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JUSTICE DEPT.
(Defense of Govt. employees)

*File in
Federal
Advisory
Cmte*

- 6/23/75 Memorandum and Order -- Ralph Nader v. Wm. J. Baroody
(Civil Action No. 74-1675) -- re Federal Advisory Cmte. Act
- 6/24/75 Memorandum transmitting above document; file being closed.
- 6/30/75 Memo for Hartmann, Marsh and Rumsfeld re the ruling by
Judge Gesell -- and thoughts concerning the Transition Team
meetings -- in case the Press makes inquiries.
- 7/1/75 - Memo from Hartmann re Mr. B's 6/30 memo; suggests transferring
the locale to the Residence for social gatherings of old friends
rather than a meeting.
- 6/27/75 - Letter to Jeffrey Axelrad, Dept. of Justice, congratulating
him on the results of the defense of Bill Baroody in the Ralph Nader
action.



JANUARY 4, 1975

Office of the White House Press Secretary

THE WHITE HOUSE

EXECUTIVE ORDER

CONTINUANCE OF CERTAIN FEDERAL ADVISORY COMMITTEES

Under the provisions of Section 14 of the Federal Advisory Committee Act (5 U.S.C. App. I), each advisory committee created by the President or any other officer of the Executive Branch and subject to the provisions of this Act -- in existence on the effective date of the Act, January 5, 1973 -- will terminate on January 5, 1975, unless renewed by the President or other appropriate officer.

During the period elapsed since the Federal Advisory Committee Act was enacted, all Federal advisory committees subject to that Act have been thoroughly examined and reexamined to determine whether they should be continued, modified, abolished, or allowed to terminate. In that period, more than 300 Federal advisory committees have been abolished or allowed to terminate.

All advisory committees created by the President before the effective date of the Act and subject to the provisions of the Act have been carefully examined. I have determined that those listed in Section 1 of this Order should be continued until January 5, 1977, unless terminated sooner. I have also determined that the advisory committees listed in Section 2 of this Order, created after the effective date of the Federal Advisory Committee Act -- expiring under the terms of that Act before January 5, 1977 -- should be continued until that date, unless terminated sooner.

NOW, THEREFORE, I, GERALD R. FORD, by virtue of the authority vested in me as President of the United States of America, particularly by the Federal Advisory Committee Act, do hereby order as follows:

Section 1. The following-listed advisory committees are hereby continued until January 5, 1977, unless otherwise sooner terminated --

- (1) Citizens' Advisory Committee on Environmental Quality -- Executive Order No. 11472 of May 28, 1969, as amended (Council on Environmental Quality).
- (2) Quetico-Superior Committee -- Executive Order No. 11342 of April 10, 1967 (Department of Agriculture).
- (3) Advisory Council for Minority Enterprise -- Executive Order No. 11625 of October 13, 1971 (Department of Commerce).

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- (4) Consumer Advisory Council -- Executive Order No. 11583 of February 24, 1971, as amended (Department of Health, Education, and Welfare).
- (5) President's Council on Physical Fitness and Sports -- Executive Order No. 11562 of September 25, 1970 (Department of Health, Education, and Welfare).
- (6) Committee for the Preservation of the White House -- Executive Order No. 11145 of March 7, 1964, as amended (Department of the Interior).
- (7) Citizens' Advisory Council on the Status of Women -- Executive Order No. 11126 of November 1, 1963, as amended (Department of Labor).
- (8) President's Advisory Committee on the Environmental Merit Awards Program -- Executive Order No. 11667 of April 19, 1972 (Environmental Protection Agency).
- (9) National Health Resources Advisory Committee -- Executive Order No. 11415 of June 24, 1968, as amended (General Services Administration).
- (10) President's Committee on the National Medal of Science -- Executive Order No. 11287 of June 28, 1966, as amended (National Science Foundation).
- (11) President's Commission on White House Fellowships -- Executive Order No. 11183 of October 3, 1964, as amended (Civil Service Commission).

Sec. 2. The following-listed advisory committees are hereby continued until January 5, 1977, unless terminated sooner --

- (1) President's Export Council -- Executive Order No. 11753 of December 20, 1973 (Department of Commerce).
- (2) President's Committee on Mental Retardation -- Executive Order No. 11776 of March 28, 1974 (Department of Health, Education, and Welfare).
- (3) Federal Advisory Council on Occupational Safety and Health -- Executive Order No. 11807 of July 28, 1974 (Department of Labor).
- (4) Energy Research and Development Advisory Council -- Presidential Announcement of June 29, 1973 (National Science Foundation).
- (5) Ad Hoc Advisory Group on Puerto Rico -- Presidential Announcement of September 27, 1973 (Domestic Council).

Sec. 3. The department or agency listed after the advisory committees listed in Section 1 and Section 2 of this Order shall perform such functions with respect to the committee involved as may be required by the Federal Advisory Committee Act.

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Sec. 4. Advisory committees created by the President before January 5, 1973, which are subject to the provisions of the Federal Advisory Committee Act, and which have not been continued by Section 1 of this Order, will, unless sooner terminated under the provisions of the Federal Advisory Committee Act, terminate as of January 5, 1975.

GERALD R. FORD

THE WHITE HOUSE,
JANUARY 4, 1975

#



THE WHITE HOUSE
WASHINGTON

For file on
Advisory Committee
Act.



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

January 8, 1975

MEMORANDUM TO: Roy L. Ash

FROM: Paul H. O'Neill

SUBJECT: Advisory Committee Act - Committee Management Secretariat
(CMS) Responsibilities

REFERENCE: Chet Warner's letter to you of 1/6/75

Attached is a detailed log of actions taken regarding OMB's responsibilities in administering the Advisory Committee Act and the National Petroleum Council (NPC) renewal in particular.

I have been and continue to be assured by the General Counsel's office that we are in compliance with the law. In the case of the NPC, the question was one of balance - which is solely a matter of judgment. The fact that there has been no adverse publicity to date, suggests that our judgment was not bad.

There have been, and continues to be, CMS implementation problems. Their staff has been increased and a management study is underway (study plan attached).

I suggest that we accept Mr. Warner's resignation effective 1/10/75. You have my assurance that we will continue to closely monitor our Advisory Committee Act responsibilities.

Attachments

Advisory Committee Act - Committee Management Secretariat

OMB Activities - 12/3/74 through 1/4/75

12/3/74 - Chet Warner's first report was brought to OMB General Counsel's attention.

- Meeting held to discuss the subject.

Participants - Paul O'Neill, Dep Director
Stan Ebner, OMB Gen Counsel
Bob Bedell, OMB Gen Counsel Office
Joe Laitin, OMB Public Affairs
Velma Baldwin - OMB Admin.
Cliff Graves - OMB Dep Assoc Dir Evaluation
& Program Implementation (Warner's supervisor)
Chet Warner, Head of CMS
Betty McCormick, Sp Asst to Dep Dir
Robin West, WH Pers.; Bill Casselman, WH Counsel
Report was discussed. Mr. Graves was asked to prepare additional report.

12/12/74 -Mr. Graves' report was received. It focused on CMS implementation problems and recommendations. It was given to OMB General Counsel for analysis.

12/13/74 -Mr. Bedell & Graves made a presentation on OMB's Advisory Committee responsibilities to the weekly staff meeting of 30 top managers.

12/19/74 -Meeting held to review Mr. Graves' report in legal context. Participation - Mr. O'Neill, Ebner, Bedell, Mrs. Baldwin. Determination was made that OMB was fulfilling its legal responsibilities.

12/20/74 -Mr. O'Neill met with Mr. Graves to discuss CMS responsibilities and overall EPI staffing. Mr. Graves was instructed to give CMS priority attention, to immediately move an additional person into CMS and to move in a second person as soon as possible.

-Mr. O'Neill received first CMS status report, made several comments and returned it to EPI for further input.

12/24/74 -Mr. O'Neill asked Ms. McCormick to meet with Mr. Warner in reference to statue report.

- They met and developed a plan of action regarding specific problems and the general process.



- 12/27/74 -Plan was reviewed with Mr. O'Neill.
- Roy Niemela, Branch Chief for Interior, was instructed to call Jack Carlson at Interior regarding NPC renewal paper work.
 - Chuck Bingman, DAD for Special Projects, was asked to develop a study of the entire CMS process.
 - Mr. O'Neill decided to include a Presidential statement in the next official communication to Congress on the subject (1/15/75).
- 12/30/74 -NPC was discussed at R.Ash staff meeting.
- 12/31/74 -Interior submitted partial justification for NPC renewal. In a telephone conversation late Tuesday night between Mr. O'Neill and Mr. Carlson, Mr. O'Neill gave them a conditional concurrence to renew based on their proposed new members and pending final paperwork receipt on 1/2/75.
- 1/2/75 -Paperwork was received. Interior/OMB meeting held. Telcon between Mr. Carlson and Mr. O'Neill stressing importance of having new members committed to serve.
- By end of day, 14 of 22 new members were committed.
 - Further discussion in Mr. Ash staff meeting.
 - CMS study plan completed and approved by Mr. O'Neill
 - Fri. OMB staff meeting, Mr. O'Neill asked for cooperation in final days of committee expiration.
- 1/3/75 -Mr. Warner still concerned about extent of consumer group representation. Mr. Graves suggested renewal with conditional letter to Sec. Morton. Mr. Bedell and John Hill, Actg PAD for Interior, concurred.
- Mr. O'Neill had telcon with one of Sen. Metcalf's staff, who called in reference to the NPC renewal. The staff member seemed reasonably pleased with the new members added.
 - All 22 of new members committed.
 - Mr. O'Neill made decision to allow renewal. Interior informed.
- 1/4/75 -R.L.Ash follow-up letter to Sec. Morton delivered. (Attached)



Study Plan For

Review of OMB Responsibilities and Implementation Arrangements for the Federal Advisory Committee Act

I. Purpose

This study is to reassess OMB responsibilities under the Federal Advisory Committee Act and to identify and evaluate alternative management plans for further implementation of those responsibilities.

