

Research In Action



# Lab Dispatches,

vol. 1

Edmond J. Safra Center for Ethics

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# Lab Dispatches, vol. 1

Institutional corruption: the consequence of an influence within an economy of influence that illegitimately weakens the effectiveness of an institution especially by weakening the public trust of the institution.

Fall 2012 blog posts

by the Edmond J. Safra Research Lab for Ethics

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## Table of Contents

01) William English, <i>The Ethics of Competition</i> . 14 August, 2012 .....	4
02) Michael Jones & Paul Jorgensen, <i>The Politics of Distraction: A Call for a Fresh Look at Ad Effects</i> . 5 September, 2012.....	11
03) Paul D. Thacker, <i>What Value Lobbyists?</i> 17 September, 2012 .....	14
04) Aaron Kesselheim, <i>Institutional Corruption and Perceptions of Methodological Rigor</i> . 26 September, 2012.....	19
05) Sunita Sah, <i>The Burden of Disclosure: What You Do Know Can Hurt You</i> . 1 October, 2012 .....	22
06) Gregg Fields, <i>The Banker Had No Face: Assessing Institutional vs. Managerial Responsibility in Mortgage Fraud Lawsuits</i> . 11 October, 2012 .....	25
07) Gregg Fields, <i>No Charge: Why Regulatory Institutions Have Prosecuted So Few Bankers; and Why It Matters</i> . 3 November, 2012.....	33
08) Daniel Weeks, <i>What Is Left Unsaid in This Campaign</i> . 6 November, 2012 .....	41
09) Gregg Fields, <i>Reformers at Bay: Analyzing Institutional Failure in the Implementation of Dodd-Frank</i> . 14 November, 2012 .....	51
10) Donald W. Light, <i>Demythologizing Corrupted Facts and Claims by Big Pharma</i> . 19 November, 2012 .....	58
11) Maggie McKinley, <i>Studying the Everyday Lives of Professional Federal Lobbyists</i> . 4 December, 2012 .....	62
12) Donald W. Light, <i>From Institutional Corruption to Pharmageddon?</i> 10 December, 2012 .....	69
13) Donald W. Light, <i>Good Reasons Why Physicians Should Not “Believe the Data”</i> . 17 December, 2012 .....	77
14) Clayton D. Peoples, <i>What Can \$6 Billion Buy?</i> 19 December, 2012 .....	81
15) Ted Gup, <i>A Seat in Congress</i> . 21 December, 2012 .....	85
16) Paul D. Jorgensen, <i>Political Money in 2012</i> . 24 December, 2012 .....	89
17) Sheila Kaplan, <i>White House Stalls EPA Report</i> . 27 December, 2012 .....	91
18) Eric G. Campbell & Genevieve Pham-Kanter, <i>Doctors Pressured to Prescribe Brand Name Drugs</i> . 7 January, 2013 .....	98
19) Gregg Fields, <i>On Confidence Lost: Does the World Still Trust Washington to Steer International Financial Reform?</i> . 18 January, 2013 .....	100
20) Maryam Kouchaki, <i>Dirty Money: Mere Exposure to Money Motivates to Think Business, Cheat and Lie</i> . 22 January, 2013 .....	109
21) Sheila Kaplan, <i>Conflicted: GOP vs. EPA-Funded Scientists</i> . 24 January, 2013 .....	112
22) Jennifer E. Miller, <i>On Restoring Trust and Ethics in Pharma</i> . 29 January, 2013 .....	116
23) Zach Fox, <i>Unaffordable Housing</i> . 30 January, 2013 .....	124

## The Ethics of Competition

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[William English](#)



An interesting cheating scandal recently rocked the 2012 Summer Olympic games. It didn't involve gambling, blood doping, or performance enhancing drugs. In fact, the problem was with poor, not enhanced, performance. Eight badminton Olympians were disqualified because they did such a good job of *losing*.

The details are a bit complex for those of us who don't regularly follow the sport, but in essence, four teams apparently tried to lose in a preliminary round in order to secure matchups in subsequent rounds that would increase their chances of winning a medal. More specifically, two Chinese teams were on track to play each other in the semi-finals, meaning only one could advance to the medal round. If one of these teams lost in the preliminary round, however, they would be placed in a different bracket and both teams would still have a chance to win medals. Thus, the Chinese team started to play badly in their matchup with South Korea. However, it also became apparent to the South Koreans that their overall chances could improve by being in the other bracket as well. The result was a comically bad match, with each team trying their best to lose. A similar scenario played out an hour later between another South Korean

team and Indonesia. The South Koreans wanted to lose to avoid competing against the other South Korean team, and Indonesia wanted to lose to avoid being in the bracket with the dominant Chinese team. (Badminton is not the only sport to suffer from these problems: similar accusations have been made of teams underperforming to secure better seeds in the soccer and basketball tournaments.)

Fans and Olympic officials were clearly dismayed by the poor performance of these world-class athletes, and the decision to disqualify them appears to be a popular one. However, it is worth asking what exactly these players did that was wrong. The answer is less obvious than it might appear at first glance, but likely holds some lessons for how we ethically evaluate a wide range of contests in the real world.

### What game are you cheating at?

Consider the advice these teams might have received from a hardnosed strategy consultant. The Olympians had come to the games with a clear goal in mind – to win medals. The tournaments had a transparent structure, and, as a matter of strategy, losing in one round really could help achieve their ultimate goal of medaling. Athletes are constantly searching for new strategies to win. Why shouldn't the decision to throw an early game for a better tournament seed not be part of the game of winning?

Various rationales were put forward as to why this strategy was wrong. The official charge from the Badminton World Federation was “not using one’s best efforts to win a match” and “conducting oneself in a manner that is clearly abusive or detrimental to the sport.” Others argued that this strategy robbed ticketholders of the money they paid to see a good performance. Perhaps the most straightforward charge came from a fan who remarked, “It’s not in the spirit of the thing.”

In order to understand the outrage, I think it is useful to consider a distinction that the philosopher Alasdair MacIntyre made in his classic work on ethics, *After Virtue*, concerning the kinds of achievement people can seek. MacIntyre asks us to imagine teaching a seven-year-old child how to play chess. At first, the child is uninterested, but you tell her you'll play such that she'll always have a chance of winning and, if she does win, you'll reward her with her favorite candy. You might get her interested in chess this way, but so long as the candy is her only motivation, she has no reason not to cheat if given the opportunity (indeed she has every reason to cheat). However, over time the child may come to love the game of chess for what it is and appreciate the particular excellences required to play it well – strategy, concentration, creativity, imagination, and so on. MacIntyre describes these sorts of goods as “internal” to the practice of chess, contrasting them with “external” goods like money, prestige, or candy that might come as rewards to winning players. Importantly, to the degree that the child comes to be motivated by the goods internal to chess, she has reasons not to cheat to obtain external goods, for in doing so she would be robbing herself of the opportunity to achieve the goods that are internal to the practice.

### Which goods are primary?

Internal and external goods often stand in uneasy relation to one another in the real world. With Olympic medals and glory on the line, it's understandable why players would be tempted to compromise their athletic integrity (the decision of one badminton player to leave the sport for good after the scandal perhaps suggests she really did see the external goods as primary – why play the sport if you can no longer medal?). Of course, when players play purely for medals, they are still playing a game. However, it's a game for the external rewards, not the internal goods of the sport – you cease playing badminton to show you are the best at badminton; you play badminton because it pays.

Again, it may be an open question, morally speaking, whether it's worth forsaking the goods and integrity of a particular practice for various external goods. However, sports are not the only arena in which this question arises. The professions that constitute the lifeblood of any society are also practices, complete with their own internal goods, standards of excellence, and purposes. Being a good doctor, for example, requires caring about the health of patients, diligence in keeping up with medical literature, exercising care in making diagnoses, judiciousness in recommending the best treatments, and so on. Good doctors are expected to exercise these virtues whether they work for a six-figure salary in a Manhattan hospital (large external rewards) or volunteer for a medical mission in Haiti (small external rewards). Something similar could be said of engineers, lawyers, public officials, plumbers, and so on.

It's useful to understand how professions are constituted by their own distinctive internal goods and virtues, because it is only from this perspective that we can speak meaningfully about a profession's "corruption." A doctor who prescribes a truly inferior drug because of a financial kickback from a drug company wins at the game of wealth maximization, but has failed as a doctor. The corruption of the "internal" purposes of professions by "external" rewards is a familiar complaint. Indeed, it seems that one purpose of the process we call "professionalization" — professional schools, medical boards, bar exams, professional meetings, etc. — is to shape the motivational fabric of professionals' lives so that they come to see the internal goods of a practice as primary and non-negotiable. The importance of shaping individual motivation in this way is hard to overstate. Although police, referees, and other "enforcers" are called upon to monitor and penalize extreme infractions of professional integrity, out of necessity we must ultimately rely on the voluntary discipline of professionals to keep up the standards of a practice.

So, shaping motivations and habits of mind at the individual level is crucial for creating professionals committed to the integrity of a practice. However, there are

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two further challenges to the integrity of practices, which can become opportunities if handled well.

### Structuring competition

First, new questions will always arise about the boundary lines of fair play. There was a point when it was not clear whether bunting should be a legitimate strategy in baseball, or whether swimmers should be allowed to wear rubberized tech suits. One can imagine decent arguments for and against, but it's important that a consensus was reached that could provide players with common expectations about the legitimacy of such innovations. Similar questions arise in professions, although the right answers may be less arbitrary. Should auditors provide consulting advice to their clients, should politicians be able to accept donations from foreign nationals, should banks be able to use customer deposits to gamble in the stock market, should plumbers begin work without providing an estimate to customers, and so on? These strategies will tend to increase earnings in the short term, but in evaluating their legitimacy one must ask about their long-run effects on the purpose and integrity of these professions.

Note that this sort of underlying question does not arise for someone who is focused exclusively on external, material goods. To take an extreme example, we could imagine the proverbial third-world dictator, obsessed with power and wealth, who decides whether to rape, pillage, and murder based solely on the instrumental calculation of what he can get away with. True professionals consider more than external rewards and what they can get away with – not simply because of legal systems that restrain them, but also because many goods they value can only be achieved if the integrity and public purposes of the profession remain intact. (Perhaps this does suggest that we should be wary of professions where external rewards are seen as the only thing that counts.)

A second challenge concerns the way we create external rewards to tempt people in the first place. The badminton players bear ultimate responsibility for

their actions, but the tournament designers may share part of the blame. As one player (from a team that was not disqualified) remarked: “The round-robin format was ridiculous. It brought about a very bad side of the game. The format encouraged match-throwing. I hope the format changes (in the next Olympics).” Indeed, it would be ideal if a tournament format could be found that did not provide such massive incentives to game the system by losing in early rounds. Change the structure of the competition and you remove the temptation to cheat. Economists and political scientists spend a lot of time thinking about these sorts of “institutional design” issues in the hope of bringing external rewards into closer alignment with the genuine internal goods of a practice. Likewise, managers are constantly on the lookout for ways to improve the “choice architecture” of employees and customers and thus wrestle with these problems on a daily basis.

Changing institutions to encourage better behavior, while not creating new opportunities for malfeasance, is of course easier said than done. Indeed it can seldom be done perfectly, which is why we generally need to call on the personal integrity of professionals as well. The badminton episode illustrates the importance of each. Although unfortunate for the players involved, this peculiar scandal provides some useful lessons beyond the Olympics: the goodness of losing or winning depends on what game you’re playing; and both participants and rule-makers have a role in creating contests conducive to the “spirit of the thing.”



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[www.ethics.harvard.edu/lab/featured/239-william-english-the-ethics-of-competition](http://www.ethics.harvard.edu/lab/featured/239-william-english-the-ethics-of-competition)

## The Politics of Distraction: A Call for a Fresh Look at Ad Effects

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[Michael D. Jones](#) & [Paul D. Jorgensen](#)

Lab Fellows Michael Jones and Paul Jorgensen published [a new study](#) in the *Journal of Political Marketing* on political television advertisements' influence (or otherwise) on congressional election results. Their results, also reported in [USA Today](#), are further explained for both scholarly and non-academic audiences in this blog entry, written for the Lab.

Every election cycle millions of Americans without TiVo are subjected to advertisement after advertisement about political candidates. Media outlets cover the advertisements as if they are legitimate news in of themselves and many a political scientist has built a case for tenure around the study of advertisements. Thus the candidate who runs the ad, the media who report on the ad, and political scientists who analyze the ad, are all convinced that ads are necessary to win elections. Of course, while *they* think ads matter *we* citizens are doing our best to limit exposure to the toxin poured into our communication environment every election cycle. Given these two truisms — that elites think ads matter and that the rest of us go out of our way to prove them wrong — we asked what turned out to be a pretty novel question: do political advertisements influence congressional election outcomes? Based upon our recent analysis of congressional elections from 2000 to 2004, the short answer is [no](#).

The long answer is more nuanced, but we think the nuance can be summed up in essentially three points. First, and despite being highly visible annoyances for

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most of us, ads are actually quite uncommon. According to our data, most of the congressional elections between 2000 and 2004 had no advertisements whatsoever. In these cases the races are almost always non-competitive — we don't even really need elections for most of these districts let alone a campaign. Second, in the elections where advertisements were aired, if one side advertises a whole bunch, then so does the other side — the advertisements drown each other out. Third, there is a statistically significant effect — ads are influencing what percent of the two-party vote a candidate gets, just rarely is it even close to enough to determine the winner or loser of a race.

Despite the nuance, we are not going to tell you that ads matter for congressional election outcomes. Our data simply do not indicate they do. In fact, we are excited about our ability to throw an empirical pebble onto the levy of “small ad effects” conjectures that political science has been building“ [...for at least a decade or more.](#)” Why? Because in parsing out that ad effects are inconsequential in nearly all congressional election outcomes, our analysis indirectly sheds some light on what is likely to matter in campaigns. In short, we found more influential effects in our models for non-airing expenditures — payment for staff, literature, and other activities associated with the *ground game*; however, given some recent [cogent summaries](#) concerning the state of advertisement knowledge, we think it is time to research political advertising from a critical approach, one that can incorporate institutional corruption.

Media coverage and research into political advertising misses a point only made in passing by those concerned with negative ads: political advertising harms our democracy. Although individuals and groups [try](#), the main effect of advertisements may not be in changing public perception, mobilizing/demobilizing voters, or even in altering the outcome of an election. On the contrary, political marketing agencies (a growth industry) aid and abet politicians in masking policy preferences bought and paid for by big donors. We should all thank [Mr. Romney's advisors](#) and [Mr. Ryan](#) for admitting as much

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## The Politics of Distraction: A Call for a Fresh Look at Ad Effects

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publicly. It is high time we examine political advertising as a *result* of a system of influence, distracting most of us from real politics. Let's take [Murray Edelman](#) to heart, when he writes: "Sometimes politics is not myth or emotional at all, but a cool and successful effort to get money from others or power over them. Perhaps it can be cool and successful for some only because it is also obsessional, mythical, and emotional for some or for all."

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[www.ethics.harvard.edu/lab/blog/242-the-politics-of-distraction-a-call-for-a-fresh-look-at-ad-effects](http://www.ethics.harvard.edu/lab/blog/242-the-politics-of-distraction-a-call-for-a-fresh-look-at-ad-effects)

## What Value Lobbyists?

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[Paul D. Thacker](#)



A constant stream of news and gossip floods Washington’s information channels about Hill staffers leaving Congress for higher paying jobs “downtown.” For the insider’s inside view, read [“Politico Influence”](#) a daily email from *Politico* that covers fundraisers, job changes by Hill staffers, and client “gets” by lobbying firms.

Below, a typical snippet:

**FORMER HILL STAFFER JOINS PUBLIC RELATIONS FIRM:**

**Tonya Allen**, the former press secretary for Rep. **Nick Rahall** (D-W. Va.) has joined **North Bridge Communications**, a D.C.-based public relations and crisis communications firm, as an account executive. Allen is also a former senior manager of public affairs for the **American Meat Institute**.

The tone of “Politico Influence” contains little hint of scandal, and why should it? Washington is rife with lobbyists, fundraisers, and staff passing through the revolving door to better paying jobs off the Hill. Beltway insiders thrive on information—all the better if you are the first to congratulate a friend who landed a high paying gig at a lobby shop or law firm.

A [recent paper by Jeff Lazarus and Amy McKay](#) attempts to quantify a university’s success in acquiring earmarks after hiring a former Hill staffer or Members. In short, they examined whether universities which hired former Hill staff or Congressmen won more earmarks, meaning money that Congress says must be spent on a specific program. In simpler terms, does hiring a former Hill staffer or Congressman translate into a \$2.3 million earmark for a new center on neuroscience or \$5 million to help build new dorms?

The authors conclude, quite obviously I believe, that hiring former congressional insiders increased the likelihood of getting an earmark. According to their study, this greater success was 30 percent in 2002 and 35 percent in 2003.

Unfortunately, the study suffers from a series of methodological flaws, two of which the authors acknowledge. While the study lumps them together, former Congressmen have much more power than former staffers. They are rarely refused a meeting, even with current Congressmen, and are more likely to get an “ask.” Second, staffers themselves are not the same. When it comes to earmarks, a former staffer who worked on appropriations — better yet, the Appropriations

Committee — has a better handle on the earmark process and better relations with the staffers and Members who make final approvals.

But the earmark process has a host of other variables, some of which cannot be quantified. Just because a university hired a former Congressman and then won an earmark does not prove that this lobbyist was involved. Regardless of how hard they lobby, universities in the districts of Representatives on the Appropriations Committee are more likely to get an earmark. And in some situations, a Congressman might request an earmark just because he likes a campus. Perhaps it's his alma mater or he has a child attending the school.

Finally, there are some technical issues with lobbying records that make the influence process difficult to suss out. Namely, lobbyists self-report and requirements are vague. Plus, there are examples, like [Newt Gingrich](#), who work to influence Congress but don't bother to register. Even if they do register, there is no way to check if lobbyists are reporting accurately what they worked on. A lobbyist who won an earmark for his university could report that he worked on "educational issues." But what does that mean?

