

About the Author



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The Wall Street-Washington Revolving Door Is As American As Apple Pie

The most oft-heard criticism of Mary Jo White's nomination to become chair of the Securities and Exchange Commission is that she has made repeated trips through the "revolving door" between government service as a prosecutor and private practice representing, among other clients, the kinds of business executives and companies she used to prosecute. As John Cassidy of *The New Yorker* put it, "it seems a bit peculiar for a President who has repeatedly pledged to crack down on Wall Street wrongdoing to pick as one of his top financial cops a figure who has spent much of the last decade defending senior bankers."

The announcement of her nomination coincided with a report last month by the Project on Government Oversight, a nonprofit group, that found a pattern of revolving door SEC alumni helping companies "influence SEC rule-making, soften the blow of SEC enforcement actions, block shareholder proposals and win exemptions from federal law." White's confirmation is all but certain after her impressive performance at Tuesday's confirmation hearing, but the revolving door issue will not go away—even though, especially with high-stature nominees, it misapprehends history, what lawyers, especially senior litigators, are about, and the real-world impact of money on revolving door public servants.

The revolving door has been a fixture of American governance ever since Alexander Hamilton went from a post-Revolutionary War law practice to become the first secretary of the treasury and then back to a very lucrative law practice, and it has produced exemplary public servants. In the 1930s and '40s, for example, Dean Acheson went from

a Washington law firm where he often dealt with international legal issues to undersecretary of the treasury, then back to his law practice after a falling out with President Roosevelt, and then back to government after mending his fences with FDR, this time as an assistant secretary of state. He eventually became one of America's greatest secretaries of state—and then returned to his Washington law practice. No one ever suggested that his public service was ever influenced by his private practice.

To be sure, the revolving door isn't always the stuff of American legends. Louisiana Senator John Breaux, a Democrat who served in Congress from 1972 to 2005, is perhaps best remembered for his 1981 success in getting huge sugar subsidies enacted as part of Republican-sponsored tax cut legislation. "My

vote can't be bought, but it can be rented," he told reporters afterward. After leaving the Senate, Breaux joined a lobbying firm that in 2010 had billings of more than \$11 million from blue chip companies.

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But Mary Jo White, like many nominees to law enforcement and regulatory positions, is a career litigator. Here's the DNA of litigators: Between the bounds of ethics and the duty to adequately, if not zealously, represent their clients, they want the best possible result. It doesn't matter whether they represent the butcher, the baker, or the candlestick maker—or a big bank or the SEC. When a Major League baseball team trades one of its longtime players to another team, everyone expects—indeed, would be astonished if it didn't happen—that player to try as hard as he can to wreck his former teammates' chances of winning the pennant. Litigation, a competitive endeavor, is no different. Trials are zero-sum games in which there are almost always a clear winner and loser. Even in settlements, especially involving the government, someone is perceived to come out best. Any high-level nominee's residual ties to an industry will just evaporate in the face of the competitive challenge of pursuing and achieving the goals and objectives of his or her regulatory agency, especially when litigation is so often the tip of the regulatory agency spear.

Finally, at this level money isn't an issue, which is why the PGO study is irrelevant to Mary Jo White's nomination. When midlevel employees at regulatory agencies—that is, those with no policymaking authority—leave the government, they have to find a job that pays well. Perhaps they were single when, in their mid-20s or early 30s, they started their public service careers, but now many are married, supporting families, and paying off mortgages. The risks that financial pressures will lead them to cut potential future employers a break and/or barter their agency connections and insider knowledge to obtain or succeed in the private sector—and sometimes in so doing breach their obligations to avoid conflicts of interest—are not insignificant.

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But in the case of a successful senior lawyer like Mary Jo White, this concern is nonexistent. The much repeated emphasis on her lucrative law practice should serve only to underscore that her chairmanship of the SEC, whether a success or failure, will not be a platform for burnishing her marketability among New York City law firms. She doesn't need that.

So in considering the revolving door phenomenon of American public life, let's not throw the baby out with the bathwater. The revolving door has often served this country quite well, and there is no reason that it will do otherwise in the case of Mary Jo White.