

AGGRESSIVE OVERSIGHT:
THE SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS OF THE
HOUSE ENERGY AND COMMERCE COMMITTEE

A Thesis

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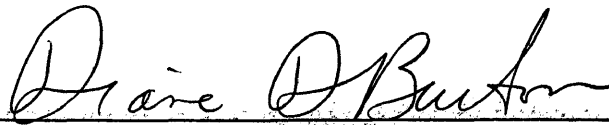
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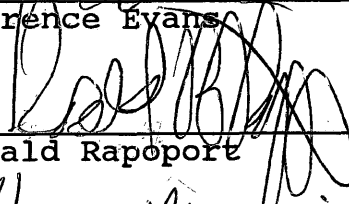


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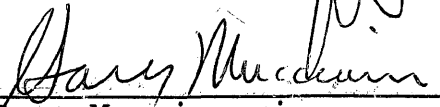
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ABSTRACT

This thesis examines some of the factors which have made the Subcommittee on Oversight and Investigations of the House Energy and Commerce Committee an outlier in terms of congressional oversight during the past decade. Interviews with congressional staff and examination of hearing reports focus on eight issues which reached the hearing stage during the 101st Congress (1989-91). Five dependent variables were reviewed:

- 1) origin of each investigation
- 2) Chairman Dingell's role
- 3) subcommittee member participation
- 4) partisanship and minority involvement
- 5) outcome of the investigation

The focus of the paper is the incongruence between staff perceptions of the subcommittee and the picture which emerges from an examination of available data. Staff members describe a subcommittee which is nonpartisan in its goals and tactics in which investigations are initiated by staff members, conducted independently of member involvement, and not intended to produce legislative change. What emerges from an inspection of the data, however, is a picture of a subcommittee which focuses on the interests of its chairman, where active participation is strongest among minority members, involves an appreciable degree of partisan tension, and frequently results in the introduction of new legislation.

The contrast between these conflicting images indicates a serious methodological problem in relying primarily on interviews with subcommittee staff members and examining specific cases to generalize about the function of a congressional unit.

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CHAPTER I
INTRODUCTION

The conservative mood of the 1980s and the mounting deficit accumulated during a decade of divided government have been instrumental in elevating Congressional oversight of the bureaucracy to a prime spot on some committee agendas. However, as a recent report of the National Academy of Public Administration concluded, although oversight in absolute terms appears to be on the rise, it tends to be "narrowly focused, ad hoc and episodic...focusing on gaining public attention and having little lasting effect."¹ In part, this situation is the result of a Democratic Congressional strategy utilizing the oversight mechanism to increase public awareness of and support for programs which it perceived to be in jeopardy under a Republican administration which had campaigned on a pledge to reduce the size of government and cut domestic spending.

The key question, however, is not how much oversight

¹Congressional Oversight of Regulatory Agencies: The Need to Strike a Balance and Focus on Performance, report published by the National Academy Panel on Congressional Oversight of the National Academy of Public Administration, 1988 (Chair: Richard Wegman), 44.

occurs, but whether congressional interest in executive agencies translates into effective policy management. A heightened activity level among congressional oversight committees may be meaningless if the primary purpose is to increase public support for favored programs to avoid budget cuts rather than to conscientiously examine compliance with congressional intent. Many of the criticisms of oversight during the past fifteen years focus on this aspect or its close relative, the "sweetheart alliances" of the iron triangles assumed to exist between many committees and the agencies and industries they oversee.

In his 1976 study of oversight,² Morris Ogul lists seven "opportunity factors" which provide a framework for examining congressional attitudes toward aggressive management of the administrative bureaucracy: legal authority; expansion of staff and budget resources; the jurisdiction of the committee; committee structure and orientation of the committee; the chairman's feelings about oversight or a particular agency, program, or policy area; relations with the executive branch; and finally, individual member priorities.

Ogul suggests that for these opportunity factors to evolve into actual oversight activity, two additional conversion factors may be necessary: policy disagreement with the president, and/or external events (a scandal, media

²Morris Ogul, Congress Oversees the Bureaucracy, (Pittsburgh: University of Pittsburgh Press, 1976), 13-20.

attention, or complaints by constituents or interest groups).³ Further, If the leadership of the majority party in Congress believes that it can cause sufficient embarrassment to a past or current president and reap significant advantage for itself by calling attention to the performance of agency heads, it may succumb to the "irresistible urge" to tarnish the President's reputation.⁴

Throughout the 1980s, the political climate certainly favored an aggressive congressional posture with regard to oversight of the Republican administration. The reforms of the 1970s had clearly given the Congress unprecedented legal authority under the Legislative Reorganization Act to increase oversight activities. An expansion of the size and technical expertise of committee staffs and budgets provided resources which could be devoted to this activity. A reduction in funds available for new federal programs increased the political incentives for committees and individual congressmen to focus on maximizing the efficiency of existing programs and, whenever possible, to attempt to embarrass the administration. Finally, there was sharp disagreement with the President over proposed spending cuts in domestic programs.

As could be expected during two decades of divided government, members of Congress have expanded the amount of

³Ibid, 136.

⁴Seymour Scher, "Conditions for Legislative Control," Journal of Politics 25 (3) (August 1963), 541.

time and effort they have devoted to pursuing the elusive, and often uncomfortable, task of scrutinizing the very programs they fought to create. In his study of oversight activity over a twenty-five year period, Joel Aberbach documented a 300% increase in both absolute terms (the number of days spent in oversight hearings and meetings conducted by congressional committees) and as a percentage of total activity between 1961 and 1983. In 1961, committees devoted 8.2% of their efforts to oversight activity; by 1983, this activity was absorbing approximately 25.2% of Congress' attention.⁵

However, to many congressional observers, including Aberbach, Foreman, and Dodd,⁶ although more formal oversight hearings are now being conducted than at any other period in our history, activity is generally uncoordinated and relatively ineffective.

The difficulty in assessing the effectiveness of oversight is compounded in trying to decide how to detect the presence or absence of oversight activity in the first place. Critical attention to the administration of a federal program cannot be determined merely by counting the

⁵Joel D. Aberbach, Keeping a Watchful Eye: The Politics of Congressional Oversight, (Washington: Brookings Institution, 1990), 35.

⁶Aberbach, op cit, p. 198; Christopher Foreman, Signals from the Hill (New Haven and London: Yale University Press, 1977), 272; Lawrence C. Dodd and Richard L. Schott, Congress and the Administrative State, (New York: John Wiley and Sons, 1979), 272.

number of hours Congress devotes to formal hearings. Lavish attention to an agency or its programs certainly does not guarantee that Congress is undertaking a conscientious effort to determine whether a particular program is in compliance with legislative intent. In fact, the reverse may well be true if committee oversight or reauthorization hearings are used to bolster support for a pet program or to capture favorable publicity. And if, as has often been suggested, the most effective form of oversight is done informally--through contacts between legislative staffs and agency officials--the effect of these largely unpublicized activities is difficult to observe, much less quantify.

High staff turnover, lack of staff experience in investigative procedures, and the level of technical expertise in complex areas complicate the oversight process. A study conducted by the Congressional Management Foundation indicated that two out of three legislative assistants have held their positions for less than two years.⁷ Congressional committees must be willing not only to devote staff resources and time to oversight activities, but to provide training and expertise to assist staff members in acquiring the skill necessary to do it.

As the savings and loan and HUD scandals of the 1980s amply illustrate, oversight may be hindered by ties between many committees and special interest groups. Efforts to

⁷Congressional Oversight of Regulatory Agencies, 14.

investigate the savings and loan industry were derailed by industry lobbyists and their allies on the hill (including former House Speaker Jim Wright), despite 31 reports by the GAO detailing the scandal.⁸ If relations between Congress, interest groups and the bureaucracy are too cozy, whistleblowers may be afraid to call attention to problems within federal agencies and congressional committees may relax their scrutiny of the executive branch. Therefore, although Congress appears to have political incentives to capitalize on problems within bureaucratic agencies during an era of divided government, the attack mechanism may well be tempered by Congress's protective instincts with regard to favored programs or by the influences exerted by powerful interest groups on Capitol Hill. If there is any truth to the accusation that incestuous ties between federal agencies and their legislative patrons exist, this situation presents a fundamental conflict between the legislative watchdog function and Congress' desire to shield programs it supports from unfavorable publicity.

Since the 1980s marked a pronounced shift in the spending pattern of the federal government and heralded what is generally expected to be a permanent era of restricted federal spending, this decade reflected two often contrasting political realities which dominated congressional poli-

⁸Steven V. Roberts and Joseph P. Shapiro, "The Howl of Congressional Watchdogs", U.S. News and World Report, Sept. 11, 1989, 26.

tics. First, Congress did wish to exert influence over the administrative structure of federal agencies and subject them to some measure of direct accountability to the elected representatives of the people they have been created to serve. Presidential appointees such as Anne Burford Gorsuch and James Watt were viewed as visible examples of interpreting executive authority in fundamentally different ways than Congress intended. Further, especially in the Democratically-controlled House, there were substantial political rewards to be gained from exposing fraud, waste and efficiency in the executive agencies to embarrass a Republican administration. However, if Congress chose to exercise its oversight function rigorously, it risked undercutting support for the very programs and agencies it was trying to shield from White House "budget slashers" like David Stockman and Richard Darman. Many members of Congress were understandably reluctant to jeopardize the existence of threatened programs supported to a greater extent by a Democratic Congress than a Republican administration. Any short-term political rewards to be gained from calling attention to agency mismanagement needed to be balanced against the danger that public support for a program could erode, which an unfriendly administration could turn to its own advantage.

The changing political climate with regard to federal spending thus has significant implications for congressional oversight which may replace its traditional management

function with the need to provide visible support for federal programs in an era of divided government. Since it is unlikely that the financial situation in Washington will change substantially during the next few decades, this thesis concentrated on examining congressional oversight within the boundaries of the current political realities rather than from an historic perspective. While many congressional committees chose to deal with the fundamental conflict by neglecting their oversight role completely or adopting advocacy oversight strategies, one investigatory subcommittee is generally singled out for both praise and criticism for its vigorous attempts to scrutinize the executive agencies. That panel, the Subcommittee on Oversight and Investigations of the House Energy and Commerce Committee, chaired by Rep. John Dingell (D-MI), is the focus of this research. This paper attempts to examine some of the circumstances which have made this subcommittee an outlier in terms of congressional oversight and the incongruence between staff perceptions of the subcommittee and a somewhat different view suggested by an examination of available data.

This thesis examines eight investigations undertaken by the subcommittee during the 101st Congress. The 101st Congress (1988-90) was chosen not only because it was the most recent, but because it was assumed that staff members who had been involved with these issues would still be available and would be able to recall details of the inves-

tigations. An attempt was made to include those issues which generated the most publicity and required a significant degree of staff effort. These particular cases were selected to provide a cross-section of those issues which reached the formal hearing stage during this period and reflect the subcommittee's preoccupation with health and consumer matters. Included is one very extensive investigation which involved over ten separate hearings, another which became highly controversial and the focus for widely-publicized criticism of the subcommittee, and several which fall within the boundaries of what is generally considered to be traditional oversight areas. A complete list of issues investigated by the subcommittee during this period is found in Appendix C.

The investigations examined for this thesis include:

- 1) charges of fraud and inefficiency in the generic drug approval process within the Food and Drug Administration;
- 2) a controversial paper published in a medical journal and the ability of the scientific community (and the NIH which sponsored the study) to police itself;
- 3) abuses surrounding the sale of insurance policies designed to supplement Medicare insurance;
- 4) an investigation into the safety of the nation's blood supply in light of possible contamination by carriers of the AIDS virus;
- 5) the effect of the international Montreal Protocol (which banned substances which deplete the ozone layer) on American business;
- 6) a faulty heart valve manufactured by Pfizer, Inc., and the FDA's failure to enforce sanctions against the manufacturer;
- 7) charges that the U.S. Army purchased helicopters which have never functioned properly and for which sufficient logistical support is not available;
- 8) the effect of unfair foreign trade practices on American business after the passage of the Omnibus

Trade and Competitiveness Act of 1988.

Five dependent variables will be reviewed:

- 1) origin of the investigation
- 2) the chairman's role in the investigation
- 3) subcommittee member participation
- 4) partisanship and minority involvement
- 5) outcome of the investigations.

Interviews with present and former staff members of the Oversight and Investigations Subcommittee, appropriate staff members of the House Energy and Commerce Committee, the General Accounting Office, and congressional staff were conducted during the summer and fall of 1991 to provide background information on specific investigations and the operation of the subcommittee. The names of individuals contacted are listed in Appendix A. All quotations without specific citations result from these interviews.

Additional information was obtained from transcripts of hearing reports for each of the eight issues as well as newspaper and magazine articles which involved these issues.

Staff members interviewed for this thesis describe a nonpartisan subcommittee in which investigations are initiated largely by staff members and conducted autonomously. Although staffers express an obvious degree of admiration and loyalty for their chairman, for the most part, they appear to be convinced that staff interests, not those of the chairman, dominate the oversight agenda. They also display a lack of confidence in legislative remedies to problems uncovered within administrative agencies, maintaining that oversight is most effective when it punishes wrong-

doers. To this end, they utilize strategies which enhance the subcommittee's image as aggressive crusaders and capitalize on their chairman's reputation as a fierce (and fearless) opponent.

What emerges from an inspection of the data, however, suggests a picture of a subcommittee which focuses on the interests of its chairman and where active participation is strongest among minority members of the subcommittee while the majority of the Democrats (with one or two exceptions) appear to be surprisingly indifferent. Despite claims to the contrary, varying degrees of partisan tension surfaced in at least half of the issues examined. Further, although staff members themselves have little regard for legislative remedies, fully half of the cases resulted in the passage of additional legislation. Finally, it appears that the chairman uses his investigative subcommittee as a forum to influence policy change rather than to ensure administrative compliance with legislative intent.

The contrast between these conflicting images indicates a serious methodological problem in relying primarily on interviews with subcommittee staff members and examining specific cases to generalize about the function of a congressional unit. Although staff members appeared to be very straightforward in their responses to questions about the conduct of investigations and the operation of the subcommittee, this approach involves obvious limitations in formulating a complete picture of a congressional subcommit-

tee.

Before examining the dynamics of this subcommittee, it is critical to establish why it has gained such an impressive reputation on Capitol Hill. To begin with, the task of the subcommittee has been facilitated because its reputation as an effective oversight body was firmly established by the time Dingell inherited it in 1981. One of the oldest investigatory subcommittees in Congress, it had a long history of aggressive probes into regulatory agencies. Staff hold-overs, proven investigatory techniques, generally positive relations with the press, and the aura which already surrounded the subcommittee allowed Dingell and his staff to capitalize quickly on the accomplishments achieved under former chairmen, particularly Rep. John Moss (D-CA), with a minimum of delay.

A number of interrelated circumstances have contributed to its ability to accomplish significant oversight when so many other subcommittees have been unwilling (or unable) to do so. First, and most important, are the personal characteristics, philosophy, and power of its chairman. Dingell appears to sincerely believe that the legislative branch is intended to be the most powerful branch of government and that the responsibility for good government rests squarely with it. He possesses an uncommon degree of institutional loyalty to the House, and claims to regard the oversight function as at least as important as passing new legislation. This view is shared by an experienced, motivated, and

aggressive staff.

Dingell has actively tried to lessen partisan tensions on his committee by encouraging subcommittee members to co-sponsor legislation and acting as spokespersons for issues under investigation. Among the staff, congenial relations based upon mutual respect between investigators and management have minimized internal conflicts and allowed staff members to concentrate on issues rather than personnel problems. The broad jurisdiction of the committee has been used to tackle a wide variety of issues and as the subcommittee has accumulated a record of highly publicized hearings, its reputation has provided a significant degree of insulation from criticism and political pressure. Sensitive treatment of whistleblowers and supportive agency employees has prompted individuals to cooperate with the subcommittee. A large budget, including the judicious use of employees borrowed from other agencies, provide resources which allow subcommittee staff to pursue multiple, detailed investigations simultaneously. A reputation for intimidating witnesses has "encouraged" cooperation from federal agencies and organizations involved with the federal government.

Under Dingell's leadership, the committee has gained a reputation for aggressive pursuit of fraud and mismanagement in the federal bureaucracy. But the subcommittee's commitment to oversight is a highly personalized commitment, focused mainly (but not exclusively) on those areas of primary concern to the chairman, occasionally overstepping

the bounds not only of its own committee jurisdiction but beyond that, into Wall Street, universities and corporations.

CHAPTER II

THE SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

Any examination of the effectiveness of the subcommittee under Chairman Dingell would be incomplete without some discussion of the history and reputation of the panel since its creation over thirty years ago. Although Dingell's subcommittee reflects a change in emphasis in national politics necessitated by the tight budgetary constraints of the 1980s, its effectiveness has been enhanced by the reputation it gained under previous chairmen.

The Formative Period (1957-75)

The precursor of the Subcommittee on Oversight and Investigations of the House Energy and Commerce Committee was a special Subcommittee on Legislative Oversight under the jurisdiction of the House Committee on Interstate and Foreign Commerce during the 85th Congress. This special subcommittee, suggested by Speaker Sam Rayburn in 1957, was intended to examine the rule-making and enforcement activities of the "Big Six"⁹ regulatory agencies in light of

⁹The Civil Aeronautics Board, Federal Power Commission, Federal Trade Commission, Federal Communications Commission, Securities and Exchange Commission and Interstate Commerce Commission.

their legislative mandates.

Table 1 lists the chairmen and staff directors of the Oversight and Investigations Subcommittee from the creation of the special committee in 1957 until the present.

Rep. Oren Harris (D-Ark.), Chairman of the full committee, appointed Rep. Morgan M. Moulder (D-MO), as Chairman of the special subcommittee. The subcommittee was never given the power to issue its own subpoenas, control its own budget, or for the most part, appoint its own staff.

TABLE 1
SUBCOMMITTEE CHAIRMEN AND STAFF DIRECTORS

<u>Dates</u>	<u>Chairman</u>	<u>Staff Director(s)</u>
1957-58	Moulder	Schwartz
1958-66	Harris	Lishman (1958-60) Howze (1961-66)
1966-75	Staggers	Lishman (1966-70) Manelli (1970-5)
1975-79	Moss	Lemov (1975-7) * (1977-9)
1979-81	Eckhardt	Raabe (1979-81)
1981-present	Dingell	Barrett (1981-91) Stuntz (1991-)

*Three-man task force structure with no staff director. The members were James Nelligan, John Atkisson, and Lowell Dodge.

