THE WHITE HOUSE TRANSITION PROJECT
1997—2017

RICE UNIVERSITY'S BAKER INSTITUTE FOR PUBLIC POLICY

SMOOTHING THE PEACEFUL TRANSFER OF DEMOCRATIC POWER

Report 2017—50

MENDING THE PRESIDENTIAL APPOINTMENTS PROCESS
NINE RECOMMENDATIONS

Terry Sullivan, *University of North Carolina at Chapel Hill*
Executive Director, *the White House Transition Project*

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For the White House Transition Project
Martha Joynt Kumar, *Director* (202) 285-3537
Terry Sullivan, *Exec. Director* (919) 593-2124
http://whitehousetransitionproject.org

For the Baker Institute
Mark P. Jones, *Senior Fellow* (713) 348-2107
http://BakerInstitute.org

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EXECUTIVE SUMMARY

This paper recommends changes to the presidential appointments process. It highlights three kinds of problems: inexperience, lengthening confirmation, and tedious and adversarial inquiry. Instead addressing most of the causes of lengthening confirmations, it concentrates primarily on building out capacity in the campaigns and eventually the president-elect staff and it suggests steps to reduce the burdens of inquiry that nominees face. The report identifies five ways to bolster a new White House and Senate's capacity to meet the demands of presidential personnel. These changes also help (indirectly) shrink the length of the nomination and confirmation processes. The report then identifies three improvements to inquiry by outlining patterns of repetitiveness among the approximately 2,800 details that a nominee must provide in responding to some 295 individual questions in nine categories. The report's three recommendations about structuring inquiry reduce the adversarial burden on nominees by 31%.

These recommendations include:

- *Bolster Capacity.* In general, improve the capacity of the Executive to vette nominees and increase the Senate's capacity to process confirmations.
- *Start Preparations Differently.* Alter the government's strategy in pre-election preparations from improving *familiarity* to improving *capacity.*
- *Earlier Knowledge of Personnel Requirements*. The Office of Personnel Management and the relevant congressional committees should take steps to assure earlier publication of their "Plum Book."

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- *Wider Provision of Technology to Campaigns.* The Congress should authorize funds to promote earlier preparations among campaigns for personnel operations.
- *Create a Professional Staff to Undergird Personnel Operations.* The Congress should authorize a permanent expansion of the White House personnel operation. This new authority should create a permanent staff of professionals, overseen and supplemented by presidential appointees.
- *Create a Professional Staff to Undergird Senate Confirmation.* The Congress should authorize new staff in both the majority and minority to focus on each committee's confirmations.
- *Improve Redundancy in Inquiry.* The Congress should require the executive to develop a plan for improving redundancy in executive branch forms by taking the most general information required by any agency and requiring that level of information for all.
- *Eliminate the Net Worth Statement in the Senate.* The Senate committees should agree to eliminate the use of Net Worth Statements in favor of requiring nominees to submit their SF-278 reports.
- *Build a Model Senate Questionnaire.* To sponsor redundancy, the Senate Committee on Homeland Security and Governmental Affairs should develop a Senate committee questionnaire modeled on the SF-86.

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From reconciling partisan conflict to assuring global security to promoting international commerce, her peaceful transfer of power — and the appointment of a new administration that it entails — represents America's most significant democratic export. Yet, presidential transitions have not always gone smoothly or even expeditiously, especially when considering the appointment of the government. After undergoing yet another presidential transition, the complexity of the federal appointments process will undoubtedly reemerge as a point of controversy.

Since the Reagan administration, studies have regularly surfaced complaining about appointments.[1] Invariably, they conclude that the process has become a mess. Invariably, they conclude that it discourages and demoralizes those needed most in government service [cf. Light and Thomas 2001: 10], with dire consequences for successfully recruiting quality

* The author acknowledges the counsel of Clay Johnson, Martha Joynt Kumar, Chase Untermeyer, and Thomas Oatley. This research began while the W. Glenn Campbell Fellow in National Affairs, the Hoover Institution, Stanford University. It depends, in part, on data collected by the author for the National Commission on Reform of the Federal Appointments Process and the Aspen Institute. The author employs those data with the permission of the National Commission. This paper also profited from conversations with Lisa Brown, chair of the President's Working Group on Streamlining Paperwork for Executive Nominations and some of her staff.

[1] These reports have included special presidential commissions, private forums (most recently the Aspen Institute (2012)), professional organizations (like the National Academy of Public Administration in 1988) and policy think tanks (most recently the AEI-Brookings-Hoover Institution's Transition to Governing Project, Brookings 2002), as well as those conducted by congressional committees and, sometimes in conjunction with, executive Branch agencies [OGE 2001].

nominees.[2] Invariably, they conclude that the complexity of the inquiry process misses obvious vulnerabilities among nominees that lead eventually to embarrassing the newest president. And, maybe predictably, invariably they have had generated little reform.[3]

In a nutshell, the entire presidential appointments process presents a conundrum: nominees feel needlessly badgered by a process that seems irrational. Taking one reasonable complaint as an example: One might reasonably ask why an experienced appointee should have to complete again a whole new application when the details of their situation cannot have changed much in the short time between their prior service and the current service? On the other hand, those using the process to make decisions complain little about these elements and concentrate, instead, on *their stakes in it* — stakes that, for the Executive involve judgments about insuring the president's safety, or promoting the new administration's agenda, or assuring the national security?

This paper takes a new tack on this troubled process. It sidesteps this conundrum and focuses on issues associated with establishing a common ground for reform, one concentrating on efficiency, capacity, and reducing tedium in the inquiry that nominees must face. Taking that approach not only fills an information gap in an area that matters, it clarifies something about the root causes of the growing complexity and frustration with appointments, and it provides the first quantification of the burden that appointees must bear. Taken alone, for example, just two of the recommendations here would produce a 31% reduction of nominees' burdens without losing any useful information or modifying anyone's authority.

DETAILING THE APPOINTMENTS MESS

Repairs to the presidential appointments process have occupied the governing community for decades [Light 2007]. And why not? As Alexander Hamilton noted [*Federalist #72*], the appointment of a new administration occupies the core of how to achieve everything that a president wants and the core of everything on which the electorate

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[2] A survey of former presidential appointees, released by the Brookings Institution's Presidential Appointee Initiative, concluded [Light and Thomas 2001: 10] those who have traversed the process "were so unhappy with the nomination and confirmation process that they called it embarrassing, and two-fifths said it was confusing....'" In a separate survey [Light and Thomas 2000: 18] of those who had not held presidential appointments (although almost half had been asked), these "neophytes" responded to the same question with 81% saying they thought filling out the forms would "not be difficult," suggesting that familiarity with the forms greatly altered *in the negative* the opinions of those who would brave the process.