II. Issues

A number of issue areas will be covered as part of this review. They include:

A. Definition of OMB responsibility.

What is legally required of OMB under the Act? In what way should Congressional intent or future expectations influence OMB's interpretation of its responsibilities? What flexibility exists in defining OMB's responsibility?

B. OMB role in relation to Departments and Agencies.

Closely related to defining the OMB responsibility is the matter of defining what is required by law of the agencies. This, in turn, points to the issue area of what alternative relationships between OMB and the agencies should be considered in assuring



adequate and national implementation of the Act throughout the Executive Branch, In this connection questions arise such as: monitoring of agencies - why and how? Enforcement policy in event of violations?

C. Implementation Activities and Problems.

In the light of OMB/CMS responsibilities, including its role in relation to the agencies, what activities should be undertaken? How do these activities rank in terms of relative priority? What do these activities imply in regard to manpower and skills requirements?

On the basis of experience to date, what problems are evident which pose a threat to adequate implementation of the Act?

D. Management Arrangements within OMB.

What alternative arrangements within OMB will best assure accomplishment of priority activities given the need for general austerity? For example: --

- ° degree of centralizing OMB responsibility in CMS versus coordinating participation by other OMB units such as examiners, management associates and general counsel.
- ° Placement of CMS within OMB.



- Number and type of positions required by CMS, both permanent and detail.
- Possible use of management controls or facilitating techniques such as: planned objectives, management reporting, information retrieval, or others.
- Responsibility for any necessary coordination with White House -- especially regarding Presidential Advisory Committees -- and with Congress.

III. Study to be Performed by:

- Organization and Special Studies Division
- In collaboration with Evaluation and Program Implementation Division.
- Other OMB units will be consulted for information and to obtain their views.
- Information contact will be maintained with the Special Assistant to the Deputy Director.

IV. Report

- A brief (8-10 pps) report will be submitted directly to the Deputy Director.
- This report will be a preliminary draft subject to whatever coordination the Deputy Director may request.



- ° Attachment will contain any reference material if essential.

V. Schedule

- Week of January 6 --- Initiate review and develop pertinent information.
- Week of January 13 --- Draw up tentative alternatives for evaluation through discussion and analysis.
- Week of January 20 --- Prepare preliminary draft report.
- Week of January 25 --- Submit preliminary draft report to Deputy Director for action or further coordination.



JAN 4 1975

Honorable Rogers Morton
Secretary of the Interior
Washington, D. C.

Dear Rog:

Pursuant to the provisions of the Federal Advisory Committee Act of 1972 (P.L. 92-463), I have concurred with your proposal to renew the charter of the National Petroleum Council. I have done so on the basis of your Department's recent efforts to bring the Council into full compliance with the Act, with the understanding that these efforts will continue in the coming months. My staff will closely monitor the activities of the Council.

Section 5(b)(2) of the Act requires that the membership of an advisory committee "...be fairly balanced in terms of the points of view represented and the functions to be performed by the committee." Your proposal to add representatives from consumer or environmental groups, organized labor and the academic community will do much to achieve this balance. I am sure that you will see that the new members have appropriate representation on the NPC subcommittees as well.

I understand that if any of the proposed new members do not accept, they will be replaced by persons of comparable stature and perspective. I suggest that as the terms of present members expire, if they are to be replaced, that additional representatives of consumer organizations be considered for appointment. My staff will work closely with yours to ensure that the objectives for the National Petroleum Council are met.

Sincerely,

(Signed) Roy

Director

cc: DO Records Official File
Director
Director's chron
Dep Director

Rewritten:PHO'Neill:hh 1/3/75



DEPARTMENT of the INTERIOR

news release

OFFICE OF THE SECRETARY

Cadieux (202) 343-4367

For Release Upon Receipt (January 6, 1975)

NATIONAL PETROLEUM COUNCIL MEMBERSHIP BROADENED

Environmentalists, consumer and academic representatives will become members of the National Petroleum Council this month, it was announced today by Interior Secretary Rogers C. B. Morton.

Tom Kimball of the National Wildlife Federation, Elvis J. Stahr of the National Audubon Society, Kent Gill of the Sierra Club have been invited to represent environmentalists on the prestigious council, Secretary Morton said.

Ruth C. Clusen, President of the League of Women Voters; Charles F. Bulotti, Jr. President of the American Automobile Association; Andrew J. Biemiller, Director of Legislation for the AFL-CIO; and Charles Wyckoff, President of the National Rural Electric Cooperative Association, are among consumer representatives invited to join the Council.

Additional representation from the academic world will be furnished by Dr. Paul W. MacAvoy of Massachusetts Institute of Technology; Dr. John A. Carver of the University of Denver; and Dr. Jay W. Schmiedeskamp, University of Michigan.

Twenty-two members will take seats on the Council, bringing its total membership to 155. The change in composition of the advisory board is the result of a Department of the Interior study begun in October of 1974 by Jack W. Carlson, Assistant Secretary of the Interior for Energy and Minerals. The study sought to determine whether the effectiveness of the group could be improved by including other segments of the nation which are vitally interested in oil and gas problems.



Petroleum industry representation on the 155 member Council will be changed considerably, Carlson said, pointing out that Independent marketers have been given an enlarged voice in the Council, and the new Council will more accurately reflect all operational elements of the petroleum industry. A functional breakdown of the new Council shows that every function of the industry is represented.

Interior's study showed that there is adequate geographic distribution of the National Petroleum Council's membership, Carlson added, so there has been no conscious effort expended toward picking the new members by location.

The existing members were appointed for the fiscal year, so their memberships extend to the end of June 1975. (A list of these members is attached.)

The National Petroleum Council is charged with advising and informing the Secretary of the Interior, upon request, on any matter relating to petroleum or the petroleum industry. When the National Petroleum Council was first established in 1946, the intent was to draw upon the technical resources of the industry and to obtain its viewpoint.

The change in the membership of the Council, to represent all segments of petroleum interests from exploration and production to the ultimate consumer, is indicative of the newly recognized importance of petroleum in the American economy, Carlson said.

"At a time when decisions concerning petroleum have a direct effect upon all aspects of the petroleum industry, we want representation from all segments, from the oil well to the consumer," Dr. Carlson said.

The complete list of the 22 individuals invited to become members of the Council follows:

John F. O'Connell, President of Bechtel Corporation, San Francisco, CA

Andrew J. Biemiller, Director, Department of Legislation AFL-CIO,
Washington, D.C.

Charles F. Bulotti, Jr. President of AAA, Falls Church, Virginia

Dr. John A. Carver, University of Denver Law School, Denver, Colorado

Ed Carlson, Chairman of the Board of United Airlines, Chicago, Illinois

Ruth C. Clusen, President, League of Women Voters, Washington, D.C.



Frank E. Fitzsimmons, President of the International Brotherhood of Teamsters, Washington, D.C.

Dr. John S. Foster, Jr. Vice President of Energy Research and Development of TRW, Incorporated, Redondo Beach, California

Robert Gilkeson, Chairman of Edison Electric Institute, New York

Kent Gill, President of the Sierra Club, San Francisco, CA

Mary Hudson, President of Hudson Oil Company, Kansas City, Kansas

William Hulbert, President of American Public Power Ass'n., Washington, D.C.

Thomas L. Kimball, Executive Director of the National Wildlife Federation, Washington, D.C.

William J. Kuhfuss, President of American Farm Bureau Federation, Parkridge, Illinois

Dr. Paul W. MacAvoy, Massachusetts Institute of Technology, Cambridge, Massachusetts

James C. Scanlan, President of Pennsylvania Oil Company, Sommerville, Massachusetts

Jay W. Schmiedeskamp, Institute for Social Research, University of Michigan

Elvis J. Stahr, President of the Audubon Society, New York

Robert E. Thomas, President of Mapco, Inc., Tulsa, Oklahoma

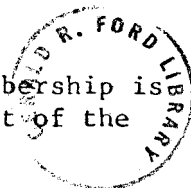
John G. Winger, Vice President of the Chase Manhattan Bank, New York

D. E. Woodrick, Executive Director of Midwest Petroleum Marketing, Rosemont, Illinois

Charles Wyckoff, President of National Rural Electric Cooperative Ass'n. of Washington, D.C.

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Editors: A complete list of the National Petroleum Council membership is available at the Office of Communications, Room 7222, Department of the Interior, Washington, D. C. 20240 (202-343-3171).



January 6, 1975

Roy Ash, Director
Office of Management and Budget
Washington, D.C.

Dear Mr. Director:

At 4:00 p.m. on December 31, 1974, Jack Carlson of Interior called me regarding the renewal of the National Petroleum Council's charter, which was terminating that day. Jack informed me that a request for renewal of the NPC was en route to OMB. He also informed me he was working on a new plan for balancing the membership of this Council. He read me a list of names under consideration for appointment to the Council to achieve better balance.

