Congressional committee staffs:
who’s in charge here?

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When I first came to Washington, fresh from academe, I was assigned by National Journal to write a story about a conference committee that was deadlocked over the use of Highway Trust Fund money for mass transit. The $23-billion authorization bill was the most significant piece of legislation likely to come out of the House Public Works Subcommittee on Transportation that year (1973), so I decided to interview its chairman, the late John Klucyznski, from Chicago.

When I arrived at his office, the receptionist said that the Congressman would be glad to see me in a few minutes. While I waited, she telephoned one of the committee-staff professionals working on the bill: The Congressman wanted him to sit in on the interview, she said, in case I asked any technical questions. This seemed like a routine procedure, until we got to some of those “technical questions.”

I began the interview with what I thought was an easy question (generally a good way to get an interview going): “What makes this issue important?”

“This is a tremendously important bill. It involves millions of dollars,” Klucyznski began to answer, and then paused. “No—billions, isn’t it?” he asked, turning to the staff aide.
The significance of that brief exchange was too clear to be missed, even by a newcomer. I was initially shocked, but quickly began realizing that to understand Congress, I had better start paying attention to the role of its staff. That realization has only been confirmed by subsequent experience. Rarely do Representatives or Senators depend as totally on their staffs as Klucyznski did that day, particularly not concerning a major bill handled by a subcommittee they head. Nevertheless, it is not unfair to suggest that Congress as a whole has become the institutional embodiment of Klucyznski's spirit. Congress could not even begin to function today without its considerable legislative bureaucracy.

This represents a revolutionary change in an institution that, as recently as 1945, saw no need for permanent professional committee staffs. The Congressional budget, now approaching $1 billion, is almost 45 times as large as it was three decades ago. In that same time, committee staffs, the most important element of the Congressional bureaucracy in policy terms, have increased fourfold. These numbers only begin to tell the story of staff influence, however. More impressive are the kinds of tasks Members of Congress have become willing to delegate to their staffs. This has reached the point where some Members publicly ask whether they or their staffs are in charge.

In principle, of course, the Members hire, fire, and therefore control their staffs. This is true only to a limited extent in reality. Staff influence arises from the simple fact that Members have more to do than time to do it. The pressures of time prevent House subcommittee members from knowing the details of all but the most important bills that pass before them. In the Senate, where Members serve on many more committees and subcommittees than their House colleagues, few have the time for even that much. The most they can do is learn the major issues of the major bills.

As a result, staff influence extends well beyond the housekeeping functions familiar to most of us. We all know, for example, that committee staffs arrange hearings, see to the printing of the testimony presented there, draft bills, and hold stacks of paper with reams of information for Members during debates. But the way staffs can substantively affect every step in the legislative process may be less familiar. For example, their ability to run committee investigations, the results of which they can skillfully leak to the media,1 gives

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1 I belong to an association of professional writers, called "Washington Independent Writers." Its October 1976 newsletter contains the following advice for those who want to cover Congress: "Reporters sometimes go for the star,
them influence over the items Members choose to put on the legislative agenda. Once something is on the agenda, the staff works to assemble a coalition supporting a specific piece of legislation. As it sets up committee hearings, the staff will reach as broadly as possible without sacrificing the goals the chairman, often at their urging, has adopted. Then, when a bill is “marked up” (amended and passed in committee), the staff will be expected to reconcile competing interest-group demands. When conflicts cannot be resolved, the Members may then learn enough about the details to weigh the political costs of compromise. But if the major differences raised by the normally vocal interest groups can be settled otherwise, most Members will be content to leave the details to the staff, as well—details that can frequently mean everything to whole industries or groups of people.

A classic example of what can happen when a Member fails to understand the detailed language written by a staff occurred when Congress was finishing work on the 1974 version of the omnibus energy bill. The Chairman of the Senate Public Works Committee, Jennings Randolph, from the coal-producing state of West Virginia, wanted very much a bill to encourage electric-utility companies to convert to coal. Environmental groups were not happy with the idea of burning more coal, however. Working closely with friendly staff aides to the Chairman of the Public Works Subcommittee on Environmental Pollution, Senator Edmund Muskie, and the ranking minority Member, Senator James Buckley, they wrote strict environmental standards that have deterred conversion. At the time, no one protested the harsh regulations: The electric industry did not want to convert, and the coal interests either failed to notice or failed to state their case clearly. Randolph thought he had won a great victory for coal, and apparently did not catch on until the New York Times, several weeks after the bill was enacted, reported the Environmental Protection Agency’s interpretation of the law’s likely impact. This story is not meant to belittle Randolph. Similar mishaps occur almost daily, especially in the Senate. What makes the example interesting is its very likelihood.

The system that leads staffs to have this kind of influence is, in principle, a rational one. The problems result from how they ex-

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The big name. We forget that the key people are really the staff people. They are the people to cultivate. They are dying to talk to somebody and will help you a great deal. Their names never appear because everything they do bears the name of their Senator or Congressman, but they get terribly excited when they help put an important story out. In the majority of cases, they know what they are talking about when the Senator doesn’t."
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exercise the influence they must have for the system to operate. The reason for committee staffs, and the source of their influence, is an extension of the reason for having committees: the idea that Congress is best served if Members serve on specialized committees, with the vast majority accepting the expertise of the few on most issues. Committee staffs grew when it became apparent that even the committee members needed help if Congress was to get the information required for making informed decisions. Congress needs staffs, just as it needs specialist Members, to help it evaluate the flood of material from the outside, and perhaps even come up with ideas of its own. For the most part, the system works. It seems no accident that Congress, the most powerful parliamentary body in the world, is the only one with much staff of its own. Without its staff, Congress would quickly become the prisoner of its outside sources of information in the executive branch and interest groups.

Congress appears to have avoided this difficulty—but at what cost? The new staff bureaucracy and the “legislative explosion” it has helped create threaten to bury Congress under its own paperwork, just as surely as if the staff had never existed. Congress has become just as incapable of evaluating the biases in the information from its own staffs as it has from sources outside Congress.

