

THE BROOKINGS INSTITUTION  
PRESIDENTIAL TRANSITION PROCESS:  
UNDERSTANDING THE OBLIGATIONS, OBSTACLES AND URGENCY

Washington, D.C.

Monday, December 14, 2020

PARTICIPANTS:

MODERATOR: ELAINE KAMARCK  
Senior Fellow and Founding Director, Center for Effective Public Management  
The Brookings Institution

LISA BROWN  
Vice President and General Counsel, Georgetown University  
Co-Director of Agency Review for the Obama-Biden Transition Project

KATHRYN DUNN TENPAS  
Nonresident Senior Fellow, Governance Studies  
The Brookings Institution

JOHN HUDAK  
Senior Fellow and Deputy Director, Center for Effective Public Management  
The Brookings Institution

\* \* \* \* \*

## P R O C E E D I N G S

MS. KAMARCK: Good afternoon, everyone and welcome to this Brookings webinar on the presidential transition process. I want to remind everyone that viewers can submit questions for speakers via email to [events@brookings.edu](mailto:events@brookings.edu) or via Twitter using #Transition2021.

In 1963, Congress passed the Presidential Transition Act which has been amended twice, in 2016 and again in 2020. Under the act, GSA, the General Service Administration, will provide money for offices, staff and other services associated with a presidential transition.

The act requires agencies to begin transition planning before the election by designating a career official to be in charge of it. And it requires the FBI to conduct security clearances expeditiously for the new president's national security team and it requires that agencies prepare to brief the incoming president's teams among other things.

The act is triggered by the director of the General Services Administration and until a few weeks ago, no one knew who that was. And that's because this transition has gotten underway very, very slowly unlike most previous modern transitions. 2020, a year full of surprises in so many ways, didn't see the presidential transition begin until November 23rd, three weeks after election day and two weeks and two days after the Saturday on which it became very clear that Joe Biden had won majority in the electoral college.

Even after the GSA made the announcement, Trump appointees still were slow to participate. There were reports of political appointees sitting in on Biden transition team briefings with career staff, reports of information being blocked and other kind of unusual involvement by political officials.

And, of course, even today as the electors are meetings in state capitals to cast the electoral college votes that will make Joe Biden president, the incumbent president still hasn't conceded the presidential election. So, this is a pretty unusual transition and to help me unpack this I have with me three experienced scholars. Lisa Brown, Katie Tenpas and John Hudak.

Lisa is currently vice president and general counsel at Georgetown University. I first met Lisa when she worked as counsel to Vice President Al Gore. After a hiatus at the American Constitution Society, she joined the Obama administration and served in several high level jobs. The

most important of which for our purposes today was as co-director of the Agency Review for the Obama-Biden transition team.

John Hudak, senior fellow and deputy director at the Center for Effective Public Management here at Brookings, is an expert on the relationships between presidents and the bureaucracy. Well known for a great book called, "Presidential Pork," which is going to help anybody understand what the stakes are in this transition.

And finally, Katie Dunn Tenpas who is a nonresident senior fellow here at Brookings. You may know her for her work on the presidential personnel tracker that we've been running here at Brookings for several -- for more than a year now. She's also been a member of the White House Project, which prepared reports to the 2000 and 2008 presidential transitions. In addition, she has a book called "Presidents as Candidates: Inside the White House for the Presidential Campaign."

So, with these three great scholars here, let's get started. And the first question I want to pose is, does it matter? What, if any, are the consequences to this most unusual presidential transition? Lisa, why don't we start with you.

MS. BROWN: Thanks Elaine, and thanks for having me, it's great to be here today. And the short answer is it definitely matters. If you think about it, a transition has an average of 75 days between election day and inauguration day. To get their hands around what is going on in every single agency in the government.

It is a massive amount of work in a short period of time. And if you think about it, no business would ever think to have their entire senior leadership leave on the same day. And the only reason that the government can do that is because of the cooperation of the outgoing administration and because of the incredible work of career employees.

And until election day, the transition cannot actually get into the agencies, Elaine, as you indicated which means they can't get classified briefings. If you think about the big issues today on COVID, what you want is you want the Biden team in there talking to CDC, talking to DOD about their distribution plans. You want to make sure that when Biden takes office, when he becomes president, no longer president-elect, they hit the ground running on COVID.

And then similarly, the other area where you worry in particular is national

security. Because you don't want any gaps in turns of handover from one administration to the next. And we learned this lesson the hard way when President Bush took office after Bush v. Gore and their transition was, I think, shortened to about 45 days. And the 9/11 Commission actually said that they pointed the late transition and the inability of President Bush to get his full team into place as one of the causes of 9/11.

So, now one of the other practical things that you're seeing right now is background checks are backed up because you can't start those until -- for the election as well and that's always a bottle neck. Katie can talk to this more but it's a very practical block right now. And even though I think Vice President, former Vice President now President-Elect Biden and his team are tremendously experienced. That will help but it doesn't make up for the gap in time.

MS. KAMARCK: Good. Katie, can you expand on this a little bit more and particularly the issue with the FBI clearances?

MS. TENPAS: Sure. Well, if you think about it, there are roughly 4,000 political appointments that need to be made when a new administration takes office. Of those 4,000, roughly 2,100 require Senate confirmation. And that means that several of them or thousands of them are going to need FBI background checks. In addition, White House staffers that are allowed to have access to classified materials also need FBI background checks and clearance checks in order so that they may see those materials.

