The Vested Oracles: How Industry Regulates Government

By Lee Metcalf

The main complaints about the more than 1,500 advisory committees to the federal government have been directed at the ones that don't do anything significant, or never meet. Such groups as the Tea Tasters and the International Screw Thread Commission have been dodging flak from budget-minded critics who say there is no reason for the $75 million a year the government puts out for these and like ventures.

The nation might be better off, however, if the healthy, active, and influential advisory committees, especially those from industry, would adopt the ways of their inactive companions. For in the realm of advisory committees, the ones that don't say anything seem to be much less detrimental and costly to the public interest than those that do.

Industry advisory committees exist inside most important federal agencies, and even have offices in some. Legally, their function is purely as kibitzer, but in practice many have become internal lobbies—printing industry handouts in the Government Printing Office with taxpayers' money, and even influencing policies. Industry committees perform the dual function of stopping government from finding out about corporations while at the same time helping corporations get inside information about what government is doing. Sometimes, the same company that sits on an advisory council that obstructs or turns down a government questionnaire is precisely the company which is withholding information the government needs in order to enforce a law.

The industry advisory groups enjoy a favored position over other non-industry special interests and even public interest groups. If the environmentalists, for instance, asked to sit in while government policy was being made and to have free access to the

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files of the Environmental Protection Agency, they would be scoffed at. But this is exactly the position the nation's largest companies enjoy inside the Defense Department, the Department of Commerce, and elsewhere. Because of their quasi-official status, advisory councils are aware of potential policy changes and inter-agency dissensions that may help them oppose government actions.

As early as February, 1962, President Kennedy, concerned about the use and abuse of government advisory committees, issued an executive order "prescribing regulations for the formation and use of advisory committees." Among the requirements Kennedy imposed were: 1) annual publication of the names of members (and their affiliations) of all advisory committees, 2) a full-time salaried officer or employee of the government chairing each committee, and 3) verbatim transcripts of all industry advisory committee meetings.

But each of these requirements carried a most convenient escape clause: the requirements could be dispensed with if the head of the department or agency felt that they "would be unduly costly or impracticable" or "would interfere with the proper functioning." Not surprisingly, in case after case, the agency heads, usually at the prodding of the advisory group itself, found that the waiving of these requirements was "in the public interest."

To combat the excesses of these committees, I introduced a bill in the 91st Congress to diversify the representation in the advisory groups in the Office of Management and Budget, at least. Eventually the bill died, but a more comprehensive one has been introduced in the current Congress, and hearings are now in progress.

Advisory committees proliferated in the early post-war years, when the public romance with private industry still blurred the collusion between government and corporations. Today, the advisory system still acts as if that climate were unchanged. Many do not even bother to create the appearance of impartiality, as was the case with the Civil Aeronautics Board Finance Advisory Committee, established in 1970 along with similar groups for consumer affairs and for labor. Airline finances are not merely the concern of banks and business; nevertheless, the committee was made up purely of men from those institutions. The committee even dispensed with the pretense of meeting in the CAB offices and convened for the first time at One Chase Manhattan Plaza, in the office of James P. Mitchell, chairman of the committee and also Chase Manhattan's vice president in charge of airline finances. The bank is the major creditor for five of the nine local service carriers and a major stockholder in two airlines. No wonder the committee dealt with the serious liquidity problem of the carriers and with Mitchell's suggestion for a large federal ante into the airlines' kitties to help them pay their bills.

Five weeks after I publicly cited the CAB case as an example of the partiality of advisory bodies, the CAB disbanded the committee. The rapidity with which they backed down may be evidence of the flimsy rationale for the entire industry advisory structure. But most committees continue to function.

Take the National Industrial Pollution Control Council. President Nixon created it in April, 1970, to advise the President and the chairman of the Council on Environmental Quality, through the Secretary of Commerce, on industrial pollution problems.

