

## The Bryce Harlow Workshop on Ethics and Lobbying

By Joel DiGrado – Fall 2005

As the 108<sup>th</sup> Congress came to the end, many lawmakers announced their retirement. One of these lawmakers was Wilbert Joseph “Billy” Tauzin, the charismatic lawmaker from Louisiana’s 3<sup>rd</sup> congressional district. Chairman of the powerful House Committee on Energy and Commerce, Tauzin’s influence was found in various policy areas including healthcare, telecommunications, corporate regulation, and energy. Throughout his storied career, Tauzin had been the architect of many important pieces of legislation – none better known than the Medicare Prescription Drug bill of his final congress. When faced with employment choices post congressional service, Tauzin was not without options as he was publicly courted by some of the most prestigious trade associations. Ultimately, Tauzin decided to take the position of lead spokesman for the Pharmaceutical Research and Manufacturers of America (PhRMA).

Tauzin’s decision sent shockwaves throughout political landscape.<sup>1</sup> News reports and opinion pieces sizzled with skepticism concerning the ethics of such a move. As a lawmaker who legislated directly over the industry he would soon advocate for, Tauzin’s move to PhRMA was met with great cynicism. Moreover, many pundits and political insiders began to question the integrity of Tauzin’s actions during his final term in Congress.<sup>2</sup> Worse, some wondered if he had committed to PhRMA before his official announcement. If so, did he legislate on their behalf? Did he grant them special treatment? These questions were only exacerbated by disclosures of Tauzin’s campaign filings that showed pharmaceutical interests as large donors to his elections.

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<sup>1</sup> Athens, Frank. (2004, February 4). Tauzin Quits Chairmanship, Will Retire from House. *The Washington Post*, A09

<sup>2</sup> Billy Tauzin. 2001 - 2002 Election Profile. Top Industries. Center for Responsive Politics. <http://www.opensecrets.org/politicians/indus.asp?CID=N00005372&cycle=2002>

Tauzin's retirement and subsequent move to PhRMA appears to be a valuable case study in regards to ethics and lobbying. Before casting judgment and joining the crowd of political opinion makers, I intend to explore certain elements surrounding the event of Tauzin's retirement. This exploration will begin by examining the political subsystems surrounding the event. Furthermore, current laws and regulations, as stated by the ABA's Lobbying Manual, will be analyzed. Once the law and the outside influences have been studied, a reasoned value judgment will be determined.

The last of the old-style lawmaker – the type that could bring anyone to the negotiating table – Tauzin's rise to power was long and storied.<sup>3</sup> One of the original founders of the Blue Dog Democrat Coalition, Tauzin switched parties following the Contract with America.<sup>4</sup> In fact, Tauzin was one of only two Democrats to support the entire Contract language.

A fiscal conservative and a strong supporter of the marketplace, Tauzin fit quite well with the Gingrich-led Congress. As reward for his party switch, Gingrich promised to count Tauzin's Democrat years as part of his seniority. This deal between Gingrich and Tauzin was fought by Energy and Commerce rival Mike Oxley of Ohio. Always the playmaker, Tauzin brought Oxley to the negotiating table and they came to an agreement; namely, that the Telecommunications and Finance Subcommittee that Tauzin was to chair gave its finance jurisdiction to Oxley's subcommittee.<sup>5</sup>

Tauzin eventually became Energy and Commerce Chairman in 2002 when Rep. Bliley stepped down.<sup>6</sup> During his tenure on the Energy and Commerce Committee, Tauzin was active in expanding both the committee's jurisdiction and his own mark on major public issues. Tauzin

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<sup>3</sup> Graves, Garrett. (2005 October 3). Former Deputy Chief of Staff to Billy Tauzin. Personal Interview

<sup>4</sup> Rep. Billy Tauzin. (2004). Almanac of American Politics.

<sup>5</sup> Rep. Billy Tauzin. (2004). Almanac of American Politics.

