

The Union Institute

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Office for Social Responsibility
Center for Public Policy
Center for Women

March 22, 1993

via Fax

Mr. Bruce Reed
Deputy Assistant to the President
Domestic Policy Council
The White House
Washington, D.C. 20500

Dear Bruce:

I would like to thank you for having taken the time to meet with Bob Smucker (Independent Sector) and Nan Aron (Alliance for Justice) concerning lobbying disclosure and the nonprofit sector. As I am sure you understand, this issue holds profound implications for the charitable community.

The nonprofit sector believes that the past decade has seen concerted efforts, especially on the part of previous administrations, to curtail its capacity to undertake advocacy. Its leadership is particularly sensitive to the "chilling effect" that even well-intentioned initiatives might have -- sending out the message that nonprofit advocacy needs to be more closely monitored and regulated, although there has been no pattern of abuse. (A 1990 op.ed. of mine, from *The Chronicle of Philanthropy*, addressed this issue.)

I am grateful for whatever you might do to help others understand that further and unnecessarily complicated regulation, applying new definitions of lobbying which differ from those under which nonprofits already disclose and report to the IRS, might not be in the best interests of the Nation.

Again, my appreciation for your interest in these matters.

Sincerely,



Mark Rosenman
Vice President, Social Responsibility

Enclosure

OPINION

OPINION II

MY VIEW

BY MARK ROSEMAN

Limitations on Lobbying by Non-Profits Are an Affront to Democracy

A VULNERABLE DEMOCRACY requires its active citizens to be concerned with consequential issues and committed to their advancement. At times such an issue, when its resolution turns from an abstract one to a concrete one, becomes absolutely essential that those concerned with democracy work to reverse that pattern. Legislators and others who refuse such a challenge abdicate their responsibility and forsake any credible claim to leadership. If non-profit organizations, and the business and labor groups that support them, do not work to reverse this abdication and to help re-activate government in its political power toward the end, our democracy among the nations will enter our rapid decline in the world economic order.

There are many indications that American democracy is in danger. In 26 states, fewer than 50 per cent of registered voters exercised their franchise.

People have become disenchanted with government and government. Shared beliefs of common purpose have been replaced by an atomistic personal selfishness. Concern for democracy has been replaced by a quest for the power of personal privilege. Public life has become without interest in public interests.

Many of those responsible for public policy fail to challenge the status quo; some even affirm it. Through the lack of initiative and conviction, they forsake efforts to increase citizen participation in public life. They defend the status quo in a political process with an ever-narrowing circle of "insiders" and perpetuate a policy of government that is a few at the expense of the many. There are few new faces in Congress because of the death of office-holders; this because of the chronic deficit of interested

Beyond political parties, which often appear uninterested in anything but instrumental to the election of designated candidates or the perpetuation of incumbency, the on-profit sector is the principal vehicle through which citizen participation in democracy might be advanced. Its rich history as an instrument of democracy has been en-

riched to our representative democracy, especially for the disenfranchised.

However, the ability of non-profit organizations to serve such a purpose is increasingly constrained by some elected officeholders and the agencies of government that they control. For simply, not only has government failed to fully promote democracy, but it has worked actively to inhibit such efforts by others.

The Internal Revenue Service soon will reduce the level of its principal and long-awaited regulations concerning advocacy and lobbying by non-profit organizations. In their initial version, the regulations would have been irretrievably destructive and punitive. They would have greatly expanded the definition of lobbying, and the U.S. would have applied the new definition retroactively for 40 years. That would have punished many non-profit groups past legal lobbying limits and subjected them to fines, penalties, and the potential loss of their tax exemption. After an appropriate outcry from non-profit groups, the regulations were revised. However, this episode and many non-profits believing that the governmental policies are improper far there to speak out and policy makers are to work to increase citizen participation in political affairs.

IN THEIR REVISED FORM, the new U.S. regulations, which carry out a 1976 tax law, are expected to continue to allow non-profit organizations to use between 5 per cent and 50 per cent of their tax-exempt revenues for conventional lobbying. (The former 50 per cent budget, the lower the percentage it is, the more it is expected to be lobbying.) However, no more than one-quarter of the lobbying allowance is to be used for 10 per cent of the exempt revenues for groups with large budgets and 5 per cent for groups with small budgets.) That limitation is an affront to democracy, and it also provides an embarrassing insight into the desires of much of our political leadership.

In effect, grassroots lobbying means democracy. Con-

ventional lobbying means playing the politician's game. The preference of many government officials is clear.

Conventional lobbying is insider trading. Legislators are approached by professionals (many of whom were themselves elected or appointed officials) who represent narrow interests. They know how to wield influence; they know the power of the dollar, and they use it. As the philanthropist and author Philip M. Stern said, we have "the best Congress money can buy." It should note that for-profit and tax-exempt dollars in lobbying: such costs simply are treated as business expenses and deducted from gross profits before corporate taxes are calculated.)

It is O.K. with the U.S. if non-profit organizations want to play this game, but they can spend no more than 20 per cent of their tax-exempt resources doing so. A few large non-profits have become experts at it, and some feel that they have so well learned the rules of the insider game that they do not want to see them changed. Others contend that non-profits, which represent causes of broad public interest, need to be able to lobby in the conventional way to counter the powerful interests of lobbyists who work on behalf of for-profit ventures.

But when non-profit organizations work to help people to learn about issues, to understand their individual and common interests, and to act directly through the democratic process and express their will to elected officials, it is called grassroots lobbying and the lower 11.5 per cent of 5 per cent (5 per cent) limit applies. Those who control the Internal Revenue Service seem to find an informed and active citizenry much less desirable than campaign-contributing political-action committees.

These anti-democratic tendencies go even further. The White House's Office of Management and Budget is seeking to deny charitable groups the right to use subsidized postage rates for advocacy and even for public education. Previously O.M.B. tried to define lobbying even more broadly and impose draconian limits on advocacy work by any non-profit that received federal funds.

AL L OF THIS HAS HAD A CHILLING EFFECT ON non-profit organizations and, perhaps even more consequentially, the philanthropic foundations that support them. Too many charitable groups are afraid of even using words like "advocacy," "legislation," "lobbying," "politics," "policy," and "public interest"—the very activities necessary to re-investigate democracy. Those words are suicide pills for grant seekers in talks with foundations, who are themselves severely limited by federal legislation and whose memos extend

to the Congressional acquisition of organized philanthropy in the late 1940's, but whose spirits forget (17%). These terms evoke the threat of coercive U.S. audit that can cripple innocent non-profit groups and foundations with major unsuspected staff costs, lawyers' fees, and untold hours of lost sleep.

It is time to ask ourselves some hard questions. Do we value or fear democracy? Is democratic political leadership an oxymoron? Do we surrender to wealth and its hold on our government or do we reclaim democracy for the citizenry? Is it narrow self-interest or democratic concern that shall rule?

If we are true to the founding credo of our nation, to our Constitution, and to the values most of us profess to share, the answers are clear. Then new questions emerge: How are we to react to those basic tenets, re-investigate civic life, and re-establish broader democratic behavior?

The answers lie both with government and with non-profits. To start, we should, as a minimum, set limits for the use of tax-exempt and tax-deductible funds for grassroots lobbying and advocacy equivalent to those allowed for conventional lobbying.

We need an legislative, enhance, and expand the capacity of non-profit groups to use charitable dollars to re-educate democracy. We need to design and support more programs to encourage the broadest possible participation in civic life and remove the constraints imposed on the charitable sector's efforts toward such ends. And while democratic participation is being retrained, non-profit organizations need to be given increased abilities to speak in the interests of those who are not yet politically active.

In terms of government itself, we need significant campaign-finance reform. We need to curtail the power of wealth and of conventional lobbying to create room for the power of people and of grassroots lobbying. Our election of leadership and political parties must be held accountable for their part in the restoration of democracy.

Non-profit organizations and foundations, as well as our government, must re-commit to a fundamental faith in democracy. In an informed and active citizenry. We must move beyond the immediately expedient, beyond implicit acceptance and unreflective conformity to the self-perpetuating rules that in power make in service to themselves. We must demand the right and the support to rebuild a nation of the people, by the people, and for the people.

Mark Roseman is director of the Union Institute Cross for Public Policy in Washington.

You many charitable groups are afraid of even using words like "advocacy," "legislation," "lobbying," "politics," and "policy."

LAWYERS NOT SO POWERFUL IN D.C.

Study debunks myth of attorney influence

There is a popular idea that Washington, D.C., lawyers are the power brokers who shape federal policy.

But that idea is more myth than reality, according to a study conducted by two American Bar Foundation researchers.

Non-lawyer lobbyists and others who represent corporations, labor unions and trade associations have a far greater impact on shaping federal policy than do lawyers, according to ABF researcher John Heinz.

Heinz and Robert Nelson are co-authors of "Lawyers and the Structure of Influence in Washington," which was published last year in the *Law & Society Review*.

The authors analyzed interest groups in four areas of domestic policy—agriculture, energy, health and labor.

They interviewed 776 Washington representatives of major corporations, private institutions, trade groups, unions, local governments and public-interest organizations.

They also interviewed 300 federal government officials and 72 persons who are generally considered to be highly influential in shaping federal policy.

"We thought the Washington lawyers would be a very large part of this, just from what we read in the popular press and the common wisdom within the legal profession," Heinz said.

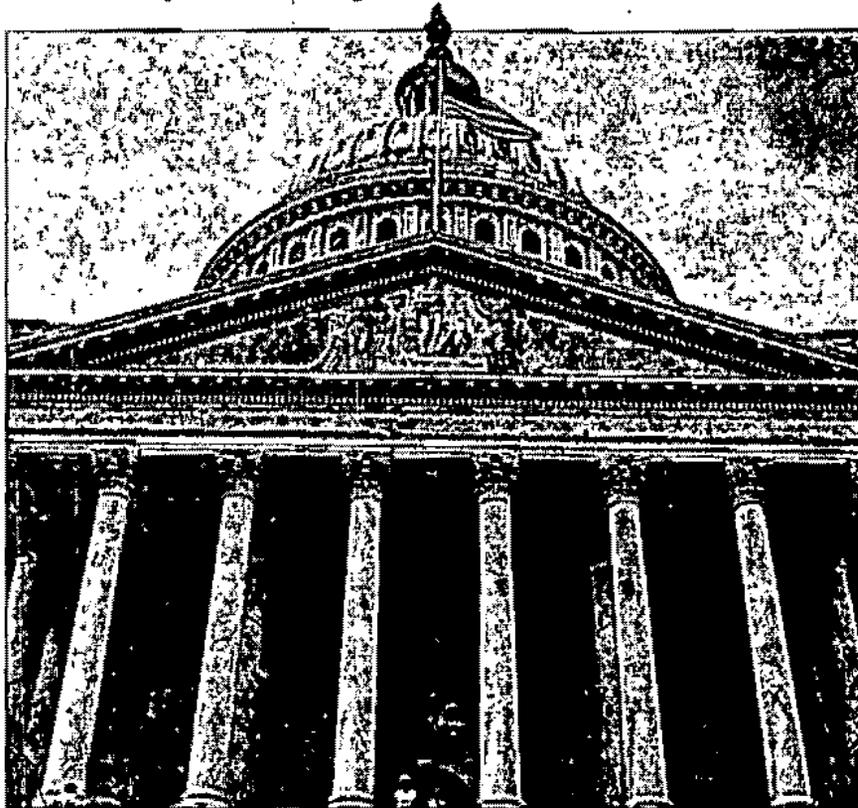
Thousands of lawyers work in Washington, and lawyers traditionally have dominated the composition of Congress.

In 1983, 60 percent of the U.S. senators and 44 percent of the members of the House of Representatives were lawyers.

But lawyers have a far lesser role within those private-interest groups that work behind the scenes to influence federal law.

Of those who represented private-interest groups, only 12 percent were lawyers working for law firms. Another 8 percent were in-house counsel for corporations.

Women and minorities were a



Non-lawyer lobbyists have a greater impact on shaping federal policies than do lawyers.

small fraction of this group.

An additional 13 percent, mostly corporate executives and heads of trade associations, had law degrees but didn't practice law.

So, while about one-third of those representatives of private-interest groups had a legal education, only 20 percent practiced law.

"Lawyers were a lot smaller part of the picture than they were commonly thought to be, a lot smaller piece of the action," said Heinz.

The researchers also found that the role these lawyers played was more technical and limited than expected.

Although the Washington lawyer is often pictured as a wise confidant, "That's not what we found that lawyers do particularly," he said.

"That type of role is played much more by the non-lawyer Washington representatives than it is by the lawyers," Haynes added.

While lawyers may play an important role if policy is made through formal procedures, most policy decisions are made outside the areas in which lawyers have a special claim to expertise.

Telephone calls, personal visits to members of Congress, give-and-take negotiations with allies and adversaries, and monitoring of the trade press are usually more important.

As a result, non-lawyers were more involved in shaping issues and employing strategies to get bills enacted into law.

"The lawyers—it is overstating it a little bit, but not much—are much more technicians," Heinz said. "When there are technical legal issues, the lawyers are called in to deal with those issues. They are not usually called on to provide general policy advice, wise counsel, and particularly not political counsel."

—Paul Marcotte

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Disagreement May Threaten Lobbying Bill
At Issue Is Disclosure
Of Gifts to Lawmakers
By Charles R. Babcock
Washington Post Staff Writer

Sen. Carl M. Levin (D-Mich.) and Fred Wertheimer, president of the public interest group Common Cause, agree with President Clinton that special interest lobbyists have undue influence in Washington today.

But they disagree whether Levin's lobbying disclosure bill needs to require that lobbyists report gifts to members of Congress and their staffs. The difference is threatening a two-year effort to revamp the current laws.