The President apparently felt that council effectiveness demanded the recruitment of the world's most renowned experts on pollution, for he set about naming representatives of companies that have the greatest experience in spewing filth and poison into our environment. He manned the council with 63 top executives of major polluting companies, including the chief officers of airlines and electric utilities, and producers and manufacturers of steel, automobiles, detergents, coal, petroleum, chemicals, beverage containers, and paper and wood products. The President charged the pollution advisory group with collecting data and evaluating "programs of industry relating to the quality of the environment." Not one member of the council represents conservation groups, consumers, universities, or other public interest groups.

Obviously, the National Industrial Pollution Control Council must be placed in the category of the rabbit sent to fetch the lettuce. The analogy certainly befits Bert S. Cross, chairman of the board and chief executive officer of Minnesota Mining and Manufacturing. At the time of Cross' designation as council chairman, his company had been under order for four years by the Wisconsin Department of Natural Resources to stop discharging sulfurous wastes into the municipal sewers of Prairie du Chien.

The pollution council conducts its meetings in a fashion quite unlike anyone conditioned by industry's environmental advertising would suppose. The October 14, 1970, meeting was not publicly announced. Several environmental and consumer organizations had heard rumors of the pending meeting and presented themselves at the Commerce Department that morning, requesting admission. They were denied entrance. Their request for a transcript of the industrial polluters' meeting was turned down, as were reporters' requests that the officials hold a post-meeting press conference.

The agenda for that meeting suggests why the environmentalists were barred. While only 10 minutes were allotted to Russell Train of the Council on Environmental Quality for discussion of the national pollution standards, one hour and 45 minutes was set aside for an exploration of tax breaks and incentives to promote pollution control.

The appearance of the environmentalists at the doors of the meeting apparently embarrassed both the Administration and the council. The next gathering, in February, 1971, convened in the State Department building, where security regulations prohibit entry of non-employees without special arrangements.

The February meeting added a new twist to the previous format. The industrialists were whisked over to the White House to stand on the lawn with the President and witness the effectiveness of new air pollution abatement equipment on commercial jetliners. First, a Boeing 727 took off from National Airport. Rising into view over the Jefferson Memorial, a trail of heavy, black smoke belched from the three jet engines. Another 727 quickly followed, trailing a remarkably smaller, less dense plume of exhaust.

The President and his visitors, official protectors of the environment that they are, delightedly hailed this demonstration as an example of the great, voluntary strides of industry in controlling pollution. But a member of my staff also observed the demonstration, coming away less impressed than the President and his polluters' council. My aide's feeling was that if the first plane had flown at as low a speed and climbed at as slight an angle as the second 727, it too might have significantly reduced its exhaust emissions.

The Polluters' Council

This little episode on the White House lawn demonstrates the industrial pollution council's function as a massive, government-established public relations arm of the world's worst polluters. Little more than one year after its inception, the council has published approximately 25 reports printed at public expense by the Government Printing Office, including a "Casebook of Pollution Cleanup Actions." These cleanup actions are "drawn from published accounts of individual company environmental accomplishments throughout American industry"—most of them reprinted from such highly unimpeachable sources as industry trade association publications and house magazines.

To be sure, each report carries the disclaimer that "it does not necessarily represent the views of the Department of Commerce or any other Government agency." Indeed, the research and writing of these reports is carried out entirely by industry. But the corporate polluters have now decided they will pass these reports to senators, congressmen, and the public as government pamphlets on the scientific facts of pollution.

Mike Manatos, associate director of governmental relations (a fine euphemism for lobbyist) at Procter and Gamble, pleaded in a recent letter to me that the idea that phosphates in detergents pollute is a "misguided notion." He was sure I wanted the "real rights and wrongs," so he provided me with "a new Commerce pamphlet which gives the full story."

The "new Commerce pamphlet" was, in fact, neither new nor Commerce's. Published in October, 1970, and superseded by a March, 1971, report, it did not represent the views of the Commerce Department, but rather only of the council of polluters. By May, 1971, portions of the October pamphlet discussing the chemical, NTA, were scientifically and legally incorrect. These discrepancies were rectified in the March report on detergents, but Procter and Gamble neglected to mention the council's March report, passing off the earlier pamphlet as Commerce's "full story."

