Defending lobbyists is about as popular as defending trial attorneys, those ambulance-chasing pit bulls in pinstripes whose slip-and-fall cases against the Wal-Marts of the world keep the lights in corporate boardrooms burning well into the night. In fact, there is much that both professions have in common, least of which is their ability to advocate — the lawyer for his aggrieved client, the lobbyist for the corporation, interest, or industry employing him to ensure that its position is fully considered by the government.

While defending either profession may be unsavory, given prevailing cultural attitudes, the question is: Where would we be without them? Just as every man deserves his day in court — with trial attorneys ensuring that the abuses of the powerful do not go unanswered — so does every interest deserve to have its position considered in the halls of government.

This is neither new nor novel. In 1787, as the advocates of the Constitution pushed for its ratification, James Madison, John Jay, and Alexander Hamilton penned and published 85 essays under the pseudonym Publius. The most famous of those essays, *Federalist No. 10*, calls those interests “factions,” groups that are bound together by common causes but that are often at odds with other groups.

Factions, Madison argued as author of the *Federalist No. 10*, are natural, and a constitutional form of government would provide the stability needed for factions to contend one against another. On the other hand, a constitutional government would require factions as both an expression of liberty — the opportunity for groups to pursue their interests — as well as a check on the potential abuses of larger factions and even the power of government. “As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed,” he
wrote, making it clear that liberty, which is essential to political life, will nourish factions like air nourishes fire.

Maintaining representation before government is not only a right inherent in America’s form of government, it is also an asset to that government. As journalist Jeffrey Birnbaum, one of the foremost authorities on the lobbying profession, has suggested, “The First Amendment makes lobbying a national right, and we should all be glad to have it, businesses included. The ability to petition for redress of grievances is one of the things that makes our country great!” According to Birnbaum, “lobbying is important to the system.”

From this perspective it would appear that lawmakers who become lobbyists are not actually selling out — turning away from public service — but continuing to lend their expertise to a complex and important process. That they are paid more as lobbyists than they were paid as senators or congressmen does not diminish the value of the service they provide, nor does it make that service infra dig. In fact, a case can be made that these lawmakers turned lobbyists can actually be more effective off Capitol Hill than they were while in office. No longer restricted by balancing one faction against another, or weighing the consequences of their actions in terms of political donations and votes — not to mention compromising to gain clout within their respective parties — they are free to advocate stridently on behalf of the interests they represent, to build coalitions, to persuade lawmakers, and to conduct aggressive campaigns to counter those who represent interests on the other side of the issue — and in Washington there are always two sides to every issue. As my former mentor and boss, the late great Senator Bill Roth (R-DE), once chairman of the powerful Senate Finance Committee, taught me, “When various interests come to Capitol Hill, and they are well represented, the cream will eventually rise to the top.”

Just as it would not be fair to cast aspersions on lobbyists because lobbying is generally well compensated as a profession, it is likewise unfair to diminish the importance and credibility of the lobbying profession due to the occasional eruption of scandal. The pattern seems to be consistent in Washington: at the first hint of impropriety, often fueled by media scrutiny and talk radio screams for reform, Congress feels that it must do something, and passing legislation — or mandating — is what it does best. Case in point: More ethics laws have been passed in the last 30 years than in the previous 180. However, the Josephson Institute for the Advancement of Ethics suggests that this is not always the best answer.
It is important not to expect too much from the proliferation of ethics laws... They tend to reflect narrow, legalistic approaches to issues of propriety and to reduce broad ethical principles to technical requirements in ways that trivialize the notion of public service ethics. As a result, new ethics laws usually breed, not new attitudes or a higher level of commitment, but new evasion schemes on the part of those determined not to abide by the rules. For the most part, however, these laws have not created new or different ethical obligations. In almost every case, they simply formalize some aspect of conflict of interest standards that are intrinsic to the notion that public office is a public trust.

Scrupulous persons with a high degree of ethical commitment have not been affected materially by these laws since their natural inclinations cause them to avoid types of conduct that, while legal, were always ethically dubious even in the most rambunctious days of the early American political system during the nineteenth century.  

The recent scandal involving lobbyist Jack Abramoff has once again incited the call for reform — everything from shutting down the revolving door between elective office and lobbying, to minimizing contact between a former congressman and his Capitol Hill colleagues, to prohibiting contributions from lobbyists to those they lobby. The irony, however, is that the current system appears to be working, in that Jack Abramoff and his cadre of lawbreakers were caught and prosecuted, and the investigation continues. The additional irony is that so much of the focus concerning reform is being directed at former lawmakers who lobby and Abramoff was never a member of Congress, nor, for that matter, was he a congressional aide.

