Protecting the Polity: Strategies for Reform

Dana Gold,† Solange E. Bitol-Hansen,‡ Charlie Cray,§ Bruce Freed**

Dana Gold: This session is somewhat near and dear to my heart, although somewhat provocative. This session is Protecting the Polity: Strategies for Reform, and we frame this as additional strategies that are actually percolating in a concrete way out in the real world, not just in the world of academic theory, to promote citizen participation in a democracy that countenances corporate influence in the political process.

What we have learned today, to some extent, is that there is some concern, acknowledged by both the audience’s questions and the panelists, about the degree of corporate influence in democracy and how that influence impacts our access to information in the political process. Some people actually don’t seem to think there is a problem; but we wouldn’t have anyone here at this conference if we at least didn’t think there was a problem and a need to at least look at the health of democracy.

Again, for this session we will focus on several strategies that are gaining concrete traction that seek—through very different tactics, as well as philosophies—to foster a healthier democracy. Our speakers today are going to present a slice of some of those strategies that address the corporate presence in our democracy. I will introduce them in turn as they talk.

Our first speaker, Solange Bitol-Hansen, is the National Program Director for Public Campaign, and she will talk about their very important work on clean elections and what it means to create a level playing field in the political process. At Public Campaign, she is responsible for federal and state campaigns and for strengthening public campaign work with campaign reform allies nationally and across the country. Prior to her work with Public Campaign, Ms. Bitol-Hansen spent five years as a

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senior legislative advocate for SEIU, focusing on federal legislation and policy affecting immigrant workers and families. Before working at SEIU, she was legislative counsel for Senator Arlen Specter, was legislative counsel for the ACLU on First Amendment free speech issues, and was legislative counsel for the national office of the NAACP.

At this point, I’d like to turn the time over to Ms. Bitol-Hansen. Thank you so much for joining us.

Solange Bitol-Hansen: Thank you. [Public Campaign] advocates for full public financing of elections at all levels of government, largely because of the disproportionate influence that corporate interests have on privately funded political systems.

I want to thank Dana Gold for asking me to come here today. Last night as I was in my hotel watching the local news, it was filled with political ads for the local races. There were some good ones, too. Of course, doing the type of work that I do, I watched it intently and started thinking about how much money is spent on political campaigns.

In the last election cycle, over $4 billion was spent on political campaigns. Some of you may know, and some of my colleagues who were speaking here earlier may know, that this summer my husband and I had a baby, Max. He’s four months old, and I started thinking about how expensive elections are going to be when and if Max decides to run for office. So, I decided that I’d like to use time here today to kick-off his exploratory committee. Everyone can take out your checkbooks and make it out to “Friends of Max Campaign.” We’d appreciate it.

Yesterday, I took Max to the Pike Place Market and saw that next year the Market will celebrate its hundredth year anniversary. Of course, centennial celebrations are a big deal, and this year marks several important 100 year anniversaries. In addition to the Pike Place Public Market, there’s the Portland Rose Festival and the 100 year anniversary of Hersheypark in Hershey, Pennsylvania, if there are any chocolate lovers in the house today. The park will celebrate by introducing a new edition to its water park ride.

Finally, there’s the hundredth birthday of the 1907 Tillman Act, the federal law that banned corporations from contributing directly to the federal election. The 1907 Tillman Act, championed by President Teddy Roosevelt, limited corporations and national banks from giving money directly to candidates. Roosevelt had previously called for such a measure in his 1905 State of the Union speech, saying that all contributions by

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1. Service Employees International Union.
corporations to any political committee or for any political purpose should be prohibited by law.

Unlike support for the Rose Festival, the Pike Place Market, or the Hersheypark hundredth birthday celebrations, it’s unlikely there’ll be any great fanfare for the anniversary of the Tillman Act. That’s because at the start, the Act’s provisions did not have an enormous effect at the time, and, of course, it still doesn’t 100 years later.

Corporations are still prohibited from making direct contributions to candidates. Corporate and business influence in elections, however, is at an all-time high. Political action committees and individuals working for these companies are the dominant source of money for political campaigns. Taking a look at some of the statistics from the last political cycle, some $4 billion was spent, as mentioned earlier, in 2004. The average cost of a House seat was $1.2 million, a comparative bargain to that of a Senate seat for $7.2 million. Candidates who do not have massive personal fortunes that they are willing to spend on their own races must collect this money from wealthy corporate interests that have it to give away.

With seventeen days left in this election, some campaigns have already topped 2004 races in terms of fundraising. Democrat senator Hilary Clinton has already raised more than $47 million, more than the entire amount raised in the 2004 New York Senate race, and dwarfing the $4 million raised by her Republican opponent, whoever that happens to be this week.

Locally, Maria Cantwell has raised over $17 million, more than twice the amount raised by Michael McGavick, her Republican opponent, who’s raised a little over $8 million dollars. In total, more than $27 million has been raised for the Washington Senate race, fourth overall on the list of top ten Senate races this year according to the Center for Responsive Politics.

Business interests are dominating contributions in the 2006 elections, giving $817 million, again according to the Center for Responsive Politics, which is about $18 for every $1 contributed by labor unions. The list of top contributors in this year’s race is dominated by business interests, including the National Association of Realtors, Goldman Sachs, the American Bankers Association, and the United Parcel Service (UPS).

Why does it matter that candidates are dependant on business interests for money to fuel their political ambitions? It matters because these interests are contributing and want a return on their investment, and all too often they get it. In contrast, ordinary people like you and me don’t
have the spare cash in our budgets to make sure their representatives in Congress and the White House are putting their interests first.

Consider UPS as an example. The company’s executives and political action committee, which have contributed nearly $20 million to federal campaigns since 1989, nearly two thirds of that amount to Republicans, was one of the business community’s staunchest opponents to a Clinton-era federal rule to prevent injuries to workers, known as the “Rule of Ergonomics.” When I was at SEIU, I worked a lot on this particular rule. One of George W. Bush’s first acts in office was to sign legislation that rescinded that regulation. At that time, some 20,480 workers at UPS missed a day or more of work annually because of back, leg, and other injuries, the sort of thing that the regulation was designed to prevent.

The American Bankers Association, the leading voice for commercial banks nationwide, was at the forefront of the efforts to dismantle the Glass-Steagall Act,\footnote{3. Glass-Steagall Act, ch. 89, 48 Stat. 162 (1933) (codified in scattered sections of 12 U.S.C.).} the critical Depression-era law that for close to six decades kept the banking, securities, and insurance businesses separate from each other. These interests got what they wanted when Congress approved the 1999 Financial Services Modernization Act.\footnote{4. Financial Services Modernization Act, Pub. L. No. 106-102, 113 Stat. 338 (codified in scattered sections of 12 U.S.C. and 15 U.S.C.).} Since then we’ve seen a series of Wall Street scandals, such as the implosion of Worldcom, which Eliot Spitzer blamed on the deregulation feature in that law.