The detergent report was not just an unfortunate mistake or an embarrassing oversight, but rather the logical result of the council's methods of operation and stacked membership. The detergents sub-council consists of eight industry members, including the president or chairman of Procter and Gamble, Lever Brothers, Purex, and Calgon. Moreover, the sub-council operates by the stated council rule that it "does not regard its assignment as including a responsibility to obtain, weigh, and reflect all other viewpoints as well, except to the extent that sound business advice regarding industry policies and programs so require."

The National Industrial Pollution Control Council is the President's one official advisory council on industrial pollution. The Administration's lack of enthusiasm for more balanced bodies is evidenced by comparing how quickly it staffs such industry committees–named either by the President or the heads of federal agencies–and how slowly it mans more representative councils, like the Advisory Council on Environmental Education. Established by Congress as part of the 1970 Environmental Education Act, this Office of Education advisory group provides guidance on environmental education programs. In setting it up, Congress required balanced membership, to include academic, scientific, medical, and legal representatives, as well as at least three ecologists and three students. Yet nearly nine months after its inception, the council has not met. In fact, it has no members, Health, Education and Welfare Secretary Elliot Richardson having completely failed to comply with the congressional directive.

Even when the President conformed with a congressional mandate setting up a broadly based advisory committee on railroads, the result was simply another panel stacked with businessmen. In creating the National Railroad Passenger Corporation, Congress set up a 15-man financial advisory group. The law requires that these 15 members consist of six from investment, commercial banking, and railroads; two from the Treasury Department; and seven from "the public in the various regions of the Nation."

On December 1, 1970, the Department of Transportation announced the Administration's choices for this advisory body. All 13 non-government members came from business. The President did not appoint seven representatives of the public, and did not even bother to dig up a tamed, retired academician for window dressing.

Slow-Talking Polluter

Until last year very few people were aware even of the existence of such committees. My first experience with them and their influence came about six years ago, when I suggested that the Federal Power Commission ask the major utilities whether they gave money to specified right-wing organizations. The FPC pleaded that such an inquiry was impossible without Budget Bureau (now the Office of Management and Budget—OMB) approval. Budget, I learned, had to call the question form to the attention of something called the Advisory Council on Federal Reports, which in turn would buck the proposed form to one of its utility industry advisory committees.

This revelation sparked me to take a closer look at the operations of the Advisory Council. It dates back to 1942, when the Congress was inundated with small businessmen's pleas for legislation controlling the flood of forms and questionnaires resulting from wartime rationing and wage-price controls. In short order, Congress overwhelmingly enacted the Federal Reports Act of 1942, instructing Budget to coordinate governmental collection of information.

The director of Budget turned to officials of industry for advice on administering the new law. The industrialists promptly established the privately financed and operated Advisory Council, consisting of 16 committees on banking, broadcasting, chemicals, equal employment, fats and oils, meat packing, natural gas, oil, railroads, trade, and utilities. Subsequently, when federal agencies sent a proposed questionnaire to Budget for its evaluation and approval, the Bureau listed the questionnaire on "birdwatcher sheets" mailed to a few dozen industry and association representatives. If something on the sheets caught the corporate birdwatcher's eye, he would inform Budget of the need for a meeting of the industry advisory committee with the government agency responsible for the proposed form, and Budget would cordially comply.

The procedures, still followed in today's OMB, bring some strange results. For instance, a critical national inventory of industrial water wastes was delayed more than seven years by a filibuster of OMB and the advisory committees. In June, 1964, officials of the Public Health Service launched negotiations with 27 men from the various industry advisory committees, reviewing a Health Service inventory form designed to catalogue the composition, volume, and locations of water-contaminating industrial wastes. The advisory group, including representatives of such industrial giants as U. S. Steel, Consolidated Coal, and American Paper and Pulp, challenged the inventory on the basis that the data would find its way into the hands of the news media and opportunistic politicians. Further, they charged the survey—which was voluntary—would garner incomplete, outdated, and misleading information. Besides, they lamented the frightful costs to industry and the revelations of trade secrets that allegedly would result. After wrangling over the form for seven hours, the advisory committee adjourned, failing to resolve its conflict with the Public Health Service.

