THE REPORT *of the* TWENTIETH CENTURY FUND TASK FORCE *on the* PRESIDENTIAL APPOINTMENT PROCESS

OBSTACLE COURSE

With background papers by
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Report of the Task Force

The American public's trust in the federal government began to decline during the Vietnam War, plummeted after Watergate, and subsequently continued to deteriorate. Over that same period, not coincidentally, the scrutiny of presidential nominees for executive branch service steadily intensified as the insistence on greater accountability escalated. The clearance process for those asked to serve at the upper levels of government has grown to unimagined levels of complexity and redundancy, often complicated by fierce political partisanship. Senate consideration of nominees becomes at times a chamber of horrors where respectable Americans suddenly find their integrity called into question, their credentials disparaged, and their reputations permanently threatened. Individuals who agree to serve in a presidential administration face an appointment process that is increasingly dominated by "win-at-any-cost" politics, media feeding frenzies, and a sharp decline in public civility.

Of course, it is essential to take prudent steps to ensure that government officials are capable, honorable, and worthy of public trust. The constitutional provision requiring Senate advice and consent for presidential appointments and the long-standing practice of extensive background checks are intended to ensure that insufficient scrutiny does not contribute to government malfeasance and incompetence. The question is whether those basic safeguards have mutated into a system that no longer serves the purposes for which it is intended.

The Twentieth Century Fund convened a bipartisan Task Force on the Presidential Appointment Process to assess whether the current system, on balance, is beneficial or detrimental to good government. The central conclusion of the Task Force is that the confirmation process

is undermining the very trust in government it is supposed to foster. It often disables the government as key appointments languish and federal agencies and departments go without leadership for months—even years—at a time. In addition, many talented and honorable candidates for office decide against serving because of the intrusiveness of the process.

At a time when the need for public services is great, when the demand for efficiency and effectiveness is justifiably strong, when the problems government confronts are growing in complexity—that is, at a time when creative leadership is as important as it has ever been—the principal American mechanism for providing that leadership is in disarray. The presidential appointments process generally served America well for most of our history, but it no longer does—at least not as it currently operates.

The Task Force believes that the procedures used to fill the highest offices in the federal service must by altered significantly. Failure to do so now will result in further deterioration of the appointment process and deeply aggravate a decline in the leadership of federal agencies and departments.

The stakes are high. Nearly two million civilian employees work in the executive branch of government. But only two of them are elected by the American people: the president and the vice president. Most of the rest are career civil servants who look to several thousand political appointees for policy guidance and leadership. Those appointees play a critical role in defining and implementing public policy, in managing and inspiring the federal workforce, and in keeping government responsive to the people it serves. When the quality of those political appointees declines, or they are not available because of delays in selection, nomination, and confirmation, every facet of federal operations suffers.

The Task Force has focused on several particularly important flaws in the contemporary appointment process. These are explored more fully in the background papers that follow this Report, but a summary here sets the context for the Task Force's recommendations.

▲ *The appointment process is too slow.* The two most recent presidential transitions—one with a Republican succeeding another Republican, the other with a Democrat succeeding a Republican—took much too long to unfold. President Bush and President Clinton were many months into their presidencies before their leadership teams were fully

in place. On average, appointees in both administrations were confirmed more than eight months after the inauguration—one- sixth of an entire presidential term.

Compare this to the presidential transition of 1960. Kennedy appointees were confirmed, on average, fewer than two and a half months after the inauguration. But each president after Kennedy has had to wait longer than his predecessors to get his administrative team in place. The process is now so routinely slow, whether at the outset or during the term, that long vacancies in senior administrative positions have become a normal condition of Washington life. In every agency and department at any given moment, some leadership positions are vacant, while others are filled by holdovers from previous administrations or temporary place-holders. Important decisions are postponed; caseload backlogs accumulate. When Mary Schapiro was finally confirmed to head the Commodity Futures Trading Commission in October of 1994, for example, she became the agency's first permanent chief in twenty-one months.

And while presidents wait, so do the people they appoint. Sometimes they wait for months on end in a limbo of uncertainty and awkward transition from the private to the public sector. Some simply give up. Tired of waiting for the appointment process to conclude, Anne Hall withdrew as a nominee for a Republican seat on the board of the Federal Deposit Insurance Corporation in 1994. When Stanley Tate withdrew after waiting four months for the Senate to confirm his appointment to head the Resolution Trust Corporation, he called those months the "most difficult and stressful involvement" of his life.