[3] Since 1997, new administration teams have access to a number of useful resources on presidential appointments, including the resources and experience of the White House Transition Project which has now helped usher in two smooth transitions. In the Bush transition, WHTP analysis helped restructure the White House Personal Data Statement making a 30% reduction in the details nominees had to provide See Sullivan 2000 and Sullivan and Hora. In the Obama transition recently concluded, the new president's team also profited from the assistance of the permanent and experienced staff at the Center for American Progress. The presence of these groups does not diminish the basic problems which remain unchanged.

has made its choice.[4] In a 2008 issue of *Public Administration Review,* three articles focused on the then yet to occur 2009 presidential transition and each underscored meeting the challenge of the appointments process as critical to a successful start [Kumar 2008; Wellford 2008; Johnson 2008a]. Nothing has really changed much for nominees in the ensuing years.

This personnel challenge derives from three related difficulties: the inexperience of new administrations, the ever-lengthening process, and the morass of inquiry. The first set of challenges have to do with the mismatch between the personnel task and what the new president might bring to bear for that task. The second reflects the inevitable constitutional struggle between the Congress and president to control the policy process. The third derives from the complex gauntlet of inquiry nominees consider overly adversarial and tedious. This section outlines the problems identified in each of these areas. The next section introduces a range of recommendations for addressing these challenges.

Inexperience with Personnel

A long-time observer of presidential leadership, himself a former presidential staffer, Richard Neustadt used to say that new presidents and their staffs come to work carrying three curses: arrogance, adrenalin, and naïveté. No president-elect comes to office with useful experience in national personnel. No governor, for example, appoints anything like the breadth, depth, or range of a president's appointments. Ignoring for the moment, the national security apparatus or its global defense establishment, no governor deals with the appointment of an international diplomatic corps nor those that would handle a breadth of issues surrounding international trade, the regulation of a massive national economy or monetary system, and so on down a list of other complex issues.

Governors, of course, do not stand alone lacking this kind of useful experience. No legislator, steeped in the dynamics of congressional accommodation and its requirements of intense specialization and narrow expertise, faces the breadth of the president's appointments. No former general (to consider President Eisenhower as a special case) has assumed a command in which he must replace simultaneously every line, support, and staff officer throughout the entire command. No corporation takes over another by emptying the entire management down to the production line and replacing it with a wholly new crowd. Hence, by relying on their past experience, in states or Congress or the military or business, no candidate can ever come to office ready to grasp, let alone lend leadership to, the presidential appointments process.

President Eisenhower, clearly experienced in massive military organizations, struggled with appointments until he resolved several disputes (but not all) with an Executive Order in year *five* of his administration (see Mackenzie 2001, chapter 1). Though a Senator, President Kennedy and his chief advisors knew so little about appointments that they coupled presidential personnel, governmental affairs, and congressional relations into one assistant's portfolio — a portfolio so immense that within thirty minutes of moving into his West Wing office, Lawrence O'Brien realized what a mistake they had made and called

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[4] In an irony of history, Thomas Jefferson (1801), speaking from a practical point of view juxtaposed to Hamilton's theoretical one, also belabored the necessity of establishing a new president's distinct identity from that of a predecessor through the selection and appointment of an administration.

the Government Printer to see if they could remove his personnel and governmental affairs titles from his letterhead (see Lawrence O'Brien Oral History, LBJL). Though a seasoned politician, Senator, and Vice-President, President Nixon nearly sank his own personnel operation by naïvely authorizing a search for nominees that included polling every person in *Who's Who in America*. The resultant tidal wave of responses nearly scuttled his White House operation. In 2000, while preparing for winning the election, George W. Bush's operation nearly succumbed to woefully low expectations on personnel, projecting their own gubernatorial experience onto their future, Washington one. For this reason, presidents must depend upon the talents of others they can recruit with prior governing experience and a special breadth of knowledge about the scope and scale of the Executive Branch.

Second, no president-elect possesses a completely useful instrument for addressing the demands of the personnel process. However successful in fielding a national campaign, the new president-elect's staff has no experience surmounting the difficulties of these appointment responsibilities. For that reason, alone, the president-elect begins behind a curve of ignorance that grows exponentially and requires that a staff built for campaigning and communicating transforms itself into something more capable: a staff attuned to governing realities [Kumar 2008]. In addition to this general mismatch and mostly because of these misleading expectations, once in office, the White House Office of Presidential Personnel has traditionally possessed a small staff relative to the job of locating, vetting, and supporting nominees. While the Governor of the second largest State in the union (Texas) maintains a resume database on some 15,000 potential nominees, the president-elect's operation must process that many resumes *on the day following the election*.[5] By inauguration day, a new White House staff may come into the building with nearly 350,000 resumes of potential nominees. And at any time, a White House personnel staff, one that on President Clinton's inauguration day numbered twenty-nine (20 volunteers and nine staff, down from 220 during the transition or roughly the size of Governor Bush's Austin staff), may have to maintain 400,000 resumes.[6] What worked in maintaining the operation of a governor or a Senator or a Representative can easily snap under the pressure of such scale.[7]

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[5] While Presidential Personnel locates and considers potential nominees, the White House Counsel's Office has lead responsibility for vetting "appointees."

[6] These numbers derive from White House Transition Project interviews with former staffs of the George H. W. Bush and William Clinton administrations, especially Robert Nash. The size of the personnel office derives from National Journal Group's, *The Capital Source* (spring, 1993) and from organization charts developed and available through the White House Transition Project at: http:\\whitehousetransitionproject.org.

[7] Faced with these tasks, the Personnel operation turns to interns and former campaign workers and other volunteers to find the assistance they need. As often happens in dealing with personnel, one solution simply compounds the problem in some other way. Nominees regularly complain about the youth and inexperience of their contacts in the personnel operation. One Clinton appointee complained he had reached a point when he simply refused to deal with "one more teenager" [Maranto 2005].

Taking Longer to Stand Up the Government

Complaints about the lengthy appointments process represents a second challenge. As a useful measure of length, consider the time it takes from the President's inauguration to completion of each of the administration's "policy government" nominations. This measure would stand in for "standing up" the American Executive, a comparative measure of how long it takes to get the government up and running [MacKenzie 1990, 2002]. Unlike typical research measures on appointments (employed in studies noted below), this measure takes in more than just the time the Senate uses to consider a nomination and act on it. Instead, this measure approximates something akin to the entire appointments process from initial identification of a candidate, through intent to nominate, through executive branch vetting, to nomination and confirmation. In effect, it encompasses two processes, an executive nomination and a Senate consent, which make up the whole of the appointments process. The Kennedy score on this measure equals 2.4 months while the Clinton administration number stands at 8.5 months or three times longer, even though both presidents faced a Senate majority of their own party [Mackenzie 1990, 2002:137].

