

Joseph Biden's Effective Presidential Transition: "Started Early, Went Big"

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The 2021 transition will be remembered as the most tumultuous in over a century. President Trump sought to delegitimize the presidential election as flawed and refused to concede his loss, and several of his departments and agencies slow-walked their cooperation with the incoming team. Further, the insurrection on the Capitol and the Trump impeachment trial brought more turmoil. The question this article will consider is how, in such an environment, did Joseph R. Biden manage to complete the basic transition preparations needed to get off to the fast and effective start his administration had? A presidential transition has two dominant threads that come together to pave the path to a productive beginning. In 2020, early transition planning by the Biden team and existing laws detailing what resources the federal government will provide, when, and under what conditions were two important elements in his successful transition. Additionally, an effective transition depends on people leading it who have experience in both management and government service. The 2020–2021 transition had both.

The 2021 transition from President Donald Trump to President Joseph R. Biden was the most tumultuous and disorderly of any transfer of presidential power in the twentieth or twenty-first centuries. It was a transition that swung between opposites, with the incoming president presenting an experienced administrative team and a list of policy priorities well before his inauguration. At the same time, Trump sought to delegitimize the presidential election as flawed and refused to concede his loss, and several of his departments and agencies slow-walked their cooperation with the incoming team. The political waters were further poisoned by the insurrection on the Capitol following President Trump's speech on the Ellipse. Merrick Garland, in his Senate testimony for his confirmation as attorney general, described the January 6 attack at the Capitol as an "attack that sought to disrupt a cornerstone of our democracy: the peaceful transfer of power to a newly elected government" (Balsamo, Tucker, and Jalonick 2021). Yet despite the turmoil, on January

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20¹ the inauguration of Joseph Biden took place without incident. The political system proved stronger than the attacks directed its way, and the public approved of the way he handled his transition. Biden had a public job approval rating of 68% for his handling of the transition. Going back to Bill Clinton, only Barack Obama had a higher rating (83%) for the same early time period (Brenan 2021).

The inauguration occurred as prescribed by the Constitution, yet the circumstances were far from normal. With a nation scarred from the COVID-19 pandemic, a faltering economy, and months of racial disturbances, followed by the insurrection at the Capitol, President Biden came into office with challenges few presidents have faced. Yet he was able to surmount most of the obstacles to come in with a strong start to his presidency. During the transition period, Biden announced 12 of his 15 Cabinet secretaries by the Christmas holiday; designated 1,100 officials to positions not requiring Senate confirmation; and had ready on inauguration day a 200-person White House staff with deep experience both with the federal government and with Joseph Biden in his roles as senator, vice president, and presidential candidate. In the policy area, on inauguration day he introduced the particulars of his American Rescue Plan legislative package. Additionally, in his first two weeks in office he unspooled 45 executive actions that covered a range of items from two letters rejoining the Paris Agreement on Climate Change and the World Health Organization, 28 executive orders, 10 presidential memoranda, and five proclamations (Keith 2021). In executive orders alone, Biden issued more in the two-week time period than did any president since Franklin Roosevelt. He also called upon the Federal Register to halt any unpublished rules and mandated a review of those that had not gone into effect. His first day and weeks were a full agenda of appointments, policy initiatives, and rollbacks of late actions by President Trump and his administration.

The question this article will consider is how, in such an environment, did Biden manage to complete the basic transition preparations needed to get off to a fast and effective start to an administration reflecting his priorities and goals? From an organization and action standpoint, a presidential transition has two dominant threads that come together to pave the path of the incoming president. Both shaped the 2020–2021 transition. First, this article focuses on the actions of Biden and his transition team in their early decision-making period. He began his preparations early in 2020, which allowed him to coordinate his campaign and transition themes as well as sketch out the government he wanted and assign preparations to experienced transition teams. This piece concentrates on the early Biden preparations taking place from mid-March to mid-May 2020. By then, he and his team had created their basic transition organization, the rules covering transition operations, and their personnel strategies; identified the “unconventional challenges” they could face and developed possible mitigating strategies for each; and set their transition priorities.

The second factor associated with an effective start for Biden is a cache of laws and their implementation stretching back to the original law signed by President Lyndon B. Johnson in 1964. Except for the period surrounding the 20-day post-election delayed “ascertainment” of a presidential winner, the General Services Administration (GSA) met the requirements of the law in terms of the information they generated and the resources they provided. The original law provides that the administrator ascertain “the apparent successful candidates for the office of President and Vice President, respectively” (Public

Law 88-277, Section 3 B[c]). Transition laws assign and govern the federal government resources and requirements facilitating a productive transfer of power. They provide a government structure requiring an incumbent administration to meet guideposts articulated in law. In contrast to the post-election administration roadblocks, until that time transition preparations met the legal guideposts. Even presidents who failed to win re-election and members of their administrations have supplemented legal mandates by ensuring continuity in government and in the presidency in particular. Through their orders, actions, and remarks, presidents can remove or create barriers promoting a productive transition for a successor. While President Trump sought to delegitimize the election results certifying a Biden win, there were actions during the post-election period by officials in his administration on both sides of the barriers supporting the law and flouting it. The Biden transition team knew the law and dodged and weaved around the obstacles placed in the president-elect's path.

The Key Transition Players: Experienced Managers

An effective transition depends on people with experience in both management and government service. The 2020 transition had both. While the principals who had transition-related responsibilities inside and outside of government occupied different positions, a common thread aiding an effective 2020 transition that ran throughout transition institutions was an emphasis on management as a central component and key subtext to their work and to a successful transition. The key transition players sought where possible to focus on functions and tasks and at the same time avoid engaging in political disagreements that might jeopardize positive outcomes in their particular areas. The management focus ameliorated some of the rough points of the transition. Each of the key transition leaders in the Biden operation, the White House, the General Services Administration, and the Partnership for Public Service, an important outside transition resource for the Biden team, were experienced managers in either the private or federal government sectors, with some having spent time in both.

Experienced government officials with several years spent in the federal government were front and center in organizing and implementing their transition work for Biden. Ted Kaufman and Jeffrey Zients had management backgrounds, Kaufman in crafting transition legislation and participating in the 2008 and 2016 transitions. Zients served in multiple management positions in the Obama administration, heading the Office of Management and Budget (OMB) and serving as director of the National Economic Council, as well as in his own businesses. Chris Liddell, who co-chaired the White House Transition Coordinating Council and served as an Assistant to the President for the full Trump term and was the central transition person for the administration, had a corporate business management background as well as earlier transition experience. In 2012, Liddell served as the executive director for the Mitt Romney transition when Romney ran for president and received government assistance through the Pre-Election Transition Act. In earlier years, Liddell served as the chief financial officer of Microsoft and the vice chairman chief financial officer of General Motors. Mary Gibert, the General Services

Administration's Federal Transition Coordinator responsible for carrying out and overseeing much of the law governing presidential transitions, had substantial GSA experience as the regional commissioner for the Washington area of its Public Buildings Service, overseeing 1,200 employees and a budget of \$3.5 billion (GSA, 2021). Her transition experience includes managing the federal government part of the 2016 transition. Complementing the government leaders, the Partnership for Public Service provided resources on the transition and agency work as well as connections with people inside and outside of government. Max Stier, who heads the Partnership, has long transition experience. David Marchick, who headed the Partnership's Center for Presidential Transition, was new to transitions, but he was experienced as a senior executive and member of the management committee at the investment firm Carlyle Group. All of these people were important because as much as a transition has prescribed contours, those who lead them, including the president, have a significant amount of discretion in how the laws are carried out. Chris Liddell reflected on the peaceful transfer of presidential power on January 20. "At 12:01 we had a new president. And nothing happened on January 20th ... other than what should happen," he said. "So, despite all the challenges, the institution held. It held to some extent because of the goodwill of a few people" (Liddell 2021). These experienced people made a great difference to that peaceful process.