If the Abramoff scandal hints at any one problem it is the vast amounts of money involved in the political process, and the ends to which unscrupulous individuals will go to enrich themselves. Money is, indeed, the lifeblood of politics. At a time when even the most modest House campaign runs into the millions of dollars, congressmen and senators are engaged in an unending quest for campaign contributions. It was commonly rumored that former U.S. Senator Alan Cranston (D-CA) dedicated three to four hours every morning to fundraising. That was the cost of holding his seat in California. And contributions most often come with expectations.
Former U.S. Senator Paul Simon (D-IL) said that at the end of a busy day, when he would finally have time to return a portion of the countless telephone calls he had received, his highest priority was to get back to those who were campaign contributors. Their contribution earned them the right to expect a return call. Randy “Duke” Cunningham (R-CA), the disgraced congressman who recently pled guilty to taking bribes from defense contractors, proves the expectations can run both ways.

Despite a brilliant career as a politician and the laurels of being one of America’s great military heroes, Cunningham may now spend the rest of his life in prison. How it started or why, federal prosecutors are still sorting out, but Cunningham’s greed got the better of him in relationships with defense contractors, and in November he pleaded guilty to accepting $2.4 million in bribes to pressure the Pentagon to buy products and services from those who were paying his prices. In fact, he went so far as to write down in menu fashion how much money he would require the defense contractors to pay in exchange for government contracts. In his own handwriting on his personal stationary, with the congressional emblem at the top, he wrote two columns: the left column listed how much the contract would be worth; the right listed the bribe amount he required. For $50,000, he would work to secure a $17 million contract. For another $50,000, he would push through a second $18 million contract. For getting a $16 million-dollar contract, he listed on his menu that he had rights to live on the contract or’s yacht, christened the Duke-Stir, which was anchored in the Potomac River, only a few miles from Capitol Hill.

Abramoff and Cunningham demonstrate that no matter how tight ethics laws become, no matter how tightly Congress weaves a web of rules and regulations, there are those who will, as the Josephson Institute suggests, exploit their power and position to take advantage of the system. And just as Willie Sutton, when asked why he robbed banks, answered, “Because that’s where the money is,” the Abramoffs and Cunninghams will find the federal budget with its $2.8 trillion in spending where the real money is, and, like Willie Sutton, they will go after it with abandon. But just as it would be foolish to criticize the banking industry for Willie Sutton’s behavior it is equally foolish to suggest that Abramoff and Cunningham are representative of the lobbying industry as a whole. Lobbyists do work with the government on behalf of big business and foreign countries. They also represent senior citizens, social workers, veterans, teachers, farmers, and home builders. They represent children and
families, universities, and churches. As my friend and fellow lobbyist, James Copple, recently wrote in *The Washington Post*, they are “standing with cell phones pressed to our ears on Washington street corners, working to catch a handful of budgetary decimal dust for nonprofit programs that alleviate human suffering and troubles such as underage drinking, drug abuse, teen pregnancy, homelessness, dropping out of school and fraud against the elderly.”

The arrest and prosecution of Abramoff, Cunningham, and others demonstrate that the system works, and it points to the real solution in the quest to maintain integrity in the American political process: sunshine. Simply require transparency with full and timely disclosure of lobbying activities and campaign contributions and provide easy public access to disclosure reports.

The truth is that we live in the most ethical time of American government. According to the Josephson Institute, “Despite proclamations that the ethics of politics has sunk to a new low, the American political system has, in fact, made its greatest advances in reducing traditional forms of corruption. Complex and sophisticated concepts of conflicts of interest have been incorporated into statutes and etched into the psyche of the American media so that they now play a major role in everyday political decision-making. These changes have created whole new categories of impropriety which may lead us to believe political ethics are getting worse, when, in fact, they actually are getting better.”

The most apparent reason why it appears that ethics is lapsing and constant reform should be the order of the day is because there has been a round-the-clock nationalization of bad news, an increase in government oversight, a proliferation of post-Watergate investigative media scrutiny, and the democratization of opinion and publishing made possible by the Internet and the advent of blogging. Today, bad news does not even have to be true to be news, and rumors masquerading as truth spread with more aggression than the lyrics of Eminem.

This is good, as far as it is kept in proper perspective. There are sufficient laws governing the lobbying industry to keep the honest on the straight and narrow and to ferret out the criminals. Limitations on gift giving and campaign contributions, rules requiring a cooling-off period before a former congressional leader or staff can lobby after leaving government, disclosure laws that pretty much take all the guesswork out of who represents whom — these are already in place and are heeded seriously by the vast majority of lobbyists. To suggest that additional ethics laws will prevent future scandals a la Abramoff and Cunningham — who
so egregiously flaunted the laws already on the books — would be naïve. Instead, we need simply to continue effectively enforcing existing rules and, in all things, to let the sunshine in.

NOTES

1 Washingtonpost.com interactive forum, May 30, 2006, 12:00 PM EST.