

★★★★★ THE EVOLVING AMERICAN PRESIDENCY ★★★★★

PRESIDENT GEORGE
W. BUSH'S
INFLUENCE OVER
BUREAUCRACY
AND POLICY

EXTRAORDINARY TIMES,
EXTRAORDINARY POWERS

Edited by

Colin Provost and Paul Teske



THE EVOLVING AMERICAN PRESIDENCY SERIES

Series Foreword:

The American Presidency touches virtually every aspect of American and world politics. And the presidency has become, for better or worse, the vital center of the American and global political systems. The Framers of the American government would be dismayed at such a result. As invented at the Philadelphia Constitutional Convention in 1787, the presidency was to have been a part of a government with shared and overlapping powers, embedded within a separation-of-powers system. If there was a vital center, it was the Congress; the presidency was to be a part, but by no means, the centerpiece of that system.

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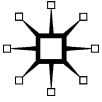
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PRESIDENT GEORGE W. BUSH'S INFLUENCE OVER BUREAUCRACY AND POLICY
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Softcover reprint of the hardcover 1st edition 2009 978-0-230-60954-9

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First published in 2009 by
PALGRAVE MACMILLAN®
in the United States—a division of St. Martin's Press LLC,
175 Fifth Avenue, New York, NY 10010.

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this is by Palgrave Macmillan, a division of Macmillan Publishers Limited,
registered in England, company number 785998, of Houndmills,
Basingstoke, Hampshire RG21 6XS.

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ISBN 978-1-349-37609-4 ISBN 978-0-230-62016-2 (eBook)

DOI 10.1057/9780230620162

Library of Congress Cataloging-in-Publication Data

President George W. Bush's influence over bureaucracy and policy:
extraordinary times, extraordinary powers / [edited by] Colin Provost and
Paul Teske.

p. cm.—(Evolving American presidency)

Based on a conference entitled "Politics and policy making in the
Bush administration federal bureaucracy" held at Oxford University,
June 21–23, 2007.

Includes bibliographical references and index.

1. Bush, George W. (George Walker), 1946—Influence—Congresses.
2. Bush, George W. (George Walker), 1946—Political and social views—
Congresses.
3. United States—Politics and government—2001—
Congresses.
4. Presidents—United States—Congresses.
5. Executive
power—United States—Congresses.
6. Control (Psychology)—Political
aspects—United States—Congresses.
7. Bureaucracy—United States—
Congresses.
8. Administrative agencies—United States—Congresses.
9. Political culture—United States—Congresses. I. Provost, Colin.
II. Teske, Paul (Paul Eric)

E903.3.P74 2009
973.931092—dc22

2008035081

A catalogue record of the book is available from the British Library.

Design by Newgen Imaging Systems (P) Ltd., Chennai, India.

First edition: April 2009

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Acknowledgments

This book came together largely as a result of the “Politics and Policy Making in the Bush Administration Federal Bureaucracy” conference held at Oxford University, 21–23 June 2007. Without the conference, the book would not have been possible, so we would like to thank those who made the conference possible. First, Desmond King used his considerable clout at Oxford to help secure funding for the conference and organizational details. His assistance was invaluable. Also, we would very much like to thank Lindsay Earnhardt, Esther Byrom, and Bridget Taylor in the Department of Politics and International Relations at Oxford. Without their contributions, conference participants would have been deprived of minor things like food to eat and places to stay. In addition, conference participants who also played the role of paper discussants helped to make the chapters in this volume stronger. Thus, we would especially like to thank the paper discussants who do not appear in this volume: Joel Aberbach, Nigel Bowles, Fabio Franchino, and Desmond King. At Palgrave, we would like to thank Toby Wahl and Emily Hue for their assistance in the editing process and to the anonymous Palgrave reviewers who provided the authors in this book with further ideas for their chapters. Finally, we would also like to thank Kristin Schumacher for her excellent work on the book’s index.

Paul Teske would like to add additional thanks to Colin Provost, who put the Oxford conference together, laboring long and hard before and after, to help shape the papers into this volume. Colin’s careful selection of conference participants and paper topics made the task of editing this volume far easier than is sometimes the case with a group of conference papers.

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Chapter One

Extraordinary Powers, Extraordinary Policies?

Colin Provost and Paul Teske

September 11 changed everything!

That has been the overarching theme of most American political and policy discourse over the past seven years. Whether or not it is true more generally, September 11 certainly has changed the Bush presidency. George W. Bush had won the 2000 election by the barest of electoral vote margins, while losing the popular vote, and gained office partly through an unprecedented and highly controversial decision by the U.S. Supreme Court. By 10 September 2001, only nine months after assuming office, his popularity levels were gradually dropping, and he faced serious opposition to his proposed tax cut and Social Security policy proposals.

With the shock of September 11, however, America experienced a major “rally round the flag” period, in which support for the president skyrocketed to wartime levels. At least for a time, this gave the Bush administration an enormous amount of political capital, specifically in addressing national security and homeland defense issues, in addition to most policy spheres. And, the Bush administration was quick to seize on such a national mood to push many of its favored policy proposals, homeland security related, and otherwise.

In the years since 2001, many commentators have suggested that the Bush administration politicized the federal bureaucracy to an extreme level, placing political favorites into agencies where they had little subject area expertise, expanding the use of signing statements (presidential statements that assert the parts of a law by which the president will abide) and executive orders, and sometimes rewriting and changing expert bureaucratic reports to better suit their political agenda. On potentially unqualified appointees, a report in *Knight Ridder* newspapers said of Bush and the Federal Emergency Management Administration (FEMA) after Hurricane Katrina that

“the Bush Administration has filled FEMA’s top jobs with political patronage appointees with no emergency-management experience...” (Borenstein and McCaffrey 2005). On signing statements, the *Boston Globe* reported: “legal scholars say the scope and aggression of Bush’s assertions that he can bypass laws represent a concerted effort to expand his power at the expense of Congress, upsetting the balance between the branches of government” (Savage 2006). And on scientific reports, the *New York Times* editorial page claimed in February 2004 that “no administration in recent memory has so shamelessly distorted scientific findings for policy reasons or suppressed them when they conflict with policy goals.”

But these reports are mainly anecdotal and have not been subject to more rigorous scholarly scrutiny. Did the Bush administration attempt to politicize bureaucratic decision making more than prior presidencies? Were they successful in changing bureaucratic outputs? There is a substantial academic literature that argues how difficult it can be for presidents to influence bureaucratic behavior; the Congress, courts, and various interest groups have their own role to play in the processes, making bureaucratic policy a domain not exclusively about presidential influence.

In this book, we bring together several experts on bureaucratic behavior and policy outcomes, to sort out these claims and issues. Since the topic of presidential, congressional and interest group influence over bureaucratic agencies has become increasingly central in political science and public policy for the past 25 years, we are able to expand that literature using the extraordinary “case study” of the Bush presidency, and to utilize the quite sophisticated quantitative models and approaches now available. While this book is mainly aimed at an academic audience, there is a broader audience that has focused its attention on the extraordinary expansion of presidential powers, initiated and asserted by President Bush. After the 9/11 terrorist attacks, America and the Congress arguably accepted, or at least tolerated, a greater presidential role in agency decision making, in part to address national security and expediency concerns. And, the Bush administration was not shy about pushing the outer limits of their influence far. We also aim to speak to that broader audience in this book.

As several of our studies find, despite the Bush administration’s fierce attempts to control bureaucratic policymaking, it is not clear whether the administration has been able to produce the intended results. Administration mandates have often been at odds with agency procedures and missions and thus, in some cases, the result has been low morale within agencies and higher staff turnover. In addition, the

administration has often sent conflicting policy signals to bureaucratic agencies, particularly in salient issue areas such as homeland security. Thus, we provide some counterevidence to the “common wisdom” that President Bush has successfully accomplished his own policy goals with a “muscular approach” to transforming bureaucratic organizations and outcomes. We provide examples from the broad policymaking domains of homeland security, disaster management, education, and several areas of social and economic regulation.

The State of Presidential Influence

Early research on presidential control of the bureaucracy tended to minimize the role of the president. The politics-administration dichotomy framework, prevalent until the 1950s, focused on the alleged independence of bureaucratic agencies and thus did not treat agencies as entities to be controlled (Wilson 1887; Goodnow 1900). Thereafter and through the 1970s, iron triangle theories and theories of regulatory capture emphasized the role of interest groups in shaping regulatory policy (Peltzman 1976; Posner 1975; Stigler 1971). And, iron triangles did not feature a major role for presidential influence over policy outcomes. However, these theories suggested that much policymaking occurred in narrow, but powerful policy subsystems, leading Hugh Hecló to observe that theories of iron triangles “are not so much wrong, as they are disastrously incomplete” (1978: 88). Hecló’s suggestion that policy was more likely created by “issue networks” allowed room for influence from a larger number of organized interests, as well as other political players.

Contributing to the notion that iron triangles were incomplete theories, Richard Nathan argued that the president had the ability to influence bureaucratic policymaking through administrative tools, such as appointments or agency reorganizations (1975). In particular, Nathan argued that this was the strategy employed by the Nixon administration. Installing loyalists in the bureaucracy was important for Nixon as bureaucrats in many agencies responsible for domestic policy were hostile to his agenda (Aberbach and Rockman 1976). Nixon’s attempted transformation of the bureaucracy was limited though, by Watergate and by a larger focus on foreign policy (Nathan 1975). However, Nathan also argues that President Reagan followed the Nixon strategy, and had greater success.

Following in Nathan’s footsteps, Terry Moe demonstrated that bureaucratic outputs often correlated with presidential ideology (1982)

and that presidents could employ the shared power of appointment to influence decision making at agencies like the National Labor Relations Board (1985b). Moreover, as Nathan noted, the Reagan administration brought sweeping changes to the structure and function of numerous bureaucratic agencies, changes that have been well documented in the literature. Many studies have shown that during the Reagan administration, through the use of agency appointments, agency reorganization and budget shifts, regulatory enforcement was rolled back in the Environmental Protection Agency (EPA) (Whitford 2005; Wood 1988; Wood and Waterman 1994), as well as in the Equal Employment Opportunity Commission (EEOC) (Wood 1990; Wood and Waterman 1991), the Federal Trade Commission, the Food and Drug Administration (FDA) and in the Office of Surface Mining (Wood and Waterman 1994). Still, these studies also showed some of the limits of even very aggressive presidential actions and appointments, showing a role for Congress, media, and the agencies themselves.

In addition to using the powers of appointment and agency reorganization to shape agencies in a conservative direction, Reagan also sought to use administrative tools to reduce the growth of new regulatory rules. The implementation of new regulatory rules was perceived to be one of the causes of rising inflation and increased business costs during the 1970s, so in an effort to reduce such costs, Reagan passed Executive Order 12291, which mandated that agencies ensure that the expected benefits of new rules exceed the expected costs (Kerwin 2003; McGarity 1991).

This expansion of control of regulatory bureaucracies has taken place in the context of broadening presidential powers in general. Richard Neustadt originally argued that the main power of the president was his ability to persuade people to accept his policy agenda (1960), but a wealth of recent research has demonstrated that many presidents have chosen to advance their policy agendas through unilateral action, particularly relying on administrative tools of the presidency. First, presidents increasingly pass important policy changes, such as E.O. 12291, through executive order (Cooper 1986; Howell and Lewis 2002; Krause and Cohen 1997, 2000; Mayer 1999). Second, while much research has documented the important effects that political appointees have on bureaucratic agencies, David Lewis has examined the role of appointees even more closely and has found that presidents will increase the number of appointees in agencies in which they are likely to have ideological disagreements (2005, 2008; also see chapter two). Third, in order to modify or nullify particular aspects of legislation rather than veto an entire bill, presidents have

increased their use of the presidential signing statement (Cooper 2002). According to Philip Cooper, signing statements were largely developed during the Reagan administration, but their use has exploded during the George W. Bush administration and they, to a significant degree, explain why President Bush never vetoed any legislation during his first term (2005). Finally, Terry Moe and William Howell argue that in the modern presidency, presidents can exploit constitutional ambiguities and assume power where it is not necessarily prohibited by constitutional or statutory law (1999).

Power and Influence in the Bush Administration

The expansion of presidential power accelerated dramatically during the Bush administration, as the president and his advisers employed a vast arsenal of administrative tools with the goal of tightly controlling bureaucratic behavior. Many scholars have suggested that Bush's business school education significantly influenced his thinking on how best to accomplish his policy objectives. James Pfiffner has argued that "President Bush has achieved significant policy victories through secrecy, speed and tight control of the executive branch by his White House and his political appointees" and "secrecy, speed and top-down control are all qualities attributed to business management..." (2007: 7). Similarly, Lewis suggests that "Bush's focus on top-down control, delegation, measuring performance and managerial flexibility has important connections to Bush's graduate education" (chapter two: 20).

Naturally, delegating important policy tasks to political appointees in agencies will only be successful from a policy perspective if ideologically like-minded people are selected to do the job. And much evidence indicates that Bush White House officials were zealous advocates of installing their own people—people who typically have business backgrounds—in crucial, bureaucratic positions throughout the executive branch. First, and most obvious, many of President Bush's Cabinet selections, such as Vice President Cheney, Treasury Secretary Paul O'Neill, and Secretary of Defense Don Rumsfeld, had business backgrounds or had been CEOs of companies. In addition, Secretary of Labor Elaine Chao had been CEO of the United Way of America and Commerce Secretary Don Evans had been CEO of oil company, Tom Brown, until joining the administration in 2001.

While trying to run the government as a business, Bush also gained a reputation for selecting appointees with distinct probusiness policy

biases, particularly in regulatory agencies. In environmental policy, Gale Norton's appointment as Secretary of the Interior, J. Steven Griles's appointment as Deputy Secretary of the Interior and a number of subexecutive, Senate-confirmed appointments in the EPA (see Provost, Gerber, and Pickup chapter nine) were all perceived as being more favorable to industry interests, rather than environmental interests. Similarly, Bush's pick to head the Occupational Safety and Health Administration, John Henshaw, had worked for two decades at Monsanto Corporation and had been the Director of Environment, Safety and Health at another chemical company, Astaris LLC (Goldstein and Cohen 2004). Moreover, Bush's choices of John Graham to head the Office of Information and Regulatory Affairs and Timothy Muris to lead the Federal Trade Commission were indicative of a desire to also appoint scholars to key positions, as long as they were scholars devoted to the ideas of economic efficiency, cost-benefit analysis, and the free market.

While these political appointees had their own important impact on directing policy within agencies, they also had a role in trying to install conservatives in entry and mid-level positions within agencies. One of the most significant examples was within the Department of Justice (DOJ). In 2002, Attorney General Ashcroft shifted control of recruitment of lawyers for the Attorney General Honors Program and the Summer Law Intern Program, from career employees to political appointees (Eggen and Goldstein 2007). The programs, established during the Eisenhower administration, had been in the control of career employees for most of their existence. Loyalty, rather than excellence, became the key selection variable. In the wake of the scandal over the firing of nine U.S. Attorneys, control of the program was returned to career officials in April, 2007.

Moreover, in April, 2007, the Boston Globe reported that a large number of attorneys hired to work in DOJ came from Regents' University, a university founded by conservative evangelist Pat Robertson (Savage 2007c). The fact that, at the time, Regents was a fourth-tier law school, tied for 136th place in the national rankings (*ibid.*), emphasized to many observers that the administration valued ideological loyalty over competence or credentials.

White House officials found, however, that at times they could not control policy output of a large federal government apparatus entirely through personnel maneuvers. In particular, the administration was often quick to alter the content of agency reports that had the potential to contradict stated White House policy. For example, in June 2002, the EPA sent a report on global warming to the United Nations,

which indicated that human action was a significant contributor to global warming. President Bush offered a tepid response to the report (Seelye 2002b) and the following year, when the EPA was preparing to release another report on the state of the environment, the White House insisted on deleting the section on climate change (Revkin and Seelye 2003).

As a result of instances such as these, major segments of the scientific community protested, throughout Bush's tenure, that his administration politicized science. In July, 2004, the Union of Concerned Scientists issued its second report of the year, "accusing the Bush administration of undermining science in crafting environmental and health policies..." (Ebbert 2004: A8). More than 4,000 scientists signed the statement. Moreover, in July, 2007, former Surgeon General Richard Carmona testified before Congress that when he refused to implement what he considered to be a deeply political health agenda from the administration, he was "repeatedly muzzled and marginalized" (Patton 2007). He further claimed that administration officials "vetted and censored his speeches, would not let him speak freely with reporters, attempted to insert political phrases and candidates' names into speeches, and told him to follow administration policy instead of science" (ibid.). These are prime examples of the Bush administration reaching deep within bureaucratic agencies to manually alter policy when it is not enough to rely simply on the job done by appointees.

Finally, of course, Vice President Dick Cheney also asserted robust versions of the institutional power of the American president. Unlike previous vice presidents, Cheney played a key role in numerous important policy decisions. At the start of the Bush presidency, former vice president Dan Quayle, in offering Cheney advice, told him he would be fund-raising, attending funerals, and performing other largely symbolic duties. According to Quayle, Cheney "got that little smile" and said, "I have a different understanding with the president" (Gellman and Becker 2007: A1). From the administration's outset, the vice president exerted a strong influence over policy, performed his duties with little accountability to actors outside the executive branch, and occasionally employed creative legal reasoning to justify the secrecy of his activities. He frequently asserted executive privilege to avoid releasing documents to Congress, such as the time when members of Congress demanded to know the activities of his energy task force. In 2007, he refused to abide by an order stating how to treat classified documents, by claiming that the vice president's office was not part of the executive branch (Milbank 2007b). Thus, we see that

Vice President Cheney was prepared to push the boundaries of presidential power as far as possible, in order to conduct an unfettered pursuit of Bush administration policy objectives.

Constraints in Implementing the Bush Agenda

The Bush administration's unprecedented control and centralization of power over bureaucratic agencies would suggest that President Bush has succeeded in transforming policy, according to his vision. However, the difficulties of implementation can often produce policy failures, even in the presence of tight political control.

According to the bureaucratic ideal type offered by Woodrow Wilson (1887), administration is kept separate from political decision making, administrators are directly accountable to politicians, and administrators display what Herbert Kaufman later referred to as "neutral competence" (1956). However, as most studies of public administration have shown, it is difficult to separate politics from administration and agencies are not passive receptacles of political instruction, rather they have their own culture, mission, and standard operating procedures. In particular, agencies with a strong sense of mission or professional culture will be more likely to resist political directives that run counter to the agency's core mission (Wilson 1989). Moreover, if agencies have large constituencies among members of Congress and interest groups and have a favorable impression among voters, they can use these reservoirs of support to deflect strong attempts at executive control and build greater autonomy (Carpenter 2001; Rourke 1984). For example, several studies suggest that Reagan's desire to roll back environmental regulations was not fulfilled, partly due to his hostility to the EPA, an agency with widespread political support (Ringquist 1995; Waterman 1989; Wood and Waterman 1989). In addition, Marissa Golden found resistance to Reagan directives from career attorneys in the Civil Rights Division of DOJ, a group with a strong sense of agency mission and a wellspring of expertise (2001). However, resistance to presidential directives requires high levels of organization among career officials. When such organization cannot be achieved, the result is likely to be low agency morale and possibly incoherent or dysfunctional agency behavior.

In the Bush administration, examples abound of tight political control clashing with agency perspective to produce policy dysfunction, low agency morale, or rapid turnover among employees. Perhaps,

most notably, the administration's attempts to roll back environmental regulations, most notably in air quality, resulted in several high-profile departures within the EPA (Krause and Dupay chapter five; Provost, Gerber, and Pickup chapter nine). Moreover, in February, 2008, the EPA Labor Union Coalition, a group that represents more than 10,000 EPA staff and all but one of the regional offices, wrote to Administrator Stephen Johnson to notify him of the coalition's intention to suspend their involvement with the National Partnership Council, a group designed to facilitate collaboration between EPA staff unions and management (2008). The coalition cited specific decisions of Johnson with which they disagreed, but more broadly, they scathingly criticized the Bush EPA's tendency to place politics before science.

In the Department of the Interior, the philosophy of regulatory relief also prevailed in the highest echelons of the agency. Interior Secretary Gale Norton and Deputy Secretary J. Steven Griles, both having lobbied for industry groups in the past, had distinctly pro-business beliefs and often clashed with agency careerists. However, agency critics argued that regulatory relief was often just code for cronyism, conflicts of interest and in some instances, outright corruption. In 2006, Congress discovered major lapses and mismanagement in Interior's auditing system of oil company royalties for the government, leading to significant morale problems among auditors at the department. That same year, the Interior Inspector General testified before the House Judiciary Committee that "short of crime, anything goes at the highest levels of the Department of the Interior" (E. Andrews 2006). "Short of crime" turned out to be an inaccurate characterization, however, when Griles plead guilty the following year to obstruction of justice in the investigation of Jack Abramoff's lobbying activities (Schmidt and Grimaldi 2007). Moreover, Julie MacDonald, the Deputy Assistant Secretary for Fish, Wildlife and Parks, had frequent battles with agency scientists until she abruptly resigned in 2007 after it was revealed that she sent internal agency documents to industry lobbyists (Barringer 2007) and an internal agency report found that she had inappropriately manipulated decisions regarding research on endangered species (Doyle 2008). In instances like these, when the goals of appointees diverge from those of careerists, not only in terms of policy substance, but also in terms of procedural legality, dysfunctional agency behavior is often the result.

Appointee-careerist conflicts caused problems in other agencies as well during much of the Bush administration. A top priority at the Centers for Disease Control (CDC) was implementing a major agency

reorganization, an initiative that was designed to improve the agency's ability to respond to crises, yet dragged on for years and significantly intervened in employees' daily tasks (Stein 2005). The *Washington Post* also noted that CDC Director Julie Gerberding's critics suggested that "she tends to squelch open discussion and has failed to protect the agency from the specter of deep budget cuts and undue influence from Washington" (ibid.: A9). In 2004, after the FDA suddenly withdrew the drug Vioxx from the market, the FDA Safety Officer David Graham testified before Congress that it was sometimes difficult to keep unsafe drugs off the market (Kaufman 2004). Shortly thereafter, the *Washington Post* reported that 18 percent of the respondents in a 2002 survey of FDA scientists revealed that they "had been pressured to recommend approval of a new drug, despite reservations about its safety, effectiveness or quality" (ibid.: A1).

Finally, in 2001, President Bush introduced the "competitive sourcing" initiative, in which federal employees would have to compete with private contractors to keep their jobs. The idea was that, regardless of who ultimately was awarded the job, efficiency would be enhanced by the competition to keep costs low. However, many federal employees claimed that such competition required cutbacks, often in jobs, which had a negative effect on employee morale in the agencies (Lee 2008). To be fair, many administration officials argued that this policy did not live up to expectations because federal employee unions succeeded in establishing numerous exceptions in the competitive bidding process, such as removing health and retirement benefit costs from the comparisons (ibid.). Such exceptions eventually drove many private contractors out of the competing process, but this actually provides a very clear example of how bureaucracies can stymie presidential initiatives.

These examples are a small sample of stories that illustrate the constraints faced by presidents who are determined to maximize their use of executive authority. A long literature illustrates the difficulties of bureaucratic control (Gormley 1989; Wood and Waterman 1989) and in the coming chapters, we see how various difficulties, such as federalism, agency opposition, organizational constraints, and policy proposal incoherence sometimes thwart the will of presidential power. However, President Bush, with support from Vice President Cheney, still initiated a presidency dominated by appointments of strong ideological loyalists, in which he could employ all the possible tools of centralization and control that were available. The terrorist attacks of September 11 provided the impetus to make these tools more effective. Many observers have taken as "a given" that Bush has successfully

asserted power over bureaucratic agencies and policies. This book provides the empirical basis upon which to judge the Bush administration's successes and failures in this regard.

We believe that this volume provides a unique contribution to our general understanding of the institutions, policies, and legacy of the Bush administration. President Bush's two terms in office have spurred a wealth of scholarly research primarily examining decision making prior to and during the Iraq War, the consolidation of executive power and the polarized nature of decision making within the White House (see, e.g., Edwards and King 2007; Campbell, Rockman, and Rudalevige 2008). The primary foci of these works, including the two cited volumes, have been the aggressive use of executive power, the style of President Bush's decision making, the administration's management of information and communications, and the organizational arrangements that affected decision making for the Iraq War. These are important studies, without which our understanding of the Bush administration and indeed, the presidency, is incomplete.

This volume, we believe, takes the next step by first acknowledging President Bush's expansive view of executive power and then asking, what effects has it had on policymaking and policy outcomes? In so doing, we focus primarily on domestic policy. The subject of how organizational arrangements in the White House, Pentagon, and State Department affected decision making and therefore, affected the progress of the Iraq War has been covered in great detail elsewhere (see, e.g., Burke 2007; Campbell 2008; Pfiffner 2007b). Therefore, we target the less-discussed aspects of domestic policy and how they have been affected by the governance of the Bush administration.

Preview of Coming Book Chapters

Chapters two–five examine the Bush administration influence in a general manner, and they are followed by several chapters that focus upon specific agencies and programs.

In chapter two, "Personnel Is Policy: George W. Bush's Managerial Presidency," David E. Lewis sets the stage for coming chapters that focus upon particular agencies, by examining three facets of President George W. Bush's federal personnel policy. First, Lewis examines the administration's White House Personnel Office operation and compares it to that of previous presidents. Second, he evaluates presidential efforts to control the bureaucracy through alterations in the number and location of presidential appointees in the executive

branch. Third, he reviews some dramatic changes in the federal civil service system brought by the creation of agency-specific personnel systems in the Department of Homeland Security and the Department of Defense. Lewis concludes by discussing the implications of these strategies for governance and speculates about the influence each will have on the personnel policy of future presidential administrations.

In chapter three, “Is the Bush Bureaucracy Any Different? A Macro-Empirical Examination of Notice and Comment Rulemaking under ‘43,’” Jason and Susan Webb Yackee analyze another important area of presidential administrative activity, rulemaking. The authors question whether Bush’s MBA background has produced a system whereby rulemaking has become more efficient. That is to say, does the Bush administration produce fewer rules than previous ones and does it promulgate rules more rapidly than previous administrations? Their study, which employs data for four presidents, across a wide range of agencies, concludes that rulemaking under Bush has not necessarily been more efficient than under previous presidents, yet control over rulemaking in the Office of Management and Budget (OMB) has traveled a different trajectory in the Bush administration, compared with other administrations.

In chapter four, we shift away from personnel management and rulemaking to how President Bush has used public rhetoric to focus attention on particular agencies. In “Presidential Attention to Independent Regulators in the Bush Era,” Andrew B. Whitford addresses the question of how much attention presidents pay to independent regulatory agencies and the circumstances under which this attention is paid. His primary argument, that agencies will receive more attention when there is a crisis revolving around them, is supported by the attention President Bush lavished on the Securities and Exchange Commission during the Enron and Arthur Andersen accounting scandals and on the Federal Energy Regulatory Commission after the California energy crisis of 2000.

In chapter five, “Coordinated Action and the Limits of Presidential Control over the Bureaucracy: Lessons from the Bush Presidency,” George A. Krause and Brent M. Dupay discuss the conventional wisdom in political science, that unilateral powers enjoyed by presidents provide them with an unequivocal institutional advantage vis-à-vis Congress with respect to influencing the federal bureaucracy. However, the president’s ability to employ these powers successfully should depend on the degree of coordination within the executive branch and on the clarity of policy signals directed to bureaucratic agencies. Krause and Dupay state that signaling noise from within the

executive branch has varied over different policy areas in the Bush administration. Analyzing the changes to the New Source Review rules in the EPA, as well as the creation and reauthorization of the wiretapping program within the Justice Department, the authors here find that a lack of coordination within the executive branch can lead to delay and compromise on important presidential initiatives.

In the next set of chapters, the authors consider the issue of presidential influence over cabinet agencies and their policies. In chapter six, “President Bush and the U.S. Department of Education: The Texas Mafia, Scientific Education Policy, and No State Left Behind,” Paul Teske examines the most important initiative of the Bush administration (apart from Homeland Security), his No Child Left Behind (NCLB) signature law. Bush has pushed hard to enforce NCLB, but ironically, education is mainly a state and local function in the United States, with the federal role limited to research, targeted programs like Title I poverty (of which NCLB is the updated version), and a mix of federal carrots and sticks to influence implementation. This chapter addresses the tools that the Bush administration has used to try to enforce NCLB. It also examines how personnel policies, changes in agency structures, and internal political battles within the U.S. Department of Education have been shaped by Bush appointment policies.

Chapter seven begins a two chapter focus on homeland security. Here, in “The Paradox of Agency Issue Attention: The Bush Administration and Homeland Security,” Peter J. May and Samuel Workman employ a unique dataset of agency rules and guidance materials to assess organizational focus around homeland security issues and the newly created Department of Homeland Security. The focus of issue attention on domestic security has had some anticipated, but also many unforeseen, bureaucratic consequences, such as the insufficient federal response to Hurricane Katrina in 2005. The authors argue that these unforeseen consequences resulted from changes in issue attention reverberating within agencies, which, in turn, were amplified by changing organizational arrangements, in this case, greater centralization of agency policymaking. These shifts in attention, along with an excessive reliance on informal policy guidelines, undermined overall policy coherence by producing oscillation in agency programs and confusion in agency signals for key inter-governmental partners.

In chapter eight, “Policy Dominance versus Policy Success: Homeland Security and the Limits of Presidential Policy Control,” Brian J. Gerber assesses how President Bush has staked his presidency

on homeland security protection and wars abroad designed, at least in theory, to reduce that threat. There are few other areas in which we would expect to see more presidential power and influence. Yet, in a federalist system, much of the actual work of homeland security is not done in Washington, DC, but by state and local government agencies, and within nonprofit organizations with whom they contract. This provides numerous levels of constraints upon presidential policymaking that has been little understood to date. In this chapter, Gerber lays out examples of these constraints and formulates a larger model.

In the final four chapters, the focus of the book turns to presidential influence over regulatory agencies before offering a final assessment of President Bush's bureaucracy. In chapter nine, "Flying under the Radar? Political Control and Bureaucratic Resistance in the Bush Environmental Protection Agency," Colin Provost, Brian J. Gerber, and Mark Pickup note that past research demonstrates that bureaucratic agencies can resist changes at odds with an agency's mission, as was true in the EPA under the Reagan administration. Given President Bush's strong preferences for rolling back clean air regulations, his presidency offers an opportunity to study whether similar resistance has come from the EPA again. The authors examine the impact on bureaucratic outputs of the appointments of Christine Whitman, Michael Leavitt, and Stephen Johnson and of several changes to rules under the Clean Air Act. In addition, the authors examine the effects of more subtle approaches, such as the installation of industry lobbyists to subexecutive positions within the EPA.

In chapter ten, "Efficiency, Enforcement, and Political Control: The Case of the Equal Employment Opportunity Commission," Sean and Jill Nicholson-Crotty address this complex topic. They note that little research has addressed whether administrative reforms aimed at improving agency efficiency facilitate or mitigate attempts by presidents and Congress to influence bureaucratic behavior. This chapter argues that, despite deep cuts in agency personnel and enforcement budgets, President Bush was unable to reduce EEOC enforcement outputs or outcomes because he failed to address an important administrative reform put in place during the Clinton administration. The Priority Charge Handling System, implemented in 1995 to make the agency more efficient in the processing of discrimination charges, nullified the impact of Bush administration personnel and budget cuts. This chapter tests these issues using interrupted time-series models of EEOC staff, budgets, and enforcement activities between 1980 and 2005.

In chapter eleven, "Maintaining Political Control: George W. Bush and the Nuclear Regulatory Commission," Richard W. Waterman

assesses the Nuclear Regulatory Commission (NRC) and provides an interesting contrast to Sean and Jill Nicholson-Crotty's analysis of the EEOC. While the Nicholson-Crotty's argue that Bush was unable to circumvent Clinton-era reforms in the EEOC, Waterman argues that Bush tried to maintain reforms in the NRC implemented during the Clinton administration. His evidence does in fact show that the pattern of enforcement prevalent during the Bush administration did begin during the Clinton administration. Thus, Waterman's example provides an interesting case in which Clinton and Bush policies were not at odds with each other.

These chapters cover a great deal of ground, and their conclusions are sometimes concordant, but sometimes with different nuances. To make sense of what these studies mean, collectively, Colin Provost provides a summary of the findings and what they mean. Provost provides "cross walks" between the quantitative and qualitative evidence that different authors present. Ultimately, he assesses what this evidence tells us about the degree to which George W. Bush's strong attempts to influence agency outputs and policies have been effective, or the extent to which inertia, agency opposition, implementation challenges, and other factors have stymied these efforts. Finally, some speculation about the future of presidential influence, beyond the Bush administration, is provided.

Part I

An Overview of the Bush Bureaucracy

Chapter Two

Personnel Is Policy: George W. Bush's Managerial Presidency

David E. Lewis

No accounting of George W. Bush's administrative strategy is complete without an understanding of his personnel strategy. Primary among the president's executive powers is the ability to nominate the principal officers of government. These nominations are subject to confirmation by the Senate. The president also has the power to fill lower level offices and positions without confirmation subject to the guidelines provided by law. While not completely controllable, appointees do push the president's policy vision through hiring decisions, budgeting and spending, and formal rulemaking processes. They interpret the vague and sometimes conflicting laws enacted by Congress. They also monitor bureaucratic activity and communicate the president's vision to the press and agency employees, clients, and stakeholders. Appointees have important influence over public policies as varied as postwar Iraq reconstruction to the cost estimates of government-funded prescription drug benefits to environmental regulation.¹

Existing scholarly work on Bush's personnel policy has provided important insight into the Bush transition in 2000, the president's focus on loyalty in personnel selection, and Bush's use of recess appointments to circumvent Senate confirmation (Aberbach 2007; Burke 2004; Rudalevige 2006; Warsaw 2006). This chapter expands on this existing work to make clear how the Bush personnel operation is organized to get control of policy and satisfy demands for patronage and how the administration has altered the number and location of political appointees to accomplish its goals. It also discusses Bush's efforts to reform the civil service. It describes these aspects of Bush's personnel policies in the context of earlier presidents' behavior and concludes with a discussion of how Bush's actions inform the debate about whether his administrative strategy is driven by institutional, ideological, or other personal factors.

Existing Work on the Bush Administrative Strategy

The existing work on the Bush administration's administrative strategy suggests that President Bush aggressively used a variety of tools, including his staffing power, to exert control over the bureaucracy.² Scholars attribute distinct institutional, ideological, or personal motivations for these actions. Aberbach (2007) and Rudalevige (2005, 2006) see the Bush administrative strategy as the fulfillment of the tactic bred by Nixon, employed by most subsequent presidents, and described most prominently by Nathan (1975, 1983). Bush, like other presidents, sought to expand his power in order to meet the immense expectations of the office. Against the backdrop of 9/11, he attempted "to *take over* the bureaucracy and *take on* the Congress, to concentrate on administrative steps and correspondingly downgrade legislation as the principal route for bringing about domestic change" (Nathan 1975: 8).

Suleiman (2003) argues that executives adopting the largely conservative views of the New Public Management tend to devalue, politicize, and undercut the civil service. He suggests that many of the administrative strategies adopted by recent presidents are driven by an ideological distaste for traditional professional civil service systems. Cooper (2005) describes Bush's use of signing statements as ideological, deriving from a conservative "unitary executive" view of presidential power. Others allege that Republican presidents are more willing to take on the civil service and its unions because unions are not part of its traditional party constituency. During debates of the creation of the Department of Homeland Security Senator Joseph Lieberman (D-CT) said, "Repeatedly, the Bush administration has failed to treat federal employees with respect and dignity and that has got to stop... The administration partisanly and, I think, stubbornly, insisted on fighting over civil service issues" (quoted in Ballard 2003: online edition).

Burke (2004), Kettl (2003), and Pfiffner (2007a) all suggest that Bush's MBA training influenced his approach to administrative management. Similarly, Bruce Buchanan claims that Bush "conceives of himself as an executive in the Harvard B-school mold," and Stephen Wayne argues that Bush and his advisors "are business executives and they want to govern as business executives" (quoted in Dalrymple 2002: 3002–3007). These scholars argue that Bush's focus on top-down control, delegation, measuring performance, and managerial flexibility had important connections to his graduate education. As

president, he preferred to decide, delegate authority, free up managers to manage, and hold them accountable for results.³

To determine what was distinctive about Bush's approach it is important to describe Bush's administrative strategy and place it in context with the presidents who were in power before him. Before examining the Bush administration's approach to staffing the bureaucracy, however, it is worth reviewing the essential features of the U.S. personnel system.

Federal Personnel System in the United States

The president's primary means of controlling the bureaucracy is through political appointments. When new presidents assume office, they encounter a continuing, professional administrative state comprising over 2 million civilian employees divided into 15 different cabinet departments and 55–60 independent agencies and their various subelements. To manage this vast apparatus, new presidents are allocated approximately 3,000 appointees, or .15 percent of the federal workforce. The percentage of personnel subject to presidential appointment varies by agency. In some agencies, such as the Small Business Administration or the Department of Education, the percentage is much higher than the government average, 1.5–3 percent. In other agencies, the percentage is much smaller. The Department of Veterans Affairs, an agency of 236,000, employs only 40 appointees (.02 percent). The Social Security Administration, an agency of 65,000, has only 21 appointees (.03 percent).

This variation in politicization allows presidents different amounts of influence in the continuing bureaucracy. In some cases presidential influence can penetrate down deeply into an agency. In other cases, presidents have no foothold or means of easy entrée and, as a consequence, agencies have very little interaction with or direction from the White House. The difference becomes clear when we consider that modern personnel systems are composed of a mix of appointees and civil servants hired, promoted, and fired on the basis of merit criteria (figure 2.1). Appointees are generally drawn from the political or private sector (i.e., outside the civil service) and hold the jobs with the highest pay and greatest authority. By contrast, civil servants make a career of government work, entering the system at positions of lower pay and responsibility, and work their way up. The degree of

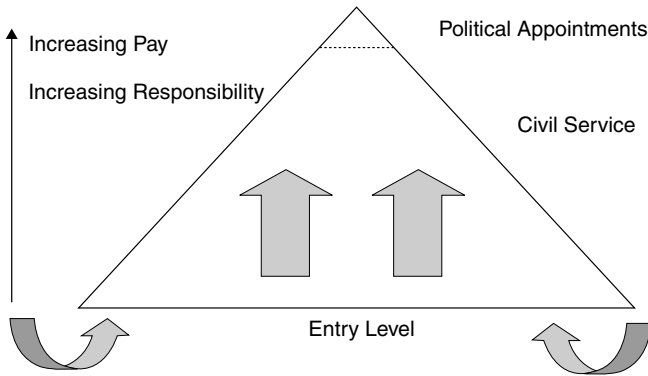


Figure 2.1 Civil Service Systems

politicization can be conceptualized as the point where a line is drawn between appointees and careerists.

In the United States there are three primary types of appointees. At the top of the administrative hierarchy, regardless of personnel system, are positions that require presidential nomination and Senate confirmation (PAS). The United States Constitution in Article II requires that the principal officers of the executive branch be appointed in this manner. There are about 1,100 positions requiring Senate confirmation but only 950 are salaried, nonadvisory positions (Lewis 2008). Of these 950 positions close to 200 are U.S. marshals and U.S. attorneys and 150 are ambassadors, leaving 500–600 Senate-confirmed appointees in the normal bureaucratic hierarchy. These officials include secretaries along with deputy, under, and assistant secretaries along with some commissioners of independent regulatory agencies and some bureau chiefs.

Between top-level Senate-confirmed positions and traditional civil servants in the federal hierarchy is a layer of top management positions that must be filled by a mixture of career employees from what is called the Senior Executive Service (SES) and political appointees who will be designated noncareer members of this service. Presidents or their subordinates can choose either an existing member of the SES (a career civil servant who applied to be a part of the SES) or a political appointee from outside who will fill an SES allocated position.⁴ By law political appointees cannot exceed 10 percent of the entire SES or 25 percent of the allocated SES positions in a specific agency.⁵ In September of 2004 there were 7,062 persons in the SES, 691 of whom were appointees.⁶

The third type of appointee is Schedule C appointees, posts that are confidential or policy-determining in nature but generally non-managerial. Part of the current Schedule C has its analog in the political ministerial staff that appears to be increasing in Western parliamentary democracies (Suleiman 2003). Typical Schedule C posts include special or confidential assistants to Senate-confirmed appointees, directors of communications, press, or outreach offices, and officials in legislative liaison offices. Some current examples include the White House liaison in the Department of Interior, the confidential assistant to the Assistant Secretary of Education for Vocational and Adult Education, and the Director of Media Affairs in the Department of Labor. In 2004 there were 1,596 persons appointed to Schedule C positions in the federal government. These positions, while influential for policy, are frequently used to satisfy patronage pressures from the president's party and campaign apparatus.

In addition to the comparatively large number of appointees, the U.S. civil service is comprised of one primary merit-based civil service system (described in Title 5 of the U.S. Code) and an increasingly large number of agency-specific personnel systems. Agencies have been granted authority to create their own personnel systems outside the traditional merit system for a variety of reasons. Some unique aspect of an agency's work or mission often necessitates agency-specific policies.⁷ For example, the Central Intelligence Agency (CIA) was given control over its own personnel system so that it did not have to reveal employment information to the government personnel officials. Allowing the CIA control over its own personnel system also for the adjustment of personnel policy to the unique needs of the agency's analytic, clandestine, and special operations mandate. The Veterans Health Administration was granted an exemption from civil service rules in order to help the agency overcome difficulties recruiting medical personnel under the existing pay structure.

In total, the U.S. personnel system deviates from the ideal type depicted in figure 2.1 since it includes an unusually large number of appointees (even in low-paying jobs), personnel rules and processes vary across agencies, and the civil service is relatively permeable.⁸ The Bush administration's approach to personnel has influenced the civil service system depicted in figure 2.2 in three ways: (1) the types of persons selected to fill the top roles in government; (2) where the line was drawn between appointees and careerists in different agencies; and (3) the percentage of federal workers under the traditional merit civil service system.

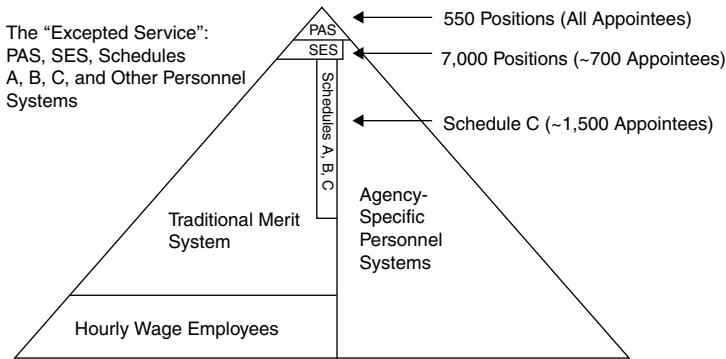


Figure 2.2 Federal Civilian Personnel System Appointment Authorities

Note: Excludes job-specific excepted positions. PAS excludes part-time, advisory U.S. attorneys, U.S. marshals, and ambassadorial positions.

Presidential Personnel Operation

Presidential concerns for policy and to satisfy demands for patronage shape their personnel strategy and structure their personnel operations. On the policy side presidents must fill the 500–600 PAS positions with persons equipped by both loyalty and competence to carry out the president's wishes. One Clinton aide explained, "People make policy, and unless you look for the people who have policy visions that track with the president, you are not going to have policies emerging from the departments that track with the president. There are enormous centrifugal forces out there. There are powerful, important constituencies out there at work in the departments, and the minute a cabinet secretary takes office, they are tugged this way and that. If you don't have your people in the departments, there will be no balance [between the centrifugal forces and the president's aims]" (quoted in Weko 1995: 124).

On the patronage side presidents must respond to office seekers who worked for their campaign, party, key interest groups, or patrons in Congress. The president's control over personnel is a source of political capital and how the president uses this resource can directly affect the electoral fortunes of their party. It also influences the president's own fortunes. The possibility of a government job induces many people to work on campaigns and provides presidents a credible means of assuring interest groups that their views will be represented in the administration. Such promises help presidents secure interest group endorsements, manpower, and resources. The shrewd distribution of patronage provides presidents a means of governing more

effectively by holding diverse party factions together. The giving and withholding of jobs is used to maintain party discipline or as a bargaining chip to help presidents get their way in Congress. In short, jobs represent a crucial political resource for presidents.⁹ How the president uses his own limited resources can influence the president's success or failure in bargaining.

To understand the Bush personnel operation, it is important to put it in the context of four emerging trends in presidential personnel more generally. First, personnel operations have increasingly prioritized which positions to fill first in order to pursue the president's primary policy agenda. President Kennedy targeted the "pressure points" in government and Reagan's team focused on the "key 87" positions central to implementing his economic program.¹⁰ The practice of prioritization continues throughout the president's term as presidents fill key vacancies first. Bush's personnel operation proceeded with hiring based upon the administration's key policy priorities, although less dramatically than some other administrations (Burke 2004).¹¹ They focused first on the cabinet and then targeted filling 165 subcabinet posts by April 30, 2001 (Johnson 2003: 313).

Second, the two sides of presidential personnel (policy, patronage) are becoming professionalized and institutionalized in the White House Personnel Office (PPO). There is an increasingly formal division between efforts to fill top executive jobs and satisfy patronage demands due to the fact that they have their own demands and processes. One task revolves around filling top executive *positions* and is increasingly staffed by professional recruiters. The use of professional recruiters began with Nixon and has been adopted by most subsequent presidents from Reagan forward. Indeed, several subsequent heads of presidential personnel have been professional recruiters (Pendleton James—Reagan, J. Veronica Biggins—Clinton, Liza Wright—George W. Bush).¹² The other task revolves around placing *persons*, a job known euphemistically as priority placement.

The growing institutionalization of these differences began during the administration of John F. Kennedy. Robert Kennedy headed one group of aides responsible for patronage management. Sargent Shriver directed another set of aides charged with searching for "New Frontier Types" from their "egghead constituency" to direct the executive branch in a way responsive to Kennedy (Weko 1995: 26). By the Clinton administration the patronage operation had become institutionalized in an office called the Office of Priority Placement within PPO. During the Bush administration patronage was handled largely in the Office of Political Affairs (OPA), headed by Karl Rove.¹³ PPO's

job is to fill positions and OPA's job is to place people for campaign or political reasons. Each part of the total personnel operation, along with the departments themselves, recommends people for positions. In the 10–20 early cases where the Office of Political Affairs and PPO disagreed on candidates, those disagreements were taken to the chief of staff. The OPA was notably involved in the replacement of nine U.S. attorneys with persons more acceptable for both policy and patronage reasons.¹⁴ It was also involved in “finding attorneys who would be ‘ideologically compatible’ with the president” (Simendinger 2007: online edition).

A third trend in presidential personnel over the past 40 years is that presidents have exercised increasing control over subcabinet appointments to ensure their loyalty to the president (Nathan 1975; Moe 1985b). While President Carter famously allowed his cabinet secretaries to select their subcabinet officials, presidents since that time have exercised substantially more control over lower level appointees. Clinton personnel officials told every cabinet secretary that “These positions [lower level appointed positions] are Bill Clinton’s and he appoints them—the Senate-confirmed positions, the non-career SES positions, and the Schedule C positions—he selects them” (quoted in Weko 1995: 124). Of course, the extent to which the individual presidents force their choices on top-level appointees varies. While Carter did give secretaries a free hand for the first part of his administration, the Reagan administration was much more aggressive about appointing Reagan loyalists to subcabinet slots without consultation (Burke 2004).

The Bush administration exercised tight control over the selection of all subcabinet appointments. As Clay Johnson, Bush’s first personnel director, said, “they (appointees) need to know that the president selected them” or when things got tough their loyalty would be to the president rather than the secretary.¹⁵ While this is the case, the Bush PPO sought to work with cabinet secretaries and top officials so that, in their words, they did it “with them, not to them” (Johnson 2003: 316). In practice, the Bush personnel operation operated with a mutual veto system. Both the PPO and the agency had the right to recommend candidates for consideration and refuse candidates they did not like (*ibid.*).¹⁶

Over time the mechanisms for selecting appointees on the basis of loyalty have become more sophisticated. The Reagan administration built up institutional staff to look for candidates with conservative credentials and past evidence of activity for “movement” or Goldwater-type conservatism.¹⁷ The Clinton administration was careful to select New Democrats with policy views close to Clinton’s own.

The Bush administration valued loyalty to the president very highly and worked to foster it both through the selection process and their procedures for orienting political appointees.¹⁸ A one-page document summarizing the Bush personnel operation given out at the beginning of the administration states, “This is not a beauty contest. The goal is to pick the person who has the greatest chance of accomplishing what the principal wants done.”¹⁹ The process emphasized picking people who would satisfy the technical requirements for the job and share the president’s views. To answer the question of who would be worthy of most serious consideration, the PPO document says, “review unsolicited applications, who do your advisers for the subject matter suggest, are there #2 and #3 people from the last Republican administration to consider, and are there any members of the legislature or congressional staffers to consider.” After determining who the candidates were who were most likely to accomplish “what the principal wants done” personnel officials were instructed to assess the political wisdom of the choice.

The two components of ensuring that the appointees accomplish what the president wants done are loyalty and competence. Anecdotally, the Bush administration was very successful in ensuring loyalty. They made few apologies for excluding from administration jobs those persons who gave money to another candidate or were publicly critical of the president. For example, the preferred chief of staff to incoming Commerce Secretary Carlos Gutierrez, George Franklin, was denied the position in 2005. It was believed Franklin was denied the job because he was a strong supporter of John Schwartz (R-MI) who was head of John McCain (R-AZ)’s 2000 primary campaign in Michigan (Kamen 2005). Franklin was the only nonadministration aide Gutierrez wanted.

In at least the Department of Justice case, partisan personnel influence extended down into the career ranks. Justice Department appointees used partisan and ideological criteria in selecting attorneys for career positions in the department which is prohibited by law (Eggen 2007b).

Finally, some presidents have used lower level appointments to credential young partisan appointees to go back to their home states and run for office or prepare them for higher appointed positions. Reagan’s head of Presidential Personnel Pendleton James recounted how Reagan told him that the administration provided an opportunity to bring bright young people into government and expose them to the administration, after which they’ll go back home and “there’s mayors, governors, city council members.”²⁰ Reagan’s first head of the Office of

Personnel Management recounted how some in the administration viewed Schedule C appointments as a training ground for future Republican appointees.²¹ They placed young Republicans in junior positions to start and have them work their way up (Blumenthal 1985a, 1985b). The Bush administration appears to have followed this same pattern. Relatively junior administration officials in the Bush administration were promoted from the White House to higher positions in the departments, including Margaret Spellings to Education, Alberto Gonzales to Justice, and Condoleezza Rice to the Department of State. Junior appointees in the bureaucracy were also promoted to top positions in their bureaus.

In total, the Bush administration personnel operation looks like the next iteration of the personnel operations that preceded it. This administration learned the lessons of past presidents, both Democrats and Republicans, exceptionally well (Franks 2007). The personnel system infrastructure was put in place by a professional who began earlier than any other personnel official and who probably understood past presidential practice as well as any other person in his position.²² The Bush personnel operation succeeded in recruiting effectively for executive positions; they maintained control of subcabinet appointments; and the Office of Political Affairs used the distribution of federal jobs to the political advantage of the administration. As with the Reagan administration, the effects of the OPA's personnel activities could continue long after the Bush administration is out of power. Their likely efforts to brand young Republicans for future electoral races or appointee work will not bear fruit until 5–10 years in the future.

There was little evidence of infighting in the personnel operation and by most accounts the team selected has helped accomplish “what the principal wants done” with a few notable exceptions. The administration's appointees helped advance the president's major policy initiatives and change public policy in fundamental ways including No Child Left Behind, tax cuts, the prescription drug benefit, the War on Terror, regulatory reform, faith-based initiatives, and the President's Management Agenda.

Of course, not all of Bush's appointees were successful, and efforts to extend loyal appointees into agencies like FEMA, the Department of Justice, the Office of Special Counsel, and NASA created managerial and political problems for the administration in the form of charges of cronyism, censorship, and administrative incompetence. Efforts to extend political control into the civil service and satisfy political goals through patronage naturally create

performance problems because of the Michael Browns that find their way into administration jobs, but also because of the systematic effects such efforts have on management. Presidential politicization increases management turnover, makes it harder for agencies to recruit and retain top career professionals in agency administration, and reduces the incentives for civil servants to invest in site-specific expertise (Collins et al. 2006; Lewis 2007, 2008). Bush's personnel operation was successful at selecting persons that would help him change policy, but at the cost of some administrative competence.

