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OA/ID Number: 17985

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Folder Title:
Vetting Operation 1995

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Row:

106

Section:

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Position:

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*For only
with Graham*

THE WHITE HOUSE
WASHINGTON

February 24, 1995

MEMORANDUM FOR ABNER J. MIKVA
COUNSEL TO THE PRESIDENT

FROM: BETH NOLAN *BN*
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Vetting Operation

I am very concerned about the capacity of our Office to meet the vetting demands that are being placed on it. We are beginning to fall behind, and we do not have adequate resources to do the thorough job we should be doing. Moreover, I believe in some cases (what I refer to as high-profile vets), we need to be doing more than we already do. With the increased focus on vetting, both within and without the White House, the problem of inadequate resources and the need to do more creates a serious problem.

As you may be aware, our vetting staff consisted of 8 attorneys last summer. We now have 3, with another half a position assigned to vetting. This reduction comes from the termination of a short-term boost we were given last spring to overcome a backlog, and a further reduction by two persons in our 1995 budget. With predictions that the nomination process would slow down, and in the spirit of sharing the burden of personnel limitations, I conceded early last fall that we could live with this reduction. Events have changed this view, if it was ever correct.

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This memo recommends that we revisit the decision to reduce the size of our vetting staff and that we provide resources to increase that staff. Alternatively, I recommend that we remove some functions from the Counsel's Office vetting operation.

*AB -
Thoughts -
① We should make every effort to keep Beth's exceptions for well as hand out and protect
② Do you have fun to keep fun
③ Are we adequately supplied - if not, what do you plan to do
E*

I think this latter alternative is unsatisfactory, but it is better than leaving things as they are, with others depending on us to perform a job we cannot do.

The Two Goals of Vetting

I start with the proposition that we have two fundamental goals when we vet a nominee. The first, and most critical, is to ensure that only people of integrity are entrusted with the public welfare. I believe that our process protects this goal, even with limited personnel. The good news is that crooks and thieves are not being appointed to federal office because we are overwhelmed with work. While problems arise in every Administration, and we must be vigilant to avoid every possible problem, I am persuaded that the combination of our vet and the FBI background investigation catches about as much as we could expect without a shift in the processes of both the White House and the FBI by some orders of magnitude. I doubt that such a shift would result in significant enough change to make the extraordinary commitment of resources worthwhile.

The second goal is to protect the President and the Administration from both embarrassment and the diversion of resources that result when unanticipated problems in a nomination arise. Failure to achieve this goal entails high political costs and distracts the White House from the President's policy agenda. Achieving this goal obviously requires sufficient resources at the front end to avoid a drain of resources at the back end. I believe we have done an excellent job of achieving this goal as well, given our limited resources, but I also believe that the limitations of our resources and changing circumstances now threaten continued achievement of this goal. I especially believe that we must do a better job with high-profile vets than we are able to do now.

The Problem of Increased Demand and Decreased Resources

1. The tenor of the Senate confirmation process has changed significantly. This shift has imposed a significant additional burden on our resources. We are dealing with new Committee chairs and new staffers, many of whom are unfamiliar with our processes and need significant time and attention regarding the details of a background investigation. Moreover, the changed political climate has meant that we are being asked to provide more detailed information on matters that would not have been considered problematic previously.
2. Vetting is in the news and under a microscope. The increased media attention that has recently been brought to bear on the vetting process obviously requires even greater attention to detail.
3. Controversial nominations exhaust our newly limited resources. Right now, that nominee is Dr. Henry Foster, but there are several others in the wings. Under the direction of John Podesta, Marvin Krislov and I have been working nearly full-time on

Dr. Foster's nomination and confirmation. We have been using all three vetters, several interns, and others from time to time (Clarissa Cerda, Jeff Connaughton). We have too little cushion to ensure that the regular vetting process continues undisturbed. In the current political climate, I think we can expect more, not fewer, high-profile nominees.

4. We have lost not only positions but also significant continuity in the positions we have retained. We have always had continuity and efficiency concerns with the staffing of our vetting shop, but these concerns are heightened with our more limited number of vetters and the budgetary decisions that have been made about them. Before, we had two White House employee slots and six detailee slots. Detailees could be reimbursed beyond six months in a fiscal year. We usually had 4 or 5 employees who had at least six months experience. Now, only one staff member is a permanent employee; the others are non-reimbursable detailees from other agencies whose details cannot be extended beyond six months in a fiscal year because of budget concerns. For this reason, in March we stand to lose Jana Blair, who supervises the others, despite that fact that she does excellent work, has gained valuable experience in the time she has been here, and her agency is willing to extend her detail. These constraints are making it impossible to perform at the same level we were several months ago.

The Need to Do More Extensive Vetting Before Nominating High-Profile Candidates

We need to be doing more, not less, with high-profile nominees. Recent events have demonstrated (once again) the political dangers of naming high-profile candidates without a full background vet or even with a standard vet. By "high-profile," I mean five categories of candidates: (1) those who will be named to head cabinet-level departments (and in some cases the deputy heads of such departments); (2) candidates whose selection will be announced personally by the President; (3) candidates for high-level White House appointments; (4) candidates for positions that typically generate controversy; and (5) candidates who for various reasons are themselves controversial.

