

MEA CULPA: ETHICS REFORM CAN BE A HARD PILL TO SWALLOW

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In November of 2016, the New York Times ran a story about New York Governor Mario Cuomo, with the headline, “Cuomo, Stung by a Scandal, Offers Ethics Reforms.” While the particulars of the Governor’s proposed ethics reforms were scant, the details of the scandals themselves (FBI investigations into bribery and bid-rigging schemes involving the Governor’s close associates, former aides and advisors) dominated this story and the many media reports that followed. At first blush, offering up ethics reform would seem to be a noble response to allegations of political corruption within your inner circle, but looking at this approach from the long lens of history (superficially covered in this paper) should tell us that actions don’t always speak louder than words.

While the fallout from political scandals can be devastating and long-lasting, the silver lining is that scandal can often be a source of change and progress. Sometimes, the champions of ethics reform are the victims of scandal; occasionally, it’s the offender himself who leads the charge. But are the mea culpas from the accused sincere or just a calculated PR maneuver? Often, it’s hard to tell.

Examine any political scandal and the common element in nearly all cases is greed. Greed is defined as “an excessive desire to acquire or possess more than what one needs or deserves, especially with respect to material wealth,” and those who act on that desire tend to reinforce the biblical truth - “for the love of money is the root of all evil.”

While the love of money can be traced back to biblical times, money’s corrupt influence in politics resulted in some of our nation’s earliest political scandals. By way of example, examine the 1896 presidential race between William McKinley and William Jennings Bryan. A lot of money – corporate money – flowed into that race. McKinley’s campaign manager, Mark Hanna, was said to have strong-armed corporate leaders into making financial “assessments” which were then funneled into the McKinley campaign. As a result, McKinley was able to outspend Bryan, by 10 to 1, and won the election. After shepherding the as-yet-unheard-of amounts of corporate money toward election victory, Hanna would go on to say, “There are two things that are important in politics. The first is money, and I can’t

remember what the second one is.” According to Hanna, “All questions in a democracy are questions of money.” This sentiment carried into McKinley’s bid for re-election in 1900. After Theodore Roosevelt was re-elected President in 1904, he urged Congress to ban corporations from making political contributions and pushed for other campaign finance reforms. Not long after, Congress banned corporate contributions with the passage of the Tillman Act of 1907, followed by the Federal Corrupt Practices Act of 1910. Forty years later, Congress followed up with bans on indirect expenditures by corporations and labor unions with the Taft-Hartley Labor Act of 1947.

Not all attempts at ethics reform following a scandal were as successful. Some saw mixed results. Concerns about ethics and conflicts of interest grabbed the nation’s attention in 1920, after Federal Judge Kenesaw Mountain Landis was named the nation’s first Baseball Commissioner following the 1919 World Series cheating scandal, also known as the Black Sox Scandal. When Landis supplemented his \$7,500 annual salary as a judge with the \$42,500 salary he made as Baseball Commissioner, the American Bar Association censured him. In late 1921, after much of the public criticism died down, Landis quietly resigned as judge and served out the rest of his 7-year term as Commissioner of Baseball. Shortly thereafter, the American Bar Association created a commission on judicial ethics to study ethical rules for judges and adopted the first ever (non-binding) Canons of Judicial Ethics in 1924.

Modern ethics laws really took shape in the 1970s in response to campaign abuses in the 1972 Presidential election and the Watergate scandal. Congress passed the Federal Election Campaign Act in 1971 and President Nixon signed it into law in February 1972. The Federal Election Commission followed in 1974. One of the lasting lessons from Watergate has been the requirement that all law students take an ethics course in law school, pass an ethics exam before becoming licensed, and take a minimum of 3 hours of continuing legal ethics education every year. These requirements were a direct and pointed response to the fact that so many lawyers were involved in the Watergate cover-up.

Ethics reform in Texas has also enjoyed a long, tortuous history steeped in political scandal, mirroring the pattern seen on the national scene – scandal followed by the response to scandal. Modern day ethics laws in Texas have been shaped almost entirely by the response to these Texas-sized scandals.

Some of the earliest reforms came in the late 1950s following scandals involving insurance companies paying improper fees to influence legislators; the Texas Veterans Land Board scandal that led to the conviction of General Land Office Commissioner Bascom Giles; and the bribery conviction of Texas State Representative James Cox. In response to these scandals, the 1957 Legislative Session concluded with a first-ever Code of Ethics. Unfortunately, not many lawmakers complied with the Code, many complaining that it simply wasn't needed and that no law could make someone ethical if they were not. By 1969, newspapers around the State were roundly criticizing lawmakers for their lack of compliance. That lax attitude toward ethics would be the tone adopted by each Legislative Session until 1971.

