Federal Advisory Committees in the United States: A Survey of the Political and Administrative Landscape

Mark B. Brown

Introduction

In 2006 the United States government maintained 916 federal advisory committees composed of 67,346 members at a total cost of approximately $384 million.1 As in other industrial countries, federal advisory committees in the United States address a wide range of public policy issues, including national security, public health, environmental protection, the economy, food safety, hazardous waste, national security, and international trade. Advisory committees advise decisionmakers, evaluate grant proposals, and conduct peer reviews of scientific research. The also serve a wide range of political and policymaking functions: Advisory committees help make political decisions more reasonable, justifiable, and effective; they lend decisions a greater claim to public acceptance; and they are used strategically to delay decisions or avoid responsibility (Brown et al. 2005, 2006).

This paper first provides an overview of the recent controversy over the politicization of science advice in the United States. It then examines the key federal legislation intended to prevent the politicization of science advice, the Federal Advisory Committee Act (FACA), as well as its interpretation by selected federal agencies and oversight bodies. The paper shows that different agencies have adopted very different approaches to fulfilling FACA's requirement that advisory committees be independent and fairly balanced. Most agencies and oversight bodies require advisory committee members to embrace one of two roles: either provide value-free scientific advice or represent the direct interests of a particular social or economic group. A few agencies, however, have adopted a somewhat different approach. A review of the process for appointing advisory committees at the Environmental Protection Agency (EPA), the Food and Drug Administration (FDA), and National Institutes of Health (NIH), and the National Academy of Sciences (NAS) shows that each of these agencies, to different degrees, solicits information about the political views and perspectives of all committee members, including those.

appointed for their technical expertise. This approach does not abandon the idea that advisory committees should remain politically neutral, but it makes neutrality into a property of the committee as a whole rather than individual committee members. It also suggests a way of mitigating the politicization of science advice.

The Politicization of Science Advice under the Bush Administration

U.S. federal advisory committees are created in several different ways. The initiative may come from the President, Congress, or an agency secretary, administrator, or executive. Committees are called statutory or non-discretionary when Congress passes legislation that specifically requires an agency to create an advisory committee. Discretionary committees, in contrast, are those created by an agency when Congress has required it to obtain advice without specifying how the advice should be obtained (Stine 2005: 131). In 2004, of those committees with more than 50 percent of their membership from scientific and technical fields, about one third were non-discretionary committees required by congressional statute, one third were discretionary advisory committees authorized by Congress but created by an executive branch agency, and another third were created on an agency’s independent initiative. Only seven were directly authorized by the President (Stine 2005: 136).

Contrary to widespread belief, most U.S. federal advisory committees are not composed exclusively or even primarily of technical experts. In 2004 only about one third were comprised of over 75 percent technical members, defined as people holding an advanced degree or significant professional experience in science, engineering or medicine. Another third had no technical expertise whatsoever, and the remaining third had a mix of members from technical and non-technical fields (Stine 2005: 128ff.). Moreover, observers often disagree about whether or not an advisory committee is primarily technical. As I argue below, this mix of technical and non-technical members on most advisory committees has important implications that have not been sufficiently appreciated in recent commentary on the politics of science advice.

According to a 1998 GAO survey of a representative sample of 607 federal advisory committee members, 85 to 93 percent of respondents reported that their committees were balanced in membership, had access to the information they needed for decisionmaking, and were not inappropriately pressured by agency officials (GAO 1998a: 2f). More recent surveys have produced very different results. In 2006, for example, the Union of Concerned Scientists conducted a survey of FDA scientists. Almost one in five (18 percent) of the respondents agreed with the statement, «I have been asked, for non-scientific reasons, to inappropriately exclude or alter technical information or my conclusions in an FDA scientific document.» Over 60 percent knew of cases in which «Department of Health and Human Services or FDA political appointees have inappropriately injected themselves into FDA determinations or actions.» Three in five knew of cases where commercial interests have inappropriately induced or attempted to induce the reversal, withdrawal or modification of FDA determinations or actions» ( UCS 2006). In a similar survey of climate scientists at seven federal agencies and the independent National Center for Atmospheric Research (NCAR), nearly half of all respondents either perceived or personally experienced pressure to eliminate the words climate change, global warming, or similar terms from official communications. Two in five (43 percent) perceived or personally experienced changes or edits during review that changed the meaning of scientific findings» (Donaghy et al. 2007: 2). Similarly, a 2006 study by the Center for Science in the Public Interest found that during the preceding three years approximately 18 percent of advisory committee members at the National Academy of Sciences (NAS) had a substantial conflict of interest, defined as a financial tie to a company or industry relevant to the topic of the committee (CSPI 2006). The study also found that, out of the 320 committee members examined for the study, at least 66 had a long history of taking a pro-industry stance in their published writ-
ings and testimony. Only 9 of the 320, in contrast, were closely identified with environmental or public interest groups.