Not all Congressional staffs produce biased information, however. From a Member’s perspective, the problem is that the staffs have grown so haphazardly that almost a specialist’s knowledge is required to determine what to expect from different staffs. Nonetheless, committee staffs do fall into a few major categories, with characteristic strengths and weaknesses. The most basic distinction is between partisan and nonpartisan staffs.

**Partisans and nonpartisans**

Congress first acknowledged its need for permanent committee-staff professionals in the Legislative Reorganization Act of 1946. Committees had been hiring clerks for about a century, but for the first time, each standing committee was permitted, upon a majority vote, to hire four professional and six clerical staff aides. (An exception was made to allow the two Appropriations Committees to hire staff “as necessary.”)

At least for the first few years, most committees hired nonpartisan professionals, frequently experienced civil servants from the agencies within a committee’s jurisdiction (in sharp contrast to the current practice of hiring inexperienced partisans, straight out of law
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school). The chairman and ranking minority member would generally agree on a staff director, who would then be confirmed by the full committee. If other staff positions fell open, the director and other senior staff members would screen the applicants before presenting the top candidates to the ranking members of both parties. Their joint recommendation would routinely be followed by full committee approval. (The House Armed Services Committee is a committee that still claims to use this procedure.)

This system began to break down rather quickly, as committees began to feel they needed more than four staff professionals. Instead of amending the 1946 Act, Congress created a second kind of staff: the supposedly temporary, annually funded “investigative” staff. On most committees, these quickly became semipermanent slots under the de facto control of the chairman. The four permanent professional slots became equally partisan positions on most committees in fairly short order.

The erosion of the original notion of nonpartisan professionalism was formally recognized in the Legislative Reorganization Act of 1970, which, for the first time, permitted the minority on each committee to hire some staff aides (just how many is a battle the Democrats fight all over again every two years). Although the 1970 Act was silent about the majority staff, its statements about the minority presupposed the propriety of partisan staffing.

Staffs can be partisan at the level of the full committee or the subcommittee. On some committees, such as the Commerce and Finance Committees in the Senate, the chairman and ranking minority member control most of the committee staff, perhaps giving control over a few positions to other key committee members. Others, such as the Senate Judiciary Committee and the House Interstate and Foreign Commerce Committee, divide the power to hire and fire the staff among the subcommittee chairmen and ranking minority members. Most staffs today are partisan de jure as well as de facto, but a few, despite the 1970 Act, remain nonpartisan.

The staff of the Joint Committee on Internal Revenue Taxation is the classic example of a competent staff of neutral professionals that operates in the spirit of the 1946 Act. It behaved in this fashion after the 1946 Act was passed, when John Manley studied the Joint Committee from 1963 to 1966, when David Price studied the Senate Finance Committee from 1966 to 1972, and it continues to do so today.2

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2 See John F. Manley, "Congressional Staff and Public Policy-Making: The Joint Committee on Internal Revenue Taxation," *Journal of Politics*, Vol. 30 (Novem-
The Joint Committee on Internal Revenue Taxation was established in 1926 with little substantive jurisdiction. The 51-member staff—up from 39 in 1974—serves as the primary tax-policy staff for both the Senate Finance Committee and the House Ways and Means Committee, exercising the kinds of responsibilities most committees reserve for their partisan staff. Laurance N. Woodworth was the chief of staff for 12 years before he joined the Carter Administration as the Assistant Secretary of the Treasury for Tax Policy. Woodworth (who received his Ph.D. in public administration from New York University in 1960) had worked for the joint committee since 1944. Determinedly nonpartisan, he regarded his staff almost as if they were civil servants working for the legislative branch. One can get some notion of how unusual this is from the fact that in 1972 Woodworth became the first Congressional employee ever to win the Career Service Award of the National Civil Service League.

Woodworth is an incredibly energetic, competent public servant, whose shoes will be hard to fill. He was admired by almost every one who had to work with him, including those who had reason to be unhappy with the policies the two tax committees were writing. Teams of experts would work on specialized aspects of tax policy, but the task of orchestrating the whole effort—from preparation of a bill by the Ways and Means Committee to modification by the Senate Finance Committee, and in conference—fell to Woodworth. A few Members, especially on the Republican side, thought he tried to do too much, thereby opening himself up to error. But there can be no doubt that Congress’ willingness to trust the judgment of Woodworth and his staff concerning numerous and various issues rested in part on the respect they felt for his ability and integrity. This sense of trust never would have developed to the extent it did if Woodworth and his staff were partisan—or if they did not know the limits beyond which staffs should not go.

The connection between the staff’s nonpartisanship and the Members’ willingness to defer to its judgment is evident at every step of the legislative process, but nowhere more so than in the first stages. Before a major tax bill comes up, the joint-committee staff holds...
seminars for Members and legislative assistants to brief them on the major issues, supplemented with background papers that go beyond anything available to any other Congressional committees, except perhaps the budget committees.

Next comes a step that no other committee follows. Instead of beginning with a bill, the Ways and Means Committee normally holds hearings on a loose set of proposals that are not put into legislative form by the joint-committee staff until after the hearings, debate, and an initial "markup." In this way, the Members and staff avoid taking a position on a bill before the committee has had a chance to work its will. This procedure, designed to help foster Ways and Means solidarity and thus preserve its power on the House floor, clearly depends upon the faith Members have that their sometimes loosely worded debates will be accurately translated by the joint-committee staff into the appropriately technical legislative language.

The burdens of neutrality

What are the institutional pillars supporting this unusual staff? To some extent, the mere fact that it serves two distinct committees compels some degree of nonpartisanship. There is no way one staff could serve both committees at the same time if either one felt the staff deliberately favored the other. But although there is a joint hiring arrangement, there are other factors at work.