So, you know, people think oh, you know, it was just three weeks later. But those three weeks matter, especially when you only have 78 days total. Losing three weeks is a huge proportion of that time. And most people will tell you who have worked on transitions when I've conducted interviews and such, they say 78 days is hardly enough time. So, imagine that that time has already been truncated by three weeks. It's a problem. And those FBI checks could have been started on November 4th, instead it was much later. So, there could be a backup which is completely and contrary to the recommendations of the 9/11 Commission.

MS. KAMARCK: You know, and Katie, let me drill down a bit. It was my impression that after the 9/11 Commission recommendations that there was some change in the law to require expeditious background checks. What's that mean? What's the difference between an expedition

check and a regular check? Is it they put everybody else aside and take the president-elect's team first? What's happening there?

MS. TENPAS: I'm not exactly sure. I mean your explanation sounds right. Lisa, do you have insight on this?

MS. BROWN: No, all I know is they mandated that, so required that the president-elect get classified briefings immediately after the election. But in this area, they encouraged the expeditious and they basically said try to get them done before inauguration day for the national security team.

MS. KAMARCK: So, it's not a mandate, it's an encouragement, right?

MS. TENPAS: Yeah, and I was just going to say in prior administrations, there was always a great deal of cooperation. The transition from President George W. Bush to Obama is thought of as the gold standard. Where they prepared heavily in advance for the Obama people and it seemed as though it was a seamless transition. Now we're finding pockets of dissent. So, not only do we have this three week delay, we also have these pockets of dissent that complicate things even more.

MS. BROWN: You know, Katie, Elaine, we actually got the letter from GSA, the ascertainment letter at nine in the morning the day after the election. So, I was actually in GSA meeting the formal start literally the day after the election with our folks going into agencies soon thereafter.

MS. KAMARCK: That was in?

MS. BROWN: That was, sorry that was in 2008. That was the transition that Katie is talking about. Bush, yeah that's absolutely right, complete cooperation from the Bush administration.

MS. KAMARCK: John, what's your perspective on this in the broader context of things? What is this mean? How bad is it, okay, how dangerous is it?

MR. HUDAK: So, I think there's two parts to this. There's a positive side and then a really negative side and Lisa touched on the positive side. That is that Joe Biden is better prepared for a truncated transition than probably any president we've had in the past except maybe George H.W. Bush at least in modern times. And the reason for that is, he knows how to staff a White House.

As vice president for eight years, he's been there, he understands what that organization looks like. He probably also understands what he would have wanted to differently than what President Obama did in terms of organization. And so, he's ready to hit the ground running and he's only been out of power for four years.

It's not like when Bill Clinton came to office in 1992 and Democrats hadn't been in power for 12 years. A lot changes structurally in the White House, a lot changes structurally in the bureaucracy to be able to get caught up. Plus, of course, President Clinton and Vice President Gore had not served in White Houses before. And so, in that sense there is it's unfortunate but that it's truncated but if you had to essentially pick anyone who was running on the Democratic side in 2020 to face that type of transition, Joe Biden would have been the person.

But at the same time, there's a broader issue of institutional decay that exists here. And if this is the new normal, this idea that you can test an election that is clearly lost. That you disregard the national security elements of a transition, the basic functional elements of a transition and the ability of a new administration to meet the goals and the issues of the day. If we're doing away with that, we're doing serious harm to the republic.

We're doing serious harm to the ability of the United States to do what it needs to do and a president to do what he or she needs to do. And so, when we look at this year in particular, a lot of presidents or some presidents come to office with crises on their plate. President Obama, as Lisa well knows, she was there, was dealing with a financial crisis and the worst recession since the Great Depression. That was very serious and needed to be addressed quickly.

We now have the worst recession since the Great Depression again. We have instability in the Middle East. We have obviously a global pandemic that no one serving in government has dealt with before. These are all massive, major issues that the American public expects President Biden and Vice President Harris to do affective work on. And this truncated transition is just crippling their ability to do that as quickly as they could have been able to.

MS. KAMARCK: Great. Okay now let me ask you all the broader question. How do you explain this? Trump has lost almost every single law suit I think but one that he and his allies have tried. The Supreme Court has turned him down twice, rather clearly and abruptly. The electoral college is

voting today and he's going to win. There is kind of a fanciful notion that somehow, he can bring this up in the House of Representatives and they might vote otherwise. I sincerely doubt it. Why is Trump doing this? What's happening. John, do you want to start this off? What's going on in his mind?

MR. HUDAK: Sure. I think it's sort of the answer is the precursor to my last answer about institutional decay. And the reality is, Donald Trump is a candidate and Donald Trump as president has not really cared for the institutions of government. He is the state, right, he considers himself a one man operation and the rest of the government is there just to serve whatever his goals are. And not that he is there to serve those institutions and help those institutions work.

And so, you know, when we take a step back, we've seen concession speeches from candidates that are brutally painful. Before this panel, we were talking about Vice President Gore's concession in 2000, Hilary Clinton's concession in 2016. Very difficult moments for those two candidates but necessary moments.

And I think when we look back in 2016, Hilary Clinton lost a combined three states by about the same amount that Donald Trump lost by this time. Donald Trump lost the popular vote by significantly more this time. And Hilary Clinton's margin of loss in the electoral college was about what Donald Trump's margin of loss will be in the electoral college this time.

But the morning after the election, Hilary Clinton conceded in part because she respected the institutions of government and the importance of the peaceful transfer of power. And I think sort of a double reflection of that appreciation for the institutions, Hilary Clinton is today casting her vote for Joe Biden as an elector for the State of New York. She and President Clinton were both electors and they cast their votes earlier.