Altering the Number and Location of Appointees

Focusing on how appointed personnel are selected is only half the story, however, since presidents can alter the number and location of political appointees throughout the government through law or administrative action.²³ Modern presidents have tended to make decisions about increasing or decreasing the number of appointees in given agencies predictably with concerns for both policy and patronage in mind (Lewis 2008). Modern presidents place more policy-relevant appointees primarily in agencies that do not share their policy views. They place more patronage-type appointees in a less discriminating fashion, often in agencies that do share their policy views since it is easier to match young Republicans by background and aspiration with agencies like the Department of Commerce or Department of Treasury than the Department of Labor or Housing and Urban Development.²⁴

The Bush administration increased the number of appointees between 2000 and 2004 by 350 positions. This is a significant increase relative to the Clinton administration but the total number of appointees is still less than two presidents before him (figure 2.3). The increase can partly be explained by the fact that Clinton was in his second term. By the eighth year of his presidency, Clinton would both have a hard time recruiting and retaining appointees and he had eight years to change policy and identify sympathetic career employees to fill top executive jobs. Bush also enjoyed a majority in Congress for part of his term, whereas Clinton did not during his second term. This made it more difficult for Clinton to alter the number of appointees.

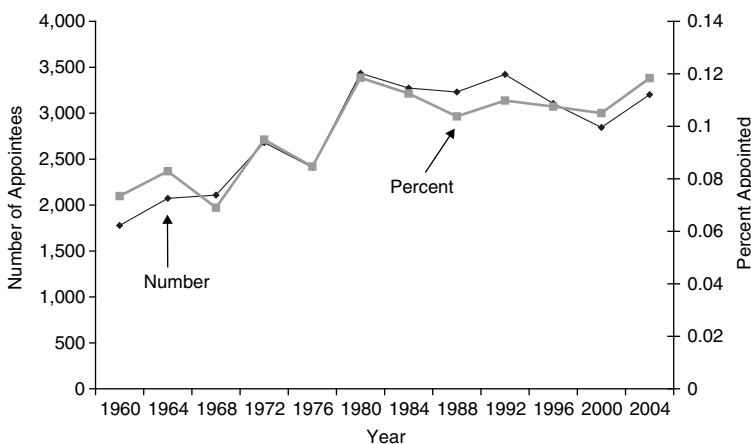


Figure 2.3 Total Number of Federal Government Appointees and Percentage Appointed, 1960–2004

Note: Includes salaried PAS, Schedule C, Noncareer SES, and NEA appointments.

Source: U.S. Congress. Policy and Supporting Positions, 1960–2004.

In table 2.1 I show where the biggest increases and decreases were by agency. The biggest increases among the larger agencies were in the Federal Housing Finance Board, the Office of Management and Budget, Department of Labor, the Department of Commerce, the Small Business Administration, and the Environmental Protection Agency. The fact that the increases in some of these agencies was heavily in Schedule C positions rather than Senate-confirmed or SES positions suggests that this increase was at least partly driven by patronage concerns. In agencies such as the Department of Education, however, where the increase was primarily in SES positions, the increase was probably driven by policy concerns. The president added appointees to help change education policy and implement No Child Left Behind (see Teske chapter six). There was an increase of 14 SES positions in the Department of Defense that arguably reflects an attempt to change defense policy both by force restructuring and to manage the war in Iraq. Interestingly, the Office of Management and Budget and the Office of Personnel Management received noticeable increases in appointees. These agencies spearheaded other aspects of the president's administrative agenda including regulatory policy (OMB), the president's management agenda (OMB), and civil service reform (OPM). Politicization of these agencies is a means of enhancing control of the levers of government.

Table 2.1 Changes in Politicization by Selected Agency, 2000–2004

	Employment		PAS		Noncareer SES		Schedule C		Total Appointments	+/-	Δ %	
	2000	2004	2000	2004	2000	2004	2000	2004				
<i>Agencies Gaining Appointees</i>												
Office of Science and Technology Policy	33	31	5	3	3	4	3	6	11	13	2	8.60
Federal Housing Finance Board	107	120	5	5	0	0	0	8	5	13	8	6.16
U.S. Commission on Civil Rights	77	62	0	0	2	1	8	9	13	14	1	5.70
Office of National Drug Control Policy	123	112	5	5	3	2	11	14	19	21	2	3.30
Office of Management and Budget	511	513	6	6	7	13	9	18	22	37	15	2.91
Office of Special Counsel	105	106	1	1	1	1	3	5	5	7	2	1.84
Overseas Private Investment Corporation	195	210	10	10	0	0	2	6	12	16	4	1.47
Commodity Futures Trading Commission	574	502	5	5	3	0	6	12	14	17	3	0.95
Nat Foundation on Arts & Humanities	373	384	3	3	6	5	7	11	16	19	3	0.66
Department of Labor	16,040	15,771	17	19	26	27	47	101	91	147	56	0.36
Department of Education	4,734	4,461	15	13	15	20	117	118	148	155	7	0.35
Small Business Administration	4,150	4,156	4	4	11	14	27	38	42	56	14	0.34
Office of Personnel Management	3,780	3,476	3	3	6	5	13	22	22	30	8	0.28

Continued

Table 2.1 *Continued*

	Employment			PAS			Noncareer SES			Schedule C			Total Appointments	+/-	Δ %
	2000	2004	2000	2004	2000	2004	2000	2004	2000	2004	2000	2004			
	Office of Personnel Management	3,780	3,476	3	3	6	5	13	22	22	30	8			
National Credit Union Administration	1,021	904	3	3	0	0	5	6	6	9	1	1	0.21		
Department of Commerce	47,652	37,495	25	25	41	42	52	103	118	171	53	1	0.21		
National Transportation Safety Board	419	430	5	5	1	1	5	6	6	11	12	1	0.13		
Environmental Protection Agency	18,036	17,933	14	14	19	20	8	30	41	64	23	0.13			
<i>Agencies Losing Appointees</i>															
International Trade Commission	384	361	6	6	0	0	15	10	21	16	-5	-1.04			
Federal Maritime Commission	123	129	5	5	0	0	5	3	10	8	-2	-1.93			
Farm Credit Administration	285	305	3	3	0	0	10	4	13	7	-6	-2.27			
Council of Economic Advisers	30	29	3	3	0	0	4	3	7	6	-1	-2.64			
Trade and Development Agency	37	41	1	1	0	0	2	1	3	2	-1	-3.23			
Fed Mine Safety and Health Review Commission	46	40	5	5	1	0	5	3	11	8	-3	-3.91			
Council on Environmental Quality	21	24	3	1	0	0	3	3	3	4	-2	-11.90			

Note: Table lists agencies that gained appointees in both number and percentage between 2000 and 2004 from biggest percentage increase down. It also lists agencies that lost appointees in both number and percentage during the same time period from biggest percentage decrease up. Department of Defense includes only civilian personnel.

Source: Lewis 2008.

With increases in appointees in the Departments of Labor and Education, the Commission on Civil Rights, the Office of Special Counsel, the National Foundation on the Arts and Humanities, and the Environmental Protection Agency, there is some evidence that the 350 appointee increase was biased toward agencies that would not naturally share Bush’s views on policy. To evaluate this a bit more carefully, I graph in figure 2.4 the average increase between 2000 and 2004 in the percentage of agency managers who are appointees by agency ideology (estimates of agency ideology being determined in a 2005 expert survey).²⁵ While the number and percentage of appointees increases for all types of agencies, the increases are largest for liberal agencies. This appears to confirm that this Republican president politicized liberal agencies more than moderate or conservative agencies.²⁶

When these data were disaggregated by type of appointee, the results show that the number of Senate-confirmed appointees increased the most in liberal agencies and actually declined in conservative agencies. This suggests that the Bush administration kept a fuller team of the most policy-relevant appointees in liberal agencies than in conservative agencies. As with presidents before him, President Bush could rely on some agencies to implement policies he preferred when they were on autopilot. For those agencies where he wanted to change policy the most, namely liberal agencies, his personnel operation was more vigilant about maintaining appointee presence. For schedule C appointees, both liberal and conservative agencies received about the

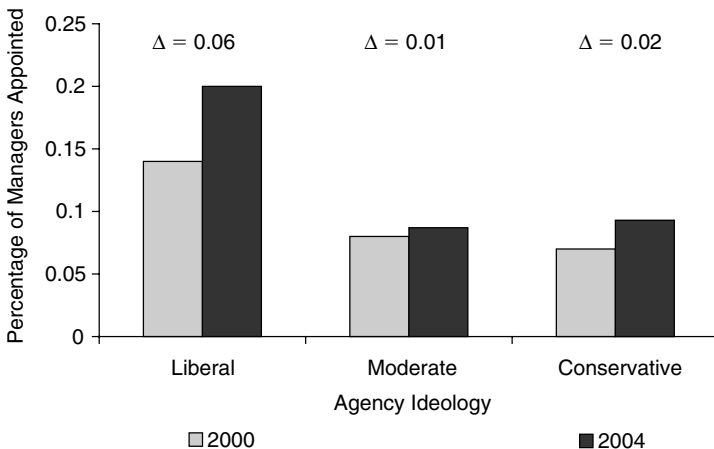


Figure 2.4 Change in Percentage of Appointees by Agency Ideology, 2000–2004

same increases, suggesting that these positions were used for both policy and patronage. This, too, is consistent with the behavior of past presidents.

Transformation of the Civil Service

The first half of the period following the creation of the U.S. civil service in 1883 is characterized by the expansion of civil service to an increasingly larger percentage of federal jobs. The original civil service covered only 10.5 percent of federal jobs but by 1951 the system covered almost 88 percent (figure 2.5).²⁷ The 88 percent figure underestimates the actual coverage of the system because many employees not covered by the traditional merit system were covered by systems that included merit-like provisions. The percentage also includes employees overseas who were unlikely to be consequential for patronage.

The second half of the period is best characterized as a move away from one monolithic federal personnel system to agency-specific systems. Notably, the United States Postal Service (1970); the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision (1989), the Federal Aviation Administration (1996), and the Internal Revenue Service (1998) were granted important power to create their own personnel systems. Some of the exemptions were justified on the basis of

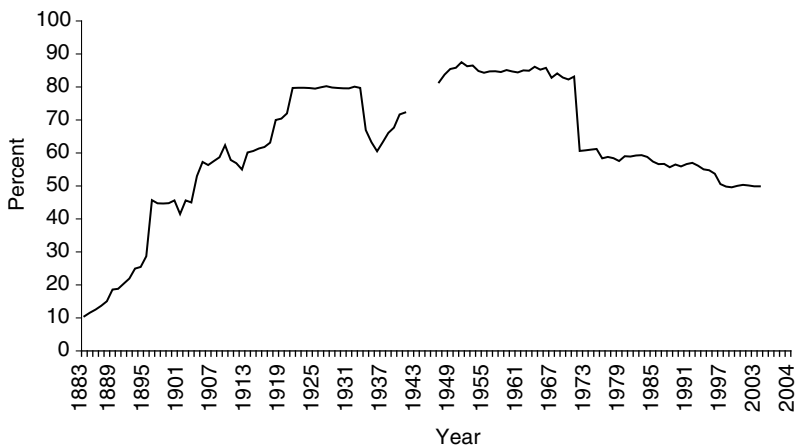


Figure 2.5 Percentage of Federal Civilian Jobs in the Traditional Merit System, 1883–2004

difficulty recruiting personnel with specific in-demand skills. As government work becomes more technical and professional, arguments about difficulties recruiting personnel with special skills increasingly gain force. In the case of the Federal Aviation Administration and the Internal Revenue Service, specific visible agency failures were linked to difficulties recruiting specific types of personnel. This bolstered the case of both agencies for new exemptions from civil service rules. Specifically, the agencies failed in major efforts to modernize their air traffic control and tax systems, respectively.

President Bush fought vigorously to secure authority both for the new Department of Homeland Security (2002) and the Department of Defense to create their own personnel systems outside the traditional service system. The president asked for and was granted more personnel flexibility largely based on the need for more executive control in national security. He sought greater flexibility in hiring, firing, promoting, and demoting by lessening worker and union rights. In the case of the Department of Homeland Security, the increased flexibility in the personnel system was accompanied by other executive-enhancing powers including a significant number of appointed positions, secretarial reorganization authority, substantial spending flexibility, and exemptions from the Freedom of Information Act (Lewis 2005a). The effect of these reforms, if Congress and courts do not reverse the administration's course, is to decrease coverage of the traditional civil service system to less than 50 percent of the total federal civilian workforce.

Bush's actions are consistent with the actions of past presidents. Modern presidents are held electorally accountable for the performance of the whole government, particularly in the area of administrative affairs. The failures of the intelligence apparatus prior to 9/11 and after Hurricane Katrina are two clear examples. As a result, all modern presidents have actively, if selectively, sought control over the administrative machinery of government. The biggest increase in appointees and most significant reform of the civil service in the past 40 years occurred under Democrat Jimmy Carter. During his 1976 presidential campaign Carter pledged to reform the civil service. When in office he proposed a major personnel system overhaul in his 1978 State of the Union Address and his efforts resulted in the passage of the Civil Service Reform Act of 1978 (Carter 1978; Strout 1978). The change was by all accounts intended to strengthen presidential and executive management of personnel.²⁸ Similarly, President Clinton's efforts to "Reinvent Government" were an attempt to enhance executive control (Arnold 1998). Bush's current efforts to

contract out government jobs can be traced back to Clinton's efforts in the 1990s.

Bush's efforts to take the departments of Homeland Security and Defense out of the traditional merit system are best understood as a continuation of a trend that started long before he assumed office. Certainly, his desire for expanded executive control over the bureaucracy was one shared by the presidents before him. What makes Bush's efforts distinctive are both his willingness to take on government unions and the ambitiousness of his efforts. Since government unions were not part of Bush's constituency, he was less worried about antagonizing them.²⁹ Of course these actions were also consistent with his CEO-like practice of delegating to subordinate officials and then trying to enhance their authority to manage.

The net result of his efforts to move from a one-size-fits-all personnel system to the new agency-specific system is a decline in the coverage of the uniform merit system, an increase in fragmentation of the federal personnel system, and striking inconsistencies in personnel powers and employee treatment across the government. While the president's actions might have increased the managerial powers of his appointees, they also made it more difficult to centrally control personnel across the executive branch. The fragmentation and unique character of the different personnel systems made it less likely that officials in the Office of Management and Budget, Office of Personnel Management, and the White House could understand and monitor these different systems.

Conclusion

This chapter has highlighted three aspects of the Bush administration's approach to personnel including the organization of their personnel operation, the ways they have altered the number and location of political appointees in government, and their efforts to secure greater flexibility in hiring, firing, and motivating civil servants through personnel reforms. From FEMA to Homeland Security to the Department of Justice, personnel policy was a prominent issue in the Bush administration. While lauded for his organized approach to team building, Bush was also pilloried for his perceived cronyism.

To what extent is Bush's personnel policy an iteration of past presidential practice? Understood in the context of past practice and trends, a significant portion of Bush' activities were predictable. The way the Bush team organized their personnel operation, handled

patronage requests, sought loyalty and control in subcabinet positions was consistent with past presidential behavior. This administration, particularly during the transition, was well schooled in the practices of previous presidents. The administration's politicization patterns were also predictable. As with presidents before him, Bush increased appointed positions most in agencies that did not share his policy views. The president's efforts to move away from a one-size-fits-all personnel system was an acceleration of an existing trend.

While the president's actions were in part predictable, the president's ideology and personal management style probably influenced his approach. While all modern presidents want more control over personnel, they differ in the means of securing this control. In the case of ideology, Bush's views about policy naturally influenced which agencies he targeted. Agencies differ in the extent to which they share the policy views of the president and this influenced the way Bush treated them. The fact that Bush was a Republican also made him less concerned about antagonizing federal employee unions. This directly influenced his willingness to push outsourcing and new personnel systems in Department of Homeland Security and Department of Defense.

Bush's management style, focused around delegation, freeing up managers to manage, and holding executives accountable influenced his approach to personnel and civil service reform. He sought to enhance managerial flexibility in the Department of Homeland Security and Defense. The extent of delegation and lack of direct involvement, however, meant that some administration personnel were overly zealous in their efforts. Giving executives enough power to succeed and fail means that some will use their authority and freedom unwisely. Embarrassing personnel actions in places such as the Office of Special Counsel, the Department of Justice, the Department of Homeland Security, and the Central Intelligence Agency reflected poorly on the administration and generally had harmful consequences for agency management.

In total, Bush's personnel operation is arguably the most sophisticated of the modern presidents for enhancing control. This administration learned the lessons of past presidents and used the levers of personnel power effectively. The effects of Bush's unique contribution to personnel policy—increased role for the OPA in personnel, increased presidential appointments, and increased fragmentation of the personnel system—come at a cost in government performance. This is a cost that future presidents arguably will be willing to pay to accomplish their policy and political goals.

Notes

1. See, for example, Chandrasekaran (2006); Rogers (2004); Vedantam (2005a).
2. For reviews of different aspects of the Bush administrative strategy see Breul (2007) (President's Management Agenda); Cooper (2005) (signing statements); Howell and Kriner (2007) (unilateral executive action); Pfiffner (2007a) (executive power over national security); Shapiro (2007) (rulemaking); Warshaw (2006) (unilateral executive action).
3. For Bush on "decide and delegate" see Kettl (2003: 3).
4. Career personnel in the SES have ranks that are mobile across jobs. This allows them to be moved around while retaining status. So, for example, a career SES employee can serve in Senate as a confirmed employee or hold other positions but retain reemployment rights when they leave those positions. Presidents are subject to the further limitation that some positions are "career reserved," meaning they can only be filled by careerist members of the SES.
5. There are two exceptions to this rule. First, small agencies with only a few SES positions often have more than 25 percent appointees. Second, percentages are calculated according to allocated positions rather than filled positions. If political appointees manipulate the total number of allocated SES positions they can have more than 25 percent appointees.
6. U.S. Office of Personnel Management, *Fedscope* Web site (www.fedscope.opm.gov).
7. I draw the discussion about exceptions to the Title 5-based personnel system more or less directly from Thompson (2001).
8. U.S. personnel system is relatively permeable relative to the ideal type because federal workers regularly enter government service at higher pay grades and increasingly they serve only a portion of their career in government service.
9. See Patterson and Pfiffner (2003) for a good description.
10. For Kennedy, see Mann (1964); Reagan information comes from an interview with Pendleton James, New York, 10 October 2006.
11. Interview with Clay Johnson, Washington, DC, 25 October 2006.
12. Bush's original head of personnel, Clay Johnson, could be considered a professional since he had been appointments director for Bush in Texas.
13. The means of accepting resumes, filling jobs, and managing the personnel process has also become more regularized, computerized, and sophisticated. The Bush administration estimated that it received 95 percent of its resumes online through a Web site set up by the transition (Burke 2004).
14. The deputy attorney general claimed that one U.S. attorney (Bud Cummins) was removed to make way for an aide to Rove. Others were apparently removed because of concerns about their actions with regard to issues like immigration and the death penalty. See Eggen (2007a).

15. Interview with Clay Johnson, Washington, DC, 25 October 2006.
16. As with previous administrations back at least until George H. W. Bush, each department or large agency had a White House liaison to work with PPO to fill subcabinet positions.
17. See Blumenthal (1985a).
18. Interview with Clay Johnson, Washington, DC, 25 October 2006.
19. "The General Personnel Process," document provided by Clay Johnson via e-mail, 25 October 2006.
20. Interview with Pendleton James, New York, 10 October 2006.
21. Telephone interview with Donald J. Devine, 13 September 2006.
22. Although the Bush transition got a late start, not officially beginning until 14 December (after Al Gore's concession), the personnel operation had been at work since the Spring of 1999 (Johnson 2003). This was the earliest start to date and by most accounts contributed to a generally smooth beginning to the personnel operation (Burke 2002, 2004; Johnson 2003).
23. For details about how new positions get added see Lewis (2008), Chapter Two.
24. On the policy side presidents are most likely to add policy-influential appointees to agencies with policy views that differ from their own (Lewis 2008). For example, Republicans tend to target agencies like the Environmental Protection Agency or the Department of Labor that are more liberal by mission and career workforce. Democrats are more likely to target historically conservative agencies such as the Department of Defense or the Department of Commerce. On the patronage side, when presidents need to find jobs for supporters or partisans they often find it easier to place them in agencies whose missions are closer to the core commitments of the president's party. Potential patronage appointees are most likely to pursue jobs that will enhance their career prospects that systematically influences the number and location of appointees across administrations. Patronage appointees are also better qualified for work in agencies whose policy views are similar to those of the president since their previous work in AFL-CIO or the U.S. Chamber of Commerce makes it easier to place them in the Labor of Commerce Department, respectively. While almost all personnel officials note that there are more applicants than jobs, difference in competencies and views between the parties means that PPO officials have an easier time placing patronage appointees into agencies with views or policy commitments closer to those of the president or the president's party.
25. Rather than attempt to identify agencies that tend to be liberal consistently, conservative consistently, or neither, I relied on the expertise of academics and Washington observers. With the help of a colleague I identified a set of 37 experts in American bureaucratic politics among academics, journalists, and Washington think tanks. We sent them a list of 82 departments and agencies with the following directions: "Please see below a list of United States government agencies that were in

existence between 1988 and 2005. I am interested to know which of these agencies have policy views due to law, practice, culture, or tradition that can be characterized as liberal or conservative. Please place a check mark (✓) in one of the boxes next to each agency—“slant Liberal, Neither Consistently, slant Conservative, Don’t Know.” We received 23 responses to the request (a response rate of 63 percent), and used these expert survey responses—adjusting for the degree of expertness (discrimination) and different thresholds for what constitutes a liberal or conservative agency—to get estimates of which agencies are consistently liberal or conservative. For details see Clinton and Lewis (2007).

26. Some caution should be taken in interpreting this figure, however, since the number of cases is small and the difference among groups of agencies is not statistically distinguishable from zero.
27. This percentage includes all civilian positions in the executive branch not specifically exempted from the competitive service by statute, executive decree, or Civil Service Commission decision. Source: U.S. House (1976a: 305–306).
28. As OPM’s official history explains, “Among its primary aims, the Civil Service Reform Act of 1978 sought to strengthen Presidential control over the Federal bureaucracy.” U.S. Office of Personnel Management 2003, 167. See also Sawyer (1978).
29. In response to Bush’s efforts to secure authority for a new personnel system in Department of Homeland Security, Bobby Harnage Sr., the former president of the largest federal employee union, stated that Bush’s action “means nothing less than gutting the civil service merit system and busting employee unions” (“Government Employees Union Charges Bush Wants ‘Political Patronage’ Leeway in Creating Homeland Security Department,” *BNN White House Bulletin*, 28 August 2002 [online edition]).

Chapter Three

Is the Bush Bureaucracy Any Different? A Macro-Empirical Examination of Notice and Comment Rulemaking under “43”

Jason Webb Yackee and Susan Webb Yackee

Much has been made in the popular press of President George W. Bush's status as the “first MBA President” (see Pfiffner 2007; Breul 2007; and see Lewis chapter two). The implication is that Bush's two years at Harvard Business School well equipped him to transform, or to transformatively lead, an inefficient, unwieldy, and unacceptably independent federal bureaucracy. Bush himself, at a campaign stop in 2000, ridiculed then vice president Gore's efforts to “reinvent government” as mere “reshuffling”:

Today, when Americans look to Washington, they see a government that is slow to respond, to reform, ignoring changes that are taking place in the private sector and in some local and state governments. (Mitchell 2000)

Bush promised to apply, rather than to ignore, his particular understanding of those private sector management lessons learned. And to a considerable degree Bush's campaign rhetoric resulted in potentially significant changes in relations between the White House and the agencies it ostensibly controls. For example, he implemented through the Office of Management and Budget (OMB) what in Shapiro's view are “a number of critical reforms to the regulatory process” that were designed “to largely empower the president and those with access to the Executive Office of the President” in their dealings with federal agencies (2007: 270–271). More generally, we can identify any number of anecdotes suggesting that Bush sought to impose a top-down style of management, in which the president's top advisors and appointees were institutionally well positioned to shape the development

both of agency policies and regulations as well as the very facts upon which those policies and regulations were based.

In these and other ways it is clear that the Bush administration made a serious effort to extend presidential control over the bureaucracy and to improve its performance. But scholars have left largely unexplored how, or even whether, Bush's regulatory reforms and his purportedly MBA-derived management style had any noticeable effect on bureaucratic outputs.

And, it is by no means clear that we should expect to see much of an effect. As Moe (1985b) argued in the midst of the second term of the Reagan presidency, presidents face nearly teleological pressures to strengthen their control over the bureaucracy (see also West 1995). The principal tools for doing so, however, are limited largely to those championed by the Bush administration (and by administrations past): centralizing decision making in the executive office and infiltrating bureaucratic outposts with ideologically like-minded and loyal associates who will resist the urge to "go native." But recall that Moe's estimation of the potential success of such reforms at righting the ship of executive branch policymaking is fundamentally pessimistic. Presidents may be institutionally predisposed (or even predestined) to seek similar kinds of "reform," but the institutional realities of the bureaucracy—certainly more of a heavily laden barge than a nimble canoe—often produce incremental and perhaps ephemeral changes in the course of government (Knott and Miller 1987; Light 1997, 2006).

Our principal aim in this chapter is to explore whether the bureaucracy writ large performed measurably differently under Bush's first term and a half of leadership. To do so, we present what we call a "macro-empirical" examination of the federal bureaucracy's regulatory policymaking under Bush. We focus on federal agencies engaged in notice and comment rulemaking. The vast majority of important agency policies are promulgated as legally enforceable "rules" after undergoing a mandatory period during which the public is formally notified of a proposed rule and given the opportunity to comment in writing on the proposal, as required by the Administrative Procedures Act (APA). Focusing on notice and comment rulemaking allows us to concentrate on the bulk of what agencies do regarding policy development, and on the bulk of what matters in terms of federal regulatory policy outputs.

We draw on data from the Unified Agenda of Federal Regulatory and Deregulatory Actions to compare descriptive snapshots of notice and comment practice and performance under Bush and previous administrations. The Unified Agenda is published semiannually in the Federal Register and summarizes the expected and pending notice and

comment rulemaking activities of all federal agencies. These data cover the timeframe of 1983 to 2005. While the information reported in the Unified Agenda is limited in breadth and depth, in Balla's (2005: 70) view it "represents as complete a snapshot as possible" of federal agency rulemaking. The Unified Agenda allows us to compare presidencies across such important dimensions of bureaucratic performance as the volume of rulemaking, the agencies most frequently engaged in rulemaking, the extent of rule review by OMB, and, more ambitiously, the efficiency of agency rulemaking, which we operationalize as the amount of time that it takes agencies to move rules from proposal to promulgation. The research presented in this chapter builds upon our previous empirical work in this area (see, e.g., Yackee 2006a, 2006b; Yackee and Yackee 2006, 2007; McKay and Yackee 2007).

Before beginning our analysis, we offer two caveats. First, we are not able to explore in any detail the potential causal links between specific regulatory reforms (such as Bush's increased emphasis on electronic rulemaking or the implementation of the Data Quality Act) and bureaucratic outputs. That is best left to detailed case studies of the type presented elsewhere in this volume. Our own contribution is, as we have already emphasized, at the macro level. Second, our approach here is descriptive rather than theoretically deductive. We do not attempt to derive a theory of the Bush administration's approach to the bureaucracy, nor do we attempt to provide theoretically rigorous, a priori predictions of what types of differences we might expect between the performance of the Bush bureaucracy and, say, the bureaucracy under Clinton.

But we do take (candidate) Bush at his word that the main underlying goal of his approach to managing the bureaucracy is to promote efficient government that is responsive to the interests and input of stakeholders, as guaranteed by top-down control of bureaucratic outputs. This suggests two rough but useful benchmarks for gauging the success or failure of Bush's efforts. First, we can examine whether the bureaucracy is indeed able to perform more efficiently than in the past, as indicated by the number of new regulations and the speed with which such regulations are promulgated. Second, we can examine patterns of White House review of agency actions, looking to see whether the Bush administration succeeded in institutionalizing centralized review of bureaucratic outputs.

To preview the chapter's findings, the descriptive data suggest that in many respects the bureaucracy functioned under Bush in much the same way that it functioned under previous administrations (and particularly under the Clinton administration). The same departments

and agencies engaged in writing the most rules; Bush, like Clinton, presided over large numbers of new rules, the vast majority of which were successful in the sense of eventually being promulgated; and Bush's bureaucracy was roughly, though not quite, as efficient as Clinton's in terms of the amount of time that it took to promulgate rules. The principal difference that we find is that the Bush administration appears to have been more selective and more rigorous than previous administration in its use of OMB review as a tool to force agencies to reshape proposed regulations to suit White House preferences. Yet, in the end, Bush requires agencies to change about the same absolute number of regulations as previous presidents. Overall, we conclude that President Bush's administration and management of the rulemaking process does not appear, at least in these macro-empirical exercises, to have differed fundamentally from his predecessors.

Descriptive Statistical Comparison

In this section we compare bureaucratic practice and outputs across four presidential administrations, beginning with Reagan in 1983 and ending with George W. Bush ("Bush II") in 2005. Our data comes from the Unified Agenda, and is supplemented in some instances with data provided separately by OMB. We divide our discussion into three subsections. First, we discuss statistics pertaining to notice and comment rulemaking generally. We then discuss various statistics relating to OMB review of rulemaking. And in the third and final subsection we present a brief Kaplan-Meier analysis of the time that it took to write rules under the Clinton and Bush II administrations.

Notice and Comment Rulemaking Generally

The first and most basic issue in which we are interested in comparing is the volume of rulemaking. How many rules has the federal bureaucracy proposed under Bush II? How many have been promulgated? How does this level of regulatory activity compare to the levels of activity of past administrations? Table 3.1 uses the Unified Agenda data to calculate the average annual number of proposed rules under each of the past four administrations, and the average annual number of final, promulgated rules. The data for final rules include only those rules that went through the APA-mandated notice and comment process.

Table 3.1 Rulemaking Activities by President: Annual Averages

<i>Rulemaking Activities</i>	<i>Reagan</i>	<i>Bush I</i>	<i>Clinton</i>	<i>Bush II</i>
NPRMs	1,032	997	889	683
Final Rules (Via NPRM Process)	682	795	776	589
Conversion Rate (Final Rules/ NPRMs)	66%	80%	87%	86%
Significant Final Rules [^]	—	—	133	121
“Interpretative” Rules	450	420	445	312
Interim Final Rules	89	149	172	153

Note: Data span from 1983 (or 1984) to 2005 and are from the Unified Agenda. [^] indicates that data is available only from 1995 and on. See text for additional data details.

Table 3.1 shows that under Bush II the bureaucracy proposed, on average, 559 new rules per year, significantly fewer than Reagan’s bureaucracy (which averaged 737 proposals per year) and somewhat less than Clinton’s (which averaged 641 proposals per year).¹ But the vast majority of Bush’s proposals became binding law. His “conversion rate”—which for simplicity we calculate as the ratio of annual average rules proposed to annual average rules promulgated—is the highest of the four administrations, at 93 percent. This means that while the Bush bureaucracy proposed fewer rules than past administrations, it finalized a roughly equivalent number. Indeed, Bush promulgated on average slightly more rules than Reagan did (518 per year versus 504), and only slightly fewer than Clinton (561).²

The Unified Agenda data do not offer much insight into the content of proposed and promulgated regulations. Without performing detailed and time-consuming content analysis of individual rules we are not able to tell whether Clinton’s 561 promulgated rules per year were more “proregulatory” or “liberal” on average, than Bush II’s promulgated rules. While it is sometimes assumed that an “antiregulatory” or “deregulatory” agenda means a lack of new regulations, this need not, in fact, be the case. Deregulation—meaning the formal modification or loosening of existing regulations—must also take place through the notice and comment process, as agencies are required by the APA to justify their decisions to change the regulatory status quo in either a pro- or antiregulatory direction. Bush II’s apparent willingness to resort to notice and comment rulemaking—and his administration’s ability to successfully shepherd a very high percentage of proposed policy initiatives through that process—thus does not necessarily mean that Bush betrayed his party’s traditional antiregulatory agenda.

There is one limited exception to our general inability to discuss regulatory content. Since 1995 agencies have been required by presidential executive order to record whether a regulatory activity is “significant” in terms of its likely economic, legal, or budgetary impact, or because it is likely to clash with other regulatory initiatives, or because the rule is a priority of the agency head.³ Rulemaking agencies make the initial determination of “significance,” though OMB has the right to make its own determination as well. Rules that are declared “significant” by OMB are automatically reviewed and are subject to potentially rigorous analytic requirements, including cost-benefit analysis.

We see in table 3.1 that Bush II’s bureaucracy promulgated, on average, nearly 40 more self-identified “significant” rules per year than did Clinton’s bureaucracy (129 versus 91). The difference is even greater when expressed as a percentage of the average annual number of final rules: 14 percent for Clinton versus 25 percent for Bush. On the one hand, this may mean that Bush II’s bureaucracy engaged in more substantively meaningful regulatory activities than did Clinton’s. We suspect, however, that the difference in numbers of significant rules reflects instead the Bush administration’s ideological preference for top-down control of agency activities. A declaration of “significance” is, at times, associated with additional analytic requirements that serve as a check on agency autonomy, and declarations of “significance” may be a way for administration officials to ensure that regulations receive an extra dose of top-down scrutiny.

Figure 3.1 presents a different view of the Unified Agenda data on the volume of Notices of Proposed Rulemakings (NPRMs) and final rules. Here we are comparing the number of NPRMs and final rules by president by year of administration; Bush II is indicated by the diamond-patterned line. Since a marked peak in NPRM activity during his second term in office, the Bush administration’s issuance of NPRMs declined steadily. In his fifth year in office, Bush proposed just 400 new rules—almost 100 fewer than Clinton in his fifth year, and almost 400 fewer than Reagan in his fifth year. (Recall that we do not have data for the first few years of Reagan’s administration.) Bush II’s dramatic drop off in proposed rules is roughly consistent with Clinton’s pattern of rulemaking, even if the magnitude of Bush’s decline in proposal activity is unique. Clinton, like Bush II, began his administration with a flurry of proposed rulemakings, many of which we presume were designed to reverse Reagan-era policy initiatives that conflicted with Clinton’s own regulatory preferences. Bush’s early spurt of activity likely reflects both his administration’s attempts

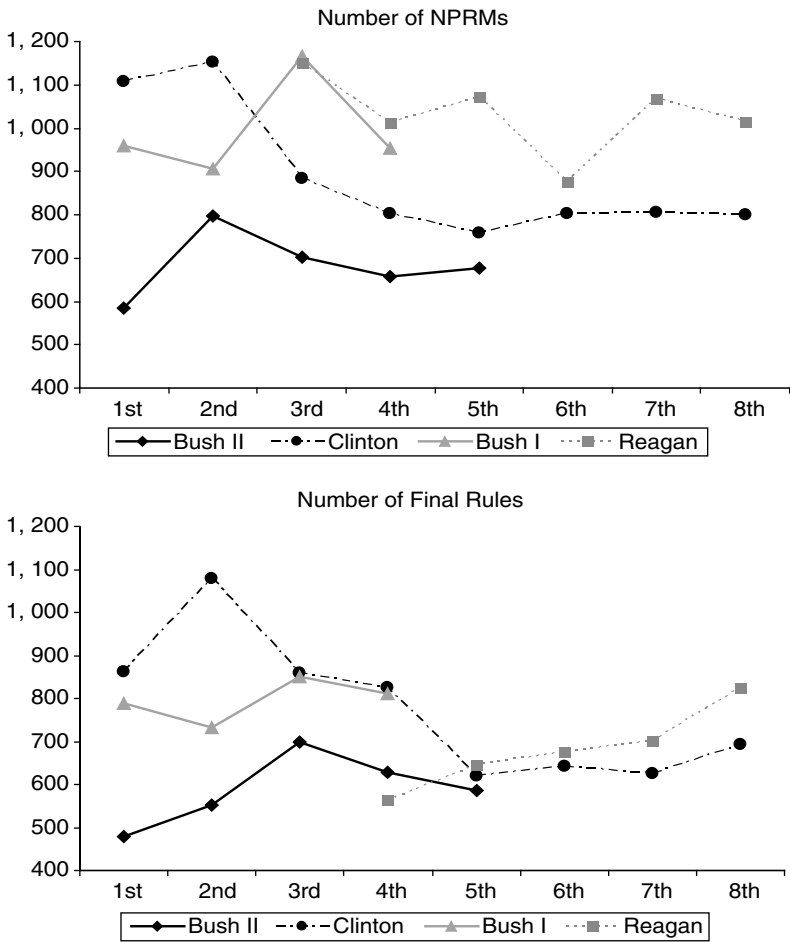


Figure 3.1 Rulemaking Activities by Presidential Year in Office

Note: Data span from 1983 to 2005 and are from the Unified Agenda. See text for additional data details.

to reverse Clinton policy initiatives and his administrative response to the September 11 tragedies.

We see a similar but less pronounced pattern when we look at final rules issued by year of administration. Bush II's number of promulgated rules peaked in his third year in office (at over 600, similar to President George H. W. Bush [Bush I] and Clinton during their third years in office), but it declined modestly to approximately 550 rules

promulgated in his fifth year. More interesting than the decline, however, is that the number of final rules promulgated during Bush's fifth year in office is still well above the number of rules promulgated by Clinton and Reagan during their fifth years in office. This suggests that the impression left by our annual averaged data—that Bush II regulated less than any of the previous three administrations—needs to be temporally qualified. While Bush began his administration with a far less active regulatory agenda than did Clinton or Bush I, and while Bush's level of regulatory activity peaked well below the peaks of those two other administrations, Bush's bureaucracy was able to maintain a relatively high level of activity during the middle years of his presidency. But in any event, Bush II's low number of proposed rules in the NPRM pipeline suggests that the downward trend in promulgated rules continued into the latter years of his administration.

Table 3.2 breaks out NPRM activity by administration and by federal department and agency. We list the top seven rule-proposing departments and agencies for each of the four administrations in order to examine whether there are noticeable differences in each administration's regulatory focus. Entries that are common to all four administrations are highlighted in grey, and the relative importance of each department or agency to its administration's total rulemaking activity is indicated in parentheses, as a percent of total NPRMs.

The top rule-proposing departments and agencies are strikingly stable across administrations. The same seven departments are in each administration's "top seven" list, and we see that for each of the first three administrations the same three departments—Interior, Treasury, and Transportation—comprise the top three rule proposers.⁴ We do, however, see some modest shift in focus under Bush II. Bush's policy emphasis on tax reform and tax reductions elevated Treasury to the top of his department list, with 14 percent of all NPRMs, while Interior—the number one rule-writing department under Reagan, Bush I, and Clinton—became relatively less important, falling to the third spot with nine percent of Bush II's NPRM activity. Commerce also emerged as an important focus of regulatory activity for Bush II, largely as a result of a doubling of the National Oceanic and Atmospheric Administration's (NOAA) share of proposed rules, itself an apparent response to the Katrina disaster.

We also see that the same three agencies are at the top of each administration's "top seven" list: NOAA, the Internal Revenue Service, and the Fish and Wildlife Service. Notable differences under Bush II include the rise of the Defense Acquisition Regulations Council into the top seven (an unsurprising result of the Iraq War) and the

Table 3.2 Notices of Proposed Rulemakings by President and Department or Agency

<i>Reagan</i>	<i>Percent</i>	<i>Bush I</i>	<i>Percent</i>	<i>Clinton</i>	<i>Percent</i>	<i>Bush II</i>	<i>Percent</i>
<i>Top Five Departments</i>							
1	Department of the Treasury	12.23	Department of the Interior	15.97	Department of the Interior	Department of the Treasury	14.11
2	Department of the Interior	11.26	Department of the Treasury	11.36	Department of the Treasury	Department of Commerce	10.54
3	Department of Transportation	9.57	Department of Transportation	10.68	Department of Transportation	Department of Transportation	9.13
4	Environmental Protection Agency	8.79	Department of Agriculture	7.97	Environmental Protection Agency	Department of the Interior	8.31
5	Department of Health and Human Services	7.98	Department of Health and Human Services	7.00	Department of Agriculture	Environmental Protection Agency	7.49
<i>Top Five Agencies</i>							
1	Internal Revenue Service	9.10	United States Fish and Wildlife Service	12.19	United States Fish and Wildlife Service	National Oceanic and Atmospheric Administration	8.63
2	United States Fish and Wildlife Service	5.27	Internal Revenue Service	7.17	National Oceanic and Atmospheric Administration	Internal Revenue Service	7.96
3	Office of Prevention, Pesticides and Toxic Substances	3.73	National Oceanic and Atmospheric Administration	4.24	Internal Revenue Service	United States Fish and Wildlife Service	5.56
4	National Oceanic and Atmospheric Administration	3.09	Federal Aviation Administration	3.06	Air and Radiation	Defense Acquisition Regulations Council	3.04
5	Public Health Service	2.50	National Highway Traffic Safety Administration	2.66	DOD/GSA/NASA (FAR)	Centers for Medicare and Medicaid Services	2.81

Note: Data span from 1983 to 2005 and are from the Unified Agenda. See text for additional data details.

return of the Centers for Medicare and Medicaid Services (missing since the Reagan administration, but newly important, probably as a result of Bush II's prescription drug initiative).

The Unified Agenda also allows us to tabulate a limited amount of information regarding what might be called "other regulatory activities." The second section of table 3.1 presents basic statistics regarding regulatory actions other than the issuance of NPRMs or the promulgation of final rules. While almost all important regulatory initiatives pass through the notice and comment process, agencies may be able to bypass those procedures by issuing either "interpretative" or "interim final" rules.

Interpretative rules are ostensibly limited to rules that merely "interpret" or explain an existing regulation (or statute) rather than add new legal content.⁵ But the line between legal explanation and law creation is sometimes quite fine, and proponents of the prominent "ossification" thesis in the administrative law literature have accused agencies of increasingly seeking to avoid the rigors of notice and comment by dressing substantive regulatory initiatives in the guise of mere interpretation (e.g., McGarity 1992; see also Yackee and Yackee 2007).

Interim final rules have the legal force of a final rule when first issued and thus do not begin with an NPRM. Interim final rules are typically used when a statute requires an agency to act quickly or when a matter is thought to be relatively uncontroversial, and it is generally expected that the interim final rule will be fine-tuned later in response to comments and eventually converted to a final rule proper. However, interim final rules occasionally remain on the books unchanged for substantial periods of time and may also serve as a way of getting around notice and comment requirements.

Table 3.1 indicates that Bush's use of interim final rules is not markedly different from that of his two immediate predecessors. On average, the Bush bureaucracy issued 153 interim rules per year, just over Bush I's 149 and just under Clinton's 172. There is a much more striking difference in Bush's use of interpretive rules. Note that the Bush bureaucracy appears to have issued far fewer interpretative rules than Reagan, Bush I, or Clinton. Across those three earlier administrations the use of interpretative rules remained rather steady, at between 509 (Bush I) and 560 (Reagan) per year. The Bush bureaucracy has, in contrast, issued only 309 interpretative rules per year. This finding is quite surprising given the predictions of ossification theorists that the use of interpretative rules should have increased over time.

What explains the Bush bureaucracy's relative aversion to interpretative rules? We suspect that it is due neither to the Bush administration's

regulatory reforms nor to Bush's particular management style or philosophy. Instead, the decline in use of interpretative rules may be, in part, a rational agency response to changing Supreme Court jurisprudence. In its 2001 decision in *United States v. Mead Corp.*, the Court held that regulations that passed through notice and comment would enjoy a significantly higher level of deference in the event of judicial review than would policies promulgated through interpretative rules or other informal methods of regulation, such as "policy statements." The ruling places substantive agency policies that are based upon interpretive rules on a weak legal foundation, making the NPRM process, despite its various procedural hurdles, relatively more attractive to agencies than it has been in the past.

OMB Review

Table 3.3 provides basic statistics on the extent to which the four administrations have used OMB to review and to require changes in proposed and final rules.⁶ In 1981, President Reagan issued Executive Order 12291, which required agencies to submit to OMB a Regulatory Impact Analysis for all "major" draft and final rules. All subsequent presidents have required some type of rule review by OMB (West 1995; Kerwin 2003; Croley 2003), including Clinton, who directed OMB to review all "significant" rulemaking activities, and Bush, who maintained Clinton's executive order laying out the parameters of OMB review. OMB review serves two main purposes: it focuses agencies on the costs and benefits of regulations, and it eases what might be called the president's "transaction costs" of monitoring the bureaucracy by subjecting important policy initiatives to a centralized and formal review process. OMB review has emerged as perhaps the single most important procedural tool for imposing the president's agenda on the bureaucracy.

Table 3.3 illustrates some significant differences between Bush II's OMB practice and that of his father and Reagan, but differences between Bush II and Clinton are relatively muted. OMB can review rules immediately prior to both the issuance of an NPRM or the issuance of the final, legally binding rule. Reagan and Bush I clearly adopted a strategy of using OMB to review a relatively large number of rules at both stages, but to require changes to a relatively small proportion of those reviewed rules. Thus we see that Reagan and Bush I reviewed, on average, more than 300 rules per year. At the prefinal rule stage, Reagan reviewed, on average, 221 rules, and Bush I reviewed

Table 3.3 Rule Review by the Office of Management and Budget, Annual Averages

	<i>Reagan</i>	<i>Bush I</i>	<i>Clinton</i>	<i>Bush II</i>
<i>OMB Review—Pre-NPRM Stage</i>				
NPRMs Reviewed	478	414	214	171
OMB Review Rate (NPRMs Reviewed/NPRMs)	46%	42%	24%	25%
Average Review Days for All Reviews	44	48	62	66
Number of Reviewed Rules OMB Requires to Be Changed	160	143	112	128
Percent of Reviewed Rules OMB Requires to Be Changed	33%	35%	52%	75%
<i>OMB Review—Pre-Final Rule Stage</i>				
Final Rules Reviewed	451	414	167	124
OMB Review Rate (Final Rules Reviewed/Final Rules)	66%	52%	22%	21%
Average Review Days for All Reviews	33	42	53	51
Number of Reviewed Rules OMB Requires to Be Changed	121	120	94	94
Percent of Reviewed Rules OMB Requires to Be Changed	27%	29%	56%	76%

Note: Data span from 1983 to 2005 and are from the Office of Management and Budget, which are linked to the Unified Agenda data. See text for additional data details.

over 300. This translates into a relatively high rate of review. Dividing the average number of NPRMs (or final rules) reviewed by the average annual number of NPRMs (or final rules) listed in table 3.1, we see that Reagan and Bush I reviewed over 40 percent of their NPRMs and final rules. In Bush I's case, 51 percent of final rules were reviewed at the prefinal rule stage. Reagan and the first Bush were also relatively likely to review NPRMs or final rules multiple times, as indicated in the statistic for "average number of OMB reviews per rule."

Contrast these figures with those for Clinton and Bush II, both of whom reviewed nearly 200 fewer NPRMs and final rules than Bush I. Indeed, it is striking to note that Clinton and Bush II have nearly identical rates of OMB review, and that those rates are themselves quite a bit lower than the rates of review of the earlier administrations: Clinton and Bush II reviewed just 21 percent of their NPRMs, and between 24 and 25 percent of their final rules.

In brief, then, Bush, like Clinton, appears to be casting his OMB net more discriminately than prior presidents. But review under Bush,

when it does happen, also may be more demanding than review under Reagan or Bush I, or even than under Clinton. We can get a sense of this by examining the proportion of OMB-reviewed NPRMs and final rules that OMB required to be changed. Under Reagan and the first Bush, between 24 and 34 percent of reviewed NPRMs and final rules were required to be changed; in other words, the vast majority of reviewed agency initiatives were allowed to proceed exactly as the agency proposed. In marked contrast, Bush II's OMB imposed changes on over *two thirds* of reviewed NPRMs and final rules. In short, OMB review under Bush II did not resemble a rubber stamp. Nor does it seem as if Bush's agencies were very adept at anticipating likely OMB objections to their policy initiatives. This is a surprising failing given Bush II's emphasis on installing administration loyalists in sub-cabinet positions within the agencies. One may have expected that such efforts would decrease the need for OMB to require changes.

We see evidence of this more demanding review in another statistic—the average number of days that OMB takes to review agency initiatives. Reagan and the first Bush pushed NPRMs (and especially final rules) through the OMB review process with remarkable speed. Under Reagan, for example, final rules were reviewed, on average, within 26 days. Bush II's OMB took more than twice as long—58 days—reflecting, we believe, the additional time that it took OMB to formulate changes to policies.

The data presented in this subsection suggest that Bush II, like any other president, faced important resource constraints on his ability to monitor and control agency outputs through centralized review. Absent a significant increase in OMB funding and staffing, presidents face a tough managerial decision: should they try to review as many rules as possible—quickly and, perhaps, superficially—or should they review fewer rules, but conduct those reviews intensively? It is perhaps unsurprising that Bush, as someone who famously described himself as “the decider,” would prefer a strategy that enables the White House to play a more active role in actually formulating rather than simply approving policies that bubble up from the lower reaches of the bureaucracy. But we emphasize that this strategy is not unique to Bush. Indeed, it is the same strategy chosen by Clinton. Furthermore, it is unclear whether Bush's strategy has led to greater control over bureaucratic outputs considered as a whole. If agencies were aware that Bush's OMB is not particularly likely to review their policy initiatives, career staff may have had little incentive to anticipatorily incorporate responses to likely White House objections in their proposals.

Our descriptive analysis so far focuses on administration-level rulemaking statistics, in which we average data across all administrative units. This government-wide-average approach may tend to obscure department or agency-specific differences across presidential administrations. Certain government units may tend to consistently engage in low-salience or low-politics policymaking, giving presidents of one partisan stripe or the other little incentive to invest much effort in changing the way the unit does its business. On the other hand, presidents may face greater incentives to try to reform units that are regularly engaged in politically controversial issues. To explore this possibility, Table 3.4 breaks down the data described above for two representative department-level units under Clinton and Bush II: the Environmental Protection Agency (EPA), whose mission we assume to be reliably politically contentious, and the Department Of Transportation (DOT), whose various activities we take as less politically controversial.⁷ We would expect differences between administrations to be sharper in the case of EPA.

Table 3.4 broadly supports the conclusions that we have already drawn from the aggregated data presented in table 3.3: differences between Bush and Clinton are muted, even in the case of a politically contentious agency. Both Clinton and Bush II's EPA issued quite comparable numbers of NPRMs (36 and 31, respectively) and final rules (27 and 33) on an annual average basis. Both used OMB to review a relatively meager proportion of EPA NPRMs, but when review took place, changes were almost always required. The most notable difference between the two administrations is that Bush's EPA has a more successful conversion rate for turning NPRMs into final rules (74 percent versus 106 percent). (Bush's conversion rate was above 100 percent because his EPA promulgated a number of NPRMs that were begun under Clinton). On the other hand, differences in DOT's rulemaking practice are more striking. Clinton's DOT was far more active in proposing new rules (89 NPRMs on average per year, versus 45), though the number of promulgated DOT rules is similar (57 final rules for Clinton, 48 for Bush). Bush's DOT, in other words, proposed far fewer regulations than Clinton's, but what it did propose was promulgated: note Bush's high conversion rate for DOT rulemaking (again, over 100 percent due to promulgation of a number of Clinton-era DOT NPRMs). Bush and Clinton used OMB to review a nearly identical percentage of DOT NPRMs (approximately 15 percent), though when Bush's OMB reviewed a DOT NPRM it was much more likely to require a change.

Again, this fits with the more general pattern evident in table 3.3. Bush's agency practice is much like Clinton's, with one principal

Table 3.4 Rulemaking Activities in Two Departments: Comparing the Annual Averages of Clinton and Bush II

	<i>Clinton</i>	<i>Bush II</i>
Environmental Protection Agency (EPA)		
<i>Notice and Comment Rulemaking</i>		
NPRMs	71	51
Final Rules (Via NPRM Process)	53	48
Conversion Rate (Final Rules/NPRMs)	75%	94%
<i>OMB Review—Pre-NPRM Stage</i>		
NPRMs Reviewed	27	18
Number of Reviewed Rules OMB Requires to Be Changed	21	17
Percent of Reviewed Rules OMB Requires to Be Changed	78%	94%
Department of Transportation (DOT)		
<i>Notice and Comment Rulemaking</i>		
NPRMs	87	62
Final Rules (Via NPRM Process)	82	56
Conversion Rate (Final Rules/NPRMs)	94%	90%
<i>OMB Review—Pre-NPRM Stage</i>		
NPRMs Reviewed	22	14
Number of Reviewed Rules OMB Requires to Be Changed	9	10
Percent of Reviewed Rules OMB Requires to Be Changed	41%	71%

Note: Data span from 1993 to 2005 from the Unified Agenda and the Office of Management and Budget. See text for additional data details.

exception: OMB review tended to be more rigorous, with Bush's OMB more likely to second-guess agency policy decisions.

Bureaucratic Efficiency: Kaplan-Meier Analysis

One of the principal implications of Bush's claim to be the "first MBA president" is that he would be able to impose private sector efficiencies upon the business of government. We define efficiency here simply as the amount of time that it takes an agency to transform a policy initiative from a proposed rule into a promulgated and legally binding regulation. Our layman's concept of efficiency is admittedly a simplistic one, but it roughly mirrors Bush's own stated view of the principal problem with the bureaucracy under previous administrations—that government is too slow to respond to societal needs for regulatory

change. We assume that more efficient regulatory production processes tend to minimize the amount of time, which many view as a key cost of the regulatory process.⁸

Kaplan-Meier survivor probability estimates provide us with a methodologically appropriate, nonparametric means of estimating that time frame.⁹ We used the Unified Agenda data to create a variable measuring the number of months that it took Clinton and Bush-era rules to move from the proposal stage to promulgation. We then used Kaplan-Meier techniques to estimate the amount of time that it would take for certain percentages of each president's NPRMs to reach finalization.

