

# Panel's Report: Too Much

## Centralization of Power

Following are excerpts from the summary of the National Academy of Public Administration's report to the Senate select Watergate committee on the implications of the Watergate affair for the future of American government.

Watergate damaged the image of the public service, which already had been suffering from a decline in public confidence for several years. It represents not only an aberration, but, perhaps more important for those concerned with America's future, a culmination of converging trends developing and gathering intensity over the post-World War II decades. The focusing of attention on the abuses associated with Watergate now lays the ground for much needed re-examination and reform. . . .

### 1. The American System of Government

The panel considered a wide range of proposals for modifying the American system of government including possible amendments of the Constitution. While acknowledging the difficulty in making the system function, the panel believes that the Constitution contains the inherent flexibility for orderly change in a dynamic society. The panel unanimously opposes the concept of moving in the direction of a parliamentary system of government. On the contrary, it believes that a strong and independent executive is essential to meeting the needs of the government of a large nation confronting increasingly complex problems. Likewise, there is need for strong and independent legislative and judicial branches to provide the balance on which our governmental system rests.

The difficulties standing in the way of putting into effect the constitutional provisions for removal of a President or Vice President have led to proposals for recall elections comparable to those in some state and local jurisdictions. The panel opposes such change. The inadequacy in impeachment as a means of removal lies not in the concept of it by the founding fathers. They properly recognized the need to make the process difficult and arduous. The current problem is one of misunderstanding of what the language of the Constitution means.

The American public and their elected representatives need to be educated in the original intent of the founders. The sense of "high crimes and misdemeanors" needs to be understood in

the historical context, which includes crimes against the state or society as well as indictable crimes. Moreover, the impeachment process should be extended to cover serious misconduct in the political campaign prior to assumption of office.

Despite the many doubts raised over the years about the office of Vice President, that office should be retained. But the political parties should conduct full checks of the qualifications of potential nominees.

### 2. The President, the White House and the Executive Office

Centralization of power in the presidency has increased over the years to the present extreme situation in which the prevailing view is that the whole government should be run from the White House. The role of the principal assistants to the President has been virtually transformed to one of "assistant Presidents." The basic directives under which the executive office was organized provide that administrative assistants to the President shall not be interposed between the President and heads of departments. This stricture has been ignored in the overly broad

and perhaps illegal delegation of authority to White House staff.

The McCormack Act of 1951 authorized the President to delegate certain statutory functions to heads of departments. That act is now in need of revision to permit delegations of routine functions to White House staff. It also needs to be supplemented by legislation requiring each President to make public his orders on the organization and staffing of the White House and the duties of White House staff. If needed, additional legislation should be enacted to prohibit assistants to the President from being interposed between the President and heads of departments in the exercise of their statutory or delegated functions.

To increase the options now available to the presidency, there should be legislation authorizing the creation of a number of temporary offices of secretarial rank outside the executive office of the President to take on ad hoc assignments. Such "secretaries without portfolio" would be appointed by the President, with the advice and consent of the Senate, to direct activities generally of short duration and involving a high degree of interdepartmental collaboration. But

these appointees would, in no sense, be supersecretaries. The White House staff should be limited to approximately 15 top aides to the President and not to exceed 50 supporting professional employees. All the latter should be subject to the Hatch Act.

Heads of executive departments and agencies should be prohibited from serving in a White House capacity as assistants or counselors to the President. The essential difference between staff serving the President and staff serving the presidency should be re-emphasized by (1) discontinuing the designation of the director of the office of management and budget as assistant to the President, and (2) amending Reorganization Plan No. 2 to provide a full-time director of the domestic council, subject to senatorial confirmation. All special purpose agencies not concerned primarily with providing staff assistance to the President should be removed from the executive office. Finally, the function of the executive office, particularly the office of management and budget, should be to assist the President, not to be the general manager of the executive branch.

### 3. The Chief Executive and the Executive Branch

A debate as old as the republic itself has been conducted on the question of what should be the proper relationship between the presidency and the departments and agencies comprising the executive branch. The question of how to achieve effective response on the part of executive agencies to presidential policy preferences has concerned all Presidents, particularly over the past forty years. Recent administrations have been moving in the direction of fundamental changes in the American governmental system which, if fully achieved, would substitute a philosophy foreign to the concepts of the framers and the majority of the American public.

The actions taken following the election of 1972 appear to have brought this philosophy to its culmination. The U.S. government would be run like a corporation—or at least a popular view of the corporate model—with all powers concentrated at the top and exercised through appointees in the President's office and loyal followers in key posi-

tions throughout the executive branch. No one can guess how close American government would be to this closed hierarchal model had not the Watergate exposure halted the advance toward it, at least temporarily.