So what do we do about this problem? My colleagues and I at Public Campaign believe that the solution is not necessarily more regulation of campaign spending. Instead, it’s important to provide an alternative way for people to run for office without having to rely on business interests to fund their campaigns.

Full public financing of elections, or “clean elections,” give candidates this opportunity. Clean elections systems typically work by offering candidates the choice of qualifying for public funding if they demonstrate grassroots support by raising a set number of small contributions; in most cases $5 per voter. They must also promise to take no more private contributions and to abide by strict spending limits. Because this system is totally voluntary, it passes muster with the Supreme Court campaign finance rulings. Candidates must rely on a large number of people for very small contributions instead of receiving large contributions from an elite few. Qualified candidates receive an equal and set amount from a clean elections campaign fund to run their campaigns. If they face a privately funded opponent who raises more money than they
have been given, they can then qualify for additional funds up to a set limit. These additional funds are also available if candidates face outside spending opposing them; that is, independent expenditures.

Clean elections are beyond theory and well into practice. Clean elections laws are on the books in seven states: Arizona, Connecticut, Maine for all state elections; North Carolina for judicial appellate elections; New Mexico for the Public Regulations Commission; Vermont for Governor and Lieutenant Governor races; and New Jersey where there was a legislative pilot program in effect in 2005 that’s up for renewal in 2007 and has widespread support in the legislature.

In addition, two cities have also adopted full public financing of elections: Portland, Oregon and Albuquerque, New Mexico. In Arizona and Maine, where clean elections have been in place for statewide races since 2000, we’ve seen an increase in the diversity of candidates running for office and competitive seats. The system is also quite popular. Seventy-eight percent of the members of the Maine legislature used clean elections in their races. In Arizona, ten out of eleven statewide officials ran using this system, and currently Janet Napolitano, the Governor, is running clean.

Meanwhile, the reelection rate for incumbents in Maine and Arizona dropped in both 2000 and 2004, according to researchers at the University of Wisconsin. While this trend cannot entirely be explained by the existence of clean elections, nevertheless the researchers concluded that there is no question that public funding programs have increased the pool of candidates willing and able to run for state legislative office. The fact is most pronounced for challengers, who are far more likely than incumbents to accept public funding. Public funding appears to have increased the likelihood that an incumbent will have a competitive race.

Recent polling by Lake Research Partners and Bell Weather Research\(^5\) shows that clean elections are also popular with the electorate. Three out of four voters support a voluntary system of publicly-funded campaigns. This support crosses all party lines and is strong across demographics and regional groups.

Moreover, clean elections are spreading. For instance, in the House of Representatives, John Tierney of Massachusetts and Raul Grijalva of Arizona are each sponsors of HR 3099,\(^6\) which establishes public financing for clean elections for House races. A similar bill is being worked on in the Senate and is expected to be introduced if they come back in for a

pro forma session after the elections, or if not then in the 110th Congress in January. Another example of how clean elections are spreading is found in California, where voters will have the chance to vote for Proposition 89, the clean money and fair elections initiatives, which would establish public funding of elections for all statewide and legislative races in the state. Efforts are under way in dozens of states to bring clean elections to state and local races. Just today we had a discussion at lunch where we talked about funding of judicial elections here in Washington state because of the amount of money that had to be raised and spent for the last cycle.

In the wake of political scandals radiating from convicted lobbyist Jack Abramoff, citizens’ groups are also working to get candidates for Congress in this year’s elections on record for full public financing of elections. As of today, 351 candidates for Congress have signed the Voters First Pledge, which shows their support for clean elections-style system of congressional races, as well as several important lobbying reforms. Among the signers are over seventy current members of Congress, and you can find out more information about the Voters First Pledge at www.VotersFirstPledge.org. Finding a way for qualified candidates to run for federal office without needing to resort to collecting from special interests would take power away from the Jack Abramoffs of Washington and put it back in the hands of voters where it belongs.

The 1907 ban on corporate contributions was a good start, as were the many campaign finance reforms that followed. But to truly bring balance and fairness to the political system, we need to go far beyond a formal ban on corporate contributions to federal campaigns as well as contribution limits and disclosure laws. Clean elections are a practical, proven way to make politics about the people.

Dana Gold: Thank you. What is interesting is that the clean elections strategy, as far as I know, has avoided conflict with First Amendment jurisprudence, but addresses some of the problems we’ve been talking about today. It will be interesting at the end of this session to discuss what is hopeful about some of these strategies but also what some of the limitations and challenges to them are.

Next we have Charlie Cray who is going to talk about a range of strategies both at the grassroots level and beyond. Some strategies address the issues that Professor Adam Winkler discussed this morning about the jurisprudential move that equates corporations with persons,

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7. For more information about Proposition 89, see http://www.ss.ca.gov/elections/vig_06/general_06/pdf/proposition_89/entire_prop89.pdf (last visited May 18, 2007).
8. For more information on the Voters First Pledge, see http://www.campaignmoney.org/votersfirstpledge (last visited Apr. 7, 2007).
and how local communities are dealing with the perceived problems that personhood status creates for corporate influence in democracy. He will also discuss other efforts to counter corporate voice in nearly every aspect of culture.

Charlie Cray is the Director for the Center for Corporate Policy and a policy analyst there. He’s also the coeditor of HalliburtonWatch.org. He is a coauthor of *The People’s Business: Controlling Corporations and Restoring Democracy,* as well as an article that was published in the *Seattle Journal for Social Justice* at a conference that Charlie participated with us back in April of 2005. So thank you, Charlie, for joining us today.

**Charlie Cray:** Thanks, Dana. I want to set up my talk by reminding you a little bit about the political and legal history of the corporate rights movement that has been quite aggressive over the last few decades. As we’ve heard from many people throughout this conference, corporations are increasingly invoking the First Amendment to defend commercial and political speech, but also to dissolve local, state, and federal restrictions on their activities. And in some respects, we need to look at this as the result of an ideological movement that accelerated in the early ‘70s when the United States Chamber of Commerce (Chamber) asked Lewis Powell to write a strategic memo to help corporate America maintain its power.

If you don’t know what I’m referring to, search on Google for “Powell Memorandum” and read it carefully. What Louis Powell wrote was transformed by the Chamber and the corporate right wing, particularly the Scaife, Olin, Bradley, Smith Richardson, Coors and other foundations, into a decades-long agenda. Powell started by suggesting that “the free enterprise system is under attack,” and corporate executives needed to organize a concerted response in the courts, on the campuses, and in the media. We talked a lot about those arenas here today. That’s not surprising.

