

Wedding Presents, Cigars, and Deference

by Thomas Redburn

It's a Washington party. The details are unimportant. Perhaps it is part of the convention of the National Association of Broadcasters (NAB); or perhaps it is the annual gathering of the Federal Communications Commission Bar Association; or a celebration to kick off a new television program. There are probably two or three genuine celebrities present, but most of the people are broadcasting network executives, owners of television stations, lobbyists for the industry, communications lawyers, and a few government officials involved in broadcast regulation.

A broadcast lobbyist is wandering through the crowd. He spots a familiar face. Almost automatically he reaches into his coat pocket to find the cigar he is in the habit of offering to this man. This time, however, he discovers that he has run out. Oh well, he thinks, the man will never notice. But he's wrong. "Where's my cigar?" demands Nick Zapple.

Nick Zapple has come to expect such favors as a matter of course. In his mind, they go with his job. A cigar

may not seem like much, but on the face of it, neither does his job. Zapple is one of the more anonymous holders of power in Washington. The *Congressional Staff Directory* lists him merely as one of 21 staff counsels for the Senate Commerce Committee. And while the guide contains nearly 2,000 brief biographies of important Capitol Hill staff assistants, there is none on Zapple. To the people engaged in the politics of broadcast regulation, this is a startling omission, for, to them, Zapple is a central figure. Almost *the* central figure. As one communications lawyer told me, "For those of us who work in this world, from the way we talk and act, you'd think there was no one more important than Nick Zapple. It must seem a little unreal to an outsider, but we can't help it."

Zapple's importance derives from his position as chief counsel (and virtually the only professional staff) of the Senate Commerce Committee's Subcommittee on Communications. He can be seen at any public hearing of the subcommittee, sitting next to the subcommittee chairman, Senator John Pastore. There are seven senators on the subcommittee, but at most hearings the other six wander in and

out, asking only an occasional question. Whenever the senators appear they make a point of remembering to put up their name cards—in case anyone forgets who they are. There's no need for a name card for Zapple; everyone in the room already knows who he is. It is a small world, of which Zapple is a central part, that revolves around the Federal Communications Commission (FCC). More than a hundred people are in the room whenever the subcommittee meets, and they may be practically the only ones in the world who find the testimony and questions absorbing; to anyone else, the session would seem boring and irrelevant. But this insularity of interest is exactly what gives the comparative handful their influence.

Nothing makes this clearer than witnessing a typical subcommittee hearing. For instance, at the annual FCC oversight hearings in April, Richard Wiley, the FCC chairman, read a 31-page summary of all the Commission's activities over the past year. None of it was noteworthy enough to make the daily newspapers, yet within the audience, carefully following copies of the testimony, were many of the people who comprise the subgovernment within which broadcasting policy is set: the seven FCC commissioners, the Commission staff, the communications lawyers who make up the FCC Bar Association, the representatives of the television networks, the lobbyists for the NAB and the Association of Maximum Service Telecasters. You could also see reporters for the trade magazines like *Broadcasting*, *Television Digest*, and *Variety*.

Everybody Knows My Name

Nick Zapple is the man who brought all these people together. He sits next to Pastore, occupying one of those high-backed, overstuffed, leather chairs normally reserved for elected legislators. No small wooden chair set against the back wall for him. From his prominent position, he

surveys the crowd with a knowing half-smile on his face. He still has a flat-top out of the 1950s, like H. R. Haldeman before he grew his hair. He is clearly content with where he is and what he is, and with reason. Zapple claims he has been asked to become FCC chairman, but he's turned it down because he finds his present position more important and more interesting.

Zapple's reluctance to go to the Commission doesn't come from the fear that the FCC is unimportant or ineffectual. He, more than most people, is aware of the crucial part the FCC can play in regulating the television and radio industries. But although it is the FCC which draws most of the attention from the public, it is Zapple, not the FCC commissioners, who is spoken of with a mixture of fear and respect by broadcast lobbyists. One indication of this is that just one person I interviewed, a former reporter for *Broadcasting*, was willing to speak on-the-record about Zapple.