The results of the exercise are presented in table 3.5. The first column indicates the estimated number of months that it takes for 25 percent of the NPRMs in the dataset to move from proposal to promulgation. The second and third columns provide estimates for 50 percent and 75 percent of the NPRMs in the dataset to move to promulgation. The first row shows that for rules proposed and finalized solely under Clinton, 25 percent of NPRMs are estimated to have been promulgated within just four months of the initial notice. Stated simply, about half of Clinton's rules are estimated to have been finalized within just eight months of initial notice, and three-quarters within 14 months. Bush's performance, illustrated in row two, is slightly worse. It took an extra month for 25 percent of Bush's rules to reach completion, and an extra two months for half of Bush's rules to reach completion. It took quite a bit longer for 75 percent of Bush's rules to reach completion—an estimated 22 months, or nearly 2 years (table 3.5).

These results provide, in short, little evidence that Bush's regulatory reforms or management style enabled his administration to push regulations through the notice and comment process any more efficiently than Clinton. Indeed, at the margins it appears as if Bush's administration was less able to regulate in a timely manner.

Table 3.5 Time to Finalization for Notice and Comment Rulemaking

	<i>Kaplan-Meier Estimates in Months</i>		
	25%	50%	75%
NPRMs Began and Finalized under Clinton	4	9	15
NPRMs Began and Finalized under Bush II	4	8	13

Note: Data span from Spring 1993 to Spring 2006 Unified Agenda. See text for additional data details.

Conclusions

In a recent article Milakovich examined Bush II's and Clinton's "performance management strategies," asking "are they more alike than different?" (2006). His conclusion is that the approaches of the two administrations are broadly similar, and that Bush had even "tacitly endorsed many of Clinton's reforms." This is not surprising. At least since Moe (1985b), scholars have recognized that despite quadrennial exercises in bureaucracy-bashing and bold claims for "administrative reform" presidents have relatively few tools in their tool-chest that have not already been tried and found wanting. In examining one important aspect of the federal regulatory system—notice and comment rulemaking—we found that the Bush administration's patterns of practice are not dramatically different from what has come before. Thus, our analysis generally supports Milakovich's conclusion that Bush and Clinton are "more alike than different."

This is not to say that the substance of federal regulation would have been no different had Gore won the election in 2000, or Kerry in 2004. We presume, for example, that under a Gore administration EPA would have moved to regulate carbon dioxide emissions, rather than waiting for a directive from the Supreme Court to begin agency action. Furthermore, any number of other policy areas would certainly have been differently regulated, and probably more regulated, had Bush failed to capture or to hold on to the White House.

But what we are able to say, with a modest amount of confidence, is that the Bush administration does not seem any better able to regulate in terms of the volume of rulemaking than were previous presidents, and that it does not seem to regulate any more efficiently, in terms of time. These findings are surprising only in light of the rather large amount of attention Bush, a mediocre student by all accounts, received by virtue of his graduate training (Pfiffner 2007; Breul 2007), and in light of claims that Bush's formal reforms to the administrative process amounted to "significant" changes in the way regulation now takes place (e.g., Shapiro 2007).

That said, we did document an increased willingness to use OMB review to second-guess agency initiatives during the Bush II years, a finding consistent with perceptions of the Bush administration as favoring a top-down management style. But that difference, too, is largely a continuation of trends begun under Clinton, and seems to entail a Hobson's choice of sorts: intensive review of *some* rules equates with *little to no* review of others.

We fully expect the early post-Bush II era to be dominated by claims that the federal bureaucracy is “broken,” that Bush’s “reforms” were mere “reshuffling” (or worse), and that Candidate X, Y, or Z will *really* change the system the next time around. Given the well-publicized bureaucratic disasters in New Orleans, Iraq, and elsewhere, we hope that President X, Y, or Z succeeds. But our analysis suggests that the fight is a difficult one. At least at the macro-empirical level, the bureaucracy tends to function under one president much as it has functioned under others.

Notes

1. Comparison with the Reagan administration merits some caution, because we do not have data on Reagan’s first years in office and during which he may have initiated and/or finalized an above-average number of rules.
2. As we discuss elsewhere (Yackee and Yackee 2007), the overall downward trend in the number of final rules since Bush I’s administration may be a function of declining congressional demand for new regulation. Notice and comment activity is driven to a great degree by legislation, and Congress appears to legislate less in current times than it had in the past.
3. See, for example, President Clinton’s Executive Order 12,866 and the Regulatory Information Service Center’s 2005 “Introduction to the Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions.”
4. We consider the Environmental Protection Agency to be the functional equivalent of a “department” given its size and importance.
5. The Unified Agenda does not identify “interpretive rules” as such, and we can identify them only indirectly by counting as “interpretive” all final rules or actions that do not list an NPRM over the lifespan of the regulation. This is an imperfect measure, even more so because it is doubtful that agencies report all of their “interpretive rules,” including their “policy statements,” to OMB. That said, we have no particular reason to believe that our method of identifying interpretive rules is differently accurate across presidential administrations.
6. For the purposes of this chapter we tabulate OMB review data only for NPRMs and final rules that are listed in both the Unified Agenda and the OMB dataset.
7. This is not to say that DOT never engages in highly salient issues or politically contentious issues. Road-building projects, for example, tend to be highly salient to members of Congress and their constituents, even if, putting aside the rare “bridge to nowhere,” they are not controversial. DOT’s road safety and fuel economy regulations, on the other hand, tend to spark vicious political battles. On average, however, we feel safe in

assuming that DOT's regulatory agenda is less likely to attract the attentions of a reform-minded president than EPA's.

8. A more sophisticated view of regulatory efficiency may take into account the social desirability of a particular regulation, recognizing, for example, that it may be "efficient" for an agency to delay promulgation of socially undesirable regulations as long as possible. But here we are less concerned with comparing what might be called the "social efficiency of regulatory output" as we are with much more narrowly comparing the time-efficiency of the production process itself.
9. A similar methodological approach is discussed in more detail in Yackee and Yackee (2007). In essence, Kaplan-Meier techniques allow us to take into account the information value of right-censored observations. Here, we do have a number of right-censored observations—NPRMs that are either withdrawn prior to promulgation, or that are otherwise not promulgated prior to the end of our dataset.

Chapter Four

Presidential Attention to Independent Regulators in the Bush Era

Andrew B. Whitford

While Marver Bernstein's (1955) book *Regulating Business by Independent Commission* teed up a research agenda about the regulatory independence and influence from political actors, more recent studies have focused on elected politicians and their ability to influence agency outputs. In this chapter, I focus on the president's attention cycle for nine independent agencies (IRCs). Politicians try to shape the attention cycle to concentrate on issues and problems (e.g., Flemming, Bohte, and Wood 1997; Baumgartner and Jones 1993; Cohen 1995, 1997; Wood and Peake 1998). The president's status and position gives him the power to change the attention cycle (Andrade and Young 1996; Light 1999; Edwards and Wood 1999; Canes-Wrone 2001)—to the extent that presidential agenda-setting is a primary means through which he secures and extends his power and influence (e.g., Bond and Fleisher 1990; Yates and Whitford 2005). In general, we know that the president's ability to command the "bully pulpit" provides him with the capacity to shape public attention of topics, issues, or frames of reference, and that capacity has consequences for the performance of public agencies (e.g., Whitford and Yates 2003).

The data, which analyze presidential attention towards regulatory agencies, are drawn from nine agencies observed mostly during the Bush presidency, from 2000 to 2006, at the daily level to be used in the president's public statements. The nine agencies are the Federal Communications Commission (FCC), the Federal Energy Regulatory Commission (FERC), the Federal Deposit Insurance Commission (FDIC), the Federal Reserve Board (the Fed), the Federal Trade Commission (FTC), the Nuclear Regulatory Commission (NRC), the Equal Employment Opportunity Commission (EEOC), the National Labor Relations Board (NLRB), and the Securities and Exchange Commission (SEC). Among these agencies, one is broadly concerned with telecommunications regulation (the FCC), two with oversight of

aspects of energy production (FERC and NRC), two with oversight of banking (the FDIC and the Fed), one with its broad oversight of anti-trust and other competition issues (the FTC), two with strong distributive consequences (NLRB and EEOC), and the central one with oversight of the financial sector (the SEC). Among these agencies, the Fed enjoys a unique role as the manager of the money supply and other aspects of macroeconomic performance, which means that observation of presidential attention to the Fed allows contrast with six other commissions with smaller purview and lower profile. This also provides insight into how the president relates to the one bureaucrat (the Fed Chairman) whose actions directly affect the president's electoral outcomes (e.g., Lichtman 1992).

My focus is on the last year of the Clinton administration and the first six years of the administration of George W. Bush. This means that I can identify (1) early administration ("honeymoon") effects for the president in contrast to the previous year; (2) changes in the president's attention to these agencies as the news cycle changes; (3) cross-agency differences for the entire time period; and (4) the dynamics of changes for individual agencies or collections of agencies at a very fine level of time granularity. Developments toward the end of Bush's presidency indicated that the administration wanted to increase executive control of the regulatory process: for example, the 2007 executive order that all agencies must have a policy office (run by a political appointee) that both oversees how the agency develops rules and documents, and provides regulated industries with guidance (Pear 2007). Moreover, while the administration necessarily focused on foreign affairs and national security policy during the first seven years, this time period also included the California energy crisis of 2000 and 2001, as well as the widely publicized accounting scandals that involved Enron, Global Crossing, and major accounting firms (leading to the passage of the Sarbanes-Oxley Act of 2002).

This attention-oriented approach to assessing regulatory influence reveals five important aspects of how the Bush presidency related to the IRCs. First, presidential attention changed over the 2000–2006 time period; the greatest attention was at the beginning of the period, with attention falling over time. Second, several agencies experienced significantly greater attention: the SEC, the FCC, and the FTC. In contrast, the president virtually never mentioned the Federal Reserve Board by name. Third, an early period of elevated attention was spread across multiple agencies, while a later attention cycle focused almost entirely on the SEC. There is also evidence of a third cycle involving FERC. Fourth, the data reveal relatively constant attention

to the FCC—an agency not often described as a constant interest of the president (when compared to other, more central regulatory agencies like the FTC). Last, the data reveal almost no attention to either the EEOC or the NLRB, two agencies long considered to have more distributive purposes. Together, these results suggest that presidential attention to independent regulators is influenced by external events like crises, but also that some agencies lie significantly below the president's radar screen of attention.

I start the chapter examining different approaches to understanding the role of the IRCs in a democratic system of separated powers. I then discuss the measurement strategy for assessing presidential attention to the IRCs. Results are then presented and discussed, and the chapter concludes with some brief remarks and potential extensions of this study.

Presidential Attention as Mechanism and Outcome

Bernstein (1955) argued that over time politicians' attention moves away from independent commissions, which were created in response to widespread views that an agency must resolve a market-induced crisis, to other, more pressing issues. Into this gap interest groups move, and essentially become clients of the agency. The agency, in turn, becomes captured. The capture hypothesis has helped analysts focus on specific issues in political control and regulatory performance—and has induced multiple views of the long-term relationship between regulated industries and the agencies that oversee them (e.g., Stigler 1971; Laffont and Tirole 1971; Levine and Forrence 1990). This basic intuition has grown and developed into a number of variations, some focusing on the lack of overt political oversight (McCubbins and Schwartz 1984) and others centered on the conditions under which agencies truthfully reveal information to their political principals (Banks and Weingast 1992). Yet, a constant in most of these models and theories of the policy process is that the attention span of politicians, even presidents, with regard to federal regulatory agencies is short and rare.

On the other hand, the literature on presidential agenda-setting in our system of separated powers focuses on the conditions under which the president attends to a specific policy area (e.g., the economy, crime, foreign affairs), and the impact of that attention on other relevant actors (e.g., Congress, the courts, the public, the media). As

Baumgartner and Jones (1993) have shown, political attention to specific issues changes in time, moving sharply up and down as crises and other critical events bring topics to the desk of the president and therefore onto the president's agenda. The president's own motivations for attending to these issues—for attempting to use his power of the “bully pulpit” to shape the tone and tenor of the debate—are well documented (Andrade and Young 1996; Light 1999; Edwards and Wood 1999; Canes-Wrone 2001).

One reason the president attends to these events and translates them into policy language is that his electoral circumstances are dictated by his ability to speak to the policy preferences of citizens—although the coincidence with the electoral cycle also directly impacts the degree to which he takes up any given issue (Yates and Whitford 2005). Beyond the impact on citizens and other actors in the system, presidents also have incentives to use their unique position as “chief executive” to move the debate from the political arena to the arena of policy implementation by shaping the behavior of unelected bureaucrats who work for him in the IRCs; while having direct oversight authority probably increases the impact of the president's words on individual bureaucrats, there is strong evidence that the president's rhetorical leadership expressed through his attention cycle can penetrate layers of bureaucratic hierarchy and even federalist arrangements (Whitford and Yates forthcoming). Attention can be a multilayered political strategy for presidents interested in political payouts, policy outcomes, and their ability to remain relevant in policy debates.

In the case of IRCs, presidents can make specific use of the power of appointment to shape the ideological bent of the individuals who collectively head the agency. This formal power is expressed beyond their ability to use the power of the pulpit to change bureaucratic impressions of “what they ought to do” in making policy real, and it is certainly real, but it is also infrequent. Nixon (2001) represents a range of new studies that offer a micro view on presidential appointment powers with regard to the IRCs and how those powers work out in practice. While other studies also seek to understand the interplay between presidents and Congress over the power to appoint, one unique advantage present in empirical studies is that focus is on the selection of individuals of specific types to fill a limited set of slots the president can claim for moving agency policy.

Yet, it is easy in these and other studies to lose sight of the larger point—that the IRCs have a unique form, created during a specific period of American political history, drawn from an array of experiences and political movements, that fundamentally limits the power

of an executive president to shape and move policy forward along the lines of his own personal agenda. Kagan (2001) provides an eloquent and spirited defense of the move toward greater presidential control of agencies. Specifically, she argues that this comports with law because the president's power to direct executive branch officials in how they exercise the discretion delegated to them should be understood to be provided by Congress—a view contrary to the prevailing one. She goes on to argue that presidential control advances values like accountability and effectiveness—that in contrast to other types of control, “presidential administration” makes bureaucracies more transparent, responsive, and even competent. Of course, in practice the president is left to navigate the IRC form of shared authority enhanced by partisan balance. So while appointments may make the president appear to have a direct route to influencing the agency's subsequent behavior, presidential rhetorical leadership is often as close as he can get.

I take the perspective that the president is most likely to practice that rhetorical leadership of agencies—to use his position to shift the attention cycle by referring to specific agencies at specific points in time—when a crisis emerges. Studies of agenda-setting in the case of foreign policy show that the president is highly responsive to crises and media coverage of them (Edwards and Wood 1999; Wood and Peake 1998). The effects are not limited to the case of foreign policy: highly visible national events bring the president to the pulpit (Ragsdale 1984). Indeed, as Bernstein argued long ago, most of these IRCs were born in crisis—in response to sets of events that shaped public perceptions of the need for organized public intervention into the market to rectify some wrong. That focus by the public has accelerated over time with the acceleration in the twenty-four hour news cycle, and the president still uses the pulpit as a first level of response to the formation of those public perceptions.

This action/reaction attention cycle is exactly why, at root, economic models like Barro-Gordon and Spulber-Besanko see regulatory independence as a solution to an array of political commitment problems to not intervene in the market when unusual events (or crises) focus public attention on government intervention. In the classic Barro-Gordon (1983) model (see also Keefer and Stasavage 2003: 409), the policy variable is the inflation rate and the government faces the loss minimization problem. Can the government credibly commit to its ideal inflationary policy and thus reduce the effect of the shock on optimal policy? If not, the effect of the shock on policy is reduced only by the government's policy preference, which exposes investors to arbitrary action on the part of government. Spulber and Besanko

show a similar problem in credibility for governments that want to respond to public perceptions that government intervention is needed in pure regulatory arrangements. In that case, regulatory independence (just as with central banks) provides a stopgap on the politician's motivation to move away from optimal policy and toward public preferences. So, for many economists today, regulatory independence becomes a mechanism for protecting markets from unwanted intrusion by the agency's political principals.

In sum, Bernstein supposes that presidential attention will cycle, economic models see attention as a mechanism for reducing policy credibility, and agenda-setting theorists see attention as part of the democratic dance between our separated powers. This chapter acknowledges that all of these are essentially correct: that the cycle of attention is underpinned by public crises, that presidents are limited in their ability to use appointments to change IRC behavior, and that rational politicians want IRCs for insuring policy credibility at the same time they want to move IRCs in the direction of public pressure. Empirically, though, the questions remain: does presidential attention cycle away from and to the IRCs as a whole, and across the individual IRCs as a collection of independent regulators?

The next section turns to a data-driven attempt to assess four questions drawn from these disparate efforts to understand regulatory independence in democratic society. Are there early administration (honeymoon) effects for the president in contrast to the previous year? Are there changes in the president's attention to these agencies as the news cycle changes? Do we observe cross-agency differences for the entire time period? Last, what are the dynamics of changes for individual agencies or collections of agencies?

Presidential Attention Data

My observations of presidential attention for each of the nine agencies (FCC, FTC, SEC, FERC, NRC, the Fed, EEOC, NLRB, and the FDIC) were obtained from the presidential papers by automated search and measured at the daily level. The data were then aggregated to the weekly, quarterly, and annual levels as raw counts of mentions. For each agency the dictionary was the official name of the agency (including both Federal Reserve Board and Federal Reserve System in the case of the Fed). The data are available online at the American Presidency Project, which is maintained by John Woolley and Gerhard Peters at the University of California, Santa Barbara.¹ This data source

includes a broad variety of records or document types. Specifically, the data were drawn from the following types: executive orders, State of the Union addresses/messages, proclamations, press conferences, inaugural addresses, Saturday radio addresses, addresses to Congress (other than the State of the Union), addresses to the nation and the United Nations, and miscellaneous other types (e.g., prayer breakfasts, correspondents' dinners, and addresses to foreign legislatures, party convention, and at college commencements).

The database was accessed and the data were processed in May 2007. Data were retained for complete calendar years for 2000–2006. The entire database contained 1,687 records of mentions for the dictionaries for the nine agencies from 1916 to 2007; for 2000–2006 there are 189 mentions, constituting the universe of mentions for these data sources. I note briefly that these mentions constitute 11.2 percent of the total number of mentions even though the time period constitutes only 6.8 percent of the time frame for which mentions are available for any of the nine agencies. A level increase in the total annual number of mentions occurred after 1975, with the pre-1975 average 10.4 and post-1974 average 35.11. The distribution of the variable is always nonnegative, and the variance increases as well after 1974.

This period is the modern period of presidential attention to regulation, yet the 2000–2006 period is marked by slightly higher annual attention to the IRCs. Specifically, the 2000–2006 period saw 27 total annual mentions of the IRCs in contrast to 19.5 annual mentions for the rest of the modern period; the variance is not significantly smaller during the 2000–2006 time period, though. One inference is that the Bush administration talked a little more about the IRCs during the 2001–2006 period, although as will be shown below there is significant variation in attention during that period that the averages mask.

Data Analysis

Figure 4.1 shows the distribution of the attention paid by the Bush administration to our nine agencies by reporting the normalized Herfindahl-Hirschman Index (HHI), which is commonly used to measure industrial concentration. The HHI is larger when there is greater attention paid to a single agency relative to the others; here the HHI is normalized to a maximum value of 1, so in 2002 we observe that the majority of attention was paid to just a few of the nine agencies. Figure 4.2 shows the individual agency time series for the 2000–2006 time period with the number of mentions measured at the

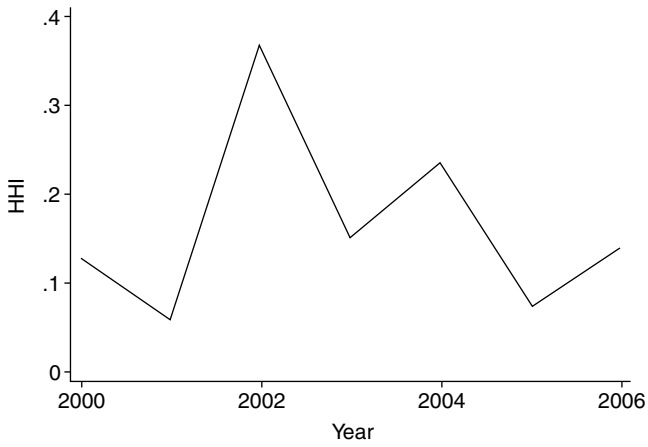


Figure 4.1 Distribution of Presidential Attention, 2000–2006

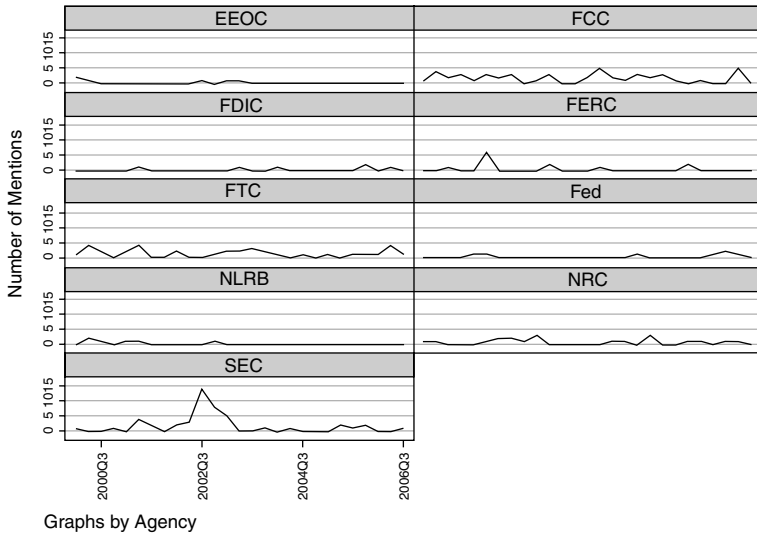


Figure 4.2 Presidential Attention Cycles, 2000–2006

quarterly level of aggregation. A number of trends are immediately noticeable. First, two agencies show significant “shocks” to attention: the FERC in 2001 and the SEC in 2002. Second, two other agencies show continuous attention throughout the 2000–2006 time period: the FCC and the FTC. Five agencies show almost no attention at all: the FDIC, the NRC, the NLRB, the EEOC, and the Fed. These trends suggest that at least two crises affected the presidential attention cycle for IRCs—the California energy crisis of 2000 and 2001 in the case of FERC, and the financial scandals of 2001 and 2002 in the case of the SEC. The president offered greater continuous attention to one agency with a strong and traditional role in overseeing competition issues (the FTC). In contrast, the FCC has a less-traditional role in overseeing industrial competition per se, but consolidation in the telecommunications arena and the changing nature of the FCC, given cellular spectrum auctions, suggest an elevated interest on the part of the president. The Fed received no attention, which calls into question our traditional stories about the president’s willingness to “call out” the Fed for actions that might damage his electoral opportunities. Traditionally, the Fed has been considered the most independent federal agency (Morris 2000). Below, I revisit the question of the degree to which the president attends to the Fed in his statements.

Figure 4.3 shows the longitudinal distribution of presidential attention across the 2000–2006 time period; this is essentially the overlay of the nine graphs in figure 4.2. The box plots suggest that there were individual-level attention spikes for certain agencies (cases where the number of mentions for the quarter was outside the nine-agency empirical distribution in the cross-section) in the last quarter of 2000, the third quarter of 2002, the fourth quarter of 2002, the second quarter of 2004, and the fourth quarter of 2004; these points are noted as within-quarter outliers. In four of these five quarters, the spikes in attention for those individual-level agencies are in contrast to overall low attention for the remaining agencies (the width of the interquartile range is quite small). High outer fences are noticeable for four quarters: Q2 of 2000, Q1 of 2003, Q3 of 2003, and Q2 of 2006. But in general, the height of the seventy-fifth percentile is below five for virtually all quarters of 2000–2006. Figure 4.3 helps address the total dynamics of presidential attention to these nine agencies, but it also ignores the composition of the attention cycle at any given point in time; figure 4.5 below helps address the question of composition.

The focus in figure 4.4 is on presidential attention distributions by agency. We see that there are attention spikes for at least two agencies (the SEC and the FERC), and perhaps three more (the FDIC, the NRC,

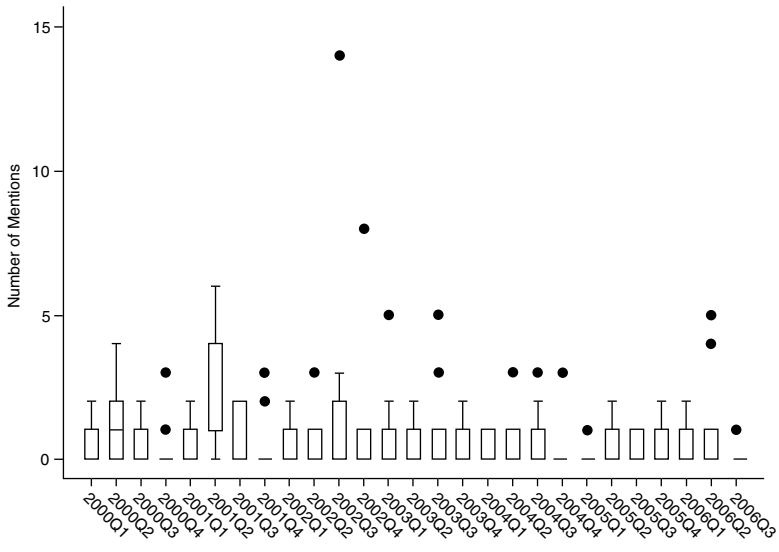


Figure 4.3 Longitudinal Distribution of Presidential Attention

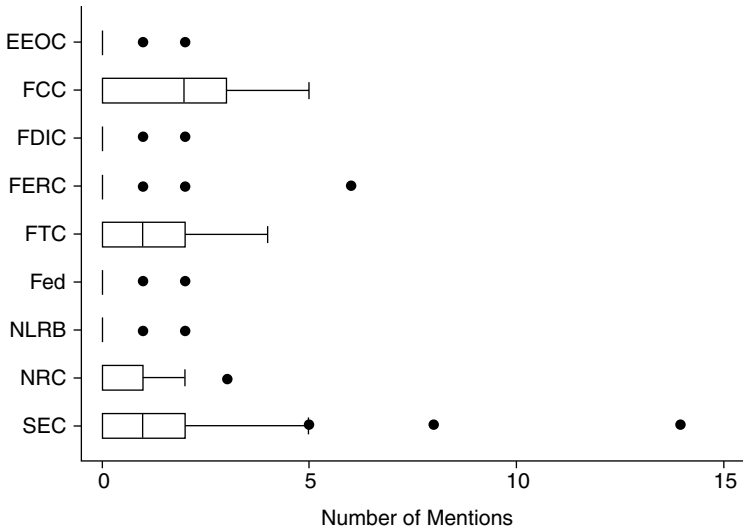


Figure 4.4 Presidential Attention Distributions

and the Fed). In the case of these last three, the outliers represent a period of uniquely high attention levels given the fact that the president virtually never mentioned these agencies—a perhaps unusual interpretation of an attention spike. In the case of the FTC and the FCC, the widths of their respective interquartile ranges show that the president paid consistent attention to these IRCs (when compared to three other IRCs that received virtually no attention whatsoever). Finally, the two attention spikes in the case of the SEC overlay a generally elevated level of attention for this agency; the outer fence is as high as that for the other agency receiving as much attention (the FCC).

As mentioned above, the independence of the Fed has been widely recognized, and indeed, the economics literature on regulatory independence centers on central bank independence as a signal about the likelihood of politicians' fiscal intervention in macroeconomic management. The data show that the president does not talk about the Federal Reserve Board or the System. This does not mean that Bush did not talk about Alan Greenspan or Ben Bernanke. The question of "personalization" of agencies is outside the focus of this chapter, but represents a fruitful direction for future studies of presidential rhetoric and attention to independent commissions.

Figure 4.5 simultaneously assesses the longitudinal attention cycle (the total attention paid by the president to these nine agencies, as measured in this study) while accounting for the composition of this attention. We observe 3 quarters in which the president mentioned the collection of IRCs over 10 times (2001 Q2, 2002 Q3, 2006 Q2), as well as over a half-dozen quarters in which the president mentions the collection between 5 and 10 times total. Again, the first spike, during which Bush mentioned the collection of agencies over 20 times, occurred in 2001 Q2, which coincided with the 100 days of the president's honeymoon and the time period in which many new appointments occur. That spike, though, is composed of mentions of all nine agencies, with the greatest attention paid to FERC. The second spike, at 2002 Q3, almost reaches 20 total mentions, but is composed of mentions of only three IRCs with the vast majority being in reference to the SEC. Adjoining quarters also include mentions of the SEC. The fourth spike in 2006 Q2 is just over 10 but includes 5 agencies: both SEC and FERC are omitted from mentions during this quarter.

Of course, the president is challenged by many issues, and federal regulatory independence is only one—and probably a relatively small one when compared to Iraq, Afghanistan, and other topics in national security. Figure 4.5 offers one perspective on the composition of the attention cycle, but it ignores the overall competition among broader

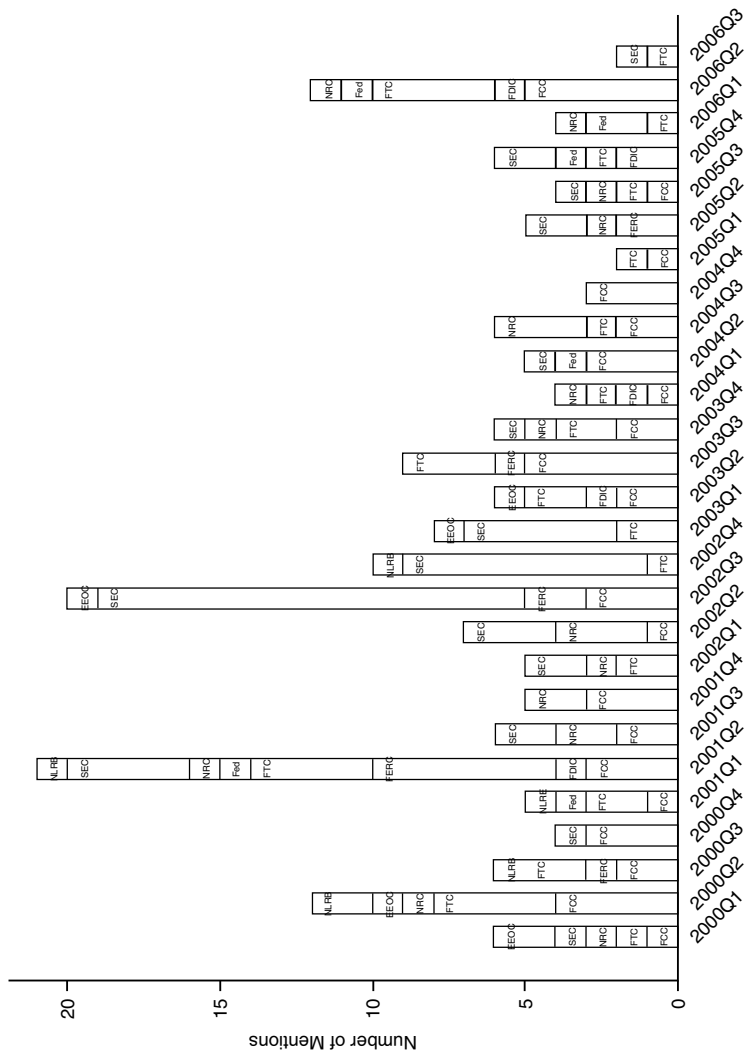


Figure 4.5 Composition of Presidential Attention

issues for the president's attention. The question then is, given the space available, how are mentions allocated across the agencies?

Figure 4.6 shows the composition of the quarterly attention paid to the nine agencies, with the height of each bar segment representing the percentage of the total number of mentions that are allocated to a given agency. This figure also highlights the attention cycle for the SEC by marking those bar segments. Specifically, we see that in two quarters of 2002 and one of 2003 the president paid extraordinary attention to the SEC—that for those three quarters well over 60 percent of the mentions go to that single IRC. In those three quarters only three other agencies were mentioned, with the FTC receiving more attention than FERC or the FCC; neither the FDIC, the NRC, nor the Fed were mentioned during those quarters. The SEC attention cycle is present intermittently throughout 2000 and 2001, but the cycle starts full force in 2002 Q1. Enron filed for bankruptcy at the end of 2001; Arthur Andersen was convicted of obstruction of justice in its accounting scandal on 15 June 2002; Sarbanes-Oxley was passed on 30 July 2002.

In figure 4.7, the highlighted bars show the percentage of the total attention given to the nine agencies that the FCC received. We see two major cycles: one beginning in 2000 that ended around 2002 Q3, and a second beginning in 2003 Q2 that ended around 2005 Q1. Auctions were virtually continuous during these time periods, so it is unlikely that auctions per se were the focus of the president. Interestingly, though many of the mentions in early 2001 did relate to policy changes with regard to auction implementation, in 2003 mentions shifted to the National Do Not Call Registry. Perhaps more than anything, this figure and these data illuminate that relative to a number of other important policy areas, the FCC has garnered significant presidential interest over time for the past six years. It is also useful to note that the SEC and FCC cycles “nest” (one distribution fits as the obverse of the other), with the omitted portion of the composition being allocated to the FTC—except in cases of extreme attention events like those associated with FERC.

Figure 4.8 takes the first major attention spike, which was measured at the quarterly level in figure 4.5, and shows the cycle at a weekly level of time granularity. This figure shows that the burst in 2001 Q1 actually occurred in the last week of that quarter—that the highest number of mentions was in week 26, and that the mentions were spread across all 9 agencies. All of these are traceable to a single omnibus announcement on 30 June 2001 of “other items of general interest announced by the Office of the Press Secretary and not

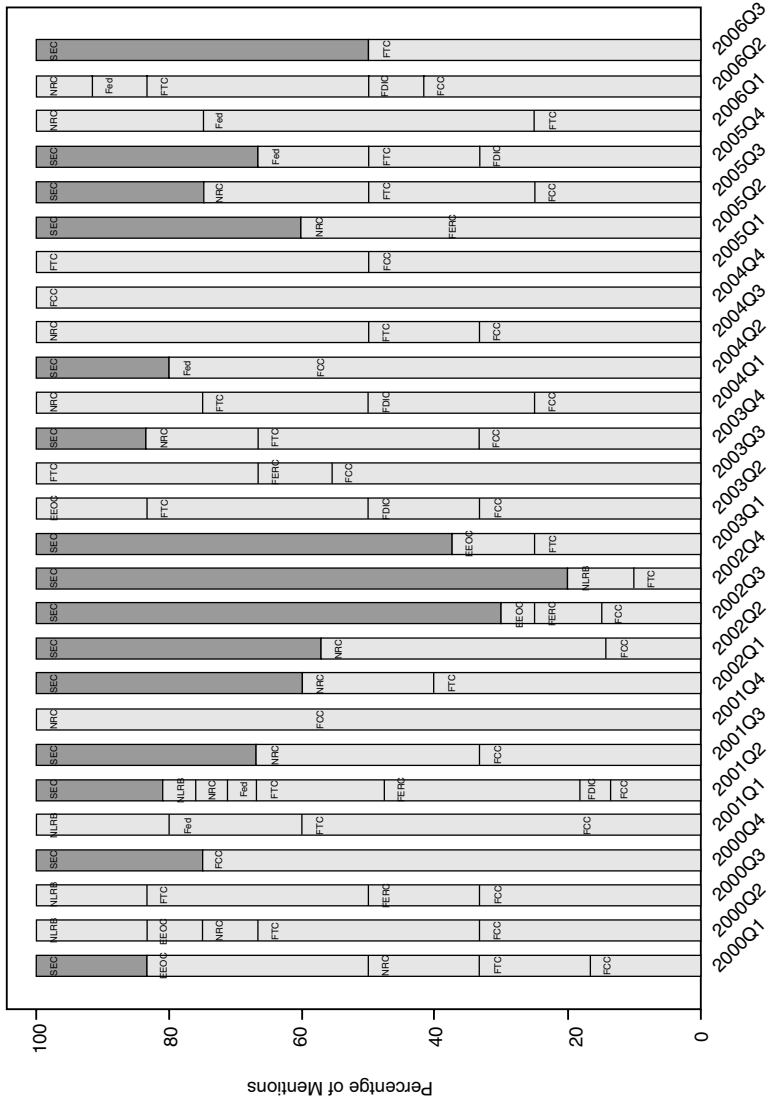


Figure 4.6 Composition of Presidential Attention: SEC Focus

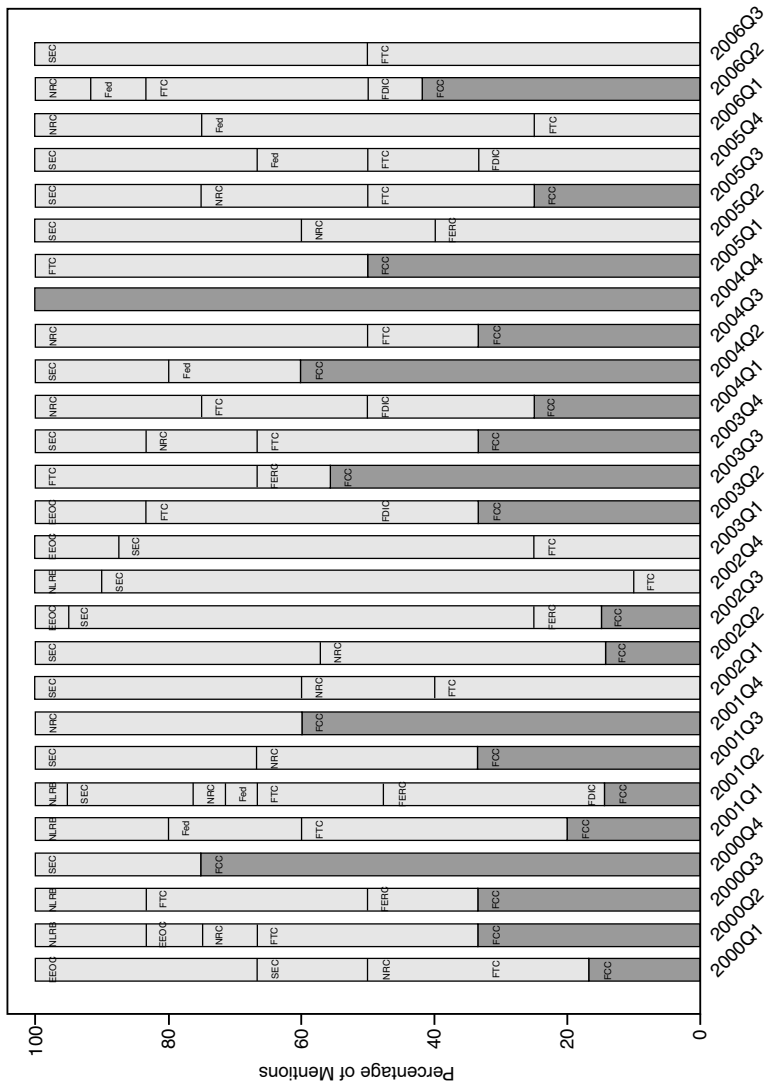


Figure 4.7 Composition of Presidential Attention: FCC Focus

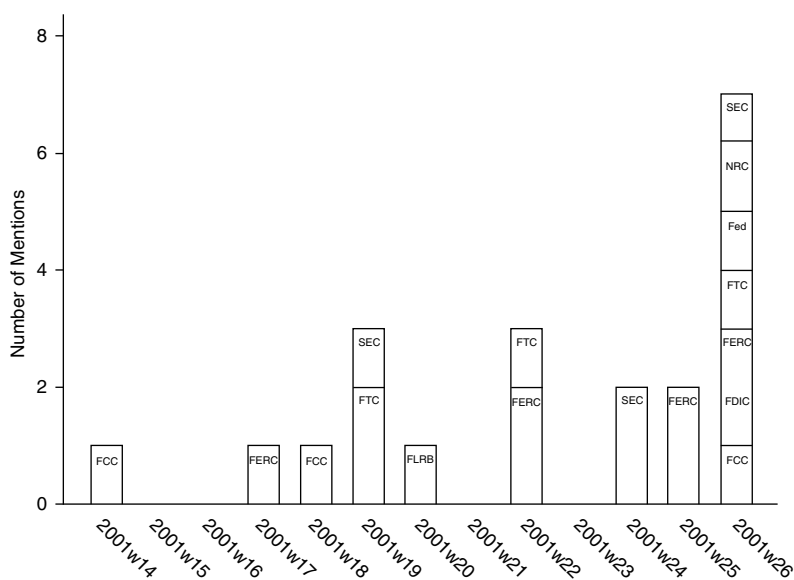


Figure 4.8 Presidential Attention, 2001 Quarter Two

included elsewhere in this book.”² On one hand, this may indicate the perils of a research strategy that does not discriminate between specific types of documents for the coding of mentions; on the other hand, this example illuminates that even these specific announcements—which are limited entirely to announcements of intentions to nominate individuals to serve on these commissions (with the exception of a lunch with Alan Greenspan, who was identified by his status on the Federal Reserve Board)—are not important enough to qualify for individual announcements during this time period.

In contrast, figure 4.9 shows the time period of 4 quarters from 2002 Q2 to 2003 Q1; note that this figure shows an uneven time scale, with a number of the 52 weeks during this time period omitted. Over this time period we observe consistent coverage of the SEC relative to all other IRCs in the sample. In the first quarter of coverage over half of all mentions were with regard to the SEC, yet the number of mentions in this quarter was dwarfed by the spike in SEC mentions in a single week in Q3. The mass of the sustained mentions was in that week and the following three; later coverage in 2002 Q4 and 2003 Q1 was spread out over a number of weeks with no more than three mentions in any single week.

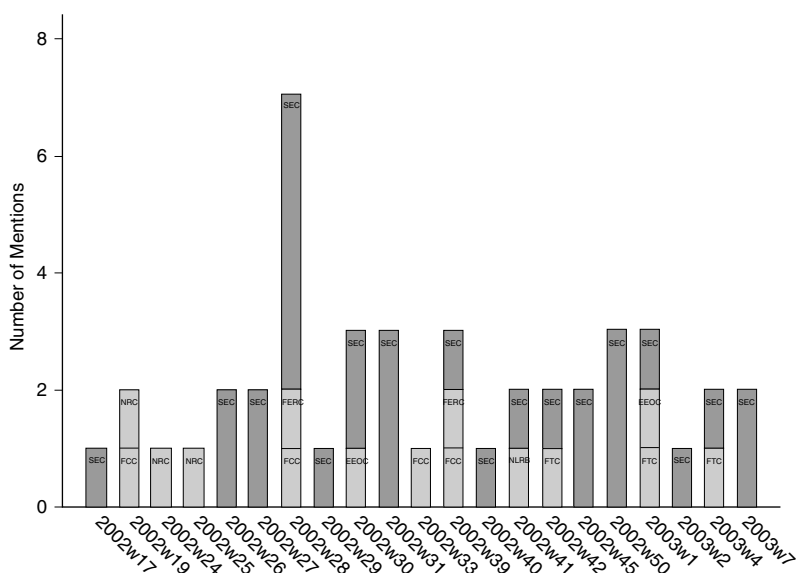


Figure 4.9 Presidential Attention, 2002 Quarter Two–2003 Quarter One

The week that was the highest single spike shows how the president on occasion focuses his attention on a single IRC. There were five mentions in the documents: E. O. 13271, which established a corporate fraud task force; a statement of administration policy regarding S. 2673, the Public Company Accounting Reform and Investor Protection Act of 2002; two press briefings by Ari Fleischer; and, a letter to the Speaker of the House regarding budget year amendments involving the SEC. The three following weeks brought five more press briefings that involved discussions of the SEC, and in the fourth week of this cycle the president made remarks after signing Sarbanes-Oxley that discussed the SEC's role in financial regulation.

In sum, the data reveal that presidential attention increases at the beginning of the first term, that presidential attention responds to critical events (as it happens in the cases of the SEC and FERC), that some agencies receive regular and steady attention while others are virtually neglected, and that the level of time aggregation can mask substantial within-period dynamics (even at the quarterly level). These results hold for a six-year time period from the most recent presidential administration; while that administration shows lower overall attention than others in the modern period, the modern period is substantially higher than the pre-1975 time period. Together with the

admittedly brief dictionary used for identifying mentions in the president's papers, these results lend credence to the traditional view that presidents are largely inattentive to regulatory affairs with respect to individual agencies, but that the attention cycle moves with external events that produce relatively unified public preferences for enhanced intervention in the economy.

Conclusion

Bernstein's inference that agencies would enter into clientelistic relationships with those they regulate has come to serve as a frame of reference for views on both the left and right about the performance of the modern regulatory state. The core of those inferences—that politicians, and even presidents, come to ignore the agencies they created in response to crises—is not far from the truth. From 2000 to 2006, the George W. Bush administration rarely ventured into the world of calling out specific regulatory agencies in public settings. Yet, during that time period the president turned his attention on a number of important occasions to agencies that held the power to intervene in the market and rectify what many saw as inadequacies about energy production, securities regulation, or other matters. The president has incentives to deviate from “optimal policy” (conceived in economic terms); the president has unique opportunities to focus public attention on those agencies and move implementation closer to what he perceives to be public preferences.

The approach taken in this chapter centers on the examination of public pronouncements with regard to a select set of IRCs, even though regulatory independence is a unique administrative form in the American polity and certainly not the only way regulation is implemented. Other agencies, such as the U.S. Environmental Protection Agency, clearly face a different oversight arrangement with the chief executive (see Krause and Dupay chapter five; Provost, Gerber, and Pickup chapter nine). The research design offered here applies equally to an agency like the EPA—or even the Department of Justice—and is perhaps more appropriate for those. As noted, the design here expressly involves a limited dictionary for identifying presidential attention to the agencies. In the case of the Fed, the overt lack of attention signals the common view that it may be the most independent. Yet, the design is also unable to identify the personalization of policy language with regard to individual members of agencies (as opposed to agencies as organizations). Of course, the politics of

personality are different, but no less relevant for understanding why presidential attention cycles across policy implementers. Future research will do more on this problem.

Perhaps the most important question about presidential attention to independent regulators in the Bush era is why the president cared to do so little. One possible reason, also beyond the scope of this chapter, is that Republican presidents do not respond to crises in the same way that Democratic ones might—and thus their general attention to the powers of the state to intervene in the economy suffer from a type of regulatory myopia. Identification of a full set of agency types for comparison across the past century would fully answer that question, although the mean differences within the modern era do suggest a general lack of attention. If anything, the data provide clear evidence of a lack of attention during these six years for either the NLRB or the EEOC—two agencies with missions that can benefit broadly Democratic constituencies. Yet, few casual observers see in the Bush administration any of the fervor for deregulation seen in Reagan’s first term, or even for regulatory reform seen in the Ford or Carter administrations. The times are different and so are the crises. There were 189 mentions of these 9 agencies during the 2000–2006 time period. In contrast, there were 102 mentions of the phrase “bioterrorism” and 531 of the “Department of Homeland Security.”

This lack of general attention to regulatory affairs during this administration shows the impacts of (1) the California energy crisis and (2) the financial markets meltdown. The FERC and SEC attention bubbles are the necessary responses to the bubbles that popped in other markets. That alone calls for some hesitation about using Bernstein too much for framing our understanding of IRCs long-term performance in a democratic system. Instead, what we see is more of a hybrid: the long periods of inattention that Bernstein feared but recent political economists virtually hope for, and the short bursts of attention that Bernstein hoped for and economists fear.

Notes

1. The database is available at <http://www.americanpresidency.org>.
2. George W. Bush. “Appendix A—Digest of Other White House Announcements.” 30 June 2001. John Woolley and Gerhard Peters, *The American Presidency Project* [Online]. Santa Barbara, CA: University of California (hosted), Gerhard Peters (database). Available at <http://www.presidency.ucsb.edu/ws/?pid=45951>.

Chapter Five

Coordinated Action and the Limits of Presidential Control over the Bureaucracy: Lessons from the Bush Presidency

George A. Krause and Brent M. Dupay

Presidents have considerable formal authority over the executive branch of the government.

Article II of the U.S. Constitution enumerates the formal powers of the U.S. chief executive. One salient area where presidential power has manifested itself in recent years is President George W. Bush's issuance of Executive Order 13422 on 18 January 2007. From the view of presidential authority, the most striking (and controversial) provision of this executive order is the enhanced role the Office of Information and Regulatory Affairs (OIRA) plays in determining the acceptability of agency rulemaking activities. Under EO 13422, Executive Office of the President (EOP) appointees play an increasingly vital role in determining which agency rules will be promulgated from those which are not. Such enhanced executive authority is consistent with a broader dual trend in presidential strategy centering on increased centralization and politicization of the agency policymaking process (see Rudalevige and Lewis 2005).¹ The "modern" origin of this trend began with Reagan issuing EO 12291 in February 1981, whereby all executive branch agencies were required to conduct a regulatory impact (cost-benefit) analysis for all proposed regulations exceeding an annual impact of \$100 million. These regulatory impact analyses were subject to executive clearance by OIRA. This executive order was augmented by EO 12498, which made all major rules subject to OMB director approval. President Bill Clinton extended this power in September 1993 by issuing EO 12886, which once again altered the rulemaking process via OIRA, and revoked the terms of both 12291 and 12498. As can be seen from this illustration, presidents' unilateral authority over the federal bureaucracy can be quite

extensive and formidable as they meld executive policymaking to fit their own policy preferences.

It is commonly accepted (and for good reason) that presidents have unilateral authority over the executive branch, and thus possess an institutional advantage for directing bureaucratic agency activities vis-à-vis Congress (Moe 1995). However, presidential influence over the bureaucracy via unilateral action is predicated on both timely and full compliance by public agency officials. Yet, in practice, bureaucratic compliance often does not work in the manner posited by unilateral action accounts of executive influence over the bureaucracy. That is, presidential intent can be thwarted by either bureaucratic delay (Carpenter 2003) or bureaucratic opposition (Halperin 1974). One obvious source of noncompliance to presidential will is attributable to civil servants whose employment position is independent of the president that they serve under (Hecl 1977: 171–173; Seidman and Gilmour 1986). Still a less commonly understood source of bureaucratic noncompliance can be attributable to political executives who serve at the pleasure of the president.

In this chapter, we make two broad theoretical claims concerning the latter form of bureaucratic noncompliance. First, we contend that effective coordination between presidents and political executives is a necessary condition for obtaining presidential control over the bureaucracy. In turn, we claim that effective coordinated presidential action requires policy cohesion between the president and (appointed) political executives charged with the responsibility of overseeing bureaucratic agencies. We highlight these obstacles to presidential control over the bureaucracy by examining the George W. Bush presidency. This presidency provides a conservative empirical test of our logic since it is commonly thought of as being robust in its exercise of executive authority (Rudalevige 2005), and thus is conducive for maintaining bureaucratic compliance consistent with administration policy goals. Specifically, we analyze two cases where political executives either delayed or thwarted presidential will: the Bush administration's desire to relax emission standards through the reform of New Source Review (NSR) implemented by the Environmental Protection Agency (EPA); and the Department of Justice's (DOJ) opposition to the National Security Agency's domestic surveillance program advocated by Bush administration.

The outline of the chapter is as follows. The first section discusses the limits to understanding presidential influence over the bureaucracy by solely focusing on the power of unilateral presidential action. The second section discusses why executive branch policy cohesion is

a necessary condition for observing effective presidential coordination action. The third section presents the two empirical illustrations noted in the preceding paragraph to highlight instances where Bush administration policies have been met with a lack of compliance from political executives. Finally, this chapter concludes by discussing the implications of imperfect executive policy cohesion for theoretical models analyzing bureaucratic politics, and how a mixed strategy of “soft” and “hard” power may improve bureaucratic compliance consistent with presidential intent.

The Limits of Presidential Control over the Bureaucracy

Over the past two decades, scholars have spent considerable time analyzing the means by which presidents can ensure bureaucratic compliance. These means include setting the budgetary agenda for government agencies via OMB budget requests (e.g., Moe and Wilson 1994: 36), the power to appoint political executives to serve as agency leadership (e.g., Wood 1988), and unilateral authority via executive orders, signing statements, proclamations, and the like (Howell 2003; Moe and Howell 1999). While U.S. presidents possess strong formal powers over the bureaucracy, such authority does not ensure bureaucratic compliance.

