TexasMonthly

Speakergate

Who's going to get indicted in the grand jury investigation of Tom Craddick, Tom DeLay, and corporate contributors to Republican campaigns in Texas? That's the $190,000 question.

May 2004

WHO CAN BLAME TEXAS REPUBLICANS for succumbing to giddy euphoria in the weeks after the November 2002 election? The victories of 88 House candidates cinched a long-sought GOP majority, guaranteeing the election of a Republican Speaker, easy passage of pro-business legislation, and a new congressional redistricting map friendly to the party. No wonder, then, that political operatives were eager to take credit for the historic victory, as Texas Association of Business (TAB) president Bill Hammond did when he bragged that $1.9 million in corporate money raised and spent by his organization "blew the doors off" the election.

Hammond's boast, posted on TAB's Web site and in its newsletter, caught the eye of one of the few remaining Democrats in Texas with any clout: Travis County district attorney Ronnie Earle, the elected official whose office is responsible for prosecuting misconduct by state officials. No one needed to point out to Earle that using corporate money to elect state officials has been illegal in Texas for nearly a century. A 27-year veteran of his office, he successfully prosecuted former Speaker Gib Lewis and former state treasurer Warren G. Harding (both Democrats), but he lost his two biggest cases: against former Democratic attorney general Jim Mattox, in 1985, and in a 1994 trial that cast a shadow over his career, against newly elected Republican U.S. senator Kay Bailey Hutchison, when he gave up after a key judicial ruling went against him. The biggest guessing game in Texas politics today is whether Speakergate, Earle's high-profile grand jury investigation into alleged! Republican campaign-finance-law violations, has any legs. Will it grow into the biggest stain on the Capitol since the Sharpstown scandal of the early seventies, or is it, as the Republicans contend, a partisan witch hunt (even though in this case, it seems, the witches called attention to their own sorcery)?

The now sixteen-month investigation centers on whether a Republican election machine that included U.S. House majority leader Tom DeLay and his political action committee, Texans for a Republican Majority (TRMPAC), Speaker of the Texas House Tom Craddick, and TAB illegally used and concealed corporate money in state political campaigns to guarantee Craddick's election as the first Republican Speaker in 130 years. (Three civil suits filed by Democrats who claim that they were defeated by the use of illegal corporate contributions are also moving forward.) Earle is probing issues from the technical (whether the use of corporate funds was for administrative or campaign purposes; the latter would be illegal) to the conspiratorial (whether GOP candidates had to promise to support Craddick to receive donations to their campaign).

The big question circulating in the political world this spring is, Who is at risk of criminal indictment? At the bottom of the political food chain are operatives like Jim Ellis, a DeLay staff member, and John Colyandro, the executive director of DeLay's TRMPAC. Both were involved in day-to-day decisions about fundraising and spending. At the next level are two prominent business lobbyists who were deeply involved in the election campaign and whose clients stood to gain from the election of a Republican House: TAB's Hammond and Mike Toomey, now Governor Rick Perry's chief of staff. Both met frequently with Colyandro during the campaign season to discuss politics and may have known about any mischief. And finally there are the Big Fish: Craddick and DeLay, each of whom was actively engaged in raising money for TRMPAC. If criminal charges reach this level, the state's political establishment could be rocked to the degree it was 33 years ago by Sharpstown, the scandal that ! involved bribery by Houston developer and banker Frank Sharp to secure the passage of two banking bills. A young state representative named Tom Craddick was part of the Dirty Thirty opposition to then-Speaker Gus Mutscher, who was eventually convicted of accepting a bribe. In the end the governor, the lieutenant governor, and half the Legislature were swept out of office, even though few of those who lost their seats had any connection to Sharp.

While campaign-finance violations are not as likely to stir the emotions of the public as bribery, they shouldn't be regarded as trivial or business as usual. Campaign-finance laws are designed to protect the integrity of the democratic process. Corporations aren't allowed to pay for political campaigns for the simple reason that their accumulated wealth would overwhelm the voice of the average voter, even the average well-heeled individual contributor. Corporate cash swamped presidential campaigns during the nineties, leading to the passage of the McCain-Feingold reforms in 2002. Corporate cash also swamped Texas House races in the 2002 election, and what's more, most of the corporate donors remain secret: TAB maintains that it does not have to reveal their names.

The specific allegations against TAB and TRMPAC involve those contributions, which can be used for issue advocacy and for administrative expenses but not for direct aid to candidates. For TAB, the questionable expenditures came in the form of mailings sent not long before the election that slammed the records of incumbent Democrats and may have crossed the line that separates issue advocacy from electioneering. For TRMPAC, the sticking point is Colyandro's use of corporate funds for polling and phone banks: Did it qualify as a permissible administrative expense, or was it campaign activity that illegally benefited specific candidates? (In an unrelated case, the U.S. Supreme Court ruled last December that, at least for broadcast ads in federal campaigns, ads mentioning a candidate's name and aired within two months of an election constitute political activity and cannot be paid for with corporate funds.)