<sup>6</sup> Ibid.

went after the corporate criminals of Tyco, WorldCom, Martha Stewart Inc., and others. He aggressively pushed energy measures that promoted market solutions to our fuel demands. Moreover, his performance in the Firestone hearings was legendary.<sup>7</sup>

Of course, Tauzin is now well known for his large role in the Medicare prescription drug bill. Joining with House leadership and Ways and Means Chairman Bill Thomas, the prescription drug bill squeaked through the 108<sup>th</sup> Congress in 2003. This was a much-scrutinized floor vote due to the fact that former House Majority Leader Tom Delay kept the vote open for the longest period of time in history as he, fellow members of leadership, and the President whipped enough House Republicans to their side. Reported in the press as a Republican gift to the pharmaceutical industry, this bill would provide seniors switching from traditional Medicare to private health plans in the Medicare+Choice program significant prescription-drug coverage.<sup>8</sup> Democratic critics of the bill projected that it would be nothing more than a “give-away to the drugmakers because it prohibits the federal government from negotiating lower prices for medicines and continues a ban on importation of identical but lower-cost drugs from Canada and elsewhere.”<sup>9</sup>

With such a highly controversial bill, tensions only elevated when Tauzin decided to retire from Congress and become a lobbyist for PhRMA. With this decision, Tauzin went from being one of the leaders of drug oversight to *the* leader for the drug industry. Partisans, journalists, and fellow lawmakers all questioned the move. Yet, this case study begs the

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<sup>7</sup> Tauzin, Billy. (2003). In D. Hawkings, & B. Nutting (Eds.), *CQ's Politics in America 2004. The 108th Congress*. Washington: CQ Press. Retrieved October 1, 2005, from CQ Electronic Library, CQ Congress Collection, <http://library.cqpress.com/congress/pia108-669526>. Document ID: pia108-669526.

<sup>8</sup> Bettelheim, A. (2003, August 22). Medicare reform. *The CQ Researcher Online*, 13, 673-696. Retrieved October 1, 2005, from <http://library.cqpress.com/cqresearcher/cqresrre2003082200>. Document ID: cqresrre2003082200.

<sup>9</sup> Welch, William M. (2004, December 15). Tauzin Switches Sides from Drug Industry Overseer to Lobbyist. *USA Today*.

question: was it unethical? To answer, we must first look at the subsystems that were involved in the Tauzin case.

The subsystem surrounding Tauzin's decision is comprised mainly of three major forces: the lobby and trade industry, colleagues in Congress, and the news media. The lobby and trade industry had multiple members pitching for Tauzin's services. Each wanted his expertise and reputation. Most were industries that were once in his committee jurisdiction.

The Congressional subgroup is composed of colleagues (both Democratic and Republican) as well as the important committees related to Tauzin's specialty. Democratic and Republican colleagues seek to advance themselves in the political arena by either aligning themselves with or against Tauzin. Thus, the intent behind their actions must be monitored closely. Are they positioning themselves politically or are they acting as loyal friends? Much can be read into the actions of his colleagues.

In regard to committees, the Energy and Commerce, Ways and Means, and Appropriations Committees are all, in some way or another, within Tauzin's jurisdiction or realm of power. Thus, Tauzin's policy range was quite broad considering the vast array of issues that each of these powerful committees oversees.

Finally, the news media is the most active subgroup. Always looking for a sensational hotline from Capitol Hill, the Washington D.C. press feasts on reports regarding Members, former Members, and former Members-turned lobbyists. These reporters – some with partisan agendas and others with a thirst for a sensational story – are motivated to expose, uncover, and highlight any hint of impropriety. Regardless of motivation, their zero sum approach to reporting creates a tense and speculative atmosphere for any member choosing become a lobbyist.

The rulebook on all issues regarding lobbying is the American Bar Association's Lobbying Manual. This text serves as the bible for all truth-seekers regarding the legal issues of lobbying. Compiling all previous lobbying law with the most recent Lobbying Disclosure Act of 1995, this manual clearly lays out the rules of the craft of lobbying. Scrutinizing the Tauzin case with this work as our primary text, certain conclusions can be drawn about the legality of Tauzin's actions.

The primary law applying to Tauzin's decision is the provision regarding former Members of Congress, congressional staff, and employees of congressional offices. All Members of Congress are for one year prohibited from "making any communication to or appearance before Member of Congress or congressional officers or employees with intent to influence their official actions on behalf of another person."<sup>10</sup> In this regard, Tauzin has yet to break any laws. He declared his move to PhRMA in 2004 and has not been reported of making any direct contact with current Members of Congress, leadership staff, or former personal staff in other current congressional capacities. As with most other "revolving door" lobbyists (former Members who become lobbyists), Tauzin is allowed to have surrogates within his organization advocate on behalf of the organization directly with current Members and their staffs.

