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ADVICE AND CONSENT: A REEVALUATION

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Advice and Consent: A Reevaluation

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In the final analysis government consists of people, and the quality of the people who compose the government determines the quality of government itself. For this reason, the Constitutional process by which the highest nonelected officials of the federal government are chosen is immensely important.

I. HISTORICAL PERSPECTIVE

The appointment power provoked something of a battle among the Constitutional draftsmen of 1787. Under the Articles of Confederation, Congress maintained full power over all appointments in the national government. There were many representatives at the Philadelphia Constitutional Convention who advocated that Congress maintain this absolute power under the new three-branch federal system. This scheme was labeled the Virginia Plan and served as the original basis for discussion at the convention. Conversely, there were those who proposed that Congress create an executive entity, which would, in turn, have full power over appointments. This proposal was entitled the New Jersey Plan.[1]

These two divergent plans resulted in a compromise under which Congress would *share* the appointments power with the Chief Executive. The President would suggest or "nominate" a person for appointment to a position, and Congress would then have authority to either approve or disapprove the nomination. Only with the "advice and consent" of Congress could the President then proceed to formally "appoint" the highest officials of his government.[2]

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* Senior United States Senator, Illinois; A.B. University of Chicago, 1941. I am indebted to Kenneth Ackerman, professional staff member of the Senate Governmental Affairs Committee, for his assistance in the research and preparation of this article.

1. PARRIS, *Nominations and the Senate Committee System* in SECOND REPORT OF THE TEMPORARY SELECT COMMITTEE TO STUDY THE SENATE COMMITTEE SYSTEM, OPERATION OF THE SENATE COMMITTEE SYSTEM: STAFFING, SCHEDULING, COMMUNICATIONS, PROCEDURES, AND SPECIAL FUNCTIONS (1976).

2. U.S. CONST. art. 2, § 2.

Controversy over the extent of Congressional power in this process has continued, however. Early Senates selected special caucuses or committees to consult with Presidents over the appointment of high officials, and in many cases initiated recommendations for these nominations. President James Madison attempted to rebel against this practice and sent a strongly-worded message to the Senate in which he said "the appointment of a committee of the Senate to confer immediately with the Executive himself appears to lose sight of the coordinate relation between the executive and the Senate."[3] Madison refused to discuss his intention to appoint his Treasury Secretary Albert Gallatin as Secretary of State with a Senate delegation appointed for that purpose, and as a result was dealt a political defeat when these senators successfully forced the appointment of Robert Smith to the State Department post.

Other disputes have centered around investigations of the nominee's political views and integrity. The Senate defeat of the 1795 nomination of John Rutledge to succeed John Jay as Chief Justice of the Supreme Court was based primarily on Rutledge's opposition to the then controversial Jay Treaty with Great Britain. Similarly, James Madison's 1811 Supreme Court nomination of Connecticut Customs Official Alexander Wolcott was blocked by Senate Federalists because of Wolcott's vigorous enforcement of unpopular embargo acts, as well as press allegations that Wolcott lacked legal qualifications for such an important judicial appointment.[4]

Rather than outright rejection or acceptance of the preferred individuals, in recent years the Senate has often resorted to another technique whereby it seeks to attach conditions prior to its approval of Presidential nominees. For example, in cases of a potential conflict of interest, nominees often enter into an agreement with the respective Senate committee in which the nominees agree to divest their holdings by a given date, or to disqualify themselves from related issues. Similarly, it is almost universal today to require a nominee to agree in writing to be responsive to proper Congressional requests for information or testimony.

No court of law has ever ruled upon the question of whether such agreements between a Senate committee and a Presidential nominee are legally binding. The application of simple contract law to such a situation becomes extremely complex if one tries to apply such doctrines as "mutuality of remedies" or common law definitions of contractual

3. CONGRESSIONAL QUARTERLY, POWERS OF CONGRESS 209 (1976).

4. *See* CONGRESSIONAL QUARTERLY, POWERS OF CONGRESS (1976) for discussion of the early history of the confirmation process.

consideration. Such agreements would also appear to raise potential separation of powers problems.