In political time, windows of opportunity quickly close. When presidents are unable to fully exercise leadership simply because they have no administrative team to back them up, the quality of government performance is diminished and the public trust erodes further. Yet this is now the norm. The new president takes office promptly on January 20, but the president's team trickles in slowly over the following year. The momentum of the election dissipates before there are leaders in place to translate it into policy initiatives.

▲ *The appointment process is repellent to the very people it seeks to recruit.* Many of America's most creative leaders and technical specialists decline opportunities for public service because they do not want to submit to the appointment process. They see it as an obstacle course

that assumes guilt rather than innocence, that invites inappropriate public scrutiny, that encourages a relentless politics of brutality, that invades privacy and demolishes reputations. Even Americans who would relish the opportunity to contribute their talents to their country, and who would do so at great financial sacrifice, are unwilling to endure an appointment process that they have come to regard as a meat grinder.

The United States has long benefited from the public service of distinguished citizen-leaders—people who have worked in the private sector as well as in government. But today there are powerful disincentives in the appointment process that make such people hesitate to accept a call to public service. Presidential advisers responsible for recruiting appointees now report increasing difficulty in attracting their top choices for many positions. Nearly all recent studies of the appointment process report the same finding. It took President Bush twelve months to fill the position of commissioner of the Food and Drug Administration, eighteen months to get a director of the National Institutes of Health, and twenty-two months to put in place a director of the Office of Energy Research. The evidence is powerful and consistent: putting America's top talent at work in the public service is harder today than it has been at any previous time, and it grows steadily more difficult—in significant part because of flaws in the appointment process.

▲ *The appointment process is often abusive to appointees.* Even those Americans willing to accept an invitation to join a presidential administration soon learn the high and often unanticipated costs of public service. They are required to answer dozens of probing questions about their personal lives: Have they ever used drugs? Have they ever been in psychological counseling? Have they ever had an abortion? Have they ever rented a pornographic film? What is their credit history? What potential skeletons hang in their closets? They have to undergo a thorough reckoning and revelation of their personal and family finances. Their views on important policy issues are subject to intense scrutiny. Teams of FBI agents scour the country talking to former associates and neighbors, searching for any information that might be used to question the candidate's qualifications or embarrass the candidate and the president if made public.

Then comes Senate confirmation. A new investigatory process unfolds, often repeating much of what has already occurred. More

weeks and months pass. Some nominees become objects of rumor or criticism during this time. Others may become pawns in political debates that have nothing directly to do with them or the office they've been selected to fill. For months in 1995, for example, the Senate Foreign Relations Committee refused to act on fifteen ambassadorial nominations as its chairman sought an agreement with the president on a restructuring plan for the State Department. Some nominations become flash points in already pitched political battles over issues like civil rights (William Lucas, William Bradford Reynolds, Lani Guinier) or abortion (C. Everett Koop, Henry Foster). At these moments, the gloves come off and nominees are often subject to innuendo, exaggeration and misrepresentation of views, and character assaults.

Of course, intense scrutiny and extensive public disclosure are appropriate in the process of evaluating the men and women who will wield vast power in the offices for which they have been nominated. But the problem is that, far too often, the examination process wanders far afield from that necessary evaluation. As a result, nominees are robbed of their legitimate right to privacy and the nation is robbed of their service.

▲ *The appointment process has become a maelstrom of complexity, much of which serves little public purpose.* The Appendixes to the Report (see page 169) include a selection of the forms and questionnaires that all political appointees must now execute. Those materials give overwhelming testimony to the excesses of the appointment process. There are too many questions, too many forms, too many clearances and investigations and hearings. The appointment process is too slow because it is too cumbersome and redundant. It is repellent to potential appointees and abusive to those nominated because it is so often unnecessarily intrusive and humiliating. Simplicity, clarity, and a focused sense of the public interest have vanished from the appointment process. Presidents, appointees, and the American people all suffer as a result. President Clinton himself has argued that "it's time to have a bipartisan look at this whole appointments process. It takes too long to get somebody confirmed. It's too bureaucratic. You have two and three levels of investigation. I think it's excessive."

