

2009

## Panel Two - Lobbyist Contributions and the Constitution

Catholic University Law Review

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### Recommended Citation

Catholic University Law Review, *Panel Two - Lobbyist Contributions and the Constitution*, 58 Cath. U. L. Rev. 943 (2009).

Available at: <https://scholarship.law.edu/lawreview/vol58/iss4/4>

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## PANEL TWO

### LOBBYIST CONTRIBUTIONS AND THE CONSTITUTION<sup>+</sup>

DAVID SCHUMACHER, LEAD ARTICLES EDITOR, *CATHOLIC UNIVERSITY LAW REVIEW*: I would like to introduce the participants for this event. Our first panelist is Todd Cranford, of counsel at Patton Boggs. Mr. Cranford draws from his extensive experience in the public sector assisting clients on matters of public policy, FEC enforcement, capital markets, and corporate governance, among other matters. Mr. Cranford also has experience from an insider's perspective that allows him to represent his clients' interests and helps to see that their needs are addressed in Congress.

Our second panelist is Craig Holman. Mr. Holman is currently a legislative representative for Public Citizen. As a legislative representative, he serves as the organization's Capitol Hill lobbyist on campaign finance and government ethics. Mr. Holman worked closely with reform organizations and the Democratic Congressional Caucus of the 110th Congress in drafting and promoting the Honest Leadership and Open Government Act, the federal lobbying reform legislation signed into law in September 2007. As a consequence of this legislation, Mr. Holman is also working with European non-governmental organizations and members of the European Commission, and is developing a lobbying registration system for the European Union.

And, finally, it is my pleasure to introduce our moderator, a professor here at The Catholic University of America, Columbus School of Law, Robert Destro. Professor Destro also served as counsel for Ohio Secretary of State J. Kenneth Blackwell. At this point I will turn the discussion over to Professor Destro. Thank you.

PROF. DESTRO: Thank you. Welcome to our panelists and welcome back to all of you. Since we are starting about ten minutes late we will move the times forward so that we will gain about ten minutes. And now, like every good moderator, I will simply recede into the background and let you speak. Mr. Cranford?

MR. CRANFORD: First of all, thank you. It's a pleasure to be here and I appreciate the invitation. I will begin with the typical disclaimer that the views about to be expressed are not necessarily those of management or any

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particular client, and actually extend this disclaimer from my colleague on the previous panel, Mr. McGinley.

Lobbying and lobbying reform is prompted by some of the negativity that seems to be in the air regarding lobbyists and their role in how government functions. I spend my time principally working with financial services firms, addressing not only their particular issues, but also, as an ongoing concern, the structure of issues that are happening in the financial markets.

The stakes are no secret. We are in the midst of one of the most challenging periods in our country's history. We are moving forward with a new administration—the first time that we've had a Democratic president and both chambers of Congress dominated by such large majorities of Democrats. There is clearly going to be a number of reform efforts going on in the next year or two, and probably beyond—not only in the economics sanctum, but also with energy, consumer safety, and a number of other issues.

I think that there has been much ado about nothing with the role that lobbyists play in affecting the negative aspects of government. I guess there are always going to be some negatives in our profession, but, by and large, the majority of lobbyists are earnest, moral, ethical, and completely legal. And they are exercising their constitutional rights on behalf of clients to try to, yes, influence policy. That doesn't mean that they are in any particular legislator's or staff member's hip pocket and that we get everything that we want from them. We often don't get exactly what we want, but it is a give-and-take process—not always through the contributions or even the access that lobbyists often have on any side of a given issue, although that's often a part of it. It's about trying to positively influence the outcome of any particular piece of legislation—or regulation, if we're talking about it in the context of the executive branch dealing with any of the agencies.

And I think that some of the hyperbole that has been associated with, most recently, Mr. Madoff and what he was able to do over the years with access has been somewhat taken out of context. Because, again, the majority of lobbyists—and I don't even think that the term "lobbyist" in and of itself does justice to what we in public service and in public policy more broadly try to achieve, because the negative connotations of lobbyists far outstrip what we positively do.

I think, and would suggest, that you can analogize a public policy professional—or a lobbyist—to a litigator, in that over time we'll often develop an expertise in a particular area—whether it's First Amendment, criminal defense, or patent and trademark. You often have to deal with a client who comes to you with a new issue and you have to get up to speed on that issue. You will advocate for that issue, so you are learning the substance of that issue—and particularly at a place like Patton Boggs, where many, but not all, of the public policy professionals are attorneys.

We are also held to the same ethical standards that all attorneys are held to, only we're practicing in the public policy realm. And that is also something

that is not necessarily discussed in the broader press when they're talking about lobbyists these days. But it is something that I think is important, particularly here in the law school setting. If any of you decide to go into the public policy realm, you will be held to the same ethical, moral, and legal standards that all members of the bar are held to. I think that that is important to keep in mind.

The practical role of a lobbyist is very different from the perception right now because of all the bad press. It's not quite as glamorous, if it ever was, as it was a few years ago. We spend a lot of time not necessarily meeting with staff or members, but trying to develop strategies and understanding exactly what the potential policy implications of any given administrative rule or proposed law are. Not just for our client—which is of course our first concern—but in a broader sense regarding the relationship that the legislation or rule is going to have going forward for that particular industry. And that is something that has not gotten as much play in the press as of late—that we don't spend nearly as much time in meetings on the Hill with staff or with members as we do behind scenes preparing, learning, understanding, and then being able to go and talk to the staff and the members.

Once we get there, it is important that we be as forthcoming—[and] as accurate as we can—with the information that we share because our trading space relies on our reputation and our ability to inform, because that is much of what we do. Whether you are on my side of the fence—representing a paying client—or someone who is working for Public Citizen or the Consumer Federation of America—which has kind of a broader mission and is working to ensure that good policy is enacted—you are really trying to convince the staff and these members that your position is right, that it is factually based, and that you are giving them all the information that they're going to be able to use to make good decisions.

