Capitol Punishment

How to Survive A Senate Confirmation Hearing

Charlotte Hays

"The thing you've got to remember about Washington," says veteran lobbyist Tom Korologos, "is that it's a lot like Salem—they love a lynching." Increasingly they love confirmation hearings in the U.S. Senate.

Once upon a time, these hearings were humdrum affairs. No longer. Confirmation hearings for some of Ronald Reagan's first term appointees were more like inquisitions than Capitol Hill proceedings. Ernest Lefever, Reagan's ill-fated nominee for the State Department's human rights slot, defended himself against accusations of racism made by his own brother. Attorney General-designate Edwin Meese saw the minute details of his finances aired publicly. When Leslie Lenkowsky was fighting to be confirmed as deputy director of the United States Information Agency (USIA), he attracted so much hostile press that his wife was brusquely asked by the administrator of a school for dyslexic children, "Why should we admit your son? Are you going to be around in September?"

A staff member for a Democratic senator intimately involved in several confirmation battles of the last four years, blames the controversy on the quality of Ronald Reagan's nominees. But clearly something else is at work here. A Common Cause study of confirmation hearings during Jimmy Carter's Administration was aptly headlined "The Senate Rubberstamp Machine." Bert Lance was confirmed as Director of the Office of Management and Budget but later resigned when he was accused of conflicts of interest. He was later cleared of any legal wrongdoing, but had he received the scrutiny accorded Reagan appointees, he might never have made it to OMB.

The U.S. Senate enjoys the privilege of giving "advice and consent" to presidential appointments. But until recently, it acted on the presumption that a U.S. president is entitled to his men. Confirmation hearings were deadly dull. Since 1789, only six Cabinet nominees have failed to get the Senate's nod, and in-depth probes of candidates for lesser offices have also been rare. The sea change in the Senate's attitude is, like so much else in public life, a legacy of the Nixon years.

Appointments to the Supreme Court, unlike other cases, always attracted a great deal of attention. But Nixon's 1969 choice of Judge Clement F. Haynesworth, a courtly strict constructionist, met an unprecedented storm of opposition. Civil rights activists and officials from the AFL-CIO lined up to fight Judge Haynesworth's confirmation. A fairly insignificant conflict of interest finally tipped the scales: Judge Haynesworth had once written an opinion favorable to a large corporation that did business with a vending machine firm in which he held stock. Many legal scholars have lamented his defeat.

It was the Senate Commerce Committee under Chairman Warren G. Magnuson that developed the confirmation hearing as an art form. After Nixon's landslide reelection in 1972, Democrats on the committee feared that he would appoint anti-regulatory businessmen to fill vacancies on regulatory agencies. Several months before Nixon's second term, the committee staff heard that Nixon intended to appoint Robert Morris, a San Francisco oil and gas lawyer, to the Federal Power Commission.

Led by Chief Counsel Michael Pertschuk, later head of the Federal Trade Commission, the staff set about subverting Mr. Morris's chances. They composed a list of policy-related questions for Mr. Morris to answer. A reply on the deregulation of natural gas cost him the support of crucial conservative senators, and he was voted down—the first rejection of a regulatory appointment since 1950. From then on, all regulatory nominees were required to fill out complicated questionnaires about substantive issues. They had to submit public financial disclosures, and professional investigators would go over their records with a fine-toothed comb.

Some of Jimmy Carter's nominees were roughed up on Capitol Hill, for instance disarmer Paul Warnke and Attorney General Griffin Bell, but they mostly escaped with their reputations intact. When President Reagan threatened radical changes in the course of government, his opponents picked up the gauntlet. They decided to knock down, or at least bully, any vulnerable appointees who came their way.