In 1968—four long years of mounting pollution after the initial advisory committee meeting—a new team of concerned bureaucrats tried to get the industry group to accept the inventory. The government environmental protectors faced several veterans of the meeting held several years earlier. Industry rehashed the old argument. The Budget Bureau again did not approve the inventory, thus awarding the decision to the polluters.

By last year, growing attention to this issue from Congress, the press, and Ralph Nader had created a public image problem for the Administration, forcing it to do something, if only to create the illusion of action. So it initiated a pilot, voluntary inventory. Just a few firms in each state, including, in many cases, small operators rather than big polluters, are asked to send in information. The result is that we still don't know who pollutes what, where, and how much.

The Intimate Caucus

OMB, of course, is not legally required to accept the objections of the industry advisory committees. But industry wins out because of its power and its experts, who can cajole and even intimidate government officials into seeing and doing things industry's way. Peter Petkas, an attorney with Nader, last year described a September, 1970, meeting he attended of the Communications Industry Committee of OMB's advisory council. The meeting, called to discuss a Federal Communications Commission questionnaire probing the effects of conglomerate ownership of broadcasting facilities, was packed with representatives of CBS, NBC, ABC, Westinghouse Broadcasting, and other communications corporations. The industry representatives, as Petkas put it, "quite literally put [the FCC man] through the wringer. For the first few hours he held his ground. . . . As time wore on he was more willing to accept industry criticism and to offer to make changes accordingly." As examples of the wearing-down process, Petkas cites an hour-and-a-half discussion as to which company official should sign the questionnaire and whether it should be notarized, and a three-hour bemoaning of NBC's difficulty in locating the necessary information in its files.

The discussion frequently focused on questions that OMB and industry claim are not supposed to be considered by the advisory committees. Petkas recounted industry inquiries concerning "agency policy, the depth of support among the commissioners for carrying out the survey, and the names of commissioners who were responsible for instigating it."

OMB had made no attempt to notify the FCC in advance of industry allegations and objections to the questionnaire, and, after eight hours of sometimes heated discussion, the advisory committee had reviewed merely five of the 17 questions on the form. The meeting then adjourned with the agreement that issues remaining between the industry people and the FCC be ironed out in "intimate caucus." When Petkas suggested that he might attend the "intimate caucus," he was bluntly uninvited by the committee's industry chairman and assured by the OMB reviewing officer that this closed, informal meeting between an OMB advisory committee and the FCC was none of Petkas' or OMB's business. OMB, it was explained, could not assure Petkas' admittance.

Prior to introduction of the Senate bill on advisory committees, OMB discouraged public knowledge of its advisory meetings. Today, public interest representatives can be notified of, and sometimes participate in, these gatherings, albeit as observers rather than members. But these changes, forced because of the bad light in which congressional hearings placed OMB and its advisory committees, do not address the more serious implications of industry's dominance of these groups and its quiet exercise of governmental power.

Five-Sided Profits

The Commerce groups may make the polluters look good and the OMB advisory groups may keep government away from industry's files, but it is at the Pentagon where the real potential of industry expertise is realized, where corporations can advise the government on how to help them make more money off federal contracts.

The Defense Industry Advisory Committee (called merely the Industry Advisory Committee, or IAC, since 1968—they dropped the "Defense" in deference to growing public opinion against militarism) was established in 1962 by Secretary of Defense Robert McNamara. All of its members, except the Deputy Secretary of Defense, who serves as chairman, are heads of corporations. And as of mid-1970, 12 of the 24 members were from among the top 40 defense contractors, their firms holding $6.12 billion in prime military contracts let last year.

When the IAC advises the Pentagon on defense profits, it advises from experience. It has negotiated both for changes in procurement rules and for higher profits, and its success can be measured by a recent General Accounting Office questionnaire that last year found an average 56 per cent profit based on equity invested in 146 negotiated defense contracts examined.