Dr. Bernard Schwartz, a man with impeccable academic credentials but little government experience was appointed Chief Counsel. His intention in assuming his post was to do an "overall, scholarly study of the workings of regulatory

agencies--primarily a legal one."¹⁰

Schwartz' short and controversial tenure on the subcommittee was characterized by his surprisingly aggressive pursuit of fraud, abuse, and improprieties in the federal agencies under investigation. His attempts to hold public hearings to document charges that FCC commissioners were submitting duplicate expense accounts and that agency employees had been bribed to grant TV licenses, failed to apply anti-trust policies, and fostered development of a patent monopoly in the field of radio and TV broadcasting were not appreciated by Chairman Harris. On February 10, 1958, less than seven months after his appointment, the subcommittee voted 7-4 to dismiss Schwartz as chief counsel. Moulder, frustrated by Harris' interference in subcommittee investigations, hampered by the inability of his subcommittee to obtain the cooperation of the regulatory agencies in submitting documents, and strongly supportive of his chief counsel's efforts to conduct meaningful hearings into what appeared to be alarming patterns of agency misconduct, resigned as subcommittee chairman the next day.

After Schwartz' and Moulder's stormy departures, Oren Harris took over the special subcommittee and chaired it until his departure from the House in 1966. During his tenure, the name of the subcommittee changed to the "Special Subcommittee on Regulatory Agencies" until 1963 when it was

¹⁰Bernard Schwartz, The Professor and the Commissions (New York: Alfred A. Knopf, 1959), 18.

changed again to the "Special Subcommittee on Investigations." The subcommittee focused its investigative efforts on FTC issues, particularly the rigging of TV quiz shows (including the popular "The \$64,000 Question), payola in the music industry and the accuracy and influence of radio and TV audience ratings.¹¹ In addition, it embarrassed President Eisenhower by its probe into a New England businessman's expensive gifts to the president's chief assistant, Sherman Adams, (a scandal which led to his resignation).

Representative Harley Staggers (D-WV) inherited the chairmanship of both the full committee and the O&I subcommittee when Oren Harris left Congress to become a federal judge. Like Harris, who was a conservative, controlling chairman, Staggers had a tendency to be cautious and suspicious and resisted any attempt to decentralize his committee. In his study of the House and Senate commerce committees, David Price documents a series of struggles and uneasy truces between Staggers and his more active committee members which resulted in the development of a legislative bottleneck at the top of the committee.¹²

Staggers sought to reinvigorate the subcommittee, whose funding and staffing had declined under Harris' leadership. Robert Lishman, who had served as Chief Counsel under Har-

¹¹David E. Price, The Commerce Committees: A Study of the House and Senate Commerce Committees, (New York: Grossman Publishers, 1975), 309.

¹²Ibid, 19-20.

ris, was rehired as staff director, the size of the professional staff was doubled from 6 in 1965 to 12 by 1967, and several assertive, relatively senior members were added to the subcommittee membership.¹³ But Stagers was unable to match Harris's "iron rule" over his increasingly strident full committee members or strong-willed subcommittee chairmen who wanted a stronger voice in investigations. By 1969, the entire senior half of the full committee, including the chairman and ranking minority member of every legislative subcommittee, had seats on the cumbersome investigative subcommittee.¹⁴ Stagers engineered a successful attempt to reduce the size of his subcommittee and regain control over the agenda, but committee Democrats became increasingly dissatisfied with the pace and scope of the subcommittee's investigative work. This discontent would erupt into open revolt in 1975, in the dramatic multi-ballot contest which cost Stagers the subcommittee chairmanship.

Although it had a relatively substantial percentage of Commerce staff and a healthy budget, the subcommittee was largely ineffective. In spite of Lishman's plans for continual scrutiny of the commissions, except for a concentrated effort to investigate the Interstate Commerce Commission, most of the subcommittee's work reflected Stagers'

¹³David E. Price, "The Impact of Reform: The House Commerce Subcommittee on Oversight and Investigations", in Leroy Rieselbach, Legislative Reform, (Lexington, MA: Lexington Books, 1978), 134.

¹⁴Price, The Commerce Committees, 310.

preoccupation with communications issues¹⁵ and a futile attempt to cripple CBS. Other policy areas and agencies falling under Commerce's jurisdiction were either covered sporadically or ignored completely.

In general, Staggers' leadership did not lead to a clear, systematic oversight role. Price's study concluded that "the work of the investigative subcommittee betrayed a tendency to concentrate on individual cases and aberrations as opposed to patterns of institutional behavior."¹⁶

The addition of twelve reform-minded Democratic freshmen to the Commerce Committee in 1975 provided support for Rep. John Moss (D-Cal) to defeat Staggers in a seven-ballot contest for the subcommittee chairmanship. At the same time, rules changes were voted in both committee and House caucus which would increase the authority and resources available to subcommittee chairmen, reflecting both a keen dissatisfaction with Staggers' leadership as well as the escalating trend in the House toward a decentralized committee structure. Also, Commerce was forced to reorganize its subcommittees by the shifts in its jurisdiction created by the Committee Reform Amendments of 1974, which removed aviation and surface transportation (except for railroads) from Commerce while adding additional health and energy jurisdiction. The net result was that subcommittee lines

¹⁵Ibid, 313.

¹⁶Ibid, 317.

were redrawn and another legislative unit was created.

The Moss/Eckhardt Period (1975-81)

Moss' assumption of the subcommittee chairmanship led to enormous changes in the subcommittee; the membership tripled, its professional staff was restored to its 1959-60 level, the budget grew by 64% and Moss held as many days of hearings in the next two years as Staggers had held in the previous nine:¹⁷ from 17 days of hearings in the 91st Congress (1969-70), 16 in the 92nd, and 23 in the 93rd under Staggers to 71 days in the 94th (1975-6) and 122 in the 95th under Moss.¹⁸

In contrast to Staggers who operated in a "reactive" mode, Moss courted controversy. He had a genuine commitment to oversight, which earned him Ralph Nader's endorsement as "the man who perfected oversight". Yet the topics he chose for energy oversight in the 94th Congress seem to have been selected because he was trying to influence his colleagues' opinions about legislation pending before the Energy and Power Subcommittee then chaired by John Dingell.¹⁹

Moss' first staff director was Michael Lemov, who suggested that the subcommittee focus on energy, health, and the performance of independent regulatory agencies. Moss

¹⁷Ibid, 140.

¹⁸Michael J. Malbin, Unelected Representatives, (New York: Basic Books, Inc., Publishers, 1979), 133.

¹⁹Ibid, 134.

and Lemov let the issues of natural gas reserves and price deregulation dominate their energy investigations. Moss had a personal interest in establishing that gas companies were intentionally withholding supplies in anticipation of higher prices under deregulation, a charge which became difficult to prove despite persistent efforts of Lemov and his staff. One investigator, Michael Barrett, dissatisfied with the direction and focus of what he felt were futile investigations in this area, resigned his position in protest.²⁰

The subjects of natural gas supplies, reserves and withholding took up 17 of the 27 days of hearings the subcommittee devoted to energy in the 94th Congress. Two more days were spent on Federal Energy Administration enforcement and three more on other energy subjects. However, the subcommittee expanded its agenda to include other subjects, especially health and regulatory reform.²¹ A potent weapon in the Moss arsenal was judicious use of the subpoena. James Nelligan, Operations Director from 1977-79, claimed in a congressional workshop on oversight that the subcommittee once issued 105 of them in a single day.²² During this period, the subcommittee earned a reputation for attacking the administration. In 1975, during an investigation of the

²⁰He quickly found a position with Dingell's subcommittee on Energy and Power and later returned to the O&I subcommittee as Staff Director under Dingell.

²¹Malbin, 145.

²²Workshop on Congressional Oversight and Investigations, 96th Congress, December 1, 6, 7, 1978, 131.

effects of the Arab oil boycott on American business, Rogers Morton, then Secretary of Commerce, was cited for Contempt of Congress when he refused to turn over requested documents. This marked one of the first times in history that a cabinet member had been cited for contempt. Later, the same subcommittee cited HEW secretary Joseph Califano.

Moss kept most of Staggers' clerical staff and three of his ten professionals. He then hired twelve new staffers of his own, increasing the size of the professional staff to 22 professionals and 9 clerical staff by 1978.²³ In addition, permanent subcommittee staff members were supplemented by full committee staff and personnel borrowed from the GAO.

There was a pronounced difference in staff between the subcommittee chaired by Staggers and the one chaired by Moss. Staggers had relied heavily on staff with FBI or regulatory experience. In contrast, Moss and Lemov selected staff from congressional offices, public interest organizations and universities. They tended to be more conspicuously reformist, more broadly focused on policy questions, more sensitive to political implications, and more inclined to carry on their investigations in a public forum.²⁴ Also, two further kinds of activity were promoted under Moss: cultivation of the press and the key role of staff members

²³Ibid, 136.

²⁴Price, The Impact of Reform, 137.

as "hearing examiners."²⁵ However, although Moss later claimed he had an "open door" policy regarding his staff, many staff members complained that they found it difficult to get to Moss without going through Lemov and minority staff complained of obstructionism and unfair treatment.

The focus of subcommittee activities under Moss' four-year chairmanship clearly indicates his conception of oversight in legislative terms. Investigations were conducted either to influence items already on the legislative agenda or to introduce issues which might result in legislation. Moss also maintained the tradition, begun under Harris and continued under Staggers, of treating the subcommittee as a "one man show", echoing the style and priorities of its chairman. In spite of this domination, most majority members seemed to be basically well-satisfied with their role on the subcommittee since Moss was generous in directing favorable publicity arising from hearings to majority members to maximize public exposure for their participation (a courtesy he was far less willing to extend to the minority).

In spite of the name change of the subcommittee in 1975 from Investigations to Oversight and Investigations and attempts to broaden its scope, criticisms of subcommittee activity still focused on the "narrowness" of the work and failure to perform legitimate oversight of the regulatory agencies and bureaucracy falling within the jurisdiction of

²⁵Ibid, 143.

the committee. Critics complained that too many investigations deteriorated into "headline grabbing" at the expense of substantive policy questions. Other critics claimed that Moss' leadership resulted in a bias against industry and health establishment and agencies perceived to be protecting their interests.²⁶ Although substantial changes in the subcommittee occurred since the legislative reforms of the early 70s and Moss' assumption of the subcommittee chairmanship in 1975, there were still fundamental problems with translating oversight findings into legislative remedies, no clear consensus on what issues should be raised, or how effective oversight should be conducted.

Bob Eckhardt (D-TX) chaired the subcommittee for the short period after the departure of Moss in 1979. Under his leadership, the subcommittee blasted the Interstate Commerce Commission for rate hikes it allowed railroads to charge for hauling freight in western, non-competitive routes. It also branched off in other directions--investigating the cleanup of Love Canal near Niagara Falls, acid rain impacts on the environment, Blue Cross/Blue Shield efforts to pressure for lower medical costs, excessive charges by real estate and life insurance agents and household movers, the recodification of securities law, pricing policies of regulatory agencies and foreign bribery law charges. Energy issues under investigation included EPA/energy gas pricing, the

²⁶Price, The Impact of Reform, 150.

Superfund, and potential uses of solar energy in urban centers.²⁷ Eckhardt lost his reelection bid in 1980.

The Subcommittee under John Dingell (1981-)

Staggers' retirement in 1981 gave John Dingell the chairmanship of the full committee as well as the Oversight and Investigations Subcommittee. Dingell is known as a "New Deal" liberal who favors civil rights, protectionist legislation, consumer issues and, when it doesn't negatively impact the Detroit auto industry, environmental legislation. He is generally considered to be one of the most powerful men in Congress and the committee which he chairs, Energy and Commerce, has claimed jurisdiction over roughly half the legislation coming out of Congress.²⁸ He has no reservations about extending his reach into other committee jurisdictions on occasion. As a result, his investigative subcommittee has held hearings on a wide variety of issues including financial markets, corporate takeovers, biotechnology, health insurance, the drug industry, scientific fraud, nuclear power, telecommunications, accounting practices, food, environmental regulations and defense contracts. It has helped to bring down such Reagan administration figures as top White House aide Michael Deaver, Interior Secretary James Watt, and Environmental Protection

²⁷Compiled from pages of the National Journal from 1979-81.

²⁸See Appendix B for the formal jurisdiction of the committee.

Agency administrator Anne Gorsuch Burford.

Like the Moss subcommittee, Dingell's panel plunged into controversy almost immediately. Its investigations into the Environmental Protection Agency, initiated after tips from disgruntled agency employees, focused on the EPA's mishandling of the Superfund for hazardous waste cleanup. That and other scandals eventually led to the resignation of the administrator and more than a dozen EPA appointees and a perjury conviction for assistant administrator Rita Lavelle.²⁹ Called to testify about foreign influence in Washington, Deaver earned a perjury conviction in 1987 for his appearance before the subcommittee.

In 1984, the subcommittee began to investigate allegations of fraud at General Dynamics, the nation's largest defense contractor, an activity which took Dingell well beyond his committee's normal jurisdiction and infuriated Armed Services Committee chairman Les Aspin. Dingell argued that his committee's oversight responsibility for the Securities and Exchange Commission gave it jurisdiction over publicly-held corporations like General Dynamics and, in later investigations, Northrop and McDonnell Douglas. The General Dynamics investigation, which originally focused on submarine contracts and gifts the company had given to Admiral Hyman Rickover and other military officials, eventually led to the resignation of the firm's chief executive,

²⁹Fred Barnes, "Bad Cop", The New Republic, (October 23, 1989), 11.

substantial fines against the company, and the cancellation of multi-million dollar defense contracts. Dingell's subcommittee charged that General Dynamics had bilked the Navy out of millions of dollars on ship-building contracts and unauthorized expenses.³⁰

The subcommittee also conducted an extensive investigation into the activities of the Synthetic Fuels Corporation, a quasi-government agency with an \$88 billion dollar budget to finance alternative fuel programs. Large-scale abuses in this program were uncovered before it was abolished in the mid-1980s. Another probe involved Electrospace Systems, Inc., a defense contractor owned by Chrysler, to determine whether an Air Force colonel who quit his Pentagon job to join the firm violated ethics laws by helping to channel \$100 million in business by lobbying former associates.

Justification used to probe the defense industry has also been extended to include investigations into insider trading, junk bonds, the savings and loan crisis, and insurance company fraud. Neither the subcommittee nor the Congress itself have any formal jurisdiction over the insurance industry, a technicality which has not prevented hearings attempting to link insurance fraud, the S&L crisis, and the

³⁰Among the extravagances uncovered was evidence that thousands of dollars in kennel fees for a dog had been charged to the federal government, which was also billed for a bed which General Dynamics installed for its chairman after he complained that the one which came with the room was unsatisfactory. Jayne Levin, "Have Subpoena, Will Travel", Investment Dealers Digest, (December 17, 1990), 21.

junk bond industry through the SEC. Dingell and his staff have also tangled with Ivan Boesky and Michael Milken, two of the most visible figures in the high-stakes securities world, who later pleaded guilty to securities violations, and scheduled hearings on Ellis A.G., a small Swiss brokerage firm linked to an insider trading network in the U.S.

The subcommittee has been aggressive on trade politics despite the fact that two other House subcommittees have more logical jurisdiction over trade issues: Ways and Means Trade Subcommittee, with jurisdiction over trade agreements, and the Foreign Affairs Subcommittee on International Economic Policy and Trade.³¹ A major participant in drafting the 1988 Omnibus Trade and Competitive Act, Dingell actively promotes reciprocal trade agreements which would open foreign markets to US goods and improve the country's international trading position. He has openly criticized the Reagan and Bush administrations for tolerating what he considers to be unfair trading practices by Japan, Germany, and other countries which he charges have benefited from free trade with the US while imposing restrictions on American imports.

The integrity of the subcommittee was severely damaged in 1988 when an investigator illegally taped a phone conversation between John Gibbons of Kroll Associates, a private investigator working for the subcommittee, and a lawyer

³¹Christopher Madison, "Dingell's Heat Wave," National Journal (July 7, 1990), 1657.

representing a firm under investigation for junk bond and insider trading. Brian McTigue, a subcommittee staffer assigned to the investigation, believing that Gibbons was working for both the subcommittee and for Drexel Burnham Lambert Inc., authorized the eavesdrop. He was subsequently fired for his unethical behavior but Dingell compounded the embarrassment by playing the tape at a hearing.

Another major controversy in recent years involves the series of well-publicized hearings into possible scientific fraud in a genetic research study partially funded by the NIH and published in *Cell* magazine in 1986. The subcommittee's aggressive pursuit of the controversy brought an emotional response from the scientific community which angrily questioned Congress's role in ascertaining the integrity of the scientific review process. Since prominent scientist and Nobel prize-winner Dr. David Baltimore (appointed president of Rockefeller Institute during the controversy)³² was one of the authors of the controversial paper, the subcommittee suffered a substantial, albeit temporary, loss of credibility.

In the past decade, the subcommittee has encountered a barrage of criticism for its disregard for jurisdictional boundaries, tactics, and attacks on the administration. The most common complaint mentioned about the subcommittee is

³²He resigned in December, 1991. One of the reasons which he cited for his resignation was that negative publicity from this investigation affected his ability to provide effective leadership.

that it, and especially its chairman, is a bully. Fred Barnes of **The New Republic** calls Dingell the "meanest and most feared man in Congress."³³ The **US News and World Report**, tagging him as "the baddest overseer on the hill", reports that his colleagues "regard him as an arrogant power-grabber who thinks nothing of treading on their turf."³⁴ The **Wall Street Journal** christened him "Congress' Grand Inquisitioner"³⁵ in charging that his subcommittee overstepped its bounds in the Drexel probe.

Reid Stuntz, the current staff director, defends his boss, insisting that Dingell is certainly not a bully in the sense that he is usually characterized in the press because "a bully is feared but not respected. Dingell is feared and respected." He calls him a "throwback to an earlier day, when right was right, who believes that honest people should prosper." A minority staff member says that Dingell is "pugnacious and doesn't mind a good fight", but doesn't "get you up there unless he thinks you've done something wrong."

One of his rivals, fellow Democrat Henry Waxman of California, claims that Dingell enjoys having the reputation of being powerful and deliberately cultivates his image as a tough guy. "When people think you're powerful, you some-

³³Barnes, 10.

