

PASSING THROUGH THE MAELSTROM*

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Abstract: This paper details the inquiry of presidential nominees during their vetting process. It demonstrates how the early Obama administration drastically increased the burdens on nominees, doubling the amount of information they must provide. That increase in inquiry alone contributes to one-third of the lengthening of the appointments process identified by others since the G.H.W. Bush administration. The paper also details two significant steps to reduce the process, one by the Senate reducing scrutiny of nominees by 20% and one the White House reducing inquiry of nominees by another 20%. The paper then considers two additional reforms of inquiry, each relying on proposals innovated by the scholarly community and each reducing nominees burdens by between 20% and 34%. The total alterations in inquiry could reverse the lengthening appointments process by nearly 30% over those differences since 1989.

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THE INQUIRY OF PRESIDENTIAL NOMINEES

AND REFORM, 2001-2012

Since the constitution's beginning, a new administration's appointments represent the key to achieving everything a president wants and everything the electorate has chosen (cf. Hamilton, *Federalist* #72). Challenging the new president's appointments, those requiring Senate confirmation (the so-called "PAS" positions), becomes an opposition's first line of resistance. No wonder fixing the presidential appointments mess has occupied the governing community for decades with so little effect [Light 2007].

The partisan back and forth has masked another equally troubling but essentially nonpartisan problem: the inquiry that nominees must endure has plummeted into a morass. Under the cover of recurring partisanship, the agencies responsible for vetting nominees, including the White House, have built their own versions of inquiry virtually independent of any coordination with one another. As a result, nominees have come to endure a process that the Twentieth Century Fund has described as a "maelstrom of complexity" [1996]. In 2001, the Presidential Appointees Project at the Brookings Institution found that potential nominees regularly underestimated the problems they would face navigating that maelstrom [Light and Thomas 2000] and, having endured it, those nominees most often characterized the experience as "mean-spirited."

Despite its importance and except for Sullivan 2009, no other research has analyzed the full dimensions of this inquiry and its effect on the appointments process. That research focused on the change from the Bill Clinton to the George W. Bush administration. The latter took a more pronounced interest in reshaping the process, including its inquiry. That study concluded, however, that a large reform agenda remained. O'Connell [2009, 2010] has done the best job describing detailing the period from a vacancy through to completion of the confirmation process using data from the Office of Personnel Management. Her data represent the only data on appointments that covers the full range from the presidential search leading to the intent to nominate through to confirmation. O'Connell documents that this length vacancy period has stretched out over the past two decades, going from 163 days for G.H.W. Bush [O'Connell 2009] to around 192 for President Obama's early administration [O'Connell 2010]. Other research on appointments (e.g., McCarty and Razaghian 1999; Nokken and Sala 2000; Massie *et al* 2004) primarily focus on the confirmation process where few effects undermine the overall and overwhelming "presumption of success" (Bond *et al*, 2009) dominating confirmations, where the Senate approves at least 95% of the administration's nominations.¹ None of these accommodate those processes like executive vetting prior to nomination or the increasingly complex inquiry of nominees, as potential causes for delay. Hence, most scholarly research, then, has focused on those elements of the process most *unlikely* to accommodate change.

Meanwhile, policy studies, like those conducted by the Twentieth Century Fund or the Brookings project rely on anecdotes from, or surveys of, nominees. These focus on nominees' perceptions of their experience. Relying on personal experience, of course, places too much emphasis on what becomes a very narrow window of experience. It potentially exaggerates that experience and oversimplifies its complexities. So, can data analysis document perceptions of excessive complexity and unnecessary duplication? Can it identify potential paths to improvement?

This paper focuses directly on nominee inquiry, describing the range of questions asked and identifying what dimensions might undergird nominees' perceptions. For the first time, it provides data that substantiate a series of such perceptions. It finds the inquiry process needlessly repetitive and unnecessarily time-consuming. It demonstrates how the changes made early in the Obama

¹ Of course, this very presumption of success undermines the empirical patterns found in a number of studies which focus on understanding confirmation politics as a function of predicting the few and far between defeats [Binder and Maltzman 2002].

White House greatly increased this needless repetitiveness and increased the burdens on nominees, almost doubling the time required to file forms, an increase estimated at one-third of the additional length in the appointments process since 1989.

It introduces a simple disjunction between “scrutiny” and “inquiry,” the former more invested with constitutional prerogatives and, hence, more likely to fall victim to partisan opportunism. This simple disjunction, however, offers an opportunity for reasonableness as a substitute for maelstrom and the chance that small alterations in inquiry can substantially reduce the burdens on nominees independent of partisan, institutional competitions.² The paper reviews two such changes made recently, independent of each other, by the Senate and the Obama White House. Each has reduced the burdens of the process by 20%. The paper also reviews two additional reforms recommended by the recent Presidential Working Group on Streamlining Nominations. Using the database on inquiry, the paper then estimates each of these reforms promises to further reduce burdens on nominees by between 20% and 35%.

DESCRIBING THE INQUIRY PROCESS

Few scholars and even fewer inside government know much about the appointments process and the inquiry process within it. The president makes two types of important appointments. The first, called “PA” (presidential appointees), encompass the range of advisors closest to the president. The second, called “PAS” (presidential appointees, Senate confirmed), encompasses the range of policy makers in the Executive branch and the associated independent agencies. Standards of “fitness” associated with confirmation and its associated scrutiny and inquiry apply mostly to PAS. Most vetting takes place with respect to PAS nominations, although many PA positions also require substantial inquiry using the same forms as Senate confirmable positions.³ Because it constitutes one element these two categories of appointees have in common, the nature of inquiry has an important place in the appointments process. The burdens placed on presidential appointments (PAS) also affect and limit the process of filling those advisory positions closest to the President.

