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AEI-BROOKINGS JOINT CENTER FOR REGULATORY STUDIES

The False Promise of "Full Disclosure"

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In response to growing concerns about understanding the impact of regulation on consumers, business, and government, the American Enterprise Institute and the Brookings Institution have established the AEI-Brookings Joint Center for Regulatory Studies. The primary purpose of the center is to hold lawmakers and regulators more accountable by providing thoughtful, objective analysis of existing regulatory programs and new regulatory proposals. The Joint Center builds on AEI's and Brookings's impressive body of work over the past three decades that has evaluated the economic impact of regulation and offered constructive suggestions for implementing reforms to enhance productivity and consumer welfare. The views in Joint Center publications are those of the authors and do not necessarily reflect the views of the staff, council of academic advisers, or fellows.

Executive Summary

In this essay, I address the problem of conflicts of interest in the context of funded research and opinions that are disseminated to the public by academics, think tanks, and individuals affiliated with think tanks. I argue that "full disclosure" may be a laudable goal, but is likely to be a disaster in practice. In addition, I argue that some disclosure norms imposed by the media are not likely to be very helpful in promoting useful information for their audiences, and will likely have unintended adverse consequences.

There are no simple solutions to the problem of identifying conflicts of interest and potential biases associated with research and opinions reported in the media. I believe the problem could constructively be addressed by honing the thinking skills of the media and the public–not something that is likely to happen immediately because the demand isn't there.

The False Promise of "Full Disclosure"

By Robert W. Hahn

The Enron "scandal" has raised several fascinating issues related to disclosing information and potential conflicts of interest. For example, an accounting firm that receives consulting fees from a company it is paid to audit may be less likely to report financial problems with that company. But contrary to conventional wisdom, simply not allowing that firm to consult will not necessarily solve the problem. The accounting firm will still have potential conflicts so long as it is getting paid by other firms to monitor their performance. In the past, accounting firms have used professional standards as a way of helping to ensure their reputation. In addition, they have tried to have a diverse client base, so the costs of losing one client would not be overwhelming.

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Similarly, academics and pundits receiving monetary compensation from a company may be more likely to give that company's policy positions a favorable review. One solution to this problem is to have these folks come clean by identifying their conflicts of interest. Unfortunately, as we shall see, this is easier said than done and is likely to have unintended consequences.

Consider, for example, the problem of conflicts of interest in the context of funded research and opinions that are disseminated to the public by journalists, academics, and individuals affiliated with think tanks. This is a broad topic and one with which I have some personal experience as a scholar and a consultant to business and government.[1] My purpose is to evaluate the pros and cons of disclosing potential "conflicts of interest." "Full disclosure" may be a laudable goal, but is difficult to define and, therefore, not very useful. In addition, some disclosure norms imposed by the media are not likely to be very helpful in promoting useful information for their audiences, and will likely have unintended adverse consequences. The problem is not that disclosure is necessarily bad, though it may lead to bad outcomes in certain situations. Instead, the problem is that too often, the media and the public use partial disclosure as a substitute for critical thinking.

The nature of the problem

Paul Krugman — one of the best known economists in academia — received $50,000 for serving on an advisory board to Enron. Krugman, of course, was not alone. For example, Larry Lindsey, President Bush's chief economic advisor, was reported to have received the same amount.

Defending himself in his *New York Times* column (January 25, 2002), Krugman noted that he complied with the *Times'* conflict of interest policy. When he agreed to write for the paper, he resigned from the Enron board. In addition, Krugman noted the potential conflict posed by his Enron advisory role in a *Fortune* piece he published three years ago.

