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Book Review

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BOOK REVIEW

Effective Washington Representation. Stanley J. Marcuss, ed. New York: Law & Business, Inc. 1983. Pp. xvi, 350. \$45.00.

*Robert M. Hallman**

In introducing this work, the editor, Stanley Marcuss, paraphrases Justice Brandeis as follows: "Effective Washington Representation . . . is not an exact science. It is an elusive concept; hard to define in the abstract, but you know it when you see it."¹ Rather than to attempt a definition of effective Washington representation, therefore, this collection of writings is intended to afford both those familiar with Washington and those who are not with a "practical guide to the principles and procedures that are fundamental to effectiveness in Washington."² The collective purpose of the contributing authors is to develop a framework for the reader that will provide "the tools for developing an individual check list of things to consider when assessing a Washington problem and deciding what to do about it."³

Unfortunately, the objective of providing a nuts-and-bolts formula for achieving effective results in Washington remains largely unfulfilled. The failure does not stem from lack of either effort or articulate examination of the subject. Rather, the objective simply is not within the reach of the analytic device employed. The very effort of delineating basic analytic principles and procedures by definition involves dealing in a high level of abstraction that is unlikely to prove very useful to practitioners. In other words, the practitioner confronting specific issues involving particular agencies and/or congressional committees should be several steps beyond the general principles delineated by Mr. Marcuss and the other authors. He should be focusing on the defined parties, interest groups, and policies that must be addressed to achieve a client's interests in an established time-frame.

The book contains eight chapters, each authored by an individual with considerable experience in Washington as a practicing lawyer, lobbyist, or government official.⁴ The chapters are intended to furnish the reader with guidelines for dealing with the "basic situations" that

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1. *Effective Washington Representation* ix (S. Marcuss ed. 1983).

2. *Id.*

3. *Id.* at xi.

4. The eight chapters are: "Discretionary Agency Actions," by David C. Acheson; "Effective Representation in Agency Proceedings," by Edward J. Grenier, Jr;

confront Washington practitioners, ranging from the activities conducted by various regulatory agencies to dealings with the Executive Office of the President and the Congress. The final two chapters view Washington from the perspective of the corporation. The first addresses the needs of those conducting government relations activities for companies in Washington, and the second encourages corporate management to engage in "strategic planning" and nonadversarial approaches to Washington problems.

The principal problem with this book—at least from the practitioner's point of view—is the very general nature of the various guidelines, hints, lists and other formulae for effectiveness in Washington provided by the authors. This concern may be best conveyed by the following check list of guidelines for effectiveness derived from the book:

1. Be familiar with each agency and its procedures before undertaking to represent interests before it. In other words, do your homework.
2. Cultivate credibility with both the decision-makers you encounter and your client. Most authors identified "credibility" as perhaps the most important factor in effective representation.⁵
3. Be flexible and willing to compromise.
4. Under normal circumstances, limit initial contacts to the staff level, as opposed to heads of agencies, political appointees, or chairmen of congressional committees.
5. Be aware of the variety of interests and pressures that may affect or influence a decision-maker, and always keep in mind that change is really the constant in Washington, both in terms of coalitions and government officials. As a corollary, do not enlist one part of the government to bring pressure on another unless absolutely necessary.

"Communications With the Agency—Seeking Guidance and Advisory Opinions," by John H. Shenefield; "The Importance of the Office of Management and Budget," by James T. McIntyre, Jr.; "Working With the White House," by Stanley J. Marcuss; "Workings of Congress," by Dr. Robert W. Russell; "Corporate Washington Representation," by Dr. Fruzsina M. Harsanyi; and "Corporate Planning in a Changing Washington Environment: Divining and Shaping the Future," by Elliot L. Richardson.

5. For example, John Schenefield, a former high Justice Department official, states that "perhaps no single factor is more important than credibility and a reputation for candor in practicing before a government agency." *Effective Washington Representation* 129 (S. Marcuss ed. 1983). James McIntyre, Jr., former director of the Office of Management and Budget, observes that "credibility is the most important asset for effectiveness in Washington." *Id.* at 163. David Acheson, an experienced Washington lawyer, asserts that "the critical factor in regulatory treatment is likely to be the agency's confidence that the client and his advocate can be trusted." *Id.* at 22.

6. Know your client's interests and problems intimately before formulating and presenting the client's position to a decision-maker.

7. Keep presentations as concise and to the point as possible. Make sure information provided is both accurate and thorough, but point out how the interests you seek to advance relate to the interests and mandate of the decision-maker.

8. Because public reporting of actions often lags behind internal decisions, constantly check with informed agency personnel to ensure up-to-date information on agency positions and proposals.