Modern ethics law in Texas was really shaped by two big events – the Sharpstown Bank Stock Fraud Scandal in the 1970s, followed by a series of political scandals in the late 1980s and early 1990s.

Much like Watergate, which captured the nation's attention in the early 1970s, the Sharpstown Bank Stock Fraud scandal was BIG. It started in 1969 because Frank Sharp, a Houston businessman who owned the Sharpstown Bank, was tired of dealing with the Federal Deposit Insurance Corporation. He supported proposed legislation that would have allowed his bank to be insured by a state chartered corporation instead of the stricter FDIC. Sharp provided hundreds of thousands of dollars in unsecured loans from the Sharpstown Bank to Legislators, elected officials, and their staff who in turn used the money to purchase stock in National Bankers Life, an insurance company owned by Sharp. Sharp artificially inflated the value of the insurance stock, allowing his investors to sell their shares for huge profits. The bill he was interested in was pushed through a Special Session by Speaker of the House Gus Mutscher. It was later vetoed by Governor Preston Smith, but not before he sold off his shares of stock for a significant profit. In the end, Sharp was convicted of banking and securities fraud violations; Mutscher was indicted and convicted (later overturned on appeal) of bribery. Though not criminally charged, the political careers of Smith and Lieutenant Governor Ben Barnes were brought down by the scandal. Several legislators and their staff were later caught up in other criminal investigations spawned by Sharpstown.

With the specter of Sharpstown driving the 1971 legislative agenda, one would think passing comprehensive ethics reform would have been easy. It was not. In fact, after a long, contentious fight between both chambers, the ethics package (HB 203) finally passed just before

midnight on Sine Die. It was not cause for celebration. The following year, the Texas Attorney General declared HB 203 unconstitutional. Legislators went back to the drawing board.

The real fall-out from Sharpstown was evident in the 1972 elections, with more than half of the Legislature defeated or embarrassed into not running again. Holding themselves out as “reformers,” the largest group of freshman Legislators in history, including a new Governor and a new Lieutenant Governor, took over as the Legislature entered the 1973 Session.

The 1973 Session was dubbed the “Reform” Session for that reason. House Bills 1-9, known as the “Campaign Reporting and Disclosure Act,” eventually passed without much controversy, but in reality, despite the impact of Sharpstown, lawmakers’ appetite for ethics reform never really lived up to the public clamor and expectations. The “reformers” filed a flurry of tough ethics bills, which were met with the filing of competing bills. Legislators wanted to look good to their constituents, so many jumped on the “ethics reform” bandwagon creating a lot of competition to arrive at the best ethics reform bill. Instead of working together, fights over details ensued. Republicans fought against Democrats and Senators fought against House members. With too many choices and too much fighting, it became more and more unlikely that any bill would pass. When Legislators did reach an agreement, the result was often just a “watered down” version of an ethics bill.

In the end, there were some significant reforms that came out of the 1973 Session, including laws governing lobby disclosure, greater disclosure in annual personal financial reports, more disclosure in campaign finance reports for candidates and political committees, a prohibition on accepting honorariums, stronger open meetings laws, and the first open records laws. However, against this backdrop and faced with lawmakers’ sentiments that “something is better than nothing,” the public’s expectations for true ethics reform would have to wait another 20 years.

In the meantime, there were smaller scandals and smaller ethics reform victories that followed. In the early 1980s, Speaker of the House Billy Clayton was indicted and tried for bribery after accepting thousands of dollars in cash as part of an FBI sting. Clayton was acquitted because he never deposited the cash and testified that he had intended to return the money, which had been stored in a credenza in his office. In the tradition of mea culpas past and future, Clayton would go on to create an advisory committee whose

recommendations led to new ethics laws passed in the 1983 Session. Among the new laws that would pass was a prohibition against accepting more than \$100 in cash contributions.

The ethics laws that came out of the 1983 Legislative Session were essentially a response to the Speaker scandals. Even though he had been acquitted of bribery, Clayton lost credibility after his trial and was succeeded by Gib Lewis. Lewis had been elected as one of the “reformers” in 1972 in the wake of Sharpstown. He soon found himself frequently criticized by the press for failing to disclose business ties to racing and liquor industries with interests before the Legislature. Lewis would remain among a group of several lawmakers who routinely took a casual approach to filing disclosure reports. However, new laws were passed in response to omissions in financial disclosure reports and because Legislators were regularly using campaign contributions for personal items such as clothing, vacations, college tuition for their kids, paying off personal debt (Speaker Lewis reportedly used \$200,000 to pay off a debt on his private airplane). Despite these reforms, one Legislator lamented that “all the legislation in the world won’t stop lying and cheating.”