After the Powell Memo was written, these large foundations set up dozens of legal foundations, including the Pacific Legal Foundation, and handed stacks of cash over to groups like the Heritage Foundation, which virtually functions as Bush’s backbench today. One particular legal foundation, the most aggressive and perhaps the craziest, is the

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Washington Legal Foundation\textsuperscript{11} based in Washington, D.C. Let’s review some of the actions that the Washington Legal Foundation has taken with regards to corporate speech.

They’ve used the First Amendment to get a District Court to strike down FDA restrictions on promoting off-label uses of approved drugs. They opposed the FDA’s trans-fat labeling regulations. Of course, they backed Nike in \textit{Kasky}.\textsuperscript{12} They supported breast implant manufacturers’ and asbestos makers’ rights to advertise during trials. They argued that restrictions on point-of-sale advertising, warning labels and disclosures sought by the federal government, the FTC and the FDA, violated big tobacco’s First Amendment rights. They argued that the bipartisan Campaign Reform Act,\textsuperscript{13} which we heard a little bit about earlier, encroaches on the First Amendment rights of speech and association.

They opposed the test to require GMO labeling. They opposed European standards on advertising. They opposed city ordinances banning tobacco and alcohol advertising. They opposed attempts in Congress to eliminate tax deductions for tobacco and alcohol advertising. They opposed attempts to regulate product placement in movies. They opposed the ban on Joe Camel, or Joe Chemo as we like to call him. They supported the phone carriers’ right to use customers’ business records without prior consent, and it goes on and on and on.

The Washington Legal Foundation’s Richard Simms once said, “I look at us as the bearers of the torch of the civil rights movement. I see us as the successors to Martin Luther King and Thurgood Marshall.” And the Chairman of the Washington Legal Foundation, Dan Popeo, added, “I like to think of us as a small business version of the ACLU, only our stress is on economic civil liberties.” Small business, indeed. The funders include Exxon/Mobil, 3M, Caterpillar, Chase, Phillip Morris, Citicorp, Sprint, Bristol-Meyers, and Warner Lambert.

I want to talk a little bit about some speech issues in both the areas of commercial speech and political speech that are getting some attention, at least from activists. I’m an activist, and I’m not an attorney. I guess the last time I was in Seattle was when some friends of mine shut down the WTO because they were trying to pass a universal global investor rights agreement at the exclusion of all other rights for people, and that was an excellent moment. Being back here now reminds me that corporate speech rights are part of this larger corporate agenda that confronts us.

\textsuperscript{11} For more information on the Washington Legal Foundation, see http://www.wlf.org (last visited Apr. 7, 2007).
\textsuperscript{12} Nike, Inc. v. Kasky, 539 U.S. 654 (2003).
In the area of commercial speech, you’ve heard a lot already about advertising tobacco and liquor. Consumer drug ads are another example that I want to touch upon today. First, step back from the legal issues and remember that the amounts of advertising that we’ve seen in our society has grown tremendously. Expressed in 2004 dollars, according to Advertising Age,\(^{14}\) in 1900 it was just $9 billion. By 1976 it was $89 billion in the United States; by 2000, $236 billion; by 2004, $266 billion. Jeff Chester said earlier that the amount is expected to rise to around $275 billion this year. The result is that we have a completely commercialized culture. We’re basically colonized. That is the word I like to use because it reflects the fact that we think of ourselves as consumers rather than as citizens, let alone as neighbors or spiritual beings.

The average American sees over 2,000 messages a day. What effect does it have? Try this: Ask your kids how many brands of candy or other foods they can name. Give them a minute to write as many as they can down on paper. Then tell them they have another minute to write down as many species that are native to their state as they can think of. Then compare the two and ask yourself what happens when corporate speech dominates the discourse?

We see a diminishment of the public spirit everywhere in this society. It’s not just the visual pollution and the crowding out of non-commercial messages and the chaos in the public sphere. It’s also the elimination of the public sphere entirely that we’re talking about.

The average American sees forty-seven hours of television per week. In the “marketplace of ideas” we hear the term “listener” bandied about, especially in legal debates. But who, exactly, are these listeners? Are they consumers? Are they just consumers, or are they also citizens? Isn’t that sort of like what the law does to people when they participate in the corporate system where you’re only an investor or employee or customer? In Dan Greenwood’s papers on corporate speech, he addresses this question of the role of human beings within a certain kind of system. I think what happens is that our ability to think as citizens is fundamentally circumscribed.

We cede a lot of ground when we talk about these things as consumer questions rather than questions about self-governance. Speech is a question about whether we want a society that allows us to construct the architecture of public discourse to ensure democracy. Such as the media. Such as the prevalence of commercial advertising (or not) in public

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As a result of ubiquitous commercial speech we find ourselves conditioned around patterns of unnecessary and wasteful consumption. So just exactly how is advertising a beneficial form of speech? We should go back and read John Kenneth Galbraith, who said that the individual is increasingly subordinate to the goals of the producing organization. If that’s the case, who really benefits? Does commercial speech benefit the consumer? Or does it really benefit the speaker?

What are the consequences for things like public health? In the tobacco cases, this is a big issue. Lawrence Gostin, one of the leading figures in public health law and policy said to the American Public Health Association:

A different First Amendment theory should recognize the importance of population health and the low value of corporate speech. In particular, a future court should consider the low information value of tobacco advertising . . . unlawful practice of targeting minors, and magnitude of the social harms . . . to the extent that commercial speech becomes assimilated into traditional political and social speech, it could become a potent engine for government deregulation.

The default position, therefore, should not be that all speech is good, or that corporations are like you and me, or that we should cede the notion that they should enjoy the rights of persons unless there is an explicit reason not to, because it is often the case that we can’t foresee the harm. In public health regulation we have the precautionary principle, which suggests that if an action or policy might cause severe or irreversible harm to the public, in the absence of a scientific consensus that harm would not ensue, the burden of proof falls on those who would advocate taking the action. Without it, new technologies can be introduced, and it will be a long time before we can document the adverse impacts enough to meet the unbelievably high standards of proof required to restrict them. As legal theorists, what do you think is the ethical standard? Should the default be to lean toward protecting corporate speech, or do we think it’s important to recognize that other principles and societal values should take precedence, such as public health?

We create corporations, so there shouldn’t be any automatic assumption that they have rights. This was discussed earlier: chartering is a

privilege and not a right, although the assumption is that the system of law has evolved to the point where that may no longer be true—I don’t know the law as well as most of you. But I do know that it’s still possible for the people to exercise their sovereign authority over corporations. In New York, the Attorney General revoked the charters of the Tobacco Institute and Council for Tobacco Research,18 which were incorporated to provide truthful information about the effects of smoking on public health. The Attorney General described their work as “a pack of lies.” Certainly corporations themselves don’t always act as if more speech is better, at least when it comes to their employees. We know that from Larry Soley’s work, that they restrain the speech of workers in the workplace. Union organizers are very familiar with the consequences.