Because in some instances we are educating them completely on an issue, and in other situations we are trying to give them a different perspective; maybe share with them information that hadn't yet come from another source at that point and is going to, hopefully, be important in their decision making process. I'll stop there, so we can have more time and hopefully be able to get into questions.

PROF. DESTRO: Craig [Holman].

MR. HOLMAN: My name is Craig Holman and I'm a card-carrying registered lobbyist. I lobby for lobby reform on behalf of Public Citizen and my work in this area began not that long ago, in about 2002. I had always been in academia prior to coming to Washington, D.C. and working as a lobbyist. But after some various jobs, I was asked by Public Citizen to serve as their lobbyist here and it was sort of an interesting idea.

Coming out of the ivory castle where I could write things and generally be entirely ignored, I thought it might be more interesting going into the field as a lobbyist, and try to make my ideas happen. So I was excited about it. I was on

the Hill in 2002, 2003, and 2004 trying to get something done, and I realized I wasn't getting hardly anything done on Capitol Hill.

The lobbyists that had the type of influence that got things done were the lobbyists that had a lot of money, using a number of various tools that were just unavailable to citizens, unavailable to Public Citizen, and unavailable to me. One of the more effective tools of well-financed lobbyists, obviously, was making campaign contributions, but even more so, hosting fundraising events that bring in lots of campaign contributions and bundling campaign money. Another one is providing gifts to lawmakers right across the Hill while I was trying to get something done and wasn't getting anything done. Jack Abramoff had his Signatures Restaurant, with table twenty-four, right in his restaurant, set aside for any lawmaker that wanted to walk in—and they would be freely wined and dined. [Congressman] Bob Ney made extensive use of it; he's in prison now. There were a lot of lawmakers doing this.

I could not afford to send lawmakers to Scotland to go play golf. I could not afford to buy the box seats at sporting events. But this is what was going on. In 2002, for instance, it was remarkable when the Homeland Security Act was being debated a lot of these lobbyists were quietly and very effectively inserting various special interests provisions into the law that had nothing to do with homeland security. One of the most famous provisions that you may have heard of was an exemption put in the Homeland Security Act to exempt Eli Lilly from a number of lawsuits that had been pending over the last ten years because they produced a faulty drug—nothing to do with homeland security and an outrageous insertion into the Homeland Security Act, and nobody took credit for it. Slate.com has the website which offered a \$10,000 reward for the identity of who put that provision in the Homeland Security Act and no one claimed it; you know that was lobbying on Capitol Hill.

Also, most of the other most egregious abuses are attributable to the revolving door. [Congressman] Billy Tauzin is a classic example. He was head of the committee that was writing the prescription drug bill in 2003, and that drug bill gave the pharmaceutical industry everything it wanted. It made sure there were no price controls on drugs. It made sure that Americans could not import cheaper drugs from Canada or Mexico, or anywhere outside the country. It made sure that Medicare couldn't use their binding power to leverage lower prices from the pharmaceutical industry, and two months after that bill passed Billy Tauzin announced, "By the way, I'm leaving." He was taking a \$2 million job with Pharma to represent the pharmaceutical industry. Clearly what happened—but I can't prove it—is that the pharmaceutical lobbyists would sit down with Billy Tauzin and, if not overtly say it, at least let them know if you're our friend, you've got a very lucrative job following your public service here. This was the type of lobbying that had been going on all over Capitol Hill, and so I decided to try writing lobbying reform legislation.

By the way, let me know when I'm going over the time limit.

PROF. DESTRO: I can do that.

MR. HOLMAN: So I started working on lobby reform legislation prior to Jack Abramoff in 2004 and 2005 to try to break that nexus between lobbyists, money, and lawmakers—but I don't want to end all lobbying. The last thing I would want to do is make myself unemployed. I understand the value of lobbying.

The value of lobbying is, as Todd [Cranford] has described, to provide information and expertise, but that was not the practice of lobbying on Capitol Hill. It was money—it was lobbyists, money, and lawmakers. I could only get this bill introduced by some friends, [Senator Russ] Feingold in the Senate, [Congressman] Marty Meehan in the House. It never got anywhere. I would go from door to door in Congress trying to get other cosponsors, but I couldn't get cosponsors. I would place phone calls and my phone calls wouldn't be returned.

Then, in January 2006, Jack Abramoff worked out a plea bargain with the Department of Justice. The super-lobbyist went into Signatures Restaurant, worked out a plea bargain where he agreed—and it broke in the press—that he would point the finger at those whom he bribed in Congress.

Suddenly, my phone started ringing off the hook. It was various congressional offices, all wanting to cosponsor that lobby reform legislation and it just took off from there, and we passed it last year, actually [in] 2007—September 14, 2007.

I don't mean to try to give lobbyists a black eye. That's not my role. I know lobbyists serve a very useful function, but there are a number of them that use money to get what they want, and that's what we've got to rein in. We can't take the money out of the lobbying practice, but we can take a lot of it out. The next best step, and actually it ought to be done together, is to have full disclosure of that money, and we achieved a great deal of that in the Lobby Reform Act.

If I could make one more note: as you know, most lobbyists are virtuous and that does bring up a story. When I was testifying for the European Commission in Brussels—this was the first time I was there—they were debating lobby reform legislation and I'm talking about basically the same stuff I just told you; and one commissioner stopped me and said, "Craig, I understand you have corruption in Washington, D.C., but this is Europe. There are no Jack Abramoffs here." So you've got to keep this in perspective, even though you may not think we have many Jack Abramoffs, I think the record on Capitol Hill speaks to the contrary.

PROF. DESTRO: We're about ready to get into our discussion, and I'll just say as we move into it that we have a very interesting split right now just in terms of the pictures that are given. Todd Cranford says: "Nobody here but us public servants. You know, we're selfless, we're ethical."

And Craig Holman is saying: "Boy, this is just a cesspool." I can tell you now that, from an academic perspective, and from a practical one, that the right to petition for redress of grievances is part of the First Amendment. It's not

just about speech. It's about citizens getting together and coalescing to try and get stuff done.