This pattern then constitutes a serious lengthening of the appointments process. Some of that increase reflects growth in the number of policy-making positions [Light 1995]. And from bureaucratic "thickening" in the Executive [Light 1995; Lewis 2008] and some reflects a complex bureaucratic response to professional pressures [Moranto 2005] and an attempt to increase the political span of control in the Executive [Weko 1995]. Regardless of the explanation, historical growth has added layers of nominees to invite, vette, and advise on. As a reflection of this growth, President Kennedy nominated 189 position in his first year (1961) [Ragsdale:28-9] while President Obama nominated 360.

Detailed analyses of the Senate consent process places most the blame for this lengthening on Senate politics. After studying confirmations from 1885 through 1996, Nolan McCarty and Rose Razaghian [1999], for example, concluded that "political conflict induced by divided government and polarization clearly leads to a more drawn out confirmation process." Others have echoed these conclusions (cf. Binder and Maltzman 2002): by employing available procedures to gain bargaining advantages, Senators have lengthened the process.

These studies of consent, however, miss two important points: First, increasing demands for appointments and its historical growth have also meant more pressure on the White House Personnel Office and the executive vetting processes, as well as more pressure on the Senate. Assuming that every position starts out with three or four candidates implies that a doubling of government positions yields an astronomical increase in preliminary vetting. In conjunction with a relatively constant staff for vetting, this growing purview means one clear and overlooked implication: Clay Johnson, who spent two and a half years as White House Personnel Director before moving to OMB, has estimated that on average the internal White House process sifting through nominees takes at least twice as long as the Senate consent process [Johnson 2008c]. Hence, the lengthening of the process takes place predominantly in the executive, rather than the legislative.

Second, the breadth of those to appoint and the lengthening executive vetting process means that often presidential nominations arrive in the middle of the Senate's primary legislative season. Since for most Senators consider law making their primary responsibility

(and certainly their most potent influence on governing), confirmations *after a certain point* become a weak competitor for their time. The broadening of appointments itself, then, provides opportunities for individual as opposed to aggregated influence as a single Senator's objections produce extraordinary opportunity costs within the system.

The Morass of Inquiry

In its last report (released in 1996), the Twentieth Century Fund's published the results of its Task Force on Presidential Appointments describing the process as a "maelstrom of complexity," containing "too many questions, too many forms, too many clearances." In the next presidential cycle, the Presidential Appointees Project at the Brookings Institution found that potential nominees regularly underestimated the problems they would face in filing their government forms [Light and Thomas 2000]. And then they found that facing the apparent complexity of that inquiry, nominees characterized it as "mean-spirited."

As a result of the Presidential Appointment Efficiency and Streamlining Act of 2011 (PL 112-166), a presidential task force recommended a number of changes to questions and to their universal application but none of changes have found a supportive ear in the Legislative branch. The panel also recommended the creation of a smart form, developed first in 2000 by the White House Transition Project, but Congress did not fund that proposal either.

The Basics of Inquiry. This section details the inquiry process using a unique database built to identify the range of questions to which nominees must respond.[8] The database maps the flow of similar information across questions between forms and this mapping allows for measuring the degree of repetition, the amount of "adversarial relations," and the tedium nominees endure.

Nominees face a number of agencies to which they must report and a dazzling array of questions they must answer. Most nominees submit to at least four reviews, each represented by a separate packet of government forms.[9] The first packet, the White House Personal Data Statement (WHPDS) includes a questionnaire along with a number of release forms and a basic contact sheet. Primarily, the WHPDS questionnaire focuses on basic information and "political" liabilities. The second packet originates with the FBI. Called the "Standard Form 86" (SF-86), it includes three separate forms: a "standard questionnaire," a "supplemental" questionnaire, and an immigration addendum. This package, the one highlighted in the introduction, focuses on national security vulnerabilities and legal entanglements. The third package of forms, called the "Standard Form 278," comes from the Office of Government Ethics (USOGE) and now has an implementation in its

[8] In one of its 2000 programs, the White House Transition Project developed the first-ever comprehensive database on nominee inquiry. This database supported the development of a unique software project that allowed nominees to answer question once and then have the software parse that answer and distribute them across the myriad of questionnaires and forms the nominees had to file. In 2001, 40% of Bush nominees used the software to file their forms. In carrying out this software project, the White House Transition Project identified each of the questions asked on all the forms nominees might file along with all the details required to answer these questions.

[9] Actually, appointees must fill out several additional forms granting permissions for various background and IRS checks but these do not present a burden and no one considers them noxious.

stand-alone *Integrity* software. This form covers financial entanglements and potential conflicts of interest and also doubles as an annual disclosure report for all federal employees above the rank of GS-15.[10]

For most nominees for policy-making positions, a fourth package of questions comes from the Senate committee of jurisdiction. This package typically consists of two forms: a basic questionnaire covering the range of information from background to political conflicts to policy positions and a financial disclosure document of some sort (most often a net worth statement). Then, and based on the answers to the standard questionnaire and with the help of policy experts in the GAO, many committees will require answers to a second, more tailored questionnaire. About one-third of all questions asked on the average Senate committee's initial questionnaire and almost all of the subsequent questions asked on the follow-on questionnaire cover specific policy commitments that the committee wishes the nominee to consider.

A single example epitomizes the problems in inquiry and how to discern the level of repetition in an area of inquiry — the case of owning property. Since the beginning of the George W. Bush White House, the WHPDS no longer surveys property ownership. On its form, however, the FBI surveys properties currently held by the nominee, excluding personal residences. The FBI only focuses on what property the nominee holds in name, ignoring family holdings. And for each property, the nominee must produce a variety of information including its current worth. While it also has an interest in property, the USOGE changes the subject of investigation, projects that interest back in time, and changes the kind of information requested. While it requests information on those properties owned by the nominee, it also adds a requirement for information about properties in which the nominee has an "interest," it includes requirements about residences, and then the OGE also wants information on real estate assets currently held by any others in the family. In addition, and unlike the FBI, OGE wants information on property transactions covering the previous two years. And, for all of these properties, the OGE requires information on values but only to the extent that the nominee can place those values within one of 11 categories.