'You Belong to Us'

By now it is a truism that the FCC is not the independent commission the law says it is. The FCC has often been pointed to as a prime example of a regulatory agency "captured" by the industry it is supposed to oversee. While there is a good deal of validity to the charge, it also oversimplifies the process. What is often forgotten is that occasionally the FCC breaks out of its lethargy and does something unexpected, creating an uproar among all those broadcasters who depend on a docile Commission. When the smoke clears, the true pecking order is revealed, as the FCC is quickly reminded that it isn't allowed to just wander off on its own, doing whatever it feels like.

This is where Congress enters the picture. Newton Minow, FCC chairman from 1961 to 1963, tells the story of an encounter with House Speaker Sam Rayburn soon after

being appointed. Rayburn, exuding friendship, put his arm around Minow and said, "Just remember one thing, son. Your agency is an arm of Congress, you belong to us. Remember that and you'll be all right." Rayburn then warned Minow to expect a lot of pressure from outsiders. In retrospect, Minow says that "what he didn't tell me was that most of the pressure would come from Congress itself."

But what is wrong with that? Isn't that just democracy in action? Not exactly. Congress' relationship with the FCC is complicated by the awareness on the part of each legislator that he is dependent on local broadcasters for his access to the voters. A majority of congressmen regularly use free time offered by these local broadcasters to report to their constituents. Congressmen also know that broadcasters have a great deal of latitude when it comes to how politicians are presented on news programs. It may be only a simple matter like a post office opening. The local newscaster can say just as easily, "The Postal Service announced the opening of. . ." as "Congressman X announced the opening of a new post office. . . ."

At the same time, broadcasters are dependent on the FCC to retain their licenses, the government charters which assign them broadcast frequencies. Such a permit may be an entirely artificial product, but it has very aptly been called a license to print money. In any major city a television station can probably be sold for about \$50 million. Since the value of the station's tangible assets probably do not exceed \$3 million, the \$47 million remaining is the real value of the government franchise, the broadcasting license. What drives fear into the soul of a broadcaster is the realization that periodically these licenses must be renewed by the FCC. Theoretically, the Commission has the right to assign these valuable commodities elsewhere.

With their sway over elected



L. to R.: John Pastore, Nick Zapple

legislators, however, broadcasters have found an effective way to guarantee that the bonanza does not end. Paul Comstock, former vice president of the NAB, has said: "Most of our work is done with congressional committees. We concentrate on Congress. We firmly believe that the FCC will do whatever Congress tells it to do, and will not do anything Congress tells it not to do." Thus both Congress and the industry, united by a mutual fear of each other, coexist warily, like two boxers just sparring for a few rounds. They circle each other uneasily, both afraid to strike a serious blow.

Imagine what can happen, then, when this delicate equilibrium is disturbed. In January 1969, for example, the FCC voted to take away the license of TV station WHDH in Boston and award it to a competing applicant. The reasons for the decision were complex, the circumstances unusual, but the decision touched off a firestorm since this was the first time ever that the FCC had failed to renew the license of a television station.

Although the Communications Act explicitly holds that stations are granted no legal property right to their licenses, the unwritten code of the FCC was that licenses would only be revoked for high crimes and misdemeanors. But in the minds of the broadcasters, the WHDH decision



destroyed this delicate understanding. *Broadcasting* set the tone of the ensuing debate, charging that the FCC was out to "jeopardize broadcast holdings that, in the top 50 markets alone, are valued at more than \$3 billion. . . . The shock waves of the losses would be felt by thousands of big and small stockholders alike, threatening the financial underpinnings of the broadcast industry and possibly swamping many small broadcast groups."

The only hope of stemming the tide of anarchy seemed to be Congress. After enjoying being the object of an almost indecently intensive lobbying effort, Senator Pastore vowed at the NAB convention to protect the precious licenses: "It is my deep-seated conviction that public service is not encouraged or promoted by placing the sword of Damocles over the heads of broadcasters at renewal time."