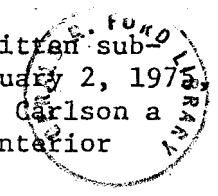
At 5:28 p.m., December 31, 1974, Interior's request for renewal of this Council arrived at OMB. This submission did not contain the new plan for balanced membership, nor was their old plan for balance complete.

At 5:40 p.m., December 31, 1974, I called Charles Enright, the Committee Management Officer at Interior, and informed him that I did not concur on the renewal of the National Petroleum Council's charter for the following reasons:

- (1) Their old plan for balanced membership was incomplete;
- (2) Their new plan for balance was not in the submission;
- (3) I did not have time to consider the categories of names and compare them with other members (the new names Jack Carlson read over the phone);
- (4) It was too late to process their request.

At 7:15 p.m., December 31, 1974, I received a telephone call at home from Bob Pressley, who was working on this problem with Jack Carlson. Bob asked me if I would reconsider my position, because he had the new names written down and would deliver them to OMB. I told him no, because there was not enough time to check the names and go through a negotiating process between OMB and Interior to resolve the question of balance and other programmatic matters.

At 8:10 a.m., January 2, 1975, OMB received Interior's written submission for a new balance plan for the NPC. At 10:00 a.m., January 2, 1975, I was informed by Bob Pressley that Paul O'Neill had given Jack Carlson a concurrence at 8:30 p.m., on December 31, 1974, provided that Interior



Roy Ash, Director
January 6, 1975
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presented an acceptable plan of balance to OMB on January 2, 1975. Betty McCormick, Paul O'Neill's Assistant, informed me at 10:15 a.m., January 2, 1975, that Paul had given Interior this conditional concurrence. At 2:00 p.m., January 2, 1975, representatives of Interior and OMB met and discussed Interior's new plan for balanced membership of the NPC.

At 10:00 a.m., January 3, 1975, I informed Cliff Graves that I did not concur with Interior's new plan for balance and that the National Petroleum Council should have terminated on December 31, 1974.

At 5:30 p.m., January 3, 1975, I was informed by Cliff Graves that OMB was granting the renewal verbally to be followed by a letter from you to Secretary Morton.

I think you and Paul O'Neill acted in an irresponsible manner on this issue. Paul overruled my decision without the facts and with second-hand information. You wrote a concurrence letter with less information than Paul had. In my opinion, both these actions are in violation of the letter and spirit of the Federal Advisory Committee Act. These actions are also indicative of and consistent with OMB's policy makers' track record of noncompliance with the Act. These actions and this track record have placed the President, you, the Deputy Director, the Deputy Associate Director, and the Committee Management Secretariat, OMB in an indefensible position with the public and the Congress.

I have enclosed a paper that will give you more detail on violations of the Federal Advisory Committee Act by the President, you, and this Agency. This paper was written by me and presented to Gwen Anderson of the President's staff six weeks ago in hopes that she could get through to the President. I understand that she gave the paper to Donald Rumsfeld. I took this action as a last desperate act, after six months of futile attempts to get through Bob Marik to the Deputy Director or you to help us remedy this situation. Mr. Director, the President nor this country can afford this kind of trouble. I have enclosed a proposed Presidential announcement, which I implore you to ask the President to make in order that he may get out in front of this issue. Your Deputy Director, the President's staff, and the General Counsel's Office, OMB, have been in possession of this paper for six weeks. Your Deputy Director has had the statement for 10 days.

On March 28, 1974, I was assigned the lead responsibility for the Committee Management Secretariat, OMB. At that time I pledged to my associates at OMB, the Congress, and to myself to bring to this job hard work, dedication, sincerity, loyalty, and integrity. I further pledged



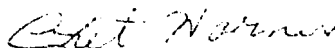
Roy Ash, Director
January 6, 1975
Page 3

to discharge my responsibilities in accordance with the letter and spirit of the Federal Advisory Committee Act. These things I have done to the maximum extent feasible within the constraints of the resources provided me.

However, in view of your action and Paul O'Neill's action in overruling my decision not to concur on the renewal of the National Petroleum Council's charter, I feel that I can no longer discharge my duties at the Committee Management Secretariat without compromising the professional integrity of OMB and my personal integrity. This I will not do.

I hereby tender my resignation to take effect as soon as it is administratively feasible to relieve me of my duties.

Sincerely,



Chet Warner
Committee Management Secretariat



PART I

EXISTING PROBLEMS OF THE ADVISORY COMMITTEE
MANAGEMENT SYSTEM IN THE EXECUTIVE BRANCH OF
THE FEDERAL GOVERNMENT

PART II

A NEW ADVISORY COMMITTEE CONCEPT

PART III

WHITE HOUSE ADVISORY COMMITTEE OPERATION



PART I

EXISTING PROBLEMS OF THE ADVISORY COMMITTEE
MANAGEMENT SYSTEM IN THE EXECUTIVE BRANCH OF
THE FEDERAL GOVERNMENT



"The Congress finds that there are numerous committees, boards, commissions, councils, and similar groups which have been established to advise officers and agencies in the executive branch of the Federal Government and that they are frequently a useful and beneficial means of furnishing expert advice, ideas, and diverse opinions to the Federal Government." (Section 2.(a) Federal Advisory Committee Act PL92-463).

The term "advisory committee" means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof which is established in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government. In general, for a group to be classified as an advisory committee and to come within the coverage of the Federal Advisory Committee Act, it must have all or most of the following characteristics: (1) fixed membership (including at least one person who is not a full time Federal officer or employee; (2) the purpose, objective or intent of providing advice to a Federal official or agency regarding a particular subject or subjects; (3) regular or periodic meetings; and (4) an organizational structure (e.g. officers) and a staff.

These groups are established by statute or reorganization plans; established or utilized by the President; and established or utilized by one or more agencies.

The Federal Advisory Committee Act authorizes the establishment of a system governing the creation and operation of advisory committees in the executive branch of the Federal Government. The Act places certain responsibilities for these advisory committees in the Congress, the President, the Director of OMB, agency heads, and the Library of Congress. The Act also authorizes the Director, OMB, to "...establish and maintain within the Office of Management and Budget a Committee Management Secretariat, which shall be responsible for all matters relating to advisory committees."

It was the intent of the Congress to have these entities carry out their individual responsibilities under the Act and



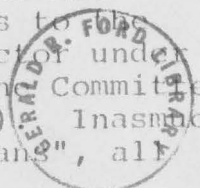
give the Committee Management Secretariat the overall responsibility for an advisory committee management system in the executive branch of the Federal Government.

"...each standing committee of the Senate and the House of Representatives shall make a continuing review of the activities of each advisory committee under its jurisdiction to determine whether such advisory committees should...." There are few, if any, Congressional Committees conducting reviews of advisory committees. There is no comprehensive review being conducted by the Congress of all statutory advisory committees.

The President delegated the functions vested in the President by the Act to the Director, OMB (EO 11769). However, the President creates advisory committees and nominates members to these and other advisory committees. During the first two years of the Federal Advisory Committee Act the President has created by proclamation and executive order numerous advisory committees that have not been properly brought into the administrative process. The President has created other groups and incorrect determinations were made that they were not advisory committees.

The President has nominated members to these advisory committees with little or no consideration given to fairly balancing the memberships in terms of the points of view represented and the functions to be performed. As a result of these Presidential actions or inactions, the President, his delegates, and these advisory committees are in violation of the following sections of the Federal Advisory Committee Act: balanced membership (Sec. 5.(c)); establishment of advisory committees (Sec. 9. (a)(1)); charter filing (Sec. 9.(c)); open meetings, notice of meetings publication in Federal Register, 81 Stat. 54 (public inspection of documents), minutes, certification of accuracy of minutes, 81 Stat. 54 (annual reports), Federal officer or employee attendance (Sec. 10.); availability of transcripts (Sec. 11. record keeping, audit, agency support services (Sec. 12.); reports and background papers, depository (Sec. 13.); and termination of advisory committees, renewal, continuation (Sec. 14.(a)(2), (b)(1), (b)(3), (c)).

The Director of the Office of Management and Budget was delegated the functions vested in the President by the Act (EO 11769). The Director delegated certain functions to the Agencies and, "in general, the functions of the Director under the Act and under EO 11769 shall be carried out by the Committee Management Secretariat of OMB (OMB Circular No. A-63). Inasmuch as there are no guidelines as to what "in general means", all



actions or inactions by the Secretariat will be considered taken or not taken in the name of the Director. The functions of the President under the Act, delegated to the Director and carried out by the Secretariat will be treated separately from the functions of the Director under the Act, carried out by the Secretariat. Other functions of the President under the Act delegated to the Agencies by the Director (EO 11769) will be treated under the responsibilities of agency heads.

The Director has delegated some, but not all, of the President's responsibility for evaluating and taking action, where appropriate, with respect to all public recommendations made to him by Presidential advisory committees. There has been little or no action in this area on the Presidential advisory committees not delegated by the Director to other agencies.

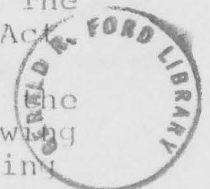
The Director has delegated some, but not all, of the President's responsibility to submit a report to the Congress within one year after a Presidential advisory committee has submitted a public report to the President. There has been a small percentage of these reports submitted to the Congress on the Presidential advisory committees not delegated by the Director to other agencies.

