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# THE LIFE CYCLE OF REGULATORY COMMISSIONERS\*

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ECONOMISTS increasingly have come to view the regulatory process as a device for transferring wealth among factions in society according to their political clout, but so far it is unclear whether the process has been dominated by the interests of regulated producers, consumers, or some combination of the two.<sup>1</sup> Relatively little attention has been given in this literature to the rewards that regulators themselves may obtain from the process. One obvious possibility would be for ex-officials to take jobs with firms that were formerly under their jurisdiction. This incentive would be especially strong for regulatory commissioners. Commissioners receive direct salaries that are not large, serve terms of office that are fixed by statute, and face uncertain prospects of reappointment—all of which lead them to take a shorter run view of their situation compared to that of their bureaucratic counterparts in civil service.<sup>2</sup> A commission might be viewed as “captured” by regulated firms or related organizations if a large proportion of its membership either has experienced pre-commission employment or has accepted postcommission employment with such groups. The purpose of this paper is to discover how common this behavior has been.

The tendency of ex-commissioners to take jobs related to the regulated

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<sup>1</sup> George J. Stigler, *The Theory of Economic Regulation*, 2 *Bell J. Econ. & Management Sci.* 3 (1971); William A. Jordan, *Producer Protection, Prior Market Structure, and the Effects of Government Regulation*, 15 *J. Law & Econ.* 151 (1972); Richard A. Posner, *Taxation by Regulation*, 2 *Bell J. Econ. & Management Sci.* 22 (1971); *Theories of Economic Regulation*, 5 *Bell J. Econ. & Management Sci.* 335 (1974); Sam Peltzman, *Toward a More General Theory of Regulation*, 19 *J. Law & Econ.* 211 (1976).

<sup>2</sup> Ross D. Eckert, *On the Incentives of Regulators: The Case of Taxicabs*, 14 *Public Choice* 83 (1973).

industry is as old as commission regulation itself. A. F. Walker, a prominent New York legislator, attorney for railroads, and one of the first group of five persons appointed to the Interstate Commerce Commission (ICC) in 1887, resigned after two years to become a railroad executive.<sup>3</sup> One of the original appointees to the Federal Radio Commission in 1927 resigned after fifteen months to become vice president of a major broadcasting system.<sup>4</sup> E. Pendleton Herring, a political scientist who studied the careers of commissioners during the 1930s, observed that "Most of our commissioners have found that their connection with the federal government stood them in good stead and resulted in friendships and knowledge of value. . . . An examination of the Washington telephone directory discloses the names of nearly a score of erstwhile commissioners most of whom are practicing law in the capital. . . . A lawyer after service on an important regulatory commission has no difficulty in getting wealthy clients."<sup>5</sup> James M. Landis, a Washington attorney and former commissioner, noted this tendency in his report on the regulatory agencies to President-elect Kennedy in 1960 and expressed his concern that it could prevent some officials from maintaining an objective arm's-length relationship with regulated firms.<sup>6</sup> The tendency has continued up to the present. Of the ten most recent departures (other than by death in office) from the ICC, the Civil Aeronautics Board (CAB), and the Federal Communications Commission (FCC) as of December 31, 1977, 17 of the 30 (or 56 per cent) either were employed by the regulated industry, practiced general or administrative law in Washington, or were affiliated with related consumer groups.<sup>7</sup>

Biographical profiles were assembled for the complete population of 174 individuals who had been appointed and confirmed to the three commissions by December 31, 1977. This research was limited to each person's profession, age, length of commission service, and the nature of jobs held before and after commission service. The principal sources were

<sup>3</sup> C. A. Miller, *The Lives of the Interstate Commerce Commissioners and the Commission's Secretaries*, 13 I.C.C. Practitioners' J., June 1946, § 2, at 25.

<sup>4</sup> E. Pendleton Herring, *Federal Commissioners: A Study of Their Careers and Qualifications* 136 (1936).

<sup>5</sup> *Id.* at 68.

<sup>6</sup> James M. Landis, *Report on Regulatory Agencies to the President-Elect Submitted by the Chairman of the Subcomm. on Administrative Practice & Procedure to the U.S. Senate Judiciary Comm.*, 86th Cong., 2d Sess., 14 (1960).

<sup>7</sup> See sources for Table 1 *infra*. Evidently the same behavior has been observed for the staffs of commissions and regulatory bureaus, although the evidence is mainly anecdotal. See Richard A. Posner, *The Federal Trade Commission*, 37 U. Chi. L. Rev. 47, 87 (1969); Louis M. Kohlmeier, Jr., *The Regulators: Watchdog Agencies and the Public Interest* 73-75 (1969).

professional directories, the several *Who's Who* biographical indexes, major newspapers, annual reports and other documents provided by each commission, and the trade press of each industry.