University lobbying records list the names of all lobbyists, the issues or committees they lobbied, and lobbying expenses. Even if a lobbyist reports accurately that they lobbied the Appropriations Committee and the Science Committee and had \$50,000 in expenses, we are still left wondering what happened. The lobbyist could have had one meeting with Appropriations staffers to get the earmark but countless meetings with House Science staffers on policy matters. Lobbying forms do not account for the difference in time or expenses.

Finally, the study suffers from a framing issue, hinting that earmarks are a sign of corruption or undue influence. For my project at the Edmond J. Safra Center for Ethics, I am interviewing 100 current and former staffers about life on the Hill. Just last week, I interviewed my 61<sup>st</sup> staffer. At no point during these interviews,

some of which involved staffers who work on appropriations, did anyone say that they thought earmarks were wrong.

If anything, staff were indignant at the very question. While acknowledging that they've seen bad earmarks, they also cited ways the money benefited taxpayers: bridges, a homeless shelter for veterans, and other needed projects back home.

Two veteran Democratic staffers were much more blunt in their assessment of the recent ban on earmarks. One staffer said that the ban fit a neat, simplistic Washington narrative that Congress was out of control, instead of noting that Congressmen know much better how to target federal dollars back in their home district than the White House or federal agencies in Washington.

A staffer on the Appropriations Committee added that robbing Congress of the right to target dollars undermined the Constitutional separation of powers, leaving all spending decisions with the White House. Negative talk about earmarks implied that the White House budget was a "pure document" while congressionally targeted spending was "political." Earmark reform was a way to score cheap political points and gave the false impression that politicians were tackling budget matters. Meanwhile real spending issues like bloated defense projects are ignored because they are politically complicated and protected by large corporate interests.

I don't envy Lazarus and McKay. They've chosen a tough task. Just about every staffer I've interviewed thus far told me that lobbyists can be a problem; undue influence can be a problem.

The question is how to control it.



*Attributions: [Wally Gobetz](#) and [Daquella Manera](#)*

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[www.ethics.harvard.edu/lab/featured/247-paul-d-thacker-what-value-lobbyist](http://www.ethics.harvard.edu/lab/featured/247-paul-d-thacker-what-value-lobbyist)  
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## Institutional Corruption and Perceptions of Methodological Rigor

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Read Aaron Kesselheim's blog entry for the Lab, summarizing salient features of "[A Randomized Study of How Physicians Interpret Research Funding Disclosures](#)," a ground-breaking research article that appeared in *The New England Journal of Medicine* on Sept. 20, 2012. The Journal's [editorial](#) and Professor Lessig's [blog entry](#) offer complementary perspectives that draw out aspects of this study's significance.

Within a week the article also received worldwide press coverage, including [Reuters](#), [The Chicago Tribune](#), [The Boston Globe](#), [PLOS](#), [Scientific American](#), the German [Deutsches Ärzteblatt](#), the Greek [Pharma Market Journal](#), and the Dutch [Medisch Contact](#).

## Institutional Corruption and Perceptions of Methodological Rigor in Medical Research

[Dr. Aaron Kesselheim](#)

In the past decade, pharmaceutical companies have repeatedly been found to engage in unethical behavior in clinical trial design and reporting. In response, most major medical journals now prominently report the sources of funding of clinical trials. But the impact of such disclosures on physician readers has not

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been studied. Edmond J. Safra Center research associates Aaron S. Kesselheim (Assistant Professor of Medicine at Harvard Medical School) and Christopher Robertson (Associate Professor of Law at the University of Arizona), and Edmond J. Safra Fellow Susannah Rose (Assistant Professional Staff at Cleveland Clinic) conducted a randomized study of a national sample of practicing internists to determine how funding disclosure affects the perception of clinical trial results. They designed abstracts of clinical trials supporting three hypothetical drugs useful for hard-to-treat medical conditions. The trials had different levels of methodological rigor: high, medium, and low. They then varied the conflict of interest disclosure appended to these abstracts: pharmaceutical industry-funded, NIH-funded, or none listed. They found that while physicians readily distinguished among clinical trials of different methodological rigor – appropriately giving more credence to high-quality studies and less to low-quality studies – physicians tended to downgrade their perceptions of trials funded by the pharmaceutical industry compared to those with no funding source listed. The effect size was even greater when industry-funded studies were compared to NIH-funded studies. Most striking, the physicians consistently downgraded the credibility of industry-funded research, even if it was high-, medium-, or low-quality research.

These findings have profound significance for the generation of clinical trial data intended to influence patient care. First, the data suggest that episodes of unethical behavior in recent years in this field have led physicians to perceive widespread institutional corruption in the pharmaceutical industry, and to be skeptical of industry-derived research. Since the industry funds the vast majority of clinical research, such an attitude may unfairly tarnish even high-quality research, and slow the translation of important advances in patient care. Our evidence suggests that the industry is now suffering a crisis of confidence. Institutional corruption has a cost.

Second, the data suggest that physicians do take conflict of interest disclosures into account when interpreting clinical research, but that these disclosure statements are indiscriminately applied. While it is reassuring to see that disclosures work as a policy mechanism, we need to find additional mechanisms to make sure that believable research is indeed believed. Additional mechanisms must be considered – such as blind funding grants, data transparency, or independent statistical review of industry-funded research – to promote physician trust and ensure that high quality research, no matter what its source, gets the credibility it deserves.

Third, the data suggest that physicians may be particularly receptive to NIH-funded research, which supports the importance of continued funding of high-impact clinical questions through NIH and other government programs, like the Patient-Centered Outcomes Research Initiative. Although the NIH has occasionally had its own difficulties with research integrity, our data suggest that it has maintained its credibility in the eyes of physicians.

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[www.ethics.harvard.edu/lab/featured/249-believe-the-data](http://www.ethics.harvard.edu/lab/featured/249-believe-the-data)

## The Burden of Disclosure: What You Do Know Can Hurt You

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[Sunita Sah](#)

Read this original blog post by Lab Fellow Sunita Sah discussing her article, “The Burden of Disclosure: Increased Compliance with Distrusted Advice.” The article is forthcoming in the [Journal of Personality and Social Psychology](#), the journal of the American Psychological Association and the [highest-impact](#) empirical journal in the field.

Disclosure is commonly proposed as a solution to conflicts of interest. In the financial industry, disclosure is advocated as an important rule. Across countries, the Securities and Exchange Commission (SEC), the Financial Services Authority (UK), and the Autorité Des Marchés Financiers AMF (France) all commend disclosure. In medicine, in the US alone, the American Medical Association, the Medicare Payment Advisory Committee, and the 2010 Patient Protection and Affordable Care Act, all endorse disclosure as an important component in dealing with conflicts of interest. Disclosure is popular because it is perceived to work; the fuller the disclosure, the better. For consumers, disclosure is anticipated to act as a warning alerting them to their advisor’s potential biases in the hope that they will be able to adjust the advice accordingly.

Seeking out disclosures, however, may not be as attractive as it sounds, and it may even backfire. Over six experiments, I found that even though disclosure decreased advisees’ trust in the advice, it also caused increased pressure on

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advisees to comply with their advisor's recommendation. The increased pressure occurs because, instead of disclosure communicating only information about the conflict of interest, it also communicated how consumers could help their advisor. More importantly, it communicated, and made salient, that not taking the recommendation would not help their advisors. Imagine, for example, your financial advisor saying to you, "I highly recommend this fund for you. However, I must disclose that I will receive a commission if you invest in this fund." Consumers are now more likely to feel greater discomfort in rejecting the recommended fund than they would if the same recommendation was given without disclosure. Disclosure has become tantamount to a favor request.

The compliance pressure that comes with disclosure is not motivated by altruism, but rather by reluctance to appear unwilling to help the advisor once the advisor's interests are publicly disclosed. In my experiments, the burden of disclosure was significantly reduced (i.e., advisees were far less likely to follow advisors' biased recommendations) when the disclosure was secretly provided by an external source rather than directly from the advisor, suggesting that it is the *common knowledge* of the disclosed interests (not merely the advisee's knowledge of those interests) that creates pressure to satisfy them.

Other remedies that were effective in significantly reducing advisees' tendency to comply with biased advice were if advisees could make their decision in private or had an opportunity to change their mind. This suggests that cooling off periods for investment, medical, or other important decisions, will be beneficial for advisees who hear about their advisor's conflict of interest directly from their advisor.

These findings show that people experience conflicting emotions when receiving disclosure of a conflict of interest from an advisor. Trust is central to advice-taking, yet compliance can occur in the absence of trust. Advisees are simultaneously aware that the advice is likely to be biased and trust it less, yet feel increased pressure to comply with the advice. Instead of a warning,

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## The Burden of Disclosure: What You Do Know Can Hurt You

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disclosure can become a burdensome request to comply with advice that is trusted less.

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[www.ethics.harvard.edu/lab/blog/251-the-burden-of-disclosure-what-you-do-know-can-hurt-you](http://www.ethics.harvard.edu/lab/blog/251-the-burden-of-disclosure-what-you-do-know-can-hurt-you)

## The Banker Had No Face: Assessing Institutional vs. Managerial Responsibility in Mortgage Fraud Lawsuits

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In journalism school, every student eventually learns about the “Five W’s.” It stands for Who, What, When, Where, Why. Then they’re taught about the H — How.

It’s actually a useful framework for anyone conducting an investigation. But it’s apparently a methodology that isn’t embraced by government agencies allegedly digging into the root causes of the economic crisis.

A recent exhibit: [New York Attorney General Eric Schneiderman’s lawsuit](#) against affiliates of JPMorgan Chase. The civil complaint is about their role in massive losses investors suffered on residential mortgage backed securities, or RMBS.

A similar lawsuit was filed this week against Wells Fargo by Manhattan U.S. Attorney Preet Bharara.

The Schneiderman lawsuit, filed in early October, has garnered a fair amount of press, and some observers are even suggesting he may be laying the groundwork for an Eliot Spitzer-style assault on Wall Street.

The complaint has some rich details. There is the what — the alleged rip-off of investors. There is the when, in that it occurred right before the Great Recession. Where is easy enough, in New York, of course. And the why is a no-brainer: Quick profits for the bankers, almost immediate losses for the investors.

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The how includes details on how borrowers got mortgages they couldn't possibly afford, and the loans were soon sold off to unsuspecting investors whose portfolios then sank.

### An incomplete picture

But if the complaint were an assignment for Journalism 101 it would have to be returned as an Incomplete. The reason: There is no “Who.” Schneiderman weaves a captivating tale that, in its best moments, conjures up comparisons with last year's capsizing of the Concordia off the coast of Italy.

With one big difference. The Concordia had a captain, and we learned a lot about him — not much of it complimentary — in the weeks after that tragedy. In contrast, Schneiderman's lawsuit never says who was at the helm as securities marketed as investment grade ran aground and plunged underwater almost immediately.

The lack of suspects fits an increasingly popular legal strategy by regulators. Specifically, companies are often taken to task — or at least, to court — but not the managers who run them.

It may be true that at least in terms of free speech corporations are people. But this has nothing to do with the Citizens United decision. And it begs a perplexing question: Can a corporation be guilty of something when its management isn't?

Schneiderman sued under a New York state law, called the Martin Act, which actually doesn't require prosecutors to prove intent to commit fraud. So that might explain Schneiderman's strategy.

But the shortage of names is prevalent in federal actions, too, however. U.S. District Attorney Bharara's civil fraud lawsuit against Wells Fargo concerns allegedly shoddy handling of mortgages backed by the Federal Housing

Administration. It cost the FHA hundreds of millions of dollars. Who did it? “Yet another bank has engaged in a longstanding and reckless pattern” Bharara said in a statement. Who, specifically? We can only speculate.

### A bearish indicator

First, a couple of disclaimers. One, both banks have said they intend to fight the charges.

And certainly the case against JPMorgan Chase is something of a legal labyrinth. It may be the named defendant, but that's more by default than anything overt. The case Schneiderman is bringing focuses primarily on the actions of Bear Stearns & Co., which JPMorgan bought in 2008 in a marriage arranged, ironically, by the federal government. Its wedding gift was \$29 billion in assistance from the Federal Reserve Bank of New York.

At a Council on Foreign Relations event this week, JPMorgan CEO Jamie Dimon said his company has lost between \$5 billion and \$10 billion on the Bear Stearns deal. According to press reports, he made clear he didn't appreciate Schneiderman's lawsuit.

Another prime violator, according to Schneiderman, was EMC Mortgage Corp., a Bear Stearns subsidiary that bought mortgages for the parent and which JPMorgan now owns. (Schneiderman co-chairs a massive inter-agency group investigating the mortgage mess.)

The narrative in the complaint is sadly familiar to anyone who followed the mortgage meltdown. Bear Stearns was making a killing by packaging home loans into securities that were then sold to investors. So Bear Stearns primed the pump, pushing lenders like EMC to approve risky mortgages, all the while touting them as sound quality.

We all know it didn't work out. And it's hard to fault Schneiderman for taking action. After all, New York's credibility as a reputable financial market is on the line. That's one of the most lucrative industries in his state.

### An empty lineup

But if the actions the lawsuits describe no longer are shocking, the complete absence of human defendants feels like a sucker punch. Consider this line from Schneiderman's complaint: "At all relevant times, defendants committed the acts, caused or directed others to commit the acts, or permitted others to commit the acts alleged in this complaint."

Fine. However, the defendants in this case are inanimate. They are legal entities. True, the lawsuit adds that it means "those acts were committed through their officers, directors, employees, agents and/or representatives."

Which begs the question: Who? Which individuals committed the acts? And if they were acting "within the actual or implied scope of their authority," then we need to know who gave — or implied — that authorization.

It would be less worrisome if Schneiderman's faceless predators were an anomaly in the current regulatory environment. But the truth is that Schneiderman's approach is increasingly the norm. In far too many regulatory actions, the thinking seems to be that train wrecks can't be blamed on conductors who ignored the signals, then took the wrong track.

### Size matters

There are a number of reasons why regulators would understandably prefer taking on companies rather than officers. For one thing, regulators are outgunned and underfunded. The organizations they oversee are much bigger than the agencies themselves. As one example, the Securities and Exchange Commission has about 3,800 employees. JPMorgan has a quarter of a million, give or take.

Then there's the mismatch in resources. In fiscal 2011, the SEC had a budget authority of about \$1.6 billion. JPMorgan's London Whale trader alone *lost* roughly four times that much, and Dimon, described it as a “tempest in a teapot.” That's some teapot.

For regulators, the clear lesson is, if you're running low on fuel, look for shortcuts. And keeping legal actions simple is one way to reduce a lawsuit's travel time.

Secondly, financial institutions — particularly of the too big to fail variety — seem to take these actions, and their often considerable settlement amounts, as a simple cost of doing business. That's perfectly logical. The fines aren't designed to do real damage to their core business. And the odds are very good that the company will neither admit nor deny guilt as part of wrapping things up.

### The price we pay

It would be tempting to ask, “So who gets hurt?” And the answer is, all of us. Admittedly, the city on a hill analogy does get overused. But American exceptionalism is a fundamental value among a great many of this country's citizens, and even among a sizable slice of people who live in other lands. Central to this belief is the notion that we are a nation of law-abiders, governed by a system of laws.

What to make, then, of investigations that consistently produce smoking guns, but fail to find fingerprints? To have a corporation pay a fine shouldn't absolve any individual of personal responsibility. Nor should it excuse regulators from performing their appointed duties. Banks are backed by the full faith of the U.S. government, and Americans need to have full faith that the regulatory process is rigorous and thorough. What happens when this confidence wanes?

If that sounds a tad too philosophical, consider the more practical consequences. The American standard of living is dependent on the economy's

ability to attract capital. I have nothing against the Federal Reserve's QE1, 2 and 3. But the most effective form of economic stimulus is confidence. And people won't place their faith in a regulatory system that routinely produces heat but no light. It's a sham form of transparency that, frankly, is easy to see through.

To be sure, regulators do crack the whip on occasion. The Securities and Exchange Commission recently disclosed a laundry list of actions taken against players in the mortgage meltdown. Goldman Sachs, something of a poster boy, agreed to pay \$550 million and to reform its business practices.

Just this year alone, Bharara, the U.S. attorney in New York, has obtained settlements of \$158 million from CitiMortgage, \$202 million from Deutsche Bank and \$132.8 million from an organization called Flagstar.

And sometimes people — real people — pay the price. The former CEO of American Home Mortgage, Michael Strauss, [settled SEC charges](#) by paying a \$2.45 million fine and agreeing to a five-year ban on being an officer or a director. (Considering his company was defunct, one wonders how much demand there is for his services.)

But it's worth noting that Strauss earned over \$3 million in just 2006, and that a loan backed by his company's stock netted him a profit of more than \$2 million before it all collapsed, according to the original SEC charges. He is described as a resident of Southampton, N.Y., a burg not known for its mean streets. As part of his settlement, he neither admitted nor denied wrongdoing, according to the SEC.

Also on the SEC list is the now-notorious settlement with Citigroup. The SEC charged a Citigroup subsidiary with, in essence, betting against its own investors in a collateralized debt obligation, related to housing, that Citi was promoting.

### The judgment call

Citi agreed to settle for \$285 million, without admitting or denying guilt. No senior officers were named, and a mid-level manager sued by the SEC was found not liable by a jury.

But [the settlement was thrown out](#) late years by U. S. District Judge Jed Rakoff.



Mr. Preet Bharara, US Attorney  
for the Southern District  
of New York

Rakoff's rejection is being appealed — ironically, by both defendant Citi and plaintiff SEC — and his action may yet be overturned. But a group of 19 legal scholars filed a [friend of the court brief](#) in support of Rakoff. Their reasoning: The SEC's perpetual policy of settling is an ineffective deterrent. "Citigroup and its affiliates have been enjoined from violating securities laws four times since 2000, yet have not been the subject of a contempt proceeding," the scholars said.

And in his eloquent opinion, Rakoff argued, simply yet forcefully, that the SEC hadn't met its legal, if not ethical, obligations.

"In much of the world, propaganda reigns and truth is confined to secretive, fearful whispers," Rakoff wrote. "Even in our nation, apologists for suppressing or obscuring the truth may always be found. But the SEC, of all agencies, has a duty, inherent in its statutory mission, to see that the truth emerges."

As journalism students can tell you, it all starts with who.