The typical Senate committee returns to the FBI standard of ownership (dropping the spouse and dependent children); it uses the FBI's timeframe (dropping previous transactions); and it asks the nominee to identify a specific value for each of the properties. The committee will ask these questions as part of a detailed financial disclosure (or net worth) statement delineating property as assets and liabilities.

In all, then, nominees need to muster information on real property designating three separate classes of ownership, sorting on at least two separate types of transactions, setting out two different time frames, and set across three separate approaches to reporting values.

From the perspective of a nominee, the inquiry process they face has two separate characteristics: its intrusiveness and its repetitiveness. These two notions characterize the dimensions of inquiry. Intrusiveness involves the "depth" of inquiry, the degree to which an inquiry does not seem of immediate relevance. These details require and the

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[10] That classification would include all important presidential appointees and many in the senior executive branch and all of the Senior Executive Service. Below GS-15, federal employees report on a SF-450.

accompanying potential for errors quickly generates a sense of tedious inquiry carrying high stakes. Repetitiveness, on the other hand, involves the regularity with which nominees must alter and recap required information. For nominees, this repetition gives them the impression of the process as a senseless dance seemingly orchestrated merely for the sake of making them dance. This sense merely reinforces their sense of a deeply adversarial process.

Repetitiveness and Specialization Defined. To appreciate fully these difficulties, consider a distinction between four elements: "details," "inquiries," "questions," and "categories." Details constitute the lowest level of information a nominee must provide. For example, in listing their education background, nominees must supply the city and state in which they attended high school. The state constitutes a single detail. The general request for records about high school constitutes an "inquiry," a clump of details built around a common fact. Typically, these inquiries come bundled together as a "question," typically numbered on a form. For example, a single numbered question might ask for the details of a nominee's educational background: the institutions, their addresses, periods of attendance, graduation outcomes, and relevant dates. These questions themselves come bundled by categories, general areas of investigation.

Table 1 summarizes the distribution of these questions across nine categories which describe basic background information (e.g., education), potential liabilities (e.g., whether civil or criminal conflicts), and associations (e.g., prior policy-related activities) and so on.[11] The table also summarizes the number of details required of nominees in each category. On average, nominees provide around 2,800 details grouped in 295 questions themselves organized into nine categories.[12]

Table 1 distributes the questions in each category by the degree of repetition. Those questions that do not vary the detail required constitute "redundant" questions (for example nine forms have the same question requiring the nominee's Social Security number). Those questions which require restructuring details constitute "repetitive" questions (e.g., the different ways to ask about a nominee's real property ownership requiring morphed responses). And those questions that require distinctive details constitute "unique" questions (e.g., the typical Senate committee, and *no other agency* interestingly enough, requires a nominee to declare the sum of all "unpaid income taxes").[13]

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[11] "Miscellaneous" includes questions about specific activities which appear (and disappear) as particular political vulnerabilities arise. The series of questions called the "nanny questions" represents the current exemplar of the "miscellaneous" category.

[12] This average includes data from the three standard executive packages and the package from the median Senate Committee (Indian Affairs). Sometimes, an executive questionnaire bundles a series of questions under a single number, so tying the definition of a question to numbering does not fully capture the technical requirements for identifying a "question." The number reported here (295) "unbundles" these complex questions. The total number of bundled equals a smaller (though still consequential) 190.

[13] Note the degree of precision in these definitions of redundant, repetitive, and unique and the nature of details required by inquiries in questions makes identifying the nature of questions relatively easy to accomplish. Where tested, inter-coder reliability statistics hold extremely high values.

Table 1. Distribution of Details by Category, Question, & Repetition

Questions		Details by Repetition			Detail
Topic	N	Redundant	Repetitive	Unique	Totals
Personal & Family	112	60	12	40	473
Professional & Educational	15	0	11	4	373
Tax Information	10	0	5	5	101
Conflict of Interest	103	23	21	59	1302
Legal Associations	12	0	4	8	108
Criminal Misconduct	17	2	6	9	279
Miscellaneous	12	5	2	5	29
Civil Misconduct	12	0	4	8	153
Policy Commitments	2	0	0	2	2
Totals	295	90	65	140	2820

Source: Compiled by author from *NFO* Inquiry Database.

Adversarial Load and Tedium. Comparing the relative proportions of redundant, repetitive, and unique questions in a category suggests something about the common complaints of nominees. Taking these proportions more seriously will produce approximations of the adversarial load and tedium that nominees experience. As suggested from Table 1, about half of the questions that nominees answer involve "recurring" questions (those designated as redundant and repetitive). Since redundant questions constitute two-thirds of these recurrent questions, the sense among nominees that the process requires them to tediously repeat their answers from one agency to the next appears valid. In fact, they often have to do just that. Thus, tedious specificity might constitute a reasonable target for reform.

In addition, as indicated in Table 1 almost half of all unique questions and 40% of the details provided fall into one category: conflicts of interest. The additionally tedious inquiry these facts suggest highlights another potential target for reform.

The distinctions between redundancy, repetition, and uniqueness provide the means for specifying the "load" placed on nominees by inquiry. If nominees find the constant morphing of details a symbol of the adversarial relationship they experience, define their "adversarial load" as the ratio between the two recurrent types of details and the number of recurring questions, weighted for repetitiveness. Hence, this definition and its measure presume that the more repetitive details per question in a category, the more adversarial the nominee finds that category.

If nominees find tedious the number of details they provide answering the endless stream of unique and redundant questions, define "tedium" as equal to the sum of the ratios of details to questions from both the redundant and unique questions. Hence, this definition and its measure presume that the more unique the details they must provide in a category, the more tedious nominees finds that category.

Table 2. Adversarial Burden and Tedium by Category

Topic	Questions	Questions by Repetition			Loads		*Overall*
		Redundant	Repetitive	Unique	Adversarial	Tedium	Burden
Personal & Family	112	114	112	247	8.74	8.08	16.81
Professional & Educational	15	0	317	56	28.82	14.00	42.82
Tax Information	10	0	85	16	17.00	3.20	20.20
Conflict of Interest	103	33	801	468	35.21	9.37	44.57
Legal Associations	12	0	88	20	22.00	2.50	24.50
Criminal Misconduct	17	8	168	103	26.08	15.44	41.50
Miscellaneous	12	5	12	12	5.60	3.40	9.00
Civil Misconduct	12	0	60	93	15.00	11.63	26.63
Policy Commitments	2	0	0	2	—	1.00	1.00
Totals or Medians[14]	295	160	1643	1017	19.50	8.08	24.50

Source: Compiled by author from *NFO* Inquiry Database.