Obtaining bureaucratic compliance requires that presidents are successful in handling hierarchical (i.e., vertical) coordination dilemmas between their administration and political executives. If such problems cannot be well handled, it is rather unlikely that cooperation among political executives or between them and the permanent bureaucracy will occur. Vertical coordination dilemmas are often the most difficult to resolve since the agent (political executive) has hidden information that they can exploit at the expense of the principal (president) (Miller 1992: 196). Effective presidential coordinated action requires political executives to comply with presidential intent. A presidential strategy of coercion via formal authority is one way to solve this dilemma. Yet, solving this dilemma often requires “soft power” in the form of bargaining and positive inducements to ensure bureaucratic compliance. This is because agent control via fiat is a rare occurrence within organizations (Barnard 1938). If the executive branch is an alliance comprised of a confederation of sovereigns joined together in pursuit of a common goal (Seidman and Gilmour 1986: 79), presidential use of “hard power” via formal authority will be of

limited effectiveness in obtaining bureaucratic compliance. That is, whenever support for a common goal dissipates within the executive branch, presidential control naturally becomes difficult.

Rapid turnover among political executives makes effective coordinated presidential action even more difficult (Hecl 1977). Therefore, presidents do not have sufficient time to develop trust between themselves and their appointed surrogates (Aberbach and Rockman 2000: 170–171). Such trust is crucial for developing effective coordinated presidential action. This is because incentives have limited utility for understanding how a principal (president) can effectively obtain compliance from an agent (political executive). Rather trust is premised on the notion of cooperation, which can imply a norm of reciprocity between the principal and agent (Miller and Whitford 2002: 258). Although selective recruitment based on shared policy goals and loyalty to the administration can facilitate coordination between the president and political executives (Moe 1985b), it is by no means a perfect remedy for solving the president's principal-agent problem (Whitford 2002: 171–172). Thus, effective coordinated presidential action requires cooperation between both the president and political executives.

Next, we discuss the critical variable for understanding effective coordinated presidential action—executive branch policy cohesion. Specifically, we address the centrifugal forces that cause political executives to deviate from presidential will, and why it is not an uncommon occurrence. Later, we show that both *timely* and *complete* bureaucratic compliance is a difficult aim for presidents to achieve—even in the case of the George W. Bush presidency, an administration known for its vigorous efforts at politicizing the executive branch bureaucracy.

Why Executive Policy Cohesion Matters

Because the president is the singular chief executive, the effective exercise of presidential authority within the U.S. executive branch is often assumed. While it is true that presidents possess certain unilateral advantages for exerting their influence over the bureaucracy (Moe 1995), it remains equally true that presidents face obstacles in obtaining bureaucratic compliance that cannot be gleaned from a strict interpretation of executive power enumerated in the U.S. Constitution. In this study, we highlight one critical obstacle—namely *executive branch policy cohesion*. This concept refers to the extent to which various officials housed within the executive branch of government

act in accordance with the president's wishes. For the purposes of our study, we analyze our executive coordination thesis by restricting our focus to the relationship between presidents and their own top-level political appointees. After all, one should expect greater policy agreement between the president and their political appointees than compared to presidents and the permanent bureaucracy.

Our argument is straightforward: effective coordinated presidential action relies on a high level of executive branch policy cohesion. That is, presidents who seek to obtain bureaucratic compliance require political appointees to act in accordance with their policy wishes. Otherwise, there is little chance that agency careerists will follow the president's wishes if the latter's chosen agents go against their boss. A high level of policy cohesion among presidents and their political appointees is thus required in order to obtain bureaucratic compliance. This is because greater cohesiveness within an organization limits policy choices since it restricts intragroup competition by enforcing group demands on any individual actor who wishes to "defect" (March and Simon 1958: 60).

Several pressure points exist that may prevent presidential will from being faithfully executed by political appointees. First, political appointees will often have divided loyalties between the president and the agency that they lead (Hecló 1977: 98). This tension is natural since political executives routinely serve as "policy brokers" between the administration and the permanent bureaucracy (Aberbach and Rockman 2000). Presidents recruit political executives to implement policy on their behalf for a good reason—they possess a shared philosophy on matters of both policy and governance (Moe 1985b). Yet, counterbalancing presidents' desire for control over their political appointees is the fact that political executives often view themselves as representing the agency's long-term mission, thus giving voice to the concerns of agency careerists. Political executives who "go native" by supporting the professional mission of an agency can cause a decline in executive branch policy cohesion by producing disagreement between them and the president (Rourke 1984: 194).

Second, political executives may be insulated from White House influence if they represent agencies possessing strong support external to the executive branch. Under such circumstances, it is often necessary for the administration to make concessions to the agency (Rourke 1984: 74). For example, the USDA's Bureau of Chemistry (led by Harvey Wiley) was vigorous in its enforcement of the 1906 Pure Food and Drug Act on a wide array of issues ranging from caffeine and cocaine in Coca-Cola to blended forms of whiskey, even in the face of opposition by Republican-organized interests controlling both the

executive and legislative branches of government at the turn of the twentieth century (Carpenter 2001: Chapter Eight).

Third, while the American presidency is typically viewed as becoming increasingly centralized over the past half century (e.g., Aberbach and Rockman 1976; Burke 1992; Moe 1985b; Weko 1995; but see Rudalevige 2002), it is widely regarded that this institution has become increasingly complex through time. As Samuel Kernell (1989: 224) notes, "As the White House becomes more complex, so too do these management problems. Presidents who manage their own offices will increasingly risk being overwhelmed with policy work." Even if presidents place a great premium on loyalty as a selection criterion for hiring political executives, the increasing multiplicity of presidential actors both inside and outside the EOP will engender a decline in executive branch policy cohesion. Thus, the American presidency's increasing complexity makes effective presidential coordinated action an ever more difficult goal to attain.²

Finally, presidents may face incentives to select political appointees for reasons beyond achieving their own policy goals. These alternative selection criteria include technical expertise, rewarding campaign workers, satisfying the demands of organized interests, to name but a few (Wilson 1989: 198–199). Although presidents desire policy responsiveness from their political executives, they also realize that by doing so they may be exchanging greater loyalty for a lower level of bureaucratic competence (Huber and McCarty 2004; Lewis 2008).

Coordination is fundamental to the functioning of all organizations (March 1988; Miller 1992; Wilson 1989: 24). Intrabranched policy coordination within a given political institution is essential for obtaining effective presidential influence over policy administration. In turn, such effective coordinated presidential action requires a high level of policy cohesion between presidents and political executives. Although the presidency's singular position as the unitary head of the executive branch affords it with special advantages over Congress for eliciting bureaucratic responsiveness (Moe 1995), it will not necessarily translate into both full and timely bureaucratic compliance. As Norton E. Long (1949: 260) has noted, "The personal unity of the Presidency cannot perform the function of Hobbes' sovereign since his office lacks the authority of Hobbes' contract. Single headedness in the executive gives no assurance of singleness of purpose. It only insures that the significant pressures in a society will be brought to bear on one office."

In the next section, we examine two important cases involving the George W. Bush presidency where the administration's will was not

executed in a manner consistent with full and timely bureaucratic compliance by political executives. As a result, these case studies shed much needed light on the importance associated with coordinated presidential action as a means to understanding intra-executive branch relations. In our first case study, we examine the clash between the Bush administration and former EPA chief Christine Todd Whitman regarding NSR. NSR is an administrative rule requiring private firms to modernize their industrial plants if they were built prior to the Clean Air Act of 1970. The EPA's desire to maintain the bureaucratic discretion afforded by NSR led to bureaucratic delay in response to the Bush administration's attempts to eliminate this regulatory mechanism from this agency's policymaking arsenal. This case highlights the fact that while presidents may get their preferred course of action, they may not obtain it in a timely manner.

The second case study examines the coordination problems between the Bush White House and Department of Justice regarding the National Security Agency's (NSA) domestic wiretapping program. The Justice Department viewed NSA's program as a breach of the U.S. Constitution's protection of civil liberties, whereas the Bush administration viewed this program as a key administrative weapon in protecting the United States and its interests from terrorism. Most notably, presidential will in this instance was thwarted by the actions of Justice Department political executives Jack Goldsmith and James B. Comey. Because of the George W. Bush administration's reputation for placing a high premium on policy loyalty and corresponding efforts to elicit policy responsiveness as noted in several chapters of this volume, we feel that it is an appropriate empirical setting for analyzing the limits of presidential influence over the bureaucracy. Although the Bush presidency has had vigorous influence over administrative behavior in many areas, the point of these case studies is to provide some balance to the empirical debate analyzing the extent to which presidents can control policy administration via executive appointments.

Empirical Illustrations

EPA and Carbon Emissions Policy (2001–2007)

The battle between the White House and several EPA personnel over the reform of NSR highlights how a lack of effective coordinated

presidential action can result in significant bureaucratic delay in complying with presidential will. Congress established NSR as part of the 1977 Clean Air Act Amendments, and the EPA enforces the policy.³ NSR mandates that operators of aging power plants must install new pollution control technology whenever they make upgrades to their facilities. The policy is designed to enforce pollution regulations on plants built prior to the Clean Air Act. Aging power plants must either eventually shut down or be equipped with modern technology designed to control emissions in accordance with current regulations (Whitman 2005: 183).

Advocates of industrial interests oppose NSR because of the added cost and regulatory burdens it places on plant operators. Environmental advocates view NSR as a crucial tool in reducing harmful pollutants. While not an ardent environmentalist, former EPA chief Christine Todd Whitman respected the basic premise behind NSR. Much of this respect was borne from the views held by career executives within the agency, as well as her previous gubernatorial experience on air pollution abatement in her home state of New Jersey. On the other hand, the White House favored allowing plant operators to make significant upgrades to their facilities without having to install modern pollution controls. Whitman and her allies within the EPA eventually lost their fight over NSR, and Whitman resigned in 2003. However, this case study shows that if the White House and political executives lack policy cohesion, then the implementation of White House policy can be delayed for a significant period of time.⁴ It is an important reminder that the president's formal powers do not ensure swift bureaucratic action consistent with their own policy preferences.

Christine Whitman was at loggerheads with other administration officials immediately after starting her job as head of the EPA. Just weeks after her confirmation, journalists were reporting a schism over carbon dioxide emissions between two administration factions. On one side were Whitman and Treasury Secretary Paul O'Neill; on the other were Vice President Dick Cheney and former energy secretary Spencer Abraham (Benson 2001). The spat started when Whitman appeared on CNN's *Crossfire* in February 2001 and said, "George Bush was clear during the course of the campaign that he believed in a multi-pollutant strategy, and that includes CO₂" (Pianin 2001b). She was referring to a 29 September 2000 Bush campaign speech given in Saginaw, Michigan, in which Bush pledged to reduce the emission of pollutants, including carbon dioxide (Reynolds and Gerstenzang 2007). Whitman followed up her CNN performance by repeating the carbon cap pledge at a G8 meeting in Trieste, Italy, in March 2001.

According to Whitman, both Andrew Card, Bush's chief of staff, and National Security Adviser Condoleezza Rice approved Whitman's statement about carbon emissions before the G8 conference.⁵

However, days after Whitman's reiteration of Bush's assurance to reduce carbon emissions, Bush reversed his campaign pledge in a letter to four Republican senators: Chuck Hagel (Nebraska); Jesse Helms (North Carolina); Larry Craig (Idaho); and Pat Roberts (Kansas) (Jehl and Revkin 2001; Whitman 2005). Citing a report by the Energy Department, Bush argued that any attempt to regulate carbon dioxide would cause energy companies to shift from coal to natural gas, which would lead to higher energy costs (Pianin and Goldstein 2001). Dick Cheney and Spencer Abraham guided Bush to this decision. Whitman was one of the last top administration officials to find out about the reversal (Ahearn 2001).

Whitman recalls that President Bush broke the news about the reversal in a meeting on 13 March 2001. Immediately after the meeting, she encountered Dick Cheney, who gave her a curt "hello" in the hallway next to the Oval Office. Whitman reports that the vice president appeared rushed, and that he asked one of his aides for a letter. As it turned out, that was the letter to the four senators that reversed Bush's campaign pledge and undercut Whitman's previous statements (Whitman 2005: 175–176). Whitman was on the outside looking in on the real decisions being made within the Bush administration about the environment. As Whitman stated in an interview in early 2007, it was clear that Bush gave "great deference to [Cheney's] opinion," including on environmental issues.⁶

The environmental policy feud between Whitman and Cheney set the stage for another confrontation—this time involving the NSR program. NSR has been a source of much controversy. Much of the consternation has been over the vague language of the policy that afforded EPA administrators considerable policy discretion. Specifically, NSR does not require power plant operators to install modern pollution control technology when performing "routine repair and maintenance."⁷ Prior to the mid-1990s, the EPA only passively enforced NSR because of the confusion over the language (Schlesinger 2002). However, when Clinton's EPA decided to actively pursue violators of NSR, calls for both NSR reform and the abolition of NSR were ubiquitous among Republicans (Whitman 2005: 184). In May 2001, the Bush administration ordered a review of the NSR program. Striking some as indicative of the White House's proindustry position, the White House ordered the review to be a joint effort between the EPA, which is responsible for NSR, and the Energy

Department, which was widely seen as favoring energy and manufacturing industry interests (Seelye 2002a).

Whitman's main problem with NSR was the imprecision of the "routine repair and maintenance" rule (Whitman 2005: 183). She stressed the need for either an environmentally conscious reform of NSR or a similar substitute program (184). Whitman's political solution to this dilemma was to agree to abolish NSR in exchange for an environmental program—dubbed the "Clear Skies Initiative"—that would implement caps on emissions via a market-based system. The idea was to get the energy industry to support substantive emission caps by doing away with the controversial NSR rule. However, Clear Skies had been tabled in Congress since 2002. According to Whitman, the Clear Skies Initiative received little support, because the White House had offered to gut NSR without the expectation of serious support for Clear Skies (Becker and Gellman 2007).

According to an internal EPA memo leaked in early 2002, the Energy Department, working in close concert with Cheney's task force, proposed changes that would "vitalize" NSR.⁸ Whitman said that the task force even pushed to have the Energy Department—not the EPA—responsible for NSR. The regulatory relevance of NSR depends upon the commitment to enforcement shown by the administering agency. The higher level of NSR enforcement exhibited by the Clinton administration demonstrates this point. The regulatory burden to plant operators would likely be less if the Energy Department were in charge of the NSR program, because the Energy Department—especially in the Bush Administration—would probably be more sympathetic to proindustry interests. Whitman fought "tooth and nail" to defeat this proposal, and finally did so after imploring former chief of staff Andrew Card to prohibit the proposed change (Becker and Gellman 2007; Whitman 2005: 185).

In late 2002, the Bush administration announced changes to the NSR program. Although the EPA argued that the reforms would actually provide a net benefit to the environment, many Democrats and environmentalist groups blasted the reforms (Schlesinger 2002). While the reforms did appear to relax some regulations, the new policy was more measured than the plan originally proposed by the Energy Department.⁹ However, the new reforms did not include a clarification of the ill-defined "routine maintenance and repairs" line (*ibid.*). The 2002 reforms did not include a clarification on the vague rule, because Whitman and Cheney/Abraham had vastly different ideas on how to deal with NSR. If reform was going to happen, Whitman wanted both a pragmatic and environmentally conscious

approach to NSR reform, whereas Cheney's task force, in conjunction with the G. W. Bush White House, wanted to allow power plants to make expensive upgrades to equipment without triggering an emissions review by the EPA (Schlesinger 2002; Whitman 2005: 185).

Whitman's opposition to the Cheney/Abraham NSR reforms was attributable to both her own policy preferences and the influence of several key EPA career executives. On a personal level, she thought the NSR reforms were politically unwise and environmentally harmful, and she appeared to hold this view on emissions prior to her EPA job. As governor of New Jersey, Whitman supported efforts during the Clinton administration to reduce emissions from coal-fired power plants (*New York Times* Editorial 2001). In addition, Whitman had strong support from her subordinates within EPA. When this support began to deteriorate via key departures from within the agency, the policy tide within the executive branch turned against her. Specifically, against this backdrop of long-standing executive branch policy disagreements, a pair of key EPA career executives began an exodus of key agency personnel that would extend beyond Whitman's tenure as EPA chief.

First, Eric Schaeffer, former director of the Office of Regulatory Enforcement at the EPA, resigned in February 2002. In his resignation letter, he expressed frustration at "fighting a White House that seems determined to weaken the rules we are trying to enforce" (Seelye 2002c). Schaeffer specifically mentioned the White House's proposed NSR rule changes as a key irritant. Although Schaeffer said he was not sure if Whitman was effective, he did say that she was "pushing back" on the White House's proposed policy changes. According to Schaeffer, "This is a watershed issue for her... There's a reason you haven't seen a really bad proposal come out yet—she isn't just sitting there. She's starting to work it and starting to understand the scale of what we're looking at" (*ibid.*). Next, Sylvia Lowrance, the former deputy assistant administrator for enforcement, retired in August 2002 (Lee 2004). Lowrance expressed annoyance at the perceived lackluster way in which the Bush administration prosecuted Clean Air Act compliance cases.

Ultimately, the White House won the intra-administration battle over defining the terms "routine" and "maintenance" with respect to NSR policy when Whitman resigned in June 2003 (Pianin and Gugliotta 2003). At the time, she said she resigned to spend more time with her family; however, she later admitted that personal reasons were only partly the cause of her resignation. A major reason for her resignation was her realization that the White House was going to

announce major reforms to NSR in just a few weeks.¹⁰ In her book, Whitman said that she simply could not sign the reforms being proposed by the White House (2005: 185). Subsequent to Whitman's departure, Bruce Buckheit resigned as head of the EPA's Air Enforcement Division six months later. In an interview on *Dateline NBC* in April 2004, Buckheit said that he would still be at the EPA if not for the administration's proindustry stance on the Clear Air Act.¹¹ Richard Biondi, former associate director of the Air Enforcement Division at the EPA, also made evident his frustration, stating that the "rug was pulled out from under [them]" by the Bush administration (Lee 2004).

In August 2003, the Bush administration enacted the NSR reforms that were the cause of Whitman's departure. The reforms allowed older power plants to upgrade their facilities without having to install modern pollution controls, as long as the cost did not exceed the equivalent of 20 percent of the cost it would take to replace the plant's entire essential production equipment. In addition, the reforms stated that the upgraded equipment must be the "functional equivalent" of the replaced equipment (Pianin 2003a).

Marianne Horinko, the interim EPA administrator at the time, vigorously defended the program, contending that the reforms would not affect emission levels (Pianin 2003b). However, critics argued that the rules essentially voided the intent of NSR, which was to phase out plants that did not conform to the Clear Air Act. Under the 2003 reforms, plants could potentially operate indefinitely without installing newer pollution control systems (*ibid.*). Bush's reforms never went into effect, however, because of court challenges by several states and environmental groups (Sissell 2007). The D.C. Court of Appeals struck down the NSR reform on 17 March 2006, and the Supreme Court declined to hear an appeal (Becker and Gellman 2007; Sissell 2007).

Before its demise, the August 2003 reforms to NSR continued to receive support from Whitman's successors. In January 2004, while the administration's reforms were in limbo due to legal restrictions, Mike Leavitt, Whitman's immediate successor, expressed optimism and hope that the Bush administration's reforms would stand (Pianin 2004). Stephen Johnson, who took over for Leavitt in 2005, also showed support for the administration's ideas on NSR reform. In 2005, Johnson backed a program that would have further weakened NSR, according to environmental advocates. The proposed plan would have allowed plants to avoid installing modern pollution controls technologies as long as their hourly rate of emissions did not increase. Thus, a plant could legally emit more pollutants in a given

week, month, or year by increasing the number of hours the plant operates on a daily basis (Eilperin 2005). To the adulation of environmental advocates everywhere, the Supreme Court rejected this interpretation of NSR in *Environmental Defense et al. v. Duke Energy Corp.* in April 2007 (Greenhouse 2007).

Whitman, and by extension the EPA, incurred both political and policy losses over NSR reform. It is clear that Cheney's voice on environmental issues trumped the EPA's position at the White House. Whitman recalls that when she met with Bush about energy-related issues, Cheney always stayed in the room with President Bush after she departed, thus showing that Cheney had the ear of the president (Becker and Gellman 2007). Furthermore, the White House was not happy with the EPA's proposed reforms for NSR, because their reforms needed to be "more proindustry" (ibid.). Of course, the administration's proposed reforms did just that. Furthermore, since Whitman's resignation, the White House has been able to install two EPA administrators who have supported the White House's efforts to dull NSR's regulatory teeth.

However, it is clear that these reforms could have come much earlier. Cheney's task force wanted to make big changes to NSR as early as 2001. In May 2001, Whitman sent a memo to Cheney warning the White House about its proposed changes that would weaken NSR (Pianin 2003c). In August 2001, while Whitman was vacationing with her family in Colorado, Cheney called her to inquire why the EPA was "dragging its feet" on weakening NSR. Cheney pushed her to make NSR changes quickly, but Whitman protested again that doing so would be environmentally unwise and would only invite court challenges (ibid.). Throughout the course of the next two years, several staff members at the EPA strongly objected to vast reforms to NSR that would damage the environment. The White House was obviously dealing with a potentially explosive situation politically, as Whitman was prepared to resign over reforms with which she did not agree. The White House had to tread lightly on this issue. Without Whitman's objections, it is very likely that the NSR changes would have come much earlier than August 2003 (Seelye 2002a). Instead, the delay in EPA's implementation of the NSR reforms in accordance with the Bush administration's policy wishes was over two years, marked from the May 2001 memo from Whitman to Cheney to the August 2003 reforms promulgated shortly after Whitman's departure (Pianin 2003c; Symons 2003).

The case of NSR reforms and the EPA provides two lessons about executive politics. First, this case illustrates that political executives can

thwart the president's agenda by causing bureaucratic delay in policy implementation. Yet, it is worth noting that career executives play a critical role in supporting political executives under such circumstances. When the strength of careerist support wanes, most often through key personnel departures, then political executives become vulnerable to presidential influence without a strong base of support within the agency. Therefore, the existence of robust bureaucratic cohesion is crucial for public agencies seeking to fend off attempts at political influence over policy and administrative matters (Rourke 1984).

Relatedly, conventional wisdom suggests that a president's unilateral authority over public agencies gives the president reason to expect prompt bureaucratic compliance. The NSR case suggests a more tempered view of presidential control over the bureaucracy is needed. Indeed, the president exerts tremendous power over the executive branch, but high-level political appointees possess the capacity to obstruct and delay the president's agenda. The broader lesson from this case study is clear. Political executives may not ultimately win policy battles with the White House, but they can make it costly in both time and political capital for the White House to promulgate controversial policy changes when considerable internal agency opposition exists.

The NSA Surveillance Program (2002–2007)

In addition to delaying policies favored by the White House, political executives can occasionally change administration policy. The highly classified—and highly controversial—NSA domestic eavesdropping program illustrates this point. In early 2004, the White House sought the Justice Department's approval for the renewal of the NSA surveillance program. Top officials at the Justice Department viewed some of the program's provisions as legally indefensible, and the end result of this policy battle was an outcome that moved the status quo away from the White House's preferred policy outcome. This case shows that political executives can impede even a White House viewed by many as exercising unfettered unilateral authority (*New York Times* Editorial 2005). The NSA program represented a vast expansion of executive power, but many observers overlooked the implications of the way the current NSA program was formed. The program was a result of a policy compromise between the White House and the Justice Department, and it serves as a good example of how a lack of

bureaucratic compliance can result in policy shifts by the White House. Thus, the NSA program reveals both an expansion of presidential power and that bureaucratic noncompliance can diminish the president's authority.

Acting on leads from almost a dozen government officials, the *New York Times* published a story on 16 December 2005 revealing the existence of a secret domestic surveillance program administered by the NSA (Risen and Lichtblau 2005). President Bush confirmed the existence of the program later that day.¹² According to Bush administration officials, the program, which started in 2002, allows the NSA to wiretap any phone conversation between someone in the United States and someone in another country. There must be a "reasonable basis" to conclude that one party to the conversation is somehow affiliated with a terrorist group and Bush administration officials had stated that the NSA—or any other agency—must still obtain warrants to eavesdrop on purely domestic conversations (*ibid.*). While the Bush administration briefed congressional leaders about the program well in advance of the disclosure of the program in 2005 (*ibid.*), the public revelation of the program caused a torrent of criticism to be unleashed on the administration by Congress and the media (Johnston 2007a).

Before the implementation of the NSA surveillance program, any government intelligence agency, including the NSA, had to obtain a warrant from the Foreign Intelligence Surveillance Court to engage in domestic eavesdropping. The hearings for these warrants take place within closed sessions at the Justice Department (Risen and Lichtblau 2005). Congress passed the 1978 Foreign Intelligence Surveillance Act (FISA), which mandates this requirement, in response to surveillance abuses by the Nixon White House (*ibid.*). Many legal scholars, pundits, and policymakers maintain that any domestic surveillance without a warrant is forbidden by the Constitution. The Congressional Research Service, the nonpartisan research arm of Congress, has argued that the Bush administration's legal grounds for the program are dubious (Lichtblau and Shane 2006).

The disclosure of the NSA program eventually faded from the news headlines. However, a year and a half later, on 15 May 2007, James B. Comey, the former deputy attorney general, delivered a spellbinding testimony on Capitol Hill that thrust the wiretapping program back into the headlines. The Senate Judiciary Committee summoned Comey to question him about the firings of several U.S. attorneys by Alberto Gonzales' Justice Department. The topic eventually turned to Comey's riveting account about the debate within the Bush administration over

the NSA surveillance program (Milbank 2007a). For the first time, the public learned firsthand about the strong policy disagreements that this program caused between the White House and the Justice Department.¹³

Legal decisions within the administration concerning interrogation techniques and surveillance programs after September 11 were kept within a small cadre of administration lawyers (Rosen 2007). In particular, the White House relied heavily on the legal opinions of John Yoo (Stevenson and Liptak 2005). Yoo was a deputy assistant attorney general in the Department of Justice's Office of Legal Counsel (OLC) and the OLC advises the president on the boundaries of presidential power (Rosen 2007). Because Jay Bybee (OLC Director) had relatively little expertise on security issues, he routinely delegated such policy matters to Yoo, who took an expansive view of executive authority regarding issues such as interrogations and surveillance programs (Stevenson and Liptak 2005). Yoo's legal opinions served to insulate the White House from subsequent legal problems (including prosecution) (Rosen 2007).

Policy change effectively began once Bybee left as OLC Director in late 2003. White House Legal Counsel Alberto Gonzales suggested that Yoo replace Bybee as OLC director, but Ashcroft, with whom Yoo often clashed, vetoed that suggestion (Rosen 2007). Jack Goldsmith, Yoo's friend, replaced Jay Bybee as OLC director on Yoo's recommendation in October 2003. However, Goldsmith immediately clashed with some administration officials over several issues (*ibid.*). Part of this tension arose from the extraordinary secrecy surrounding the NSA surveillance program. Goldsmith has stated that prior to his arrival as OLC Director, NSA lawyers were not allowed to study any legal analysis of the surveillance program. For example, in 2003, David Addington, longtime advisor to Dick Cheney, denied a request by the NSA's inspector general to see an OLS legal review of the surveillance program (*ibid.*).

In late 2003, Goldsmith began a formal legal review of the NSA surveillance program, and in 2004 he determined that certain facets of the program had no firm legal foundation (Eggen 2007c). He briefed James Comey and former attorney general John Ashcroft on his findings, and both Comey and Ashcroft concurred with Goldsmith's analysis.¹⁴ Because some White House officials disagreed vehemently with Goldsmith on this issue, this set the stage for the infamous hospital room altercation between White House officials and several Department of Justice officials. On 10 March 2004, as Attorney General John Ashcroft lay recovering from emergency gall bladder

surgery at George Washington University Hospital in Washington, DC, the White House notified Ashcroft's wife that Card and Gonzales were on their way to the hospital to visit Ashcroft.¹⁵ Ashcroft's wife, who forbade any visitors to see Ashcroft, immediately, contacted David Ayres, Ashcroft's chief of staff, about the visit (Eggen and Kane 2007). Ayres then alerted Comey (Taylor Jr. 2007), and Comey arrived at the hospital just minutes before Card and Gonzales did (Eggen and Kane 2007). Jack Goldsmith also rushed to the hospital when he heard of Card and Gonzales' visit.

According to several witnesses, the two White House visitors wanted to discuss more than Ashcroft's convalescence. Card and Gonzales were there to obtain the Justice Department's reauthorization of the NSA wiretapping program. Even though Ashcroft and Comey, after an extensive Justice Department review of the legalities of the NSA program, both agreed on 4 March 2005 that the NSA needed to revamp the program in order to put it on a better legal foundation, Card and Gonzales apparently felt they could persuade Ashcroft to approve the renewal (*ibid.*). After Card and Gonzales asked that Ashcroft sign off on the renewal of the wiretapping program, Ashcroft reiterated the Justice Department's view that the program lacked a legal basis, and he refused to sign the reauthorization papers brought by Card and Gonzales (*ibid.*). Ashcroft also reminded Card and Gonzales that Mr. Comey was the acting attorney general, but, according to Comey, Card and Gonzales ignored him and then left promptly after Ashcroft rebuffed them (Milbank 2007a).

Upon returning to the White House, Card and Gonzales phoned Comey to set up a meeting at the White House to discuss the NSA program. Comey expressed his dismay at Card and Gonzales' seemingly inappropriate visit to Ashcroft. He said that he would not attend a meeting with them without a witness, who ended up being Solicitor General Theodore Olson. Comey, along with Olson, met with Card and Gonzales at 11 p.m. that night at the White House. According to Comey, nothing was resolved at the meeting (Eggen and Kane 2007).

The next day, 11 March 2004, terrorists killed over 200 rail commuters in Madrid, and President Bush reauthorized the program that day without approval from the Justice Department (Eggen and Kane 2007). In response to this apparent disregard for the Justice Department by the White House, Comey drafted a letter of resignation, effective from 12 March 2004. David Ayres, Ashcroft's chief of staff, persuaded Comey to delay his resignation until Ashcroft was healthy enough to join him in resigning (*ibid.*). FBI Director Robert Mueller was also prepared to resign, along with other top Justice Department

officials (*ibid.*; Shane and Johnston 2007). During Comey's testimony on 15 May 2007, Senator Arlen Specter (R-PA) compared the events of those few days to the so-called Saturday Night Massacre during the Watergate Scandal, when several Justice Department officials resigned in protest to President Nixon's dismissal of special prosecutor Archibald Cox (Carr 2007).

Facing this mass exodus, which surely would have set off alarms in Washington, Bush acquiesced (Taylor Jr. 2007). Bush met with both Comey and Mueller on 12 March and Bush directed Mueller to have Comey change the wiretapping program to bring it into compliance with the Justice Department's objections. The end result, then, was a victory by the Justice Department over some of Bush's closest advisors—Card, Gonzales, and Cheney (*ibid.*). Bush's policy turn also staved off, albeit temporarily, the resignations of Comey, Ashcroft, and Mueller.

Neither Comey nor the Bush administration released specific details about the changes that were made to the classified program after the threatened resignations (Taylor Jr. 2007). However, government officials said that some of the changes included Justice Department audits of the program and a "refined" checklist developed by the Justice Department to ensure that the NSA is appropriately targeting individuals for surveillance (Shane and Johnston 2007; Risen and Lichtblau 2007). The lack of details about the Justice Department's objections about the original NSA program leaves the story incomplete, but the important point is that the Justice Department notably altered policy from the president's most preferred outcome regarding this matter.

In closing, this case study illustrates how a lack of executive branch cohesion can limit presidential influence over *policy outcomes*. President Bush, along with his closest advisors at the White House, favored the pre-March 2004 version of the NSA program. Much of the tension over the NSA surveillance program between the Justice Department and the White House can be traced to Jack Goldsmith's tenure as OLC director. Justice Department political executives broke with the White House over this policy by threatening to resign. In the end, the White House acquiesced to Justice Department concerns based on the legality of this program.¹⁶

The fight over the NSA surveillance program affirms our theoretical argument that a lack of policy cohesion between the White House and political executives can result in bureaucratic opposition to presidential will. This contradicts the view that the president's unilateral authority must result in bureaucratic compliance to the former's policy

preferences. Although American presidents possess formidable institutional authority to elicit bureaucratic responsiveness, these powers are of limited value when there is fundamental disagreement between the chief executives and their political appointees. We argue that political executives do more than implement the president's wishes. When policy disagreements are palpable, political executives may oppose their appointive political principal, and thus not comply with the latter's wishes.

The Dilemma of Executive Branch Coordination: Implications and Prospects

The current state of scholarship in executive politics suggests that the presidency's formal powers are formidable, and thus can be effectively used to implement its desired policies through the executive branch bureaucracy (e.g., Howell 2003; Krause and Cohen 2000; Lewis 2005, 2008; Mayer 2001; Moe 1985b, 1995; Moe and Howell 1999; Rudalevige 2005; Wood 1988). While we concur that presidents possess robust formal mechanisms to elicit bureaucratic responsiveness, the effective use of such means often requires policy cohesion between presidents and their political executives. When presidential authority cannot produce executive branch policy cohesion, one cannot infer that presidents will necessarily control the bureaucracy. Absent a high level of executive branch policy cohesion, political executives can significantly delay or impede the implementation of policies advocated by presidents. This chapter has attempted to highlight the limits of presidential control over the bureaucracy when political executives have sharp differences in policy preferences with the presidents whom they serve.

This chapter raises the question how can presidents best obtain bureaucratic compliance? Our answer is that formal executive authority (i.e., "hard power") has limits for effective presidential control over the bureaucracy. Yet, a presidential strategy relying solely on "soft power"—for example, trust, *esprit de corps* among executive branch personnel, and persuasion—is also potentially fraught with problems. This is because bureaucratic compliance sometimes requires "sticks" since agencies may have incentives, as well as their own unique set of preferences, which render such "carrots" as being ineffective. Perhaps the optimal administrative strategy undertaken by presidents for obtaining bureaucratic compliance should involve

utilizing a mixture of hard power and soft power. The balance between these two classes of tools would be determined by how strong agency incentives for policy opposition were, and the extent to which presidents could rely on soft power to get their way.

In conclusion, we have attempted to make two broader points about shared internal power within executive branch politics. First, that a president's unique position as the singular head of the executive branch does not necessarily guarantee presidential control over the bureaucracy. Although Congress suffers from well noted collective action problems, presidents incur internal executive branch coordination problems of their own. Also, political executives will not possess the same policy preferences as the presidents who appointed them to their position. This latter point may seem obvious, but it has direct implications for formal theoretic models of bureaucratic politics that treat the agency's ideal point as being synonymous with the president's because political executives are appointed to head agencies by the former (Epstein and O'Halloran 1999; cf. Volden 2002). Specifically, existing separation of powers models that make such simplifying assumptions regarding executive branch preferences not only overstate presidential control, but also understate both bureaucratic autonomy and congressional influence. The overarching lesson from the George W. Bush presidency is simple—even presidents who vigorously utilize their formal authority as a means of exerting their will over the bureaucracy will face executive branch coordination problems. Taking these organizational realities into account will provide students of executive branch politics with a more accurate theoretical understanding of presidential power in the realm of policy administration.

Notes

1. This trend predates the advent of the modern administrative presidency that began during the Nixon presidency (Nathan 1975). Please see Dickinson and Rudalevige (2004) for an excellent historical treatment of efforts at presidential centralization through the Bureau of the Budget during both the Truman and Eisenhower administrations.
2. This line of argument is analogous to one that I have made elsewhere concerning the deleterious impact of the increasing organizational size and scope of the presidency on institutional policy performance (Krause 2004).
3. Environmental Protection Agency Web site, available at <http://www.epa.gov/nsr/>. Accessed on 7 July 2007.

4. Several news reports mention the delay caused by the dispute between the EPA and other administration factions. See Kahn (2001); *New York Times* Editorial (2002); Seelye (2002a).
5. Christine Todd Whitman, interview by Deborah Amos, *Frontline*, Public Broadcasting Service, 24 April 2007, available at <http://www.pbs.org/wgbh/pages/frontline/hotpolitics/interviews/whitman.html#3>. Accessed on 8 July 2007.
6. Whitman, PBS *Frontline* Interview.
7. Ibid.
8. This EPA internal memo was not made available to the public. According to news reports, it was leaked to an unnamed environmental group, which in turn gave it to the *Times*. See Barcott (2004).
9. The Energy Department originally recommended a 15-year period after a review during which factories and power plants would be exempt from NSR. The final changes to NSR in November 2002 allowed only a 10-year exemption period. See both Seelye (2002a) and Schlesinger (2002).
10. Whitman, PBS *Frontline* Interview.
11. Bruce Buckheit, interview by Stone Phillips, *Dateline NBC*, National Broadcasting Company, 20 April 2004, available at <http://www.msnbc.msn.com/id/4759864/>. Accessed on 20 December 2007.
12. Alberto Gonzales, White House Press Briefing on December 19, 2005, First Full Paragraph, available at <http://www.whitehouse.gov/news/releases/2005/12/20051219-1.html>. Accessed 8 July 2007.
13. The *New York Times* ran a piece on 1 January 2006 that mentioned the incident, but the source of the leak was not named in the piece and many details were excluded. See Lichtblau and Risen (2006).
14. Ibid.; see also Savage (2007b).
15. See Milbank (2007a). Comey believes that the call to Ashcroft's wife could have come from President Bush.
16. However, it is currently impossible to confirm that the reforms made by the Justice Department in March 2004 are still in effect. Ashcroft, Goldsmith, and Comey are no longer part of the administration, and the administration has not revealed the specifics of the reforms. In August 2006, a federal district judge in Detroit ruled the surveillance program illegal, but the sixth Circuit Court of Appeals reversed this ruling in July 2007. The Supreme Court could eventually decide the matter. See Weinstein (2007).

Part II

*Control and Constraints in
Cabinet Agencies*

Chapter Six

President Bush and the U.S. Department of Education: The Texas Mafia, Scientific Education Policy, and No State Left Behind

Paul Teske

As Governor of Texas in the 1990s, George W. Bush made education reform a central focus, tying school accountability to students' test scores. And, accurately or not, education reform in Texas was perceived to be a great state-level success, at least prior to the 2000 election.¹ In a campaign with very few domestic issues upon which Bush proposed to be a president who would develop new programs and policies, as opposed to cutting taxes, education was truly a signature area for Bush. Surprisingly, too, for an issue upon which most citizens typically favor Democratic policies, Bush was perceived by the electorate to be strong on education reform, and this helped provide a concrete manifestation of his broader "compassionate conservative" agenda.

After becoming president, Bush put forward the legislation that would become the No Child Left Behind (NCLB) law in 2002, which was formally a reauthorization of the Elementary and Secondary Education Act (ESEA) of 1965. Famously compromising with Senator Ted Kennedy, Representative George Miller, and other prominent liberal Democrats in Congress, NCLB became the most important domestic policy initiative of the Bush presidency (Peterson and West 2003). Bush also made some other changes in the structure and personnel policies within the Department of Education, which I examine in this overall assessment of his influence over national education policy.

In most years that are not severe economic downturns, Americans consider education to be the most important domestic policy issue. Since 1983's "A Nation at Risk" report from the U.S. Department of Education, presidents, Congress, governors, philanthropists, mayors, and school superintendents have undertaken a dizzying array of

school reform efforts (Hess 1999). The problems of overall education performance compared to that in other nations, and especially achievement gaps between higher income and lower income students, have proved to be very stubborn and difficult to address. But, NCLB has become one of the most important federal reform efforts.

To put the Bush presidency in appropriate context, I first examine the overall approach to influencing education policy and the U.S. Department of Education (ED) by presidents before George W. Bush. Despite the contentious literature in political science about the relative influence of other branches over bureaucratic agency outputs, it seems fairly clear that presidents, rather than Congress, have generally played the most prominent and visible role in federal education policy, especially in recent years.

Prior Presidential Influence over Education

Like most other policy areas, federal education programs are shaped by congressional legislation and oversight, presidential appointments, oversight, and implementation decisions, considerable interest group input, and sometimes by judicial decisions. The political science literature on influence over bureaucratic decisions has not been heavily shaped by examples from the education arena, however, in large part because the federal role in education is less direct than in most other policy areas.

Congress created the U.S. Department of Education (U.S. ED, as it is known, to distinguish it from the U.S. DOE—Department of Energy) as a cabinet level agency in October 1979, in part to demonstrate a national level commitment to this issue, with a “Secretary of Education” equivalent to other departmental secretaries. Prior to that, federal education policy was developed and implemented from the designated agencies within the Department of Health, Education, and Welfare (HEW). The federal role in education, especially federal funding for low-income students known as “Title I,” had been greatly expanded in the 1960s, with a large emphasis on equity and civil rights issues (Manna 2006). The education content, funding and personnel for the newly created ED agency, mostly was moved over from the education portion of the former HEW. Today, the U.S. ED is the smallest American cabinet level agency, with about 5,000 employees.

It is small for a reason. While education is the most highly funded public good in the country, apart from national defense, most of the funding and most of the policy decisions are made at the state and

local level. Indeed, about 92 percent of public K12 funding comes from state and local sources, a figure that has changed little over 25 years and is unlikely to change much in the near future. Federal funds and actions have been focused largely upon low-income and disadvantaged students, starting especially with Title I of the Elementary and Secondary Education Act of 1965.

Since it was created and signed off during his term, President Jimmy Carter was obviously an advocate of the creation of the U.S. Department of Education. Still, his term was almost over when it was created, so he had little opportunity to influence its policy directly (Rampe et al. 1993; Stephens 1984).

President Reagan was not a supporter of the U.S. ED. He campaigned in 1980 on the idea of eliminating the agency completely, arguing that it represented more creeping “big government” intrusion into state and local policies, and was not necessary. Congress did not agree, and President Reagan was never able to rally support to eliminate the agency (and, indeed, it is not clear that he actually tried very hard to do that, anyway). The fact that the report “A Nation at Risk” was produced by the U.S. ED in 1983 made it more difficult to argue against the existence of such a federal level agency to help address such a pressing national problem, one that had partially shifted from concerns mainly about equity to a greater focus on international competitiveness and overall student achievement levels. The Reagan administration also argued that even if a federal education agency existed, it should not remain as a cabinet level agency, but again Reagan never followed through seriously on that idea of making a structural change.

When George Bush became president in 1989, he took a “kinder, gentler” approach to education policy, abandoning the goal of eliminating or downgrading the U.S. ED. He even declared that he would be the “education president,” holding a summit conference on education with all 50 state governors, out of which came proposals for new voluntary national education standards and a plan called “America 2000.” During his tenure in office, the concern about American competitiveness accelerated, as many feared that American students and future workers had fallen behind those in other nations, especially behind Japan, and that joint reform efforts by governors and the national government were necessary to turn that around. The Department of Education was necessarily an important player in those competitiveness efforts. Still, the Bush administration and U.S. ED attempted only modest reforms and the states were mainly left to address education issues in their own manner, with an enhanced level of federal “cheerleading.”

President Clinton supported education reform and used his experience as governor of Arkansas, where he had pressed for considerable modernization in a state that had been a backwater of education. Still, after the damaging failure of large-scale health reform in 1994, Clinton was not optimistic about big federal government efforts in any domain, and he instead proposed a series of small reforms in education and tried to work with the states in their reform efforts. Clinton did preside over the 1994 reauthorization of the ESEA, known as “Improving America’s School’s Act” (IASA), which gave somewhat more power to the federal government to set goals and targets for student achievement, with the new name “Goals 2000.” Clinton also drew the wrath of some traditional education establishment interest groups, such as teachers unions, as he supported the development of charter schools, demonstrating elements of a “triangulation” or “third way” strategy in education.

None of these presidents made any major changes to the structure of the U.S. ED. And, unlike Reagan, no successor suggested eliminating or downgrading the position of the agency. It had become clear that, even though education is largely a state and local function in America, a federal cabinet level department is appropriate for an issue that ranks very high on the radar screen of American citizens.

And, during all of these presidencies prior to Bush, the U.S. ED gradually built up its own resources, professionalism, and capacity, essentially doubling in employee size from 1980 to 2000 (a period when most federal agencies were flat in employment size). At the same time, most state education departments were also being transformed, partly with the use of federal funds for technical assistance, from relative backwater organizations with quite limited capacity, to somewhat stronger bureaus with greater resources, data management capacity, and other abilities, though this still varies substantially across the 50 states today (Manna 2006).

This gradual increase in focus on student achievement led up to George W. Bush becoming president in 2000 (by which time it was clear that the various “goals 2000” had not actually been met) and his introduction of the ideas behind NCLB.

NCLB and U.S. ED

It is worth repeating that the federal government does not have many direct levers over American education reform. The federal government does not fund most of the K12 system; it doesn’t actually deliver

almost any of it (save for some schools on military bases), and there is a very long tradition of local and state control of education in this country. Even the establishment of national standards, like those in existence in most developed European and Asian (competitor) nations, with goals aiming for specific education outcomes, do not have enough political support to pass in America. Simply put, because of the huge emphasis on federalism, the U.S. ED is not like most other federal agencies, where the president directs new policies and federal employees are pushed to carry them out in a more tightly coupled manner.

Still, NCLB was a much more aggressive attempt than past efforts to set federal goals and to utilize federal policy levers to move more rapid state and local action. NCLB has become highly controversial and a lightning rod for opposition from traditional education establishment groups, such as teachers unions, school boards, parent groups, and others. Indeed, states, districts, and unions have sued over NCLB, arguing that it represents an “unfunded mandate” of the sort that Congress declared in 1995 that it would no longer implement. In fact, while NCLB mandates some costs, it also brings some additional new funding to states and districts. And, districts are free to turn down Title I funds from NCLB, as they are with all federal grants, but few have the resources or political courage to do so, and it would be a controversial decision for any elected or appointed school board. If, however, a district did not accept Title I and other federal education funds, it would not be bound by NCLB rules.

NCLB, passed in 2001, a few weeks after the September 11 attacks, and conservative Republicans swallowed some of their concerns to back the president’s major domestic initiative. Technically, NCLB is the latest reauthorization of ESEA, which has been the basic, guiding federal education law for nearly 40 years. NCLB is complex and contains some 1,200 pages, compared to the original 50 page ESEA in 1965. It was authorized at a level of \$22.5 billion per year, about half of which, \$10.4 billion, was for Title I poverty funds. And NCLB itself represents about half of the total U.S. ED budget (Hess and Petrilli 2006).

While NCLB left the actual testing regimes to the states, it did require tests to be given to all students in reading, math, and science, for grades 3 through 8. NCLB was given a six-year life in the original law—thus, it was up for reauthorization in 2007, which was delayed at least until 2008, or more likely after the new president takes office in 2009.

For President Bush, and his conservative supporters, a fundamental point of contention around education reform was whether to

emphasize accountability mechanisms, via student test scores, or to focus more upon school choices, both charters schools in the public sector and vouchers for private schools, to encourage competition with the public system. Many hard-core choice supporters were disappointed when Bush emphasized accountability over choice. Partly, this matched Bush's philosophy and emphasis on accountability in Texas, and partly it was a pragmatic reading of the congressional politics of 2001, which did not look favorable to a stronger push for vouchers, especially in the closely divided Senate.

While NCLB is sometimes referred to as extreme or major legislation, it really extended a line of accountability reform that was already taking root, not only at the federal level under President Clinton, but also in the states. For example, when Congress passed and Clinton signed the 1994 IASA, 30 states were already working on tests to measure student achievement, and 42 were developing content standards for student learning. By 2000, many states, in addition to Texas, had established testing goals for their students, with consequences for not meeting those goals, often focused upon shutting down or converting underperforming schools. NCLB extended and codified the idea of consequences for not meeting targeted improvement goals, its main feature.

It is worth some further basic description of key NCLB elements here. Despite the emphasis on testing, the states decide what tests to implement, and where to set the bars for student proficiency (Kosar 2005). With both conservative and potential liberal opposition to national standards, Bush never pushed hard for that, which as we will later discuss, leaves the door open for states to "game" the testing regime, at least to a degree (and many have). There is a required national diagnostic test, the National Assessment of Educational Progress (NAEP), but it only samples students from all states and is not the basis of any NCLB goals or reforms.

The central goal of NCLB is that *all* students (hence "*no* child left behind") become proficient in reading and math by the year 2014. In the implementation period from 2002 to 2014, all states, districts, and schools are supposed to demonstrate "adequate yearly progress" (or AYP) toward that goal—that is, their test scores should be improving and heading toward 100 percent proficiency, based upon whatever test they are actually administering. As a subcomponent of this goal, not only "all students," but each significant subgroup of students within each school (e.g., broken down by race, ethnicity, income, language ability, disability status) must have its test scores broken out separately and each subgroup within each school needs to demonstrate

AYP as well. In addition, all schools are supposed to have only “highly qualified” teachers in all classrooms at various staggered implementation deadline dates, though the definition of that term has also largely been left up to the states and has been a point of negotiation between levels of government.

Perhaps the most important accountability element is that if schools do not achieve AYP for a few consecutive years, they are subject to various consequences. First, they must offer paid tutoring and/or supplemental services to the students in those schools that do not meet AYP. Second, the students in those schools must be offered paid transportation and available slots in district schools that are performing at a higher level. Ultimately, if a school does not meet AYP for a number of consecutive years, it might face being closed, converted to a charter school, or otherwise significantly reformed.

Much of the debate in the potential reauthorization of NCLB centers around how improvement is measured, how flexible these consequences should be, how much time to give schools that are not meeting AYP, and what to do with them. Since several years of non-AYP compliances are required before sanctions kick-in, only in 2007 did these issues become manifest in a large number of schools. And, although technically any kind of school could face challenges in meeting overall AYP or for specific subgroups, in reality schools filled with low-income students have been far less likely to meet AYP so far (Abernathy 2007).

NCLB Politics and Federalism

Not surprisingly, NCLB has divided the education reform community, on many levels. And it has been a challenge to implement. Early on in the NCLB process, Sandy Kress, Bush’s White House education advisor who came with him from Austin, Texas, noted: “What makes this tough is designing something that will work in 50 very different states, and then figuring out how you can leverage change when you’re only paying 7 percent of the bill” (Broder 2001). This highlights the issue that, even under the stronger NCLB law, the federal government has fewer levers to force policy change and implement programs in education than in most other policy areas, and federal-state-local interactions become critical (Hess and Finn 2007).

Hard-core conservatives find NCLB to be weak tea, without a major school choice component, and with goals they find to be overly flexible and long term. Liberals see it as an unfunded mandate,

narrowly focused upon test scores outcomes, and including only tests in reading, math, and science, which they see as inevitably squeezing out other elements of a well-rounded school curriculum, such as history, arts, and music. Liberals also believe that NCLB should provide more resources, especially for schools filled with low-income students, before applying the various penalties for not achieving NCLB's goals. In the extreme, some liberals see NCLB as a deliberate attempt to show that the overall public education system is "failing," by labeling huge numbers of schools as unable to meet AYP, and thus to propose a next round of more draconian solutions that break down or privatize the existing public system.

Thus, NCLB gets attacked from both sides and creates odd bedfellows. Baker (2007) writes: "Teachers' unions stand alongside hard-line conservatives against the program, while civil rights groups team up with business organizations in support of it."

Moderate or less ideologically driven education reformers generally see both advantages and disadvantages to NCLB. They view the accountability elements as useful to hold schools' and districts' "feet to the fire," as an extension of trends that were already well underway in the 1990s, and as focusing necessary attention on the needs of underperforming students and subgroups in a manner different from prior policies. Many moderates are concerned about the remedies, however, and whether or not there is any evidence that they will actually improve student performance (Hess and Finn 2004). For example, many charter schools are subject to NCLB (if they serve poverty students and are thus eligible for Title I funds), and many of those charter schools are not meeting AYP requirements, yet conversion to charters is one of the "solutions" for failing public schools within NCLB (Abernathy 2007).

Other Bush ED Policy and Political Initiatives

There is no question that NCLB was the central education policy of the Bush administration, but it was not the only change in federal education policy or in U.S. ED after 2000. The other key changes include (1) an ongoing effort to reduce the relative power of teachers unions in shaping education policy at all levels (since teachers unions are probably the biggest single source of Democratic party political power); (2) further encouragement of charter school development and parent choice; (3) encouragement of more "scientific" education

research with the development of the Institute for Education Sciences (IES); (4) using education to advance various conservative social priorities, such as abstinence-only sex education, faith-based programs, more tolerance for religion and religious ideas in schools; and (5) more resources for science-based training for enhanced American competitiveness. I will briefly discuss each of these approaches, in order.

First, the role of teachers unions is one of the most fascinating in the politics of education. Even more liberal education reformers often find that opposition from teachers unions is their biggest obstacle to implementing many reforms that seem appropriate. It is simple and natural for conservatives and Republicans to oppose the teachers unions, since they are such strong supporters of the Democratic Party. But, it is very challenging for Democratic reformers to figure out ways to change policies, while still retaining the support of the unions.

The teachers unions have considerable federal, state, and local clout. As Moe (2006a, 2006b) notes, they have a far greater incentive to be involved in school board politics and to get members and/or supporters elected in those low-turnout, often single issue elections. Many state-level reputational assessments (e.g., Hrebener and Thomas 1993) consistently find that experts rank the teachers unions as among the most powerful interest group in most states. And, unions are the central part of the “education establishment” that lobbies for federal policies, often in coalitions with university teacher training programs, school board associations, and other education unions or organizations.

