

CAMPAIGN FINANCING AND CORRUPTION IN THE US

*Anthony Didrick Castberg**

I. OFFICIAL CORRUPTION IN THE UNITED STATES

Corruption was common in the US in the 19th century. Patronage was widespread, and although the spoils system was created with the intention of diversifying bureaucrats, it became clear that corruption continued to increase. Rapid industrialization and westward expansion not only expanded the role of government, but also of corruption in government. Although there was considerable corruption at the national level and scandals affecting the presidency, such as those involving the Grant administration in the 1870's, most of the corruption in the US at the time was found at the local level. Most famous, perhaps, was New York's Tammany Hall, which involved political party leaders, politicians, and business interests in collusion to control lucrative government contracts. This corrupt activity centered on kickbacks, extortion, election fraud, and bribery. But a growing consensus among reformers and the population as a whole saw this corruption as ultimately detrimental to both politics and the economy. This consensus led to the Pendleton Act, which created the first federal civil service system in the US. As a result of this movement, bribery and other forms of corruption decreased substantially, although it was still to be found at the city, county and state levels, often through political parties. Nevertheless, the reform movement spread to all political jurisdictions and, by the early part of the 20th century, the more blatant forms of corruption had been

reduced significantly. The reform movement was frequently aided by outrageous scandals, such as the Teapot Dome scandal during Harding's administration, and by the press, which often played a crusading role in bringing scandals to public attention.

The nation suffered a setback during the prohibition era, 1919 - 1933. Prohibition was the result of the 18th Amendment to the US Constitution, which prohibited the manufacture, import and sale of intoxicating liquors. Although well-intentioned, the Amendment was ill-conceived, as it sought to make illegal what many, if not most, of the citizens not only enjoyed but felt was their right. Although the Amendment tried to eliminate the supply of alcohol, it clearly did not eliminate the demand for alcohol. As a result, a thriving underground enterprise sprung up virtually overnight to supply the demand. This enterprise established the Mafia as a major criminal force in the US, and with it, widespread corruption of law enforcement. Such corruption was not only accepted by many citizens but encouraged, as it made access to the forbidden intoxicating liquors much easier. The end of prohibition in 1933 did not mean the end of organized crime nor the end of corruption in law enforcement, as organized crime merely shifted its activities and corruptive influence to other forbidden but desired commodities and activities, such as gambling, loansharking, prostitution and drugs. The US has never completely shaken loose of the corruptive influences of the era of prohibition. But political corruption and scandals at the national level, at least, decreased; there were no major scandals during the Roosevelt,

* Professor of Political Science, University of Hawaii at Hilo, United States of America.

113TH INTERNATIONAL TRAINING COURSE
VISITING EXPERTS' PAPERS

Kennedy or Johnson administrations.

The US has not, of course, eliminated political scandals. Perhaps the most famous political scandal involving corruption in high offices in recent history was the so-called "Watergate" affair involving President Richard Nixon. This scandal started with what, at the time, seemed to be a simple burglary of Democratic Party headquarters in the Watergate building in Washington, DC. The burglars were caught in the act and an investigation soon connected them to Nixon's re-election campaign staff (the burglars had been trying to obtain information on Democratic campaign strategy). President Nixon ordered that money be given to the burglars so that they would not talk about his involvement in the crime. There then followed one cover-up after another. The President used the Internal Revenue Service, the FBI, and other federal agencies against those he thought were leading the efforts to involve him in the conspiracy. He had a very long "enemies" list. Largely due to an aggressive press, all of the details of corruption in the office of the President were brought to public attention. Congressional hearings not only brought to light the many details of the burglary and cover-up, but also of illegal campaign contributions made to Nixon's campaign committee. This ultimately resulted in the House Judiciary Committee voting for impeachment, and the President's resignation soon thereafter - the first time in US history that an American president resigned from office.

As is often the case in major scandals, some good resulted in the form of tougher laws and new protections. The Federal Election Campaign Act of 1971 was strengthened after Watergate, and the Federal Elections Commission was established. The Foreign Corrupt Practices

Act was passed in 1977, and the Ethics in Government Act in 1978. The movement led to a significant increase in the number of state and local officials charged under federal law with corrupt practices, a number that reached almost 500 in 1986.