Krugman's level of disclosure, however, did not seem to satisfy Andrew Sullivan — an excellent journalist. On his website, andrewsullivan.com

[1]I rely heavily on personal anecdotes in places to make my case, in part because I have some inside information that is useful. In addition, I do not wish to make my colleagues the targets of ad hominem attacks. I would like to thank Christopher C. DeMuth, Harold Furchtgott-Roth, Thomas W. Hazlett, Scott Hemphill, Charles Jackson, Clark Judge, Paul Krugman, Robert Litan, Peter Passell, Richard Posner, and Cass Sunstein for helpful comments, and Mary Beth Muething for excellent research assistance. This work was supported by the AEI-Brookings Joint Center for Regulatory Studies. A list of funders can be found on the Joint Center website: www.aei.brookings.org.

(January 25, 2002), Sullivan took Krugman to task for not noting the amount of money he received. Sullivan noted, "You'll notice one detail missing from Krugman's apologia — the amount of money he got. Why won't he mention it? Because it's the most damning evidence against him." He thinks "the reading public has a right to know" such information.

Sullivan raises an important question: What does the public have a right to know about a person's opinion or findings? That is, what should academics and pundits be required to say about their remarks or research when presenting it in public?

Sullivan thinks that full disclosure is the key. He made the point specifically with respect to talking heads: "What this is about is the enmeshment of some of the pundit class in major corporate money. It seems to me that an integral part of a journalist's vocation is independence — independence from any monetary interests that could even be perceived as clouding his or her judgment. Disclosure is a must — and not just when the subject matter comes up a few years down the line" (January 23, 2002).

What constitutes "all relevant information" for purposes of disclosure?

Unfortunately, Sullivan's suggestion has serious problems. There is no obvious place to draw the line on what needs to be disclosed. In some cases in public life, full disclosure has been interpreted to go beyond an individual to an individual's acquaintances or family. For example, when the AOL-Time Warner merger was approved by the FCC, the impartiality of the current chairman of the FCC, Michael Powell, was questioned because his father was on the AOL board of directors and owned stock in the company.

Take the Krugman example again. What constitutes all relevant information for purposes of disclosure? Is it relevant, for example, to know that Krugman received the Clark Medal — given every other year to the "best" economist under 40 or that he has published numerous pathbreaking books and journal articles? Krugman pointed out in his January 25 column, in his own defense, that "the compensation [he] received per day [from Enron] was actually somewhat less than other companies were paying [him] at the time for speeches on world economic issues." All of these things are arguably relevant, but some in the public would really like to know how much credence to put in Krugman's view on a particular subject. More generally, the public and interested parties might like to have mechanisms introduced that would lower the cost of obtaining and evaluating information on a particular subject.

Firms, non-profits, and individuals have dealt with the problem of establishing credibility in a number of ways. For example, *Consumer Reports*, which evaluates many kinds of consumer products, does not take money from business for advertising. Indeed, *Consumer Reports*'s subheading on its website reads: “Our mission since 1936: Test, Inform, Protect. We accept no ads.” The *New York Times*, the *Wall Street Journal,* and many other media outlets place restrictions on what journalists can do in order to maintain their independence.

The rules governing academicians and think tank types generally require some form of disclosure. For example, the AEI-Brookings Joint Center, which I direct, requires that authors submitting analyses of specific regulations do not receive any support from industry for the regulatory policy under study. We do that in order to preserve our reputation for impartiality in this area. With regard to other publications, we ask authors to note sources of financial support. And research journals are increasingly interested in knowing about sources of funding for research work.

Universities restrict how professors may identify themselves when doing outside consulting.

Universities place restrictions on how professors identify themselves when doing outside consulting and testimony. Think tanks do as well. For example, authors are typically required to differentiate consulting products from university or think tank products by noting the source of support and not using the institution’s logo without permission.

Many in the press ask for similar kinds of disclosure. When I receive a call from the press about one of my studies, one of the first questions asked is who funded it. Indeed, that question often seems to be more important to the journalist than how I arrived at the results. That suggests a fundamental problem to me. Many journalists either don’t have the time to, or simply cannot, evaluate the validity of studies. Instead, they simply take cues from less important aspects, such as the source of funding or the affiliation of the individual.