To the extent that all policies also have political goals and intentions, the Bush administration did not attempt an “all-out” frontal assault on the teachers unions, with the exception of U.S. ED Secretary Rod Paige’s speech to governors in winter 2004 that likened them to a “terrorist organization” (Toppo 2004). But, the administration did develop a number of policies designed to reduce their clout. One was to encourage more alternative teacher certification programs, with the hope that teachers certified in a nontraditional manner will be less likely to join and follow the policy prescriptions of the unions. A second effort accelerated the use of merit pay for teachers, via the Teacher Incentive Fund (TIF) established in 2006, since merit pay is expected to drive a wedge into many teachers unions that still support pay based upon seniority. Another set of broader Bush policies was aimed at reducing the clout of unions in politics generally, with a related impact on teachers unions.

Second, the Bush ED continued to encourage the expansion of charter schools. Though this is not a radical change from policies that

President Clinton supported, funding for start-up and capital programs for charters increased and there was not any rollback of support. Indeed, the NCLB requirement to convert some failing public schools to charter schools, if they did not meet AYP for a number of years, suggests a strong belief that charter schools are a solution to problems of underachieving schools. Still, while an increase over prior federal support for charters, encouraging school choice was not a major approach of the Bush ED. Indeed, as noted above, many conservatives felt betrayed when, given a tradeoff between accountability and school choice as major reform approaches, Bush heavily favored accountability via NCLB. Early drafts of NCLB included support for voucher programs, but the final version did not include publicly funded vouchers, which were not likely to have survived the political compromises necessary to get NCLB through Congress. Bush did support, and Congress passed in 2003, a limited income-tested voucher program for Washington, DC residents, as an important urban choice demonstration program—the only one ever funded by the U.S. federal government.

Third, another important role played by the U.S. ED is to fund education research, which states and localities largely lack the capacity to do on their own. Traditionally, conservatives have viewed research done in most education schools as slanted to the ideological left, as supportive of the views and perspectives of teachers and teachers unions, and as scientifically weak and mushy. The Bush administration clearly held this view strongly, and used it as a guiding principle within its ED. Specifically, they changed the existing Office of Education Research and Improvement (OERI), which was perceived as co-opted by the above interest groups, into the IES, with a mandate to perform and to fund only upon rigorous, random assignment type scientific studies to show what reforms boost student achievement (hence supporting NCLB accountability) and what does not. This represented a fairly substantial reorganization of the key agencies of U.S. ED, and below I explore its implication further. In addition to OERI, a few other units were created anew or moved under the aegis of IES. These included NCES, the testing and data-gathering arm of U.S. ED, and various other national centers, including the National Center for Education Evaluation and Regional Assistance (NCEE), which conducts large-scale evaluations of federal programs, supports a “What Works Clearinghouse” and funds 10 regional education “Labs” that try to bring best-practices to states and districts.

Fourth, as was true across a number of domestic policy agencies, the Bush administration encouraged ED staff to have a small, but not

trivial, focus upon important conservative social issues in the education sphere. Specifically, they provided greater support for grants and programs favoring abstinence education in schools, the “war on drugs,” as well as more school partnerships with faith-based programs.

Fifth, after 2005, the Bush administration spent some resources addressing “competitiveness” issues, especially concerns about American STEM (Science, Technology, Engineering, and Math) training issues. In contrast to the 1980s competitiveness concerns focused upon Japan, this was stimulated by the politics of concerns about “outsourcing” of jobs, particularly to India and China. Significantly, however, Bush focused most of the programs and resources for additional STEM training in the National Science Foundation and in the Department of Labor, in part suggesting a lack of confidence in U.S. ED’s traditional focus upon these issues. Some resources were devoted to U.S. ED to encourage the training of more STEM teachers, but this approach tended to provide resources to education schools that are not perceived as the closest partners of the Bush administration.

U.S. ED Personnel and Structural Changes

Like all cabinet agencies, U.S. ED is led by a secretary, appointed by the president and confirmed by the Senate. Rod Paige, an African American who had been superintendent of Houston’s school system, was Bush’s first secretary of education. In terms of “inside Texas baseball,” this was viewed as Bush favoring the “Houston mafia” over his “Austin mafia.” The Austin group consisted of advisors with whom he was more familiar from Texas, including Sandy Kress, a former Dallas Board of Education president, and Margaret Spellings, who were his main White House advisors on NCLB. As noted above, the Houston school system had been noted as a significant education success story from Paige’s tenure, though much of this success was later debunked, and his minority background implicitly symbolized the idea that NCLB and Bush education policies were aimed at all children, including urban minorities.

As the nation’s seventh education secretary, Paige played to mixed reviews. In a 2004 speech he likened the teachers unions to a “terrorist organization,” which was hyperbole for which he had to later apologize. Conservative critics felt that he too easily compromised on NCLB implementation, while liberals found him too harsh and inflexible. After a less than stellar tenure, he was replaced after the first

Bush term, in early 2005, by Margaret Spellings, who was perceived to be a sharper political operative, a better public relations secretary than Paige, and closer to the president. For example, the *Washington Post* called her a “member of the palace guard around President Bush” (Dobbs 2004). (Paige, on the other hand, later finished writing his book *The War against Hope*, documenting his view of the harms caused by the teachers unions [2007]). Meanwhile, Spellings was the first mother of school-aged children to serve as U.S. ED secretary—she previously had served as campaign manager, then education advisor for six years to Governor Bush in Texas, and then as assistant to the president for Domestic Policy from 2000 to 2004.

In terms of other appointments, the deputy secretary and deputy undersecretaries were important, as were the eight assistant secretaries of the “siloe” units that focus on subfields of education policy. Many top appointments had Texas or Bush family connections. For example, Maria Hernandez Ferrier was appointed deputy undersecretary in 2003 and Sara Martinez Tucker was appointed undersecretary in 2006, both from Texas. Others were veterans of DC conservative organizations, such as Nina Rees, the original deputy undersecretary for OERI, who was a veteran of the Heritage Foundation and VP Dick Cheney’s staff.

The 8 subareas within the U.S. ED include (1) Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students; (2) Office for Civil Rights; (3) Office of Educational Research and Improvement, which the Bush administration changed to the IES (more on this below); (4) Office of Elementary and Secondary Education; (5) Office of Postsecondary Education; (6) Office of Special Education and Rehabilitative Services; (7) Office of Federal Student Aid; and (8) Office of Vocational and Adult Education. These siloe units of education policy have traditionally been closed linked to university schools of education and to state education agencies, with their specific program foci and funding mechanisms.

In addition, as with most other agencies, ED has a General Counsel providing legal services, an Office of the Inspector General for audits, an Office of Public Affairs for media relations, an Office of Legislation and Congressional Affairs, and an Office of Intergovernmental and Interagency Affairs, for working with state and local agencies, which has been particularly important with NCLB. Appointees to these positions generally followed the Bush administration pattern of emphasizing loyalists and “known quantities” (many from Texas) over Washington, DC-based candidates who might have had more

specific expertise and experience in that particular education topic. As Lewis notes in chapter two, Bush appointments made U.S. ED a fairly politicized agency.

As noted above, the one major structural change took place via the “Education Sciences Reform Act of 2002,” which established the IES to replace the former OERI. This was the Bush administration’s attempt to make education research more scientific, ambitiously linking to the models of NSF and NIH, and, in political terms, to break the links of the siloed offices with U.S. ED to the various education school and teachers union constituent groups that the Bush administration did not support politically. Former Professor Grover Whitehurst was appointed to a six-year term as the first director of the institute in November 2002. This structural change may well survive into a new president’s tenure in 2009.

In the end, then, in terms of personnel and structure, there was some jockeying for position within U.S. ED between the Austin and Houston “mafia” and the related question of who had President Bush’s ear on education reform. The less-polished Houston crowd had more clout in Bush’s first term, while the Austin group took complete power in Bush’s second term, not only at the secretary level but also with more former White House advisors like David Dunn, who became U.S. ED chief of staff. More than in most other agencies, political appointments were pushed down to the lowest possible levels. And, the creation of the IES tries to mimic the “evidence-based” scientific research fostered by NSF and NIH, partly a laudable goal, but partly a direct attack on the current state of education research as produced by the teacher training education schools.

Politicization, Privatization, and Agency Scandals

I have noted some of the politicization of U.S. ED programs, which had parallels in other Bush administration agencies. U.S. ED also pursued limited privatization, but this had a relatively narrow scope, since most of the U.S. ED financial support goes to states and local districts directly. As a result of these and related efforts, a few scandals developed, of varying importance. As with other Bush administration policies, with a Republican or mixed Congress from 2000 to 2006, precious few hearings were held and potential scandals were bottled up or delayed in their impacts. After Democrats regained majority positions in 2006, congressional hearings ramped-up considerably and more publicly.

The first issue related to the U.S. ED was about “fake news” reporting, where the agency contracted with a talk show host, Armstrong Williams, a former assistant to U.S. Supreme Court Justice Clarence Thomas, to promote the NCLB law among minority guests and listeners, providing a kind of “infomercial” (Toppo 2005). This was a relatively minor scandal, discovered just after the 2004 election, was not investigated by the then Republican-controlled Congress, and it faded away fairly quickly. It was a public relations ploy that probably ended up doing more harm than good for U.S. ED and the administration.

Two more recent scandals may prove more damaging. The first relates to the “Reading First” program. The teaching of reading is highly politicized, especially between the “whole language” and “phonics” factions (though many reasonable moderates seem to believe that both programs can be useful, complementary, and one can work better for some students than the other). In the 1990s, then governor Bush of Texas was very impressed with reading guru Reid Lyons, who strongly favored the phonics approach, and Bush gave Lyon’s supporters strong positions in U.S. ED. Standing by its new concept of only funding “what works” as shown through “rigorous scientific analysis,” the U.S. ED pushed the “Reading First” initiative as such an idea, under NCLB auspices and enhanced funding, with specific programs highly recommended for states to implement. Programs were established by firms with close contacts to U.S. ED, and members of the program selection panel and other advisors were sometimes also, at the same time, acting as private consultants selling versions of the Reading First curriculum around the country, a clear violation of ethics policies. An official audit in September 2006 found several violations and reported: “the department did not follow its own guidance for the peer review process,” but the full parameters of the scandal took time to reveal (Office of Inspector General, U.S. Department of Education 2006).

The most recent scandal in 2007 may prove to have the longest legs because it involved the most money and affects many families. U.S. ED is responsible for overseeing various student loan programs for higher education financing. They had privatized many of these loan programs, often to financial firms with close political connections to the administration. The oversight proved to be shoddy and minimal, and various reports showed how poorly students had been served. Several universities had contract or “kick-back” type relationships with these loan firms, often steering students to them, rather than to a freer market of providers. NelNet, for example, a major contributor to Republican campaigns, was allowed to exploit various loopholes to

generate and to keep extra profits generated from student loans. In total, this involved an \$85 billion student loan market, much larger money than the earlier scandals, and demonstrated a somewhat incompetent approach to oversight and protection of student and family interests. Spellings, defending U.S. ED's role, admitted that their regulations needed to be overhauled to prevent private abuses, and that "the system is redundant, it's Byzantine and it's broken" (Dillon 2007).

George Miller, California Democratic congressman leading the hearings, combined the two recent scandals, questioning the competence of the U.S. ED: "When I look at the whole body of evidence that has been amassed about both the student loan and Reading First programs, it is clear that—at a minimum—the Education Department's oversight failures have been monumental" (*ibid.*). In any event, scandals did not play a major role in the reauthorization discussions of NCLB, but they were part of the larger picture of U.S. ED and the Bush administration.

Bush's Influence over Education Policy?

There can be little doubt that NCLB has been influential. State accountability systems were tightened and the AYP mechanisms forced greater attention upon low-performing schools (DeBray 2006). While there was considerable pushback and state variation (see Hess and Finn 2007), states ended up implementing most of the program elements, and in the past few years the use of supplemental education services (tutoring) and NCLB-forced student choice have been accelerating. Most states and districts seem to have accepted the ideas behind NCLB, though battles continue in the current reauthorization period about testing procedures, deadlines, sanctions, and other key elements.

This may be a relatively unusual case for the Bush administration where the most important influence comes from the policy itself. NCLB, however controversial and however much really an extension of growing accountability trends, is without question a genuinely important policy initiative (McGuinn 2006). It will almost surely fail in its ambitious goal of every American child becoming proficient in reading and math by the year 2014. The real policy question is whether significant positive progress will be made by then or not. If not, a considerable emphasis on testing, conversions, and overhauls of schools—more tutoring and more encouragement of choice—will have proved to be a substantial misdirection of resources.

So far, the evidence for NCLB's success on the ground is mixed. Test scores have gone up in some states and districts, though some have also "gamed" the testing process by lowering the bar on their state tests for what they consider to be "proficient" (IES 2007). A May 2007 report looking across all of the states, prepared by a bipartisan group of analysts, finds that test scores have increased a modest amount since NCLB was implemented, though the analysts caution that they cannot ascribe direct causation (Center on Education Policy 2007).

The gap between state proficiency standards and federal goals is large. For example, in 2006, while 87 percent of grade 8 math students were considered proficient by Tennessee state test standards, only 21 percent of Tennessee students scored at that level on the NAEP test. Some other states, such as Massachusetts, have been more rigorous with their proficiency bars, but this harms them in AYP calculations. Overall, it seems fair to say that NCLB may have stimulated a modest improvement in student performance.

In addition to the fact that student achievement results move slowly regardless of the policy initiative applied, Sunderman and Kim (2007) note that the (top-down) Bush approach to federalism, the limited capacity of state education agencies, and fiscal constraints have led to federal-state conflict over NCLB, complicated implementation efforts, and an increasing erosion of state commitment to the ideas. They are skeptical of NCLB leading to future successes.

Manna (2006) argues more generally that despite repeated presidential attempts to impose a national education agenda, with limited funding and capacity, presidents and U.S. ED have not been able to become the major players in education reform, a role that governors retain. NCLB pushed this federalization harder than any prior presidential effort, to be sure, but it was not a wholesale change from prior efforts, and it is likely to fail for those same capacity and federal implementation reasons (McDermott and Jensen 2005).

The federalism process built into NCLB led to considerable vertical negotiation. Many states received lots of waivers from U.S. ED, and the amount of flexibility they can assert has proven controversial. But, there seems to be no question that even though NCLB is more prescriptive than prior ESEA laws and federal involvement, it is a matter of degree, not a whole new game. States and local districts hold the key to implementation and no federal law or agency can rely upon the use of "sticks" alone to achieve any lasting education reform (Manna 2006).

As reauthorization of NCLB was debated in 2007 and 2008, the federal consensus that helped pass the law in 2001 had broken up.

Senator Kennedy noted: “It seemed to me the president had a golden opportunity to reform education, and it’s in very, very great danger of being missed” (Baker 2007).

In fact, even in prior discussions, it was clear that NCLB was unlikely to be “ramped-up” any more. For example, the Bush administration abandoned its 2004 campaign promise to extend NCLB testing into high schools (the law now requires testing in grades 3–8), for lack of political support in Congress and in the states (Robelen 2005).

Even supporters in Congress have criticized U.S. ED officials for relaxing some testing requirements, especially for limited English proficient and disabled students, for relaxing AYP calculations, for relaxing “highly qualified” teacher requirements, for relaxing rules for rural schools, and for allowing experimentation with value added assessments. Faced with examples of clear noncompliance, U.S. ED has negotiated with states and districts more than applying formal punishments (and actual dollar punishments have been few in number and minimal in amount).

Even if NCLB gets reauthorized in 2009, it is likely to lead to more flexibility for states. And, NCLB is not popular with the public: a May 2007 poll of 1,000 Americans found that nearly two-thirds want the law abolished or amended, rather than reauthorized in its current form (Scripps Howard 2007).

Thus, while President Bush achieved some major goals with NCLB, it did not radically alter or improve American education, and much of the law is likely to be changed in future years. While the Bush administration claimed extraordinary powers in a number of policy arenas, the federalized nature of American education does not easily lend itself to straightforward top-down solutions.

Note

1. Later analyses cast some doubt on the “Houston miracle” and other improvements in test scores in Texas, but these studies mostly were done after Bush had become president.

Chapter Seven

The Paradox of Agency Issue Attention: The Bush Administration and Homeland Security

Peter J. May and Samuel Workman

During the Bush administration, protecting the homeland from terrorism was central on the domestic policy agenda. After the events of September 11 President Bush announced creation of the Office of Homeland Security and charged it with focusing the attention of federal agencies on the threat of terrorism. That was followed in November 2002 with the creation of the Department of Homeland Security, the largest reorganization of the federal government since 1946. These actions left little doubt about the degree to which the Bush administration made homeland security a top policy priority.

The massive shift in attention to highlight antiterrorism across the federal government and the creation of the Department of Homeland Security were perhaps the preeminent exercise of the Bush administration's presidential authority over the bureaucracy. But as noted in chapter one, presidential scholars know well that the exercise of presidential authority is often imperfectly translated into action by federal agencies. Moreover, the changes after 9/11 did not occur in a policy or bureaucratic vacuum. Presidents prior to George W. Bush called attention to the terrorism threat, and aspects of the federal bureaucracy had addressed the threat for decades. Given this history and bureaucratic context, the central question we investigate is how have presidential policy signals to emphasize terrorism affected the domestic preparedness agendas of federal agencies? Answering this question is central to evaluating how major presidential initiatives are translated by federal agencies and for understanding the consequences of the Bush administration's extraordinary emphasis on homeland security and the threat of terrorism.

We study federal agency responses to presidential signals dating to the mid-1990s to attend to the threat of terrorism. We pay particular

attention to changes brought about after the events of September 11 by the Bush administration. Of interest is how top-level actions within the Department of Homeland Security profoundly shaped the agency's preparedness agenda and in so doing fostered a paradox of agency issue attention. We show that the Bush administration emphasis on domestic security for terrorist events had anticipated and unforeseen bureaucratic consequences. The anticipated consequence was a shift to substantially greater attention to terrorism-related programs. As such, the Bush administration had an unusual degree of success in focusing the attention of the federal bureaucracy on this agenda item. As many predicted, this agenda focus came at the expense of attention to disaster preparedness for natural and technological hazards.

Less obvious is a paradox in issue attention that had been fostered by the preparedness agenda emphasis on antiterrorism programs. We show that the shift in attention within the Department of Homeland Security had unforeseen negative consequences that include oscillation in agency preparedness programs, confusion in agency signals for key intergovernmental partners, and meddling from above. As a consequence, homeland security and preparedness for terrorism incidents became arguably weaker than they otherwise would have had the bureaucratic translation of the presidential signals been different. The challenge for future administrations is finding ways to manage the terrorism threat while accomplishing other aspects of homeland security that were crowded out under the Bush administration.

Presidential Attention to the Terrorism Threat

Concerns at the highest levels of the U.S. government about preparedness for terrorism-related events predated events of September 2001 by three decades. Donohue (2001) notes the first administrative response to the perceived threat of terrorist attacks came in 1972 in response to the attacks on Israeli athletes at the Munich Olympics. President Reagan appointed an interagency task force in 1985 chaired by then Vice President George H. W. Bush that reviewed federal antiterrorism programs. The task force concluded: "Our national program is well-conceived and working. The United States currently has in place anti-terrorism activities in virtually every federal department and agency. Specific agencies have been assigned to respond to any threat or attack

directed at our citizens whether on foreign soil, here at home, in the air or at sea” (Office of the Vice President 1986: ii). Despite this statement, the task force highlighted an increased terrorism threat to American citizens and made a number of recommendations. These primarily focused on intelligence gathering and international cooperation. The chief domestic recommendations concerned airport and port security.

The 1993 World Trade Center bombing, the 1995 bombing of the Oklahoma City Murrah Federal Office building, and the 1995 Tokyo subway nerve-gas attack focused concern about potential “weapons of mass destruction” and led to several initiatives (see Falkenrath 2001). Presidential decision directives by President Clinton (no. 39 in 1995 and no. 62 in 1998) provided for a stronger federal role in terrorism preparedness planning. Congressional enactment of the Defense against Weapons of Mass Destruction Act (PL 104–201 Section 14; the “Nunn-Lugar-Domenici Amendment”) and the Anti-terrorism and Effective Death Penalty Act of 1996 (PL 104–132) provided the base for an expansion of federal funding and called on federal agencies to increase preparedness activities for responses to use of weapons of mass destruction or related materials. As we discuss below, the events of September 2001, the creation of the Department of Homeland Security, and the focal emphasis on terrorism preparedness substantially expanded these earlier initiatives.

Figure 7.1 shows the presidential attention to preparedness issues that include directives addressing federal efforts with respect to terrorism, natural disasters, and other extreme events from 1993 through 2006. The bars are yearly counts of presidential Executive Orders, Presidential Decision Directives, National Security Presidential Directives, and Homeland Security Presidential Directives.¹ The heightened attention after the events of 9/11 by George W. Bush is evident by the issuance of 18 different Homeland Security Presidential Directives between the 29 October 2001 creation of the Homeland Security Council as a coordinating entity and a 31 January 2007 directive concerning medical responses to releases of weapons of mass destruction. Figure 7.1 also shows that presidential attention to preparedness issues, including antiterrorism programs, predated the events of September 11.

The issuance of these different presidential directives highlights a long-standing tension in federal programs concerning preparedness for disasters, civil disruption, terrorist events, or other emergencies. Historically, there has been a distinction between two different components of preparedness agendas: one component addressing civil

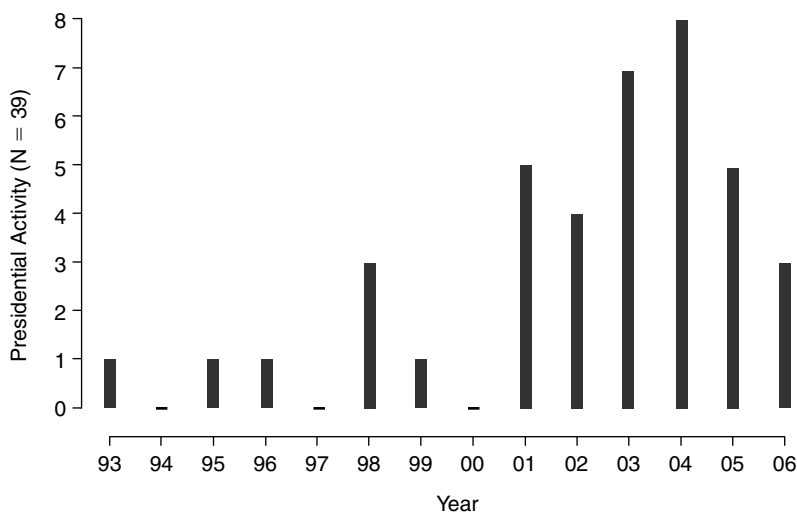


Figure 7.1 Presidential Attention to Preparedness Issues

defense and more recently domestic security, and a second component addressing preparedness for natural and technological disasters (see Falkenrath 2001). The civil defense agenda of the 1950s into the 1960s emphasized preparedness for nuclear attacks for which the legacy today is antiterrorism preparedness efforts that generally are labeled as domestic security programs. These include preparedness for events involving release of weapons of mass destruction or related materials along with other forms of domestic terrorism. The natural disaster preparedness agenda of the 1970s through today has emphasized preparedness for earthquakes, floods, hurricanes, and other natural events as augmented by planning for responses to technological hazards such as oil spills and chemical plant accidents.

The degree to which these two components reinforce each other has been a long-standing issue (see May and Williams 1986: 111–113). A “dual use” policy established in the 1970s allowed states and localities to use civil defense funds to support other preparedness planning as long as the civil defense objectives were not undermined. The current rendition of that policy is the “all hazards” approach to federal preparedness enunciated by President Bush as part of Homeland Security Presidential Directive 8 signed on 17 December 2003. Regardless of the functional interplay of these components, the important point is that at the federal level they entail different agenda emphases concerning consequence management, funding priorities, and planning scenarios.

Federal Agency Agenda Shifts

The preceding reinforces what policy scholars know about presidential and congressional responses to focusing events (see Birkland 1997). Dramatic events lead to new initiatives and changing signals to federal agencies—“do more,” “do better,” “do X differently,” “do Y instead.” These have differing levels of volume and specific messages depending on the circumstances at hand. As a consequence, perturbations in the agendas of federal agencies that deal with preparedness programs can be expected over time. We first discuss our approach to characterizing federal agency agenda change, then discuss the relevant perturbations in federal agendas.

One contribution of this chapter to the study of federal bureaucracy is the introduction of a new methodological approach to studying the agendas of federal agencies. Scholars typically approach this by studying budgets or other outputs like enforcement actions, as with other chapters in this volume. We work with a different approach building upon the work of policy scholars who track national policy agendas with reference to changes in statutes, bills, and executive orders (see Baumgartner and Jones 1993; Kingdon 1984). The corollary basis for tracking the agendas of federal agencies that we employ is analysis of the set of rules and guidance materials that agencies issue.

As noted by William West (2005), the issuance of agency rules constitutes allocation of “scarce organizational resources to the development of some policies and not others” that constitute agency agenda setting (663). By tracking the topics that are subjects of rule making and related issuance of agency guidance, we trace changes in agency attention. The topics of those rules and guidance materials that are either new or subject to change are of particular interest for studying agency agenda change. The analogy we draw is a university course catalog. New courses are entered in the catalog just as new rules and guidance materials are introduced by agencies. Similarly, catalogs are updated with changes in existing courses to better reflect current emphases. One can gauge the topics that are currently hot by tracing the changes in the catalog entries.

We characterize the domestic security component of the “preparedness agenda” of relevant federal agencies for the period 1984 through mid-2006.² The broader time frame was selected to provide sufficient historical context for considering agency disruptions concerning terrorism along with practical consideration of data availability. Our specific interest is the period immediately before and after the creation of the Department of Homeland Security. Three organizations

are relevant within this time frame: the Federal Emergency Management Agency (FEMA; our data for 1984 through mid-2003), the Department of Homeland Security (DHS; our data for mid-2003 through 2006, which incorporates FEMA after mid-2003), and the Office of State and Local Domestic Preparedness (OSLDP) within the Department of Justice (our data for 1999 through mid-2003). OSLDP served as a central conduit for antiterrorism funding for state and local governments prior to the creation of the Department of Homeland Security within which the Office of Domestic Preparedness (ODP) functions were eventually incorporated. These are the major organizational players that are concerned with preparing federal, state, and local governments for responding to extreme events.

We employ two unique data sources for tracking rules and guidance materials issued by these agencies. Our first source of data is the entries found in the Unified Agenda. The Unified Agenda is published in the Federal Register biannually (spring and fall). Pursuant to Executive Orders by Presidents Reagan and Clinton (Executive Orders 12291 and 12866), the Unified Agenda contains all substantive regulatory actions for which executive branch agencies reasonably anticipate they will take action in the coming 12 months. Actions pertaining to military or foreign affairs and agency organization, management, and personnel are exempted from the Unified Agenda, but agencies sometimes choose to include them in order to provide increased legitimacy to these functions and to establish turf. The Unified Agenda contains the actions that an agency predicts will receive attention in the coming 12 months, but this is only a preview of the agenda. Agencies may take action on matters not appearing in the Unified Agenda and, as such, they have a measure of discretion in its contents. The important point is that the Unified Agenda constitutes a consistent source of executive agency agendas. Each entry in the Unified Agenda lists the title, abstract (synopsis of the problem the rule purports to address), statutory authority, statutory deadlines, offices or policy divisions issuing the rule, and other characteristics of each rule. We identified 1,421 rules for the agencies we study over the period 1984 through mid-2006.

The second data source is the set of guidance materials issued by FEMA and the Office of State and Local Domestic Preparedness (and later the Office of Grants and Training) in the Department of Homeland Security. Guidance materials were first identified using the Catalog of Federal Domestic Assistance for the years 2005 and 2006 to identify all relevant programs. Electronic versions of relevant grant guidance were obtained for 1998 through 2006 from Web sites for the Catalog

of Federal Domestic Assistance, FEMA, and the Department of Homeland Security.³ We document 56 relevant issuances of guidance materials over the period under study. Identifying guidance materials prior to 1998 is problematic given that none is posted electronically. As we discuss below, guidance materials are less relevant in these earlier years given that agencies relied less upon them.

Agency Agenda Perturbations

Figure 7.2 shows perturbations from 1984 through mid-2006 in federal agency preparedness agendas. Our measure of agency attention is the annual percentage change in rules and guidance materials that are issued by relevant agencies based on our counts of each of these activities. The figure shows the patterns and interplay of federal agency attention to the two major components of preparedness policy, labeled in shorthand as domestic security (solid line that includes civil defense and terrorism-related activities) and disaster preparedness (dashed line that includes natural and technological disaster preparedness). We calculate the degree of attention to each based on coding the topics of each relevant rule and guidance material.⁴

This figure suggests two patterns. One is greater variability in the domestic security agenda than the disaster preparedness agenda,

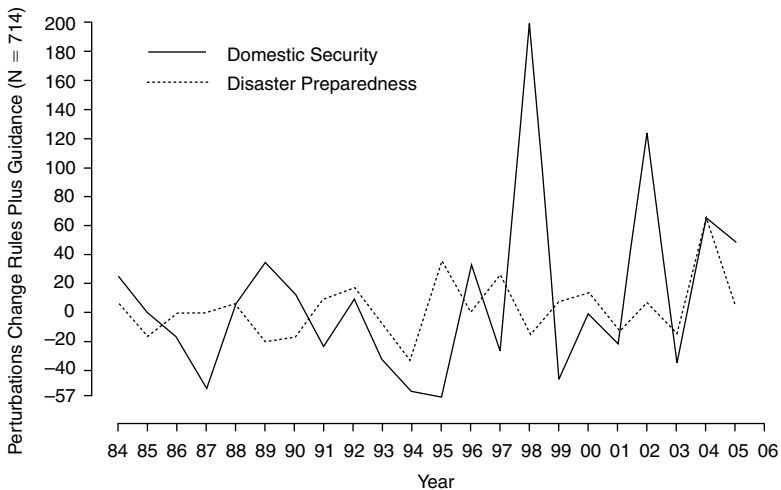


Figure 7.2 Domestic Security and Disaster Preparedness Agenda Change

especially over the period 1995–2004 when terrorism became a highly salient issue. The standard deviation of the disaster preparedness series is 22, whereas the standard deviation for the domestic security series is nearly 3 times greater at 62. Statistical tests of the variability in the two series confirm what is evident visually in the figure. The two series represent issues with vastly different dynamics across time for which the variances of the series are significantly different from each other.⁵ The series for domestic security is more sensitive to shifts in attention over time.

The second pattern is a difference in the responsiveness of federal agency preparedness agendas to presidential and congressional signals. Particularly after 1995, federal agencies are highly responsive to higher-level signals concerning the domestic security agenda. Spikes are evident in 1996 following congressional enactment of antiterrorism provisions following the 1995 bombing of the Oklahoma City federal building, in 1998 following a Clinton presidential directive about terrorism planning, and post-2001 in response to the various congressional and presidential directives following September 11. The limited responsiveness of the disaster preparedness agenda is evident by little change in agenda items following major congressional reforms in disaster programs under the Stafford Act in 1988, additional reforms in 1994 following the problems evident in the response to Hurricane Andrew in 1992, and changes in funding for disaster preparedness following the creation of the Department of Homeland Security in 2003.

Two factors probably explain the greater volubility and responsiveness of agencies to the higher-level signals about domestic security than those for the disaster preparedness agenda. One is the greater salience of terrorism issues. We can think of the issue space as “heating up” as higher-level actors struggle to attain control over the issue. Under these circumstances, an incentive exists to move policymaking up the administrative ladder where change is more easily controlled. The result is that agenda change is more responsive to signals from above. The second factor is the direct involvement of presidents and Congress in signaling the importance of the issues. As we note above, there were several key presidential directives and congressional acts concerning terrorism beginning in 1995 and prior to the flurry of higher-level activity after 2001. We are not the first to note that the nature of the signal matters in determining the dynamics of bureaucratic responsiveness (see Carpenter 1996).

In contrast, the more muted shifts in the disaster preparedness component reflect “business as usual” in FEMA’s management of

disaster programs that is marked over time by cycles of criticism and reforms (see Sylves and Cummings 2004; Wamsley and Schroeder 1996). A key aspect of this is the ability of the agency to dampen response to criticism by bureaucratizing their response to critics who demanded reforms. This entailed a pattern of deflecting criticism by shifting blame to state and local level actors and promising to make necessary internal management reforms rather than remake the agency (see Wamsley and Schroeder 1996; Daniels and Clark-Daniels 2000).

The low point in agenda change for the domestic security agenda in 1994 that is evident in figure 7.1 marks a key shift in that agenda. The 1950 Civil Defense Act was repealed in 1994 (under provisions of PL 103-337), formally marking an end to the Cold War emphasis on civil defense and setting in place the agenda transformation to domestic security concerns about terrorism and other related threats. This transformation is stark. In 1991, rules pertaining to civil defense comprised 25 of 87 total rules (29 percent of all entries) issued by FEMA in the Unified Agenda. By 1997, FEMA issued no rules pertaining to civil defense. Indeed, the Clinton administration eliminated the National Preparedness Directorate within FEMA where civil defense activities had been housed. It was reestablished when the Bush administration took office. In contrast, two-thirds of the agency guidance issued by FEMA or by the Department of Homeland Security from 1998 to 2006 addressed terrorism-related aspects of domestic security.

Table 7.1 further elaborates the agenda shift to emphasize domestic security within the agencies we study. Here the comparison is between two key periods. One is the period 1998 through 2001 that comprise the pre-9/11 set of signals concerning the importance of domestic security that include Presidential Decision Directives in 1995 and 1998, and two key congressional enactments in 1996. These actions called on federal agencies to increase preparedness activities for responses to the domestic use of weapons of mass destruction and expanded federal funding for these purposes. The second period of 2002 through mid-2006 reflects post-September 11 greatly expanded emphasis on the domestic threat of terrorism.

The key finding at the level of agency agendas is the change in the agency-level attention to domestic security and terrorism-related agenda items. This is the empirical characterization of the pattern shown in figure 7.1. Attention to these agenda items jumps from 17 percent of all items in the first period to 57 percent post-2001.

Table 7.1 Agency Agenda Composition

	<i>FEMA and ODP^a</i> <i>1998 through 2001</i>	<i>OHS & DHS^b</i> <i>2002 through 2006</i>
Domestic Preparedness ^c		
Number of Rules Issued	60	58
Number of Guidance Items Issued	5	51
Percent specific to Domestic Security ^d	17	57

^aThe Federal Emergency Management Agency (FEMA) was then an independent agency. The Office of Domestic Programs (ODP) was a unit within the Department of Justice.

^bThe Office of Homeland Security (OHS) and the Department of Homeland Security (DHS).

^cCounts of rules and guidance materials for preparedness functions relating to domestic security, natural disasters, and technological disasters; not including agency management, disaster assistance, insurance, or mitigation programs.

^dPercentages of above rules and guidance that are specific to domestic security.

Terrorism Agenda Translation in the Bureaucracy

These broad patterns mask the translation of the high-level policy emphases on terrorism that began in the mid-1990s. There is a decided contrast between the policy agenda translation under the Clinton and early Bush administration with that of the radical policy agenda change after the events of 9/11. These are discussed in what follows.

The responses of the president, Congress, and relevant agencies to the terrorism threat during period 1998 through 2001 reflect the bureaucratization of the federal agency antiterrorism agenda through delegation of these tasks to existing bureaus. The Presidential Decision Directives by President Clinton (no. 39 in 1995 and no. 62 in 1998) provided for a stronger federal role in terrorism-related preparedness planning. Congressional enactment in 1996 of the Defense against Weapons of Mass Destruction Act (PL 104–201 Title 14; Nunn-Lugar-Domenici Amendment) and the Anti-terrorism and Effective Death Penalty Act (PL 104–132) provided the base for an expansion of federal funding and called on federal agencies to increase preparedness activities for responses to use of weapons of mass destruction or related materials. The main thrust of these initiatives was enhancing existing efforts by increasing attention and capacity rather than introducing a new problem or shifting attention to new solutions.

Even the implementation of new federal funds for state and local terrorism-related preparedness under the 1996 Nunn-Lugar-Domenici Amendment of 1996 resulted in a dampening of this initiative through bureaucratic delegation. The legislation sought to increase attention

and capabilities of state and local first responders to domestic chemical weapons events. As related by Falkenrath (2001), the implementation of this was the epitome of dispersal of agency attention. The funds were disbursed to several existing agencies within the Department of Defense for which the main tasks were training state and local responders.⁶

Although FEMA was the logical agency for carrying out this function, the FEMA leadership did not seek the role because they apparently feared no new funds would be provided for administering the new programs. Moreover, Defense Appropriations Committee members preferred working through their normal channels and the Department of Defense. The Pentagon was reluctant to embrace the state and local government training task and two years later provisions of the Act were invoked to transfer this function to the Department of Justice's Bureau of Justice Assistance. This organization had prior responsibility for administering Justice Department funding for state and local law enforcement functions aimed at promoting safer communities. The new antiterrorism funding role was assigned to a fourth-level unit within the Department of Justice—the Office of State and Local Domestic Preparedness that was later renamed the Office of Domestic Preparedness (ODP).⁷

FEMA's involvement in terrorism-related programs during this time entailed their ongoing national security lead role in planning for continuity of the federal government during national security emergencies and an enhanced role in planning the federal response to the consequences of major terrorist incidents. The latter was fairly minimal as indicated by the fact that only \$15 million was appropriated under the Nunn-Lugar Act to FEMA for terrorism-related preparedness planning. No funds were provided under the Anti-terrorism and Effective Death Penalty Act of 1996, which mainly focused on law enforcement-related antiterrorism provisions.

In sum, the translation of new signals from above concerning increased emphasis on terrorism programs was a decidedly bureaucratic response during this period. The federal efforts were undertaken mainly within lower levels of existing organizations that invoked standard operating processes of bureaucratic policymaking. The creation of the ODP reflected the bureaucratization of a new initiative through delegation to a fourth-level unit. The ODP saga shows that Pentagon and FEMA leaders clearly sought to minimize the disruption that the imposition of new tasks would bring (more generally see Wilson 1989: 221–226). As a consequence, there was limited disruption of ongoing tasks of the relevant agencies, and the attention shift to antiterrorism programs was muted.

Hyperattention after 9/11

The policy responses to the terrorism attacks of September 11 followed the patterns that scholars observe for large focusing events in leading to dramatic shifts in media attention, legislation, and symbolic undertakings. More than 450 bills and resolutions relating to these events were introduced into the 107th Congress (Birkland 2004). There was an extensive debate behind the scenes about the best way to organize the federal bureaucracy for addressing homeland security. The debate has been extensively discussed elsewhere for which the main choice was among creating a coordinating office, placing an existing agency in a stronger lead role, or creating a new agency (see O'Hanlon et al. 2002: 99–124; Kettl 2004; U.S. Government Accountability Office 2002). The initial choice was to create the Office of Homeland Security within the White House with subsequent appointment of Governor Ridge of Pennsylvania as head of the office and assistant to the President for Homeland Security (E.O. 13228, 8 October 2001).

The important point of this choice is that it establishes the basis for top-level attention to the terrorism agenda rather than delegating the response to lower levels of the federal bureaucracy. Partly out of a disdain for large bureaucracy, White House officials vociferously argued against creating a new agency. A Byzantine flow chart was issued to make this point in showing “just how disruptive it would be to create a cabinet-level department to oversee the nation’s security” while likening it to the abortive Clinton Health Care plan (Mitchell 2001: B7). Though the Office of Homeland Security had no power to issue rules or guidance memoranda, by definition its creation was a centralizing action to force decisions about homeland security to the top. While this was intended to turn the attention of federal agencies to the threat of terrorism, the actual implementation of any plans or programs had to take place through existing agencies.

The Office of Homeland Security was soon overwhelmed with both important and trivial decisions. Meanwhile the politics of the situation led to renewed calls for creating a cabinet-level agency. The Bush administration responded to the shifting political environment adroitly and worked with Congress to fashion a superagency. The legislation creating the Department of Homeland Security was enacted in November 2002 (PL 107–296) and the department was constituted in March 2003.

Although the agency was established to carry out a wide range of preparedness and response activities, the major foci were domestic

security and terrorism-related efforts. The administration proposal for the department emphasizes these in stating the rationale for a new bureaucracy: “The changing nature of the threats facing America requires a new government structure to protect against invisible enemies that can strike with a wide variety of weapons” (White House 2002a: 1). In signing the bill that created the department on 25 November 2002, President Bush remarked: “The Homeland Security Act of 2002 takes the next critical steps in defending our country. The continuing threat of terrorism, the threat of mass murder on our own soil will be met with a unified, effective response” (White House 2002b).

Secretary Ridge took specific actions to gain greater control over the domestic security initiatives of the department and to reinforce the terrorism-related agenda. One of these was the creation of an Office of State and Local Government Coordination that reported to him as a central contact point with subnational governments “so we can speak with one voice.”⁸ He later restructured this office, renaming it the Office of State and Local Government Coordination and Preparedness, and consolidated within it key funding programs for terrorism-related grants to local governments that were previously housed within various subunits of the Department of Homeland Security (see GAO 2005a).⁹ This brought an important lever for directing terrorism-related actions at subnational levels under Secretary Ridge’s direct control while combining funds to increase flexibility.

Secretary Ridge also circumvented Department of Homeland Security organizations in crafting the National Preparedness Plan called for by President Bush (Homeland Security Presidential Directive No. 8, 17 December 2003). Ridge contracted with the RAND Corporation for this task rather than relying on the expertise of and prior planning within FEMA’s Office of National Preparedness. In relating this, *Wall Street Journal* reporters Cooper and Block (2006: 82) note that this was an “odd choice” given RAND’s experience in military affairs and limited experience with emergency management.

Secretary Chertoff, who took office in 2005, exercised his organizational powers with a controversial reorganization that took effect in October 2005 (see Congressional Research Service 2006: 21–22). Among other things, the “second-stage review” consolidated the preparedness functions that were housed within FEMA with other related functions in a new Directorate for Preparedness. Also folded into this organization were elements of the Office of State and Local Government Coordination and Preparedness under a renamed Office of Grants and Training.

Reinforcement of the Antiterrorism Agenda

The shift in attention to antiterrorism programs at the Department of Homeland Security was reinforced by congressional, presidential, and agency actions. Nearly \$9 billion of federal funding was allocated for funding three key preparedness-related programs for the four-year period after the creation of the Department of Homeland Security (FY 2003 through FY 2006). Over 92 percent of these funds went to programs that emphasize terrorism-related preparedness: \$5.1 billion for State Homeland Security Grants and \$3.2 billion for the Urban Area Security Initiative.¹⁰ Department of Homeland Security officials argued that these programs served the “all-hazards” agenda, but the emphasis of guidance materials and review of grant submissions clearly emphasized terrorism-related preparedness. The Department of Homeland Security was not alone in this as Congress appropriated the funds and regularly inserted into appropriations bills language emphasizing the need for antiterrorist preparedness funding for first responders (see GAO 2005a; Roberts 2005). Less than 8 percent of the three-key preparedness related program funds went to broader preparedness planning under the Emergency Management Performance Grant Program.

During this period the White House and the Department of Homeland Security sought to reduce funding for nonterrorism-related programs in order to free up funds for the more pressing antiterrorism agenda and for basic organizational needs for the Department of Homeland Security. One example is the Assistance to Firefighters Program that supports purchase of equipment, fire station modification, wellness programs, and public education. Substantial reductions in funds were proposed by the White House in both FY 2005 and FY 2006 along with a requirement that priority be given to applications emphasizing terrorism preparedness. Congress restored funds in each instance and directed the Department of Homeland Security to eliminate the antiterrorism funding priority for disbursing the firefighters’ funds (see Congressional Research Service 2005). Cooper and Bloch (2006: 84) describe how Secretary Ridge used his power to shift funds across Department of Homeland Security units to create a “semianual departmental shakedown [that] became known as ‘Homeland taxes’ and like taxes in real life their assessments sometimes seemed arbitrary and were perennial cause for complaint.” They cite FEMA funding as being particularly hard hit by this tax.

The preparedness planning emphasis on the threat of terrorism is evident in the development of national planning scenarios that the Department of Homeland Security developed to guide all-hazards preparedness planning and exercises as mandated by Presidential Homeland Security Directive 8 of December 2003 (see General Accounting Office 2005b). Twelve of the fifteen scenarios that were developed were terrorism-related, although the Department of Homeland Security argued and the GAO generally agreed that these served broader preparedness planning purposes. The three nonterrorist-related scenarios were a pandemic influenza, major earthquake, and major hurricane. The terrorism emphasis is further underscored by the congressionally mandated TOPOFF exercises that were conducted in 2000, 2003, 2005 to examine the preparedness of top-levels of federal, state, local, and international agencies to respond to a large terrorism attack. For example, TOPOFF2 conducted in 2003 depicted release from a radiological device in Seattle and of a plague in the Chicago area.

Department of Homeland Security Agenda Fallout

The evidence we provide shows that the Bush administration was highly successful in focusing agency attention on the administration's antiterrorism agenda and that for the most part Congress went along with this emphasis. The preceding discussion of the agenda of the Department of Homeland Security shows that the domestic security emphasis of the Bush administration was strongly inculcated within the department. The presidential signals were clearly heard and the agency agenda was shaped to reflect those signals. Secretaries Ridge and Chertoff made effective use of their powers to reinforce this agenda.

Yet, as we discuss here, other consequences followed. As many predicted, the antiterrorism agenda focus came at the expense of attention to disaster preparedness for natural and technological hazards. We show the hypershift in attention also had unforeseen negative consequences that include oscillation in agency preparedness programs, confusion in agency signals for key intergovernmental partners, and meddling from above. As a consequence, homeland security and preparedness for terrorism incidents are arguably weaker than might otherwise have occurred had the bureaucratic translation of the presidential signals not been so amplified.

This might be chalked up to “normal” implementation problems of wrestling with a major federal reorganization and trying to integrate multiple functions within the Department of Homeland Security (see Szanton 1981). However, we argue that unforeseen consequences flowed directly from hyperattention to the terrorism threat, which created instability and crowded out needed top-level attention to other issues.

Crowding Out of Attention

One consequence of the antiterrorism emphasis within the top levels of the Department of Homeland Security was inattention to nonterrorism-related programs that were folded into the department. From the outset, the creation of the department posed an organizational challenge in meshing the tasks of the organizations that were folded into the department with the new focus on antiterrorism-related activities. Concerns about how this would be accomplished were raised in reports by the Brookings Institution (O’Hanlon et al. 2002: 99–124), the Century Foundation (Kettl 2004), and the U.S. Government Accountability Office (2002). By forcing attention on terrorism issues to the top, there was limited capacity among the leadership to deal with other issues. Those charged with leading nonterrorism-related tasks felt marginalized. This was especially evident in the internecine struggles involving FEMA director Michael Brown and Department of Homeland Security officials (see Cooper and Block 2006: 67–92).

Terrorism-related funding was presented by Department of Homeland Security officials as supporting other agency functions under the rubric of all-hazards preparedness, but many first responders felt otherwise. As noted above, 92 percent of the state-and-local funding after 2003 went to programs that emphasized terrorism planning and exercises. Cooper and Block (2006: 83–84) cite complaints by state and local officials about Department of Homeland Security grant applications being rejected because they did not contain an antiterrorism component. As stated by one well-known director of county emergency preparedness in a widely publicized opinion piece written in the wake of Secretary Chertoff’s plan to transfer key FEMA preparedness programs elsewhere within the Department of Homeland Security, FEMA will be survived by state and local emergency management offices, which are confused about how they fit into the national picture. That’s because the focus of the national effort remains terrorism, even if the Department of Homeland Security still talks about “all-hazards”

preparedness. Those of us in the business of dealing with emergencies find ourselves with no national leadership and no mentors. We are being forced to fend for ourselves, making do with the “homeland security” mission. Our “all-hazards” approaches have been decimated by the administration’s preoccupation with terrorism. (Holdeman 2005)

The undermining of preparedness efforts relating to natural disasters was cited as one reason why the response to Hurricane Katrina was deficient (see House Select Bipartisan Committee 2006: 153–155). Simply put, the attention focus was such that top leaders could not simultaneously juggle the demands of the antiterrorism agenda with the pressing demands of a catastrophic hurricane. The circuits were overloaded at the top.

Congress mandated a major reorganization on 31 March 2007 under the Post-Katrina Emergency Management Reform Act (Title VI of PL 109–295) that helped address this overload. The legislation made FEMA a semiautonomous agency within the Department of Homeland Security. The legislation also shifted national preparedness planning and the centralized grant functions under the DHS Office of Grants and Training to the reconstituted FEMA. These actions directly addressed the responses of past Department of Homeland Security leadership to the antiterrorism agenda by delegating aspects of the disaster preparedness and antiterrorism agendas. These reforms, of course, do not put terrorism and natural disaster programs on even footing given their vast differences in funding and scale. Nor do they necessarily fundamentally alter the decision processes that led to top-level focus on antiterrorism programs. However, by delegating aspects of these programs, the reforms allow for consideration of both terrorism-related and natural disaster-related agenda items in parallel.

Oscillation in Grant Programs

A second consequence of the hyperattention to antiterrorism was extreme instability in grant programs for homeland security. Top levels of the organization were in a rush to get the sizable funds that Congress appropriated for antiterrorism programs out to state and local governments. The centralization of grant programs and the use of hastily developed grant guidance were presumably intended to provide flexibility in funding and to speed delivery of funds. But, Department of Homeland Security officials clearly lacked the

information they needed to craft effective grant programs. Instead, they revised grant materials on an annual basis, shifted the ground rules for funding in a number of programs, and undermined a predictable basis for terrorism-related preparedness by state and local governments.

The instability in the grant programs is evident in trying to trace the evolution of programs from 2003 to 2006. Over this period, key preparedness funding programs were recombined in a different fashion each year. Funding programs contained within the Department of Justice and FEMA were integrated and then consolidated within the Department of Homeland Security. These were then recombined into two strands of terrorism-related and emergency management-related funding programs. At each junction, the grant programs entailed new sets of guidance materials for obtaining funding and new conditions.

The grant oscillation created considerable uproar among governors and mayors who desired stability in funding and who questioned the rationale for grant allocations. Not surprisingly, Department of Homeland Security officials found themselves on the defensive in trying to justify their decisions and explain changes. In announcing the FY 2007 grant programs, Secretary Chertoff remarked: "Now, what you see this year as compared to the past years are not huge changes, but refinement, simplification and transparency.... We spent a lot of time talking to community officials, city officials, state officials, federal officials, and we got a lot of observations and suggestions. Some of them we did not accept, but some of them we did accept" (Chertoff Press Remarks 5 January 2007).¹¹

One reason for the oscillation in grant programs was the Department of Homeland Security effort to move toward a risk-based funding allocation. That entailed creation of rating of terrorist threats to "national assets" as called for under Presidential Homeland Security Directive 7 issued on 17 December 2003. As of January 2006 the Department of Homeland Security listing contained 77,069 assets that the Department's Office of Inspector General labeled "not an accurate representation" of the nation's critical infrastructure (2006: 1). That report cites inclusion in the list of 4,055 malls, shopping centers, and retail outlets; 224 racetracks; 539 theme or amusement parks and 163 water parks; 514 religious meeting places; 4,164 educational facilities; 1,305 casinos; 234 retail stores; 127 gas stations; 130 libraries; 335 petroleum pipelines; 217 railroad bridges; 140 defense industrial base assets; 224 national monuments and icons; and 8 wind power plants (DHS Inspector General 2006: 5).

Release of this report created uproar given that it was timed with cutbacks in preparedness planning funds for a number of major cities including New York and Washington. The *New York Times* editorialized: “A government list of potential terrorist targets that came to light recently is only comforting if the roundup is intended, by its very absurdity, to confound the enemy into total inaction” (*New York Times*, 17 July 2006: A16). Congressional criticism led three months later to the resignation of the Department of Homeland Security official responsible for antiterrorism funding programs.

Criticism from Above and Below

A third consequence of the centralized Department of Homeland Security response to emphasize the antiterrorism agenda was the inability of Department of Homeland Security to establish a stable relationship with congressional principals or its clientele of first responders. This lack of control over its environment served as a major impediment to obtaining the kind of agency autonomy that Wilson (1989: 195) argues is essential for stable functioning. One might think that like curing cancer, there would be strong support in Congress and among state and local officials for the Department of Homeland Security agenda emphasis on domestic security. Indeed, strong support for these efforts is evidenced by the substantial congressional appropriations that provided new funds to first responders for antiterrorism preparedness. But, as evident with the shifting grant guidance and the asset inventory debacle, Department of Homeland Security officials did not inspire confidence among their political principals or the emergency management constituency. As a consequence, congressional criticism and appropriation committee adjustments to grant programs have been common (see GAO 2005b).

The Paradox of Attention

The net result of the preceding agenda fallout is a paradox. The translation of attention to the terrorism threat within the Department of Homeland Security was undermined by oscillation in grant programs, distrust among intergovernmental partners, and meddling from above. Moreover, attention to nonterrorism-related programs was crowded out. As a consequence, preparedness for terrorism incidents

and homeland security more generally became weaker than might otherwise have occurred if handled differently.