Adversarial Load: $A_c \equiv \frac{N_{dc}}{Q_{dc}}\left(\frac{N_{dc}}{N_{dc}+N_{rc}}\right)+\frac{N_{rc}}{Q_{rc}}\left(\frac{N_{rc}}{N_{dc}+N_{rc}}\right)$, where Ndc, Nrc define the number of details in a category (c) for redundant (d) questions and repetitive (r) questions. Q** defines the number of questions in a category and repetition type.

Tedium Load: $T_c \equiv \frac{N_{dc}}{Q_{dc}} + \frac{N_{uc}}{Q_{uc}}$, where Nuc defines the number of details in a category for unique questions.

[14] For questions, the number represents totals. For loads and burdens, the numbers represent medians.

Table 2 also reports the distribution of these two loads across the nine categories. A summary statistic in the far right column summarizes the burden of the two on nominees. The median adversarial load on nominees equals 19.5 while the median tedium load equals 8.08. Three categories place especially high burdens on nominees: criminal misconduct, conflicts of interest, and professional and educational backgrounds.

Though it involves a reasonably small portion of the questions asked of nominees (5%), the burden placed on nominees by professional background questions derives primarily from the extraordinary detail (and its repetitiveness) required of each question in this category. In addition to creating the second highest adversarial load on nominees, this category also places the second highest tedium load on nominees. This category packs a punch in a small number of questions.

By comparison, approximately one-third of all questions, both recurring and specialized, focus on identifying conflicts of interest. As noted in Table 1, of the 2,800 details typically provided, 1,300 result from providing answers in this category. Around 65% of those details derive from repetitive questions, affording the sense that, in this area alone, inquiry focuses on flummoxing the nominee. Here, the repetitiveness of the inquiry process surely contributes to the sense of an adversarial process: it has the highest adversarial burden of all the categories. In addition, this category produces moderate levels of tedium. Nearly half (46%) of all questions that require reporting unique information come from this category, as well. For the most part, these questions come from the Office of Government Ethics form SF-278. Hence, conflicts of interest occupy a special place among the kinds of inquiry that nominees face: grossly repetitive, highly adversarial, grossly specialized, and reasonably tedious.

Criminal misconduct represents primarily the purview of the FBI, built around its SF-86. The details required here provide moderately high levels of load in both adversarial and tedium measures. However, like the professional and educational background category, this category accounts for a relatively small number of questions. As seems reasonable, the other category accounting for a large number of questions has moderately low adversarial and tedium loads. Personal and Family background details most of the identifying characteristics used in the vetting process. This category constitutes the only one in which a high proportion of redundant questions appear. Only about 15% of the questions cover repetitive details. This category then offers few opportunities for reform.

The remaining five categories produce relative low levels of adversarial burden and tedium. Two of the categories producing low levels of both loads involve special considerations: miscellaneous and policy commitments. Involving what has become a series of unexpected difficulties, almost anecdotal in regularity, the miscellaneous category requires almost as few details as it has questions. As indicated above, the policy commitments category involves questions exclusive to the typical Senate committee and its attempts to intervene in the policy process through confirmation.

Senate Specialization. As a loose indication of how they differ from the executive, the average Senate question repeats on only 14% of executive questionnaires. The principal culprits in this low rate of commonality involve the range of "commitment questions" unique to Senate committee questionnaires and their role in creating Senate policy leverage. Because of the separation of Senate jurisdictions each of these kinds of questions appears

rarely across the Senate forms but almost never on an executive form. Moreover, the Senate's popular net worth statement (a competitor with the executive's SF-278) accounts for another huge hunk of dissimilarity with the executive's forms.

STRATEGIES FOR MENDING APPOINTMENTS

This section considers proposals for fixing the appointments mess, highlighting those reforms that do not invoke competitive institutional interests but which nevertheless make more manageable the burdens placed on nominees, the Executive, and the Senate.

Side-step the Constitutional Tussle

No problem in the entire arc of presidential transition issues presents more difficult solutions than addressing the lengthening appointments process. Of course, for the most part, this intransigence derives from linking appointments to the broader struggle over controlling the federal executive that has its roots in the constitutional delegations of shared responsibilities.

That the lengthening confirmation process (as a stand in for the whole appointments process) would invoke these constitutional grants suggests the general problem's intractability. While it increases the processing burdens on the Senate and generally consumes its work time, the thickening of government described earlier also expands the president's authority [Lewis 2008]. Why shouldn't each institution have a considerable stake in their side of this equation? And why shouldn't they defend that stake not as an exercise in power but as an exercise in authority?[15] Neither side can adjust the process unilaterally without tipping that balance away from their side. And why should either side see a common ground on which to compromise when each has so much at stake?

One potential point of reform, however, derives from the earlier discussion of lengthening process. First, as those with access to the best data on the internal executive vetting process have pointed out [i.e., Johnson 2008c], the congressional side of the appointments equation (that part that grabs the headlines) occupies but one-third of the increasing time consumed in the process. Second, the Senate has only two committees with staff dedicated to handle vetting of nominees. Hence, later nominations must compete for staff time with responsibilities for the policy agenda. The lack of a capacity on both sides of the appointments equation creates both an opportunity for mischief and delay and an opportunity for effective reform: without ever addressing directly the questions of presidential span of control or the Senate's arcana, addressing the need for capacity will make progress on shortening the confirmation process without affecting any institutional standing.

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[15] Some organizations, especially funded by business but also those favoring the civil service, have taken on this issue through the backdoor, trying to commit presidential candidates to performance standards (like PART) knowing that the agencies with the highest scores have fewer appointees [see Lewis 2008, chapter 7]. The scores derive from judgments about agency performance made by career officers in the OMB.

Recommendation 1. *Bolster Capacity.* In general, improve the capacity of the Executive to vette nominees and increase the Senate's capacity to process confirmations.

Simply bolstering personnel capacity and making improvements in inquiry simultaneously side-steps and improves on this aspect of the situation. The next two sections flesh out this general strategy with specific and "indirect" approaches to reform.

Recommendations to Bolster Capacity

No problem in the entire arc of presidential transition issues has an easier solution than addressing the lack of experience in personnel matters through effective capacity. Since the bulk of the appointments problem occurs with the accession of a new administration, effectively addressing these problems involves creating sufficient time for, and matching resources to, that challenge.

Five recommendations would improve things greatly. The first recommendation alters slightly the strategy for government preparations. The remaining four recommendations focus on assisting with the scale of personnel.