The Task Force believes it is possible to correct many of the flaws that beset the current appointment process and produce so much frustration in presidents and such profound anxiety in nominees.

The members of the Task Force envision an appointment process that is simple and sensible, that informs the public of nominees' qualifications and character, that concentrates the bulk of its attention on the most significant appointments, that matches the level of scrutiny to the level of risk, and that treats Americans willing to serve their country with respect and civility. The following recommendations are offered as practical steps to secure an appointment process that balances appropriate scrutiny and caution with the public interest in an efficient and effective process of leadership selection and retention.

RECOMMENDATIONS

The recommendations that follow focus on four principal areas: the scope of the appointment process, the recruitment and nomination process, the Senate confirmation process, and the need for greater civility.

SCOPE OF THE APPOINTMENT PROCESS

The number of presidential appointments should be substantially reduced, by approximately a third of the current total.

The American approach to staffing top executive-branch positions seeks to encourage a constant flow of new energy and ideas into government and to ensure the responsiveness of the senior officers of the government to the president and to the president's electoral mandate. Over the years, however, the number of presidential appointments, especially those requiring Senate confirmation, has been growing. Part of the growth is attributable to an increase in the number of government agencies and departments, part to the steady addition of new layers of upper-middle management, and part to the conversion to presidential appointments of positions previously in the civil service or appointed by others.

The painful consequence is that the appointment process is now overwhelmed by the burden of all these complex personnel choices. Many months pass before new administrations are in place. In-term vacancies often last for a half-year or more. Candidates for appointment are kept on hold for months while their appointments are "processed." Leadership teams are in constant flux. It's no way to run a railroad, let alone a large modern government.

Many of the Task Force's recommendations are aimed at making the appointment process more efficient, rational, and timely. But we must first confront the major cause of contemporary difficulties. The process is swamped. If presidential appointments are ever to possess the prestige and visibility necessary to attract and retain the country's very best talent, there must be fewer of them. So must there be fewer if we are to accomplish the more careful selection and aggressive recruitment that modern administrations require. The current large number of presidential appointments undermines both objectives.

The reduction recommended here would have the additional benefit of strengthening America's beleaguered civil service. The National Commission on the Public Service reported in 1989 that "Too many of our most talented public servants . . . are ready to leave. Too few of our brightest young people . . . are willing to join." Reducing the number of presidential appointments will improve the appointment process while simultaneously increasing opportunity, raising morale, and enhancing the appeal of careers in public service. This reduction would be good for the president, good for appointees, good for the public service, and good for the country.

Appointments to most advisory commissions and routine promotions of military officers, foreign service officers, public health services officers, except those at the very highest ranks, should cease to be presidential appointments and cease to require Senate confirmation.

The Constitution states that the president "shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the president alone, in the courts of law, or in the heads of departments."

In the early days of the republic the government was tiny and a president could easily pay attention to the appointments and promotion of nearly all its employees, including military officers at every rank. The practice of treating these as presidential appointments requiring Senate confirmation took early root.

It is a practice the nation outgrew long ago. While such routine appointments and promotions consume little of the time and attention of busy modern presidents and senators, they clutter the appointment process with reams of unnecessary paper. The Task Force

believes, as a sound general principle, that the president should bear direct responsibility for the appointment of only those officials who have a reasonable likelihood of interacting with him or of working directly on presidential business. Genuine presidential appointments should not be confused with other categories of personnel appointment and promotion. The Task Force similarly believes that the Senate should not be burdened with confirmation responsibilities for appointments or promotions that almost never rise to the level of senators' attention. Following that principle, the Task Force believes that both branches should be relieved of the antiquated practice of treating routine military, foreign service, and public health service promotions and appointments as presidential appointments requiring Senate confirmation.

The Task Force notes the importance, however, of certain exceptions, again following the principle stated above. Senior military appointments to positions with major command or important staff responsibilities and chief of mission appointments in the foreign service should continue to be presidential appointments requiring Senate confirmation.

RECRUITMENT AND NOMINATION PROCESS

The Presidential Personnel Office, Counsel to the President's Staff, Office of Government Ethics, and other relevant investigatory agencies should be augmented with additional, temporary staff to help process the extraordinary appointments burden when a new president takes office.