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[www.ethics.harvard.edu/lab/blog/252-the-banker-had-no-face-assessing-institutional-vs-managerial-responsibility-in-mortgage-fraud-lawsuits](http://www.ethics.harvard.edu/lab/blog/252-the-banker-had-no-face-assessing-institutional-vs-managerial-responsibility-in-mortgage-fraud-lawsuits)

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## No Charge: Why Regulatory Institutions Have Prosecuted So Few Bankers; and Why It Matters

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“In some cases there is a lack of law. In others, there are too few resources. And perhaps most significantly, this financial crisis, unlike its predecessors, comes after years of shuffling the regulatory deck, dealing the government a losing hand – so they fold.”

## No Charge: Why Regulatory Institutions Have Prosecuted So Few Bankers; and Why It Matters

[Gregg Fields](#)

They were icons of the industries they dominated.

Michael Milken of junk bond fame. Charlie Keating of the infamous Lincoln Savings. Enron gurus Andrew Fastow and Jeffrey Skilling.

Of course, they all have something else in common: each went to jail. They were incarcerated despite political connections that would be the envy of anyone on K Street. In the Senate, we had the famously faithful Keating Five. President George W. Bush was so chummy with Enron executives that he referred to its CEO, Ken Lay, as “Kenny Boy.”

And of course, all could pay the most brilliant legal defense counsel imaginable. And perhaps they did. It didn’t keep them out of prison. (Keating

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served four years before his original conviction was overturned; on the eve of a retrial he entered a plea agreement and was sentenced to time served. Lay died prior to his sentencing.) While the criminal cases against these financiers didn't restore the losses suffered by the victims, Americans could at least take comfort in knowing that justice does get served, even against the rich and powerful.

Which begs an obvious question: what has changed? The financial collapse that still haunts the U.S. economy dwarves anything since the Great Depression. There is ample evidence that certain actions warrant digging deeper. And of course, there is an implicit benefit to society when the rule of law prevails.

But so far the prosecutions related to the banking and housing collapses are of actors who, in the scheme of things, are mere bit players. A one-time mortgage executive, Lee Farkas, was convicted of fraud in 2011. But his firm, Taylor, Bean & Whitaker, was hardly a Wall Street kingpin. Angelo Mozilo, of mortgage giant Countrywide Financial, had a marquee name, and paid [a huge fine](#) to the Securities and Exchange Commission – a \$22.5 million penalty plus \$45 million in what the SEC called ill-gotten gains. But a grand jury criminal investigation of him [was later dropped](#).

### A new kind of crisis

A review of the record, and interviews with banking and legal experts, paints a picture of why, in terms of criminal accountability, it really is different this time — and not, say critics, in a good way. Specifically, there appear to be three very powerful forces at work, all of which mean individuals are less likely to be blamed, in either criminal or civil complaints, for financial malfeasance.

In some cases there is a lack of law. In others, there are too few resources. And perhaps most significantly, this financial crisis, unlike its predecessors, comes after years of shuffling the regulatory deck, dealing the government a losing hand – so they fold.



William Black, Associate Professor  
of Economics and Law, UMKC

“Banks fail for lots of reasons,” said William Black, an associate professor of economics and law at the University of Missouri-Kansas City. Among numerous regulatory positions, Black was formerly the litigation director of the old Federal Home Loan Bank Board. “When banks fail, it’s not necessarily a case of homicide. So you look. But they didn’t look.”

Experts say it’s simplistic to say that a major collapse is prima facie evidence of criminal culpability. For one thing, making bad investments, provided there is no fraud involved, likely falls under the so-called business judgment rule. That legal principle essentially immunizes officers and directors, provided they acted in good faith. It is considered a very high bar to overcome, and perhaps it is part of the reason why prosecutors are wary of going after individuals.

“This was more of a business cycle crisis,” said Ken Thomas, a Wharton lecturer in finance and independent banking analyst. “There were lots of bad decisions, but this was the Great Recession.”

Thomas, who has written extensively on banking regulations, said that over the years banking laws have grown more opaque, raising another legal hurdle. To give one example, there have been rampant allegations about questionable trading in derivatives. (At its simplest, a derivative is a contract that derives its value from something else. A classic case would be a “futures” contract, which allows someone to purchase, for instance, a barrel of oil at a set price on a certain date, regardless of market price on the delivery date. The goal, theoretically, is to hedge risks.)

The derivatives market has mushroomed in recent years, growing roughly seven-fold from an estimated \$80 trillion in notional value in 1998 to more than \$600 trillion today, according the Bank for International Settlements, which

comprises the world's leading central banks. (Notional value is the value of the assets involved; the actual worth of a derivative contract itself would be much less.) But regulation often moves at a much slower pace than market innovation. And in any case, derivatives were effectively not regulated at all – a decision expressly supported by the Clinton administration in 2000, when the newly passed Commodity Futures Modernization Act removed “over the counter” derivatives, or those traded between private parties like banks, from regulation. The law led to a sharp increase in inter-bank trading in credit default swaps, or contracts that pay off loans that go bad. Credit default swaps were a major reason why the mortgage crisis soon spiraled out of control.

“The grey area has gotten very big,” said Thomas. “Things you think would be convictable just are not. Things that were clear-cut black and white back in the S&L crisis no longer are.”

### No time to lose

Another detectable dichotomy between the current crisis and previous ones is this: Washington was in a much weaker bargaining position this time precisely because of the scope of the collapse.

Consider that Milken's Drexel Burnham Lambert and its junk bond empire disappeared from the scene after pleading nolo contendere to government charges. Keating's Lincoln Savings was seized by regulators and then sold off. Hundreds of other S&Ls were put out of business as well.

Enron was forced into bankruptcy and was soon gone. So was its accounting firm, Arthur Andersen, which was convicted by a jury of obstruction of justice, for shredding Enron documents that the Justice Department was seeking. (Years later the conviction would be overturned by the U.S. Supreme Court, but it was too late to save the firm.)

By contrast, during this crisis, the federal government fought doggedly – at a cost of hundreds of billions of dollars – to save the institutions most publicly linked to the collapse. In the process, the federal backstop expanded from banking to insurance to seemingly unrelated industries, like auto manufacturing. “The S&L crisis was focused on one industry,” said Thomas. “This one was across every economic sector.”

### Regulation on a budget

The dearth of prosecutions may also be the simple result of too few resources.

In the late 1980s, during the S&L crisis, bipartisan support created the Financial Institutions Reform, Recovery and Enforcement Act, or FIRREA. (It passed the Senate 91–8 and the House by 320–97.) Among other things, it created the Resolution Trust Corp., a new agency charged with cleaning up the zombie thrifts that were headed for collapse. In other regulatory innovations, FIRREA deactivated the moribund Federal Home Loan Bank Board, and placed oversight of the industry under a newly created Office of Thrift Supervision (which has since been merged into the Office of the Comptroller of the Currency.)

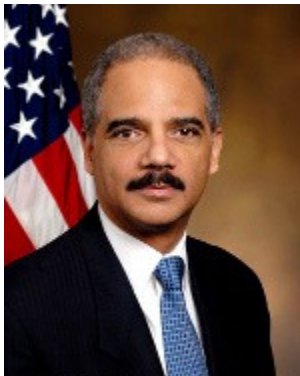
Thanks to FIRREA funding, by early 1992 the Justice Department reported that it had charged roughly 1,000 people with S&L fraud, 30 percent of whom were officers, directors, or top executives. The conviction rate was over 90 percent, agency officials said at the time.

However, the regulatory momentum underwent a fundamental shift in the 1990s, one that meant sharp cutbacks in government manpower, at least when it comes to financial regulation.

A case in point is the Federal Deposit Insurance Corp., which of course plays a major role in regulating banks. In 1990, just after FIRREA passed, the FDIC had 19,247 employees. By 1992, the agency’s payrolls swelled to 22,459, partly because of RTC hires. But the numbers began a sharp contraction in the mid-1990s. By

2006, as dangerous lending practices were at their zenith, the FDIC was down to just 4,476 workers, or less than a fourth of the peak. As the banking crisis grew, FDIC's employee count did rise, to 8,150 [FDIC figures](#).

“When you have this kind of regulatory race to the bottom, you're not going to get the leaders,” says Black.



Eric Holder, Attorney General of  
the United States

The FDIC is hardly alone. Under U.S. Attorney General Eric Holder, for example, the Department of Justice has been in a hiring freeze for nearly two years. According to a recent report on the front page of the [Financial Times](#), the DOJ is taking advantage of America's lawyer glut and using unemployed attorneys – who are working as unpaid prosecutors.

### A strong defense

Money and people are always an issue with litigation, of course. But it is particularly nettlesome in this case, precisely because of the complexity of modern banking. The expertise to unravel what happened, and then trace it backward to individuals, is expensive. As with the Agatha Christie thriller, *Murder on the Orient Express*, the casualty is easy to see. Identifying the suspect takes an investigator as savvy as Hercule Poirot. “You have to be trained in spotting these types of fraud,” said Black.

The resources are also scarce in the field. In fiscal 2008, when the financial crisis began, the Department of Justice's total budget allocations for U.S. Attorneys' offices nationwide was \$1.018 billion, according to data obtained by the Washington Post through a Freedom of Information Act request. In fiscal 2011, it was \$1.122 billion, for an increase of just 10 percent spread over three fiscal years. And that's for all U.S. Attorneys' activities.

Furthermore, the reality is that many potential criminal targets “had so much money, they could hire the best lawyers around,” said Thomas. By contrast, a 2009 survey by the National Association of Assistant U.S. Attorneys found that the top salary for an assistant U.S. attorney was \$153,000 annually. Those without experience can earn as little as \$50,287, depending on location, according to the DOJ website.

### A long-term decline

While there may be disagreements about the causes, what is clear is that white-collar prosecutions have tumbled, according to the Transactional Records Access Clearinghouse at Syracuse University. TRAC found that [white-collar crime prosecutions](#) for the first 10 months of fiscal 2012 are down 16.5 percent from the previous year. Although they are up a bit – 6.7 percent – from five years ago, they are 11.9 percent below from 10 years ago. They are off by 47 percent from 1992.

Amid the scarcity of resources, some regulators are combining forces. But the results have been mixed. The DOJ and 49 states, for instance, negotiated a \$25 billion settlement with five major mortgage lenders earlier this year. It was the largest multistate settlement since the Big Tobacco accord of 1998.

However, the states are not legally required to provide homeowner relief with their share of the settlement. According to a recent report by Enterprise Community Partners, a housing advocacy group, less than half the \$2.5 billion disbursed so far is going toward housing programs. A second multi-jurisdiction entity formed earlier this year was the Residential Mortgage- Backed Securities Working Group, a state-federal effort backed by the White House. The most public result so far is a civil suit by New York Attorney General Eric Schneiderman, co-chair of the group, against JPMorgan Chase.

But legal experts have noted that civil complaint primarily targets the activities of Bear Stearns. Ironically, JPMorgan actually purchased Bear Stearns with more than \$29 billion in assistance from the Federal Reserve Bank of New York. Furthermore, the complaint does not name any individuals. A similar civil lawsuit was filed recently against Bank of America by Preet Bharara, the U.S. attorney in Manhattan.

Looking ahead, other regulatory agencies with a role in future financial oversight say they are being starved. The Dodd-Frank Act of 2010, for instance, gave much of the responsibility for regulating derivatives to the Commodity Futures Trading Commission. Yet, the agency's budget has remained static despite its new responsibility. In fact, the CFTC's current \$205 million budget would be cut by \$25 million, if critics in the House have their way for fiscal 2013. The White House had asked for a CFTC funding increase, to just over \$300 million. (Fiscal 2013 started Oct. 1, but its budget has not been passed; the federal government is operating on stopgap measures that run through next March.)

One of the strongest supporters of trimming CFTC funding is Rep. Jack Kingston, a Georgia Republican and member of the powerful House appropriations committee. "Some members of Congress look at every issue as an opportunity to grow the government and hire more people, "[Kingston said in June](#). "It's certainly not the path to economic recovery. It's also not the most effective way to ensure the integrity of the commodity, futures, and swaps markets."

But Gary Gensler, CFTC chairman, countered that its limited resources mean the agency cannot possibly interpret, and enforce, the Dodd-Frank Act, which runs some 2,000 pages long, without more resources. "The result of the House bill is to effectively put the interests of Wall Street ahead of those of the American public by significantly underfunding the agency Congress tasked to oversee derivatives – the same complex financial instruments that helped contribute to

the most significant economic downturn since the Great Depression,” said Gensler, himself a veteran of Goldman Sachs.

In a sports analogy, he likened the subcommittee’s proposed cuts to multiplying the number of NFL games by eight, without hiring any additional referees. “Imagine the mayhem on the field, the resulting injuries to players, and the loss of confidence fans would have in the integrity of the game,” he said.

What’s certain, said Black, the UMKC professor, is that the current muddle means investigating possible financial crimes, and prosecuting when warranted, will be a rare occurrence. “Prosecuting these people is like getting to the top of Everest,” Black said. “It’s hard, but it’s not impossible. But you need a guide.”

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[www.ethics.harvard.edu/lab/blog/254-no-charge](http://www.ethics.harvard.edu/lab/blog/254-no-charge)

## What Is Left Unsaid in This Campaign

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[Daniel Weeks](#)

Much has been said by politicians and the press in this campaign. In three presidential debates alone, we've heard the two contenders for our nation's highest office speak of tax cuts, deficits, jobs, and the middle class literally hundreds of times.

But much has also been left unsaid. In those same presidential debates, poverty was hardly featured and the word "inequality" didn't appear at all.

How can it be that the Holy Bible refers to helping the poor and vulnerable more than 2,000 times, yet two professing Christians running for president of the United States disregard this unholy scourge?

As we did not hear in the debates, nearly 50 million Americans are currently living in poverty – more than at any other time in our nation's history – and between a third and half of all Americans are within a few lost paychecks of the poverty line. When a quarter of all American jobs pay less than poverty line wages for a family of four, systemic poverty and inequality become more than abstract economics: they are moral and Constitutional concerns.



*New Orleans*

So they should be treated by the men and women who aspire to lead our country.

But the politics of modern elections do not favor the least of these God's children. Consider that one in 10 American adults – most of them poor and disproportionately people of color – are legally barred from voting because of a past conviction. Or that those at the bottom of the economic ladder are seven times less likely to engage in politics than those at the top, largely because of legal and social barriers to political participation.

Consider, also, that a fraction of 1 percent of the population – those at the very top – contribute more than 80 percent of the billions of dollars that fund campaigns, and just five wealthy interests accounted for a majority of super PAC spending in this election.

Could it be because poor people are America's "second-class citizens?" Could it be because economic and political inequality are increasingly one and the same thing in a system where money is a necessary condition to seeking public office?

If our less fortunate neighbors in poverty had the chance to speak and be heard in this election, what would they say?

It was in hopes of hearing directly from some of these second-class citizens that I recently set off on a “[Poor \(in\) Democracy](#)” tour by Greyhound bus through the southern and eastern U.S., retracing the steps of *Democracy in America* author Alexis de Tocqueville on a poverty-line budget of \$16 per day.

I spoke to jobless youth in Boston and New York, immigrant vendors in Philadelphia, retired cooks and clerks in Pittsburgh, working poor janitors and social workers in Cincinnati, undocumented immigrants and activists in Memphis, former farm hands in Mississippi, hurricane homeless in New Orleans, grocery store stockers in Montgomery, park workers in North Carolina, and homeless people on Capital Hill in Washington, D.C.

They were male and female, black, white, and brown. They ranged from 23 to 65 years old and spoke English, Spanish, Haitian, and French. Some were ex-offenders, some were unemployed, some were on welfare, some were homeless, and too many were all of the above. All were below – or within easy reach of – the poverty line.



*Poverty in the land of Rosa Parks, Montgomery*

What did they have to say about poverty and our democracy? More than I could possibly do justice to here, but a few messages bear repeating in the final days of this election.

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## What Is Left Unsaid in This Campaign

“How can I support my kids on eight bucks an hour when the company denies me benefits and cuts back my hours and my workload stays the same?” asked a janitor and mother of two in Cincinnati.

“How can our kids grow up to be equal citizens when so many are living in poverty and attending failing schools?” was the accompanying question from a single mother of four, who works full-time with people on welfare and depends on food stamps herself.

“I get in line at the temp agency at 5 a.m. but if I’ve worked the last three days they cut me off, say it’s someone else’s turn,” was the lesson from a homeless mechanic in New Orleans, who once helped Coast Guard troops pull stranded neighbors off of rooftops during Hurricane Katrina. “I know I’ve made mistakes, but all I want is a job so I can get off the streets and pay my way.”



*New Orleans, seven years after Katrina*

“Whatever happened to the land of second chances?” several people asked, referring to the loss of voting rights and other civil liberties – not to mention the

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black mark against future employment – that results from a single conviction in many states.

“Why do some Americans hate the poor – aren’t we Americans too?” others asked, referring to laws in many southern states that make homelessness and panhandling illegal. Many related stories of being jailed for weeks at a time after asking pedestrians for spare change or sleeping outdoors in public view. “I’ve been on the housing list for the last 10 years.”



*At home under the bridge in New Orleans*

To my question about who determines the course our country takes, there was but one universal refrain: “American politics is all about the money.”

I do not recommend sleeping in bus stations, on park benches, in borrowed beds, or on the bus for those who can make the choice. But as long as millions of fellow citizens cannot, those in more privileged positions – especially our

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politicians – would do well to take to heart these unhappy facts of life. Perhaps then we might hear from the lips of our nation’s leaders more than a passing reference to the scourge of poverty and political inequality in our time.

As Alexis de Tocqueville observed nearly 200 years ago, “America is great because America is good; if America ever ceases to be good, she will cease to be great.”



*Home under Interstate 80*

*[Daniel Weeks](#), the past president of Americans for Campaign Reform, is conducting interviews around the country for a book on poverty and democracy through an [Edmond J. Safra Center for Ethics](#) fellowship at Harvard University. For more information, click [here](#).*

## What Is Left Unsaid in This Campaign

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Cross-posted with: <http://sojo.net/blogs/2012/11/01/what-left-unsaid-campaign>

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[www.ethics.harvard.edu/lab/blog/255-what-is-left-unsaid-in-this-campaign](http://www.ethics.harvard.edu/lab/blog/255-what-is-left-unsaid-in-this-campaign)

## Reformers At Bay: Analyzing Institutional Failure in the Implementation of Dodd-Frank

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[Gregg Fields](#)

The re-election of President Obama and Congressional gains by the Democratic Party would theoretically provide momentum for the implementation of the Dodd-Frank Act.