The IAC, wanting to minimize its success in the area of profits, worked to convince the GAO to write another draft of its report, highlighting new information voluntarily and unselfishly provided by industry, showing a lower profit margin of 21 per cent. The IAC prevailed—the final version of the GAO report de-emphasized the government's independent conclusions and upgraded the industry's data showing the lower figures.

Such is the influence of the closed, secretive board, whose nine-year history is shrouded in mystery. Its rules forbid members to "issue or make public statements regarding the work of the council without prior approval of the chairman," and rarely does the Pentagon reveal anything about IAC activities.

There's something in the IAC both for the Pentagon and for industry. On the government side, it permits the Pentagon to prevent or resolve conflicts between contractors in private, where arrangements can be worked out without the danger that a disgruntled contractor will complain to Congress or the press. Rumors still abound that the IAC was specifically established to smooth rumpled feelings surrounding the award of the TFX contract to General Dynamics rather than Boeing. William M. Allen, Boeing's chairman, was a charter member of IAC, serving from 1962 to 1969.

On industry's side, contractors gladly exchange the right to publicly protest for the chance to get inside the Pentagon, where things can be worked out amicably among friends and there is always enough for everybody. Being inside gives the IAC a way to influence procurement rules before they are promulgated, to criticize troublesome government regulations, reporting forms, and audits, and to get advance information on Pentagon decisions so there is still time for industry to apply pressure. IAC members also enjoy what all other private citizens' groups are denied—top-secret briefings on the war, Soviet technology, domestic militants, and the Administration's economic "game plan." Little wonder that some have tagged IAC as the "board of directors of the military-industrial complex."

The IAC had some influence on the changes in defense contracting that led to the cost-plus contracts and the lucrative overruns. And now it is moving to eliminate all competition between contractors as well. Arguing against the low profits that imperil national security, John Dresser, chairman of Dresser Industries, told the February, 1971, IAC meeting that actions must be taken to boost contractor earnings, that defense is inconsistent with haggling over the price, and that "the country will be best served without cutthroat competition."

Apparently, the Pentagon agrees. At the same meeting, Ron Fox, Assistant Secretary of Army Installations and Logistics, referred to a memorandum issued by Deputy Secretary David Packard which outlined major Pentagon policy changes in contracting. The new guidance provides for more cost-plus contracts and less competition, which, according to Fox, "will probably increase the actual profit earning on defense contracts."

Mini-Arms Race

Most of the IAC's work is carried on by subcommittees, such as the one on military exports that dates back to 1962. This subcommittee, representing a large variety of companies, has as its prime objective the selling of the Pentagon abroad by promoting overseas military sales and mini-arms races. Small countries provide a lucrative market for second-hand arsenals, and the IAC subcommittee helps convince them they need to be the first on their continent to have a surplus destroyer or an obsolete jet. At a June, 1967, meeting, Henry J. Kuss, Jr., Special Assistant for International Logistics, delivered to IAC the export subcommittee's recommendations for a joint industry/defense effort to expand the number of U. S. companies engaged in exporting weapons as well as the yearly volume of shipments overseas. Their approach seems not unlike a weapons' sale roadshow, including a more favorable policy on profits so as to stimulate export expansion; a combined effort by industry and the Departments of State, Commerce, and Defense to solicit foreign sales; and upgrading of "industrial-educational institutions" in the instruction of problems of military hardware export.

The IAC has also concerned itself with the possible threat to the defense industry from domestic unrest. After hearing the Army's Provost Marshal, Major General Lloyd B. Ramsey, imply that the increase in the national crime rate and the jump in "student unrest and disobedience" are indicators of a conspiracy to disrupt production, Mark Shepherd, Jr., president of Texas Instruments and IAC member since 1969, took the floor. In a paper specifically endorsed by several council members, Shepherd advocated an immediate and far-reaching program to combat the radical threat to industry. His program involves giving industry access to federal records and criminal data, so a job applicant can no longer conceal arrests for "loitering, illegal picketing, and disorderly conduct"—misdemeanor charges Shepherd views as indicators of "potential militancy."