The Director is required by the Act to carry out an annual comprehensive review of advisory committees and upon completion of this review make recommendations to the President and to either the agency head or the Congress with respect to action he believes should be taken. These reviews have been conducted, but no recommendations have been made to the Congress, the President or agency heads.

The Director is required by the Act to include in budget recommendations a summary of the amounts he deems necessary for the expenses of advisory committees. No summary has been included in any budget recommendations.

The Director is required by the Act to provide for the filing with the Library of Congress of at least eight copies of each report made by every advisory committee and, where appropriate, background papers prepared by consultants. The Director has no system to monitor this provision of the Act.

As a result of the Director's actions or inactions, the Director and the President are in violation of the following sections of the Federal Advisory Committee Act: evaluating and taking action on Presidential advisory committee recommendations (Sec. 6.(a)); follow up reports to the Congress on



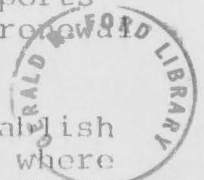
Presidential advisory committee reports (Sec. 6.(b)); recommendations to the Congress, the President or agency head (Sec. 7(b)); budget recommendations (Sec. 7.(e)); and providing for the filing of advisory committee reports to the Library of Congress (Sec. 13.).

The Director delegated certain functions vested in the President by the Act to agency heads (EO 11769). One of those functions is evaluating and taking action, where appropriate, with respect to all public recommendations made to him by Presidential advisory committees. Another of those functions is to submit a report to the Congress within one year after a Presidential advisory committee has submitted a public report to the President. Agency heads are performing less than ten percent of the actions required by these two functions.

The Act requires each agency to establish uniform administrative guidelines and management controls for advisory committees established by that agency; maintain systematic information on the nature, functions, and operation of these committees; exercise control and supervision over the establishment, procedures, and accomplishment of advisory committees established by that agency; file advisory committee charters; publish timely notice of meetings in the Federal Register; and conduct other administrative and management procedures. Many agencies have not written advisory committee management regulations; have no system for committee management; have not defined and chartered subgroups as advisory committees; do not publish timely notice in the Federal Register; do not publish proper justification for closed meetings in Federal Register; and do not make timely reports to OMB.

As a result of the agency head's actions or inactions, the agency heads and the President are in violation of the following sections of the Federal Advisory Committee Act: Presidential actions (Sec. 6.(a)(b)); advisory committee management control officer, designation and administrative guidelines and management controls (Sec. 8.); publication in Federal Register, charter filing (Sec. 9.); minutes, certification of minutes, annual report, Federal officer or employee attendance (Sec. 10.); availability of transcripts (Sec. 11.); record keeping, audit, agency support services (Sec. 12.); reports and background papers (Sec. 13.); and termination and renewal of advisory committees (Sec. 14.).

The Act requires the Librarian of Congress to establish a depository for advisory committee reports and papers where they shall be available to public inspection and use. The



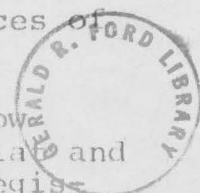
legislative history of this provision shows the Congress intended this depository to be subject matter oriented. The data in this depository is disorganized, incomplete, and sketchy.

The Director shall establish and maintain within the Office of Management and Budget a Committee Management Secretariat, which shall be responsible for all matters relating to advisory committees (Sec. 7.(a) of the Act). In general, the functions of the Director under the Act and under Executive Order 11769 shall be carried out by the Committee Management Secretariat of OMB (OMB Circular No. A-63 Revised).

OMB Circular No. A-63 Revised requires the Committee Management Secretariat to carry out more specific functions: when creating agency advisory committees, agency head must consult with the OMB Secretariat to satisfy the Secretariat that establishment of the advisory committee would be in accord with the Act--if the Secretariat is not satisfied, Secretariat must inform the Agency head in writing within 15 days of receipt of agency consultation letter; the Secretariat may authorize for a shorter period of time the 15 days between the publishing of certification in the Federal Register and the filing of a new advisory committee charter; the Secretariat must concur on agency head's determination that the renewal of an advisory committee is necessary; and two copies of each public report of each Presidential advisory committee shall be submitted to the OMB Committee Management Secretariat at the time of submission to the President.

OMB Circular No. A-63, Transmittal Memorandum No. 1, amends advisory committee renewal criteria and procedure, but does not change the Secretariat's function. Transmittal Memorandum No. 2 amends the annual comprehensive review procedure and requires agencies to submit a monthly report to the Secretariat on changes in the status of advisory committees. OMB Bulletin No. 75-2 requires agencies to report on certain dates to OMB on advisory committees terminating on or being renewed before January 5, 1975. This Bulletin also requires the Secretariat to notify the agencies prior to January 5, 1975 of the completion of consultation on specific committees. On June 25, 1973, the Deputy Director delegated to agencies, by memorandum, functions regarding certain Presidential advisory committees. Certain executive orders and legislation delegate support services of advisory committees to agencies.

The documents and functions are listed above to show specific functions of the Committee Management Secretariat and specific functions of other entities. Where the Act, legislation, executive orders, circulars, bulletins, and memoranda



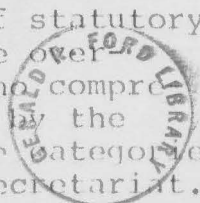
are silent on certain functions, it must be assumed that the Secretariat is responsible for most of these functions. The Secretariat also acts for the President and the Director in certain areas in addition to carrying out the responsibilities of the Secretariat. The Committee Management Secretariat is in violation of the Federal Advisory Committee Act in most instances described above where it acts for the President, the Director and itself (Parts of Sec. 5., Sec. 6., Sec. 7., Sec. 9., Sec. 10., Sec. 11., Sec. 12., Sec. 13., and Sec. 14.

It was the intent of the Congress to establish a system for governing the creation and operation of advisory committees in the executive branch of the Federal Government. Congress further intended each agency to have a central committee management operation reporting to the Committee Management Secretariat, OMB. The Secretariat was intended to have the overall coordinating and management responsibility for the executive branch. The Secretariat has set up an infrastructure to perform this function. However, the Congress also intended that the Secretariat perform the comprehensive oversight responsibility for all advisory committees to avoid overlapping and duplicating functions in order to make these committees more effective and keep their number to a minimum. The Secretariat is not performing this function.

As a result of the violations of the Federal Advisory Committee Act listed above, there are 1,250+ advisory committees in 56 agencies with 23,000+ members in the executive branch of the Federal Government floating around with little central control. Committees are being created and renewed that are overlapping, and in many cases, duplicating the functions of other committees. There are conflict of interest problems with current members of these committees and former members have been, allegedly, paid off by special interest groups for services performed while members of committees.

The majority of these advisory committees do not have balanced memberships; are not complying with the Act and the guidelines published by OMB; groups are holding meetings without being chartered; other groups are holding closed or other illegal meetings; and are violating other provisions of the Act.

To sum up, there is no comprehensive overview of statutory advisory committees by the Congress; no comprehensive overview of agency advisory committees by the Director; no comprehensive overview of Presidential advisory committees by the President; and no comprehensive overview of all these categories of advisory committees by the Committee Management Secretariat.



Inquiries received by the Committee Management Secretariat in the past two months from law firms, the academic community, public relations firms, public interest groups, public representation groups, consumer groups, and the news media indicate an embarrassing situation in the very near future for the Committee Management Secretariat, agency heads, the Director, members of the White House Staff, and the President.



PART II

A NEW ADVISORY COMMITTEE CONCEPT



A new advisory committee concept should be developed to include citizen participation from the neighborhood advisory committees in the cities of America to the Presidential advisory committees in Washington. The states should pass state advisory committee laws to bring state, county, and local citizens into the advisory committee structure.

This concept will emphasize broad citizen participation in advisory committees to bring people into the governmental process. Their activities as members of these advisory committees will stimulate new interest in the political process, create a base for a new grass roots movement, and bring people back to the polls. The President would receive broad based public support by introducing this new advisory committee concept.



PART III

WHITE HOUSE ADVISORY COMMITTEE OPERATION



The White House Advisory Committee Operation would have two functions: (1) Develop the resources on the White House Staff, in OMB, and in the agencies to clear up the present problems and place all advisory committees under a comprehensive management system. (2) Develop the new advisory committee concept.

This operation should be placed under the direction of a Special Assistant to the President whose responsibilities would be as follows:

(1) Overall responsibility for the advisory committee function in the White House.

(2) Monitor all Presidential actions on advisory committees to see that they comply with the Federal Advisory Committee Act and follow through on institutionalizing these actions.

(3) Monitor the President's delegated responsibilities under the Act, the Committee Management Secretariat, and the agencies to see that the executive branch complies with the Act.

(4) Liaison between the President and the Subcommittee on Budgeting, Management, and Expenditures of the Committee on Government Operations, United States Senate; and the Subcommittee on Legal and Monetary Affairs of the Committee on Government Operations, United States House of Representatives (these committees have oversight responsibilities for the Federal Advisory Committee Act).

(5) Advisory committee liaison between the President and the Library of Congress; the academic community; business, industry, agriculture, labor, management, etc.; consumer groups, public interest groups, public representation groups, etc.; and the news media.

(6) Review GSA's preparation of the President's Annual Report to the Congress on advisory committees.

The Special Assistant to the President for the Advisory Committee Operation would need a staff of one assistant and one secretary to begin these functions.



January 6, 1975

Roy Ash, Director
Office of Management and Budget
Washington, D.C.