The *New York Times* editorial title “Homeland Insecurity Department” (17 July 2006: A16) is emblematic of the policy image that has been fostered by the downplaying of preparedness for natural and technological hazards, instability in grant programs, and criticisms from Congress and constituents. The goal of all-hazards preparedness was undermined by the nearly singular focus at top levels of the Department of Homeland Security on the antiterrorism agenda. Simply put, the agency had not credibly committed to the broader goal of all-hazards preparedness despite the rhetoric about it. Also, the mantra of homeland security rang hollow as was overshadowed by the repeated emphasis on domestic security aspects of the Department of Homeland Security agenda.

We trace the roots of this paradox to overloaded circuits at the top. All organizations, at some level of aggregation, face scarcity of attention, which is zero-sum in the limit. Given a focus on some agenda items, there is necessarily less attention to devote to others. An organizational response to agenda change that concentrates authority at the top and limits attention to one agenda item, as undertaken by Department of Homeland Security leaders, exacerbates these limits of attention. While concentration of authority at the top of the organization holds the prospect of control over the substance and speed of policymaking, this control is highly circumscribed by the limits of attention at the top of the organization.

Large organizations are in part a solution to the limits of attention—they allow individuals and administrative units to economize on scarcity of attention by promoting parallel processing. An organizational response to external policy signals that centralizes policy discretion at the top of the organization runs counter to the logic of parallel processing embodied in delegation to expertise at lower levels of the organization. Thus, there exists a real trade-off where centralization and control are concerned. Control over decision making gained via centralization drains away under the limits of attention.

We argue that this paradox is not a consequence of the reorganization that created the Department of Homeland Security. Rather, it is a direct consequence of the overloaded circuits at the top. These were imposed by organizational limits to attention as exacerbated by top levels seeking control of the antiterrorism agenda. The promotion of an antiterrorism mission undermined the more nebulous all-hazards preparedness and homeland security agenda that was the alleged basis for creating the Department of Homeland Security and for moving away

from an Office of Homeland Security. As a consequence, to quote James Q. Wilson, “Tasks that are not defined as central to the mission are often performed poorly or starved for resources” (1989: 110).

Conclusions

The events of September 11 propelled the Bush administration to redirect its energies into responding to the terrorism threat. The anti-terrorism efforts led by the Department of Homeland Security became a centerpiece of domestic policy for the administration. Much has been written about the challenges of addressing the terrorism threat and the difficulties the Bush administration has and future administrations will continue to face in fashioning an effective homeland security effort. That research highlights the limits to massive federal reorganizations and the conflicts brought about by shared governance of preparedness programs.

Our perspective and approach are different. We think of the Bush administration redirection of the policy agenda as a disruptive policy change. That change, as reified with funding and powerful signals from Congress, elevated attention to the terrorism issue and sent powerful signals to agencies to “address this problem.” But these signals were not in and of themselves determinative of the outcomes for federal agencies charged with preparedness for different types of extreme events, including terrorism. We argue that how these signals were interpreted by the federal bureaucracy is the key to understanding the success and the fallout of the Bush administration in bringing about agenda change.

The evidence we provide shows that the Bush administration was highly successful in focusing agency attention on the administration’s antiterrorism agenda. The strong signals were clearly heard and the agenda of the Department of Homeland Security was shaped to reflect those signals. Secretaries Ridge and Chertoff made extensive use of their unusual powers to reinforce this agenda. Among other actions, they created centralized offices to manage the huge amounts of antiterrorism grant funding. In short, much of the machinery of the Department of Homeland Security was focused on the antiterrorism agenda.

This hyperfocus on the antiterrorism agenda and the way that it was reinforced within Department of Homeland Security created an overloading of circuits at the top. This crowded out attention to non-terrorism related programs as was especially evident in lessened efforts in preparedness for natural and technological disasters and the

problems so evident in the failed response to Hurricane Katrina. The hyperactivity associated with the antiterrorism agenda focus fostered oscillation in grant programs, distrust among intergovernmental partners, and meddling from above. As a consequence, preparedness for terrorism incidents and homeland security more generally are arguably weaker than might otherwise have occurred.

No doubt, an agenda item of future presidents will be to reexamine the workability of the mammoth Department of Homeland Security. Public administration scholars (see, e.g., Kettl 2007) have commented that it is an impossible job to balance the diverse issues, tasks, and interests involved in the full business of homeland security that includes both the threat of terrorism and other bases for societal disruption. Our point is that the problems we observe are not inherently structural. Overloaded circuits can occur in large agencies or small ones, or in multifunction agencies or single function agencies. Some organizational solutions may be better than others, especially those that delegate authority and foster parallel processing of multiple issues. But, the fundamental issues we address are matters of attention and decision making.

Future shifts in issue attention for different aspects of extreme events will certainly arise because of new terrorist incidents, major technological accidents, or catastrophic natural disasters. Development of an institutional capacity at the top levels of government to respond to these shifts in ways that channel rather than disrupt federal agency disaster preparedness and response functions is essential for improved homeland security. This requires an institutional capacity within the White House to establish appropriate direction and to provide effective oversight of the federal agency response. It also requires abilities within relevant federal agencies to effectively respond to different types of events and to work with intergovernmental partners in carrying out these tasks.

Notes

Financial support for this research was provided by National Science Foundation grant numbers SES-0554845 and SES-0623900. Neither the NSF nor those who have offered insights are responsible for the content of this chapter.

1. Compiled by authors from listing of activities in the “disaster timeline” compiled by Claire B. Rubin and Associates, available at www.disaster-timeline.com/dtl.html. Accessed 28 April 2007.

2. We use the term preparedness in reference to all aspects of federal disaster and after-crisis event activities including terrorist events. As such, our terminology is shorthand for distinctions that disaster specialists usually make—mainly the four phases of disasters: mitigation, preparedness, response, and recovery. Our focus is on domestic preparedness for which we exclude activities relating to border security (part of DHS), pandemics (Center for Disease Control), port and transportation security (part of DHS), and the security of defense facilities (Department of Defense). These other security functions are largely separable from general preparedness for addressing natural disasters and terrorist events.
3. The total number of grant program entries for our period of study is 149. For these 149 potential entries we were able to identify 56 different guidance materials. We do not have any reason to suspect that there are systematic forces related to the creation of grant guidance for some programs and not for others. Most of these programs exist year after year for which grant guidance would only be issued if changes are made.
4. The number of rules and guidance items of 714 shown in figure 7.1 is lower than the total of 1,421 because we limit attention to only rules and guidance items that are specific to the categories shown in the figure.
5. A Siegel-Tukey rank sum dispersion test of the two variances yields a test statistic of 11.89, which is statistically significant at $p < .001$. This is confirmation that the two series differ significantly across time in terms of volatility. The Siegel-Tukey test does not make a priori distributional assumptions. The conclusion is that the series could not have come from two populations with the same variance (Kanji 2006: 102). An F-test for statistically different variances yields a test statistic of 7.89, which is statistically significant at $p < .001$ (ibid.: 45).
6. As reported by Falkenrath (2001: 162), approximately half of the money was provided to the Department of Defense (\$52 million) to conduct training of state and local first responders, while the remainder of the funding was earmarked for the Department of Health and Human Services (\$6.5 million), the Department of Justice (\$17 million), the Federal Emergency Management Agency (\$15 million), and the Customs Service (\$9 million).
7. The Justice Department's ODP was transferred to the DHS Directorate of Border and Transportation Security when the Department of Homeland Security came into existence in March 2003 (although grants were still processed through the DOJ financial offices). In March 2004, the ODP was consolidated with the DHS Office of State and Local Government Coordination and Preparedness that reports directly to the Secretary of the Department of Homeland Security (see GAO 2005a: 5).
8. Ridge remarks to NEMA Conference 24 February 2003: "We will have a much more robust, much larger office of state and local coordination, and I don't mean a huge bureaucracy. We're not into building a huge bureaucracy in the nation's capital. If we're going to build assets and build structure, it's not going to be in Washington; it's going to be around the

rest of the country, I assure you of that. But we will have an office of state and local coordination separate and distinct from the four directorates. There is some overlap. And this, these group of men and women in our shop will be working with you and others as we build the capacity around this country, set priorities, and hopefully work together on matters—funding matters before the Hill, so we can speak with one voice” (DHS Office of Press Secretary, 2003). Accessed 17 April 2007 at http://www.Department of Homeland Security.gov/xnews/speeches/speech_0093.shtm.

9. Senator Collins of Maine introduced a bill on 7 April 2003 (S. 796) to accomplish these same ends but the bill did not make it out of committee.
10. Amounts calculated by authors from amounts for FY 2003 and 2004 reported by the Congressional Research Service (2004) and from DHS program grant guidance for FY 2005 and FY 2006.
11. Downloaded from http://www.Department of Homeland Security.gov/xnews/releases/pr_1168039350894.shtm on 24 April 2007.

Chapter Eight

Policy Dominance versus Policy Success: Homeland Security and the Limits of Presidential Policy Control

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Among the political and policy consequences of the September 11 attacks was the decision to significantly restructure the basic architecture of the emergency and disaster management system in the United States. The most readily visible manifestation of that decision was a massive bureaucratic reorganization producing the U.S. Department of Homeland Security (DHS). More important than the act of combining the various units that make up DHS¹ was what its creation meant for emergency management and disaster policies and practices. After 9/11, terrorism was elevated to focal point status in the all-hazards management² approach to dealing with emergencies. Doing so shifted the fundamental locus of policy decision making on such issues. Emergency management in the United States historically is characterized by highly decentralized networks of state and local policy systems. In that context, making terrorism the primary motivator for future policymaking represented a major departure because it allowed the federal government to take on a much greater role in defining specific action priorities for state and local governments.

It is also critical to recognize that this policy change was almost entirely driven by presidential initiative. In the post-9/11 environment, Congress has played a lesser role in affecting the redesign of the national emergency management policy architecture. Instead it has often deferred to, or simply validated, the decisions of the executive branch. Through declarations of national homeland security strategy and a series of presidential decision directives and key executive orders, George W. Bush and the Executive Office of the President (EOP) dominated both the framing of homeland security policy issues and the terms of implementation.

What these changes represent is presidential dominance in policymaking. As discussed below, presidents are sometimes viewed as relatively weak actors in domestic policymaking (as distinct from foreign policy) in part because they are believed to face significant constraints in controlling the legislative arena. However, presidential scholars have more recently emphasized that presidents can unilaterally employ tools, such as executive orders, memoranda, and decision directives that allow them greater latitude in forcing substantive policy change. The downside of such actions is that they are rather susceptible to being “undone” by a different administration.

While the Bush administration has been primary initiator of the homeland security policy agenda it is worth considering whether this dominance is likely to translate into durable change. In this chapter I ask whether, and to what extent, the Bush administration has been effective in modifying actual emergency and disaster management practices by local officials across the United States. To put it another way, while the administration has been dominant in defining how homeland security policy should be defined and designed, has it succeeded in either promoting commitment to national goals or in developing capabilities to match?

Asking this question is relevant for two reasons. First, decades of research has shown that simply because a significant national policy goal is established, it does not follow that the implementation of those decisions will occur effectively—or even as intended. Second, a centralized (i.e., presidential) refocusing of emergency management policy systems is especially difficult because of the policy domain’s decentralized nature. Directing the loosely connected series of policy networks of state and local public officials, nonprofits, and private sector firms toward very particular policy ends has represented an enormous challenge for the Bush administration.

My objective in this chapter is to provide an explication of the constraints a president faces in successfully accomplishing major policy change. Specifically, I examine the Bush administration’s initiatives on homeland security. I provide an assessment of local government officials’ reported policy commitment, their reported awareness or comprehension of changes in the national emergency management doctrine, and the extent to which, in a post-9/11 environment, the federal government has spurred development of coordinated response practices and enhanced preparedness. Examining the local government perspective is one means of understanding whether the Bush administration’s policy refocusing efforts are likely to be durable.

The evidence presented here suggests the administration has not surmounted some basic obstacles to change. Parallel to education reform (chapter six herein), attempting to centralize policy control in the institutional context of a policy domain critically shaped by federal decentralization is inherently challenging. As described below, additional constraints of resource variability, ill-defined concepts and a less than coherent structuring of policy incentives failed to produce significant improvements in commitment to national policy goals or homeland security preparedness actions by local governments. In short, the evidence suggests that the Bush administration did not accomplish its objective of fundamentally reorienting disaster management practices—in spite of having the policymaking field largely to themselves. This speaks not only to defects in the administration’s approach to pursuing a homeland security policy strategy, but also to just how difficult it is for a single institutional actor to try to impose change in the face of decentralized and fragmented policy authority in the United States.

Policy Context: Emergency Management and Homeland Security

In the briefest of terms, the U.S. emergency management system at its core reflects the strengths and weaknesses of a federal institutional design. The distribution of authority and responsibility in emergency/disaster response can be described generally: the scale of an event is inverse to the level of governmental involvement in the federal authority hierarchy. That is, smaller emergency events generally are the purview of local governments. As an emergency event increases in scale, up to a disaster, state government is increasingly more likely to provide, or be called on to provide, response assistance. When a full-blown disaster occurs, a state government can request federal assistance, at both the response and recovery phases of incident management. In such an arrangement of authority, local expertise and knowledge of area priorities represent a strength: it makes policy priority setting more reasonable and efficient and creates localized incentives for resources investments. At the same time, a basic weakness is often observed in that local capacity and commitment to building that capacity are inconsistent across the United States, presenting substantial vulnerabilities.

Today’s emergency management system, in part, has been shaped by the civil defense preparedness policy model developed in the 1950s

and 1960s. The logic of the Civil Defense Act of 1950 was that the responsibility for civil defense in the event of an attack from an external enemy (with a nuclear attack from the Soviet Union being the paradigmatic threat) would be vested in state and local government. The federal government would take on the more limited role of mobilization only under certain circumstances. In its historic origins, the civil defense perspective conceives of the federal government as a limited partner for catastrophic events with respect to state and local responsibilities (May 1985).

It is important to recognize that from 1950 to the mid-1970s, the civil defense model functioned poorly in terms of achieving its stated purpose. Specifically, there was limited capacity for, and commitment to, civil defense preparedness at the state and local level (May and Williams 1986). Without adequate resources (financial and administrative expertise) many subnational governments lacked the ability to effectively develop and implement programs such as crisis relocation planning—preparation for the mass evacuation and relocation of large numbers of people following a major incident (*ibid.*). Moreover, many subnational governments did not necessarily agree with various civil defense policy objectives, making policy commitment uneven across the United States (May 1985).

In the early 1970s, civil defense officials began informally promoting the idea of a “dual-use” approach where civil defense program funds could be utilized for nonattack-related disaster preparedness. While the Ford administration actually curtailed this practice on the grounds that state and local government should shoulder the financial responsibilities of natural disaster preparedness, Congress acted by amending the Civil Defense Act in order to codify the dual-use approach and permit civil defense program funds to be used in disaster response and recovery (May and Williams 1986).

Recognition that the existing civil defense model as an approach to promoting state and local emergency preparedness could be made more effective by explicitly promoting just such a dual-use perspective contributed to President Jimmy Carter’s reorganization plan creating the Federal Emergency Management Agency (FEMA). As one of the core principles motivating its creation, defining the mission of FEMA as one of promoting what is now called an all-hazards approach represented a distinct alternative to the civil defense model. Carter’s emphasis on dual-use (i.e., all hazards) received a much fuller expression in the Bill Clinton presidency. Moreover, all hazards under the Clinton administration went further than any other in emphasizing hazard mitigation practices and in investments supporting local

preparedness efforts. This included creating stronger intergovernmental coordination efforts and development of closer public-private partnerships (see Daniels and Clark-Daniels 2001; Schneider 1998). In short, under the leadership of Director James Lee Witt, FEMA was an exemplar of the Clinton administration's reinvention approach to governance (Daniels and Clark-Daniels 2001).

In contrast to Clinton, the Reagan administration had earlier adopted the view that the mission and scope of federal actions on disaster events should be limited in scope. Even after FEMA's creation, the Reagan administration held the narrower view that the federal government's role in emergency management should pay particular attention to how the country should respond to a military attack. Federal support was heavily weighted to promoting preparedness only in traditional civil defense terms. A similar perspective resurfaced in the G. W. Bush administration—with an important distinction.

To a much greater degree than Reagan, no doubt owing to the experience of 9/11, Bush demonstrated a willingness to use federal directives and requirements in the grants process to shape specific subnational government behavior. As Cigler (2007: 70) has noted, the federal government “has traditionally served a facilitating, not a dominating, role in emergency management.” After 9/11, but before Hurricane Katrina, the Bush approach to FEMA was to deemphasize or defund the all-hazard mitigation and preparedness program activities initiated during the Clinton administration. With the transition of FEMA into the DHS, the agency was intentionally moved away from a focus on promoting and facilitating preparedness and mitigation efforts by state and local government. FEMA's preparedness functions were largely eliminated under DHS Secretaries Tom Ridge and Michael Chertoff and shifted to other areas of DHS (Cigler 2007; Schneider 2005).³

In essence then, the G. W. Bush administration, post-9/11, made a policy choice to return to the civil defense model where the federal government's lead disaster management agency is geared toward dealing with an external attack threat, with a catastrophic terrorist event replacing the Soviet nuclear attack threat. Building antiterrorism capabilities occurred at the expense of promoting preparedness on natural disasters, as evidenced by a dramatic shift in the substantive focus of FEMA preparedness grants to antiterrorism efforts (Schneider 2005; Tierney 2006). In general, this reorientation occurred neither by congressional initiative, nor from pressure from state governments (such as the pressure that helped prompt the creation of FEMA itself).

It occurred mainly by a series of Homeland Security Presidential Directives (HSPD), executive orders, and broad policy declarations.

Perhaps most important among these unilateral policymaking tools were HSPD-5 and HSPD-8. HSPD-5 tasked the DHS Secretary with developing and administering the National Incident Management System (NIMS) in 2003 and subsequent National Response Plan (NRP). Together, NIMS and the NRP formally established something akin to a national emergency operations plan and an explicit framework for distributing response authority for major emergency or disaster incidents. Moreover, the president's Homeland Security Advisory Council within the EOP (established via Executive Order 13260) developed 15 specific all-hazards planning scenarios that all levels of government are required to utilize in preparedness activities. The importance of HSPD-8, issued in December, 2003, is that it required the development of a national domestic all-hazards preparedness goal. This led to DHS ultimately creating a list of target capabilities, requiring state and local governments to demonstrative effective capacity and resource commitment, to be able to manage those incidents spelled out in the planning scenarios.

Consider further the substance of the policy direction of these efforts. The most recent update to the *National Strategy on Homeland Security* makes clear that terrorism should be viewed as the nation's primary hazard—at least in terms of the federal government's responsibilities. The first sentence of the document's overview states: "America is at war with terrorist enemies who are intent on attacking our Homeland and destroying our way of life" (White House, Homeland Security Council 2007: 1). Of the four stated national goals on homeland security, the first stated goal is the prevention and disruption of terrorist attacks. The strategy document declares itself the basis for a framework to guide national policymaking, which of course includes directing the policy and administrative structure that makes up the emergency and disaster response system in the United States.

The NRP⁴ and associated documents make clear that the new doctrine is almost entirely motivated by terror attacks as the guiding principle for the policy reorientation. The 15 planning scenarios referenced above that federal, state, and local governments are supposed to use for development of response capabilities illustrate this point. All but 3 of those 15 scenarios identify forms of potential terrorist attacks. Moreover, 5 of the 12 attacks scenarios could be plausibly described as significant enough in scale as to be characterized as a potential catastrophe. This simultaneously presents a rationale for

centralized control of the policymaking system and an explanation of why the doctrine has taken the form that it has.

Assessing Policy Dominance: Unilateral Presidential Power

There are several key points to take from the preceding overview of the development of homeland security policy under George W. Bush. First, the locus of decision making on homeland security was centralized within the White House. In that homeland security policy encompasses traditional emergency management administrative systems, this was a major departure from past practices where the federal government's role was to offer disaster relief, some limited response resources, and grants to facilitate state and local preparedness and mitigation practices (Waugh and Strieb 2006). The specific terms of that reorientation were dictated by the White House, the EOP, and by top officials at DHS. Congress certainly has engaged in legislative and oversight activities—but it has had relatively limited input in shaping the national homeland security policy and strategy documents.⁵ Likewise, state and local officials had little or no input in shaping the character or structure of the new directives they were confronted with implementing in homeland security policy.

Second, it is important to recognize the substantive logic behind attempting to establish a reorientation of the disaster management system to a form analogous to the earlier civil defense approach. The approach makes sense if one accepts the premise of preparing for terror attacks as the guiding rationale for the policy reorientation. In such a context, establishing the potential for clearly defined unified command structures helps explain the assertion of centralized, presidential control over the development and maintenance of national preparedness efforts to ensure consistency across state and local government. In other words, identifying terrorism as the organizing principle for the policy change carries the critical implication that any future terror attacks should be prepared for under a national security rubric—one that permits swift federal action to assist local response. This means that a president, in functioning as the head of the nation's broader security policymaking apparatus can legitimately dictate very precise courses of action for subnational governments to follow. Likewise, the singular nature of such presidential responsibilities in the area of national security suggests that other institutional actors (i.e., Congress) should be deferential to presidential policy initiatives.

Beyond those two points, it is also useful to place the actions of the Bush administration on homeland security into the context of presidential policymaking more generally. Presidential scholars are often characterized as having two essential views of presidents as policymakers. One view is that presidents are substantially limited by institutional constraints and therefore they cannot typically produce policy changes on their own. This “shared power” model posits that a president’s power is shared with, and constrained by, other institutional and noninstitutional actors including Congress, the judiciary, state and local governments, public opinion, the media. As a consequence, presidential policymaking power is seen as meaningfully circumscribed.⁶

By way of contrast, other presidential scholars argue that presidents have an impressive arsenal of formal powers that can be used unilaterally—that is, with either minimal input or without the consent of other institutional (e.g., Congress) or noninstitutional (e.g., public opinion) actors. Though some unilateral powers of the president can be overturned subsequent to their use (for instance, executive orders can be overturned by the courts or Congress) such authority allows presidents to make policy quickly and decisively. Richard Nathan’s (1976, 1983) work also suggests the possibilities for unilateral action, through administrative procedures like reorganization initiatives or central clearance. The literature examining unilateral tools has tended to focus on somewhat higher visibility actions such as executive orders (e.g., see Gleiber and Shull 1992; Krause and Cohen 1997; Mayer 1999, 2001; Morgan 1987). Phillip Cooper (1986, 2002), however, emphasizes administrative actions that generally produce less attention, such as signing statements, proclamations, internal agency memoranda (that instruct policy actions), and presidential directives, arguing that those powers give a president direct control over policymaking. Durant (1992) and Waterman (1989) show that even with the potential for unilateral policymaking via administrative actions, the use of those tools is meaningfully shaped by political contingencies such as the preferences (and their relative intensity) of other important actors in a policy domain.

The preceding section briefly summarized the idea that beyond limited congressional activity, the animating principles of the new national emergency management doctrine have been dictated by the Bush White House. It has done so both through higher visibility unilateral tools (e.g., actively promoting national strategy documents, prominent executive orders such as the creation of first the Office of Homeland Security and later the Homeland Security Advisory

Council) and through somewhat less visible means (e.g., various decision directives).

Assessing Policy Success: Local Government Response to Policy Change

Given the Bush administration's dominant leverage over the design of the post-9/11 national homeland security policy strategy, it is useful to consider to what extent its policy initiatives have produced meaningful change at the local government level. There are several reasons for considering local government attitudes and actions in this regard. As Gerber et al. (2005) have noted, many key functional activities relevant to homeland security fall primarily within the responsibility of local government. Both before and after the 9/11 attacks the federal government devoted considerable resources to helping enhance local government counterterrorism preparedness and emergency preparedness more generally. Understanding how well equipped local governments are to respond to homeland security policy needs is an indication of the potential efficacy of homeland security policy as devised by the Bush White House.

To assess whether the Bush administration's policymaking dominance has translated into success—which I define as discernible indications of durable change in the operational activities and policy attitudes of key players in the emergency management system—I consider three substantive questions. The first is: what is the present state of homeland security policy commitment at the local government level? The second is: to what degree are local governments able to comprehend and implement national policy doctrine? And the third is: since 9/11, have interjurisdictional coordination practices improved? The significance of each of these questions is discussed below.

To answer these questions, I rely on data from two sources. The primary dataset I use here is from a mail survey of city and county officials across the United States in cities with resident populations of at least 30,000. All American cities meeting this population threshold were stratified into one of three groups (small = 30,000 to less than 100,000; medium = 100,000 to less than 250,000; large = 250,000 or more), and sample units were selected at random within each stratum. A total of 250 cities were selected for inclusion in the sample. Multiple municipal officials at both the city and county level (the county in which the sampled city is located) then constituted secondary sampling units. Those officials included a mix of elected and bureaucratic

officials in the following five areas: government executives (city managers, mayors, county executives); first responder personnel (fire or police department heads, emergency medical services department heads); city and county emergency managers, city and county public health officials, and general administrative personnel, such as offices with relevant responsibilities like transportation management. The final sample frame consisted of 1,767 city and county officials. Through interviews with local emergency management and other officials in several locations a survey instrument was constructed and pretested in June/July 2006. Individuals in the sample frame were mailed a notification letter in late August, and a first wave of the survey was mailed in early September. Two weeks later, a reminder postcard was mailed to the sample members, and a second wave of the survey was mailed in the first week of October. A total of 723 completed, or partially completed, surveys were received for a rate of about 41 percent.

In addition, for some of the questions addressed here, I rely on a second dataset to provide some comparisons over time. A survey similar to the one just described was conducted two years earlier. The specifics of data collection for that survey are described in Gerber et al. (2005).

While the national government has strong incentives for promoting hazard mitigation and preparedness, state and local governments face certain disincentives to proactive management and often lack the administrative capacity or commitment for effective policies (Cigler 1998; May and Williams 1986). As a result, state and local government frequently do not develop a level of capacity for, and commitment to, effective disaster policy that matches their responsibilities (see Burby 1998). The issue of policy commitment—the willingness of policy actors to address a policy problem/challenge in an effective way—is an important one in the area of homeland security, which is contingent on all actors in a vertically integrated system committing the necessary resources to accomplish security objectives. But as research has shown in similar situations of vertically integrated policies of a hazard management nature, commitment by subnational actors is often difficult to achieve in practice (see, e.g., Burby and May 1997).

An item from the aforementioned survey instruments allows me to address this first question. Both the 2004 and 2006 surveys asked respondents about how they would rate the city (or county) government's "overall commitment to homeland security preparedness." Responses were made on a 7-point scale with "low" representing the lower bound (i.e., value = 1) and "high" the upper bound (i.e., value =7). Table 8.1 presents the mean score for the 2004 responses,

Table 8.1 Reported Policy Commitment, 2004 and 2006

<i>Response by</i>	<i>Mean</i>	<i>St. Dev.</i>	<i>p value, Mean Difference</i>	<i>n</i>
2004 (City Officials)	5.03	1.46		304
2006 (City Officials only)	4.97	1.36	.370	429
2006 (All—City and County)	5.03	1.38		721

as well as the 2006 responses. The 2006 responses are disaggregated because in the 2004 study, only city government officials were included in the sample frame; in 2006, both city and county officials were included. Therefore, to provide a direct comparison between comparable officials (same type of government) across the two samples, the 2006 ratings are shown for city officials and all officials.

Table 8.1 provides several pieces of information. First, the mean scores on the 7-point scale are reasonably high, indicating that local government officials believe the government in which they operate has a relatively clear commitment to homeland security preparedness efforts. Second, there has been virtually no drop-off in the degree of that reported support between 2004 and 2006. When comparing all responses from the two samples, the mean commitment rating is an identical 5.03 on the scale. Only when city officials from the two study years are compared directly do we observe a slight difference. A simple means comparison test was conducted, and as table 8.1 shows, that slight difference is not statistically significant.

While in the aggregate, these statistics suggest policy commitment is relatively high, table 8.2 presents stated policy commitment in a slightly different light when responses are categorized by a respondent's government position. The one-way ANOVA presented in table 8.2 shows that respondents who are first responders (fire, police, EMS) and emergency managers are statistically significantly distinct from city/county executives (mayors, city managers, etc.); post hoc analyses were conducted to evaluate pair-wise differences among the means and those results are shown in the fourth column of the table 8.2. The F value for the city size comparison is statistically significant ($p < .01$).

The mean scores show that the first responders and emergency managers are about half a point apart on the scale from local executives. These differences do have an importance. If one considers first response and emergency management personnel possess the leading functional responsibility for homeland security preparedness efforts in a local government, it is noteworthy that such individuals rate policy commitment significantly lower than their colleagues in the rest of

Table 8.2 Reported Policy Commitment by Occupation, 2006

<i>Response by</i>	<i>Mean</i>	<i>St. Dev.</i>	<i>p value, Mean Differences</i>	<i>n</i>
All	5.03	1.36		720
Executives	5.38	1.21	.01	251
First Response	4.80	1.42		308
Emergency Managers	4.86	1.38	.01	87
Public Health	5.05	1.27		74

Note: $F(3,716) = 9.359, p < .01$

their government. Moreover, while not shown here, the same analysis was conducted for the 2004 sample, and the results were quite similar: first responders were statistically significantly lower in their assessment of their government's policy commitment in comparison to their colleagues. The ANOVA itself for that analysis was statistically significant ($p < .02$). The basic inference to draw is that those local officials with the greatest functional responsibilities in responding to an emergency or disaster situation are significantly less confident than their colleagues in assessing how committed their respective governments are in preparing for homeland security threats.

The second assessment question posed above asks us to consider the degree to which local government officials have a clear understanding of the national emergency management doctrine. Donahue (2006: 141) notes that effective emergency response operations require that multiple jurisdictions, sectors, and levels of government resolve complex coordination of effort problems. To help resolve the coordination challenge, Donahue points out that, among other factors, having clearly articulated and commonly understood missions, objectives, strategies, and priorities helps reduce the frictions that characterize multiple actors working in complex policy spaces.

One way to understand this issue with respect to homeland security policy change is to examine the degree to which local officials believe their government (city or county) is sufficiently ready to implement the NRP (the plan applicable at the time of the survey). In 2006, respondents were asked to either agree or disagree with the following statement: "In the event of a catastrophic terrorist incident in my community, my county government has a clear understanding of its procedural obligations under the National Response Plan." Responses were made on a 7-point scale with "strongly agree" the lower bound (i.e., value = 1) and "strongly disagree" the upper bound (i.e., value = 7). Table 8.3 presents the mean score for all responses, as well as a

Table 8.3 Local Comprehension of the NRP

<i>Response by</i>	<i>Mean</i>	<i>St. Dev.</i>	<i>p value, Mean Differences</i>	<i>n</i>
All	3.34	1.53		700
Small	3.52	1.59	.05	310
Medium	3.21	1.47	—	260
Large	3.14	1.45	—	130

Note: $F(2,697) = 4.249, p < .02$

comparison for the size of a respondent's city. The reason for making city size comparisons is that prior work on preparedness has shown that city size has a strong and consistent effect on how local governments perform in these sorts of issues (Gerber et al. 2005, 2007).

Table 8.3 presents mean scores for all respondents and then compares scores by respondents' city size in a one-way ANOVA. The F value for the city size comparison is statistically significant ($p < .02$). Given that finding, post hoc analyses were conducted to evaluate pair-wise differences among the means (to determine where exactly the differences reside). The results of those comparisons are displayed in the fourth column of table 8.3.

The results indicate a somewhat positive local evaluation of NRP comprehension. About 57 percent of respondents were lower than the scale's midpoint, with an overall mean of 3.34, which is an indication of agreement with the statement posed. But the ANOVA results show that comprehension ratings decline as community size gets smaller. The table shows the mean score for officials from medium and large cities indicate statistically significantly greater doctrine comprehension than the mean scores for officials for small cities ($p < .05$ in each case). In other words, respondents in large and medium cities are more likely to report that their city or county governments do understand their procedural obligations than their counterparts in small-sized cities. There is no statistically significant difference of mean scores between medium and large city respondents.

In the aggregate this is fairly intuitive insofar as the larger the city or county government, the greater the administrative capacity (all else equal) and more than likely a greater concern for terrorism as a hazard (see Gerber et al. 2005). More important is the implication of smaller city and county officials reporting lower levels of NRP procedural comprehension, that is, lower national emergency management doctrine awareness. The reader should note that for the purposes of this study small cities—defined as having a residential population of

between 30,000 and 100,000—are still substantial communities in most areas of the country. In that these communities have significant populations their lagging behind larger communities in understanding how to put the NRP into practice during an incident represents a potential vulnerability in the response system if and when major disasters or catastrophes occur.

Further, the results suggest that to a certain extent, doctrine awareness and comprehension is a function of community size. This too is problematic because routine hazards (i.e., more familiar or commonly occurring), such as flooding, hurricanes, or chemical accidents, of course occur across a wide range of communities—not just larger ones. The Bush administration approach of typing preparedness activities to terrorism—and particularly directing funding to larger urban areas that are presumed to be more vulnerable to terror attacks, but are not more vulnerable to a range of natural or technological hazards—potentially has a negative effect on all-hazards preparedness across the national emergency management system. The community size relationship shown in table 8.3 suggests this possibility. To the extent this is true, it undermines the policy change sought by the Bush administration, because eventually state and local governments will push back against such policy prioritization—as was seen in the case of civil defense.

Donahue (2006) also notes that joint planning in the midst of a disaster or other crisis situation helps ameliorate coordination problems; daily planning meeting increased the effectiveness of the space shuttle Columbia disaster's recovery efforts in 2003, for example. That logic can be extended to preparedness coordination more generally (e.g., planning and exercise efforts across jurisdictional lines). On that theme, the 2006 survey asked local officials to rate how well both the federal and their state government have been in facilitating regional preparedness and response efforts. Specifically, respondents were to either agree or disagree with the following two statements: "Federal officials at DHS (including FEMA) have done a good job at facilitating regional preparedness and response capability," and "Officials from my state government have done a good job at facilitating regional preparedness and response capability." Responses were made on a 7-point scale with "strongly agree" the lower bound (i.e., value = 1) and "strongly disagree" the upper bound (i.e., value = 7). Table 8.4 shows that the mean score of all respondents give a slightly negative rating (mean = 4.17, above the scale's midpoint) to federal officials, while giving a relatively positive rating to state-level officials (mean = 3.56). As table 8.4 shows, the difference between these two ratings is statistically significant ($p < .001$).

Table 8.4 Comparison of Federal and State Ratings on Coordination

	<i>Mean</i>	<i>St. Dev.</i>	<i>Mean Difference</i>	<i>p value</i>
Federal	4.17	1.34	.609	.001
State	3.56	1.49		

A follow-up ANOVA comparison to check whether these responses varied by city size revealed that while officials from larger cities give slightly more negative ratings to both state and federal officials, those ratings are not statistically significantly different from small and medium cities. One potential inference, perhaps most obvious, from the divergent ratings presented above is that local officials work more closely with state officials and hence a more positive rating is provided. However, it also must be pointed out that as described above, the federal government has issued a large number of policy change directives over the past several years. Because of this effort to modify state and local policy behavior, it is important to recognize that local officials' assessment of the cues and directives received from federal officials does matter and so the more negative assessment carries negative consequences for DHS efforts to inculcate preferred policy behavior in subnational governments.

These two questions, perceived self-readiness and ratings of coordination assistance, indicate challenges for an administration intent on establishing durable policy change. The result showing that the rating of NRP comprehension declines as community size decreases implies that relatively higher resources and higher policy need, that is, greater perceived vulnerability in more densely populated locations—both more or less immutable characteristics—are related to doctrine utilization. At the same time, the fact that those officials give lower ratings to federal and state government on issues related to facilitating local preparedness and response on a regional basis suggests a level of ineffectiveness on the part of federal officials in proactively assisting in capability-building efforts or at least in communicating proper policy signals to local government officials.

The last research topic of interest here is the matter of assessing how strong interjurisdictional coordination practices are in the post-9/11 environment, which is to ask: are different local governments working together within the context of the new emergency management doctrine? The significance of the question requires a bit of elaboration. A key part of the terrorism-oriented emergency response doctrine is the

federal government's emphasis on preparedness for catastrophic events as a major policy priority. It has explicitly called for increases in regional responses capabilities based on the logic of "worst case" planning (see White House 2006). Worst case scenarios of course include catastrophic incidents, which are defined in the NRP as "any natural or manmade incident, including terrorism, that results in extraordinary levels of mass casualties, damage, or disruption severely affecting the population, infrastructure, environment, economy, national morale, and/or government functions" (2004, CAT-1). It is worth noting that there is some ambiguity on this concept. Birkland (2006) points out that there is not a brightly defined division between emergencies (i.e., crises), disasters, and catastrophes. Clearly the key issue is of scale, and while some events appear to be easily categorized, Birkland argues that the definition of an event as a disaster or a catastrophe itself can be fraught with political implications (and as a consequence is a designation choice that might be strategic).

In the aftermath of Hurricane Katrina, the U.S. Department of Homeland Security (2006) completed the second of a two-phase national review of national disaster preparedness across the 50 states and in the country's largest urban areas. Outside of a few exceptions (e.g., Florida, which routinely confronts mass evacuations related to the hurricane hazard), the review gave mediocre to poor grades for the country as a whole in terms of actual incident preparedness and adequacy of emergency operations plans, particularly related to issues associated with catastrophic incidents, such as mass evacuations of citizens. As a consequence, the federal expectation of subnational government readiness for catastrophic events has become a point of greater emphasis in the past several years. It is rooted, however, in the basic framework of NIMS and the NRP placing an emphasis on attempting to promote catastrophic preparedness—in particular for a large-scale terrorist attack.

Given this point of emphasis, it is useful to try to ascertain the nature of regional coordination activities at the local level. This can be accomplished by asking city and county officials to assess current levels of coordination activities in their jurisdictions. One item on the 2006 survey instrument sought to measure how well city and county governments within the same county jurisdiction coordinated preparedness actions, while a second sought to measure how well cities and counties coordinated with other cities and counties outside their own jurisdiction.

Specifically, respondents in city governments were asked to "Rate the level of coordination your city government has with county

officials on homeland security planning.” Similarly, respondents in county government were asked to “Rate the level of coordination your government has with officials from the county’s largest city on homeland security planning.” Table 8.5 presents the mean score of all respondents on this question, and then treats the question responses as the dependent variable and compares scores by the size of a respondent’s city or county government. The ANOVA analysis is statistically significant ($p < .05$) and a post hoc comparison shows that officials from medium-sized cities report statistically significantly higher coordination ratings than smaller cities (no significant difference from larger cities).

Likewise, the 2004 survey asked city officials the extent to which they had engaged in regional planning on homeland security issues. The two questions were not identically worded, but are roughly comparable, and 7-point response scale was again used. The mean score for the 2004 respondents on that item was 5.37. This compares to the mean score of 4.83 for the city officials from the 2006 survey. This is a significant decline in reported coordination activities between city and county officials across the United States. Of course this implies there are limitations in the effectiveness of federal programs to facilitate such cooperation on emergency management—at least when examined at a national aggregate level.

Returning to the 2006 survey, respondents were also asked the related question of rating the level of coordination their city or county has with other cities/counties outside their own jurisdiction. This is of course a slightly more demanding indicator of potential regional coordination, and it is no surprise that the mean response for this question, reported in table 8.6, is slightly lower than in table 8.5. That difference in the two overall mean ratings shown in tables 8.5 and 8.6 (mean difference = .228) for intracounty coordination between city

Table 8.5 Rating of City-County Coordination

<i>Response by</i>	<i>Mean</i>	<i>St. Dev.</i>	<i>p value, Mean Differences</i>	<i>n</i>
All	4.84	1.57		693
Small	4.65	1.56	—	308
Medium	5.02	1.52	.05	259
Large	4.95	1.71	—	126

Note: $F(2,690) = 4.213, p < .02$

Table 8.6 Rating of Interjurisdictional City-County Coordination

<i>Response by</i>	<i>Mean</i>	<i>St. Dev.</i>	<i>p value, Mean Differences</i>	<i>n</i>
All	4.61	1.45		702
Small	4.46	1.47	—	311
Medium	4.69	1.44	—	261
Large	4.77	1.41	.1	130

Note: $F(2,699) = 2.826, p < .06$

and county government and coordination with cities/counties outside the officials' city or county jurisdictions is statistically significant at $p < .001$. While a simple bivariate comparison lacking some important contextual information, this is perhaps an important result, if intuitive. The import lies in the fact that while it is not surprising that local officials would report better coordination performance in an intrajurisdictional city-county relationship, the implication of the coordination ratings declining for interjurisdictional relationship is at least somewhat suggestive that actual regional coordination is most likely to occur within a narrow geographic scope.

Conclusion

Mainly through the use of unilateral policymaking tools, the Bush administration has been the dominant initiator of homeland security policy change since the September 11 terror attacks. This is certainly not unexpected nor is it counterintuitive; in times of crisis, the singular structure of executive leadership offers advantages over corporate bodies like legislatures, which seldom move nimbly. Moreover, there is a certain degree of institutional deference afforded a president on matters of national security. The threat of terrorism has generally been seen as constituting a security threat, and the logic associated with such a perspective has allowed the Bush administration the advantage in framing the political and policymaking agenda in the area of homeland security.

This chapter has tried to offer some insight into the question of whether a president dominating the initiation of policy change is sufficient to ensure policy success—when success is defined as making the preferred changes reasonably durable. The substance of what the

Bush administration attempted was remarkable: it fundamentally revised the basic outlines of a national emergency management doctrine in place at least since the creation of FEMA. Using a full range of administrative tools that were at his disposal, the president declared the centrality of terrorism as a hazard, and made clear that state and local government should engage in a series of specific preparedness activities and develop response and recovery capabilities for a range of threats, but particularly major terrorist and catastrophic incidents.

While the administration had a great deal of control over initiating the policy shift, it is not altogether clear that changing basic practices of disaster prevention and management by state and local government officials across the United States is an objective easily accomplished. As discussed above, a variety of potential hurdles present themselves to a president interested in making dramatic revision to emergency management in the United States, such as diffuse authority and highly variable resource capacity to implement nationally defined goals. Considering local officials' commitment to the newly defined concepts of homeland security policy, how well those officials comprehend and can utilize national response plan documents, and whether the new doctrine has impacted coordination between local governments are three important indicators of how likely it is that local governments will adopt changes in emergency management practice based on Bush administration directives. The evidence presented is not cause for great optimism if one is an administration official. Key first response personnel with the greatest operational responsibilities are less positive in their assessments of local policy commitment (in comparison to other local officials). As communities fall below the 100,000 resident population mark, comprehension of response doctrine declines. And local officials do not report particularly robust assessments of coordination between neighboring governments. Taken together, what all this suggests in the specific case of homeland security policy, while the current administration has dominated the agenda, is that they have not necessarily figured out a way to ensure an effective implementation of their policy goals. A broader inference from this chapter is that while a president may be quite effective in utilizing administrative tools to force policy change, there are limits to what can be accomplished across the diffuse sources of authority, unique local characteristics, and fragmented policy networks that characterize a policy domain like emergency management—where federalism is a critical institutional characteristic of that domain.

Notes

The data presented in this chapter are from a research project supported by a National Science Foundation grant (award number: CMS-0554332).

1. The U.S. Department of Homeland Security was created with the Homeland Security Act of 2002 (PL 107-296). It combined 22 existing federal agencies with over 179,000 employees, including the Federal Emergency Management Agency, the U.S. Coast Guard, the Transportation Security Administration, Customs and Border Protection, and U.S. Secret Service.
2. An “all-hazards” approach refers to comprehensive management of a wide range of potential emergencies or disasters that arise from natural, technological, or other human sources. It has been a long-standing organizing principle for the U.S. emergency management community and captures the notion that emergency management and first response organizations should be flexible enough in their planning and operational capabilities to be able to handle a wide range of incidents that can follow from a range of hazards.
3. That change has been reversed, however. In response to the dismal FEMA performance during Hurricane Katrina, Congress enacted the Post-Katrina Emergency Reform Act of 2007 (PL 109-295), as part of a homeland security appropriations act. The statute restored much of FEMA’s functional responsibility for preparedness programs.
4. The NRP has been recently revised to a National Response Framework. That process has been controversial because it underscores how centralized control policy development has been under the Bush administration because the document has been described as too broad and vague to be useful. One local emergency manager described it as a public relations document, disconnected from post-Katrina legislation that tries to strengthen FEMA’s role within DHS (Hsu 2007a). Further, state and local input was minimized, and the current president of the National Emergency Management Association declared that the process of excluding that input indicates a more polarized environment between federal and state government on emergency and disaster policy than he had ever seen in his career (Hsu 2007b).
5. Haddow et al. (2006: 57-63) provide a representative list of congressional legislative activity on homeland security and terrorism since 2001. The list of bills introduced and passed is extensive. However, the key point is that these statutes have not been the major documents shaping the new emergency management doctrine. Outside of the Homeland Security Act, the other major piece of legislation after 9/11, the PATRIOT Act of 2001(PL 107-156) is oriented toward counterterrorism, and has limited implications for emergency management and disaster policy.
6. Neustadt’s (1960) persuasion thesis is the classic illustration of this argument; Kernell’s (1997) arguments refine and complement Neustadt.

Part III

*Regulation of Business in the
MBA Presidency*

Chapter Nine

Flying under the Radar? Political Control and Bureaucratic Resistance in the Bush Environmental Protection Agency

Colin Provost, Brian J. Gerber, and Mark Pickup

During his tenure as president, George W. Bush pushed a domestic policy agenda that strongly advocated reducing the burdens on business, allegedly caused by regulations that were deemed too punitive and too expensive by the administration and its allies. This policy shift took place within most agencies responsible for administering social and economic regulation, but environmental regulation was the most salient and visible example of the administration's attempt to roll back enforcement activities. In particular, administration officials attempted to implement most of these changes through administrative means, such as appointments and rulemaking. With strong efforts like these, to make regulation more business-friendly, it is natural to expect that enforcement activities in the Environmental Protection Agency (EPA) would decline during the Bush administration. However, this conclusion may be premature, given previous research in this area that suggests that such "overhead" cues do not always dictate enforcement patterns.

Our primary interest in this chapter is to determine whether the Bush administration was successful, through the use of subtle means of presidential power, in rolling back air pollution enforcement levels at the EPA. There is abundant anecdotal evidence from interest groups and the media, regarding the administration's desire to weaken existing rules and make it more difficult to pass new ones (e.g., Barcott 2004; Drew and Opperl Jr. 2004). However, these accounts have not examined the effects that such efforts have had on administrative outputs from within the bureaucracy. We believe that this question, within the context of the Bush administration, adds to our understanding of the broader question of how key administration officials

might be able to exert control over bureaucratic agencies. Previous research has demonstrated that Republican administrations, primarily the Reagan administration, have used executive power forcefully in order to narrow the scope of health and safety regulation, but with somewhat limited success (Ringquist 1995; Wood and Waterman 1994). Some observers have suggested that the Bush administration learned from the overreaching of the Reagan years and consequently, employed a more subtle approach to manipulating bureaucratic outputs (Barcott 2004).

In this chapter, we will begin exploring the effects that the Bush administration had on bureaucratic actions in environmental regulation. More specifically, we examine traditional administrative tools employed by the administration, as well as more creative, new administrative means to influence policy. First, we discuss tools of presidential control over the bureaucracy and why President Bush would want to employ an administrative strategy in environmental policy. Second, we discuss the potential impacts of using an administrative strategy, as well as the EPA's ability to resist such a strategy. Finally, in order to gauge the impact of this administrative policymaking, we test the effects of appointments and rule changes on administrative outputs in the Bush EPA's Office of Air and Radiation.

Presidential Power and the Bureaucracy

We are primarily concerned with the questions of how presidents can use their power to influence the federal bureaucracy and whether this power can successfully alter bureaucratic outputs. Much recent work on the presidency focuses on how presidents can accomplish policy goals unilaterally, typically through administrative means, such as appointments¹ (Moe 1985a; Nathan 1983; Whitford 2005; Wood and Waterman 1994), executive orders (Cooper 1986, 1997; Krause and Cohen 1997; Mayer 1999), agency reorganization (Moe 1987; Wood and Waterman 1994), and with careful review of new regulatory rules (Kerwin 2003; McGarity 1991). Importantly, Moe and Howell have also argued that language in the Constitution, stating that the president shall "take care that the laws be faithfully executed," builds ambiguities into the formal structure of power that the president can push to further enhance his own power (1999). In other words, the president may take bold, even radical, steps in policymaking that he may claim are necessary in order to make sure that the laws are faithfully executed.

Many observers of the Bush administration have noted that under President Bush, many of these administrative tools were employed aggressively to bring bureaucratic agencies in line with White House policy objectives. Like Reagan and, to a lesser extent George H. W. Bush, President George W. Bush employed traditional administrative tools, such as appointing industry insiders to many key positions in agencies responsible for the implementation of social regulation. However, the administration utilized other unilateral tactics that go beyond the typical methods used by presidents to influence the bureaucracy, tactics that some observers claim are barely visible to the public and are thus part of a larger strategy to go “under the radar” (Gerber and Cohen 2003). For example, the administration often altered the wording or findings of scientific reports in order to downplay the need for stronger regulations (Andrews 2006; Rosenbaum 2006; Vig 2006). In addition, in some cases, existing lawsuits or investigations were not followed through vigorously, due to either a rule change or a belief in regulatory relief for industry, a process known as “tanking a lawsuit” by some scholars (Gerber and Cohen 2003). Finally, in clean air regulation, agency employees also claimed that they were barred from doing analysis on policy proposals that conflicted with the administration’s agenda (Lee 2003). Regardless of what one thinks of these particular tactics, we argue that there are important reasons why the Bush administration would want to use an administrative strategy to affect environmental policy.

Why an Administrative Strategy?

There are two main reasons why a president might choose to enact environmental policy via an administrative strategy, rather than by working with Congress or appealing to the public to pass new legislation. First, because environmental regulation is a salient issue (Gormley 1986; Ringquist, Worsham, and Eisner 2003), policy battles are fiercely contested between environmental groups who generally want strong regulation, industry groups who want to minimize the costs of such regulation and allies on both sides in Congress. Consequently, EPA officials frequently feel tugged and stretched by a multitude of governmental and nongovernmental actors at both the federal and state levels (Reenock and Gerber 2008; Waterman, Rouse, and Wright 1998). This competition has intensified recently as the environmental policy subsystem under the Clinton and Bush administrations has become characterized, to

a large extent, by partisan warfare where suspicion and mistrust are more common than cooperation and compromise (Kraft 2006). The feelings of mistrust are exacerbated by the complexities and uncertainties of environmental policy outcomes that make it difficult for each side to trust the other on their policy promises. Such mistrust ensures that passage of any legislation is exceedingly difficult and, in the process, makes unilateral, administrative action appear much more attractive.

Second, presidents often appeal to the public to gather support for their policies (Canes-Wrone 2001; Kernell 1997; Neustadt 1960), but when the primary objectives of a president, such as President Bush, are to reform environmental regulation and perhaps limit the intensity and scope of enforcement, appealing widely to the public and to Congress can be risky or impractical. Although environmental policy seldom ranks at the top of issues about which Americans are most concerned, polls typically show that a majority of Americans favor strong environmental protection (Dunlap 1989). Thus, in the past, when Republicans have appealed to the public to reduce the costs and burdens of regulation, their messages have been successfully counter-attacked by environmental groups who claim that Republican plans are veiled attacks on clean air and water regulations. For example, under the Reagan administration, EPA administrator Anne Burford's open hostility to environmental interests earned the ire of Congress and she was forced to resign by mid-1983. When the Republicans swept into Congress in 1994, they made sweeping statements about rolling back the scope of regulation. President Clinton retaliated with a strong proenvironmental message and the regulatory reforms of the GOP majority became bogged down in Congress. Thus, any attempt to weaken environmental enforcement openly will, more often than not, fight a losing battle in the court of public opinion. The pursuit of a subtle, administrative strategy lessens the risks of potentially alienating the public.

Potential for Bureaucratic Resistance

In the case of the EPA, the use of an administrative strategy has enabled presidents to alter bureaucratic policymaking (Mintz 1995; Whitford 2005; Wood 1988; Wood and Waterman 1994), yet scholars also emphasize the capacity of some agencies to resist political control and take policy in their own direction. In environmental regulation, the ability of the agency to resist a political principal,

such as the president, depends largely on the ability of career staff to develop thoroughly their own expertise and knowledge that they can use independently of political principals or political agency appointees (Rourke 1984). This is more likely to occur in an agency in which career staff are committed to the organization's mission (Kaufman 1960; Meier 1993; Rourke 1984; Wilson 1989). When the EPA was created, it was originally designed to represent the interests of environmentalists (Marcus 1980; Rosenbaum 1989) and despite some attempts to reduce the scope of regulation, the agency's mission has not genuinely changed. Rourke also maintains that agencies with large constituencies are more likely to develop power independent of their political principals (1984). Similarly, Carpenter argues that agencies develop autonomy because they have entrepreneurial leaders who are able to cultivate broad coalitions of support (2001). In the case of environmental regulation, because the benefits of clean air, water, and land are spread across virtually everyone, the agency's constituency is virtually everyone. Because the EPA has expertise, a core agency mission and a large constituency, we would expect it to have a great deal of autonomy, yet the high salience of environmental policy betrays the agency as numerous political actors vie for influence over agency policy (Waterman, Rouse, and Wright 1998).