The senator views Wertheimer's insistence on gifts' disclosure as "an 11th car" that might derail his "10-car train" on lobbying reform. Wertheimer says that Levin's bill "greatly improves" lobbying registration rules, but the loophole on gifts leaves unreported a central way lobbyists work to influence lawmakers.

The key player in the controversy may be Clinton, who made a pitch for

lobbying revisions in his State of the Union Address. The president hasn't addressed the specifics of Levin's bill, which was approved unanimously by the Senate Governmental Affairs Committee last week.

Levin and Wertheimer agree that members of Congress should ban the acceptance of most gifts - as the executive branch already does. But only Wertheimer thinks lobbyists should have to disclose the gifts they are now allowed to give members and their staffs.

Levin said in an interview that "there's only one effective way" to address the problem: changing the congressional gift rules to make them as tough as those for the executive branch.

In 1991, however, Congress moved to loosen the gifts rules, allowing members to accept unlimited meals in Washington without any reporting requirement. "There's a different atmosphere" in Washington now, Levin said. He added that he already has urged Sen. Wendell H. Ford (D-Ky.), chairman of the Senate Rules and Administration Committee and majority whip, to push for gift rules that match the executive branch.

The senator said he is frustrated by Common Cause's current opposition to the bill, after its strong support for the measure last year. "They are sinking, trying to sink, a good bill on registration because it doesn't contain an ineffective rule on gifts," he said.

Levin's Governmental Affairs oversight of government management subcommittee began work on the bill two years ago.

The 8,000 lobbyists who register now are only about one-quarter of those who actually work to influence legislation, Levin said. The bill would expand the definition of "lobbyist" to require more complete registration. It would also set up an enforcement mechanism so filers would report what issues they are working on and how much they are paid. It wouldn't require that lobbyists report which individuals they are lobbying or how they are spending their money.

The full committee report on the bill last year said, "The basic purpose for disclosure of receipts and expenditures is that the amount a lobbyist spends is the best indicator of the scope of the lobbying effort." It added that it wasn't as important to know how the money was spent.

Wertheimer disagrees, saying that "money is used to obtain access and influence. And that involves the various ways lobbyists provide financial help to members - from meals to gifts to scholarships for family members - huge sums to sponsor events at conventions, donations to foundations. It shouldn't be allowed, but as long as it is, the public ought to know about it."

Do you wish to store these articles in a LEGISLATE
FILE for future reference? ('Y/N')

'Do I Hear \$250?'

Sidney Lezak (right), U.S. Attorney for the District of Oregon sang, and Portland lawyer Jonathan Hoffman played the blues at a recent benefit for Oregon Legal Services.

Creative financing methods to provide legal services for the poor, from surcharges on filing fees to the use of client interest trust funds, were discussed at the NLADA conference. One of the most novel ideas came from Oregon where, in November, a Benefit Auction and Gala for Equal Justice raised \$32,000 before expenses. That was enough to "help in keeping an office open," according to Steven Lowenstein, executive director of Oregon Legal Services Corporation.

Notables including the governor, secretary of state, attorney general, two congressmen, the state's chief justice and several judges sponsored the event. A former chief justice and the United States attorney provided entertainment, and a former bar president served as master of ceremonies.

One of the 340 auctioned items, Lowenstein said, was a day's fly-fishing trip with gourmet lunch served personally by the state bar president. Other items, all donated, included fine art, vacation trips and food processors.

Nearly 750 attended the auction, which Lowenstein thinks may be the "first one geared toward issues of justice." He called it "an opportunity for attorneys again to get together to provide legal help for the poor."

—M.M.

 SUPREME COURT

Public Defenders Not Liable Under Act

A U.S. Supreme Court ruling that says public defenders can't be sued under the Civil Rights Act of 1871 if they're performing a lawyer's traditional functions won praise from the National Legal Aid and Defender Association.

The 8-1 decision (*Polk County v. Dodson*, No. 80-824), which came down in December while NLADA members were in San Francisco for their annual conference, said public defenders do not act "under color of state law" when representing indigent clients.

The case originated when an indigent sued a public defender who worked in the Polk County (Iowa) Offender Advocate's office. He alleged that the lawyer's attempt to withdraw from the indigent's appeal on the ground that it was frivolous in his criminal appeal had deprived him of his right to counsel, subjected him to cruel and unusual punishment and denied him due process of law. He contended that the defender was

acting "under color of state law" because she was a county employee.

The Supreme Court, reversing the U.S. Court of Appeals for the Eighth Circuit, reasoned that "a defense lawyer is not, and by the nature of his function cannot be, the servant of an administrative superior." Justice Lewis Powell Jr. also wrote that "it is the constitutional obligation of the State to respect the professional independence of the public defenders whom it engages."

Calling it "a major decision regarding indigent defense and public defenders," NLADA said, "This decision is the first time in over 20 years of consideration of the Civil Rights Act that the court has applied a functional test for liability." NLADA, in its amicus brief, had argued for just such a test, "hinging on the nature of the work performed by the defender."

The court, in fact, did not rule out liability for public defenders when making hiring and firing decisions on behalf of the state and, possibly, when performing certain administrative and investigative functions.

—Martha Middleton

 CONGRESS

Reforms Sought in Lobbying Registration

Registered lobbyists in Washington outnumber members of Congress 10 to 1. Counting unregistered lobbyists, the ratio is 30 to 1, many observers say.

That disparity results from a broad definition of lobbyists in the existing Federal Regulation of Lobbying Act. Legislation to narrow the definition has been introduced, but the chances of its passage are slim, many say, because lobbyists have banded together to oppose it.

"I'd say Congress, in general, agrees that reforms are needed. It just can't agree on how far that reform should go," said Frederick Krebs, a lawyer in McLean, Virginia. "Each year legislation is introduced and each year it dies. Some compromise has to be reached because the number of lobbyists is growing tremendously." That number has almost



Powell: The State should respect the independence of its public defenders.

doubled in the past five years, Krebs added, because special interest groups are growing.

The act, passed in 1946, was poorly drafted, said Robert Evans, acting director of the American Bar Association's Governmental Relations Office and a registered lobbyist. It requires registration and quarterly expenditure reports from any person or organization whose "principal purpose" is to influence federal legislation. "The definition is too vague and, consequently, many people just don't register," Evans explained.

Of the estimated 15,000 lobbyists in Washington, only 5,000 are registered, said Michael Murray, director of the Office of Records and Registration in the House. There is no fee for registering and the number of lobbyists increases by 50 per month, he said.

A disclosure bill, H.R. 5, has been introduced by Rep. George Danielson, D-Calif. It would require an organization to register and file reports if it spends \$5,000 in any quarter to retain an outside lobbyist or employs one or more in-house lobbyists who spend 13 or more days each quarter on lobbying. It has been referred to the House Judiciary Committee.

"The idea is not to limit the number of people who can lobby, but to have a better record of the larger organizations and the amount of money being spent," Murray said.

The American Civil Liberties Union has fought the changes, saying they suppress rights of free speech and freedom to petition the government. On the other hand, some organizations have criticized Danielson's bill as too weak. "The proposal doesn't include provisions for registering grass-roots lobbying," said Ann McBride of Common Cause, a non-profit citizen lobbying organization.

Grass-roots lobbying involves organizations that urge their members to appeal to members of Congress on legislative issues. "There currently is no way of knowing how many people are involved in lobbying," McBride said. Krebs said the registration act should contain a narrow definition, once it is redrafted: "A simple disclosure—who you are and who you represent."

—Vicki Quade

THE JUDICIARY

Burger Seeks 'Agenda' for the Year 2000

"Those of us whose duty it is to administer justice have to ask ourselves if we have sufficiently anticipated and made provision for the consequences which flow from . . . transformations in our legal justice system," Chief Justice Warren Burger said in his year-end report on the judiciary.

Calling for an "agenda" for the year 2000, Burger noted several important developments in 1981, including the division of the old Court of Appeals for the Fifth Circuit into two new circuits.

Burger also called for the division "into three full-fledged circuits" of the Ninth Circuit, one "whose filings continue to mount."

He pointed to increased federal filings throughout the country, saying the problem they present "is not simply workload on the courts or delay for the litigants, but a real threat to the quality of federal justice." Burger said a study by the Administrative Office of the United States Courts projected that court of appeals filings will increase 80 percent and district court filings 78 percent between 1975 and 1983.

He said, further, that "too many of today's advocates too frequently take undue advantage" of pre-trial discovery, originally intended to speed up litigation. "Abuse of the discovery process often serves nothing other than to enlarge the fees of counsel (many of whom are paid on an hourly basis)," Burger said.

He also urged improvements in the use of juries, saying, "We are sadly inattentive to helping jurors perform their task, to treating them with the respect they deserve, and to using their time efficiently."

Burger called peer review, both at the federal level and in experimental state programs, "helpful steps in the movement to improve lawyer competency."

Burger also:

—Encouraged law-related courses in schools, saying a recent study found that such courses, when properly taught, cut delinquency significantly.

—Urged adequate judicial compensation and benefit programs, saying, "The economic penalty for joining the federal bench should not be so great as to constitute a barrier to accepting judicial office."

—Called for additional federal judgeships, saying the need "remains acute."

—Noted "growing concern" about federal district court review of state court convictions. He said he hopes Congress will consider limiting such review "to claims of manifest miscarriages of justice."

—Urged review of the rule-approving role of the Supreme Court.

—Encouraged the use of judicial impact statements on all bills affecting the courts.

—Martha Middleton

See also "C.J. reports" in this issue, page 118.



Burger: Abuse of discovery only serves to enlarge attorneys' fees.

POLITICS & POLICY

Clinton's Plan for Campaign, Lobbying Reform Encounters Resistance From House Democrats

By JEFFREY H. BIRNBAUM

Staff Reporter of THE WALL STREET JOURNAL
WASHINGTON — At a private meeting of House Democrats recently, White House adviser Paul Begala laid out President Clinton's top priorities, including changes in campaign-finance and lobbying laws.

New Jersey Rep. Robert Torricelli was quick to respond, several participants say. If President Clinton pushes for drastic changes in the campaign finance law, Rep. Torricelli is quoted as saying, Democrats might "lose control of the House."

The next questioner further underscored the congressional preference for business as usual by asking, half jokingly, whether Mr. Clinton will let cabinet secretaries attend fund-raisers for members of Congress, as is customary. (There was laughter but no answer.)

Mr. Clinton says he wants to change the way Washington works; in his inaugural address, he said, "Let us resolve to reform our politics so that power and privilege no longer shout down the voice of the people." And soon after taking up residence in the White House, he met in the Oval Office with top staffers and emphasized the importance that they press ahead to reduce the amount of money spent in federal campaigns and to increase the amount of information lobbyists must disclose about their client relationships.

But Washington isn't eager to change. Rep. Torricelli denies making the remarks attributed to him at the meeting of House Democrats, despite recollections to the contrary by several in attendance. Nevertheless, faced with complaints from rank-and-file Democrats in the House, White House aides are now moving cautiously in putting together a plan to overhaul campaign finance and lobbying laws. There is even disagreement among White House advisers about what the changes should be, further slowing progress.

The result: Mr. Clinton's plan to make major changes in the campaign finance and lobbying laws could be delayed and watered down.

Advocates of campaign-finance reforms worry that delay could mean defeat. "The longer you let this slip the more you create the opportunity for the opponents to

Capital Cleanup

Here are President Clinton's political reform proposals:

- Limit political action committee campaign contributions to \$1,000.
- Limit "soft" money contributions that now let companies or individuals give unrestricted amounts to political parties.
- Reduce the cost of TV time to promote more discussion of issues.
- End tax deductions for lobbying expenses.
- End the "lawyers' loophole" that lets lawyer-lobbyists avoid disclosing their activities on behalf of foreigners.
- Require lobbyists who appear before congressional committees to disclose the campaign contributions they have made to the members of those committees.

Source: "Putting People First" by Bill Clinton and Al Gore

aimer, president of the citizens' lobby Common Cause.

Six-Month Process

Lawmakers say it will be next summer or later before they move the issue onto the front burner. California Rep. Vic Fazio, chairman of the House Democrats' fund-raising committee, sees at least a six-month process for developing a bill. "It's not something people are demanding tomorrow, like jobs," he says. "If we have to err on the side of taking more time, we ought to."

Reluctant to engage Congress in an early fight over political reform, the administration appears to be putting changes in campaign and lobbying laws on a somewhat slower track than other priorities. Mr. Clinton's first speech to a joint session of Congress Feb. 17 is expected to focus primarily on economic problems and proposed solutions. And White House aides say they aren't interested in ramming through a potentially controversial political process bill at a time when they will be asking legislators to cast so many other tough votes for deficit reduction.

shouldn't do it," says one senior White House staffer, "but that we should do it sensitively."

Lawmakers note that the issue has been delegated to White House staffers who, though able, are much junior to the officials who have been given charge of the president's other initiatives. Campaign-finance overhaul is being directed by Michael Waldman, and the bolstering of lobbying laws is being lead by Bruce Reed. Both are 32 years old. Mr. Reed is also working on welfare law changes, another big issue for Mr. Clinton.

Officially, the Clinton team says political-law changes are a priority, and one the administration doesn't intend to delay. Mr. Clinton already has endorsed a bill by Sen. Carl Levin (D., Mich.) that would combine and toughen the now diffuse and weak lobbying disclosure laws. And talks with congressional leaders have begun on campaign-finance changes, including a meeting today with the president.

But there is a long way to go. Disagreements and proposals to dilute the legislation arise at almost every turn.

Nervous in the House

House Democrats are especially nervous. Up for election every two years, they fear that Mr. Clinton's plan to limit campaign spending by candidates, and contributions by political action committees, may give their challengers too many advantages. The result has been what is apparently the first big compromise on the issue. House Speaker Thomas Foley of Washington says campaign-finance changes that will be proposed by House Democrats won't take effect until after the congressional elections next year.