Dear Mr. Director:

At 4:00 p.m. on December 31, 1974, Jack Carlson of Interior called me regarding the renewal of the National Petroleum Council's charter, which was terminating that day. Jack informed me that a request for renewal of the NPC was en route to OMB. He also informed me he was working on a new plan for balancing the membership of this Council. He read me a list of names under consideration for appointment to the Council to achieve better balance.

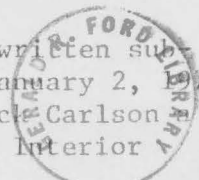
At 5:28 p.m., December 31, 1974, Interior's request for renewal of this Council arrived at OMB. This submission did not contain the new plan for balanced membership, nor was their old plan for balance complete.

At 5:40 p.m., December 31, 1974, I called Charles Enright, the Committee Management Officer at Interior, and informed him that I did not concur on the renewal of the National Petroleum Council's charter for the following reasons:

- (1) Their old plan for balanced membership was incomplete;
- (2) Their new plan for balance was not in the submission;
- (3) I did not have time to consider the categories of names and compare them with other members (the new names Jack Carlson read over the phone);
- (4) It was too late to process their request.

At 7:15 p.m., December 31, 1974, I received a telephone call at home from Bob Pressley, who was working on this problem with Jack Carlson. Bob asked me if I would reconsider my position, because he had the new names written down and would deliver them to OMB. I told him no, because there was not enough time to check the names and go through a negotiating process between OMB and Interior to resolve the question of balance and other programmatic matters.

At 8:10 a.m., January 2, 1975, OMB received Interior's written submission for a new balance plan for the NPC. At 10:00 a.m., January 2, 1975, I was informed by Bob Pressley that Paul O'Neill had given Jack Carlson concurrence at 8:30 p.m., on December 31, 1974, provided that Interior



Roy Ash, Director
January 6, 1975
Page 2

presented an acceptable plan of balance to OMB on January 2, 1975. Betty McCormick, Paul O'Neill's Assistant, informed me at 10:15 a.m., January 2, 1975, that Paul had given Interior this conditional concurrence. At 2:00 p.m., January 2, 1975, representatives of Interior and OMB met and discussed Interior's new plan for balanced membership of the NPC.

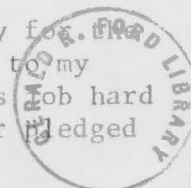
At 10:00 a.m., January 3, 1975, I informed Cliff Graves that I did not concur with Interior's new plan for balance and that the National Petroleum Council should have terminated on December 31, 1974.

At 5:30 p.m., January 3, 1975, I was informed by Cliff Graves that OMB was granting the renewal verbally to be followed by a letter from you to Secretary Morton.

I think you and Paul O'Neill acted in an irresponsible manner on this issue. Paul overruled my decision without the facts and with second-hand information. You wrote a concurrence letter with less information than Paul had. In my opinion, both these actions are in violation of the letter and spirit of the Federal Advisory Committee Act. These actions are also indicative of and consistent with OMB's policy makers' track record of noncompliance with the Act. These actions and this track record have placed the President, you, the Deputy Director, the Deputy Associate Director, and the Committee Management Secretariat, OMB in an indefensible position with the public and the Congress.

I have enclosed a paper that will give you more detail on violations of the Federal Advisory Committee Act by the President, you, and this Agency. This paper was written by me and presented to Gwen Anderson of the President's staff six weeks ago in hopes that she could get through to the President. I understand that she gave the paper to Donald Rumsfeld. I took this action as a last desperate act, after six months of futile attempts to get through Bob Marik to the Deputy Director or you to help us remedy this situation. Mr. Director, the President nor this country can afford this kind of trouble. I have enclosed a proposed Presidential announcement, which I implore you to ask the President to make in order that he may get out in front of this issue. Your Deputy Director, the President's staff, and the General Counsel's Office, OMB, have been in possession of this paper for six weeks. Your Deputy Director has had the statement for 10 days.

On March 28, 1974, I was assigned the lead responsibility for the Committee Management Secretariat, OMB. At that time I pledged to my associates at OMB, the Congress, and to myself to bring to this job hard work, dedication, sincerity, loyalty, and integrity. I further pledged



Roy Ash, Director
January 6, 1975
Page 3

to discharge my responsibilities in accordance with the letter and spirit of the Federal Advisory Committee Act. These things I have done to the maximum extent feasible within the constraints of the resources provided me.

However, in view of your action and Paul O'Neill's action in overruling my decision not to concur on the renewal of the National Petroleum Council's charter, I feel that I can no longer discharge my duties at the Committee Management Secretariat without compromising the professional integrity of OMB and my personal integrity. This I will not do.

I hereby tender my resignation to take effect as soon as it is administratively feasible to relieve me of my duties.

Sincerely,

Chet Warner
Committee Management Secretariat



(1292-463)

of the Federal Advisory Committee Act.

Section 14. (a) (1), states, among other things, "Each advisory committee which is in existence on the effective date of this Act shall terminate not later than the expiration of the two-year period following such effective date unless...". Pursuant to this section of the Act, OMB issued Bulletin No. 75-2 on July 19, 1974, for the purpose of reviewing advisory committees that would terminate on January 5, 1975, unless renewed under the criteria of this review.

The Office of Management and Budget has completed this review and will be forwarding to you in the near future a complete report. However, there were many serious issues raised as a result of this review that require my personal attention.

As you know the Federal Advisory Committee Act became effective on January 5, 1973. ^{Two} of the most important features of this legislation was to give private citizens the opportunity to furnish expert advice, ideas, and diverse opinions to the Federal Government and to give the people of America access to their Federal Government by oral and written presentations at open meetings of these committees.

Due to more pressing priorities in the former administration and in this administration, the opportunities for the American people to participate in this program have not been fully developed. I would like to say at this time that I am taking steps



to develop the resources within my administration to remedy this situation.

On the plus side I would like to report the largest single reduction of the number of advisory committees since the inception of the Act. There were approximately 20 Committees terminated as a ^{direct} result of the ~~process~~ ^{Jan 5, 1974 termination date} and approximately 160 ~~terminations~~ ^{terminations} ~~suggested~~ by the ^{OMB} review for other reasons. This is a total of 360 terminations with a savings in excess of \$10,000,000.00 to the Federal Government.

Last paragraph - personal close.

Letter from President
to Senator Lee Metcalf, Chairman
Subcommittee on Budgeting, Management,
And Expenditures of the Committee on
Government Operations United States Senate

This committee has legislative jurisdiction
over Federal Advisory Committee Act

This letter should be published in President's
weekly documents.

Via Deenemer, Staff Director of above
Committee - phone 224-1474 for
verification of ^{at} ~~above~~ Chet Warner

Chet's number - 5193

345



National Committee For Employer
Support of the Guard and Reserve
Dept of Defense - John Roche chairman - personal friend of President
3/4 million dollars - huge paying operation

Consulting Committee of Banking Economists
National Advisory Committee on Banking Policies
and Practices - 14 Regional Committees
Treasury Dept - function is national bank
solvency, liquidity, and continuity of Fed'l
Banking System - Franklin Park - P. Arnold Smith
for Regis - operated illegally in 1974

National Petroleum Council - reserved
outside of normal procedures of O n B A/c
Management - big oil Co. pressure

Conclusion:

Defense - Monetary System - oil

Don Dunsford, Bill Casselwar, Bill Walker
& O n B Director & Deputy Director - sitting on this
mess for 6 weeks - another Watergate
Evening mess of Treas. Dept & big oil



January 21, 1975

MEMORANDUM FOR: Don Rumsfeld

FROM: Phil Buchen

SUBJECT: Advisory Committee Act and
complaints by former OMB employee,
Chet Warner

About January 7, I was advised of this employee's resignation effective January 10, 1975, on grounds that OMB and various agencies under delegation of authority from the President had failed to carry out the intent of the Act. I received a complete report of OMB efforts from 12/3/75 to 1/4/75 to evaluate Warner's complaints, and by the end of this month OMB expects to have the results of a current study and recommendations for sharpening up compliance with the Act based upon an outline of points to be resolved, which I have read. Warner had earlier advocated appointment of a new Special Assistant to the President with a staff to take lead responsibility for administering the Act, and the underlying reason for his vociferous complaining may have been that this proposal was not blessed by his superiors in OMB.

The subject is a complex one, and my judgment is that OMB is moving expeditiously to overcome whatever problems remain in administering the Act. I have alerted Paul O'Neill to keep us advised.

cc: John Marsh
Dick Cheney

PWBuchen:ed



R. Hills
FNT.

ADVISORY
Committee

Honorable Rex E. Lee
Assistant Attorney General
Civil Division

June 24, 1975
EJS:PMT:cbc

Attn: Jeffrey Axelrad

Earl J. Silbert
United States Attorney
for the District of Columbia

Ralph Nader v. William J. Baroody, Jr.,
Civil Action 74-1675

By memorandum and order entered June 23, 1975, Judge Gesell granted defendant's motion for summary judgment in the above-captioned case. In the opinion, the Court used a reasonable construction approach to the Federal Advisory Committee Act in holding the Act not to apply to meetings conducted on a regular basis at the White House with mixed groups of the public. The Court relied on the lack of organization of these groups, their mixed views and lack of common purpose, and the public interest in retaining the flexibility of such two-way efforts of communication by the President and the public.