This body of research suggests that high-profile agencies responsible for implementing social regulation, such as the EPA, may be responsive to political control from conservative administrations, yet may also show the capacity to resist. Many federal bureaucrats were hostile to the domestic policy initiatives of the Nixon administration (Aberbach and Rockman 1976), as well as the Reagan administration (Maranto 1993). Evidence of such clashing was present in Reagan's EPA, as enforcement activity actually increased right after his inauguration as well as in response to the resignation of his first EPA administrator Anne Burford (Wood and Waterman 1994). In addition, in his thoughtful analysis of the EPA's Office of Water Quality, Ringquist finds that efforts at political control from Congress and the president were successful, but that the impacts were short term and that EPA bureaucrats "used more subtle strategies and 'hidden actions' to maintain a strong enforcement presence, keeping civil fines high..." (1995: 359). Thus, although the literature does not provide a perfectly clear roadmap for what to expect in the Bush administration, it does suggest that Bush would have had some success in weakening regulations, but the EPA would have resisted particularly ambitious proposals to relax environmental laws.

The Use of Administrative Power in the Bush Administration

Appointments

One of the president's strongest sources of power is his ability to appoint his own people to key positions in bureaucratic agencies throughout the government. By appointing people with similar ideological leanings, the president ensures, with fewer monitoring costs, that policy will be implemented according to his preferences. In environmental regulation, President Reagan was initially successful in rolling back regulatory enforcement activities with his appointment of Anne Burford to run the EPA (Mintz 1995; Whitford 2005; Wood 1988; Wood and Waterman 1994), yet Burford's hostility to environmental interests aroused the ire of Congress and eventually led to her resignation in March 1983 after questions arose about her potential role in a toxic waste dumping scandal. Burford's tenure at EPA is a symbol of Reagan's early ambition to roll back dramatically the scope of environmental regulation, an ambition that eventually met stiff resistance from Congress and environmental groups. Reagan's subsequent EPA administrators, William Ruckelshaus and Lee Thomas, were more conciliatory and did not work actively to reduce enforcement activity (Wood and Waterman 1994). Given that Reagan's environmental agenda was stopped by overreaching, to a degree, it raises the question of whether other appointees might have been able to implement Reagan's regulatory roll backs.

President George W. Bush came to office with the same desire to relax regulations that President Reagan had when he assumed the presidency in 1981. So, what, if any, lessons did Bush officials learn from the early Reagan era? Some observers in the media have suggested that the Bush administration decided it made more sense to appoint less outspoken individuals to head important agencies while installing former lobbyists and industry officials to lower levels within the agencies (Barcott 2004). In addition, Lewis's findings in chapter two of this volume, that presidents are more likely to install political appointees in agencies with diverging policy preferences, support this idea as well. Using these methods, significant regulatory policy change can take place subtly and less visibly, at lower levels in the agency.

Some research documents the ability of subexecutive appointees to influence policy. In their comprehensive study, Wood and Waterman find that the head of the Office of Defect Design at the National

Highway and Traffic Safety Administration had a significant impact on the number of engineering evaluations produced (1994: 61). In addition, the hazardous waste chief under Reagan, Rita Lavalle, became embroiled in a toxic dumping scandal, although Burford was allegedly involved as well (Wood and Waterman 1994). However, beyond these studies, the effects of subexecutive appointees on policy have not received much attention and thus, the extant literature is an imperfect guide to developing expectations regarding the mechanisms of subexecutive appointment influence. Thus, in our analysis, we proceed with the expectation that if the policymaking preferences of the president are more closely aligned with those of the subexecutive appointees than with those of the EPA administrator, subexecutive appointees are more likely to have an independent influence on administrative outputs.

The administration's appointment strategy reflected a desire to weaken regulations through subexecutive appointments. Bush's first EPA administrator, Christine Whitman, who was not at all outspoken, had a reputation as a moderate, was trusted by many environmental groups and was confirmed by the Senate, 99-0. However, appointments to key positions at lower levels were more controversial. The deputy administrator, Linda Fisher, had worked in the EPA for more than 10 years, but she had also worked for the chemical company, Monsanto. Jeffrey Holmstead, who had represented electric utility groups at the lobbyist firm of Latham and Watkins, became assistant administrator for Air and Radiation, where he would steer the implementation of air pollution policy. Thomas Sansonetti, who was confirmed as assistant attorney general of the Environment and Natural Resources Division, had also lobbied for private interests, most notably coal companies. Finally, Donald Schregardus, Bush's first choice to head up the EPA Office of Enforcement and Compliance, had not been a lobbyist, but persistent criticism of his performance as Ohio EPA administrator forced him to withdraw from consideration.²

What sort of impact would this arrangement of appointments have on the inspection and enforcement activities of the EPA? Whitman, while lauded by some environmentalists, shared President Bush's regulatory philosophy of bringing compliance through cooperation, rather than confrontation or punishment. However, early in the administration, a high-profile split in preferences revealed itself when Bush announced he would not attempt to regulate carbon dioxide emissions after Whitman had publicly stated a month before that the administration would do so. At the same time, Whitman was only just beginning a high-profile battle with Secretary of

Energy Spencer Abraham and Vice President Dick Cheney to prevent the New Source Review rules from being substantially weakened (see Krause and Dupay chapter in this volume). Given this tension between Whitman and the White House, as well as the industry background of Holmstead and Sansonetti, we anticipate that they may have had an independent, downward influence on enforcement activity.

In addition to the effects that appointments have, the resignations of key appointees can also have an important impact. If an agency is faced with the resignation of someone like Burford under Reagan, an appointee who harbored ideological leanings hostile to the agency mission, career staff may respond with a sudden surge in enforcement activity. Wood and Waterman document that this is exactly what happened when Burford resigned in 1983 (1994). In the case of the George W. Bush administration, it is not as clear what effect Christine Whitman's resignation should have. Most accounts in the media have suggested that Whitman left because industry insiders in the Departments of Energy and Interior, as well as within her own EPA, succeeded in pressing for weaker enforcement than what she desired. Thus, because she was considered the strongest proponent of enforcement in the administration, in our view, it is not clear that her resignation would lead to a surge in activity.

Finally, we also expect that the subsequent appointments of Michael Leavitt and Stephen Johnson to be EPA administrator should have had impacts on clean air enforcement activity. Leavitt, nominated by Bush in August 2003 and confirmed by the Senate in October 2003, was not outspokenly hostile to the mission of the EPA, but he was a reliably conservative governor from Utah, who was a strong advocate of property rights. Thus, although we should probably not expect a dramatic decrease in enforcement activity as a result of the Leavitt appointment, we should expect a decrease nonetheless. Stephen Johnson, on the other hand, at the time of his confirmation in April 2005, had been a career EPA scientist for more than 20 years. Late in the Bush administration, Johnson came under attack by environmentalists for his performance at EPA, most notably, his decision not to grant California a waiver from the Clean Air Act, so that it could act on its own to regulate greenhouse gases (Wald 2008). However, at the time of his appointment, his career in the EPA signaled to the agency and to environmentalists that the rules would be enforced. As a result, we should witness an increase in enforcement activity subsequent to the Johnson appointment.

Rulemaking

The Bush administration also made important changes to regulatory rules in 2003 and 2005. Rules are written by agencies under the authority of broader legislation passed by Congress and they have the force of the law to back them up. Rulemaking lacks some of the advantages possessed by other unilateral, administrative tactics, in that it often takes considerable time to pass new rules and there are more veto players in the rulemaking process than in the process of reorganizing an agency or nominating agency appointees. The original rule, once it emerges from the authoring agency, must pass muster in the Office of Information and Regulatory Affairs and once that is done, it must endure a “notice and comment” period through which affected interests can relay their concerns back to the agency, who, in turn, may or may not incorporate those concerns back into the rule. In a way, it is a mini legislative process, yet it has nowhere near the level of bargaining, coalition-building, and visibility that is typical of passing laws through Congress. Thus, for an administration that wants to change the substance of regulations, proceeding with a process of rulemaking or rule-changing may be more effective and less costly than attempting to pass legislation through Congress.

Previous research illustrating direct effects of rule changes on administrative outputs is a bit scarce, but because rule changes often provide substantial alterations to existing regulatory policy, there is good reason to expect that agency outputs will respond with varying lag time. Regarding stationary sources³ under the Clean Air Act, the Bush administration implemented three major rule changes during its first five years, the first one being the controversial policy of New Source Review (NSR). NSR rules dictated that when a power plant or coal-fired plant passed a certain monetary threshold in spending to upgrade their facilities, they also had to upgrade their pollution abatement equipment. Late in the Clinton administration, the EPA discovered that this clause of the Clean Air Act was not being enforced and the agency proceeded to file lawsuits against several companies that were in violation of NSR (Barcott 2004). Representatives from the power industry argued vehemently against enforcement of the NSR rules, claiming that plants had merely been performing routine maintenance and that upgrading antipollution equipment would be prohibitively expensive (Behr 2001).

Although the specific subject of NSR was scarcely discussed during the 2000 presidential campaign, Bush’s friendliness toward the energy industry signaled that there may be changes to either the NSR rules or

to the status of the lawsuits against the power plants. In May 2001, Vice President Cheney's Energy Task Force ordered a 90-day review of New Source Review, although the review actually extended well into 2002 (Barcott 2004; Drew and Oppel Jr. 2004). Although the Justice Department announced in January 2002 that the Clinton-era lawsuits had merit and that it would proceed in prosecuting the lawsuits (Hawthorne 2002), environmentalists and some career staff at the EPA were very skeptical of the administration's commitment to enforcing the NSR rules, causing some high-profile careerists to leave the agency (Barcott 2004).⁴

Prior to the announcement of the final NSR rule changes, Sylvia Lowrance, the deputy administrator for Air and Radiation, under Holmstead, suggested to Holmstead that a reasonable threshold for the rules would be .75 percent, meaning that if a power plant was valued at \$1 billion, then the owners could spend up to \$7.5 million in upgrades without installing new antipollution equipment (Barcott 2004). When the final rules were announced in August 2003, they stipulated that coal-fired plants may perform maintenance worth up to 20 percent of the value of the plant before also upgrading antipollution equipment. In light of the rule change, the EPA announced in November that it would be dropping many of the existing lawsuits against coal-fired power plants that had originally been filed by the Clinton administration (Drew and Oppel Jr. 2003). Given that many ongoing investigations were dropped, it is logical to expect that consent decrees (settlements of lawsuits) should have seen a decrease as well soon after. One month after the investigations were dropped, a federal judge issued an injunction against the implementation of the new rules, as a result of lawsuits filed by nine state attorneys general (Lane 2003). However, we stand by the point that the new rules and the dropped investigations should have provided a clear signal to EPA staff, regarding enforcement activity.

In addition to the changes sought to the NSR rules, the EPA also issued two new rules early in 2005. Although the Bush administration largely pursued an administrative strategy in environmental regulation, it did put before Congress in February 2002 new legislation for regulating air pollution, known as the "Clear Skies" bill. Clear Skies emphasized reductions in sulfur dioxide, nitrogen oxide and mercury, mostly through programs of capping and trading emissions, yet the goals of the bill were denounced as too weak by environmentalists from the outset (Seelye 2002d). After the bill officially failed to advance out of committee in the Senate in March 2005 (Janofsky 2005), the

Bush administration turned to an administrative solution. In the same month, the EPA issued the Clean Air Interstate Rule (CAIR), a new rule that featured many of the same provisions of the Clear Skies bill, except that it was a bit more limited. Whereas Clear Skies proposed comprehensive legislation, CAIR instituted a cap-and-trade program on sulfur and nitrogen dioxide emissions in 28 Eastern and Midwestern states (Weiss 2005). About one week later, the administration also announced the Clean Air Mercury Rule (CAMR), a rule considered to be closely linked to CAIR, as the two rules together were designed to accomplish the goals of Clear Skies reductions in sulfur dioxide, nitrogen dioxide, and mercury (Barringer 2005).

Taken together, CAIR and CAMR initially gave mixed signals regarding their expected impact on enforcement. On one hand, environmentalists, preferring CAIR to the Clear Skies bill, claimed that the new rule was a step in the right direction (Weiss 2005). In addition, EPA enforcement officials had been operating in a state of ambiguity during much of the Bush administration, due to the limbo status of the NSR rules and the Clear Skies legislation. The promulgation of CAIR was designed to reduce this ambiguity. On the other hand, at the heart of CAIR was a cap-and-trade program in which firms that could not yet meet Clean Air Act standards for sulfur dioxide or nitrogen oxide could buy pollution credits. Such a system is obviously based more on market-style incentives than on command-and-control enforcement and from this perspective, we should expect that enforcement activities decreased.

CAMR however, also based on a cap-and-trade approach, generated additional controversy for two reasons. First, many scientists and environmentalists were critical of a cap-and-trade approach for mercury, as its heavy weight would possibly lead to polluted “hot spots” in areas where firms bought mercury pollution credits (Vedantam 2005b). Second, shortly before the introduction of CAMR was announced, the General Accounting Office issued a report, stating that the EPA had distorted the analysis behind the proposed mercury rule, making the market-based, cap-and-trade approach appear to be more attractive (Vedantam 2005a). Moreover, shortly before the release of the GAO Report, the EPA Inspector General made similar findings, indicating that EPA scientists were pressured to go along with the market-based approach (Vedantam 2005b). In short, these rule changes generate conflicting expectations. On the whole, the use of a cap-and-trade approach in both rules should result in a decrease in enforcement activities, yet the events depicted in the GAO Report

and the EPA Inspector General Report could very well have caused a drop in staff morale at the EPA and consequently, lead to bureaucratic resistance in the form of stronger enforcement.

Data and Methods

In order to test the effects of Bush appointments and changes in administrative law on regulatory enforcement activity, we obtained from the Air Facility System (AFS) of EPA, through a Freedom of Information Act Request, data on the enforcement and inspection activities, on stationary sources under the Clean Air Act, of the head EPA office as well as all regional offices. We are mindful of potential critiques that administrative outputs do not translate directly into policy outcomes and therefore, we refrain from making definitive claims about the alleged success or lack of success of the Bush administration's policies. Nonetheless, the categorization of activities into inspection and enforcement has been used often before, as it examines the tendency of the EPA to monitor firms' activities as well as to punish firms for not being in compliance (Wood 1988).⁵ For the current analysis, our period of investigation begins in January 2001 and ends in December 2005, with the data divided into monthly intervals.

If President Bush successfully employed the tools of his presidency to manipulate bureaucratic outputs, then we should expect some decrease in enforcement and inspection activities from 2001 through 2005. However, this predicted decrease is likely to manifest itself in some categories more than others. For example, notices of violation should see a decrease in activity as these involve notifying firms that they are in violation of the Clean Air Act. Because the Bush administration expressed the desire to employ cooperative policies with industry, thereby getting them to comply voluntarily, emphasis on punitive measures has been reduced. Therefore, we expect to witness a decrease in notices of violation. Similarly, we expect to see an overall decrease in consent decrees, which are settlements between business and the EPA, designed to reduce bad business behavior.

Looking at the enforcements and inspections series in figure 9.1, we see that there is actually not much of a decreasing pattern over time. In fact, although it does fluctuate around, the enforcement series does not show a significant increase or decrease contrary to the negative slope over time that we expected. At the same time, the inspections series, also contrary to expectations, does not remain constant, but rather increases substantially in 2003. The series also appears to

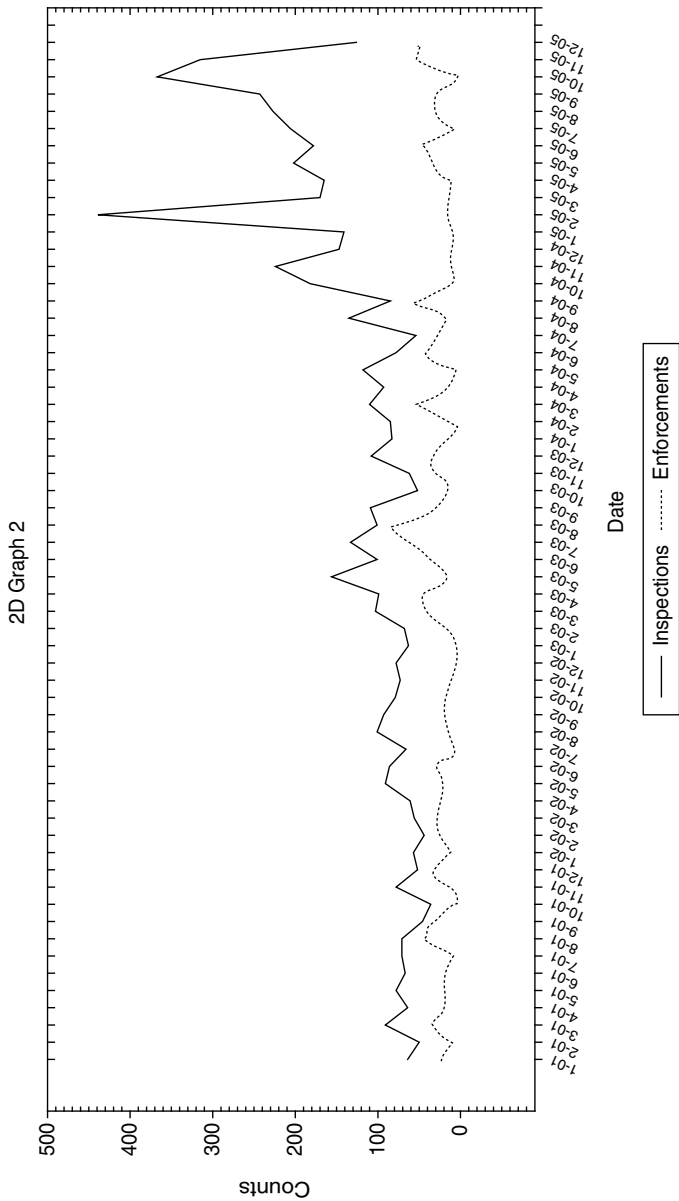


Figure 9.1 EPA Stationary Source Air Quality Enforcement and Inspections Series, January 2001–December 2005

become more volatile at this point, but the trend upward rather than downward is what provides the real surprise. In addition, the series for notices of violation and for consent decrees, not pictured, also does not show any noticeable patterns. Thus far, from simple visual observation, it does not appear that President Bush's proenergy production agenda produced noticeable declines in environmental regulation enforcement activity.

To examine the effect of presidential administrative actions on EPA outputs, we use an ARIMA model, employing lags of 1 month for each dependent variable. Because of potential heteroscedasticity in the series, particularly in the latter part of the inspections series, we use semirobust standard errors. Moreover, the variance in the inspection series is modeled as a function of the magnitude of the year over a year change in the budget. Our predictor variables are the aforementioned presidential appointments and rule changes, as well as the change in EPA's budget for each year in the period studied. For the budget, we include two variables—one for budget increases and one for budget decreases.

Results

In table 9.1, we present the results of our model. Among the EPA administrators, there was an effort to reduce enforcement actions. Both consent decrees and overall enforcement actions declined under both Whitman and Leavitt, indicating some success for the Bush administration in weakening environmental regulations. This also indicates that Whitman's policy preferences did not diverge from that of the Bush administration's as significantly as some high-profile incidents would suggest. Stephen Johnson's appointment resulted in an increase in inspections, but had no other significant impact on enforcement activity. This provides some evidence for the idea that EPA bureaucrats would respond favorably to the appointment of a career scientist like Johnson, by pursuing inspections or enforcements more vigorously. Among the lower-level appointments, the appointment of Jeffrey Holmstead to head the Office of Air and Radiation had no significant effect on either inspection or enforcement activity, while the appointment of Thomas Sansonetti to the environmental crime unit of the Justice Department had no significant effect on the number of settlements (consent decrees). These findings support previous research that suggests that agency chiefs, and not necessarily their deputies, are the important administrators who influence policy directions.

Table 9.1 Effects of Appointments and Rule Changes on EPA Stationary Source Air Quality Enforcement and Inspection Activities, 2001–2005

	<i>Inspections</i>	<i>Enforcements</i>	<i>Notices of Violation</i>	<i>Consent Decrees</i>
<i>Appointments</i>				
Whitman	-29.04 (32.76)	-30.81*** (6.01)	-6.60 (7.18)	-19.80*** (4.64)
Holmstead	3.25 (84.86)	-6.18 (11.05)	-3.87 (8.46)	-4.44 (17.82)
Sansonetti	19.31 (14.85)	-5.57 (8.82)	.04 (7.18)	5.14 (12.71)
Whitman Resignation	-.414 (67.28)	10.09 (16.46)	1.78 (15.10)	-19.78 (25.32)
Leavitt	-15.19 (30.53)	-22.39*** (5.43)	-1.28 (5.47)	-21.22*** (5.75)
Johnson	63.12 (21.08)	-15.24 (27.08)	-.40 (6.44)	-14.91 (30.29)
<i>Rule Changes</i>				
New Source Review	-38.19 (38.45)	-17.93** (8.82)	-6.17 (6.68)	-9.68 (8.59)
CAIR and CAMR	-51.50** (25.03)	5.77 (20.09)	5.44 (3.45)	1.09 (39.61)
Positive Change in Budget	89.42 (102.55)	-8.78 (26.11)	-38.12 (28.67)	22.65 (34.41)
Negative Change in Budget	2461.11*** (125.83)	86.92*** (28.89)	48.43* (28.52)	234.80 (32.98)
Constant	74.28 (94.00)	56.02*** (10.09)	26.54** (11.93)	24.89** (12.10)
AR(3)			.39** (.12)	
HET Squared Change in Budget	27.21*** (7.76)			

*** p < .01, **p < .05, *p < .10;

Coefficients are Unstandardized Estimates with Semi-Robust Standard Errors in parentheses; All dependent variables are lagged at one month.

For the rule changes, the high-profile changes to the New Source Review rules did result in a decrease in enforcements. Although the rule changes were subsequently challenged in court, these findings suggest that career EPA officials did not resist the changes. The Clean Air Interstate Rule and Clean Air Mercury Rule, administrative versions of President Bush’s Clear Skies legislation, did not affect enforcements, but did result in a decrease in inspections. This is

consistent with the notion that a policy of cap-and-trade would lead to less activity on the part of the EPA, as tradable pollution permits become the main mechanism of regulating firm behavior. On the other hand, it also appears that bureaucrats at EPA did not rebel in response to the Clean Air Mercury Rule controversies, by increasing enforcement activity. Finally, we see that for decreases in EPA budget, inspections actually increase significantly while enforcement actions significantly decrease. We also see that changes in the budget produce volatility in the number of inspections. It is logical that fewer resources result in fewer enforcement actions and that budgetary change may result in temporary instability in the number of inspections, but the subsequent increase in inspections is a little more difficult to explain.

Discussion

Overall, and consistent with previous research, our results suggest that appointments and rule changes did have impacts on air pollution administrative outputs at the EPA. Our findings do not show much evidence that career staff at Air and Radiation in EPA rebelled against Bush administration mandates by raising enforcement levels. Lower-level appointments had virtually no impact whatsoever, indicating that, if there was an under-the-radar strategy, its impact was not reflected independently in these lower-level appointments. However, consistent with previous research, our findings show that the administration was successful in engineering a decline in the intensity of enforcement through its selection of EPA administrators. Although Christine Whitman was known to be a moderate Republican, she shared the Bush administration philosophy of reducing enforcement in favor of cooperating with business, a fact reflected in the decline in enforcement witnessed soon after Whitman took over. On the other hand, Whitman's resignation may have been an indicator that Whitman felt the philosophy went too far under Bush. Michael Leavitt had a more conservative reputation than Whitman and the subsequent decrease in enforcement actions during his tenure comes as less of a surprise. Finally, we see that under Stephen Johnson, a career EPA scientist, there was a shift in regulatory policy as inspections increased and enforcement actions did not change significantly. Although Johnson became increasingly unpopular throughout his tenure, his appointment was welcomed by EPA staff and environmentalists in early 2005, and it is not surprising that inspections would increase as a result, even if enforcements did not.

With the rule changes, we again see the potential effects of political control. The changes to the New Source Review rule and subsequent dropping of several investigations and lawsuits, which came largely from the White House and the Bush administration EPA appointees, signaled that enforcement was not a major priority. Media accounts at the time did suggest that numerous EPA career officials were disgusted with the new rules and many resigned, including Sylvia Lowrance, who had been Director of EPA Office of Enforcement and Compliance (Barcott 2004). Such stories of resignations and declines in staff morale boost the case that staff would have resisted by trying to raise enforcement levels, but the evidence simply does not bear this out. Rather, resistance came in the form of resignations and then from environmental groups and nine state attorneys general, in the form of lawsuits after the NSR rule changes were made.

The evidence does show that after passage of the CAIR and the CAMR, there were fewer inspections. As we stated before, the logical expectation here is that enforcements would decrease due to the decreased emphasis on command and control in a cap-and-trade approach. Conversely, the controversial reports surrounding scientific reports on mercury created by high-ranking officials at the EPA may have generated a desire by career staff to resist the new CAMR rule. Again, the findings do not reveal significant bureaucratic resistance, as enforcements remained stable, but inspections declined. As was the case with the NSR rules, resistance to the CAIR and CAMR came in the form of court challenges. Again, several state attorneys general brought the challenge, this time against the CAMR, and in February, 2008, the D.C. Circuit vacated the new rule (Speckman 2008).

The popular accounts of this presidency depict the administration as being intimately involved in the choices of agency appointees, the substance of agency reports and the details of new rule proposals. In this chapter, we have presented evidence that shows the administration was somewhat successful in altering bureaucratic outputs through appointments and rule changes. However, viewing the issue more broadly, does this mean the Bush administration achieved its policy goals? As we stated previously, we are mindful of the notion that policy outputs do not translate directly into particular policy outcomes. That is to say, while EPA bureaucrats may have complied with Bush administration policies, changes in bureaucratic outputs were often temporary, as Whitman resigned two years into her term and two of the three rule changes we analyzed were eventually invalidated by the courts. In addition, although our findings do not provide solid evidence of bureaucratic resistance, this does not mean that the agency

spoke with one voice. High-profile resignations from Sylvia Lowrance and Eric Schaeffer, who also worked in the EPA Office of Enforcement and Compliance (Barcott 2004), as well as EPA Inspector General reports that were critical of both the NSR rules (Janofsky 2004) and the CAMR (Vedantam 2005b) led to discord and weakening morale within the agency. In sum, political control and bureaucratic resistance are complex subjects and in order to gauge the full impact of the Bush administration on environmental policy, we may have to wait until well into the next presidency.

Notes

1. We acknowledge that top-level agency appointments need Senate confirmation and thus, making appointments is not an entirely unilateral strategy. However, for our purposes in this chapter, we classify it as unilateral, as it does not require the coalition-building and persuasion that a more legislative strategy would require.
2. In this analysis, we only examine the impacts of the appointments of Holmstead and Sansonetti. Including Fisher as well would have presented too many interventions in too short a time frame.
3. Stationary sources are fixed sources, such as power plants, oil refineries, and other industrial sources while mobile sources—not examined here—typically refer to emissions from modes of transport, such as cars, trucks, trains, and planes.
4. See Krause and Dupay in this volume for more detail on resignations within EPA over air pollution control.
5. Inspection activities are further categorized into full compliance evaluations (FCEs) and inspections and partial compliance evaluations (PCEs) and inspections. FCEs include On-Site and Off-Site full compliance evaluations and EPA Level 2 Inspections. PCEs and inspections include EPA Complaint Evaluation On-Site PCEs, EPA Process Off-Site PCEs, EPA On-Site PCE Observation, EPA Permit On-Site PCE, EPA PCE On-Site, EPA PCE Off-Site. Enforcement activities are comprised of notices of violation, consent decrees, and administrative orders. Administrative orders are further comprised of EPA Orders, Notices of Non-Compliance and Penalty Orders for Non-Compliance.

Chapter Ten

Efficiency, Enforcement, and Political Control: The Case of the Equal Employment Opportunity Commission

Sean Nicholson-Crotty and Jill Nicholson-Crotty

Scholars have long recognized that administrative procedures can potentially serve as a powerful instrument of political control over federal agencies. Positive theorists have articulated the ways in which the manipulation of both process and structure might be used to ensure that agency decisions match the preferences of favored constituencies (McCubbins, Noll, and Weingast 1987, 1989; Macey 1992). They have also suggested that presidents and Congress may use procedural controls to reduce uncertainty regarding future bureaucratic behavior (Moe 1990; Epstein and O'Halloran 1995; Bawn 1995). Assertions regarding the relative power of ex-ante political controls have been challenged by some authors (see, e.g., Horn and Shepsle 1989; Hill and Brazier 1991; West 1997) and the empirical evidence regarding the effectiveness of procedural controls is mixed (see, e.g., Hamilton 1996; Balla 1998; Balla and Wright 2001). Nonetheless, the literature on political control of bureaucratic agencies continues to assume an important role for the manipulation of administrative procedures (Richards and Smith 2006).

Interestingly, the research on ex-ante controls has focused exclusively on reforms designed to increase outside participation in agency decision making or reduce the discretionary decision-making authority of bureaucratic actors. Arguably, however, many major administrative reforms, particularly recently, have been targeted at least in part at reducing agency costs and improving efficiency (Peters and Savoie 1994; Cope 1997). A very incomplete list of examples might include zero-based budgeting (Phyrr 1973), "entrepreneurial" management (Osborne and Gaebler 1992), contracting and privatization (Savas 1982), pay-for-performance (Ingraham 1993), and the Bush administration's Financial Reporting Requirements. Obviously,

efficiency-focused reforms may have significant consequences, either intentional or unintentional, for the relationship between political principals and bureaucratic agents. No study to date, however, has investigated if these types of reforms facilitate or mitigate attempts by political principals to influence bureaucratic behavior.

This chapter explores this question in an analysis of the Equal Employment Opportunity Commission (EEOC) under the administration of George W. Bush. We develop the argument that despite deep cuts in agency personnel and enforcement budgets, President Bush was unable to reduce enforcement outputs or outcomes because he failed to address an important administrative reform put into place during the Clinton administration. More specifically, we argue that the Priority Charge Handling System, created in 1995 and designed to make the agency more efficient in the processing of discrimination charges, nullified the impact of Bush administration personnel and budget cuts. We test for the competing impact of efficiency-based administrative reform and efforts at political control with interrupted time series models of EEOC staff, budgets, and enforcement activities between 1981 and 2005.

President George W. Bush and the EEOC

The EEOC is an independent regulatory agency created to enforce Title VII of the Civil Rights Act of 1964, which makes it illegal for employers to discriminate on the basis of race, color, sex, religion, or national origin. Shortly thereafter it was also charged with enforcing the Age Discrimination in Employment Act of 1967 (ADEA), which added employee age to the list of protected categories, and the Equal Pay Act of 1970 (EPA), which prohibited discrimination in the payment of wages based on sex. It gained true regulatory authority in 1972 with the passage of the Equal Employment Opportunity Act, which gave the commission the power to initiate investigations and file suit on behalf of aggrieved persons. Physical and mental disabilities were added to the list of protected categories with the passage of the Americans with Disabilities Act in 1990 (ADA).

Because of its authority to regulate the private sector, the EEOC has long been a target of conservative politicians. Wood (1990) demonstrates that President Reagan was successful in reducing EEOC enforcement activities through reductions in budgets and staff and the appointment of conservative commissioners. His work also

indicates that conservative membership on relevant congressional committees helped to reduce enforcement. Meier, Pennington, and Eller (2005) similarly find that conservative representatives successfully reduce race-based charge activity in EEOC regional offices even in the presence of significant bureaucratic representation.

By all accounts, George W. Bush approached the regulation of employment discrimination with the same attitude as other conservative Republicans. The budget allocation in FY 2001 was insufficient to keep the agency functioning through mid-year and the commission was only able to avoid a 30-day furlough of employees thanks to emergency funding provided by Congress. In that same year, the president implemented a hiring freeze, which remained in place until 2006. Congresswoman Eleanor Holmes Norton (D-DC) called Bush's policies toward the agency "catastrophic," while the American Federation of Government Employees (AFGE) has suggested that "unless the Bush administration is stopped, it will strip the EEOC to the bones and make it totally ineffective" (Norton 2006; Parks 2006).

While these are compelling criticisms, the degree to which President Bush cut the resources of the EEOC can only be accurately assessed via an interrupted time series design, which can determine the impact of the Bush administration after controlling for the historical trends in budgets and personnel. Table 10.1 presents findings from Box-Tiao impact assessment models of the number of full-time equivalent employees (Column 1) and congressional appropriations (Column 2) reported in the commission's annual reports.¹ The personnel series diagnoses as an ARIMA (1, 0, 0) process, but even after modeling the noise component, the dummy variable coded 1 during the Bush administration is significant and negatively related to commission staff levels.² Substantively, the findings suggest that the administration has been responsible for a reduction of more than three-fourths of a standard deviation in the size of the agency. The size of the reduction becomes even more apparent when you consider that the American labor force, arguably the commission's clientele, increased by more than six million persons during that same period.

The budget series diagnoses as an ARIMA (0, 1, 0) process and, as indicated in Column 2, the Bush administration appears to have no significant impact on commission budgets after controlling for the noise in the series by differencing. In this case, however, the total budget figures are a bit misleading for a couple of reasons. First, if we model initial presidential budget requests, and thus exclude the \$15 million dollar emergency congressional authorization provided to the agency in 2001, the impact of the Bush administration becomes significant.

Table 10.1 The Impact of George W. Bush's Administration on Staff and Budgets at the EEOC, 1981–2005

<i>Independent Variables and Noise Component</i>	<i>Staff</i>	<i>Budgets (Differenced)</i>
ρ	.8365 (.1,569)	—
Bush Dummy	-189.2,258 (89.0,652)	696.8,758 (2,457.6,720)
Constant	2,954.8,540 (475.9,986)	612.4,367 (1,348.3,460)
N =	25	24
χ^2 =	225.13	—
F =	—	1.08

Note: Numbers in parentheses are robust standard errors.

Disaggregating EEOC expenditures under President Bush into enforcement and nonenforcement-related activities paints an even more revealing picture of the administration's goals for the agency. As figure 10.1 suggests, the total budget in inflation adjusted dollars shrunk by about 10 percent between 2001 and 2006. During that same period, however, the resources dedicated to enforcement of Title VII, ADEA, EPA, and ADA in the private sector decreased by almost 24 percent. The gap consists in large part of increases in expenditures on employer training (18 percent), mediation (16 percent), and federal sector enforcement (8 percent), which are all agency activities preferred by business interests.

Thus, it appears that President Bush attempted to limit private sector regulation in the arena of employment discrimination through substantial cuts in personnel and the reallocation of budgetary resources. A large body of research on political control in numerous regulatory agencies suggests that these efforts should have been rewarded by some decrease in enforcement at the EEOC (see, e.g., Weingast and Moran 1983; Moe 1985a; Wood 1990; Wood and Waterman 1994).

Table 10.2 presents the results from Box-Tiao impact assessment models of two enforcement outcomes as a test of this hypothesis. Column 1 contains a model of the percentage of charges each year that resulted in benefits being paid to the claimant, which diagnoses as an ARIMA (0, 1, 0). The results from a model of average inflation adjusted benefits paid per settlement, which models as an ARIMA (1, 0, 0) are presented in Column 2.³ After controlling for the noise via differencing, the administration dummy is not significantly related to

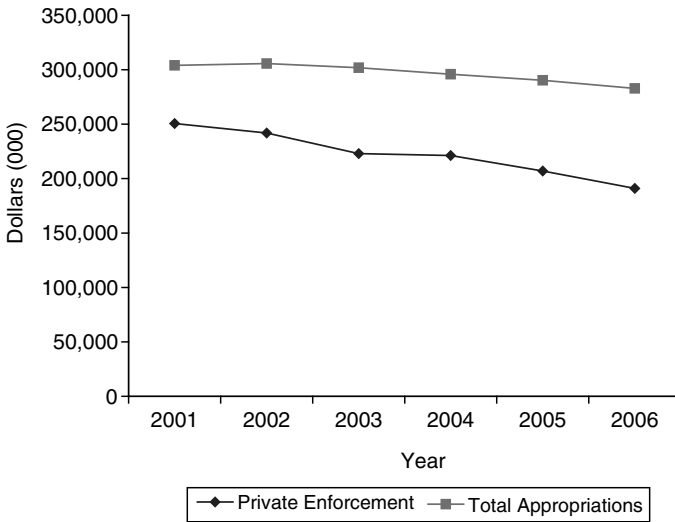


Figure 10.1 Disaggregated Budget Series for the EEOC, 2001–2006

Table 10.2 The Impact of George W. Bush’s Administration on Enforcement Outcomes at the EEOC, 1981–2005

<i>Independent Variables and Noise Component</i>	<i>Settlement Percentage (Differenced)</i>	<i>Benefits Per Settlement</i>
ρ	—	.7,803 (.1210)
Bush Dummy	1.2,117 (.8,251)	1.7,065 (.6,865)
Constant	-.8279 (.7,589)	8.9,313 (1.4,658)
N =	24	25
χ^2 =	—	96.76
F =	2.16	—

Note: Numbers in parentheses are robust standard errors.

the settlement percentage. Even more surprising, the results suggest that the benefits secured for claimants by the agency went up significantly during the Bush administration. Thus, the findings suggest that Bush administration cuts in EEOC resources did not have the expected impact on enforcement outcomes.

Administrative Reform and Charge Handling at the EEOC

President Bush's attempts at political control may have failed for a variety of reasons. For example, part of the answer may lie in his appointment of a commission chair who was more experienced and more sympathetic to the agency's goals than ones chosen by his Republican predecessors.⁴ We suggest, however, that administrative reforms put in place in the mid-1990s also contribute significantly to the explanation. This section develops and tests the argument that changes to the EEOC's charge processing system implemented in the mid-1990s made the agency more efficient and, thus, nullified the impact of the Bush administrations staff and budget reductions.

The 1964 Civil Rights Act authorized the EEOC to make administrative changes pursuant to the enforcement of Title VII of that Act. In 1990, that discretionary authority was extended to Americans with Disabilities Act-related claims.⁵ One of the most substantive issues that the commission has addressed with this authority throughout its history is the way it deals with the initial filing of charges by citizens. Scholars suggest that the various changes to charge handling protocols have had a meaningful impact on both the efficiency and the efficacy with which discrimination complaints are handled (Occhialino and Vail 2005).

The EEOC's charge handling procedures have undergone significant changes since its inception. During the first eight years of its existence, the commissioners themselves decided whether to make a finding of reasonable cause for each case. In 1972, the policy was amended to allow district directors to issue determinations on cases where some precedent existed, leaving only novel cases to be considered by the commissioners. Despite the change, however, the process of determining which charges had merit and which did not was still ponderously slow. By 1977, the backlog of unresolved charges had grown to over 90,000 and the average processing time for each new complaint was more than 37 months (Ross 1985).

In response to these and other problems, President Carter appointed a special taskforce in 1977, which offered a major restructuring plan in that same year. One of the key elements of the 1977 reorganization was a new Rapid Charge Processing System (RCP) (Occhialino and Vail 2005). Under the new system, trained investigators (rather than clerical staff) conducted the initial intake interview. They were authorized to counsel individuals regarding their charge and direct those

issues over which the EEOC had no jurisdiction to other agencies. Under the RCP, intake officials were also responsible for conducting fact-finding meetings with the charging parties, which became one of the primary investigation tools in discrimination cases. The new system was very successful in making the charging process more efficient, reducing the backlog of cases to less than 50,000 by 1981 (Igasaki and Miller 1998).

By the beginning of the Reagan administration, however, commissioners had become concerned that the emphasis on efficiency in charge processing was reducing the “quality and thoroughness of investigations” (Igasaki and Miller 1998).⁶ In 1982, the commission abandoned the RCP in favor of a policy that required full investigation of every charge. Thus, intake officers were no longer able to dismiss charges that they felt had no merit or were beyond the scope of Title VII, ADEA, or EPA. The new policy also authorized presumptive litigation for all failed conciliations between charging parties and employers and required reinvestigations in these cases, though no suits were actually filed by the commission in this type of case. By 1995, the number of pending cases had again grown to almost 100,000.

In addition to the growing backlogs due to the new full investigation policy, the 1990s brought a dramatically larger clientele for the commission with the passage of the ADA. By 1995, the EEOC was receiving almost 20,000 new charges a year under ADA, in addition to the Title VII, ADEA, and EPA charges for which it had always been responsible. In response to the growing workload and increasingly slow pace of charge processing, the commission created a task force in 1995 under the direction of then vice chairman Paul Igasaki to assess the EEOC’s charge handling protocols.

Following the recommendations of that body, the EEOC implemented a Priority Charge Handling System (PCHS). The PCHS again gave trained investigators some discretion in determining the merit of discrimination charges during the intake process. While they were not authorized to dismiss or deflect those without cause or outside the agency’s jurisdiction as they had been under the RCP, investigators were able to assign a classification of A, B, or C to all incoming charges. The policy included a presumption that the merit of the charge and, thus, the investigative resources dedicated to it decreased with each category.

The PCHS appears to have had a dramatic and immediate effect, cutting the backlog of pending charges by almost 50 percent within

two years. Again, however, the best way to assess the real impact of the reform on charge handling is via an interrupted time series design. Table 10.3 presents the findings from a model of the commission's annual resolution percentage, or the percent of total Title VII, ADEA, and EPA charges resolved each year, between 1981 and 2005. ADA charges are not included because disabilities were not a protected category during the entire period under study. The series diagnoses as a ARIMA (1, 0, 0), but even after controlling for the noise, as well as the agency's budget, full-time personnel, and the other implementation choices made during the administration of President Bush, the Priority Charge Handling reform had a significant and positive impact on the resolution percentage.⁷ Substantively, the size of the coefficient suggests that the PCHS increased the percent of charges resolved by almost 30 percent.

The PCHS is rightly understood as an exercise in strategic efficiency. The commission's strategic plan in the mid-1990s, of which the PCHS was perhaps the key element, recognized that the commission had always operated under significant budgetary and personnel constraints, which were likely to continue into the foreseeable future. Thus, it concluded that the best way for the EEOC to pursue its goals of ending employment discrimination was through "strategic

Table 10.3 The Impact of the Priority Charge Handling System on Charge Resolution Percentages at the EEOC, 1981–2005

<i>Independent Variables and Noise Component</i>	<i>Coefficients</i>
ρ	.6,836 (.1,443)
PCHS Implementation	.2,912 (.0,579)
Bush Dummy	-.0,071 (.0,601)
Staff	.0,001 (.0,001)
Budget	-4.27e-08 (1.8e-08)
Constant	1.1,546 (.5,802)
N =	25
$\chi^2 =$	156.44

Note: Numbers in parentheses are robust standard errors.

enforcement” (EEOC 1996–1998). A commission report in 1998 on the effectiveness of the PCHS and the National Enforcement Plan (NEP) reiterated that “in an era of budgetary constraints and an expanded workload, the Commission must be as strategic and efficient as possible if it is to succeed” (Igasaki and Miller 1998).

There are a variety of reasons to believe that the more efficient handling of charges at the EEOC might result in more effective enforcement of antidiscrimination statutes. First, resolving more charges each year and thus reducing the backlog of pending charges reduces the number of cases for which each investigator is responsible. In a study commissioned by the EEOC, the American Academy of Public Administration (AAPA) found that prior to the PCHS, investigators were responsible for as many as 125 individual cases. Following that reform, the number dropped to an average of 35, which the report suggested allowed for a significantly more thorough investigation of each charge (AAPA 2003).

In addition, charge handling efficiency should translate to enforcement effectiveness at the EEOC because of the reduction in time from charge to settlement action. The study found that the PCHS had reduced that time to an average of 180 days, which represented a 90 percent reduction relative to the early 1990s. Law enforcement practitioners recognize that the probability of successfully resolving a case diminishes rapidly as time passes and this is particularly true for cases like those handled by the EEOC, which rely heavily on witness testimony (Dressler and Thomas 2006). Shortening the time from charge to resolution should result in better settlement percentages and higher benefit levels for claimants because there is less evidence loss, less degradation of memory and witness accounts, and less turnover at accused employers resulting in inability to find witnesses.

A good place to determine the degree to which increased charge handling efficiency has allowed investigators to be more effective is the administrative closure rate. This represents the portion of cases that are closed without a determination of cause because the commission could not gather the necessary information, or did not have the jurisdiction, to complete an investigation and issue a ruling. These are not cases in which the evidence suggested that there was no reason to move forward, but rather where investigators were unable to gather sufficient evidence to make that determination. Table 10.4 presents a model of the administrative closure percentage, which diagnoses as ARIMA (1, 0, 0). After modeling the noise, and again controlling for the impact of budgetary and staff resources, and the Bush administration, the findings suggest that the Priority Charge Handling System had a

Table 10.4 The Impact of the Priority Charge Handling System on the Administrative Closure Rate at the EEOC, 1981–2005

<i>Independent Variables and Noise Component</i>	<i>Coefficients</i>
ρ	.6,521 (.3,108)
PCHS Implementation	-.0,042 (.0,248)
Staff	.0,001 (.0,001)
Budget	-1.5e-06 (1.2e-06)
Constant	-.1,310 (.2,832)
N =	25
$\chi^2 =$	37.71

Note: Numbers in parentheses are robust standard errors.

substantial impact. Following its implementation, the percent of cases closed in this fashion has declined by almost one standard deviation.

While the impact of the PCHS on both the efficiency and the effectiveness of the EEOC is interesting, the primary hypothesis offered herein is that the impact of this reform on enforcement outcomes made attempts at political control by the Bush administration ineffectual. The most straightforward way to test this assertion is via a comparison of the effect of PCHS implementation and the Bush administration on the percentage of charges each year that resulted in benefits being paid to the claimant and the benefits paid per settlement.

Table 10.5 presents the findings from these models with the settlement percentage (ARIMA 0, 1, 0) in Column 1 and benefits per settlement (ARIMA 1, 0, 0) in Column 2. Both models suggest that after controlling for the noise in the series, budgets, and staff, the implementation of the Priority Charge Handling System had a significant and positive impact on both the percentage of claimants who received benefits and the size of the awards in those cases. Substantively, the coefficients suggest that the settlement percentage increased by almost one standard deviation. Benefits per successful claimant increased by \$4300 dollars in 1982 inflation adjusted dollars, which represents a one and three-fourth standard deviation increase.

In both models, the variable representing the Bush administration was not significantly different from zero. This suggests that the actions

Table 10.5 Priority Charge Handling System and Bush Administration Influence on Enforcement Outcomes at the EEOC, 1981–2005

<i>Independent Variables and Noise Component</i>	<i>Settlement Percentage (Differenced)</i>	<i>Benefits Per Settlement</i>
ρ	—	.3,402 (.2,465)
PCHS Implementation	1.8,297 (.9,735)	3.5,750 (1.039)
Bush Dummy	-1.9,510 (1.466)	-1.8,472 (2.0,195)
Budget	.0,001 (.0,001)	.0,001 (.0,001)
Staff	.0,010 (.0,046)	-.0,021 (.0,014)
Constant	-1.4,076 (.9,771)	3.2,299 (6.9,567)
N =	24	25
χ^2 =	—	74.62
F =	4.86	—

Note: Numbers in parentheses are robust standard errors.

of the forty-third president had little or no effect on the improved enforcement outcomes resulting from the administrative reform that took place five years before he entered office.

Discussion

The findings discussed above suggest that the implementation of charge handling reforms at the EEOC had a significant impact on the speed and efficiency with which the agency could handle discrimination claims. The percent of claims closed increased each year, reducing the backlog of pending cases handled by investigators. In 2005, the EEOC reached parity between resolutions and charges for the first time in its history. At the same time, the proportion of administrative closures decreased to the lowest levels in more than 25 years.

In part due to this increase in efficiency, enforcement outcomes also improved markedly following the implementation of the PCHS. The percent of charges in which the claimant was awarded benefits has increased by almost 30 percent from a level that was the lowest in the agency's history. Similarly, the benefits paid per settlement have risen by 20 percent in inflation adjusted dollars since the streamlined

charge handling procedures were put in place. Most interesting for the purposes of this chapter, however, is the finding that George W. Bush was unable to derail the improvement in enforcement outcomes that began following the PCHS.

The most obvious challenge to this assertion and the evidence brought to bear on it is that President Bush never meant to decrease the regulation of employment discrimination. This position is, on its face, difficult to support because of the deep cuts in staff and the significant reductions in enforcement budgets discussed above. The intent of these cuts becomes particularly clear in light of the fact that the EEOC is one of the *only* federal agencies where hiring remained frozen for the majority of the president's tenure.

On 24 January 2001, shortly after he took office, President Bush issued a memo through his chief of staff that asked federal agencies to suspend hiring while the administration made its appointments. The intention was to ensure that subsequent hiring decisions matched the preferences of the new president. The Office of Personnel Management was quick to assert that the memo did not constitute a hiring freeze, despite the fact that most federal agencies perceived it to be exactly that (Lunney and Peckenpaugh 2001). Whether the president intended to freeze or simply "chill" hiring is largely immaterial, however, because for many agencies the edict was lifted relatively quickly. Branches of the U.S. military were authorized to begin hiring as quickly as February 9 and for most other agencies the ban lasted only until early FY 2002. At the EEOC, however, it remained in place for an additional four years.

The argument that President Bush did not intend to decrease the regulatory efforts of the commission is also not well supported by an investigation of the programmatic innovations adopted during his administration. Almost immediately upon arriving in the White House, the president dramatically reduced the breadth of the Equal Opportunity Survey, which gathers compensation data by race and gender directly from firms that do business with the government. His administration reduced the number of requests for data from 50,000 to 10,000 and, in 2006, proposed eliminating the survey all together (Baue 2006).⁸ Information from the EEOC Survey is an important investigative tool when discrimination claims are brought against companies that participate.

In addition, the president championed three new initiatives during his tenure, none of which emphasized enforcement activities against the private sector as the primary approach to eliminate workplace discrimination. The Freedom to Compete Initiative, launched in 2002,

sought to “ensure America’s workers the freedom to compete on a level playing field” through an “outreach, education, and coalition-building strategy.” The New Freedom and Leadership for Americans with Disabilities Initiatives were targeted at the integration of persons with disabilities into the workforce, but again both emphasized outreach, education, and cooperation with private sector partners, rather than enforcement, in pursuit of that goal.⁹

The four-year hiring freeze at the EEOC and the business-friendly initiatives discussed above both argue against the conclusion that enforcement outcomes remained constant after his election because President Bush was a proponent of private sector regulation. A more likely scenario is that the president was unwilling or unable to abandon a reform that increased efficiency, which was a key component of his well-publicized management philosophy. The *President’s Management Agenda* released in FY 2002 mentions the terms “efficiency,” “savings,” and “cost” 97 times in 64 pages. The president declared on the first page that his administration’s primary goal in the management of public agencies was “ensuring that the resources entrusted to the federal government are well managed and wisely used” (Office of Management and Budget 2002). On the second, he promised to end the “delivery of inadequate services at excessive costs.”

Thus, the Priority Charge Handling System, which dramatically improved service for EEOC clients at no additional cost to tax payers fit perfectly with the president’s goals of increased performance and reduced cost. Ultimately, it is impossible to determine whether he left the PCHS in place because he valued these things more than reduced regulatory activity or because he felt that it was politically damaging to preach efficiency on the one hand while eliminating agency routines that produced it on the other. Regardless, the capacity of the EEOC to handle charges more efficiently following that reform significantly moderated the impact of the staff and budget imposed by the Bush administration.

Conclusion

The case of the EEOC is interesting for a variety of reasons, most notably because of the insight that it provides into the relationship between administrative reform, agency efficiency, and presidential influence. We have long known that certain changes, which limit bureaucratic discretion or offer a voice to favored constituencies,

could be used as instruments of control. This chapter began with the assertion that it is also important to understand the ways in which reforms designed to increase efficiency help to determine the relationship between presidents and bureaucratic agents.

The evidence presented herein supports the conclusion that, at least in some cases, efficiency-related reforms may impede efforts at political control. Budgetary and personnel resources are among the most frequently used tools when political actors seek to change administrative behavior. When reforms like the Priority Charge Handling System at the EEOC allow agencies to do more with less, however, then such tools become inherently less effective for presidents. At the very least it takes deeper cuts, and the increased political will necessary to implement them, in order to produce the same change in outcomes. The irony of this, of course, is that attempts to limit managerial power in public organizations in the pursuit of efficiency may ultimately limit the power of the president instead.