Presidential transitions are a time of overload in the appointments process. Hundreds of important posts must be filled quickly. In recent transitions, this process has stretched to intolerable lengths. One way to accelerate and improve the transitions between administrations is to add temporary staff to manage them more efficiently. This change would allow the affected agencies to conduct their routine tasks for many appointments simultaneously and meet the special burdens that occur during a transition. The staff augmentations should last no more than the six months following an inauguration.

This temporary staff should include individuals with special responsibility for media relations. Rumors, false reports, and other forms of misinformation swirl around the appointment process in a presidential transition. The Task Force believes that new administrations have an obligation to keep the media as fully informed as possible

about appointment news. A special media relations office or officer should be assigned the task of providing information and responding to daily press questions during the transition. This media office would be the central source and contact point for information on presidential appointments and would work closely with media relations officers in the individual departments and agencies. A central, well-informed media contact point would serve the public's right to know about these important decisions and would also help to protect candidates for appointment from false rumors and misinformed allegations.

FBI full-field investigations should be eliminated for some appointments and substantially revised for others.

The FBI full-field investigation became a routine of the appointment process in the early 1950s. It quickly spread to all appointments and took on a life of its own. But full-field investigations are rarely a high priority for the FBI and rarely produce that agency's best work. Successive presidents have bemoaned the length of time these investigations require. White House staffs have often criticized the jumble of highly intrusive and frequently uncorroborated information they produce. FBI files sometimes leak, to the embarrassment of nominees or their patrons, and full-field investigations require a large and inefficient allocation of FBI resources that could be applied to better purposes.

There is no justification for maintaining the FBI full-field investigation for all appointments. The Task Force believes that all nominees must be persons of integrity and that appropriate checks must be undertaken to ensure that. The Task Force also believes that the backgrounds and character of appointees in highly sensitive positions involving national security must be checked more thoroughly than any others. But the FBI full-field investigation is simply too blunt and intrusive an instrument for the purposes for which it is currently used. It should be retained for sensitive posts, but for most other positions it should be replaced with a more efficient, less intrusive, and more useful background check conducted by the FBI or by a small, new agency created for the primary purpose of performing this routine investigative function. The Task Force suggests the nature of that agency in a recommendation that follows. For part-time, per diem, and other minor positions where there are no genuine national security considerations, the Task Force believes that the FBI full-field investigation can be eliminated altogether.

The current conflict of interest laws should be amended to simplify the task of identifying potential financial conflicts of interest.

The Task Force favors extensive public financial disclosure by nominees for presidential appointment. But disclosure should be a simple process for nominees, and it should yield clear and useful information about potential conflicts of interest.

The current ethics laws require candidates for appointment and all senior appointees to file financial disclosure reports (SF 278) that mandate the reporting of income and assets in numerous categories of value. This requirement imposes large burdens on the filers because income and asset values are inherently moving targets. An asset's value today may place it in a different category from its value yesterday. Nominees and appointees often report the difficulty they encounter and the time they—and often their accountants and attorneys—expend trying to file such reports accurately.

The Task Force finds no significant purpose in retaining the current reporting categories. The public interest would be satisfied and appointee inconvenience greatly relieved by simplifying the reporting requirements. The Task Force believes this goal can best be accomplished by the establishment of a single conflict-of-interest threshold or de minimis level. All assets would be reported; their value need only be indicated as above or below the de minimis level. Assets that exceed that threshold in value and that pose a significant potential conflict of interest must then be cured in one of the several ways available for that purpose.

The proscriptions on post-employment conduct by former presidential appointees should cease to be criminal statutes and be enforced instead through a regulatory process managed by the Office of Government Ethics.

The Ethics in Government Act of 1978 significantly broadened restrictions on the behavior of former presidential appointees. These were intended to prevent revolving-door conflicts of interest in which former government employees traded on their knowledge or contacts within government to enrich themselves, undermine agency integrity, or give unfair advantage to one interest over another. In the years since 1978, these restrictions have been expanded.

These requirements are complex and difficult to implement. The difficulty results in large part from the decision to embed these restrictions in criminal statutes. The Task Force believes that compliance

with the post-employment restrictions and enforcement of them can be improved by replacing the criminal statutes in which they currently reside with a regulatory process that is more flexible and less reliant on evidence of prosecutable behavior. The 1989 Ethics Reform Act (PL 101-194) began to move the ethics laws toward civil enforcement. The Task Force believes that this was a positive step, and it supports further progress in that direction.

