

# Can I Lobby You?

Don't Let One Bad Abramoff Spoil the Whole Bunch

By Jan Witold Baran  
Sunday, January 8, 2006; B01

If you typed the word "lobbyist" into the Google News search engine last week, the first page of 8,670 search results would have included dozens of headlines that screamed out "Lobbyist's Guilty Plea Sends Out Shock Waves Through US Congress," "Bush Campaign Getting Rid of Lobbyist's Money" and "Kennedy Among Leading Recipients of Convicted Lobbyist's Clients." The referenced lobbyist is, of course, Jack Abramoff. In spreading the news to America and the world, most news organizations deemed it sufficient to simply inform the public in headlines that a "lobbyist" had pleaded guilty. The insinuation is that there must be something inherently sinister because a lobbyist is involved. The nature of his guilt is treated as self-evident.

Perhaps this scandal will eventually be called the Abramoff affair, but for now it is a lobbying scandal. If Shakespeare lived today, perhaps he would write, "First shoot all the lobbyists." Yet in the midst of the current furor, reports do not mention that there are thousands of lobbyists in Washington who are honorable and honest people and who render a service that is both critical to a democratic society and enshrined in our Constitution.

There is irony here. The same constitutional provision that ensures the press may proclaim a lobbyist's guilty plea also protects the act of lobbying. The First Amendment is well-known for guaranteeing freedom of speech, freedom of press, freedom of assembly and freedom of religion. Often overlooked in its litany of fundamental civil liberties is the right "to petition the Government for a redress of grievances." It is this distinct clause that prevents Congress and the president from enacting a law that bans lobbying. It is a right that should not be taken lightly and that should not be eroded by the fraudulent acts of a single lobbyist.

The Washington lobbying community was aghast to learn of Abramoff's [methods and practices](#). Bilking a handful of Native American tribes of more than \$80 million in four years is shocking. Mocking those same clients in e-mails is unconscionable and disrespectful. Renting suites or skyboxes in at least three professional sports arenas is exceptional even among the most prosperous D.C. firms. Firms typically do not rent such suites because the price of tickets now regularly exceeds the limits on gifts to legislators. Most corporate offices in Washington have instituted compliance systems to ensure that their lobbyists do not exceed gift limits. For all these reasons, lobbyists are appalled at Abramoff's practice of extravagant wining and dining (at his own restaurant!), orchestrating lavish trips and offering campaign contributions in exchange for specific official acts. There may be others who bend the rules, but Abramoff retired the cup for outrageous conduct in the name of lobbying.

We have laws to prevent such corruption. If members of Congress were caught breaking those laws, they would be prosecuted and punished -- but we wouldn't abolish their seats and deprive their constituents of representation.

The framers of the Constitution recognized that citizens must be free to make appeals to those who govern and who make policies, laws and regulations that affect the citizenry. Obviously, most citizens are not physically located at the seat of government, may not know how government works, and are busy doing things other than lobbying. For those reasons, when they need help in making their petitions, they retain representatives who can more effectively seek redress on their behalf. In other words, ordinary folks need representatives to talk to their representatives.

While officials may prefer to legislate without being importuned by those affected or by their representatives, that is not the way laws should be made in an open democratic society. The founders sought to ensure the public interest by promoting pluralism and protecting the participation of all. How then can it be surprising that there are now more than 27,000 registered lobbyists petitioning on behalf of business, labor, the environment, education, abortion rights, the elderly, the poor, ethnic groups and more?

Daniel Webster may have become America's first lobbyist when he was retained as an attorney by business interests while also serving as the U.S. senator from New Hampshire. Legislators could wear two hats in those days. But the practice of employing lobbyists did not gain steam until the Grant administration. It was then that agents of private interests lingered in the lobby of the Willard Hotel a short walk from the Treasury Department and the White House in the hopes of buttonholing residing government officials and members of Congress to seek redress of some grievance. Hence the term "lobbyist." That certainly is easier to say than "grievance petitioner."