On the one end of the lobbying spectrum, you have the farmer who drives his tractor to Washington to make a statement. He is a lobbyist. And then you have the late Justice Robert Jackson who famously said that constitutional litigation is "power politics by other means." Both are examples of the right to petition for a redress of grievances.

Having witnessed lobbying firsthand and having represented a state secretary of state who was lobbied on all kinds of issues relating to elections: whom to let on the ballot or what kind of voting machines the state should purchase; and having written legislation and worked to pass it on the Hill, and having looked at some of the empirical data out there about who is effective at lobbying and who is not, I can tell you that some of the most effective lobbying groups in town don't have two dimes to slide together.

So the question before us today is not always a question of effectiveness, or of correlating effectiveness and outcomes—outcome measurements, if you will. Most of the discussion today, and in the title of the bill, is about lobbyist contributions and the Constitution. We know we're not going to get rid of contributions. My question is: Where does the contribution start? Does it start when Craig sends a bill, and Todd sends a bill, to a client and the client pays them? It seems to me that we have a big focus on money, and we tend to dance around the fact that somebody like Abramoff is in jail.

What about the corruption piece? Isn't that important too? It just strikes me that corruption is the one thing that nobody on the Hill really wants to focus on because it's probably just too hard to convince a jury that somebody's vote was purchased. That is the real issue on the monetary side, isn't it? Where do you start if you want to root out this perception that corruption is the result of every contribution?

MR. CRANFORD: Well, I think few people would argue that those who break the law—the Abramoffs, that's a fairly obvious case—should not be rooted out or should not be prosecuted, because there is no place in our system for breaking the law. I think if we separate existing law, or prospective laws, away from breaking those laws then it's two different issues.

There are reform laws prohibiting many of the things that Abramoff did. I think that Craig [Holman]'s work in bringing about additional guidance and additional rules is good. Having been on both sides, and having been a congressional staffer, now working in the private sector, I think it's also important to remember that access is also going to be determined by the particular people, not just the issues that you're trying to work on. I worked with a lot of groups very similar to yours.

I don't know if I ever personally worked with Public Citizen but I know the Consumer Federation of America and many of the other more public-interest-minded organizations were lobbying me, helping to reach decisions about cutting legislation and rules; how it was going to affect other people, because

the Citi Banks, the MFA—Managed Funds Association—all had their lobbyists, and they were talking to us as well.

So I think it is important to try to remember that there is always more than one side to an issue and that, in the end, just as those members and staff who allowed Abramoff to purchase specific outcomes have to be brought to account for their actions, there shouldn't be an indictment of the system *per se*—because it wasn't the system, in my estimation, that got Abramoff all that he wanted. There were plenty of members who wouldn't have done that, plenty of staff members who wouldn't have done his bidding just because he allowed them to sit in a certain seat in a restaurant, or took them to an all expense ski trip weekend. I think that it is somewhat fallacious to believe that all members or all staff can be purchased for a meal. Some of the new rules, quite frankly, are ridiculous in terms of the dollar limits. They're not allowing a \$25—or even a \$10—lunch, or in some instances a cup of coffee.

MR. HOLMAN: Not even a cup of coffee.

MR. CRANFORD: I take it personally, as an affront to me, that someone thinks that my services, or my opinion, could be purchased for a cup of coffee; it is ridiculous. Yet the opposite, which doesn't get discussed as much, is true: that there is now significantly less low-level interaction among staffers and lobbyists over a cup of coffee to discuss an issue because of that fear of who is paying—it might get to the revolving door issue that Craig [Holman] brought up as well.

I think controls are important, and there should be some restrictions, but just to finish my thought about access—many times, whether it's in the throws of an issue that is being hotly debated on the floor of the House or something that is just at the beginning, percolating stage, being able to sit down with a staffer is important for lobbyists, regardless of who the client is. The ability to have that kind of access is now being taken away in large part.

So I think there is a concern of how you're able to match staffers, or the members themselves, with lobbyists who have valuable information and viewpoints to share in a less formal setting. Being able to do something other than go to their office for a meeting all the time is important because the staffers and member senators all have a finite amount of time—and you're not going to be able to get meetings whenever you want them, even if it's a very important issue for you, much less for the member.

MR. HOLMAN: It is a very difficult issue to try to know what level, what sort of gifts, what amount of money creates corruption until you're actually smack dab in the middle of it. I recall these psychological experiments—I can't remember what the name is. I imagine everyone in the audience knows the study; they would bring in a subject and have this subject turn this shock device on another person who is part of the experiment itself. The person wasn't really being shocked but was screaming and screaming, and because there was an authority figure telling the subject to turn it up even higher—regardless of the screaming—most of the people in this psychological



experiment would continue following the authority and turn that shock device up.

MR. CRANFORD: I think it's called Hitler.

MR. HOLMAN: Then there was a final experiment in which these psychologists asked the audience, "Which of you would have turned that shocking device up if someone tells you this is what they want?" Literally, ninety-seven percent of them say, "No, I wouldn't do it."

The point to that story is that even though we may believe we are going to act with the best intentions, when it comes down to some sort of authority situation, or perhaps—you brought up \$1 million—if \$1 million is suddenly dangling in front of you, what are you really going to do if you think no one is watching?

So that's the real crux in this issue. I've heard so many times from members of Congress that "you can't buy my vote with a steak dinner." Yet, that's exactly what Jack Abramoff was doing. That's what table twenty-four was all about; to make sure that these people would be wined and dined and, in fact, to buy their votes.

How low does it need to go? I don't know. What is the advantage of coming up with the no-cup-of-coffee rule? That advantage is [that] a violation of gift rule is evident without having any work put into it. But with Jack Abramoff's dinners and his trips and everything else—people would see this lobbyist buying dinners—at that time there was a \$50 gift ban, a \$50 gift limit. But how would I know if that dinner was \$29 or \$51? I really wouldn't know. So there wouldn't be a basis for complaints. But with the no-cup-of-coffee rule, I know when that violation occurs, and so does everyone else.