Woodworth's predecessor, Colin F. Stam, was thought to be impartial between Democrats and Republicans, but not between those who wanted major tax reform and those who did not. Woodworth deliberately tried to correct this perception of the staff and its director, and he succeeded. Woodworth's successor, Bernard M. Shapiro, may have a difficult time preserving this achievement, however. Some pressures that have been developing over the past two years are only likely to grow in the future.

There has been grumbling by Ways and Means Committee Republicans about the performance of the staff in the last Congress. There also were reports in early 1976 that Senate Finance Committee Chairman Russell B. Long was upset by the joint-committee staff although the reports were not confirmed by Long or his staff. No one suggested that Woodworth or his staff had changed. Rather, the common complaint was that Woodworth's ability to work with all sides even-handedly was compromised during 1975 and 1976 by changes within the committee itself, and by the committee's growing workload.
Twelve new Democrats, almost all liberal, were added to the 25-member joint committee at the start of the 94th Congress—fully one third of the Members were novices who needed Woodworth's seminars on the elements of tax policy. But unlike the newcomers of past years, these freshmen had definite policy ideas, and were unwilling to serve a long apprenticeship before expressing them. This impatience, combined with a lack of concern for consensus building, which distinguished the new Members from the old, resulted in a committee that differed sharply from the one Woodworth worked with for 30 years.

As the Republicans saw it, Ways and Means Committee Chairman Al Ullman felt it was more important to placate the committee's liberals than its conservatives. But neither he nor the freshmen knew the tax code well enough to work out their compromises without the joint-committee staff. Ullman would work something out in principle with the liberal bloc and then go to the staff to put the agreement in concrete form. As a result, according to Representative Barber B. Conable of New York, the new ranking Republican on the Ways and Means Committee, "Larry [Woodworth] was being called on to do a lot more extrication work than he had had to do. He did not enjoy the situation, if I read the signs right. He preferred to be the 'grey eminence.'”

By “extrication work,” Conable meant that Woodworth was being asked to step beyond the details normally left to him, and to come up with policies that would respond to the contradictory pressures being placed on Ullman by the committee majority. Although this kind of task is normal for most staffs, it used to be done by the former Chairman of the House Ways and Means Committee, Wilbur Mills.

It should be noted that even if Conable's complaints were accurate, the joint-committee staff under Woodworth was still far less partisan than other staffs. Republicans in both the House and the Senate still felt completely comfortable going to the joint-committee staff for information. They merely felt that the partisan pressures created by the new Members left the nonpartisan staff less time to work with them.

Nevertheless, the current situation says something about the conditions that must be present for nonpartisan staffing to work. At a minimum, a staff can act as a committee's teachers only if the Members want to be taught. Those who do not want to do the detailed

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work Mills did may have little patience with a staff that limits itself to explaining the impact of various policy options and leaving to the Members the burden of both understanding and deciding.

The success of the joint committee’s nonpartisan staff also undoubtedly rested upon a sense of policy moderation within the committee, a willingness to let the opposition have the resources to develop its case before the majority became locked into a bill. In the past, the Ways and Means Committee was deliberately filled with moderates who felt their interests were best served by resolving their differences within the committee. Serving on a committee considered by others to be powerful meant a great deal to most of them.\(^4\) Since the appearance of their power was enhanced by the committee’s unmatched record of success on the House floor, the Members had a strong incentive to work things out among themselves. The new Members, perhaps because they have not yet made Congress their career, seem less interested in the committee’s power within the House. They are more willing to amend the committee’s bills on the floor. They even joined in asking the Democratic Caucus to instruct the Rules Committee in 1975 to reject the chairman’s request for the customary closed rule on a tax bill (i.e., no amendments to be considered). They are more interested in policy than in unanimity within the committee. If this attitude prevails in the long run, it may make it difficult for Shapiro to preserve the nonpartisan tone that Woodworth established.

Finally, the ability of the joint committee to retain its nonpartisanship rests at least in part upon the nature of its area of concern, taxation. The tax code is extraordinarily detailed, reflecting Congress’ desire to keep a degree of control over tax policy that in other areas it might leave to agency regulations. Congress must therefore have the equivalent of professional civil servants on its own staff. Other committees, which tend to make broad policy determinations and then leave the details to the executive branch, do not need the same kind of staff.

Moreover, the nonpartisanship of the joint committee is reinforced by the nature of its expertise. The Ways and Means Committee and the Finance Committee both deal with highly partisan subjects, but there is nothing about the kind of information required that draws the tax expert, as expert, into the partisan fray. Joint-committee staff members are expected to report how much the Treasury might gain or lose from a particular tax provision, given specified economic

\(^4\) See Richard F. Fenno, Jr., *Congressmen in Committees* (Boston, Little, Brown, 1973), pp. 2-5.
assumptions, or what options exist to a particular provision the committee might consider, with what impact on revenues. OrdINarily, the staff is not expected to defend one set of economic assumptions against another, or to take a position on the need for stimulating or restraining the economy. Nor do they have, as tax experts, any particular reason for entering debates over redistribution, loopholes, or other items that divide the Members. Whatever opinions the staff may have on these matters do not follow automatically from the kind of expertise it provides the committee.

This is in sharp contrast to the nearest analogue to the joint-committee staff, the Congressional Budget Office (CBO). The CBO is regularly asked to discuss the kinds of economic issues—like policies to curb inflation—that require analyses reflecting theoretical differences. Keynesians and monetarists have different views about deficit spending. Their disagreement happens to coincide with the partisan differences between many Democrats and Republicans, but they are nonetheless technical differences among experts. It makes little sense to hire a professional economist and then ask him to be neutral. Professionals who analyze the impact of criminal rehabilitation, federal aid to education, or a host of other subjects must be expected to have opinions about their areas of expertise. In that respect, it is impossible to be both expert and neutral on all questions of policy. If Congress wants balanced opinions, it can hire experts with different professional training, thus permitting opposing opinions to filter through to the Members. Congress would not be helping itself if it hired experts and then asked them to shed their expertise in the name of neutrality.