Mitt Romney, after all, vowed during his campaign to repeal the financial reform law altogether. Though most pundits saw that as a long shot, clearly financial reform wouldn't have been a priority in a Romney administration.

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Meanwhile, Dodd-Frank has a new high-profile advocate in the Senate: Elizabeth Warren, the Massachusetts Democrat. Warren created the Consumer Financial Protection Bureau, mandated by Dodd-Frank. It was at last summer's Democratic convention that Warren blasted "Wall Street CEOs—the same ones who wrecked our economy and destroyed millions of jobs." (It's safe to say they think the same of her.)

And of course, during second terms presidents begin thinking about their legacy. In that regard, the Dodd-Frank Wall Street Reform and Consumer Protection Act could be something of a legislative jewel in Obama's crown, along with the Affordable Care Act.

Nevertheless, the recent record suggests that Dodd-Frank faces a rough road ahead. It will pretty clearly remain the law of the land. But at 2,000 pages it is an extremely complicated one, covering everything from student loans to credit default swaps.

Financial industries and other business interests have already geared up to fight. And so far, they've done well in court.

But perhaps the most significant threat to implementing Dodd-Frank is, simply, institutional inertia by the agencies that should be taking the lead. Much of the financial regulatory infrastructure is facing stagnant budgets, declining headcounts and powerful Congressional critics. And a little-known law from the 1990s makes it much tougher for regulators to put new rules in force.

In that sense, the post-election question isn't whether Dodd-Frank will survive. Rather, it's whether it will make a difference. "Dodd-Frank was an unusual law, in that so many of the hard decisions were handed off, with deadlines," said James Overdahl, a former chief economist at both the Securities and Exchange Commission and the Commodity Futures Trading Commission. "More than a law, it's an instruction to regulatory agencies to develop law."

### Past As Prologue

When discussing Dodd-Frank, it helps to start with its historical significance. It is pretty clearly the most sweeping effort to restructure the nation's financial system since Franklin Roosevelt's New Deal. And that is perhaps fitting, since it addressed the biggest economic collapse since the Great Depression.

Furthermore, Dodd-Frank was created during a political alignment that is rare in Washington. Specifically, the Democrats controlled the House and the Senate for two years after Obama was elected. He signed Dodd-Frank into law just months before the Democrats were trounced in House races in 2010, producing a legislative gridlock that surely would doom the measure were it introduced today.

To be sure, Dodd-Frank has had some impact already. The Office of Thrift Supervision, which supervised institutions with savings and loan charters, has been merged into the Office of the Comptroller of the Currency, which is widely viewed as a stricter overseer.

And though Congressional opposition doomed Warren's expected nomination to run the CFPB, the agency itself is operational under its director, Richard Cordray.

But by most measures, Dodd-Frank needs to pick up the pace. According to [Davis Polk](#), a global law firm that has closely tracked Dodd-Frank progress, as of Nov. 1 a total of 237 rule-making deadlines have passed. But in 61 percent of those cases the deadlines weren't met. In 33 cases, rules haven't even been proposed.

Even when rules are adopted, they can face legal firefights – battles that regulators often lose. Under the Administrative Procedure Act, originally passed in 1946, federal courts generally have the right to review rules promulgated by federal agencies.

But more recent deregulation gives challengers to Dodd-Frank a greater chance of success. Specifically, a law passed in 1996 during the Clinton administration, called the National Securities Markets Improvement Act, requires that the SEC must consider the effect of any new rule on “efficiency, competition and capital formation.”

That requirement has contributed to a string of courtroom losses for regulators, particularly the CFTC and the SEC.

There have been mutterings of judicial bias, particularly regarding the U.S. Court of Appeals of the D.C. Circuit. But that view was disputed in a recent Wall Street Journal op-ed piece, titled “Why Dodd-Frank Rules Keep Losing In Court,” by Eugene Scalia, a Washington attorney (and son of the Supreme Court justice). He has successfully sued the SEC four times.

“For the SEC and CFTC, this sort of litigation is relatively new,” he wrote. “Until recently, their rules were seldom challenged.” But increased judicial review is a good thing, he said, “given the important Dodd-Frank rule-makings that lie ahead.”

### **Benched By The Bench**

A recent court case illustrates the dynamics at work. The Securities Industry and Financial Markets Association (SIFMA) and the International Swaps and Derivatives Association sued the CFTC. They opposed a new rule, adopted after Dodd-Frank, limiting the size of positions that traders can take on 28 different commodities. The CFTC said its goal was to reduce risk and limit volatility.

In September of this year, Robert Wilkins, a judge for the U.S. District Court for the District of Columbia, granted the industry associations a summary judgment – vacating the rule and sending it back to the CFTC to develop a new one, if it chooses. Among other problems, “the CFTC’s error in this case was that

it fundamentally misunderstood and failed to recognize the ambiguities in the statute,” the court’s opinion said, referring to Dodd-Frank.

Not surprisingly, the decision was praised by T. Timothy Ryan Jr., SIFMA’s CEO, while Gary Gensler, a former Goldman Sachs executive who now heads the CFTC, expressed his frustration.

“I believe it is critically important that these position limits be established as Congress required,” Gensler said. The agency has indicated it may appeal.

This was, admittedly, just one rule and Gensler may yet find an approach that passes court muster. But it points to just how arduous the process of adopting Dodd-Frank is. And of course, going forward, the CFTC is in charge of regulating financial derivatives, the complex contracts that played such a central role in the 2008 banking collapse.

The U.S. Court of Appeals for the D.C. Circuit has also been tough on regulators. In one example, in 2010 the SEC adopted a so-called “proxy access rule.” Championed by SEC Chairman Mary Schapiro, the rule was adopted after Dodd-Frank and was designed to make it easier for dissident shareholders to get candidates elected to corporate boards.

But the U.S. Chamber of Commerce and the Business Roundtable sued. And in 2011 a three-judge panel of the U.S. Court of Appeals for the D.C. Circuit [threw the rule out](#).

“We agree with the petitioners and hold the Commission acted arbitrarily and capriciously” the appeals court ruling found.

Overdahl, the former SEC economist, said the ruling wasn’t completely surprising. “The SEC has been on a short leash with the (appeals) court,” he said.

### A Pause in Progress

Whether courtroom setbacks will have a chilling effect on future SEC rule-making is subject to speculation. But it's perhaps worth noting that in August Schapiro said the SEC wouldn't pursue toughening regulations for [money market mutual funds](#), such as requiring them to strengthen their cash reserves. There were debilitating runs on money market funds in 2008 at the height of the financial panic.

It isn't clear where that issue will go from here. This week, the Financial Stability Oversight Council, or FSOC, created by Dodd-Frank and comprising the top federal financial regulators, met and pledged to continue pushing for stricter money market fund rules.

What's clear is that more courtroom battles are certain.

Recently, CME Group, which owns the Chicago Mercantile Exchange, sued in U.S. District Court in Washington to block a new CFTC rule that would require greater disclosure of "swaps" transactions, a form of financial derivative. The CFTC hasn't replied to the filing yet.

Ultimately, some experts say implementing Dodd-Frank boils down to a simple question: Who will pay for it?

"While much progress has been made, U.S. regulators are operating with limited resources to implement reforms that apply to very complex markets and institutions and are essential for the national economic interest," the FSOC said in its 2012 annual report.

Reformers At Bay: Analyzing Institutional Failure in the Implementation of  
Dodd-Frank

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It added: “Ultimately, for these reforms to be successful, regulators must have the necessary resources to undertake their policymaking, supervisory and enforcement responsibilities.”

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[www.ethics.harvard.edu/lab/blog/256-reformers-at-bay](http://www.ethics.harvard.edu/lab/blog/256-reformers-at-bay)

## Demythologizing Corrupted Facts and Claims by Big Pharma

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[Donald W. Light](#)

A few months ago, I co-authored with Dr. Joel Lexchin [an article](#) in the *British Medical Journal* showing that only about 10 percent of new drug products fit the industry's claim to develop clinically superior drugs to make patients healthier.<sup>1</sup> About 90 percent of the time, companies use patent protection from normal price competition for monopoly pricing to develop minor variations rather than serious innovations. This constitutes a hidden business model they do not discuss.

Responses from leaders of the industry reflect the institutional corruption of facts, figures, and accounts, an important part of institutional corruption that would be good to develop further. In particular, the heads of first the British and now the European pharmaceutical trade associations, who use staff and paid journalists and science writers to manufacture a large portion of the articles in the general and science press, published on the BMJ website "facts" about how much they spend on research that are not supported by independent sources. Joel and I have just published the following response.<sup>2</sup> Besides the mythic size of investments in research and development, the most important point concerns the lack of testing and caution about the serious side effects of new drugs. About 1 in every 5 new drugs (and 1 in 3 biologicals) cause enough serious harm to result in regulators adding their most severe warning or in being withdrawn from patient use altogether.<sup>3</sup>

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Public and professional trust in the pharmaceutical industry is low, and the responses here show why. [A recent study](#) of doctors' (dis)trust of the pharmaceutical industry funded by the Edmond J. Safra Center for Ethics at Harvard University found that they trust even well-designed trials less if sponsored by the industry.<sup>4</sup> Stephen Whitehead, one of the respondents and the Chief Executive for the Association of the British Pharmaceutical Industry, wrote as if our data-based analysis was just a one-sided polemic and therefore he did not challenge our facts, while he offered one of his own: companies invest one third of sales in R&D. We challenged him to verify such a staggeringly high amount, but he has not done so. Instead, he wrote to discredit our "lack of understanding" and reported the industry invested one third of profits, a much smaller amount. Another tall tale cut down to size. He cited the ONS 2010 *Business Enterprise Research and Development Report* for exact figure of 34.3%.

Once again, we cannot trust Mr. Whitehead to check his facts. That Report contains no such figure that we can find, and in reply to an inquiry, Mr. Jim Nicholls, an officer at the Office of National Statistics wrote to say that "Unfortunately, we do not collect/publish sales or profit figures..." So even the cut-down claim of R&D investment has no basis in the ONS R&D report. We then searched the ABPI (the pharmaceutical trade association that Mr. Whitehead runs) for the missing figures on sales and profits but found none. We called, and a nice lady said someone would call back, but no one has. We emailed too, but no reply. Who knows what trustworthy, verified facts would show to be the pharmaceutical industry's investment in R&D?

Now a more nuanced and thoughtful response has come from a senior team from the European Federation of Pharmaceutical Industries and Associations, led by Richard Bergström, but there are more inaccuracies. We thank Richard Bergström for his comments but we also take issue with much of what he has to say. First, we need to be clear that the ending of the Norwegian "medical need clause" in 1996 had nothing to do with predictions about the future value of new

drugs being “unfeasible.” The Norwegian model was abandoned because Norway harmonized its drug regulatory system with that of the European Union and the EU that did not have a medical need clause.

Second, we reject the claim that predictions are not possible. While occasionally some drugs prove to be more valuable than initially thought,<sup>5</sup> in general most new drugs provide little to no new therapeutic value. As documented in our article, an independent detailed assessment of the postmarket value of all new products (and new indications for existing products) over the last decade found only 76 out of 991 (7.7%) new products and indications offered any significant therapeutic gain.<sup>6</sup> Mr. Bergström continues the industry myth that equates innovation with a new molecular entity (NME), when most are not therapeutic advances.

Third, if as Mr. Bergström says, new drugs cannot be adequately evaluated until they are in clinical use in the real world, why then do drug companies spend hundreds of millions of dollars promoting the early adoption of these new products rather than waiting to see how valuable they actually are? Why do drug companies persist in running clinical trials on highly selective patient groups rather than testing them in a more real world environment?<sup>7</sup>

Finally, many drug candidates “fail to survive” clinical trial testing because companies withdraw them for economic reasons (43%) rather than for reasons of efficacy (31%) and safety (21%).<sup>8</sup> Even then, most clinical trial results do not show that the products being tested are outright failures but yield mixed results that lead companies to discontinue their development. The word “failure” is part of pharmaceutical mythology and should be replaced by the more accurate word, “withdrawal.”

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## Studying the Everyday Lives of Professional Federal Lobbyists

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[Maggie McKinley](#)

One of the primary research areas addressed by the Edmond J. Safra Lab's project on Institutional Corruption focuses on how the loss of public trust in an institution caused by a belief that the institution is corrupt serves to weaken the functioning of that institution.<sup>1</sup>

The focus of the Lab is incredibly timely, as recent Gallup polls have found that public trust in many of our nation's most fundamental institutions—including “the medical system” and “public schools”—has been declining steadily.<sup>2</sup> My [cohort of Fellows](#) study this loss of trust in a broad range of contexts: from medical research to academic research to the various professions.

The loss in public trust, however, has been nowhere more marked than in the institution of Congress; an institution that, for the last three years, Gallup has ranked dead last for public trust out of sixteen institutions—behind banks, big business, and HMOs.<sup>3</sup> In a July 2012 survey, Americans ranked reduction in government corruption as the number two issue for the next president to prioritize in 2013—ahead of lowering the budget deficit and confronting terrorism.<sup>4</sup> This growing concern over corruption and increased loss of public trust has paralleled a heightened public fervor over the engagement of lobbyists in the legislative process. Not only do lobbyists rank lower than lawyers and

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used-car salesmen in honesty and ethical standards,<sup>5</sup> seven out of ten Americans feel strongly that lobbyists have too much power—topping the list over major corporations, banks, and the federal government.<sup>6</sup> Given the dependence of this institution on public support and participation in order to function, this severe of a negative public perception, even a perception based on misconception or stereotype, will doubtless have real consequences for the institution over time.

However, despite this fervent and resolute public outcry deploring the corruption of our federal government as aided and abetted by “lobbyists,” two years ago when I began to develop a research study around this question, I encountered a puzzle: there exists little to no empirical data on the everyday practices of federal lobbyists—professional or otherwise—and no ethnographic research on the everyday lives and community composition of this profession.<sup>7</sup> Moreover, there appeared to be a broad and unexplored assumption in the general public, as well as in the academy, that the definition of who was a “lobbyist” excluded professionals who advocated on behalf of progressive causes—even those registered as lobbyists—and did not include amateur citizen advocacy.

For instance, the term “lobbyist” is readily deployed to describe the Abramoffs of the world, but many are shocked to learn that some of the first federal lobbyists were in fact Quakers—who, on the first day of our newly-minted Congress, set up offices in a hotel across the street from Congress Hall in Philadelphia in order to lobby for the abolishment of slavery.<sup>8</sup> It is equally a surprise that the community of lobbyists includes great historical figures such as Dorothy Detzer—a twenty year peace advocate whom *The New York Times* called “the Most Famous Woman Lobbyist”<sup>9</sup>—and modern-day heroes like Chai Feldblum who led ACLU efforts to draft and pass the Americans with Disabilities Act.<sup>10</sup> Further, discussions of the so-called “revolving door” focus on for-profit representation and neglect the possible added value of cause lawyers moving between state employment and the causes that they serve.<sup>11</sup>

Belying this definitional ambiguity, is the fact that the term has steep professional consequences for anyone branded as a lobbyist—including heavy disclosure requirements, ethics restrictions, formal and informal limitations on future employment, and strong social stigma.<sup>12</sup> Further belying this ambiguity, is the simple fact that the public appears to stigmatize and distrust something that no one has documented in a rigorous enough fashion to afford an informed opinion on the subject.

From this puzzle the Language of Lobbying Project was born. I designed the study to employ mixed-methods in order to capture what day-to-day life looks like over the course of a calendar year, a session, and a congress for folks employed as professional lobbyists in D.C. In particular, the study replicates—in modified form—the methods of my most recent research institution, the UCLA Alfred P. Sloan Foundation Center on the Everyday Lives of Families—an interdisciplinary center designed to allow researchers from a broad range of disciplines to work off of the same data set—and combines for each participant: questionnaires, in-depth semi-structured interviews, activity and spatial tracking, and audio-recorded periods of ethnographic observation over the course of a series of work days and professional activities identified as typical by the participant.<sup>13</sup>

In addition, the study draws upon the field of language socialization developed by Linguistic Anthropologist Elinor Ochs, to incorporate the observation and documentation of a clinical setting where students are trained as professional legislative advocates both in the context of a seminar and through practical work on behalf of real clients.<sup>14</sup> The language socialization component of the study is intended to capture those moments when the ideology and practices of the community are laid bare in the course of teaching and correction, and to document how lobbyists are socialized to language and through language to become competent members of the community and profession of federal lobbyists in D.C. All too often, once we become competent at an area of expertise, it is

challenging to articulate what it is we are doing and why; studying a practice in the context where an individual with expertise within the field of legislative advocacy is instructing a more junior member of the community as to the proper procedures of the profession allows for fuller documentation of ideal practices and their motivating ethics, worldviews, and ideologies.

Finally, once the study was underway this fall, I decided to open participation to a series of short semi-structured interviews with lobbyists who fit a broad range of professional types within the community—e.g., a range of substantive disciplines, in-house legislative affairs, consultants, trade association representatives, multiple political parties, and various types of clientele. I designed these interviews to glean a topology of the community and to refine the study to capture all of the relevant contextual information for each participant in order to situate them within this community.

Data collection began two short months ago, and will be underway until mid-August of 2013, with intermittent follow-up research continuing until the end of the 113<sup>th</sup> Congress. What this means for my everyday life is that I spend my days observing and recording moments of legislative advocacy in a broad range of settings—from coalition gatherings to pitches on the Hill to meetings with clients and third-party vendors—as well as conducting in-depth interviews with professional lobbyists on their ideal strategies, the composition of their community, and their views on the profession.