Notes

1. Budget figures are in adjusted 1982 dollars.
2. This and subsequent models include a dummy for the president rather than his various appointees to Chair of the EEOC because, during the period under study, that position was occupied by one person for all but the first seven months of the Bush administration.
3. These are nonlitigation related benefits.
4. Cari Dominguez became the twelfth EEOC Chairperson in 2001. Before her appointment she had held two discrimination-related positions at the Department of Labor, where she implemented a successful "Glass Ceilings Initiative" to address gender discrimination in upper management positions. According to former commissioner Gilbert Casellas, she "was able to maintain a credible civil-rights-enforcement record in an administration where one would not have expected to see it."
5. This is not to imply that the agency is immune from political influence in this area because these changes are typically initiated by commissioners who are political appointees. They do not, however, have to go through the formal rulemaking process.
6. Given the significant cut to the agency's budgets and staff during the Reagan administration, as well as the hostility of both Chairman Thomas and General Counsel Connolly to the agency's mission (see Wood 1990), it is likely that the abandonment of the RCP was meant to reduce the number of charges investigated rather than increase the quality of those investigations.

7. In order to ensure that multicollinearity between the Bush Dummy and the Budget and Staff series was not obscuring the impact of any of these variables, subsequent models were run excluding the dichotomous indicator and the budget and personnel measures. The substantive findings remained unchanged and we, therefore, report the most fully specified model here.
8. See Proposed Rule 41 CFR Part 60-2. Office of Federal Contract Compliance Programs. 2006. "Equal Opportunity Survey." *Federal Register* 71(13): 3374–3379.
9. Commission information on each of these initiatives available at www.eeoc.gov. Accessed between 10 March and 21 March 2007.

Chapter Eleven

Maintaining Political Control: George W. Bush and the Nuclear Regulatory Commission

Richard W. Waterman

Since the election of Ronald Reagan in 1980 Republican presidents have espoused a regulatory philosophy that emphasizes an enhanced reliance on market factors, while the government concomitantly plays a less intrusive regulatory role. For the most part this regulatory strategy achieved its goal. As Wood and Waterman (1991, 1994) demonstrate empirically, during Reagan's two terms in office there was a marked reduction in the number of inspections and enforcement actions across a wide range of federal regulatory agencies. In most cases the changes were durable, but in a few cases they were temporary or even reversed. The Nuclear Regulatory Commission (NRC) was one agency in which the reduction in regulatory enforcement was transitory.

With the ascension of George W. Bush in January 2001 the stage was set for a return to a reduced regulatory approach, after the Clinton administration. Was George W. Bush able to accomplish what Reagan could not with the NRC? The answer, for the most part, is yes, but he achieved this goal by getting lucky!

In this chapter I examine the case in which a president and their regulatory appointees did not need to radically alter bureaucratic behavior, but merely needed to *maintain control*. Maintaining control is the idea that a president inherits an agency that is already enforcing the law in a manner consistent with his or her regulatory philosophy. Under most scenarios we would expect this to occur when a president replaces an incumbent from their same political party, such as was the case with George H. W. Bush. But in the case of the NRC under George W. Bush, important changes in the NRC's regulatory behavior were instituted not by a Republican president, but by the regulatory appointees of his Democratic predecessor, Bill

Clinton. In this way, Bush both got lucky and had the far less difficult task of merely maintaining political control rather than actively initiating it.

The NRC under George W. Bush

Given that he was a conservative president who favored free market forces more so than government regulation, it is not surprising that George W. Bush appointed conservatives to the Nuclear Regulatory Commission. For example, he named Nils J. Diaz as the influential Chairman of the NRC on 1 April 2003, with a term to begin on 3 June 2003. Dr. Diaz's career included 11 years as the director of a program for the Defense Department's Ballistic Missile Defense Organization, a year as the main adviser for Spain's equivalent of the NRC, and 6 years at nuclear utilities and their vendors (NRC Web site). What is unusual about Diaz's appointment is not that his credentials suggested that he might be pronuclear power, but that he was appointed first not by George W. Bush but by President Clinton on 23 August 1996.

It may seem a bit strange that a Republican president would choose to select an appointee nominated first by his Democratic predecessor, especially for such a high-profile regulatory agency as the NRC. But an examination of the NRC's recent regulatory history suggests that George W. Bush adopted a strategy of maintaining control of the NRC, rather than initiating bold new action. He was able to do so largely because Clinton had chosen commissioners who in many respects reflected the Republican regulatory philosophy. This is surprising because as a Democrat we would have expected the Clinton NRC to be more aggressive in its regulatory vigor, and for part of Clinton's term it was.

A simple examination of the number of Notices of Violation issued annually by the NRC—that is, notices that a nuclear entity is out of compliance with the law—is particularly instructive on this point. During Bill Clinton's first year in office (1993), the Nuclear Regulatory Commission issued 103 Notices of Violation (NOVs). This number remained consistent over the next two years: 108 in 1994 and 104 in 1995. In 1996, Clinton's reelection year, the number of NOV's increased sharply to 210, then increased further to 303 in 1997 and 263 in 1998, before dropping to 131 in 1999, and 111 in 2000. Hence, while there was a substantial increase in the NRC's regulatory output during Clinton's reelection year and in the two years following it,

after the 1998 midterm elections the NRC's regulatory activity declined to its previous lower levels.

Now let's examine the number of NOV's issued during George W. Bush's first six years, the years for which the NRC provided data for this project. As noted, the number of regulatory enforcement actions already had begun to decline before George W. Bush became president of the United States in January 2001. The forty-third president's ability to control the regulatory bureaucracy therefore was made much easier by the implementation policy of his predecessor. Consequently, George W. Bush did not have to suddenly and radically relax the enforcement vigor of an important regulatory agency. When the NRC issued 124 NOV's in 2001, an actual increase from the last year of Clinton's presidency, President Bush was merely continuing the regulatory policies of his Democratic predecessor. Though there were subsequent reductions in regulatory enforcement over the next 4 years (to 106 in 2002, 87 in 2003, 81 in 2004, and 89 in 2005) the number of NOV's issued actually increased again in 2006 to 104, a number roughly comparable to NRC enforcement activity during the last Clinton years.

When we examine only the total number of Notices of Violation for which a Civil Penalty was assessed, a higher level of enforcement vigor, the lesson is essentially the same. During the Clinton years the number of regulatory enforcements declined steadily if not consistently (from 116 in 1993, 99 in 1994, 46 in 1995, to 71 in 1995), before increasing temporarily during his reelection year (101 in 1996), and then again commencing a precipitate decline late in his term of office (from 45 in 1997, 23 in 1999, to just 16 in 2000).

Again, the data suggest that George W. Bush did not have to markedly reduce the NRC's enforcement activity when he first arrived at Pennsylvania Avenue in January 2001. Consistent with the latter years of the Clinton presidency, the NRC issued relatively few NOV's with civil penalties (from 22 in 2001, 22 in 2002, 32 in 2003, 26 in 2004, 24 in 2005, to 15 in 2006).

Sometimes presidents have to work hard to control the bureaucracy, but occasionally they are fortunate. George W. Bush's leadership of the NRC can best be described as *maintaining control*, a far less difficult task than actually reducing or increasing regulatory activity. How and why then did a Democratic president reduce the number of regulatory actions prior to the arrival of George W. Bush? Before I address this question, I first provide a description of the Nuclear Regulatory Commission and its political environment.

Commissions and Politics

In many ways the Nuclear Regulatory Commission that George W. Bush inherited was an organizational anathema, an agency that was designed with one purpose in mind: to limit the possibility of external political control. Hence, it was particularly useful, for Bush's purposes that the regulatory behavior of the NRC changed during his predecessor's term in office. In many respects, Bill Clinton began the heavy lifting for George W. Bush, both in terms of a reduction in enforcement and with regard to the types of individuals to be appointed to the NRC.

The commission form of government is one of the last remaining vestiges of the long-neglected idea that we can separate politics from administration; that is, the politics-administration dichotomy (see chapter one for further discussion). The concept goes back to Woodrow Wilson's writings in the 1880s, Goodnow (1900) further development, and was reflected in the Pendleton Act of 1883, which established the civil servant system, as well as in the establishment of a number of bureaucratic agencies employing the commission form of government (the first being the Interstate Commerce Commission). The basic idea was that politics should be left in the realm of elected officials, such as Congress and the president, and that bureaucracy works best when it is shielded from politics. Subsequent scholars often debunked the extreme version of this dichotomy, but the idea still can sometimes be useful to understand presidential influence over agency behavior.¹

More recently, despite the relative political insulation of regulatory commissions, empirical studies have found presidential influence over agencies, such as the Federal Trade Commission (Stewart and Cromartie 1982; Moe 1982; Wood and Waterman 1991, 1994) and the Interstate Commerce Commission (Waterman and Wood 1992). Wood and Waterman (1994) also found enforcements as the Nuclear Regulatory Commission were impacted by presidential appointments, though the effect in this particular agency was short lived (the duration of the effect lasted only about one year).

By the 1990s, then, several empirical studies concluded that both presidents and Congress are capable of influencing the bureaucracy. As the controversy over the removal of several U.S. attorneys by the Justice Department officials (including George W. Bush's Attorney General Alberto Gonzales) raises serious questions about the propriety of basing personnel decisions solely on the basis of loyalty to the president, few scholars today would argue that presidents do not now

regularly rely on loyalty when they appointment individuals to bureaucratic positions.

Since the earlier empirical evidence from the Nuclear Regulatory Commission suggests that political influence was relatively short lived, it represents an interesting case to revisit. As I will argue in the next two sections, for a variety of reasons the NRC became more centralized over time and in most cases centralizing reorganizations promoted higher levels of political influence.

Centralization occurred after the catastrophe at Three Mile Island when politicians were responding to a broad public interest. Centralization also occurred later in response to cues from presidential appointees who were acting outside of the public spotlight. Centralizing organizational reforms were instituted and implemented by both Republican and Democratic presidents. Therefore, the NRC provides an interesting case that allows us to examine if centralizing reforms can increase the influence of politics on a regulatory commission.

In the next section I examine the NRC's organizational structure. I then focus on how a succession of individual organizational reforms centralized the agency over time. Then, analyzing monthly data on NRC enforcements from 1981 through 2006, I demonstrate how various reorganizations resulted in changes in NRC enforcement behavior, though these changes often were not consistent with the incumbent president's political philosophy.

The NRC's Organizational Structure

Regulation of nonmilitary sources of nuclear energy commenced on 1 January 1947 with the establishment of the Atomic Energy Commission (AEC).² The AEC had two major yet contradictory goals, the promotion and regulation of the nuclear power industry. In order to promote nuclear power, the AEC generally ignored regulation. Furthermore, the process in which a decision was made to grant a construction or operating permit to a utility was largely controlled by the nuclear power industry itself. As such, over time, the AEC developed a reputation for advancing the interests of the nuclear power industry over the goal of promoting nuclear safety. For example, according to a study conducted by Ebbin and Kapsner (1974), the licensing process was nothing more than a sham; the outcome in each case was usually determined before the AEC hearings commenced. Still, this did not pose a political problem, since during the 1950s and 1960s there was relatively little criticism of the nuclear power industry.

By the early 1970s, however, this perception began to change due to the publication of scholarly reports indicating that the likelihood of a major nuclear accident was possible. Concerns regarding the effectiveness of the AEC's regulatory approach went beyond merely its commitment to promotion over regulation. Prior to 1972, the AEC seldom used generic rulemaking to set standards, employing instead an ad hoc decision-making style (Chubb 1983: 95). In fact, the first major contested rulemaking proceeding did not occur until 1972. In 1970 the AEC had less than a dozen active regulations dealing with nuclear power. By 1972 the number had increased to several dozen, but it was not until the AEC was replaced by the Nuclear Regulatory Commission (NRC) that the regulatory oversight of the nuclear power industry became more palpable. Evidence for this increased oversight is provided by Freudenberg and Baxter (1985: 99) who note that by 1977 the NRC had several hundred regulations, rather than the several dozen that existed under the AEC.

Over time, the public also became more attentive to the issue. As public criticism of the AEC increased, Congress began to investigate other regulatory alternatives. In 1974 it enacted the Energy Reorganization Act, abolishing the AEC and establishing the new Nuclear Regulatory Commission. The NRC was assigned the task of regulating nuclear power, while the Energy and Development Administration (ERDA) was created to promote nuclear power. During the Carter administration ERDA was transferred to the new Department of Energy.

The NRC was established as a highly decentralized organization. It consisted of five commissioners who originally were both geographically and organizationally separated from the NRC staff. The intent of this separation was to protect NRC staff from direct political influence, and to allow staff to act impartially on the basis of the best scientific evidence. In practice, however, this division of authority contributed to communication problems between the commission and its staff.

This separation became an important issue following the Three Mile Island accident. The NRC's decentralized organizational structure was the subject of criticism by a number of presidential commissions, including the Kemeny and Rogovin Reports. The reports recommended replacing the five-member commission with a single administrator, such as the Administrator of the Environmental Protection Agency (NRC 1979a: 61, 1979b: 21–22, 1980). In addition, the General Accounting Office (GAO) also criticized the lack of leadership and accountability at the NRC (Davis and Helfand 1985).

While the commission was not abolished, the NRC continued to be the subject of intense scrutiny and attack.

In 1983 President Reagan's Private Sector Survey on Cost Control, better known as the Grace Commission, while conceding that the NRC chairman's authority had been increased following the Kemeny and Rogovin reports, argued that the position "still lacks the executive and administrative authority provided by law to the Chairman of the other Federal regulatory agencies" (U.S. Government 1983: 155).³ The report also was critical of the restrictions on communication between the NRC commissioners and its staff, concluding that "this vestige of a need to separate the promotional and regulatory functions...impedes the Commissions ready access to the most knowledgeable sources of staff technical advice and impairs the Chairman's ability to exercise effective staff oversight" (*ibid.*). The Grace Commission recommended the consolidation of the NRC's Washington staff in one location, rather than the existing process of placing NRC staff in 12 distinct sites (*ibid.*).

Several steps were subsequently adopted that promoted greater centralization of the NRC. As Wood and Waterman (1994: 48) note, "Prior to June 1980 the agency's internal structure insulated commissioners from its staff both geographically and organizationally." In that month, Carter actively sought to increase the authority of the NRC's chair. "From that time the chair assumed full responsibility for planning responses to nuclear emergencies. The executive director was to report directly to the chair, with operating staff accountable to both the director and the chair." Following Carter's lead, in June 1980 Congress passed legislation that "increased the size of the maximum penalty that could be levied by NRC inspectors from five thousand to a hundred thousand dollars per violation" (Wood and Waterman 1991: 811). Despite this reform, there were still "serious limitations to the chair's ability to administer the agency" (Wood and Waterman 1994: 48).

Centralization was further advanced during the tenure of Reagan's first NRC chairman, Nunzio Palladino. On 16 October 1981 he announced the creation of the Committee to Review Generic Requirements (CRGR). The Committee offered recommendations to the Executive Director of Operations (EDO) that were designed to assist the EDO in bringing greater centralized management control over the number and nature of NRC requirements on licensees. The CRGR also was designed to determine whether NRC regulations contributed to the public's well-being and safety or whether they placed an undue burden on licensees or NRC resources (Cottrell 1982: 104).

The immediate impact of the CRGR's activity was a 47 percent reduction in the number of new reactor licensing actions from 1981 to 1982 (Goodman and Wrightson 1986: 26).

Another step toward centralization was taken in April 1982 when the NRC established the Office of Investigation. The office was given the responsibility for investigating all allegations of wrongdoing by individuals or organizations except for those initiated by NRC staff members.

Further changes in the NRC's organizational structure occurred in October 1986, under its new commissioner, Lando Zech. The Office of Inspection and Enforcement was abolished and the inspection functions were divided between the Office of Nuclear Reactor Regulation and the Office of Nuclear Material Safety and Safeguards. At the same time, a new Office of Enforcement was established that reported directly to the Deputy Executive Director for Operations. In addition, the "scope of operations" of the Office of Research and the Office for Analysis and Evaluation of Operating Data were expanded (NRC 1986: 8-10). As Waterman (1989: 158) writes, "These reforms suggest that the NRC under Zech would take a more active role in regulatory enforcement and in research and development." Zech justified the NRC's new role (NRC 1986: 10).

Our mission is far different today than it was in 1975 when the NRC was created. As the plants presently in the final stages of construction are completed, we will have progressively fewer regulatory actions with large complex construction facilities and much more involvement with plant operations, maintenance, life extension, and other operational issues. The new organization will focus NRC's major program on day-to-day operational facilities and make them more accountable for our safety programs.

Yet another step toward greater centralization was taken in the late 1990s, when the NRC eliminated one of its five regional offices; its office in California was eliminated and its functions were transferred to the Texas regional office. Because this reorganization reduced the capacity of the NRC by removing a regional office, this centralization reform may be associated with a reduction in NRC regulatory activity.

Agency structure is important. The original decentralized structure of the NRC was specifically designed to separate politics from administration. As a result, presidential influence over the NRC should have been reduced (Waterman 1989: 148). On the other hand, the movement toward a more centralized structure that began in June of 1980 and was further recommended by the Grace Commission in

1983, along with the reorganization of the NRC's regional offices during the latter days of the Clinton presidency, should be associated with a greater potential for political influence. If so, then this provides the intervention that would prove so beneficial to the presidency of George W. Bush.

Presidential and Political Influence

Given the changing structure of the NRC, we should expect to find evidence of increasing political influence over time. Prior to June 1980, when Congress passed new legislation, there should be little evidence of political influence. Following the Grace Commission's report, with its strong recommendation for increased centralization, there should be greater evidence that the chairman of the agency is able to alter the level of the NRC's regulatory activity. The same should be true after the 1999 reorganization. But what type of political influence should we expect to find?

Since the June 1980 reorganization increased the influence of the NRC chair, and since the Grace Report recommended even greater authority for the chair, should we expect to find an increase in presidential influence through the appointment process? As Wood and Waterman (1994: 48) write, the NRC was established as an independent commission headed by five commissioners serving five-year staggered terms. The president designates the chair and nominates the membership. The primary qualification for membership on the commission, however, has always been experience, not loyalty to the administration. The president traditionally exerted little continuing influence over NRC policy, except when a crisis raised the issue to one of high salience.

This dynamic should have begun to change, however, after the June 1980 reorganization. In their analysis of monthly data on the number of enforcement actions conducted by NRC field inspectors between 1978 and 1988, Wood and Waterman identified political influence from two distinct sources. First, following the 1980 legislation there was an increase in the number of safety violations cited by NRC inspectors. This amounted to 155 violations in July above the preintervention mean and 214 additional violations in August. The effect, however, was short lived. Second, the appointment of Reagan's first NRC commissioner, Nunzio Palladino, corresponded with a decline of about 68 safety violations citations per month. The decline was consistent with Reagan's campaign rhetoric, which called for a

relaxation of regulatory vigor and a renewed emphasis on the development of nuclear power. Again, however, the effect of the Palladino appointment was relatively short lived.

A long-term impact was associated with the Three Mile Island accident, however. With regard to both the number of civil penalties issued by NRC enforcement personnel and the average per quarter civil penalty issued, both based on an analysis of data from 1972 and 1990, long-term effects were identified (Wood and Waterman 1994: 111–113). These results indicate that a focusing event (see Kingdon 1984) had a greater impact on NRC enforcement activity than did political factors. While political factors, legislation related to a presidential reorganization in 1980 and a presidential appointment in 1981, are related to changes in NRC enforcement activity, both effects were transitory. It is therefore still an open question whether there is evidence of more sustained political influence, particularly following the Grace Commission Report and the reorganization of the late 1990s.

Wood and Waterman identified political influence from both the Congress and the president. Since the president appoints the chair and other commissioners, there is a strong reason to expect presidential influence. There also is a reason to expect legislation that alters the NRC's organizational structure to impact NRC enforcement behavior. But what other means does Congress have to influence the NRC? First, it controls the power of the purse. Second, it conducts oversight hearings.

Initially, congressional oversight of nuclear regulatory issues was perfunctory. The Joint Committee on Atomic Energy (JCAE) developed a reputation for protecting the AEC and the regulatory industry. "Since they had originally been established to be the congressional watchdog over the AEC, the elimination of the AEC was followed by an increase in congressional support for the replacement of the JCAE by a new committee structure" (Waterman 1989: 147). Following the creation of the NRC, congressional oversight committees became more resolute. Hence, there now is a greater potential for congressional influence following the establishment of the NRC and particularly following the Three Mile Island accident, which focused greater public attention on nuclear safety issues. With regard to the legislative branch, then, the questions I pose are (1) is there evidence of increased congressional influence over the bureaucracy and if so (2) how did Congress influence the bureaucracy? We turn to these questions, as well as an analysis of the president's potential influence in the next section.

An Empirical Analysis of NRC Enforcement Activity

This analysis is based on monthly enforcement data provided by the NRC under a Freedom of Information Act (FOIA) request and covers the period from January 1981 through December 2006. This time series does not allow me to examine the impact of the Three Mile Island Accident or the June 1980 legislation, both of which occur before the series commences. Likewise, the series begins just before Reagan named Nunzio Palladino to be his first NRC Commissioner and therefore does not provide a basis for analyzing his impact. Still, we know from Wood and Waterman's (1991, 1994) empirical research that all three of these factors had an impact on the NRC's enforcement behavior. What we do not know is whether a variety of other factors had an impact on the NRC, such as the Lando Zech organizational reforms of the mid-1980s or the reorganization that occurred during the last years of the Clinton presidency. Likewise, what impact if any did the historic 1994 congressional elections, which led to a change in party leadership from Democratic to Republican control of both the House of Representatives and the Senate, exert on the NRC? Finally, and most importantly, do presidents like George W. Bush secure influence through their appointment power, as much research suggests?

I present the data and analysis of the total number of civil penalties assessed by the NRC each month from 1981 to 2006, in figure 11.1 and table 11.1. While there are some occasional variations, the interest here is in systematic and sustained interventions resulting from political influence over time. If we examine the graph in this manner, we notice what appears to be a decline in enforcements in 1994 and another substantial decline in 1999.

To more rigorously examine whether changes in enforcement are associated with political influence I conducted an ARIMA time series analysis using STATA 9.⁴ Three political factors are related to changes in the number of civil penalties assessed over time. First, Reagan's appointment of Lando Zech is associated with an increase of almost 3.5 civil penalties per month. As noted, Zech introduced a major reform of the NRC that centralized the enforcement process in a new Office of Enforcement. As hypothesized, this led to an increase in the NRC's regulatory activities. This may seem a bit surprising, since Zech was appointed by a Republican president, the virulently antiregulatory Ronald Reagan, who also was a strong proponent of nuclear power. Yet, Zech's reform encouraged greater centralization and the evidence here confirms that it promoted a more active regulatory role

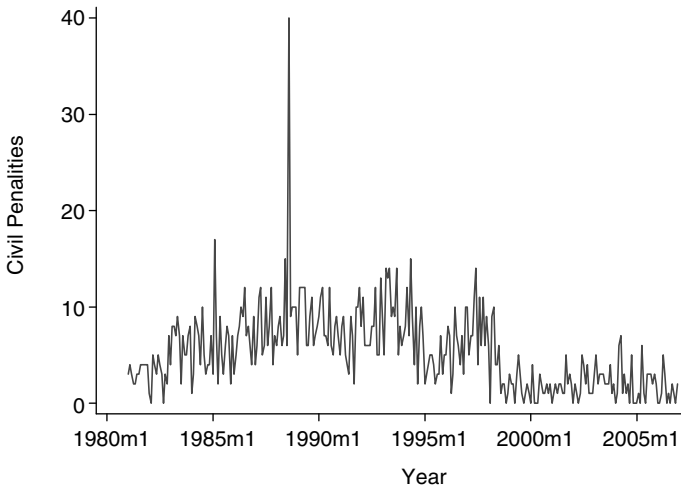


Figure 11.1 Total Number of NRC Civil Penalties Assessed, 1981–2006

Table 11.1 Analysis of the Total Number of NRC Civil Penalties Assessed, 1981–2006

<i>Interventions</i>	<i>Coefficients/Standard Errors</i>
Lando Zech’s Appointment	3.45** (.60)
1994 Midterm Election	−3.41** (.60)
Dicus and Meserve Appointments	−3.31** (.89)

**Significant at the .01 level.

N = 312

Wald Chi-Square = 90.85

for the NRC. Zech’s appointment may therefore represent a case in which a president did not secure greater influence over the bureaucracy through the appointment power. Rather, the agency moved in a direction that seems at odds with Reagan’s free market and pro-nuclear regulatory philosophy.

The historic 1994 congressional elections, however, are consistent with expectations. When the Republicans took control of Congress for the first time in 40 years (in January 1995), there was a decline of almost 3.5 civil penalties assessed per month. Since the 1994 electoral earthquake meant that the chairs of both the House and Senate

oversight committees were in the hands of Republicans for the first time since the NRC was established, this likely sent shockwaves throughout the agency. Because Congress possesses both the power of the purse and oversight authority, NRC personnel altered their enforcement behavior in a manner that was consistent with the political philosophy of the new dominant coalition in Congress.

While this political response is intuitive, the last one again represents something of a conundrum. In 1999, after a slow but steady increase in enforcement activity, the number of NRC civil penalties assessed again declined by 3.3 on average per month. This decline corresponds with the reorganization of the NRC and the elimination of one of its five regional offices. It also coincides with the appointments as chair of Greta Joy Dicus in July 1999, who served in that capacity for only a few months, and her successor Richard Meserve (who was appointed on 29 October 1999). The reform also is consistent with Dicus' confirmation testimony in 1998, when she was renominated to serve a second term on the NRC. In her statement to the Senate oversight Committee on Environment and Public Works, she noted, "It is clear that an efficient, fair, and open process to reaching regulatory decisions will assure that the industry understands, and that the public accepts, NRC's regulatory decisions" (http://epw.senate.gov/105th/dic_10-1.htm). This statement is of particular interest because efficiency was the first of three criteria that she mentioned. It would also be used as a justification for the elimination of one of the NRC's five regional offices.

It is also interesting that while George W. Bush named Nils Diaz as chairman of the NRC in April 2003, and we would expect to find a decline in enforcement activity associated with Bush's free market philosophy, there is no evidence of a statistically significant change in enforcement behavior. The reason is that the desired change already had occurred during the latter years of the Clinton presidency. The time series data in figure 11.1 show that following the Dicus/Meserve intervention, the number of civil penalties assessed never again reached its pre-1999 level. Thus, perhaps ironically, Clinton, not Bush, is responsible for relaxing the NRC's regulatory behavior. All that Bush's appointees had to do was to continue a pattern set by his immediate predecessor.

The analysis of the total number of notices of violation (NOVs) is a bit more complicated. In this case there is evidence of nonstationarity that calls for differencing the series.⁵ Once the series is differenced no statistically significant relationships are found. The trend in the data is apparent from a visual inspection of figure 11.2. The series

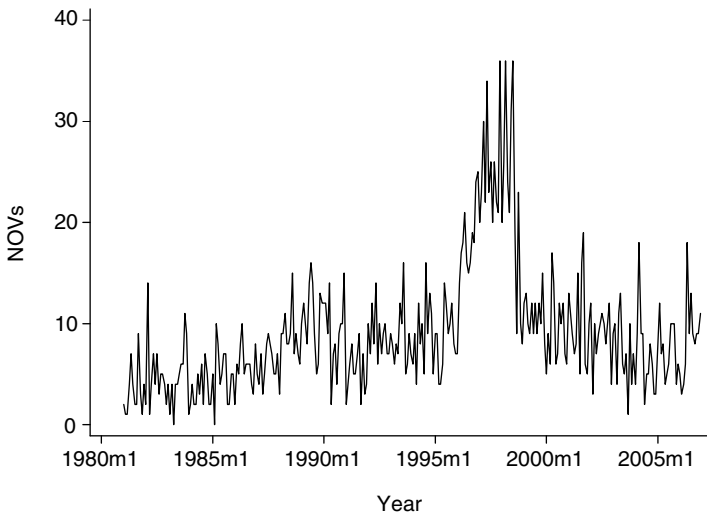


Figure 11.2 Total Number of NRC Notices of Violation Issued, 1981–2006

trends upward over time, the likely result of new plants coming on line, and the likely source of the nonstationarity in the data. Visually speaking, though again the coefficients are not significant in the statistical model, there is an increase in NOVs issued with the Zech appointment and a decline that occurs at the time of the appointment of Discus and Meserve. There also is an increase in enforcement activity at the beginning of Bill Clinton's reelection campaign in 1996.

Again, since these findings do not meet the test of statistical significance, our conclusions must be tempered. But it does demonstrate that changes in enforcements began prior to the presidency of George W. Bush.

Even if we concentrate our attention only on the civil penalties data, it is apparent that two of the organizational changes, the ones occurring under Lando Zech and during the latter days of the Clinton administration, both led to statistically significant interventions. It is not likely, however, that they promoted the political philosophy of the two presidents involved. In the case of Reagan, we would have anticipated a decline, not an increase in regulatory vigor. Even though Bill Clinton was a so-called New Democrat, who sometimes emphasized deregulation, for his 1996 reelection campaign he identified himself as a protector of the environment (thus drawing a clear distinction with his political opponent that year, Bob Dole, as well as the conservative elements that had taken over Congress in 1994). Rather

Clinton's regulatory retreat may be related to such factors as his impeachment, which surely must have diverted his attention from the issues of daily implementation at the NRC.

What then do these results tell us about the presidency of George W. Bush? First, changes in enforcement behavior consistent with his regulatory philosophy commenced prior to January 2001, when he assumed the presidency. Second, no specific intervention for Bush was significant, including his election, his appointment of Nils Diaz as chair or any of his subsequent appointments, or any of the other issues related to governance in the George W. Bush years (e.g., the 9/11 attacks).

What the data and analysis tell us is that Bush inherited a regulatory environment that already was enforcing the law in a manner that was consistent with his political philosophy. This is a huge advantage for a new president. It means that rather than actively changing the regulatory dynamic, evidence of political control of the bureaucracy, George W. Bush merely had to maintain control. While it is little studied, maintaining control may be a relatively common political phenomenon. It is therefore important to identify circumstances in which it exists, especially when the new president is not of the same political party as his predecessor.

Conclusions

Presidents sometimes inherit from their predecessor's policies and agency leaders that they favor, as George W. Bush did with the NRC. The regulatory actions of the NRC late in Clinton's presidency provided an easy implementation route for George W. Bush once he assumed the presidency. Maintaining presidential influence over an agency is clearly easier than changing the dynamics of political control.

The evidence here also demonstrates that it is possible to influence the policies of a federal regulatory commission, but those changes are not always consistent with the president's political philosophy. Centralizing reorganizations altered NRC enforcement behavior in a manner that was not consistent with two presidents' political philosophies. As such, the NRC case shows that while political influence is possible, agency expertise is far from irrelevant. It also shows that presidents should pay closer attention to what their appointees actually do. Since both interventions came late in the second terms of Ronald Reagan and Bill Clinton, they may have been distracted by

crises (in the case of Reagan by the Iran-contra scandal, in Clinton's case by the impeachment controversy). Or they may merely have been looking to other issues (e.g., foreign policy) and thus gave their NRC appointees greater discretion to act on their own.

Notes

1. Waterman and Meier (1998: 192) argue that there still are circumstances under which a politics-administration dichotomy can exist in some agencies. For example, they write, in an area with goal consensus between the principal and the agent, where an information asymmetry exists "that favors the agent, bureaucrats will become technocrats and form relations with principals that resemble those of the classic politics-administration dichotomy."
2. Some of the material from this and the next section is derived from my previous work, particularly Waterman (1989), Chapter 6.
3. The recommendation that the NRC adopt a leadership structure similar to that of agencies such as the Environmental Protection Agency can be defended as both insulating the agency from politics, as well as criticized for increasing the NRC's susceptibility to politics. When the EPA was established, one of the primary justifications for creating an administrator who was appointed and could be removed directly by the president was that commission-based regulatory structures are particularly susceptible to capture by the regulated industry. Thus, the idea of creating the EPA in 1970 using a commission form of government was soundly rejected (see Landy, Roberts, and Thomas 1994; Hunter and Waterman 1996: 27). Yet, direct appointment and removal of the administrator increases the potential for direct presidential power.
4. The series is a first order autoregressive process with no evidence of autocorrelation.
5. This series is a first order autoregressive process, though as noted there is evidence of autocorrelation.

Part IV

*An Assessment of George W. Bush's
Policy Management*

Chapter Twelve

Evaluating Policy in the Bush II Presidency

Colin Provost

Presidents are not necessarily remembered just for the policies they produce. They are remembered, for better or worse, for their personalities, their style of communication, their ability (or inability) to persuade, and for their managerial styles. In the case of President Bush, he will be remembered to a very significant extent for his management style and for the policies that accompanied this style of governing. As we have seen, President Bush continually pushed the boundaries of executive control outward, employing a multitude of means to consolidate further executive power, often at the expense of congressional, judicial, or state power. As we stated in chapter one, we are obviously not the first to speak at length about the Bush administration's ambitious use of executive power. Many scholars and commentators have produced an abundance of research documenting this pattern in the Bush presidency. However, we have sought to go further and rigorously evaluate the effects of George W. Bush's bureaucratic management on public policy, particularly in the arena of domestic policy.

We recognize that a complete evaluation of an administration's policies is difficult for several reasons. First, the full effects of many of Bush's policies will not be observed for many years to come. We have examined important indicators, such as bureaucratic outputs, and how they have been affected by President Bush's administrative actions. However, policies can still have important impacts well into the future and we cannot fully gauge that impact here. For example, as David Lewis suggests in chapter two, it is difficult to observe currently the full effects of hiring graduates of evangelical law schools to staff particular divisions of the Department of Justice, but this recruitment pattern may have far-reaching effects on the way in which cases are settled and litigated years from now.

Second, we realize that in some issue areas, policy outcomes, and sometimes even policy outputs, are difficult to observe and this can

make for challenging policy analysis. Wilson has referred to the armed forces during peacetime as “coping agencies” because much of the time, they simply do not know whether their performance is having a positive impact (1989). Similarly, some may argue that in the absence of natural disasters or terrorist attacks, the Department of Homeland Security (DHS) will struggle to know how well it is performing. It was only the devastation of Hurricane Katrina that loudly notified DHS and White House officials of the errors in their governing. In addition, focusing on particular policy output indicators can sometimes leave one with an incomplete picture of how policies affect the world. For example, if we exclusively focus on enforcement actions, yet multinational corporations join agreements to reduce their polluting emissions, as some have observed (Prakash and Potoski 2006), then declining enforcement outputs may not have as adverse an effect on air quality. Despite these caveats, the studies in this book greatly inform our understanding of how Bush’s employment of executive power in the federal bureaucracy has affected policymaking. In this chapter, I attempt to provide an overall assessment of Bush’s policymaking through the federal bureaucracy, using the book’s chapters as a guide.

Running Government as a Business

As has been stated throughout this volume, President Bush has tried to employ a business approach to the functions of government, emphasizing efficiency and results, while also tending to favor business interests in his policymaking. In particular, Bush’s business school education has resulted in a tightly controlled, top-down approach to managing the bureaucracy, with the apparent hopes of getting careerists, appointees, Cabinet members, and White House staff to all march to the same beat. This philosophy of governing has been demonstrated by many of Bush’s decisions, such as delegating the administration of key agencies to ideological loyalists, altering the recruitment patterns of agency careerists and rewriting scientific reports produced by agencies when they dissented from the administration’s conventional wisdom. In addition, Bush’s programs to make federal bureaucrats become more cost-effective by competing for their jobs with private contractors, regardless of the programs’ results, also revealed a business-oriented desire to improve efficiency. Finally, the administration’s penchant for performance measurement as a bureaucratic reform shone through in several ways.

The creation of the Program Assessment Rating Tool (PART), a measure created early in the Bush presidency to rate the performance of federal bureaucrats,¹ reflected a strong desire by the White House to evaluate the performance of bureaucrats, so that they could be rewarded or punished accordingly. And the crux of the No Child Left Behind reform in education was based on measuring students' performance through indicators, such as grades and test scores.

One method by which we could measure the potential success of applying the MBA philosophy to government is to evaluate rulemaking outputs, as Susan and Jason Webb Yackee do in chapter three. The authors find that the administration was more efficient than previous ones, in that the majority of rules that were proposed eventually were promulgated. In addition, unlike the Reagan and Bush I administrations, the Office of Management and Budget (OMB) did not review that many rules, but when it did exercise its power of review, the review process tended to be a lengthy one. Consequently, the authors state that the administration's record of efficiency in the production of rulemaking is a bit mixed, as rules that were completed tended to take a long time to complete. Thus, OMB's record of selecting a small number of rules for review, yet consuming substantial amounts of time in its review process, supports the idea that the Bush administration employed a selective, yet scrutinizing, level of attention to issues.

Regulation of Business

While Bush's style may have been guided by principles of business administration, policy substance was often guided by the interests of the business community. Reflecting the style and desires of business, Bush appointed many ardent supporters of industry to agencies such as EPA, OSHA, OMB, the Department of Interior, and the Department of Labor. David Lewis's observation that EPA, OMB, and the Department of Labor were among the largest recipients of Schedule C (non-Senate-confirmed) appointees, supports the idea that Bush politicized agencies that might lean away from him ideologically. However, Lewis also notes that the huge increase in Schedule C appointees in a more conservative agency, such as the Department of Commerce, reflects a desire to award some patronage positions to aspiring, conservative policymakers. Finally, the fact that OMB also received so many Schedule C appointees reflects the strong level of attention to particular rules, yet the patronage nature of these appointments may

also explain why OMB slowly labored through the review of these rules until their completion.

The administration also set out to make regulatory rules more business-friendly by, for example, signing the repeal of the Clinton-era ergonomics rule in early 2001 (Skrzycki 2001) and by frequently employing the Data Quality Act to challenge the science behind new rules (Weiss 2004). If we believe that strong use of presidential power can translate directly into favorable policy outcomes, we would conclude that business benefited tremendously from these appointments. But, as we have not assumed a direct translation, we are left with the question of what effects these presidential initiatives actually had on policy outputs and outcomes.

In the EPA's regulation of air quality, Colin Provost, Brian Gerber, and Mark Pickup found that the administration did accomplish some of its goals in the short run. The appointments of Christine Whitman and Mike Leavitt, along with the dramatic changes to the New Source Review rules, served to decrease the level of enforcement actions and led to the abandonment of numerous lawsuits against coal-fired power plants. However, at what cost did these changes come? Krause and Dupay suggest that the NSR reforms could have come sooner than August, 2003, had Christine Whitman been on the same page as Bush, Vice President Cheney, and Energy Secretary Spencer Abraham, but her desire to leave the heart of the rules intact led to dissent, which eventually resulted in her resignation. Moreover, several high-profile officials within EPA resigned, in response to the NSR rule changes and to the reports from the General Accounting Office and EPA Inspector General that science was distorted during the creation of the Clean Air Mercury Rule. Despite these problems within the EPA, the evidence does not suggest that careerists at the agency tried to sabotage or significantly resist the efforts of the Bush administration.

However, hard as the White House worked to enact these regulatory reforms, even at the expense of the EPA's morale and credibility, resistance to the reforms came from elsewhere. Environmental groups, as well as several state attorneys general, brought lawsuits to stop the reformed NSR rules and the Clean Air Mercury Rule from going into effect. The D.C. Circuit Court ruled against the Bush administration in both cases and the reforms were stopped in their tracks. Thus, while the Bush administration achieved some short-term success in its environmental agenda, claims of far-reaching, long-term success are more dubious. To be fair, we should note that environmental policy often progresses at an extremely slow pace because the affected interests pay such close attention to the government's actions and work

hard to avoid losing ground in the policy debates (Waterman and Meier 1998). Thus, due to the contentious nature of environmental policy, even in the post-September 11 world, in which regulatory issues received considerably less attention than they might have prior to 9/11, President Bush still had difficulty pushing through his environmental agenda.

Events within the EPA, combined with other findings in these chapters, suggest that environmental regulation received far more attention from the administration than did other areas of regulatory policy. As Andrew Whitford shows in his chapter, unless agencies found themselves at the heart of a policy crisis, as both the Securities and Exchange Commission and the Federal Energy Regulatory Commission did, they were not likely to receive much attention from President Bush. As Whitford explains, many of the independent regulatory commissions in question did not receive much attention because several of them, particularly the Equal Employment Opportunity Commission (EEOC) and the National Labor Relations Board (NLRB), had Democratic constituencies and because protecting the country from terrorist attacks was a far larger priority for the administration.

However, just because the president did not lavish rhetorical attention on a particular agency, this does not mean that the agency was completely ignored. Indeed, an important question asked in this volume is whether the Bush administration attempted to keep particular policy issues out of the public eye, in order to exert influence, using quiet, administrative means. While Whitford finds that President Bush spoke relatively little about the EEOC, Sean and Jill Nicholson-Crotty find that Bush did apply enough attention to the agency to make big cuts in its budget and staff levels. Moreover, the authors point out that hiring at the EEOC remained frozen for most of President Bush's tenure. Thus, while President Reagan spoke openly about his desire to roll back regulations cutting budget and staff levels at the EEOC (Wood 1990), President Bush took the same course of action, yet spoke very little about it. This offers further support for the notion that Bush believed that in order to change certain policies, he had to steer the public's attention away from the issue, rather than toward it.

Ultimately, however, the Nicholson-Crotty's determine that President Bush was not able to reduce enforcement levels at the EEOC because, even with reduced staff and budgets, the Priority Charge Handling System (PCHS) was very efficient at processing cases within the EEOC. Terry Moe has argued that politicians will often burden bureaucratic structures with cumbersome checks in order to prevent future coalitions

from altering those structures (1989). In this case, for a reduction in enforcement, removal of the PCHS would not have been difficult for President Bush. The Nicholson-Crottys suggest that the efficiency-seeking side of President Bush may have wanted to leave the PCHS intact. However, his lack of attention to the EEOC, as illustrated by Whitford, reveals that he very possibly was not aware of the impact of the PCHS or even the PCHS itself. In addition, the background of administrator Cari Dominguez indicates that she was supportive of the agency mission and consequently may have exploited the president's lack of attention to enhance enforcement. Thus, regardless of why exactly the PCHS was allowed to survive, it represents an enduring, administrative innovation that prevented President Bush from reducing the scope and intensity of antidiscrimination regulations.

Homeland Security

Defense of the homeland against terrorist attacks became the signature issue in the Bush administration after September 11. Immediately, America's most pressing problem became making sure that another terrorist attack would never take place on American soil. Again, as Andrew Whitford illustrates, between 2000 and 2006, President Bush referenced the DHS almost five times as often as the nine independent regulatory commissions in his study, combined. This surplus of attention, combined with Bush's strong style of executive governing, meant that the White House brought its full power to bear in steering homeland security policy. In what Peter May and Sam Workman describe as the "hyperreaction" to September 11, this meant shifting resources and focus away from the all-hazards approach to disaster prevention and management and focusing more exclusively on terrorism prevention at home. As both authors and Brian Gerber argue, this dramatic shift of focus left governments at all levels badly unprepared to deal with Hurricane Katrina.

There is little doubt that after DHS was created, officials at the top of the agency had a tremendous amount of on-the-job learning to do. They would have to coordinate the behavior of 22 federal agencies within DHS, state and local governments, and first responders in protecting the nation. The nature of muddling through experienced by DHS officials is perhaps best exemplified by May and Workman's analysis of the constantly changing guidelines for grants to be awarded to local governments. As the authors point out, rules for local government grant programs changed each year from 2003 through 2006,

partly due to multiple organizational changes in the agencies in which these programs were housed. However, this muddling through was also caused by the Bush administration's decision to concentrate most homeland security policymaking in the top levels of DHS. With grant programs at the top, it is logical to expect that the transaction costs of efficient distribution of these grants for local governments would increase substantially.

Concentration of executive power in homeland security was especially problematic when combined with the exclusive focus on terrorism. May and Workman cite numerous instances in which Secretaries Ridge and Chertoff consolidated power in their position such that attention and resources shifted away from FEMA and disaster prevention and management. First, Ridge's decision to contract with the RAND Corporation in establishing the National Preparedness Plan instead of with FEMA directed decision-making power away from FEMA. Second, Secretary Chertoff centralized power in 2005 by consolidating further preparedness functions previously housed within FEMA in a new Directorate for Preparedness. Finally, the "Homeland Taxes" that were gradually deducted from nonterrorist-related DHS agencies served to strengthen the resources designed to fight terrorism, but simultaneously weakened other agencies, especially FEMA.

As the authors claim, the obvious lesson from the dual tendencies of centralizing power at the top and shifting the focus toward terrorism was a lack of preparedness for dealing with natural disasters. This lack of preparedness and the oft-seen disconnect between federal and local authorities are also demonstrated by Brian Gerber's findings. While he found that local authorities generally understood their duties in the event of a disaster, at the same time, local authorities did not feel that they had received sufficient federal guidance on evacuating their citizens from a disaster-stricken area on a mass scale. Taken together, the findings from these chapters suggest that the aftermath of Hurricane Katrina was a predictable result. However, given the further difficulties in coordinating behavior between federal, state, and local officials that were never rectified, the findings suggest that if we were to experience another massive terrorist attack, the response to that may also be inadequate.

Law Enforcement

The forceful use of executive power was also prevalent, but perhaps nowhere more controversial, than in the Department of Justice (DOJ).

The controversies largely stemmed from the Bush administration's willingness to exert authority, even if it meant creating legal conflicts of interest or bending the law, without necessarily breaking it. We can examine the Bush administration's use of executive power toward three policymaking patterns in the administration, which are discussed at varying lengths in this volume: the administration's wiretapping program, the control of U.S. attorneys from DOJ, and the recruitment practices of career attorneys in DOJ.

As Krause and Dupay point out in their chapter, existence of the National Security Agency's (NSA) wiretapping program was not made public until late 2005 and even then, the real attention to the story came after former deputy attorney general James Comey testified before Congress in 2007. The fact that President Bush reauthorized the wiretapping law, even after Attorney General Ashcroft denied DOJ approval to the White House, showed that President Bush was willing to proceed with programs, whose legal grounds even the DOJ found dubious. However, the fact that Ashcroft, Comey, and FBI Director Robert Mueller were willing to stand together and threaten to resign demonstrates the authors' point that policy implementation cannot move forward unless there is coherent coordination among political executives within the executive branch.

The wiretapping episode may have represented honest policy differences of opinion within the executive branch, but it also showed the administration's willingness to bend the law. The treatment of U.S. attorneys from within DOJ demonstrated a willingness to bend legal ethics, which also revealed the administration's willingness to politicize legal policy. When Attorney General Alberto Gonzales was called before Congress in 2007 to explain why nine U.S. attorneys had been fired, his claim that the reasons were performance related did not match the motives revealed on documents coming from within the White House and DOJ (Johnston 2007b). After the congressional hearings on the matter, some of the fired U.S. attorneys claimed that they were fired because they did not aggressively investigate Democrats (Loven 2007). Todd Graves, the U.S. attorney of Kansas City, one of the nine who was purged from the position, was replaced by Bradley Schlozman who came under fire for indicting voter-registration workers days before the 2006 election (Margolies 2007). DOJ policy generally prohibits indictments that appear to be timed to influence elections. Ultimately, the impact of the U.S. attorney scandal was damage to the credibility of DOJ and a perception that the Bush administration was willing to reward and punish prosecutors depending on the extent to which they politicized their investigations.

Finally, some of the new hiring practices instituted in DOJ also exhibited executive authority going beyond the mere installation of appointees and reaching deeper into the bureaucracy to influence the recruitment of new careerists. In chapter one, we reported on some of the new methods of hiring instituted during General Ashcroft's tenure methods that were designed to put more Christian and evangelical attorneys into the career ranks at DOJ. As Charlie Savage of the Boston Globe reports, this pattern was particularly prevalent in the DOJ's Civil Rights Division (2007a). More than half of the new attorneys hired to the Civil Rights Division between 2003 and 2006 lacked experience in civil rights litigation and those that did have such experience had gained their experience representing employers against antidiscrimination suits. As a result of the new trends in hiring, caseloads shifted away from the traditional civil rights cases to cases of reverse discrimination or discrimination against Christians. We suggested earlier that President Bush did not accomplish his goals with employment discrimination because he did not pay sufficient attention to activities at the EEOC. However, it is clear that the administration paid close attention to the Civil Rights Division at DOJ and the shift in caseload that emerged during the administration shows that the strategy was already yielding some dividends for the Bush DOJ. The extent to which this strategy brings a permanent change in civil rights litigation within DOJ remains to be seen through future administrations.

Education

As Paul Teske indicates in chapter six, President Bush's signature domestic program, apart from the events of September 11 and Homeland Security, was education reform. Although part of a policy evolution process, the No Child Left Behind law changed the federal approach to American education, by setting specific goals and targets, with consequences. Yet, NCLB was enormously controversial, heavily criticized for both its structure and implementation. Future presidents are likely to change it substantially, including the name, which is perceived as a "tainted brand."

President Bush devoted a significant level of attention to reforming education and, as Lewis notes, the increase in Senate-confirmed appointments to the Department of Education reflected a desire to install more policy posts, rather than patronage posts, to the department. However, the education reform was hampered, in part because

education is still mainly a state and local issue in America. By not setting explicit federal standards, NCLB left considerable flexibility to the states, and many have used that to “game” the system. In addition, Teske argues that while education policy has been managed by successive waves of Bush loyalists, with Texas ties, few would argue that they have revitalized the U.S. ED or, more broadly, American education. Interestingly, NCLB faced difficulties because of too much delegation to the states, while DHS suffered because it did not delegate enough authority to the states.

The Legacy of George W. Bush’s Policy Management

Richard Nathan once argued that the American presidency was becoming the “administrative presidency” in that presidents, such as Nixon and Reagan, were increasingly shunning the construction of legislative majorities for the seemingly more expedient administrative tools that the president can exercise unilaterally (1975, 1983). There is little doubt that the George W. Bush administration has continued this trend with unsurpassed zeal, constantly expanding the boundaries of presidential power in pursuit of its policy objectives. This forceful use of power—accompanied by an obsessive level of attention that was manifested through rhetoric, administrative policymaking, or both—produced a mixed policy record in the administration.

In foreign policy and homeland security, the Bush administration clearly employed a two-pronged attack with the potentially persuasive power of the bully pulpit and a vast arsenal of administrative tools. Bush focused strongly on homeland security in his speeches and addresses, while his top deputies at DHS used the power availed to them to shape the agency’s structure, so that potential terrorist attacks would be the predominant focus in the agency. As the studies in this book show, this set of organizational arrangements weakened the nation’s preparedness in dealing with natural disasters; it also possibly weakened the response systems of local governments. Bush devoted significant rhetorical attention to education policy through the NCLB initiative, but this again was hindered by state and local constraints to a significant extent.

Almost as often, however, Bush steered high-profile attention away from issues and employed a quiet, yet equally forceful strategy of administrative policymaking. The lack of rhetoric from Bush on these issues indicates, to some extent, that the administration learned from

the difficulties the Reagan administration experienced in trying to roll back the size of government with sweeping speeches about the waste and burden of government regulations. For example, although the proposed reforms to the New Source Review rules received a significant amount of coverage in major newspapers between 2001 and 2003, Barcott states that Bush referred to the proposed rule changes in only one speech during that time (2004). Instead, the administration relied on a heavy hand in the creation of some scientific reports, actively restructured the recruitment of crucial careerist positions in agencies like the DOJ, and layered agencies with non-Senate-confirmed, Schedule C appointees when agency views clashes with his own.

However, the subtle use of power appeared to result in overreaching and frequently generated backlashes that the strategy of administrative power was designed to prevent. The EPA air quality reforms were perceived to be overly biased toward business interests and the response from environmentalists and state officials resulted in the invalidation of some of these rules in the D.C. Circuit Court. At the Department of the Interior, the coziness with industry went far enough that some top officials were guilty of ethical lapses, most notably, Deputy Secretary Stephen Griles, when he lied before Congress about the activities of lobbyist Jack Abramoff. And the dismissal of nine U.S. attorneys was seen by many in Congress as a blatant attempt to reward political prosecutions and erode prosecutorial independence. All these events served to undermine agency credibility, which in turn made it harder to produce successful policies.

Despite these problems, the Bush administration did not face problems in all policy areas. As Richard Waterman points out, in some policy areas, such as regulation of nuclear power, President Bush strove to continue the policies introduced by President Clinton and this tendency toward bipartisan solutions created fewer roadblocks. Waterman shows that under Clinton, regulation of nuclear power plants experienced a decline, possibly due to a lack of attention to the issue while facing impeachment, and President Bush was happy to continue implementing this regulatory philosophy. Moreover, whether Bush intended to or not, he continued President Clinton's efficiency reforms at the EEOC.

Overall, President Bush will be remembered for his aggressive use of presidential power and the obstacles that prevented him from seeing the use of such power through to the successful achievement of policy goals. In some cases, Bush hurt himself by opening himself to charges of cronyism and incompetence. In others, however, such as Homeland Security, the White House simply struggled, as many

presidents would, in coordinating the behavior of numerous federal, state, and local agencies. Future presidents may again see the value of governing with large coalitions, rather than just with the party base. However, the onward march of presidential power is likely to continue, as it has since Nixon's administrative presidency.

Note

1. See Lewis (2007) for more details on the creation of PART scores.

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