³⁴"The Baddest Overseer on the Hill," U.S. News & World Report, (Sept. 11, 1989), 26.

³⁵"J. Edgar Dingell" (editorial) The Wall Street Journal, (March 15, 1989), A18.

times become more powerful as a result," he told an interviewer in 1988.³⁶

Other critics of the subcommittee contend that the goal of the investigations is to seek publicity for Dingell and other subcommittee members, a charge staff and admirers dismiss. "Dingell doesn't need the press or power," says one, "he has that already. He is definitely secure as a person in wielding power, but he is not arrogant or uncomfortable with it." Says another,

He is kind of romantic in some ways in terms of right and wrong, though. He has a true sense of outrage. That is what motivates him, not publicity.

Whether or not he needs the publicity, Dingell and his staff are adept at leaking some of their juicier tidbits to the press, a tactic which has led more than one senior administration and Pentagon official to describe him as a "pain in the ass"³⁷ and has led to the more serious criticism that the subcommittee is engaged in overt "administration bashing" a charge staff members readily admits may be true but is not partisan. Since Dingell's tenure as subcommittee chairman coincides with three unbroken terms of Republican presidents, there are logical grounds for the accusation that the subcommittee focuses on embarrassing the competition. Those who defend Dingell, however, insist that he is

³⁶Rochelle L. Stanfield, "Plotting Every Move", National Journal, (March 26, 1988), 794.

³⁷Lee Walczak, "Big John Dingell Keeps Bloodying the Administration's Nose," Business Week (August 2, 1985), 31.

concerned with pursuing strong oversight of the administration regardless of its political affiliation and that he would be just as severe if the Democrats controlled the presidency. Until a Democrat captures that office, however, this hypothesis will be difficult to test.

The subcommittee is also cited for exceeding its reach, which subcommittee members and staff appear to consider a compliment. Several staff members half-jokingly referred to a satellite photograph of the world which hangs in the anteroom of the committee hearing chamber as Dingell's perception of his committee's jurisdiction.³⁸ Dingell insists he hasn't stretched the committee's jurisdiction "one millimeter"³⁹ even though he has beaten his more politically inert peers to big issues consistently since his arrival on the committee.

The justification for this, I was told by several staff members, is that other committees are "owned" by special interests and do an inadequate or half-hearted job of oversight and Dingell, in his zeal to police government operations, fills in the gap. Unlike many other committees, Energy and Commerce, with broad jurisdiction over so many issues, has no obvious "paid constituency", an argument which conveniently overlooks Dingell's obvious ties with the

³⁸Apparently, I didn't receive an "exclusive" on this observation. It seems to have been shared with most of the press as I found references to it in nearly every article I read about Dingell or his committee.

³⁹Barnes, 10.

automobile industry in his home district.

A senior staffer claimed that Dingell fervently believes in the responsibility of the legislative branch to oversee the bureaucracy, in contrast to most elected officials who see marginal political rewards in return for a major investment of time and effort:

Why does he do it? He likes it. But more importantly, he is genuinely concerned that government work. And he is angry other members don't show the same concern.

Barrett says that once Dingell built up his credibility for his investigations (around 1985), the agencies stopped fighting. And because the subcommittee had acquired a reputation for determined exposure of agency misdeeds, few congressmen were willing to tackle the powerful congressmen even when he encroached on their turf. Barrett's comments were echoed by the current staff director:

Most people get out of Dingell's way. If they know the subcommittee is on to something, most people don't want to go head to head with him. They know by now that he never backs down.

The issues of jurisdiction and reputation therefore seem to be mutually reinforcing. Chairmen of other committees may (and usually do) express public outrage over Dingell and Company's highly-publicized excursions into neighboring territory. But Dingell's political power and forceful personality, combined with his committee's largely unblemished reputation for tough, thorough investigations makes it awkward for committee chairman to challenge their motivations. In most cases, Dingell does not appear to be

interested in a struggle for permanent control of a disputed area.⁴⁰ Occasionally, his intervention works to the advantage of other committee chairmen. Aspin was able to play a stronger hand in confronting defense contractors and the Pentagon after Dingell's subcommittee began to investigate defense scandals. He argued that he had to "get tough" with military contracts because Dingell and his watchdogs were waiting in the wings to pounce again if he didn't.⁴¹

Staff members do not deny that the subcommittee utilizes aggressive, often harsh, tactics to unnerve witnesses or coax reluctant agency officials into compliance. The subcommittee employs two legal tactics which many other oversight units are reluctant to use: the subpoena and requiring testimony under oath. Dingell insists that every witness before the subcommittee be sworn, relying on the threat of future perjury charges to persuade witnesses to respond truthfully during questioning. In addition, Dingell allows cameras into the hearing rooms; unless a witness specifically asks that the cameras be turned off, the entire hearing is filmed. This serves not only to intimidate witnesses but to guarantee maximum exposure for any particularly startling revelations which emerge from the hearings. He also makes

⁴⁰A notable exception is his desire to wrest jurisdiction over trade legislation from Ways and Means, particularly its subcommittee on trade in 1986. He was not successful, but he didn't exactly lose either. Most trade legislation is now handled jointly by both committees.

⁴¹Barnes, 11.

sure that if witnesses invoke their absolute privilege under House rules not to be filmed, the cameras are not turned off until after the witness is sworn. "Look, if they want to get you on the evening news, they're going to get you on the evening news," concedes a lawyer who is familiar with Dingell's hearings.⁴²

Committee rules require that the majority of the subcommittee must vote to issue a subpoena for documents or witnesses. If the House is recessed for more than three days, Dingell has the power to issue subpoenas without the consent of his subcommittee. However, staffers emphasized that Dingell rarely does this without at least consulting the committee's ranking Republican. Barrett said that subpoenas are never issued in a blind quest for information:

I always had some (documents) already. They don't know what you have. Sometimes I had them all and would subpoena them again anyway. This is to protect the source and make sure there are no gaps. We never never went in cold and just asked for what was there.

In part, he says, this was done to establish the degree of cooperation which the subcommittee could expect. By knowing what already existed and then comparing that to what was submitted in response to a subpoena, investigators could judge the length the agency would go to cover up its mistakes. The moment of subpoena is a critical point for agencies or firms under investigation. The choice is to cooperate or to resist. But as a former subcommittee staff

⁴²Terence Moran, "Specializing in Dingell," Legal Times (May 28, 1990), 17.

member who now specializes in advising clients under investigation by the subcommittee remarks,

...anybody that thinks the path of resistance is the best way to approach Dingell or the staff is doing his client a great disservice. I operate on the premise that the subcommittee is going to get to the bottom of everything and that it's better that they hear it from my client than from somebody else.⁴³

One sign of the subcommittee's effectiveness in injecting terror into the hearts of witnesses is the number of firms which specialize in guiding clients through Dingell's oversight process. Lawyers are paid phenomenal fees for the privilege of sitting mutely in subcommittee hearings while clients squirm under the heat of camera lights and Dingell's relentless grilling. Unless a lawyer consents to being sworn in (which nullifies the attorney/client privilege), he is not permitted to answer a question directed at a witness. Although all Senate and House committees recognize the right of witnesses to be accompanied by counsel while testifying, in Dingell's hearing room, the role of counsel is limited to advising the witness of his or her rights.

The subcommittee has often been accused of manipulating the press to generate a receptive public response to issues under investigation. In general, subcommittee investigations make good stories and staff members are well experienced in dealing with the media, have solid contacts, and understand the importance of cultivating the media as a

⁴³Patrick McLain of the firm of Rowan and Blewitt. Quoted in Moran, 16.

potential ally. Not all press coverage is favorable, however. During the Cell paper hearings, the subcommittee received relentless criticism for its "intrusion into scientific matters" as the scientific community rallied in support of one of the paper's prominent co-authors.

Press interest, in spite of a common perception that subcommittee staff are masters at "working" the press, does not always result from staff initiative. The subjects of many hearings tend to be newsworthy and may attract substantial press coverage without any conscious prodding from subcommittee staff. One staff member describing an investigation into bottled water not expected to generate much media interest was surprised to find the hearing room jammed with eight TV cameras and overflowing with spectators.

However, there does appear to be abundant support for the argument that subcommittee staff (and to a lesser extent, members) frequently manipulate the press to their advantage. Staff members, veterans of years of successful hearings and favorable publicity, are well versed in knowing what is likely to attract media interest and how to strategically leak particularly choice morsels of information at opportune moments. Targets of one especially skilled (and generally uncontrite) investigator often complain of "torture by news leaks" and his penchant for "trading up" information acquired from one reporter and using it as bait for more information from another.

Subcommittee Staff, Leadership, and Resources

Although the budget constraints of the 1980s have reduced the number of staff members, Energy and Commerce's annual budget of \$5.1 million for investigations and studies surpasses any in the House. GAO records indicate that it commits more personnel and spends more travel money in support of Dingell's panel than it does for the Armed Services and Ways and Means committees combined.⁴⁴ At any given moment, as many as 25 additional GAO personnel may be involved with O&I staff, which expands both the range and scope of investigations undertaken by the subcommittee, and provides a pool of potential recruits when additional permanent positions open up on the subcommittee.

Subcommittee staff are characterized by an aggressive attitude toward their oversight role, an unusually long tenure and a fierce personal and professional loyalty to Dingell. Several, including investigator Peter Stockton and former staff director Michael Barrett, served with Dingell when he chaired the Energy and Power Subcommittee. A surprising number of the full-time staff members have been with the subcommittee since Dingell took over in 1981. Three of them were there when he arrived: Debra Jacobson, a veteran of 12 years; David Nelson (12 1/2), and Steve Sims (15). Bruce Chafin, who usually teams up with Peter Stockton on some of the more flamboyant investigations, has been on the

⁴⁴David Rogers, "Rep. Dingell Wields Wide Power to Probe Much of US Industry", Wall Street Journal, March 3, 1990, 1.

staff for over six years. He and another investigator, Claudia Beville, are former GAO employees.

This longevity gives the staff a clear advantage in terms of experience. Staff members have developed a finely-tuned "radar" for sniffing out inconsistencies, discrepancies, and as they like to point out, "the art of knowing which rocks to look under." Experience, claims a former staff director, is the only way you have to know

...which things are worth going after. There are only a certain number of hearing days per session. You need to go after things where you can have an impact and not waste your time on stuff there is no way to change.

Former staff director Barrett estimated that the subcommittee probably looks at an average of 175-200 issues in some substantial depth during an average congress. Out of that, possibly 50 to 70 of them make it to the formal hearing and/or report stage, representing about 100 hours of staff work for every hour of hearing. The current staff director says that selection of issues for oversight involves a certain amount of artistry in picking targets, many hours of searching in blind alleys, and thorough background work before a public hearing is scheduled. Most committees, he says, have no idea how to "take out" offenders or how to properly expose things which need to be fixed.

After years of experience at investigative work, these subcommittee staff members instinctively sense when something just does not "seem right." The Stanford University overhead probe currently in the news stemmed from a casual

glimpse of the university's 72-foot yacht by Chafin and Stockton who were in California on other business. When they returned to Washington, they checked it out.⁴⁵

Experience is one distinguishing characteristic of Dingell's investigative team but another, equally vital component, is their zest for the hunt and appetite for the jugular. There is no doubt that this is an unusually aggressive group. They view their investigations in harsh terms, with "good guys" and "bad guys" (generally they are the good guys and everybody else is not) and boast of the number of agency officials and corporate executives who have lost their jobs as the result of subcommittee inquiries. In personal interviews with several staff members, it was clear that most of them thoroughly relished their roles as watchdogs over the regulatory agencies and corporations. Others were more restrained in their enthusiasm and a few seemed amused, or even bewildered, by their more ruthless colleagues.

In all cases, however, this crusading zeal seems to arise from a genuine commitment to the public interest.

⁴⁵They discovered that not only was Stanford billing the government for inappropriate expenses related to the yacht, but for other costs, such as a \$1,200 antique commode, a \$10,000 set of donated silverware, floral arrangements, and \$7,000 for new sheets for an enlarged bed for the newly-married president of the university. They estimated that Stanford had overcharged the government from \$16 to \$20 million dollars a year between 1981 and 1990. The institution is now repaying millions of dollars to the government, facing additional millions in lost research revenue, and searching for a new president.

Staff members regard their role in cleaning up problems in the agencies or industry abuse as a valuable contribution to better government. One of them referred to his job as

... our Peace Corps. We're not heading off to Africa to build dams or teach people how to plant corn, but as far as I'm concerned, this is a way of returning something to society...a lot of Hill staff use their jobs as career progression... someone's got to be willing to do this on behalf of the American people.

Staffers seem to gauge the impact of their investigations by the "Mom and Pop in Iowa" standard:

All we do is to expose the problem. Then we hold a hearing and invite them to explain what is going on to Aunt Edna. Go ahead; it doesn't sell. Let them try to explain it to the people who pay the bills.

To this end, then, they feel justified in extracting maximum publicity from their hearings if it serves the purpose of arousing anger among taxpayers.

Staff effectiveness is bolstered by the continuity of management during the ten years the subcommittee has been under its current chairman. Mike Barrett, Staff Director and Chief Counsel from 1981-91, was with the Energy and Commerce Committee for over twenty years. First hired in 1970 by Bob Lishman when Staggers chaired the subcommittee, he remained with it when Moss assumed control in 1975. He resigned and was picked up by Dingell, then chairman of the Energy and Power Subcommittee. When Dingell took over Oversight and Investigations in 1981, he brought Barrett with him as Staff Director.

Barrett was an active "hands on" manager, who became personally involved in a number of investigations as well as

directing the efforts of the rest of the staff. He was particularly instrumental in the Superfund investigations, defense procurement irregularities, probes into the junk bond and savings and loan scandals, and accounting profession investigations. He rarely, he says, attends a decent sized meeting in Washington without seeing at least one person he has subpoenaed.⁴⁶

Barrett adopted a loose style of leadership, trusting his experienced and determined staff to conduct their own investigations with minimum supervision. He ran interference for them when necessary, and was kept informed about the progress of the variety of issues under investigation at any one time, but did not, as he terms it, "micro manage." He describes his style as:

...keeping informed about everything, but not in depth. I tried to talk to everybody about everything. But these people know what they are doing and they are good at it. If you tried to manage them too tightly, you would either lose them completely or end up with something that looks like the GAO.

It seemed to work. "In all the time I was there, I never lost anybody I really regretted losing," he claims. "I was there less to direct them," he says, "than to

...inspire them. Give them a sense of outrage. I tried to keep them worked up so they would still ask questions. I made them take vacations when they needed them, schedule trips, get out of town.

The present Staff Director is Reid Stuntz, who moved

⁴⁶Tom Kenworthy, "Wearing Rejection as a Badge of Honor: A Carrier of Angst, Former Hill Prober Doesn't Get Usual Job Offers," Washington Post, (April 3, 1991), A21.

into the leadership position this past spring. A former partner in a law firm and prominent prosecuting lawyer, Stuntz has been with the O&I subcommittee since 1988 and played a prominent role in the generic drug investigation. He indicated that he intends to follow Barrett's "traffic cop" management style, shaping investigations but leaving the detailed investigative work to his experienced staff. None of the staff members I interviewed voiced any complaints about either Barrett or Stuntz. The absence of overt staff/management conflict and the benign management style which has characterized the staff working environment for the past ten years has contributed to the ability of the staff to focus on investigations rather than distracting internal power struggles or disputes.

Staff members speak in glowing terms about Dingell's loyalty to them and unanimously credit the success of the subcommittee to his leadership, support, and integrity. They consider him to be unique in Congress for his genuine commitment "to make government work", a theme which recurs in their own explanations for why they remain on the staff. Dingell's power provides both insulation for the staff from political pressure and leverage with reluctant witnesses. They openly praise his willingness to tackle tough issues, even ones which may hurt him personally. For example,

Bell Textron is the largest defense contractor in his district. He investigated them. His brother works at NIH, which he has gone after. GM owns Hughes Aircraft. He investigated them too.

A former staff director described Dingell's commitment to oversight in these terms:

He believes in the integrity of government. At various times he has subpoenaed GM, Ford, and Chrysler. Friends get no special treatment, no special favors. I guarantee there is no other member in the institution like that. One investigation cost him a personal friendship. TRW's head of their Washington office was a close personal friend of Dingell and Debbie's. Not any more.

Another staff member said that "Dingell doesn't flinch from investigating things that need to be investigated." Yet another said that Dingell's trust in staff members' ability to do a good job was their "quality control."

If you (screw) up, you leave. The quality control is that you decide your job is on the line in each investigation. We don't get blindsided. There is no quality control between us and the chairman. The only way he can operate like he does is that he has to have a lot of faith in us.

In spite of adamant comments that Dingell would not hesitate to pursue an investigation that could harm him politically or personally, staff members seemed reluctant to force the issue. One of them said that she would be unwilling to do "auto stuff" because that would put Dingell on the spot. They appear to be sensitive to issues which might reflect negatively on their chairman, as in the case of the blood supply probe which attacked a popular American institution (the Red Cross) and attempt to warn him that an investigation might be leading into politically dangerous waters. Unspoken, although strongly implied, was the idea that the probe would be killed if Dingell had not given the green light to proceed. Even so, although staff members

universally report that Dingell's characteristic response when faced with the possibility of damaging criticism is only "Are we right? Then go ahead.", it is clear that they are nevertheless concerned about how their investigations may reflect upon their chairman. On the one hand, they genuinely admire Dingell's willingness to put truth and justice above politics. However, his position transfers the burden of protection from Dingell to the staff. Most of them seem to resolve this dilemma by avoiding issues which affect Detroit or could cause Dingell problems at home. Some staffers appeared to be disturbed that their coworkers would pursue issues which put Dingell in a bad light, especially the McTigue incident which compromised both Dingell's integrity and that of his staff and to a lesser extent, the Cell investigation, which unleashed months of bitter attacks on Dingell and his team.

As a congressional staff aide observed:

If you have a good relationship with the staff and there is an issue your member is interested in and you want them to look at, there is a good chance they will do it. But if we wanted to do oversight on clean air, for example, I don't think they'd touch it. You would run into a big brick wall very quickly.