When Pastore and dozens of other legislators introduced bills to change the Communications Act to prevent a recurrence of the WHDH decision, the FCC got the message. It adopted a policy statement which had approximately the same effect as the proposed congressional legislation. Although the FCC policy statement was voided for a number of intricate reasons by the Federal Court of Appeals, the crisis was over. Broadcasters became confident that the

FCC had learned its lesson and had no further interest in threatening the sanctity of broadcast licenses. Still, license renewal hearings around the country began to attract competing applicants with annoying frequency, so the NAB continued to push for congressional protection. In 1974, with congressional elections near, the House passed a new license renewal bill providing broadcasters with a number of protections against challenges. The Senate followed suit with a slightly different bill. It appeared that the broadcasters had finally gotten what they wanted. But Rep. Harley Staggers, chairman of the House Interstate and Foreign Commerce Committee, was angry at the broadcasting lobby for forcing through a provision extending the license period from three to five years. Peevishly, he refused to appoint conferees and the bill died at the end of the session.

Zapple Days Are Here Again

The license renewal issue is the most important recent example of the lengths to which the broadcast industry will go to protect itself from outsiders. What has Zapple's role been in these efforts? Zapple served as a quarterback for the industry lobbyists during the 1974 attempt to push through the bill. He met with broadcasting representatives frequently to plan approaches to individual senators. This went on behind the scenes, usually at lunch or dinner, because Pastore, for reasons of his own, tried to avoid being too closely identified with the proposed legislation.

But in this case, Zapple tried to use his position to go beyond the legislative intent of the Senate. The 1974 bill was not a complete sell-out to the broadcasters. Yet Zapple was able to undermine the bill's more public-spirited provisions. He did this through his position as chief counsel of the subcommittee, which gave him

responsibility for writing the committee report on the bill. These committee reports, which are long and detailed documents written by the staff and almost never read by the senators, are important because they help the courts and administrative agencies interpret the legislative intent of Congress. Normally they adhere as closely as possible to the language of the bill and the oral discussions in committee. In mark-up sessions, Zapple surprised some observers by taking "a public interest line." But when it came time to write the report, Zapple, who had the actual writing done by someone else, attempted to have the report phrased in such a way that it, in the words of one observer, "changed the meaning of some sections 180 degrees."

License renewal protection is not the only issue in which broadcasters have used congressional committees to alter the actions of the FCC. Another example involves cable television, which the broadcasters see as a threat to the preservation of their markets. The FCC has, under the prodding of Pastore, generally worked to delay the development of cable systems because of this fear. Pastore was also angry at cable television because back in 1960 the industry at the last minute failed to fully support a bill he introduced to regulate them. Originally assured of the support of the industry, Pastore discovered that one faction of cable system owners was working against him and they managed to defeat the bill on the Senate floor by one vote. Pastore has yet to forgive them.

The dispute between cable and conventional broadcasting is complicated and the issues are generally not clear-cut. But here again Zapple has been able to help the far more powerful broadcasting industry against competitive efforts. For example, consider what happened when the FCC, under the chairmanship of Dean Burch, attempted to institute regulations governing the infant pay cable television industry. Over a year's time the FCC went through the long

administrative procedures leading to the writing of new rules. The Commission, after holding hearings, oral arguments, and the like, was finally prepared to issue the rules in early 1974. Burch pledged to finish the job before he left the FCC to join the sinking White House. But only a few days before Burch was to depart, with rumors flying in the trade press, Gordon Rule and Leonard Goldenson of ABC went to Zapple and demanded that something be done to prevent the FCC from acting. Zapple persuaded Senator Magnuson, chairman of the full Commerce Committee, to talk to Howard Kitzmiller, the FCC's mild legislative liaison. Kitzmiller, who spends more time in Zapple's office than in his own, dutifully warned Burch that Zapple and Magnuson were displeased. Burch was surprised and angry that this was happening at such a late date. Burch asked for a meeting with Pastore, but Zapple, performing his role of buffer for the Senator, tried to put Burch off. Much of Zapple's importance derives simply from his control over access to Pastore on communications issues. Finally Burch managed to see Pastore by going directly to the Senate without an appointment. Pastore, sources say, "yelled and screamed" that the FCC was trying to ruin the public's right to free programming. Burch tried to persuade him that the rules were not a serious threat to free broadcasting at all. Yet when Burch left the FCC soon thereafter, nothing had been said or done about the new rules for pay cable TV.