In most cases in which post-employment conduct is in question, there is no criminal intent. Far more common is uncertainty about whether particular kinds of actions or communications are appropriate. The Task Force believes that the proper way to address these concerns is through a regulatory process staffed by experts in the Office of Government Ethics (OGE) who, when uncertainties arise, can advise former government employees and can order them to cease and desist when they trespass beyond the boundaries of acceptable behavior. OGE should be granted the statutory authority necessary to regulate these post-employment activities.

One significant advantage of this approach is that it will reduce the fears of many potential appointees who are reluctant to enter government service because they worry about the risks when they return to the private sector. They should abide by the post-employment restrictions, but they shouldn't have to worry that an innocent contact or action will result in their indictment and possible incarceration. The Task Force believes that there is a better approach that fully serves the public interest in protecting the integrity of government decisionmaking while lowering the risks to well-meaning and law-abiding former government employees.

All parties to the appointment process should agree on a single financial disclosure form and one set of general background questions.

One of the great aggravations and a principal source of delay in the current appointment process is the requirement that nominees complete several financial disclosure forms that vary widely in the ways they are construed and respond to several different sets of background questionnaires. The White House uses one set of forms, departments and agencies use another, Senate committees still another, and the FBI and OGE still others. The financial disclosure forms often request that the same information be reported in very different ways, none of which correspond directly to the way information is reported in income tax filings. The Appendixes to the Report (see

page 169) provide copies of some of these reports and questionnaires and illustrates their complexity and redundancy.

Many presidential appointees are accomplished people who have been financially successful. Their finances are complicated and these multiple reporting requirements—combined with the powerful desire to avoid the potential embarrassment of misreporting or inconsistent reporting—slow the appointment process considerably. It is not uncommon for nominees to spend a month or more gathering, sorting, and reporting the information necessary to complete all these forms.

Great efficiencies could be achieved if the parties to the appointment process, all of whom have legitimate interests in these matters, were to work together to create a single financial disclosure form and a standard background questionnaire. (A recent study of judicial appointments by the Miller Center for Public Affairs at the University of Virginia came to a similar conclusion.) It may occasionally be necessary for a department or Senate committee to solicit necessary information beyond these basic filings; they may use their own supplemental forms for that purpose. But the duplication and inconsistency in reporting standard information should be largely abolished. Everyone would benefit if it were.

Each administration should establish a small interoffice coordinating group that would meet regularly to facilitate and expedite clearances and background checks for all presidential appointees, to assist them in navigating the confirmation process, and to provide them proper orientation for their new jobs.

The slow pace of the appointment process is caused in no small part by its disjointed and decentralized character. The Personnel Office performs its functions, so do the Counsel's Office, the OGE, and the FBI. Then nominations go to the Senate where many of the steps are repeated.

The Task Force proposes the establishment of a standing, interagency committee with its own staff and with liaisons from other relevant agencies to superintend the necessary background, financial, ethical, and legal clearances on all presidential appointees. This committee's work would begin after the Presidential Personnel Office had identified and the president had approved a potential nominee and that potential nominee had agreed to serve if nominated and confirmed. Where FBI full-field investigations were required, those would occur before the nomination was handed off to this committee.

The coordinating group would conduct background reviews on all candidates not subject to FBI full-field investigations, including a search of all government computer records on the candidate, reviews of questionnaires completed by candidates, and follow-up interviews when necessary with the candidate or persons knowledgeable about the candidate. The group would have authority to call on the assistance of the FBI or other investigative agencies when such assistance would be helpful.

This interoffice coordinating group should be staffed by people with ample Washington experience, who are well-versed in the details of the ethics laws and the mechanics and politics of the confirmation process, and who command wide respect. Their work would be conducted in confidence. When completed, the information gathered by this committee would go to the president who could then make a final decision on the nomination. If the president decides to nominate the candidate, all relevant information from these investigations would be forwarded to the Senate committee with jurisdiction over the appointment. The committee's media relations officer would at this point provide a dossier of information about the nominee to the press.

The interoffice coordinating group would then work closely with the nominee and his or her representatives to:

- complete financial disclosure forms and other questionnaires;
- coordinate the nominee's compliance with the ethics laws with OGE, the appropriate designated agency ethics officer (DAEO), and the Counsel to the president's office;
- assist nominees in working with the staffs and meeting the members of Senate committees with jurisdiction over their nominations and prepare nominees for confirmation hearings;
- arrange an orientation program for all new appointees focusing on the specific concerns of their agencies and their jobs, on the Washington political environment and press corps, and on the program and objectives of the president.