The 1977 confirmation of T. Bertram Lance to be Director of the Office of Management and Budget (OMB), was conditioned on the understanding that Lance would divest himself of a large block of stock in the National Bank of Georgia by the end of the calendar year,[5] and in the meantime disqualify himself from all issues related to federal banking policy. Subsequently, because of the sharp drop in the value of the National Bank of Georgia stock, President Carter, in a letter to the Chairman of the Senate Governmental Affairs Committee, Senator Abraham Ribicoff, formally requested a modification of Lance's agreement with the Committee.[6] Had the Committee not given Mr. Lance an extension on his stock sale, or if he had refused to sell the stock by the agreed date, it is unlikely that the Committee could have convinced a federal court to annul its vote of advice and consent whether based upon a failure of consideration or breach of a contractual condition. This is especially true in the separation of powers context. As a result, enforcement of such agreements rests solely on the moral obligation and inherent political leverage of the parties to the agreement.

The controversy over advice and consent has even extended to the question of Congressional authority to veto Presidential removal of a Federal official, as advocated by Alexander Hamilton in his Federalist Paper 77,[7] or to place restrictions on tenure subsequent to actual appointment.

In 1820 Congress passed the Four Years Law,[8] creating a four-year term for many officials who had previously served at the pleasure of the President. Though ostensibly an attempt to increase the accountability of federal appointees, this statute evolved into a strong patronage tool under the developing "spoils system" during the mid-nineteenth century by increasing the number of official vacancies. The Four Years Law was replaced in 1867 by the Tenure of Office Act[9] which required Senate approval for a President to fire employees of the Executive branch. This law acquired serious political implications in the years following the Civil War, and was a major legal element in the impeachment trial of President Andrew Johnson,[10] who had removed Secretary of War Edwin

5. *Nominations of Thomas B. Lance & James T. McIntyre, Jr.: Hearings Before the Senate Comm. on Governmental Affairs*, 95th Cong., 1st Sess. (1977).

6. *Matters Relating to T. Bertram Lance: Hearings Before the Senate Comm. on Governmental Affairs*, 95th Cong., 1st Sess. (1977).

7. THE FEDERALIST No. 77 (A. Hamilton) at 484-85 (B.F. Wright ed. 1961).

8. Act of May 15, 1820, ch. 102, 3 Stat. 582.

9. Tenure of Office Act, ch. 154, 14 Stat. 430 (1867).

10. CONGRESSIONAL QUARTERLY, *supra* note 3, at 210.

Stanton without conferring with the Senate. It was not until 1926 that the Supreme Court struck down the Tenure of Office Act as an unconstitutional violation of the separation of powers.[11]

Controversy over the Senate's post confirmation removal power reached a dramatic climax in 1931 when, under a parliamentary reconsideration of a record vote, the Senate ordered President Hoover to resubmit the nomination of Federal Power Commission Chairman George Otis Smith, whom it had confirmed just three weeks earlier. Hoover refused, stating, "I cannot admit the power in the Senate to encroach upon the Executive functions by removal of a duly appointed executive officer under the guise of reconsideration."[12] To resolve the conflict, a court test was voted by the Senate, and, in a 1932 opinion, Justice Brandeis took the extraordinary step of reconstruing the internal parliamentary Standing Rules of the Senate so as to nullify its prior recall vote.[13]

Today, the law is clear on this point. Congress can call Executive branch officials to appear before its Committees to justify their actions, or force such officials to carry out a particular line of action by amending statutes or appropriations levels. Congress also maintains the option of exerting political pressure on an official whose conduct it finds offensive. However, once an official has been formally appointed by the President, confimed by the Senate, and sworn into office, the official serves either at the pleasure of the President, or, in the case of many federal regulatory commissioners, for a fixed statutory term. Only the Congressional power of impeachment can undo the harm of allowing an unqualified candidate to assume a high office of public trust.

II. Current Procedures

The Senate's advice and consent responsibilities have grown geometrically over the past forty-five years with the increasing size and complexity of the federal government. The 94th Congress (1975-76) received 133,302 formal nominations for confirmation,[14] a 600 percent increase over the 22,487 nominations received by the 74th Congress (1935-36) forty years earlier.[15] Of these, some seven hundred were nominations to key policymaking positions.[16] The remainder consisted largely of routine commissions and promotions in the military services,

11. Myers v. United States, 272 U.S. 52 (1926).
12. Message from Herbert Hoover to the Senate (Jan. 10, 1931), *quoted in* N.Y. Times, Jan. 11, 1931, at 1, col. 6.
13. United States v. Smith, 286 U.S. 6 (1932).
14. Parris, *supra* note 1, at 24.
15. Congressional Quarterly, *supra* note 3, at 203.
16. Parris, *supra* note 1, at 24.

the Foreign Service, the Coast Guard, the Public Health Service, and the National Oceanic and Atmospheric Administration. Though many of these are considered *en bloc*, the Senate exercises a residual power in particular controversial cases.