Two recent efforts have documented this inquiry. The first, spearheaded by the White House Transition Project (hereafter WHTP), developed a database on inquiry covering the Bill Clinton and George W. Bush administration questionnaires [Sullivan 2009]. With that database, WHTP created the first and only integrated software package ever made available to assist presidential nominees. Its *Nominations Forms Online* program implemented both a genuine “smart form” approach and what has become known as “one way, one time” inquiry, parsing answers to a single protocol, and then distributing those responses to the appropriate forms in order to answer disparate versions of the same question. According to a policy assessment conducted by the Pew Charitable Trusts, 40% of Bush nominees used WHTP’s software in 2001.⁴ A second database, created for the National Commission on Reform of the Federal Appointments Process, now covers nominee forms as of the first Obama term [Sullivan 2011]. These databases use the same protocols to identify each of the questions asked on all the forms (executive and Senate) nominees must file. Both identify the kinds

² Reforms in inquiry, of course, will miss the most common reforms: ending the filibuster, ending Senate “holds,” removing barriers to executive control of information, reducing the numbers of advice and consent positions, leveling government agencies by reverting the numbers of presidential appointee positions in the executive to the SES, etc. See Hogue; Light and Thomas.

³ PA positions do not have to file forms with the Senate. They must file financial disclosure forms and some require national security clearances. See below.

⁴ Despite this demonstration of its feasibility, the executive has not developed a smart form. 12 years later, the Senate and House have passed for presidential signature S. 679 recommending the President create an executive task force to study the feasibility of a smart form.

of details required for every answer to every question and then map the flow of those details across questions and through forms. This mapping allows measuring the degree of repetition and the time necessary to complete the inquiry process within the vetting process leading to a nomination and then consideration for confirmation.

Inquiry's Contexts

The appointments process takes place in two separate contexts: the “scrutiny” that nominees undergo and the “inquiry” to which they submit? Scrutiny defines the issues under investigation. Its substantive content rests in the partisan milieu, in recently discovered or embarrassing gaps in the process, previous attempts to sidestep legitimate investigation, or on accumulated experience among the with the responsibilities (and risks) for vetting nominees.

Directors of presidential personnel, the presidents’ headhunters, make it clear they often have a difficult time convincing potential nominees that *every* aspect of their lives and backgrounds would undergo this scrutiny. In response to this common, insider complaint, the George W. Bush transition developed on its applicant website a long disclaimer (they called it their “scare page”) emphasizing potential nominees should expect nothing less than a microscopic scrutiny of their lives. The Obama administration has followed through with a similar strategy though less publicly. Essentially, these warnings serve to remind nominees that the partisan checks and balances (and to some extent, even its “gotcha” politics) reflect a justifiable and unavoidable concern with the public’s business, an element the administration may regret but has no intention of changing. “You may not like it,” they tell potential nominees, “but you can’t escape it” [Nash 2000]. This strategy, they hoped, would lead to self-screening among potential applicants, particularly on what would become troublesome cases.

“Inquiry” describes specific requests for information. Of course, some aspects of inquiry reflect scrutiny: the subjects of partisan squabbling influence some (but not many) of the questions asked of nominees. Inquiry rarely engages constitutional powers, but merely exposes nominees to basalt.

Nominees must report to a number of entities and, in doing so, they must answer a wide array of questions.

Inquiry's Four Forms

Since the Reagan administration, nominees have submitted to four reviews, each represented by a separate packet of questionnaires and forms.⁵

Initial Screening. The first investigation coincides with initiating presidential consideration and includes a questionnaire called the “White House Personal Data Statement” (hereafter “WHPDS”), which provides the information used to commit the president to a particular nominee. The range of information covered in the WHPDS has varied considerably. The Reagan and Clinton forms, for example, had around 50 questions concerned with a range of issues and obtaining information duplicated later on other executive forms. Typically, these WHPDSs have employed what an administration considered the toughest questions for its nominees and have thereby afforded the White House a preview of responses and a measure of potential “political” liabilities [Nash 2000]: an “early warning” of potential vulnerabilities.

In July 2000, and as part of its planning for what they hoped would become a presidential transition, the Bush for President transition planners began a review of the Clinton WHPDS looking for ways to maximize its usefulness while reducing the time taken up with consideration. The planners believed that they could better minimize liabilities by using two new approaches. First, they would underscore the inevitability of scrutiny, through both personal communications and through their web-based application process and the “scare” page described earlier. Second, they adopted an

⁵ Besides the stream of questions, nominees must file forms for background and IRS checks, medical releases, etc.

“open door” approach to nominees who developed troubles not previously documented in their early warning responses: the administration would simply shove out an open door any nominee who became trouble. With these strategies in place, the Bush transition reduced the size of its initial WHPDS to a mere 19 questions, focused for the most part on special liabilities not covered in other forms. The Bush administration soon revised this document after taking office, however, reacting to their most prominent mistake, Linda Chavez, adopting a major revision in March 2001 which increased the number of questions to 42 making it similar to the Reagan/Clinton document in direction and strategy: a broad sample of hard questions.

During the 2008 transition, President-elect Obama’s staff announced that the new administration would hold nominees to a higher set of standards on ethics and transparency, especially where conflicts of interest from their past activities might compromise the administration [Shear 2008]. Their newly revised WHPDS reflected some of that commitment (see below), but it also greatly expanded the WHPDS. The questionnaire ballooned to 63 questions, plus another 13 questions on an online form. In addition, the Obama WHPDS called for a number of documents, like multiple years of tax returns. The new questionnaire adopted a broad approach: adding newly formatted questions on similar (but not identical) topics found on other forms (the Reagan/Clinton approach) and adding a number of new questions more common to Senate committee questionnaires and not covered anywhere else in the executive. As a result, the Obama inquiry process steeply increased the duplication of questions, the numbers of unique questions, and the overall demands for information from nominees.

Executive Vetting. The announcement of a “president’s intent to nominate” initiates a full executive branch investigation. This process invokes two additional packets, one from the FBI and one from the Office of Government Ethics (OGE). The “FBI form,”⁶ called the “Standard Form 86” (hereafter, SF-86), concentrates on national security vulnerabilities and various forms of legal entanglements, although it asks for a range of other information, as well. During the George W. Bush administration, this form went through a radical reordering allowing for more detailed information on some questions and reducing some demands on other questions. This reordering took effect in November 2010.