Judge Richard Posner, in *Public Intellectuals: A Study of Decline* (Harvard University Press, 2001) argues that there is little accountability for public intellectuals — most notably, professors — and that the quality of their public work has declined. A media that performs “virtually no gatekeeping function” is partially responsible for an environment with “nobody watching, nobody keeping score.”

Posner attributes the decline in the quality of public intellectual work to the “growth in the specialization of knowledge.” He states that “the fact that most public intellectuals today are academics, and thus engaged in public-intellectual work on only a part-time basis, enables them to exit the public-intellectual market at a low cost and by doing so has reduced to a trivial level the penalty for the public intellectual caught selling a defective product.”

The problem of assessing quality is not restricted to the press. Even academic peer review has serious problems, albeit for different reasons. Peer review has been shown to be an unreliable indicator of a paper's quality, accuracy, or integrity. A study that examined several articles from a prominent economics journal found that the papers almost always contained errors that were not caught by the peer refereeing process. The errors were sufficiently serious that the results could not easily be replicated. The authors also found that, notwithstanding both the general norm that data be available and the requirement of the National Science Foundation (NSF) that data be produced on NSF-funded projects, their requests for data were ignored, denied, or otherwise frustrated in a substantial number of cases.[2] Moreover, peer review is undermined by the difficulty of actually procuring the relevant data that are supposedly available.

Finally, peer review cannot necessarily prevent or reveal dishonesty in academic work. A prominent sociology professor at the University of Texas recently resigned after acknowledging scientific misconduct. She had been accused of falsifying data that supported her research. A historian at Emory University was accused of supporting an acclaimed book with untrue statistics on gun ownership. And historian and author Stephen E. Ambrose has been the subject of well-publicized plagiarism accusations.

The benefits of disclosure — and the costs

The benefit of more disclosure is that the media public is given additional information about possible conflicts of interest. When disclosure raises a red flag that makes an editor or journalist examine arguments more closely, this is a benefit. Additionally, disclosure is also valuable for its potential to deter what Richard Posner calls "improper and irresponsible moonlighting." More disclosure, unfortunately, has costs as well. These include difficulties in monitoring and enforcement, difficulties in defining an appropriate level of disclosure, and the impact on who provides information and how they respond to disclosure rules.

Monitoring and enforcement. Some time ago, I was on a radio show offering my views on the Microsoft case, a firm for which I occasionally consult. The talk show host correctly identified me as a consultant and academic, but failed to note that one of the other "experts" on the show had done a great deal of consulting for another firm on some key policy issues related to the case. In doing so, she left the audience with the mistaken impression that my counterpart in the debate was in some sense "clean" because he had not consulted.

This is an example of providing incomplete information to the public that tilts the playing field toward the side that is viewed as clean. I think it is a

[2] William G. Dewald, Jerry G. Thursby, and Richard G. Anderson, *American Economic Review* 76 (1986).

very serious problem. The problem arises in part because the disclosure rules are difficult to monitor and in part because they are not always enforced with the same vigor. Moreover, the penalties for not disclosing are not that high in most situations.

Take another example. I am aware of many people who write opinion pieces on a particular subject for direct compensation. Some disclose that information while many others do not. No one seems to care, except editors at major newspapers. They are less likely to publish op-eds that come with some kind of disclosure statement because they do not want to be viewed as supporting free advertisements for a particular point of view. This creates an incentive not to disclose. The incentive is just one factor that determines whether a piece will contain a disclosure statement. In a study of biomedical articles, 34 percent of the articles had an author with a financial interest related to the topic of the article. None of those authors disclosed a conflict of interest. The study's author explained that even when the publishing journals have disclosure policies, poor compliance with those policies is prevalent.[3]

Newspapers are less likely to publish op-eds that come with some kind of disclosure statement.

Difficulties in defining an appropriate level of disclosure. The basic problem is that we are all walking conflicts of interest because most of us have to work for a living. And in exchange for money, most of us make compromises. For academics and other professionals, it is not unusual to work for several companies, either giving speeches or on other short-term contracts. Over time, it can be easy to develop connections with businesses in the routine process of making a living. Not all of these connections pose a conflict of interest. When considering what to disclose, it is sensible to focus on activities that could pose a substantial conflict.