And she actually posted about it on social media and she said, we need to get rid of the electoral college but as long as it's here, I'm going to fill this role. And I think it's a remarkable moment to say even when you disagree with an institution, you respect that that is how the system works and you operate within that structure.

MS. KAMARCK: Well, and let me just do a little bit of advertisement. John and I have written a piece on the Brookings website saying how to get rid of the electoral college which I hope people will look at because a day is a day to consider that. John, let me just ask you one more thing.

What about Georgia? Okay, what about those Georgia Senate races? Do you think that's playing into this drama that we're seeing from the White House?

MR. HUDAK: You know, it's hard to say. I think so but the strategy that the Republican party is taking in Georgia by dragging this out is one approach to keep people motivated. But the problem is that the president, some of the president's allies, certainly social media supporters including a new social media platform is undermining that. It is not saying, get out to vote, go deliver these Senate seats for Republicans, keep that Senate as a check on Joe Biden. They're saying, the system is corrupt so why bother. And that is the worst message.

MS. KAMARCK: Yeah, you're exactly right. It is confusing. Lisa, what do you think is happening? What do you think is going on with Trump and this protracted fight?

MS. BROWN: So, I think John really did hit it on the nose here. I think from the very beginning, Trump hasn't believed in government, right. He's been a disrupter, he has been, you know, every process, you know, I served as staff secretary in the White House. And my job was to have material go to the president in an orderly fashion. We wanted to make sure that one person couldn't get in there and get their view with the president without other people weighing in.

This president values having that sort of disruption, he doesn't want order and he just doesn't value government. And I think the one thing that you're seeing, you've seen in the past from other administrations is that there is a real loyalty to the government to the processes, to democratic niceties.

And that has led them, you know, President Bush as we were talking about, he didn't want any balls dropped in between the administrations. And balls dropped, Trump loves that. He loves that whole disruption is something that he's really thrived on. So, unfortunately, he isn't incentivized in any way to be collaborating right now.

MS. KAMARCK: And Katie, what's your take on the chaos and what Trump is doing?

MS. TENPAS: Well, all I would say is all you need to do is think back to the transition of 2016. Where he immediately fired the transition team and apparently, they just tossed all of the work, the papers, the binders et cetera that Chris Christie had done. That was the start, to me, of a message of pure disdain for personnel.

As everybody knows on this panel, the most important task during the transition is to find

personnel. And if you look at his record, he has had record setting turnover in the senior level of the White House. He's had record setting cabinet secretary turnover. He's had record breaking turning over in the E1 and E2 positions which are the most senior positions in each of the departments. And right now, there's a hollowed out government because he didn't fill many of the positions.

So, for him, this notion that I'm cutting short or I'm somehow interrupting or disrupting a transition, what is that? I mean, to him it's of no matter because he has never from the beginning cared about the importance of personnel, the respect for these individuals that serve the country. He of all presidents has fired more of his staff members than anybody else just to show you as another indicator of this disdain.

And so, it shouldn't be surprising and I actually think that the Biden people were not surprised. I think they were anticipating that this would be rough. They knew that they would be the nominee, the party nominee probably by April/May. So, I'm guessing that they did a lot of work in advance to try to do whatever vetting they could possibly do and they came as prepared as they could anticipating that there would be some pushback that there would be some pockets of dissent which there are.

MR. HUDAK: Elaine, if I could pick up on that really quickly just to build on a point that Katie made about the vacancies and the real hollowing out of government. I was actually having a conversation with a friend a couple of weeks ago and this friend is a very liberal individual. And the person said, could things possibly be worse than what Trump has done?

And I said, well if you don't like what the president has done during his four years, imagine what he would have done if he staffed his government. Now policy formation apparatus was at its fullest. But he actually shot himself in the foot all along the way by leaving these agencies vacant.

And while the permanent government goes about their work, the ability to form policy in coherence with the president's view is crippled when you have almost everyone in an agency in an acting capacity and the leadership through the agency and into the department is vacant or turning over quickly. It was a real problem for President Trump and he could have had a much bigger impact on public policy in the United States had he not done that.

MS. BROWN: Can I just add to that? I think part of the reason he's lost in court so many

times is because --

MS. KAMARCK: I was going to say that, yeah.

MS. BROWN: -- the career, he didn't go through the right steps with the, you know, the civil servants know how to do this if you engage them, right. They know how to do it right but he kept doing it so quickly that it ended up actually being easier to challenge.

MS. KAMARCK: Yeah, Lisa I was just going to say that. I was just going to add in that in something I recently wrote, our regulatory tracker here at Brookings showed that of the 73 environmental changes that Trump had tried to do, almost all of them, somewhat substantially more than half failed. Either they were thrown out of court or they simply never got to where they were supposed to go.

And you're right, that's what a sophisticated political operation and a sophisticated career people can do. But by not having your political appointees in, you can't get into the minds, you can't get the sophistication and the can do of the career people. So, this is kind of those half good half bad, right. If you liked, if you wanted Donald Trump to do what he said he was going to do, you're really disappointed because he couldn't do a lot of it.

MS. BROWN: And Elaine, he did a lot from the White House. Right, if you think about some of his immigration that first, the travel ban, that came out of the White House and surprised the State Department, right. If he had consulted his agencies, same point, he would have actually been able to write it in a way that would have that would have (audio skip).

MS. KAMARCK: Yeah, exactly right. So, if you didn't like what he was doing, you could be thankful that he didn't put anybody on government. Let me -- yes, go ahead Katie.