9. Carefully consider all implications of seeking agency advice or of participating in an agency proceeding before acting. In some cases, the best strategy may be to do nothing or to forego participation.

10. In dealing with the White House, draw up a check list of steps you plan to take, the assumptions behind them, alternatives available if obstacles are encountered, and follow-up actions.

11. In dealing with Congress, rely on "elementary concepts of fair play." Do not personalize issues or embarrass members, take as little of a member's time as possible, and be prepared to compromise so that opponents can at least save face.

12. Corporate leaders should give increased attention to broad, long-range impacts of their decisions, rather than focus exclusively on narrow, short-term interests. They also should approach public policy issues in a nonadversarial manner, and actively seek communication with a wide range of affected interests.

While it certainly does no harm for accomplished Washington practitioners to collect guidelines of this sort in one place, it is doubtful whether such an exercise can have much practical value for most practitioners who have advanced beyond their first few years in a law firm or in government service. Many may find the guidelines to be painfully self-evident and based largely on good common sense.

The above reservations are not meant to imply that the authors are oblivious to the complexity of the Washington scene, or to the more intangible factors that can affect results. For example, after a very detailed description of the workings of Congress, Robert Russell (a former Senate staffer) concludes that "[w]ho supports a measure and who opposes it makes more difference in the end than the timing and skillful use of legislative procedures."⁶ Others emphasize the need for "access" to the right decision-makers and provide some sensible guidance for achieving it. For example, Fruzsina Harsanyi, director of government affairs in Washington for an international company, observes that access "does not just happen. It has to be nurtured [and] cultivated. . . . The best way to nurture access is to develop a reputa-

6. *Id.* at 259.

tion for being a reliable source of information."⁷ Moreover, she and at least one other author emphasize and do a credible job of justifying the time spent on the social circuit in Washington. As they indicate, it provides a less frenetic and "out of the spotlight" forum for trading ideas and information on an informal basis, as well as for opening important channels for expressing interests. Other contributors stress the important but supplementary role of the media and "grass-roots" organization on particular issues. These supplemental avenues to decision-makers, however, are not the prime focus of the book and the limited attention given to them is not a significant flaw.⁸

The most informative and useful article from a practitioner's point of view is Chapter 6, entitled "Workings of Congress." It is quite detailed, but its length appears justified given the changed dynamics in Congress and the dispersion of power resulting from Congressional reforms that have reduced the importance of seniority and eroded party discipline over the last several years. The chapter devoted to "Corporate Washington Representation" also contains some insightful guidance for corporations seeking to establish effective government relations offices in Washington. It makes an excellent case for a substantial degree of centralization of this function within a large corporation.

On the other hand, there is a considerable amount of overlap and repetition in the discussions of dealings with agencies in the first three chapters. There is of course some justification for attempting to distinguish among various forms of agency action, *i.e.*, advisory opinions, legislative/rule-making decisions, and adjudicatory proceedings. However, the distinctions and utility of the discussion of these areas would have benefitted substantially from some careful editing and consolidation of these subjects.

The most interesting piece is the chapter on "Working With the White House," largely because this is such a nebulous and high-stakes forum. The most important question here is the initial one: Why bring a problem to the White House in the first place? According to the

7. *Id.* at 298.

8. One rapidly increasing activity of lawyers, political fund-raising (for example direct contributions, hosting or appearing at fund-raisers), was not mentioned. It quite clearly can aid in obtaining the attention of elected officials. As a recent series in *The Wall Street Journal* points out, post-Watergate "reforms" of campaign financing which limit the amount any individual or Political Action Committee can contribute, combined with the lack of public financing of federal elections all but assure greater involvement in campaign financing by Washington lobbyists. *Wall St. J.*, Aug. 17, 1983, at 1, col. 1. In 1982 the legal profession made more contributions to federal candidates than any other profession. *See Wall St. J.*, Aug. 18, 1983, at 1, col. 1.

author, there is not a great deal of guidance that one can give on a general basis:

The most that can be said as a general proposition is that no matter should be brought to the attention of the White House without first analyzing how the White House would assess it. Nor should a matter be brought to the White House unless you are prepared to show how what you seek is consistent with administration policy and interests.⁹

Some might find this admonition a bit too conservative—for example, there is nothing inherently wrong with considering an approach to the White House which seeks to change Administration policy on a particular matter. For the most part, however, the author's guidance is thoughtful.