The Court distinguished earlier cases under this Act which dealt with meetings which provided specific recommendations on public matters of government policy. The Court also hinted at the serious constitutional problems which might arise from the application of the Act so as to restrict the effective discharge of the President's business.

A copy of the decision is enclosed. In view of this satisfactory result, we are closing our file.

Enclosure
cc: William J. Baroody, Jr.
Dudley Chapman, Esq.



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RALPH NADER,
Plaintiff,

v.

WILLIAM J. BAROODY, JR.,
Assistant to the President
for Public Liaison,
Defendant.

Civil Action No. 74-1675

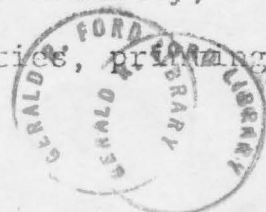
FILED
JUN 23 1975

JAMES E. DAVEY, Clerk

MEMORANDUM AND ORDER

In this action plaintiff seeks a declaratory judgment to the effect that certain bi-weekly meetings with selected groups held at the White House create "advisory committees" within the meaning of section 3(2) of the Federal Advisory Committee Act, 5 U.S.C. App. I, Pub. L. 92-463, 86 Stat. 770, approved October 6, 1972, and an injunction directing defendant to comply with the open meeting and other requirements of that Act. On the basis of information gathered under the Freedom of Information Act and by interrogatories, the White House has made full disclosure and the parties are in agreement as to the underlying facts. The matter comes before the Court on cross-motions for summary judgment which have been fully briefed and well argued.

Beginning in June, 1974, the Assistant to the President of the United States for Public Liaison has regularly convened meetings every two weeks between different high officials of the executive branch and major business organizations or private sector groups to encourage an exchange of views. This program is designed to open the White House to groups in the private sector and increase the flow of information between these groups and top Executive officials, including the President. A different group meets every two weeks. In some fifteen separate meetings at the White House, representatives of the housing construction and residential financing industries, senior citizens, life insurance industry, agriculture and livestock industries, electric utilities, printing



industry, professional service firms, food processing firms, women business leaders, National Council of Churches, home economists in business, grocery manufacturers, youth and technology, and insurance have met. The attendance is by specific invitation to named individuals. A meeting runs an average of three and one-half hours. The private participants have sometimes on their own initiative provided views and recommendations on a variety of subjects in advance of or subsequent to the meetings. The President has attended a portion of four of these meetings. After each meeting a memorandum is prepared of what transpired, summarizing the varying views or varying recommendations received. Further White House meetings of this kind are regularly being scheduled.

The specific and only issue presented is one of statutory interpretation, namely, whether the series of meetings or the individual meetings viewed separately have created one or more advisory committees within the meaning of the Act.

If, in legal contemplation, these are meetings of one or more advisory committees, a series of consequences flow which, as a practical matter, would make the program impractical because of the limited facilities at the White House, loss of scheduling flexibility, security, etc. Members of the press and public would be authorized to attend,^{*/} after advance notice in the Federal Register,^{**/} and a number of other procedural and substantive changes would be required by the Act. Plaintiff is a consumer representative who asked to attend and was denied admission and thus he has standing to sue.

Subject to certain exceptions not here relevant, an advisory committee includes "any committee, board, commission,

*/ "Each advisory committee meeting shall be open to the public."
5 U.S.C. App. I § 10(a)(1).

**/ "Except when the President determines otherwise for reasons of national security, timely notice of each such meeting shall be published in the Federal Register" Id. (a)(2).



council, conference, panel, task force or other similar group . . . established or utilized by the President . . . in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government. . . ." 5 U.S.C. App. I § 3(2). Thus, it is apparent that the Act contains a very broad, imprecise definition, and in this respect is not a model of draftsmanship. The very vagueness and sweeping character of the definition permits a reading which could include the ad hoc groups here involved as well as any other less formal conference of two or more non-government persons who advise the President.

A careful review of the legislative history throws some light on the problem. Congress was aware that advisory committees had proliferated in the federal bureaucracy to such numbers and at such expense that there was need for some regulation and greater disclosure. In enacting Pub. L. 92-463, Congress had clearly in mind prior efforts by the executive branch to control the proliferation of these groups, see, e.g., Executive Order 11007, 27 Fed. Reg. 1875 (Feb. 26, 1962); OMB Circular A-63 (Mar. 22, 1964). Congress accepted the broad outlines developed by prior administrative practice as the point of departure for its own definition of "advisory committees," making explicit those points at which its definition differed from prior usage. H.R. Rep. No. 1017, 92d Cong., 2d Sess. 3-4 (1972). While Congress did not adopt the precise wording of the OMB Circular, supra, to the effect that only "formally constituted" groups were to be covered, see also, § 1(4) Executive Order 11671, 37 Fed. Reg. 11307 (June 5, 1972), it clearly had in mind established entities subject to enumeration. See H.R. Rep. No. 1017, supra at 7.

That the Act was not intended to apply to all amorphous, ad hoc group meetings is also made clear by judicial constructions given the statute since enactment.^{*/} The administration

^{*/} Center for Auto Safety v. Morton, Civil Action No. 74-3566 (D.D.C., Oct. 28, 1974) (Pratt, J.); id., (June 6, 1975) (Robinson, J.); compare Aviation Consumer Action Project v. Yohe, Civil Action No. 707-73 (D.D.C., June 24, 1974); Food Chemical News, Inc. v. Davis, 378 F. Supp. 1048 (D.D.C., 1974).



of the Act is to the same effect. Section 7 of the statute creates within OMB a special secretariat charged with overseeing the operations of all advisory committees and prescribing "administrative guidelines and management controls" applicable to them. See also, Executive Order 11686, 37 Fed. Reg. 21421 (Oct. 7, 1972). In accordance with these responsibilities, OMB promulgated a joint memorandum with the Department of Justice directed to all agency and department heads setting forth detailed standards as to how the Act was to be implemented. 38 Fed. Reg. 2306 (Jan. 23, 1973). Paragraph 4(a)(1) of this implementing memorandum contains administrative guidelines defining "advisory committees" in a way flatly inconsistent with the extension of the Act's requirements to informal group meetings with citizens such as those at issue here.^{*/} The administrative practice, both before and after the Act, has been to consider only groups having some sort of established structure and defined purpose as "advisory committees," and Congress has not voiced objection to this construction. Congress clearly intended that formally organized advisory committees should come under the Act even at the

*/ "4. Committees covered by the Act. a. . . .

"The terms of the Act and its legislative history, including numerous indications of reliance upon concepts used in Executive Order No. 11007 (1962) and No. 11671 (1972), show that while broad coverage was intended, the statute is aimed at "advisory committees or similar groups" in the ordinary sense. In general, such bodies would have all or most of the following characteristics:

- (a) Fixed membership, usually selected by a Federal official or determined on the basis of Federal law;
- (b) Established by a Federal official or on the basis of Federal law; or, if not federally established, the initiative for its use as an advisory body for the Federal Government came from a Federal official rather than from a private group;
- (c) A defined purpose of providing advice regarding a particular subject or particular subjects;
- (d) An organizational structure (e.g., officers) and a staff;
- (e) Regular or periodic meetings.

"Thus, for example, the Act would not apply where a group of persons seeks and obtains a meeting (or even a series of meetings) with a Federal official in order to present him with their views on certain subjects."
38 Fed. Reg. 2307.



presidential level and the White House has responded in this regard, but since the passage of the Act there has been no attempt by either President Nixon or President Ford to go beyond this requirement and open up for public participation and scrutiny all meetings at the White House with non-public officials on matters of general concern where unsolicited advice has been offered.

Examination of the Act as a whole, and the indications found there, confirms the legislative history, and points to the conclusion that Congress was concerned with advisory committees formally organized which the President or an executive department or official directed to make recommendations on an identified governmental policy for which specified advice was being sought. Various provisions of the Act are designed to encourage the termination of many such committees and a reporting procedure was effectuated to bring the complexity of the problem into sharper focus. Nowhere is there an indication that Congress intended to intrude upon the day-to-day functioning of the presidency or in any way to impede casual, informal contacts by the President or his immediate staff with interested segments of the population or restrict his ability to receive unsolicited views on topics useful to him in carrying out his overall executive and political responsibilities.

There is no indication that the meetings here under scrutiny involved a presidential request for specific recommendations on a particular matter of governmental policy. Compare Food Chemical News, Inc. v. Davis, supra, 378 F. Supp. at 1050, (proposed amendments to regulations). The committees were not formally organized and there is little or no continuity. Nor is there any suggestion that the lack of formal organization arises out of a purpose to evade the statute. If the President desired recommendations on an identifiable national policy in which he is interested, in all likelihood he would not rely on a group with apparently narrow focus but would formulate policy, as has been done with past advisory committees, by soliciting the mixed views of labor, consumers, public interest groups, and other segments affected. The President has



merely wisely provided a mechanism and sounding board to test the pulse of the country by conferring directly or indirectly with widely disparate special interest groups.

To hold that Congress intended to subject meetings of this kind to press scrutiny and public participation with advance notice on formulated agendas, etc., as required by the Act, would raise the most serious questions under our tripartite form of government as to the congressional power to restrict the effective discharge of the President's business.^{*/} Cf. United States v. Nixon, 418 U.S. 683, 711 (1974); Myers v. United States, 272 U.S. 52, 131, 164 (1926); Soucie v. David, 145 U.S. App. D.C. 144, 448 F.2d 1067, 1080-84 (1971) (Wilkey, J. concurring).

