

NATIONAL ACADEMY OF PUBLIC ADMINISTRATION STANDING PANELS ON THE FEDERAL SYSTEM

MEETING OF NOVEMBER 14, 2007

PANEL ATTENDEES: Paul Posner, *Panel Chair*; Bill Gormley, Wendy Ginsberg, Brad Huther, Jolene Lauria Sullens, David Mathiasen, Clint Brass, Sarah Horrigan, Susan Irving, Dan Skoler, Enid Beaumont, Dave Garrison, Bruce McDowell, Beryl Radin

STAFF ATTENDEES: Malika Bouhdili

SPEAKERS: Beverly A. Cigler, Professor of Public Policy and Administration, School of Public Affairs, Penn State Harrisburg; Sally Katzen, Adjunct Professor and Public Interest/Public Service Fellow, University of Michigan Law School.

Paul Posner, Chair of the Standing Panel on the Federal System, welcomed everyone to the meeting and introduced the two speakers – Beverly Cigler and Sally Katzen.

Beverly Cigler is a professor of public policy and administration at Pennsylvania State University, Harrisburg. She is also director of the Pennsylvania Program to Improve State and Local Government, which operates out of the School of Public Affairs at Penn State Harrisburg. Dr. Cigler has experience with a variety of state and local government issues, including alternative service delivery, public finance, government restructuring, state-local relations, disaster emergency management, and homeland security enforcement on the state and local levels.

Sally Katzen is currently a visiting professor of law at George Mason University Law School. Next year, she will serve as the adjunct professor and public interest/public service fellow at the University of Michigan Law School. Ms. Katzen was previously a U.S. government official during the Clinton Administration. She served as Deputy Director for Management in the Office of Management and Budget (OMB) from 1999 through 2001, as Deputy Assistant to the President for Economic Policy and Deputy Director of the National Economic Council from 1998 through 1999, and as Administrator of the Office of Information and Regulatory Affairs at the OMB from 1993 through 1998.

Dr. Posner discussed the afternoon's agenda. The Panel planned to discuss the possibility of a transition paper to guide the new administration. During the last session, Beverly Cigler had suggested an exercise to examine executive orders of the last few federal administrations and extract the principles and lessons learned. The Panel also planned to hear updates from the forum on transportation.

BEVERLY A. CIGLER:

Dr. Cigler began speaking on the subject of executive orders. Historically, executive orders have been the most important means through which Presidential authority is expressed. Executive orders express policy directives for the entire executive branch and can define the relationship between all components of the federal system (states, localities, Congress and the Executive Branch). There are only two executive orders on federalism – one issued by President Reagan and the other by President Clinton. Clinton’s federal executive order essentially revoked Reagan’s.

Dr. Cigler described her involvement in an interagency working group on federalism and intergovernmental relations. The group was created by President George W. Bush shortly after he came into office, and was intended to examine any responsibilities of the Federal Government which could potentially be passed down to state and local governments. The final objective was to create a new executive order on federalism. The working group was late in submitting a draft, and after 9/11 occurred, a finalized executive order was never created. Nevertheless, in preparation for this final product, Dr. Cigler explained that she had written an article comparing the Reagan and Clinton executive orders. This article also offered recommendations as to what President George W. Bush’s executive order on federalism could look like.

Dr. Cigler then offered suggestions as to how the National Academy could become engaged in the issue of executive orders on federalism. The National Academy could examine how the events of September 11th, 2001 have impacted federalism. The National Academy could also invite representatives from the “Big Seven”¹ to discuss what principles a federalism agenda for the next Presidential administration would include.

SALLY KATZEN

Dr. Katzen began by describing her experience with executive orders while working for the Clinton Administration. She drafted several executive orders and oversaw their implementation. Dr. Katzen noted that executive orders on federalism were largely symbolic documents with little practical enforceability. She found that there was a direct correlation between the stringency of the standard and the enforceability of the document. If the document created ambiguous standards, everyone was willing to support it. The challenge lies in gathering support for a document with enforceable standards. Dr. Katzen noted that, in her experience, it was particularly challenging to gain support from the Big Seven. They are deeply attached to the language used in the Reagan order.