Although this study is still in its most nascent stages, I have already begun to draw the contours of the community and the profession, including documenting novel distinctions that could prove important in designing future research. One such example is the distinction of “access lobbying”—a term which draws fewer than ten relevant hits on Google, yet is ubiquitous throughout the lobbying community—from “substantive or issue lobbying.” As described by my participants, the everyday practices of an individual lobbyist or lobbying firm will vary based on whether the lobbyist or firm focuses on providing the service of

“access”—namely, securing meetings with the right congressional actors—as opposed to providing the service of substantive policy research, drafting, and intelligence. While the distinction between “access lobbying” and “substantive lobbying” is more of a spectrum than a strict dichotomy—with most lobbyists and firms providing some level of access and some level of substantive service—it follows that any study that does not account for this distinction could end up with skewed findings from a sample that draws too heavily from only one side of the spectrum. These are the types of distinctions that the Language of Lobbying Project is designed to document.

From the culmination of these methodologies, the study seeks to capture what it is that lobbyists do every day and to describe in a rigorous and neutral fashion these practices to the academy, as well as the general public. In particular, it is my hope that greater public awareness of the techniques of legislative engagement and the broad range of professionals in the lobbying community—including advocates who lobby on behalf of the disempowered and voiceless, as well as those who advocate for the health of business and markets—might help to dispel stereotypes and to provide a deeper understanding of the distrust and stigmatization of this profession, legislative engagement more generally, and the damage done to the democratic institution most vulnerable to lack of public participation eroded by a loss of public trust—our Congress.

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<sup>2</sup> Jeffrey M. Jones, *Confidence in U.S. Public Schools at a New Low*, GALLUP POLITICS (June 20, 2012), <http://www.gallup.com/poll/155258/confidence-public-schools-new-low.aspx>.

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<sup>4</sup>Jeffrey M. Jones, *Americans Want Next President to Prioritize Jobs, Corruption*, GALLUP POLITICS (July 30, 2012), <http://www.gallup.com/poll/156347/americans-next-president-prioritize-jobs-corruption.aspx>.

<sup>5</sup>Jeffrey M. Jones, *Record 64% Rate Honesty, Ethics of Members of Congress Low*, GALLUP POLITICS (Dec. 12, 2011), <http://www.gallup.com/poll/151460/record-rate-honesty-ethics-members-congress-low.aspx>.

<sup>6</sup>Lydia Saad, *Americans Decry Power of Lobbyists, Corporations, Banks, Feds*, Gallup Politics (Apr. 12, 2011), <http://www.gallup.com/poll/147026/americans-decry-power-lobbyists-corporations-banks-feds.aspx>.

<sup>7</sup>There are, of course, notable and valuable studies utilizing interview methodologies to document lobbying influence and tactics. See, e.g., FRANK R. BAUMGARTNER ET AL., *LOBBYING AND POLICY CHANGE: WHO WINS, WHO LOSES, AND WHY I* (2009); ANTHONY J. NOWNES, *TOTAL LOBBYING: WHAT LOBBYISTS WANT (AND HOW THEY TRY TO GET IT)* 1 (2006). However, no study to date has utilized mixed-methods to document the language, culture, community, and everyday practice of federal lobbyists.

<sup>8</sup>KENNETH R. BOWLING, *THE HOUSE & SENATE IN 1790S: PETITIONING, LOBBYING, & INSTITUTIONAL DEVELOPMENT* 64-67 (2002).

<sup>9</sup>See DOROTHY DETZER, *APPOINTMENT ON THE HILL* 1 (1948).

<sup>10</sup>See Chai Feldblum, *The Art of Legislative Lawyering and the Six Circles Theory of Advocacy*, 35 MCGEORGE L. REV. 785 (2003).

<sup>11</sup>Doug NeJaime, *Cause Lawyers Inside the State*, 81 FORDHAM LAW REVIEW (forthcoming 2012), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2152501](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2152501).

<sup>12</sup>Eric Lichtblau, *Tired of "Tainted" Image, Lobbyists Try Makeover*, N.Y. TIMES, May 3, 2012, at A17.

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<sup>14</sup> See, e.g., Elinor Ochs, CULTURE AND LANGUAGE DEVELOPMENT: LANGUAGE ACQUISITION AND LANGUAGE SOCIALIZATION IN A SAMOAN VILLAGE I (1988).

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## From Institutional Corruption to Pharmageddon?

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[Donald W. Light](#)

In the December issue of [Health Affairs](#), the leading US policy journal, Don Light reviews the new book by David Healy, *Pharmageddon*.

As a practicing psychiatrist and leading authority on pharmaceutical policy, Healy has published several books on how the dependency of researchers, regulators, and physicians on pharmaceutical funding has distorted diagnosis, drug development and treatment. (See for example *The Antidepressant Era*. Harvard University Press, 1997)

Light considers Healy's book as "the most powerful and deeply thought of a new crop of books on pharmaceuticals and medicine." For example, Healy describes how pharmaceutical companies co-opted randomized clinical trials that promised to make drug development more scientific. His account of how Abbott transformed the rare condition of manic depression (MD) into "bipolar disorder" that is alleged to affect 5,000 times more people per million is worth the price of admission. He gives specific examples of how companies have hid harmful side effects from view. He shows how the FDA's decision to make many more drugs "by prescription only" has distorted the physician's role and turned most physicians into marketing agents. Good researchers and clinicians end up doing bad things to patients. The patient-centered medicine that Healy used to practice is hardly possible now. The review is available through [pharmamyths.net](http://pharmamyths.net). Here is the review:

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## Medicine in the Thrall of the Culture of Drugs

Donald W. Light

*Pharmageddon* by David Healy. Berkeley (CA): University of California Press  
2012 302pp; \$39.95

Review in *Health Affairs*. December 2012; 31 (12) 2826–28

“Medicine as we know it is at death’s door,” David Healy writes part way through *Pharmageddon*. It is a central theme running through the book by this professor and psychiatrist, working within the National Health Service in North Wales, United Kingdom. The practice of medicine should, he believes, require knowing patients as whole persons, preferably over many years. Instead, he says, medicine is becoming fractured, evolving into a series of problem-based short office visits that make use of guidelines to make medical decisions. Pharmaceutical giants play a huge role in this shift, having moved far beyond discovering new drugs to trying to shape how patients are diagnosed and treated.

Healy’s view that pharmaceutical companies are overly influencing medicine comes as no surprise, as the author is one of the world’s most widely published critics of pharmaceutical hegemony. (The same view has preoccupied my own work in bioethics and health policy.) In *Pharmageddon*, Healy makes full use of Welsh storytelling skills to weave the tale of how the pharmaceutical giants have come to shape patients’ personal relationships with their bodies and with their physicians. Citing many studies by others as well as recounting his own experiences, Healy educates readers about the ways in which major pharmaceutical companies have influenced diagnostic categories and clinical

guidelines so that physicians – and millions more patients – believe in certain disorders or in new “at-risk” situations that require the use of a drug.<sup>1</sup> In my view, Healy’s book is the most powerful and deeply thought of a new crop of books on pharmaceuticals and medicine.<sup>2-4</sup>

One of Healy’s case studies of how pharmaceutical companies have conjured up new diagnoses concerns manic depression. Up until the 1990s, the condition, as then diagnosed, was a rare one that affected only ten people in a million. Healy describes the reengineering marketing campaign by Abbott Laboratories to replace the term “manic depression” with the existing phrase “bipolar disorder,” which according to Abbott, affects up to 50,000 people per million. Disease awareness campaigns followed, suggesting that bipolar disorder might be the cause of other problems as well, such as anxiety and depression, and inviting people to self-diagnose.

Marketing achieved the ultimate success: Bipolar became a fashionable disorder. Healy describes how marketers organized conferences to develop guidelines for diagnosing the disorder, ones with a strong basis in clinical trials run by pharmaceutical companies to prove the benefits that suited their marketing goals. In ten short years, what had been for decades a rare disorder treated by specialists became a broadly constructed mental condition without, Healy contends, solid evidence either that the condition existed or that the drugs prescribed for it were effective.

Healy details several other examples and emphasizes the downside risks. Prescription drugs have become a leading cause of illness, hospitalization and death.<sup>2</sup> Abbott is at it again now, promoting medication to help with “low T” – lowered testosterone – which, of course affects any middle-aged man who is ten years older than he was a decade earlier (<http://www.isitlowt.com>).

Before the 1970s, Healy contends, researchers in major pharmaceutical companies carried out in-depth, observational investigations, just as their

academic counterparts did, on how diseases worked and what compounds might have the right mechanism of action. Spectacular discoveries, major clinical advances, and huge profits resulted. Then a new generation of company executives bent on selling more drugs for still more profits changed to having research programs develop new products around clinical targets identified by marketing departments.

Healy contends that the number of breakthrough compounds dropped dramatically. Since then, about fifty out of every sixty “new drugs” marketing have offered few or no advantages over previous ones to offset their risks of harm.<sup>5</sup> Today, Healy contends, the Food and Drug Administration in the United States and the European Medicines Agency, the overarching regulatory agency for twenty-seven nations in the European Union, approve drugs without real evidence that they are better for patients, and they might be worse.

In the United States in the early 1960s, reformers thought requiring randomized clinical trials would lead to superior new drugs. Using case illustrations, however, Healy describes how pharmaceutical companies shape randomized clinical trials to get the results they need for marketing. As a result, physicians who believe that randomized clinical trials mean that new drugs have proven benefits – and could be prescribed with confidence – are being misled. In a quartet of chapters, Healy describes how the big pharmaceutical companies make marginally different drugs look better than they are.

First, giant pharmaceutical companies do their random sampling for clinical trials from patient populations that exclude those most likely to experience adverse reactions. They also lower the threshold for demonstrating that a new product is better than an inert substance by eliminating subjects who have a strong response to a placebo. Companies use high doses and short trials to maximize evidence of benefit, even though higher doses are more likely to produce harmful side effects weeks after data collection ends. These high, more dangerous dosages then go into the drug’s label and into clinical guidelines.

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Physicians are impressed by large trials, but companies do them primarily to prove that small benefits are statistically significant. It is not that the Food and Drug Administration is complicit in this. Rather, the agency works within rules and practices that have been set up with a good deal of influence from the pharmaceutical companies and lobbyists.

Second, pharmaceutical companies have repeatedly hidden, denied, or trivialized harmful side effects. Healy has some harrowing examples based on his own experiences as an expert on psychotropic drugs. He was among the first to note that Paxil increased suicidal thoughts in young patients, and he recounts how he began investigations revealing that clinical trials showing high rates of suicide were hidden by GlaxoSmithKline, the maker of the drug, including miscoding suicidal children as “noncompliant.” Healy describes his critical role in the lawsuit by Eliot Spitzer, then attorney general of New York, against GlaxoSmithKline for “fraudulent interference with the practice of medicine.”

Third, pharmaceutical companies have long kept academic investigators under contract to prevent them from publishing negative results so that prescribing physicians could get a full picture of harms as well as benefits.<sup>6</sup> Healy describes how, since the 1980s, companies have retained teams of skilled science writers and editors to craft articles for medical journals. He estimates that 90 percent of the articles on new drugs in medical journals are ghost managed, and other independent investigators agree.

In his twenty-seven pages of references to supporting studies, Healy cites recent studies that document how the published medical knowledge read and trusted by doctors is seriously biased.<sup>7</sup> Correcting biased medical science takes years, while billions of dollars are racked up by pharmaceutical companies in the meantime. These actions reflect not conspiracy but rational economic behavior by executives who are seeking good returns on their investments.

There you have it: trivial but “significant” benefits from drugs; undertested and underreported risks of harm; ghost-managed articles, reviews, and editorials; and \$57 billion spent on marketing to get doctors to prescribe the resulting drugs.<sup>8</sup> The weight of the evidence leads Healy to recommend that patients would be better off if fewer drugs required prescriptions. Of course, ads would endlessly tell patients why they needed to take a certain drug, but then they do already. However, patients might be more self-protective instead of uncritically trusting their physicians and basking in the benefits of the placebo effect.<sup>9</sup> And the role of physicians would change from using their expertise and authority to prescribe to looking out for harmful side effects from the drugs that their patients decided to take.

Today medical leaders think having evidence-based medicine will rationally rein in costs, but Healy writes that the giant pharmaceutical companies know better because they control how the evidence is constructed and gets into guidelines. Pharmaceutical companies “are prepared to conceal trials or adverse events that might pose problems for their marketing, ghostwrite such trials as are published, and aggressively counter attempts to doctors to describe problems that arise in the course of therapy.” Furthermore, physicians are known to report only a small fraction of harmful side effects once drugs come into broad use, compromising the evidence that could be built up in post-marketing drug surveillance.

Healy sees tragic results for society and the economy. More workers think they are “sick.” Long use of drugs for prevention or chronic management heightens people’s anxieties and alters their bodies or minds in ways not sufficiently understood. “Treating raised cholesterol levels and other ‘number disorders’...when medical necessity doesn’t call for it is more likely to lead to a decrease in American productivity...an expense that is crippling American industry,” Healy asserts.

In *Pharmageddon*, Healy offers a fresh insight that new strategies to develop “personalized medicine” and raise costs to new levels (for instance, by figuring out ways to re-patent drugs going off patent) are undermining universal health care in Europe and elsewhere, often with little evidence of real clinical gain. For the most part, he writes, looking for cures is out for pharmaceutical companies because that would end sales. Researching and developing drugs for cancers, and HIV/AIDS are largely paid for by taxpayers and donor foundations for specific diseases but then priced at levels that threaten the commitment of nations to affordable universal health care. Increasingly, countries and insurance companies conclude that the modest benefits do not warrant the staggering prices charged and decide not to cover them for patients. However, this leads to two-tier access for patients willing to pay privately.

If people want to understand how the way they think about their bodies as a bundle of risks to be managed by drugs came about, why the workforce is getting “sicker,” why the major pharmaceutical companies are banking on further overdiagnosis and overtreatment, and why this is undermining universal health care, they should read this book.<sup>10</sup> Then, readers should go on to discuss its implications in classrooms and policy circles.

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[www.ethics.harvard.edu/lab/blog/262-from-institutional-corruption-to-pharmageddon](http://www.ethics.harvard.edu/lab/blog/262-from-institutional-corruption-to-pharmageddon)

## Good Reasons Why Physicians Should Not “Believe the Data”

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[Donald W. Light](#)

In September, *The New England Journal of Medicine* published an important study funded by the Edmond J. Safra Center for Ethics that measured the loss of trust in medical science as an institution that should be dedicated to trustworthy research for treatments that restore or maintain patients’ health.

Specifically, 503 board-certified internists were shown abstracts of hypothetical clinical trials allegedly funded by industry or by the NIH. Respondents said they distrusted reports of trials funded by pharmaceutical companies significantly more than those funded by NIH, even if well-designed.<sup>1</sup>

[This study](#) highlights the depth of distrust that has arisen from years of evidence that researchers and authors, who must constantly raise funds for their work from the pharmaceutical industry, have repeatedly run biased clinical trials, then slanted the analysis of trial data in favor of the sponsor’s drug, and then further biased how the results are written up in what becomes published medical science. Several current or recent fellows at the Center are studying institutional corruption in pharmaceuticals, including Pavel Atanasov, Lisa Cosgrove, Carl Elliott, Marc-Andre Gagnon, Adriane Gelpi, Alison Hwong, myself, Jonathan Marks, Jennifer Miller, Genevieve Pham-Kanter, Marc Rodwin, Susannah Rose (a co-author of the NEJM article), Mildred Schwartz, Sergio Sismondo, and Robert Whitaker.

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Dependency corruption arises when an institution such as medicine, which is dedicated to getting and keeping patients as healthy as possible, has its mission corrupted or distorted by those involved having to seek funds from companies primarily dedicated to maximizing profits for shareholders and executives.<sup>2</sup> Researchers dependent on corporations eager for drug approval and widespread use have distorted both the trials and their write-up in abstracts and journal articles. These become the medical knowledge that doctors use to prescribe, certified as trustworthy by reviewers and editors of top medical journals. Thus the corruption of medical science has come to threaten the trustworthiness of top journals, and editors have fought back for over a decade to minimize the opportunities for biased articles and the distrust it has engendered. Such distrust is hard to overcome, except by structural changes that remove dependency corruption itself.

In response to the article, Jeffrey Drazen, the Editor-in-Chief of *The New England Journal of Medicine*, wrote an editorial to urge that physician readers “Believe the Data.”<sup>3</sup> The issue never was the data, which physicians and even most reviewers never see, but the ways in which the data get written up in biased articles that get through reviewers and editors to be published in top journals.

Drazen starts by expressing concern about the general distrust found by the study, because new drug development so greatly relies on industry funding and the altruism of patient participants. He claims that “this lack of trust” depends on negative press stories and cites five that were about other manifestations of institutional corruption, such as concealing trial results, trying to suppress unfavorable publication, and misleading promotion of drugs. Ironically, Drazen concludes with examples of ways in which *The New England Journal of Medicine* is continuing its multi-year efforts to protect its scientific integrity and trustworthiness from incomplete or biased research articles.

In response to this editorial, I wrote the following [short letter](#), now published, that could cite only a few of the many systematic studies documenting good

reasons for distrusting articles by industry-sponsored authors in medical journals. As concerned physicians have said, medical knowledge and medical science have become corrupted in ways that take years to find out and correct, if ever. Here is the letter:

“Dr. Drazen’s editorial,<sup>3</sup> invoking physicians to believe articles based on well-designed trials that are company-sponsored, misrepresents the source of physicians’ distrust as “press coverage of a few examples...” Systematic studies show that such articles are three to four times more likely to favor a company’s product than independently sponsored articles.<sup>4,5</sup> The editorial also equates NIH researchers’ interests in promotion and recognition to the interests of multi-billion dollar corporations that shape trial design, execution, data collection, coding, statistical analysis, decisions about which negative results or trials not to include, analysis in an article, abstract, and conclusions, often ghost-managed by one of the 182 publication-planning companies that shape, edit, and write articles for top medical journals.<sup>5,6,7</sup> Unfortunately, studies of sponsorship support physicians’ distrust of published articles based on trial data of drugs.”

Donald W. Light, Ph.D.

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## What Can \$6 Billion Buy?

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[Clayton D. Peoples](#)

In 2003, Ansolabehere and colleagues wrote an article on campaign finance that appeared in *Journal of Economic Perspectives* and received considerable press. It was titled, [“Why is There so Little Money in U.S. Politics?”](#)

How times have changed. The *Citizens United* decision has ushered in a whole new era of campaign spending that reached record heights in the 2012 elections. Federal candidates raised and spent more than \$6 billion. An article written today might be better titled, “Why is There so Much Money in U.S. Politics?”