Staffers respond that they have often investigated issues which affect Michigan, including the largest defense contractor in Dingell's district. They are quick to point out that the University of Michigan was one of the first institutions investigated for overhead violations, his alma mater (Georgetown University) was called on the carpet on an

energy issue, and that even Dingell's closest friends have been investigated by the subcommittee. However, there is still a noticeable reluctance to apply the same tough oversight standards to issues affecting the Detroit auto industry that the subcommittee applies to other areas.

The impression of the subcommittee which results from conversations with staff members is one of respect for the chairman, minimum interference from staff management, and an energetic, intelligent staff characterized by less turnover and more experience than most congressional units.

CHAPTER III

ORIGIN OF INVESTIGATIONS

This chapter will examine eight specific issues investigated by the subcommittee which reached the hearing stage during the 101st Congress. Staff members were asked whether specific investigations resulted primarily from staff initiative, at the request of the staff director, from a request from the chairman or other subcommittee member, or from concerns raised by whistle-blowers or other individuals.

Generic Drug Approval Process

In July of 1988, the subcommittee began its investigations into what Chairman Dingell has called "the most pervasively corrupt" FDA scandal his panel has ever investigated upon receipt of evidence from a generic drug manufacturer, Mylan Laboratories of Pittsburgh, PA, which raised serious questions about the integrity of the FDA's generic drug approval process. Ten hearings held before the subcommittee in the 101st Congress described a widespread pattern of discrimination, favoritism and inconsistency among of some FDA employees and illegal activity on the part of some of the largest generic drug manufacturers in the country.

The Drug Price Competition and Patent Term Restoration Act of 1984 resulted in an acceleration of the number of generic drug reviews and time periods for reviewing and approving new generic drugs. Although drug applications were theoretically to be assigned and approved on a "first in, first out" basis, Mylan complained that their drug approvals were being deliberately stalled because of favorable treatment shown to their competitors by a chemistry review branch chief and his subordinates. Their repeated complaints to the director of the generic drug division and other FDA officials met with no response. Finally, in desperation, the corporation turned to a private investigator who uncovered convincing evidence of corruption and mismanagement⁴⁷ and brought this information, in stages, to staff members of the Oversight and Investigations subcommittee. Convinced about the credibility of Mylan's concerns and abuses within the FDA, the staff director's enthusiastic support was influential in attracting the interest of Chairman Dingell. A staff member on this investigation commented,

A lot of investigations begin with someone with self interest trying to get free discovery; you have to do a certain amount of checking before you decide it's worth acting on. Mylan crossed this critical point fairly early. Barrett thought it was hot. Dingell became excited because Barrett was excited.

⁴⁷Among other things, the investigator inspected the trashcans outside the residence of the official under suspicion. A US attorney later described the prima facie case that the Mylan investigator established as "as good as anything coming out of the FBI."

As the investigation proceeded, staff members found other manufacturers willing to testify that they had suffered discrimination during the drug approval process and tangible evidence of bribes and suspicious behavior on the part of several industry representatives and division officials.

Scientific Misconduct

The subcommittee's investigation into charges of inaccuracies and possible fraud in a scientific paper proved to be one of the most controversial ever initiated by the O&I subcommittee. Its involvement stemmed from a complaint by Tufts researcher Dr. Margot O'Toole that a paper co-authored by her supervisor, immunologist Dr. Thereza Imanishi-Kari, appeared to contain inaccurate data pertaining to a crucial portion of an experiment described in the paper. The article appeared in a 1986 scientific medical journal *Cell*, and was co-authored by six researchers then at the Massachusetts Institute of Technology, including Dr. David Baltimore, a Nobel prize winner later appointed president of Rockefeller University. Funding for the research was provided by the National Institutes of Health.

Dr. O'Toole voiced her concerns about the data to Dr. Imanishi-Kari and to senior faculty at Tufts University (where Dr. O'Toole had received her Ph.D. and Dr. Imanishi-Kari was expected to assume a faculty position in a few months), to faculty members at MIT, and later to officials of the NIH. An informal review conducted at Tufts concluded

that Dr. O'Toole was justified in her concerns but that a formal correction would damage Dr. Imanishi-Kari's career. She testified before the subcommittee that she was told that there were already so many faulty papers in print that one more didn't make much difference.

MIT requested a formal memo outlining her charges, which she provided, and arranged a formal meeting between her and key co-authors. Dr. Baltimore acknowledged that he had not reviewed Dr. Imanishi-Kari's experimental results and did not intend to because it would imply a lack of trust in his collaborator. The MIT panel noted some discrepancies in the data but concluded that a correction was unnecessary.

The issue was brought to the attention of the NIH by a graduate student in Dr. Imanishi-Kari's laboratory. An independent NIH panel found nothing to suggest fraud or misrepresentation but raised concerns about errors and ambiguity. Two NIH investigators (Walter Stewart and Ned Feder)⁴⁸ who were not satisfied with the panel's conclusions continued to pursue the case.

The subcommittee became involved after Stewart and Feder informed them of Dr. O'Toole's dissatisfaction with the scientific review process at the two universities and with NIH reaction to the dispute.

⁴⁸Dr. Baltimore later described these employees in a letter as "nuts who are trying to keep themselves busy at our expense." Phillip Weiss, "Conduct Unbecoming", New York Times Magazine, October 29, 1989, 68.

Medigap Insurance

The impetus for the hearings into private insurance coverage to supplement Medicare coverage for the elderly arose from the long-term interest which Chairman Dingell and Rep. Ron Wyden (D-OR) have shown in both the insurance industry and issues affecting senior citizens. Congress made its first tentative steps into regulation of insurance policies designed to cover the gaps in Medicare coverage in 1980 when it set out minimum standards for these policies in the Baucus amendments, a voluntary program which allowed policies to be certified by the federal government. However, Dingell and Wyden both felt that these measures were inadequate and attempted to tighten Medigap requirements again in 1988 in provisions of the Medicare Catastrophic Coverage Act which were not repealed along with the rest of that law in 1989.⁴⁹ Discussions around the time of the bill and new reports of abuse in insurance policies prompted Dingell to request an investigation into the issue.

The subcommittee conducted an investigation which culminated in a public hearing on April 26, 1989, to examine systemic patterns in the way health insurance for the elderly is sold and regulated. The subcommittee was particularly concerned with the effectiveness of the current regulatory structure which relies on voluntary compliance with a nebu-

⁴⁹Julie Rovner, "Congress Tightens Regulation of Medigap Insurance Plans", Congressional Quarterly, (November 3, 1990), 3720.

lous system of federal standards.

Committee hearings exposed numerous problems with the manner in which insurance companies are regulated by the various states, which exercise varying degrees of effectiveness in reviewing industry practices and examining consumer complaints.⁵⁰ This hearing appeared to be designed to attract attention to problems with Medigap of insurance and to increase support for federal regulation.

Blood Supply Safety

According to the staff member involved with this issue, the investigation into the safety of the nation's blood supply was a direct result of the erosion of confidence in the Food and Drug Administration after the subcommittee's probe of the generic drug approval process uncovered major fraud and inefficiency in the organization. Since the subcommittee had found problems in other divisions of the FDA aside from the Generic Drug Division (brand name drugs, bottled water, medical devices, etc.), the staff member was concerned about whether adequate safeguards existed to

⁵⁰Witnesses testified that elderly policy holders purchase multiple insurance policies which provide very little additional coverage in return for substantial premiums. Cases of people purchasing 25 or 30 policies over five years were cited, a result of the differential commission structure (called "twisting" in the industry) which pays higher commissions on new policies than existing ones. In one example given during the hearings, an alcoholic woman bought 28 separate policies between Oct. 1985 and April 1988 at an annual cost of approximately \$5,865 but received no payments for medical expenses she incurred while hospitalized for treatment of her condition.

protect the nation's blood supply from infectious diseases, particularly since the incidence of the AIDS virus has reached epidemic proportions. However, one national reporter indicated that the investigation resulted from Dingell's comments to the staff about his concern for the nation's blood supply after a hip operation a few years ago.⁵¹

Ozone Layer Depletion

A subcommittee hearing was conducted on May 15, 1989, to examine the impact on American businesses of the Montreal Protocol on Substances that Deplete the Ozone Layer, adopted in December of 1987 to inhibit the production, consumption, and trade in chlorofluorocarbons (CFCs) and bromine-containing compounds (halons). Chairman Dingell, who has widely criticized policies which put American business at a competitive disadvantage in a global economy, was sensitive to the issue that U.S. industry might suffer from attempting to comply with the terms of the Protocol, particularly if inexpensive and easily available substitutes for CFCs and halons cannot be found.⁵²

Revisions to the Protocol were being negotiated at time of the hearings and Dingell was concerned not only that environmental groups were aggressively lobbying for stricter

⁵¹Harrison Rainie, "Congress's Most Feared Democrat," U.S. News and World Report, August 26/September 2, 1991, 53.

⁵²Although 40 countries and the EEC have ratified the Protocol, over 80 developing nations, including Brazil, China, Argentina, India, and Korea, have not.

standards, but that the Environmental Protection Agency might be pressured into premature approvals of proposed substitutes without adequate investigation into the safety, performance, and economic aspects of these substances.⁵³

The hearings reflect Dingell's cautious approach to environmental legislation, as well as his well-documented concern over America's competitive position in the international economy. Dingell's control over this investigation was obvious by his selection of a staff member from the full committee staff to handle it; his views on environmental issues are known to be identical to Dingell's.

Medical Device Industry

On February 26, 1990, the subcommittee began hearings to determine the Food and Drug Administration's ability to monitor the approval and marketing of medical devices. Although several case studies were investigated, most attention was given to Pfizer Corporation's Bjork-Shiley Convexo Concave heart valve⁵⁴ which had been approved by the FDA and marketed between 1979 and 1986 before it was recalled by the manufacturer.

A subcommittee staff member first became aware of

⁵³So far, all acceptable substitutes for CFC refrigerants have resulted in a loss of energy efficiency. Other substitutes which the EPA has recommended have proven to be toxic or highly inflammatory. Many critics of the Protocol anticipate that manufacturers will turn to foreign firms not bound by the terms of the agreement to purchase parts and supplies.

⁵⁴Shiley, Inc. was the manufacturer of the valve. Pfizer is the parent corporation.

problems with the heart valve through a tip from a **Legal Times** writer who mentioned that a number of individuals in Australia had experienced heart failures attributed to the device and that it had been the subject of an investigation by a Canadian television station.

The hearing (and report issued on the same day) focused on FDA weaknesses in the compliance with and enforcement of the Medical Device Amendments, including its failure to aggressively monitor (and later suspend) manufacturing operations until a solution to the problem could be identified. The investigation also focused on Pfizer's continued marketing of the device even after company officials became aware of problems in its design and manufacture as well as its failure to notify the FDA of potential problems in spite of numerous product recalls and modifications.

Army Helicopter Procurement

In April and May of 1990, the Subcommittee on Oversight and Investigations conducted hearings on the \$13 billion Army attack helicopter, the Apache AH-64 manufactured by McDonnell Douglas. The first units were delivered to the Army in 1984. At the time of the hearings, the Army was planning the purchase of its final 132 helicopters (at a cost of \$1.5 billion), for a total of 807 Apaches.

Subcommittee staff first learned of problems with the Apache through a letter which a colonel of the Airborne Calvary Unit sent to his commanding officers complaining of

performance problems he encountered during a routine training exercise. During the exercise, each of the twenty Apaches assigned to the unit either malfunctioned or was not operational at the time. In his letter, the frustrated colonel stated that if he had to go to war, he would prefer to take the Vietnam-era Cobras rather than gamble on the performance of the Apache. A copy of this letter was slipped to the subcommittee, which then collected a few other documents and requested the GAO to look into the allegations. After a ten-month GAO investigation, the subcommittee scheduled a hearing to highlight ongoing problems with the equipment and difficulties the Army had encountered in maintaining it. The investigation was part of an ongoing effort to expose contractor abuses in the defense industry.

Unfair Foreign Trade Practices

Subcommittee hearings during the 101st Congress were a continuation of a long-standing inquiry into foreign trade practices and reflect Chairman Dingell's attitude about the need for effective legislation to protect American business. The focus of the 1989 hearings was on the legal environment created by the Omnibus Trade and Competitiveness Act of 1988, a product of eight separate full Committees in the House alone. The 1990 hearings also emphasized issues to be discussed during the impending GATT negotiations.

Witnesses in the private sector representing the tele-

communications, pharmaceutical, steel, motion picture and automobile industries testified that the Act had failed to open new international markets to American products and that intellectual property rights violations had hurt US industry. Secretary of Commerce Robert Mosbacher and U.S. Trade Representative Carla Hills both testified before the subcommittee, and industry representatives criticized the government for the absence of a coordinated trade policy.

Hearings on trade issues seem aimed at keeping trade issues alive and on the agenda. According to a staff member responsible for trade matters, the hearings:

...keep the fire going. We have more than enough legislation already. Hearings are more to pressure the administration to implement the legislation as toughly as they should and to keep the heat on foreign competitors...they closely watch what we do. We keep in touch with them, in part through hearings. There's an audience out there; we send messages to them where appropriate. We do play on a world stage.

Summary

The selection for subjects of these particular investigations appears to be fairly evenly divided between those issues which Chairman Dingell has been consistently associated with and those which appear to be the result of individual staff initiative, primarily as the result of information obtained from whistle-blowers or contacts. Dingell's on-going preoccupation with trade, environmental and insurance issues resulted in three investigations. The probe into helicopter procurement, although prompted in this specific instance by a complaint channelled to a staff

member, was part of a continuing effort to expose defense contractor abuse, which Dingell has actively supported for most of the years he has chaired the subcommittee. Four issues, therefore, directly reflect the chairman's interest in specific subject areas. In two of them (Medigap and the ozone layer), he used staff assistance from the full committee rather than from the investigative subcommittee.

Three issues appeared to result primarily from staff initiative upon receipt of information from whistleblowers or other contacts. The origin of the final issue (blood supply safety) is not clear. Although the staff member involved in the investigation indicates that he was primarily responsible for the probe, there is some evidence that Chairman Dingell also expressed an interest in the issue. Without accurate information about the timing of their respective questions, it is impossible to accurately determine whether the impetus for this particular investigation arose with the chairman or one of his staff.

Table 2 lists the source for the eight cases selected for study in this paper.

TABLE 2
SELECTION OF CASES FOR INVESTIGATION

<u>Investigation</u>	<u>Source</u>
Generic Drug Approval Process	Whistleblower (Mylan Laboratories, Pgh, PA)
Scientific Misconduct	Margot O'Toole, via NIH employees Walter Stewart and Ned Feder
Medigap Insurance Abuse	Interest expressed by subcommittee members Dingell and Wyden
Ozone Layer Depletion	Chairman Dingell
Medical Devices	Tip from reporter
Army Helicopter Procurement	Anonymous letter from Army employee; part of on-going investigation into defense industry
Unfair Foreign Trade Practices	Chairman Dingell
Blood Safety Supply	Unclear - staff initiative or Chairman Dingell

CHAPTER IV

ROLE OF THE CHAIRMAN

Most scholars argue that oversight subcommittees and investigations tend to reflect the interests and priorities of committee chairmen. In spite of staff comments that this subcommittee is "staff driven", the subcommittee under Chairman Dingell appears to be no exception. Although the Chairman allows the staff a great deal of latitude in the conduct of actual investigations, his own agenda appears to guide the selection of topics as well as the course of the investigations.

In 1987, as reports of insider trading shook the securities industry, John Dingell accepted a fee to deliver an address to a group of security firm senior executives. His brief appearance was hardly reassuring:

This is not a speech in praise of the integrity of the securities industry, dismissing you to go off to cocktail parties and continue as before. And don't bother telling me, "Dingell, it can't be done" because if you don't immediately set to putting your houses in order, it will be done for you and to you.⁵⁵

It was, however, a typical Dingell performance--brusque, blunt, and belligerent.

⁵⁵Jack Torry, "The Alligator: Mean, Smart, Tough, and Blunt--Meet Big John Dingell of Michigan," The Blade (Toledo, OH), (April 24, 1988), B-3.

John Dingell first arrived in Washington as a seven-year old when his father, John D. Dingell, Sr., was first elected to Congress in 1932. His father, a New Deal Democrat, was one of the first big-city Polish-Americans elected to the House. He served eleven terms, helped to write Social Security legislation, and was one of the sponsors of legislation which created the National Institutes of Health, an agency now under his son's jurisdiction. The young Dingell worked as a page in the Capitol, earned a law degree from Georgetown University, and (at the age of 29) won a special election to replace his father when he died in 1955. "He is," says former staff director Mike Barrett, "more of a creature of the House than anybody I can ever conceive of." He is fiercely loyal to the House and has turned down numerous offers to run for the Senate.

As an imposing figure (6 feet 3 inches, 210+ pounds), he has earned the nickname "Big John" (sometimes "the Truck") and calls himself both a moderate Democrat, and "the last of the New Dealers." He likes to describe himself as a "poor Polish lawyer from Detroit" but for more than three decades, he has used his bluntness, intellect and the force of his personality to fight his way into one of the most powerful positions in Washington.

Although it is frequently said that Dingell has a safe district (his only tough fight was a primary race in 1964; in 1988, he won reelection with 97% of the vote), his district's voters can be fairly unpredictable. Although the

Wayne County portion of his district (the 16th), is one of the most Democratic areas in Michigan, his district also includes white-collar residents and company managers as well as a staunchly conservative rural contingent, all of whom tend to vote Republican.⁵⁶ In the last presidential election, his district voted 54% for Bush; in 1984, the figure was 64% Republican. Although it is not inconceivable that when Dingell retires he could be replaced by a Republican, there is no doubt that he has the overwhelming support of his district. His district may not be entirely secure but, for as long as he wants it, his seat certainly appears to be.

Since Dingell's district includes Dearborn and the huge Ford plant at River Rouge, he is (predictably) a fierce protector of the auto industry, advocating import quotas on automobiles manufactured overseas and fighting stringent auto-emission rules and improved fuel economy standards.

In spite of his long ties to the auto industry, he is a conservationist on wildlife habitat and federal park legislation. He sponsored both the National Environmental Protection Act of 1969 and Endangered Species Act of 1973, yet environmentalists tagged him "Dirty Dingell" for his efforts to undo the Clean Air Act. Ralph Nader, who once praised him as a fellow conservationist, now calls him "the consumer's worst enemy" after he opposed stiffer auto safety

⁵⁶ Phil Duncan (ed), Politics in America-102nd Congress, (Washington, D.C.: Congressional Quarterly, 1991), 767.

and pollution requirements.⁵⁷ Dingell shrugs off the criticism by reminding his attackers that he was "not sent here to destitute my district or destroy the auto industry."⁵⁸ Despite a high ADA rating and a reputation as a liberal populist, he is an opponent of gun control legislation and a board member of the NRA.