Nevertheless, there are crucial differences between expert, nonpartisan staffs and partisan staffs. These differences are evident in the activities the staffs engage in and the way they present their information to Congress.

**Partisan staffing**

The main reason committees have moved away from nonpartisan staffing since 1946 is the political self-interest of chairmen, who want aides responsive to their political needs. Instead of civil servants with years of agency experience, chairmen began looking for young lawyers with politically compatible ambitions. These new staff aides were also told to do different kinds of things: Instead of being asked to interpret, analyze, and react to proposals originating elsewhere, they were frequently told to seek out good publicity
for their chairmen, either through investigations or new legislative ideas to which a chairman’s name could be attached.

The desire among Senators and Representatives for legislation for which they can claim credit has led to what some have called a “legislative explosion”: If there is a problem throw a law at it; if the law fails to achieve the desired end, it can be fixed up later. A chairman needs some legislation before the next election, to show his “deep concern.” Staffs attracted to and hired for this kind of work tend to differ significantly from the professionals on the nonpartisan staffs. Instead of “grey eminences” hired in mid-career, they tend to be young people who want to “cast a shadow,” to use Harry McPherson’s term describing his own feelings as a young lawyer coming to work for Lyndon Johnson in the 1950’s.5 Many, like McPherson, will drift toward the executive branch, before ending up as lawyer/lobbyists. Some will become regulatory commissioners instead. Still others run for Congress—eight former aides sought first terms in 1976. (Six were successful.) Only a few stay on Capitol Hill as staff aides, and only a few of them ever come to resemble the older nonpartisan professionals, with their institutional perspectives and memories.

The new partisan staffs bring some things that Congress needs, but the same staff temperament that can help Congress can also get it in trouble if not kept in check. Partisan staffs are particularly useful in unearthing information others have an interest in keeping hidden. Nonpartisan staffs trained to summarize arguments coming from the outside do not have strong track records as investigators, with the important exception of the General Accounting Office (GAO). Although its nonpartisanship compels GAO to sit and wait patiently for someone to request an investigation, the result is a laudable thoroughness that could not be expected for every investigation conducted by Congress in a single year. Congress needs GAO, but it also may need the kind of work done by its own partisan committee staffs. A look at one of these staffs will show why.

5 McPherson recorded his thoughts as he drove into Washington on the trip that was to take him straight from law school to Johnson’s staff: “Why did I choose this ‘experience,’ instead of beginning a law practice and finding a responsible place in a small community? Partly because I wanted to find out what goes on in the councils of power—very much as a subway straphanger wants to know about scandals among the famous. Partly because I want to ‘do good,’ and a decade after Roosevelt it still seems as if Washington is the grand arena for doing good. Partly—perhaps chiefly—because I want to cast a shadow, to feel, however vicariously, that I have affected significant events and therefore exist.” (A Political Education, Boston, Little, Brown, 1972, p. 8).
The information monopoly

When Democrats reorganized the House Interstate and Foreign Commerce Committee in early 1975 by giving control of the committee staff to the subcommittee chairmen, the two Representatives who gained the most were John Moss, who took over the Oversight and Investigations Subcommittee, and John Dingell, who became chairman of the newly formed Energy and Power Subcommittee. Both subcommittees are partisan, and both have used their staffs to uncover facts that might not otherwise have come to the attention of Congress. The work of the two subcommittees overlapped a great deal in 1975, as Moss' staff spent a lot of time investigating natural-gas prices. Yet the two subcommittees make for an interesting contrast.

The Energy and Power Subcommittee is an example of the importance to Congress of having an independent check on the information coming from the Executive. There are 15 people working for the subcommittee—13 on the payroll, and two assigned from the full committee staff—including five lawyers, an econometrician, two economist/investigators, one investigative reporter, an administrative assistant, and five research assistants (who also do clerical work).

The staff is obviously structured to be a fact-finding body, and the reason is not difficult to determine. Throughout the debate over oil-and-gas-price deregulation, Congressional Democrats were suspicious of the information they were receiving from the Ford Administration—largely because most of it came from the energy industry. The Federal Energy Administration accepted the figures of the American Petroleum Institute concerning petroleum reserves, and the Federal Power Commission (FPC) used American Gas Association figures for information about natural-gas reserves.

To counter this apparent monopoly, the subcommittee went about gathering information in three ways. First, and most traditionally, it held hearings to collect data and opinions from interested parties. Second, it used its investigators to uncover information that was known to the energy industry and the executive branch, but was not coming out voluntarily. Finally, it occasionally asked its own experts or outside consultants to do original research, or to verify work done by others.

Consider an example of the subcommittee's methods: In October 1975, the staff learned that the FPC had known for four years that natural-gas suppliers were deliberately holding gas off the interstate market and failing to fill their contracts, as they waited for future
deregulation. But the FPC did nothing about this situation until pressured by Congress and the courts. How did the subcommittee come up with the evidence against the natural-gas industry? Subcommittee-staff director Frank Potter said that one of the jobs of his staff is to know the middle-level bureaucrats concerned with an issue: "You develop working relationships. After a while you get to be good at listening to the sound of the trees and knowing what's thrashing in the underbrush."

Most committee-staff "research" is not original, but merely an assembling of facts already known. Every once in a great while, however, the staff makes an original contribution. During the development of the omnibus energy bill in the second half of 1975, the Ford Administration had been pushing for gradual imposition of a $3-per-barrel oil-import fee, and the subcommittee's young econometrician, Walter W. Shroeder III, tried to determine the likely economic impact of the Administration's proposal. Using an identical computer model, he found that the Administration had understated the adverse economic effects by about half. At first, the Administration and Shroeder had suspicions about each other's honesty, but eventually they began getting the same or similar results—which were closer to Shroeder's estimates than to the Administration's original figures. The result of this staff effort was summed up by one aide: "If you want to know why the President signed the bill [the Energy Policy Conservation Act that maintained price controls], that's why."