Texas Rep. Martin Frost, among oth-

ers, frets about proposals to cut off so-called soft money, as Mr. Clinton has said he would. These are large contributions from individuals and corporations that bolster state political parties and indirectly help candidates for federal office.

Such critics of the system as Mr. Wertheimer see soft money as a loophole that must be closed if there is to be any real overhaul. But even some advisers to Mr. Clinton—particularly Democratic National Chairman David Wilhelm—say soft money must continue to flow, at least in some form, to keep the Democratic Party humming and, they argue, to allow more citizens to participate in party functions.

Public Financing

Another contentious matter in campaign-finance proposals is whether the public should be asked to pay for campaigns. Many lawmakers resist public financing; most polls show that voters don't like the idea. As a way around the problem, Mr. Clinton is considering tapping proceeds from his proposed revocation of the tax deduction for corporate lobbying expenses—worth about \$100 million a year.

The lobbying registration changes are far less controversial. Mr. Clinton and lawmakers agree that lobbyists should disclose more about what they do and who pays their fees. But efforts to close the revolving door between Congress and the lobbying industry is running into opposition. A proposal by Sen. David Boren (D., Okla.) to apply the five-year lobbying restrictions of Clinton officials to members of Congress and top congressional aides is being resisted by other lawmakers and some in the administration, including the White House's top lobbyist, Howard Paster. Mr. Clinton has barred top officials in his administration from lobbying their agencies for five years after they leave office.

Such disputes within the Democratic Party are only part of the problem. Repub-

licans have long held a different view of what constitutes reform of campaign financing, and those differences continue. Mr. Wertheimer suggests that even if Democrats can agree on a compromise plan, Republicans may try to stop it in the Senate with a filibuster that would be

difficult to break.

Still, Clinton officials are upbeat about the prospect for changing the system—eventually. "Nobody is saying don't do political reform," says Stanley Greenberg, Mr. Clinton's pollster. But, he adds, there is "a question of timing."

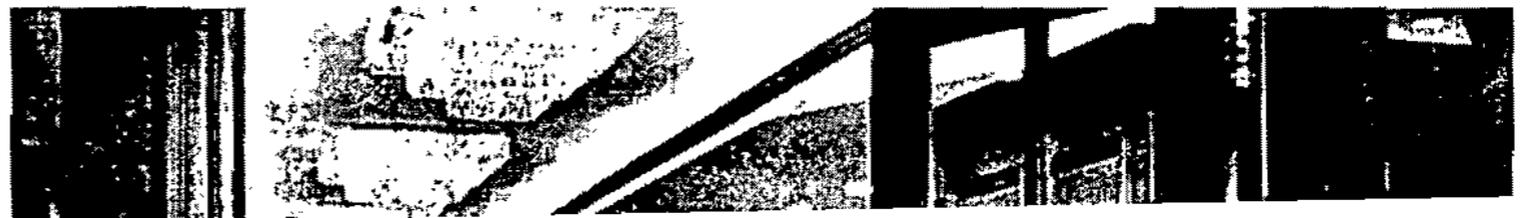
BASICS OF CROSS MARKET FIXED INCOME MANAGEMENT

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Structure maturity/sector selection of Treasuries, Mortgage-backed and Municipal securities
- ADD INCREMENTAL RETURN:
Take advantage of sector opportunities in multi-currency, emerging markets and credit sensitive instruments
- WEIGH THE RISKS:
Assess interest rate risk, credit risk and currency exposure
- IDENTIFY RELATIVE VALUE:
Analyze inter-market spread relationships, yield curves, credit tiering, global interest and tax rates
- MANAGE FOR TOTAL RETURN:
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LOBBYING

Senate Passes Bill To Tighten Special Interest Disclosure

Public's 'disgust' inspired action to close loopholes in reporting rules; House action expected

Spurred by voters' complaints that special interests exert too much influence over government, senators closed ranks to pass a far-reaching overhaul of the 1946 Lobbying Act — a law critics since Harry S. Truman in 1949 have called inadequate.

The same public sentiment forced senators to accept an unwelcome amendment requiring lobbyists to disclose any gift worth more than \$20 — including meals, trips and entertainment — to a member of Congress or a staff member.

"The Senate is feeling the heat from people around the country," said Paul Wellstone, D-Minn., who succeeded in pressing his gift-disclosure amendment onto the bill despite opposition from colleagues who felt it went too far or belonged in another venue.

Designed to plug loopholes in the 1946 law and provide a full accounting of those seeking to influence federal policy, the bill (S 349) requires anyone paid to lobby members of Congress, their staffs or senior executive branch officials to register at a new Office of Lobbying Registration and Public Disclosure under the Department of Justice. (*Background, Weekly Report, p. 441*)

Sponsored by Carl Levin, D-Mich., and William S. Cohen, R-Maine, the measure passed May 6 on a 95-2 vote. (*Vote 116, p. 1181*)

"Public disgust was a welcome motivating factor," Levin said of the bill's easy passage after he had spent several years building support for the effort. "The public and the press have a right to know who is paid how much by whom to influence public policy."

Similar legislation (HR 823) is pending before the House Judiciary Subcommittee on Administrative Law. A markup is expected soon, although no date has been set.

Naming Names

Anchored by the 1946 law, the lobby registration system is now a patchwork of laws and regulations that are so vague

By Beth Donovan



Levin



Cohen

BOXSCORE

Bills: S 349 (S Rept 103-37), HR 823 — Lobbying disclosure.

Latest action: Senate passed S 349 on May 6.

Next likely action: House Judiciary subcommittee markup of HR 823.

Background: Clinton administration supports requiring more lobbyists to register.

Reference: Committee approval. *Weekly Report, p. 441*; background, 1992 *Weekly Report, DD, 3/92, 1858*.

and inconsistent that the majority of those who work to influence legislation, government policy and regulations can remain anonymous.

Currently, only those who spend a majority of their time personally lobbying members of Congress must register. Lobbying staff and members of the executive branch do not require disclosure. A Government Accounting Office report found that fewer than 4,000 of the 13,500 people who list themselves in the directory "Washington Representatives" were registered as lobbyists.

While these loopholes have been known for decades, past efforts to mandate more complete disclosure have fallen victim to inertia, partisan bickering and the constitutional imperative to protect citizens' right to petition government.

"Every time Congress has consid-

ered reforming the worn-out lobbying registration laws," said Levin, "we found ourselves pinioned between those who would say we have called for too much disclosure and those who would call for greater disclosure."

The framework for the Levin bill was approved at the committee level in 1992. Though that bill died at the end of the last Congress, it took on new life with the Clinton administration's encouragement.

While some lobbyists worked behind the scenes to kill the bill, according to Levin and Cohen, the public position of most lobbyists was that they have nothing to hide.

If the bill is enacted, certainly more information will be public. For the first time, lobbyists would be required to disclose the identities of their clients; the issues they lobbied; the members of Congress, congressional committees and federal agencies they contacted; and total income from their clients.

Gift Disclosure

Levin and Cohen vigorously resisted the idea that their narrowly crafted bill, which they began work on several years ago, should be expanded to require lobbyists to disclose gifts to members of Congress and their staffs. Time and again, Levin said he did not want the bill to become an all-purpose vehicle for reform, saying past efforts to strengthen lobbying registration had been sunk by such extraneous amendments.

"This is just one chapter in a book of reforms that is needed," he said of the original bill.

Levin and Cohen also criticized the mechanics of the Wellstone amendment. They said it was inconsistent with Senate rules, shifted the burden of disclosure from members of Congress to lobbyists and fell short of their goal of eliminating such gifts. Levin called the amendment "a weak response to a weak rule."

But the very mention of the current rule may have strengthened Wellstone's hand. Currently, senators can accept free meals of any amount without disclosing them, as well as gifts worth less than \$100. If gifts worth more than \$100 from a non-family member add up to \$250 a year, they must be listed on the member's annual financial disclosure report. Otherwise, they do not need to be disclosed. Since the rule was adopted in 1991, Common Cause President Fred Wertheimer has criticized it, saying a member could accept \$99 a day without being required to tell anyone. (1991 *Almanac, p. 22*)

The Senate was in absence for hours on May 5, as opponents of the Wellstone amendment tested the waters for a vote on it and tried to persuade Wellstone to relent. When it became clear that Wellstone would not budge and few were willing to vote against the amendment, Levin relented and offered a few minor changes to it.

The Levin amendments provide an exemption for gifts from family members and those that are returned as well as for attendance at large receptions that are not for the benefit of particular members — for instance, the popular annual ice cream socials sponsored by the dairy industry, said Wellstone.

All other meals, gifts, entertainment or other financial benefits to a member or staff member worth more than \$20 or an aggregate of \$50 annually must be reported by the lobbyist.

Frank R. Lautenberg, D-N.J., subsequently offered a non-binding amendment that said gifts from lobbyists to members should be banned by some future legislation. It was approved 98-1 on May 6. (Vote 115, p. 1181)

Other Amendments

The bill had been expected to become a vehicle for heated rhetoric on campaign finance legislation, but that never happened. With Democrats accusing Republicans of gridlock and a floor debate on campaign finance likely within a month, Larry Pressler, R-S.D., dropped his amendment that would have banned political action committee contributions. (Campaign finance, p. 1121)

The Senate accepted by voice vote an amendment by Paul Simon, D-Ill., to require enhanced disclosure from government-sponsored enterprises, including the Student Loan Marketing Association, which benefits from federal loan guarantees and is lobbying against a Clinton proposal for direct student loans. (Student loans, p. 1152)

An amendment by Ted Stevens, R-Alaska, to require duplicate filing with the Senate Secretary and the Clerk of the House until a computer hookup is established with the new lobbying disclosure office was also approved by voice vote.

Stevens had hoped to amend the bill to require disclosure of contributors to organizations that lobby Congress, an effort environmentalists said was aimed at them. Levin and Cohen said the amendment was unconstitutional, and Stevens eventually relented. Instead he offered a non-binding amendment requesting that the

conference committee require disclosure of all foreign contributions to such organizations.

Provisions

Levin and Cohen said the bill tries to balance a desire to reveal the identities and clients of all paid lobbyists without requiring registration by every person who contacts a government official or comes to Washington for an annual meeting. It would replace several current laws (principally the 1946 Federal Regulation of Lobbying Act and the 1925 Foreign Agents Registration Act) with one statute.

Following are highlights of the 1993 Lobby Disclosure Act as approved by the Senate:

- Registration would be required for any organization that spends or receives more than \$5,000 from all clients it lobbies for, or more than \$1,000 from any single client in half a year.

- Lobbying contacts would be defined as any communications with congressional members or aides or high-level executive branch officials with regard to legislation or official actions.

- Any organization that hires a lobbyist would have to file a report covering all of its lobbying activities.

- Reports would be required twice a year. They would have to specify clients, lobbyists, amounts spent or received, issues involved, agencies and committees contacted and interests of foreign affiliates.

- Lobbyists would have to disclose whether they had served in the previous two years in government positions that were subject to lobbying.

- The bill would not require registration by religious organizations, journalists or public officials.

- An Office of Lobbying Registration and Public Disclosure would be established within the Department of Justice, with its director subject to Senate confirmation.

- The office would have to make registration information available in a form that could be cross-checked against information on campaign contributions on file at the Federal Election Commission.

- Fines up to \$200,000 could be imposed for failure to comply.

- Separate registration requirements would be retained for foreign governments and political parties.

- Provisions of the 1988 "Byrd amendment" that prohibit using appropriated federal funds to lobby for contracts, grants or loans would be preserved. (Background, 1989 Almanac, p. 736) ■

SECTION NOTES

Judge Upholds Indictment Of Rep. McDade

A federal judge refused on May 6 to throw out Rep. Joseph M. McDade's corruption indictment, rejecting arguments by the Pennsylvania Republican and leaders of both parties that the charges violated constitutional limits on prosecuting lawmakers.

U.S. District Judge Robert S. Gawthrop III scheduled the trial for June 14 in Philadelphia, declining McDade's request to move it to his district in Scranton. McDade's lawyer, Sal Cagnetti Jr., said his client would probably appeal, further delaying the trial.

McDade, the Appropriations Committee's top Republican, was charged May 5, 1992, with taking more than \$100,000 worth of illegal gratuity, bribes and extorted favors from defense firms.

McDade and House lawyers argued that his status as a committee leader so permeated the indictment that it violated the Constitution's bar against prosecution of members "for any speech or debate."

Gawthrop said such an interpretation would create "the impression that members of Congress are immune from prosecution merely because they are members of Congress." (Weekly Report, p. 117)

House Counsel Ross To Join Law Firm

House Counsel Steven R. Ross will resign to take a job with a law firm. Speaker Thomas S. Foley, D-Wash., announced May 6.

As the top legal adviser to three Speakers, Ross defended the constitutionality of laws and went to court in behalf of members in legal hot water — sometimes being accused by Republicans of working too closely with Democrats. (1992 Weekly Report, p. 2147)

Ross' last day will be May 14, after which he will join Akin, Gump, Strauss, Hauer & Feld. Foley's office said he is in the "final stage" of reviewing candidates to replace Ross.

The Parasite Economy

Like ticks on a hound, the lawyering and lobbying classes are sucking billions from the economy that might otherwise be used for productive investment. And the public is getting plenty sore about it.

BY JONATHAN RAUCH

Though the disease is ancient, only recently have anatomists of the body politic identified and dissected it, partly because the visible symptoms are worsening. *Parasitemia economicus*—in plain English, the parasite economy.

It is a disease that has claimed many victims and has benefited only the lawyers, lobbyists and politicians who have flourished as the sickness spreads. The parasite economy has a peculiar ability to suck in resources and feed on its own growth. It absorbs not only financial capital but human capital as well. It sucked in, among many, many others, M. Michael LaPlaca.

Twenty years ago, he was the national sales manager of Hertz Corp. In the early 1970s he changed to practicing law. Not surprisingly, a lot of his work was for car-rental businesses.