The third package from OGE, called the “Standard Form 278,” (SF-278) covers financial commitments, recent transactions, and potential, financially driven conflicts of interest. This form also doubles as an annual disclosure report for all federal employees above the rank of GS-15.⁷ Its form has changed little since the Clinton administration, partly because much of the form has roots in statutory language and mirrors much of the congressional conflict of interest reports.⁸

The Confirmation Process. Those potential nominees that survive the executive’s vetting process become official nominees sent to the Senate for confirmation. During confirmation, nominees must answer a fourth package of questions original to the appropriate Senate committee of jurisdiction.⁹ That package typically consists of two forms: a basic questionnaire covering the full range of information found on the executive forms, from background to political conflicts to policy positions

⁶ As of 2008, the FBI has a greatly diminished role in the form. Instead, a Suitability and Security Clearance Performance and Accountability Council oversees the content of the SF-86. Established by Executive Order 13467, the Deputy Director for Management in the Office of Management and Budget chairs the Council and it includes the Director of OPM, who serves as the Suitability Agent, and the DNI, who serves as the Security Agent.

⁷ That classification would include all important presidential appointees and many in the executive branch and all of the Senior Executive Service. Below GS-15, federal employees report on a much more abbreviated form, the SF-450.

⁸ The SF-278 undergoes revamping of its presentation but the forms themselves do not change. The latest version (9/2010) merely allows for the pdf file containing the form to save its data from one session to the next allowing nominees and federal employees to avoid filling in the form in one sitting.

⁹ Most administrations do not make their forms available to congressional oversight, except under the most guarded of circumstances, e.g., with the White House Counsel present and “in control of the papers” allowing only that the committee chair and ranking member read (but not take notes) from these forms.

along with an additional financial disclosure statement (most often a “net worth” statement) not used in the executive.¹⁰ Then, and based on the answers to the standard questionnaire and with the help of policy experts in the GAO, many committees require answers to a second more targeted questionnaire, questions asked about specific policy commitments that the committee wishes the nominee to consider. For comparisons, this paper identified and then used the median committee questionnaire, from the Committee on Health, Education, Labor, and Pensions.

Inquiry’s Parts

The system of inquiry generated by these forms employs four discernible parts: “details,” “inquiries,” “simple questions,” and “standard questions.” Details constitute the lowest level of information a nominee provides. For example, in listing their education background, nominees must supply the cities and States in which they attended college. The “State” reported in describing a single college stint constitutes a single detail. The general request for records for each college constitutes an “inquiry,” or a clump of details built around a common fact. Typically, inquiries come bundled together as a “simple question,” on say “undergraduate education,” sometimes embedded in a broader, numbered or “standard” question, say requesting information about the nominee’s educational history.¹¹

Inquiry Categories. For analysis, nine categories bundle the standard questions.¹² See the appendix for sample questions from these categories. They begin with basic personal information, (e.g., one’s social security number) and professional background (including employment histories). They then consider a number of potential liabilities, beginning with one’s tax history and financial holdings, areas of potential civil or criminal misconduct, prior policy-related activities and so on. Finally, and typically of more use in categorizing Senate committee questionnaires, inquiry includes questions having to do with securing policy and procedural commitments from the nominee.

Table 1 reports the balance in questions between the revised Bush (late 2001) and the early Obama (2010) WHPDSs and how they compare to the array of questions on all forms for the same period. Between the two, the Obama WHPDS closely reflected the distribution on the full range of forms, while the Bush WHPDS took a particular tact. For example, the divergence from the overall forms for Bush triples the variation of the Obama WHPDS. Instead of repeating many of the same questions from the other forms, the Bush WHPDS concentrated on more personal data, taxes, and organized activities than the forms in general, this at the expense of concentrating on professional background and conflicts of interests. These discrepancies suggest something of the Bush White House’s approach to *potential* nominees, as opposed to the more formal vetting of nominees, while the Obama White House seemed to treat all its potential nominees with the same approach its formal nominees would receive.

The Obama White House placed more emphasis on those miscellaneous questions often considered the hallmark of high profile goofs in previous administrations, getting the early warning.

¹⁰ Despite claims about the SF-278 matching congressional standards, the Senate’s approach to inquiry of nominees differs considerably from OGE’s, focusing instead on the Senate’s notion of financial “soundness” and relying on nominee responses to other formal background questions to highlight potential conflicts.

¹¹ The difference between simple and standard questions rests with the inquiring agency and how they combine inquiries together and number those inquiries on their form.

¹² These categories originate with the agencies involved in inquiry and therefore reflect what the originating agencies consider the general types of questions they ask. OWG1 described some 18 categories as containing 60% of the questions asked, but many of these very specific categories, e.g., using a category to distinguish between criminal *convictions* and *investigations*, easily collapse into a more general category, e.g., criminal misconduct.

Table 1. White House Personal Data Statements

Topic	WHPDS		All Forms	
	G.W. Bush	Obama	2001	2010
Personal & Family Background	31.0%	18.1%	19.6%	13.6%
Profession & Education	7.1%	12.8%	19.2%	12.5%
Tax & Financial Information	16.7%	10.6%	3.1%	7.7%
Conflict of Interest	11.9%	25.5%	36.7%	31.5%
Public & Organizational Activities	14.3%	8.5%	3.2%	3.3%
Criminal Misconduct	7.1%	3.2%	10.2%	6.7%
Miscellaneous	2.4%	10.6%	1.0%	3.6%
Civil Misconduct	9.5%	10.6%	7.0%	21.2%
Policy Commitments	0.0%	0.0%	0.1%	0.0%

Source: Data compiled for The White House Transition Project (Sullivan 2002, 2009) and for the National Commission on Reform of the Federal Appointments Process (Sullivan 2011).