These findings build on previous reports on the politicization of science by Rep. Henry A. Waxman of the US House of Representatives, the Union of Concerned Scientists, and other organizations. These reports charge the Bush administration with distorting and suppressing research findings that conflict with administration policy; replacing members of science advisory bodies with people more amenable to the administration's views; removing information from government websites that conflicts with administration policy; and vetting nominees to advisory committees with questions regarding their political views, including whether or not they support the president—in short, with politizing science (US House 2003; UCS 2004a, 2004b; Mooney 2005).

One of the most controversial cases of politicised science occurred in connection with the Food and Drug Administration’s assessment of the so-called morning-after pill or Plan B, an emergency contraceptive pill that greatly reduces the risk of pregnancy when taken within 72 hours after intercourse. The FDA approved Plan B as a prescription drug in 1999. In April 2003 the Women's Capital Corporation, a subsidiary of Duramed Pharmaceuticals, Inc., submitted an application to the FDA to allow Plan B to be sold over-the-counter without a prescription. On December 16, 2003, at a joint meeting of the FDA’s Nonprescription Drugs Advisory Committee (NDAC) and Advisory Committee for Reproductive Health Drugs (ACRHD), committee members voted 23 to 4 to recommend approving the application and changing the status of Plan B from prescription to over-the-counter. In May 2004, however, the Acting Director of the FDA’s Center for Drug Evaluation and Research (CDER) issued a letter denying approval for the proposed switch. The letter cited concerns about the use of Plan B by women under age 16, arguing that data from older adolescents could not be extrapolated to younger adolescents. There was enormous public uproar, and the FDA was widely accused of giving in to conservative anti-abortion groups that had lobbied against the drug.

According to a report later issued by the Government Accountability Office (2005, known as the General Accounting Office until July 2004), several features of the decision were «unusual» and did not follow established procedures. Out of 67 proposed switches from prescription to over-the-counter status between 1994 and 2004, the Plan B application was the only one not approved following an approval recommendation by the relevant advisory committees. Moreover, the agency had previously deemed it appropriate to extrapolate from data on older adolescents to younger adolescents in such decisions, and in no prior decision on non-prescription use of a drug had it ever cited behavioral implications due to differences in cognitive development.

The FDA delayed further action on Plan B for over two years. On August 31, 2005, Susan F. Wood, assistant FDA commissioner for women’s health and director of the Office of Women’s Health, resigned her position, citing interference by FDA Commissioner Lester Crawford, a political appointee, in agency decision-making. The Commissioner resigned soon afterward. In March 2006, Senators Hillary Rodham Clinton (D-N.Y.) and Patty Murray (D-Wash.) announced that they would invoke senatorial privilege to block a vote on the nomination of Crawford’s successor, then-acting director Andrew von Eschenbach, until the FDA issued a final decision on whether it would approve Plan B for non-prescription sale. The FDA finally approved Plan B for non-prescription sale to women eighteen and older on August 24, 2006, and Dr. von Eschenbach was confirmed by the Senate in December 2006 (Harris 2006). Nonetheless, the New York-based Center for Reproductive Rights filed a lawsuit against the FDA, and a preliminary hearing in February 2007 found a «strong preliminary showing of bad faith or misbehavior» (Kaufman 2007).

In one sense, of course, there is nothing the least bit new about such stories, nor about the idea that science advice has been politicized. As has been widely noted, the problems addressed by science advisory committees today generally involve matters where high political stakes and low technical certainty make the intertwining of science and politics a standard part of the game. Nonetheless, the politicization of science under the Bush administration appears to be more blatant, and it is certainly more widely reported, than that of previous presidential administrations. According to Donald Kennedy, editor of the prestigious journal Science, the U. S. science advisory system is suffering from an «epidemic of politics.» He writes,

«What is unusual about the current epidemic is not that the Bush administration examines candidates for compatibility with its values, it's how deep the practice cuts, in particular, the way it now invades areas once immune to this kind of manipulation.» (Kennedy 2003)

Lewis Branscomb, formerly President Nixon’s director of the National Bureau of Standards, said that Nixon never «hand-picked ideologues to serve on advisory committees, or dismissed from advisory committees very well-qualified people if he didn’t like their views». (Reppert 2004). Although it seems clear that political interference with science advice has become more direct and blatant in recent years, critics of the Bush administration tend to embrace a rather naïve view of science advisory committees. First, they often suggest that science advice can be entirely separated from political values, a view which has long been rejected in the science policy literature (Jasanoff 1990, 1992). Second, they tend to suggest that providing objective science advice offers a way to end political disputes. As Daniel Sarewitz (2004, 2006) and Roger Pielke (2007) make clear, however, this is rarely the case. The reason that global warming, abortion, and teaching evolution in public schools
have remained controversial political issues (in the United States) has little to do with the lack of decisive scientific advice on these issues. These issues remain controversial because they involve fundamental conflicts over moral and political values; and those conflicts have not yet been resolved. Responding to these controversies by calling for more independent science advice merely displaces the political conflict onto science. This has the effect of simultaneously scientizing politics and politicizing science (Weingart 1999). Finally, those charging the Bush administration with politicizing science rarely reveal their own value commitments and political interests, instead presenting themselves as defenders of pure science.