Zapple seems to relish such opportunities to wield his power and to keep those who must deal with him on edge. During the most recent congressional effort to provide appropriations for public broadcasting, he could not resist playing games. What Zapple did was to create the impression that Pastore was wavering in his support for the money the public broadcasting system was asking for. Although the evidence suggests that Pastore never had any doubts

about supporting the funding request, Zapple's maneuvers created such furor among the public broadcasting executives that they courted Zapple shamelessly. Earlier the Public Broadcasting Service had given prime time coverage to the subcommittee's hearings about public broadcasting, an event lacking most of the elements of drama of, say, the Watergate hearings. Nonetheless, while somewhat incestuous, the whole episode isn't particularly surprising. What is odd about the whole affair is that even in the one instance where he was on the right side, Zapple could not help acting in his traditional fashion and promoting his own importance.

A Gross Mistake

Another way in which Zapple uses his position is to make constant, petty demands of the people he deals with. For instance, Zapple once asked Doug Anello, then general counsel for the NAB, to send a dozen steaks to him at his home on Cape Cod. It seems that you can't get good meat on Cape Cod. The steaks were ordered from Bolton and Smart, a meat company in Boston, but by mistake Zapple was sent 12 boxes of 12 steaks each. The NAB picked up the tab and Zapple never even said thank you.

Over the years, Zapple has demanded that industry lobbyists take him to lunch, pay for his liquor, and generally supply him with what Zapple sees as all the appropriate perquisites of an important position. In nearly all cases these gifts have been minor. Zapple was once caught by Jack Anderson accepting a number of gifts, including a \$1,000 silver service set, from Don Burden, a broadcaster in trouble with the FCC, but that seems almost an exception to his general pattern. What seems to motivate Zapple is not the value of the gifts, but the recognition of importance and power they represent.

For instance, in the summer of 1968, one of Zapple's daughters was married. It was important to him,

naturally, that his daughter have a fine wedding appropriate to his station in the world. He solicited presents from a number of broadcasters and lobbyists for the event. Among other things he asked one group to supply the champagne, another to bring a turkey. A Seattle television station sent his daughter a color television set.

The pattern of relationships between lobbyists and public officials is often smoothed, of course, by free meals and other perks. What is strange about Zapple is how he has come to expect such things as his due. You can be sure the lobbyist mentioned earlier did not again forget to bring Zapple a cigar. To many of those who know him, Zapple seems to keep a mental ledger, with each token of friendship neatly catalogued in place. One former member of the White House staff says that it is his impression, "Zapple has never picked up a tab in his life."

At times he can carry things too far. It isn't enough that he be given just one cigar, I've been told. There are times when he's reached into the box, as it is being passed around the dinner table, to take four or more. Such behavior leads some lobbyists to disdain Zapple for his boorish habits. It's as if Zapple wanted to be sure that the important people he deals with cut him in on the good things, yet doesn't know quite how to respond when they do.

This sets up a tension in the relationship between Zapple and the lobbyists. *Broadcasting*, the mouthpiece of the industry, even felt called upon once to mention Zapple's outstanding ability for sponging: "He is generally conceded to be the most knowledgeable man on Capitol Hill when it comes to broadcast regulation. He has acquired a store of information by assiduous research. At almost any accessible gathering of broadcasters, especially if the wines are vintage and the cuisine dependable, Mr. Zapple is to be found collecting expertise and often disseminating it."

What strikes one about so much of this is the overwhelming pettiness of his demands. It all appears far more important for its ritual content than for the gifts themselves.

Present at the Creation

Zapple has been connected with the rise of television almost from the beginning. From his position he has been a part of practically every important piece of broadcasting legislation or congressional study of the last 25 years. His service on the committee predates Pastore, who became subcommittee chairman in 1955, by almost five years.