Richard Posner suggests a norm in which "academic public intellectuals disclose their income from all their public intellectual work." Posner qualifies his position with the caveat that compared to public officials' disclosure of their income, it is not as important that academics comply with strict disclosure standards because they are not as powerful. But he argues that "revelation of the lucrative character of some of this moonlighting would help the public to evaluate public intellectual work and would deter some of the most questionable forms of it."

While some disclosure is justified, it is difficult to know where to draw the line. How should we deal, for example, with firms that link pay to visi-

[3]See Steven Phillips, "A Conflict that Might Interest the Ethicists," *Times Higher Education Supplement* (April 27, 2001).

bility in the media? Should I note on the bottom of my op-eds that a small part of my compensation at AEI and Brookings is related to the number of op-eds I publish in newspapers? This, indeed, has an effect on the number of op-eds I write, if not their bias.

In some cases, the linkage between salary and taking a particular position in the media is more direct. I know several people at so-called public interest groups who get paid to take particular positions in the media. I do not doubt that they believe these positions, but why, in principle, should they be treated any differently from a business consultant taking money in exchange for writing an op-ed? Yet they are treated very differently by the media — with the opinion of the business consultant being given less credence.

Again, let me return to the Microsoft example to illustrate a problem with the incompleteness in the definition of disclosure. I wrote an article for *Regulation* on the Microsoft case before I became a consultant for Microsoft. Just prior to the publication of the article, I was asked by someone representing an opponent of Microsoft if the article could be withdrawn, and if I would consider a consultancy with that firm. I said no and, frankly, was offended by the offer.

Disclosure policies do not provide much information on whether an opinion is likely to be biased.

I use this example because it says lots about the limitations of actual disclosure policies. You are not asked to disclose clients that you turn away on principled grounds — only those for whom you do work. We might learn more about an individual from how she discriminates among potential clients if we could observe that, but, unfortunately, that's difficult to do.

If disclosure policies do not provide much information on whether an opinion is likely to be biased, we could examine an individual's incentive to preserve her reputation. Academics have some incentive to preserve their professional reputation among their colleagues. This can help to put constraints on their public pronouncements, but may not solve the problem. Those academics who care less about their reputation and are more interested in public exposure will be more likely to become pundits or talking heads. This could decrease the overall quality of punditry, assuming that were possible.

Let me offer another example from the Joint Center website that will illustrate some of the problems with "cleanliness" as perceived by the media. I have signed one statement on liberalizing spectrum auctions at the Federal Communications Commission and helped write a Supreme Court brief signed by 39 leading economists on the need to consider costs, benefits, and other relevant factors in regulatory decision making. While I did not take any money for either endeavor, I fully expect that being on both documents will enhance my market prospects and market value, both as an academician and as a consultant. So, it would be a bit disingenuous for me to say that I did not have a direct financial interest in these activities. Frankly, though, that was not the primary reason I got involved. The main reason I got involved is because I care deeply about how public policies affect real people outside the beltway. Should I be required to disclose that?

So, here we have an example of activities that would be viewed as clean (and therefore, no disclosure is currently required), which give me substantial monetary and nonmonetary benefits. Should we care more about my future benefits likely to be derived from an activity than past payments? I think so, but unfortunately, these benefits are hard to observe.

There is a tradeoff between available expertise and the degree of disclosure required.

The difficulty of observing many features of disclosure taken together with gaining agreement on a reasonable definition of full disclosure makes it a difficult goal at best. But I fear that achieving the goal would actually do more harm than good by reducing the pool of experts and encouraging people to circumvent the system in ways that do not aid in the search for "truth."

Impact on who responds and how they respond. Andrew Sullivan has suggested that an individual who consults for a company should not write about issues related to that company. He believes that individual's journalistic independence has been compromised — no matter how innocent or transparent the consulting arrangement. "Let's say [Krugman and Peggy Noonan] just took $50,000 minimum from this company for legit extracurricular work," he wrote. "Haven't these pundits essentially undermined themselves as independent watchdogs of the culture?"