To avoid serious constitutional questions implicit in plaintiff's position and to reach an interpretation of the statute consistent with its overall provisions and legislative history, the Court declares that the White House meetings here under review do not involve "advisory committees," since the group meetings are unstructured, informal and not conducted for the purpose of obtaining advice on specific subjects indicated in advance. Accordingly, summary judgment will be granted for the defendant, denied for the plaintiff, and the complaint is dismissed.

SO ORDERED.

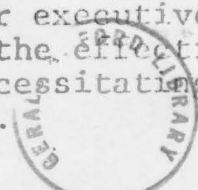
June 23, 1975.

Hubert A. Tamm
UNITED STATES DISTRICT JUDGE

*/ Plaintiff argues, citing Soucie v. David, supra, 448 F.2d at 1071 n. 8, that there has been no claim by the President of the privilege of confidentiality recognized in United States v. Nixon, supra. That misses the point.

The Supreme Court in United States v. Nixon, while agreeing that no privilege against disclosure of executive branch conversations was to be found on the face of the Constitution, held one was implied as "necessary and proper," see 418 U.S. at 705-6 n. 16, to "the effective discharge of a President's powers," 418 U.S. at 711.

It is not that the construction of the Act plaintiff urges would impinge on the privilege of confidentiality for executive communications itself, but that it might impinge on the effective discharge of the President's powers, the interest necessitating the privilege, which raises constitutional questions.



June 27, 1975

*Fed'l
Advisory
Committee
Act*

Dear Jeff:

Congratulations on the results of your defense of Bill Baroody in the case brought by Ralph Nader involving the Federal Advisory Committee Act.

I have just finished reading Judge Gesell's opinion and find his conclusions very gratifying.

I am sure the opinion reflects the high quality of the arguments you presented to the Court.

Sincerely,

Philip W. Buchen
Counsel to the President

Mr. Jeffrey Axelrad
Attorney
General Litigation
Civil Division
Department of Justice
Washington, D. C. 20530



THE WHITE HOUSE
WASHINGTON

*Fed'l
Advisory
Committee
Act*

June 30, 1975

MEMORANDUM FOR: ROBERT HARTMANN
 JACK MARSH
 DON RUMSFELD

FROM: PHILIP BUCHEN *P.W.B.*

SUBJECT: Federal Advisory Committee Act

I have read the opinion of Judge Gesell in the case of Nader v. Baroody, which involved the issue of whether the meetings conducted by Bill Baroody with different groups in the White House every two weeks makes these groups Federal advisory committees which are subject to the above Act. If they are subject to the Act, the effect would be to open each meeting to the public and to require notice of each meeting in the Federal Register.

The ruling of the court was that such informal group meetings with citizens did not bring the participants into the status of a committee subject to the Act, even though the definition of an advisory committee under the statute is broad enough to include even ad hoc group meetings. The court relied on the facts that the composition of the groups was different for each meeting and that they had no continuity of organization or purpose. Therefore, the decision is not an exact precedent for an advisory group that has continuity.

I call this point to your attention in the event news media people or anyone else challenges the closed regular meetings of the Transition Team. I think we can argue on the basis of language in the Gesell opinion that the Transition Team is not subject to the Act, notwithstanding the difference in the factual situation between the Baroody meetings and the Transition Team meetings. Even so we ought to be aware that there could be a public controversy over the issue, and we may want to agree upon what the White House reaction should be if the question is raised with Ron Nessen at a press briefing or in some other way. If you care to take the time for reading the Gesell opinion, I have enclosed a copy.



THE WHITE HOUSE
WASHINGTON

From: Robert T. Hartmann

To: Phil Bucher

Date: 7/1/75 Time a. m. p. m.

It would appear, to me, on the point raised in your memo on Nader v. Baroody, that the question would be readily resolved by transferring the locale to the Residence and making them social gatherings of old friends rather than a meeting.

THE WHITE HOUSE
WASHINGTON

*Fed'l
Advisory
Comtee.*

June 30, 1975

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ROBERT HARTMANN ←
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RALPH NADER,

Plaintiff,

v.

WILLIAM J. BAROODY, JR.,
Assistant to the President
for Public Liaison,

Defendant.

Civil Action No. 74-1675

FILED

JUN 23 1975

JAMES E. DAVEY, Clerk

MEMORANDUM AND ORDER

In this action plaintiff seeks a declaratory judgment to the effect that certain bi-weekly meetings with selected groups held at the White House create "advisory committees" within the meaning of section 3(2) of the Federal Advisory Committee Act, 5 U.S.C. App. I, Pub. L. 92-463, 86 Stat. 770, approved October 6, 1972, and an injunction directing defendant to comply with the open meeting and other requirements of that Act. On the basis of information gathered under the Freedom of Information Act and by interrogatories, the White House has made full disclosure and the parties are in agreement as to the underlying facts. The matter comes before the Court on cross-motions for summary judgment which have been fully briefed and well argued.

Beginning in June, 1974, the Assistant to the President of the United States for Public Liaison has regularly convened meetings every two weeks between different high officials of the executive branch and major business organizations or private sector groups to encourage an exchange of views. This program is designed to open the White House to groups in the private sector and increase the flow of information between these groups and top Executive officials, including the President. A different group meets every two weeks. In some fifteen separate meetings at the White House, representatives of the housing construction and residential financing industries, senior citizens, life insurance industry, agriculture and livestock industries, electric utilities, printing

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industry, professional service firms, food processing firms, women business leaders, National Council of Churches, home economists in business, grocery manufacturers, youth and technology, and insurance have met. The attendance is by specific invitation to named individuals. A meeting runs an average of three and one-half hours. The private participants have sometimes on their own initiative provided views and recommendations on a variety of subjects in advance of or subsequent to the meetings. The President has attended a portion of four of these meetings. After each meeting a memorandum is prepared of what transpired, summarizing the varying views or varying recommendations received. Further White House meetings of this kind are regularly being scheduled.

The specific and only issue presented is one of statutory interpretation, namely, whether the series of meetings or the individual meetings viewed separately have created one or more advisory committees within the meaning of the Act.

If, in legal contemplation, these are meetings of one or more advisory committees, a series of consequences flow which, as a practical matter, would make the program impractical because of the limited facilities at the White House, loss of scheduling flexibility, security, etc. Members of the press and public would be authorized to attend,^{*/} after advance notice in the Federal Register,^{**/} and a number of other procedural and substantive changes would be required by the Act. Plaintiff is a consumer representative who asked to attend and was denied admission and thus he has standing to sue.

Subject to certain exceptions not here relevant, an advisory committee includes "any committee, board, commission,

*/ "Each advisory committee meeting shall be open to the public." 5 U.S.C. App. I § 10(a)(1).

**/ "Except when the President determines otherwise for reasons of national security, timely notice of each such meeting shall be published in the Federal Register" Id. (a)(2).

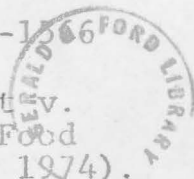


council, conference, panel, task force or other similar group . . . established or utilized by the President . . . in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government. . . ." 5 U.S.C. App. I § 3(2). Thus, it is apparent that the Act contains a very broad, imprecise definition, and in this respect is not a model of draftsmanship. The very vagueness and sweeping character of the definition permits a reading which could include the ad hoc groups here involved as well as any other less formal conference of two or more non-government persons who advise the President.

A careful review of the legislative history throws some light on the problem. Congress was aware that advisory committees had proliferated in the federal bureaucracy to such numbers and at such expense that there was need for some regulation and greater disclosure. In enacting Pub. L. 92-463, Congress had clearly in mind prior efforts by the executive branch to control the proliferation of these groups, see, e.g., Executive Order 11007, 27 Fed. Reg. 1875 (Feb. 26, 1962); OMB Circular A-63 (Mar. 22, 1964). Congress accepted the broad outlines developed by prior administrative practice as the point of departure for its own definition of "advisory committees," making explicit those points at which its definition differed from prior usage. H.R. Rep. No. 1017, 92d Cong., 2d Sess. 3-4 (1972). While Congress did not adopt the precise wording of the OMB Circular, supra, to the effect that only "formally constituted" groups were to be covered, see also, § 1(4) Executive Order 11671, 37 Fed. Reg. 11307 (June 5, 1972), it clearly had in mind established entities subject to enumeration. See H.R. Rep. No. 1017, supra at 7.

That the Act was not intended to apply to all amorphous, ad hoc group meetings is also made clear by judicial constructions given the statute since enactment.^{*/} The administration

^{*/} Center for Auto Safety v. Morton, Civil Action No. 74-1566 (D.D.C., Oct. 28, 1974) (Pratt, J.); id., (June 6, 1975) (Robinson, J.); compare Aviation Consumer Action Project v. Yohe, Civil Action No. 707-73 (D.D.C., June 24, 1974); Food Chemical News, Inc. v. Davis, 378 F. Supp. 1048 (D.D.C., 1974).



of the Act is to the same effect. Section 7 of the statute creates within OMB a special secretariat charged with overseeing the operations of all advisory committees and prescribing "administrative guidelines and management controls" applicable to them. See also, Executive Order 11686, 37 Fed. Reg. 21421 (Oct. 7, 1972). In accordance with these responsibilities, OMB promulgated a joint memorandum with the Department of Justice directed to all agency and department heads setting forth detailed standards as to how the Act was to be implemented. 38 Fed. Reg. 2306 (Jan. 23, 1973). Paragraph 4(a)(1) of this implementing memorandum contains administrative guidelines defining "advisory committees" in a way flatly inconsistent with the extension of the Act's requirements to informal group meetings with citizens such as those at issue here.^{*/} The administrative practice, both before and after the Act, has been to consider only groups having some sort of established structure and defined purpose as "advisory committees," and Congress has not voiced objection to this construction. Congress clearly intended that formally organized advisory committees should come under the Act even at the

*/ "4. Committees covered by the Act. a. . . .