It is worth noting in this context that there is some judicial precedent indicating that the constitutional right to freedom of speech protects federal employees from being dismissed based on their political affiliation. But such protection applies only as long as a person’s political affiliation cannot be reasonably construed as interfering with the duties of his or her position – a condition which does not hold true for many politically charged advisory committees. Indeed, according to two recent analyses, existing case law indicates that for advisory committees addressing issues of politics and policy – which most committees do in one way or another – there are no constitutional grounds for preventing public officials from choosing advisory committee members according to their political affiliation (Moy 2005: 159ff; GAO 2004b). Although federal personnel laws prohibits agencies from discriminating on the basis of political affiliation, these prohibitions apply only to regular federal employees, not members of advisory committees. To the extent that federal personnel law does prohibit consideration of political affiliation, the Government Accountability Office found that the practical difficulties of demonstrating a violation would likely be very burdensome.

It is thus legally problematic to insist, as have many recent critics of the Bush Administration, that those charged with selecting the members of federal advisory committees should avoid any consideration of political interest. Ensuring that an advisory committee is not biased with regard to any particular view requires finding out what the committee members’ views are in the first place (Pielke 2005). To be sure, science should not be distorted for partisan purposes. But science advisory committees would do better to acknowledge and incorporate diverse political perspectives, rather than seeking to ban them entirely. Such an approach, the rest of this paper shows, is in keeping with the spirit of the U.S. Federal Advisory Committee Act, and it appears in the advisory committee guidelines of some federal agencies.

The Federal Advisory Committee Act

The U.S. Congress passed the Federal Advisory Committee Act in 1972 in response to concerns about the fairness and efficiency of federal advisory committees. Lawmakers were concerned that industry interest groups had acquired secret and unlimited access to public officials. In addition, congressional committees had assembled evidence of many unnecessary or defunct advisory committees. Congressional hearings on the proposed legislation reflected these two sets of concerns. While hearings in the House of Representatives emphasized concerns about governmental waste, Senate hearings focused on issues of balance and secrecy (CRS 1978; Ashford 1984; 76; Smith 1992: 21ff).

FACA includes a number of provisions to limit the number and monitor the efficiency of advisory committees. It requires that advisory committees only meet when called or approved by an employee or designated officer of the federal government. It also requires advisory committees to be convened and adjourned by an employee or designated officer of the federal government. Similarly, FACA requires that before the first meeting of a new committee a charter be filed with the appropriate congressional committees. The charter must specify: the committee’s official designation; objectives and scope of activity; time period necessary to complete the committee’s purpose; agency to which or official to whom the committee reports; agency responsible for supporting the committee; committee duties; annual operating costs; number and frequency of meetings; termination date; date on which the charter is filed (Stone 2005: 136; GSA 2001: 37739). FACA also includes several measures to facilitate public participation in the advisory committee process: It requires that all meetings be announced in a timely manner in the Federal Register, that they be open to the public, that minutes be kept and made publicly available, and that the public be given opportunities to provide written or spoken testimony to committees.

In the current context, the most important FACA provision is its often noted requirement that the membership of advisory committees be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee. (5 U.S.C. Appendix §§ 5(b)(2)). This balance provision is complemented by the requirement that measures be established to ensure that committees will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee’s independent judgment. (5 U.S.C. Appendix §§ 5(b)(3)). Unfortunately, FACA does nothing to specify the meaning of the terms fairly balanced, inappropriate influence, and independent judgment. This silence has left much room for controversy, especially with regard to the fairly balanced requirement.
In the first instance, the task of interpreting the balance requirement falls to the agency administrators who select the members of advisory committees. Each executive branch agency has its own Committee Management Officer (CMO) whose task is to oversee the management of federal advisory committees within that agency. The role of the CMO in each agency is somewhat different, but their tasks include screening potential candidates for advisory committees, especially to ensure appropriate balance, as well as conducting criminal background checks on potential committee members and responding to congressional suggestions for committee members (Stine 2005: 134). Some CMOs are career civil servants while others are political appointees. Each individual advisory committee also has a designated federal officer who manages its operations.