Joseph Biden and His Team: "Started Early and Went Big on Fundraising, Size, Ambition"

The seeds for an effective transition into the presidency for Joseph Biden were sewn in decisions made in the spring of 2020. The organizational framework for the transition, the relationship of the campaign to the transition, the rules of the road for the transition, the leadership structure, the work streams identified, and top people were all in place by late April and early May. David Marchick, who was director of the Center for Presidential Transition in the Partnership for Public Service, and worked with and observed the Biden team, commented that the success of the Biden transition operation was "they started early and went big—big on fundraising, size, and ambition ... commensurate with the challenges Biden faced." Starting early began with the candidate and with his friend and transition expert, former Senator Ted Kaufman, and Mark Gitenstein, whom Biden also trusted and regularly called upon for his judgment.

Biden to Kaufman: Do You Think It's Time to Start the Transition?

When Senator Bernie Sanders pulled out of the presidential contest, Joe Biden became the front-runner and presumptive Democratic nominee. At the time Sanders suspended his campaign and Biden became the presumptive nominee, Biden asked Kaufman: "do you think it's time to start the transition? I said, I really think it is" (Kaufman 2021). "He asked me to put together some stuff." Kaufman had already begun that work a month earlier and was ready when a few days later Biden asked Kaufman to meet with

him at the nearby Tatnall School, where they walked around the deserted campus and talked about the transition.

And then April 22nd is when we went over to Tatnall School and walked around and went through the whole thing. And then came back and spent a couple of hours on the phone. Got Mark (Gitenstein) involved. And then on the next day, April 23rd, we spent three hours on the phone together, Mark and Joe Biden and me.

During the month following their talks, the Biden transition operation took shape. Prior to his discussion with Biden, Kaufman and Mark Gitenstein had met in mid-March with transition experts about resources and transition steps. Their work was well on its way by the time Biden called. Beginning early thinking through organizational steps was important because Kaufman wanted to be prepared for a transition discussion with Biden whenever it was he brought up the subject. "He may not have called me until July ... but he called me in April and raised the transition with me on April 7." He was well prepared for his discussions with Biden as he and Gitenstein had begun considering basic questions, such as choosing a transition chair and executive director; sketching out how the campaign and transition would work together; creating a fundraising operation as government funds would not flow until following the summer conventions; and identifying leaders for the work streams they discussed.

The Architect and Senator: Ted Kaufman. The early formation and scope of the Biden transition planning operation was the result of the interest of the candidate, but also because of the foresight and expertise of former Senator Ted Kaufman. He combines a long relationship with Joe Biden with experience as a senator promoting presidential transition legislation calling for an early start of transition preparations. Kaufman worked with Biden in 1972 while he was a New Castle County councilman challenging longtime House member, governor, and three-term Delaware senator Caleb Boggs. After Biden's surprising win, Kaufman stayed with him, serving as his Senate chief of staff and then when Biden became vice president, serving in the Senate for the two years of Biden's unexpired term. Prior to his political work with Biden, Kaufman worked as a manager at the DuPont Company after getting an undergraduate engineering degree. He went on to the Wharton School of Business for a business degree. Management was a focus in his business career and was fundamental to his two years in the Senate, including the legislation he sponsored.

Before Kaufman began working on transition planning as a senator, he worked on financial issues on the committees he served, particularly on how to clean up abuses of short selling of stock (Kaufman 2012). He was one of the sponsors of the Fraud Enforcement and Recovery Act in 2009. What he is most known for, though, is the 2010 Pre-Election Presidential Transition Act. What the two policy areas had in common for Kaufman was his interest in management and planning. The 2010 act called for the federal government to recognize the importance of a presidential transition by providing funds and office space for candidates following the two political party conventions. In his Senate opening statement about the proposed legislation, Kaufman stated the importance of

early planning. “For incoming administrations, early planning is vital ... we need to remove the stigma that making early plans for a transition is somehow presumptuous.... [I]f we normalize the act of early transition planning, we will be all the better for it” (Kaufman 2010). The successful work of moving the transition calendar up by two to three months in the 2011 transition legislation led to further transition legislation that honored his efforts promoting early transition preparations. He finished up his Senate term in January 2011, but his impact was felt after he left, with additional legislation defining presidential transition preparations. The law titled the Edward “Ted” Kaufman and Michael Leavitt Presidential Transitions Improvement Act of 2015 was signed by President Obama on March 28, 2016.

Organizing Transition Leadership. Following their April meetings and phone sessions with Biden, an early action was to bring in a transition co-chair to serve with Kaufman. After calling around to people he trusted, Kaufman believed Jeffrey Zients had the management experience along with an ability to crosscut over several agencies when needed to coordinate on issues and problems. On April 26, Kaufman and Gitenstein met with Zients and afterward wrote to Biden recommending Zients. Zients was known for his ability to rescue troubled programs. In the Obama years, Zients was in charge of the “Cash for Clunkers” program and the Affordable Health Care website issues. Vivek Kundra, who served as chief information officer in the early Obama years, described Zients’s management skills. “He has an amazing ability to convene the right people, to be pragmatic about problem-solving and to focus the energy of the administration on execution. He can close the gap between the theoretical and the ability to actually deliver something meaningful” (James 2013).

Once Zients came on to manage the nascent transition operation, he recommended Yohannes Abraham as the executive director. In the latter part of the Obama administration when Zients headed the National Economic Council, he brought on Yohannes Abraham as his deputy. Abraham ran the day-to-day transition operation and was very involved in the thinking of the policy and agency review teams that went into the departments and agencies post-election. By mid-May, they had their leadership team in place and began their discussions of how to proceed.

Considering Transition Priorities: “Unconventional Challenges,” Appointments, Policy. With his expertise and close relationship with Biden, Kaufman knew Biden would turn to him when it was time for a transition discussion. He wanted to be prepared when that happened. “I didn’t want to meet with him and not have thought about [it],” he said (Kaufman 2021). As a first step in gathering information for a transition, Kaufman called on David Marchick, the director of the Center for Presidential Transition at the Partnership for Public Service, a nonprofit focusing on best practices that enhance the effectiveness of government. He asked Marchick to come to Delaware for a discussion of what resources the organization had and what work streams and timelines they should consider in setting up a transition organization. Since 2008, the Partnership has built up its transition resources. Max Stier, the head of the Partnership who worked with Kaufman on the development and passage of transition legislation beginning in 2010, commented

on the role the Partnership played in the 2020 transition. “What we’re offering fundamentally is a repository of prior practice and a network of all the people that did it. So, we’re a one-stop-shop to understand how to do transition activity more effectively” (Stier 2021).

On March 12, Marchick and Dan Hyman, a manager at the Center who organized the briefing materials, met with the two people closest to Biden in his political world, Kaufman and longtime Biden-trusted associate Mark Gitenstein, who served as chief counsel (1987–1989) of the Senate Judiciary Committee and earlier as minority chief counsel (1981–1987). “They came up and sat down with Mark and me for the first discussions of the transition.... What are the main steps; what can you do early. It was to bring us up to speed on all the stuff they were doing” (Kaufman 2021). In response to a question of when the Biden operation started transition planning, Kaufman said, “That’s it (the meeting with Marchick) for us (Kaufman 2021). Marchick described their presentation: “In early March, we started working with Ted and Mark Gitenstein who were the people that Biden turned to, to help them figure out their early architectural decisions. How do you structure, and how much are you going to raise? What are the different work streams? What’s the timeline?” (Marchick 2021). Marchick identified the four basic work streams involved in transition planning. “Personnel, policy, agency review, and president-elect support, which is, basically, planning the president-elect’s schedule during the interregnum,” he said. “What does he do? ... What does he spend time on? Where does he go? What are the announcements, et cetera?” (Marchick 2021).