1989 was not a good year for the public image of Texas Legislators, perceived by many as living extravagant lifestyles thanks to gifts from lobbyists and campaign contributions. As a signal of their loss of confidence, in November 1989, voters rejected a constitutional amendment that would have tripled the salary of Legislators. Many critics of the proposed pay raise suggested voters were demanding real ethics reform before they would agree to pay lawmakers more. That same year, the public was stunned when a wealthy businessman, Bo Pilgrim, handed out \$10,000 checks to Legislators on the Senate Floor as they debated and voted on a workers comp bill that Pilgrim favored.

The Speaker scandals culminated in December 1990, when Lewis was indicted for allegedly accepting and failing to report a trip to a resort in Mexico paid for by a law firm, and for accepting a \$5,000 payment from the firm for county taxes owed by a business owned by Lewis. Earlier in the year, Lewis had been vocal in his criticism of the press, accusing them of “exploiting” ethics issues and often chiding them for taking the fun out of serving in the Legislature by expecting lawmakers to account for where they got their outside income and how they spent it. After his indictment, however, Lewis came out with public support for, among other ethics reforms, the creation of an independent Ethics Commission.

In 1990, with the Lewis indictment and Bo Pilgrim's checks fresh on everyone's minds, Ann Richards and Bob Bullock successfully campaigned for election on ethics reform. A Special Session was called in 1990 specifically for ethics reform, but no agreement was reached. With the failed Special Session in the rear mirror and the 1991 Regular Session approaching fast, Travis County District Attorney Ronnie Earle summed up the growing public sentiment in a December 1990 editorial calling for real ethics reform and lamenting that Texas had "Mr. Smith-Goes-to-Washington" expectations but a "Bo Pilgrim reality" that needed to be fixed.

The 1991 Regular Session ultimately became a watershed moment for real ethics reform, but the bill that mattered - SB 1 - almost didn't make it to the floor as the clock struck midnight on Sine Die. In fact, the clock reportedly was stopped to allow the bill to be printed and handed out to members before the final vote. In any event, what came out of the 1991 session were much tougher ethics laws. Candidates and officeholders were prohibited from using contributions to purchase real property or to pay a spouse, child, or business for services; acceptance of contributions in the Capitol or a Courthouse was banned; lobbyists were further restricted; a revolving door ban and stricter bans on accepting honoraria were put in place. A constitutional amendment was placed on the November 1991 ballot, which led to the creation of the Texas Ethics Commission. And the first ever computerized campaign finance disclosure system with reports available online came into existence.

While perhaps cynical and an over-simplification, political scandal was, and continues to be, the surest route to ethics reform. Sometimes, whether out of sincere remorse or political survival, it's the public official caught up in the taint of a corruption investigation who spearheads the call for ethics reform.

Today, in the midst of concerted efforts to undermine the advancements made over the years to bring more transparency to the electoral process, the Ethics Commission continues to administer and enforce the state's myriad campaign finance and disclosure laws. Its mission: to control and reduce the cost of elections; eliminate opportunities for undue influence over elections and governmental actions; fully disclose information related to expenditures and contributions for elections and for petitioning the government; enhance the potential for individual participation in electoral and governmental processes; and ensure public confidence and trust in government.

Passing comprehensive, effective ethics laws is difficult, but not impossible. While it's an inconvenient truth that change follows scandal, we should take some comfort in the fact that political scandals (at least in Texas) seem to have a 10-20 year cycle. Although it will always seem like a Sisyphean challenge to get lawmakers to regulate themselves in a way that lives up to public expectations, it's important not to forget the critical role played by the press, government watchdogs, the Ethics Commission, and others who report on these important issues.

In the end, how we as individuals strive to pursue ethics in both our public and personal lives will continue to drive positive change. The challenge with today's non-stop, 24-hour news cycle will be not to succumb to scandal "fatigue," which can cause people to feel exhausted from trying to stay on top of the latest scandal. In fact, the real danger may no longer be the scandal itself but the burnout and disengagement we begin to experience from exposure to too much scandal and the lowering of the bar for acceptance of bad behavior. That cannot be our legacy.