Since FACA’s passage, Congress has occasionally sought to alleviate the ambiguities of the balance provision by specifying in the authorizing legislation for particular advisory committees precisely which fields of expertise they are to include. For example, the National Institutes of Health Revitalization Act of 1993 required that ethics advisory boards established under the Act include at least one attorney, one ethicist, one practicing physician, one theologian, and «no fewer than one-third, and no more than one-half, shall be scientists with substantial accomplishments in biomedical or behavioral research» (42 U.S.C. § 289a-1(b)(5)(C)). Similarly, the Food, Drug and Cosmetic Act requires that advisory committees on color additives have «adequately diversified professional backgrounds» (21 U.S.C.S § 379e(a)(5)(D)). For additional examples, see Glitzstein/Goldman 1989: 33). And in the case of some committees, Congress has specifically prohibited consideration of political affiliation in selecting members.5 Related amendments to FACA were introduced in the Senate in 1989 (S. 444) and 1991 (S. 2039). Both of these bills, which failed to become law, would have required all federal advisory committees to have a plan for achieving balanced membership, including a specification of the factors to be considered and a statement as to whether members would represent non-governmental interests, and if so, which parties or interests they would represent. Congress successfully amended FACA in 1997 to exempt the National Academy of Sciences from most FACA requirements, while subjecting it to others, but it did not revise the balance requirement. Indeed, the ambiguities contained in the balance provision have persisted. One federal judge thus described FACA as an example of «unimpressive legislative drafting» and characterized its provisions as «obscure, imprecise,» and open to widely conflicting interpretations.6

5 These committees include the National Advisory Council on Drug Abuse, the Food and Drug Administration’s Advisory Committee on Reproductive Health Drugs, and the National Advisory Council for Human Genome Research (GAO 2004a).
6 National Anti-Hunger Coalition v. Executive Committee of the President’s Sector Survey on Cost Control 557 F. Supp. 524, 530 [1983].
Budget (OMB). Concerns that this arrangement left the management of executive branch compliance with FACA too close to the White House led to President Carter's Executive Order 12024, which moved the CMS, and hence, responsibility for administering FACA, to the General Services Administration (Stine 2005: 133f.). The GSA today not only monitors compliance with FACA but also provides extensive training resources and legal counsel for agency staff regarding FACA compliance.

The GSA's guidelines for the establishment of discretionary advisory committees by executive branch agencies require agencies to prepare a plan for achieving fairly balanced membership. Such plans must ensure that when selecting members,

«the agency will consider a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions of the advisory committee. Advisory committee members requiring technical expertise should include persons with demonstrated professional or personal qualifications and experience relevant to the functions and tasks to be performed.» (GSA 2001: 37739, emphasis added)

The GSA also lists several factors that, «while not comprehensive or universally applicable,» are intended to help agencies formulate plans for selecting balanced committees (GSA 2001: 37731). These factors include:

(i) The advisory committee's mission;
(ii) The geographic, ethnic, social, economic, or scientific impact of the committee's recommendations;
(iii) The type of scientific perspectives required, for example, such as those of consumers, technical experts, the public-at-large, academia, business, or other sectors;
(iv) The need to obtain divergent points of view on the issues before the advisory committee; and
(v) The relevance of State, local, or tribal governments to the development of the advisory committee's recommendations. (GSA 2001: 37740)

This list provides some general guidance about what to consider in selecting committees, but neither here nor elsewhere does the GSA provide any specific criteria for assessing balance, thus allowing agencies considerable discretion. Indeed, in 1989 the U.S. Supreme Court ruled that GSA's interpretations of FACA's provisions are not binding on the courts or federal agencies, especially when they lack direct support in FACA's text.9

The GSA does have a strong indirect influence on advisory committee balance, however, with regard to the employment classification of committee members. The GSA classifies committee members according to four categories: Regular Government Employee (RGE), Special Government Employee (SGE), representative, or consultant. RGEs are long-term government employees, very few of which serve on advisory committees. If an advisory committee consists of only RGEs, it is not subject to FACA, but if it includes even one SGE, it is subject to FACA (Stine 2005: 142f.). Advisory committee members classified as consultants are usually experts serving on NIH special emphasis panels, which conduct one-time reviews of research proposals. Most people serving the government less than full-time are classified as SGEs, including experts employed by the government on a temporary or intermittent basis.9 Representatives are committee members appointed to serve as spokespersons of particular groups or organizations. Committees may include any mixture of categories, but the vast majority of committee members are classified as either SGEs or representatives.

In theory, the distinction between representatives and SGEs greatly simplifies the task of ensuring advisory committee balance. It provides two independent sets of criteria for evaluating potential committee members. According to the traditional conception of expertise, experts do not represent interests, except the general human interest in understanding and controlling nature. With regard to experts, therefore, the only task would be to ensure a balance of scientific disciplines and perspectives. In the case of representatives, the aim would be to ensure a balance of political interests. Both SGEs and representatives could be chosen with regard to the functions to be performed by the committee. Unfortunately, as noted above, the functions of many advisory committees today, like the members they include and the issues they address, combine technical and political elements.