Sullivan's position, while extreme, has some empirical support. When an individual consults for a company, she is more likely to take on the perspective of that company as a result of continued interactions with a group of like-minded individuals. Even if a consultant tries diligently to preserve her impartiality, there is a likelihood that a company's views will grow on her, and seem more sensible than they did before the consulting arrangement. Sullivan's rather extreme policy could reduce such conflicts, but at the expense of reducing the available pool of experts. Who, after all, is in a better position to write about a company, or a policy related to that company, than someone who knows the business firsthand? Thus, there is a tradeoff between available expertise and the degree of disclosure required.

Even stopping short of Sullivan's suggestion to disallow any writing by a consultant, calls for greater disclosure could be counterproductive. The pool of potential experts on the subject may be reduced because some individuals will prefer not to disclose and not participate in the public discussion.

Moreover, some may simply evade the requirements and hope they don't get caught. Still others — the entrepreneurial types — will create "fronts" that make the probability of detection less likely. A front is anything that obscures the connection between an individual and that person's sources of support. It could be a business, a non-governmental organization, or an individual serving as an intermediary.

What kind of fronts might be created? A look around at how the various think tanks operate can offer some food for thought. Even the top think tanks, like AEI and Brookings, get much of their money from — dare I say it? — business, or foundations whose wealth typically comes from business. The foundations supporting think tanks run the gamut from anti-business to pro-business, but a typical foundation will only provide support if it has a reasonable expectation of the kind of results that will be produced. And even if think tanks get their money from government — read: the taxpayer — that will create conflicts because of an interest in pleasing that funder.

Most money, even so-called government money, comes with some strings related to expected results.

The way think tanks deal with potential conflicts is to introduce mechanisms that help preserve their reputation for doing quality work. These mechanisms include: hiring scholars who are interested in preserving their academic reputations, peer-reviewing their major published works, such as books, and encouraging their scholars to publish in peer-reviewed journals.

Another important mechanism that think tanks and universities use to preserve their reputation is to obtain funding from a variety of sources. Such diversification makes it easier for these institutions to have their scholars take positions that may be at odds with the views of their funders. Free trade is a good example. AEI scholars are generally very supportive of free trade, even though some of AEI's funders have argued for protectionist policies related to their firm or industry.

The mechanisms for preserving reputation are not perfect, however. Scholars may still be subjected to pressures from particular firms on particular issues. Those places concerned about their academic reputations tend to be more adept at giving their scholars freer rein. But the bottom line is that most money, even so-called government money, comes with some strings related to expected results.

And the competition for funds is fierce, which means there may be greater emphasis on producing work that increases funding rather than first-rate scholarship. Still, at the leading think thanks and universities, I think these mechanisms work reasonably well for scholarship published in a scholar's area of expertise. Work published outside of a scholar's area of expertise is another matter.

Unfortunately, not all think tanks or universities take the same degree of pride in academic freedom as AEI or Brookings. Posner, for example, provides an account of the Independent Institute's support of Microsoft while it was receiving funding from the firm. But if disclosure requirements were enforced more rigorously, I would expect more think tanks to emerge that serve as fronts for all sorts of preferred interest group policies.

The same is true of websites. While I can say that the AEI-Brookings Joint Center website has not been influenced one iota by our funders, I know other websites where that is not the case, and I'm sure you do too. Moreover, revealing the sources of support typically provides little, if any, useful information about whether the work produced or featured by a site represents independent analysis, or is merely a convenient vehicle for advertising a funder's preferred policy position. This creates a real problem for people wishing to use disclosure as a meaningful measure of potential conflicts of interest.

In some cases, disclosure is selective. Posner notes that after the Valdez oil spill, Exxon paid several academics to write articles on punitive damages. In the articles, the authors noted that Exxon had paid them for their work. But when Exxon used the articles as cited sources in briefs it prepared for its appeal proceedings, it failed to disclose that it had paid for the articles. Moreover, neither Exxon nor the commissioned academics would disclose the amount of the received payment.