By its nature, the federal establishment is necessarily pluralistic. The panel believes that the select (Watergate) committee should emphatically reaffirm that the President, in exercising his constitutional mandate as chief executive, has general authority over the executive branch, but is subject to restrictions on such authority in law. The executive agencies were all established by act of Congress and, with few exceptions, received their powers from Congress, not by presidential delegation. The Congress through the appropriations process annually renews their ability to operate. Agency heads are responsible in different ways to both the President and the Congress . . .

Another question raised by Watergate concerns a basic principle of democratic government, namely equal treatment under law. To what extent is an administration justified in rewarding its friends and punishing its enemies? The panel acknowledges the limitations of legislation to assure the principle of equal treatment under the laws. To assure such equality, the President, heads of agencies and their immediate staffs should refrain from participating in cases involving individuals or institutions. In those few cases where top executive involvement is required a record should be maintained. Alleged infractions should be investigated by the permanent special prosecutor proposed in the following section

The most alarming of the Watergate disclosures was the attempted misuse of the law enforcement and intelligence agencies against supposed "enemies." The panel believes that appropriate committees of Congress need to give special attention and oversight to agencies such as FBI, CIA, and IRS whose activities might infringe on individual liberties and that Congress should specifically prohibit the White House from conducting "intelligence" activities.

#### 4. The Attorney General and the Justice Department

Watergate has demonstrated that the "partisan climate" which has intensified within the Department of Justice over the past quarter century has no place in such an agency. The panel believes that the Department should be the chief legal office for the U.S. government and should be divorced from politics. The Attorney General should be precluded from advising the President in the latter's political or per-

sonal capacity. The presidential appointment power should be limited to the top 11 Departmental posts while all U.S. attorneys should be appointed by the Attorney General as part of a career legal service. . . .

The conflict stemming from the dual roles of the department as chief federal prosecutor as well as the principal office participating in the selection and promotion of federal judges appears increasingly questionable. The Justice Department should be removed from the process of selecting and promoting federal judges.

Pending the complete professionalization and depoliticization along lines recommended above, there would remain a potential conflict of interest in cases where the department would have to move against alleged wrongdoing involving political affairs. To avoid such

conflict the panel would recommend establishment by statute of an office of permanent special prosecutor to supervise and prosecute investigations of wrongdoing involving government officials. The office should also be empowered to investigate election fraud. Appointment to the office should be on a nonpartisan basis subject to Senate confirmation, for a fixed term of at least six years . . .

#### 5. Congressional Oversight of the Executive

Watergate has served to bring into relief the imbalance between the legislative branch and the executive. As in other democratic systems of government throughout the world, the power of the legislative branch has been declining relative to that of the executive for much of this century. Yet the American constitutional system is predicated upon a balance between the branches of government maintained through the countervailing influences of each upon the others . . .

The panel believes that if Congress had possessed an adequate oversight capability, it could have sensed the centralization of power occurring within the executive office and trends, beginning some time ago, which transformed that office along lines quite different from its original constituent elements. The panel therefore recommends that Congress give major attention to strengthening its oversight function with particular emphasis on performance review and evaluation. Initially, each house needs to discuss and adopt a clear statement of the assignment of responsibility for oversight . . .

#### 6. The Presidency and the Judiciary

The judicial branch, like other parts of the government, has experienced the institutional strain created by the events of Watergate .

. . . But in some instances the courts have had to press their powers to the utmost in order to fulfill their larger role in safeguarding the integrity of other governmental institutions and securing a civic objective of overriding importance . . .

On the narrow question of who decides what evidence the executive must turn over to the court in pending criminal cases which are properly before the court and to which the evidence is highly relevant, the panel considers it entirely correct that the final decision as to the extent of this particular executive power must rest with the courts . . .

The (Watergate) episode does not support a need for greater judicialization of the business of the other two branches. The judiciary's role in putting Watergate to rights, in the panel's view, mainly represents evidence that this role is soundly conceived, not that it should be significantly expanded.

#### 7. Information, Disclosure, Secrecy and Executive Privilege

Among the most troublesome of the issues brought to light in the Watergate hearings are those concerning access to information about executive processes . . . The panel recognizes that there continues to be a need for some degree of secrecy in government affairs but feels that the trend over many years has been to withhold information unnecessarily from the public view. The panel supports legislative efforts to clarify and improve the Freedom of Information Act and to bring the decision-making processes of administrative agencies more into public view . . .

#### 8. The Public Service

While the Constitution anticipated a number of built-in tensions in the structure of government, the framers

did not anticipate the tension that has come to exist between career and non-career political public servants. The panel recognizes the value of these tensions which may be the principal vehicle by which a new President can bring about the changes promised in his election campaign. The political appointment process is essential to responsive democracy.