Then came what was, for his clients, an alarming development. In 1989, with the support of some consumer advocates, a bill was introduced in Congress that said, "No rental car company shall . . . hold any authorized driver liable for any damage" to a rented car, except in a few specially defined cases such as drunken driving. If you drove your rental car into a tree, or if you left the keys in it and it got stolen, you couldn't be found liable, even if you were insured (which most people are). The rental company would eat the loss.

Such losses are less sustainable for small car-rental companies than for the industry giants, such as Hertz and Avis Inc. "What the bill does if it becomes law," LaPlaca said, "is to put enormous pressure on smaller companies to raise their prices." In New York state, where a similar law passed in 1988, dozens of little car-rental firms, with names like Ugly Duckling and No Problem Rent-a-Car, have gone bust. As a result, small rental companies bitterly oppose the measure currently known as HR 1293. Hertz and Avis strongly support it.

Until 1989, small and medium-sized car-rental businesses never had much of a presence in Washington, because Washington had never paid the industry much

attention. But things have changed. In May 1989, soon after the liability bill was introduced, LaPlaca organized the Car Rental Coalition to stop it. So far, LaPlaca estimates, the coalition and its member companies have spent a million dollars retaining five lobbying shops. That doesn't count time donated by hundreds of people in the car-rental business.

Set aside the legal niceties. The crucial economic point is that this million dollars produces nothing. Instead, it eats up existing wealth, which could otherwise have been used for productive investment. The same goes for money spent by the bill's advocates. Economists call this transfer-seeking.

Only one class of people will certainly come out ahead. Thanks to HR 1293, the lawyering, lobbying and politicking class is several million dollars richer. Another Washington lobby has been born, and another political action committee, too: LaPlaca's coalition authorized one in February. Like all PACs, it will invest in friendly politicians rather than in new factories.

As for Mike LaPlaca, the man who was a business executive 20 years ago now spends half his time lobbying. "I lived 52 years without ever having to petition the Congress on behalf of myself or a client," he said (he is now 54), "and in many ways, I wish I could go back to the 52nd year."

In effect, the bill, whether it passes or not, has created lobbying jobs. Moreover, once a lobby is organized, it usually stays around, either to defend against new raids by its competitors or to seek favors of its own. Feeding Washington is now a cost of doing business in the car-rental industry. Rental-car customers lose. K Street wins.

A lot of explanations have been advanced for America's disappointing productivity growth over the past 20 or so years, none of them wholly satisfactory. Recently, an emerging body of economic research has added another possibility to the list: parasites.

"Our economy is absolutely infested with transfer-seeking," Clemson Univer-

pesky real estate salesmen. If you don't defend yourself, parasites forcibly take your money.

In America, only a few classes of people have the ability to take your money if you don't fend them off. One, of course, is the criminal class. Fending off thieves costs us hundreds of billions of dollars a year. (In 1985 alone, about \$340 billion, economists Laband and John P. Sophocleus calculate. We spend almost \$10 billion a year just on locks.)

But you can invest in legal transfer-seeking, too—with one proviso. To get someone else's wealth without buying it, you must have the help of the law. To get the law's help, you need one of three kinds of people: politicians, lobbyists

ignoring the lawsuit. It had to fight back with lawyers of its own. Similarly, if a competitor starts to move legislation that costs you a lot of money, you'd be stupid not to hire a lobbyist. Mike LaPlaca was sucked into the parasite economy because it was attacking his clients. That's how it grows, even though society as a whole would be wealthier if it shrank.

Good help isn't cheap, of course. Lawyers can cost \$200 an hour, lobbyists \$5,000 a month and politicians whatever the market will bear. They extract fees (or political contributions) regardless of who wins or loses. Under the settlement in the Milli Vanilli case, 80,000 or so alert fans will get \$1 refunds on singles, \$2 on cassettes and \$3 on compact disks. That

clients' demand. And that is the real point: A system full of redistributive laws inherently creates opportunities for transfer-seeking. Businesses seek (or defend) tariffs, unions seek minimum-wage laws and laws against hiring permanent replacements for strikers, farmers seek subsidies, plaintiffs seek damages, postal workers seek bans on competition, car-rental companies seek liability legislation that hobbles their competitors, and so on, and on and on.

To blame the lawyers and lobbyists, in other words, is to blame the messenger. If the parasite economy grows, the implication is that the return on investing in it has improved relative to the return on investing in new factories, faster machines, better education. That seems to have happened, judging from the size of the parasite economy in Washington.

SIZE OF THE INFESTATION

Given the trillions in direct spending and indirect perks that slosh through Washington and all the state capitals year after year, the surprise for many years was how small the parasite economy was, not how large. The past two decades, however, have seen rapid growth in the transfer-seeking industry. Comprehensive figures don't seem to exist, but a lot of indicators point in the same direction:

- According to the Senate's Office of Public Records, the number of active lobbyists registered with the Senate (by no means the total of all who lobby in Washington) has increased from 3,065 in 1976, when the office's records begin, to 8,531 today. (See chart, p. 981.) At that rate, the number of lobbyists doubles about every 10 years.

- According to various editions of Columbia Books Inc.'s *Washington Representatives*, the number of people working in the capital to influence government rose from about 10,000 in 1982 to about 14,500 in 1991.

- According to data collected by Gale Research Inc. and cited by the American Society of Association Executives, the number of national associations rose from 4,900 in 1956 to 8,900 in 1965, 12,900 in 1975, and 23,000 by 1989. That's a doubling every 15 years.

- Of the extant associations, more and more have been sucked into Washington. According to Columbia Books, the percentage of trade and professional associations headquartered in Washington rose steadily from 19 per cent in 1971 to 32 per cent by 1990. In the Washington suburb of Fairfax County, Va., alone, *The Washington Post* reported in 1979, "the number of trade and professional groups has increased from 2 to 125 in the past decade."



Washington attorney M. Michael LaPlaca, organizer of the Car Rental Coalition. After 52 years without ever petitioning Congress, he now wishes he "could go back."

(who influence politicians) and lawyers (who can get a court judgment). These people have a strange characteristic: to fend off a lawyer or lobbyist, you need to hire another lawyer or lobbyist.

When Arista Records Inc. was sued for fraud on the ground that its pop duo Milli Vanilli didn't do their own singing, the company didn't have the option of

might make them feel a little better. But the lawyers will feel a lot better, because they come away with considerably more than \$3 each.

To say that lawyers and lobbyists richly benefit from transfer-seeking is not necessarily to say that they cause it. Some lawyers do opportunistically drum up lawsuits, but most are probably meeting



All these lobbyists and lawyers did not get into business with the sworn aim of bleeding the country dry. As with a bacillus or tapeworm, it's not that the parasite is evil; it's that it is just trying to get what it thinks it deserves.

(See chart, p. 981.) On March 12, the American Nurses Association moved its headquarters—and half a million pounds of office furniture and equipment—to L'Enfant Plaza, after 20 years in Kansas City, Mo. "We have nursing's agenda for health care reform," a spokeswoman said. Last July, the American Hospital Association moved its top officers to Washington, believing (a spokeswoman said) that they "should be closer to the action."

Whether the reform effort will lead to the passage of health care legislation remains to be seen. In any case, however, the parasite economy will grow.

THE INFESTATION'S COST

In 1980 alone, the number of new admissions to the U.S. bar exceeded the total number of lawyers in Japan. In America, about three-fourths of the people who take the bar exam pass it; in Japan, about 2 per cent. The Japanese believe one reason their economy grows faster than ours is that they invest more capital in research and development and less in suing each other. Are they right?

Professors who try to measure the cost of transfer-seeking come up with amounts ranging from about 3 per cent

• The number of lawyers in America has nearly tripled over the past three decades, from 260,000 in 1960 to about 760,000 today. More significantly, the number of lawyers per million Americans stayed about constant (at 1,200) for the 100 years ending in 1970, but then more than doubled (to 3,100) by 1988. (See chart, p. 981.)

• Though the amount by which litigation has grown in recent decades is disputed, the trend is not. "The number of federal lawsuits has nearly tripled in the past three decades, rising from less than 90,000 in 1960 to more than 250,000 in 1990," writes Peter Carlson in *The Washington Post Magazine*.

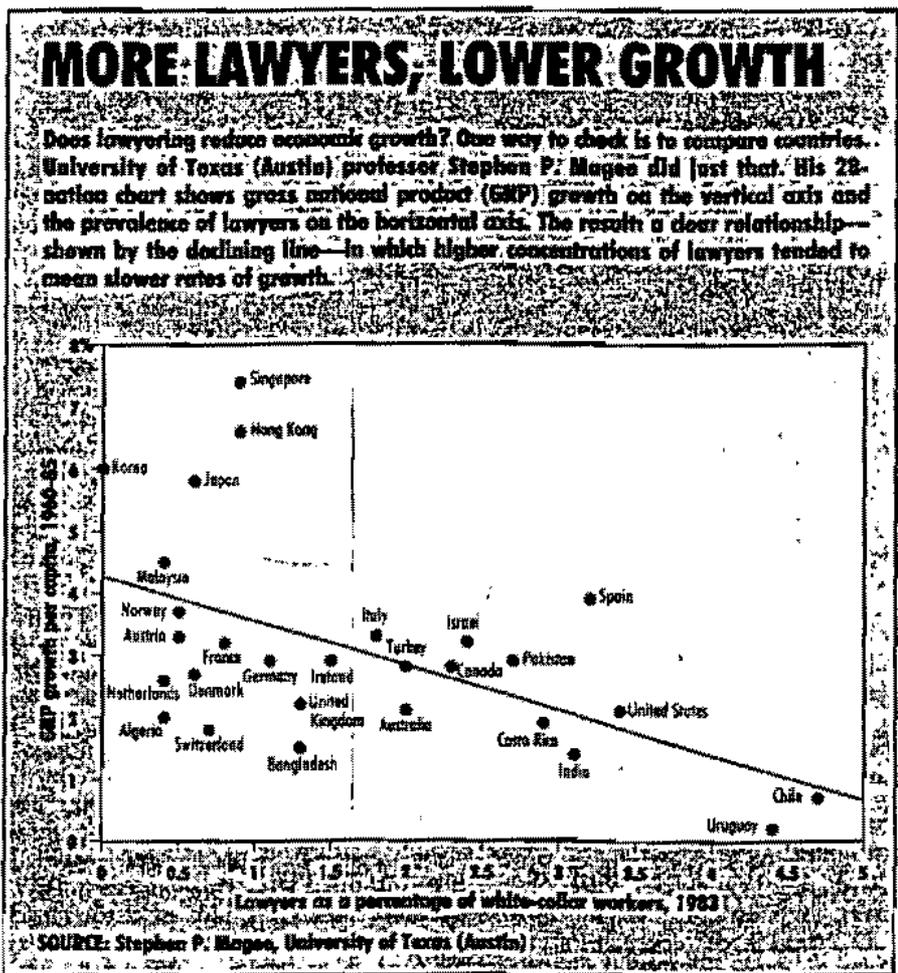
• According to the District of Columbia Employment Services Department, just from 1988 (when the count begins) to 1991, the number of people employed in legal services in the Washington metropolitan area grew by 10 per cent, half again as fast as the growth in the service sector as a whole. It seems reasonable to guess that this is not a three-year anomaly.

It also seems reasonable to believe that all these lobbyists and lawyers did not get into business with the sworn aim of bleeding the American economy dry. To the contrary: Usually, the goals are noble and the intentions good. A further fascinating peculiarity of the parasite economy is that it behaves the same way regardless of whether the parasites are cynical opportunists or idealistic seekers after justice. As with a bacillus or a tapeworm, it's not that the parasite is evil; it's that it is just trying to get what it thinks it deserves.

The drive to reform health care, for example, is motivated by concern for the strained middle class and the uninsured poor. But the result will inevitably be a boon to the transfer-seeking economy. The health insurance and medical industries have already begun a multimillion-

dollar lobbying campaign. A Democrat who recently left a Capitol Hill staff job to set up shop lobbying is relying heavily on health care business. "The stakes are just obviously there," he said. "I can't work in the Administration, and you've got to make a living."

Health care resources are steadily sucked into the whirlpool. The National Health Council Inc. counted 117 health groups represented or headquartered in Washington in 1979, and 741 last year.



of gross national product (GNP) a year to almost 50 per cent, according to Robert D. Tollison, an economist who directs George Mason University's Center for the Study of Public Choice. Most estimates cluster in the range of 5-12 per cent, however, or about \$300 billion-\$700 billion this year.

"Even the smallest number, 3 per cent, is a lot of wealth to be pissing away, if you can help it," Tollison said. For instance, 3 per cent of GNP, if it was available for investment, would roughly double the notoriously small U.S. pool of net national savings, and it would increase by a fourth the amount of gross private investment.

A number of indirect estimates suggest that the losses are well above 3 per cent. A particularly popular method among economists—and particularly unpopular among lawyers—is the lawyer regression-analysis. The idea here is that because lawyers are fairly easy to count, and because they account for many lobbyists and all lawyers, they make a good proxy for the size of a nation's noncriminal parasite class.

One such analysis, by economist Stephen P. Magee of the University of

more than \$1 billion per lawyer in Congress. "Basically," he said in an interview, "they're just generating business for themselves."

Every economy needs some lawyers; the question is, how many is too much? Magee's work finds that the first two-thirds or so of U.S. lawyers contribute to growth, but the extra third considerably reduces it. Each additional lawyer, he finds, reduces U.S. GNP by about \$2.5 million a year.

Other lawyer regressions have independently come out in pretty much the same place. Economist William A. Niskanen Jr. of the Cato Institute in Washington also came up with \$2.5 million per additional lawyer. Laband and Sophocleus found that each lawyer costs \$2.6 million in forgone GNP. Moreover, they compared states and found that a higher density of lawyers was associated with "significantly lower" growth in per capita income.