The size of the lobbyist population is proportional to the size of government. During the Civil War, the White House staff consisted of two personal secretaries to President Abraham Lincoln. Today the Executive Office of the President budgets for more than 900 employees. Lincoln was lobbied, but usually for a job in the postal service. There were many fewer legislators than today and the members had no staff. Currently there are more than 30,000 employees in Congress -- not coincidentally, that's just slightly more than the number of registered lobbyists. As the size and functions of government have grown, society has discovered more "grievances" to petition. In particular, spending by government has led to more petitions for one's perceived fair share.

Lobbying was not subject to any regulation until 1946, when the first lobbying law was passed. That initial effort required registration and reporting by lobbyists and the organizations that employed them. However, the legislation was poorly drafted. By 1954, the Supreme Court interpreted the statute so narrowly (in order to avoid violating the First Amendment right to lobby) that the law no longer provided meaningful reporting and could not be enforced. During the era of Lyndon B. Johnson, lobbyists and legislators formed an increasingly symbiotic relationship. According to biographer Robert Caro, then-Senate majority leader Johnson freely availed himself of the corporate aircraft of a

major Texas construction firm, and to the extent that he relaxed, he did so at the Middleburg estate of the firm's lobbyist.

Eventually, attempts were made to tame the gift-giving and to subject lobbyists to public disclosure. Congress adopted ethics rules in the late 1950s and gradually tightened them. In 1995 the [Lobbying Disclosure Act \(LDA\)](#) for the first time implemented clear requirements for registration and reporting. One major reason we know that Jack Abramoff was a lobbyist and who his clients were is the information on his lobbying reports.

Just because we have laws and ethics rules, however, doesn't guarantee that people, including lobbyists, will abide by them. Nor will lobbying laws prevent a lobbyist from committing crimes such as Abramoff's. He defrauded his Indian tribe clients, law firms and financial institutions, and the American taxpayer (by not paying taxes). He also admitted to conspiring to bribe a public official. That crime is the most reprehensible in that it betrays both honest government and his profession. It is like a lawyer paying off a judge or a jury. A lobbyist, like a lawyer, must ply his profession with advocacy and facts, not with gratuities or bribes.

While laws and rules do not stop crimes and rule breakers, both are vital to establishing and maintaining public confidence in the lobbying process. Congress, in particular, must take steps to reduce the excesses that Abramoff represents while preserving the right of effective lobbying. Here are four places to start:

*Enforce current [House](#) and [Senate](#) ethics rules.* After reading about Abramoff's wining, dining and entertaining, many Americans would be surprised to learn that both the House and the Senate have rules that generally limit gifts, including meals, to \$49.99. However, neither congressional offices nor the ethics committees actually enforce those rules, thus making a mockery of them. Congressional officials, particularly staff, should be required to certify annually that they have not received improper gifts and such certifications should be subject to laws that make false statements a crime.

*Tighten up those rules .* There has been much attention paid to the expensive foreign trips taken by some officials at private expense. In Congress, but not in the executive branch, officials may accept luxurious travel, accommodations and meals anywhere in the world as long the trip has some official purpose, such as giving a speech or participating in a conference. This practice must be modified or eliminated. If a trip is justified and necessary for official reasons, then it should be modest and financed by the government. If some trips continue to be privately financed, there should be limits and officials must make prompt, complete and public disclosure, preferably on a government Web site.

*Require lobbyists to itemize gifts and entertainment on lobbying reports.* The current LDA requires the reporting of the total amount of money spent by lobbyists, but no itemization of expenses. Itemizing gifts and entertainment over, let's say, \$20 would highlight which government officials accept such blandishments and whether they are adhering to their own ethics rules. Lobbyists and their clients are not subject to the

congressional ethics rules but are subject to the LDA and other statutes that prohibit bribes and gratuities.

*Promote an ethical culture.* The character and leadership of government officials are the most important ingredients in setting examples and demanding ethical behavior. There are, however, additional steps. Any manager working at a major corporation will tell you that he or she must participate in mandatory educational compliance programs. Workers are required to know what the rules are, what the company policies are and to demonstrate that they know. No less should be expected of government officials. Congress needs to implement a mandatory annual compliance education program and no one should receive a paycheck unless he or she has completed the program.

The above steps will not eliminate the possibility of another future lobbyist who is determined to bribe or an official who seeks emoluments. Renegades and schemers unfortunately exist. But these suggestions would help increase consciousness about the rules, encourage ethical behavior and perhaps reduce the possibility of another Abramoff operating on his scale for so long without someone blowing the whistle.