In addition to the guidelines provided by the GSA, federal advisory committees must comply with the conflict-of-interest guidelines established by the Office of Government Ethics (OGE). The 1982 OGE advisory committee guidelines state that it is usually necessary to carefully examine the authorizing legislation, Executive Order, or other relevant documents to determine how committee members should be selected and classified. The key factor is whether the relevant language suggests that advisory committee members should make recommendations based on particular interests or expert knowledge:

»The choices are two: (1) the use of words to command the members to exercise individual and independent judgment, or (2) the use of words to characterize them as the representatives of individuals or entities outside the Government who have an interest in the subject matter assigned to the committee.« (OGE 1982: 15)

9 The Office of Government Ethics defines an SGE as »an officer or employee of the Government who is appointed or employed to serve, with or without compensation, for not more than 130 days during any period of 365 consecutive days either full-time or intermittently« (OGE 1982: 2).

In a document issued in February 2000, the OGE reaffirmed the 1982 guidelines, noting that advisors appointed as representatives are not expected to render disinterested advice to the government but to »represent a particular bias« (OGE 2000: 4).

The same view of representatives appears in a 2004 study by the General Accounting Office:

»Members appointed to advisory committees as representatives are expected to represent the views of relevant stakeholders with an interest in the subject of discussion, such as an industry, a union, an environmental organization, or other such entity. That is, representative members are expected to represent a particular and known bias – it is understood that information, opinions, and advice from representatives are to reflect the bias of the particular group that they are appointed to represent.« (GAO 2004a: 13) 10

These guidelines thus assert a strict division between experts who »exercise individual and independent judgment« and representatives who »have an interest in the subject matter« of the committee. Moreover, these statements suggest that only committee members classified as representatives are expected to make policy recommendations to the government, while experts or SGEs are to provide neutral advice about the facts of the matter.

These guidelines neglect, first, that scientists themselves sometimes constitute an interest group in need of representation, and second, that the public representation of scientific knowledge is not a strictly technical affair insulated from considerations of political interest. Indeed, the 2004 GAO report found that the Department of Energy (DOE), Department of the Interior (DOI), Department of Agriculture (USDA), and NASA explicitly appoint some of their committee members as representatives of particular scientific fields, such as biology or toxicology. 11 My own review of the 2007 FACA database finds this practice at other agencies as well. For example, all the members of the U.S. Environmental Protection Agency’s Children’s Health Protection Advisory Committee, a committee concerned in part with highly technical matters, are appointed as representatives. 12 This practice is made possible in part by the fact that congressional authorization statutes and committee charters rarely specify the category or categories of members to be appointed (Stine 2005: 137). Moreover, whereas RGEs, SGEs, and consultants are subject to various conflict-of-interest rules, advisory committee members classified as representatives are not. This makes sense, because if committee members are specifically invited to represent a particular interest, one cannot expect them to show that they are disinterested. The 2004 GAO report expresses concern, however, that some agencies may be designating their committee members as representatives with the specific purpose of avoiding the financial disclosure statements required for SGEs, and hence, that they may not be conducting required conflict-of-interest reviews of committee members. 13

Some commentators have responded to these problems with the interest-based model of advisory committee balance by rejecting the entire notion of selecting a balance of non-expert committee members. Indeed, some people are more willing to apply the idea of balance to experts than to non-experts. »Balancing interest groups has no place in panel formation; balancing disciplines does.« (Andersen 2003: 36; see Smith 1992: 199) This claim simply ignores FACA’s balance provision, which clearly applies to all committee members and not only those appointed on the basis of their disciplinary affiliation.

A different response to this dilemma appears in a 1989 report on FACA by the public interest group Public Citizen, which argued against the »schizophrenic approach« of using different conflict-of-interest reporting requirements for SGEs and representatives (Glitzstein/Goldman 1989: 6). Citing support by the Federal Bar Association’s Select Committee on FACA and the (now defunct) Administrative Conference of the United States, the report recommended replacing the current »dual system« with simplified conflict of interest reporting requirements for all advisory committee members (Glitzstein/Goldman 1989: 31). The report thus suggested the possibility of abolishing the current double standard for balancing expert and non-expert commit-

