



**Congressional
Research
Service**

Memorandum

January 31, 2004

TO: Daniel P. Mulhollan
Director

FROM: Louis Fisher
Senior Specialist in Separation of Powers
Government and Finance Division

SUBJECT: CRS Standards for Analysis

Your "Director's Statement" of January 23 has caused apprehension and confusion among a number of analysts, particularly some of the newer ones recruited in recent years. Their concerns may, or may not, be what you intended. Although the express purpose of the Statement is on "outside activities," it ties directly with research done within CRS. I write this memo to give you some feedback and perhaps prompt some clarification from the front office.

The Emphasis on Caution and Neutrality

The effect of your Statement has been to intimidate researchers and call into question the need, or requirement, for incisive analysis. Analysts who read the Statement tell me it encourages cautious, guarded, circumspect writings. Researchers are advised to stay clear of anything that approaches a conclusion or a "position" that might irritate or annoy a congressional staffer or Member of Congress, prompting a call of complaint to the front office. The Statement is subject to that interpretation because of these remarks:

- "For CRS, I think you would agree that almost everything we say or write has the potential to be 'controversial' with at least a few Members or staff that we serve. We must therefore err on the side of caution, especially when addressing issues for which we have primary responsibility for the Service."
- "The greatest level of care for preservation of the appearance of objectivity should be exercised when addressing the very issues for which you have responsibility at CRS."
- "In light of the foregoing, I am asking everyone to think carefully before taking a public position on matters for which you are responsible in your work. When

addressing the issue for which you speak for CRS, please do so in full observance of the neutrality required of your work here."

The word "neutrality" appears to rule out coming to a conclusion, one way or the other, in one's outside writing or—just as troubling—in one's work for CRS. The word "balance" could be seen as a synonym, as when you say, at the outset, that our mission is providing "balanced, objective, and non-partisan support to the Congress." In your first paragraph, you call attention to the risk that we might be seen "as less than even-handed." We should not "relax our guard against avoidable charges of bias." At the top of page 2, you call attention to the "danger" of presenting the appearance "that your neutrality cannot be relied upon." In the next paragraph you refer to "the imprimatur of objectivity, balance, and non-partisanship on our work." Without that imprimatur, "we cease to be of the intended utility to the Congress."

No one disputes that our work must be non-partisan. But if the front office puts the emphasis on neutrality, balance, and even-handedness, there is little room for careful, expert analysis. In the past, you have told me that if the evidence comes down on one side or the other, we should say so. We should not be forced to look for middle ground. Objectivity means looking at all the relevant material and presenting a report that has integrity, credibility, and logic. "Neutral" and "balanced" writing implies that we take no positions and reach no conclusions. We should do more than merely identify arguments on each side of an issue and leave it to a congressional office to figure out the rest. Professional analysis means that we evaluate an issue on the weight of the evidence. Otherwise, we fall back on "she says this, he says that" descriptive writing and return to the days of the Legislative Reference Service, with no opportunity to fulfill what you call, in the last paragraph, our "reputation for excellence."

Surviving as a Professional Institution

The Statement warns that a challenge to the mission of providing an unbiased resource for Congress runs "at our peril, risking that we are rendered ineffective at best, and useless at worst." We all understand that Congress created CRS to be its primary source for nonpartisan analytical work on all legislative issues. The Legislative Reorganization act of 1970 states that it "shall be the duty of the Congressional Research Service, without partisan bias," to advise and assist congressional committees ("upon request") "in the analysis, appraisal, and evaluation of legislative proposals" and to assist the committee in "(A) determining the advisability of enacting such proposals; (B) estimating the probable results of such proposals and alternatives thereto; and (C) evaluating alternative methods for accomplishing those results." 84 Stat. 1182-83. The emphasis here is on analysis and evaluation. There is no congressional call for "neutrality."

All of us—management and analyst—want CRS to survive in today's environment where so much information is readily available to congressional offices through a simple Lexis/Nexis or Google search. The best way to accomplish our statutory mission, however, is not by suppressing or hiding our analytical skills, for fear that something we say or write will be "controversial" to a Member of Congress or their staff. CRS analysts want to assist in the lawmaking process, but this can only occur if they are permitted to do analytical work that goes beyond simply describing the pros and cons of an issue.

In performing our analytical work with professional care, some criticism, or disappointment, from lawmakers and their staff is inevitable. If we err on the side of caution

at every turn, we risk legitimate and much more serious criticism that our products lack analytical rigor, integrity, interest, and value. Most of the criticism of our work that I am familiar with, from CRS staff and Congress, is that our reports are too diffuse and rambling, without theme, direction, or conclusion. If lawmakers merely want background material to give them a starting point, a descriptive CRS product can be helpful. For deeper and more thoughtful analysis, Congress may decide it has to go elsewhere.