The Task Force believes that this new process would significantly hasten and improve the clearances and investigations that are essential to a sound appointment process. It would overcome the decentralization

that now encumbers the process and minimize the tendency for it to be held hostage to the particular agendas of individual agencies. The new process would greatly reduce duplication of reporting and investigative efforts. It would identify potential problems at an earlier stage and reduce the potential for embarrassment to the president and candidates for appointment. And it would minimize the likelihood of information leakage and thus better protect the privacy of candidates for nomination early in the process.

The clearances and checks that compose the current appointment process were born out of no careful or rational design. They grew haphazardly. It is time to centralize, coordinate, and rationalize this important set of functions. The Task Force believes that this recommendation promises real improvements in the reliability, efficiency, and integrity of the appointment process.

This recommendation also aims to make the appointment and confirmation process more "user friendly" for nominees. In effect, each nominee would have the assistance, throughout the appointment process, of an ethics lawyer, a political adviser, and a press representative. One of the constant laments of people who accept presidential appointments is that they seem to be "nobody's baby" during the confirmation process. The Personnel Office usually considers its work done when a nominee has been chosen. The Counsel's office and other agencies have specific interactions with nominees but none takes responsibility for helping the nominee, in any broad sense, to confront the confirmation and clearance process. This institutional failure is manifest in the frequent reliance of many recent nominees on the pro bono assistance of old Washington hands who have graciously, but inconsistently, stepped in to advise nominees.

That isn't good enough. The appointment process has grown steadily more complicated, elongated, and politically charged in recent decades. To many nominees from the private sector, it is an utter mystery. It is essential now that someone take responsibility for guiding nominees through the entire appointment and confirmation process. The Task Force believes as well that this is the appropriate time to be orienting nominees to the tasks and responsibilities that they will face and the environment in which they will operate. The recommendations put forth here seek to assign clear responsibility for accomplishing both of those objectives.

The major-party presidential candidates should begin to plan the staffing of their administrations well in advance of the election.

One of the great and enduring weaknesses of the contemporary appointments process is its failure to put a new administration in place on time. Presidents Bush and Clinton were both in office for more than a year before all the major positions in their administrations were filled by Senate-confirmed appointees. Modern presidents all want to hit the ground running, but soon come to realize that in the early months they are running alone. No other institution in our society would tolerate so many vacancies for so long a time in senior positions.

One way to cope with that problem is for new presidents to prepare better for their personnel responsibilities. The Task Force believes that major party candidates should begin to devote some attention to this before the election, perhaps at the time they secure their party's nomination. Candidates should appoint a staff to plan, in confidence, the personnel aspects of a transition with the full support of the nominee and his or her political and policy advisers. The staff could collect information on the full scope of the president's appointment obligations, gather or create job descriptions for key positions in the administration, master the technical details of the appointment process, become acquainted with officials in the agencies like OGE that play a key role in the appointment process, and begin to develop a personnel strategy.

The political dangers in beginning to build and winnow lists of potential appointees before an election are well-known and need not consume the attention of such a staff. But the critical importance of such pre-election planning should overcome the inhibition of appearing to be presumptuous about the outcome of the election. A good deal of the preparatory work can—and should—be done before the election so that the staffing process can proceed expeditiously immediately after the winner is determined.

There is some precedent for this. A number of recent major-party candidates have undertaken limited efforts to prepare for personnel selection. Few of these have been very successful, however. The Task Force believes that planning of this sort is essential and demands much more attention and effort than it has received in the past.

SENATE CONFIRMATION PROCESS

There should be significant modification in the practice of "holds" placed on nominations by individual senators.

The Senate is a relatively informal legislative body that grants significant deference to individual members. Over the years, a practice

has emerged that allows individual senators to request of the leadership that a hold be placed on a nomination in order to gather more information, to permit a senator to meet with a nominee, or for some other practical purpose. In recent years, however, holds have become more frequent and have been used not for purposes of administrative convenience but as a tactic for delaying the confirmation process in order to extract concessions from the president or other senators.

