

Substantial Disruption



I'll Be Your Public Servant Today. How Would You Like Your Sleaze?

By Mike Tully

Introducing a fictitious politician, Governor of an unidentified state named S. Lee Zbag. Call him "Governor Lee." He has a new acquaintance, a wealthy and ambitious businessman named Richard Guy. Let's call him "Rich." Governor Lee has expensive tastes and enjoys the good life. Rich knows what the wealthy and powerful have known for years: local politicians are easier to buy off than national-level politicians. In the District, Senators and Representatives demand top dollar and get it. In the hinterlands, however, there are bargains galore. And Governor Lee is for sale.

Rich has a problem. He's chairman and majority share-holder of a huge international corporation called Monstrous Alliance for Global Acquisition, Inc., commonly known as MAGA. The corporation's interests include Big Brass Door, Inc., a janitorial service located in Governor Lee's home state. Big Brass Door has done well but Rich has his eyes on a big prize: state buildings. The contract for cleaning state buildings is about to expire and Big Brass Door wants to bid on it. There's a problem: state law forbids subsidiaries of international corporations from entering into state contracts. Rich needs to have the law changed.

Governor Lee and Rich are introduced by a mutual acquaintance at a resort during a national governors' meeting. Governor Lee was there to network with other governors. Rich was on a shopping trip. He chatted up Governor Lee over cocktails. They discussed the weather and resort accommodations over the first cocktail, sports during cocktails two and three. By cocktail five Governor Lee was complaining about his low pay as governor. Two cocktails later he was expressing his love for Rolex watches, sports cars, exotic vacations and good meals. One more cocktail and Governor Lee said his wife wasn't with him and he wanted to take advantage of the opportunity. Rich made sure Governor Lee did not sleep alone that night.

In the coming months, Rich bought Governor Lee a Rolex, loaned him a sports car, and paid for his daughter's wedding. He gave Ms. Governor a credit card and told her to use it for anything she wanted. She used it during a shopping spree at Waikiki – during a family vacation paid for by Rich. Governor Lee decided Rich was his new best friend and, when Rich told him about the janitorial contract and the law preventing his company from bidding on it, he listened. He decided to help. What are friends for?

Governor Lee attended the grand opening of Big Brass Door's downtown corporate headquarters and praised the company as "a good example of old-fashioned American hard work and success." He allowed his name to be used in a company commercial. He hosted an event for Rich at the Governor's Mansion and invited members of the Legislature to attend. He introduced Rich to a powerful committee chairman and several other legislators. After Rich talked one of his new legislative friends into drafting and submitting legislation to help his company, the

Governor called the committee chairman to ask about the bill's progress. Governor Lee did not overtly lobby for the bill, nor twist any arms, but he made it clear that he was interested in the bill's progress. When the bill passed he allowed it to become law without his signature. Rich then gave him hard-to-get tickets to a popular Broadway musical, telling him it was his way of thanking him for his help with the legislation. Neither man doubted that Governor Lee did favors for Rich because Rich did favors for Governor Lee.

Governor Lee is a scumbag, right? No question. But did he break the law? Based on the Supreme Court's [decision](#) in *McDonnell vs United States* and the Second Circuit's [decision](#) in *United States vs Silver*, the answer is: probably not. Former Virginia Governor Bob McDonnell is a scumbag whose conviction was overturned by the Supreme Court and Sheldon Silver, former Speaker of the New York State Assembly, is a scumbag whose conviction was overturned by the Second Circuit. Both convictions were overturned because juries were wrongly instructed that "official acts" included any action taken by a government official under color of his or her authority. McDonnell, Silver, and "Governor Lee" all acted within the scope of their elected positions because the matters they were involved with concerned public policy, like awarding state contracts. The Supreme Court narrowed the definition of "official act," stating it must involve a "question, matter, cause, suit, proceeding or controversy" and the official must make a formal decision or perform an official act directly related to it. "A typical meeting, call, or event does not qualify," said the Court. If there's any degree of separation between official and action, there's probably no crime. Illegal is still illegal, but mere sleaze is constitutionally protected.

The unanimous *McDonnell* opinion might be a realistic concession that politicians will enjoy the "perks" of their offices. Perhaps it brings a necessary loss of innocence, a capitulation to human nature that helps us more realistically regard our public officials.

But is this innocence lost, or paradise lost?