"The terms of the Act and its legislative history, including numerous indications of reliance upon concepts used in Executive Order No. 11007 (1962) and No. 11671 (1972), show that while broad coverage was intended, the statute is aimed at "advisory committees or similar groups" in the ordinary sense. In general, such bodies would have all or most of the following characteristics:

- (a) Fixed membership, usually selected by a Federal official or determined on the basis of Federal law;
- (b) Established by a Federal official or on the basis of Federal law; or, if not federally established, the initiative for its use as an advisory body for the Federal Government came from a Federal official rather than from a private group;
- (c) A defined purpose of providing advice regarding a particular subject or particular subjects;
- (d) An organizational structure (e.g., officers) and a staff;
- (e) Regular or periodic meetings.

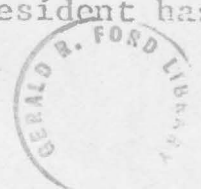
"Thus, for example, the Act would not apply where a group of persons seeks and obtains a meeting (or even a series of meetings) with a Federal official in order to present him with their views on certain subjects."
38 Fed. Reg. 2307.



presidential level and the White House has responded in this regard, but since the passage of the Act there has been no attempt by either President Nixon or President Ford to go beyond this requirement and open up for public participation and scrutiny all meetings at the White House with non-public officials on matters of general concern where unsolicited advice has been offered.

Examination of the Act as a whole, and the indications found there, confirms the legislative history, and points to the conclusion that Congress was concerned with advisory committees formally organized which the President or an executive department or official directed to make recommendations on an identified governmental policy for which specified advice was being sought. Various provisions of the Act are designed to encourage the termination of many such committees and a reporting procedure was effectuated to bring the complexity of the problem into sharper focus. Nowhere is there an indication that Congress intended to intrude upon the day-to-day functioning of the presidency or in any way to impede casual, informal contacts by the President or his immediate staff with interested segments of the population or restrict his ability to receive unsolicited views on topics useful to him in carrying out his overall executive and political responsibilities.

There is no indication that the meetings here under scrutiny involved a presidential request for specific recommendations on a particular matter of governmental policy. Compare Food Chemical News, Inc. v. Davis, supra, 378 F. Supp. at 1050, (proposed amendments to regulations). The committees were not formally organized and there is little or no continuity. Nor is there any suggestion that the lack of formal organization arises out of a purpose to evade the statute. If the President desired recommendations on an identifiable national policy in which he is interested, in all likelihood he would not rely on a group with apparently narrow focus but would formulate policy, as has been done with past advisory committees, by soliciting the mixed views of labor, consumers, public interest groups, and other segments affected. The President has



merely wisely provided a mechanism and sounding board to test the pulse of the country by conferring directly or indirectly with widely disparate special interest groups.

To hold that Congress intended to subject meetings of this kind to press scrutiny and public participation with advance notice on formulated agendas, etc., as required by the Act, would raise the most serious questions under our tripartite form of government as to the congressional power to restrict the effective discharge of the President's business.^{*/} Cf. United States v. Nixon, 418 U.S. 683, 711 (1974); Myers v. United States, 272 U.S. 52, 131, 164 (1926); Soucie v. David, 145 U.S. App. D.C. 144, 448 F.2d 1067, 1080-84 (1971) (Wilkey, J. concurring).

To avoid serious constitutional questions implicit in plaintiff's position and to reach an interpretation of the statute consistent with its overall provisions and legislative history, the Court declares that the White House meetings here under review do not involve "advisory committees," since the group meetings are unstructured, informal and not conducted for the purpose of obtaining advice on specific subjects indicated in advance. Accordingly, summary judgment will be granted for the defendant, denied for the plaintiff, and the complaint is dismissed.

SO ORDERED.

June 23, 1975.

Gerald A. Tavel
UNITED STATES DISTRICT JUDGE

*/ Plaintiff argues, citing Soucie v. David, supra, 448 F.2d at 1071 n. 8, that there has been no claim by the President of the privilege of confidentiality recognized in United States v. Nixon, supra. That misses the point.

The Supreme Court in United States v. Nixon, while agreeing that no privilege against disclosure of executive branch conversations was to be found on the face of the Constitution, held one was implied as "necessary and proper." see 418 U.S. at 705-6 n. 16, to "the effective discharge of a President's powers," 418 U.S. at 711.

It is not that the construction of the Act plaintiff urges would impinge on the privilege of confidentiality for executive communications itself, but that it might impinge on the effective discharge of the President's powers, the interest necessitating the privilege, which raises constitutional questions.



THE WHITE HOUSE
WASHINGTON

From: Robert T. Hartmann

To: Phil Buchen

Date: 7/1/75 Time a. m.
p. m.

It would appear, to me, on the point raised in your memo on Nader v. Baroody, that the question would be readily resolved by transferring the locale to the Residence and making them social gatherings of old friends rather than a meeting.

Fed's
Advisory
Center Act.



*Richard A. ...
C. ...*

THE WHITE HOUSE

WASHINGTON

August 5, 1975

MEMORANDUM FOR: DON RUMSFELD
FROM: PHIL BUCHEN *P.W.B.*
SUBJECT: The Transition Team and the
Federal Advisory Committee Act

As I mentioned to you, my concern with Judge Gesell's opinion in Nader v. Baroody is not that a court is likely to subject the Transition Team to the requirements imposed by the Federal Advisory Committee Act, but how we will respond to any questions that may arise concerning the applicability of the Act to the Transition Team. Although the Transition Team meets on an infrequent, but recurring basis, the applicability of the Act in this instance raises the same constitutional problem that Judge Gesell sought to avoid by his interpretation of the statute; i. e., impingement of the effective discharge of the President's powers.

Should a question regarding the Gesell opinion be raised with Ron Nessen, I recommend that he point out the informal nature of this group and its unstructured format. He should also state he understands that Judge Gesell determined the statute did not apply to such informal meetings with the President.



MEMORANDUM

THE WHITE HOUSE
WASHINGTON

August 1, 1975

MEMORANDUM FOR: PHIL BUCHEN

FROM: DONALD RUMSFELD

I am going to assume that you are going to get me a piece of paper as to whether or not the Transition Team is an Advisory Council under the Gizzell decision. What we need to know is how we ought to handle it so that it fits what we want.

Gizzell

Transition Team



THE WHITE HOUSE
WASHINGTON

June 30, 1975

*Let's
Baroody
Miller
etc.*

MEMORANDUM FOR: ROBERT HARTMANN
JACK MARSH
DON RUMSFELD

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THE WHITE HOUSE

WASHINGTON

October 20, 1975

MEMORANDUM FOR: CLEM CONGER

THROUGH: PHIL BUCHEN *T.W.B.*

FROM: DUDLEY CHAPMAN *DC*

SUBJECT: Applicability of the Advisory Committee Act to Meetings of the Committee for the Preservation of the White House

I.

You have asked whether the requirements of prior notice and open meetings of the Federal Advisory Committee Act, 5 U.S.C. Appendix I., apply to meetings of the Committee for the Preservation of the White House.

The Committee was established under Executive Order 11145 of March 7, 1964 (Tab A). The Order designates as members of the Committee the Director of the National Park Service, the Curator of the White House, Secretary of the Smithsonian Institution, the Chairman of the Commission of Fine Arts, the Director of the National Gallery of Art, the Chief Usher of the White House, and seven other members to be appointed by the President (Section 2). The Order provides that the Committee --

"shall report to the President and shall advise the Director of the National Park Service with respect to the discharge of his responsibility under the Act of September 22, 1961, for the preservation and the interpretation of the museum character of the principal corridor on the ground floor and the principal public rooms on the first floor of the White House...." (Section 3(a))



It also provides that:

"Among other things, the Committee shall make recommendations as to the articles of furniture, fixtures, and decorative objects which shall be used or displayed in the aforesaid areas of the White House and as to the decor and arrangements therein best suited to enhance the historic and artistic values of the White House and of such articles, fixtures, and objects." (Id.)

The Committee is directed to cooperate with the White House Historical Association and to invite individuals who are distinguished or interested in the fine arts to attend these meetings or otherwise to assist in carrying out its functions.

II.

Since the Committee has both government and nongovernment members, and is authorized to give advice to both the President and the Director of the National Park Service, the Advisory Committee Act would apply to the performance of these functions.

III.

Your description of the Committee's activities, however, is that it (1) does not ordinarily make recommendations to the President, or to the Director of the National Park Service, (2) makes decisions by equal vote of its members on the disposition of various properties and other gifts donated by private persons and not involving the expenditure of appropriated funds, and (3) reports to the First Lady rather than to the President.

IV.

In my opinion, activities of the type described under III above are operational rather than advisory in nature and are, therefore, not covered by the Federal Advisory Committee Act. The applicability of the Act, therefore, will depend on the specific activities carried on by the Committee. Functions of the kind described under II must comply with the Act; those under III are exempt.

