

LEWIS H. LAPHAM: THE EMPIRE STRIKES BACK

HARPER'S

HARPER'S MAGAZINE / JUNE 2003



GET RICH OR GET OUT

Attempted Robbery with a Loaded Federal Budget
By Thomas Frank

THE LAST AMERICANS

Environmental Collapse and the End of Civilization
By Jared Diamond

THE MAN WHO KNEW TOO MUCH

Stephen Jay Gould's Opus Posthumous
By David Quammen

GRACE

A story by Paula Fox

Also: James Agee and Paul West

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ONE-AC

Deregulation by dispute

Where can a corporate lobbyist hide thirty-two lines of stealth legislation? Right here, between a land transfer to the Gerald R. Ford Foundation and some details about cost-of-living allowances at the Office of Personnel Management, on pages 153 and 154 of the 712-page federal budget for the year 2001. Christened the "Data Quality Act"—one of the many euphemisms employed by the law's supporters—Section 515 presents itself as an innocuous call for federal agencies to improve the accuracy of their data. But the act, which became effective in October 2002, is in fact designed to encumber those agencies and, over time, to hamper their ability to regulate. Passed with no debate and with little public scrutiny, the law is intended not to improve data but, through constant contention, to suppress it.

Although technically an extension of the Paperwork Reduction Act, the Data Quality Act forces regulatory agencies to produce reams of extra paperwork. The act required that the Office of Management and Budget issue guidelines "ensuring and maximizing the quality, objectivity, utility, and integrity of information . . . disseminated by Federal agencies." When the OMB released these guidelines in February 2002, they consumed some 10,000 words and included definitions of the terms at issue. (Philosophers may be interested to know that "quality" now is officially "an encompassing term comprising utility, objectivity, and integrity.") By October 2002 the individual agencies were required to produce their own guidelines and, more important, to establish "administrative mechanisms" to respond to, keep track of, and deliver reports on any complaints concerning the objectivity, utility, and integrity of their data. If disputed information is found to be out of compliance with these vague requirements, it may now be struck from government use.

Who would conceive of such a thing? As the only person listed in the act, the director of the OMB—Mitch Daniels Jr., previously a senior vice president at pharmaceutical giant Eli Lilly—would be a natural guess, but an inaccurate one. Nominally, the act's sponsoring representative was Jo Ann Emerson, Republican of Missouri, a former lobbyist who gained her seat in 1996 after the death of her husband, eight-term congressman Bill Emerson, from lung cancer. But in reality, the act was written by Jim Tozzi, a current lobbyist whose clients include such corporate citizens as Philip Morris, Bridgestone/Firestone, and Synagro Technologies, a leading disposer of sewage sludge. For Tozzi, the act is the opening salvo of his latest venture, the Center for Regulatory Effectiveness, a for-profit lobbying group whose actual purpose is to render regulations ineffective.

PUBLIC LAW 106-554—APPENDIX C 114 STAT. 2763A-153

the East line of Scribner Avenue 327 feet more or less to a point which is 7.0 feet South from the NW corner of Lot 8 of Block 2 of Converse Plat; thence Easterly 200 feet more or less to the place of beginning, also described as:

Parcel A—Lots 9 & 10, Block 2 of Converse Plat, being the subdivision of Government Lots 1 & 2, Section 25, T7N, R12W; also Lots 11-24, Block 2 of J.W. Converse Replatted Addition; also part of N ½ of Section 25, T7N, R12W, commencing at SE corner Lot 24, Block 2 of J.W. Converse Replatted Addition, thence N to NE corner of Lot 9 of Converse Plat, thence E 16 feet, N to SW corner of Lot 23 of J.W. Converse Replatted Addition, thence S to SW corner of Lot 23 of J.W. Converse Replatted Addition, thence W 16 feet to beginning.

Parcel B—Part of Section 25, T7N, R12W, commencing on S line of Bridge Street 50 feet E of E line of Front Avenue, thence S 107.85 feet, thence 77 feet, thence N to a point on S line of said street which is 80 feet E of beginning, thence W to beginning.

Parcel C—Part of Section 25, T7N, R12W, commencing at SE corner Bridge Street & Front Avenue, thence E 50 feet, thence corner Bridge Street & Front Avenue, thence E 50 feet to E line Front Avenue, S 107.85 feet to alley, thence W 50 feet to E line Front Avenue, thence N 106.81 feet to beginning.

Parcel D—Part of Government Lot 1, Section 25, T7N, R12W, commencing at a point on S line of Bridge Street (66' wide) 170 feet E of E line of Front Avenue (75' wide), thence S 230 feet parallel with Front Avenue, thence W 170 feet parallel with Bridge Street to E line of Front Avenue, thence N along said line to a point 106.81 feet S of intersection of said line with extension of N & S line of Bridge Street, thence E 127 feet, thence northerly to a point on S line of Bridge Street 130 feet E of E line of Front Avenue, thence E along S line of Bridge Street to beginning.

Parcel E—Lots 1 through 8 of Block 2 of Converse Plat, being the subdivision of Government Lots 1 and 2, Section 25, T7N, R12W.

Also part of N ½ of Section 25, T7N, R12W, commencing at NW corner of Lot 9, Block 2 of J.W. Converse Replatted Addition; thence N 15 feet to SW corner of Lot 8; thence E 200 feet to SE corner Lot 1; thence S 15 feet to NE corner of Lot 10; thence W 200 feet to beginning.

Together with any portion of vacated streets and alleys that have become part of the above property.

(c) TERMS AND CONDITIONS.—

(1) COMPENSATION.—The land transferred pursuant to subsection (a) shall be transferred without compensation to the United States.