The example I want to highlight today is direct-to-consumer drug advertising. The United States and New Zealand are the only countries to allow these [forms of advertising]. Between 1996 and 2004, direct-to-consumer drug ads, DTC ads, rose over 500% in the United States. For instance, in 1994, $265 million was spent on advertising pharmaceutical drugs to consumers. The same amount of money was spent in the first five months of 2004 on erectile dysfunction drugs alone. One can argue that maybe this is a good thing, that maybe it’s developed an environment where men are less embarrassed to talk about a health condition. But that’s certainly not the reason the drug industry has done this. There’s a Kaiser Family Foundation study that concluded that each dollar spent on DTC advertising in 2000 yielded four dollars in sales.19

The ultimate goal of DTC advertising was revealed in a candid moment by two direct-to-consumer drug advertising executives at FCB Healthworks, who wrote: “The ultimate goal of DTC advertising is to stimulate consumers to ask their doctors about the advertised drug and then, hopefully, get the prescription.”20

DTC ads glamorize and normalize the use of prescription medications. Unlike tobacco, you are talking about a product that is not introduced directly to the market. You are creating an emotional bond between the consumer and the product that will, in essence, interfere with the relationship the patient has with the person who prescribes the drug: their doctor. This is similar to the marketing strategy that McDonald’s uses: convince the kids to pester their parents. Patients go

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19. THE HENRY J. KAISER FAMILY FOUNDATION, IMPACT OF DIRECT-TO-CONSUMER ADVERTISING ON PRESCRIPTION DRUG SPENDING 7 (June 2003).

and pester their doctors so that they can get medications because they have developed an emotional bond with the fantasy they see on TV, where people are leading great lives after taking certain drugs.

There is a phenomenon that public health experts call "disease mongering." This is defined as prescribing medications for normal behavior, and basically turning that normal behavior into a disease-like social anxiety disorder. For instance, what we used to call being shy is now termed as generalized anxiety disorder. And there are others, like "restless leg syndrome." In selling sickness, the world's pharmaceutical companies are turning us into patients. You could say pharmaceutical companies are searching for new disorders based on extensive analysis of unexploited market opportunities. The coming years will bear greater witness to the corporate creation of disease.

Is that a good public health policy? Is that how we want to make our drug policies? Vioxx example is a good example. In 2000, Advertising Age named Vioxx one of the top 100 mega brands, and Merck spent $160 million in 2000 and $135 million in 2001 on one of the largest DTC ad campaigns ever, on Vioxx. FDA researcher David Graham told the Multinational Monitor that there were approximately 100,000 heart attack cases associated with the use of Vioxx.21

There is also a group called Commercial Alert.22 They have thirty-nine groups organized to endorse what they call the Public Health Protection Act, which puts restraints on DTC ads. There are 211 medical school professors who endorse a statement that is on their Web site.

Another type of corporate speech increasingly being resisted is internet advertising. Adware is a growing phenomenon. Twelve and a half billion dollars were spent on internet ads in 2005. A lot of this advertising was placed on your computer without your consent. Over 80% of U.S. computers have these kinds of programs. There are laws in places, like in the state of Utah, that restrict Adware.23 One of the marketing groups took Utah to court to overturn its Spyware Control Act, arguing that the law violated their First Amendment rights.24

Finally, I wanted to also mention an example of activism in the area of political speech. You may have already heard about the "Measure T" campaign in Humboldt County. Voters in the county passed that

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22. For more information on Commercial Alert, see http://stopdrugads.org/learn_more.html.
referendum in June by a 55% majority. You can get all the details from VoteLocalControl.org.\textsuperscript{25} Basically, the law prohibits non-local corporations from making direct or indirect contributions and independent expenditures in all elections within the jurisdiction of Humboldt County, including candidate campaigns, initiatives, referendums and recalls. The activists who organized the campaign for Measure T would not be surprised if the ordinance is challenged in court, but the circumstances are different than those in the \textit{Bellotti} case,\textsuperscript{26} which may make a difference. For instance, it would not be as hard to establish that corporations have distorted the political process. WalMart, for example, spent $250,000 to try to change a local zoning law in 1999, and the Madison Corporation spent $300,000 in 2004 to try to recall the local district attorney after he was in office for just three months.

I do not think that there was that kind of a history in the \textit{Bellotti} case. It will be an interesting one to watch as it gets challenged in the courts. Thanks.

\textbf{Dana Gold:} Thanks, Charlie. I definitely encourage you all to ask more questions about that. What I think is interesting is the contrast between the commercial speech strategies you talked about, which seek to address a \textit{symptom} of corporate involvement in the public fora, specifically the deluge of corporate advertising, as compared to the "Prop T" initiative in Humboldt County, which seeks to address the many problems caused by corporate influence in politics at their root by prohibiting all corporate contributions in elections. Both kinds of strategies are important.

Our next speaker, Bruce Freed, presents an innovative and concrete strategy for dealing with corporate accountability and the role of corporations in our society by using the language of corporate law, such as risk, fiduciary duty, and accountability to shareholders, to change corporate behavior and ideally minimize their influence in the political process.

Bruce Freed is the codirector of the Center for Political Accountability, a nonpartisan, nonprofit organization created to bring transparency and accountability to corporate political spending. From 1998 to 2004, he wrote a column on business and politics for The Hill, a newspaper that covers Congress. He was the first to report on the implications of the absence of transparency and accountability in corporate soft money spending. He commented on business and politics on PRI’s Marketplace, and he managed his own strategic public affairs firm. Previously, he served for a decade as chief investigator for the U.S. Senate Banking

\textsuperscript{25} http://votelocalcontrol.org (last visited May 18, 2007).
Committee, staff director of a House subcommittee, and a senior aide and strategist to members of the House leadership. He began his career as a journalist, so it’s interesting to see the arc of his career channeled in not such a predictable way, but a natural arc. Mr. Freed, thank you for joining us.

Bruce Freed: Thank you very much, Dana. It is a pleasure to be with all of you this afternoon to deal with an issue that is very important to our democracy and to our society today. That issue is corporate power, how one addresses it, how one creates countervailing checks to corporate power, and how one develops innovative strategies to do that. The work of the Center for Political Accountability and the effort that we have been leading for the past three years addresses the issue of corporate political spending with company money.

We are not dealing with PAC money. We are talking about treasury funds, shareholder money, whatever you call it, that companies are pumping into politics. What we are dealing with is money that is having a direct impact on public policymaking, on government decisionmaking, and on the political process.

Let me give you some background on the Center. What we decided to do when we created the Center three years ago was to take a practical, results-oriented approach. Our approach was to look at corporate political spending from the standpoint of the risk it posed to shareholder value. Dana talked about our using the language of the companies. We felt it was very important that when you address companies and try to get them to deal with this issue, that a framework be created in which the management would understand it, in which shareholders would understand this, and in which we could talk to the media and get through to our target audiences. Our audiences include directors, senior executives, CEOs, investment analysts, and others who would be addressing the broad issue of what companies are doing with their political spending.