MS. TENPAS: I was just going to say, the other thing in regard to personnel that's just a stark contrast from what Biden has done so far is I've studied the backgrounds of the senior staff and I've compared them to the backgrounds of other senior staff. And the Trump people have far less prior government experience which also feeds into this not only disdain for personnel but a disdain for processes and the importance of all those things in order to be effective. And so, you know, right from the beginning through his appointments, he sort of handicapped his ability to accomplish things.

MS. KAMARCK: Well, and you know, it's interesting because when you do have a presidential transition, usually what happens is the party that's coming to power will reach back to the

most recent presidential administration. So, it's not surprising at all that a lot of people in the Biden administration were people who served in the Obama administration. It wasn't surprising that a lot of people in the Obama administration like Lisa had been in the Clinton administration.

However, an interesting thing happened with Trump who as we know takes everything personally. The most recent Republican administration was the Bush administration. And Trump has a long and deep fight and animosity with the Bush family. So, the pool of experienced people that should have been going into a Trump administration either they felt uncomfortable serving this president or this president didn't want anything to do with them, so.

Well, let's move on to Biden himself. And let me ask all of you, starting with Lisa, how's he doing, okay? How has his response been to all the challenges before him and how do you think, is he on track when it comes to putting together his administration? What's going on?

MS. BROWN: So, you know, people said that the Obama-Biden transition was the best ever. I actually think this transition is the best ever. I think to Katie's point earlier, they started earlier. They are real professionals in how they're doing this. So, the fact that Biden has named more cabinet members, I think, Katie can check me here, then anybody else at this point.

And he's clearly, he's appointing people who know what they're doing. There is no question that he is valuing experience. And what you're getting a real sense of is that the message he's sending is we're professionals, we know how to make government work, we're going to get government working again for you.

And I think that you can see that in the appointments that he's making. And the other thing he's doing is he is living up to his promise about the most diverse administration so far. I think that when you -- and there are obviously a lot more appointments to come but he's been -- I think the themes in his appointments are experience and low key good people, I will say that too. You haven't seen a lot of, you know, sort of big personalities in this. And so, you get a sense of these are people who are going to hit the ground running, be able to do their jobs on day one.

Now the flip of that is you're starting to see this criticism of sort of retreads and wait, this isn't progressive enough, this is the same people all over again. And Elaine, as you indicated, every administration does to some degree draw, expect for Trump, on the last administration of their party. So,

it's not unusual but he is getting criticized for it and he gets experience.

I think the other thing I would say is we don't know what's going to happen with Georgia. But if he doesn't get the Senate, he's also going to be -- there's going to be a constraint there that he's going to have to face in terms of who he is able to get confirmed.

MS. KAMARCK: Katie, you probably have data on some other transitions. You have data on everything. Can you talk about that?

MS. TENPAS: So, the White House Transition Project is also is quantifying the pace of the transition in terms of appointments. They break it down White House staff appointments and cabinet appointments and it shows that Biden is well ahead of pace of his predecessors going all the way back to Carter.

And again, I think it's a couple things, the experience and knowing that he would be the nominee by late spring enabled them to sort of get things going in that respect. I also have data that does show at this point, it is the most diverse cabinet. You would have had to go back to Clinton to find the other diverse cabinet but it is far more diverse.

Of the 15 major departments, he's appointed eight of those individual secretaries. So, there will be seven more so there's interesting. There are all kinds of names that are floating around but he's a little bit over half way in terms of those major departments. As Lisa mentioned, not only do you see, you know, the dominance of experience but you also see more women and more minorities in these positions.

In terms of retreads, I just think that is the weakest criticism of all. As you point out, the norm is to go back to prior administrations to get experienced people. So, someone might move up from being a special assistant to the president to a deputy assistant or to an assistant to the president. And that's typically how you sort of move up and advance in politics.

You know, it's also the case that in some oral histories I've interviewed people and they've had prominent jobs in the private sector. But they will tell you that it took them six months to figure out what they were doing in the White House because the learning curve is so steep. And so, this makes perfect sense that we're in a moment of a major pandemic, racial tension and economic crisis, we need leadership that knows what they're doing or at least can master that curve much more quickly than

predecessors.

MS. KAMARCK: I can certainly agree with that. I mean, armed with a Ph.D. in political science, I went into the White House in 1993 and wow there was a lot to learn. So John, talk a little bit about the cracks that are showing in this transition that might be important to Biden as he starts to actually govern, particularly the progressive wing of the party.

You know, last week there was a meeting with Biden and African American leaders and a lot of them were unhappy. They wanted Marcia Fudge to be the agricultural secretary not the HUD secretary. I mean, there's been some of this brewing and some of it leaking out. Although I must say it's much more disciplined than a lot of transitions that I've been involved in including, by the way, the Clinton transition which was just like Clinton, all over the place. But John, talk a little bit about what's happening there and what tea leaves we can read about the upcoming politics.

MR. HUDAK: Sure. So, I think there's three areas in which the president-elect is going to be open to criticism and he has been open to criticism already with regard to his staffing choices. The first is ideological. Are there going to be enough progressives, are those voices going to be progressive enough to advance some of the values, some of the ideas, some of the policies that other leaders in the party want. And certainly, what some of the people who are responsible for the electoral coalition that brought Biden to office has espoused.

We have a great piece from our colleague, Vanessa Williamson on our Fix Gov blog that touches on this exact issue in Georgia. The groups that Biden elected in Georgia have been advocating for a lot of policies. And Vanessa explores the ability of those groups to get what they want from the Biden administration. So, ideological is the first one.