How did partisanship contribute in this case to uncovering information that Congress otherwise would not have had? The subcommittee staff was loyal to Dingell, and shared his suspicion that the information it was receiving from the Administration was biased. Thus, unlike a nonpartisan staff, it began with the idea of "looking for the holes" in the Administration's position. It did not have to start from scratch in its analysis, or give equal weight to opposing claims. Such a procedure may not be scholarly, but it does save time—a precious commodity.

Even if the Administration and Congress were of the same party, there is still reason to believe that the same procedure would have been followed. A partisan staff is actually loyal not to a party but to a person—the chairman, or ranking member. Although Dingell might have been more in tune with a Democratic Administration, his political self-interest would still have led him to "look for the holes," and seek to stamp his own mark on Administration proposals or come up with proposals of his own.
The dangers of partisanship

If the Energy and Power Subcommittee shows the virtues of partisan staffing, the Oversight and Investigations Subcommittee shows its dangers. In its investigations, the subcommittee learned many things of interest about the gas industry, but repeatedly reported only that part of the story that best fit its preconceptions.

When the subject of gas deregulation came up on the House floor in February 1976, Moss' subcommittee prepared a report—specifically labeled a "staff report" that had been neither approved nor disapproved by the committee—called "Questions and Answers About the Nature and Causes of the Natural Gas Shortage." By preparing it in this fashion, Moss and his staff were able to avoid a vote on its findings and, perhaps more importantly, to issue it without a minority opinion.

The report was primarily an effort to discredit energy-industry claims that the natural-gas shortage was caused by regulation, or that it would be eliminated by deregulation. To counter the argument that demand increased because prices were kept artificially low through regulation, the report offered the irrelevant observation that increased demand resulted not from a spontaneous reaction to low prices, but from the aggressive advertising of prices by the gas companies (which, in any case, is not an unnatural practice for private corporations).

Whatever the cause of the shortage, the report does not deny that current annual demand exceeds current annual production. The two longest sections contain interesting information designed to show that there is an economic incentive for producers to withhold gas from the market while they await the next FPC price increase, and that there is evidence of both withholding and underestimating of natural-gas reserves by the industry. Although these sections of the report leave the unbiased reader with plenty of reason for not taking industry claims at face value, they have little to do with the main point at issue: whether deregulation is necessary to stimulate exploration and exploitation. The report's only argument against deregulation consists of one quotation from an FPC official, and some statements about the effect of previous price increases on production. The report does not deal directly with the claim made by the industry that future exploration and exploitation will be considerably more expensive than in the past. The point is not that the natural-gas industry's argument should be accepted, but that a balanced report on the subject should at least acknowledge it and respond to it.
The most blatant example of the report's selective use of publicly available information is in its estimate of the cost of deregulation to consumers. The report quoted Lawrence Kumins of the Congressional Research Service, who estimated the first-year costs at between $20.3 and $22.4 billion, but it failed to state the controversial assumptions on which his figures were based.

Kumins' estimate was more than double the next highest figure offered by anyone else working on the problem—and Moss' staff knew this. David Schwartz, formerly the second-ranking economist at FPC and then a consultant to Dingell's subcommittee, put the first-year costs at $9 to $11 billion, half the amount of Kumins' figure, but higher than any other estimate. (The Administration's figure was $4 to $6 billion, the industry's was $1 billion, and the General Accounting Office estimated a 10-year cost of $75 billion.) We know that Moss' staff had to be aware of the other estimates, because it even quoted Schwartz's estimate of the cost of deregulation per 1000 cubic feet of natural gas—although not mentioning his estimated total first-year cost.

What Kumins had done was assume that deregulated natural gas would sell at a BTU-parity price equivalent to OPEC oil prices. He may be proven correct by this year's severe winter. But last year his estimate seemed like the worst assumption, and should have been labeled so. By failing to explain this in its report and by not providing alternate figures, the subcommittee staff preyed on the ignorance of noncommittee members to lead them to a prejudged conclusion. Congressional decisions are ultimately acts of faith—prudential judgments based upon the Members' acceptance of others' opinions. When staffs present something in dispute as if it were a fact, they are exploiting that faith to distort the process.

To anyone expecting honest information, it is incomprehensible that the staff report did not let its readers know that Kumins' estimate was only one of several in the staff's possession. The report was simply designed to persuade unknowing Members of the folly of deregulation, without giving them the full benefit of the available knowledge. It was not meant to educate the Members, and could not possibly have done so, either: It was propaganda, pure and simple.

This is not an isolated example, although it may be an extreme one. Other committee reports can be just as bad, although they are normally balanced by the inclusion of some form of minority opinion. Conscious distortions have their source in the same partisanship that helps Congress uncover new information. Staff members who
are primarily loyal to a Member develop a stake in bills or reports with his name on it.

S. Lynn Sutcliffe, the former chief counsel for the Senate Commerce Committee (who, appropriately, left the staff to form his own lobbying law firm with other staff aides), once defended his professionalism to me in a way that perfectly underscores the problem. Sutcliffe described how the shifting coalitions in the Senate and on his committee once produced three different natural-gas-deregulation bills, each of which looked at different times to be the bill the committee would report. According to Sutcliffe, the staff was prepared to write a favorable report for each bill, showing how the facts commended it above all of the others. As an attorney, he was prepared to write a brief representing his client's interests, whichever bill ultimately proved to serve those interests best.

Sutcliffe's notion of professionalism is widely shared among young staff aides. Although people like Woodworth or Congressional Budget Office director Alice Rivlin may picture the professional staff aide as an expert, Sutcliffe's professionalism is that of the generalist attorney.

The difference is crucial. To the extent that economists or other experts remain true to their professional discipline, they are bound to tell the truth as they see it. The professional commitment of an attorney, on the other hand, is to represent a client. If the client's needs call for some distortion by the attorney, there is nothing unprofessional about that—let the other side bring out the rest of the story. That is what the adversary system is all about.