Why is there so much money in U.S. politics? Probably the simplest answer is that money influences policy. Although the scholarly literature on contribution influence is mixed—likely due in part to the fact that most studies look at only a few bills—recent meta-analyses of the literature show that contributions have a significant effect on legislation (Stratmann 2003; Roscoe and Jenkins 2005). Moreover, my own research on 1,000s of bills over more than a decade shows that contributors have a consistent influence on legislative voting.

I studied if/how contributors influenced voting on all bills over a 16-year period, 1991–2006—adding up to 7,000+ bills – and [published the findings](#) in *The Sociological Quarterly* in 2010. The verdict? Contributors significantly influenced lawmakers’ votes on bills in all Congresses except for the 107<sup>th</sup> (2001–02), which is when the Bipartisan Campaign Reform Act (BCRA—better known as the

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‘McCain-Feingold’ bill) was debated and passed.

It is not especially surprising that an analysis of *all* the bills over an extended period reveals consistent contributor influence. As a lawmaker interviewed by Schram in his 1995 book *Speaking Freely* put it, “(People) will often look for...the grand-slam example of influence of these interests. But rarely will you find it. But you can find a million singles...regulatory change, banking committee legislation, (etc.)...” Scholars have been looking for the “grand slam”; they should have been looking at all the “singles.”

But do “singles” matter in the grand scheme of things? Yes, they do. The lawmaker’s quote above lends some insight into this. Little regulatory changes and banking committee codes may seem inconsequential when passed, but can have catastrophic effects down the road. There are two such pieces of legislation, in particular, that are prime examples of this: the Gramm-Leach-Bliley Act of 1999 and the Commodity Futures Modernization Act of 2000. They may have been viewed as harmless “singles” initially; but we now know that they both helped lead to the Global Financial Crisis:

— The Gramm-Leach-Bliley Act of 1999. This Act repealed part of the 1933 *Glass-Steagall Act*, which had sought to rein in banking practices after the onset of Depression. For instance, Title I of the *Act* allowed banks to merge with entities that buy/sell securities. Dubbed the “Citigroup Relief Act,” it benefits big banks, but creates “too big to fail” in the process.

— The Commodity Futures Modernization Act of 2000. This Act established provisions for “swap” agreements. For instance, Title III of the Act paved the way for transfers of financial risk via derivatives such as collateralized debt obligations insured with credit-default swaps. The Act allows bundling of risky bonds. Initially, firms and investors make money...until bundled securities

become worthless “junk bonds,” which leads investors to lose money and companies to collapse.

In my work with the Center over the past year, I have been examining the impact of contributors on these bills. It turns out that not only did contributors have a significant influence –they were *the most significant* influence on these bills. Contributors had a greater effect on these bills than even the usual factors (e.g. party affiliation).

I think the ultimate question now is, “What can \$6 billion buy?” We know that money influences policy. Even a decade ago, when there was less money in politics, money influenced voting—and not always for the better. Bills like the Gramm-Leach Bliley Act and the Commodity Futures Modernization Act benefitted a few at the expense of many. The fact that there is even more money in politics today raises a very scary prospect. What can all this money buy? If history tells us anything, whatever it is, it won’t be good—at least not for the vast majority of us.

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## A Seat in Congress

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[Ted Gup](#)

The idea is neither new, nor mine alone, but well worth revisiting: to curb excessive partisanship in Congress, get rid of the seating scheme that separates one party from another. Mix ‘em up. Imagine Senators Barbara Boxer (D- Ca.) and Tom Coburn (R- Okla.) side-by-side, whispering in the back row, sharing a bag of chocolate kisses, and finding a way off the fiscal cliff.

OK, so it may not usher in an Age of Aquarius, but it can do no harm, and it may just do some good. Robert Frost was right when he wrote, “Something there is that doesn’t love a wall, that wants it down.” The aisle that divides Congressional members is just that, a wall that does not merely recognize but contributes to the notion that the chasm between parties is wide. It creates a geography that legitimizes that divide, gives it length and breadth, and a visual that is antithetical to reconciliation and the common good. It puts an institutional imprimatur on the schism, the very incarnation of “taking sides.”

You say it’s only a place to sit, but where you sit in Congress telegraphs to one and all where you stand. It says that you begin from a different place and will likely end there as well. It is no coincidence that we speak of “winning a seat in Congress,” as if it were a sedentary prize, rather than a chance to rise to leadership. And for those who say it can’t be done, it can and has already been tried on select occasions. At the State of the Union (2011) and at inaugurals, lawmakers allowed themselves to mingle and fraternize with the opposition.

There were no reports of fratricide or partisan mayhem. Brooking that chasm may be symbolic only but isn't a symbol of collaboration better than one of division? Besides, Congress is full of symbols that command respect, the gavel and mace among them.

Sure conservative talk show hosts have dissed the idea, and politicians of both stripes have given it the back of the hand as so much window dressing. These days any gesture in the direction of "Kumbaya" – Democratic Representative Nancy Pelosi's description of the idea – is tossed out, but interestingly some of those rejections appear to be grounded in the fear that it might threaten party purity or discipline – a stronger endorsement for shuffling the political deck, I could not imagine.

But if there is one thing that most members of Congress agree on, without respect to party or politics, it's that the old sense of community – the cross-aisle socializing after hours, the meeting of spouses and children, the friendly pick-up game of basketball, is sorely missed. Party rivalries have given rise to bloodsport. Community has dissolved into an assemblage of strangers rife with suspicion, resentment and petty feuds. Much of it has been brought on by the relentless need to raise campaign cash, which itself has spawned a Tuesday-through-Thursday schedule, the every-weekend-home-routine, and the unraveling of a social fabric that long transcended hyper-partisanship and fostered a human perspective. The aisle that divides feeds into the idea of isolation and containment, promotes party – as opposed to national identity, and reinforces loyalty to caucus, not country. It is George Washington's worst nightmare, the one he warned of in his celebrated Farewell Address of 1796.

There are those in Congress even today who point out that the design of the House and Senate in the semicircle was intended to create a shared focus and a sense of unity, as opposed to the architecture of Parliament where opponents face each other. And there have been times when history and happenstance have forced The Other to take a seat with the opposition. The "Cherokee Strip," as it

came to be known, was the product of a gross imbalance between Democrats and Republicans in the Senates of 1907–1909, 1937–1939, and 1939–1941 requiring members of the dominant party to sit with the minority. It drew its name from a narrow section of land in Oklahoma that belonged neither to the Indian Territory nor to the US government – a no man’s land. By the 89<sup>th</sup> Congress (1965–1967) four senators sat in a makeshift fifth row rather than join the opposition. There was even a time in the 1950’s when Senator Wayne Morse of Oregon left the Republicans and, declaring himself an Independent, took his seat in the middle of the main aisle. Former Rep Henry Hyde (Rep. – Ill) was often to be seen sitting with the opposition and no one ever questioned his conservative *bona fides*.

Of course, the roots of this scheme of sitting with one’s own – the “Birds-of-a-feather syndrome” are not so easily ascertained. You’d think there would be an abundance of records on when the practice started, by whom, and why. In fact, the shelf is rather scant, documentary evidence hard to come by. Even some Congressional historians confess it is something of a mystery. A souvenir from the 24<sup>th</sup> Congress (1835–1837) – one of the earliest in the possession of Congressional staff – shows that already the parties had parted ways. By then, the House had 242 members who arrayed themselves by party, though it was a more exotic mix than today, with 75 anti-Jacksonians, 143 Jacksonians, 16 anti-Masonics, and 8 nullifiers.

But there was a time before political parties – brief as it may have been – and the competition for seats had less to do with political position and more to do with what was perceived to be the best seat in the house (or Senate, as the case may be.) The rule was first come, first serve. In those early and innocent days of the Republic, a time of horse and carriage, a decided advantage went to those who lived closest to the Capitol. That would have been the delegates from Virginia and Maryland. Others, conscious of their geographic disadvantage, finally insisted in 1845 on instituting a lottery system. Balls of marble or other material were placed in a box and drawn out by a page who called out the

number on the ball which corresponded to a member's name on a list. The winner had his choice.

But the evolution of parties, at least as expressed on the floor of Congress, has a murkier background and even those who specialize in such arcane topics have few sources to turn to. Charlene Bickford, Director of the First Federal Congress Project, says that in the First Congress members sat largely, though not exclusively, by state. (That sounds like an excellent idea to me, reminding members that they represent the same folks back home.) But just when the parties divided the House and Senate by seating arrangement is less clear. One of the earliest documents to address it is the "Plan for the House of Representatives," done by New York's Representative Philip Van Corlandt in 1796. The schematic and names scribbled in are thought to have been a way to help count votes on the House floor. What it shows is some members sitting by state, but others arrayed by seniority. Mind you, seniority in 1796 was a relative thing, given the infancy of government. A year later, a visiting Polish aristocrat found the members in the House sitting randomly, or at least with no discernible pattern. Party does not yet appear to have surfaced as an organizing principle.

The point is, Congress has not always been seated by party alignment, there have often been those who dared to cross the line, and the ossification of the current scheme hardly seems to be serving us well.

Maybe a bit of rejiggering won't bring us eternal harmony, but it's surely worth a try. Even the allies and their foes could leave their trenches and cross the line to observe a moment's peace that Christmas of 1914, before getting back to the business of killing. Is it too much to ask of our legislators to do the same?

- T.S.G.

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## Political Money in 2012

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[Paul D. Jorgensen](#)

In our recent [story for Alternet](#), Tom Ferguson, Jie Chen and myself wanted to refocus post-election coverage back onto campaign finance. Two troubling narratives emerged after the election: big money [lost](#) in 2012, and Obama's groundswell of small donors beat Romney's brazen billionaires.

Despite the best efforts of some to proclaim *Citizens United* a [dud](#), money played an important role in the 2012 federal election, and a majority of Obama's itemized money came from large donors, albeit less brazen. Our story covers the need to formulate alternative hypotheses about the 2012 election, with new numbers about Obama's donors, but does not cover the intensive data efforts necessary to analyze donors.

Political analyses rarely answer one basic, descriptive question: how much did a donor give? The lack of analysis is not surprising given that both the Federal Election Commission (FEC) and the Internal Revenue Service (IRS) do not give individual donors unique identification numbers; instead, public data only lists each transaction without any attempt to aggregate money by donor (not to mention the difficult design of the data, which is not intuitive). The data must be transformed and cleaned in order to make sense of *who* funds our elections.

The problems are well known: name misspellings and variations, donors giving from different locales, and uncomfortably high amounts of missing data. Even

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though the FEC has not updated the itemized list of Obama donors (his campaign filed electronically, seemingly making the disclosure process faster), we analyzed all pro-Obama donors up to October 17 (the most recent data available until the FEC updates its files). In addition to accounting for misspellings, our name-matching algorithms and settings are able to match donors who use a combination of nicknames, prefixes/suffixes, and addresses. We also have rules to decipher when spouses give money using their husband or wife's name.

Using these techniques, we find that 50% of itemized, pro-Obama money came from donors who gave at least \$10,000, which is only 2.7% of pro-Obama itemized donors. These donors are hardly small.

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## White House Stalls EPA Report

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[Sheila Kaplan](#)

A landmark Environmental Protection Agency report concluding that children exposed to toxic substances can develop learning disabilities, asthma and other health problems has been sidetracked indefinitely amid fierce opposition from the chemical industry.

[America's Children and the Environment, Third Edition](#) is a sobering analysis of the way in which pollutants build up in children's developing bodies and the damage they can inflict.

The report is unpublished, but was posted on EPA's website in draft form in March 2011, marked "Do not Quote or Cite." The report, which is fiercely contested by the chemical industry, was referred to the White House Office of Management and Budget (OMB), where it still languishes.

For the first time since the ACE series began in 2000, the draft cites extensive research linking common chemical pollutants to brain damage and nervous system disorders in fetuses and children. It also raises troubling questions about the degree to which children are exposed to hazardous chemicals in air, drinking water and food, calling attention to exposures in their indoor environments – including schools and day-care centers – and through contaminated lands.

### Politics of Postponement

In the making since 2008, the ACE report is based on peer-reviewed research and databases from federal agencies, including the Food and Drug Administration, Housing and Urban Development and the Centers for Disease Control and Prevention. Public health officials view it as a source of one-stop shopping for the best information on what children and women of childbearing age are exposed to, how much of it remains in their bodies and what the health effects might be. Among the “health outcomes” listed as related to environmental exposures are childhood cancer, obesity, neurological disorders, respiratory problems and low birth weight.

The report cites hundreds of studies; both human, epidemiological studies that show correlation between exposure to certain chemical pollutants and negative health outcomes; and animal studies that show cause and effect. In some cases, the authors note that certain chemicals have been detected in children, but that not enough is known about them to draw conclusions about safety.

The EPA’s website still notes that the report will be published by the end of 2011. But after a public comment period that was marked by unusually harsh criticism from industry, additional peer review and input from other agencies, the report landed at OMB last March, where it has remained. No federal rule requires the OMB to review such a report before publication, but EPA spokeswoman Julia Valentine said the agency referred it to the OMB because its impact cuts across several federal agencies.

The spokeswoman said EPA had no idea when OMB would release it, allowing publication. A spokeswoman for the White House Office of Management and Budget said she would not discuss the review process or give an estimated release date.

Some present and former EPA staffers, who asked not to be named for fear of losing their jobs, blamed the sidetracking of the report on heightened political

pressure during the campaign season. The OMB has been slow to approve environmental regulations and other EPA reports throughout the Obama Administration — as it was under George W. Bush according to reports by the Center for Progressive Reform, a nonprofit consortium of scholars doing research on health, safety and environmental issues.

“Why is it taking so long? One must ask the question,” said a former EPA researcher who works on children’s health issues. “It is an important document and it strikes me that it’s falling victim to politics.”

### EPA Versus the Pentagon

The EPA states that the report is intended, in part, to help policymakers identify and evaluate ways to minimize environmental impacts on children. That’s an unwelcome prospect to the \$674 billion chemical industry, which would face greater legal liability and lose business if the EPA or Congress bans certain substances mentioned in the report or sets standards reducing the levels of exposure that are considered safe.

Among other findings, the report links ADHD to numerous substances, including certain widely available pesticides; polychlorinated biphenyls (PCBS), which were banned in 1979 but are still present in products made before then and in the environment; certain polybrominated diphenyl ethers (PBDEs), used as flame retardants; and methyl mercury, a toxic metal that accumulates in larger fish, such as tuna. The draft also cites children’s exposure to lead, [particularly from aging lead pipes](#), as a continuing problem.

Among the other widespread contaminants linked to learning disabilities is perchlorate, a component of rocket fuel, fireworks and other industrial products, which has polluted water around the country. The Department of Defense, which wants to avoid paying to clean it up, is alarmed by research showing that the chemical interferes with thyroid function and otherwise damages the nervous system, according to R. Thomas Zoeller, a biology professor at the University of

Massachusetts Amherst, and an expert on perchlorate, who has sat in on Defense Department presentations on perchlorate while serving on EPA advisory panels studying the issue. Zoeller also expressed outrage about the Air Force's hiring of two consultants, Richard Mavis and John DeSesso, who wrote a letter to the editor of *Environmental Health Perspectives*, attacking an EPA scientist who had published a study showing that perchlorate causes brain damage.

The incident occurred in 2009, when Mavis and DeSesso wrote to *EHP*, which is published by the National Institute of Environmental Health Sciences, attacking a study authored by Dr. Mary Gilbert, of EPA. Mavis and DeSesso were identified as having worked on an Air Force contract, but this was little consolation to Zoeller. "I don't like my tax dollars going for one federal agency to refute the work done by scientists at EPA," he said. The Defense Department and the Air Force declined to comment. Dr. DeSesso said their perchlorate work and the EHP letter were completely objective and not designed to assist the Air Force on the issue.

One of the new sections of the long-awaited report notes that children may be widely exposed to pollutants in schools and day-care centers. Among them are pesticides; lead; PCBs; asbestos, a mineral fiber long used as insulation and fire-proofing; phthalates, chemicals that are used to soften vinyl and as solvents and fixers, and are found in numerous consumer goods, among them: toys, perfumes, medical devices, shower curtains and detergents; and perfluorinated chemicals, which are used in non-stick and stain-proof products. The study notes that these substances are (variously) associated with asthma, cancer, reproductive toxicity and hormone disruption.

The American Chemistry Council (ACC), the chief industry trade group, has accused EPA of lacking objectivity and vilifying its products. It has filed dozens of pages of comments accusing the EPA of ignoring certain studies – including some funded by ACC itself — that would help businesses make the case that their

products are safe. The ACC also contends that EPA has not included enough positive comments about the role of chemicals in society.

ACC members apply the science of chemistry to make innovative products and services that make people's lives better, healthier and safer," wrote ACC senior toxicologist Richard A. Becker. ... "The exclusive focus on exposure is particularly problematic as it may lead to the incorrect conclusion that exposure to chemicals (e.g. phthalates) at any level is not only cause for concern, but also a direct source of negative health effects."

Becker also expressed the ACC's contention that EPA was painting too bleak a picture of children's health in America.

It is troubling that the draft ACE report seems to make such little effort to provide "a complete overall picture of child health in the United States," Becker wrote. "For example, the draft report does not refer to The Health and Well-Being of Children: A Portrait of States and the Nation ... which concludes the health and well-being of children in the U.S. is improving overall with 84.4% of children in the United States listed as being in excellent or very good health, an increase from 83% in 2003." Other ACC members, representing manufacturers of BPA, phthalates and other substances, also weighed in against the report.

### **Buying Time**

The chemical industry is a key donor to lawmakers. So far, in the 2012 election cycle, chemical companies and their trade groups reported donating more than \$43 million to congressional and presidential candidates, with Republicans reaping 78 percent, and Democrats 22 percent. The ACC also paid for television advertising in congressional races around the country. The industry spent more than \$52 million on lobbying in 2011, and is on track to top that for 2012.