Impact on Promotional Opportunities

The Statement has another implication that concerns a number of analysts. You speak of the fact that "much of your knowledge of the subject matter [is acquired] in the course of your duties as a public servant for the Congress." Quite true. You then ask everyone "to think carefully before taking a public position on matters for which you are responsible in your work." Think carefully. What level of "care" is needed or advisable? For analysts who are uncertain, the easiest course is not to express one's views in public, either before an audience or in outside writing. Here is another warning: "Extreme care must be exercised when we venture beyond limited boundaries in search of public recognition." A CRS analyst may not understand the meaning or intent of this sentence (particularly "limited boundaries") and decide that it is safest not to express oneself at all outside the institution. Is that front office policy?

Is it a mistake for an analyst to be "in search of public recognition"? Some analysts in CRS believe that their statements quoted in newspapers and trade publications give them an edge in seeking information from public agencies and private organizations. Public recognition can lead to invitations from congressional committee to testify. Public recognition—at least in the past—could lead to promotion. Has front office policy on this issue changed?

Other analysts point out the inconsistency between the cautious nature of the Statement and the opportunities for promotion within CRS. If an analyst carefully limited one's research to neutral, even-handed, descriptive work, supervisors could well state: "This work is not sufficiently rigorous and analytical to justify a promotion to the next grade." Analysts face a Catch-22.

Taking Positions

As I explained to you in an earlier memo, it is very difficult to apply the words of neutrality, non-advocacy, and balance to what I have done at CRS for more than three decades. In my prepared statements at congressional hearings, I regularly take positions on institutional and constitutional questions. I reach those positions based on analysis of available information and theories. I am invited to testify *because* I have a position. Committees want the orientation that I bring. Inevitably, some members of the committee will be satisfied with my statement, and others will be disappointed. The expectation is not that what I say will please everyone, but that what I say is constructive, well grounded, and contributes to the legislative debate.

Having taken sides on many issues over the years, I have never once heard any criticism or complaint from any Member or any staffer. I am more apt to hear, as Cong. Mike Synar told me at hearings in 1985 on the Gramm-Rudman bill: "You sit there as the only person whom I can find in this city or anywhere in this country who has done the type of

constitutional scrutiny and analysis which is necessary to give any of us assurances that we are not going down a path that may be dangerous."

All of the positions I have taken in testimony before Congress have been reviewed and approved by the front office. Never have I been told by CRS to draft a statement that is "neutral." No committee would have any interest in inviting me if I simply pointed to four points on one side and four on the other, without ever indicating my own view as to where I found the principal merit.

A Risk of Alienating Members?

In the opening paragraph, you seem to warn that if CRS analysts take a position they may burn their bridges with some Members: "We must all see to it that our ability to serve the Congress . . . is not compromised by even the appearance that we have our own agenda as an agency; that one or more of our analysts might be seen as so set in their personal views that they are no longer to be trusted to provide objective research and analysis; or that some have developed a reputation for supporting a position on an issue to the extent that CRS is rendered 'suspect' to those on the other side."

I have never found that my taking a position, which may turn out to please one side, automatically excludes the opportunity to work with the other side. On many occasions I testified against the delegation of a certain legislative power to the President. Whoever followed the issue on the Hill knew my position. Yet when a bill was presented to transfer that authority to the President, the House committee with jurisdiction asked me to write the committee report because of the amount of analysis I had done on the issue. I did so, at which point the House committee called the Senate committee and suggested that they might want me to write the report for them. They called and I began writing the Senate report. Some members of the minority on the Senate committee then asked for hearings before reporting the bill. Hearings were held and the minority asked me to testify. My statement presented constitutional and institutional reasons for not passing the bill. Everyone I talked to on both sides recognized and appreciated my expertise and independence.

When the Congressional Budget Office releases a budget projection or study, it knows that not all readers on Capitol Hill will be happy with the results. It does the best professional work it can, conducts as rigorous an internal review as possible, awaits and deals with criticism, and moves on. That is all it can do and all we can do. Congressional research arms cannot function if they fear criticism.

Front Office Standards

I have been at CRS for 33 years and have never received understandable guidance on what constitutes good research, other than avoiding partisanship. As I have explained to you in previous memos, the buzz words of objectivity, balance, neutrality, etc. are quite barren. Fortunately, there is a considerable gap between what the front office says we can write and what we actually write.