It is a very interesting issue because there is a serious problem with corporate political spending today. That spending is not disclosed. When a company makes a soft money contribution, that contribution is not disclosed by the contributor; it is disclosed by the recipient. That means that you have to cut into the middle to find out where recipient money is coming from and where it is going.

Soft money was limited with the passage of BCRA, the Bipartisan Campaign Reform Act of 2002. What that did was to prohibit soft money contributions to political parties and to political action committees of elected officials, also known as leadership PACs. Up until 2002,

elected officials such as Representative Tom Delay of Texas, Senator Rick Santorum of Pennsylvania, Senator Sam Brownback of Kansas, Senator Harry Reid of Nevada, and Senator Tom Daschle of South Dakota had their own leadership PACs. Quite a bit of soft money, including corporate soft money, was going into these groups. However, that money dropped off with the passage of BCRA.

What we found was that corporate money was being shifted. It is a shift that had begun much earlier, around the mid-90s, but accelerated after the passage of BCRA. The money was going to trade associations. Trade associations were emerging as very active, independent political groups. They were pursuing agendas that went beyond what one would assume to be in the interest of their corporate members. Indeed, they were getting involved in social issues and getting involved with issues that companies had deliberately and consciously made an effort to stay away from.

The strategy that the Center developed was to use the shareholder resolution. We drafted a shareholder resolution that called on companies to disclose and require board oversight of their soft money contributions. This is what we call Resolution 1. It also called for companies to identify the corporate officers involved in the decisions on the contributions.28 In the 2004 proxy season, our resolution was filed by three institutional investors at 23 companies.

The resolution passed muster at the Securities and Exchange Commission (SEC). Although the resolution was challenged, the challenges, known as “no actions,” were rejected by the SEC staff. By the end of the 2004 proxy season, we found that our resolution cracked 10% of the vote at twelve of the twenty-three companies where it was filed, and the average vote was 9.1% for the first year. That was a tremendous response for a first-time resolution. It was categorized by Institutional Shareholder Services (ISS), the big proxy voting advisory service, as a socially responsible resolution.29

What happened is that we caught the attention of companies. By the end of December 2004, the first company came to us and said, “We want to agree to disclose and require board oversight of our soft money contributions.” The company was Morgan Stanley, so we dubbed what they agreed to the “Morgan Stanley standard.” Very quickly thereafter, in 2005, we began getting responses from more companies; there was beginning to be a cascade effect: first Johnson & Johnson, and then in the


29. Conversation between Bruce Freed, Co-Director, Center for Political Accountability, and senior officials of Institutional Shareholder Services (Summer 2004).
fall Coca-Cola and PepsiCo. We began getting more companies, and within eighteen months we had twelve leading companies that had agreed to disclose and require board oversight of their soft money contributions.

We went from three institutional investors that filed for the 2004 season to twelve for 2005 and seventeen for 2006. What we found was that the institutional investors—socially responsible mutual funds, public employee pension funds, union pension funds, and religious orders—were strongly committed. Their strategy, in many instances, was to use the resolution to engage companies. The strategy we follow is to engage, and I use the word *engage* very deliberately because, as I said, we are looking for results. For us, receiving a high vote on our resolution is very nice. It makes you feel good, but does it bring about change? No. Engaging a company and getting it to agree to disclose and require board oversight is the change that we are looking for.

What we have been looking to do is build up momentum where you get more and more companies agreeing to disclosure and where the proxy voting advisory services began recommending for the resolution. ISS is the leading one. There are several others. They advise institutional investors on how to vote their proxies, and we want to get them to view this resolution as a new corporate governance standard. We did that with ISS where, after initially dismissing the resolution by the 2006 proxy season, they changed their policy and began recommending for it on a company-by-company basis. They recommended for the resolution at two-thirds of the companies where they reviewed it in 2006.

We are looking to create this as a corporate governance standard because, in the end, we want companies to disclose and require board oversight. When I talk about board oversight, I mean that board oversight is the other shoe that needs to drop because it means accountability. When companies spend their money politically, there need to be directors asking why they are doing this. Disclosure allows directors to take a hard look at how their company spends money politically. In many cases, they do not know what their companies are doing with their political money. They do not know what companies are doing in trade associations.

We found that out in a survey that we did. In January of 2005, Tom Hamburger of the Los Angeles Times interviewed John Engler, the new President of the National Association of Manufacturers (NAM). Engler told Hamburger about a multimillion dollar campaign that NAM was planning to mount on behalf of the Bush judicial nominees. These were controversial appellate nominees who had been blocked in the Senate.
The Center decided to write to 750 directors of sixty companies that were on NAM’s board. We did a survey asking them whether they had been informed of and had approved of NAM’s use of their company’s money for this purpose. We found in many instances that it is very difficult to get through to directors, even though companies in their proxy statements provide an address to contact them. But we did receive some responses. One was from Southern Company, the big utility, saying that it told NAM not to use its money for that purpose. GE did the same thing. Then we got a letter from American Electric Power. They told us that it was their policy not to inform the board about what they do with trade associations—a very important piece of intelligence. We then got letters from two directors of Corning. One of the senior vice presidents said that they had looked at the NAM invoice, and they were satisfied, although the invoice just said dues payment, period, and nothing else.

But what we then discovered was quite interesting. A friend, who headed up the Washington office of a major company, faxed me a memo that the senior vice president for communications at NAM sent out. It turned out that our letter prompted quite a few companies to query NAM about their plans. It turned out in this memo that NAM retreated because of the Center’s query to the companies. Because of the questions they were getting from the companies, NAM found that they could not go ahead and do this.

This shows the type of pressure that we are building on companies to have the internal dialogues on their political spending and its consequences. We found that this is very effective. Early on we put out a press release, I think it was back in April of 2004 just before the Union Pacific annual meeting, saying that Union Pacific money ended up at the Traditional Values Coalition.

One of the strategies that we have used is what we call “conflicts and contradictions,” where we take a look at company values. We use company statements that are on their web sites to examine what they state their values to be. We can see their personnel and diversity policies. How do they treat their gay employees? What do they say about diversity? We are broadening it now to include issues like global warming. What is the company’s position on global warming? Then we go and we take a look at where their political money has ended up.

In the case of Union Pacific in 2004, the company made a contribution to a 527, and in turn, that 527 made a contribution to The

30. IRS § 527 defines a relevant entity as “[a]n organization that is created to receive and disburse funds to influence or attempt to influence the nomination, election, appointment or defeat of candidates for public office.” I.R.C. § 527 (2006). See generally http://www.gnossos.com/webhelp/What_is_a_527_Organization.htm.
Traditional Values Coalition in southern California. This is a vitriolic homophobic group. When we made the announcement that their money ended up at that group, I received a call from a Union Pacific spokesperson who was quite angry. But the fact is they could not argue with us because the company’s money did end up there. We had the same situation with PepsiCo with a contribution it made to Senator Sam Brownback’s Restore America PAC in 2000. That contribution ended up going to Kansans for Life and the Kansas Christian Coalition.

