

Reform of the Presidential Appointment Process

A FINANCIAL MELTDOWN, wars in Iraq and Afghanistan, an energy crisis—these are just a few of the many critical issues that President-elect Barack Obama will face. Yet there are only a few more than 70 days between the election and the

inauguration. In this short period of time, President-elect Obama must select a cabinet and begin making thousands of appointments and also coordinate with the outgoing Bush administration to ensure a smooth transition, to put together a budget for fiscal years 2009 and 2010 (because Congress has yet to pass a budget for most of the government for 2009), and to plan for the legislative initiatives that will be put forth in the initial months of his presidency.

Having the right people in place is crucial to accomplishing all these tasks. Yet one scholar, Paul Light, has documented the historical increase in the amount of time that it has taken for Presidents to install their cabinets and subcabinets—for example, what took two and one-half months for President John F. Kennedy took President George W. Bush nearly nine months. Furthermore, many potential nominees are turned off by the grueling task of filling out financial disclosure and security clearance forms, whereas others are deterred by the Senate confirmation process, which Anthony Lake (a former nominee for director of the CIA) described as “nasty and brutish without being short.” Study after study has shown that reform of the presidential appointment process is desperately needed. And the time for reform is ripe: with so many challenges facing the incoming President, the appointment process must be simplified in order to ensure that the federal government can attract the best and the brightest and also to decrease the time and attention that must be devoted to the personnel selection process.

One of the most important reforms would be to decrease the number of presidential appointments and nominations subject to Senate confirmation—more than 1,200 positions that a new President must appoint require Senate confirmation. The confirmation process now takes longer than eight months on average. The 9/11 Commission recognized the potential disruption in national security policy-making that might result from a presidential transition and recommended that Congress require Senate confirmation only for nominees to be cabinet secretaries, deputy secretaries, and undersecretaries.

Even beyond positions involved in national security policy, Congress should examine every presidentially appointed position and consider whether Senate confirmation—which is an important check and balance under the Constitution—is truly necessary. For example, the chief financial officer of every cabinet agency is a position that is presidentially appointed and requires Senate confirmation. However, this is a job that could easily be converted into a career senior executive service position, as it is at other large federal agencies, such as the Nuclear Regulatory Commission and the Office of Personnel Management. As another example, at several cabinet agencies, the assistant secretaries for congressional relations or public affairs are appointed by the President and confirmed by the Senate; these positions are important, but they are only tangentially involved in the management of a government program or department. Congress should allow the President or the cabinet secretary to select these individuals without requiring Senate confirmation and should focus on positions that are more mission critical.

Even though the redesignation of presidentially appointed and Senate-confirmed positions requires a statutory change, agencies have control over many other political appointments. Agencies should aim to reduce the number of these political positions and consider whether certain positions are better filled by career civil servants. Such an effort has the added advantage of ensuring continuity between presidential administrations, because most political appointees depart at the end of an administration’s term. For example, a recent report by the National Academy of Public Administration recommended that the Department of Homeland Security convert numerous political positions—including deputy officials and regional administrators of the Federal Emergency Management Administration—into positions filled by career civil servants. At a recent technology forum, spokespersons for both presidential candidates agreed that agencies’ chief information officers should be career positions, rather than political appointees. The Intelligence Reform and Terrorism Prevention Act of 2004 took a step in the right direction by requiring all agencies to put together plans to reduce the number of presidential appointees and the number of layers within the agency; unfortunately, Congress never followed up on these plans.

Another initiative that deserves attention is reform of the financial disclosure and security clearance process.

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In December 2008, Judge Conaboy will celebrate 45 years on the bench. Although he has not yet served one year for each grandchild (he now has great-grandchildren to contend with), his years of service to his community and his country have left an indelible mark on those who have worked with this kind and gentle soul. Tom Brown, a former law clerk who followed the judge to Washington, D.C., to work for the U.S. Sentencing Commission, cites his former boss's sense of fairness. "Whether it was a complex civil matter with millions of dollars at stake or an incoherent jailhouse cry from a penniless inmate, every case received the same assiduous attention. This was a reflection of Judge Conaboy's conviction that to command the respect it deserves, the law must not only be applied fairly, it must be perceived as fair." One of the judge's current and longest serving clerks Joan Samuel has always admired his philosophy to take his work—but not himself—seriously. "He is a master raconteur with a self-deprecating sense of humor, just as easily recounting stories of failures as of successes, and more often pointing to his foibles rather than his strengths. While he revels in the path he has taken, it is with great humility that he shares the stories and lessons of the road." Joan rightly observes that her fellow clerks would share her sentiment that the "Conaboy years" are "among the best of our professional lives—for that and so much more he has our enduring gratitude and respect."

Several years ago, Judge Conaboy was asked to speak at an induction ceremony for a judge in Philadelphia. His remarks at that event, as recalled by Joan Samuel, provide insight into the man who has crafted a life that is true to his ideas and ideals: "As a judge, you never learn enough—you never stop trying—and you never

feel you have fully learned your job." Later in those same remarks, quoting former Pennsylvania Supreme Court Justice Curtis Bok, Judge Conaboy observed: "A good judge must have an enormous concern with life, animate and inanimate, and a sense of its tempestuous and untamed streaming. Without such fire in his belly... he will turn into a stuffed shirt the instant a robe is put around him. The first signs of judicial taxidermy are impatience with trivial matters and the statement that his time is being wasted, for the secret of a judge's work is that ninety-nine percent of it is trivial matters, and that none of them will shake the cosmos very much. But they are apt to shake the litigants gravely."

Judge Richard P. Conaboy breathes fairness, and he inspires those around him to do the same. Judicial taxidermy doesn't have a chance of setting in on this man; he was born immune to "robe-itis." Self-importance is anathema to his very being. After 45 years on the bench, the fire burns brightly. Judge Conaboy looks forward to his life of service each and every day because, for him, it is a learning experience. For those around him, it is a lifetime experience. **TFL**

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Presidential nominees are required to fill out forms that consist of 60 pages or more, and many nominees have to expend thousands of dollars in accountants' fees simply to compile the information necessary to fill out the financial disclosure forms. The Intelligence Reform and Terrorism Prevention Act brought some much-needed reforms to the security clearance process, including reciprocity of clearances and a streamlining of the clearance process, but the implementation of those reforms has been sluggish. On the financial disclosure front, the Office of Government Ethics proposed legislation modernizing the process and forms in May 2008, but Congress has not shown much interest in this important reform. Many nominees have asked for assistance in filling out these lengthy forms but report that they have received inadequate assistance from the White House personnel office. Transformation of the personnel office to a more responsive, helpful, and competent

organization is a reform that could be accomplished immediately without legislative change.

President Ronald Reagan was famously quoted as saying, "Personnel is policy." The federal government needs to be able to attract the best and the brightest to deal with the myriad crises facing the nation. However, an appointment process that deters the best nominees from serving in government and that puts a tremendous burden on a new President could seriously hinder the achievement of this goal. Now is the time for both the executive branch and Congress to focus on fixing the broken presidential appointment process. **TFL**

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