The article that is most difficult to relate to on a practical level is the one by Elliot Richardson, entitled "Corporate Planning in a Changing Washington Environment: Divining and Shaping the Future." Starting from the premise that few corporations succeed in anticipating and shaping public policies that are vital to their long-term interests, he urges corporate executives to engage in "strategic planning," which by definition is wide-ranging and does not embrace practical, immediate steps for implementing broad policy goals. According to Mr. Richardson, the basic defect of most corporate attempts to influence government activity is that

they tend to focus only on the most obvious components of the political process—elective contests at one end of the spectrum and the regulatory free-for-all at the other—but to neglect the in-between process of policy development. And yet policy development is likely to have far more direct relevance for the corporation's long-term interests.¹⁰

Taking part in this public policy process effectively, he asserts, will involve less reliance on adversarial approaches and more attention to negotiating compromises among a variety of affected interests. These, of course, are worthy goals and appear to be increasingly recognized by corporate interests (albeit pursued primarily via trade groups, such as the Business Roundtable). However, it is also important to recognize that the policy-making process is multi-dimensional and involves a variety of decision-makers. Strategic plans without effective implementation in each relevant forum, including regulatory agencies, the courts, and congressional committees, will be of little value either in the short or long run to corporate interests. Unfortunately, the subject

9. *Effective Washington Representation* 177 (S. Marcuss ed. 1983).

10. *Id.* at 331-32.

of implementation, which is essentially excluded by the author's broad definition of strategic planning, receives little attention in this particular article.

The book as a whole is at its best when describing and emphasizing the dynamic, fluid atmosphere of decision-making in Washington. As several authors note, it is essential to look beyond the simple legal framework of a particular governmental decision. For example, in seeking approval to export strategic materials from the United States to the Soviet Union, it is simply not enough to consider only the formal export license process at the Department of Commerce. A variety of other interests—both in and out of government—are affected by and have substantial impact on this type of decision. In this environment, there is a definite need for a "quarterback" to identify the interests likely to be affected and to coordinate efforts to address each of them. In this sense, the authors' emphasis on the need to understand the Washington environment as a basic element of effectiveness is clearly warranted. According to Mr. Marcuss' introduction, understanding the Washington environment is the key to effective representation, and the most common failure of those engaged in Washington representation is not a lack of adequate information (although he acknowledges that inadequate information can be fatal), but "is more often a failure to conceptualize the problem; a failure to identify the interests that could have an impact on it; and a failure to devise solutions that inventively match private needs and public goals."¹¹ Of course, it is one thing to recognize this, and another to wend one's way through the decision-making process to a positive result. Ultimate success on specific projects is much more likely to depend on the personal talents and experience of the particular practitioner than on any grand strategy or check list for defining relevant tasks. Moreover, as the authors recognize, an approach that is effective under one set of conditions may be useless in another setting.

The book is in one respect premised on the notion that Washington today functions within a post-Watergate, reform environment in which the premium is on careful planning and rational analysis of the substantive issues involved in public policy disputes rather than on back-room deals. Some of the authors go to considerable length to distinguish Washington today from the traditional, more political Washington in which success depended on the ability to obtain access to specific decision-makers through personal favors, to secure "non-public" information, to deliver votes on election day, and to know and obtain the cooperation of the right people. The message here is that professionalism is in, and "influence-peddling" is out. In such an

11. *Id.* at xi.

atmosphere, it makes sense to focus on legal processes and the creative presentation of advocacy positions to decision-makers, to seek out and rely on persons able to contribute facts and understanding (as opposed to campaign contributions and votes), to pay attention to the intricate rules and procedures governing passage of legislation in Congress, to formulate and present concise, objective memoranda, and to attempt to meld corporate interests with the public interest.

Based on my own recent experience in state and federal government, I would agree with the authors' collective theme that decision-makers today are very attuned to substantive issues and objective analysis, and would certainly agree with the implicit notion that this approach deserves greater emphasis. Indeed, this book—whatever its shortcomings might be—is welcome in one sense as evidence that professionalism is alive and well (this despite such aberrations as former Secretary of the Interior James Watt's widely-publicized attempt to limit access to his department to lawyers with established, partisan political connections—a remarkable conception of the right to counsel under a constitutional form of government).¹²

To conclude, this work would not appear to be a priority item for relatively experienced practitioners whose study time is limited and who are subject to the seemingly endless flow of new publications offering to improve their practice. The book is well written and thoughtful, however, and might make a valuable contribution to law school or undergraduate courses designed to introduce individuals to the workings—from both the inside and the outside—of the executive and legislative branches of the government in Washington.

12. See Moore, *Interior Warns Against Retaining Political Outsiders*, Legal Times of Washington, Feb. 22, 1983, at 3, col. 3; Legal Times of Washington, Jan. 11, 1982, at 1, col. 1.