The targets of my suggestions are government officials, our leaders. It is incumbent upon them to pay their share of a dinner check and to decline a ticket to a sporting event that violates any gift limit. If they seek the social company of lobbyists they should abide by the rules or go Dutch. By the same token lobbyists must abide by the laws and act ethically, as most do, even in the era of Jack Abramoff's excesses.

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**Online chat Q&A following op-ed appear below:**

## **Outlook: In Defense of Lobbying**

Jan Baran

Partner, Wiley Rein & Fielding LLP/Fmr. General Counsel, Republican National Committee  
Monday, January 9, 2006; 1:00 PM

In Sunday's Outlook section, lawyer **Jan Witold Baran** writes that if Shakespeare lived today perhaps he would write, "First shoot all the lobbyists." And perhaps the current scandal in Washington will eventually be called the Abramoff affair, but for now it is a lobbying scandal. The word lobbyist is so tarnished it's almost as if the exact nature of the scandal requires no explanation. Yet in the midst of the current furor, Baran says that there are thousands of lobbyists in Washington who are honorable and honest people and who render a service that is both critical to a democratic society and enshrined in our Constitution.

Baran, a former general counsel of the Republican National Committee who served on the President's Commission on Federal Ethics Law Reform and a partner at Wiley Rein & Fielding LLP, will be online **Monday, Jan. 9, at 1 p.m. ET** to discuss his Sunday Outlook article, [Can I Lobby You?](#) , ( *Post, Jan. 8, 2006* ).

[Submit your questions and comments](#) before or during today's discussion.

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**washingtonpost.com: Jan Baran:** Hello, everyone. I will attempt to answer questions, particularly if several ask or touch upon the same specific subject.

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**Lyme, Conn.:** Your article was good in reminding the public that lobbying is legal and it is a Constitutionally protected freedom that all are allowed to speak and to address Congress. Yet, would you agree that lobbying creates political imbalances, in that those who can afford lobbyists and those who know the inside tricks to effectively getting members of Congress to act have distinct advantages? If so, do you see anything wrong with that, not on a legal sense, and perhaps not even on a moral sense, but at least in a sense that it does distort the messages that Congress hears as to what the public wants?

**Jan Baran:** As in all things, even those that touch upon constitutional rights, balancing of interest must be made. Lobbying should be subject to both legal constraints and moral restraints. Improper payments is neither constitutionally protected nor ethically acceptable.

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**Falls Church, Va.:** When a lawyer receives money to argue vigorously on behalf of a client, it is noble. If the lawyer takes the client's money and pays the judge to hear the arguments, it is unethical. If a lobbyist's only role was to receive money from a client and vigorously argue for the client's interests in Congress, then lobbying would be a noble profession. But the K Street Project made it clear that lobbyists also have a campaign financing role, with their success as lobbyists dependent (to some degree) on the amounts of moneys given to campaigns. To me, this is no different than paying a judge to listen -- the actions of both the lobbyist and the person being lobbied are unethical and the process becomes corrupted.

**Jan Baran:** I agree with your statement. It may be of interest to you that gift rules for judges are currently being evaluated by the ABA. The bar prepares the Model Code of Judicial Conduct and the entertainment of and travel by judges is undergoing revision and more restrictions. Information about the project is available from the ABA's web site.

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**Fairfax, Va.:** Some proposals being discussed would require lobbyists to list all their contacts with officials. Do you think this could discourage some Members from meeting with lobbyists who may represent unpopular groups? I worry that this could lead to a hardening of positions, limiting compromises on controversial bills.

**Jan Baran:** On the one hand, it seems that a government official should not be concerned about public information about who they meet with. On the other hand, detailed logs and reports of such daily meetings which may number a dozen or more seems unnecessarily burdensome. Current law requires disclosure of the chambers that have been lobbied and the bills lobbyists are lobbying about.

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**Washington, D.C.:** Thank you Jan! Finally, someone is out there that is bringing sanity back to this entire debate. People fail to understand that every single person has someone who is lobbying for their interests--to protect their interests--to promote their ideas. We help to represent their views to the Members of Congress. These include everything from social security, patient rights, tort reform, university research, civil rights, etc.