Although he tends to support consumer issues, particularly health-related ones, he opposes health and safety regulations which he thinks will unduly tax steel and auto manufacturers. Dingell is currently backing proposals to change product liability legislation, siding with manufacturers who prefer federal product liability laws over having to deal with fifty separate state laws. However, manufacturers want new legislation to replace the current strict liability standards holding manufacturers responsible with a "negligence standard" which provides more protection for industry. Dingell supports this direction, charging that lawyers are the only group which benefit from strict liability statutes. Although he defends his position by claiming that a revision of the laws would ultimately benefit consumers, the fact that the auto industry is the frequent target of product liability lawsuits undoubtedly affects his decision.

Dingell has a reputation for reinforcing his power by

⁵⁷Anna Cifelli, "Capitol Hill's One-Man Gauntlet," Fortune, (February 18, 1985), 123.

⁵⁸Barnes, 12.

rewarding allies and punishing enemies, but it is difficult to judge whether his actions constitute strong arm tactics or merely the adroit use of a chairman's prerogatives. His dislike of James Scheuer (D-NY), who ranks second in seniority on the full committee, has made it impossible for Scheuer to retain a subcommittee chairmanship. When Dan Kildee, a fellow Michigan Democrat, voted against a Dingell-sponsored bill in 1982, Dingell shouted to him across the crowded House floor, "Kildee, I hope you're satisfied with your current committee assignment." Kildee, who was trying to get on Ways and Means at the time, still has not made it.⁵⁹ Leon Billings, a former aide to Sen. Edmund Muskie of Maine, opposed Dingell on the Clean Air Bill. Years later, during an unsuccessful campaign for Congress, he ran into Dingell, who abruptly informed him that he wanted him to know that he would do everything he could to make certain that he was not elected.⁶⁰

Dingell often operates through a junior committee member, permitting that member to introduce a bill while he runs political interference for it. He claims this practice is intended to "educate" a new generation of skilled young legislators who can continue to carry on the legacy of public service. Cynics point out that it also multiplies the number of issues he can work on, extends his range, and

⁵⁹Barnes, 12.

⁶⁰Torry, 3.

builds a power base of grateful younger members.⁶¹ His normally successful attempts to solicit bipartisan sponsors for legislation builds coalitions and effectively minimizes partisan conflict on his committee. He is generally considered to be more effective in committee than on the floor. His greatest strength is considered to be his skill at coalition building and deal cutting. A crucial element in this strategy is his alignment with committee Republicans to advance legislation he supports over the objections of fellow Democrats. In a recent markup of the Clean Air Act reauthorization in the Health subcommittee, six Republicans and three Democrats voted with Dingell for amendments and seven Democrats and two Republicans voted with Waxman against them, killing them in a tie. During another vote on product liability legislation, all seventeen committee Republicans voted with him, while only three of the committee's 24 Democrats were on his side.⁶² In spite of his liberal/populist rhetoric and inherited New Deal pedigree, in reality he is a moderate Democrat who frequently has more in common with Republicans than fellow Democrats.

Tensions often run high between Dingell and some of his subcommittee chairmen and fellow committee chairman. Henry Waxman, who heads the Subcommittee on Health and the Environment, frequently opposes Dingell's attempts to weaken

⁶¹Stanfield, 794.

⁶²Ibid, 794.

auto emission controls. They battled several years ago over proposed acid rain restrictions and have often tangled over provisions of the Clean Air Act. Yet they are in agreement on health issues and their alliance is credited with maintaining the federal health budget in face of dramatic cuts for other programs over the past decade. A pragmatic politician, he has been quoted as saying that he will work with anybody and everybody that comes along if he can do it honorably and they are going in the right direction.⁶³

Dingell clashed with former subcommittee chairman James Florio over the Superfund, and opposes fellow committee members Norman Lent on acid rain issues and Ron Wyden on environmental matters. As already mentioned, he frequently antagonizes other committee chairmen over his widely-publicized excursions into their jurisdictional territory. Dingell usually justifies his encroachment by thinly disguised exercises in creative logic.

For example, the investigation into salmonella in eggs undertaken during this Congress resulted because a staff member became concerned about the high rate of salmonella in chickens.

We had no jurisdiction over agriculture so we couldn't go after chicken, which fell under USDA jurisdiction. But the FDA has jurisdiction over eggs, and we have jurisdiction over the FDA. So we had a salmonella hearing on eggs, which we had jurisdiction over, but not chicken. We were really concerned about chickens but got our point across with the eggs.

⁶³Stanfield, 795.

Staff members seemed to have no qualms about crossing jurisdictional borders in pursuit of wrongdoers and frankly admit that the subcommittee "steps on toes" when necessary. One staff member's attitude about criticism of his panel's efforts was clear:

We have the physical capability and the power base to do it. With Dingell, we have the wherewithal, the capability, and the willingness. Other committee chairmen have the capability, but not the willingness.

Barrett remarked that Henry Waxman, Chairman of the Subcommittee on Health and the Environment, did not like the generic drug investigation, but never tried to get the subcommittee to stop it. Dingell's reputation for playing rough, he said, minimized potential opposition and protected the oversight staff from political pressure from the subcommittee or full committee members.

Energy and Commerce shares jurisdiction on trade issues with the Ways and Means Committee which is responsible for tariffs. However, they work independently, apparently because of obvious differences in philosophy on trade issues. Says one staff member,

Ways and Means is more free trade than we are. Our strategy in the 1988 trade acts was to get some trade legislation; Ways and Means didn't really want to do it. We ended up with joint referral. An awful lot of what we did was preparing ground and forcing people to confront reality. The subcommittee went overseas, threatening and pushing, meeting with foreign industrialists.

But Dingell's power grabs have met with increasing resistance in recent years. The headline-grabbing question in a "Dear Colleague" letter circulated by Public Works

leaders asked congressmen "Has the Energy and Commerce Committee Ever Tried to Steal Your Jurisdiction?"⁶⁴ In October 1987, the House rejected a provision of a FTC bill to transfer oversight of airline advertising from Public Works to Energy and Commerce which had been vigorously opposed by Public Works Chairman James Howard (NJ). In a "surf and turf" fight during 1990, Dingell angered Agriculture Chairman E. De La Garza (TX) when he succeeded in transferring regulatory authority inspection for shellfish to the FDA.⁶⁵ But his fellow congressmen are not immune from exploiting Dingell's jurisdictional appetite when it suits their purposes. Former House Banking Committee Chairman Ferdinand St. Germain once yielded jurisdiction knowing that Energy and Commerce would slow down a bill he thought was moving too fast in his own committee.⁶⁶

In recent years he has suffered a stinging defeat on the revised Clean Air Bill, which he managed to stall for over nine years before reluctantly supporting it in 1990. He lost another major battle over the FCC decision to drop the fairness doctrine requirement from their regulations. Dingell proposed legislation to keep it which passed but was subsequently vetoed by President Reagan. He had his proposal attached to the budget bill a year later, but it was

⁶⁴Duncan, 768.

⁶⁵Ibid, 768.

⁶⁶Rogers, 1.

dropped in a final attempt to get the legislation through.

Dingell's personal interest in his oversight subcommittee is readily observable. He attended all but two of the 24 separate hearings covered under this research, for a 99% attendance record overall. The two hearings he missed were two short and fairly unimportant generic drug hearings. A brief description of his participation in each case follows.

Generic Drug Investigation

Although the impetus for the probe into the generic drug approval process originated with staff members, Dingell quickly became enthusiastic about the investigation as convincing evidence appeared regarding the magnitude of abuses within the FDA. His involvement deepened as it became obvious that the scandal extended far beyond the approval stage alone and the generic drug industry manufacturing practices came under suspicion. He took an active role in prompting criminal proceedings against FDA and industry officials and quickly became the target of angry newspaper advertisements sponsored by a company under suspicion. He angrily demanded the names of FDA employees who ordered a surprise inspection of Barr Laboratories shortly after its president testified that it had also suffered discriminatory treatment during the approval process. The inspection was canceled (with appropriate apologies).

Acknowledging that under current law, the FDA did not have the authority to penalize companies which engaged in

questionable activities, Dingell recognized that the FDA would need "a sharp new set of enforcement teeth" to "put misery on the scoundrels who are doing these things."⁶⁷

His emphasis during the course of the investigation shifted noticeably from oversight of the FDA to legislative remedies to address the problem.

Scientific Misconduct

According to staff members, Dingell did not foresee the furor which would erupt over the *Cell* paper, did not anticipate that it would require a second hearing, and

...took a lot of heat for it as Baltimore rallied the scientific community and launched a direct attack at Dingell and the right of the government to become involved in scientific issues.

While Baltimore complained that he was being "hounded" by Dingell and NIH investigators Stewart and Feder, many scientists considered the case as an attack on science itself. A Baltimore colleague launched a nation-wide campaign to enlist the support of the scientific community to get Dingell to back down. In a "Dear Colleague" letter, MIT scientist Phillip Sharp asked researchers to help "in countering the continuing activities of Rep. John Dingell's subcommittee in Congress."⁶⁸ The letter urged scientists to write to every member of the subcommittee, particularly

⁶⁷John Cary, "Congress Wants a Tougher FDA--But It's Not Sure How Tough," Business Week, (January 14, 1991), 33.

⁶⁸Barbara J. Culliton, "Dingell v. Baltimore," Science 244, 28 April 1989, 414.

minority Republicans, in the hope that fellow congressmen could stop the subcommittee which had "repeatedly rejected the judgment of qualified scientists" that no fraud was involved and had embarked on "a vendetta against honest scientists" that would "cost our society dearly." Dingell's response to criticism from the academic and scientific press describing his subcommittee as "science police" was to request the assignment of Walter Stewart, Baltimore's protagonist at NIH, to his subcommittee and to call in the Secret Service to check the validity of Dr. Imanishi-Kari's journal entries, an action Baltimore predicted would have a "chilling effect" on the scientific process.⁶⁹

The most volatile point during the investigation came on May 4, 1989, when Baltimore appeared before the committee in a grueling day of testimony which lasted until nearly 7 p.m. A large audience of scientists witnessed the indignant Nobel prize winner lecture the subcommittee on the scientific process, question Dingell's motives, and defend his co-authors from what he termed the relentless pursuit of an interventionist Congress. Newspapers and the scientific press portrayed the event as a personal duel between two protagonists, announced that Baltimore had emerged as the victor, and concluded that Dingell had uncharacteristically botched the hearing.

Even when he was clearly on the defensive, Dingell

⁶⁹David Baltimore, "Self Regulation of Science," Technology Review 6, August, 1989, 20.

refused to back down. Although the investigation raised questions of abuse of power by his subcommittee and Dingell and his staff were subjected to extensive criticism, particularly from the scientific press, he continued to express reservations about the ability of the scientific community to police itself and unqualified support for his staff.

Medigap Insurance

Chairman Dingell's interest in the insurance industry in general and in insurance matters affecting the elderly in particular are widely known. The hearing was clearly directed at calling attention to sales abuses of questionable insurance policies to gullible senior citizens. The goal was to gain support for potential legislation which would allow the federal government to set regulations to govern this type of insurance coverage.

Since individual states, not the federal government, supplied what little regulation existed in this area at the time the hearing was held in 1989, the hearing cannot be considered traditional oversight since no federal agency was involved. Dingell was clearly using this forum to promote his own policy agenda.

An interesting point is that Dingell selected a member of his full committee staff to conduct the investigation rather than assigning (or suggesting) it to a member of the subcommittee investigative staff. This is another indication that Dingell was concerned with affecting policy, not

conducting the type of investigation his subcommittee is usually associated with. The staff member I interviewed frankly admitted that his and Dingell's intention was to create a record of the problem in the hope that it prompted legislators to take the necessary action.

Regulation of the Medigap insurance industry is a politically astute move which would undoubtedly appeal to the influential senior citizen bloc at no cost to the federal government (or the deficit). The hearing was calculated to draw attention to the problem, increase support for potential legislation, and dampen opposition expected to come not from the Republicans in Congress or the White House but from the insurance industry itself.⁷⁰

Blood Supply Safety

By the time the staff member who initiated the investigation into the nation's blood supply approached Chairman Dingell with the need to hold a hearing on the issue, he already knew that the focus of the investigation would be on the blood industry, not the FDA, and that much of the criticism for laxity in standards was going to be directed at the American Red Cross. Hesitant to proceed further without discussing possible negative ramifications of attacking a revered institution with powerful supporters, he wanted to

⁷⁰Dingell lost in the short run but won in the end. Legislation he co-sponsored with Wyden shortly after the hearing was lobbied down by the insurance industry but later passed as part of the budget reconciliation bill in 1990.

be sure that Dingell was aware of the implications of the investigations and supported it. He described the first time he discussed the investigation with the chairman:

Funny; he usually goes at about 110 miles per hour. When I first told him about the blood investigation, I warned him that we were going to investigate the American Red Cross. He stared at me for about five seconds and said, "Ok, do it the right way. Keep me informed.

Testimony revealed numerous problems with the American Red Cross record-keeping system and its failure to notify the FDA of potentially fatal collection and distribution errors. In contrast to the openly adversarial climate of the generic drug probe, however, the blood investigation was handled with a great deal of discretion and tact, largely because of the potential for widespread public panic if abuses in the collection and processing of this vital commodity became widely known and partly because the attitude of the organization's top administration was cooperative from the beginning.

Dingell was apparently satisfied that any problems would be corrected by the Red Cross and saw no point in applying additional pressure to attracting further attention once the organization agreed to tighten their restrictions.

Ozone Layer Depletion

Hearings into the effect of the international Montreal Protocol on the banning of substances which affect the ozone layer merged two issues of great concern to Dingell: the environment and American competitiveness in the world mar-

ket. Like the investigations into the Medigap insurance industry, he used a staff member from the full committee rather than a member of the subcommittee investigative staff to handle the proceedings. This staffer was described by an individual on a subcommittee member's staff as someone whose views regarding the environment were identical to Dingell's.

The purpose of the hearing seems to be similar to that of the Medigap hearing, except that the pressure in this case was clearly directed at the administration and the EPA. Dingell's concern was apparently that environmental concerns were receiving more priority than the country's competitive trade position. He was particularly concerned with the effect of the Protocol on small to mid-sized businesses and insuring that they received as much assistance as possible during the transition from banned substances to acceptable substitutes.

Medical Devices Industry

This investigation is a classic example of the type of high-profile issue which adds to Dingell's stature without much involvement on his part before it reaches the hearing stage. The issue received a lot of attention not only because of the number of patients who had received the heart valves which were the focus of the investigation (approximately 86,000) and the relatively high rate of failure, but also because of the potential legal cost to Pfizer in damage

suits.⁷¹ Lawyers, doctors, the medical equipment industry, and heart patients followed the proceedings with interest.

The staff member assigned to the case called it a "great consumer issue" which generated a great deal of interest, especially once the report became public and after the California court ruling on the case. She said that at one point, the CEO of Pfizer met with Dingell to try to get him to "soft pedal" the issue but that Dingell arranged for her to attend the meeting and didn't attempt to "back door" her. She said that Dingell listened to Pfizer's arguments but didn't relax the pressure.

She indicated that Dingell did not play a very prominent role in the investigation and allowed Wyden to direct most of the questioning during the hearing. However, she said that Dingell was "pleased...(he) thought it was a great hearing (which) served the purpose." Curiously, although Wyden was appointed to the conference committee to reconcile the House and Senate versions of the bill which resulted, he was not listed as one of the bill's sponsors.⁷²

Of the cases I studied, this one was the most blatantly

⁷¹As of April 1990, Pfizer had settled approximately 200 claims for damages, all of them out of court, for amounts reportedly as high as \$1 million. In January, 1990, a California appellate court ruled that a 39-year old patient could be compensated for "mental anguish" if she and her lawyers can prove that the manufacturer fraudulently misled the public about the valve's risks. This ruling opens the door for the 56,000 implant recipients currently wearing the valve to sue even if their devices function normally.

⁷²The bill was sponsored by Dingell and Sikorski. Sikorski did not attend the hearing.

partisan, with Republican members expressing sympathy for manufacturers of medical equipment for use in high-risk patients but also attacking the manner in which the companion report, "The Bjork-Shiley Heart Valve: Earn As You Learn," was prepared and submitted. Additional details are provided in Chapter VI.

Army Helicopter Procurement

Dingell has a long-standing interest in exposing defense industry abuses which has earned him a reputation as a turf-stealer and provoked hostility from his peers in Congress, particularly Les Aspin of the House Armed Services Committee. Although the quasi-official justification for usurping the oversight of defense contractors is that they are regulated by the SEC which Energy and Commerce does have jurisdiction over, the actual reason for the subcommittee's activities appears to be that it regards Armed Services as tied too closely to defense manufacturers and unwilling to exert any controls over them. The mantle thus falls (so the logic goes) by default to the only subcommittee in Congress willing to tackle the powerful on behalf of the public.

The focus of these particular defense hearings was divided about equally between charges that the Army had grossly underestimated what it took to maintain sophisticated military equipment it had purchased and criticism of the manufacturer for failing to correct defective designs or supply appropriate parts. Dingell took an obvious interest

in the progress of the investigations and was, the staff members involved in them indicate, supportive as always.

After the close of the hearings, Dingell publicly criticized the Army's plans to buy another \$1.5 billion worth of helicopters remaining on the contract and circulated a copy of a letter he had addressed to Defense Secretary Dick Cheney advising against the purchase.

Unfair Trade Practices

Dingell's reputation as a protectionist is, in large measure, based on the needs of his Detroit constituents. Opposed to deregulation, he believes the government should protect the public against the abuses of the free market. He seems to instinctively distrust corporations and has focused much of his anger on Wall Street and the defense industries. He is alarmed about the size of the US trade deficit and a vocal critic of President Reagan's "coddling of the Japanese" yet he bristles at the charges that he supports a return to Smoot-Hawley protectionism. Instead, he advocates reciprocal trade agreements:

I didn't make this jungle. We just live here. And we can't practice some polite rules that none of the other predatory animals in this jungle are going to live by. We have got to live by the rules that are here, and there is no way that America is going to survive, or American industry, or opportunities for our kids are going to survive, if this is the only free trade country in the world and everybody else practices restrictive trade.⁷³

⁷³Thomas G. Donlan, "The Samurai Warrior from Michigan," Barron's, (April 15, 1985), 26.

