

Testimony of Robert Dove

March 2, 2011

Introduction

Every new president assembles a team of advisors. Article II, Section 2 of the Constitution, provides for the President, who "shall nominate, and by and with the Advice and Consent of the Senate..." these government officials. Today more than 2,000 high-level positions in the Cabinet departments and independent agencies are submitted to the Senate for approval.

When the President names a new Cabinet member, or makes another executive appointment, the following steps occur:

1. The nomination is submitted by the President in writing to the Senate.
2. The nomination is referred to the committee with jurisdiction over the position or the agency in which the position exists. i.e. The Armed Services Committee will review the Secretary of Defense nominee.
3. Committee hearings may occur at this point.
4. Once a nominee is placed on the Senate's calendar, floor consideration of the nomination may occur.
5. The White House is notified of the confirmation or rejection of the nominee. The Record includes all nominations submitted to the Senate, as well as the action taken on them.

The Senate committees hear testimony on proposed nominees in order to determine whether or not to approve the presidential nominee. The reality is that over 98% of the nominations are approved.

Committee Referral and Consideration. The Parliamentarian, acting on behalf of the presiding officer, refers each nomination to the committee with jurisdiction over the position or the agency in which the position exists. More than one committee may have the opportunity to examine a nomination; some nominations are referred sequentially, and a few are jointly referred to two or more committees. Confirmation hearings, generally open to the public, are not held on all nominations. The closest scrutiny in hearings is given to the most senior appointments, and also to controversial nominees, to afford committee members an opportunity to question a nominee to determine his or her fitness for a post. Senators may also use hearings as a forum to advance their own views on public policy, to determine or challenge the administration's position on policy issues, and to extract commitments from a nominee. In addition to investigations already conducted by or at the behest of the White House, each Senate

committee may have its own questions or forms for the nominee, and may conduct its own investigation. Often a nominee is introduced at a hearing by a Senator or both Senators from his or her home state, and may be accompanied by other Members of Congress. Supporters and opponents of a nominee are occasionally permitted to testify. Most committees have rules governing how soon after hearings the committee may vote on a nomination. The committee has the option to report the nomination favorably, unfavorably, or without recommendation, or to take no action at all. If the committee votes to report the nomination, it is then filed with the legislative clerk, who notifies the executive clerk. Committees usually do not submit written reports to accompany nominations. The executive clerk assigns a calendar number to each reported nomination (or list of nominees in the case of military commissions), and the nomination is placed on the *Executive Calendar*. The calendar identifies the number of the presidential nomination message, the name of the nominee, the office to which he or she is nominated, and the name of the predecessor holding the office. Other details about the nomination, such as committee action, are also provided. Although unusual, a committee may be discharged by resolution from further consideration of a nomination. Such a resolution is listed in the *Executive Calendar*.

Floor Consideration. The Senate meets in executive session to consider nominations, but may not begin floor consideration of a nomination until it has been on the *Executive Calendar* for at least one day, except by unanimous consent. Nominations are subject to unlimited debate, subject to cloture being invoked (which requires 60 votes). In some instances, one or more Senators may place a “hold” on a nomination, thereby delaying or preventing it from reaching the floor for further action. Under Senate Rule XXXI, the final question on a nomination is, “Will the Senate advise and consent to this nomination?” The Senate has three options: confirm, reject, or take no action on the nomination. Confirmation requires a simple majority vote.

Although Senate Rule XXXI requires pending nominations be returned to the President when the Senate recesses for more than 30 days or adjourns between sessions, this requirement is often waived. Nominations pending at the end of a Congress are returned to the President, and they must be resubmitted for the Senate to reconsider them.

White House Notification. Once the Senate has acted on a nomination, the Secretary of the Senate attests to a resolution of confirmation or rejection, which is transmitted to the White House. All nominations submitted to the Senate as well as action on them are printed in the *Congressional Record* and a number of other Senate publications.

Routine Nominations. The Senate also confirms nonpolitical appointments to and promotions in the military and other civilian positions (in the Foreign Service, Public Health Service, and National Oceanic Atmospheric Administration). These routine nominations are usually “placed on the secretary’s desk.” The Senate typically considers and approves these nominations by unanimous consent, frequently en bloc, without committee action. Routine nominations in any given Congress number between 50,000 and 100,000.