The problem is that the adversary system bears little relevance to Congress. Two key elements are missing: First, Members depend on their staff precisely because they do not have the time to focus on the issues, unlike a judge or jury examining evidence in a courtroom. Second, there is nothing guaranteeing that opposing points of view will be heard. When the chairman and ranking minority member agree to support a bill, the staff will defend their agreement, but no one presents the other side to non-committee members who might want to hear it.

**Entrepreneurial staffs**

One additional characteristic of partisan staffs is worthy of attention: Because they are expected to respond to their employers' political needs, they are usually given more freedom than nonpar-
artisan staffs to seek new legislative issues, or new approaches to old issues. David Price refers to those engaged in such activities as "entrepreneurial" staffs, a description suggesting that they develop a "product," which is then "marketed" to a potential "buyer." The "buyer" is the chairman who invests his prestige and his committee's time in pursuit of the legislative goal produced by the staff. Not all partisan staffs are entrepreneurial, but all entrepreneurial staffs are partisan.

Price tends to think that this entrepreneurial relationship between staff and Member is healthy, because Congress can thus be more far-ranging, more "innovative," and more independent of the executive than it could be by relying exclusively on more closely supervised staffs. But although Price's description seems accurate, his evaluation raises problems. "Innovation" is not an acceptable end in itself. True, a Congress unable to innovate would also be unable to legislate—but not all innovation is worthwhile.

Staffs with a self-interest in innovation, rather than deliberation or oversight, create two specific types of problems for Congress. First, it is difficult for elected representatives to stay abreast of what is done in their name, and the responsibility given entrepreneurial staffs to find new legislative tasks only makes it more so. Much of what the staffs do looks useful when viewed in isolation, but the cumulative impact of staff initiative is flooding the system.

Second, entrepreneurial staffs are rarely made up of independent specialists who limit themselves to the policy areas they know well. Instead, they are manned by lawyers and other intermediaries, whose job is to look for outside experts on whom they—and, through them, the Members—can rely. This is not a problem in itself, but given the heavy work load an entrepreneurial staff can generate, a Member may become so removed from real expertise that he cannot evaluate legislation any better than he could without staff help.

As an example of how staffs act as intermediaries for ideas developed elsewhere, consider the Senate Small Business Committee. Because it had no legislative jurisdiction in the 94th Congress, it was completely free to pick the issues it would examine. The staff director, William Cherkasky, therefore chose issues that would enhance the reputation of the committee chairman, Senator Gaylord Nelson of Wisconsin, and educate the rest of the Senate and the general public. (Cherkasky had been Nelson's administrative assistant for six years before moving over to the committee in 1974, when Nelson became chairman.)

The most critical step for a staff entrepreneur is getting an item
on the committee agenda. In a lengthy interview, Cherkasky described how the committee decides its course of action: At the start of the session, the staff first puts together a "laundry list" of possible topics for hearings, which it circulates to the appropriate staff people in each committee member's office. After receiving responses from the individual offices, Cherkasky's staff then blocks out a tentative timetable, before meeting with the committee. "The Senators accept about 90 per cent of what's proposed," he said. With this kind of relationship between Senator and staff, the staff aide "can create his own issue if he's smart, and if he sees a Senator who's interested. The important ingredient for a staff person is imagination."

Cherkasky described—as a typical example of how the process works—one item that made the agenda through his own initiative. Under the workers' compensation law, an employee who is injured by machinery, but believes he was not sufficiently compensated, can sue the original manufacturer of the machinery, instead of his employer—no matter how old the equipment, or whether it had been altered or resold. This unlimited liability has resulted in an incredible increase in insurance premiums for manufacturers. One small company's annual rates, for example, went from $500 to $65,000 over a four-year span, with no offsetting increase in business.

Cherkasky said that he became interested in this problem after reading an article in a newsletter put out by the National Small Business Association. After discussing the problem with Nelson, he assigned a member of the staff to gather information from the relevant trade groups and companies. The next step was to "find a Senator who would sit for a couple of days of hearings to expose the problem.... I'm not sure we'll lick the problem, but we'll educate the public and educate the Senators. That's what public hearings are all about." Hearings were held in September 1976, with corrective legislation a possibility for 1977 or 1978. According to Cherkasky, the procedure followed—a staff member reads or hears an idea developed by someone else, usually an interest group, and then sells it to the Senators—was normal for his committee.

The new middlemen

The importance of outsiders to the committee process is apparent from another example offered by Price: the 1966 traffic-safety legislation that came out of the Senate Commerce Committee. According to Price, the auto-safety issue became public largely because
Ralph Nader, then a relatively unknown young attorney, devoted his full time to lobbying Congress. His first success was a set of hearings held in 1965 by the Government Operations Subcommittee on Executive Reorganization, headed by Senator Abraham Ribicoff. When the hearings attracted attention, Gerald Grinstein and Michael Pertschuk, two top aides on the Senate Commerce Committee, saw the auto-safety issue as an opportunity to establish Senator Warren Magnuson, the committee chairman, as having interests extending beyond the “pork-barrel” bills that had previously occupied his committee’s attention.

Grinstein and Pertschuk were given great leeway by Magnuson to develop an auto-safety bill. Before becoming too deeply involved, the staff used a tire-safety bill as a trial balloon—which, according to Price, showed Magnuson that he could defy auto-industry pressures: “Grinstein and Pertschuk were subsequently less hesitant to involve Magnuson in the auto-safety issue and to commit him to a relatively hard line.”