Despite reform, corruption continued. The "Abscam" scandal of 1978-80 involved FBI agents posing as Arab sheiks who offered various government officials, including senators and representatives, money for help in obtaining favorable immigration rulings. Most of this was recorded on videotape. Six representatives and one senator were convicted of bribery. And in 1986-89 two representatives and many other officials were convicted of racketeering, tax evasion, bribery, fraud, grand larceny, and perjury for accepting payoffs from military contractors in what was called the "Wedtech" scandal. In 1987, five Senators obstructed federal regulators in their investigation of a savings and loan company that had been had been looted by its owner, Charles Keating, of \$2 billion. Those senators received a total of \$1 million in campaign donations from Keating. But the senators, called the "Keating Five", were never charged with any crime or ethical violation because, while they could influence federal regulators, they had no direct control over them. One of those senators, John McCain, is now a Republican candidate for the presidency.

More recently, President Clinton was accused of accepting large campaign contributions from several Chinese businessmen in return for favorable treatment of China on a variety of matters, including the sale of satellite technology. US intelligence agencies allegedly intercepted information in early 1995 indicating interest on the part of the Chinese government in spending money to support certain candidates for office in the coming election, an issue raised by

Republican legislators but not proven until subsequent indictments and trials. The money, however, seems to have bought little other than access to the President.

Early this year, the *New York Times* reported that China had stolen highly classified nuclear weapons information from the Los Alamos laboratory, information that allegedly allowed the Chinese to make rapid advancement in their nuclear weapons program. Although the theft allegedly took place in the mid 1980's, during the administration of Ronald Reagan, it was charged that the theft had not been detected until 1995, that the President had not been informed until April 1996, and that nothing was done to investigate the alleged theft until 1997. Congress was not informed until 1998. Republicans charged that the failure of the Clinton administration to follow up on the theft and to promptly notify Congress was due to campaign contributions funnelled through Chinese businessmen in the US by the Chinese government. To date, none of these allegations have been proven, and it would seem to be a highly partisan issue.

Earlier this month, it was revealed that Secretary of Labor, Alexis Herman, was under investigation for influence peddling and soliciting illegal campaign contributions for the Democratic National Committee when she was a White House aide during Clinton's first term. She was appointed to her current post by Clinton in May 1998. Although the investigation is still under way and she has not been charged with any crime, this is an example of how working for a campaign can result in appointment to a high post. If she did solicit large campaign contributions, it may well have been a factor in her being appointed to her present position. It is well known, for example, that individuals who make very large contributions to a presidential campaign may do so in return

for being appointed an ambassador.

The examples cited above are, of course, high level corruption. Just how much corruption is there in the US at all levels? We only have official figures on reported corruption, so the amount of unreported corruption remains unknown, but the data we do have gives us some idea of how cases of corruption compare to other offences. It is interesting to note that the most widespread crime reporting system in the US, the FBI's Uniform Crime Reports (UCR), does not even list corruption or even bribery in either Part I offences, those deemed to be the most serious, or Part II offences, those less serious. Nor does data from state courts list corruption or bribery in its data. When we look at data collected by the Department of Justice's Bureau of Justice Statistics, however, we do find cases of bribery and of other forms of corruption. Under the general category of "other," a category that also includes racketeering and extortion, we find that in fiscal year 1996 there were a total of 405 federal bribery suspects, of whom only 168 were prosecuted in US District Courts. Of the remainder, 212 were not prosecuted and 25 were dealt with by federal magistrates (the equivalent of a misdemeanor case). It is difficult to determine the exact reasons that 212 suspects were not prosecuted. Using slightly different data, for the 232 defendants whose bribery cases were terminated in fiscal year 1996 we find that 90.1% of the defendants were convicted, most of them by a jury, and 16 of the 23 who were not convicted had their cases dismissed, with only 7 going to trial and being found not guilty.

Using data from fiscal year 1998, we find that official corruption cases have been broken down into separate offences. Corruption in federal law enforcement resulted in 52 cases and 74 defendants, and of the 46 terminated during this period, 44

113TH INTERNATIONAL TRAINING COURSE
VISITING EXPERTS' PAPERS

were through a finding of guilty. One should also note that there were significant numbers of state and local corruption cases, the vast majority of which ended in findings of guilty. While these figures are alarming, they must be viewed in perspective. A total of 902 officials were convicted of offences involving abuse of public office in 1996. These figures should be compared to the total of over 53,000 defendants convicted in federal courts alone in FY 1996. Corruption in the US, then, is a problem, but it is not as much of a problem as many other crimes, and as a consequence, does not alarm the public as much as other crimes, especially crimes of violence.