Bottom line. Thank you Jan for trying to set the record straight. We lobbyists do not advocate what Abramoff and his partners did, yet the public believes we are all doing the same evil deeds. That is simply wrong.

**Jan Baran:** Obviously, when over 90% of respondents in a CNN poll believe that lobbying and lobbyists should be banned, there is a crisis of public confidence. This crisis must be addressed by both government officials and lobbyists. As I outline in the article, rules must be enforced, the wining, dining and travel must be curtailed, and the lobbying laws must be improved without unnecessary burdens or unconstitutional restrictions. This will require prompt good faith action on the part of Congress.

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**Fairfax, Va.:** Since you claim the lobbying process is generally an honest one, would you object to legislation requiring the specific content of all lobbying contacts with legislators be placed on the public record and hence available for public scrutiny? Why do lobbyists need to operate behind closed doors if they are engaged in an honest activity?

**Jan Baran:** I have touched upon this issue in an earlier reply. I would add that not all meetings are with lobbyists. Many people with an interest in legislation meet with Congressmen and Senators, but do not satisfy the statutory definition of "lobbyist." Therefore, publishing the daily meetings would not reflect all meetings and to publish all meetings may be overly intrusive, burdensome and not necessarily productive.

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**Charleston, S.C.:** In your opinion, how has, if at all, McCain-Feingold contributed to the current scandal. Is it unreasonable to expect that the stricter the controls on the money are, the more likely we are to see devious schemes and plots to funnel money into the political process. What is wrong with allowing anyone to contribute anything they wish and make candidates disclose fully exactly who contributed and how much money they received. The system as currently enacted does not allow the average voter to truly know who is financing these campaigns.

**Jan Baran:** The point you make was hotly debated in 2002 during the McCain-Feingold law. Campaign finance regulation does affect the amount of time needed to raise money for campaigns. With contribution limits, more time is needed to raise money. However, Congress has chosen to restrict contributions to gain more confidence from the public. I leave it to you and the public to decide whether that works.

As for a disclosure only system, that is the way campaigns in the Commonwealth of Virginia are financed. Full prompt disclosure with no prohibitions on contributions or amounts. It seems to work there.

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**RE: The Thank You:** Well, yes and no. It kinda comes down to something very fundamental to me - buying access. Even a meal, even just two or three times a year, predisposes one to act favorably towards the person bestowing it. Deny it all you want: it just does.

**Jan Baran:** Access is a debatable question. Presumably everyone wants to make their point to a government policymaker. One of the chief objectives of a lobbyist is to build credibility. If they become known to the official through multiple contacts as honest and credible the information and positions they espouse will be given greater weight. My own

belief is that access purely from fundraising and unrestricted wining and dining is not productive nor ethically healthy.

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**Washington, D.C.:** While I agree that there needs to be some laws made to reign in lobbyists, what I fear most is all of the legislation is actually going to do the opposite of what it is intended to do. There are lobbyists for a number of social institutions such as churches, nonprofits, the poor, etc. None of these groups have a lot of money or give a lot of money. Yet they play an important role in advocating for the least of people in the country.

What I fear will happen is with lobbying reform, there will be a ton of new regulations that will require tons of money for lawyers and accountants to meet new regulations. This will end up not being a big deal for CitiBank or huge corporations but it will mean that a number of small nonprofits will have to give up lobbying.

Any thoughts?

**Jan Baran:** I agree. One of the dangers of excessive regulation is the cost and burdens that may be imposed on smaller groups. We have seen this in the campaign finance arena where campaigns have now become fully regulated enterprises which in addition to money need professional accounting, legal and compliance advice.

One of the numerous repetitive comments I have received from emails is frustration that lobbying does not represent or protect the "little guy" or "average Jane." Space did not allow me to mention in my article the hundreds of associations in Washington that represent exactly such people, such as AARP, NEA, and the public interest groups, who I suspect will be the one group of lobbyists who will prosper from this scandal.

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**Washington, D.C.:** There are limits to what lobbyists can donate to candidates for public office through PAC contributions and individual giving? Are there any laws restricting employment income that federally elected officials and their staffs can receive from lobbyists or as a result of lobbyist activity (i.e., lobbyist brings new client to Congressman's law practice)? How about speaking honoraria to congressional staffs, illegal or legal?