PROF. DESTRO: Let me just ask about this: The common thread running between most of your comments is the role of the staffer. For somebody who has never really worked on the Hill, a lot of people would be surprised. They really have no idea how much the staffers are in charge of things. I remember the first time I met a senator in my capacity as a member of the United States Commission on Human Rights. I was talking to him about a bill. He turned to the staffer and said, "So, what is our position on that bill?" There was also a great colloquy in the mid 1980s between then-Majority Leader [Bob] Dole and Senator [Alan] Simpson of Wyoming, who was questioning the Majority Leader about the committee report. Senator Simpson asked: "Has the senator read the report?" No. "Does he know who wrote it?" No. And finally as Dole is getting a little annoyed with Simpson's questions, Dole asked, "why are you asking me these questions?" Simpson replied that there is a canon of judicial construction that says that the floor debates are more important than the language of the committee report and that he just wanted to demonstrate to the courts that not only did Senator Dole not know what was in the committee report, he did not know who wrote it, or know anything about it. The bottom line: the Senators here are voting on bills and committee reports that were really written by staffers.

Staffers are that important, so why would we want to stop the staffer from getting a cup of coffee with a lobbyist? Don't you want that interaction at the lower level?

MR. HOLMAN: I would like to address this because I didn't get to the other part of my story—that is what lobbying is supposed to be about. The profession is supposed to be about education. We're supposed to walk in there, offer studies, papers, expertise, and sometimes opinions. We try not to make things up, but sometimes we do.

It's not supposed to be about taking someone out for a cup of coffee, or for a drink in a bar, or for a dinner, or to a movie, or to a golfing outing, or to whatever. By having the no-cup-of-coffee rule, it does not stop me from talking to the staffers or the member of Congress. I go into their office and talk to them, like I'm talking to you. I haven't bought anyone a cup of coffee here and we're having an academic, educational discussion. This is how lobbying is supposed to be. It's not supposed to be gifts. It's not supposed to be privies and it's not supposed to be promises of future employment.

PROF. DESTRO: I would disagree with you on that. My question really comes down to this: Where is the data that clearly indicates that there really is a payoff? Companies pay all kinds of money to candidates on both sides of every question. This is not for our panel, but we do need to know whether there are good empirical studies that say that this is money well spent, or do these companies just sort of throw it down a rabbit hole on the assumption that the contributions are going to pay off down the road?

MR. HOLMAN: There is one study that I'm aware of. First of all, it's a very difficult subject to try and measure. And the political scientists haven't really figured out a good empirical way of measuring how effective lobbying is. But there is one study that followed a lobbying firm that deals with government contracts and they were able to document that for every one dollar they received from the client for lobbying they were able to deliver \$100 in value in government contracts. So if we take that as a sample, it's a 1:100 pay off, which explains why so many companies—all the major companies—are investing heavily in lobbying Capitol Hill.

MR. CRANFORD: I will respond to that by saying that they invest money to protect their interests—particularly in this environment. For example, higher education, as a general matter, for years and years avoided having Washington lobbyists, because the academics felt that they were above it and they didn't need it. They thought that lobbying was what some of the less savory corporations or industries did, until they realized that they weren't getting their appropriations.

They were missing out on opportunities that they could have had and then, almost collectively, the light bulb went on and they said, "Hey, we need to have representation." We need to have eyes and ears that can advise us of the best strategies; not to cheat the system, but to be part of the system—to make sure that when appropriations are being made, when funding is being given for

research on various issues, that our university or our university system is going to be involved with that.

And I just use higher education as one example of an industry, if you will, that saw the light and decided that they needed to have representation. Our role—I'll also go a little further and say I don't think that the role of a lobbyist is just to educate and inform—particularly from my perspective, when we are being paid by a client [it] is to achieve certain results.

I don't think that there is anything wrong with trying to achieve those specific results for that client, as long as you are doing it in a legal, moral, and ethical way—which I am happy to say I always do.

MR. HOLMAN: At this point, we need to define legal, moral, and ethical. If I could make one point, you were touching upon the legal definition of corruption, and there is a problem there if we're talking about the legal definition of bribery. I'm working on a bill for this next 111th Congress to try to expand what the definition of bribery is, because it is so narrow that it's being used by a number of lawmakers. It could have been used by Abramoff and his lawyers who probably thought of it to avoid these types of corruption convictions.

[Congressman] William Jefferson really was the first to come out with this defense, and the primary law itself says that a bribe occurs when you receive something of value and you deliver some sort of official favor in return—the *quid pro quo* relationship. William Jefferson, the congressman who got caught with \$90,000 in his freezer, used as his defense: "Yeah, I took that \$90,000 but I didn't get around to actually returning the favor yet. That was going to be later down the road. So I just essentially scammed this person who just gave me \$90,000 and therefore cannot be prosecuted under the bribery statute." That defense has been used a couple of times now. We've got to expand the legal definition of bribery to include things like illegal gratuities, for instance.

PROF. DESTRO: Well, I guess I don't understand. I think that the theory, if you use the empirical study that you just talked about, that one dollar nets \$100 in return of government contracts could just be explained by the very fact that the government wants to buy stuff anyway—products and services.

It says that the lobbying firm is effective, but we don't know how the company spent the money. It could have been on research. It could have been on testing that research. But what you seem to be talking about is the actual giving of money to get favors, or the giving of favors to staff. This is bribery. What concerns me is that when you start talking about expanding the definition of bribery, you are going to make people even less willing to lobby. The implication that the cup of coffee is a bribe would make it a cup of coffee, literally, with a bullet.

How do you deal with that? Because, in the end, it seems to me if you've got a very high level of transparency, the chilling effect on legitimate advocacy is going to be great because people are going to be staring down a possible

criminal indictment for a conversation over coffee. That's why I asked about the definition of corruption.

MR. HOLMAN: That issue always has to be considered in any kind of definition of what corruption is, but I guess I focus on the side that the definition right now isn't sufficient. [Illinois Governor Rod] Blagojevich is another example. Here's a person that the FBI had been bugging for half the year, but were afraid to move against him because they know this definition of bribery is so narrow. Finally, in the process of bugging him on pay-to-play corruption, they find out he's trying to sell the senate seat of Illinois. They had to act. So they go in and they arrest him for this; but if you notice, they really hadn't charged him for anything yet dealing with trying to sell the senate seat. This bribery law doesn't cover that type of corruption.