He has been a constant disappointment to those trying to push Congress in a more liberal direction: "At first I thought Pastore was just a servant of the broadcasters and that Zapple was venal, even corrupt," says one source who's tried to influence legislation in the Senate. "But I don't think so anymore. Pastore has divided impulses between a populist streak and his softness toward business interests. The frustrating thing is that time and time again Zapple has missed the opportunity to push Pastore in the direction of serving the public."

Such idealism seems incongruous when talking about Zapple, for he is clearly a man without idealistic impulses of his own. While it is certainly true that a staff assistant can be an important force for good, Zapple is in an entirely separate category. But it is undeniable that he has power, even if it is primarily only the power to promote the interests of an already rich and important group.

This may help explain Zapple's reluctance to assume the post of FCC chairman. Zapple himself knows the advantages of relative anonymity—he does not need or crave the limelight. You only need contrast the publicity Nick Johnson received when he was a relatively ineffectual FCC commissioner, with Zapple, who rarely emerges from the shadows. Johnson's power to enlist the press was impor-

tant, but ethereal, quickly fading away like the smoke from a gun. Yet Zapple continues to be courted with a deference which borders on sycophancy.

Despite an occasional success by outsiders in pushing the broadcasting subgovernment in a more liberal direction, it is still true that most of the questions concerning industry policy are decided by a small and close-knit group. Against this backdrop, it is particularly disturbing when journalists from the trade press do little to overcome the closed nature of the subgovernment. A number of trade reporters are aware of the practices which have been described here, but they are never written about. Partly there is the sense that such matters aren't really news, for they simply describe the way things are. More important, though, is the manner in which reporters are frequently drawn into the net by their dependence on people like Zapple. One former reporter told me: "Zapple was a good source. When he said, 'This is what we're going to do,' it happened. He was nearly infallible. Consequently I could go in and talk to him on a not-for-attribution basis for 20 minutes and emerge with one or two good stories. I didn't have the time to chase all over town."

It is difficult to say how different television would be if these arrangements were transformed. Practically all domestic politics is organized along essentially the same line, with each congressional fiefdom supporting its own world of executive branch bureaucrats, lobbyists for the affected interests, and assorted lawyers, consultants, and trade reporters. Perhaps these institutional arrangements arise from what the public really does want, or at least will tolerate. Still, you don't have to be a Marshall McLuhan devotee to realize that television has had some fairly profound effects on our lives and that the question of control of such a medium deserves to be considered among a far wider public than it is now. ■

Anything You Can Eat, Drink, or Fornicate In One Afternoon

by Peter Gruenstein and Daniel West

Although even the most minor peccadillos of congressmen are now subject to public scrutiny, few have bothered to monitor the behavior of the anonymous aides who staff congressional committees. These aides, who earn up to \$36,000 a year, write much of Congress' legislation and often have tremendous influence over both the form and substance of bills. Committee staff members are therefore important to lobbyists, sometimes more so than the congressmen themselves. Yet relatively little scrutiny has been given to the relationships between these aides and the lobbyists who swarm around Capitol Hill.

Only five of 39 congressional committees we surveyed have rules prohibiting committee staff members from accepting gifts from special-interest groups or lobbyists. Spokesmen for the committees without restrictions on gifts generally argue that such rules aren't necessary.

"We count on the integrity of staffers," remarked George Murphy,

Jr., of the Joint Committee on Atomic Energy. "We're like Caesar's wife down here," said Howard Greenberg of the House Small Business Committee in arguing that a rule would be superfluous because staff members on his committee are personally above suspicion. Jack Swigert, executive director of the House Science and Technology Committee, said it is difficult to precisely define a conflict of interest. He added that if anything arises which might involve a possible conflict, the staff member is encouraged to talk to him about it. Swigert added, "Oh, there's nothing that I actually see. But, hell, I'm sure it goes on."

Some committee staff spokesmen take an ostrich-like approach on the whole issue. John Martin, staff director of the House Ways and Means Committee, which has no rules on gifts, said: "Well, I suppose it goes on. But I don't want to know anything about it." Dudley O'Neal of the Senate Banking Committee said: "Over the years, I guess just about every organization we do business with has sent up a case of whiskey at Christmas. . . . If presents are given to staffers outside of this office, I

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