The legislative vehicle Magnuson’s staff used was a 1966 bill, offered by the Johnson Administration, that would have permitted the proposed Department of Transportation to set automobile-safety standards if, after two years of voluntary industry efforts, it deemed them necessary. The Administration’s bill was attacked from two directions: Nader wanted immediate, mandatory, federal safety standards; the auto industry, whose most effective lobbyist was Washington attorney Lloyd Cutler, wanted to rely on purely voluntary efforts. According to Price, Pertschuk engineered the compromise that enabled passage of the bill:

To Pertschuk fell the task of sifting through these proposals, balancing one against the other, and coming up with an equitable compromise. His own sympathies, of course, were more with Nader than with Cutler, but he recognized the legitimacy of certain industry criticisms and was anxious to develop a workable program. In addition, it was necessary to consult with the White House and the Commerce Department, both of whom had a strong interest in the bill. But Pertschuk had a relatively free hand, and his position was immensely strengthened by the backing Magnuson gave him. . . .

Accommodations were made and agreements reached on the staff level. Pertschuk drew on the expertise of both Nader and Cutler, secured the confidence of them both, and occasionally played them off against one another. Only a few issues could not be handled this way and spilled over into committee meetings.

It should be clear from these examples that the entrepreneurial role of the staff is essentially that of a middleman: A staff aide is intrigued by someone else's idea, brings it to the attention of the committee chairman, is authorized to expand it, and then proceeds. There is constant checking as a proposal moves through the committee process, but once a Senator makes a basic policy decision, the staff is normally expected to resolve as many differences as possible among the interested parties, without involving the Senator in the details. The staffs may take the first steps within the legislative branch, but they rarely initiate ideas. The advantage of a good staff is not in coming up with new proposals, but in expanding the pool of resources upon which Congress draws.

The problem is that new sources rapidly become old and familiar. Partisan staffs become comfortable with equally partisan outsiders; the danger is that they may shut off some ideas that would flow to a less partisan staff. For example, the Senate Commerce Committee staff was independent of past administrations and big business on consumer issues, but at the cost of becoming dependent on pro-Nader consumer groups. Business lobbyists who must deal with the committee constantly complain about the treatment they receive. Several have told me that they would rather deal with the equally partisan and liberal House Commerce Committee staff, because they think their ideas have a better chance of being heard.

Whether their complaint is accurate, their perception is widespread enough to indicate a real problem, particularly in the Senate: Once it generates an idea, there is danger that a staff may become a political actor in its own right. The only way a Member can guard against this is through close supervision of the activity of the staff. This is impossible, however. As a result, the only alternative for a lobbyist is to try to bypass the staff, and deal directly with the Member. But a lobbyist will not try this too often, since his political credit is limited, and saved for the most important issues. Other matters will necessarily be left to the staff.

Much of the new power of "public-interest" lobbying groups stems directly from the intermediary role played by entrepreneurial staffs. Young Democratic activists from the top Eastern law schools who work for a Congressional committee feel a basic kinship with their counterparts from the same schools who work for citizens' lobbying groups. Together, they form a network every bit as in-

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*For example, Pertschuk (A.B., 1954, LL.B., 1959, Yale) and Nader (A.B., 1955, Princeton; LL.B., 1958, Harvard) are good social as well as political friends.*
timate as the one tying business lobbyists to Members of Congress on golf courses.

Who's in charge here?

The fact that some lobbyists have better access than others to some committees is not a problem in itself. If a Member knowingly decides that one source of information filtered by the staff is more trustworthy or politically useful than another source, it makes perfect sense to return to it. Normally, neither the staff nor the lobbyists are technical experts, but they can be helpful if a Member knows what kind of information he is being provided. The problem arises when a partisan committee staff takes partisan information and passes it on without warning to unsuspecting Members not on the committee. This is compounded when those on the committee who supposedly supervise the staff are too busy to understand the issues. Representative Edward W. Pattison, a second-term Democrat from Troy, New York, described the pressures of his situation as follows: "For every minute of your time, there is a demand for five, so you spend a part of the one deciding what to do." 17

This difficulty is even more serious in the Senate. In 1976 each Senator served on an average of 10 standing subcommittees, compared to 3.5 for each Representative. This disparity in workloads affects the relative importance of committee staffs in the House and Senate. Few Senators are able to keep up with the activities of the subcommittee they serve on, leaving them virtually dependent on their staff in most areas. Moreover, the disproportionate ratio of subcommittees to Senators means that almost every Senator is the chairman or ranking minority member of at least one, and frequently two or more subcommittees. As a result, most Senators have direct control of some subcommittee staff, allowing them to push their own proposals—which diverts them from their work on other subcommittees, leaving them at the mercy of the staff.

Two examples show how Senators can become dependent on the work done by their staff. At the start of his 1976 Democratic Presidential campaign, Senator Birch Bayh was questioned in Los Angeles about his cosponsorship of the omnibus criminal-code revision that had been pending for years before the Judiciary Committee, on which Bayh serves. The questioners objected to a number of

provisions dealing with search and seizure, the ability of an executive-branch employee to claim he was following orders as a defense to a criminal charge, and a host of other topics. By failing either to defend the provisions or to promise amendments to change them, Bayh showed he was ignorant of their precise impact. He withdrew his name from the list of the bill’s cosponsors when he returned to Washington.

An even more revealing incident involving Senator Daniel K. Inouye of Hawaii was reported in the New York Times (July 28, 1976) by John W. Finney. Inouye serves on the Defense Appropriations Subcommittee. According to Finney, lobbyists for Rockwell International, the nation’s 10th largest defense contractor, almost succeeded in blocking a move by liberals on the Appropriations Committee to kill Rockwell’s controversial Condor missile program. Rockwell reportedly convinced an inexperienced committee aide, 22-year-old Shannon Cockett, that the program was worth saving, and then gave her the legislative language that served its purposes, which Inouye accepted uncritically.

A Senator rarely admits how little time he has to pay attention to the business done in his name, but Inouye was an exception, according to the Times:

Senator Inouye said that he had accepted the language given him by Miss Cockett because “I have great confidence in the young lady.” The Senator said that with all the demands on his time, he had not had a chance to attend a committee hearing on the Condor program and thus relied on the judgment of his aide.