Moreover, there is no law that prohibits a former Member from leaving his committee chairmanship to work for an industry that was directly regulated by that former committee. Recalling the broad jurisdiction of some of the older congressional committees, the lack of regulation in this regard appears only fair for key reasons. First, committees like Energy and Commerce and Ways and Means in the House of Representatives and Commerce, Science, and Transportation and Health, Education, Labor and Pensions in the Senate cover vast fields of

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<sup>10</sup> Luneburg, William V (Ed). (1998). The Lobbying. American Bar Association. p. 265.

policy and industry. Banning a Member from any private work in an industry that falls under his committee assignments would be antithetical to our democratic freedoms and capitalist economy.

Second, the nature of the modern Congress with its heavy reliance on the committee system breeds an atmosphere of specialized policy experts. Members of Congress who serve on committees develop policy expertise over that committee's issue. This byproduct of the committee system is only natural since each subject committee scours the detail and policy on that issue to better serve the public. Therefore, why should a former Member of a certain committee not go on to work in a private industry related to that field of expertise? Furthermore, why would a private organization or industry advocacy organization not want a policy specialist in the field? Former California House Member, Cal Dooley, raised these exact questions in a candid lecture on revolving doors members, ethics, and lobbying.<sup>11</sup>

Third, this argument is only further supported by the fact that most former Members have only a short shelf life of influence as the current congressional makeup changes with every term. The Contract Congress's move to term limit committee chairmanships adds a great deal in keeping parity among influential lobbyists and former Members. Thus, the "edge" or unfair advantage supposedly granted to revolving door Members, if it exists at all, lasts for only a brief period of time.

Legal research determines that Tauzin did not break the law with his decision to move to PhRMA. The greater question is whether Tauzin's move was unethical. As a former student of philosophy, I understand the magnitude of such a question. Making a value judgment about any specific action is difficult since the ethical debate creates many different spheres for one to live

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<sup>11</sup> Dooley, Cal. (2005, September 24). Perspective from a former Member of Congress and President of an Association. Ethics and Lobbying. Lecture Notes.

their life by. In an effort to make a reasoned value judgment, I will briefly explain my own ethical framework and then apply the Tauzin case to it.

If the ethical debate had to be generalized and divided into two schools, they would largely consist of universalists and relativists. Universalists believe that there are certain virtues and values that are constant, always true, and apply to every situation. Relativists disagree. They understand that ethical dilemmas are bound to arise and furthermore recognize that in some cases two virtues can come in conflict. Of course, relativism can also be abused and in excess can be used to justify almost any action morally.

Though admittedly both descriptions are general and oversimplified, I would have to describe myself as a member of the universalist camp. I believe certain core virtues and values work as a blueprint for human interaction. Many ancient great philosophers like Aristotle, medieval theorists such as St. Thomas Aquinas, and even modern thinkers like William Galston and Michael Walzer all share some variation of this belief – Walzer (in Spheres of Justice) and Galston (in Liberal Purposes) nuance this position quite a bit.

My universal principles are traditionally Western and mostly Jeffersonian: sanctity of life and preservation of liberty. Building off these basic universal values, I recognize the professional paradigm offered by Pat Griffin. When faced with a professional ethical dilemma one must consult the varying meters that apply their core principles of life and liberty. These various meters are: regulation, ideological, perception, professional ambition, and personal value system. At each end of each meter is a maxim. For example, on the regulations meter one end consists of rigid adherence while the other acts as the legal limit. The paradigm of meters blueprints the ethical system for a value-conscious lobbyist.<sup>12</sup>

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<sup>12</sup> Griffin, Pat. (2005, September 24). Values Based Lobbying. Ethics and Lobbying. Lecture Notes.

Evaluating Tauzin's decision to leave his chair on Energy and Commerce and begin private lobbying for PhRMA with Griffin's system, certain conclusions can be made. First, as previously mentioned, Tauzin's move was not in violation of the current law or his own personal liberty. Second, his decision to lobby for PhRMA is not outside of his own political ideology since he was a strong supporter of the pharmaceutical industry during his tenure in congress. Third, Tauzin's move did stir political observers so we can logically assume that he was indifferent to perception. Of course, this is compounded by the fact that Tauzin's hiring at PhRMA was part of their plan to better *their* image.