II. ELECTIONS IN A DEMOCRACY

A fundamental tenet of a democratic society is free and open elections, with few restrictions on access to political office. Age, citizenship and residence are the primary limitations on candidacy for political office in a democracy. The United States is a democracy, and prides itself on the diversity of its elected politicians, diversity measured in terms of gender, age, ethnicity, race, religion, and political ideology. A democratic political system may be multiparty, or it may consist of two parties, which is the case of the US. Although over the past two hundred years third parties have elected their candidates to local, state and national office, the US is considered a two party system, dominated by the Democrats and the Republicans. Most agree that neither party is ideological in nature, but it is also true that the Democrats are more on the liberal side and the Republicans on the conservative side of most issues. The Democrats, for example, support social welfare programs and government regulation of business, while the Republicans tend to favor less government and more free enterprise. Over the last 100 years, all presidents and the vast majority

of national legislators have belonged to one or the other party. In both parties one can find the wealthy as well as those from modest backgrounds, but over the past 30 years some things have changed.

Running for political office, or for re-election thereto, in the US is now very expensive. The average cost of a winning campaign for the US Senate in 1996 was \$4,692,100 and \$673,739 for the House, with the most expensive campaigns for each house costing \$14.5 million and \$5.6 million respectively. The 1996 Clinton and Dole presidential campaigns spent over \$230 million, not including almost \$70 million in ads paid for by the Democratic and Republican parties. All of the campaigns nationwide in 1996 cost an estimated \$2.7 billion. A great deal of this money is spent on television advertisements - the Democratic National Committee alone spent about \$44 million on such ads (this does not include the money spent by the Clinton campaign itself). Television advertising can be very expensive - up to \$500,000 per minute.

Needless to say, only millionaires can finance their own campaigns for national office. This means that most aspirants for office and incumbents running for re-election must rely on contributors, contributors who usually expect something in return for their contributions. That "something" may be as simple as a politician whose political views are consistent with those of the contributor, it may be access to the politician not enjoyed by lesser contributors, or it may be an explicit *quid pro quo* - paying for favorable consideration on an issue over which the politician has substantial control. In the last century and early part of the 20th century, the practice of selling votes was fairly common. Today it is practically unheard of, but many argue that campaign contributions amount to the same thing.

III. SOURCES OF CAMPAIGN FINANCING

While political opponents may try to influence voters by alleging foreign influence on domestic politics, in fact the vast majority of campaign funds come from domestic sources. The single largest contributors are corporations and Political Action Committees (PACs). In the 1996 campaign, for example, a tobacco company - Phillip Morris - contributed \$4,208,505 million, 21% of which went to Democrats and 79% of which went to Republicans. The second largest amount - \$4,017,553 million - came from the American Federation of State, County and Municipal Employees, 99% of which went to the Republicans. While large individual donors and PACs accounted for almost 32% of all contributions, 31% came from small donations (under \$200). Political parties may legally solicit and receive an unlimited amount of funds. These funds must, under a 1979 amendment to federal election laws, be used to publicize the party or present issues, and may not be used for the benefit of specific candidates. This law was upheld by a 1996 Supreme Court decision that said that political parties could spend unlimited amounts of funds on congressional races as long as they act independently of the candidates. This has resulted in party advertisements that devote a great deal of time to a candidate and only discuss "issues" in passing, a method of meeting

the letter but not the spirit of the law. Because this money is supposedly used to promote issues, it need not be reported, unlike other contributions.

Money contributed to political parties and not specified for a particular candidate is called "soft money," and there are virtually no limitations on how much can be given or how it is spent, as long as the spending is on "issues," voter education, party building, etc. Soft money raised by the two major parties more than tripled from 1992 to 1996, where it amounted to over \$260 million. There are, nevertheless, restrictions on soft money contributions, and the Democratic National Committee admitted that it accepted \$2.8 million illegally or under questionable circumstances for the 1996 campaign; it subsequently returned the money to its donors.

IV. CAMPAIGN SPENDING LAWS

The Federal Election Campaign Act, as amended in 1974, established strict disclosure requirements, set limits for donations, and provided for public financing of presidential campaigns. Campaigns must list all contributors who give over \$200 per year, and cash contributions of over \$100 were prohibited (as cash contributions are almost impossible to trace). Limits for donations were set as follows:

	To a candidate or committee per primary or general election	To a national party per year	To any other political committee per year	Total contribution per calendar year
Individuals	\$1,000	\$20,000	\$5,000	\$25,000
PACs	\$5,000	\$15,000	\$5,000	No limit

113TH INTERNATIONAL TRAINING COURSE
VISITING EXPERTS' PAPERS

These limits also applied to candidates themselves - they could not even spend their own money in excess of the specified limits. All of the reports by candidates are public, and are available on the Federal Elections Commission website, and at least one candidate for the presidency, George W. Bush, has provided detailed contribution information on his own website. Bush so far has raised over \$50 million - the largest amount ever raised by a candidate in a primary election.