Second, the transition from the Bush to the Obama White House clearly underscored a new focus on potential conflicts of interest, an increase from 12% to 26%, though the Obama figure still came in under the standard for federal forms. Hence, the Obama White House did not so much increase scrutiny of potential conflicts of interest as rebalance the WHPDS towards a more typical concentration on such conflicts and bring those conflicts into the early, unofficial vetting. Third, in response to an increase in conflict of interest, the Obama White House reduced the proportion of inquiry focused on a nominee's taxes from 17% to 11%. Even after its reduction in focus, the Obama WHPDS still placed a much greater than average emphasis in this category.¹³

ESTIMATING NOMINEE BURDENS

Of course, identifying the proportions of details provided under different topics does not capture the real burdens placed on nominees. The apparent Obama White House shift in emphasis towards conflicts of interest, for example, only suggests a substantive (or scrutiny) problem for nominees. It does not describe the increase in overall inquiry. Documenting these burdens placed on nominees involves three additional assessments: First, both inquiry and scrutiny combine to require details from nominees. How many details must nominees provide? Second, the increase in needless repetition increases the adversarial nature of inquiry. How adversarial or tedious has inquiry become? And third, concerns with standing up the government invoke the press of time. How much time does inquiry require of nominees? And how much have these increasing demands contributed to slowing the process?

Counting Details and Repetition

As described earlier, details constitute the base unit of inquiry. In order to estimate nominees' efforts, we count on each form the provisions made for details (for example, the form might leave a

¹³ Of course, the Obama nominees had some early, high profile tax difficulties during the Senate confirmation process leading many in Washington to blame the administration's difficulties on a lack of preparation in this area [Connolly *et al* 2009; Milbank 2009; Rosenwald 2009; *Washington Post* Editorial Staff 2009]. While the administration did reduce the proportion of inquiry in this area, that reduction reflected more attention in other areas and not less attention on taxes and, as Table 1 indicates, both administrations had a stronger than the average emphasis on taxes and finances.

row of boxes to fill in information about a single school attended) and we assume that the nominee fills out all of the lines but does not need more than the allotted space, does not employ the extension forms, or uses the additional pages often provided with the forms.

This assumption, of course, takes a very conservative approach assuming the typical nominee presents a relatively straightforward profile.¹⁴ Then, for each box, we identify what information would satisfy an answer to the question posed. For example, a request for one's educational record typically includes providing the school's name, its street address, its city, the state and zip code, begin and end dates for attendance (month and year), and graduation date (month and year). Thus, this inquiry involves eleven details.¹⁵ The total number of details provides the first evidence of the nominee's burden.

As noted earlier, inquiry also involves a relationship among questions. Define as "redundant" those questions that do not vary the details required of nominees across forms. For example, five forms require the nominee to report a Social Security number. Define as "repetitive" those questions that require restructuring basic details to respond differently to seemingly similar questions. And, define as "unique" those questions that require specialized details not asked elsewhere, e.g., the Senate committee form, and *no other*, requires a nominee to declare the sum of all "unpaid income taxes."

The Ownership of Property. A single example epitomizes the complexity of repetitive inquiry — the case of owning property. Merely repeating the range of inquiry in this area tells a significant tale about the impact of repetition on inquiry burdens. In different time periods, the White House has asked potential nominees about their ownership of real property. The George W. Bush White House dropped surveys of property ownership, but the early Obama WHPDS reinstated it. On the Obama form, the White House wanted to know about holdings going back 10 years and for the nominee and spouse, excluding dependents, but including property held in different arrangements — e.g., in trusts. On *its* form, the FBI only surveys properties in foreign countries and only if held by the nominee, in name alone, ignoring immediate family holdings and excluding other arrangements. For each property, the FBI requires the nominee produce information on its location (but only by country), time held, and its current worth.

While it also has an interest in property, the USOGE changes the subject of investigation, includes more family, returns inquiry further back in time than the FBI, but draws up shorter than the White House, and changes the kinds of information requested. Unlike the others, OGE only wants information on property held as an investment or as a source of on-going revenue (e.g., rent). 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 ranges.

If not enough variation, the typical Senate committee then returns to the FBI (not the OGE or White House) standard of ownership (dropping the spouse and dependent children); it uses the FBI's timeframe (note the OGE or White House); and, like the FBI (and not the OGE), it asks the nominee to identify a specific value for each of the properties. Then Senate committees ask these questions again as part of a detailed financial disclosure (or net worth) statement delineating property as assets and liabilities (which would include residences).

In all, then, nominees need to muster information on real property designating three separate classes of ownership, sorting at different times on at least two separate types of transactions, setting out information about three separate time frames, and set across three separate approaches to reporting values. In all these variations, the question of inquiry has remained the same — what property does the nominee have an interest in?

¹⁴ For example, nominees may have as many as 250 pages of additional documentation on the SF-278 alone, recording their stock holdings and other assets. Those in the financial community use extensions extensively.

¹⁵ Other educational inquiry might also include the kind of degree received from each school and when the nominee received that degree.

Table 2. Details Required by Repetition and by Category, 2001 & 2010

Bush 2001			Obama 2010				
N of		Standard	Details by Repetition			N of	%
Details	Topic	Questions	Redundant	Repetitive	Unique	Details	Change
690	Personal & Family	49	20	857	126	1,003	+45.4
675	Profession & Education	15	0	878	45	923	+36.7
109	Tax & Financial	22	0	561	5	566	+419.3
1,292	Conflict of Interest	81	6	1,928	390	2,324	+79.9
114	Public & Organization	9	0	171	76	247	+116.7
359	Criminal Misconduct	11	2	366	128	496	+38.2
35	Miscellaneous	14	4	33	227	264	+654.3
248	Civil Misconduct	11	0	599	965	1,564	+530.6
2	Policy Commitments	2	0	0	2	2	0.0
3,524	Totals	214	32	5,393	1,964	7,389	+109.7
% Difference from 2001		+21.1	—86.6	+103.4	+29.4	+109.7	

Source: Data compiled by author for The White House Transition Project (Sullivan 2002, 2009) and for the National Commission on Reform of the Federal Appointments Process (Sullivan 2011) and for this paper.

