A DANGEROUS PASSAGE

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What happens is a gradual shifting of a man’s loyalties from the community, to those who have been doing him favors. His final decisions are, therefore, made in response to his private friendships and loyalties rather than to the public good. Throughout this whole process, the official will claim — and may indeed believe — that there is no causal connection between the favors he has received and the decisions which he makes. He will assert that the favors were given and received on the basis of pure friendship unsullied by worldly considerations. He will claim that the decisions, on the other hand, will have been made on the basis of the justice and equity of the particular case. The two series of acts will be alleged to be as separate as the east is from the west. Moreover, the whole process may be so subtle as not to be detected by the official himself.

— The late Senator Paul Douglas (D-IL)

Service is its Own Reward? The Revolving Door from Lawmaker to Lobbyist explains both the attraction of going through the revolving door to become a lobbyist and the dangers that such a passage entails. The article also effectively lays out possible reforms in current laws which, if enacted, could limit the damage posed by the revolving door.

In looking at the case that authors Jowers and Peterson make, it is important to specifically identify the dangers posed by the revolving door — why the revolving door is a problem — as well as to focus on those reforms that would do the most to address those dangers.

Current post-employment restrictions in the statute are based on the notion that while serving as a public official, an individual not only gains
access to information not generally available to others, but also develops unique relationships with colleagues. The theory is that both the information and the relationships will “cool” over time and thus the “cooling off” period in current law. It is important to note that in current law, there are also lifetime restrictions on executive branch officials working on certain “particular matters” and a two-year restriction on executive branch officials who supervised others working on particular matters to lobby on those matters.

Thus, these laws are not an indictment of lobbying per se, but are a recognition that private interests, by their nature, are always looking for ways to gain access and influence in the public decision-making process. Former public officials simply should not use the information they learned or relationships they formed during their public service, for the benefit of a private interest.

But the truth is that the nature of lobbying has changed since these laws were originally enacted. Because lobbying is now much more lucrative than it was a decade or two ago, Members-turned-lobbyists have new incentives to enrich themselves. Furthermore, lobbyists have become bigger players in Washington because they are a significant source of campaign money whose magnitude and importance has grown. Members have an incentive to become cozy with lobbyists to get those campaign dollars. Lobbyists in turn have an incentive to become cozy with Members to gain access, influence, and possible success — which will make their clients happy.

The individual who has perhaps spoken with the most eloquence and experience on this issue of post-employment restrictions for public officials was former U.S. Solicitor General and Watergate Special Prosecutor Archibald Cox, who served in and out of public service during his long career. In a 1988 address at Princeton University, Mr. Cox spoke on “Public Ethics and the Public Good,” and defined the “revolving door” as the “the practice of leaving positions of power and influence in government only to return immediately to the same circles as a lobbyist or other representative seeking favorable legislative or executive action on behalf of some private interest from the very subordinates or associates with whom the ex-official used to deal.” He then went on to identify four “evils” in this practice:

1. The official, while still in office but thinking of work as a lobbyist, is tempted to curry favor with prospective employers or clients;

2. The ex-official will find it all too easy to use inside information not available to others for the benefit of his private employer or client;
3. The ex-official will often be able to trade upon habits of deferring to his advice and wishes engendered during the days when he was senior to, or at least a more influential official than, those with whom he now deals;

4. At best, the insidious influences described by Senator Paul Douglas come into play. [see above]

Cox noted that there is indeed some value in attracting to government men and women with practical experience in the private sector, as well as having men and women with government experience in the private sector in order to “bring to the private sector a better understanding of government and a public point of view.” But, he noted, “the country can have all those benefits without allowing an ex-official to go back as an “insider” to use the knowledge and influence of his former position among the very same people whom he used to direct or with whom he used to work. There are plenty of other posts in the private sector, including private industry, to which the department government official may usefully go.”

Changes that were made to the post-employment statues in 1989 addressed some of the most egregious problems, such as extending restrictions for the first time to Congress and top staff. However, the changes were not enough to deal with the dangers posed by the revolving door that increasingly spins not just to the private sector but directly into lobbying.

Of the five reforms that Jowers and Peterson identify, in my view two are critical.

One, “lobbying activities” — not just “lobbying contacts” — should be prohibited during the cooling off period. As Jowers and Peterson note, “many lawmakers sign contracts while still in office, and are on the payroll of lobbying firms well before their one-year ‘cooling off’ period has expired.” The former lawmaker may not make the specific contact with the sitting Member of Congress, but both parties to the contact know who is pulling the strings. Simply saying, “Your former colleague X sends his greetings” is enough to get the point across to the Member.

Two, a one-year cooling off period is not long enough. The relationships that former Members or top staffers have with current Hill employees are still fresh. An election should intervene before lobbying activities and contacts are made.

One improvement that is not included in the Jowers and Peterson list is a cross-branch restriction. Members who leave to become lobbyists should also have a cooling off period from lobbying executive branch
agencies whose oversight fell within the jurisdiction of the committees on which they served. A former Armed Services Committee Chairman-turned-lobbyist, for example, has enormous entrée and sway with the Defense Department. Such individuals should face a two-year cooling off period from cross-branch lobbying.

Finally, I believe two of the possible reforms suggested — prohibiting campaign contributions from lobbyists to those whom they lobby, and restricting former lawmakers from hosting fundraisers — probably make good sense but are likely to face constitutional challenge as being too invasive of any American’s exercise of their First Amendment rights.