For example, there is a document called "CRS Reviewer's Handbook," updated most recently in July 2003. It says that CRS work must meet the following criteria: "it must be accurate, authoritative, responsive, timely, objective, appropriate, clearly articulated, non-advocative, without political bias, inclusive of the range of professional and congressional

policy perceptions and in conformance with the requirements of confidentiality” (p. 1). That is helpful. I note that nowhere in that string of words is there anything about “neutrality.”

The Handbook then says that CRS “does not take a position on any legislative option” (p. 9). Of course that is false. CRS analysts take positions, and they do it all the time. I take positions on legislative options when I testify, and the front office knows it and approves my statement. If an attorney in the American Law Division is asked whether a draft bill is constitutional or not, that analyst is expected to “take a position” based on case law and constitutional principles. Otherwise, the attorney would simply cite a lot of relevant material and leave the conclusion to the congressional office. We don't do that. That is not analysis, nor is it professional or in keeping with our statutory charter.

There is a document called “Objectivity and Nonpartisanship in CRS Products and Services,” which is a product of the 1996 CRS Strategic Performance Review. The first paragraph of the Introduction refers to the need for objective and nonpartisan work, but urges that research by CRS staff “bolster our reputation for policy neutrality.” The goal of neutrality has merit in preventing CRS products that advocate free trade or trade protectionism, etc., but it serves little purpose in explaining how we perform our analytical work, nor does it take account of the values that guide our research. For example, your statement at the CRS annual meeting on January 21, 2004, talks about helping Congress “to sustain its constitutional prerogatives during a time of war where traditionally the executive branch has prevailed,” and says it is “incumbent upon each of us . . . to help sustain representative democracy as so exquisitely portrayed by the United States Congress” (p. 2). That isn't neutral, nor should it be. Of course it is what I have been doing for three decades, and it is because of that value (hardly neutral) that the front office has approved my testimony that explicitly takes positions to defend congressional prerogatives.

I notice that in this January 21 address you write: “I have expressed to you in other venues my concern over the trend of Supreme Court decisions over the past decade to restrict congressional power in favor of the power of the states.” I have the same concern, but it is hardly neutral and “unbiased.”

The 1996 document on “Objectivity and Nonpartisanship” has a paragraph on pages 3-4 that I find incoherent as a policy directive: “In an increasingly polarized environment, it is imperative that staff take extra care to uphold CRS's neutrality on contentious issues. . . . On all issues, it is the responsibility of the Service to provide sound, professional analysis . . .” There is an obvious tension between providing sound, professional analysis and remaining “neutral.” Moreover, this document spotlights “neutrality on contentious issues” but we all know that every issue on Capitol Hill can be contentious.

Guide for Policy Analysis

CRS adopts an OPM document called “Grade-Evaluation Guide for Policy Analysis,” the most recent edition of which is August 2002. It provides guidance on how to classify policy analysis positions “that require professional knowledge, skills, and abilities” (KSAs). Nothing in this document counsels “neutrality.” Far from it. Analytical work, especially at the higher level, demands adherence and fidelity to evidence, sound reasoning, and innovation.

Consider this explanation of analytical work: “Skill sufficient to extend and refine existing techniques and to develop new approaches to the analysis of public policy issues.

Skill sufficient to conduct probing, innovative analyses" In performing this level of work, the "decision maker" (in our case a Member of Congress) recognizes "the expertise of the analyst to deal with complex issues" (page 14). The policy analyst is expected to analyze, not summarize. The process is creative: "Professional knowledge and skills sufficient to generate and apply new hypotheses and concepts in planning, conducting, and evaluating long-range projects or proposals for the solution of complex public policy questions" (page 16). Note: *Generating new hypotheses*. A senior analyst is expected to "exercise considerable judgment in interpreting and adapting existing precedents and in developing new or improved approaches . . ." (page 23). "New hypotheses and concepts may have to be generated and applied to resolve critical and intractable problems." (p. 28).

Does the Statement Carry a Punitive Spirit?

Some analysts wonder if your Statement is meant to have a punitive quality: warning analysts that if they fail the test of neutrality or some other standard they are subject to sanctions and possible dismissal. For example, how does the front office measure the neutrality requirement? How does neutrality differ from objectivity? CRS uses these words but they are not defined. If someone can be punished for crossing a line, we need to know where the line is. We need clearer direction from the front office on what is permissible and what is not. Without clear and understandable standards, CRS analysts are at the mercy of supervisors who are free to act subjectively and in a capricious manner.