**Jan Baran:** At one time Congressmen and Senators were permitted to maintain their businesses and even practice law. Today such practices are generally prohibited. Law firms may not use the name of a former Member or Senator that appeared in its title. The elected officials now are restricted to the amount that they may earned in outside income (non-interest, or non-investment). And some professions may not be undertaken for pay at all. Senator Coburn of Oklahoma is a pediatrician and recently was instructed by the Senate Ethics Committee that he could not practice medicine for compensation beyond

the outside income limit, which is approximately \$20,000. Honoraria was first limited in the 1980's and is now banned. If an honoraria is paid to a Senator or Congressman it may not exceed \$2000 and must go to a charity. There is a cap on the total of such payments.

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**Washington, D.C.:** I hardly ever agree with Bill Kristol, but when he said that the latest Abramoff thing has just as much to do with the nasty business that is gambling as with poor lobbying laws, I could not have agreed more.

**Jan Baran:** I agree that gambling played a role in this episode. I also note that Indian tribes are the only contributors that have a status under the current finance laws that permit them to make donations without attributing the money to any individuals and without the aggregate limits that otherwise are imposed on individual contributors. This is an issue that should be addressed by Congress.

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**Washington, D.C.:** Thinking way back to the late 1970s when the federal government conducted a sting investigation against congress called AB-SCAM, what would happen if another government or non-government did the same thing to our elected officials?

Are you aware of any situations where foriegn governments or private organizations have conducted scams that videotaped American elected officials who accepted bribes, with the purpose of using the evidence to secure or influence an elected official's position on an issue?

**Jan Baran:** I am not aware of any foreign entities undertaking sting operations on US politicians or even their own. Sting operations have been used by the FBI in several investigations of state legislators and officials.

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**Eugene, Ore.:** 1. If one wants to discourage unfair or illegal lobbying, wouldn't it be better to concentrate on reducing the POWER that federal government officials have to award "pork" to favored petitioners? What can government officials or public interest groups do to start rolling back the POWERS that Congress has to award public money to special interests?

2. Wouldn't it be advantageous to push for term limits for Congress so that long term relationships with lobbyists would not be possible?

**Jan Baran:** As I noted in my article, the more government grows, the more lobbying there will be. Term limits have some appeal. However, they may produce the undesirable result that the only knowledgeable and experienced source of information will be the lobbyists who are not term limited!

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**Va.:** I was talking with someone from France visiting here and he read about the thing. He said that in Europe there are few lobbyists because the politicians and civil servants are elitism and the state will take care of the people.

**Jan Baran:** Europe does have a very different system. First of all it is parliamentary. Second, they have fewer elections and campaigns that may be publicly financed or privately financed by a small number of large contributors, often business and labor organizations. As you mention, France in particular has a corps of public officials who go to elite schools devoted to public administration.

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**Houston, Tex.:** Lobbying is the cancer that has made our Democracy into a Government of the Rich, similar to the Roman government of the Aristocrats. Suggestion: that anyone running for a political office sign an agreement not to become a lobbyist, EVER, under a severe penalty. Question: do you know of an everyday citizen that hires a lobbyist?

**Jan Baran:** AARP. You may be too young to belong.

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**Washington, D.C.:** Mr. Baran I thought your article was interesting but I have a question. You write about the LDA and how lobbyists and their clients are subject to the LDA and other statutes that prohibit bribes and gratuities. I am wondering whether the client is subject only when they are actively involved in the bribery? What about a situation where they probably should know what is going on but they intentionally avoid knowing. Are there laws that could be enforced against clients that make sure they act as a check against their lobbyists running amok? I think, for example that the FTC holds people responsible for the acts of others when they know or consciously avoid knowing what their agents are doing?

**Jan Baran:** In criminal law, conspiracy may involve others who did not perpetrate the crime. In civil law, penalties can be imposed on others who have responsibilities from compliance. This is true of the federal campaign finance laws which look to the treasurer of a committee as a responsible person.

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**Jan Baran:** Thank you all for your questions. This concludes our online chat.

Jan Baran

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