The Task Force understands that the character and traditions of the Senate sometimes justify a temporary hold on a nomination to permit full deliberation. But the Task Force does not believe that the public interest, nor the interests of a majority of the Senate, are well served by the abuses of this practice, which have become common in recent years.

The Task Force urges the Senate to review its policy on holds and to modify it in one or more ways. One option is to limit the length of a hold to a week or ten days. Another is to require that a minimum number of senators, perhaps 10 percent of the members, must request a hold before one takes affect. A third possibility is to allow any member to offer a privileged resolution on the Senate floor that could end a hold by vote of a simple majority of those present and voting.

The Task Force does not believe that the practice of holds on nominations was established to frustrate the confirmation process or allow the conduct of important government business to be held hostage by a single senator. It believes that abuses of the holds system must end, and urges the Senate to take the necessary action to accomplish that.

Confirmation debates on executive branch appointments should be granted "fast-track" status in the Senate to shield them from filibusters.

Whatever their value for other purposes, filibusters have no place in the confirmation process for executive branch nominees. The framers of the Constitution believed that presidents should be permitted to select and be held accountable for their own appointees, subject to a vote by the Senate on the fitness of those appointees for the offices to which they were nominated. The framers deliberated carefully on what the character of the Senate check should be and decided that approval by a simple majority of the Senate was adequate to serve the public interest.

The use of filibusters on confirmations radically changes the character of the confirmation process. It requires that presidents select nominees who can obtain support of a super-majority of sixty members of the Senate, not a simple majority of fifty-one. The filibuster allows a minority of forty senators to control who will or will not serve in a presidential administration. In a time of divided government—of the sort that has become normal in recent decades—the filibuster creates abundant opportunities for partisan mischief in the appointment process.

In recent years, while it has retained the filibuster rule, the Senate has come to realize that there are some areas of its jurisdiction from which filibusters should be excluded. Filibusters are not now permitted in the process used to close military bases. Important trade agreements are often beyond the reach of the filibuster. The annual budget resolution and ensuing reconciliation legislation cannot be filibustered. Before the Supreme Court struck down the use of legislative vetoes, many proposals that came to the Senate were not subject to filibusters.

The Task Force believes that presidential nominations should proceed on a "fast track" in the Senate. They should be scheduled for floor vote within fifteen legislative days after being reported out of committee, and they should receive a shield from the filibuster and other forms of procedural delay. The Task Force would exempt judicial nominations from these requirements. Because they involve life tenure in a third branch of government and because judicial vacancies are significantly different in character from administrative vacancies, Senate deliberation does and should proceed more slowly.

The efficient conduct of government business cannot occur when presidents—and even majorities in the Senate—are held hostage by determined minorities employing the filibuster rule. The Senate has an important constitutional role in the appointment process. The Task Force believes it should play that role fully and carefully. But the Task Force also believes that it should do so by majority rule. Any other practice is deeply threatening to the framers' wise intent and to good government.

It is equally important that Senate committees not unduly delay confirmation decisions, especially by using appointments as bargaining chips in policy disagreements between committee members and the president. The Task Force recognizes the long-standing deference the Senate affords its committees in all matters, but must also

note that long delays in committee action leave the affected nominee and the departments and agencies awaiting their leadership in highly uncomfortable limbo, undermine the president's ability to govern, and discourage other talented individuals from accepting future offers of appointment.

Confirmation hearings should be waived for noncontroversial appointments to lower-level positions.

For most of our history, the Senate did not hold public hearings on nominations to any office. When the practice began, it spread quickly and has now come to consume a good deal of the time of some Senate committees and to produce a good deal of unnecessary anxiety among nominees. The American people are most familiar with the few extraordinary, and often hostile, confirmation hearings that prick the public consciousness. Those, however, are clearly exceptional. Most confirmation hearings are routine, pro forma, and short. They produce little valuable information and often seem simply unnecessary. Scheduling of hearings is often a significant source of delay in the confirmation process. Committee staff must frequently scramble on the day of the hearing to find a single senator willing to chair the proceeding.

The Task Force urges the Senate to raise the threshold for confirmation hearings, limiting them only to those offices or nominations in which individual senators have genuine interest or concern. For some years, the Senate has followed the practice on military promotions of publishing the list of candidates and holding them for a limited time. During that time, any senator can demand a hearing on a particular nominee. Absent such demands, no formal hearings are held. The Task Force believes that this practice should be applied more widely to include nearly all nominations. Where no senators express significant interest in or concern regarding a nomination, the Task Force believes that the waiver of confirmation hearings will be of value in expediting the confirmation process.