The Number of Questions and Details

Table 2 reports the basic data on questions and details required of nominees, each arrayed by type of repetition as set out in the early Obama administration set of forms. For most categories of inquiry, the table reports raw numbers (e.g., 214 total standard questions) and the percentage changes from the Bush 2001 forms (+21%), and then distributes these details by category (e.g., Tax & Financial information requires 561 details on repetitive questions, 566 total, an increase of 419%). On the early Obama forms (2010), nominees provided around 7,389 details. This figure constitutes a more than a doubling (109%) from 3,500 details during the Bush ('43) administration. On its face, then, the early Obama inquiry represented a significant burden as well as a dramatic increase. Hence, the impression that nominees face a substantial inquiry has a clear basis.

Nearly 60% of this dramatic increase resulted from the significant expansion of the WHPDS by the early Obama White House, while the remaining 40% increase derived from the scheduled overhaul of the SF-86. Both these changes not only increased the details required but they have also drastically increased repetitiveness, leaving virtually no lines of inquiry as redundant. Overall, the numbers of details required by repetitive questions have jumped dramatically since the Bush administration, increasing almost three fold. The early Obama administration forms, for example, did not even ask nominees for their names in the same way (thereby making the questions redundant) but instead required different (and therefore repetitive) details. These repetitive questions account for almost five times more of the details nominees must report than do those unique questions. More than three times as many questions required manipulating information from other questions as required reporting completely unique information.

Reflecting the new administration's announced "emphasis," by far the largest component of required details, whether repetitive or unique, falls into the conflict of interest category. Almost one-third of all details occur in this category, or for comparison, the number of details required for conflict of interest equals the combined totals of the second and third largest groupings.

Conflict of interest, however, did not expand like the other categories. At 80%, this category falls well below the average growth (below the growth in five of the other eight categories). By far, the largest growth in details came from the “miscellaneous” category at almost a six-fold increase. Growth in the civil misconduct (531%) area and in the taxes area (419%) follow the growth in the miscellaneous category. So, if the early Obama administration made a commitment to anything and evidenced it by their increases in those inquiries, it seems clear that conflicts of interest (though publicly underscored) did not represent their actual concentration.

Hence, changes made during the early Obama administration greatly challenged its nominees by increasing the demands placed on them in every category of inquiry.

Burden Measures

Table 3 reports the kinds of burdens these changes in the early Obama forms placed on nominees, using the three types of burdens identified earlier. First, a line of inquiry can promote the sense of a needlessly adversarial relationship. Repetitiveness acts as a clear indicator of such inquiry. When different agencies require nominees to change the details of their answers on virtually identical questions — requiring the same information but rearranging it to drop one family member or add another for example — nominees conclude these agencies require their changes because they can assert them, making the nominee an unwilling object in some wonderland maze. Second, a line of inquiry can become merely tedious. Redundant questions, like those repeatedly requesting a social security number, invoke this tedium.

Table 3. Burdens Imposed by Category, 2010

Topic	Standard Questions	Burden Measures ¹⁶		Hours to Complete
		Adversarial	Tedious	
Personal & Family	49	16.1	3.0	19.8
Profession & Education	15	58.5	3.0	18.7
Tax & Financial	22	25.5	0.2	11.6
Conflict of Interest	81	21.9	4.9	45.7
Public & Organizational	9	19.0	8.4	4.7
Criminal Misconduct	11	30.6	11.8	9.5
Miscellaneous	14	2.2	16.5	4.3
Civil Misconduct	11	54.5	87.7	27.4
Policy Commitments	2	0.0	1.0	0.0
<i>Totals</i>	214			141.7
<i>Medians</i>		21.9	4.9	11.6
<i>Difference from 2001</i>	+21.1%	+150.2%	—44.2%	+104.3%

Source: Data compiled by author for The White House Transition Project (Sullivan 2002, 2009) and for the National Commission on Reform of the Federal Appointments Process (Sullivan 2011).

¹⁶ Note:

$$\text{Adversarial Load: } A_c \equiv \frac{N_{dc}}{Q_{dc}} \left(\frac{N_{dc}}{N_{dc} + N_{rc}} \right) + \frac{N_{rc}}{Q_{rc}} \left(\frac{N_{rc}}{N_{dc} + N_{rc}} \right)$$

$$\text{Tedium Load: } T_c \equiv \frac{N_{dc}}{Q_{dc}} + \frac{N_{uc}}{Q_{uc}},$$

where N_{dc} , N_{rc} 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 type.

where N_{uc} defines for a category the number of details used to answer unique questions.

And third, it reports figures on how long each category of inquiry will take nominees to complete. Although the most recent government report on reforming the appointments process (OWS2) in May 2013 only suggested studying time to completion (Part III – Further Evaluations), Table 3 produces such estimates. Following the requirements of the Paperwork Reduction Act, both the SF-86 and SF-278 provide official estimates from the Office of Personnel Management on how long it takes to collect, organize, and enter the information required. For the national security questionnaire, the OPM estimates nominees require 2 hours to compile, organize, and then report their answers. The OPM estimates the financial information on the much shorter SF-278 would require 3 hours to compile, organize, and report.

By comparison, especially with the financial reporting requirements of the SF-278, the IRS estimates the average tax payer takes 22 hours to take the steps necessary to file a typical IRS Form-1040 (hereafter IRS1040). For comparison, the IRS1040 has 77 standard questions compared to the SF-86's 29 and the SF-278's 21. The IRS1040, then, takes 17 minutes a standard question to gather, organize, and report, while the SF-278 takes 8.6 minutes per standard question, or less than half the time required to report similarly complex financial information. Though both agencies have an incentive to underestimate the time required to complete their forms, it does seem that the IRS projections appear more reasonable. Hence, Table 3 reports time to completion using the IRS estimate of 56 seconds per detail to collect, organize, and report. Where questions require repetitive details, we assume an additional 30% for nominees to restructure their answers. By contrast, we assume no additional time for nominees to file redundant details.