So we know our legal definition of corruption does not allow for the indictment of Blagojevich. It is not sufficient. Now, of course, we've got to be careful how far we take it, but it needs to defend the public.

PROF. DESTRO: Do you want to comment?

MR. CRANFORD: I don't really have much more to add on the definition of corruption. I will admit that I don't know what the legal definition is; I do assume, however, that we would say it's insufficient at this point.

I think that's still an issue of individual actions. I don't think that the way lobbyists operate, as a general matter, leads to corruption. I'm not aware of any studies that would show this, it is just my anecdotal, experiential view. There are individuals who were more prone to corruption, to violating the laws, and, that given the opportunity, they violate the law. Particularly if they think they could do it without getting caught. And so you have those outliers, an Abramoff or a Blagojevich or a Bill Jefferson, those people who may have been more prone to violate the existing rules. So even more rules will only work in light of the fact that they will potentially impede those that are law-abiding from having the same level of access to information and people that they had prior to the enactment of new rules and regulations.

I don't think there are any lobbyists who believe that they should be able to spend unfettered—maybe there are some, but most lobbyists don't believe that they should be able to spend unlimited amounts of money taking staff or members on trips, buying them meals, buying them gifts, taking them to ballgames. If that ever was the case, and it may have been in a bygone era, that is no longer the case. I think most of them just want to be able to have more substantive access.

I'll use one example that the new rules have done away with—the sit-down dinner at events: if an event has any food at it, it has to be finger food. That's fine and there will be members and there will staffers and there will be lobbyists who can attend those affairs, and I don't personally see any problem with that. I think what happens, though, is that there's way too much time spent trying to figure out if people are going to be in compliance with the rules.

And, in the end, more time is being spent on compliance than on addressing the substantive issues that members, staff, and lobbyists would like to address.

PROF. DESTRO: I'm going to ask one more question, and then we're going to open it up to the floor. We hear a lot about transparency. What I want to know is what do you mean by "transparency"? What would be a good level of transparency? When would you have lobbyists report?

MR. HOLMAN: Well, we're getting to what I consider a very good level of transparency right now with the new Lobby and Ethics Act of 2007; they call it the Honest Leadership and Open Government Act (HLOGA). For some reason, reformers can't come up with good anagrams. But, with HLOGA, we achieved a certain level of disclosure and transparency that we've never had before in the U.S., and they don't have anywhere in Europe.

And that is even considering LDA—the original 1996 Lobby Disclosure Act—under which we had a pretty good disclosure system. However, we didn't have any kind of disclosure, for instance, of lobbyist's campaign contributions, or our bundling activity, or our hosting of fundraisers. That was totally under the table, hidden from public view, and I think most of us will recognize that when it comes to the potentially corrupting influence of money, campaign contributions are what the real problem is—if no one knew what lobbyists were doing with campaign contributions. When I give a specific contribution to a candidate, it's disclosed on the Federal Election Commission webpage.

Well, there aren't many of us lobbyists who actually call ourselves lobbyists. I was introduced as a legislative representative. That's a name Public Citizen is trying to force on me. I call myself a lobbyist, and it's on my business card there. But most people—most lobbyists—will call themselves vice president of public affairs, or something that you just don't know what it is.

There was no way of tracking down lobbyist contributions, and there was absolutely no disclosure of lobbyists bundling campaign contributions and lobbyists hosting fundraisers. I once caught a lobbyist for Freddie Mac doing what appeared to be illegal activities entirely by chance, because there was no actual disclosure system. This lobbyist is named Mitch Delk. The webpage of Epiphany Productions, a private conservative fundraising institution, boasted about how it helped Mitch Delk host twenty-four fundraisers for members of Congress in a two-year period. I'm reading over this list and almost all of the organizations focus on the House and Senate committees that have oversight over Freddie Mac. Taking that list, I started running through the FEC campaign contribution records and found that no one was paying for these fundraising events. There was something suspicious going on there, but that was it and it was by sheer chance that I ran into it. I filed a complaint with the FEC that resulted in the FEC's largest financial fine ever, \$3.8 million against Freddie Mac. They determined that Freddie Mac was actually paying for these fundraisers.

What we got in the new law is that lobbyists now must disclose on their lobby disclosure reports, their campaign contributions, their bundling activity and their fundraising activity so we can open the book on this. You no longer have to accidentally discover a violation anymore. It's now transparent.

MR. CRANFORD: Well, not only that, but Freddie and Fannie can no longer violate it.

PROF. DESTRO: That's a little bit like closing the barn door after the barn burned down. How about some questions from our audience? Does anybody have any?

MALE SPEAKER: Mr. Cranford, you've talked about the number of lobbyists who are also attorneys and we're regulated as attorneys by not only the law but the ethical standards of the profession, and Mr. Holman has talked about how many lobbyists deny the fact that they are in fact lobbyists. To what extent do you think the propensity to deny that they are lobbyists and what they do is lobbying makes it more difficult for the profession of lobbying to exercise the kind of ethical supervision among your own members as the bar does for instance?

MR. CRANFORD: I think the reticence that he is speaking of about calling themselves lobbyists doesn't mean that they're not obviously acting as lobbyists. It has much more to do with the appearances because the term lobbyist seems to be vilified. They want to use another term, a euphemism of sorts, so that they still are conducting lobbyist business. Those who are lobbyists and attorneys, regardless of what they call themselves, will remember the professional responsibility required of an attorney. They recognize that whenever they speak, whenever they act, they're acting as officers of the court, whether they are lobbyists, litigators, or whatever it is that they're doing. From that perspective, I don't think what they call themselves has anything to do with it.