“*Unconventional Challenges*”. In their discussions over the coming weeks, in early April Kaufman added a fifth work stream, offering an alternate view on administration personnel priorities, as well as discussed a different way of combining the policy and the agency review processes. All became important parts of the 2020 transition. Kaufman titled the fifth work stream “Unconventional Challenges.” In early May, Kaufman wrote a memorandum about the 70 possible challenges they had catalogued. He grouped the challenges into a dozen topics and identified them as falling into three broad buckets.

A confidential, intensive effort must begin immediately to focus not only on the conventional transition challenges but also on the novel threats caused by a toxic brew of three dangerous ingredients:

1. Trump and the political division he intentionally foments;
2. The Coronavirus pandemic and the uncertainty of duration and intensity it portends for the foreseeable future; and
3. An economic collapse that may well lead to the nation’s second Depression. (Kaufman 2020)

The “unconventional challenges” filtered down to three major categories: “Challenges to the integrity of the election, the validity of the results and the legitimacy of a Biden presidency ... challenges to a viable and functioning economy ... challenges to effective governance.” (Kaufman 2020).

Marchick indicated that they spent a significant amount of time discussing the challenges and developing mitigating strategies for each. “And then they added a fifth area of work. We spent an enormous amount of time on it with them. But this was their idea ... what Ted calls unconventional threats ... they said, all right, let’s go through these threats, and then we helped them figure out mitigation strategies” (Marchick 2021).

In the month ahead, they explored the issues, developing compensating strategies. Marchick gave selecting and handling personnel as a key area where they thought through the opportunities and limits on their flexibility getting a staff team selected and ready to enter the administration on or near inauguration day. One of the challenges they identified in April was the possible lack of ascertainment of a Biden victory. If there was no post-election ascertainment or the declaration was delayed, the Biden team would need to alter the personnel process.

So, with the delayed ascertainment ... there were strategies such as really analyzing what happens once you get ascertainment, and how do you approach those tasks if you don’t get access. You can do a lot with personnel. But, if you don’t have ascertainment, you don’t have access to the FBI. Or you don’t have access to OGE (Office of Government Ethics).... But, otherwise, you can do pretty much everything on your own. And so they even created a strategy for kind of a mock OGE process. So, basically, you could get 90% of the work done on their nominees, have the packages ready and then hope that you got it mostly right, and then OGE can look and say, yes, you did the analysis right and let’s finish the remaining 10%. (Marchick 2021)

Focus on Presidential Appointments Not Requiring Senate Confirmation. In preparing for their transitions, most presidents have focused first on selecting their nominees for Cabinet positions, as they take time to get through Senate confirmation. Kaufman, a former senator himself, went over the confirmation timelines and could see each new administration met with a longer calendar. Instead of focusing on Cabinet secretaries, Kaufman advocated prioritizing the political appointments that did not need to go through the Senate. “The big mistake has been too much emphasis on high-profile, confirmable positions. Because they weren’t going to get through,” Kaufman explained.

When I say hit the ground running, ... I’m not talking about March (March 18, Xavier Becerra, Secretary of Health and Human Services was the last Cabinet secretary to be confirmed). I’m talking about January 20 ... we wanted people on the ground, ready to go to work on Inauguration Day. And we did. (Kaufman 2021)

Stier discussed the importance of this strategy and what it produced. A president can appoint approximately 4,000 federal government officials. Those include approximately 1,200 requiring Senate confirmation (PAS); department secretaries and those a president designates as Cabinet-rank along with deputy and assistant secretaries fall into this group. In their preparations for office, traditionally the appointees not requiring Senate confirmation (PA) have been left until after a president comes into office. Those posts include several hundred White House staff, Schedule Cs, and non-career SES. The positions

include department chiefs of staff, their deputies, senior advisors, and others at that title level. Stier observed those non-Senate-confirmed positions are “spread out across the entire government. It’s not just volume. The penetration of the Biden reach is broader and deeper than any prior administration on day one.” What that meant was when they came into office, the Biden appointees “were able to put their arms around what was happening in those agencies faster than you would ordinarily see” (Stier 2021).

The number of non-confirmed appointees made the difference throughout the federal government. They filled out the White House leadership posts of commissioned officers. There are 25 slots for Assistant to the President titled staff that include the chief of staff and at least two of his deputies, the national security advisor, press secretary, counsel, communications director, and other people who form a president’s White House leadership team and another 25 for the Deputy Assistants to the President. The Biden team filled most of the limited number of those two positions by inauguration day. Together, Biden had 1,100 non-confirmed officials throughout the federal government, including 206 White House staff members. With an early start and the startup of a broad-ranging personnel operation, Kaufman said during their pre-presidential work, the Biden team interviewed 8,000 people for government positions (Kaufman 2021).

Rules Governing the Transition. As a veteran of several transitions, Kaufman wanted to avoid the conflict that often occurs between campaign and transition organizations. As they developed their transition operation, they had a set of rules for all who were working for the transition that established the relationship between the campaign and transition organizations. Kaufman said one of the transition rules was “we don’t do anything to interfere with the campaign. . . . Will do no harm to the campaign.” A related rule was the “candidate and campaign make policy—not the transition.” Those two rules called for establishing a routine to make sure the campaign and transition knew what the other was doing. An important aspect of how they minimized any discord between them was to have regular meetings of the top campaign and transition leaders. Kaufman and Gitenstein regularly met on Saturdays with Anita Dunn, campaign co-chair, Jeff Zients, and the executive director of the transition, Yohannes Abraham.

So that meant we had to be talking to the campaign. So, every Saturday (including Bob Bauer who was involved in legal issues) (if) needed—sat down with Jeff Zients and Yo (Yohannes Abraham) and Anita Dunn and me and we went through everything we were doing, every step of the way what we were doing. And the biggest thing, it wasn’t just us communicating to them what we were doing. They were communicating back to us what the campaign was doing, so that we didn’t inadvertently get crossways. (Kaufman 2021)

A third rule discouraged transition personnel from talking about business to reporters or to others outside of their families. “What happens in the transition stays in the transition” was a rule all were expected to follow. That meant clearing news media responses with the campaign. For himself, Kaufman said: “Every reporter that ever called me, I never called them back until I talked to the people on the campaign. Not a single person, press person, that I talked to during the entire transition where I had not cleared it with

the campaign communications people” (Kaufman 2021). The rules were repeated often and led to a tight-lipped transition operation with a minimum of friction between the two organizations.

While the first three rules discussed the restraints on how transition personnel conducted business, the fourth rule was a policy directive. “The transition will reflect the face of America” emphasized Biden’s interest in having a diverse workforce when he came into office. The call for diversity “was an ironclad rule from the top,” Kaufman said (Kaufman 2021). The diversity mantra was a priority in the appointment and policy processes for the transition as well as for the administration. In early May, Kaufman, Gitenstein, Zients, campaign co-chair Anita Dunn, and Bob Bauer, a legal counsel for them, had a call to discuss their diversity plan.