Watergate testimony has made all too clear that those appointed to political positions in the federal government need to bring to their jobs an understanding of and respect for the principles of the democratic system of government. The hearings revealed that hostility towards the career service has threatened to damage that service and the concept of the merit principle on which it is based, in spite of the fact that the record of the career service has generally been one of high ethical and professional standards . . .

Although the basic concept of the merit principle is sound, the civil service is bound by rules and regulations which were products of an age of simpler government and which have led to unwieldiness and unresponsiveness. On the other hand, it is clear that political patronage has again invaded the career service, thereby undermining the merit principle.

To deal with these problems the panel recommends that Congress and the President: (1) require strict enforcement of the laws and regulations forbidding political considerations in career personnel actions; and (2) provide for a thoroughgoing review and modification of anachronistic laws and regulations impeding effective personnel administration. This review should focus on the need for improving the quality and the responsiveness of the career services. It should re-examine the role of the Civil Service Commission and restate that role in terms relevant to the contemporary needs of the federal government.

#### 9. The Financing of Federal Political Campaigns

An overwhelming majority of the public favors action to prevent the abuses to which the present system of campaign financing lends itself. But reform is impeded by the enormous complexity of federal election financing for which simple solutions are not available and by the powerful vested interests, both public and private, which oppose corrective legislation . . .

The value of the media in increasing public understanding of political issues has been limited by the interpretation of the "fairness doctrine" suggesting that debates between major party contenders cannot be held because independent and minor party candidates would not have equal representation. The legislative barrier in Section 315 of the Communications Act should be lifted to allow broadcasters discretion in arranging equitable presentation of candidacies and issues . . .

The strongest argument in behalf of direct federal appropriations to finance campaigns for federal office rests on the proposition that present practices are intolerable.

The panel considered the arguments which have been advanced against federal financial support but reached the unanimous conviction that federal appropriations in support of campaign funding for national elections, both presidential and congressional, would serve a proper and desirable public purpose. Although the experience with private financing of campaigns furnishes strong evidence against continuation of the existing method, that does not estab-

lish a case for exclusive public financing. The panel believes that private support of political campaigns is an important aspect of citizen participation in the electoral process and that there may, indeed, be a constitutional right for individual citizens to contribute towards political candidacies. The panel supports in principle the bill that passed the Senate in the previous session.

While the rights of individual citizens to contribute to the campaigns of political candidates or parties are uncontested, the same rights cannot be claimed by corporations, organizations or associations. With partial public support lessening the need for private funding, donors to campaign funds should be strictly limited to individual voters. Severe penalties are required to discourage violations on the part of organizations, other than political parties, contributing to campaigns. Heavy borrowing by candidates or political parties has had damaging effects on the political process. Provision of partial public financing should justify legislation to limit and control borrowing for campaign purposes . . .

A statutory limit should be placed upon campaign gifts by any individual voter during the course of any calendar year. This limit might well be \$10,000 in any presidential campaign, \$3,000 in any congressional campaign,

with an overall maximum of \$25,000 by any family in any calendar year. Limits should be observed by the candidates themselves, as well as by their constituents.

The proliferation of campaign committees in federal elections has reached ludicrous proportions with nearly 5,000 such groups operating during the 1972 campaign. Most appear to be paper fronts designed to avoid gift taxation or to conceal dubious transactions. The panel believes that abuses associated with this approach to financing can best be eliminated if solicitation, collection, and allocation of campaign funds are performed only by political parties and/or candidates for political office.

Every gift to a campaign fund in excess of \$10 should be by check or money order, and each donor should be publicly identified. This implies prohibition of the use of "conduit" channels to conceal sources of funds. Gifts of securities that have appreciated in value, to avoid capital gains taxes, should be prohibited. Donors contributing in excess of a certain sum (perhaps \$100) in any calendar year of a federal election should be required to list and report such gifts independently.

Accumulation of campaign funds by any candi-

date should be prohibited entirely except within some reasonable time frame (perhaps four or six months) before the primary or general election that is to be contested. Political parties, of course, should be free to collect and accumulate funds at any time for support of their ongoing operations and for use in final elections, subject to strict disclosure requirements. A preferred solution for disposing of surplus funds controlled by candidates would be to escheat them to the U.S. Treasury if they are not transferred to a party organization.

The great weakness in past efforts to enforce laws governing campaign contributions has been the reluctance of the Department of Justice to prosecute violations, however flagrant. The panel believes that two steps are necessary to strengthen enforcement. An electoral commission should be formed consisting of highly respected citizens serving on a part-time basis, to be appointed by the President, with a full-time director and adequate staff wielding broad authority. Secondly, as proposed above, there should be an office of permanent special prosecutor, whose role would include prosecuting authority for cases referred by the electoral commission.