

When Your Client Is The President

Gregory Craig, former White House counsel for President Obama, and Michael Scudder, general counsel of the National Security Council under President Bush, recount the teamwork involved in transitioning national security between administrations.

Law360, New York (October 31, 2016, 12:02 PM EDT) --

*With all eyes on the presidential election, Law360 asked former White House counsel to reflect on the experience of advising a U.S. president and share some lessons they learned. **This Expert Analysis series** features articles from counsel for six presidents.*



Gregory B. Craig

As new presidents come into office and old presidents leave, change is inevitable, particularly if the new party in power is different from the old one. Threats to our national security, however, do not respect the election calendar. They are ever-present, just as dangerous the day after inauguration as they were the day before. To address that reality, it is important for there to be continuity in the national security transition from one president to another. No matter how different in style and substance the two presidents and their teams might be, they must work together to get ready for what comes next.

We witnessed this firsthand eight years ago as Barack Obama took over from President George W. Bush. President Obama faced momentous, ongoing national security and foreign policy challenges: continuing operations in Iraq; the war in Afghanistan; the Iranian nuclear threat; the persistent and increasingly pervasive activity of al Qaeda and emerging affiliate groups, to name just a few.

Pushing a pause button is not an option available to a new president. There are only 73 days between Election Day and inauguration day.

Demands on the new president's time in that period will be impossible to meet. It will be difficult if not impossible for his national security team to get up to speed. In 2009, President Obama faced substantial national security decisions the moment



Michael Y. Scudder

he took the oath of office. His national security team was on duty from that moment on, and tough decisions presented themselves in the flash of an eye. Each challenge requires a different set of options and responses. Some policies will change altogether, others only slightly, and still others not at all. But on that first day of a new president's administration, it all seems to happen at once.

Perhaps the single most critical event of the transition occurred the day after the nation elected Barack Obama to be our 44th president. President Bush gathered the White House staff together and delivered a clear and simple message: The new team deserves not only congratulations, but also, and more importantly, the best transition in the history of the presidency. President Bush made clear that the work of his administration during the final two months of his presidency would be defined by whatever was necessary to help President-elect Obama and his team succeed.

What was critically important in the 2008-2009 transition, we both observed, was the work that was done to make sure that decision-makers had as much information as possible so they could make decisions based on fact and reality, not guesswork. A smooth transition requires an efficient system for communicating massive amounts of relevant information during the transition to national security decision-makers. Such a process will be critical again after Nov. 8, 2016, no matter who wins the election.

Immediately following the November 2008 election and long before he took office, President-elect Obama began receiving the same daily intelligence briefing presented each morning to President Bush. These briefings describe threats, identify risks, and provide other intelligence necessary to help a sitting president continue to govern and to prepare an incoming president for the responsibilities of the office. In addition to these daily briefings, President-elect Obama requested and his national security team received additional more focused briefings that addressed particular topics of special concern to the president-elect as he set his national security and foreign policy priorities.

In the national security transition, the Bush team prepared transition packages dealing with the most important and continuing challenges and priorities as identified by President Bush through National Security Advisor Stephen Hadley. Prepared by members of the National Security Council staff and personally reviewed by the national security advisor, each transition package adhered to a common template: a detailed memorandum explaining the history, evolution and status of a particular challenge or priority, accompanied by an appendix with the most important supporting materials, including summaries of National Security Council meetings, white papers, executive orders, speeches, and the like. Each package resembled a detailed, thorough, and carefully written bench memorandum on issues of great complexity.

Preparing these materials was labor-intensive. That exercise, however, provided critical, useful and relevant information to the incoming national security team and allowed them to formulate options for the new president and recommendations for his national security cabinet. The project required President Bush's outgoing team sprinting the final lap and left them totally exhausted at the finish line.

Not surprisingly, difficulties sometimes surfaced between the two teams during the transition. To mediate the expected disagreements, the outgoing and incoming White House counsels met on a regular basis to resolve disputes. An effective dispute resolution device is critical to the success of any transition.

During this transition, there was an unprecedented number of important (and often classified) meetings between the outgoing and incoming national security teams. Senior advisers from both sides met to discuss matters of continuing policy importance as well as to provide information on administrative and personnel matters that helped President-elect Obama structure his national security staff and formulate his policymaking process. The

two of us first met in just such a meeting, called by National Security Advisor Stephen Hadley to identify the most urgent national security challenges involving legal issues. As we saw it, the campaign was over, and the election was in the rearview mirror. Thanks to the two leaders, the focus of both teams was on getting ready for tomorrow. This was good government at work and at its best.

In one week, the American voters will choose our 45th president. Whichever candidate prevails, that person upon taking the oath of office will be forced almost immediately to make consequential decisions dealing with our nation's security. The record of teamwork during the last national security transition proves that it is possible to put politics aside in pursuit of the national interest. That record should serve as a model for the transition teams already at work today. We know that President Obama and his team are committed to a sound transition no matter who wins the election. We urge the candidates and their transition teams to embark on the transition in the same spirit. The stakes could not be higher.

—By Gregory B. Craig and Michael Y. Scudder, Skadden Arps Slate Meagher & Flom LLP

Gregory Craig is of counsel in Skadden's Washington, D.C., office, and Michael Scudder is a partner in the firm's Chicago office. They worked together during the last presidential transition, with Craig serving as White House counsel for President-elect Barack Obama and Scudder as general counsel of the National Security Council under President George W. Bush.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of the firm, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.