In his conclusions, "wholeheartedly endorsed" by W. P. Gwinn, chairman of United Aircraft, and W. F. Rockwell, Jr., North American Rockwell's chief, Shepherd said that federal agencies, including the FBI, should share their intelligence with industry, and that special FBI agents should work closely with industry "to identify potential militants." He also proposed the establishment of a "central repository of criminal data for the purpose of screening job applicants."

Lest silly, groundless fears of civil libertarians and other bleeding hearts allay the government from taking industry's recommended course, United Aircraft's W. P. Gwinn warned that industry would do it themselves. Said Gwinn, "It is conceivable that if the present restrictions on the release of such information to industry are not modified, industry may in effect have to establish an undercover organization of its own in order to protect itself."

Advise and Deceive

But in reality this is what industry has already done through the vast and complex web of advisory committees. The growth of advisory groups in the last 30 years, and particularly in the last decade, has not benefited society through increased information and expertise in government. Rather, it has closed off the flow of information and reserved key governmental access points for the leaders of the corporate world. The widespread and pervasive influence of these committees marks the emergence of the American corporate state, where dominant political power is officially and quasi-officially invested in the massive industrial and financial conglomerates.

Clearly, we must eliminate this source of government by special interests. All unnecessary advisory committees certainly must go. And if some are indispensable, they should be open, representative bodies operating under adversary proceedings, thereby assuring that no interest will be officially enthroned. While not guaranteeing all societal interests equal political resources and influence, at least all interests will share an equal chance at information and access.

Prospects for such changes are not good. Even when diverse representation on advisory committees is legally mandated, the President puts himself above the law by either refusing to appoint the committees or stacking them with businessmen. In our present system, government by advisory committees, the public can have no more confidence in the advice of these panels than it has in the quality and reliability of the products of the industrialists who man them. ■

POLITICAL NUMBERS:
The Rise of the Small State

Political Numbers, analyzing election trends, public opinion, and voting patterns, will be a continuing feature.

by Michael Rappeport

Two basic elements in the reality of American political life, the dominance of the Senate by Southern Democrats and the control of Democratic presidential politics by men from heavily populated industrial states, are being altered by the changing pattern in reelection probabilities of senators.

Senators from the North and from small states, generally more liberal than their Southern counterparts, are fast inheriting the power granted by the seniority system that many of them oppose. And for the first time in presidential politics since 1924, a small state may produce a Democratic presidential candidate.

These two changes have much to do with the fact that, for at least the last six years, the best predictor of an incumbent senator's reelection chances has been the population of his state—the smaller the state, the better the chance. In the three elections held during the last six years, only 29 of the 44 incumbents from the 25 most populated states were successful, while an incredible 43 of 47 incumbents were elected from the 25 smallest states. Of the 15 smallest states, only one senator (Gruening of Alaska) was defeated.

The increasing ability of small-state politicians to be reelected, and hence acquire seniority, coupled with the aging of many of the Southern senators, means that the key positions will be taken over by men of a different ideology who are beginning to enjoy the fruits of elective longevity. This trend may be further accelerated by the fact that eight out of 11 Southern states fall into the large category where reelection probabilities are statistically less.

There are now three distinct seniority blocs among the 55 Democratic senators. (I leave Republicans out of my calculation because their seniority is not significant as long as the Senate is controlled by the Democrats.) The first group, composed of senators elected before 1958, comprises 19 senators, 10 of them Southerners. These 10 men, among the most influential in the Senate, control nine committee chairmanships, including such major ones as Appropriations (Ellender, Louisiana) and Armed Services (Stennis, Mississippi). Six of them, however, will be 70 or older this year, three of whom will be 75 or more, and one is already past 80.

In this same bloc of the 19 senior senators, the nine Northerners are, on average, younger. Only one, Stuart Symington, will be 70 this year. Five

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