Despite disagreements with other committees and subcommittees over jurisdiction over trade issues, Dingell has made it clear that he considers these matters his domain and has used his subcommittee to hold hearings on trade issues throughout the eighties. The purpose of the hearings held during this Congress was to examine recent landmark trade legislation to see whether it was being enforced and having the desired effect, as well as to influence the direction of the GATT negotiations expected to resume in the future.

The hearings were structured to provide a forum for numerous industries to call attention to problems they were encountering in gaining access to global markets. Their testimony reinforced Dingell's argument that American companies are at a competitive trade disadvantage and that measures need to be adopted to counteract unfair tactics used by other nations to protect their own industries.

Summary

Dingell's political interests clearly dominate the subcommittee agenda. Environmental, trade, health, and consumer issues are high on his list of priorities and on his oversight calendar. Although staff members claim that Dingell allows wide latitude in selection of topics for investigation, they tend to gravitate towards areas in which the chairman has an interest. Occasional deviation from this pattern, however, such as the scientific misconduct investigation, reinforce Dingell's reputation as an aggres-

sive opponent of waste and corruption and deflect criticism of his subcommittee for focusing its attention exclusively on issues of personal interest to the chairman. Highly publicized cases of this nature tend to originate with the staff; the amount of attention devoted to these issues may be tolerated because they are viewed as part of an overall strategy to enhance the reputation of the subcommittee and not necessarily for their value in correcting problems in administrative agencies.

CHAPTER V

SUBCOMMITTEE MEMBER PARTICIPATION⁷⁴

Staff members interviewed indicated that in most instances, subcommittee members had very little involvement in probes during the investigatory stage. They indicated that although congressmen and their personal staff were generally informed about the progress of investigations, in most instances they were seldom aware of specific details until they were briefed shortly before hearings. In general, staff members tended to regard subcommittee members as the audience for hearings, rather than active participants. Some hearings appear to be deliberately orchestrated not only to attract attention of the media and the public, but the subcommittee members as well. One staff member described the effect of hearings on members:

We don't get many surprises during the hearings. We know what the witnesses are going to say and we already have prepared the responses the members come back with. Often the members are surprised, though, and sometimes the best way to get a point across is to make them sit there and listen to it firsthand. It's much more effective than writing a report.

Another said that he considers the hearing as "an educational tool" not only for the agency but for the members. One

⁷⁴See Appendix D for a complete list of members of the subcommittee during the 101st Congress.

staff member called the hearings "theatrical productions" and said that witnesses may be called for their potential "emotional impact". For example, during the medical device hearing,

We brought in one witness I knew would cry during the hearing. His wife had died from a faulty heart valve and he cried during the preliminary interview. This was really risky. Dingell hates tears and Mike (the staff director) thought I shouldn't do it. I thought it was too good to pass up so I did it anyway. About halfway through his testimony, the witness started to cry and I looked at Mike and he was looking at Dingell and looked worried. A little later, he looked at me and smiled so I knew it was OK.

Although staff members carefully avoid directly criticizing subcommittee members, it is clear that they consider them tools to be manipulated during the oversight process rather than full partners. Because members seldom take any initiative in requesting investigation into particular topics, staff members apparently assume that their commitment to oversight is merely superficial or political in nature. Their allegiance is clearly to Dingell, viewed as a distinctive breed not only because he is chairman but because they presumably share a similar philosophy with regard to the importance of oversight in the political process. It is difficult to determine whether Dingell takes member preferences into consideration when setting his own oversight agenda, although it is reasonable to assume that members who have particular interests may channel them through the chairman rather than approach subcommittee staffers directly.

Variance in Participation-Individual and Party Affiliation

Overall, participation in subcommittee hearing was much higher among Republicans than Democrats. As shown in Table 3, in fifteen hearings, Republican attendance (as a percent

**TABLE 3
ATTENDANCE AT SUBCOMMITTEE HEARINGS (BY PARTY AFFILIATION)**

<u>Hearing</u>	<u># of D</u>	<u># of R</u>	<u>% of subcommittee members in attendance (by party)</u>	
			<u>Democrats</u>	<u>Republicans</u>
Generic drugs				
5/10/89	3	2	37.5%	40.0%
5/11/89	3	3	37.5%	60.0%
7/11/89	6	4	75.0%	80.0%
7/27/89	3	3	37.5%	60.0%
9/11/89	3	2	37.5%	40.0%
11/17/89	5	4	62.5%	80.0%
6/20/90	4	4	50.0%	80.0%
10/15/90	1	2	12.5%	40.0%
12/19/90	2	1	25.0%	20.0%
12/20/90	1	0	12.5%	0.0%
Scientific Fraud				
5/04/89	5	3	62.5%	60.0%
5/09/90	2	3	25.0%	60.0%
4/30/90	2	0	25.0%	0.0%
5/14/90	2	0	25.0%	0.0%
Medigap Insurance				
4/26/89	4	2	50.0%	40.0%
Ozone Layer				
5/15/89	1	1	12.5%	20.0%
Medical Devices				
2/26/90	3	4	37.5%	80.0%
Army Helicopters				
4/19/90	3	2	37.5%	40.0%
5/10/90	3	3	37.5%	60.0%
Blood Supply Safety				
7/13/90	4	3	50.0%	60.0%
Unfair Trade Practices				
3/01/89	5	4	62.5%	80.0%
3/02/89	7	4	87.5%	80.0%
7/30/90	2	0	25.0%	0.0%
9/24/90	2	1	25.0%	20.0%

of total party membership on the subcommittee) was greater than that of the majority party.⁷⁵ All five minority members were very interested in the generic drug hearings and attended regularly.

In most other cases, attendance varied depending on the issue, except for Bliley and McMillan who seemed involved in just about all of them.

Attendance at the subcommittee hearings for each of the eight cases under examination are shown in tables 4 and 5. Table 4 indicates the number of hearings on each issue conducted during the 101st Congress and the total number of hearing hours devoted to each issue. Table 5 measures the percentage of attendance for each member at the hearings on each of the eight issues. As can be seen, there is a wide divergence in hearing attendance among members of the subcommittee, and a noticeable difference between participation by Democrats and Republicans.

Rep. Bliley, the ranking Republican on the subcommittee, seldom misses a hearing. He attended at least one on every single issue I studied; his attendance rate was 81.6%, second only to Dingell's. Although subcommittee staffers generally describe him as cooperative, it is unclear whether he attends hearings because he is interested (and supportive) or whether he considers it his responsibility to over

⁷⁵Democratic participation, as a percentage of total subcommittee membership by party affiliation, was greater in nine of the hearings.

TABLE 4

SUBCOMMITTEE MEMBERS ATTENDANCE AT OVERSIGHT HEARINGS ON ISSUES EXAMINED

(measured by number of hearings and total hearing hours)

Subcommittee Member	Generic Drugs	Scientific Misconduct	Medigap Insurance	Blood Safety	Ozone Layer	Medical Devices	Army Procurement	Trade Practices
1st session:	(6) 23.74	(2) 13.41	(1) 3.33	(1) 4.0	(1) 4.5	(1) 7.0	(2) 6.25	(2) 5.75
2nd session:	(4) 7.49	(2) 4.25		(1) 4.0		(1) 7.0	(2) 6.25	(2) 4.0
Total (#)/hours:	(10) 31.23	(4) 17.66	(1) 3.33	(1) 4.0	(1) 4.5	(1) 7.0	(2) 6.25	(4) 9.75
Democrats:								
Dingell	(8) 28.73	(4) 17.66	(1) 3.33	(1) 4.0	(1) 4.5	(1) 7.0	(2) 6.25	(4) 9.75
Wyden	(9) 27.48	(3) 11.91	(1) 3.33	(1) 4.0	--	(1) 7.0	(2) 6.25	(2) 5.75
Sikorski	(3) 11.07	(1) 7.66	--	--	--	--	(2) 6.25	(2) 5.75
Collins	--	--	--	(1) 4.0	--	--	--	--
Bryant	--	--	--	--	--	--	--	(2) 4.25
Walgren ¹	(5) 22.41	(2) 13.41	(1) 3.33	--	--	--	--	(2) 5.75
Eckart ¹	(1) 4.75	(1) 7.66	(1) 3.33	--	--	(1) 7.0	--	(2) 5.75
Boucher ¹	(2) 8.41	--	--	--	--	--	--	(1) 2.75
Rowland ²	(1) 1.66	--	--	(1) 4.0	--	--	--	--
Scheuer ²	--	--	--	--	--	--	--	(1) 2.5
Cooper ²	--	--	--	--	--	--	--	--
Republicans:								
Bliley	(8) 26.9	(2) 13.41	(1) 3.33	(1) 4.0	(1) 4.5	(1) 7.0	(1) 2.0	(2) 5.75
Lent	(6) 23.65	(2) 13.41	--	--	--	(1) 7.0	--	(2) 5.75
Oxley	(3) 10.16	--	--	(1) 4.0	--	(1) 7.0	(1) 4.25	(2) 5.75
Billirakis	(4) 14.74	--	--	--	--	--	(1) 2.0	--
McMillan	(4) 11.57	(2) 13.41	(1) 3.33	(1) 4.0	--	(1) 7.0	(2) 6.25	(3) 8.25

¹Member of subcommittee for first session of 101st Congress only.

²Member of subcommittee for second session of 101st Congress only.

TABLE 5
SUBCOMMITTEE MEMBERS ATTENDANCE AT OVERSIGHT HEARINGS ON ISSUES EXAMINED
 (Measured by percent of hearings hours)**

<u>Subcommittee Member</u>	<u>Generic Drugs</u>	<u>Scientific Misconduct</u>	<u>Medigap Insurance</u>	<u>Blood Safety</u>	<u>Ozone Layer</u>	<u>Medical Devices</u>	<u>Army Procurement</u>	<u>Trade Practices</u>	<u>Total</u>
1st session:	(6) 23.74	(2) 13.41	(1) 3.33	(1) 4.0	(1) 4.5	(1) 7.0	(2) 6.25	(2) 5.75	
2nd session:	(4) 7.49	(2) 4.25				(1) 7.0		(2) 4.0	
Total (#)/hours:	(10) 31.23	(4) 17.66	(1) 3.33	(1) 4.0	(1) 4.5	(1) 7.0	(2) 6.25	(4) 9.75	
Democrats:									
Dingell	92%	100%	100%	100%	100%	100%	100%	100%	99.0%
Wyden	88%	67%	100%	100%	0%	100%	100%	59%	76.8%
Sikorski	35%	43%	0%	0%	0%	0%	100%	59%	29.6%
Collins	0%	0%	0%	100%	0%	0%	0%	0%	12.5%
Bryant	0%	0%	0%	0%	0%	0%	0%	44%	4.0%
Walgren ¹	94%	100%	100%	n/a	0%	n/a	n/a	100%	78.8%
Eckart ¹	20%	57%	100%	n/a	0%	100%	n/a	100%	62.8%
Boucher ¹	35%	0%	0%	n/a	0%	n/a	n/a	48%	16.6%
Rowland ²	7%	0%	n/a	100%	n/a	0%	0%	0%	17.8%
Scheuer ²	0%	0%	n/a	0%	n/a	0%	0%	63%	10.5%
Cooper ²	0%	0%	n/a	0%	n/a	0%	0%	0%	0.0%
Average:	30%	31%	50%	50%	12.5%	37.5%	37.5%	47.8%	30.0%
Republicans:									
Bliley	86%	76%	100%	100%	100%	100%	32%	59%	81.6%
Lent	76%	76%	0%	0%	0%	100%	0%	59%	38.9%
Oxley	33%	0%	0%	100%	0%	100%	68%	59%	45.0%
Billirakis	47%	0%	0%	0%	0%	100%	100%	85%	41.5%
McMillan	37%	76%	100%	100%	0%	100%	100%	85%	74.8%
Average:	55%	46%	40%	60%	20%	100%	60%	69%	56.4%

¹ Member of subcommittee for first session of 101st Congress only.

² Member of subcommittee for second session of 101st Congress only.

**Attendance for members who served only one session is based only on hearings scheduled during their tenure. N/A is used to indicate members were not available during a session, rather than 0%.

see the overseers. Minority staff members insisted, of course, that his participation stemmed from a genuine commitment to oversight and the work of the subcommittee.

The lack of Democratic attendance as a general rule is somewhat puzzling. Despite the considerable publicity associated with most subcommittee hearings and the significant political benefits which would presumably accrue from visible participation, interest appeared to be aligned with constituent concerns. This could be expected in relation to routine committee hearings but was somewhat surprising on an oversight subcommittee with excellent opportunities for favorable media attention and the potential to earn (or enhance) a reputation as a congressional watchdog.

The issues which sparked the most interest among subcommittee Democrats were generic drugs (and three Democrats never attended ANY hearings on that issue) and unfair trade practices, which provided a convenient forum for congressmen to gripe at Trade Representative Hills and Commerce Secretary Mossbacher about how our trade policies were hurting industries in their home states.

Subcommittee staffers singled out a few individuals for their interest in the issues I studied. Almost all of them mentioned Rep. Ron Wyden (D-OR), a former leader of the Gray Panthers, who appears to share Dingell's interest in most issues, except environmental protection. He appeared to be actively involved in at least four of the issues (medical devices, blood supply safety, Medigap insurance, and generic

drugs), which reflects his concern about issues which affect the elderly. Wyden's attendance record (76.8%) for hearings is higher than other Democrats, except for Dingell overall and Walgren (for the first session); he attended at least one hearing on each of the issues, with the exception of the one on the ozone layer. Whenever Dingell is forced to leave the hearing room for any reason, Wyden substitutes for him as chairman. He is a frequent spokesman in the press, particularly on health-related issues.

Participation among other Democrats on the issues I studied, however, ranged from Walgren's 78.8% to no participation at all (Cooper). Walgren's activity level was probably affected by his acute interest in trade issues, specifically those affecting the steel industry in his home district, and the fact that his district in Pittsburgh is the home of Mylan Laboratories, the whistleblower whose initial complaint triggered the generic drug investigation. The issue received a lot of publicity in Pennsylvania and it would have been politically foolish for Walgren not to maximize his role in the probe for the hometown press. His participation was probably also influenced by his chairmanship of the Subcommittee on Commerce, Consumer Protection and Competitiveness, which would have a logical interest in many of the issues which came to the hearing stage during his tenure on the subcommittee.

Eckhart (who has been called a "Dingell in training" by the press) also seems to be substantially more interested in

oversight issues than most of his Democratic colleagues, even actively participating in the hearing on medical devices when he was no longer a member of the subcommittee during the session in which the hearing was held. Other Democrats, however, did not express much interest in these particular issues. Of the three Democrats who were members of the subcommittee for the entire two years, Sikorski had the best attendance record, attending hearings on four of the eight issues. Collins managed to appear only during the hearing on blood safety, and Bryant attended only two hearings on unfair trade practices. Boucher attended hearings on only two of the five issues active during his service on the subcommittee, while Schuer attended only the trade hearings and Cooper none at all during the session he was a member.

Variance in Attendance by Issue

Examination of the data on attendance during hearings reveals a wide variation in interest displayed by the members by issue, particularly among committee Democrats. The generic drug hearings, because they involved a highly-publicized scandal on a subject of great interest to many constituent groups, generated substantial member interest.

One staffer on the scientific fraud investigation contended that subcommittee members provided very little support during the controversy; instead, he said they "strayed like roaches in the sunlight." He recalled that few of them bothered to show up for the first hearing (in

1988) and even those who did were not overly enthusiastic. This lukewarm reception may have stemmed from a sense that there was little political advantage to be gained from an attack on the integrity of the scientific community, but conversations from congressional staff indicate that there was a strong feeling that the subcommittee staff had overextended itself on this particular battle. Regardless of their feelings about the investigation, however, a respectable number of members did attend the hearings held during this congress. The three Republicans who attended the hearings, in particular, were certainly not disinterested, spending nearly 14 hours each listening to testimony from Drs. O'Toole, Imanishi-Kari and Baltimore.

However, most Democrats appeared apathetic about the medical device and army procurement hearings, and neither party (with the exception of Dingell and Bliley) showed any interest whatsoever in the environmental issue.

The staff member who handled the trade investigation indicated that those hearings deliberately focused on "things that tied to a member's district" to give everyone on the subcommittee a personal (and political) stake in the proceedings. Witnesses in the private sector representing the telecommunications, pharmaceutical, steel, motion picture and auto parts industries testified that the Act had failed to open new international markets to American products and that intellectual property rights violations had weakened the U.S. competitive position. Sikorski (Minneso-

ta), Oxley (Ohio), Bryant (Texas), and McMillan (North Carolina) were concerned about trade policies which affected the semiconductor and supercomputer industries in their home districts. Bliley (Virginia) criticized Thailand and the People's Republic of China for banning the importation of American tobacco products. Walgren (Pennsylvania) and Eckart (Ohio) wanted extensions of the Voluntary Restraint Agreements to help protect the steel industry in their districts; Eckart also wanted a change in policies to benefit the auto parts industry which is rapidly becoming a significant part of Ohio's manufacturing base. Even Wyden, who usually calls himself "the last of the free traders," expressed dissatisfaction with the recent free trade agreement with Canada which he said had negative repercussions on Oregon's wine and timber industries. McMillan's primary concern was the American position on trade policies affecting the textile industry, in particular the multi-fiber agreements which are on the agenda for discussion during the GATT negotiations.

On the other hand, Rep. Lent of New York was concerned that sanctions against Japan for protectionist policies would backfire against the aerospace contractors in his district whose finished products incorporated semiconductors and other parts manufactured overseas.

The significant level of interest in the trade issue lends credence to the argument that Congressmen, even Congressmen on this renowned oversight subcommittee, prefer to

spend their efforts on activities which will pay off in terms of constituent support. The trade hearings were not so much an effort to determine whether administrative agencies were carrying out the terms of recent trade legislation as an opportunity to affect national trade policy and push for increased protectionism for U.S. companies.

Summary

In summary, where political incentives for participation in oversight hearings were present, participation among subcommittee members increased. If no significant political link could be determined, this was reflected in a drop in attendance at hearings. However, there appeared to be no clear pattern of participation which resulted from a desire to perform oversight of the bureaucracy in a traditional sense. Instead, subcommittee member interest seemed to result more from constituent concerns.