Such studies don't, unfortunately, tell whether lawyers are the cause of costly transfer-seeking or merely a symptom. They do tend to confirm, however, that a lot of potentially productive capital is spent in court and on Capitol Hill. A lot

are. As government grows, parasites eat better.

POLITICAL BACKLASH

A dog with fleas or ticks will scratch and bite to get rid of them, often to the point of wounding itself. Monkeys with worms will search desperately for medicinal plants. The body politic appears to behave analogously, especially recently.

Among the anti-parasite spasms is former California Gov. Brown's unexpectedly tenacious campaign for the Democratic presidential nomination. Brown rages that "only the rich hire lobbyists . . . to ensure that the system favors themselves at the expense of everyone else." His attacks on big-dollar campaign contributions focus on "the people who always figure out a way to prosper even as more Americans suffer." He touts his flat-tax proposal as an assault on "the crooked Washington fund-raising machine that routinely auctions off loopholes to the highest bidder."

More and more of the public seem to have latched on to the fact that the parasite economy thrives on political and legal activity, whether or not that activity solves anybody's problems. Brown's rhetoric taps the public's anger by attacking the parasite class. His flat-tax plan is widely dismissed as being bad for the poor. But a flat tax would also be bad for parasites who make a living by lobbying and lawyering today's Byzantine tax code. Which is Brown's point.

It was also, to a large extent, the point of the milestone 1986 Tax Reform Act, arguably the most sophisticated anti-parasite medicine of our time. Conservatives agreed to close tax loopholes that heavily benefited the wealthy; liberals agreed to bring down the high tax rates that made the wealthy so desperate to get loopholes. The idea was that lower rates would make loophole-lobbying and tax-finagling a less lucrative investment. The country as a whole would gain, and parasites would lose.

To a large extent, it worked; in the years just after tax reform, loophole lobbying seems to have diminished. That may help explain the sharp drop in registered lobbyists in 1988. The trouble is that the deal is already falling apart. President Bush wants a host of new tax breaks to stimulate the economy, and liberals in Congress want to raise rates. The result would be to raise the profitability of tax finagling, thus putting retired tax lawyers and lobbyists back in business.

More recently, in the 1990 budget agreement, Congress tried pitting parasites against each other: It put caps on spending, so as to force transfer-seekers to feed off each other's programs. Given



More and more of the public seem to have latched on to the fact that the parasite economy thrives on political and legal activity, whether or not that activity solves anybody's problems.

Texas (Austin), plotted the prevalence of lawyers against the economic growth for 28 countries. (See chart, p. 983.) The Magee Effect is pretty clear: Having more lawyers is associated with lower growth, a result consistent with the hypothesis that where there are a lot of lawyers, people are devoting a higher share of resources to transfer-seeking.

The Magee Corollary is, if anything, even stronger: In an 18-nation regression analysis, Magee found that the more lawyers a country has in its parliament, the lower its economic growth tends to be. The U.S. House is 42 per cent lawyers; the 18-country average for lower houses of parliament is 15 per cent. The difference, Magee calculates, reduced the American GNP by \$220 billion in 1990—

is spent, too, on parasite-related seminars, databases and magazines such as this one, the better to "keep track of the political influences that affect your bottom line—before it's too late," as a recent promotional mailing for *State Legislatures* magazine put it.

Transfer-seeking even acts as a hidden subsidy for golf courses and fancy restaurants—favorite business venues for lobbyists. When Laband and several colleagues compared state capitals with similar noncapital cities (and controlled for extraneous factors), they found that the capitals had—you guessed it—a higher proportion of golf courses and sit-down restaurants. Moreover, the bigger the state government's share of state income, the more fancy restaurants there



The public demands governmental machinery that redistributes wealth or directs how it must be spent; and yet it rages at the parasites who work the machinery for a living—and force others to follow suit.

the growth in the deficit, how well this worked is open to question. Also open to question is the effectiveness of yet another anti-parasite proposal, term limits. The idea here is that denying politicians a professional career in politics might make them less inclined to pander to favor-seekers.

Then there's the medicine beloved of Vice President Dan Quayle and his Competitiveness Council: litigation reform. (See *NJ*, 11/23/91, p. 2844.) The Administration wants to make life more difficult for plaintiffs' lawyers, thus deterring opportunistic lawsuits. For instance, the Administration proposes limiting punitive damages and requiring that the loser pay attorneys' fees, as is done in most other countries.

Consumer groups and lawyers are outraged, saying that such reforms would deter reasonable claims. Most controversial of all is the "economic rights" movement, which wants to persuade the courts that regulatory transfer-seeking is often an unconstitutional violation of property rights. This is popular with conservative legal scholars and activists, but other supporters are few. (See *NJ*, 11/30/91, p. 2940.)

And that, finally, is the problem with attempts to cure parasites by making procedural reforms: The process isn't the main problem. In America, the professional parasites are serving an enthusiastic clientele—the American public.

The New York City activist whose barrage of lawsuits recently stopped the 57-story Columbus Center project will cost the city's economy a sizable sum. To the people who support him, however, he is just using the tools available to do what's right. One person's parasite is another's noble reformer.

This is why lawyers, lobbyists, politicians and political activists are infuriated by the notion that transfer-seeking produces nothing. On the contrary, they say:

It produces justice. Many Americans agree.

Consider the 1990 Americans With Disabilities Act. It is a compassionate bill intended to broaden handicapped people's access to all kinds of buildings. But most laws, like power switches, are binary instruments: They say "you always must" or "you never may," not "you usually should." Inevitably, in an attempt to adapt binary law to an infinitely complex world, Congress wrote the disabilities statute vaguely, requiring "readily achievable" measures and "reasonable accommodations." Just thrashing out what the law requires, therefore, will keep a brigade of lawyers in clover.

Responding to those lawyers' lawsuits and petitions will keep another brigade of lawyers busy. "Most major law firms," *The Washington Post* reported earlier this year, "are well aware that [the disabilities act] will open up a vast new area of discrimination law and, potentially, a lot of business." Already, the paper said, "many, many" law firms are holding seminars on the act, as are disabili-

ty-rights groups and businesses ("searching for answers to such questions, how does a ski resort get a paraplegic skier up a mountain?").

Viewed one way, the disabilities act is a civil rights measure expanding justice for the handicapped. Viewed another way, it's a public works jobs program for lawyers. Which view is correct? Both.

The public demands governmental machinery that redistributes wealth or directs how it must be spent, and yet the same public rages at the parasites who work the machinery for a living—and who force others to follow suit. But the public can't have the one without the other. Ultimately, what feeds the parasite economy is not lawyers and lobbyists but laws, all of which pass with the blessing of some share of the public.

That is why a popular means to cope with unpopular parasites has yet to be found. "There really is no good answer to what you do to break this gridlock," Tollison said. Until the level of anti-parasite rage exceeds voters' appetite for benefits and favors plucked from other people's pockets, ever more parasites will dig into their expensive meals at fancy restaurants, wishing each other *bon appétit*. ■



George Mason University economist Robert D. Tollison
Three per cent of GNP "is a lot of wealth to be pissing away."

22642
People of Influence

Push is on in Congress to revamp lobbying disclosure laws

BY RHONDA McMILLION

Faced with increasing public concerns about how Congress functions and the extent to which legislation is driven by outside interests, federal legislators are considering measures to overhaul lobbying disclosure laws.

Sen. Carl Levin, the Michigan Democrat who chairs the Senate Governmental Affairs Subcommittee



Thomas M. Susman: Changing FARA could "needlessly burden the practice of law."

on Oversight of Government Management, has introduced S. 2279 as his proposed solution to the "deep flaws in each of the lobbying disclosure laws on the books today."

Drawing from a series of hearings held by the subcommittee last year, Levin is proposing the consolidation of four existing laws: the Federal Regulation of Lobbying Act of 1946; provisions of the Foreign Agents Registration Act of 1938 (FARA) that apply to private persons and companies; disclosure requirements of the Byrd Amendment regarding awards of contracts, grants and loans; and Department of Housing and Urban Development disclosure statutes.

Through this consolidation, Levin is seeking registration of all "professional lobbyists," defined in his bill as those who are paid to make lobbying contacts with either the legislative or the executive branch of the federal government. The proposal would not cover individuals whose lobbying activities are only incidental to and not a significant part of their jobs.

Levin's bill would more clearly

Rhonda McMillion is editor of Washington Letter, a monthly publication of the ABA Office of Governmental Affairs.

define "lobbying contacts," consolidate filing requirements into a single form and registration by organizations whose employees lobby, and simplify reporting of receipts and expenditures. The Office of Government Ethics would administer the new lobbying disclosure rules created under the bill.

The ABA has not adopted policy on overall consolidation and simplification of the federal lobbying disclosure statutes, but the association is very concerned about proposals in the Levin bill to change requirements for lawyers under FARA.

The act requires any person who becomes an "agent of a foreign principal" to register certain information with the U.S. attorney general, including the name and address of every foreign principal the registrant represents, the nature of its business, and information on its ownership and control.

Lawyers are currently excluded from registering under FARA when they "engage or agree to engage in the legal representation of a disclosed foreign principal before any court of law or any agency of the Government of the United States."

Testifying in March before Levin's subcommittee, Thomas M. Susman of Washington, D.C., chair of the ABA Section of Administrative Law and Regulatory Practice, said Congress should not expand cover-

age of FARA in ways that would "needlessly burden the practice of law and undermine fulfillment of lawyers' professional responsibilities."

The ABA is concerned that eliminating the FARA exclusion would add a vast and unnecessary registration burden on lawyers who represent foreign interests, raise fundamental problems about the right to counsel and the attorney-client privilege for foreign persons or foreign-owned entities, violate existing U.S. treaty obligations, and invite retaliatory legislation by other nations against U.S. interests abroad.

To address these concerns, S. 2279 would exclude from the definition of "lobbying contact" any "communications with regard to ongoing judicial proceedings, criminal law enforcement proceedings, and any other proceedings that are required by statute to be conducted on a confidential basis, provided that such communications are limited to matters that are subject to the proceedings."

The bill also would exclude communications made in certain agency adjudicatory and rule-making proceedings, and communications with certain executive branch officials that involve compliance and enforcement.

Nevertheless, Susman said, many areas of legal work that involve routine representation before federal agencies would still be subject to disclosure.

In addition to Susman's testimony, the ABA Section of Antitrust Law submitted an analysis of the adverse effects that S. 2279 could have on the representation of clients.

Unlike the Senate bill, a measure submitted in the House of Representatives deals only with FARA, H.R. 3597, sponsored by Rep. Barney Frank, D-Mass., and approved last October by his Judiciary Subcommittee on Administrative Law and Governmental Relations, would retain FARA as a separate statute. However, the bill would limit FARA's attorney exemption to those representing a disclosed foreign principal before any court of law or before the U.S. Patent and Trademark Office.

H.R. 3597 is pending before the full House Judiciary Committee, while the Senate subcommittee hopes to schedule markup of its bill this summer. However, enactment of legislation is not likely this year. ■

ON THE HILL
RECENT ABA TESTIMONY

▶ Thomas M. Susman of Washington, D.C., chair of the Section of Administrative Law and Regulatory Practice, urged reform of the federal government's security clearance process during testimony in March before the House Government Operations Subcommittee on Legislation and National Security.

▶ Ronald E. Mallen of San Francisco, a member of the Special Committee on Medical Professional Liability, testified in March before the House Government Operations Committee on proposals to reform the medical professional liability system.

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**UNITED WE
STAND**

**HOW WE CAN TAKE
BACK OUR COUNTRY**

**ROSS
PERROT**

HYPERION
NEW YORK

UNITED WE STAND

who left it to us. We were to do as they did and pass this nation on to our children in better shape than they left it to us.

Who among us in good conscience is willing now to say that this solemn charge has been fulfilled? Which ones of us loves their country or children or grandchildren so little that they would leave behind an America weaker or sicker than the one they inherited? Who among us can look at these facts and turn away with a shrug?

These are not simple problems that can be solved with a single vote on Election Day. One person in one office will not restore excellence to America.

There is only one person in the entire world who can with character, devotion, hard work, and sacrifice create an America stronger and healthier than it is today.

Go back and look in that mirror again.

CHAPTER TWO

An America that Reforms Its Politics

Our political system has lost its moorings. It no longer rises to meet new challenges.

It seems designed to avoid solving problems.

The first words of the Constitution are "We, the people." We created the Constitution. We created Congress. It exists for us, not the other way around. We hire and pay for the bureaucracy. *They all work for us.*

Before we can hope to face up to our problems, we have to restore the intent and meaning of the Constitution we created. We cannot repair our economic engine, retool our economy to be competitive in a new age, and put ourselves on a solid footing for the future unless we take back control of our government that has been taken from us.

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The first and most important action we can take as a people is to treat our elections seriously. Candidates for public office must be required to lay out their proposed solutions to the problems that confront us. They avoid this like the plague. They'll raise false issues, appeal to the voters' self-interests, or sling mud—anything to avoid facing the tough issues.

The Savings & Loan crisis is a case in point. In 1984, the administration and Congress believed that the S & L crisis was a \$20- to \$30-billion dollar problem. The special interests mobilized. The S & L operators flooded Washington with lobbyists, campaign contributions, PAC money, and free airplane trips to fancy resorts. As a result, the issue was swept under the rug. It didn't reappear on the screen during the 1988 elections. The day after the 1988 election, our Republican President and Democratic Congress suddenly discovered we had a \$400- to \$500-billion S & L crisis that could no longer be ignored.

In 1990 we were told by Washington that the deficit for the next five years would be \$547 billion. A year later we were told there was a slight mistake. The five-year deficit would total \$1 trillion. As usual, nobody wanted to talk about it.