Next, the professional ambition meter for Tauzin appears in between success at any price and service, because Tauzin claims his own recovery from cancer is due to pharmaceuticals. Finally, Tauzin's personal value system meter appears to be closer to moral than amoral. His words and deeds suggest that he believes he did nothing wrong, and of course, only Tauzin knows the extent of his own moral code. But, the larger question still remains for us the outside observer: did he do something wrong?

I believe that Tauzin's actions were justifiable. While making a decision that maximized his own person liberty and sanctity of life, he did not infringe on these universal rights of others. Most importantly, his decision to retire and move to PhRMA shortly after the passage of the prescription drug bill cannot be directly linked to potential impropriety for three reasons.

First, the 108<sup>th</sup> Congress was the beginning of Tauzin's final term as Chairman of the Energy and Commerce Committee. Term limits were going to force him out of his position. Tauzin saw his window of opportunity and struck while the proverbial iron was hot. Of course, he was courted by several large trade and lobby organizations before settling on PhRMA. If Tauzin had chosen to work for the Motion Picture Association would his case be so interesting?

Probably not. Although, as Chairman of the Energy and Commerce Committee, he did have certain jurisdiction over that industry as well.

Second, the partisanship surrounding the Medicare prescription drug bill is the key to why Tauzin's move to PhRMA had such a dark cloud around it. If the Republican Congress did not whip the vote on the floor as aggressively as they did – pushing the limits on parliamentary rules and procedure, and if the Democrats, with their friends in the media, did not create such a divide over the pharmaceutical portion of the bill, Tauzin's move would not even be discussed. As Joel Jankoswky wittingly noted, “it is proximity that matters.”<sup>13</sup> Therefore, Tauzin's retirement and subsequent move to PhRMA shortly after the passage of the controversial Medicare prescription drug bill caused much speculation because of its proximity.

Of course, that speculation came at the hands of Democratic critics and journalists. Tauzin and his close personal staff did not know about the PhRMA offer until after the passage of the Medicare prescription drug bill.<sup>14</sup> According to Garrett Graves, Tauzin's Deputy Chief of Staff and Staff member for the Energy and Commerce Committee, Graves was prepared to move to the Motion Picture Association of American (MPAA) with Tauzin at the end of 2003. Graves recalls Tauzin returning from a meeting with Jack Valenti, the current head of the MPAA, and beginning to express doubts about taking the position. After meeting with Valenti, Tauzin realized that it would take him many years to establish the international contacts that Valenti had acquired during his tenure. Tauzin, coming off a tough bout with cancer, did not want to travel as heavily as he did as a Member and the MPAA position appeared to have him traveling as much – if not more.<sup>15</sup>

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<sup>13</sup> Jankowsky, Joel. (24 September 2005). “Lobbying, Perspectives Built from Personal Values. Ethics and Lobbying. Lecture Notes.

<sup>14</sup> Graves, Garrett. (2005 October 3). Former Deputy Chief of Staff to Billy Tauzin. Personal Interview.

<sup>15</sup> Ibid.

Also, Tauzin began to question the length of time that he wanted to work after leaving Congress. With a 10% survival rate after five years given to people with his form of cancer, Tauzin knew he wanted to work for a small period of time, make some money, and retire to his farm. While weighing all these doubts, Tauzin was suddenly approached by PhRMA.<sup>16</sup> The term was ending and the PhRMA position required less travel and good money. Tauzin called in his close staff and told them he was going to join PhRMA instead of MPAA. Thus, Tauzin weighed his personal preferences, his health, and his professional capabilities when making his decision.

In sum, I conclude that Tauzin made no ethical mistake. Using Griffin's professional value paradigm, Tauzin metered his decision in a manner that fit his personal as well as professional virtues. Tauzin knew he was breaking no law when he decided on the PhRMA position since he was told of it around the time of his retirement announcement. Moreover, he recognized the political perception that was bound to occur with any employment decision he made, and thus, metered it appropriately – choosing to work for an association he believed advocated on behalf of a product that saved his own life. Also, he believed that PhRMA would be a better fit for his health and his professional aptitude. Tauzin's experience as Energy and Commerce Chairman only gave him one advantage: the field expertise required to perform the new job.

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<sup>16</sup> Ibid.