Dr. Katzen emphasized that the executive order under the Reagan Administration was never enforced. No agency has ever reacted to it. Agencies are increasingly concerned with cost benefit analyses and financial considerations, and they are not likely to pay attention to any executive order on federalism.

¹ The Big Seven is a group of non-partisan, non-profit organizations made up of U.S. state and local government officials. They include the following: Council of State Governments, National Governors Association, National Conference of State Legislatures, National League of Cities, U.S. Conference of Mayors, National Association of Counties, International City/County Management Association.

Dr. Katzen noted that the problem does not lie in the executive branch, but rather in Congress. Congress is the institution that lays out statutes from which agencies derive their authority. According to Dr. Katzen, there are approximately 11,000 regulations. Of these, only about 100 a year are substantive, and only 10 of these affect state and local governments.

Finally, Dr. Katzen encouraged the Panel to look into different ways, other than an executive order, to advance federalism principles.

PANEL DISCUSSION

The Panel then discussed the value and effectiveness of executive orders in advancing a federalism agenda. The Panel also brainstormed ideas as to how the Academy could help define the relationship between the federal, state, and local governments.

Beryl Radin suggested that the Panel focus less on the possibility of a new executive order and more on the grant system. The manner in which grants are distributed often defines the relationship between federal, state, and local governments.

Examining past executive orders was viewed as a potentially useful undertaking. The executive orders which came about as a result of President Nixon's "New Federalism", for example, had a far greater impact from a management perspective than the Reagan and Carter executive orders. More specifically, Nixon's "New Federalism" had a substantial impact on the distribution and management of federal grants. It could be equally as useful to examine President Johnson's executive orders that addressed how to manage natural disasters. There has been a renewed interest in these executive orders in light of the Hurricane Katrina disaster.

The executive branch can also impose its federalism agenda through Supreme Court appointments. An examination of how the court system impacts the federalism agenda might be interesting, especially since the judicial branch is often overlooked by the Academy.

Beryl Radin discussed the two legitimate roles of federalism and intergovernmental relations. One is largely symbolic and rhetorical, and the other has some very tangible political realities for mayors, governors, and executive leaders. The manner in which these leaders can craft policy is often determined by the nature of intergovernmental relations. The focus therefore, should be less on the Executive branch, as it examines policy issues on a macro level, and more on a policy level. By examining federalism in a programmatic and substantive policy-oriented context, the Panel would be focusing on more tangible realities.

Beverly Cigler cautioned the Panel against dismissing the underlying principles in executive orders, however symbolic they may be. She encouraged the Panel to start examining past executive orders on federalism. Though they may be largely symbolic, they still contain key principles and criteria for defining the relationships between

federal, state, and local governments. The Executive Branch, therefore, should not be ignored.

Most Panel participants agreed that the focus should not be on principled federalism, but rather on federalism as it relates to policy. There are number of policy issues that have strong federalism implications such as education, health, and immigration.

The Role of the Academy

Sally Katzen encouraged the Academy to communicate with the Big Seven and take on a consultative and educational role. The Academy could organize joint workshops, forums, and colloquia with representatives of the Big Seven to discuss the value of defining a clearer federal system.

The Academy could examine the policy proposals of the 2008 Presidential candidates and assess the intergovernmental implications of each should they be implemented. This might attract the attention of the candidates.

The Panel could also research the intergovernmental implications in past Academy reports. By working with Academy Panel chairs, they could examine what worked and what didn't in an attempt to identify common principles. More specifically, the Panel could focus on Academy reports that deal with intergovernmental policy issues such as health, education, or immigration.

FORUM FOR TRANSPORTATION UPDATE

The final minutes of the meeting focused on the last Transportation Forum, held two week prior to the Panel's meeting. Six of the Big Seven sent two attendees each. Other attendees included: representatives from the executive branch, a few staff members from Capitol Hill, experts in the Transportation field, and two Academy representatives. Disagreements were largely between the six Big Seven organizations present and the Executive. The representatives from the Big Seven were more interested in finances than "red tape". There was, however, agreement on the need for greater performance management and accountability. The report, which will be completed in the coming months, will reflect more than one point of view.

Adjourned at 5:00pm.