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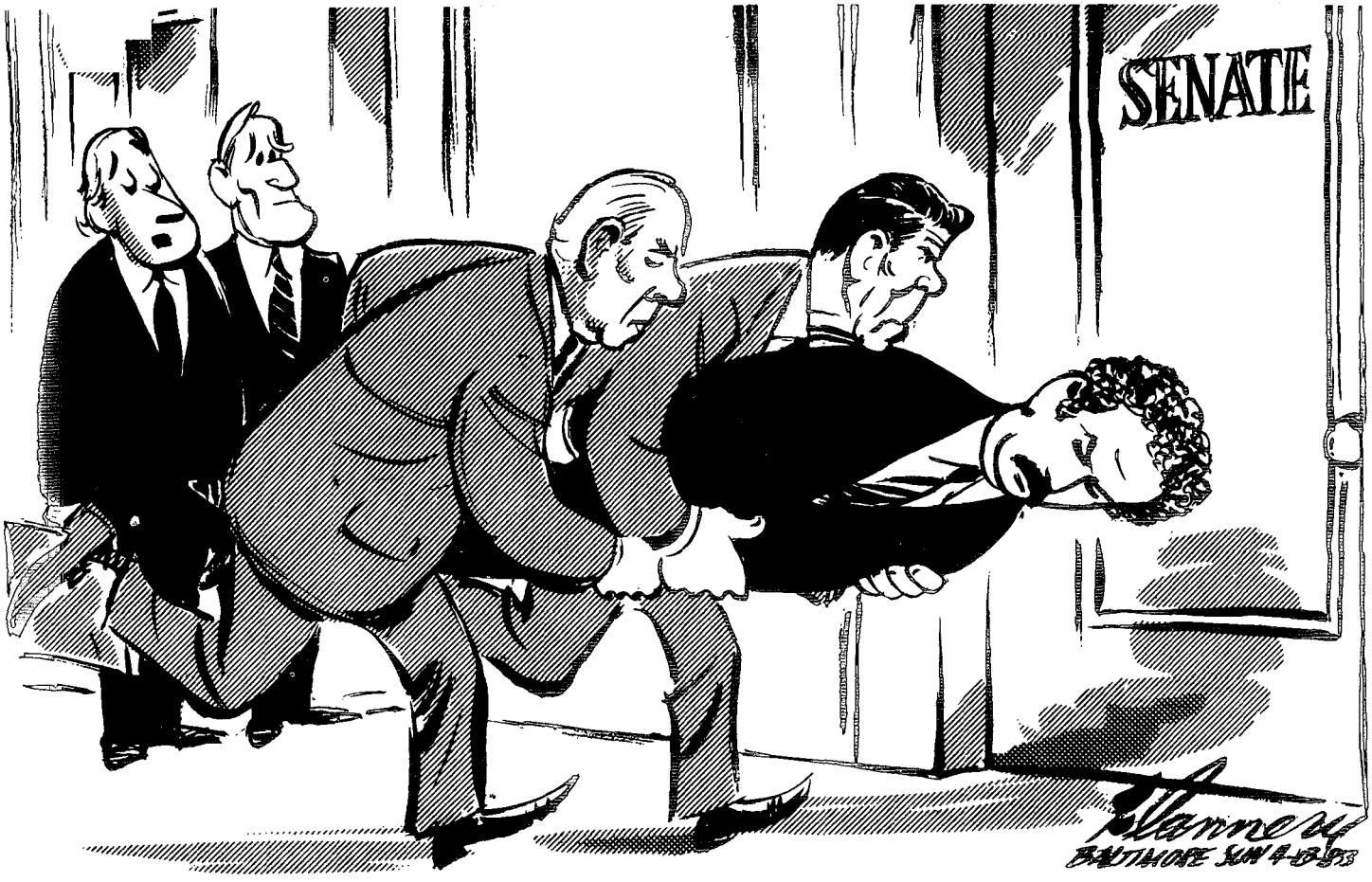

"I'll say this for Adelman; he has a good strong head on his shoulders!"

Although the real battles of confirmation hearings are conducted over policy or ideology, senators generally prefer to attack on points of character. The reason is obvious: vetoing an apparently unsuitable person looks better than refusing a duly elected Chief Executive the right to choose his government. Senate staffers used Leslie Lenkowsky's hearings, for instance, to criticize policy and management changes at the USIA. The spotlight, however, was focused on charges that Mr. Lenkowsky was not telling the full truth about a procedural matter. When Kenneth Adelman was picked for the Arms Control and Disarmament Agency (ACDA), the Senate Foreign Relations Committee held a massive forum on Reagan's nuclear policy. But much of the time was taken up with such matters as whether Mr. Adelman had flouted Zaire's export rules to acquire his collection of African art.