13 Perhaps aware of the loss of credibility potentially associated with avoiding conflict-of-interest rules, but not wanting to abandon the flexibility provided by the representative classification, some agencies have established guidelines for identifying conflicts of interest among representatives. For example, the Department of the Interior has formulated standard language for its committee charters that specifies the ethics obligations of all committee members, whether they are special government employees or representatives. All charters state that »a member may not participate in matters that will directly affect, or appear to affect, the financial interests of the member or the member’s spouse or minor children, unless authorized by the designated federal official.« Similarly, although the Department of Energy does not require members to disclose their financial interests, it states in letters appointing representatives that »they are required to excuse themselves from participating in any meeting, study, recommendation, or other committee activity that could have a direct and predictable effect on the companies, organizations, agencies, or entities with which they are associated or in which they have financial interest.« Interior and Energy policies thus rely on committee members to voluntarily identify and disclose conflicts of interest. USDA goes somewhat further, requiring that representative members disclose employment income over $10,000 but not other potentially relevant financial information such as stock holdings. While these measures may guard against some conflicts of interest among representative members, they are less stringent than the government-wide rules for special government employees (GAO 2004a: 26f.).
Advisory Committee Appointment Processes: EPA, FDA, NIH, NAS

Environmental Protection Agency

The U.S. Environmental Protection Agency maintained 27 advisory committees in 2007, most of which are coordinated by the EPA’s Science Advisory Board (SAB). The SAB’s policy statement on its panel formation process stresses the technical nature of SAB committees:

"The Board focuses on technical issues, not policy issues; risk assessment and engineering issues, not risk management decisions; the adequacy of the scientific foundation on which an Agency position (e.g., a regulatory standard) is built, not the position itself. [...] Where the Board’s advice does touch on policy issues, it takes special care to note and differentiate those instances." (EPA 2002: 2)

In accord with this general outlook, the SAB rejects the notion of stakeholder representation.

"At the SAB, a balanced panel is characterized by inclusion of the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors can be influenced by work history and affiliation), and the collective breadth of experience to address the charge adequately. The SAB is a technical advisory body, not a committee designed to reflect stakeholder views." (EPA 2002: 10)

Although the EPA thus emphasizes the technical nature of its advisory committees, a closer look reveals that it assesses potential committee members according to a broad range of technical and non-technical criteria.

When the SAB decides to create a new advisory panel, a notice is printed in the Federal Register. Interested members of the public can also receive a notice through an email listerv. Based on its own research and nominations from the general public, the SAB creates a list of candidates for advisory committee service. Each candidate is asked to complete a Confidential Financial Disclosure Form, which requests information regarding previous employment, research support, consulting, expert testimony, and assets and liabilities over $10,000 during the previous two years. Like most other federal agencies, the EPA uses the standard Office of Government Ethics form (Form 450) to collect information on financial conflicts of interest. The EPA also invites public comment on advisory committee rosters prior to the first meeting. Like the FDA and NAS, however, the EPA does not make conflict-of-interest information available to the general public (CPI 2006: 5). According to the GAO’s 2004 study, the EPA does not request other information relevant to assessing points of view, such as previous public statements or positions on the matter being reviewed, including statements in articles, testimony, or speeches; positions taken in various legal forums, particularly in providing expert legal testimony; research conducted on the matter; interests of their employers or clients in the matter; and sources of funding for research or other activities." (GAO 2004a: 34ff.)

The GAO report did find, however, that the EPA’s Federal Insecticide, Fungicide, and Rodenticide (FIFRA) Scientific Advisory Panel consistently collects and assesses precisely this sort of information. As a result, the FIFRA Scientific Advisory Panel is "in a position to ensure that its panels are balanced in terms of the points of view represented" (ibid.).

Food and Drug Administration

The FDA maintains more than 30 advisory committees that advise the agency on drugs, medical devices, and food. Committees often call upon additional experts to provide targeted advice during meetings on the person’s area of expertise. Meetings are announced in the Federal Register at least 60 days prior to the meeting, but the membership roster of a new committee is not released before the first meeting (CSPI 2006: 8). FDA advisory committees are composed primarily of scientists from a wide range of fields, but most committees also include representatives of industry and consumer groups. Consumer representatives must be able to "represent interested individual consumers and consumer organizations," as well as "analyze scientific data, understand research design, discuss benefits and risks, and evaluate the safety and efficacy of products under review, but from the consumer perspective." 14

The FDA requires advisory committee members to submit a "Confidential Financial Disclosure Report," which asks them to provide "detailed information regarding financial holdings, employment, research grants and contracts, and other potential conflicts of interest that may preclude membership." 15 It also asks if they have provided services as expert witnesses or engaged in advocacy related to the committee’s topic during the past year. If the agency considers a committee member’s conflicts of interest to be insignificant, or if it considers the member’s expertise essential for the committee, it may grant a waiver. Indeed, according to a recent study,

"Virtually all FDA advisory panels include some scientists who receive conflict-of-interest waivers. There have even been cases where a majority of the committee received waivers. When a committee is discussing a scientific or regulatory issue that applies to all firms in