Recommendation 2. *Start Preparations Differently.* Alter the government's strategy in pre-election preparations from improving *familiarity* to improving *capacity.*

Beginning with the Presidential Transition Act of 2000, the objective of government involvement in pre-election preparations has focused on affording the national candidates and eventually the president-elect with a *good sense* of the expectations they to which they will soon have to adapt. Recent reforms, for example, improve "readiness" among the president-elect's team by authorizing briefing sessions for senior administration designees (cabinet and White House) after the election. They become familiar with their jobs before stepping into them. Other reforms have pushed out the time that the government provides information to candidates' teams, about the range of positions needed filling, for example. Again the government tries to make the candidates familiar with the dimensions of the challenges in front of them.

Presumably, learning will reduce naïveté and speed up the initial personnel process. The candidates, however, need more than familiarity to become ready. They need to begin framing their eventual needs in terms of what capacities those needs will require.

Recommendation 3. *Earlier Knowledge of Personnel Requirements*. The Office of Personnel Management and the relevant congressional committees should take steps to assure earlier publication of their "Plum Book." [16]

Clearly, identifying key Executive positions requires a growing catalog of information. The earlier a campaign can obtain that catalog, the earlier it can outline its needs and reduce thereby its inexperience [Pfiffner: 164]. As documented in Sullivan 2004, the Bush dedication to this kind of early planning resulted in a number of record-setting

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[16] *United States Government Policy and Supporting Positions*, published as a collaboration between the Office of Personnel Management and (alternating between) the House Committee on Oversight and Government Reform and the Senate Committee on Homeland Security and Government Affairs.

performances by the Bush transition, despite its decidedly uncertain start. Under the 2010 amendments to the Intelligence Reform and Terrorism Prevention Act, the Office of Personnel Management provides something like its "Plum Book" to the designated national candidates' campaigns. Recommendation 3 suggests making that list available three months earlier, when campaigns begin their planning. Moving the campaigns' access just a few months earlier would allow them to take into account changes in the Executive's personnel requirements that have occurred in the previous four years. It would also allow them to survey the positions with fixed term appointments allowing them to identify key positions already in place on inauguration day. That one alteration would significantly improve their personnel preparations.

The next recommendation focuses on providing the national campaigns with the technology necessary to apply to the anticipated scale they will face after election. In the 2009 transition, the Bush White House took steps to secure funds for purchasing additional licenses for new human resources software it planned for introduction in late 2008. These additional licenses it provided the new Obama transition team.[17] The Pre-Election Presidential Transition Act of 2010 memorializes that practice, authorizing GSA to provide the eligible candidates, following their national conventions, with software for secure communications and human resources tracking. Again, this earlier provision affords the campaigns the time necessary to become *familiar* with the requirements of the personnel system.

The schedule of provision does not allow the campaigns to actually begin building a *capacity to meet* these requirements in personnel. While Recommendation 3 suggests providing the list of positions earlier would build capacity, the following recommendation suggests providing technologies to the end of the primary season, when only a few campaigns remain but before the parties have settled on presumptive candidates.

> Recommendation 4. *Wider Provision of Technology to Campaigns.* The Congress should authorize funds to promote earlier preparations among campaigns for personnel operations.

To match scale and improve use of information management techniques, the government should circulate more copies of the personnel software by the end of April of the election year. Those campaigns still in the hunt for their national party's nomination should have this early access to the same software and computerized personnel system as that used in the White House. That alteration would build capacity in this vital area by requiring dedicated staffing to the software and its use. These operations would provide for early acquisition of information about the active campaign staff, thereby speeding the accommodation of applications from within the winning campaign.

Finally, in addition to early planning, the early accession of capital, and the development of working staff around a new administration's eventual staffing needs, the presidential personnel system and the Senate confirmation process need a permanent infusion of professional staff.

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[17] Communications between the George W. Bush White House and the author.

Recommendation 5. *Create a Professional Staff to Undergird White House Personnel Operations.* The Congress should authorize a permanent expansion of the White House personnel operation. This new authority should create a permanent staff of professionals, overseen and supplemented by presidential appointees.

Recommendation 6. *Create a Professional Staff to Undergird Senate Confirmation.* The Congress should authorize new staff in both the majority and minority to focus on each committee's confirmations.

For the White House, such an increase would reduce the transition shock of moving from a relatively large personnel staff during the transition period to a tiny and overwhelmed staff after inauguration. For most committees in the Senate, such an increase would provide the first staffs focused on supporting the Senate's constitutional charge to provide consultation and consent over nominees.

In the Executive, the Office of Management and Budget presents a perfect example of the marriage of presidential responsibilities and professional expertise and like OMB, personnel needs that kind of mix. In the Senate, the Senate Committee on Foreign Relations represents a good example of keeping on a staff of professionals concentrating on appointments.

Recommendations to Reduce Adversarial Burdens and Tediousness

Ameliorating inquiry does not have so simple a solution as pushing back time. It has solutions though. And while these solutions attack directly the morass of inquiry, they would also reduce the vetting time on the executive side and thereby reduce the time to confirmation and filling out of the executive. In effect, fixing inquiry will address several problems at once.

While significant reductions in intrusiveness require decisions by institutions understandably reluctant to forego their responsibilities or abdicate their leverage over appointments, by contrast, relieving the burden of unnecessary repetitiveness requires giving up little in the way of control. Hence, it seems more reasonable to expect that practical reform rests on bypassing intrusiveness and taking one of four approaches: reducing the details required, reducing the degree of repetitiveness, exercising the strategic imperative of a single institution, or developing a common form. This section explores each of the first three strategies and suggests a 30% improvement in inquiry. The next section takes up the question of a common form as a separate issue.

Bypassing Intrusiveness. Attacking intrusiveness poses an interesting challenge to reform. As indicated earlier in Table 1, about half the repetitive detail required of nominees comes from discovery of conflicts of interest, typically the purview of the USOGE. In addition, of the unique questions, those having no counterpart elsewhere, a bit more than one-third fall within the Personal and Family Background topic, establishing a host of background characteristics presumably necessary to trace out an individual's identity, including basic descriptors like "height" and "hair color" and "spouse citizenship." Most originate with the FBI. Therefore, targeting reform at intrusiveness, and its incumbent tediousness, collides with the fact that these questions (generated by either the FBI or the USOGE) have substantial institutional justifications. Both the FBI and OGE can claim

expertise about the nature of these investigative processes to justify requiring answers to these questions. Hence, eliminating questions other than a few in this area pose just the kind of clash illustrated in the introduction involving inconvenience *versus* the superiority of expertise reinforced by stakes — *this isn't your old job* will always trump concerns about tediousness.