Rockwell eventually failed in its efforts, largely because aides to Senators Thomas F. Eagleton and William Proxmire, both opponents of the program, persuaded Cockett to change the language to tighten Congressional control over the program. But Rockwell did not give up easily: It then persuaded Cockett to make additional changes in the wording of the bill. But she was stopped once more, this time by the staff director of the Defense Appropriations Subcommittee.

The point is not to criticize every Senator or Representative who trusts an aide’s judgments. The situation is clearly different when Nelson trusts Cherkasky on small business, or Dingell trusts Potter on energy and power, or Edmund Muskie trusts Leon Billings on the environment, or Henry Jackson trusts Dorothy Fosdick and Richard Perle on defense. All of these people know their subjects, and they have worked together long enough to know one another’s minds. In each case, the Senator or Representative is quite willing
to let the public judge his record by the recommendations he accepts from his aides.

The Inouye-Cockett example is another matter entirely. Unfortunately, it is not isolated. Too many of the decisions in Congress—and particularly in the Senate—are made by poorly informed Members who accept the word of poorly informed aides, who in turn rely on the word of a partisan outsider. Since most Congressional decisions are not well publicized, these Members and their aides too often think it is not worth their time to learn more about what they are doing. But how or what can such people be said to be "representing"?

Some recommendations

Members who want to show how terribly shorthanded Congress is would argue that neither Cockett's inexperience nor Inouye's indifference was the real problem. What is needed is more staff: The few thousand aides working for Congress are spread too thin to deal with the information flooding from the executive branch and interest groups.

The difficulty with this view is that a larger staff, particularly if it is composed of partisan entrepreneurs, would generate more information on more issues, increasing instead of lessening the burden on Members. Congress can never "keep up" with the executive branch and the interest groups, and it would be a mistake to try. What Congress needs is not so much the capacity to generate new information, as the ability to select and evaluate existing information critically. The problems caused by staffs frequently have less to do with their ability to gather information than with the way they transmit information for the Members to evaluate.

Partisan staffing and entrepreneurial activity are problematic only in their excesses and abuses, not in their mere existence. Partisan staffs can help Congress uncover information it might otherwise miss. Innovative staffs occasionally produce worthwhile ideas that might have a hard time surfacing elsewhere in government. The real problem is the web of self-interest binding Members and their staffs to the fate of "their" common programs: Members want bills with their names on them; the staff wants to "cast a shadow." Both have political reasons for worrying more about whether "their" program passes than whether Congress considers a bill's merits. Deliberation is seen as more of an obstacle than an opportunity.

One way to break this web would be to make sure that commit-
Committee staffs do not owe their loyalty to one person. If every committee had a nonpartisan staff hired jointly by the majority and the minority, Members not on the committee could feel more secure about the information they were getting to guide their floor votes.

But this simple solution may involve throwing out the baby with the bath water. The ability of Congress to move quickly to counter partisan arguments coming from the outside may depend upon the existence of at least some staff aides chosen for partisan reasons. Perhaps Congress could resolve the dilemma with “dual staffing”: Committees could have a core of nonpartisan professionals on the staff, supplemented by partisan slots controlled by the majority and minority. The House Budget Committee adopted this practice, in theory, when it began business in 1975. And Chairman Ullman told me he wants to beef up the partisan staff of the Ways and Means Committee precisely because he wants to permit the nonpartisan staff of the Joint Committee on Internal Revenue Taxation to go about its traditional business in its traditional way.

Committee staffs that would draw on the virtues of both experienced, nonpartisan civil servants and young, partisan, trouble-shooting lawyers make some sense institutionally. Politically, however, there are barriers to such an arrangement. Members have let the current staffing system evolve because many see it as serving their political self-interests. If that perception is accurate, there is little hope of changing the system by appealing to any less self-serving motive. Congress can be changed only if Members think their individual political needs are not being ignored in the process.

What Members need to understand is that their self-interests are no longer served by the present system. Voters have become increasingly skeptical of the government’s ability to deliver the services it promises. As a result, Members have to take more factors into account when they calculate where their self-interest lies. It is not enough just to know whether a program will bear their names. They must also know how it will affect their careers in the long term, and for this they may need to know whether future opponents will be able to attack them for pushing a short-sighted folly. For this task they will need some unbiased experts on their staffs; entrepreneurial lawyers are simply not equipped to handle such questions.

Some Members of Congress are not unaware of these new needs, as is apparent from the 1970 Legislative Reorganization Act, which transformed the Legislative Reference Service into the Congressional Research Service (CRS). That bill required CRS to do more
long-range research for committees than had been done in the past. CRS has also helped fulfill another need, on a selective basis, by producing pro/con arguments on some of the major issues before Congress.

CRS is now terribly overworked and understaffed. Although it does good work, for the most part, it cannot realistically be asked to do more with its present staff. But giving it an adequate staff means creating a large bureaucracy that would probably be too far removed from the direct control of the elected representatives. An expanded CRS more closely tied to the committee system would be an improvement over the present situation, but not as much as "dual staffing" would be: Dual staffs would have the added advantage of trimming the self-justifying activities of entrepreneurial staffs.

However, a tradition has developed in Congress that Members should be free to use their staffs as they see fit, within the bounds of ethics and propriety. The presumption among most Members is that committee staffs "belong" to the chairman and ranking minority member. On some committees, each Member has a staff aide of his own, but this does not represent a change in the principle of ownership, only its distribution.

It is not inconceivable that this barrier to "dual staffing" could be overcome. Chairmen are less powerful than they used to be. In addition, a growing number of Members are concerned about the institutional needs of Congress for information. Given the way committee staffs affect Congress as a whole, we should hope that Members will accept the notion that a staff belongs to a committee, not to individual Members. In fact, would it be too much to ask the Members to think of the staff as ours, not theirs? After all, they are writing our laws, and our money pays all their salaries.