Under our normal procedures, before we clear a candidate for intent to nominate, we review the candidate's paperwork, the IRS tax check, and the FBI name check (which tells us what is in the FBI records, but does not involve the FBI undertaking any new investigation). We also conduct a limited public record research and interview the candidate, almost always by telephone. Of necessity, we rely heavily on what is available on Lexis/Nexis and what the candidate provides to us. After the intent to nominate is announced, we complete the work of clearance, including reviewing financial disclosure reports and reviewing the background investigation before the candidate is formally cleared for nomination by the Senate. We have made many adjustments along the way to ensure that we meet two competing objectives: on the one hand, to satisfy the twin goals of vetting, and on the other hand to perform the vet expeditiously and economically. Announcing an intent to nominate before the full FBI background is completed is one of those adjustments. Searching the public record only through Lexis/Nexis is another.

This process works well enough for your average Assistant Secretary, who I would describe as a low-profile candidate. When questions are raised in the vet about such a low-profile nominee, we delay the intent to nominate until all the issues are resolved. This often means awaiting the full FBI background investigation, and may mean asking the FBI to investigate certain issues that have come to our attention. Even if an issue does not arise in our preliminary vet, the FBI will normally catch it when they complete the more extensive check of agency records, interviews, etc. Because the candidate is low-profile, a decision not to nominate can be made without much public fanfare (however privately painful). That is, we have the luxury of time to work out the issues that arise. Moreover, low-profile nominees rarely have a raft of non-legal political issues surrounding their nominations. Presidential Personnel makes sure that they are politically satisfactory for the job, and it is usually enough for us to make sure that they have paid their taxes, have a clean criminal record, are in professional good standing, are not in financial extremis, etc.

This process, which works well with low-profile nominations (given sufficient resources to do it), is not nearly so satisfactory for high-profile nominees. Several factors contribute to this difference: (1) the high-profile candidate will normally be closely identified with the President, thus upping the political ante for a failed nomination; (2) the high-profile candidate usually has a more extensive public career with numerous land mines and fault lines to avoid; (3) we need more information than is available to us from a normal vet to respond to the immediate public inquiry that follows the announcement of a high-profile candidate; and (4) if we do a vet at all, we are often under extreme pressure to complete the high-profile vet in a very short time and without full paperwork.

Overall, high-profile candidates should have the most extensive vets before a public announcement is made, but often have the least extensive. Because many high-profile positions elude the normal Presidential Personnel and vetting route, we often do not vet these persons before they are announced. This is especially true of high-level White House appointees, but it is also true of many high-level agency appointments. Sometimes, we do a mini-vet, with a very short deadline. This time frame often precludes us from even getting an FBI name check before an announcement. In any event, the mini-vet is usually conducted without full paperwork from the candidates, and with their attention entirely focused on the already-scheduled announcement ceremony.

Sometimes we do have the opportunity to schedule a regular vet with such candidates, but time and resource constraints preclude us from nailing down each problem, or reading every publication, before the announcement moves forward. Finally, even if we do a true regular vet, we have no FBI background investigation, including interviews of others, before the high-profile announcement.

Ideally, a high-profile candidate would not be announced before a full background investigation was completed and the President was actually ready to send the nomination to the Senate. The vet would be more extensive than that for low-profile candidates.

Any confirmation team we anticipated needing to pull together would meet and identify potential issues before the announcement. Several recent problems could have been mitigated by such an approach.

Even in the real world in which we live, however, we need to ensure at a minimum that high-profile candidates are vetted on full paperwork, and that those recommending the candidate to the President fully understand the limits of the vet that has been conducted. I believe the President should be informed when anything less than a full background investigation has been conducted for any candidate he intends to announce personally. I also believe such occasions should be rare.

Recommendation

My recommendation that we do more in this area, rather than less, will of course strain our limited resources even further. As it is, I do not believe we can accomplish even what we should do now with the resources available. I therefore recommend that our available resources be increased to permit us to do both the regular vets and the enhanced vets that we should be doing for high-profile candidates. That is, I ask that you give us more resources and more work. In the short term, I ask that you seek authorization to extend the detail of Jana Blair. I believe the money can be found in our budget. We need her services for continuity in our vetting operation.

If we decide to live with the current resources, however, we must find a way to limit, not expand, what we do. Last spring, shortly after I took over the vetting operation, I oversaw a significant alteration in our processes. This included (1) the elimination of full vets and the adoption of highly limited vets for most part-time boards and commissions and (2) devolution to the agencies of nearly all non-career SES vetting. These changes enabled us to focus our resources on the most important vets: those of Presidential Appointees subject to Senate confirmation. I believe therefore that we have cut the fat from our operation. I am not sure what more we can do, but I will work with you to devise a plan if we conclude that the vetting operation does not merit more White House resources.

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JOHN -

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ME

KNOW

WHERE

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