To further develop their transition team, Biden and his leadership team identified accomplished women who had served in the Obama-Biden administration. In the policy area working with the agency review teams, Avril Haines served as deputy national security advisor and deputy director of the Central Intelligence Agency during the Obama years, focused on national security policy with the agency review teams in that area reporting to her. Cecilia Munoz handled the domestic policy area for the transition, which was her expertise in the Obama years when she headed the Domestic Policy Council. For appointments, Suzy George was responsible for non-PAS appointees while Lisa Monaco was responsible for picks for PAS positions. George was chief of staff and executive secretary on the National Security Council during the Obama years while Monaco served as homeland security adviser in the same time period. Jessica Hertz served as the transition legal counsel and earlier served as principal deputy counsel to Biden during his vice presidential years. The five women formed a pathbreaking team for a transition, and their appointments to these key transition positions served as a message that indeed Biden was committed to women in a leadership role. Having women and minorities heading important transition offices resulted in a pipeline for governing posts. In the Biden White House, for example, of 22 major offices there, 15 are headed by women. No administration has appointed such a significant number of women to White House leadership posts. The same is true administration-wide. Biden named 11 women to head the 23 Cabinet and Cabinet-rank positions, though Neera Tanden’s name for OMB director was later withdrawn. Overall in the administration at 100 days, Kathryn Dunn Tenpas found that women accounted for 47% of Biden appointees to Senate-confirmed positions (Tenpas 2021). In addition to his appointment of women, he also emphasized a Cabinet representing multiple ethnic backgrounds. In those same 23 Cabinet and Cabinet-rank posts at 100 days, together Biden named 12 appointees of Black, Latino, Native American, and Asian heritage. Biden’s early emphasis in the transition on choosing people with diverse backgrounds resulted in substantive change in government leadership.

Coordinating Campaign Pronouncements with Transition Policies. Transition preparations were made easier by the connection that Biden saw between campaign statements and governing policies. In his campaign, Biden focused on his policies and identified the priorities among them. “For 50 years, Joe Biden has had a policy in his campaigns. It’s based on the rule that if you want to do something when you get elected,

you damn [well] better tell them during the primary. So, he would give speeches like the Build Back Better—he would give speeches that were directly related ... [to] the issues that he was going to do,” Kaufman commented (Kaufman 2021). By emphasizing the pandemic and its economic fallout as his first priority, those working in the transition had their basic guidance, particularly for those on the agency review teams.

In the discussions with Marchick and Gitenstein, Kaufman was interested in bringing together Biden policies with the agency review process. “What we do is the campaign puts together a book of all the speeches,” Kaufman explained. “Every single thing he talks about is in the book. They bring it over to the transition. What the transition does, it then slices and dices it so that each of the agency review teams understand exactly what his agency strategy is.” In their transition discussions, Kaufman assured Biden: “This is one of the things I promised him (Biden) when he asked me to do this thing. I said, I will guarantee you, when our people go in So basically, if you want a view of what the Biden transition’s aspirations were, and it pretty well worked out this way, is every single one of those 500 people who went into an agency, we know who they were and they knew exactly what the agency—policy was going to be in that agency” (Kaufman 2021). The goal in going into the agencies was not only to gather general information on the agency, but it was also to look at agency performance in terms of Biden’s stated policies and figure out how they could be accomplished. To further develop the government policy, the Biden team decided to have review teams devoted to particular policies, not just the agencies. Climate change, immigration, and COVID are three examples. Marchick explained:

Because previously they were stove piped, and they said they really should be together because the transition doesn’t make policy, it prepares to implement policy. And the way you do that is through the agencies, and so let’s combine it. And then what they did is they also said we’re going to have cross-functional capabilities. It was very innovative. So, for example, COVID, they said we’re not going to have—we’re going to have COVID people cover each agency. So, we’re going to have a COVID team that is multiple agencies.... And the Biden team said, well, you know, we have COVID experts that are going to cover DoD and HHS and Ag, EPA, and so, basically, they ended up just listing those COVID experts for multiple agencies. (Marchick 2021)

Yohannes Abraham, the executive director of the Biden transition and a leader thinking through the connections between policy and agency review, wanted to make certain the two were connected in order to break down artificial department barriers. “Besides integrating the agency review and policy work, (we) also had a big commitment to making sure that the national security and foreign policy teams and the domestic and econ teams built in process and connective tissue to keep their work very much connected and keep us away from silos” (Marchick interview with Abraham 2021).

Leadership meetings and the agency review process brought to the fore another of Kaufman’s “unconventional challenges”: a virtual transition. As they began their transition preparations, they considered how they could have virtual meetings with the leadership teams, but more challenging, also with the 500 people involved in all of their meetings, including training people on all their teams, those considering appointments, and people on the review process for government agencies. One of the agency review

leaders, Chris Lu, who headed the Department of Labor review team, found the process worked efficiently even if it lacked the personal encounters that can be important in gathering information.

In terms of meeting with the agencies, I think we got everything we needed from the career agency staff. But what you miss are the informal hallway conversations because there might be something happening, that somebody didn't want to say in front of a large group. With an in-person transition, you might have passed them on the way to the cafeteria or on the way to the bathroom, and they could pull you aside. We didn't have any of that, but it was still remarkably efficient. (Lu 2021)

Salman Ahmed, who was responsible for the intelligence, state, and defense areas, pointed to the accomplishments in a virtual setting. "We built the entire transition team and executed it and dismantled it in time to hand over, all virtually. We never met," he commented, except for a limited number of post-ascertainment classified sessions. Those few meetings involved national security agencies needing to use secure spaces at government facilities (Ahmed 2021). The transition operation turned a weak point into a strength.

So, it's much, much more conducive to having people spread out around the country. It's cheaper if you don't have to physically fly people in for things, which you don't have money for in any event, so a lot of this has to be out of your pocket.... So it's cost-effective. It's more conducive to inclusion of people around the country. It's much more conducive to secrecy. You don't want the names of people who are engaged in all this to leak. (Ahmed 2021)

With a virtual format, the transition teams were able to utilize people who would normally be unable to move to Washington for a short period of time. Chris Lu gave as an example of the experts he could have on his labor team because of virtual meetings, Doug Parker, who headed the California Division of Occupational Safety and Health. He was on the morning labor department team call that Lu had even though in California it was 6:30 a.m. for Parker. Following the call, Parker went to his day job but could participate virtually in transition meetings throughout the day (Lu 2021). His expertise was particularly important for the policy work related to COVID workplace issues. Biden announced in April his intent to nominate Parker as the director of OSHA.

In a two-month period, Joseph Biden and his team set up a transition operation that will serve as a model for the future for those seeking office. Starting early with a focus on identifying goals, tasks, and people to bring together aids the direction of the campaign and provides time for the transition leaders to gather relevant information for governing. Having a well-formed organizational structure minimizes the hazards a transition faces and allows a president-elect to take advantage of positive opportunities that come his way.

Presidential Transition Law: Precedent and Continuity

The Biden team set up a transition framework prepared for a variety of circumstances, but their organization alone could not provide for an effective transfer of power. The

president-elect and those working for him needed access to information and resources only the departments and agencies could supply them. They needed information on budgets, personnel, activities underway, schedules, and programs. While some of the information could be found online and through people who had previously served in the government offices, the Biden agency review teams needed access to the people who ran the offices to find information they wanted in order to begin their work. They needed national security information in order to get a clear assessment of situations important to the United States and to the president-elect's possible policy initiatives. Background checks and financial assessments are required of federal employees and can only be done in a thorough fashion by government institutions. The Biden operation relied on the strength of the transition laws and the willingness and dedication of federal government employees to carry them out. While the transition was rocky, the Biden team's belief in the professionalism of career officials was not misplaced. Career employees were the ones who developed the department and agency information and, on November 23 after the GSA administrator ascertained a Biden win, provided their materials to the Biden teams and staff.