Nsedu Witherspoon, executive director of the Children's Environmental Health Network and a member of the EPA Children's Health Protection Advisory

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Committee, which oversaw the report, called it a major accomplishment, reflecting the explosion of research since the first ACE was published. She also praised EPA chief Lisa Jackson for standing behind it. Industry critics, Witherspoon said, “in many cases are the same ones out there trying to debunk the original research,” that the study cites.

On Thursday, December 27, Jackson, who was praised by environmentalists but vilified by industry and many Republican lawmakers, said she would resign in January. Jackson had made no secret of her disappointment with President Barack Obama’s resistance to strong climate change protection.

Rena Steinzor, a professor at the University of Maryland School of Law, and president of the Center for Progressive Reform, said the ACE report need not have gone to OMB for review in the first place. Steinzor notes that Executive Order 12866 states that proposed significant regulations — generally defined as those that could cost more than \$100 million — need be reviewed by OMB, but studies do not. The Executive Order gives OMB up to 60 days to review such proposals — although it allows for extensions. In practice, OMB has missed numerous such deadlines. But the ACE report, which is not a proposed regulation, falls into a gray area.

“If it’s not a rule, I don’t know what it’s doing there,” Steinzor said. “And even if it were a rule, there would be a deadline and they’d be violating it.”

In an email statement to the Investigative Reporting Workshop, EPA spokeswoman Julia Valentine said, “The report was provided to OMB so that they could conduct an interagency review process to ensure accuracy and consistency.”

She noted that because the report addresses children’s health, it includes issues that are the focus of many departments and agencies within the Department of Health and Human Services — including the Centers for Disease

Control, the Food and Drug Administration, the National Institute of Environmental Health Sciences and the National Cancer Institute.

Steinzor, whose organization has studied OMB under numerous presidents, doesn't buy it.

The report should be released now, she said, "because to protect children adequately we need all the information we can get... I guess I understand why there was great anxiety and paranoia before the election ... (but) why would you not do it now? It's sad that things have gotten so polarized that we're afraid to release scientific information."

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## Doctors Pressured to Prescribe Brand Name Drugs

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[Eric G. Campbell](#) & [Genevieve Pham-Kanter](#)

Edmond J. Safra Center Faculty Affiliate [Eric G. Campbell](#) (Professor, Harvard Medical School and Massachusetts General Hospital) and Lab Fellow [Genevieve Pham-Kanter](#), along with co-authors Lisa I. Iezzoni and Christine Vogeli at Massachusetts General Hospital, have published [a study in JAMA Internal Medicine](#) looking at how frequently doctors prescribe brand name drugs at the request of their patients.

Analyzing data from a national survey of physicians in 7 specialties, they find that 37% of physicians reported prescribing a brand name drug *even when a generic was available* because their patients requested the brand. Certain types of industry relationships were important predictors of physicians acquiescing to patient demands for brand name drugs. Physicians who received workplace food and/or beverages paid by pharmaceutical companies, who received free drug samples, and who reported meeting frequently with industry representatives were more likely to acquiesce to patient demands for brand name drugs despite their knowing that there were generic substitutes for the brands. Physicians who more frequently read medical journals (relative to those who never or rarely read these journals), however, were less likely to accommodate these kinds of patient demands. A summary of the study may be found [here](#). The study in *JAMA Internal Medicine* may be found [here](#).

## Doctors Pressured to Prescribe Brand Name Drugs

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This piece was also covered in the [Harvard Gazette](#).

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[www.ethics.harvard.edu/lab/blog/269-doctors-pressured-to-prescribe-brand-name-drugs](http://www.ethics.harvard.edu/lab/blog/269-doctors-pressured-to-prescribe-brand-name-drugs)

## On Confidence Lost: Does the World Still Trust Washington to Steer International Financial Reform?

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[Gregg Fields](#)

Massive regulatory failures preceded the recession. The legacy is diminished faith in America's global economic leadership.

For regulators, it was the economic equivalent of a Rodney Dangerfield moment.

AIG, the insurance giant saved by an infusion of \$182 billion from Washington in 2008, recently considered joining a lawsuit against the federal government. The argument: the terms of the life-saving bailout had been far too onerous for shareholders. The original lawsuit was filed by former AIG Chairman Maurice Greenberg, who invited his old firm to join him.

It was an episode with absurdist overtones. Who bites the hand that feeds you \$182 billion? Adding to the irony, AIG had just unveiled TV ads proclaiming "Thank you, America" for coming to its rescue.

Ultimately, [the company passed](#), but not before senior officials of the Treasury Department and the Federal Reserve Bank of New York gave a presentation to AIG's board, according to *The New York Times*.

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It wasn't the only recent instance where federal regulators, to paraphrase the late Dangerfield, got no respect. Indeed, the problem is going global. Other countries, mindful of the regulatory failures that preceded the 2008 collapse, are openly bristling at Washington's efforts to reassert its global economic leadership, an uncharacteristic stance with far-reaching implications.

The issues we want to focus on are international connections, said David Skeel, corporate law professor at the University of Pennsylvania and author of *The New Financial Deal: Understanding the Dodd-Frank Act and Its (Unintended) Consequences*. "But we're seeing fallout. There's a lot less deference to the U.S. than there used to be. There's less of a feeling that the ways we do things are superior."

Why the resistance? Some blame a lingering bitterness over the institutional failures that were a core cause of the 2008 economic collapse. Once the world's regulatory standard-bearer, the market meltdown revealed that U.S. financial oversight was rife with industry-friendly regulations. There remains the issue of a complicit Congress, dependent on campaign contributions from Wall Street. And even when regulators mean well, the difference between the checks that agencies should perform and the balances of people and money required can seem woefully lopsided.

That institutional ineffectiveness is crimping American credibility at a critical juncture. The dangerous derivatives trading that drove AIG to the brink of collapse is still largely unregulated. Last year's London Whale trading scale at JPMorgan demonstrates it's an ongoing threat.

True reform clearly requires extensive international cooperation. Yet, many countries seem wary of Washington's ways — and mistrustful of its motivations.

American regulators still lead in influence, "but not the way they once did," Harvey Pitt, the former chairman of the Securities and Exchange Commission,

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told me. “If you’re the leader you can have a lot of sway, but not if you embrace what I call American geocentrism.”

### Border disputes

A closer look at a recent episode involving the Commodity Futures Trading Commission, or CFTC, illustrates the dynamics at work.

Title VII of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* put the CFTC, primarily, in charge of bringing swaps, a form of derivatives, under regulatory oversight. Previously, derivatives were largely unregulated.

(Derivatives are complex, and come in all shapes and sizes. But at their simplest they act like insurance policies against financial shifts. But when movements are unusually swift, steep and large, as when the subprime mortgage market collapsed, the damage can quickly rip through the entire system.)

The danger, of course, is that if U.S. laws are too strict, and apply only domestically, rogue practices will simply migrate to the country of least resistance. In an age of electronic trading, trading can be conducted anywhere.

“As the (CFTC) and the international regulatory community move forward, we all recognize that risk has no geographic boundary and money can move in and out of markets and jurisdictions in milliseconds,” Gary Gensler, the CFTC chairman, said recently.

But if an international standard is developed, and everyone adheres to it, that problem could be curtailed. So last year, the CFTC announced plans for a set of rules governing cross-border transactions in swaps. Much of it focused on defining a “U.S. person,” which would include U.S. corporations and affiliates overseas. CFTC standards regarding derivatives would apply to foreign entities trading swaps with U.S. persons.

It was a bold move at extra-territorial reach for the CFTC — and the reaction was a furious rebuke. “Washington, we have a problem,” pronounced Patrick Pearson, head of the financial infrastructure unit at the European Commission, at a November meeting of international regulators, according to *Bloomberg News*.

Other countries, including traditional economic allies like Japan, also balked. And on Dec. 21, Gensler announced he was tabling the cross-border transaction rules until next summer. The delay “provides time for the (CFTC) to work with foreign regulators,” he said.

### Beat the clock

In isolation, the CFTC's difficulty in asserting its authority might not seem alarming. America regularly has disputes with even its closest economic partners. And some sources interviewed said Gensler should have known other countries don't like being told what to do. (A CFTC spokesman said Gensler wasn't available for an interview.)



Gary Gensler, current Chairman  
of the CFTC

As for the delay — well, that's more the norm than the exception with Dodd-Frank. As of Jan. 2, regulatory agencies overall have missed roughly 60 percent of the law's required rule-making deadlines, according to the Polk Davis law firm, which tracks the law. (Gensler has testified to Congress that his goal is to construct rules "in a deliberative way — not against a clock.")

But to some skeptics the endless inaction smacks of deliberate dead-end dithering — and gives financial giants time to lobby for more palatable rules.

"Wall Street and its army of lobbyists will use the additional time to continue their war on financial regulation that may hurt their profits, but which will protect the American people from having to bail them out again," Dennis Kelleher, President and CEO of a pro-reform group called [Better Markets](#), said when the cross-border transaction rules were delayed. "If the rules don't apply overseas, then U.S. firms will just move their businesses to offshore markets and avoid the rules that protect U.S. investors, markets and economy."

In a follow-up interview, David Frenk, the director of research at Better Markets, said that, with Dodd-Frank, "it's staggering the impact the industry is having with this thing."

As for cross-border transactions rules, “I think we’ll end up with a compromise that waters it down,” he said. “That’s not a good outcome. The statute is there for a reason.”

### Sizing up the situation

Perhaps. But some complain that Dodd-Frank doesn’t seem to recognize regulatory realities. And even former Rep. Barney Frank, the Massachusetts Democrat whose name is on the law, acknowledges it has one significant shortfall.

One issue is this: the notional value of derivatives contracts around the world exceeds \$600 trillion, according to the Bank of International Settlements.

The CFTC has approximately [700 employees](#) in total. CFTC employment is up about 10 percent from the 1990s, according to a budget request Gensler filed last year with Congress. But the futures market has grown fivefold in that time, and Dodd-Frank added oversight of the swaps market, which is eight times bigger than the futures market.

So the question isn’t so much if the CFTC has the right ideas, but whether it’s big enough to implement them. Pitt, the former SEC chairman, used an analogy to illustrate the dilemma.

“When I was little, I had a doggie and I worried that he chased cars,” Pitt said. “And I was never sure what would happen if he caught one.”

Jeff Harris, a former chief economist at the CFTC, and currently a finance professor at Syracuse University, said size isn’t the only thing that matters. Other issues are experience and expertise.



Harvey Pitt, 26th Chairman of the  
SEC (2001-3)

Traditionally, the CFTC oversaw markets in agricultural commodities like soybeans. Putting together massive international agreements on regulatory restructuring is something else altogether.

“The CFTC hasn’t historically been at the table for negotiations of this type,” Harris told me. Furthermore, because derivatives were previously unregulated, other countries are being asked to put their faith in a U.S. system that is actually a work in progress.

“Part of the problem with Dodd-Frank is, it steps into areas where there wasn’t much regulatory oversight at all,” Harris said.

### Twice as nice

Other observers say Dodd-Frank ignored a relatively simple but potent fix, for the reason that it might crimp Congressional campaign fundraising.

The issue is merging the CFTC with the much larger SEC. Experts say it’s only logical, given the scarcity of regulatory resources. “Merging the SEC and CFTC has been a no-brainer for decades,” Skeel, the corporate law professor at Penn, told me.

Frank, who didn’t run for re-election, concurred. “The existence of a separate SEC and CFTC is the single largest structural defect in our regulatory system,” he said in a November [press release](#).

The stumbling block is that the CFTC doesn’t report to the same Congressional committees as the SEC. More committees mean more members of Congress to receive campaign money.

It's particularly relevant here, because FIRE -- for finance, insurance and real estate -- was the most generous sector of all in the 2012 campaign cycle, contributing more than \$573 million to various candidates, according to [OpenSecrets.org](http://OpenSecrets.org).

Frank introduced legislation — whose prospects are bleak — to [merge the agencies](#) in November. Adding it to Dodd-Frank would have doomed the law, he said. “Had we sought to merge those institutions in the overall financial reform bill, it would almost certainly have caused the defeat of the legislation,” he said.

### The platinum standard

The global resistance to U.S. leadership, and the plodding implementation of Dodd-Frank, is in stark contrast to Washington's regulatory heritage.

Indeed, historically American regulators were a veritable rapid response team whenever — and wherever — economic disasters struck. In 1987, for instance, a new Federal Reserve chairman named Alan Greenspan moved quickly to stabilize world financial markets after the infamous Black Monday stock market crash.

And the U.S., either on its own or in concert with international bodies like the International Monetary Fund, played lead roles in dramas like the Mexican peso crisis of 1994 or the Asian economic panic of the late 1990s.

But the current impasses reflect the cost of lost credibility after regulatory failures of the kind that preceded the Great Recession. And in many ways, that may prove to be the greatest loss of all.

Said Pitt: “One thing we've seen with the subprime meltdown, Enron and other scandals is, the U.S. regulatory regime is not perceived as the platinum standard.”

On Confidence Lost: Does the World Still Trust Washington to Steer  
International Financial Reform?

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<http://www.ethics.harvard.edu/lab/blog/271-on-confidence-lost>

## Dirty Money: Mere Exposure to Money Motivates to Think Business, Cheat and Lie

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[Maryam Kouchaki](#)

Lab Fellow Maryam Kouchaki, along with co-authors Kristin Smith-Crowe, Associate Professor, and Arthur P. Brief, Presidential Professor and Chair in Business Ethics, both at the University of Utah's David Eccles School of Business; and Carlos Sousa, a former University of Utah graduate student, have [published a study](#) in *Organizational Behavior and Human Decision Processes* showing how mere exposure to money – even simply using money-related words – will trigger unethical behavior.

“To our knowledge, we are the first to empirically test the link between mere exposure to money and unethical outcomes,” write the researchers. “Testing this link is important because money is a central pursuit of business organizations, and, as recent scandals illustrate, immorality in organizations can have devastating effects.”

The researchers conducted four studies which are reported in the article, [“Seeing Green: Mere Exposure to Money Triggers a Business Decision Frame and Unethical Outcomes.”](#) The first two demonstrate the connection between money and unethical behavior, while the second two examine the link between money, adoption of a business frame of mind, and unethical acts. Thinking about money leads people to think ‘business,’ and it’s this framing of a situation as a business

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one that leads to unethical behaviors, such as lying, cheating and acting in one's self-interest without regard to others.

In one of the studies, participants exposed to money-related words were twice as likely to lie as those who were not. In others, they cheated and made unethical decisions more often in order to earn more money. The four studies used college undergraduates enrolled in introductory business courses. The researchers used various kinds of money cues for some of the participants, while the control groups were not exposed to money references. The participants then had to make choices between ethical and unethical behaviors.

“Our findings suggest that money is a more insidious corrupting factor than previously appreciated, as mere, subtle exposure to money can be a corrupting influence,” write the researchers. Because their subjects were U.S. residents, the findings are not generalizable to other cultures.

The researchers believe that their work cements the relationship between business and unethical behavior. Previous psychological research has shown that economics education among business students promotes greed, and that business students are more likely to cheat and engage in self-interested behavior. Other work finds that after exposure to money, people are less likely to help others, less likely to ask for help, and more likely to work alone. Other researchers have demonstrated that priming people to think about business elicits competitive and self-interested behavior. “We will continue to live with headlines reporting business wrongdoing until we take effective steps to alter the nature of business education and subsequently the practice of business,” Brief said.

Altering business organizations is not easy; money is an integral part of business. Yet this research suggests that we should be aware of the potential of environmental or contextual cues for influencing people's unconscious unethical behavior. Everyone should be warned about the potential moral obstacles of money and business.

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Dirty Money: Mere Exposure to Money Motivates to Think Business, Cheat and  
Lie

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[www.ethics.harvard.edu/lab/blog/272-dirty-money](http://www.ethics.harvard.edu/lab/blog/272-dirty-money)

## Conflicted: GOP vs. EPA-Funded Scientists

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[Sheila Kaplan](#)

Are government-funded researchers more biased than those bankrolled by America's top polluters?

The House science committee says so. Amid much lobbying by the oil and chemical industries and other companies, the GOP is working to revamp conflict of interest rules governing EPA science advisory panels; making them more hospitable for industry scientists-for-hire; and taking seats away from EPA-funded academic researchers.

The EPA Science Advisory Board Reform Act of 2012, first introduced last fall by Texas Rep. Ralph Hall, then chairman of the House Science, Space, and Technology committee, is expected to be reintroduced shortly by incoming committee chairman Lamar Smith, also of Texas, who was a co-sponsor.

The EPA review panels were established by Congress in 1978 to advise EPA on the quality of scientific and technical information being used to support regulations, and weigh in on many significant issues. They fall under the Federal Advisory Committee Act, which calls for all advisory boards to be "objective." EPA's own policy states that "committee membership must be balanced by points of view," but the definition of "balanced" has fluctuated with each agency chief. In 2010, the Obama Administration adopted a policy barring federally-registered lobbyists from serving on the committees—although their science advisors may do so.

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In a press release accompanying the legislation, the Committee said it would “limit conflicts of interest” on the panels, and “enhance transparency.”

But what’s truly transparent is the bill’s beneficiaries: the oil, gas and chemical industries, which gave nearly \$53 million to Republican congressional candidates and GOP party committees in the last election cycle, according to the Center for Responsive Politics (CRP), a nonpartisan research group which studies money in politics. [CRP’s numbers are based on Federal Election Commission records released in mid-November, 2012.]

Federal lobbying reports show that the American Petroleum Institute, Exxon Mobil Corp., Berkshire Hathaway and Lockheed Martin Corp. were among those lobbying on the legislation. The American Chemistry Council has called it a top priority.

It’s easy to see why. The Act would change the makeup of the panels, so that no more than ten percent of the members could be researchers with EPA grants or other financial support. Since the committees need only include nine people, this rule paves the way for leaving out EPA-funded scientists altogether.

As Jennifer Sass, a senior scientist for the Natural Resources Defense Council, wrote in her blog:

“For example, while a university professor with a competitive research grant from EPA to study the cancer risks from chromium-contaminated drinking water would be disallowed, a scientist with funding from the chromium industry would be permitted on the Board, as long as the financial conflicts were disclosed publicly. This would essentially block the experts whose research shows the health risks of contaminants, while favoring researchers that fail to find a risk.”