There's a broad category of lobbyists and then it funnels down to lobbyists who also happen to be attorneys. The vast majority of lobbyists want to, and do, act according to the guidelines that are set out, like disclosure laws. But attorneys who are also lobbyists must hold themselves to a far higher standard and, justifiably, will incur greater wrath and greater sanctions if they are caught not doing what they are supposed to do. Does that answer your question?

MALE SPEAKER: We would have a duty to the profession as lawyers to root out bad conduct among fellow lawyers, and I was just wondering whether the lack of cohesion among the lobbying profession makes it difficult to do something similar?

MR. CRANFORD: I don't know if I'm necessarily in a position to opine on that, but I'll tell you my sense is that attorneys who are lobbyists have to be prepared to rat on their colleagues and testify against them. I would suspect that there are a lot of bad actors who are known in the larger community, but nobody is really willing to finger them for fear that they may be fingered for

something, even if it's small. If it's illegal, or inappropriate, they don't want that taint.

I said at the outset, your word is your bond and your reputation is your card to be able to have access and continue to have access. Once you get a bad reputation, you're not going to be able to effectively advocate for your clients because you're not going to have the access. You're not going to be trusted. I propose to those that are interested—I'll commend to you an article that was written by one of my partners, Nicholas Allard, who is the head of our public policy at Patton Boggs, in the *Stanford Law and Policy Review*.

Bad actors, particularly in this day and age, won't last that long because there is an increase in the number of lobbyists. I don't know all the numbers, but I know when Tom Boggs, the chair of our firm, first registered he was maybe number sixty-five on the registered lobbyist list. There are well over 4,600 registered lobbyists now. I'm sorry, 46,000 registered lobbyists.

So as you can see in the span of two and a half to three decades, lobbying has become much more prominent in our culture and there is a certain expectation that if you're going to go to Washington you need to have lobbyist representation.

And when I say if you're going to go to Washington, I mean corporations, trade associations, and things of that nature.

MR. HOLMAN: I'd like to add a little bit to that question as well. I find it interesting that lawyers have a tougher ethical standard than lobbyists do. Lawyers who are lobbyists not only have to abide by the lobby disclosure laws, or whatever laws may be imposed on lobbyists, but lawyers have a mandatory code of ethics that lobbyists don't; and if lobbyists violate our self-imposed code of ethics there really isn't any penalty. If a lawyer violates the code of ethics of the bar, he faces possible criminal prosecution and disbarment. So there is a double standard if you're a lawyer as opposed to a lobbyist. But if you're a lawyer-lobbyist, you had better be careful.

MR. CRANFORD: Well, for example, a straight lobbying firm could, if they so choose, represent two clients simultaneously that are taking exact opposite positions on an issue where our conflicts, as attorneys, would not permit us to do that. So aside from the fact that I think our moral compasses, hopefully, would tell us that would be inappropriate, our malpractice insurance would also tell us that it's inappropriate and we wouldn't do it.

Again, just as Craig [Holman] was saying, those are the kinds of things that are just differences between straight lobbying firms that aren't employing attorneys versus law firms that have lobbying arms—whether it's a fully integrated portion of the firm as it is at Patton Boggs, or like some firms who have a spin-off public relations group as opposed to a lobbying or government relations arm.

MR. HOLMAN: We now have some legal ramifications for lobbyists in the new lobby disclosure law. A lobbyist, in filing these campaign finance reports, has to sign an oath saying that he has read the congressional ethics rules and he

is not going to encourage anyone to violate the congressional ethics rules. So now we can be held liable if we actually encourage members of Congress or staffers to violate the ethics rules. But that's still much more limited than what lawyers have to face.

PROF. DESTRO: Let me interrupt, because there is a question in the back.

MALE SPEAKER: Just looking through the materials, it seems like institutions of higher education did a pretty good job of carving themselves out exceptions to a lot of these lobbying rules. I was just wondering if I could get your opinion, or knowledge, on how that came about. I think it makes sense, but I just noticed that in many of these they very clearly carved these exceptions themselves. My second question goes to the difficult nature of lobbying in terms of just how this affects human interactions. Washington is a small town, and I can think of a couple of members of Congress who are in fact married to lobbyists and/or may be best friends with lobbyists—genuinely friends with them aside from their professional relationship. So I'm just wondering, within those relationships, how do these exemptions play out? There are, naturally, exemptions that spouses and family members can give each other presents; but what happens if one is a member of Congress and one is a lobbyist for a corporation?

PROF. DESTRO: Let me just ask you one question, just to clarify. You said that you thought you can see why the exemption for higher education made sense, why? Why do you think that?

MALE SPEAKER: I think universities and colleges have a unique place in our society in terms of future leadership positions—education is a prerequisite, essentially, to all of those positions.

PROF. DESTRO: That's why I asked.

MR. CRANFORD: I'll take a crack at your first question and Craig [Holman] may be in a better position to answer the second one, which is a little more technical. I am not specifically familiar with the university exemptions, but I think you're on the right track. I suspect what happened was that the lobbyists that represent the universities looked at the rules and said, "These are far too restrictive for the kind of operation that we have, given our place in higher education and the need that we have, with the lack of resources, to be able to petition the government to make sure that we are able to build more research facilities, build more classrooms, build more dormitory space"—the members probably found that persuasive and thought that it was a good idea to give whatever type of exemption that they got from that.

That's typically how those will work. It is similar to something in an agriculture bill that says farmers who have acreage of less than a certain amount are not going to be liable or be held to the same rules as others. They can come up with a good reason and a persuasive reason. Again, congressmen are rarely going to vote for anything they think is not in their best interest, or the best interest of their constituents. So it's obvious whatever side of an issue you're on, your goal is to be persuasive with facts and figures that are going to



convince that member or that senator that voting for this is a good thing. Or, in the alternative, convince them that the potential political fallout from not acting is not manageable.

That's part of how we advocate for our client, because there is always going to be someone on the other side who is going to say the position that Todd took on that is bad for you for the following reasons. It's about effective advocacy, in the end.