Federal government participation in a president-elect's passage to the presidency is not an option. It is mandated by law.¹ The accumulated laws dealing with presidential transitions lay out what the federal government is obligated to provide to the presidential nominees, a timetable for delivering resources and information, and the conditions under which information is to be shared. Throughout the development of transition law, the principles of continuity and precedent served as threads that career staff and some political appointees used as their guides in developing and delivering information to the Biden teams.

1. Listed here are the basic pieces of legislation relating to presidential transitions as well as the executive orders issued by Presidents Bill Clinton, George W. Bush, and Barack Obama relating to the 2000, 2008, and 2016 presidential transitions. Additionally, the Intelligence Reform and Terrorism Prevention Act of 2004 contains provisions connected to national security clearances.

2. Presidential Transition Act of 1963 [PTA] Public Law [PL] 88-277, signed by President Johnson on March 7, 1964.

3. Presidential Transitions Effectiveness Act of 1988 as amended PL 100-398, signed by President Reagan on August 17, 1988.

4. Presidential Transition Act of 2000 PL 106-293, signed by President Clinton on October 13, 2000.

5. Executive Order 13176 Facilitation of a Presidential Transition, signed by President Clinton on November 27, 2000.

6. PL 108-458 Intelligence Reform and Terrorism Prevention Act, (amended in part by PL 111-283 October 15, 2010, Sections 7601 and 8403[b]), signed by President Bush on December 17, 2004.

7. Executive Order 13476 Facilitation of a Presidential Transition, signed by President Bush on October 9, 2008.

8. Pre-Election Presidential Transition Act of 2010 [PEPTA] PL 111- 283, signed by President Obama on October 15, 2010.

9. The Edward "Ted" Kaufman and Michael Leavitt Presidential Transitions Improvement Act of 2015 PL 114-136, signed by President Obama on March 28, 2016.

10. Executive Order 13727 Facilitation of a Presidential Transition, signed by President Obama on May 6, 2016.

11. Presidential Transition Enhancement Act of 2019 PL 116-121, signed by President Trump on March 3, 2020.

12. "Memorandum for the Heads of Executive Departments and Agencies" issued by Acting Office of Management and Budget Director Russell Vought, describing the mandated actions the units must take as prescribed by the amendments to the Presidential Transition Act of 1963, on April 27, 2020. Most actions are required by the Presidential Transitions Improvement Act of 2015.

The Purpose of Transition Law

From 1962 when President John F. Kennedy recommended and Congress began considering transition legislation, government officials recognized that the passage to power for a president-elect is more than a funding issue. Up to that time, political parties provided the post-election funds. Representative Dante Fascell, sponsor and floor manager for the transition legislation, said that once a candidate was elected, he was in a sense an employee of the federal government and deserved information preparing him for the presidency. He explained:

This orientation can only be provided by the outgoing administration and we should recognize it as a legitimate function of government and a legitimate expense of government. Under present conditions, a new President, in one sense, begins working for the Government the morning after the election.... (Eisenhower and Kennedy) were given the cooperation of their predecessors and access to what information they needed. (Fascell 1962, 4)

Fascell was concerned that a transition framework be in place because there may be times when the same cooperation would not exist.

But the time has come to formalize the process. That is the purpose of this bill. To leave these matters to the discretion of the existing President and the President-elect could conceivably have unfortunate results—especially if the incumbent was defeated by the President-elect in a hard-fought campaign. Let us guard against the possibility of noncooperation, remote as it may be. (Fascell 1962, 4)

From 1964 when the law was enacted and with subsequent amendments adjusting to changing conditions and needs down to the last amendments in the 2019 bill, the laws provided the “access” to government officials an incoming team would need and the “cooperation” an incumbent president and his administration called for in the original law and amendments.

The 1964 law sets out as its purpose “to promote the orderly transfer of the executive power in connection with the expiration of the term of office of a President and the inauguration of a new President.” To bring about the “orderly transfer,” the president-elect and his team require the cooperation of his predecessors and access to needed information. In the 57 years of the transition act, the law has broadened from the General Services Administration as the basic institution providing space and resources to an all-of-government operation providing services, including ones with a national security dimension. Government agencies that did not exist in 1964 now have important roles, such as the Office of the Director of National Intelligence, which organizes a national security threat assessment; the Office of Government Ethics, which works with political appointees on carrying out their ethics pledges and financial disclosure statements; and the Office of Personnel Management, which provides information to candidates and others about the existing positions in the federal government that a president can fill. None of these offices existed when the original transition act became law.

Changes in the political environment; national security concerns, particularly following the 9/11 attacks on the United States; transition experiences; and the increase in the complexity of government all have played into the development of the current shape of transition planning. The two branches have constructed a transition framework that now moves up the transition information clock to after the major party nominating conventions. Since the 2012 election, the federal government has provided funds to both party candidates, not just a president-elect. Taking government resources and funds continues to be on a voluntary basis, as it was in the 1964 bill. But today those candidates who take money must report all contributions and contributors. The law limits each contributor to \$5,000.

Beginning in 2000 with an executive order issued by President Clinton setting up a Presidential Transition Coordinating Council, the president has had an important role in the transition process through his creation of a similar council that sets transition policy for the executive branch. Presidents George W. Bush and Barack Obama issued similar orders at the end of their presidencies. The Kaufman–Leavitt 2015 statute now requires the president, even if he is running for reelection, to create, first, a White House Transition Coordinating Council setting transition policy for his administration and, second, an Agency Transition Directors Council composed of career officials tasked with carrying out those policies. The earlier 2010 pre-election law instructed that at the six-month and three-month marks before the election, the administration should file reports on behalf of the president to the relevant committees of the House and Senate. Those reports on actions taken by government agencies to prepare for a possible transfer of power are submitted by the Federal Transition Coordinator. In 2020, Mary Gibert submitted reports to the House Oversight and Government Reform Committee and the Senate Homeland Security and Government Affairs Committee.

The mix of a dozen transition and transition-related laws prescribes what government officials do, but those in administration leadership roles have considerable discretion in carrying out those laws. In 2020, the key figures on the government side were Mary Gibert for GSA and Chris Liddell, who led the White House council, along with Chief of Staff Mark Meadows. Both had transition experience. Gibert served as the 2016 GSA coordinator and Liddell was executive-director of Mitt Romney's pre-election transition operation. As recounted earlier in the article, both of them had extensive management experience. Their backgrounds as managers matched the management experiences the Biden team leaders brought to their work. The key leaders—Ted Kaufman, Jeff Zients, Mary Gibert, Chris Liddell, and David Marchick—effectively worked with one another in spite of the post-election difficulties generated by President Trump. Collectively, they managed the transition on a basis of what the issues were and how they could accomplish their goals and solve problems and obstructions. If they could not solve them, they would try to develop alternate routes.

Mid-March to Mid-May Government Preparations

GSA and the White House were preparing for a possible transition, whether it was to a second term for Trump or a change of leadership in the presidency. The first order of

business for the White House, however, was planning for a second term, not a transfer of power. As the deputy chief of staff for policy coordination, in late December 2019 Chris Liddell assembled the White House senior policy staff to consider the policy and organizational priorities they would take in a second term. Shortly before the May deadline for administration six-month reports on how the federal government was preparing for the transition, Acting Director of the Office of Management and Budget Russell Vought confirmed the start-up of the Agency Transition Directors Council along with the date of its first meeting, May 27 (Vought 2020).