14 http://www.cfsan.fda.gov/~lrd/vidiel.html#advice.
15 http://www.cfsan.fda.gov/~lrd/vidiel.html#advice.
the affected industry, the FDA will grant a «general» waiver to anyone who has any financial ties to any company in that industry.» (CSPI 2006: 8)

National Institutes of Health

The various entities of the Department of Health and Human Services, including the National Institutes of Health, sponsor about 26 percent of all federal advisory committees and 36 percent of all scientific and technical advisory committees (GAO 2004a: 3). In 2007 the NIH chartered 149 advisory committees with a total of 5,618 members (NIH 2007b). The NIH uses five types of advisory committees (NIH 2006, 2007a):

Initial/Integrated Review Groups and Special Emphasis Panels, also known as study sections, perform the initial peer review of external grant applications, cooperative agreements, and contract proposals. The Boards of Scientific Counselors perform the same function for NIH internal research. The latter also perform broader concept reviews of research programs, but unlike other advisory committees, they do not have permanent memberships but consist of individuals asked to serve for a single meeting. Members of all these committees are «selected on the basis of the scientific and technical needs of specific committees.» At the same time, however, «Non-scientific members of the public may serve on scientific and technical review committees when their expertise is appropriate.» (NIH 2007b)

The NIH’s National Advisory Councils and Program Advisory Committees perform the second level of peer review of grant and cooperative agreement applications, examining the proposed research with regard to its impact on the mission of the particular NIH Institute or Center where it is located. They «review the summary statements for scientific merit, [...] the adequacy and appropriateness of peer review as performed by the IRGs, the need for research to be initiated in new areas, the relevance of the proposed research to the Institute or Center’s mission and programmatic priorities, the potential public health or categorical disease impact, and other matters.» (NIH 2007b)

They also «serve as a forum where interested members of the public, in open session, may both hear and comment on issues relevant to the overall mission of the IC.» Indeed, «The membership of most councils is required by law to be two-thirds scientists and one-third representatives of the public.» These public members are people with «demonstrated interests in the health program areas of the particular Institute or Center,» often patients or relatives of patients. «The mix of members brings to the review and award process diverse knowledge and expertise in the relevant programmatic areas.» For all committees, «Measures are taken to ensure representation of women and minorities as well as broad representation of geographic regions of the United States.»

There are other requirements, based on legislation, regulations, or policies.» (Ibid.)

The National Academies

The National Academies – an umbrella term for the National Academy of Sciences, the Institute of Medicine, the National Academy of Engineering and the National Research Council – select over 8,000 scientists each year to serve on more than 500 committees that produce over 200 scientific reports. Over 80 percent of its budget comes from U.S. government agencies, and most of its studies are undertaken in response to requests from government administrative agencies or members of Congress. As a non-governmental institution, the NAS was long exempt from FACA, but in 1997, as noted above, Congress amended FACA to make NAS committees that receive federal funds subject to certain FACA provisions. In particular, the amendments required that NAS:

- Make names and brief biographies of committee members public;
- Post notice of open meetings;
- Make available written materials presented to the committee;
- Open data-gathering meetings to the public;
- Post summaries of meetings that are not data-gathering meetings;
- Make copies of the final committee report available to the public;
- Make available the names of the principal non-Academies reviewers of the draft report;
- Follow conflict-of-interest and balance requirements that were similar to those established by FACA for advisory committees. (GAO 1998b: 12; CSPI 2006: 4).

Despite acknowledging that most federal advisory committees are interdisciplinary, a recent NAS report sharply distinguishes, at least initially, between the selection criteria for technical and non-technical members.

«Achieving a balance of policy perspectives may be appropriate for those placed on committees for their policy insights, but it is not a relevant criterion for selecting members whose purpose is to provide scientific and technical expertise.» (NAS 2005: 3)

The report goes on to implicitly criticize the Bush administration, noting that because the policy views of technical members are irrelevant, so are questions about potential members’ voting records, party affiliations, or political views. And yet, after noting that political opinions, affiliations, and positions are no more relevant than «other personal and immaterial information – such as hair color or height,» the NAS report goes on to recommend that the opinions of nominees be «disclosed to staff and other committee members in closed session,» in part because this «provides an opportunity to balance strong opi-
nions or perspectives through the appointment of additional committee members." (NAS 2005: 6).

It seems doubtful that this approach to identifying conflicts of interest is sufficient.