Do not allow any candidate in this election to ignore our deficit. When Governor Clinton talks about his new programs, ask him where the money is coming from. When President Bush talks about finishing the job he started, ask him when he's going to start on the job of getting this country back on track. If you will hold all the candidates accountable, then we'll be on the way to getting this problem fixed. You will have done your part no matter for whom you vote.

AN AMERICA THAT REFORMS ITS POLITICS

After the election the real work will begin. The men and women who are chosen by the people to go to Washington in 1992 should pledge themselves to restore the people's control over our institutions. That will mean irritating their powerful friends and big donors. It will also mean shutting the revolving door. It will mean restoring the intent of the Constitution.

Start at the Top

Before we can hope to eliminate our deficit, we have to overhaul the political system that created it. Our Founders built a beautiful ship of state, but the barnacles have latched on and the hull has rusted. It's time for a scrubdown from top to bottom.

It's not just a matter of bringing in new people. It's not just a matter of replacing a Republican President with a Democrat, or a Democratic Congress with a Republican one. To throw the rascals out is an impulse as American as apple pie, but it alone won't do the job.

The wave of new members of Congress who were elected in 1974 as reformers in the wake of the Watergate scandal were as bright and sincere as Congress has ever seen. Eighteen years later those who remain in office are as encrusted in the system as the people they replaced. They enjoy the same perks, PAC payouts, bounced checks, fawning staffs, and personal exemptions from the laws they pass.

Take any good, decent citizen and put him in a limousine, hold the red lights for him, give him a private jet for personal use, supply him with free tickets to any place he wants to go, and he'll lose touch with reality

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in a hurry. If we replace every person in Washington tomorrow but keep the present system intact, in a few weeks the new people will be just like the old people.

The British aristocracy we drove out in our Revolution has been replaced with our own version: a political nobility that is immune to the people's will. They have created through our campaign and lobbying laws a series of incentives that corrupt the intent of the Constitution.

It's time to make a few changes. Specifically, we need to insist on a sweeping package of reforms for our political system:

- Restrict campaign contributions to \$1,000—period. No more "soft money" contributions of up to \$100,000 from corporate interests, labor unions, and rich people. No more \$8-million extravaganzas where the dinner seating is determined by how much money you gave to the President's campaign. Think of it. This is the presidency of the United States. This is the office George Washington once held. We will no longer allow it to be demeaned and cheapened by pandering to wealthy donors from all over the world.

- Curb political action committees. In 1974 PACs contributed nearly \$13 million to congressional candidates. About that time lobbyists noticed that congressmen returned their phone calls if their PAC had given money. In 1990, PACs contributed over \$150 million, an eleven-fold jump. Who are we trying to kid here? We know what they're out to buy. It's time for the owners of the country to declare that the United States Congress and the White House are not for sale.

- Give the Federal Election Commission real teeth.

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Right now, the President appoints six members. By tradition there are three Republicans and three Democrats. Guess how many tie votes there are. You can also guess at the amount of winking and nodding that goes on around the table. No wonder it's a paper tiger. It must be revamped. Let's have five members appointed at staggered terms. Give it criminal prosecution powers to enforce our election laws.

- Change the way we hold elections. First, shorten the campaign season. Five months is long enough for anyone to make a case. Hold elections on both Saturday and Sunday so working people can go to the polls. Release no information until all polls are closed. Since the airwaves belong to the public, require equal free time for candidates for federal office. Joined with easier voter registration, these measures will improve our elections and stimulate more voters to go to the polls.

- Eliminate the electoral college. There's no reason to filter the people's vote. Why shouldn't we let the people directly choose their President and Vice President? Whoever gets the most votes of the entire country should be the President.

Public Service Is a Public Trust

Reforming our campaign laws is only the beginning. We have to restore the idea that public service is a sacred trust. Being an elected, appointed, or career public servant is a noble calling. Some of our elected and appointed officials see their terms of office as interim steps to high-paying lobbying jobs. We need to

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make it abundantly clear that anyone who enters the federal government comes to serve, not to cash in.

- Make it a criminal offense for any foreign government or individual or company to attempt to influence American laws or policies by means of direct or indirect campaign contributions. Tighten laws requiring full and prompt disclosure.

- Rewrite the foreign agent registration and lobbying laws to close the loopholes. Today there is not even a clear definition of what lobbying is. For example, if you don't want to be accused of hiring a lobbyist, you hire a law firm to accomplish the same task.

- Forbid any former President, Vice President, cabinet officer, agency director, Federal Reserve governor, commission director, White House staffer, trade negotiator, member of the Senate or House from accepting one penny for any reason from any foreign interest—ever. Anybody who holds one of these high offices does so because the American people gave them their trust. That trust should be honored.

- Forbid anyone who has held any position in the federal government to be a paid lobbyist for any domestic interest for five years after leaving government. Slam the revolving door shut.

- Draft a tough ethics code for private citizens who serve as consultants and advisers to the federal government. The federal government contracts with these private citizens, most of whom used to work for the government, to do the work that federal employees could do. These people usually get paid much more than workers on the federal payroll. Establish stiff criminal penalties for any abuse or fraud.

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- Forbid anybody on the payroll of a foreign government or foreign interest from serving in any capacity, volunteer or paid, in a presidential or congressional campaign. Right now, foreign lobbyists play key roles in both the Democratic and Republican campaigns. That is inexcusable.

Clean Up the Executive Branch

At a time when we're asking the American people to make sacrifices for their country, why do we allow our political elites to live like pampered royalty? No wonder the American people have grown disgusted with their government; we need to take severe steps to restore that sacred trust.

- Move immediately to sell off the 111 civilian aircraft maintained for discretionary use by federal government executives. Conduct a case by case review of the remaining 1,100 civilian planes owned by the federal government that are allotted to different legislative and executive agencies. Keep the few that are essential.

- Eliminate the 89th wing of the air force. It exists solely to transport top officials around the country. The Cold War is over. The Vice President doesn't need an air force jet to go play golf. I don't understand how a chief of staff to the President could even consider using a government jet to take him to the dentist.

People might say, "Aren't you being a little hard? These people have giant responsibilities while running huge departments of government. Most corporate exec-

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utives never run anything so large and complex, and they all have corporate jets.”

These people work for *us*. They are our employees. Unless we take steps like this, they will continue to believe we work for them.

We need to capture their hearts and minds. No matter how high their office or how lofty their titles, members of the next administration should fly commercially. They should go out to the airport, get in line, lose their baggage, eat a bad meal, and stay in touch with how normal people live. Then, if there's a recession in this country, it won't take three months for them to figure it out. The person in the seat next to them will let them know in no uncertain terms.

- Have the cabinet members spend most of their time outside Washington answering tough questions and solving real problems. What good can the Secretary of Education do behind a desk while our schools are falling apart? How can the Secretary of Health and Human Services tackle the massive bureaucratic problems of this system without really understanding the people who encounter them?

- Encourage federal employees to treat citizens as owners. When *any* owner of this country walks into a federal office, that person should be treated with the courtesy and respect that an owner should receive. We need to restore pride in the federal service so that our employees will smile every day at the office and be polite.

- Reduce civil service restrictions and allow more discretion so that federal employees can be more responsive. The word “bureaucrat” conjures up some bloodless, uncaring robot with a rubber stamp. In

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truth, I've found almost every federal employee I've encountered to be a dedicated, intelligent professional. We need to lift restrictions that keep our employees from doing their best jobs. We need fewer employees and more rewards.

We need to give our officers the tools to do the job. Right now, for example, the Secretary of Housing and Urban Development presides over a department of 13,000 people. By legislative statute he can only hire or fire 105 of them. It's not surprising that public housing is a mess.

- Drastically cut the White House and executive branch staffs. John F. Kennedy had a White House staff of 600. George Bush has 1,850. In 1960, Congress had a total staff of 5,610. Today it has a staff of over 20,000. What do all these people do? From my experience, their main mission is to insulate executive officials and members of Congress from you, the owners. Their secondary mission is to make sure their boss gets reelected. Congress and the executive branch have grown fat, complacent, unwieldy, and unresponsive. The White House and Congress could easily reduce their staffs by 30 percent.

Never forget that staffs accomplish very little. All of the action is in the field.

Look at the Agriculture Department to see how much the bureaucracy in the executive branch has grown. In 1948, farms employed 20 percent of our population, and the Agriculture Department had 67,000 employees. It was considered a huge bureaucracy. Today only 2 percent of our people work on farms, but the Agriculture Department has swollen to 118,000 employees. Instead of creating a new cabinet office every time

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a special interest group wants more attention, we should overhaul and permanently reduce departments of government so that we can apply our resources where they will do more good for our people. We don't need staffers in Washington to hold a cabinet officer's briefcase. We need hands-on problem solvers out in the field where they will do some good.

Restore Confidence in Congress

Congress needs to take a good, hard look at itself as an institution. It has been through trying times. It has in large measure lost the respect and confidence of the American people. We cannot afford to let this go on. A representative democracy depends on the essential trust the people place in their institutions. We should urge Congress to regain that trust by taking four measures immediately:

- Slash the current \$2.8 billion budget that supports Congress, its agencies, gymnasiums, staffs, barber shops, free mail, and all the other perks that have been built up over the years. Cut congressional staffs by 30 percent and other perks by 40 percent. Congress could apply nearly \$1 billion toward cutting the deficit. Suddenly the people, the financial markets, our allies, and our competitors would realize that the United States is serious about facing its problems. Congress would rise to new heights of respect in everyone's eyes by becoming more productive.

- Reform the retirement system. Up to 93 members of Congress are eligible for lifetime pension benefits ex-

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ceeding \$2 million apiece. This is *much* higher than their constituents' pensions! The people consider such excesses a breach of trust.

- Reorganize the legislative system. As many as fifteen committees and subcommittees must be involved for any significant piece of legislation to pass the House. Negotiations among all these committees and subcommittees become so complex that loopholes and special favors get enacted with only a handful of people knowing about it. Congress needs to streamline this process so that they and the people can follow the progress, or lack of it, on bills before the House and Senate. Members of Congress should be acutely aware that the people run this country, not the lobbyists in the hallways and offices.

- Turn in excess campaign funds to the Treasury. Some congressmen have racked up campaign war chests which hold many millions of dollars. Every two years, the PACs pour more money in just to stay in their good graces. Clean it up. The owners want that money back.

Restore a Sense of Ownership to Our People

Owners have responsibilities, too. If you have guests in your house, and you allow them to pocket the loose change on the dresser, you have nobody to blame but yourself when you discover they've stolen your television set. The most honest people in the world will be corrupted by a pattern of winking at minor misdemeanors. By the time they get to the television set they've lost all sense of proportion. They've begun to believe

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that they deserve it and that nobody will mind. If that's the psychology at work with people in your own home, magnify it a million times to understand the problem that festers in Washington.

Again, if you want to know who's to blame for our political system that encourages and rewards people who cash in on public service, look in the mirror.

We have abdicated our responsibilities as owners. Our political system can only be repaired if we take charge of it.

- First, all of us must vote. We need legislation to make voter registration more accessible. How can anyone disagree? We should change the voting time from Tuesday to both Saturday and Sunday.

- Second, we must stay informed. I've suggested we have an interactive "Electronic Town Hall" so that as a nation we can lay out the issues, review the choices, argue over the merits and demerits, and reach a consensus. This has aroused a lot of controversy, but why? Most of us carry on a quiet debate with our leaders every morning while we're reading the newspapers. I remember that FDR's "Fireside Chats" united us as a country and set a national direction. President Reagan used the same medium to explain his ideas. The only difference between the Fireside Chat and the Electronic Town Hall is that the first was one-way, the only radio technology available at the time, and the second is two-way, which we can do today. Instead of passively listening to the radio or watching members of the political elite debate on television, our citizens will be able to engage their representatives and appointed officials in a direct conversation. This may be a conversation

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our political elites would like to avoid, and I can understand why. That doesn't mean they should be able to avoid it. For our system to work, our elected officials must listen to the owners (us) we, the people.

Eternal vigilance is the price of liberty, and citizen participation is the price of responsible representative democracy. This is what our Founders intended and what we must restore.

Fix the System First

We must repair the political system. If we don't, the actions we take to repair our economic engine will be just another series of temporary fixes. We have to change the incentives if we expect our political leaders to hold the course in setting this country right. Let's tackle this like our grandparents would have. Let's fix it. Then let's keep it fixed. Do it as an act of love for our grandparents and parents who gave us this country, and also for our children and grandchildren. They deserve the very best government we can give them.

LOBBIES

The Washington Lobby: A Continuing Effort To Influence Government Policy

Of all the pressures on Congress, none has received such widespread publicity and yet is so dimly understood as the role of Washington-based lobbyists and the groups they represent. The popular image of a rotund agent for special interests buying up members' votes is a vast oversimplification. The role of today's lobbyist is far more subtle, his or her techniques more refined.

Lobbyists and lobby groups have played an increasingly active part in the modern legislative process. The corps of Washington lobbyists has grown steadily since the New Deal, but especially since the early 1970s. The growth in the number of lobbyists has paralleled the growth in federal spending and the expansion of federal authority into new areas. The federal government has become a tremendous force in the life of the nation, and the number of fields in which changes in federal policy may spell success or failure for special interest groups has been greatly enlarged.

With the drive to reduce federal spending that gained impetus during the Reagan administration, the competition for the dwindling supply of federal dollars has become more intense. Lobbyists have to compete with one another to safeguard traditional spending in their area of interest or to gain some portion of the smaller federal pool of funds. Thus commercial and industrial interests, labor unions, ethnic and racial groups, professional organizations, citizen groups and representatives of foreign interests — all from time to time and some continuously — have sought by one method or another to exert pressure on Congress to attain their legislative goals.

The pressure usually has selfish aims — to assert rights or to win a special privilege or financial benefit for the group exerting it. But in other cases the objective may be disinterested — to achieve an ideological goal or to further a group's particular conception of the national interest.