Hidden Hazards

Can a nominee predict if he'll stir up a controversy? "What you look for is not the number of people against you, but their intensity and passion," suggested Larry Smith, who became a connoisseur of confirmation hearings during 14 years as an administrative aide to Senators Gary Hart and John Stennis. (He is now a fellow at Harvard's Kennedy School of Government.) Ernest Lefever, archfoe of the reigning human rights dogma, was bound to cause a tempest. Rights activists testified against him at the hearings, including Argentine torture victim Jacobo Timerman, who showed up waving a copy of his book *Prisoner Without a Name, Cell Without a Number*. A newspaper bulletin captured the charged atmosphere: "Rights Victim is Potent Presence As Senators Assess Reagan Choice."

The Lefever nomination points up another rule: a potential dismantler of an agency simply will not receive the approbation of the U.S. Senate. In an article published in *Policy Review* in 1978, "The Trivialization of Human Rights," Mr. Lefever urged Americans to "recognize the political and moral limits of promoting particular reforms in other societies." At his confirmation hearings, Mr. Lefever admitted he had "goofed" when he earlier urged Congress to abolish human rights statutes. But his opponents were relentless. Although ideology was the issue, he was attacked with a touchy question about contributions from the Nestlé Company to the Ethics and Public Policy Center, Mr. Lefever's Washington think-tank.

A delay in the hearings is a signal to the sharks that there's a scent of blood on a nominee. "Once you start having your knees knocked together," says Kenneth Adelman, "you are giving everybody who's against you all kinds of incentives." An originally friendly senator can be peeled off, as Charles Percy reportedly was during Mr. Lenkowsky's ordeal.

A nominee can't do that much to push his cause during a hearing, but one thing he can and must do is to display his political allies as prominently as possible. "When it was just me and [W. Scott] Thompson testifying on the first day," Mr. Lenkowsky ruefully recalled, "I didn't have a single friendly senator in the room." (Mr. Thompson is the former USIA official who alleged that Mr. Lenkowsky had lied to the Senate about his role in drawing up a speakers' blacklist. Mr. Lenkowsky strongly denies the charge.) Mr. Adelman says that one fervent champion is better than 10 lukewarm senators; his prospects brightened considerably after Rudy Boschwitz, originally hostile, rallied to his banner.

"A nomination will not go through unless the nominee has the support of the ranking member of the president's party," contends Mr. Lefever, whose sponsor was S.I. Hayakawa, hardly a Senate powerhouse. A number of Republicans ran into trouble because Republican senators simply didn't stick to the President's men, the egregious example being Charles Percy, chairman of the Foreign Relations Committee. (Senator Percy opposed Messrs. Lenkowsky and Lefever but went along with Mr. Adelman.)

A nomination is practically assured if the White House puts its own prestige on the line. Kenneth Adelman's ultimate weapon was Ronald Reagan. Reagan engaged in extensive arm-twisting on Mr. Adelman's behalf. "When Senators picked up the phone," an ACDA official says, "the old man was on the other end." A former White House counsel avers, "If I knew what makes the White House decide when to fight like a wolverine, I'd be a rich consultant." A defeat in Mr. Adelman's case, all agree, would have made Reagan look weak.

Another source of potential problems can be the nominee's own words. When Senator Claiborne Pell asked Mr. Adelman if nuclear war could be contained, Mr. Adelman replied that he didn't know. As true as the answer was, it didn't come across quite right on the evening news. In retrospect, Mr. Adelman wishes he'd simply avoided the issues and spoken emotionally about his fear of nuclear holocaust. "Don't study gobs of information," he teasingly advises a hypothetical nominee, "because it's all emoting, how sincere you are. If you're going to be Secretary of the Interior, you should talk about how much you like little mooses."

Tom Korologos, who was Senate liaison for Presidents Nixon and Ford and director of congressional relations for the Reagan transition team, (he is now vice president of Timmons & Company), offers another rubric: never, *never* take an interim appointment. "I tell all my appointees," he says, "don't set foot inside the building until you're confirmed. It's an insult to the senators if you start measuring the desk." The senators own the nominee until he's safely confirmed; a certain amount of kowtowing is expected. Mr. Korologos once ordered a finicky nominee who balked at a southern senator's breakfast fare: "Eat the grits if you want to be confirmed."