Adversarial Relationships. Table 3 reports burden measures based on these distinctions. The adversarial measure increased substantially with the change from the Bush to Obama administration. Overall, and by comparison with the Bush administration, the adversarial relationship between nominees and the Obama vetting process nearly tripled (150%). While most of the categories saw a doubling of the adversarial score, including the score for “conflicts of interest,” the greatest increases came under personal information and under criminal and civil misconduct. The increase in this category came from additional questions on both the FBI's form and the WHPDS and often by manipulating the family members inquiry covered. Especially when applied to potential misconduct, the use of an adversarial relationship promotes discrepancies which then suggest further investigation.

The perception, then, that nominees face a process *designed* primarily to challenge them also has, on its face, a substantial foundation in fact. And the early Obama approach to vetting made things significantly worse. Not simply because the administration had focused more inquiry on conflicts of interest, though it had, but because it had increased, and made more challenging, inquiry in virtually every area of interest. In most topics, the burden on nominees has more than doubled.

Tedium. Because the Obama WHPDS and the new SF-86 increased repetitiveness dramatically and reduced redundancy, the tedium score dropped considerably. The overall score on the early Obama forms represented a 44% decline over the Bush forms. This good news, however, hardly countered the impact of the increases in adversarial relationships.

Time to Completion. Using these essentially conservative methods derived from the IRS, the time required to complete inquiry would equal around 142 hours — essentially three full workweeks, or nearly *seven times the effort required of nominees to complete their taxes*. These estimates substantiate the impressions of nominees that responding to inquiry takes a long time. And given that much of the additional time required comes from reformatting information already provided, these data substantiate the sense that the length of time for filing forms seems needlessly long.

The statistics on time to completion has a special meaning. Recall that the introduction noted that best estimates (O'Connell's analysis of OPM data) of how long it takes an administration to fill an empty chair has increased about 30 days since the G.H.W. Bush administration. The early Obama administration clocked around 192 days. Since virtually all the Obama vacancies appearing in these

data occurred with the initial 2009 transition, these statistics reflect the critical time it takes to stand up a particular appointee. The statistics here on inquiry, then, suggest that of that 30 day increase, about one-third of it came from additional work hours associated with the more complex and vastly more repetitive inquiry nominees faced under the early Obama changes. Given that some unreported amount of that 30 days would have come from increases experienced in the Clinton and George W. Bush administrations, it seems quite possible that a far greater and therefore substantial amount of the changes associated with the Obama nominations resulted from these very dramatic increases in inquiry.

REDUCING NOMINEE BURDENS

A grand proportion of the complaint about the appointments process focuses on scrutiny but most of the evidence here focuses on inquiry, substantiating those nominee perceptions of the process as burdensome, needlessly adversarial (contributing to a sense of partisanship), and especially time consuming. Nominees, especially during the early Obama administration, filed a very large number of often repetitive details, doubling their burdens over previous administrations. The research here has documented that the early Obama changes to the WHPDS greatly increased repetitiveness and greatly increased the time required of nominees to file their forms, further slowing the standup and potentially robbing the administration of its momentum. Conservatively, the estimated drag produced by this increased repetitiveness accounted for at least one-third of those dramatic increases most often reported by other analysts. The evidence also underscored that while lengthening the process, inquiry also contributed to a sense of unneeded adversarial confrontation in the vetting process. These attitudes greatly undermine the process and purportedly reduce the pool of prospective, talented nominees (Light and Thomas 2000).

While complaints about the necessity of pursuing certain lines of investigation, about the necessity of scrutiny, do not lend themselves to systematic assessment, many complaints about the nature of inquiry do. Most agree that scrutiny, with its evocation of constitutional purviews and professional expertise, also does not lend itself to easy fixes. Meanwhile, inquiry poses a great potential for ameliorating the situation through reform. This section considers two broad approaches to reform, modifying elements of scrutiny and, then, rationalizing inquiry, and four specific changes that have recently or could greatly improve matters.

Modifying Scrutiny

Two general approaches can affect scrutiny. The first involves reducing the numbers of presidential appointments that require Senate confirmation, transforming the pool of PAS positions, while the other involves restructuring the authority for determining inquiry among the Executive agencies controlling specific forms. In the past, the problem with the second of these strategies has revolved around the differences between political and professional expertise. One might consider, for example, whether a particular question or set of questions might produce “useful” information, i.e., whether they evoke a genuine political or policy liability. Challenging the questions agencies ask in carrying out *their* responsibilities or utilizing their expertise poses many problems for those new to governing.

Previous attempts to limit scrutiny have concentrated on how much to limit the FBI in vetting nominees after the president has committed to their nomination. Both the Bush administrations employed an approach to vetting nominees that tailored FBI commitments to nominees based on how critical the position the nominee held. Low level PAS positions (e.g., commission members) might receive only the FBI inquiry and rudimentary verifications while senior administration officials

would get a full field investigation involving hundreds of work hours. The Clinton administration abandoned this system opting for applying the same (high) level of investigation to all PAS positions. This tiered approach to work hours, of course, did not challenge the nature of scrutiny.

Five strategies have developed to challenge this institutionalized intransigence. Three of them address directly the FBI's role in scrutiny, elaborating of this previous approach, while two others concentrate on other elements. First, late in its term, the Bush administration issued an executive order (EO 13467) removing the FBI from controlling the SF-86's contents, creating a new commission to oversee the form's contents, and leaving the FBI off of the commission's membership (see fn 6 above). The Obama administration has now extended this strategy, continuing the Bush EO but also floating recommendations (via OWG2) for standardizing time frames across forms, a common problem in the repetitiveness of FBI questions, and then suggesting the possibility of removing the FBI altogether, in favor of the OPM, as the lead investigative agency for vetting.