Lobbying: Pros and Cons

It is widely recognized that pressure groups, whether operating through general campaigns designed to sway public opinion or through direct contacts with members of Congress, perform some important and indispensable functions. Such functions include helping to inform both Congress and the public about problems and issues, stimulating public debate, opening a path to Congress for the wronged and needy, and making known to Congress the practical aspects of proposed legislation — whom it would help, whom it would hurt, who is for it and who against it. The spinoff from this process is considerable technical information produced by research on legislative proposals.

Against benefits to the public that result from pressure activities, critics point to certain serious liabilities. The most important is that in pursuing their own objectives, the pressure groups are apt to lead Congress into decisions that benefit the pressure group but do not necessarily serve other parts of the public or the national interest. A group's power to influence legislation often is based less on its arguments than on the size of its membership, the amount of financial and manpower resources it can commit to a legislative pressure campaign and the astuteness of its representatives.

Origins of Lobbying

Representatives of special interests haunted the environs of the First Continental Congress, but the word "lobby" was not recorded until 1808 when it appeared in the annals of the 10th Congress. By 1829, the term "lobby-agents" was applied to favor-seekers at the state capitol in Albany, N.Y. By 1832, it had been shortened to "lobbyist" and was in wide use at the U.S. Capitol.

Although the term had not yet been coined, the right to "lobby" was made implicit by the First Amendment to the Constitution, which provided that "Congress shall make no law . . . abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the Government for redress of grievances." Among the Founding Fathers, only James Madison expressed concern over the dangers posed by pressure groups. In *The Federalist* (No. 10), Madison warned against the self-serving activities of the "factions." "Among the numerous advantages promised by a well-constructed union," he wrote, "none deserves to be more accurately developed than its tendency to break and control the violence of faction. . . . By a faction, I understand a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community." A strong federal government, Madison concluded, was the only effective counterbalance to the influence of such "factions."

Sources of Pressure

Traditionally, pressure groups in the United States have been composed of similar economic or social interests. Classic examples of such traditional lobbies are those representing farmers, business executives and labor union members. Each of these groups has interests that usually draw the support of a large majority of its members.

have joined other more traditional conservative groups, including the Conservative Caucus, in legislative fights against abortion, homosexual rights, and the Equal Rights Amendment, and in favor of budget-balancing, an anti-communist foreign policy and heavier defense spending. This loose coalition of conservative groups has come to be called The New Right.

Pressure Methods

A Washington lobby group is out to get results. It pursues them wherever results are likely to be found in the governmental process. Many organizations, directed by professionals in the art of government, focus major efforts at key points where decisions are made and policy interpreted into action. If a group loses a round in Congress, it may continue the fight in the agency charged with implementation of the legislation or in the courts. A year or two later, it may resume the struggle in Congress. This process can continue indefinitely.

Whether they focus on Congress or the executive branch, lobbyists use the methods they deem appropriate for the circumstances within the limits of their resources, group policies and ethical outlook.

Bribery

Bribery of members of Congress was a well-documented practice in the 19th and early 20th centuries.

When Congress in the 1830s became embroiled in President Andrew Jackson's battle with the Bank of the United States, it was disclosed that Daniel Webster, then a senator from Massachusetts, enjoyed a retainer from the bank. On Dec. 21, 1833, Webster complained to bank President Nicholas Biddle: "My retainer has not been renewed or refreshed as usual. If it is wished that my relation to the Bank should be continued, it may be well to send me the usual retainers."

Col. Martin M. Mulhall, a lobbyist for the National Association of Manufacturers (NAM), stated publicly in 1913 that he had bribed members of Congress for legislative favors, had paid the chief House page \$50 a month for inside information from the cloakrooms, and had influenced House leaders to place members friendly to the NAM on House committees and subcommittees. In a subsequent congressional probe, six members were exonerated but one was censured and resigned.

After World War II, direct vote-buying by lobbyists was replaced, for the most part, by more sophisticated techniques. Indirect, grass-roots pressures and political support became more powerful tools of persuasion. But bribery did not disappear altogether and the Abscam scandal that surfaced in 1980 demonstrated its persistence. The government undercover investigation of political corruption — known as "Abscam" — in which agents of the Federal Bureau of Investigation, posing as businessmen or wealthy Arabs, attempted to bribe members of Congress and other elected officials to help Arabs obtain U.S. residency, get federal grants and arrange real estate deals, resulted in the convictions of seven members of Congress — six representatives and one senator. The charges ranged from bribery to conspiracy.

Campaign Support

Campaign contributions to members of Congress serve two important functions for lobbying organizations. Political

support may not only induce a congressman to back the pressure group's legislative interests in Congress but also helps assure that members friendly to the group's goals will remain in office.

While corporations have been barred since 1907, and labor unions since 1943, from making direct contributions to campaigns for federal office, contributors have found numerous ways to get around the restrictions. Although unions are prohibited from using dues money to assist political candidates in federal elections, it is legal for them to set up separate political arms, such as the AFL-CIO's Committee on Political Education (COPE), which collect voluntary contributions from union members and their families and use the funds for political expenditures calculated to benefit senators and representatives friendly to labor. It is also legal for unions to endorse political candidates.

Similarly, while corporations are prohibited from making direct campaign contributions, they can set up corporate political action committees (PACs) to seek contributions from stockholders and executive and administrative personnel and their families. Corporate PACs have proliferated in recent years and their influences rival, if not surpass, those of labor.

Twice a year union and corporate political action committees may seek anonymous contributions by mail from all employees, not just those to which they are initially restricted.

The same general resources for political support and opposition are available to members of citizens' groups and, indeed, to a wide range of organizations seeking to exert political pressure on members of Congress.

In approaching the typical member, a pressure group has no need to tell the member outright that future political support or opposition, and perhaps future political expenditures and the voluntary campaign efforts of its members, depend on how the member votes on a particular bill or whether, over a long period, the member acts favorably toward the group. The member understands this without being told. The member knows that when the vital interests of some group are at stake in legislation, a vote supporting those interests would normally win the group's friendship and future support, and a vote against them would mean the group's enmity and future opposition.

Lobbyists themselves frequently deny that this is the intention of their campaign support. But lobbyists do admit that political support gives them access — that they otherwise might not have — to the legislator to present their case.

Grass-Roots Pressures

Except on obscure or highly specialized legislation, most lobby campaigns now are accompanied by massive propaganda or "educational" drives in which pressure groups seek to mobilize public opinion to support their aims. In most cases, citizens are urged to respond by contacting members of Congress in support of or opposition to a particular bill.

The most outstanding example of a successful grass-roots lobbying group is the National Rifle Association (NRA). Despite polls showing a majority of Americans favoring some strengthening of gun controls, and despite periodic waves of revulsion brought on by the shooting of public figures, efforts aimed at stricter gun control legislation have been consistently subdued by the NRA, and other similar groups.

their statements before the hearing, seek to ensure a large turnout from their constituency on the hearing day, and may even hand friendly committee members leading questions for the group's witness to answer.

The degree of propaganda success for the hearing, however, is likely to depend on how well the committee's controlling factions are disposed to the group's position. In his book, *House Out of Order*, Rep. Richard Bolling, D-Mo., says that within congressional committees "proponents and opponents of legislation jockey for position — each complementing the activities of their alter egos in lobbies outside." He points out: "Adverse witnesses can be kept to a minimum, for example, or they can be sandwiched among friendly witnesses in scheduled appearances so that their testimony does not receive as much attention from the press as it deserves. Scant attention will be given, for example, to a knowledgeable opponent of the federal fallout shelter program if he is scheduled to testify on such legislation on the same day as are Dr. Edward Teller, an assistant secretary of Defense and a three-star general. The opponent is neatly boxed in."

Regulation of Lobbying

In the 19th and 20th centuries, abundant evidence accumulated that venal, selfish or misguided methods used by pressure groups could result in legislation designed to enrich the pressure group at the expense of the public or to impose the group's own standards on the nation.

The first regulation of lobbyists occurred in 1876 when the House passed a resolution requiring lobbyists to register during the 44th Congress with the Clerk of the House. Since the advent of the 62nd Congress in 1911, federal legislation to regulate lobbyists and lobbying activities has continued to be proposed in practically every Congress. Yet only one comprehensive lobbying regulation law and only a handful of more specialized measures have been enacted.

The principal method of regulating lobbying has been disclosure rather than control. In four laws, lobbyists have been required to identify themselves, whom they represent

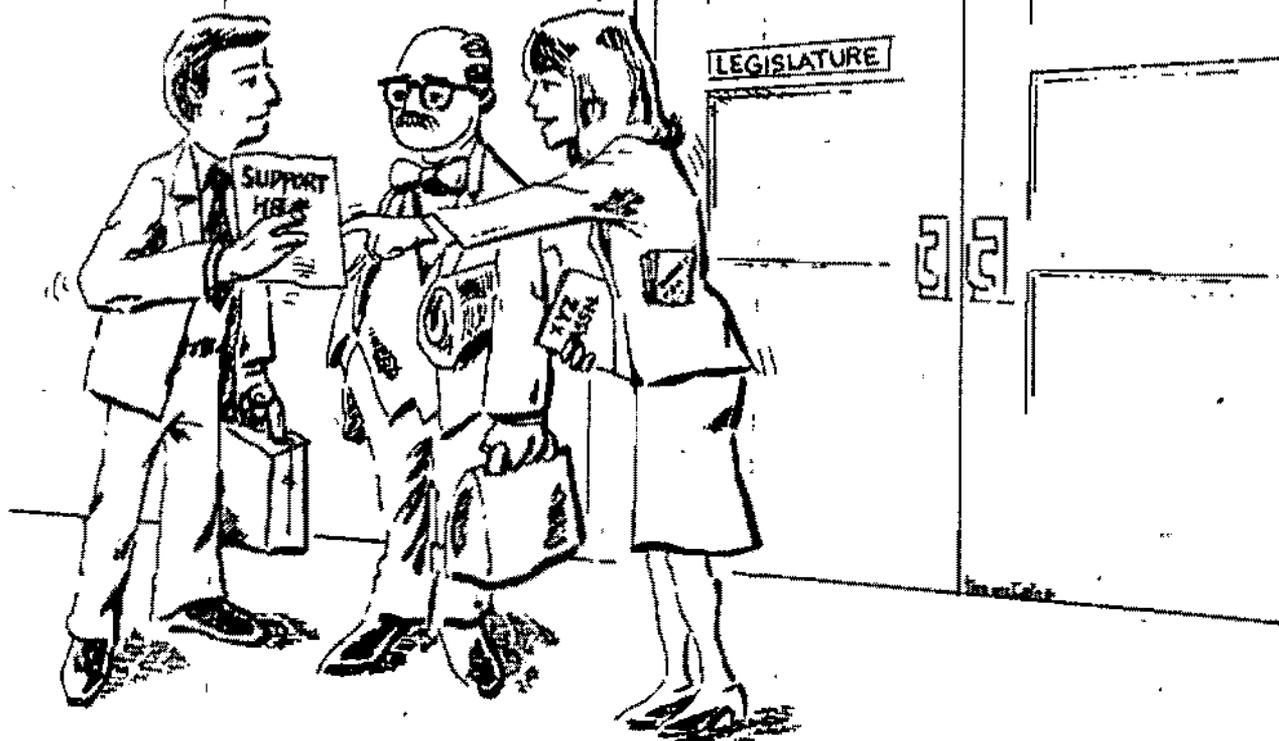
and their legislative interests. In one law, lobbyists also have been required to report how much they and their employers spend on lobbying. But definitions have been unclear, and enforcement has been minimal. As a result, the few existing disclosure laws have produced only limited information, and its effects have been questionable.

One reason for the relative lack of restrictions on lobbies has been the difficulty of imposing meaningful restrictions without infringing on the constitutional rights of free speech, press, assembly and petition. Other reasons include a fear that restrictions would hamper legitimate lobbies without reaching more serious lobby abuses; the consolidated and highly effective opposition of lobbies; the desire of some members to keep open avenues to a possible lobbying career they may wish to pursue later.

The two major lobbying laws that Congress has succeeded in enacting have dealt with lobbyists in general who meet certain definitions of lobbying. The Foreign Agents Registration Act was first enacted in 1938 amid reports of fascist and Nazi propaganda circulating in the United States in the period before World War II. It has been amended frequently since then, and its history is as much a part of this country's struggle with internal security as it is a part of efforts to regulate lobbying.

The one existing omnibus lobbying law, the Federal Regulation of Lobbying Act, was enacted in 1946 as part of the Legislative Reorganization Act. It requires paid lobbyists to register with the House and the Senate and to file quarterly reports with the House. However, large loopholes in the law exempt many interests from registering. The 1954 U.S. Supreme Court decision in *United States v. Harris* further limited the scope of the law.

Since then congressional committees have investigated the situation and proposed replacements for the 1946 act. Both the House and Senate passed versions of a new bill in 1978 but conferees were not able to resolve differences between the two versions before Congress adjourned. Although various versions of a lobby disclosure bill have been introduced each year since then, including one passed by the House in 1978, no bill has been enacted.



Lobby Registration Act

By Edwin Simcox

The 1981 Session of the Indiana General Assembly enacted IC 2-7-1, the Lobby Registration Act of 1981. In so doing, it repealed Indiana's 1915 Lobby Law (IC 2-4-3).

The 1981 Act (effective date of Jan. 1, 1982) is a recognition of the vast changes which have occurred in the legislative process and external forces which impact that process since early in this century; changes which could only be addressed through a total rewriting of Indiana's lobby statutes.

When the 1915 Act was passed, the General Assembly was meeting for 61 days in every odd-numbered year

and attracted 50 lobbyists on behalf of 87 employers. Outlays of money in lobby activity were slight by today's standards. There was need for little more than skeletal regulations.