The second one, as Lisa touched on and Katie touched on, is this tension between experience and getting new blood into an administration. And every administration faces this tension and it is certainly one that's popped up now.

And the last is this issue of diversity which is particularly relevant for a democratic administration but it's particularly relevant for the president-elect because he committed to serious historic diversity in his administration. Starting first with his choice in a vice president and moving down throughout government as well.

But I think the setting that or the context we're in right now really minimizes two of those issues. The ideological one and the experienced one. So, starting with experience, as I said earlier, we're facing multiple crises. We're facing a global pandemic and a massive recession. And what American's want is experience, people who know what they're doing.

For most Americans when they look to government right now, you know, they don't want more Steven Miller's they want more Tony Fauci's. And that, I think, is going to help Biden overcome this demand for a massive infusion of young blood and new blood into the administration. I think too, given what we just talked about with regard to staffing or under staffing during the Trump administration, I think that's an even greater expectation for President-elect Biden to focus on.

Ideologically, that argument gets diminished simply by the politics of the Senate. At best, Joe Biden is going to have a 50/50 Senate in Democratic hands. It's probably more likely the Senate will stay in Republican hands. So, his ability to get maybe not Bernie Sanders but Bernie Sanders type appointees into agencies is just limited even with that 50/50 Senate. It's hard to see people like Joe Mansion moving to confirm and accept people like that.

And so, that leaves open the President-Elect to really focus on this diversity issue. And I agree with you, Elaine, the pushback that he's gotten so far has been fairly disciplined and I think people are just essentially saying hey, remember we're here and we're not going to let things slide. But his ability to do that now, that is his focus. That's where he has the greatest room to do what he committed to do and as Katie said, he's doing it. We have empirical evidence that it has already happened and the likelihood is that that will continue.

Well and, you know, I mean, you make a good point here. Between COVID and the likelihood of a Republican or at best tied Senate means that it's almost as if a lot of the intraparty tensions are going to have to be muted at least until 2022 when maybe something will switch in the Senate when hopefully this pandemic is over. So, we've got two years where I think the normal tensions within the party that we see a little bit of this in this transition are probably not going to be that important.

Let me, before we turn to Q&A, I'm going to ask a question which is, we are accustomed in America to this tableau. The tableau is the outgoing and the incoming president of the United States traveling together to Capitol Hill in a show of national unity. They are both on the podium as the transfer

of power takes place. This has happened often. Who thinks Trump is going to show up at Joe Biden's inauguration? What are the bets? Katie, want to start?

MS. TENPAS: It's not going to happen. I mean, he's already talked about launching a campaign at the very same time that Biden is being sworn in and having some sort of tarmac speech down in Florida. I don't know if he'll, you know, attempt to sort of steal the attention during that important moment in our history but there is just nothing -- I would be surprised if he's even conceded by then. I have a feeling we won't even get a concession speech.

MS. KAMARCK: John?

MR. HUDAK: Yeah, I'm with Katie on this. I can't imagine a scenario in which he attends. His focus is on himself and his own power and his own strength. And I think regardless of everything else, one thing that I think we can all agree on, Donald Trump has really enjoyed being President. It fills something psychologically in him and I think it does for most people who are elected to the office.

And so, you know, I think this is the equivalent of someone who really enjoys weddings and the inauguration is his divorce hearing. And so, he doesn't want to show up there anymore than someone getting divorced wants to show up to a hearing to finalize it. And so, I think he's going to be sunning himself on the golf course in Florida or holding a rally at noon on January 20th but I don't think he's going to be anywhere near the U.S. Capitol.

MS. KAMARCK: Lisa, what's your bet?

MS. BROWN: I'm afraid it's unanimous. I just I mean he can't ever depict or allow himself to be depicted as a loser. And to what we were talking about earlier, he doesn't value the peaceful transfer of power. I mean, Elaine, I was so -- we were talking about this earlier. You know, to listen to Vice President Gore's concession speech today where he says, you have to put country over party. And where he then went and sat in the House while they were, you know, the electoral college votes were coming in and he was presiding.

MS. KAMARCK: In the Senate, in the Senate.

MS. BROWN: Sorry, right you're quite right. Was just another, it feels like another era right now although I'm hopeful it's one that we will get back to.

MS. KAMARCK: Good. Well, you know, it's interesting. There have been other presidents who have skipped the inauguration. If Trump skips his, he won't be the first. Our second president, John Adams, was headed back to Massachusetts after the very contentious election of 1800. Which by the way, still makes even our recent bitter elections look kind of like kindergarten, okay. And he lost that election to Thomas Jefferson.

And then Adams' son, John Quincy Adams also skipped his inauguration after his defeat at the hands of Andrew Jackson in 1828. And then Andrew Johnson, the first president to be impeached, the man who had been Lincoln's vice president, skipped the inauguration. He was definitely not welcomed at the inauguration since it was his own party that had tried to impeach him and the incoming president, for General Ulysses S. Grant really hated his guts.

So, this happened before and it has happened with presidents that have been pretty unpopular and pretty polarizing. So, I guess there's a little bit of precedent there.

I'm going to now turn to some Q&A. I want to remind our viewers that you can submit questions for the speakers via email to [events@brookings.edu](mailto:events@brookings.edu) or via Twitter using #Transition2021. But let me take a question that had come in earlier while you're all doing this. And this comes from Donald Palmer and he asks, what changes in the law and the procedures governing transitions can be made to ensure that a recalcitrant president can't interfere with the process. And Lisa being a lawyer on this, I mean, are there any changes that you think are realistic that could keep somebody else from doing what Trump is doing?