The public financing provision allowed taxpayers to indicate on their federal tax return whether they wanted \$3 of the money they owe the government to be put in the Presidential Election Campaign Fund. The Fund would then match up to \$250 of each contribution made to eligible candidates in primary elections. In order to benefit from this, the candidate had to agree to spend no more than \$50,000 of their own money. Public funds would not be available to candidates who exceeded the limit. Public funding is not available to candidates for congress, although limits were set for campaigns for those offices. Provisions of the law limiting a candidate's own expenditures, as well as total expenditures, were challenged in a suit filed by a broad coalition of candidates and political organizations in early 1975, and a year later the US Supreme Court handed down its decision in the case of *Buckley v. Valeo*. The Court found that both the overall spending limits and the limits on a candidate's own spending were unconstitutional as a violation of free speech. The Court recognized that a balance had to be struck between free speech and the prevention of corruption, and stated that contributions to a campaign are less protected than expenditures made independent of campaigns. Therefore, contribution limits were upheld while money given to political parties or PACs could not be restricted.

V. ISSUE-SPECIFIC CONTRIBUTIONS

Contributions to politicians are not always made specifically for campaigns but frequently for favorable treatment on issues of interest to the contributor. The money contributed, however, must be placed in the politician's campaign fund and must be so used. The large amount of money contributed by Phillip Morris noted above, for example, was very likely intended to influence votes on tobacco issues, including an impending government suit against tobacco companies for misleading the public about the dangers of smoking. Issue-specific money was also contributed in great quantities over the proposed Telecommunications Competition and Deregulation Act of 1995. As the title of the legislation implies, the act was intended to deregulate the telecommunications industry and thereby increase competition, which would presumably reduce costs and increase options for the consumer. Although the Act passed Congress and was signed by the President, the intended benefits to consumers have yet to appear. The campaign funds of many legislators, especially those on the House and Senate Commerce Committees, benefited greatly, however.

The benefit to legislators of controversial issues that affect large industries should seem obvious: such issues provoke significant increases in campaign contributions. It should be noted as well that most such money is not soft money but rather money from PACs, and therefore limited to a total of \$10,000 per campaign (\$5,000 for the primary and \$5,000 for the general election) per person. Because hard money is accountable and limited, it is preferred for specific issues. But one wonders whether some issues are invented as a means of creating controversy and

therefore increased campaign contributions rather than for the public good. Many of these issues are highly complex and, while they have a significant impact on the public as a whole, are often buried beneath more sensational but ultimately less important legislation. For the most part, only large corporations, interest groups, and legislatures play this game - the "little guy" is left out.

**VI. INDIRECT SPENDING:
LOBBYING**

There are methods by which legislators can be influenced on particular issues in addition to campaign contributions, the most important of which is lobbying. Lobbying is an important but low visibility process, and it can be highly lucrative for the lobbyist himself or herself. There are at least 12,000 registered lobbyists, a number of whom are former legislators or political appointees. While there is nothing illegal or necessarily unethical with individuals and organizations trying to influence legislators, many feel it is wrong for former legislators and staff members to get rich as a result of their former status and the access that it brings. The lobbyist is supposed to provide information to the legislator as well as argue for a particular cause, but the lobbyist can also help bolster a legislator's campaign fund indirectly by bringing together those who want something from Congress with those who can provide it. Thus, the former legislator, now a lobbyist, continues to practice the fine art of seeking campaign money as well as influencing legislation, but now for somebody else.

Federal law prohibits most federal employees and elected officials from taking positions in private industry that they might have been in a position to benefit from through their prior position until at least two years after they have left office.