Commission appointees have been drawn overwhelmingly from the legal profession. Of the 174 persons, there have been 123 lawyers (about 71 per cent), 13 engineers, 6 authors or journalists, 5 economists, 2 educators, 12 businessmen, and 13 in miscellaneous groups.

Table 1 shows the matrix of career pairings between precommission jobs and postcommission jobs, each of which has three classifications. The first class is for jobs in the private sector that were related to the regulated industry. Here the four subclasses are for jobs as attorneys, employees, suppliers or consultants, and representatives of consumer groups. The subclass for attorneys includes those who chose to be listed in the *Martindale-Hubbell Law Directory* either as practicing general or administrative law in Washington, D.C., or as practicing in legal firms outside Washington, D.C., but which indicated in the directory that their practice included regulated industries. The subclass of employees includes those who held such precommission or postcommission jobs as executives of airlines, motor-carrier trade associations, or broadcasting stations, as well as those who were owners, directors, receivers, or trustees of regulated firms. The second class is for jobs in the public sector that were related to the regulated industry. Here the five subclasses are for jobs on the commission's own staff, in Congress, on congressional staffs, state public utility commissions, or other federal agencies that were related to the regulated industry (for example, the Federal Aviation Administration or the Antitrust Division of the Department of Justice). The third class is for jobs in either the public or private sectors that were not related to the regulated industry. Here the five subclasses are for jobs in other federal agencies (such as judgeships), general law practice outside Washington, D.C., academia, and such unrelated businesses as farming or newspaper publishing.

The biographical profiles of some commissioners showed substantial diversity in either precommission or postcommission jobs and occasionally for both. To make the data useful, however, certain conventions were adopted for placing an individual into only one precommission class (and subclass) and one postcommission class (and subclass). A person was counted as a positive precommission or postcommission affiliation with the regulated industry if he had even one such job in his career before or after commission service no matter how long the job lasted or when the affiliation occurred in his sequence of jobs. Individuals who fit into more than one subclass (such as a person who had been both an attorney for and an employee of regulated firms) were placed into only one subclass

**TABLE 1**  
**PRECOMMISSION AND POSTCOMMISSION CAREER MATRIX FOR ALL 174 MEMBERS OF THE**  
**CAB, FCC, AND ICC COMBINED THROUGH DECEMBER 31, 1977**

Postcommission Career	Precommission Career																	
	Private Sector Related to the Regulated Industry					Public Sector Related to the Regulated Industry					Positions Not Related to the Regulated Industry							
	Attorney	Employee	Supplier or Consultant	Consumer Groups	Subtotal	Commission's Staff	Member of Congress	Congressional Staff	Other Federal Agencies	PUCs and Other State Agencies	Subtotal	Public Sector	General Law Practice	News-paper Publisher	Academia	Other	Subtotal	Grand Totals
Private Sector Related to the Regulated Industry																		
Attorney	5	1			6	3	1	2	4	7	10	1						40
Employee	2	6	1		7	1	3	1	3	4	1							29
Supplier or consultant			1					1										2
Consumer groups	1																	1
Subtotal					17					32							23	72
Public Sector Related to the Regulated Industry																		
Commission's staff	2				1					1								5
Member of Congress																		
Congressional staff																		
Other federal agencies																		
PUCs and other state agencies		1	1					1	2	1	2	1	2		1	2		11
Subtotal					4					5							7	16

### Positions Not Related to the Regulated Industry

[illegible]

SOURCES: General sources that were helpful in locating many members of the three commissions included *Who Was Who in America with World Notables, 1961-1968* eds.; *Who's Who: An Annual Biographical Dictionary, various* eds.; *Who's Who in America, 1940-1978* eds.; *Who's Who in American Politics, 1972-1977* eds.; *Who's Who in Commerce and Industry, 1966* ed.; *Who's Who in Finance and Industry, 1972* ed.; *Who's Who in Government, 1972-1976* eds. Newspaper sources included *The New York Times*; *The New York Times Obituaries Index, 1971* ed.; and *The Wall Street Journal Directories* that list attorneys by name, firm, and city of practice, and in some cases the nature of their practice as Martin-Adams's American Law Directory, 1908-1930 eds.; and for more recent information, the

Marindale-Hubbell Law Directory, 1931-1978 eds. Sources that were useful for the members of individual commissions included C.A. Miller, *The Lives of the Interstate Commerce Commissioners and the Commission's Secretaries*, 13 I.C.C. Practitioners' 3, June 1946, § 2; *The Interstate Commerce Commission, Biographies of Commissioners*, Part I, 23 I.C.C. Practitioners' 5, November 1956, § 2, at 3-13; *Who's Who in Aviation* (1942); *Who's Who in Transportation and Communication* (1942); *Who's Who in World Aviation* (1955 and 1958 eds.); biographical information supplied directly by the secretary of the commission or by its public information office; and in a few cases the regulated industry's trade press publications.