The Law as a Mixture of Prescription, Discretion, and Presidential Judgment

As simple as the “orderly transfer of Executive power” goals of access to information and administration cooperation are, reaching them is achieved through a legal tangle of prescription, discretion, and presidential judgment with enforcement achieved through persuasion. Other than the opprobrium of the public, there are few consequences if an administration does not cooperate. The prescriptive parts of the law identify resources to be used for the transition, such as government-owned office space and mandated services; tasks to be accomplished, such as providing listings of government positions a president can fill; and the timing for government actions. For example, an incumbent president and his team are required to create a White House Transition Coordinating Council and form the Agency Transition Directors Council. They are required to set up both by six months before the election. There are few legal requirements for who sits on the White House council, though the membership of the Agency Transition Directors Council is composed of representatives of the 15 departments and selected agencies with transition responsibilities. The Agency Transition Directors Council is co-chaired by the Federal Transition Coordinator and the Deputy Director for Management of the Office of Management and Budget.

Discretion is another equally important part of transition law. There are points in the transition process where those involved in prescribed actions have discretion as to how to carry out duties. For example, those who chair the mandated White House Transition Coordinating Council have the flexibility to decide who they want to have on the Council. The law identifies a few officials who should sit on the Council and determines the membership of the Council, including how many members it includes and where they currently serve in government. Who is named to the body makes a difference to its direction, its public profile, and the policies the group establishes for the career departmental representatives serving on the Agency Transition Directors Council. Those in leadership positions can exercise their judgment in many transition circumstances. For example, in July 2008, Joshua Bolten, chief of staff for President George W. Bush, went beyond the items mentioned in transition laws in order to provide help to the representatives of both presumptive candidates, John McCain and Barack Obama. Prescription, discretion, and individual judgment played important roles in how the 2020 presidential transition evolved.

Two people in leadership positions in 2020 who represented prescription and discretion are Mary Gibert and Chris Liddell. In the mid-March to mid-May time period when the Biden team was setting up its transition framework, Mary Gibert, the career staff member leading the transition for GSA, worked with the departments and agencies to meet the current legal reporting requirements for her reports on behalf of the president. It had to be cleared first by the president, or those working on his behalf, before she could send the reports to the House and Senate committees.

In the two-month springtime period, White House action was minimal, with Chris Liddell, who served as Deputy Chief of Staff for Policy Coordination, assigned a leading transition role early in the year. In late December 2019, he led a working session of senior White House officials at Camp David, where they did policy and organization planning for a second term. In mid-May, he was named vice chair of the White House Transition Coordinating Council and took the lead role in White House transition responses. With his experience as executive director of Mitt Romney's pre-election transition operation in 2012, he was well aware of the law and what needed to be done to carry it out. He used discretion in how he did so.

Presidential judgment is an important aspect of how a transition unfolds. Beginning with Bill Clinton, recent presidents have taken a lead role in presidential transition planning by creating a White House council and viewing transition as an important part of their agenda for their final year in office. Presidents Jimmy Carter and George H. W. Bush, who lost their reelection bids, turned to transition planning only after their loss. Both, though, called for public and government support for presidents-elect Reagan and Clinton. In 2020, President Trump did not concede defeat, which shaped the level of cooperation some of his political appointees gave to incoming Biden officials. Career executive branch officials, however, carried out their duties prescribed in transition law.

Federal Transition Coordinator Mary Gibert: Carrying Out the Law

The 1964 act identifies the General Services Administration as the major transition participant on the government side because it controls space in government-owned buildings and can provide the resources to fill the space and provide working office equipment that is technologically up to date. While there are now many more government institutions involved in transitions, none is as significant as GSA. It continues to provide space and resources, but GSA also has the role of coordinating all of its partners.

The Kaufman–Leavitt law established the role of Federal Transition Coordinator as a career civil servant chosen two years prior to a transition to serve as a facilitator between all of the government institutions. Mary Gibert, the coordinator for the first half of the 2016 transition before her assignment as GSA's regional commissioner for the Washington-area Public Buildings Service and for the full 2020 transition, describes the work she is responsible for in the early period. She sees her work in terms of time buckets: "it is continuous one year before the election, during the election, and post-election," she said (Gibert 2021). Her early period begins two years prior to the election, well before the time the Biden people organized. As the coordinator, she was responsible for the search

for an appropriate government building fitting the needs of two presidential candidates who would be nominated some months away. At the same time, she worked with the Office of Management and Budget, the National Archives and Records Administration, the Office of Government Ethics, the Office of Personnel Management, and career representatives of all departments and agencies. She also worked on security clearances with the FBI, the Secret Service, and the Office of the Director of National Intelligence as well as the CIA. All of these institutions have roles in developing information on past transitions, appointments, managing the financial disclosure process, security and background clearances, and the Plum Book with federal government jobs.

While the law has grown more specific on tasks, institutions, and deadlines, discretion is an important factor in making a transition work. Gibert said her approach to institutions and people has been to be as inclusive as possible. While GSA does not deal with candidate representatives until after the party nominating conventions, if “one candidate is emerging and we’re asked questions, we answer the questions . . . but at the center of all of this is equity,” she said. If they provide information to one candidate, “we would have provided the same information to the other candidate. Whether they asked it or not, to make sure there was equity” (Gibert 2021).

The partners in leadership positions found Gibert’s approach effective. Carlos Monje, who was on the Biden leadership team for agency review operations, characterized Gibert as “a strong mediator.” He added: “If it were not for Mary’s leadership and diplomacy, this transition would not have been the success it was” (Partnership for Public Service 2021). Gibert was a facilitator who worked between the various parties within and outside of government. As a member of the White House Transition Coordinating Council and as co-chair of the Agency Transition Directors Council, she was at the heart of the preparations the departments and agencies made for the Biden team. While setting up the first set of review teams for the agencies was standard, having a second set of review teams centered around issues, such as climate change and COVID, was not. Once GSA administrator Emily Murphy, who was responsible in the 1964 law for determining when there was a president-elect, made her determination that the time had come to begin the transition to President-elect Biden, both types of review teams were cleared and the departments and agencies ready to receive them. The agency career staff had their briefing books ready for the Biden team members and began the discussions following Murphy’s determination.

Additionally, the memorandum of understanding, which is required to be signed by a representative of the administration and the transition representative for the candidate who becomes the president-elect, seeks to reduce the number of potential points of disagreement over information the president-elect’s staff wants and what the administration wants to protect. The memorandum deals with the terms under which review teams will go into the agencies. If there were competing views on what the review teams should have, Gibert tried to work out a solution.

If there were questions or issues that came up, I served as a conduit between the Biden—in this case it was the Biden transition team and the Administration in terms of first, we would try to work them (out) between the transition and the agency, to see if we could come to resolution. (Gibert 2021)

If they were not resolved at her level, the issues went up to the next level, Ted Kaufman and Chris Liddell. Even so, there were cases such as the substantive complaints from some of the Biden agency review teams that could not get the meetings they sought or the budget information they needed from some of the political appointees at the Department of Defense, the Office of the United States Trade Representative, the Environmental Protection Agency, and the Office of Management and Budget. Budget information was critical to the preparation and presentation of Biden's planning for his defense initiatives. In the end, the presentation of the Biden budget was delayed by the process. Acting OMB director Russell Vought responded to criticism of his office's lack of cooperation in providing the defense budget information the Biden teams needed for their early budget projections in line with the president-elect's policies. Vought wrote to Ted Kaufman: "OMB staff are working on this Administration's policies and will do so until this Administration's final day in office," he wrote. "Redirecting staff and resources to draft your team's budget proposals is not an OMB transition responsibility" (Breuninger 2021). In earlier administrations the transition out of power was the presidential priority, especially in the post-election period.