MS. BROWN: So, there has been a trend of more and more, right Elaine, as you indicated with your opening, right. The fact that now there is a every agency has to designate a career official to be in charge of the transition for that agency. They're required to prepare briefing materials by a certain date and share it.

There was actually a huge amount of work done by the agencies here and my understanding is that for that most part, they are now sharing that with the Biden transition. I think there are a couple things they could think about. One is defining, trying to define ascertainment better and what would qualify for ascertainment or --

MS. KAMARCK: Lisa, define ascertainment for our audience.

MS. BROWN: So, the head of GSA has to ascertain the likely winner of the presidential election and that ascertainment is what triggers the start of the transition. That is what held it up this time because she did not issue that, send that letter. Or if that's too challenging, you could also say, we want to make sure that certain information is shared with the -- even if you don't yet know the winner of the election because this could happen with a genuinely contested election.

As I understand it when during the Bush v. Gore litigation, President Clinton as a matter of discretion, gave candidate Bush at that point the national security briefings. He didn't have to but he did. So, you could for example say, if it's still contested you want to make sure that both potential presidents are getting those briefings. So, there are things like that that you could do.

MS. KAMARCK: Yeah. Katie any thoughts on this?

MS. TENPAS: I'm wondering if you could make the GSA position a career civil servant instead of a political appointee. Because it was pretty clear that Emily Murphy was taking some directions from Mark Meadows at the White House. Interestingly, the tweet she released after she ascertained, you know, suggested it was her own independent decision. But it was quickly followed by a Trump tweet saying thank you for, you know, working together which completely undermined her claim of being independent.

But that strikes me as kind of an easy way of doing it. And also, just as Lisa said, being much more specific about how you go about ascertaining and what bars need to be met before you can ascertain.

MS. KAMARCK: Yeah, you know, that is really interesting. Because when you think of GSA, the other things it does, it does really the -- it really has the administrative business of the government. Real estate, a very important job, a very important agency but not really a policy making agency so that's really possible. John, what's your thought?

MR. HUDAK: Yeah, my recommendation was going to be exactly Katie's. GSA just isn't a political entity. But the political part of staffing happens in the Office of Presidential Personnel. And so, I think you're probably not going to lose much by making that a career position and anything that GSA does that a president might want to remain having, you know, a political thumb on, you could probably move some of that out of the agency and into somewhere else. But my guess is most presidents would

be fine without having to pick a GSA head.

MS. KAMARCK: Yeah, okay. Let me go to another one from a Dennis Lane. And it's his, Dennis' perception that Biden, that the expectations for Biden's transition team are higher than those of the current administration. Could anybody answer why. John, maybe start with you.

MR. HUDAK: Well, I think the expectations for President-elect Biden overall are very different than they were for President Trump. What I will say though is it's sort of an interesting approach. Because I think that the questioner is correct that those expectations are higher because he was Vice President, because he has all these years of experience in the Senate, including shepherding confirmations through the Senate as judiciary chair and in other positions.

But I actually think it should be the flip. Our expectations should have been higher for Trump because of his lack of experience in government. Making that transition -- I'm sorry, those staffing choices so much more important to his administration. I think most people look at it and say yeah, you know, Joe Biden knows how to be president.

You might not think he's going to do a good job, you might think he's going to a great job, you might think he's going to do a mediocre job but he knows how to be president. People didn't think that about Donald Trump during the transition. So, while I think that those expectations are different between the two candidates, I think they're actually flipped compared to what they should be.

MS. KAMARCK: Okay. Lisa?

MS. BROWN: I think that I completely agree that the expectations are higher. I think part of it is that President Trump he's never conformed to any of the expectations. And so, people are so accustomed to that, they never expect him to be doing what you would expect for good government.

So, it's a little bit like you've got apples and oranges, right, you can't even compare the two. And because Biden has been in government for so long, there's this sense of professionalism coming back and they expect more of that. They've come to expect less and less of it of President Trump.

MS. KAMARCK: Katie.

MS. TENPAS: And I might actually add that in some ways he's exceeded expectations. If you think about it, ever since the election they have been very calm, collected and they have kept their sort of nose to the grindstone with appointments.

And they didn't, I mean, I thought maybe they would sue the GSA or somehow make some sort of public declaration of why what the GSA was doing was wrong. But they just sort of kept their nose to the grindstone and kept working away in a calm manner and an efficient manner and they've accomplished a lot. They're way ahead of pace compared to their predecessors. So, I would say in the expectations game maybe they are higher but I think he's exceeded that at this point.

MS. KAMARCK: Okay now here comes a question from Roberta Stanley that I suspect there's loads of loads in people in Washington wanting to know the answer to and Roberta, thank you for asking it. And that is how does one engage with a transition team? Lisa, you had the most recent (crosstalk).

MS. BROWN: So, there is actually, if you get on their website, I mean, if you're interested in getting a government job and working in the administration. If you get on their website, they have a form and they're doing what every transition does. And they are collecting names of people.

But I think the other thing especially if you're in Washington, you tend to know some of these people. And practically speaking, you know, the best thing to do is if somebody you know is nominated to be a cabinet secretary, you reach and say hey I'd love to work for you.

And for working for the transition itself, that has been set for quite a while, right. So, what's happening now is they're, you know, thousands and thousands of people who would like to help restore faith in government and so, you know, they're doing their best to engage with the transition or with someone on the transition teams to get their name into the mix.

MS. KAMARCK: Yeah. Any thoughts, Katie?