The same law applies to lobbying, but to get a conviction under the law, 18 USC 207, the government must prove, among other things, that it had a direct and substantial interest in the matter and that the former official had direct responsibility for the particular matter within one year of their retirement (except for executive branch officials, where the time period is two years if the matter was pending under that person's official responsibility). There are many laws that govern the activities of current and former government officials. Some of them are listed below:

5 USC 2302	Prohibited personnel practices
5 USC 7353	Gifts to federal employees
18 USC 201	Bribery of public officials and witnesses
18 USC 203	Compensation to members of congress, officers, and others in matters affecting the government
18 USC 207	Restrictions on former officers, employees, and elected officials of the executive and legislative branches
18 USC 208	Acts affecting a personal/financial interest
18 USC 211	Acceptance or solicitation to obtain appointive political office
18 USC 666	Theft or bribery concerning programs receiving federal funds
18 USC 1510	Obstruction of criminal investigations

These are only a few of the many federal laws dealing with crimes of official corruption. In addition to these criminal laws, there are standards of ethical

113TH INTERNATIONAL TRAINING COURSE
VISITING EXPERTS' PAPERS

conduct, such as 5CFR2635.

**VII. WHY THE GREAT DESIRE TO
GET ELECTED?**

It is likely that many people run for office because they genuinely want to serve the public. They may feel that the many problems of their constituency are not being adequately addressed, or they may simply want to be in a position where they have a greater impact on society than just voting. There are those however who seek office because of selfish motives. The latter are probably a minority, but social and political commentators are saying that there seems to be an increase in these types of people running for office. Note the titles of two recent books on the subject: *The Buying of the President*, by Charles Lewis, and *The Corruption of American Politics*, by Elizabeth Drew. Some politicians are deciding either not to run for re-election or for higher office. Christine Todd Whitman, governor of New Jersey, recently changed her mind and decided not to run for the US Senate seat being vacated by Senator Frank R. Lautenberg. She said the demands of fund raising would interfere with her duties as governor. It also seems clear that she would have a very difficult time raising enough money to match the funds available to Democratic candidate Jon Corzine, the former chairman of Goldman Sachs & Company, who has a personal fortune of about \$300 million. Corzine has already put \$500,000 of that fortune into his campaign spending fund, while Whitman had raised over \$2 million. Nevertheless, Corzine has said would spend as much as necessary to be competitive, and it was clear that Whitman could not match her fund raising against his fortune.

This also raises the interesting question of why a person like Corzine would spend so much to win an election. It is highly

unlikely that he would consider money spent on a 'campaign' as an investment - he could never recoup the money spent on the campaign, legally or illegally. Why would a person who has such a fortune want more? What he wants, and what many people who run for office want, is not money but power. As chairman of Goldman Sachs, Corzine made important decisions and controlled billions of dollars, but he still had to rely on his elected representatives to make the decisions that affected the economic environment in which he worked. It is often the same motivation that makes attorneys in the US want to be judges - they will very likely make less money as a judge, but they will have far more power and influence.

If we accept, then, that many, if not most, candidates for office or for re-election are motivated by power, not money, what then of those who make large contributions to these politicians? As suggested at the beginning of this paper, it is safe to say that many of the contributions are made with economic motivation. Corporations, PACs and individual contributors who spend large sums of money on those running for political office expect something in return for their investments, and this puts pressure on the winning candidate to reciprocate. As long as that politician wants to be re-elected, s/he must act in the best interests of those contributors. As long as the politician and the contributors do not violate any laws, there has been no corruption as defined by law. But hasn't the political process been corrupted? Haven't the interests of the rich and powerful been put above those of the poor and powerless, the very people who most need the assistance of government? The answer, of course, is yes.

VIII. WHAT CAN BE DONE?

The answer to many of the problems

cited above is campaign finance reform. There are already enough laws and ethical standards to take care of criminal and unethical behavior, but the fundamental problem - the corrupting influence of money in election campaigns - needs additional attention. There is no shortage of reform proposals, but despite public pronouncements by many political leaders, little progress has been made. Part of the problem is partisanship. The Democrats generally support limits on soft money, while Republicans do not, unless there are restrictions on spending by labor unions (which traditionally support Democrats). Republicans argue for raising the limits on individual contributions, in part because large individual contributions are most frequently made to Republican candidates. But the fact is that the status quo favors those in office, those who are the only ones in a position to bring about change. One current bill, which is backed by Democrats and some Republicans, would prohibit political parties from raising or spending soft money, and would make a clear distinction between issue advocacy and advocacy of a particular candidate. The limits on hard money would also apply to soft money, and there would be stricter disclosure requirements and higher penalties for violations. It is unlikely, however, that this bill will pass before Congress adjourns in October. It is, after all, difficult for those who benefit from existing law to change them, even though a majority of voters want such reform. In the end, we come back to the people, the voters. They elected the current politicians who benefit from an essentially corrupt system and only they can throw them out of office. But will they? Only time will tell.