Responsibility for processing nominations is divided among the Senate's legislative committees in accordance with committee expertise and legislative jurisdiction. The size, complexity, and diversity of the federal establishment requires that nominees be examined by Senators well versed in the substantive area the nominee will be empowered to administer. Thus, for example, a nomination to a position in the Department of Agriculture would be referred to the Senate Agriculture Committee. Ambassadorships are the responsibility of the Foreign Relations Committee, federal judgeships are referred to the Senate Judiciary Committee.

The respective committee generally examines the nominee with particular emphasis on two factors: first, the nominee's competence and expertise, a broad category which includes experience and professional credentials, as well as the nominee's views and perspectives on substantive policy issues likely to fall within his or her jurisdiction; and second, the nominee's integrity.

The procedures used to make these assessments vary sharply among committees and according to the position involved. Many committees require a nominee to submit detailed financial disclosure and conflict of interest statements as well as policy questionnaires prior to public hearings. Executive branch investigative agencies may be requested to submit information in their files which might have a bearing on the nominee's fitness and ability. Senators from the nominee's home state are often solicited for comment, as are individuals in private life who might have special knowledge regarding the nominee's qualifications. The role of the press in the nomination process has also expanded in recent years, particularly since the Watergate affair, as the news media has shown more interest in expanding the role of investigative reporting.

Outright rejection of Presidential nominees, either within committee or by the full Senate, is relatively rare. Over the past twenty years, only fourteen nominations have been explicitly voted down by the full Senate.[17] Instead, if it appears probable that a nomination will be defeated in a floor confrontation, a President will often withdraw the nomination rather than risk the political embarrassment of a Senate defeat. It is significant that during the 94th Congress, while no single nomination was rejected outright, twenty-one nominations were withdrawn by the Presi-

17. *Id.*

dent, and 234 others were returned by the Senate after it decided to take no action.[18]

A recent case in point is President Carter's nomination in early 1977 of Theodore Sorensen to be Director of the Central Intelligence Agency. It became well known prior to initial hearings of the Senate Select Committee on Intelligence that Sorensen's nomination would provoke heavy criticism, due in part to his treatment of classified material while employed as a staff aide in the Kennedy and Johnson administrations. To have forced a resolution of the issue would have posed many risks for the new Carter administration, including the possibility of a damaging political defeat should the nomination actually be voted down, and the potential for establishing a stormy relationship between the new CIA Director and the Agency's Congressional oversight committee should the nomination be successful. Sorensen withdrew his name from consideration in his opening statement on the first day of confirmation hearings.[19]

Similarly, the 1968 nomination of Associate Justice Abe Fortas to be Chief Justice of the United States came under attack based on charges that Fortas had accepted a sizeable fee from a group of former business associates for a nine-week seminar he had taught at the American University while serving as an Associate Supreme Court Justice. The Fortas controversy was further complicated by the timing of the nomination, occurring after Lyndon Johnson had announced his intention not to seek reelection, thus rendering himself a "lame duck" President. Although affirmatively reported to the full Senate by an 11-6 vote of the Senate Judiciary Committee, Fortas' nomination soon became deadlocked in a filibuster. With the Senate just days away from closing its 1968 session and a Presidential campaign in full swing, a cloture motion aimed at cutting off the filibuster failed on the Senate floor by a vote of 45-43, far short of the required two-thirds majority necessary at that time to end debate. The next day, Justice Fortas asked the President to withdraw his name.[20] As in the case of Sorensen, no final Senate vote was taken on the Fortas nomination.

III. The Need for Reform

The Senate's internal processes for reviewing presidential nominees have come under heavy scrutiny in recent years. A series of high-pitched

18. *Id.*

19. N.Y. Times, January 18, 1977, § 1, at 1, col. 6. For information on the Sorensen nomination, *see generally, Nomination of Theodore C. Sorensen: Hearing Before the Select Senate Comm. on Intelligence*, 95th Cong., 1st Sess. (1977).

20. Congressional Quarterly, *supra* note 3, at 221-23.

confirmation battles during the Nixon administration, particularly over the nominations of Clement Haynesworth and G. Harold Carswell to be Associate Justices of the Supreme Court, growing concern over appointment of federal regulatory commissioners with close ties to the industries they are intended to regulate, and most recently the controversy surrounding former OMB Director Bert Lance, have led many to question whether reform is not long overdue.