(2) APPOINTMENT OF SUCCESSOR TRUSTEE.—In the event that the Gerald R. Ford Foundation for any reason is unable or unwilling to continue to serve as trustee, the Archivist of the United States is authorized to appoint a successor trustee.

(3) REVERSIONARY INTEREST.—If the Archivist of the United States determines that the Gerald R. Ford Foundation (or a successor trustee appointed under paragraph (2)) has breached its fiduciary duty under the trust agreement entered into pursuant to this section, the land transferred pursuant to subsection (a) shall revert to the United States under the administrative jurisdiction of the Archivist.

SEC. 515. (a) IN GENERAL.—The Director of the Office of Management and Budget shall, by not later than September 30,

T F A R C I E

tion, by Bryant Urstadt

For data to be "objective" under the OMB's definition, independent scientists should agree on its validity. In practice, this offers limitless opportunity for complaint, because a friendly scientist can always be found to dispute an inconvenient finding. The Competitive Enterprise Institute, for example, has filed a petition under the act demanding that all references to the National Assessment on Climate Change, which affirmed the existence of global warming, be expunged. The CEI's filing leans heavily on Patrick Michaels, a scientist who has argued for years against global warming on behalf of corporations, most recently through the "Greening Earth Society," which is funded by the coal industry. Jim Tozzi himself has used the act to demand that the EPA rescind statements about the reproductive effects of atrazine, an herbicide made by his client Syngenta. Tozzi's filing draws on studies paid for by Syngenta and peer-reviewed by a group called EcoRisk, which was founded, according to its website, "with the encouragement [sic] and support of various . . . private chemical corporations." EcoRisk deems the EPA's data irreproducible.

The agencies will report to John D. Graham, the administrator of the OMB's information and regulation division. Previously, Graham was the founding director of the Harvard Center for Risk Analysis, the bulk of whose funding comes not from Harvard but from more than 100 corporations. The center's "risk analysis" is chiefly economic, and with few exceptions it has argued that the risks posed by corporate products or pollution are outweighed by the evils of regulation. For example, in 2000, after AT&T Wireless gave \$300,000 to study the dangers of handheld cell-phone use while driving, the center found that no regulations were warranted. In elaborating on the OMB's guidelines, Graham has demanded special scrutiny for "influential" data—i.e., data that might prompt regulation—and has noted that even peer review by a scientific journal may not be sufficient to prove quality.

Finally conservatives and corporate lobbyists have found a bureaucracy they like. With the law in effect, its author, Jim Tozzi, now can devote himself to filing complaints under it. Beyond his attack on the EPA's atrazine study, he has also come to the aid of Bridgestone/Firestone, Goodyear, and the Rubber Manufacturers Association against the National Highway and Traffic Safety Administration, which is planning to distribute information about tire defects. In his petition, Tozzi demands pre-dissemination review by the manufacturers themselves—perhaps this is "integrity"—and argues, under the "utility" clause, that NHTSA must actually prove that releasing data about unsafe tires is useful. The end result: more paperwork, less information, weaker controls on manufacturers, and fewer safeguards for the public. This, to corporations, is "quality" legislation.

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2001, and with public and Federal agency involvement, issue guidelines under sections 3504(d)(1) and 3516 of title 44, United States Code, that provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies in fulfillment of the purposes and provisions of chapter 35 of title 44, United States Code, commonly referred to as the Paperwork Reduction Act.

(b) **CONTENT OF GUIDELINES.**—The guidelines under subsection (a) shall—
 (1) apply to the sharing by Federal agencies of, and access to, information disseminated by Federal agencies; and
 (2) require that each Federal agency to which the guidelines apply—

(A) issue guidelines ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by the agency, the guidelines under subsection (a);

(B) establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the guidelines issued under subsection (a); and

(C) report periodically to the Director—
 (i) the number and nature of complaints received disseminated by the agency; and
 (ii) how such complaints were handled by the agency.

SEC. 516. For the purpose of resolving litigation and implementing any settlement agreements regarding the nonforeign area of living allowance program, the Office of Personnel Management may accept and utilize (without regard to any restriction on funds made available to the Office pursuant to any restriction on the purpose of implementation, or in preparation for implementation of the Kyoto Protocol, which was adopted on December 11, 1997, in Kyoto, Japan, at the Third Conference of the Parties to the United Nations Framework Convention on Climate Change, which has not been submitted to the Senate for advice and consent to ratification pursuant to article II, section 2, clause 2, of the United States Constitution, and which has not entered into force pursuant to article 25 of the Protocol.

SEC. 517. None of the funds appropriated by this Act shall be used to propose or issue rules, regulations, decrees, or orders for the purpose of implementation, or in preparation for implementation of the Kyoto Protocol, which was adopted on December 11, 1997, in Kyoto, Japan, at the Third Conference of the Parties to the United Nations Framework Convention on Climate Change, which has not been submitted to the Senate for advice and consent to ratification pursuant to article II, section 2, clause 2, of the United States Constitution, and which has not entered into force pursuant to article 25 of the Protocol.

SEC. 518. Not later than July 1, 2001, the Director of the Office of Management and Budget shall submit a report to the Committee on Appropriations and the Committee on Governmental Affairs of the Senate and the Committee on Governmental Affairs of the House of Representatives that: (1) evaluates, for each agency the extent to which implementation of chapter 35 of title 44, United States Code, as amended by the Paperwork Reduction Act of 1995 (Public Law 104-13), has reduced burden imposed by rules issued by the agency, including the burden imposed by each major rule issued by the agency; (2) includes a determination, based on such evaluation,

Bryant Urstadt has written for The Baffler, the New York Times, The New Yorker, and other publications. He lives in Guilford, Connecticut.