Reform does offer one possibility, however, in attacking tediousness. To reduce the number of questions nominees must answer, the federal government could transfer basic background information on a nominee prior to the FBI conducting its background investigation. The administration would request a name search on the nominee from the government's files and then transfer the results to the appropriate forms electronically. The administration could then return these forms, partially completed, to the nominee to check, amend, and to complete. That form completed, the background check would begin in earnest. In addition to effectively reducing the burden on nominees, taking this approach would reduce the amount of time the FBI spends retracing earlier investigations. In a variant on this approach, eligibility for this treatment could depend on prior service within a specified time period.

Attacking Adversarial Repetitiveness. Reducing repetition through attacking it directly provides the single most effective way to improve things for nominees. Without reducing the number of issues covered, inquiry could better accommodate nominees by simply reducing repetitiveness and transforming these similar questions on some forms into identical questions on all forms. The real property questions represent the perfect example of this change. To adopt a single approach to these questions, using even the most complicated of the questions on each topic, would reduce the number of details provided as morphed versions of some earlier answer. And the more complicated the nominee's finances, the more effective this change. Effectively, this approach substitutes increased tedium through redundancy for reduced adversarial relations. This transformation would seem a worthwhile trade-off.

> Recommendation 7. *Improve Redundancy in Inquiry.* The Congress should require the executive to develop a plan for improving redundancy in executive branch forms by taking the most general information required by any agency and requiring that level of information for all.

Table 3 reports estimates on taking this approach. It repeats the data from Table 2 for redundant and unique questions and the total burden by topic (columns 1, 3, 5). It then reviews the impact of changing repetitive questions into redundant questions (column 2) and how such a change would affect a new total for detail (column 4). The final column reports an improvement measure (a Goodman-Kruskal Lambda). As indicated, reform would make a substantial improvement with an overall reduction of 31% of the burden on nominees (from 2,820 to 1,958 details).

This kind of reform would have the largest effect on the conflict of interest category where reformulation to the broadest available information would generate an almost 70% reduction in nominee burden. Three other areas present significant (though not as dramatic) opportunities for removing repetitiveness and transforming it into redundancy. On Professional and Educational background, identified earlier as a particular problem area,

this strategy would improve inquiry by nearly 45%. Another area, Legal Associations, presents an unexpected case of improvement. Holding adversarial burdens above the median and tedium burdens well below the median, this category can produce dramatic improvements, around 40%. Reformulation would reduce the repetitiveness in the topic from 108 details to 64. Criminal Misconduct, another category with serious adversarial and tedium loads, would also benefit by nearly a third from this reform approach. Changes in the other categories would, of course, not net such dramatic improvements, but almost all categories would show improvements above 10%.

Table 3. Results of Reducing Repetitiveness (Increasing Redundancy)

	Details after Reforms			Totals and Improvement		
	(1)	(2)	(3)	(4)	(5)	
Type	Redundant	Repetitive	Unique	Reformed	Previous	λ
Personal & Family	114	48	247	409	473	13.5%
Professional & Educational	0	151	56	207	373	44.5%
Tax Information	0	37	16	53	101	47.5%
Conflict of Interest	33	381	468	882	1302	32.3%
Legal Associations	0	44	20	64	108	40.7%
Criminal Misconduct	8	84	103	195	279	30.1%
Miscellaneous	5	6	12	23	29	20.7%
Civil Misconduct	0	30	93	123	151	19.6%
Policy Commitments	0	0	2	2	2	0.0%
Totals or Averages[18]	160	781	1017	1958	2820	30.6%

Source: Compiled by author from *NFO* Inquiry Database.

A Special Approach to Senate Forms. Since the typical Senate questionnaire has little in common with the typical executive form, improving redundancy offers little in the way of a strategy. Conflict of interest, however, invokes the largest percentage of unique questions partly because Senate committees do not rely on the SF-278. Instead, all but two Senate committees use their own net worth statement, a series of calculations and associated descriptive attachments that identify types and values of assets, liabilities, and the resulting sums.

> Recommendation 8. *Eliminate the Net Worth Statement in the Senate.* The Senate committees should agree to eliminate the use of Net Worth Statements in favor of requiring nominees to submit their SF-278 reports.

Substituting the SF-278 for the twenty-seven questions associated with the typical Senate net worth statement transforms specialization in this category into redundancy and that would reduce tedium in this category without undermining its objective.[19] Currently,

[18] Except for column for λ-statistic, all other cells contain totals for that column.

[19] Eliminating a net worth statement, however, would mean that the Senate could not easily identify those individuals who have over-extended themselves financially, creating massive debt say, but who had managed to keep current their payments on these debts. Such an "insolvency strategy," i. e., merely

however, the average Senate net worth statement carries the only extant inquiries about tax payments and the WHPDS would have to add this inquiry. For obvious reasons, the WHPDS represents the only executive form which concerns itself with taxes.

The executive strictly controls access to the FBI form and, for that reason; the Senate must develop its own information. Instead of pursuing separate sources of information, the Senate could simply require the nominee to re-answer the FBI questions on a separate Senate form duplicating the FBI form with a changed name. This approach represents the easiest way to bridge the "constitutional gap."

> Recommendation 9. *Build a Model Senate Questionnaire.* To sponsor redundancy, the Senate Committee on Homeland Security and Governmental Affairs should develop a Senate committee questionnaire modeled on the SF-86.

As a strategy for accomplishing this goal, redundancy without compromising separation, the Committee on Governmental Affairs could easily prepare a "model questionnaire." Providing such a model would fall entirely within that committee's jurisdiction and certainly call on their unique expertise. Nominees, faced with the choice of filing a different form, morphing their questions to fit independent Senate questions on the same topics or simply copying over their SF-86 onto an identical Senate form would sure choose the latter route. The executive and FBI would still maintain control of their executive information and nominees would not suffer from the internecine tussle.

Unilateral Action. Another reform strategy suggests that one of the four actors involved in questioning nominees could unilaterally surrender control over information, thereby guaranteeing a significant reduction in inquiry. That institution could rely, then, on the information gathered by the others.

This approach poses one fundamental problem. The White House represents the agent best situated to carry out this strategy. Most of the inquiry found on the White House Personal Data Statement, however, provides information on political liabilities that no other form produces (like taxes). It realizes the role of the White House as a political part of the executive branch, a role not feasible for either the FBI or USOGE. So, while the White House has the best opportunity to take this reform approach, the administration would lose some very valuable information that only it can assess in the period before issuing an "intent to nominate."