While many Presidential nominations receive intense scrutiny, all too often Senate consideration is cursory. Much, of course, depends on what office the nominee is to fill. Lengthy confirmation proceedings were held on the appointments of both Gerald Ford and Nelson Rockefeller to the Vice Presidency. Similarly, Supreme Court Justices, whose terms—short of impeachment—are Constitutionally protected for life, also as a rule undergo great study, as demonstrated by the fact that four out of the last twenty nominations for the high court have been unsuccessful.[21]

These cases, however, stand all too often as exceptions to the rule. Regulatory commissioners, for instance, whose terms in office are generally protected by statute so as to guarantee their independence of judgment, should be accorded thorough study. Yet between 1950 and 1973 the Senate had not rejected a single regulatory appointee.[22]

To a large extent, these problems stem from lax committee procedures. Of forty-eight nominations submitted to the Senate during the early months of the Carter administration, in only six cases did the responsible Senate committee issue a report on the nomination, and in only one of those cases was the report longer than four pages. In only six cases were printed hearings made available to the full Senate before floor action on the nomination, and in only nine cases did hearings last for more than one day. In seventeen cases, the committee rendered a final vote on the nomination at the close of its confirmation hearing, allowing no time whatever for reflection or study of the nominee's background.[23]

Similarly, the Senate is all too often reluctant to face the political ramifications of even doubting, let alone denying, the wisdom of major Presidential nominations. It is true that the President is responsible for implementing the platform upon which he was elected, and he should be given due deference in choosing individuals who best reflect the policies he has been chosen to fulfill. Yet, this does not justify Congressional

21. PARRIS, *supra* note 1, at 26.

22. *See* SENATE COMM. ON GOVERNMENTAL AFFAIRS, 95TH CONG. 1ST SESS., STUDY OF FEDERAL REGULATION: VOL. I, THE REGULATORY APPOINTMENTS PROCESS (1977).

23. *See* Washington Post, Oct. 16, 1977, at C3, col. 1. *See also* COMMON CAUSE, THE SENATE RUBBERSTAMP MACHINE (1977).

abdication of its responsibility to examine these appointments. The opening of a new Presidential administration brings with it a period of good will between Congress and administration (the so-called "honeymoon"), and there is a feeling that appointments should be expedited so the new administration can get off to a good and quick start. But, surely, this pivotal juncture when much of the character of the federal government is undergoing change is a time when responsible and deliberate application of the advice and consent power is most needed.

Institutional deficiencies also hamper the congressional exercise of advice and consent. The Bert Lance nomination is illustrative. The Senate Governmental Affairs Committee, which has had substantive legislative jurisdiction over OMB since that agency's inception in 1971, was well equipped to interrogate Lance fully on his positions, ideas, policies, and perspectives toward managing the federal bureaucracy and budget. Lance's confirmation hearing was replete with questions of his position on balancing the federal budget, reorganizing executive agencies, coping with the proliferation of federal advisory committees, fiscal policies he would pursue, and so on. The committee members were well versed in these substantive issues, and prepared to judge how Mr. Lance would operate his office.

Being a legislative committee, however, Governmental Affairs was not so well equipped to launch its own investigation into Mr. Lance's banking and business practices or campaign and personal financial affairs. Under White House urging for swift action on the Lance nomination, and particularly a request from then President-elect Carter that Mr. Lance be confirmed by Inauguration Day, the Committee relied primarily on information supplied to it from outside sources. Detailed financial and conflict of interest statements were submitted by Lance himself. When possible problems with overdrafts and campaign finance violations dating back to Lance's previous career as President of two Georgia banks and his 1974 campaign for Governor of Georgia were raised in press accounts and elsewhere, the Committee requested verification from the two federal investigative bodies responsible for these areas, the Office of the Comptroller of the Currency and the Department of Justice.[24]

Both the Comptroller of the Currency and the United States Attorney in Atlanta, Georgia, reported to the Committee that the allegations were unfounded, information which was later found to be seriously misleading. Mr. Lance himself appeared to answer related questions satisfactorily. Based on the facts in their possession at the time they voted to recommend Lance's nomination in January, 1977, there was hardly

24. *See Nominations*, *supra* note 5.

enough substantive evidence for the members of the Governmental Affairs Committee to conclude that Mr. Lance was not a man fully qualified to hold the office to which he had been nominated.