What all of this shows is that when you use disclosure, and then you apply it and you seek to develop accountability, you can achieve serious results. You can begin to get companies to address the consequences of their contributions. This is a case of using incremental change to achieve systemic change. When Dana Gold was talking about changing corporate behavior, that is what our ultimate goal is. We are looking at a three or five year time frame to do that.

One thing I want to mention is that we are opening up a new directors program. As more companies agree to disclosure and board oversight, we have to make sure that directors know what board oversight means; what their fiduciary responsibility is; what questions they need to ask; what information they need to get from their companies; and what to do at board meetings. That is where you can begin to change company behavior. We have developed a relationship with The Wharton School at the University of Pennsylvania to begin to move on these efforts.

I wanted to present this to you because this is a practical approach that is achieving results. It’s an approach that offers a way to address the issue of how to use shareholder power to create countervailing power to corporate power. Thank you.

Dana Gold: I would like to open this up to questions, but one of the things I think is so interesting is this concept of using fiduciary duty, or using the language of risk and the duties of directors to engage in protecting shareholders and the interests of the corporation, to affect corporate behavior. Part of the power of that is related to another thing we have been talking about today, which is how image has become the value of the corporation. To the extent that advertising and image are really part of the very intangible but very real value of the corporation, it is in part what gives access to using those existing tools to counterbalance internally that image because it’s a reputational concern that they have with transparency.

Bruce Freed: When you take a look at the Harris Interactive survey on corporate reputations that are run in the Wall Street Journal each February, we found that to be a tremendous tool to use with companies.
Dana Gold: What is interesting, too, is the extent that you’re trying to educate directors about the kind of information that they need. This is the post-Enron shift where rather than looking at your short-term quarterly reports, you are looking at more long-term trends, strategy, and different things of where the value of the company is found.

I find this whole panel both incredibly hopeful in terms of very real strategies that are being used both within the existing status quo—and the tools that exist within the structures that we have now—as well as some aspirational models. At the same time, I also think there are inherent limitations to each of the strategies. I would love to open it up for questions, because I think these are all real things that we can dig into.

Audience Participant Lisa Danetz: I have somewhat interrelated questions for Bruce Freed. I am interested in hearing about your approach, but what struck me when you were speaking is that a lot of the success that it seems you have had has been from your intervention with the company. First, are you confident that once a policy is implemented it will do something without your being actively involved? Second, how do you make it self-perpetuating so that it is not that the Center for Political Accountability has to be involved constantly with every corporation.

Bruce Freed: It is a very good question that you are asking. This is why I developed the directors program; it is a change in terms of how directors are beginning to approach their responsibility. The Sarbanes-Oxley Act is very helpful there because it has increased the responsibilities of directors.31

We are just at the beginning. We have gotten the attention of companies, especially when you take a look at our strategy of going to media that reaches corporate audiences. For us, the New York Times, Financial Times, Wall Street Journal, Business Week and Fortune are very important because they validate what we are doing. It gets the message through; but there is still a great deal of work to do. The work with the Wharton School is going to be important here. This is very interesting because we are working with the director of the Zicklin Center for Business Ethics Research. That gives us access to directors, to CEOs, and to senior executives.

One of the things that I have found when I have been in dialogues with companies is that you cannot come in and attack them. If you attack them, they are turned off. They will not deal with you. We need companies to agree to the disclosure and board oversight. We need this to

become a corporate governance standard. We have to focus on accountability, fiduciary responsibility, and educating directors. It will take a while to achieve that, but I think that it will become a norm and eventually become embedded in the corporate culture so that political spending becomes a red flag to shareholders and companies become much more sensitive to its consequences.

Audience Participant: I am interested in the dialogue between Bruce Freed and Charlie Cray. Bruce Freed appears to be an incrementalist with the view that for every little baby step you take, you are going to have six or seven giant steps sideways. Mr. Cray’s approach is to do incremental steps straightforward. I am trying to figure out which is the better approach to actually achieve the objectives of the panelists, bearing in mind that all of us have a finite life, and some of the problems we are addressing will also be finite, perhaps causing us to have finite lives.

Charlie Cray: Well, I think that’s an existential question that everyone answers for themselves. I often hear activists criticize strategies like the one adopted by the Center for Political Accountability as being incremental, and I don’t agree. The strategies are often synergistic. The ultimate goal is democratic control of corporations, and part of that would have to be done through the inside of the process, which has to be done methodically (what some would call “incrementally”) to be effective; but much of it has to be done, and where we’ve atrophied, is externally, which is where my presentation largely focuses.

Bruce Freed: Let me add some information about our Resolution 2, which calls on companies to disclose not only their soft money contributions, but also their donations to trade associations and other tax exempt organizations that are used for political purposes.32 If you get the companies to disclose this money, companies will then need to address why they are doing this. We’re beginning to have discussions with some major companies on the disclosure of their trade association spending. This is exciting because you have companies who are finding out they don’t know about the extent of their trade organization memberships. They don’t know about the extent of the spending. They don’t know what percentage of their payments to the trade association is really not tax deductible.

One company I’ve been dealing with has said, “2.9 percent.” “How did you get that?” “It’s a ballpark figure.” This company said, “We want to thank you for raising this.” This ballpark figure comes from the tax and finance department that should know exactly. If we can make

headway with several companies on this, it creates the type of beachhead from which you can fan out from and deal with other companies. But just imagine when a trade association gets a letter from a major corporate member saying, “We’d like to know what percentage of our payment is being used for political purposes. And by the way, what are the political purposes?”

That could have a salutary effect. It’s an incremental change, but in the end we know what the systemic change is.

**Charlie Cray:** Another example is the debate over proxy access and the ability of shareholders to nominate their own candidates for the board. The leading opposition to this comes from the Chamber and the Business Roundtable. They are using company money (arguably shareholder money) through dues to lobby against the interests of the shareholders themselves.

So what’s the best way to address that, if you care about shareholder rights? I would argue that for those of us in the public interest community, the best way is to organize large pension funds and for others, particularly labor who is interested in this, to nominate their own candidates for the board so that the board has someone who represents their interests. It won’t necessarily change some of the other internal corporate governance dynamics, but having someone like that as an internal watchdog would be very useful. This strategy leads in to others, or it could be a linchpin to remove some of the barriers to some of these other internal reforms in corporate governance that activists, shareholders, and others have been seeking for some time.