«In practice, this closed process may not result in full disclosure, let alone dropping conflicted members, especially when it takes place at a first meeting of the committee where the participants may barely know one another. It is likely that the potential effects of biases and conflicts of interest only manifest themselves much later in the process, when a committee's recommendations are being drafted, for instance.» (CSPI 2006: 3)

At the same time, however, the NAS advisory committee guidelines clearly emphasize the need for a broad range of perspectives on any given committee:

«The significant omission of any required discipline from the committee might seriously compromise the quality of the committee's analysis and judgments, even though it is clear to all that the committee is composed of highly qualified and distinguished individuals." (NAS 2003: 3)

Moreover, the NAS guidelines state that in cases involving a combination of technical and social issues, scientific perspectives may need to be complemented by a range of lay perspectives. Most importantly, the NAS guidelines go beyond the common political justification for including lay perspectives (i.e., to increase the political acceptance of decisions). According to the NAS, there are also epistemic reasons to include lay perspectives:

«The assessment of the necessary perspectives required for a particular study committee may also involve considerations that go beyond specific disciplinary scientific or technical concerns. For some studies, for example, it may be important to have an industrial perspective or an "environmental" perspective. This is not because such individuals are representatives of industrial or environmental interests, because no one is appointed by the institution to a study committee to represent a particular point of view or special interest. Rather it is because such individuals, through their particular knowledge and experience, are often vital to achieving an informed, comprehensive, and authoritative understanding and analysis of the specific problems and potential solutions to be considered by the committee.» (NAS 2003: 3, original emphasis)

The NAS does not see any advisory committee members as speaking for particular constituencies, and it expects all members — including those with an environmental or industrial perspective — to provide an independent judgment on the issues. For the NAS, including the particular knowledge and experience of lay members enhances the epistemic qualities of advisory committees and is a vital part of advisory committee balance.

In its advisory committee guidelines, if not always its actual practice, the NAS thus casts the inclusion of diverse perspectives primarily as a matter of enriching deliberation rather than ensuring the fair representation of interests. The NAS is thus able to tolerate a fairly high degree of potential bias among committee members. This makes it possible to appoint qualified people from a range of perspectives who might not otherwise be allowed to serve.

Potential sources of bias are not necessarily disqualifying for purposes of committee service. Indeed, it is often necessary, in order to ensure that a committee is fully competent, to appoint members in such a way as to represent a balance of potentially biasing backgrounds or professional or organizational perspectives. For example, an individual may be selected to serve on a committee conducting a broad study of proposed new scientific missions in space, although the individual is a consultant or an employee of an aerospace company that has a general business interest in such matters. (NAS 2003: 3)

The guidelines state that such biases should be noted and taken into consideration in composing the entire committee. Not all biases, of course, can be tolerated.

«Some potential sources of bias [...] may be so substantial that they preclude committee service (e.g., where one is totally committed to a particular point of view and unwilling, or reasonably perceived to be unwilling, to consider other perspectives or relevant evidence to the contrary).» (NAS 2003: 4)

But with the exception of extreme biases that preclude reasoned deliberation, the NAS argues that bias should be distinguished from conflict of interest, and the latter should be defined narrowly:

«The term "conflict of interest" means something more than individual bias. There must be an interest, ordinarily financial, that could be directly affected by the work of the committee. Conflict of interest requirements are objective and prophylactic.» (NAS 2003: 4, original italics)

A bias thus does not usually constitute a conflict of interest. An exception would be when a potential member is president of a professional society that advocates the same position as the potential member. The NAS thus again suggests that the political views of committee members should be evaluated not in terms of their capacity to represent the direct interests of particular individuals or groups, but in terms of their contribution to inclusive deliberation on the committee itself.

Conclusion

This paper has reviewed the politicization of science advisory committees in the United States, as well as selected legislative and administrative efforts to

16 The FACA Amendments of 1997 exempted NAS committees from the federal conflict-of-interest provisions to which federal agencies are subject.
prevent such politicization. It appears that the government oversight bodies charged with implementing FACA have relied on a double standard that establishes different guidelines for expert members and representative members. This indirectly fosters politicization in two ways: It establishes an impossibly high standard of disinterested objectivity for expert members, and it encourages a low standard of self-interested partisanship for representative members. In both cases, reasoned deliberation falls by the wayside. The GAO makes a similar point when it states that

> agencies that do not proactively and transparently address the relevant points of view of prospective committee members [...] are more likely to be subject to questions about committee balance from the public and users of the committees’ products than those agencies that use such processes.« (GAO 2004a: 116)

The NAS advisory committee guidelines suggest a similar view, even if evidence suggests that these guidelines are not always carefully followed. Further research is needed to identify what factors shape the practical implementation of advisory committee guidelines, especially with regard to recent efforts at some agencies to incorporate both technical and political perspectives into assessments of advisory committee balance.

Acknowledgment

This research was supported in part by the Berlin-Brandenburg Academy of Sciences and Humanities, and by the U.S. National Science Foundation under award number 0451289.

References


Office of Government Ethics (OGE) (2000): *Memorandum 00 x 1, Summary of Ethical Requirements Applicable to Special Government Employees* (February 15).