The proposal would also require all risk assessments conducted by EPA to be reviewed by a Scientific Advisory Board, a prospect that Richard Denison, senior scientist for the Environmental Defense Fund, noted in his column is a “provision

that the ACC [American Chemistry Council] knows full well, would add years to the already overly protracted process of EPA's completion of such assessments.”

Denison also pointed out that the new conflict-of-interest guidelines “would reverse longstanding conflict-of-interest policy and practice followed by virtually every authoritative scientific body in the world – including the National Academy of Sciences, the International Agency for Research on Cancer and the World Health Organization – by allowing unfettered access of industry representatives with direct conflicts of interest to serve on the SAB and its panels, as long as their conflicts are disclosed.”

The EPA Science Advisory Board Reform Act of 2012 was met with an outpouring of opposition from environmental groups, public health officials, the American Public Health Association, and, last week, well-known activists Erin Brockovich and Lois Gibbs. Gibbs, executive director of the Center for Health, Environment & Justice, was especially concerned with provisions that would require the advisory boards to respond in writing to all public comments, a change she wrote would build even more delay into an already maddeningly slow system.

The American Chemistry Council, on the other hand, is delighted.

“We cannot overstate the importance of this bill to Americans who must have confidence in a regulatory system that is transparent and that makes decisions based on sound science and with the best interests of our country in mind,” wrote the ACC in a press release about the bill. “Chairman Hall and fellow committee members have taken an important first step toward achieving that goal by proposing legislation that would strengthen the scientific integrity of the advisory panels on which EPA relies to make those decisions.”

“Not only would this bill lead to improvements in how panels are formed, but it would also hold peer review panels accountable in responding to public comment, ensuring that legitimate scientific concerns are transparently

addressed. The bill would also ensure that SAB expert panels clearly communicate to the Administrator any uncertainties associated with their findings and recommendations.”

The committee had its first organizational meeting on Wednesday, January 23.

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<http://www.ethics.harvard.edu/lab/blog/273-conflicted-gop-vs-epa-funded-scientists>

## On Restoring Trust and Ethics in Pharma

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[Jennifer E. Miller](#)

The public's "negative view of the pharmaceutical industry is a major problem... (and there is) no shortage of "experts" with solutions on how to fix the problem. Unfortunately, many of the proposals are shockingly naïve and without merit," grumbles John LaMattina, former President of Pfizer Global R&D. In response to LaMattina's challenge for outsiders to develop more realistic reform strategies, this blog post proposes the introduction of an *ethics accreditation system, akin to a Good Housekeeping Seal*, as a practical means for the industry to credibly improve its ethics and restore its broken image.

### A Good Housekeeping Seal for Bioethics: Could It Improve Trust and Ethics in the Pharmaceutical Industry?

As it stands, the majority of Americans distrust pharmaceutical companies, believing that they are consistently dishonest, unethical, and more concerned with profits than with individual and public health. Interestingly, this was not always the case. The industry was once "the world's most admired."<sup>[1]</sup> Merck, the company responsible for the Vioxx scandal, was ranked the World's Most Admired Company for seven straight years (1987-1993) by *Fortune* magazine.<sup>[2]</sup>

A mere sixteen years ago, one could still find pharmaceutical companies ranking among the top ten most admired companies (30% of the companies were from big pharma).<sup>[3]</sup> In stark contrast, today the industry is ranked barely above

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tobacco and oil companies in terms of its perceived trustworthiness. It has lost an essential component for innovation that is not just lamentable for the industry, but for all of us.

In fairness, some of the distrust in the pharmaceutical industry can be arguably linked to a corresponding rise in the distrust in big business generally.<sup>[4]</sup> However, not all big business is distrusted. The automotive and technology industries are comparatively well respected industries.<sup>[5]</sup> Is an ethics accreditation system a possible step forward for remedying at least some of the trust gaps?

In other industries, accreditation, certification, and rating systems have been helpful tools for both improving and demonstrating quality. These programs generally perform three functions: they set and communicate standards, they evaluate companies according to these standards, and they signal to both internal and external parties when the standards have been credibly implemented. Some programs focus more on evaluating the integrity of a company's processes and others evaluate outcomes.

There are, for example, programs that evaluate and signal car safety (awarding a rating of 1 to 5), the environmental impact of a building (LEED certification), whether a food is healthy or organic (the heart healthy checkmark and organic foods certifications), the quality of educational programs, the adequacy of factory working conditions, and the ethics of diamond mining. There is also a program that considers whether an IRB has processes in place to adequately protect human research subjects. Perhaps the most famous of these types of programs, is the Good Housekeeping Seal, which evaluates whether a product fulfills its marketing claims.

While many of these programs have incentivized both companies and consumers to maintain certain quality standards within different industries, the

question remains if such a program would work in the pharmaceutical industry for bioethical concerns.

**The demand question: Who cares about ethics?**

A primary concern about the suitability of implementing an ethics accreditation program for the pharmaceutical industry is a basic economic supply and demand question. Who would care about or look to see which companies have a high ethics rating? Would patients, regulators, doctors, investors, internal company management, payers, governments or research subjects look for an ethics seal? If there is no demand for a bioethics quality indicator, then there may be no incentive for companies to participate.

There are two main reasons why the demand question is less straightforward in the pharmaceutical industry than, say, for a certification of organic foods. In the first place, most patients do not know who makes their drugs. Second, not all disease states have multiple treatment options. Notwithstanding, company executives (like LaMattina) acknowledge that when distrust is high and value is questioned, patients and payers (alike) will balk at taking or reimbursing new medicines, a challenge that is not unique to the pharmaceutical industry.<sup>[6]</sup> In the beverage sector, for example, the Mondavi family understood the importance of improving the overall image of Napa Valley, California wines (arguably benefiting all vineyards in the region) in order to improve its own brand and sales.

More realistically, the demand for ethics accreditation may originate from within the industry itself as a means for keeping regulators and politicians at bay. As I mentioned in a [Pharmalot interview](#), this is in fact why most accreditation systems originate and are embraced by industries. This is, for instance, the reason accreditation systems were implemented to evaluate IRBs and universities. With trust levels so low, drug companies are at significant risk for increased regulations and sanctions:

It is not unusual to hear a politician say during a campaign speech: “Elect me and I will protect you against Wall Street, oil companies, and Big Pharma!”... Concerned that the fines are not proving enough of a detriment to prevent the illegal detailing of drugs, the Justice Department and the FDA are considering a variety of more drastic ways to penalize offending companies. One idea being discussed is taking away a company's patent rights as a condition of any settlement. Another idea is to limit business with Medicare, thereby reducing the company's sales. Changes like these would have a bigger effect on a company's bottom line than even the billion dollar fines now being imposed.<sup>[7]</sup>

This of course raises further questions of whether sanctions or regulations are more effective means for improving ethics than accreditation (or some combination thereof). However, for our purposes, we shall table this discussion for now. Instead, let us turn to another common concern held by critics: Can an accreditation program reliably assess if pharmaceutical companies are doing what they say they are doing; or, is it relatively easy to game, capture, manipulate, or invalidate an accreditation evaluation?

This common question raises some interesting sub-questions. For instance, how would a company game, capture, manipulate, or invalidate an ethics accreditation program?

#### **How does one capture a program?**

What is the typology of program capture?

Perhaps the best known method for capturing an accreditation or rating program is through finances. When a program becomes financially dependent on the institutions that it is supposed to be impartially assessing, there is a risk that the evaluating agency will cater to the institutions seeking accreditation to

maintain their patronage. This risk can increase when there is more than one available accrediting or rating agency, as companies can play agencies off of each other by patronizing the more lenient program.

A second, lesser known method for capturing a program is to capture the individual site-reviewer. This might be done by, for instance, an understood but unspoken promise of a potential job offer, should one be sought. This type of capture might fall under concerns associated with revolving door policies.

Both of these 'capture' risks can be arguably reduced. On the issue of finances, one could design a program that is independently funded (so far our program has not accepted any industry funding). Unfortunately, this is likely not a sustainable model. In practice, most accreditation programs are nonprofits that accept nominal membership or review fees, from companies seeking accreditation, to cover basic expenses. These fees are generally scaled to company revenues. Perhaps one method for beginning to address financial capture concerns is to cap each individual corporate membership or review fee so that it does not supersede more than 10% of the nonprofit's annual operating budget. Moreover, the accrediting organization can also refrain from selling any other services (for example, consulting services) to institutions and industries it accredits.

Similarly, individuals involved in recommending or voting on whether a company is accredited, could be asked to refrain from "going in-house" for a certain period of time after stepping down from their accrediting roles. These are high and relatively uncommon bars to set for accreditation programs, but are nonetheless achievable options. But, are they enough to gain the trust of critics?

#### How does one game or invalidate an accreditation program?

Industry critics also commonly worry that pharmaceutical companies will game an ethics accreditation program, thereby invalidating the program's credibility. How might a pharmaceutical company game an accreditation system? A prominent technique might be to exploit asymmetries in information. This

concern likely has to do with the competency of the individuals selected for on-site review teams and as voting members of the accreditation council. One would think there are enough potential experts to choose from that can reduce this type of gaming risk. The inquiry then becomes what 'types' of expertise and individuals are needed.

Many critics also worry that the employees of companies seeking accreditation are not sufficiently incentivized to be truthful during accreditation interviews and surveys, if the information shared might prevent the company from being accredited. Preliminary discussions with Edmond J. Safra Center Fellows seem to hint that the following may help in addressing this risk: (1) avoid allowing the company to self-select which individuals are interviewed, (2) avoid group interviews, and (3) set up a confidential system whereby management does not have access to knowing which employees were interviewed.

### Conclusion

There are clear challenges to implementing a robust ethics accreditation system for the pharmaceutical industry. However, they are largely surmountable challenges and the benefits to all stakeholders are well worth the efforts. As I stated in AboutPharma:

A successful pilot (of an accreditation program could) demonstrate a company's commitment to transparency, to ethical standards, to protecting research participants and patients, to helping doctors and others make informed decisions, and (an interest to) credibly communicate that ethics comes first (at a time when most think profits trump all else).

This solution-oriented program cannot be easily dismissed by the industry, nor its critics, as shockingly naïve and without merit. To the contrary, this program offers deep learning, a rigorous and consensus based methodology, and a win-win opportunity. An ethics accreditation

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program for pharma companies is a substantial gain for them, since promoting the good rarely tarnishes a reputation.

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<sup>[1]</sup> LaMattina, John L. (2012-12-10). Devalued and Distrusted: Can the Pharmaceutical Industry Restore its Broken Image (Kindle Locations 2661-2665). Wiley. Kindle Edition.

<sup>[2]</sup> LaMattina, John L. (2012-12-10). Devalued and Distrusted: Can the Pharmaceutical Industry Restore its Broken Image (Kindle Locations 2661-2665). Wiley. Kindle Edition.

<sup>[3]</sup> LaMattina, John L. (2012-12-10). Devalued and Distrusted: Can the Pharmaceutical Industry Restore its Broken Image (Kindle Locations 2661-2665). Wiley. Kindle Edition.

<sup>[4]</sup> Miller, Jennifer E., Rebuilding Trust and Effectively Communicating Ethics Efforts, January 2013, AboutPharma.  
<http://aboutpharma.com/news/farmaco/rebuilding-trust-and-effectively-communicating-ethics-efforts>

<sup>[5]</sup> Miller, Jennifer E., Rebuilding Trust and Effectively Communicating Ethics Efforts, January 2013, AboutPharma .  
<http://aboutpharma.com/news/farmaco/rebuilding-trust-and-effectively-communicating-ethics-efforts>

<sup>[6]</sup> LaMattina, John L. (2012-12-10). Devalued and Distrusted: Can the Pharmaceutical Industry Restore its Broken Image (Kindle Locations 2661-2665). Wiley. Kindle Edition.

[\[7\]](#) LaMattina, John L. (2012-12-10). Devalued and Distrusted: Can the Pharmaceutical Industry Restore its Broken Image (Kindle Locations 2661-2665). Wiley. Kindle Edition.

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<http://www.ethics.harvard.edu/lab/blog/274-on-restoring-trust-and-ethics-in-pharma>

## Unaffordable Housing

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[Zach Fox](#)

Across the country, state agencies in charge of administering the nation's affordable housing policy are looking at cost. But the debate might not be going far enough, as developers and state officials tend to focus on a lucrative tax credit when all programs deserve a second look.

### **Unaffordable Housing: High-Cost Projects Subvert Government's Mission to Address Nation's Affordable Housing Crisis and Require Comprehensive Reform**

There is a growing body of literature that taxpayer-funded affordable housing has become too expensive, with costs often exceeding the private-market substitute. In [a 2012 survey by Affordable Housing Finance](#), 84% of its readers thought development costs were excessive in at least parts of the country. A 2011 report from the online news publication *Voice of San Diego* summed up the issue in its article's headline: [Building "Taj Mahals" with Taxpayer Money](#).

#### **LIHTC in danger**

The nation's most significant affordable housing subsidy is the low-income housing tax credit. As tax reform talks drag into apparent perpetuity, every federal program is at risk, heightening the urgency to prove that the tax credit is judiciously applied. When credits are awarded to luxury projects that cost in excess of \$300,000 per unit, that is a difficult case to make.

All told, the low-income housing tax credit cost the federal government about \$29 billion from 2007 through 2011, according to [a study by Smart Growth America](#). That sounds like a big chunk of change, until one considers that the cost of the mortgage interest deduction, which subsidizes homeownership, runs \$396 billion over the same time.

Nonetheless, Congress' most hawkish members might not see an equivalency, and it is hard to blame them. One would be hard-pressed to find a homeowner in favor of eliminating the mortgage-interest deduction, just as it would be quite the accomplishment to find an average man on the street knowledgeable of the low-income housing tax credit. Indeed, Sen. Tom Coburn (R-Okla.) has explicitly called for the wholesale elimination of the tax credit.

### Consider costs, maybe?

That has left state agencies and developers scrambling to figure out how to bring costs down. The state of California [ordered a review](#) of affordable housing costs that is due to be released in March. The state of Washington concluded [a similar study in 2009](#).

There are numerous drivers of the high cost of affordable housing, but at least one potential solution appears to be fairly well-understood: consider cost. That was the first recommendation from the state of Washington's study, which called on the state agency to place "increased emphasis on cost control as a funding decision factor." Likewise, the National Council of State Housing Agencies issued [a memo in December 2011](#) that recommended a cap on per-unit costs. Both of these suggestions relate to the state agency's "qualified allocation plan," which is a scoring rubric used to grade projects. Essentially, the recommendation is to award more points to cost-conscious projects.

These recommendations make sense; after all, if agencies are not considering costs, how can they possibly contain them? It might be difficult to imagine a state agency failing to consider costs while handing out millions of dollars of taxpayer

funds, but there are legitimate reasons why affordable housing reached this point. Briefly, anti-affordable housing sentiment from community members has encouraged agencies to pursue high-quality, aesthetically pleasing designs in an attempt to avoid the stigma attached to public housing. Further, more expensive "mixed-income" projects that offer both affordable and market-rate units have become the gold standard for agencies interested in improving socioeconomic integration.



High cost has become a concern in the nation's affordable housing efforts, as state agencies have shown favor to aesthetically pleasing designs, such as these projects in Santa Monica, Calif., and Aspen, Colo.

### **Bond financing under the radar**

Another problem is that this discussion does not go far enough. Much of the talk has been focused on reducing costs for projects that receive the so-called 9% tax credit, as opposed to projects that receive the 4% tax credit or ones that receive tax-exempt bond financing. This makes sense on the surface. The 9% is designed to provide a 70% present-value subsidy to a project, compared to 30% for the 4% credit, so there is fierce competition for the 9% credit while much of industry refers to the 4% as "noncompetitive." This explains clearly why competition is fiercer for the higher-subsidy credits.

State agencies received requests for about \$2.24 billion in 9% tax credits but handed out only \$917.4 million in 2010, [the latest data available](#) from the National

Council of State Housing Agencies show. By contrast, the nation's state agencies issued \$8.89 billion in bonds in 2010 but had authority to issue up to \$31.13 billion that year. It should be noted here that tax credits are far more valuable in that they give developers extra cash and directly lower government tax revenue, compared to bond financing that costs the government little and serves developers as attractively priced debt. In effect, state agencies needed developers to ask for more debt.

However, that is not the case across the board. New York has been forced to reject applicants looking for a piece of the state's bond issuance.

"Here in New York there is fierce competition for volume cap," said Deborah VanAmerongen, strategic policy advisor for Nixon Peabody. "The state and city housing agencies both have more demand on that resource than they can fund in a given year."

Disconcertingly, huge chunks of New York's state bond cap, up to \$600 million, have been spent on ultra-luxury developments that offer very few affordable units relative to the amount of financing. The New York State Homes and Community Renewal did not return a request for comment.

The obvious question becomes why not reallocate some of, say, Arkansas' cap, to New York?

The state agencies' top industry group, the National Council of State Housing Agencies, does not recommend such a process, largely because cap usage fluctuates so much year to year that reallocation would be difficult, said Garth Rieman, director of housing advocacy and strategic initiatives for the council.

"Plus, [congressional budget forecasters] all recognize that a certain amount of bond authority goes unused, so that's factored into cost projections," Rieman said. "So to go to a reallocation system where all that bond authority is used would involve potential costs to the federal government."

With state agencies scrutinizing how they distribute tax credits, perhaps the federal government should reconsider its allocation of both tax credits and bond authority. Without an explanation from the state of New York, it is hard to know why it used its bond cap to give so much money to projects that produced so few affordable units. Being generous, one might assume the agency made the calculation that having some units in high-cost neighborhoods is better than none.

But is it the best use of funds? The nation has a well-documented lack of affordable housing, and the gap between what people can afford and what landlords charge is growing. From 2007 to 2010, the number of American households paying more than half their income in rent increased by 2.3 million, according to [the latest report from Harvard's Joint Center for Housing Studies](#), which called the prospects for meaningfully addressing this crisis "bleak." It is part of the state agencies' missions, as well as that of the Department of Housing and Urban Development, to address the lack of affordable housing. They are failing at this task. During this time of introspection for the industry, all programs should be under a close microscope, not just the 9% credit.

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<http://www.ethics.harvard.edu/lab/blog/275-unaffordable-housing>