**Audience Participant Kent Greenfield:** My question is for Solange Bitol-Hansen. I’m from Massachusetts, and our experience with clean elections was both very optimistic and horrible. The population passed a very good clean elections law some time ago, which included a requirement of the legislature to fund it. And the legislature kept refusing to fund it even after the Supreme Judicial Court (SJC) of Massachusetts said they had to fund it. The legislature still said, no, we’re not going to fund it. In fact, then the SJC instituted an order selling property that belonged to the legislature in order to fund it, and that caused the legislature to rescind the law that had been adopted by resolution among the population; and now the issue is dead.

So it seems to me that as an intellectual matter, clean elections are a no-brainer, and that they’re clearly a good step and positive. But at the same time, it’s hard to envision a broad-based political strategy where the people really, really care about that as their one issue. And, even if you do have broad-based political movement behind it, it’s hard to envision the people in power now being behind it enough to get it through.
Solange E. Bitol-Hansen: There is a broad base of people being excited about clean elections. Last year there was a huge groundswell of support for the Connecticut Clean Elections Law. It was brought on through years of activism, grassroots canvassing, and good old-fashioned campaigning. A Democratic legislature passed the bill and the Republican governor signed it into law. Additionally, in the next legislative session the legislature fixed the technical amendments necessary to make the law go forward because it had a poison pill that was inserted into it at the last minute.

Portland, Oregon also passed their clean, voter-run elections law last year. Albuquerque, New Mexico passed one as well. Around the country, there is more movement, including in the state of Washington. The Clean Elections Bill\textsuperscript{33} made it through one chamber and got to another chamber, but then ran out of time. Judicial clean elections bills are also gaining traction because of the rising and staggering costs that are being spent on judicial elections.

Bruce Freed: But with the judicial elections, you’ve got the problem of the corruption of justice then, too.

Solange E. Bitol-Hansen: Let me go back to my Connecticut example. It didn’t hurt that a governor was in jail at the time. The Clean Elections Law was passed. In North Carolina there is phenomenal support. Why? Because the House Speaker is under investigation for an online internet gambling scandal and handing out checks on the House floor.

The individual political people that aren’t in support of clean elections want to protect their incumbent, and they’re afraid of having to run another system where they may have six, seven, eight challengers. Other opponents of clean elections want to protect systems like what was revealed in the Abramoff scandal. People were accepting contributions and doing things that they lawfully aren’t supposed to be doing.

I think there is a grassroots movement all around the country to support clean elections. There is a student organization called Democracy Matters, and they have a great groundswell of student activists. Democracy Matters did big things last year to bring about public financing in Rhode Island, and took over a town hall meeting and a legislative hearing. There are these grassroots type movements, we just sometimes don’t hear it in mainstream media.

Audience Participant: This is directed to Bruce Freed. I think any time you can open up corporations, any veil you can partially pull back, ultimately accrues to the public benefit. The more we know about what

\textsuperscript{33} See supra note 8.
corporations do, the better shot we have of making them responsive to us.

I just wanted to pose a hypothetical where the disclosure might not necessarily be beneficial, at least not in the short run. Let’s say we find out that you force the directors of Boeing to discover where the PAC money is going, and they are sending it to some white supremacist group or gay-bashing group. And the directors decide they don’t make money off that type of contribution, so they pull the money out and redirect it. Well, where do they make money? They make money from guys who want to spend a lot of money on weapons and maybe invade countries and increase demand, so they shift the money to these causes. So, that would get more shareholder value, but probably wouldn’t be responsible in the way that most of us think of making corporations responsible.

Bruce Freed: Your example is a very interesting one and related to two of the Center’s reports, the Green Canary34 and Hidden Rivers.35 Hidden Rivers dealt with trade association spending. In Hidden Rivers, we focused on state judicial elections because the Chamber of Commerce is very active there. Another group, The American Tort Reform Association, serves as a conduit for corporate money to state judicial races in Ohio, Illinois, West Virginia, Alabama, Mississippi, Louisiana, and Texas. We used these states as case studies. What we wanted to show in Hidden Rivers is that it’s virtually impossible to find out how much money is involved and where the money is really going. Each of these states was like an island in the Pacific Ocean, where the mountain is mostly under water and hidden from view.

There was an interesting race in Mississippi in 2004 involving a candidate named Samac Richardson who was challenging an incumbent justice who happened to be black. Richardson was a lower court judge. He ran what the Jackson Mississippi Clarion-Ledger called a racist campaign.36 Two columnists at the paper said that Richardson was playing the race card and that he was using racial code words.37 In Hidden Rivers, we identified 18 companies that gave directly or indirectly to Samac Richardson.38 This was a case where companies weren’t asking trade associations what they were doing with the corporation’s money.

36. Id. at 38.
37. Id.
38. Id. at 38–41.
This example gets to the issue of reputation that Dana Gold raised, and it puts in the forefront the issue of accountability. When talking about companies diverting money, companies say if you block the money off in one area, then they will send it elsewhere. I think what will happen is that companies and directors will start questioning what value they get for that money.

An upcoming report by the Center on corporate codes of conduct will describe how the codes of conduct of companies regulate political spending. A survey we conducted of the S&P 100 found that 81 of the 100 companies did address corporate political spending in their code of conduct, but it was in a vague and cursory manner. We are using this report to present an 11 point model code on political spending that the Center and its partners developed. We will also be working with our institutional investor partners to get companies to adopt the model code.

Audience Participant: How do we watchdog these good practices that you’re having some success with? One idea is that government hasn’t ceded all of their oversight of big companies, and the government still requires charters. Companies historically had difficulties getting chartered and sometimes they were time-limited. But now, I’m not sure getting chartered is so difficult. Charlie Cray, you suggested that possibly we can require that companies be truthful in a charter. Maybe we could require some accountability in charters. I don’t see any think tanks or anybody else talking about how to reinforce the charter process, and I wondered if anybody had anything to say about that.

Charlie Cray: Chartering was a process that originally started as an instrument of democratic control over business. State legislatures gave out charters and put specific limits on many things in the charters. And through a process that Adam Winkler described earlier, the charter has eroded as a tool of control over corporations. Can we get that control back? Maybe. That’s why federal chartering has been brought up periodically as a tool; however, I don’t see any easy answers to this question right now.

Chartering has been raised periodically as an issue in American history, especially during moments of popular outrage about corporate power. I think Teddy Roosevelt proposed federal chartering, and the proposal was even passed in separate sessions by the Senate and the House during his term. But it never became law. In the mid-1970s, after Watergate and other revelations about corporate corruption, Ralph Nader and his associates wrote a book called *Taming the Giant Corporation* in which they pointed out the potential for and the potential problems with

this chartering solution. For instance, in an age of global corporations, what do you do about forum shopping? Just as Rockefeller moved from Ohio to New Jersey in the late 1800s, you could conceivably see someone move to the Caymans if we really got a tough chartering system. Nader and his coauthors suggested that you could address the issue by still requiring companies to obtain a federal charter to do business anywhere in the United States if they are above a certain level of capitalization, regardless of where the company is actually incorporated. Professor Kent Greenfield also address these issues in his scholarship, including his forthcoming book.\(^{40}\)

Dual chartering wouldn’t be required for every business. For instance, you wouldn’t require it of the smaller entrepreneurs, but it would be required for multinationals who operate all over. If the multinationals want to do business in the United States or in a particular state, they would effectively have to have a local license. I don’t know all the issues that might arise under this system, but it’s something that at least in this country we need a debate about.