Aside from considerations of etiquette, an appointee who violates this rule is likely to rack up a performance record that will be used against him. Mr. Lenkowsky, for instance, as Acting Deputy Director of the USIA, became embroiled in a sticky dispute about his involvement in what came to be called a blacklist. It was a list of speakers no longer eligible to be sent abroad on the USIA speakers' program. Mr. Lenkowsky wittily attributed the list to the efforts of "mindless gnomes" in the bureaucracy during an interview with columnist James J. Kilpatrick. Very funny, but Mr. Korologos thinks the quip inspired peeved bureaucrats to cooperate in Mr. Lenkowsky's downfall.

Beating the System

Is the process getting out of hand? "I tell my nominees," says Mr. Korologos, "that the Constitution stops at the door of the hearing room. It's not a fair and equal confrontation. The deck is stacked." Unlike a defendant in a court of law, a presidential nominee isn't guaranteed any Miranda rule or Fifth Amendment rights. There are growing worries that genuinely talented people will hesitate to come forward for government jobs.

The major battles of the next four years will come when Reagan tries to win confirmation for his Supreme Court choices. Justice Sandra Day O'Connor was treated with kid gloves; gender was her ace in the hole. But future nominees won't have it as easy as Justice O'Connor did, or to cite another case, Justice Lewis Powell in 1970. "Judge," a senator is reported to have told him, "we're not going to confirm you because we like you. We're going to confirm you because you're old." ☎

Shall I Compare Thee to a Plumber's Pay?

Comparable Worth Collapses

Phyllis Schlafly

"Comparable worth" is one of the few new ideas the liberals have come up with in the last several years. But just because it is a new idea doesn't mean it has merit.

The advocates of comparable worth want to throw out the system of wage setting that has produced the highest wages for the most people of any economic system in the history of the world. They want to replace it with a totally untried system under which they would set wages for everyone according to their notions of "pay equity." The fact that pay equity can be defined according to any standard one chooses apparently doesn't matter, since the comparable worth advocates plan on using their political muscle and litigating lawyers to establish their definition at any cost.

The term "comparable worth" is based on the notion that wages should not be fixed by the marketplace, but by a point system based on (1) a subjective evaluation of job worth plus (2) a comparison of different kinds of jobs held mostly by women with jobs held mostly by men, and then (3) using litigation or legislation to mandate the system.

Since it is unlikely that people will agree on allocations of specific numerical points for such imprecise factors as "accountability" and "mental demands," the bottom line is that wages would be fixed by judges or bureaucrats. It's hard to conceive of a more radical attack on the private enterprise system.

Comparable worth is deceptively dangerous because it is packaged as "women's rights." Interviews with many congressmen and state legislators confirm that they signed on as co-sponsors of comparable worth bills after being intimidated by such questions as "Aren't you for pay equity for women?" and "Don't you support equal pay for women? Then sign here." Few legislators gave what would have been the appropriate retort, "I support equal pay for equal work but I do not support equal pay for UNequal work."

Comparable worth bills were introduced into Congress and some two dozen state legislatures during 1983 and 1984. Some bills sought to impose the comparable worth concept on private industry; others limited their effect to public employees, but their advocates readily admitted that this was only the first step toward regulating the entire wage system. The essential component of all these bills was to order a study of salaries and wages, something which sounds harmless because ordering a study is a traditional technique by which legislators dispose of controversial items.

Washington's Billion-Dollar Boondoggle

Then a blockbuster hit business, legal, and political circles on December 14, 1983. U.S. District Judge Jack E. Tanner in Tacoma, Washington, handed down a 42-page decision endorsing a "comparable worth compensation system." Washington State's Assistant Attorney General, Clark Davis, commented that this ruling would "jeopardize the pay scale of every employer in the country." From his work on the case, Mr. Davis was well aware that the strategy of the comparable worth advocates is "public employers today, private industry tomorrow."

Judge Tanner decided for the American Federation of State, County, and Municipal Employees (AFSCME) and against the State of Washington based on a job evaluation study which had assigned points to all Washington State employees. The study concluded that (female) laundry workers should be paid equally with (male) truck drivers because they were assigned the same number of points; and that, based on points, (female) librarians should be paid about twice as much as (male) carpenters and chemists. The cost to Washington State taxpayers to implement the study's recommendations under the court's decision is estimated to be $1 billion.

The lesson of the Washington State case is mind-boggling: it is that the conclusions of the evaluators are binding on the employer. Judge Tanner bluntly told Washington State: By ordering the study, the state "knew its employees would be entitled to pay commensurate with their evaluated worth. Any other conclusion defies reason."

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