MS. TENPAS: Well, I was going to say, I always heard the old joke that the transition team it was an employment program for those who had worked on the campaign so that they had somewhere to go after the election to work until the government got started. So, yeah, I might --

MS. BROWN: So Katie, that doesn't actually happen. The transition, for the most part, the transition is set up as a, if you think about it, they started in March or April. It's set up quite consciously as a parallel process so that all the campaign energy can be spent focused on the campaign. And there are absolutely some people that then come over post-election but most of it is people that you've lined up long before.

Because if you think about the Agency review teams, you want people who know those agencies already. Right (audio skip) where you don't want any learning curve, right. You want people that can go in and talk to the career folks in the agency and know the questions to asked because they've worked there before, right.

So, there is more of a premium on prior government experience on the transition. And the thing that does happen is that there is a goodly number of people on the transition go into the government. And I think the statistic on the agency review last time was about 50 percent did. So, about half of the folks working on agency review teams ended up going into the agencies. And then half went back and kept doing what they were doing before.

MS. KAMARCK: You know, one of the and John can talk a little bit more about this. But one of the things that we forget to realize about our modern federal government is there's a huge amount of expertise required.

So, just take a person who is very in the news right now, the head of the Food and Drug Administration. You know, the President-Elect may love you, you may have delivered Cuyahoga County and won the state of Ohio for the President-Elect. But you know what, if you're not a molecular biologist or a biochemist or a guy who has a, a guy or a gal with a medical degree and a PhD, you can't be director of FDA, okay.

And we have a very modern and sophisticated federal government which means that there's a just a lot of expertise needed and the people with those kinds of expertise are not likely to be found working in campaigns. So, that's the mismatch. John?

MS. BROWN: You do traditionally, I'll just say one more thing. Traditionally, you do have a number of campaign folks who work for the inaugural committee.

MS. KAMARCK: Yes, that's true.

MS. BROWN: This year, I don't know what that means because I don't know what type of, you know, I think it's going to be a far more limited inauguration.

MS. KAMARCK: John.

MR. HUDAK: Yeah, you know, I think one of the points that Katie brought up earlier is an important one to respond to Roberta's question about the transition. I think a lot of people outside of

Washington think inauguration day happens, the transition team ends and that's it and you know, that's generally correct.

But the business of staffing the government endures. And so, if you do, Roberta if your question is sort of based on your own interest and you're interested in getting a job, you know, if you don't get outreach from the transition team by January 20th, only a very select number of those 4,000 political appointments are selected before the inauguration. And then all of that transfers over to the Office of Presidential Personnel.

And so, we think of the transition as a 78 day process and it really is. But the transition towards staffing a government is actually a (audio skip) endeavor. It's never ending. And so, just as important as what the transition team does, I think the President-Elect's choice of staff positions in the Office of Presidential Personnel, including the director but also deputies there are important.

And I'll say as a sort of plug, if the Biden team is looking for someone to run OPP, there's no one better than Katie Tenpas to do that. But it's a critically important position that a lot of people don't know about and that process of staffing is one that I think alludes a lot of people as well.

MS. KAMARCK: Good.

MS. TENPAS: I was going to say, I think Kathy Russell has her eyes on the -- or has the job of presidential personnel and she's been with Biden for many, many years. I'm sure she'll do a great job.

MS. KAMARCK: And she was Mrs. Biden's Chief of Staff. So, if you know --

MR. HUDAK: Dr. Biden's Chief of Staff.

MS. KAMARCK: Dr. Biden's Chief of Staff. And so, Roberta, if you know Kathy Russell, you're in good shape. But, you know, this does go back to the fact that one of the unique things about Joe Biden is that he's been in high office in the United States for decades and decades. Loads of people who have worked for him, loads of people that he knows. So, I think they have a pretty good idea.

But as John said, you know, an administration is four years or even eight years and people come and go. People leave for this reason or that reason so don't give up hope for those of you wanting to go in.

Finally, we have an interesting question from Jean Ann Mayhem. Who asks, what are

the impacts of presidential powers in the post-Trump era? And I think this has kind of been a discussion a lot of us have begun having given the Trump presidency. Are we just going to say, okay that's over let's return to business as usual? Or are there things that we can see changing because of the sort of uniqueness of Trump's presidency. Katie?

MS. TENPAS: I definitely think we need to tighten things up. I mean, what I would say right off the bat having to do with White House staff is the nepotism. Having your son-in-law and your daughter working as senior aides, I think that should not be allowed to happen.

There are things that are going to be more complicated and require congressional intervention. So, for instance, when he used, he took funds from the Department of Defense to build the wall at the border and did a lot of creative financing. There's been a great deal of abuse of the Vacancies Reform Act in terms of how long acting's are allowed to stay in jobs.

The DHS has had all kinds of legal gymnastics there to try to keep Chad Wolf as the acting head and they've really gone to some great lengths to try to do that. So, the Federal Vacancies Reform Act really needs to be tightened up as well.

I am sure that things are going to have to be done in regard to executive orders. I don't think Biden will have a problem with this but, you know, he clearly, Trump has used the executive order and wielded that pen extensively.

MS. KAMARCK: Good. John, what's your thought?

MR. HUDAK: Yeah, I agree with everything that Katie just said. One of the problems, of course, that we know from the literature is that every president in some way or another expands presidential power. It is very uncommon for presidents to return that power to where they took that from.

I think there's a real opportunity and a real necessity for Joe Biden to think about ways to weaken the Office of the President from where it is right now. And I think one of the most important steps that he can take off the bat is a strong signal to Congress about cooperation with regard to oversight and transparency.