based on the data available according to either the length of service in each job or the job that was proximate to the commission service. All 174 appointees in the population were used for the following precommission comparisons, but only 142 were used for the postcommission comparisons after subtracting persons who died in office or who were incumbents at the cutoff date.<sup>8</sup>

One of the striking features of Table 1 is the frequency with which appointees have held precommission jobs that are related to the regulated industry in the *public* sector. Of the 174 appointees, 84 (or about 48 per cent) had some precommission experience in the related public sector. Only 37 appointees (or 21 per cent) previously held related private-sector jobs. Thus, if the three commissions have been captured by any one group of appointees, it has been by people from the related public sector rather than the related private sector and by a margin of more than two to one. This trend appears to have grown in importance. As of December 31, 1977, three of the five incumbents on the CAB, four of the seven on the FCC, and six of the seven on the ICC had held precommission, related public-sector jobs.

The same pattern applies to the precommission jobs of those ex-commissioners who eventually took private-sector jobs that were related to the regulated industry. Of this group of 72, 32 (or 44 per cent) had precommission jobs in the related public sector whereas only 17 (or 24 per cent) had precommission jobs in the related private sector. (These results do not change much when a comparison is made between the precommission jobs of people who took postcommission, related public-sector jobs instead of related private-sector jobs.)

A different pattern emerges for postcommission behavior. Service on a commission is clearly a stepping-stone to private-sector jobs related to the regulated industry. Of the 142 ex-commissioners, 72 (or almost 51 per cent) took related private-sector jobs, of which 40 (about 56 per cent) were as attorneys and 29 (about 40 per cent) were as employees. Only 16 (or about 11 per cent) of all ex-commissioners took related public-sector jobs.

Still more information can be gleaned from the matrix by comparing different combinations of precommission and postcommission experi-

<sup>8</sup> One FCC commissioner served out his first term, left the commission for several years, and was subsequently reappointed to a second term. He is counted as only one observation. Excluded from the roster of the ICC are two individuals who were appointed but never confirmed by the U.S. Senate. Four of the eleven seats on the ICC were vacant at the cutoff date.

The reported results were not sensitive to the particular commissions studied. Data on the separate commissions or individuals may be obtained by contacting the author.

ences. Consider first the group of 34 people who held precommission jobs in the related private sector, 50 per cent of whom returned to such positions after leaving the bench. Only 4 of these (12 per cent) took postcommission positions in the related public sector. Essentially the same pattern holds for those whose precommission experience was in the related public sector. Of this group of 61, 32 people (about 52 per cent) took related private-sector jobs, and only 5 persons (about 8 per cent) returned to related public-sector jobs. This pattern applies also to those whose precommission experiences were not related to the regulated industry. They amounted to about 30 per cent of all appointments, and about half wound up taking related private-sector jobs. All things considered, taking a postcommission, related private-sector job is between three and six times more common than taking a related public-sector job. As a rule, commissioners either left the bench for eventual jobs in the related private sector or they have retired or taken jobs that are not related to the regulated industry.

The matrix also suggests that people whose precommission experience had been in the related government sector were equally adroit in using their commission service as a stepping-stone to jobs in the related private sector as were people whose precommission careers had been in the related private sector. The data offer no support for the presumption that a precommission background in the related private sector would increase the odds in favor of obtaining a job of that type after leaving the bench.

In sum, about twice as many members of the CAB, FCC, and ICC have come to commission service with backgrounds that included jobs related to the regulated industry from the public sector as compared to the private sector. However, the alumni of the three commissions have tended to take jobs in the related private sector far more frequently than anything else. Better than half eventually took jobs as either attorneys or employees with regulated firms, regardless of the type of precommission experience. When this half is added to the group who retired altogether from public life or other apparent connections to the regulated industry, then better than 70 per cent of the memberships is accounted for. If it is appropriate at all to view regulatory commissioners as prey to various interest groups in American society, then they appear to have been captured as *appointees* mainly by other governmental agencies and as *ex-commissioners* mainly by private organizations in or related to the regulated industry. The relatively crude hypothesis that the commissions have been captured by the regulated industry itself is partly supported and partly refuted by the three commissions studied here.

Why do ex-commissioners take such jobs? There are at least two



plausible explanations.<sup>9</sup> First, the job could be a reward for votes on the bench that were favorable to the industry or a particular firm. Second, the job could be the return on the investment in human capital that the commissioner made by learning the details and politics of regulation during his tenure in office, a period of relatively low wages and on-the-job training. The two theories would be difficult to test owing to the similarity of their implications, although the human-capital hypothesis has the advantage that it need not involve illegal conduct. For the purpose of economic policy, however, a choice between the two may be secondary to determining whether the turnover of commissioners affects either resource allocation or wealth distribution in the regulated industries.

<sup>9</sup> Eckert, *supra* note 2, at 97-98.