MR. HOLMAN: Institutions of higher education certainly did carve themselves out of some of these rules. I was outflanked on one in particular, and that is the gift rule. When I was first working on the lobby bill and the ethics reforms, I was advocating no gifts at all and no private refunds of travel. I was negotiating with members of Congress and staffers, and they were saying, "That's too far. You've got to provide exemptions because you don't want to stop lawmakers and staffers from going to conferences and giving speeches and meeting their constituents." That is a very valid argument.

So we provided an exemption for lobbying organizations to pay for trips for members of Congress for one-day trips. That's to go to the conference, give a speech and participate in the conference, and come back home the next day. It is still eliminating the golfing outings to Scotland. Then another exemption was thrown in, and I was starting to get a little upset at this point. That exemption was for 501(c)(3) charity events.

We had two exemptions going into the bill, and then the bill started going behind closed doors. There was a lobbyist with Cassidy Associates, hired by public higher education—not private higher education—and he got an exemption for public institutions of higher education from the gift ban and the travel restriction.

So now we have a code in which public higher education institutions can pay for trips and provide gifts, even sporting events and that sort of thing, but private schools can't do it. I was outnumbered on that one.

PROF. DESTRO: Do you think that if you actually look, it comes back to the question of transparency? One of the intriguing comments that I thought Governor [Sarah] Palin made during the campaign was that she had put Alaska's checkbook online, so that you could actually start to correlate who is putting in and who is taking out.

Institutions of higher learning get millions of dollars. Look at my own alma mater, the University of California, Berkeley's Lawrence Livermore Labs. The physics building here at CUA was built by the Energy Department. Georgetown University's gates were built with money obtained through some District of Columbia appropriation. In short, the institutions of higher education have their hands out, too.

Having filled out disclosure forms for members of Congress, I can tell you that they are a pain in the neck, but when the Member or Senator actually is going to a conference to talk about something that people need to learn about, you do the forms because representatives need to interact with the public. So

the question comes back to this: When does the evidence reach the tipping point of saying that these relationships are kind of sleazy? I want to turn that question to both of you.

I also wanted to talk about a subject that we really did not cover yet: the married lobbyist—the lobbyist married to the member of Congress. That’s not just the “revolving door,” they go through the same door.

One of the students in my Professional Responsibility class last year wrote a fascinating paper. It was about how if you work for the government, you can get disbarred and go to jail by using that revolving door without regard to the ethics rules. The question of the “revolving door” is fascinating because, if you’ve worked on the Hill for as long as you did, and if you’ve seen lobbying as long you did, your value as a staffer is enormous. The skill sets and relationships of a staffer are great, not to mention the substantive and procedural knowledge acquired in the process. Is it inappropriate to utilize that expertise? Is it possible to argue that the revolving door is a necessary part of the system? When does it become bad? Do the rules that govern an exit from an executive or judicial branch appointment strike the right balance or do we need to have more regulation?

MR. HOLMAN: We got new rules on the executive level, by the way, as of two days ago. But this is a fascinating issue, the revolving door, because I really consider it one of the biggest abuses of the lobbying profession. Just to give you some numbers as to what is going on. Public Citizen did a study of members of Congress from 1998 through 2006. We found that forty-three percent of all retiring members of Congress—and by retiring I mean not death or going to prison—spun through the revolving door and became lobbyists—forty-three percent. It is fifty percent in the Senate [and] forty-two percent in the House, which are remarkable figures especially when we tried comparing them to earlier times. There are no reliable figures for earlier times, because we really didn’t have any lobbying registration until 1996 and 1998. But there were estimates that about three percent of members of Congress back in the 1970s spun through the revolving door.

We’re now at forty-three percent. For congressional staffers—senior staffers—the number is about seventeen percent. The percentage may sound low, but that’s a lot of people spinning through the revolving door. So something has changed on Capitol Hill from the 1970s and earlier to today.

What has changed is fairly obvious, there’s just a lot more money on Capitol Hill. There are more government contracts. There are more business interventions. Congress and the federal government are about to start managing the entire financial services sector. There is a lot more money at stake and, as a result, businesses, banks, the automobile industry—everybody who wants something out of that federal government—is now paying top dollars for lobbyists, except Public Citizen. But everyone else is paying more for their lobbyists. I told you about Billy Tauzin’s \$2 million salary from Pharma to become a lobbyist. That’s the going price for a member of

Congress. We're talking multimillions for senior congressional staffers; the going rate ranges from \$300,000 to \$600,000, depending on how well entrenched you are in the establishment. Have I answered your question?

PROF. DESTRO: I do want to move onto something else. Actually, I thought the number was kind of low for staffers.

MR. HOLMAN: Seventeen percent is the number. That's a problem that I was also trying to deal with in the new lobby law. But we didn't get much of a change in the new lobby law when it comes to revolving door. That is one area in which I didn't succeed well. The current law is a one-year cooling-off period once you leave Congress. You're not supposed to make lobbying contacts with Congress for one year after leaving.

The problem with that revolving door policy is it narrows lobbying to just picking up the telephone—actually talking to other people. It doesn't bite anything else. So you have people like Trent Lott and Billy Tauzin—this forty-three percent of Congress who left—who will become registered lobbyists and they do all the lobbying activity—the strategizing and the organizing. Then, they have their colleague pick up the telephone and make the contact with the member of Congress: "By the way, Billy asked me to give you a call, we're doing this."

MR. CRANFORD: I knew you would say that.

MR. HOLMAN: So there's a big problem with the revolving door, and I was trying to include lobbying activities in the cooling-off period in the new bills and the latest legislation. But I wasn't able to get that in there, in the end.

MR. CRANFORD: You know when you talk about the high percent—fifty percent in the Senate and forty-three in the House . . .

MR. HOLMAN: Forty-two.

MR. CRANFORD: Forty-two in the House had gone to lobbying afterwards. I have not seen any reports or studies that talk about this—but just as an observation, I've got to think that in this day and age, typically on the Senate side, there are just far more of them who are used to making money before they came and it was a sacrifice for many of them now. I think, by the average person's standards, Senate salaries and congressional salaries are still very high. But when you have the millionaires club in the Senate—where I think fifty or sixty percent of them are millionaires—that's a serious pay cut for them. So their goal is to try to get back to whatever salary level they were making before, and that might be part of the phenomena of why so many more are going into lobbying now than they were twenty or thirty years ago.

