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Loyalty First

Palin's selection doesn't augur well for Washington's warped nomination process

By HANS JOHNSON
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John McCain's bending to the religious right in choosing Sarah Palin and two ominous charges of abuse of power from her tenure in Alaska raise new concerns about how the Republican team would govern.

The selection of Palin, who tried to oust a town librarian resistant to censorship and fired a law-enforcement official who was the boss of her sister's former husband, risks a renewal of and not an end to illegal actions that have marked the Bush administration.

Two recent reports from the inspector general of the Justice Department show that Bush appointees broke the law in using ideology as a basis for hiring, firing, and promoting workers, from civil service and agency employees to federal judges.

In the presidential sweepstakes this fall, the future cast and direction of the judiciary are among the biggest prizes. Bush has named more than 300 judges, more than one-third of the entire federal bench. At least two-thirds of all judgeships are now filled by appointees of Republican presidents, including 7 of 9 on the Supreme Court. Democrats are eager to change the courts' rightward tilt and expect a President Obama to achieve it.

But deserving more attention in the debate over the courts is the nomination process itself and how the Bush administration has badly warped it. I have observed up close the negative and sometimes downright nasty practices this White House has used to secure placement of its nominees on the bench and federal boards. While the executive branch engaged in ideological screening, legislative allies demanded "packages," or group approvals of nominees, to circumvent scrutiny and debate of individual qualifications or liabilities. Some also threatened reprisals to hasten the process.

The allegations against Palin send a disturbing signal about her willingness to misuse political influence and rely on ideology in appointments. If she assumed the power of the vice-presidency, her duties would include presiding over the Senate and participating in its constitutional duty of advice and consent on executive-branch and judicial nominations. Rather than a new direction, Palin augurs a continuation of a troubling trend.

Under Bush, distortions of the appointment and confirmation process began quietly, not with his judicial selections, but rather with appointments to agencies and commissions early in his tenure. One-party control of the Senate approval process after the 2002 election encouraged the Bush team to intensify its fiercely partisan strategies. Only with the loss of Republican dominance on Capitol Hill in 2007 did the scope of the administration's deviation from professional, ethical, and even lawful handling of candidates for high positions in the public service come to light.

Led by Monica Goodling, an alumna of Pat Robertson's law school, Bush aides scoured the Web to mine details about prospective appointees' identities, mindsets, and affiliations and rejected those that didn't pass narrow litmus tests. Lately, even Bush's attorney general professes outrage at the administration's misconduct. Michael Mukasey in June called the reliance on partisan screening "impermissible and unacceptable." But in August, following the two Justice Department

reports, he announced no plans for prosecutions despite acknowledging violations of the civil-service laws.

Facing no crackdown, some Senate Republicans who sit in judgment over nominations still hew to the tactics that flourished during one-party rule. As recently as December, Mitch McConnell brought the Federal Election Commission to a halt by insisting that a group of four nominees to the six-member panel be considered en masse, rather than on their individual merits.

McConnell anticipated a flap over one member of the so-called “package,” a defender of voter-roll purges that have disqualified even legal and longtime voters. Such packages of nominees became a common practice during the Bush years to secure approval, often without debate, of several nominees at once, including those with extreme views that might arouse scrutiny and outcry if considered on their own. Colleagues’ resistance caused McConnell and the controversial nomination to fail.

A crudely partisan approach to appointments has also infected Senate deliberations over nominees for the federal bench. In June, Judiciary Committee member Jeff Sessions, his party’s ranking member on the subcommittee for oversight and the courts, took to the Senate floor to insult Democratic leader Harry Reid as “clueless” and threaten havoc if majority Democrats didn’t yield to the administration’s wishes on a late batch of Bush nominees. Were Obama to win in November, Sessions even vowed to block the new president’s nominees unless the current White House got its way.

McCain and Palin portend an extension of this pattern. So egregious are its dynamics and so disfiguring its impact on the makeup and independence of the bench that simply ending it would do more to fix the courts than any new philosophy for picking judges.

To his credit, Obama promises to nominate candidates of diverse backgrounds with “feeling for what ordinary people are going through.” His non-ideological approach would broaden the spectrum of eligible talent considered for the bench as well as appointed positions in his presidency. It would facilitate effective governance by limiting reprisals and meddling in the administration of justice and federal services. It might also bridge the ditch into which the Bush administration has dragged the appointment process.

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