Gibert worked with the directions included in the accumulated transition laws to establish what actions needed to be undertaken, by whom, and when. During the mid-March to Mid-May time period when Biden created his leadership team and designed the transition organizational structure, Gibert was at the start of the big push GSA makes in a transition year. By early May, transition preparations moved from career staff carrying out prescribed transition functions to the political realm as well. At this point, there are a variety of alternatives the president, or those chosen to act on his behalf, can select.

Chris Liddell and the White House Transition Coordinating Council: The Importance of Discretion

The creation of the White House Transition Coordinating Council and the operation of the Agency Transition Directors Council demonstrates the degree to which discretion is critical in how these important councils are formed and operate. The 2015 statute mandates the president to create these two councils. The president determines what is "necessary and appropriate to plan and coordinate activities" of the federal government in order to "facilitate an efficient transfer of power to a successor President" (Section 4 [b]).

General Duties.—The President shall take such actions as the President determines necessary and appropriate to plan and coordinate activities by the Executive branch of the Federal Government to facilitate an efficient transfer of power to a successor President, including by—

- (1) establishing and operating a White House transition coordinating council in accordance with subsection (d); and
- (2) establishing and operating an agency transition directors council in accordance with subsection (e).

Both councils have a history that predates the act. At the end of their presidencies, Presidents Clinton, George W. Bush, and Obama issued similar executive orders creating the White House council as the engine establishing transition policy. In those earlier administrations, the White House council was a high-profile one with a large membership ready to emphasize their mindful preparations for a successor. But in their cases, they were at the end of their presidencies, not running for reelection as Trump was. While Obama had the opportunity to create such a council when he was running for reelection in 2012, he chose not to do so. Few presidents running for reelection would create a council designed to pave the way for a successor unless they were legally forced to do so. In a corrective action, the 2015 law provided a president “must” create such a council and do so by six months prior to election. The law, though, does not prescribe what the council must do.

Now that the Kaufman-Leavitt law requires the creation of a White House Transition Coordinating Council, Russell Vought, the acting director of the Office of Management and Budget, issued an April 27, 2020, memorandum, “Implementing the Presidential Transition Act,” based on the provisions of the 2015 statute (Vought 2020). He stated the timetable and actions to be taken, including the creation of the two councils. But he did not detail the council members selected by those in the White House. Instead, Mary Gibert provided the names in her six-month report to the House and Senate committees. There were seven members of the Trump council plus the mandated Federal Transition Coordinator. The Council members were named by their position, not who occupied the posts. Chief of Staff Mark Meadows was the chair with Deputy Chief of Staff for Policy Coordination Chris Liddell, the vice chair. Others on the Council included Russell Vought, the director of the Office of Management and Budget; Deputy Chief of Staff for Operations Anthony Ornato; White House Counsel Patrick Cipollone; director of the Office of Presidential Personnel John McEntee; and Deputy Counsel Patrick Philbin.

These were the bare minimum of people you needed to have—lawyers to comply with the law, personnel to deal with those issues, and operations to set up the mandatory crisis tabletop exercise. The membership consisted of senior White House internal operations officials, not policy leaders or those who dealt with people and groups outside of the White House. The Trump council was a small process-centric operation without the policy people included in the ones created by the three earlier presidents. The Trump model contrasted with the larger ones at the end of eight years where Clinton had 12 members, Bush had 15, and Obama 11, plus the mandated Federal Transition Coordinator and candidate representatives. The earlier ones had policy people as well as process ones. “I just tried to low-key it,” Liddell said. “Let’s just keep the minimum number of people; just a few key people” (Liddell 2021). He had a lot of small, informal meetings to make certain they kept up with the legal requirements.

The council reflected the style of Chris Liddell, the vice chair of the council and the person responsible for coordinating plans for a second term, that characterized his four years at the highest leadership level. Even though he was an Assistant to the President, Liddell had no profiles in national media or interviews with the press. As a veteran of the Microsoft and General Motors corporate world, he knew the value of a low profile. The management styles of Liddell and Gibert were similar: Keep a low profile and stick with

precedent. Ask the question: what was done in earlier years? View issues as problems that could be solved, though there were ones that proved intractable, such as the reluctance of late Trump appointees to leadership positions in the Defense Department to provide people on the Biden review teams with the information they sought.

Ted Kaufman described Liddell's importance from a Biden team viewpoint. "But it isn't just what he did; it's what he didn't do," Kaufman said. "The biggest thing was that he didn't do things that were incredibly unhelpful.... He followed the law" (Kaufman 2021).

Liddell kept transition planning at a quiet level with a legal focus. He explained:

There is a high degree of subjectivity about the way that you implement the basic framework. I made a decision relatively early that I would try and give Mary (Gibert) as much responsibility as possible and take it out of the White House as much as possible. Not because I was uninterested in running it but because it was easier to have it over there.... I would give her cover to get things done. If she had any (trouble), she'd contact us. So, we had ... a good kind of working relationship where if she ran into any barriers, she'd get touch with us. But other than that, she would be the arms and legs making it happen. (Liddell 2021)

He said that "whenever she rang up and said, 'what do you think about this?' I said, 'What happened last time?'"(Liddell 2021). Liddell then responded: "well, let's just copy that and that worked out pretty well." At the same time, Liddell wanted to make sure that Gibert had cover to carry out the prescribed law. "My role ... was to run interference for people like Mary Gibert who did a fabulous job. Most people acted well in difficult circumstances, but there are a few who didn't" (Liddell 2021).

In his work managing the White House side of the transition, Liddell focused on precedent as his guide. "What I tried to do was use precedent as my friend," Liddell said. "In particular, in the pre-election period, but then in the post-election period as well." In the early March to May period, few outside government or inside it paid attention to the transition. "In May of an election year, it's still pretty uninteresting to most people. It's way off in the distance. Campaigning is much more interesting, much more important for the incoming and the incumbent." At the point when Kaufman and the Biden team were creating their transition framework, little was happening on the White House side as the campaign dominated White House activities.

There was a continuing series of decisions that called for discretion in responding to them, as some participants may not have viewed them as routine. In addition to the reports Mary Gibert submitted on behalf of the president, there was a series of other transition-related decisions that came through the White House. The first ones were how to create the councils and then who to put on them other than the legally mandated participants. In early March, Congress sent to President Trump the latest piece of transition legislation. The Presidential Transition Enhancement Act of 2019 provided for several corrective measures. Based on the 2016 transition experience, the law called for major party candidates to establish ethics rules and identify an individual responsible for their enforcement.

The law also calls on agencies to have succession plans in place by September 15 for political appointees as they leave office. It specifies, more than was earlier the case, what transition services the government would provide and calls on eligible candidates to sign a memorandum of understanding dealing with the conditions of support services as well as the ethics plan. After passing both houses of Congress, the bill was presented to the president on February 20 and President Trump signed it without fanfare on March 3. A provision in the bill stipulated that “to the maximum extent practicable, an MOU shall be based on MOUs relating to previous presidential transitions” (congress.gov). Precedent was important in the signing of the MOU, where Liddell recommended the way to deal with it was “let’s just take the last one and change the date” (Liddell 2021).

While the period before the election went off without difficulty, the most troublesome part of the White House transition work occurred post-election when the Biden agency review teams wanted access to the information prepared for the president-elect and his teams. Dave Marchick used an analogy to a cult Clint Eastwood western classic, *The Good, the Bad, and the Ugly*, to characterize Liddell’s transition experience.