There can be no question that political considerations played an important part in the Lance confirmation, and that the committee's procedures were not as thorough as they should have been. Yet, the Lance experience has also thrown into stark relief the vulnerability of Senate legislative committees in investigating the "integrity" of Presidential nominees. The investigation of Bert Lance as it evolved through the summer of 1977 occupied literally thousands of hours at half a dozen federal agencies as well as the bulk of the committee's legislative staff. Were such an exhaustive investigation undertaken for each and every nominee presented to the Senate for its advice and consent, the legislative process could be stymied. Similarly, the cost of each Senate committee employing a team of professional investigators for the sole purpose of exploring the backgrounds of nominees could be enormous. Without this independent capability, however, there remains the possibility that circumstances such as the Bert Lance nomination and investigation will continue to arise.

IV. Proposals for Reform

These deficiencies in the Senate's advice and consent procedures are serious, and cry out for improvement. Some of the problems are inherent in the political texture of Congressional-Executive relations, and will be difficult to change. Yet many weaknesses in the confirmation process are susceptible to legislative reform, and it is in these areas that I have advocated affirmative proposals together with my colleagues, Senators Abraham Ribicoff and Jacob Javits.

Senate Resolution 258[25] contains three significant reforms of the Senatorial process of advice and consent: (1) it establishes an independent, nonpartisan Office of Nominations in the Senate to provide the relevant committee with an investigative report on each major nomination submitted to the Senate for its advice and consent; (2) it ensures that all available information, including investigative reports of the Federal Bureau of Investigations, will be received in any such investigation with adequate protection of the sensitive nature of such information; and (3) it

25. To create a Congressional organization for the purpose of assisting the Senate in its exercise of advice and consent; to provide for regular access by the Senate to investigate reports on nominees by executive branch agencies; to establish standards by which nominees shall be judged by the Senate to be fit and qualified for public office; and for other purposes.

S. Res. 258, 95th Cong., 1st Sess., 123 Cong. Rec. S14,415 (daily ed. Sept. 8, 1977).

establishes, for the first time, basic standards for confirmation to be used by the Senate in judging nominees. Though owing much of its impetus to the recent experience of the Governmental Affairs Committee with the Bert Lance investigation, this legislation is based largely on recommendations of the Committee's *Study on Federal Regulation*, a report mandated by the full Senate under the terms of Senate Resolution 71.[26]

Staff of the single, nonpartisan Office of Nominations would be appointed by the Senate leadership "without regard to political affiliation and solely on the basis of fitness."[27] This group of full-time professional investigators would be specifically mandated to review the "background and integrity" of all major nominees submitted to the Senate for its advice and consent. The Office would be headed by a Director serving a two-year term, and would specifically *not* be authorized to inquire into a nominee's "positions, opinions, or beliefs on policy matters." This responsibility, together with the ultimate recommendation to the Senate on the nomination, would remain with the respective committees themselves.

Under Senate Resolution 258, the Office of Nominations would be notified of a Presidential nomination when it is referred to a Senate committee for consideration. The Office would collect basic materials such as biographical and financial information, synopses of investigative files, plus "any other document relevant to the nominee's qualifications." Though the Office itself would not have the power to subpoena documents, it would be authorized to request subpoenas from the committees of jurisdiction. Subject to requirements of confidentiality, the Office would in addition be allowed access to "any investigative reports pertaining to the nomination of any Federal, state or local agency" as part of its inquiry.

Once this information has been collected, the Office would have fifteen days (plus one fifteen-day extension if needed) to prepare a report summarizing its findings. To protect the privacy rights of the nominee, these reports would remain confidential unless the respective committee, by recorded vote, ordered otherwise. The reports would specifically *not* contain any recommendations as to whether the committee or the full Senate should advise and consent to the nomination. No vote would be taken on a pending nomination in committee until this report had been completed.

What the reports would contain would be a summary of any evidence raising "serious questions as to the nominee's background or

26. Authorizing "a study of the purpose and current effectiveness of certain Federal agencies." S. Res. 71, 94th Cong., 1st Sess., 121 CONG. REC. 2407 (1975), *as amended* 121 CONG. REC. 25063 (1975).

27. On Office of Nominations, *see generally* S. Res. 258, *supra* note 25, tit. I.

integrity,'' including possible conflicts of interests, questionable legal or financial transactions, problems raised through analysis of the nominee's financial statement, or any patterns of illegal or improper behavior.

With this information in hand, it would then be up to the respective committee to decide how serious any questions are and how to proceed. The Office of Nominations would thus in no way divest Senate committees of their responsibility to make all key decisions, both substantive and political, in the processing of a Presidential nomination. Its function would be solely to perform the investigative legwork which is beyond the capabilities of most Senate legislative committees.