During the last decade, however, the legislative environment had changed dramatically with the advent of interim study committees and annual legislative sessions.

In 1979, for example, 939 lobbyists representing 265 employers registered for the legislative session and aggregately spent over \$1 million. Clearly, a latter 20th century legislative environment could not be effectively served by a law which predated World War I.

On Jan. 13, 1981, the Secretary of State sent a letter to the membership of the General Assembly recommending a new lobby law which would contain four essential ingredients:

1. A requirement that both employers and their lobbyists register and file activity reports. The prior Act required only employers to file;
2. A provision calling for reporting of lobbying expenses annually as opposed to reporting such expenses only for a legislative session;
3. That total lobbying expenses be

broken down into certain defined categories in the reports; and

4. A provision to allow for the auditing of a certain number of reports on an annual basis to insure full and accurate reporting of expenses.

The final version of the new law contained all of these provisions. An explanation of the Act follows.

Who is covered by the Act

The Act applies to any person¹ who "receives or expends an aggregate of \$500 for lobbying in any registration (calendar) year, whether the compensation or expenditure is solely for lobbying or the lobbying is incidental to that person's regular employment."² IC 2-7-1-10.

This provision represents a substantial improvement over the previous requirement that any person who "employed" a legislative agent or counsel had to register and file an expense report. Repealed IC 2-4-3-1.

By not defining the term "employed" the old Act was both vague and, when coupled with its definition of lobbying, "... to promote, advocate or oppose in any manner, any matter pending, or that might legally come before the General Assembly or either house thereof..." (Repealed IC 2-4-3-1) dangerously overbroad. See *U.S. v. Harris*, 347 U.S. 612, 74 S.Ct. 808, 98L ed 989 (1954).

While the new Act is thus aimed at reaching the "professional" lobbyist by introducing a \$500 threshold requirement, it also picks up both the employer and the lobbyist, thus insuring that all lobbying expenses by such persons will be reported.

Likewise, the definition of lobbying has been refined and now reads: "... lobbying includes communicating by any means or paying others to communicate with any legislative official for the purpose of influencing legislative action."³ IC 2-7-1-9.

Exemptions to registration

There are certain exemptions to the registration requirement:

1. A person receiving or expending

less than \$500 for lobbying in any calendar year;

2. Elected public officials acting in their official capacity;
3. Public employees acting within the scope of the employment (including college and university employees);
4. Officers and employees of state central committees of political parties acting within the scope of their office or employment;
5. The news media which is allowed to urge, directly or indirectly, legislative action so long as such activity is confined to the dissemination of information in the ordinary course of business and appearances before a committee of the General Assembly; and
6. Any person invited by a member of the General Assembly to testify before the Assembly or a legislative committee. 2-7-2-6.

Registration and reporting

Initial registration under the Act is accomplished by filing a Registration Statement on a form supplied by my office. IC 2-7-2-1. Registrants are required to fulfill this obligation no later than Jan. 15 or within five days after becoming a lobbyist, whichever is later. IC 2-7-2-2. Each registration statement expires on Dec. 31 of the year to which it pertains. IC 2-7-2-2.

These dates and deadlines recognize the practical aspects of year-round legislative and lobbying activities and are in direct contrast to a three month limit on registration in

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Prior to seeking office in 1978, Simcox had already compiled years of experience in state government. He worked in the Secretary of State's office at one time and served as Secretary to the Public Service Commission and the Indiana State Highway Commission. He engaged in a law practice in Indianapolis before pursuing candidacy for the office of Secretary of State.

Simcox is also a member of the Masonic Lodge, Scottish Rite and Murat Shrine and the Indianapolis, Indiana and American War associations. He is an officer in the National Association of Secretaries of State.

the 1915 Act. Repealed 2-4-3-1 (8).

The contents of the Registration Statement remain basically static under the 1981 Act. Essentially what is required is identification, i.e., name, address and telephone number of the registrant, information as to who the employer or lobbyist is, and a description of the subject with respect to which a lobbying effort is or will be made. IC 2-7-2-3; 2-7-2-4. A \$20 fee must accompany each registration statement. IC 2-7-2-1.

Each registrant must also file semi-annual Activity Reports, and the lobbyist must file a separate report "relating to each person from whom he received payment for lobbying." IC 2-7-3-1.

These reports are to be filed with the Secretary of State's office "not later than July 15, covering the period from Jan. 1 through Jan. 30 ... (and) Jan. 15, covering the period from July 1 through Dec. 31 of the immediately preceding calendar year." IC 2-7-3-2.

The repealed Act required but one report and it was due within 30 days after adjournment of the legislative session. Repealed IC 2-4-3-4; 2-4-3-6. However, enforcement of the prior filing provision required the initiation of a criminal prosecution⁴ and unfortunately, its vagueness rendered such prosecutions difficult.

See *Day v. State*, 341 N.E.2d 209 (Ind.App. 1976) (conviction of the president of an unincorporated association reversed, holding that only the treasurer was liable) and *Shunk v. State*, 326 N.E.2d 644 (Ind.App. 1975) (conviction of the president of an unincorporated association reversed, holding that even though the association had registered as a lobbyist employer it was not required to file an expense report unless someone received compensation from the association and proof of same was an element of the offense to be proven by the state.)

Under the new Act a monetary incentive has been included to encour-

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Lobby Registration Act

continued

age timely filings by imposing a late fee of \$10 per day for each day the filing is late up to a maximum of \$100.⁴ IC 2-7-3-2.

The 1915 Act set out only a general requirement for the once-a-year report, mandating "A complete and detailed statement . . . of all expenses paid or incurred . . . in connection with lobbying." Repealed 2-4-3-4.

In contrast, the 1981 Act is much more precise in its request, requiring total lobbying expenditures broken down into several categories:

- a) Compensation to others;
- b) Reimbursement to others;
- c) Personal sustenance, lodging and travel if reimbursed;
- d) Receptions; and
- e) Entertainment (except that a function to which the entire General Assembly is invited is not considered lobbying under this

article). IC 2-7-3-3.

Additionally, all lobbyists must now account for "expenditures and gifts that equal \$100 or more in one day, or that together total more than \$500 during the calendar year, if the expenditures and gifts are made by the registrant or his agent to benefit:

- a) A member of the General Assembly;
- b) An officer of the General Assembly;
- c) An employee of the General Assembly; or
- d) A member of the immediate family of anyone included in clauses (a), (b) or (c) of this subdivision." IC 2-7-3-3.

Further, registrants must also disclose the subject matter of bills or resolutions on which a lobbying effort was made.

A Notice of Termination must be filed if the registrant ceases the activity which required his registration. IC 2-7-2-5. This notice does not, how-

ever, relieve the registrant of the requirement to file an Activity Report covering the period of time up to and including the date such termination occurs. IC 2-7-3-5.

Enforcement and penalties

One of the major weaknesses of the prior Act was in the enforcement and compliance sections. No investigation was ever undertaken with respect to the completeness or accuracy of a filed report — only those persons or organizations failing to timely file were investigated or prosecuted. This gap has been corrected in the new Act.

First, registrants are required to "obtain and preserve" all documents necessary to substantiate the reports for four years from the date of the report to which they relate is due. IC 2-7-3-4.

Second, the Secretary of State's Office is mandated to "inspect and audit at least 5% of all statements and (continued on page 665)

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Lobby Registration Act

continued

reports" filed under the Act. IC 2-7-4-6. The selection of reports for audit will be on a random basis unless there is reason to believe that a violation of the Act has occurred. IC 2-7-4-6.

A person who "knowingly or intentionally" violates the Act is guilty of a Class D felony and in addition to the penalty otherwise applicable may be prohibited from lobbying for up to ten years. IC 2-7-6-2; 2-7-6-3; 2-7-6-4.

Since criminal penalties are prescribed, referrals of potential violations are to be made to the appropriate prosecuting attorney and to the Attorney General.

If the prosecuting attorney fails to act on such referral within 60 days, the Attorney General may bring such prosecution on behalf of the state. IC 2-7-4-7; 2-7-6-1.

Conclusion

The 1981 Lobbyist Registration Act,

recognizes and strikes an appropriate balance between the legitimate role of lobbyists as sources of information for Indiana's part-time citizen legislators, and the public's reasonable expectation and right of being informed as to who is spending how much to influence legislation.

The 1981 Act embodies clarity, fairness and maximum disclosure — the key elements of effective scrutiny of lobby activity.

Person is defined as meaning a "human being, corporation, partnership, association, firm, or educational institution." IC 2-7-1-12.

The last phrase of this section is a codification of the holding in Secretary of State v. Indiana State AFL-CIO, 371 N.E.2d 1343 (Ind.App. 1979).

A violation of the old Act was a Class A misdemeanor and the prosecution had to be initiated by the Attorney General. Repealed IC 2-4-3-9.

The failure to file either a Registration Statement or an Activity Report could also be treated as a criminal offense if the failure is "knowingly or intentionally." IC 2-7-4-2.



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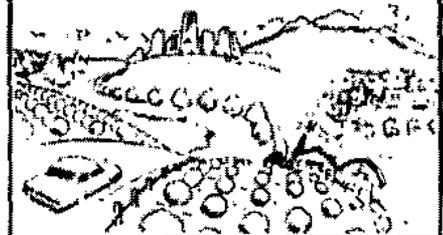
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Attachment #1

A Comparison of Treasury Regulations Issued August 31, 1990, Implementing the 1978 Lobby Law and Definitions of Lobbying Under H.R. 823/S. 349 "Lobbying Disclosure Act of 1989"

Following is a comparison between definitions related to lobbying under Public Law 94-405 and regulations, and H.R. 823/S. 349. This comparison is drawn from H.R. 823/S. 349, the Internal Revenue Code, the 878 Regulations and related documents.

[NOTE: IN SOME INSTANCES, the definitions are only roughly analogous so comparisons are sometimes bracketed.]

| | |
|--|--|
| Treasury Regulations implementing Section 1507 of PL 94-405 (From I.R.C. Sec. 4911) | Lobbying Disclosure Act of 1989 |
| Relevant Legislation: | |
| A) any attempt to influence any legislation through an attempt to affect the opinions of the general public or any segment thereof, and | BARR (Sec. 3 (8) incorporates IRS rules on grass roots lobbying by reference) |
| B) any attempt to influence any legislation through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of the legislation. | See 3 below. |

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Treasury Regulations Implementing Section 1307 of PL-94-405
(From L.R.C. Sec. 4911)

Other Definitions and Special Rules.

Legislation. The term "legislation" includes action with respect to Acts, bills, resolutions, or similar items by the Congress, any State legislature, any local council, or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure.

Action. The term "action" is limited to the introduction, amendment, enactment, deferral, or repeal of Acts, bills, resolutions, or similar items.

Communications with members. -

(Direct Lobbying)

A) A communication between an organization and any bona fide member of such organization to directly encourage such member to communicate with a legislator, etc., to influence legislation.

(Grass Roots Lobbying)

B) A communication between an organization and any bona fide member of such organization to directly encourage such member to urge persons other than members to communicate with legislators in grass roots lobbying because it attempts to affect the opinions of the general public or a segment thereof.

Lobbying Disclosure Act of 1995

The term "lobbying" contact means any oral or written communication with a covered legislative or executive branch official made on behalf of a client with regard to--

- (A) The formulation, modification, or adoption of Federal legislation (including legislative proposals);
- (B) The formulation, modification, or adoption of a Federal rule, regulation, Executive order, or any other program, policy or position of the United States Government; or
- (C) The administration or execution of a Federal program or policy (including the negotiation, award, or administration of a Federal contract, grant, loan, permit, or license) except that it does not include communications that are made to officials serving in the Senior Executive Service or the uniformed services in the agency responsible for taking such action.

See 3 above.

SAHR

(Sec. 3 (8) Incorporates IRS rules on grass roots lobbying by reference)

SAHR

(Sec. 3 (8) Incorporates IRS rules on grass roots lobbying by reference)

Treasury Regulations implementing Section 1307 of PL-94-455
(From L.R.C. Sec. 4011)

Lobbying Disclosure Act of 1993

Example: - "Influencing legislator" does not include-

| | |
|--|--|
| <p>7 A) making available the results of comparison analysis, study or research;</p> | <p>SAME (S. REP. CROSS-REFERENCES the IRS regs (p. 36))</p> |
| <p>8 B) providing of technical advice or substance (for such advice that would otherwise constitute the influencing of legislation) to a governmental body or to a committee or other subdivision thereof in response to a written request by such body or subdivision, in the case may be;</p> | <p>SAME (Sec. 3(9)(B)(viii) excludes written INFO. provided in response to a specific written request)</p> |
| <p>9 C) appearance before, or communications to, any legislative body with respect to a possible decision of such body which might affect the substance of the organization, its power, and duties, tax-exempt status, or the deduction of contributions to the organization;</p> | <p>NO EXCEPTION - "Self-defense" lobbying is covered</p> |
| <p>10 D) communications between the organization and its bona fide members with respect to legislation or proposed legislation of direct interest to the organization and such members, other than a communication between an organization and any bona fide member of such organization to directly encourage such member to communicate with a legislator as described in (8)-above.</p> | <p>SAME (Sec. 3(8) incorporates IRS rules on grass roots lobbying by reference)</p> |
| <p>11 E) any communication with a government official or an employee, other than-- (i) a communication with a member or employee of a legislative body (where such communication would otherwise constitute the influencing of legislation), or (ii) a communication the principal purpose of which is to influence legislation.</p> | <p>See 3 above.</p> |
| <p>12 <u>Affiliated Organizations.</u> If for a taxable year two or more organizations described in Section 501(c)(3) are members of an affiliated group of organizations (as defined) then... (note what follows at this point is a complex description when organizations are affiliated and should be treated as one entity).</p> | <p>NO REQUIREMENT - Reporting on the lobbying expenses of affiliated orgs. is not required.</p> |