PROF. DESTRO: You have a question?

MALE SPEAKER: I would suggest maybe part of it is—and I'm curious what the panel thinks—related to the fact that House and Senate rules prohibit members from having a profession while they're in the House and Senate. They're in the House or Senate for ten or twenty years, and they were an attorney prior to that. By the time they retire, I wouldn't hire them to defend a traffic ticket. You haven't practiced law in twenty-five years; and if you're in

business, you know your business prospects are over. Your career has atrophied. Politics is what you know, and so you're going to turn to lobbying for a source of income.

MR. CRANFORD: Although there were a couple of doctors still trying to ply their trade.

MALE SPEAKER: I know [Senator] Tom Coburn was trying to get an exception, but I don't think he did. I wonder if changing that rule would cause fewer people to go into lobbying.

MR. HOLMAN: Well, there are some important exceptions to that rule on outside employment. I'm trying to recall what the rule is—you can't receive fifteen percent or more of your income from outside employment.

MALE SPEAKER: They can certainly write books.

MR. HOLMAN: There are some important exceptions. If you have an established business, you can continue your established business unless it happens to be something that deals particularly with a congressional affair. So there's an important exception there. It's sort of a difficult issue, because I remember the reform committee would be supportive of increasing congressional salaries as a means to try to alleviate the burden that is posed by that rule. We've done so. We have tied the salaries to automatic increases, so Congress wouldn't have to vote on it. We've done that and it doesn't seem to have alleviated many of the problems that I've seen on Capitol Hill. This is a difficult issue to deal with.

PROF. DESTRO: One last question.

MALE SPEAKER: This question is for Mr. Holman, but I would be interested to see what Mr. Cranford would think as a former head staffer. I used to work on the Hill, and also was a lobbyist before law school, but it looks like from the Public Citizen documents and from my own personal research a lot of the legislation that came out of the 110th Congress and some of the legislation that came out before that was as a result of the Abramoffs of the world and the exceptions to the rules, and not the rule itself. So I'm curious how that cup-of-coffee rule is not insulting to staffers who did their job every day and who didn't take bribes and to lobbyists who do their job every day and don't offer bribes?

Some of the meetings that I had on the Hill with lobbyists helped me and my boss draft legislation to help people. I happened to work on healthcare and social issues and not so much telecom or medical issues, but it just seems to me that the result of the ethics reforms that were passed really punished those staffers and lobbyists who were doing their jobs every day and made the process work quite well. As both of you have said, lobbyists are used to informing staff who don't have the time to go through and learn all the issues as they might otherwise need to. I would be curious to see what your reaction is to the unfortunate effects of some of those reforms?

MR. HOLMAN: Well, it was never meant to be an insult to congressional staffers or to members of Congress. There are many noble members of

Congress. For that matter, it really wasn't meant to be an insult to the profession of lobbyists either. Those types of rules—the no-cup-of-coffee rule and the travel restrictions—were designed to standardize and make it easier to monitor and enforce ethics rules that we knew were being broken egregiously by several people. I do know that I'm not popular within my lobbying profession, but that doesn't concern me very much.

I hope the work of setting up these types of new ethics rules hasn't insulted too many staffers or members of Congress. I do still work with them. We often joke about the fact that I can't buy them a cup of coffee. That's one of the biggest jokes on Capitol Hill.

I don't intend it as an insult, and I hope most congressional staffers don't take it that way. It is designed to address a very specific problem, some egregious abuses and, quite frankly, it's done a fairly good job so far.

MALE SPEAKER: Not necessarily the insult, but what about the unintended consequences of perhaps losing information and people lobbying less?

MR. HOLMAN: There's no less lobbying going on. As a matter of fact, the lobbying activity continues to increase, the amounts of money spent in lobbying continue to go up, the lobbying activity flourishes, and the whole profession of lobbyist is flourishing. They may be angry that they can't do the old fashioned wining and dining, but they seem to have adjusted to the new rules. There's no downturn in the lobbying activity going on at Capitol Hill.

MR. CRANFORD: I would just quickly add to your broader question about unintended consequences. I think, as probably what you're experiencing, it is what happens every time that Congress legislates after an emergency, after a crisis, or after a scandal. They do it quickly and they don't—it's just impossible—think about all of the unintended consequences that are going to come down the pike. One good example recently is legislation that was put together in a manner of weeks following the whole Enron debacle. There have been people litigating and trying to open it up and reform it since the day it was enacted, because of unintended consequences.

Now again, very few people I think argued that something should not have been done. What led to Enron and WorldCom and some of those other debacles was ridiculous, and it was expensive for the employees of the companies and for the stock market. It was bad and something had to be done. But because it was done quickly, it might not have been crafted the same way they would like to have crafted it had they been doing it prospectively, as opposed to after the barn was burning down and you were trying to close the door. But that's what happens in Congress.

MR. HOLMAN: This reform legislation was exceedingly well crafted.

MR. CRANFORD: No slight intended.

MR. HOLMAN: One of the topics that is a popular joke between staffers and myself and other lobbyists is that finger food exception. It actually is achieving what we wanted to do. What we wanted to do was shut down the wining and dining—table twenty-four at Signatures Restaurant—but we did

not want to stop staffers and members of Congress from going to receptions hosted by Public Citizen or other lobbying organizations, whether we have a conference or we just want to lay out our agenda.

It used to be we could do this and we would attract staffers all the time by offering free lunch. Right after we gave up on offering that free lunch, Public Citizen—a lot of my own colleagues—were complaining because we held one of these briefings and no one showed up. I went to work to figure out how to use the finger food exception because people don't want to go and get cheese on a toothpick at a briefing. I found the ideal solution that the ethics committee didn't dream up, ice cream. You serve ice cream and that is as ethical as finger food. Staffers show up at these briefings all the time.

PROF. DESTRO: Let me thank the panel. This has been an excellent discussion.