But I agree that the current chartering process is basically a rubber stamp. One extreme example of the ease of chartering occurred on the eve of the Phillip Morris shareholders’ meeting a few years ago. A group of activists decided to point this out by incorporating a company whose express purpose was to kill 400,000 people a year through the distribution of tobacco products. The company was called License to Kill, Inc., and the state of Virginia rubberstamped the papers without hesitation, and the company was legally in business.

Audience Participant David Skover: It seems to me that the shareholder resolution is an approach best suited for corporate spending for social issues that are truly collateral to the profit maximization interests of that corporation. Thus, to use the earlier example, when it’s bad business to discriminate, then the corporate board response is likely to be more favorable if it turns out that in looking at where the soft money is going, to organizations that support discrimination, such as white supremacists or are anti-gay groups. But where the money is given, for example, by big oil companies to the trade associations that fight environmental regulations, it is possible that this shareholder resolution would be less effective.

Bruce Freed: Well, when you’re dealing with the trade associations, it is Resolution 2. But the point that you’re raising is very interesting because a growing number of companies are finding that it’s

important to their corporate reputation, and also to some extent to their business model, to tip their hat to environmental issues. It’s good for their reputation and their business to be green-tinged.\textsuperscript{41}

Resolution 2 addresses the broad issue of political spending by companies because once you begin to see what that spending is, and once directors begin to see that, you can start raising questions. In many cases, you don’t know what the broad range of the spending is. These resolutions are windows into this spending. They are a wedge that we’re using that will help find other interesting things that can be helpful.

But what is most helpful is to take the dialogue into the company, into the boardroom, to senior management, and to educate them so they begin to look at political spending from the standpoint of risk.

\textbf{David Skover:} In \textit{The Death of Discourse}, Ronald Collins and I extensively support the notion of commercialization of our speech culture and the commoditization of our identities, and we posited that Americans have increasingly embraced a consumer democracy rather than a citizen democracy. Now, that said, I think the issue really is where the fingers of blame are to be pointed. Most activists, including I would imagine the three of you, are more likely to point the finger of blame right squarely into the face of the corporation.

But now my question to you, Charlie Cray: is it possible that like the citizenry of the brave new world, we Americans have come to love our “soma” such that, in essence, when we ask who is the enemy here in the changing from citizen democracy to consumer democracy, the real answer might be that the enemy is us? That we are the enemy?

\textbf{Charlie Cray:} I totally agree, and that’s why I used the word colonization earlier, and not lightly, because it starts with a psychosocial understanding of what it’s done to us. How do we participate in our society? What does it mean apart from leaving out people who are indoctrinated?

On the question of civic participation, or what it means to be a citizen: we’ve lost a lot of understanding and a lot of room to organize. For instance, I talk to activist friends who run corporate campaigns, who too often rely upon damaging the brand, market chain analysis, and shareholder resolutions. There is no public policy component to those campaigns.

Another example where I think we’ve been convinced in a bad way to not function properly in our role as citizens is the Abramoff scandal. What a lot of people are probably thinking is that after twenty years of having been told that “government is the problem,” the corruption in

\textsuperscript{41} Green-tinged, meaning to support environmental causes in appearance only.
Washington just proves that yes, government is the problem. Who benefits from that? I don’t see Grover Norquist\footnote{Conservative activist and president of Americans for Tax Reform, (in)famous for the quip, “I don’t want to abolish government. I simply want to reduce it to the size where I can drag it into the bathroom and drown it in the bathtub.” See http://www.npr.org/templates/story/story.php?storyId=1123439 (last visited May 18, 2007).} closing up shop as a result of this. It’s a self-perpetuating kind of thing. We’ve got to break out of that, and I think one of the best ways to do it is through the kind of organizing that the people in Humboldt County did through a process of education. There are these things called Democracy Schools that a group called the Community Environmental Legal Defense Fund and the Program on Corporations, Law and Democracy have organized.

At these schools they go all the way back, inviting us to educate ourselves about the history of the Constitution. It’s phenomenal what comes out of that, including things like the Measure T campaign in Humboldt County. That’s very much like the role of The Highlander Institute in Tennessee during the civil rights movement. I think that’s the model. I think people want to go back to fundamental principles like our right to organize ourselves as a democratic society. But how do we do it? That’s a tough question that you get a chance to entertain at these schools. We have to decolonize our own thinking so that we can see clearly what we’re after, and that’s why it’s important to learn the history and peel off the layers so we can see clearly.

**Audience Participant:** A lot of those things define what the public domain is; that is, that part that stays public no matter what the private contract is. Pennsylvania, where I used to practice, had life insurance companies, and you know how they used to operate in the colonial days. These companies were formed before the United States existed, and so there was no regulation of them. Pennsylvania came into being, the country came into being, they had a commonwealth, but there were no contract laws. There was no constitution. So Pennsylvania passed a law saying that the sale of insurance was a matter of the public health and welfare and then imposed its police power and said, if you fail to make the payment every year, in effect as a license, then you lose your pre-national priority. And a lot of companies lost their pre-national priority. All of a sudden they found themselves regulated. By the same definition, people used to hunt at will, and then that became regulated.

It seems to me one of the problems that you’re getting at is what is public welfare that gets to be regulated no matter what contract is in effect? What things cannot be sold? What things cannot be made the subject of a grant? And it seems to me that the public mood is coming around to beginning to say and redefine exactly what that is.
Charlie Cray: An example that many people understand is the fight against the privatization of water, which didn’t start here. I think really the biggest battle was in Bolivia where there was actually a very bloody battle against the subsidiary of Bechtel, who was operating with the support of the World Bank. And, it comes around again to the WTO protest in Seattle, the instruments of creating markets out of what many people consider to be essential rights.

In South Africa, activists are pushing for de-commodification of electricity because they consider it an essential service, not a commodity, which was, of course, what it was in California with Enron and others manipulating the market. So I think that you’re right, and that’s where a lot of organizing campaigns are structured or the principles are grounded. Some of these things should remain in the public domain. Look to Capitalism 3.0 by Peter Barnes, where he talks about the commons and how the notion of the commons is extremely important to our survival.43

Dana Gold: I’m sorry I can’t take any more questions. Let’s thank our panel, and thanks so much to all of you for coming.