Two other changes suggest some alteration of scrutiny, one of these altering the constitutional relationships. First, following the urgings of a number of good government groups, many sitting as the Commission on Reform of the Federal Appointments Process, the Congress has taken a large step to affect scrutiny. It initiated and passed and the President signed into law the Presidential Appointment Efficiency and Streamlining Act of 2011 (PL 112-166, § 4, 126 Stat.1283, 1293). Among its provisions, the law downgraded the status of some 260 positions (out of 1152) from PAS to PA, thereby relinquishing Senate confirmations and increasing the president's primary control over those positions.

This unilateral action resulted in a 20% reduction in the numbers of nominees requiring Senate attention¹⁷ and, consistent with that, in the hours required for preparing and then vetting answers to Senate questionnaires by administration nominees. This represents a significant alteration of the appointments process. For example, reducing by 20% the average time to fill positions would drive the delay reported for early Obama nominations from 192 to 149 days. That change alone would reduce the average time on nominations to levels observed prior to the G.H.W. Bush administration. This bipartisan reform, orchestrated by the two Senate leaders, also required considerable support from Senate committees of jurisdiction and then House majority leadership's acquiescence. Hence, in addition to actually reducing scrutiny, this reform suggests an opportunity for future cooperation between the Executive and the Legislative leaderships over the issue of appointments.

Lastly, President Obama's Working Group (OWG1) suggested creating a federal information system to share between the Executive and the Legislative branches information repeated on the various forms. In particular since previously the Executive has not shared its forms and nominees responses, the Senate has felt obligated to recreate the scrutiny of nominees from the baseline up. By initially sharing at least the most basic information from nominees, constituting 53% of the nominee's details, this new system would minimize the numbers of basic questions the Senate feels obligated to repeat. In addition to reducing inquiry (see below), this new electronic system would lead to more opportunities for cooperation between both parties and institutional leaderships thereby laying a foundation for narrowing the gaps between them.

Modifying Inquiry

Without modifying the constitutional balance over scrutiny, three strategies present themselves for attacking inquiry. The first two involve taking advantage of the electronic system contemplated in OWG1 and introduced in the earlier section. This system involves two approaches. The first, some

¹⁷ This percentage covers "the policy government" those considered significant in setting policy and excluding many PAS positions that generally execute policy, e.g., Ambassadors, US Attorneys and Marshalls.

call it “one way, one time,”¹⁸ transforms the inquiry on repetitive questions into redundant questions by standardizing inquiry across forms to the broadest possible inquiry in an area. If one agency wants to learn about the property holdings of minor children then the single real estate question a nominee would address would include that information. All agencies interested in real estate holdings would then get this response. The nominee, then, provides that greater amount of information only once and without morphing it to fit essentially esoteric requirements of multiple forms. This approach eliminates the time penalty for morphing questions to fit repetitive versions on other forms, but it also presents some policy hurdles to implementation, including changing some statutory mandates, and in it will increase the numbers of details on some questions while altering them on some others.

A second approach (also OWGI), deploys a “smart form” in which inquiry would remain the same, but a computer application similar to the earlier *Nominations Forms Online* software would facilitate nominees’ answers by distributing details to specific questions.¹⁹ The software would uptake from the nominee the most detailed information required to answer all the renditions of the repetitive questions (a variation on one way, one time) and then apply the answers, properly parsed for these repetitive questions, to each of the forms. Essentially, the software would shield the nominee from redundancy and repetitiveness, would require no coordination among the originating agencies, and would not modify the underlying forms themselves.

In addition, Sullivan 2009 suggested that the White House had the best opportunity to affect inquiry the most by unilaterally removing its WHPDS. This strategy would rely on potential nominees filing the other standard forms and answering a supplemental questionnaire (typically to the SF-86) which would cover the miscellaneous questions overlooked in the other forms. Since the Obama White House had already modified the WHPDS to reflect the basic balance across all the forms (see Table 1), the administration could easily take this advice and in mid-2012 it removed the WHPDS from the nominee’s packet.

Impact of Reforms. Table 4 reports the effects of one way one time and smart form, comparing them to the early Obama inquiry from Table 2 (Obama 2010). The table also reports the Obama 2012 change, removing the WHPDS.²⁰

As indicated in Table 4, the removal of the WHPDS drastically lowers the burden on nominees by almost a 30% reduction (to 5,345 details). This change reduces completion times to around 105 hours, a reduction of about five workdays, a 26% improvement. These changes, however, still leave nominees with the considerably higher burdens resulting from the expansion of security and activities questions (especially those directed at family members) added in the revised 2010 SF-86.

Applying 1 Way/1 Time and SmartreForm. Table 4 also reports that both reform proposals improve the situation. For example, one way/one time reduces the work time another 21 hours, an additional 20% improvement over the 2012 Obama forms: an additional reduction of two workdays. The estimates on the smart form assume that the nominee only files one set of details and the software deploys that answer to the range of questionnaires. Using the 2012 Obama forms as a base, that alternative results in another reduction, of 16 hours or an additional two workdays. All tolled, then, the three reforms have or could cut in half the reporting time required during the early Obama administration. In effect, these changes would have absorbed the greatly altered SF-86 without changing the burdens on nominees from a decade earlier.

¹⁸ For example, the National Commission on Reform of the Federal Appointments Process advocates developing such a system. In a separate recommendation, the Commission also encourages development of another smart form held and maintained by the federal government.

¹⁹ Created by the White House Transition Project in 2000, NFO represents the first smart form put into general use by presidential nominees. It applied to the Bush era forms from 2001-2008. The NFO received funding from The Pew Charitable Trusts through grants administered by the Brookings Institution and the American Enterprise Institute and a separate source of support from the James A. Baker III Institute for Public Policy at Rice University.

²⁰ SF-278, SF-86, and the typical Senate committee form.