Surprisingly, participation across the spectrum of the issues under investigation was consistently higher among Republican members of the subcommittee, whose overall rate of participation was markedly greater at 56% than was that of the Democrats (30%).

CHAPTER VI

PARTISANSHIP AND MINORITY INVOLVEMENT

In response to questions about participation by minority subcommittee members, most staff members insist that oversight investigations are largely bipartisan and do not become the focus of political rivalries. One staff member described the political atmosphere on the subcommittee as:

...very nonpartisan. All politicians run against fraud, waste and abuse. Most members don't want to get in the way of this train. We work well with the Republicans on most issues.

Barrett said that Dingell was more concerned with competition between branches than with party rivalry.

Being a creature of the House, Dingell regards ANY administration as the enemy. He believes completely in the idea of checks and balances. He certainly showed no hesitation in attacking the last Democratic president (Carter) when he felt he deserved it.

Dingell has often insisted that oversight should be above partisan politics:

We have gone after Democratic administrations and Republican...we have gone after Democratic appointees and Republican. We have made misery for Democratic-controlled agencies in government and regulatory agencies appointed by Democratic administrations, and we have done the same thing to Republicans. We are quite indifferent about that. The law is the law, and we are here to see that it will be carried out.⁷⁶

⁷⁶Donlan, 28.

On a practical basis, the current staff director speculated that the absence of partisan tension is strategically advantageous.

If our investigations were reduced to partisan issues, we would be constantly trading political shots. That would slow us down and render us ineffective. The investigations are strictly fact-driven, not political.

These observations were verified in interviews with minority staff members, one of whom commented that:

Investigations certainly don't appear to be partisan in general. We all work together; there are really few, if any partisan issues that I am aware of. I think there was a time when it was more partisan but that was before I got here. I work well with majority staff; the only problems I have are due to communications breakdowns and that isn't really their fault. You are involved from the beginning. It varies from person to person, but once you are trusted, they bring you on board real quick.

Nevertheless, despite frequent assurances from Dingell, subcommittee members and staff that oversight investigations are not motivated by partisanship or designed to embarrass a Republican president, at least one minority staff member has expressed some reservations on this point:

...with a Republican administration to shoot at (Dingell) hasn't been as willing to see things from an executive point of view. If there were a Democratic president or if he were a Republican, there would be a tendency to step back and do less administration bashing.

However, this same staff member conceded that, given Dingell's devotion to exposing misconduct and problems in the agencies,

...if there were a Democratic administration, (the subcommittee) would be just as busy and the battles might be even more bitter...the rivalry between Dingell and Waxman would probably be even more pronounced.

Another minority staff member supported this position, commenting that he saw the rivalries on the committee less as partisan disputes than as contests between subcommittees and dominant personalities among the Democrats. However, should the Democrats regain the White House and still manage to maintain control of both houses of Congress, it is reasonable to assume that a resurgence in party discipline would occur which would discourage this type of behavior among congressional Democrats. In any event, Dingell's subcommittee would not be immune to partisan pressure from the executive branch and House leaders. It is therefore dangerous to assume that partisan politics plays only a minor role in this subcommittee's investigations despite sanctimonious assurances to the contrary.

However, in line with the current official benevolent attitude adopted with regard to repressed partisan tension during investigations, subcommittee staffers tended to describe Republican members in complementary terms, as "sage", "well intentioned", "sincere" and "supportive". They appeared to be especially fond of Rep. Thomas Bliley (R-VA), the ranking Republican on the subcommittee for his cooperation and willingness to put partisan politics aside in the interest of conducting "honest" oversight.

A legislative aide to a subcommittee member presented a collaborating, if somewhat more politically realistic, explanation. She commented that Republicans like the publicity that normally results from the hearings and tend to

downplay partisan differences during the investigatory stage. There are political incentives to be gained from appearing to watchdog federal agencies or attacking industries which misuse government funds, particularly if criticism is not directed toward their party and administration. It is a different story, the aide commented, if the hearings result in the introduction of legislation opposed by the President or party leaders.

They're with you until legislation is proposed and the administration doesn't support it. All of a sudden, they're out of the picture.

The political angle was also mentioned by subcommittee staff members who seem aware that they can count on minority cooperation during investigations, but are apparently less confident that this will translate into support for a legislative solution. It may be a significant factor in the cynical attitude most of them hold toward corrective legislative. In general, staff members tend to dismiss legislative solutions to correct embedded problems within the government because bills get "bogged down in politics", preferring instead to

...expose what's going on. We create pressure. Someone is awakened to do the right thing, or maybe pressured to do the right thing.

In contrast to the subcommittee's efforts under Chairman Moss which attempted to influence pending legislation or the introduction of new measures, most staff members were more concerned with applying pressure on administrative agencies to implement existing regulations. Staff comments

with regard to additional legislation were blunt and pessimistic:

There is already more than enough legislation out there. Our job is to keep the pressure on to implement it as toughly as they should.

Legislation can't fix anything. Politics comes out. If we can manage to get something through the House, it gets stuck in the Senate.

What we do here is not legislation driven. Possibilities of legislative change are encompassed, of course, but we don't focus on it. You can spotlight where changes are needed and hope that the agency makes them or appropriate action results from exposure.

However, it was less clear that this bias is shared by the subcommittee chairman.

One major problem for minority members is that they have no real control over the agenda. Although there appear to be no barriers preventing Republicans from requesting an investigation, this does not seem to be a common occurrence. Subcommittee staffers indicate a willingness to conduct investigations upon request from members of either party, but emphasize that most investigations result from staff initiative. A minority staff member could recall only one issue which was minority-driven (Telestar). Republican members can also utilize the General Accounting Office and can request an investigation on any subject which interest them. There was no problem with access to the GAO a few years ago when a minority member requested a independent study on railroad retirement plans; he quickly obtained GAO assistance in compiling the information he needed. As Dingell appears to take a conciliatory position with regard

to his minority members and often proposes legislation with both Democratic and Republican sponsors, there does not appear to be much incentive for partisan competition.

In spite of Dingell's continued insistence that there is no "majority staff, only subcommittee staff", the minority staff suffer obvious disadvantages in comparison with the staff which reports to Dingell and his fellow Democrats. First, there are only 22 of them, and they must serve the entire full committee. In contrast, there are currently 140 "majority" staff on the full committee, most of them assigned to specific subcommittees. There are, therefore, almost as many full-time investigators assigned to this one subcommittee as there are minority staff who work for the entire full committee.

In addition, it is far easier for "majority" staff members to focus on narrow interests and develop a level of expertise which minority staff, far outnumbered and shuffled between subcommittees, are seldom able to obtain. Further, the chain of command for subcommittee (majority) staff is very clear: first Dingell, then the other Democratic subcommittee members. If involved with an oversight and investigations subcommittee probe, a minority staff member must answer equally to all four minority members on the subcommittee and secondly to all Republicans on the full committee who might have questions or concerns.

Most subcommittee staffers appeared to make a conscientious effort to include minority staff in all aspects of

the investigation. Staff members claimed that minority staff was "100% involved", or "involved from the beginning stages" and the investigations were "absolutely nonpartisan".

None of the minority staff members I interviewed complained of unfair treatment by the subcommittee members or staff, but all of them mentioned structural difficulties and time constraints which hindered their effectiveness. Most complaints from minority staff members center on scheduling conflicts and the inability to focus on only one issue at a time, neither of which they blame on the subcommittee staff. Involved with several investigations simultaneously, they often face painful choices when hearings or interviews for different cases are scheduled simultaneously. The minority staff do not appear to blame subcommittee staff for these difficulties, as one aide commented:

It's not their fault. We're stretched pretty thin. Oversight and Investigations is a very active subcommittee and the staff is aggressively involved in a number of issues all the time. They try their best to keep us informed on everything, but we can't always keep up.

In most investigations, minority staff say that they are treated as "equal partners" in the investigations, although some hearings involve separate minority efforts. Minority staffers say they are usually given more than the required seven days notice about a scheduled hearing and receive adequate time to review materials. Long-time minority staffers commented that their relations with the "major-

ity" staff had vastly improved under Barrett's tenure, and they expected this to continue under the new staff director, Reid Stuntz. Both men, they indicated, made a conscientious effort to keep them informed.

However, in three of the investigations (Medigap insurance, scientific misconduct, and medical devices) there appeared to be indications of partisan tension. Therefore, the assertion that partisan politics plays a minimal role in subcommittee investigations could be challenged in half of the cases I examined.

Generic Drug Approval Process

Republican support for the probe was strong from its inception, particularly from Bliley, who later co-sponsored (with Dingell) legislation designed to prevent similar problems from occurring again in the future. Republican support for the investigation remained solid throughout the ordeal in spite of strong lobbying efforts by the pharmaceutical industry. It is particularly striking that Rep. Lent, who represents a state (New York) which is the home of many of the generic drug firms under investigation, continued to wholeheartedly agree with efforts to correct abuses in the industry, despite layoffs of hundreds of innocent employees as the investigation proceeded.

During the stormiest moments of the investigation, when Bolar Pharmaceutical Company took out full-page newspaper ads blasting Dingell and his staff for "creating a climate

of fear in the generic drug industry,"⁷⁷ it was the minority members who reacted with the greatest outrage.

There was some concern expressed within Congress (but not the subcommittee) that the generic drug industry was being unfairly singled out for publicity because problems uncovered with generic drug approvals existed throughout the FDA. Some members complained that Dingell's investigation and his proposed solutions were "overly heavy-handed and could work against restoring confidence in generic drugs."⁷⁸ The fact that criticism of this type did not apparently surface among Republican members of the subcommittee may be connected to a remedy proposed by Bliley (and supported by President Bush) allowing the FDA to charge drug companies user fees to review and process applications. In the past, this idea had been backed by the administration and Republican legislators but defeated by Democrats. Minority support for the investigation may have, therefore, may have masked a hidden agenda, which definitely had partisan overtones.

Scientific Misconduct

During the widely-publicized and emotional hearings on the Baltimore cell paper, one Republican member was very critical of the investigation and fought it until the draft

⁷⁷Rogers, 1.

⁷⁸Julie Kosterlitz, "Drug Therapy," National Journal, May 25, 1991, 1233.

of the NIH report was released. According to a minority staff member, although some majority members were fairly convinced that the subcommittee staff had done an adequate job, most minority members were more skeptical and none of them showed up for the initial hearing in April of 1988. By 1989, however, the majority of Republicans on the subcommittee were actively involved in the investigation.

The "Dear Colleague" letter campaign instigated by an MIT scientist may have produced the desired results with minority subcommittee members. In his opening statement at the May 4th hearing, Rep. Norman Lent urged his colleagues to approach the day's testimony with caution. Rep. Alex McMillan wondered aloud whether "anyone had ever examined the notebooks of Albert Einstein."

Subcommittee staffers attribute the lack of support among Republican members to the controversial nature of the investigations. With the hearings receiving vehement criticism from the scientific community and the press, there was no political incentive to be associated with what was generally perceived to be a misguided attempt to regulate the scientific profession. Several Democratic members of the subcommittee also distanced themselves from the inquiry but were more hesitant in voicing their objections.

Medigap Insurance

During the Medigap insurance investigations, minority members were portrayed by staff as being generally more

sympathetic to the insurance industry, but not generally in a position to obstruct the investigation. In contrast to the abuses which were being charged by the majority, in his opening statement, Bliley remarked that problems with Medigap policies had decreased during the eighties and expressed his reservations that no representation from the insurance industry had been invited to testify before the subcommittee. McMillan also indicated that he felt the insurance companies were, in general, behaving responsibly in trying to protect consumers from unscrupulous agents and that the blame should be placed on state regulators not the insurance industry.

Medical Devices

The most partisan issue I investigated was clearly the medical devices hearing. There appear to have been two dimensions to the tensions which surfaced during the course of the hearing. First, the Republicans expressed sympathy for the manufacturers of "high risk" medical equipment, and secondly, there was an uncharacteristic lack of cooperation between subcommittee and minority staff. In his opening statement, normally cooperative Congressman Bliley expressed reservations about the hearing and its accompanying report:

In this case, we seem to be approaching a fine line that separates FDA oversight of medical devices from practicing medicine. I am not a doctor, I have not been trained in medicine, and I am patently unqualified from rendering medical opinions. I believe the same applies to the individuals who prepared the report being issued today. Yet this report appears to analyze and interpret medical phenomena, question the findings

of scientific experts, and make medical judgements that the subcommittee and its staff have just no business making.

He also complained that minority staff members had not participated in the preparation of the report and were given insufficient time to review the report before or after its publication. He also complained that he did not receive adequate notice about the appearance of several witnesses who testified during the hearing.

Rep. Lent also charged that the minority staff member had been deliberately denied access to materials regarding the case and voiced his concern that there were now only about three companies making prosthetic heart valves and "if we keep beating up on these people...we are going to have even less than three people in this business." In addition, he attacked the credibility and motivation of one of the witnesses (a lawyer representing the plaintiffs in a class action suit against Pfizer).

Oxley compared the situation to the "pseudo-scare about the use of alar on apples" and blamed unscrupulous lawyers for creating a climate of panic in heart valve recipients by advertising for claimants against the manufacturer.

McMillan, the fourth Republican to attend the hearing expressed regret that the report issued by the staff was not shared with the minority staff prior to the hearing and attempted to establish during questioning of witnesses that all heart implants involved substantial risk to patients.

According to the staff member working on this case,

Pfizer lobbyists "got to the minority. She indicated that minority members tried to kill the hearing, but were "blistered" by Dingell and apparently apologized later for interfering with the investigation. She also readily admitted that the minority staff member had been intentionally slighted during the preparation for the hearing and its companion report but justified her decision because "...he was a jerk; he is a politico...didn't spend time on the issue." The animosity which was directed toward the minority staff member appeared to be of a personal nature and might have been unconnected to the larger issue of Republican sympathy for a company under siege.

Summary

Although there did not appear to be significant partisan tension between Democrats and Republicans on four of the issues (trade, ozone layer, army helicopter procurement, and blood supply safety), there was clearly some division on three of them and in the generic drug investigation, Republican cooperation may have resulted, at least in part, from a hidden agenda. Therefore, in spite of subcommittee staff's depiction of unbiased, nonpartisan cooperation, closer inspection of several issues reveals an underlying dimension of distinctly different attitudes between Republican and Democratic subcommittee members in at least 37% (and possibly 50%) of the cases.

CHAPTER VII

OUTCOME OF THE INVESTIGATIONS

Generic Drug Approval Process

The investigations into the generic drug approval process resulted in criminal convictions (to date) of five FDA officials, four generic drug manufacturers, nine industry executives and an industry consultant, and federal officials indicate there are more to come. By the close of the hearings, the FDA commissioner (Frank E. Young) had resigned and more than 100 generic drug products, including the largest-selling generic, a version of the blood pressure medication Dyazide, had been pulled from the market. Of approximately 36 generic drug companies with more than one product on the market, about 18 are currently under criminal investigation by the Justice Department.⁷⁹

In 1990, Dingell and Bliley introduced the Emergency Food and Drug Enforcement Act which would have increased the resources of the FDA, provided enforcement penalties, and given the agency swift recall authority. The bill was dropped at the last minute after the Senate, which favored more comprehensive legislation covering food, brand name

⁷⁹Kosterlitz, 1233.

products, and medical devices as well as generic drugs, declined to support it.

On September 25, 1991, the full committee passed HR2454, sponsored by Dingell and co-sponsored by every member of the committee, which gives the FDA considerably more authority to invoke sanctions, including debarment from the drug approval process and authority to suspend distribution of generic drugs of any company which has abused the approval process. The act also provides civil penalties as well as a "whistleblower award." It is expected to be signed into law without opposition during the current congressional session.

Scientific Misconduct

In the wake of the publicity surrounding the Cell paper, the NIH established an Office of Scientific Integrity⁸⁰ to investigate allegations of misconduct involving federal research funds. A draft report issued by this office indicated that Dr. Imanishi-Kari "probably" fabricated data in the paper she wrote with Dr. Baltimore.⁸¹

In March, 1991, Dr. Baltimore asked that the Cell paper be retracted because of evidence that it had included falsi-

⁸⁰In July 1991, the subcommittee accused NIH director Bernadine Healy of obstructing the investigation into the Baltimore case and another probe by removing a deputy director who was supervising both.

⁸¹David L. Wheeler, "NIH Director Accused of Improper Interference in Agency's Investigations of Scientific Fraud," The Chronicle of Higher Education, August 7, 1991, A7.

fied data. Fraud and perjury charges are now being considered with respect to Dr. Imanishi-Kari.

Medigap Insurance

Following the hearing, Congress tightened federal regulation of Medigap insurance as part of the huge budget reconciliation bill (PL-101-508, Omnibus Budget Reconciliation Act of 1990) which cleared Congress on November 5, 1990. Part 5 of the Medicare provisions in Subtitle A provided for standardization of Medigap policies, required that companies return at least 65 cents of every premium dollar in benefits, barred the sales of policies that duplicate Medicare, prohibited the direct sale of Medigap policies to recipients of Medicaid, mandated that every policy sold be approved by insurance regulators at the state or federal level, and forced insurance companies to sell Medigap policies to all senior citizens who seek them within six months of becoming eligible for Medicare.⁸²

Blood Supply Safety

Following the hearing, the Red Cross committed \$120 million to completely modernize 53 regional blood collection centers. Computer systems are now being installed to track donors and the blood stock, and laboratory personnel are being trained to test properly for infectious diseases. By the time these innovations are completed, the United States

⁸²Rovner, 3720.

will have the most effective blood collection system in the world. In this case, no legislation was required to force the FDA to direct the Red Cross to change its procedures. The actions taken by the Red Cross were strictly a voluntary response to problems which surfaced during the investigation and hearing process.

Ozone Layer Depletion

The hearing forced the EPA and the administration to confront the problems resulting from strict compliance with the terms of the Protocol, especially as some of the key substitutes recommended by the EPA have proven to be toxic. Other substitutes that EPA officials had assumed to be safe, such as turpine, appear to be highly inflammatory and are being resisted by insurance companies concerned about the increased potential of industrial fires.