What this president has done to the norms of congressional oversight is disastrous for the functioning of the government and for accountability within government. And I think it would be an important step for the new president, particularly actually if the Senate is controlled by Republicans to

demonstrate that cooperation.

If he's cooperating with Nancy Pelosi's House, it's not that big of a reach. But if he's cooperating across the aisle to signal that no, the president is not exempt from the requests of Congress, I think it's an important show of what he sees and what his theory is about the proper role of the presidency in our government.

MS. KAMARCK: Lisa, you want to finish this one up?

MS. BROWN: So, I think that Trump has been more comfortable just plain disregarding the law and saying (audio skip) make me do it in a way that others have not. I mean, I do think there's been a different standard and in essence, it's ended up being applied to him and I think we're going to have much more of going back to a norm of, you know, as John is talking. Typically, you have a conversation with Congress when they're asking for testimony or for people and you have accommodations.

And I think you're going to see a big difference with regard to the relationship with the Justice Department. I think you're going to have it revert to what it's traditionally has been where the Justice Department, any communication especially on an investigation matter, you don't interfere. The politicals do not interfere with investigations by Justice. Any communication is through White House counsel.

I think you're probably going to continue to see use of executive orders. I think if we especially if the Republicans hold on to the Senate. I think that is something that you will continue to see but I think it will be done in an a more thoughtful manner engaging with the agencies before you issue an executive order so that it's then hopefully upheld if it's challenged. But I do think it's going to be, I think we'll be much more back to if a criticism for not abiding by a certain requirement but I think Biden's team will be much more sensitive to that.

MR. HUDAK: Elaine, if I could jump in really quickly. Something Lisa said gave me a thought. That one of the things that the new president can do also is exercise the power of the office in a way that shows a marked change from how this president has exercised. And I don't necessarily just mean overturning executive orders and this.

I think in the next, you know, five weeks, we're in for a very interesting use of the pardon

power. We've already seen an interesting use of the pardon power. But I think a lot of president's friends and supporters are going to get pardons, perhaps family members as well.

And I think one way that the new president could demonstrate, you know, these presidential powers exist but they don't have to be used in perverse ways. Would be very early on in January or February to do sweeping pardons for non-violent drug offenders in this country.

It would be an interesting outreach to his base, the people who got him elected but also to say listen, the pardon power is there to do good and not just to help your friends. And that begins that process of restoring faith in government and I think that restoration of faith in government begins with the exercise of presidential power.

MS. KAMARCK: That's a great idea, John, and of course, the House voted in their drug bill I think just last week voted to do that but, of course, it died in the Senate. Very quickly in the last couple minutes, we have a question and you touched on it, John so you go first but be brief. What can Trump do in his remaining five weeks? We know that he can pardon people. Is there anything else of consequence that he can do in this last five weeks in office?

MR. HUDAK: Yeah, I think the pardon power is obviously a really important one. It also then creates limits on what type of efforts another administration and the next Congress can do in terms of holding individuals accountable. We don't expect much legislation to get passed so we'll probably see the finalization of some more regulations on the way out the door.

And certainly, at this point the exercises in presidential power by executive orders and other memoranda, those are only going to last for a few weeks if they're beyond the pale. But I really think the pardon power is something that a lot of people are talking about but don't appreciate how much havoc that can create in terms of the norms in function of our system.

MS. KAMARCK: Lisa, what can he do in the next five weeks?

MS. BROWN: One thing he's actually trying to do is he's tried to create a whole new category of civil service. So, people who have been in career positions who were doing policy work which is so broad and can encompass thousands of career employees, that they could be let go as if they were political.

And so, some of the agencies, OMB included have apparently identified a number of

those individuals. If they are actually let go treating them like they're political, that is devastating at the beginning. Because if you think about OMB which has phenomenal expertise --

MS. KAMARCK: Yeah, exactly.

MS. BROWN: -- administration to administration. And you could rehire them but all that is going to take time. And so, I think that is a very -- another destructive thing he's doing right now in addition to what John identified.

MS. KAMARCK: Katie, you get the last word.

MS. TENPAS: Yeah, I would agree with all of that. I think what Lisa was referring to is the schedule F that they tried to create at OMB. Which there have been a lot of former OMB staffers who have signed a statement to the effect of how damaging that could be in the long term.

So, I would agree with everything that John said and that Lisa said. And the only other thing I think to keep an eye out for are the Trump people that try to burrow into the government into civil servant positions and then at that point, try to wreak havoc. I think our government makes it difficult to do to really wreak havoc when it's one individual but I think we should keep an eye on that as well.

MS. KAMARCK: Great. Well listen, with that I want to thank John and Lisa and Katie for participating. They all have great and interesting careers and wonderful things to read. Katie and John and I will be writing about the transition, sort of some of the lesser known pieces of the government as the months go on. And I hope that you will join us at Brookings again and thank you to everyone for participating today.

\* \* \* \* \*

#### CERTIFICATE OF NOTARY PUBLIC

I, Carleton J. Anderson, III do hereby certify that the forgoing electronic file when originally transmitted was reduced to text at my direction; that said transcript is a true record of the proceedings therein referenced; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken; and, furthermore, that I am neither a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Carleton J. Anderson, III

ANDERSON COURT REPORTING  
1800 Diagonal Road, Suite 600  
Alexandria, VA 22314  
Phone (703) 519-7180 Fax (703) 519-7190

(Signature and Seal on File)

Notary Public in and for the Commonwealth of Virginia

Commission No. 351998

Expires: November 30, 2024