Another way to consider the impact of these changes involves the general lengthening of the appointments process documented elsewhere (e.g., by O'Connell). The totals estimated here reduced or could reduce the demands on the Obama nominees by a total of 9 workdays or nearly one-third of the 30 day increase that has stretched out the appointments process since the G.H.W. Bush administration in 1989.

Table 4. Improvements from Revision Strategies

Topics	Obama 2010		Obama 2012		1 Way/1 Time		SmartreForm	
	Details	Hours	Details	Hours	Details	Hours	Details	Hours
Personal & Family	1,003	19.8	954	19.2	954	15.0	820	12.9
Profession & Education	923	18.7	689	15.5	689	10.8	503	7.9
Tax & Financial	566	11.6	135	2.8	135	2.1	115	1.8
Conflict of Interest	2,324	45.7	2,244	43.1	2,244	35.3	1,683	26.5
Public & Organizational	247	4.7	94	1.5	94	1.5	94	1.5
Criminal Misconduct	496	9.5	1,007	18.5	1,007	15.8	892	14.0
Miscellaneous	264	4.3	10	0.2	10	0.2	8	0.1
Civil Misconduct	1,564	27.4	210	4.2	210	3.3	190	3.0
Policy Commitments	2	0.0	2	0.0	2	0.0	2	0.0
<i>Total Details Required</i>	7,389		5,345		5,345		4,308	
<i>Hours to Completion</i>		141.7		104.9		84.1		67.8
<i>% Improvement</i>			27.7	25.9	27.7	19.9	19.4	35.4

Source: Data compiled by author for The White House Transition Project (Sullivan 2002, 2009), for the National Commission on Reform of the Federal Appointments Process (Sullivan 2011), and for this paper.

Deploying Reforms. Except for eliminating the WHPDS, the other two reforms require several steps as outlined in Sullivan 2009, OWGI, and OWG2. For example, requiring the originating agencies to modify their forms to fit a common, one way one time strategy conflicts with the fact that much of the SF-278's format has statutory origins. Without congressional cooperation, the only approach that would work one way/one time would require the SF-86 and senate committee questionnaires come in line with the SF-278 on financial matters. This requirement would alter greatly the Senate's typical approach to financial reporting, which differs considerably from the Executive's and OGE's.²¹

The creation of the smart form, on the other hand, would involve a reasonably small funding commitment by the federal Executive and the Senate. Maintenance of the software, especially as agencies and committees alter their inquiry over time, will continue to cost the government after its initial programming and production investments. And while no government agency has successfully accomplished this type of programming project before, expertise and experience with precisely this kind of software has existed in the private sector and philanthropic community for more than a decade. Of course, the application of electronic technologies to nominee inquiry poses other advantages not discussed here (cf. Sullivan 2009) having to do with the improving transmittal across institutional boundaries and advanced error checking that minimizes simple and potentially misleading errors of omission and transcription.

²¹ The Senate typically relies on a net worth statement whereas the SF-278 does not ask for the range of information required to generate net worth. The latter, doubling as a financial disclosure statement, of course, does not consider relevant to conflicts of interest assessments the kinds of problems that a net worth statement would uncover.

THE UNNECESSITY OF SHARKS AND JETS

Of course, no one has ever proved that the excessively adversarial and tedious system of inquiry has made filling the executive impossible. Despite surveys of former appointees decrying their experiences (Light and Thomas 2000), there seems a plethora of willing candidates and only a few of those turn out ill-chosen. By comparison with the sometimes unrestrained and adversarial scrutiny, the burdens of inquiry probably prove less discouraging. Regardless of one's assessment of the necessity for scrutiny and its intrusion into the lives and affairs of nominees or the necessity for partisan checks and balances, and regardless whether one can attribute such burdensome inquiry on the decline in federal service, one fact remains: no one can justify the burdens found in needless repetitiveness, especially when simple reforms would ease that burden considerably. For this reason, side-stepping direct systemic reform to scrutiny *per se* and relying instead on modification and increased redundancy appears reasonable and a reasoned approach to take. The research reported here assesses significant reform strategies that would improve the process and reduce the burden on nominees without ever affecting the balance between constitutional institutions. 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, the government's legitimate needs, and the demands of the partisans who administer most of the process. And as these decision-makers remove the burdens on nominees that merely make things more difficult for everyone, these changes might put scrutiny into better perspective and, in a way, that accomplishment might allow for striking a new balance to appointments less obstructionist in nature. The changes made in the Senate and by the Executive in 2012 suggest that possibly, that not everything is sharks and jets in Washington and *even on appointments*. In the end, of course, how quickly Americans can stand up their own new government underscores the democratic sensibility, or it undermines it.

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APPENDIX: TOPICS IN INQUIRY

Category	From	Example of a Question
Personal & Family Background	WHPDS	Current Address
Profession & Education	SF 86	<p>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.</p> <ol style="list-style-type: none"> 1. High School 2. College/university/military college 3. Vocational/technical/trade school <p>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.</p> <p>For correspondence schools and extension classes, provide the address where the records are maintained</p>
Tax & Financial Information	Committee	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	WHPDS	Please describe the mortgage terms for any properties listed under question 21, including the rate, date, holder, service entity, and any special circumstances surrounding the acquisition of the mortgage(s).
Public & Organizational Activities	WHPDS	Briefly describe the most controversial matters you have been involved with during the course of your career.
Criminal Misconduct	SF 86	Since the age of 18, have you been involved in the illegal purchase, manufacture, trafficking, production, transfer, shipping, receiving, or sale of any narcotics, depressant, stimulant, hallucinogenic, or cannabis for your own intended profit or that of another?
Miscellaneous	WHPDS	Do you presently have or have you in the past had occasional (to be sure, a monthly house keeper is covered) or regular domestic help? (e.g., a housekeeper, babysitter, nanny or gardener) If yes, please indicate the name and years of service for each individual and also provide a brief description of the services rendered.
Civil Misconduct	SF 86	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	Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.