The Inappropriate Pursuit of a Common Form

A second popular approach to reform recommends creating a common bank of information that both the Senate and executive would access. Certainly a common form seems technologically feasible. Agreeing on the contents of such a single form and having it serve all of the needs of government, recall that both the SF86 and SF278 serve double duties as forms for the use of others in government. A single form for nominees would not necessarily serve this additional function for the rest of government. Moreover, a single

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maintaining debt, would not appear on the typical executive financial disclosure statement. In addition, potential insolvency does not suggest a direct conflict of interest (an OGE issue) but a vulnerability (an FBI issue).

form calls forth the kinds of inter-institutional conflicts at the heart of the appointments process, and for good reasons, but more importantly, *by design*. Hence, the research reported here takes a different tact as to why a common form seems infeasible: each of the institutions involved in this process have legitimate responsibilities and their different responsibilities generate divergent requirements.

WORKING REASON

Of course, no one has ever proved that the excessively adversarial and tedious system of inquiry nor the lengthening of confirmations has made filling the executive impossible. There seems a plethora of willing candidates and only a few of those turn out ill-chosen. The costs of creating a proper study to reach the conclusion that the process has weakened governance would extend beyond the financial willingness of private philanthropy given its level of interest in governance issues. No one need doubt, however, that many have chosen not to serve (ask any former Director of Presidential Personnel), that the adversarial nature of executive service contributes to that unwillingness, and that these adversarial burdens, therefore, increase the costs associated with locating competent, irreplaceable candidates. And therefore have made it more difficult to stand up the American Executive. A sluggish American Executive of course threatens global prosperity and peace and provides at best a tarnished democratic export.

The Founders believed that reason served to discover effective mechanisms. Regardless of one's assessment of the necessity for intrusiveness and the necessity for checks and balances, no one can justify the burdensome repetitiveness the system places on those willing to serve nor the adversarial relationship it bolsters. Hence, side-stepping direct systemic reform *per se* and relying on modification of capacity and increased redundancy appears a reasonable and reasoned approach to repair the mechanism for filling out the Executive. The research discussed here provides two significant reform strategies (and some minor tweaks) that aide the process and reduce the burden on nominees without either reform affecting the balance between constitutional forces. Affording a "new" administration more time in its initial process (increasing its useful "experience" before it takes office) and giving it better tools to accomplish a fast start on personnel will reverse the lengthening appointments process. Providing the Senate the same capacity as a strengthened Executive will speed confirmations and reduce opportunities for mischief. And, in inquiry, improving redundancy constitutes a real improvement, providing a 31% reduction in the number of details nominees must provide. And while these changes will not make the process painless or necessarily "rational" from the perspective of the beleaguered nominee, they can strike a new and useful balance between the nominee's plight and the government's legitimate needs.

APPENDIX: EXAMPLES OF INQUIRY

This appendix illustrates each of the categories found in Table 1 through Table 3.

Category	Form	Question
Personal & Family	WHPDS	Social Security Number:
Professional & Educational	SF 86	List the schools you have attended, beyond Junior High School, beginning with the most recent (#1) and working back 7 years. List College or University degrees and the dates they were received. If all of your education occurred more than 7 years ago, list your most recent education beyond high school, no matter when that education occurred. 1. High School 2. College/university/military college 3. Vocational/technical/trade school For schools you attended in the past 3 years, list a person who knew you at school (an instructor, student, etc.). Do not list people for education completely outside this 3-year period. For correspondence schools and extension classes, provide the address where the records are maintained
Tax Information	WHPDS	In the last seven years, have you, your spouse, or a member of your immediate family ever failed to file an income tax return? If so, please explain and describe the resolution of the matter.
Conflict of Interest	Committee	As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your current or any previous employer, business firm, association or organization.
Legal Associations	Committee	Please list each membership you have had during the past ten years or currently hold with any civic, social, charitable, educational, political, professional, fraternal, benevolent or religious organization, private club, or other membership organization. Include dates of membership and any positions you have held with any organization.

Category	Form	Question
Criminal Misconduct	SF86	Since the age of 18, have you been involved in the illegal purchase, manufacturer, trafficking, production, transfer, shipping, receiving, or sale of any narcotics, depressant, stimulant, hallucinogenic, or cannabis for you own intended profit or that of another?
Miscellaneous	WHPDS	Is there any other information, including information about other members of your family that could be considered a possible source of embarrassment to you, your family, or the President?
Civil Misconduct	SF86	Have you or your spouse or any businesses over which you or your spouse have exercised control ever failed to pay any loan or similar obligation when due at final maturity, or have you ever been more than 180 days delinquent on any such loan or obligation?
Policy Commitments	Committee	Do you agree to provide such information as is requested by such [a duly authorized Congressional] committee?

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ABOUT THE AUTHOR

Terry Sullivan serves on the faculty of Political Science at the University of North Carolina at Chapel Hill. Since co-founding the White House Transition Project in 1997, Professor Sullivan has served as its Executive Director.

His research covers a number of topics related to leadership and the professional tradecraft of politicians: congressional procedure, persuasion, delegation, agenda formation, work routines, crisis management, and presidential appointments. He has authored 4 books, 40 scholarly articles published in journals ranging from *the American Political Science Review* to *The Brookings Review*, and 5 reports to Congress. In 2008-09, he served as an invited (external) member of The President's (Bush) Transition Coordinating Council. From 2010 through 2014, he served as Senior Research Scholar to and Commissioner on the National Commission to Reform the Federal Appointments Process. In 2012, President Obama asked Professor Sullivan to advise his Presidential Working Group on Reforming the Presidential Appointments Process.

He has served as an American Political Science Association Congressional Fellow, twice a Lilly Endowment National Teaching Fellow, the first Carl Albert Policy Fellow, a Glenn Campbell Fellow in National Affairs at the Hoover Institution of Stanford University, a Spencer and Teagle Foundations National Teaching Fellow, and the Edwards Chair in Democracy at Rice University's Baker Institute for Public Policy. He is past President of the Presidency Research Group, a worldwide association of scholars focused on the American Presidency.

A native of Texas, Professor Sullivan has served on the faculty at UNC Chapel Hill since 1987. He teaches courses on the political tradecraft of leadership and on the role of the Presidency and the Congress as institutions in the American policy-making process. In 2014, the UNC Student Congress designated Professor Sullivan as Undergraduate Teacher of the Year, and in 2015, the UNC System Board of Governors presented Professor Sullivan the System's Award for Excellence in Teaching as the guest of honor at the UNC Chapel Hill Commencement.

Contact Information:

Office CB# 3265 Hamilton Hall 324
University of North Carolina
Chapel Hill, NC 27599–3265
email sullivan@email.unc.edu

voice 919 962.0413 *office*
962.0432 *fax*
593.2124 *mobile*
web resources
http://ibiblio.org/sullivan/bios/TerrySullivan-bio.html
http://WhiteHouseTransitionProject.org