The advantages of this system are obvious. Each major nomination, no matter how ''noncontroversial'' or routine, would be subject to a basic professional, nonpartisan inquiry. The possibility of another Bert Lance-type situation occurring in the future would be diminished substantially.

As is the case with any major new reform, objections have been raised to the Office of Nominations proposal. Some Congressional committees might view the creation of this Office as a threat to their independence or jurisdictional prerogatives. Further, during ''peak periods'' such as the beginning of a new Presidential administration when the volume of nominations is abnormally high, the workload could be intense, making it difficult for the Office to maintain high standards of thoroughness and care for each separate appointive investigation. Finally, there is the danger that such an Office, created for the sole purpose of raising questions about the background and integrity of high government nominees, may lack a proper perspective in judging the seriousness of questions it has uncovered.

Senate Resolution 258 attempts to remedy these problems through direct statutory provisions. To guard against infringement upon the jurisdictional prerogatives of existing committees, the resolution is specifically drafted so as not to be construed as a limitation on the right of any committee to conduct a review in addition to, or in conjunction with, any action taken by the Office of Nominations. Further, to accommodate variations in workload, the Office would be authorized to acquire temporary or intermittent services of experts and consultants on a per diem basis when the volume of nominations became particularly heavy. Under this system, the Office's core professional staff could remain small, though flexible enough to handle a wide range of circumstances.

The Office of Nominations proposal would also ensure access to investigative files, including those in possession of the Federal Bureau of Investigations, or the courts in all nominations proceedings. To protect the privacy of this material, only those members of the Office's profes-

sional staff who have obtained necessary clearances would be allowed to examine confidential investigative files.

It is unfortunate that FBI files are not now made available on a routine basis to Congressional committees, particularly where extensive background checks have been made for Executive branch purposes in anticipation of a nomination. In many instances the lack of this information has severely hindered the Senate in its consideeation of nominees. With the strong protections of confidentiality built into Senate Resolution 258, Presidents would no longer need to fear the unauthorized disclosure of raw investigative files, a chief source of the current reluctance to make this significant information available to responsible Senate committees.

This proposal would undertake an additional reform by, for the first time, establishing standards to be used by Congress in assessing the qualifications of nominees for high office.[28] There are five such standards:

(1) That a nominee be "affirmatively qualified" for the office under consideration;
(2) That he or she be a person of "integrity" and free from potential conflicts of interest;
(3) That the "nature and needs of the particular office" and "the nominee's commitment to the enforcement of applicable statutes and regulations" be taken into account;
(4) In the case of a collegial body, that the "existing composition" of that body, including representation of particular interest groups, be considered; and
(5) That the nominee meet any statutory qualifications for the office in question.

On the surface, these five criteria might appear rudimentary and obvious. Of course, we would want nominees for high government positions who are qualified, who are honest, who are committed. All too often, however, the Senate tends to judge nominees using a negative standard of proof—asking not whether the nominee is well-qualified for the job but simply whether the nominee has significant problems which would disqualify him or her from consideration. This lack of affirmative standards is in large part responsible for the "rubber stamp" quality of advice and consent that has been so often criticized.

The process of advice and consent requires a human judgment on the part of the Senate which can never fully be regimented into mechanical standards. Intangibles such as trust, rapport, and the ability to work together in close cooperation are of utmost significance to the Senate. The confirmation process is often the first step in an ongoing relationship

28. *Id.* tit. II.

between a committee and an official, and the quality of this relationship will often be the ultimate determinant of the success or failure of the official and the programs he or she is to implement.

Over recent years, particularly since the Nixon administration, the Senate has come to take its Constitutional responsibility of advice and consent with increasing seriousness. Perhaps this trend is part of an overall assertion by Congress of its role in government, or perhaps it is related to a growing awareness of the increasing importance of the federal bureaucracy and its leaders in shaping the lives of citizens. In either event, this trend is a welcome one. However, if the Senate is to participate fully in the appointment process as envisioned by the Founding Fathers, it is clear that basic reforms will be needed. Changes in the fabric of our society have been drastic over recent years. To keep up with those changes, Congress must continue to examine itself, its structure, its procedures, and its responsibilities.

The reforms I have recommended to update the Senate's advice and consent process are not the final answer to this continuing challenge. Rather, I have offered them in an attempt to stimulate serious discussion and thought. The creation of a Senate Office of Nominations and the establishment of affirmative standards for nominees, I believe, are significant first steps along the road to reform.