One of the accomplishments of the 101st Congress was major revision of the Clean Air Act after 13 years of hearings and debates. Concerns raised in the subcommittee hearings were incorporated into Title VI of the revised bill, (PL-101-549, Clean Air Act Amendments of 1990), especially those issues relating to CRFC substitutes and timetables for their adoption. Federal assistance has been promised to help bring industries into compliance with pollution standards and to assist in identifying and testing substitutes for banned substances. Deadline extensions will be granted if acceptable substitutes cannot be found within the

time limits outlined in the Protocol and the amendments.

Medical Devices

Following the hearing, the FDA initiated a series of unprecedented steps to correct the problems which the subcommittee and other groups addressed. These included removing the heart valve's Pre Market Approval, initiating a patient and physician notification process, and determining steps for a criminal investigation against Shiley, Inc. The subcommittee presented the FDA with information that the company had withheld information regarding both the alleged therapeutic benefits of the valve and the incidence of strut failure. In August, 1990, Shiley announced that it had awarded a grant to Medic Alert to implement a worldwide patient notification program.

The Safe Medical Devices Act of 1990 (PL-101-629) approved on November 21, 1990, gave the FDA a comprehensive framework to regulate medical devices to ensure their safety and effectiveness. It required companies to report problems with medical devices to the FDA promptly, gave the FDA subpoena authority to request documentation when necessary and order the recall of devices whenever there is reasonable probability that the device will cause adverse health consequences or death.

Army Helicopter Procurement

Following the hearings, Dingell publicly criticized plans to purchase the additional 132 Apache helicopters

remaining on the contract at a cost of \$14 million each. It is difficult to quantify the impact of the Apache investigation since it didn't succeed in blocking the sale. Staff members, however, argue that the investigations sent a "loud and clear" message to the Army about its procurement habits, and that after adverse publicity about the performance of the equipment, the Army is finally taking action to correct some of the problems with spare parts and adequate support personnel. Further, the negative publicity which surrounded the manufacturer, McDonnell-Douglas, for its design failures and inability to correct problems with the equipment was probably a significant factor in its loss to the Boeing/Sikorsky team for the contract for the new Comanche helicopter now in the development stages.

Unfair Trade Practices

It is difficult to measure the outcome of continuous efforts like trade hearings. A staff member described a "successful" hearing as simply a part of a process, intentionally consistent with the actions of main trade negotiations, to provide leverage for key trade officials to use with foreign governments and, when necessary, with a reluctant administration. In light of Dingell's protectionist position with regard to trade, hearings calling attention to inequities in international trade arrangements or the failure of foreign governments to live up to bi-lateral agreements can be assumed to be part of a long-term strategy to

boost support for tighter restrictions on foreign trade and/or import quotas and increased tariffs. The hearings also seem to be clearly designed to prod the administration into taking a more aggressive posture during the upcoming Uruguay Round of multilateral trade negotiations.

Summary

In spite of staff consensus that legislative change is not the goal of oversight hearings, four of the eight cases I investigated resulted in significant legislation to correct problems uncovered during the course of the probes. A summary of legislative and other actions appears in Table 6.

TABLE 6

RESULTS OF OVERSIGHT INVESTIGATIONS IN CASES STUDIED

<u>Case</u>	<u>Outcome</u>
Generic drug approvals	HR 2454, passed by Energy and Commerce Committee; pending floor action Sponsors: all members of committee
Scientific misconduct	Agency reform (institution of Office of Scientific Integrity, NIH), perjury charges pending against Dr. Imanishi-Kari
Medigap insurance	PL-101-508 (Omnibus Budget Reconciliation Act of 1990) Approved: November 15, 1990
Blood supply safety	\$120 million committed by American Red Cross to modernize blood collection centers
Ozone layer depletion	PL-101-549 (Clean Air Amendments of 1990) Approved: November 15, 1990
Medical devices	PL-101-629 (Safe Medical Devices Act of 1990) Approved: November 28, 1990
Helicopter procurement	Attempt to block purchase of additional units unsuccessful. Agency reform (efforts to provide adequate spare parts and personnel) Contractor failed in bid for additional helicopter contract.
Unfair trade practices	Ongoing effort to influence trade legislation.

CHAPTER VIII

CONCLUSIONS

This thesis compares an image of the Oversight and Investigations Subcommittee obtained through staff interviews with one which emerges from inspection of hearing reports and newspaper and magazine articles on eight of the issues investigated during the 101st Congress. Staff members describe their subcommittee as nonpartisan in nature, with an agenda driven primarily by staff initiative, supported (but not dominated) by an aggressive chairman, and directed at enforcement of existing, rather than introduction of new, legislation. My findings indicate a subcommittee with some level of disagreement between Democrats and Republicans on a significant number of cases, markedly distinct levels of participation between Democratic and Republican members, a subcommittee agenda reflecting the political interests of its chairman at a substantial level, and inclined to pursue legislative solutions to problems unveiled during subcommittee hearings.

The discrepancy illustrates some of the methodological difficulties encountered in trying to generate conclusions based primarily on interviews with staff members. These problems were compounded because members of congressmen's

personal staffs were reluctant to challenge the subcommittee staff depictions of activities as nonpartisan. Nor did anyone I interviewed appear willing to criticize Chairman Dingell's integrity or tactics. Although it is possible that respect for the Chairman is so ingrained as to be unquestioned, it is more likely that his personal power and forceful personality dictate a prudent response when troublesome questions are raised.

However, some interesting observations about the cases which were reviewed for this thesis are in order. Investigations initiated by staff members tended to become more controversial than the issues which originated with Chairman Dingell. It is my impression that Dingell uses oversight hearings as one of a variety of weapons to further his legislative agenda, patiently building a public record of problems in a particular area to support legislation which he plans to introduce or sponsor at some point in the future. This approach seems to be utilized primarily in those hearings which result from his own initiative.

On the other hand, staff members tend to be attracted to issues which have the potential to generate maximum press exposure and publicity to enhance the subcommittee's reputation as congressional watchdogs. The chairman's unwavering support under fire is deeply appreciated by his staff and reinforces both their loyalty to him and their respect for his integrity. His willingness to absorb criticism for their actions may represent a subtle, but deliberate, strat-

egy aimed at maintaining harmony between the chairman and the staff and minimizing any potential difference in philosophy. It is interesting to speculate whether Dingell considers his staff's ventures into headline-grabbing scandals a worthy price to pay for their ability to maintain steady pressure on the administration and agencies in areas he considers to be vital to the public interest. He may tolerate (or even encourage) issue-specific investigations to escalate the climate of fear and intimidation generally associated with his subcommittee in order to increase its clout on the larger issues affecting policy which may be his primary concern.

There is little doubt that the competence and skill of the subcommittee staff provides the chairman with the technical expertise to conduct extensive investigations into complicated issues. He apparently trusts their instincts and experience, allowing them wide latitude in framing and pursuing investigations which they initiate. In return, Dingell's trust, lack of interference, and unwavering personal support during critical periods have earned him the gratitude of his staff who obviously admire him and respect his loyalty and integrity.

Although this mutual admiration scenario appears to be genuine, there is undoubtedly another, more realistic, dimension to the relationship. Dingell's reputation as an aggressive opponent of fraud and waste has been enhanced, in large measure, by the efforts of an usually diligent and

dedicated staff. It is, therefore, in his interest to retain them and to do whatever is necessary to reinforce their zeal and commitment since their activities contribute to his prestige and performance in the House. This includes allowing them free rein to pursue lines of inquiry which interest them as well as consistent support if they occasionally go too far. In return, the most aggressive of these staff members obviously enjoy the attention and power which accompanies a position on the subcommittee and have obtained an appreciable degree of personal recognition from years of widely-publicized investigations. Tactics and behavior not only tolerated, but rewarded, on this subcommittee would probably not find the same reception in most professional environments. The staff is generally acknowledged to be very well compensated and it is unlikely that they are particularly anxious to test the job market within other federal agencies or in the Washington community. It is to their advantage then to increase Dingell's satisfaction with the performance of the subcommittee by continuing those activities which bring favorable attention to their chairman while avoiding those which might cause him unnecessary political embarrassment or loss of prestige among his peers. The task then is to navigate a balance between the type of issues which are investigated, enhancing the reputation of the subcommittee while allowing the chairman to use the prestige of the panel to pursue his own policy agenda.

Dingell's commitment to oversight is widely regarded

and politically advantageous. However, it is quite possible that he uses his oversight resources as a tool to influence policy in much the same manner as Moss did when he chaired the subcommittee. Subcommittee hearings are often a convenient forum for Dingell's own policy views rather than an honest attempt to determine administrative compliance with legislative intent.

Finally, Dingell's strategy in obtaining Republican cooperation by allowing them to take credit for oversight successes and including them as sponsors on legislation may result as much from political necessity as a desire to minimize partisan conflict. In spite of his description of himself as a "New Deal Liberal", his views are closer to those of moderate Republicans on his committee, especially with regard to matters affecting industry, than they are to many of the members of his own party. Republican interest in subcommittee investigations may reflect not only political benefits from publicity, as staff members suspect, but an underlying sympathy with Dingell's policy agenda. Tension, when it does arise during the hearings, tends to occur over issues selected by subcommittee staff, rather than the chairman.

The 1980s has seen the issues of the deficit, tax reform, and reduced federal spending influence the liberal agenda. Congress can no longer afford to allow "pork barrel" politics to dominate its activities, as it becomes increasingly obvious that there will be less and less pork

to distribute in the coming decades. The major policy issues facing Congress will be regulatory ones: financial services, communications, health care, energy, technology, transportation, and science. Dingell's investigative subcommittee appears to be attempting to striking a balance between traditional process questions (largely introduced by staff members) focusing on wrongdoing and scandals and those issues involving policy review, which seem to be initiated by Chairman Dingell as part of his strategy to influence upcoming legislation.

APPENDIX A

INDIVIDUALS INTERVIEWED

Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce current and former staff members:

Reid P. F. Stuntz, Chief Counsel and Staff Director. Personal interview, Washington, D.C., July 18, 1991.

Michael F. Barrett, Jr., Chief Counsel and Staff Director, Subcommittee on Oversight and Investigations (1981-91). Personal interview, Washington, D.C., July 24, 1991.

Claudia Beville, Special Assistant. Personal interview, Washington, D.C., July 26, 1991.

Bruce F. Chafin, Special Assistant. Personal interview, Washington, D.C., July 30, 1991.

David W. Nelson, Economist. Personal interview, Washington, D.C., July 31, 1991.

Stephen F. Sims, Special Assistant. Personal interview, Washington, D.C., July 31, 1991.

Peter D. H. Stockton, Research Analyst. Telephone interview, July 22, 1991.

Committee on Energy and Commerce staff members:

David B. Finnegan, Counsel. Telephone interview, October 10, 1991.

Donald E. Shriber, Counsel. Telephone interview, August 6, 1991.

Committee on Energy and Commerce minority staff members:

Thomas C. Montgomery, Minority Counsel. Personal interview, Washington, D.C., July 31, 1991.

John Hambel, Minority Counsel and Press Secretary. Telephone interview, September 19, 1991.

Dennis B. Wilson, Minority Counsel. Personal interview, Washington, D.C., July 30, 1991.

John Shelk, Minority Counsel. Telephone interview, September 20, 1991.

General Accounting Office

James Shafer, Senior Investigator. (Currently on loan to the Subcommittee on Oversight and Investigations for one year). Personal interview, Washington, D.C., July 30, 1991.

Members of personal staff of subcommittee members:

Ellen Donesky, Legislative Assistant to Representative Gerry Sikorsky (D-Mn). Telephone interview, October 10, 1991.

Wendy Horowitz, Legislative Assistant to Representative Ron Wyden (D-OR). Telephone interview, October 10, 1991.

Sara Franko, Legislative Assistant to Representative Dennis Eckart (D-OH). Telephone interview, October 17, 1991.

APPENDIX B

FORMAL JURISDICTION OF THE ENERGY AND COMMERCE COMMITTEE

The formal jurisdiction of the House Energy and Commerce Committee includes:

- (1) Interstate and foreign commerce, generally
- (2) National energy policy generally
- (3) Measures relating to the exploration, production, storage, supply, marketing, pricing and regulation of energy resources, including all fossils, fuels, solar energy and other unconventional or renewable energy resources
- (4) Measures relating to the conservation of energy resources
- (5) Measures relating to the commercial application of energy technology
- (6) Measures relating to energy information generally
- (7) Measures relating to (a) the generation and marketing of power (except by federally chartered or Federal regional power marketing authorities), (b) the reliability and interstate transmission of, and ratemaking for, all power, and (c) the siting of generation facilities, except the installation of interconnections between government waterpower projects
- (8) Interstate energy compacts
- (9) Measures relating to general management of the Department of Energy and the management and all functions of the Federal Energy Regulatory Commission
- (10) Inland waterways
- (11) Railroads, including railroad labor, railroad, retirement and unemployment, except revenue measures related thereto
- (12) Regulation of interstate and foreign communications
- (13) Securities and exchanges
- (14) Consumer affairs and consumer protection
- (15) Travel and tourism
- (16) Public health and quarantine
- (17) Health and health facilities, except health care supported by payroll deductions
- (18) Biomedical research and development.
- (19) Nuclear facilities and energy⁸³

⁸³Report on the Activity of the Committee on Energy and Commerce for the 101st Congress, (Washington: US Government Printing Office, 1991), 1-2.

APPENDIX C

ISSUES INVESTIGATED BY OVERSIGHT AND INVESTIGATIONS
SUBCOMMITTEE DURING 101ST CONGRESS

During the 101st Congress (1988-90), the Oversight and Investigations Subcommittee held 56 days of public and executive session hearings on a wide variety of topics.⁸⁴ The following is a list of issues examined by the subcommittee during this period. Those which resulted in formal hearings are indicated in bold type. An (*) indicates that a subcommittee report was issued during this Congress.

Interstate/Foreign Commerce

Fastener Safety

Trade Investigations

Uruguay Round of trade negotiations

Omnibus Trade and Competitiveness Act of 1988

Pharmaceutical product patent protection

Chinese intellectual property and other trade concerns

Copyright problems in Taiwan

South African steel investigation

Kawasaki and Nissho-Iwai

Customs fraud enforcement

Foreign direct investment (*)

Health issues

Generic drugs

FDA enforcement of Food, Drug and Cosmetic Act (*)

Blood supply safety

FDA surveillance of food imports (*)

Medical devices (*)

Seafood inspections

Salmonella Enteritidis in eggs

Insurance for the Elderly

Medigap insurance

Long term care insurance

Government supported research

Overhead costs

Scientific misconduct

Conflict of interest

Other Investigations:

Bottled water (*)

Prescription drug advertising to consumers

⁸⁴From Report on the Activity of the Committee on Energy and Commerce for the 101st Congress, HR-1021, (Washington, D.C.: U.S. Government Printing Office, January 3, 1991), 277.

Fraud and abuse in clinical laboratories
 Infant mortality
 Lead in housewares
 Pesticide Monitoring Improvement Acts oversight
 Sodium Nitro Prusside

Environmental Issues

EPA Office of Inspector General
 Superfund implementation
 National contingency plan (*)
 Office of Technology Assessment Superfund
 report
 Review of the Agency for Toxic Substances and
 Disease Registry
 Management review of the Superfund program
 Oversight of the Resource Conservation and
 Recovery Act
 **Groundwater monitoring of land disposal
 facilities**
 RCRA corrective action program
 RCRA implementation study
 New Jersey manifest tracking system
**Implementation and expansion of the Montreal
 Protocol on CFCs**
 Other investigations
 Fuel economy
 EPA pesticide tolerance-setting policies and
 procedures
 EPA regulation of asbestos
 International environmental matters
 Gasoline vapor controls
 Authority of EPA regarding accidental release
 of toxics
 Public participation in EPA settlements
 Environmental degradation in Latvia (*)

Securities and Finance

Insurance company insolvencies and failures (*)
Insider trading and other abuses
 Procurement abuses by major defense contractors
 Northrup Corporation
 McDonnell Douglas
 Army Apache helicopters
 Army CH47D helicopters
 Navy A-12 cost overruns
 AF C-17 transport plane
 Satellite to satellite communications
 Lockheed C-5 crash damage kits
 **Army National Guard procurement of Sperry 500
 computers**

Texas Instruments high speed antiradiation
missile

Other procurement investigations

- Army aviation safety (*)
- Bath Iron Works DDG-51 Arleigh Burke
destroyer
- Martin Marietta/Gerlikon's ADATS
- Adequacy of penalty system
- Army Reserve readiness
- Air Force acquisition of telecom systems

Other investigations

- Auditing and accounting
- Merged Surplus and "M" accounts**
- Multiple listing of trading options
- Leveraged buyouts (RJR Nabisco) (*)
- Federal Credit Assistance and Insurance
Program**

Energy Issues

Energy strategy and supply

Health and safety of nuclear weapons facilities(*)

Safeguards and security at nuclear weapons
facilities

Other investigations:

- Nuclear weapons safety
- Scientific integrity at DOE's national labs
- Worker safety at civilian nuclear power
plants
- Technology transfer at DOE
- Property management at Lawrence Livermore
Labs
- Adequacy of controls for tritium
- Contract auditing by DOE
- DOE's environmental testing program
- DOE work for others
- Oil overcharge enforcement

Miscellaneous

OMB interference in agency rulemaking

Unfair practices - FCC (Telestar)

National Highway Safety Administration

- Seat belts
- Motor vehicle safety inspections
- Auto theft
- Accidental fires and other problems in
manufacture of air bags
- Aftermarket brake linings for autos and
trucks

APPENDIX D**MEMBERSHIP OF THE SUBCOMMITTEE ON OVERSIGHT AND
INVESTIGATIONS
HOUSE COMMITTEE ON ENERGY AND COMMERCE****101st CONGRESS****Democrats:**

John D. Dingell (D-MI), Chairman
Ron Wyden, (D-OR)
Gerry Sikorski, (D-MN)
Cardiss Collins (D-IL)
John Bryant, (D-TX)
Douglas Walgren (D-PA) (first session)
Dennis Eckart (D-OH) (first session)
Rick Boucher (D-VA) (first session)
J. Roy Rowland, (D-GA) (second session)
James H. Scheuer, (D-NY) (second session)
Jim Cooper, (D-TN) (second session)

Republicans:

Thomas J. Bliley, Jr. (R-VA)
Norman F. Lent, (R-NY)
Michael G. Oxley, (R-OH)
Michael Bilirakis (R-FL)
Alex McMillan (R-NC)

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