The good was pre-election where, basically, Chris was running everything, and it was under the radar screen. Chris did a fantastic job. They were very buttoned up, they implemented it by the book, and they were very, very organized. The bad was the post-election ascertainment delay, and Chris was handcuffed. He could do nothing. He was frustrated as hell. And he could not talk to the Biden people. He was going through me. I would talk to Ted, I would talk to Jeff, and then I would talk to Chris and back and forth.... But they didn’t talk until the day after ascertainment.... And then, after ascertainment, I call it the ugly for two reasons. Because, obviously, of January 6th, and then second ... you had some agencies which just refused [to cooperate]. (Marchick 2021)

Ted Kaufman discussed Marchick’s role as a facilitator working between the two camps. “I never talked to Mary—I never talked to Liddell.... It was just Dave did that whole thing,” Kaufman said (Kaufman 2021). One of the areas where Marchick worked with both sides was on considering scenarios with different election outcomes. Although he did so later than Ted Kaufman, Mark Gitenstein, and David Marchick did with their discussion of “unconventional challenges,” Liddell considered four scenarios with some subsets. Liddell said:

The scenarios were a clean victory for the Trump administration, a clean victory for the Biden administration, and then a disputed situation. In the disputed case, we considered a dispute for a relatively short period of time and a dispute for a long period of time. Clean loss and clean victory clearly would have been relatively easy to deal with, and there’s plenty of good precedent on that.... On the disputed situation, I started to build some scenarios around that. (Marchick interview with Liddell 2021)

Liddell was not concerned about a short delay. “Having a lack of access to the agencies would have been a nuisance to the incoming administration but not that significantly initially, mainly because there is so much for the incoming people to do straight away,” Liddell said. “It is incredibly inconvenient and annoying, but not that significant to the final outcome” (Marchick interview with Liddell 2021). The scenario that was the most

troublesome scenario was one where there was no declared president. “The real issue is the one that we started to face, which is that it dragged on and on and on.... [C]learly as the transition goes on, it becomes more and more critical that the president elect gets intelligence briefings and that the teams start to get into the agencies and the components of the White House,” Liddell said (Marchick interview with Liddell 2021). Precedent again came into play. In 2000 when the presidential election results were undecided while the voter recount occurred in Florida, President Clinton signed off on providing the President’s Daily Brief to Governor George W. Bush. On November 30, President-elect Biden and Vice President-elect Kamala Harris received their first complete intelligence report.

Presidential Judgment: The Spirit of the Law

In addition to transition law, past presidential transitions benefited from tacit understandings about the presidency as an institution (Kumar 2020). Until 2020, incumbent presidents who lost their campaigns for reelection quickly conceded their loss and called upon their staffs to pave a smooth road for the president-elect and his team. George H. W. Bush, our most recent one-term president who ran for reelection, instructed his White House senior staff the day following his 1992 defeat to “be helpful and leave no ticking time bombs for the incoming Clinton administration,” according to his White House economic and domestic policy adviser, Roger Porter (Porter 2020). “The voters have spoken, and our job is not to make the task of the incoming administration more difficult than it would otherwise be,” he told his aides. In addition to providing briefings on key subjects such as the Haitian boatlift crisis, Bush went beyond the requirements of the law in other ways as well.

One of the most significant actions a sitting president can take to help his successor get off to a clean start is to dismiss all of the officials he appointed to political positions. That way, an incoming president can start off with his own team and not have to spend his early days firing people. Andrew Card explained how President George H. W. Bush handled the issue. He called Warren Christopher, who was handling the transition for President Clinton, and, on President Bush’s instruction, asked him whether they would like for Bush officials to clear out political appointees or would the Clinton team prefer to do it when they come in? As happens with most administrations, the Clinton transition staff wanted offices cleared out with a few exceptions. “You give us the names and we’ll handle it the way you tell it,” Card said (Card 2020). He then asked for resignations or told appointees, “the President-elect is likely to want you to stay on for a while. Will you stay?”

The 2008 transition is viewed as an ideal one in part because of the tacit understanding on both sides that transitions make a difference to the foundation of a presidency. In late 2007, President Bush told Joshua Bolten: “Go all-out to make sure that the transition is as effective as it possibly can be, especially in the national security area” (Kumar 2015, 72). To that end, Bolten took actions that brought about a smooth transition but were not required by law. In summer 2008, Bolten brought into the White House representatives

of the presumptive candidates, John McCain and Barack Obama. Bolten gave the green light to having the candidates put in names for FBI clearances for their agency review team members and those who would be working on the transition should they win the election. The representatives also worked on a required memorandum of understanding that would govern the interactions between the transition team members and the federal government. There was nothing in transition law requiring such work, but it was important for the quality of the Obama transition into office.

Rather than call for a smooth transition when the election was over and after 60 court challenges did not go his way, Donald Trump sought to undermine the legitimacy of a Biden electoral victory by proclaiming that the election was stolen from him. He did not concede the election and rallied his supporters on January 6 to protest to Congress as its members counted electoral votes. He did not sign off on firing his political appointees until January 7, the day following the riot on Capitol Hill and 13 days before he left office. His actions were costly even to his administration officials. While his political appointees could rightly assume they would be fired when Biden assumed the presidency, not letting appointees know their status worked against them as they were not able to go through the full “offboarding” process that provides employment help to departing employees as well as an explanation of their benefits.

The 2020 Presidential Transition

There’s an irony that the people who run the transition to the new people are the old people. That makes sense because we’re the executive. And the President is the President until January 20th. But it’s putting a lot of power and discretion in people who have just lost an election.

(Liddell 2021)

President Biden came into office with much, but not all, of the support a president-elect has traditionally received. The incumbent president sought, and still seeks, to delegitimize the election results as well as a Biden presidency. Yet Biden was able to come into office with most of the resources the law provides and with the help of most of those inside and outside the administration who were tasked with or offered aid to the incoming team. Trump made the transition more difficult than it should have been, but he was not able to thwart the passage of power to President Biden.

At the key points in the transition process, there were people in top leadership positions inside and outside of government who provided the guidance and stability required by the circumstances. They had a long record of government experience and trusted that the political system would carry them through the probable rough points. They operated on the principle that people of goodwill in key places would aid the transition process. They were correct, but it took a combination of people and actions not anticipated by the law to make the law work. There was a preponderance of experienced people inside and outside of the government who supported a peaceful transfer of power.

There was no person with more combined experience on transitions, with the candidate, and in the Senate than former senator Ted Kaufman. He had the trust of all the transition players and knew most of them well through his own experience in the Senate and from a long run with Biden. He knew not only transitions, but also where to find the information on government positions, modern transitions, and the law. As an experienced manager inside and outside of government, Jeffrey Zients was a crucial member of Biden's transition team. Max Stier and the Partnership for Public Service spent the last 12 years working with agencies and their leaders on the effective delivery of government services and best practices, including on presidential transitions. In that time, they have accumulated information on government positions, leaders, and how to coordinate their contacts and information to the benefit of those coming into office. Dave Marchick used his position as the director of the Center for Presidential Transition to work as a facilitator with leaders he knew and with the Partnership's accumulated information in hand. On the government side, the accrued provisions of 57 years of transition law prevailed. Yet it took the work of experienced leaders, in particular Mary Gibert at the General Services Administration and Chris Liddell at the White House, to assess and break down roadblocks when they occurred, though their success was somewhat mixed as some agencies did not cooperate. The letter of the law was ultimately carried out and the political system survived, but our transition structure proved weaker than many imagined. It is important to consider how we can strengthen its structure. But we also need to consider how much responsibility we put on political appointees for transition operations and whether it is time to give more authority to career staff through amendments to the law that envision a variety of election outcomes.

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