Senate committees should conduct executive sessions for examination of certain personal matters or criticisms of nominees based on questionable evidence.

The Senate has every right, indeed is obligated, to inquire into personal matters or questions of character that might affect a nominee's performance in office. It also has a duty to examine criticisms of, or complaints about, a nominee.

The Task Force believes, however, that it is most often appropriate, especially in the early stages of a hearing, to explore these sensitive issues in executive session. This approach would both protect the appropriate privacy of the nominee and maintain the integrity of the confirmation process from charges of unfairness or political bias. Matters initially explored in executive session may later warrant discussion in open session. But fairness requires that nominees be considered innocent and worthy of appointment until proper evidence demonstrates otherwise.

Public discussions of personal matters and attacks on the character of some recent nominees have had a chilling effect on the appointment process. Too many potential appointees these days decline nomination because they do not wish to be subjected to the kinds of abusive confirmation hearings they've watched on television. The Task Force believes that the Senate has an obligation to exercise extreme caution in subjecting nominees to potential abuse. Broader use of executive sessions is one way to accomplish that.

A CALL FOR GREATER CIVILITY

One of the greatest threats to the historically high quality of public servants in America is the growing reluctance of talented individuals to accept presidential appointments. Throughout its deliberations, the Task Force has heard story after story of highly qualified individuals who have declined to accept presidential appointments because they did not want to be subjected to the intense and sometimes irrelevant scrutiny or to the personal abuse that have become increasingly common in the appointment process. "It's not worth it" is the refrain born of this reluctance. Our nation suffers gravely when so many good people find the prospect of entering public service so forbidding.

Change in the character of the appointment process is the responsibility of everyone who participates in it or reports on it. Presidents should be more cautious about the practice of floating "trial balloons"—suggesting names of potential nominees as a way of determining what kind of opposition they might draw if nominated. Members of presidential administrations must cease the leaks designed to undermine internal candidates they oppose. People and groups who disagree with a nominee's policy views must frame their opposition to the nominee in policy, not personal, terms. Senators and their staffs must step up their efforts to ensure the integrity of the

confirmation process by redoubling their efforts to prevent malicious leaks of information or rumor and by making every effort to keep the focus of their attention on the policy views and professional qualifications of nominees. Reporters and editors should take great care to report only reliable and relevant information about nominees and to avoid personal information about individuals that is unverified or irrelevant to their nominations.

To accomplish these changes will be no simple task. Appointments matter because they deeply affect the course of public policy. They are always inviting political targets. Appointments are also "good copy." Unlike much that goes on in government, they are relatively easy to comprehend. Stories about them can focus on personal drama rather than the complexities of public policy. The Task Force recognizes the temptations and political logic that have led to recent excesses in the politics and media coverage of the appointment process. It also recognizes that thoughtful people reasonably disagree about appropriate topics for investigation, discussion, and news coverage in this process. There is no current consensus on where the public's right to know ends and an appointee's right to privacy begins.

These perplexities make it all the more important for people who work in, try to influence the outcomes of, or report on the appointment process to take special cognizance of their responsibility to exercise caution. Individuals willing to serve the public as presidential appointees deserve some protection from unnecessary or unfounded attacks on their integrity, character, or prior life history.

The Task Force believes that candidates for presidential appointments are entitled to a zone of privacy and that all discussions of individual nominees should be subject to the careful discipline of relevance and reliability. Beyond essential questions of policy and philosophy, the appointment process should focus only on the personal characteristics and qualifications of the nominee that are relevant to the position for which they are nominated and be based on reliable evidence.

But even this approach is no substitute for caution and concern for the public interest. In the appointment process, winning a battle often does contribute to losing the war. When an appointment is killed by abusive and excessive personal attacks, or even if it succeeds in spite of them, good people around the country take note. Their

reluctance to subject themselves to a protracted ordeal is solidified. We all suffer as a consequence. And so all of us must share the responsibility for restoring civilized discourse and procedural integrity to the appointment process. If we do not, the pool of talented and creative Americans who are willing to serve their country as presidential appointees will continue to shrink.