The point is that calls for greater disclosure will lead to more innovative ways to circumvent disclosure and we should keep that in mind in crafting solutions.

What needs to be done?

CONSIDER DISCLOSURE. A requirement of full disclosure is not meaningful because it is hard to know how to implement and is likely to create perverse incentives. The current system of disclosure, for all its warts, is not a bad starting point. That system generally requires a scholar to identify conflicts that would not pass a political "smell test." That is, if there is a reason to think that an average reader would be suspicious if a scholar did not disclose something, then she should disclose it.

The basic problem with the current system of disclosure is that it is incomplete. The media need to recognize this and do a better job. Here are five concrete suggestions.

Suggestion 1: Place less reliance on disclosure as a signal. Disclosure can provide a useful hint about a conflict of interest, but several other factors should be taken into account. For example, does the "expert" have a reputation to preserve (e.g., in her field of expertise)? How do reputable colleagues view her?

Suggestion 2: Apply rules for evaluating experts across the board. That means doing due diligence on all participants in a debate, not just those where the conflicts are most obvious. The notion that taking money from industry should necessarily taint someone is naïve. But if it is going to be treated as a practice that warrants disclosure, the self-interest of individuals who appear to be clean, such as those from so-called public interest groups and government, should also be highlighted.

Suggestion 3: Find out whether the person is really an expert. I'm an economist — Ph.D. and all. I can't tell you how many times I've heard "talking heads" get up there on TV and radio talk shows and get treated with great respect on the stock market and forecasting issues, when they actually know next to nothing on the subject. The press should not give these people a pass, just because they sound good.

Suggestion 4: The media should think harder. The press needs to be more critical in an academic sense. There is no substitute for actually reading some reports to determine their quality. If this skill is in short supply, as I think it is for many journalists, then leading media outlets, such as the *New York Times*, the *Wall Street Journal,* and CNN, should hire people to support reporters who can think critically about technical issues. Some of these skills can be taught and they should be.

Suggestion 5: We all should think harder. One of the things I try to teach in the classroom is critical thinking. Does the argument the person is making really hold water? If more people learn to think critically, this would help.

The media seem to be happy with the status quo, and for the most part, so is the public.

What's wrong with these recommendations? The media seem to be happy with the status quo, and for the most part, so is the public. So there is nothing that is likely to move us in this direction quickly unless some foundation, or foundations, with serious money decides to take up the cause.[4] One might consider government help, but beyond a voucher program to stimulate competition and improve quality in education, I do not see a useful government role.

Posner has suggested that, in addition to disclosing income related to public intellectual work, academics should provide all of their work on public intellectual activities in some kind of form that is easily retrieved, such as posting to a website. He suggests that "one solution might be for universities to require their faculty members to post annually, on the university's web page, all the non-academic writing . . . and public speaking that they have

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[4]Posner notes that "the public-intellectual market does not appear to exhibit, at least to any marked degree, 'market failure' in the economic sense" and that the shortcomings of the market "do not warrant costly methods of correction."

done during the preceding year. . . . At the end of the year the contents of the web page would be downloaded and printed out, and copies deposited in the major university libraries."

Posner's ideas could, of course, be extended to pundits in general. The question is what good they would do. I'm not so sure. I am certain that it would decrease the supply of opinion makers on key public policy issues, but whether it would improve the overall quality of information is another matter.

Reform?

We began with a tale of Paul Krugman and a controversy over disclosure, but I don't think Krugman is the real story here. I think the real story is that disclosure has serious limitations, there are lots of major conflicts of interest out there that don't get reported, and that the press tends to tilt the playing field in ways that have not been adequately considered.

Full disclosure, far from being a panacea, could make things worse. My basic suggestions for fixing the problem are a press that thinks more critically and a public that does the same. Don't hold your breath.