Another possible vulnerability for Republicans is the question of coordination. Issue advocacy ads are supposed to be independent of a political campaign, and it's illegal for anyone to coordinate a PAC's use of "soft" money (typically corporate dollars) with a campaign. If DeLay or Craddick or Toomey made even one phone call to a campaign directing how "soft" money should be used to help a specific candidate, they are in trouble.

A third area of exposure is a reform law the Legislature passed in the wake of Sharpstown prohibiting any organizations, committees, or individuals outside the Texas House

from influencing the selection of a Speaker. A couple of transactions in 2002 raise eyebrows. Colyandro shipped TRMPAC campaign checks totaling $152,000 to Craddick for dissemination to fourteen House candidates. (TRMPAC treasurer Bill Ceverha, another GOP operative, testified in a civil case that Craddick made phone calls from Ceverha's office soliciting money for the fund.) In another instance, TRMPAC sent the Republican National Committee a check for $190,000 in September from its corporate "soft money" account; two weeks later, the RNC sent "hard money" (typically donations from individuals or PACs) checks totaling $190,000 to seven Republican candidates in Texas House races. While the seven would not have been able to accept TRMPAC's corporate money, a donation from the RNC was perfectly legal. If ! the intention was to circumvent the law, this could be a violation. A spokesman for the RNC has called the transactions "a coincidence." (Right, and the bloody footprints outside Nicole Simpson's condo just happened to be O.J.'s size.)

Republicans contend that they carefully followed the letter of the law and regard the grand jury investigation as another example of the Democrats' refusal to accept that Texas voters have transferred power to the GOP. Roy Minton, the accomplished Austin criminal-defense attorney hired by Craddick, says he is confident that his client did nothing wrong during the campaign and notes that the Midland lawmaker had obtained enough pledge cards before his delivery of the checks to win the Speaker's race. So why did he serve as TRMPAC's errand boy? "I don't know why politicians do those things," Minton says. As for Craddick's raising money for TRMPAC, Minton says, "Everybody I know helping the Republican party was saying, 'Send [contributions] to TRMPAC.' I don't know of anything wrong with that." Craddick's defenders argue that his activities were no different from those of the Democratic Speaker he unseated, Pete Laney, who had his own PAC, Texas Partnership. Furthermore, no ! one has ever been prosecuted under the broadly written (perhaps too broadly written) Speaker's race statute, whose sweeping prohibition against outside money in Speaker's races may be vulnerable to challenge as an unconstitutional restriction on political speech.

In a related civil suit, TAB is represented by former first assistant attorney general Andy Taylor, who argues that the controversial mailings did not expressly advocate the election or the defeat of Democratic candidates. Taylor says they were "voter education" pieces, which can legally be financed with corporate money. TAB's mailer against Democratic incumbent Ann Kitchen, mailed thirty days before the election, informed voters that Kitchen believes "you don't have to read to succeed," among other unflattering characterizations. However, Taylor maintains, since the mailer did not specifically exhort voters to cast their ballots against Kitchen, it does not qualify as political advocacy. Craig McDonald, the director of Texans for Public Justice, the watchdog organization that filed the criminal complaint against TRMPAC, thinks Hammond's post-election boasting is revealing. "The ads' purpose was to defeat candidates," McDonald says. "Bill Hammond understood their purpose.! " But Taylor says this is irrelevant. "It's the content of the speech [in the mailing], not the motivation of the speaker" that determines the legality of using corporate money, he says.

The defenses to the allegations indicate that both sides may be in for a long battle. Ethics laws are based on important principles, but in practice, determining if a violation has occurred involves the difficult job of locating the line separating legal and illegal conduct. The task for Earle is to determine whether Speakergate is simply a case of ambitious political operatives like

Colyandro and Ellis tiptoeing right up to the line, and perhaps crossing over it, to curry favor with their more powerful mentors and bosses or a much bigger case of a coordinated plan to wrest control of the House with illegal use of corporate money. The bigger the case, the more difficult it will be to prove. Unless there is a paper trail or a Deep Throat, most of the people who know what happened are potential targets of the investigation and unlikely to cooperate. The DA may have to resort to the familiar prosecutorial tactic of indicting the "little fish" and using them as bait for a more impressive catch.

For Speakergate to become as big as Sharpstown, the investigation will have to achieve a much higher profile than it currently has. The nightmare scenario for Republicans is that Earle indicts DeLay, who would then, under U.S. House rules, have to give up his post as majority leader. The Texas investigation would then become a national news story of corruption in the president's home state. The story line would be that the illegal use of corporate funds was designed not just to elect Craddick as Speaker but as the basis of a scheme to pave the way for congressional redistricting: seven new Republican seats that would ensure a GOP majority in Congress for the rest of the decade and keep DeLay in power. Texas politics would become the subject of national ridicule, not for the first time, and voter embarrassment here could produce a Sharpstown-like revulsion against incumbents.

Sharpstown did not end the Democrats' domination of state politics, but it was the beginning of the end--a process that took 23 years. Speakergate will not end Republican domination of state politics; Texas is so safely Republican that, in all likelihood, the GOP would have won the same number of seats in the 2002 elections and ensured Craddick's election as Speaker without breaking a sweat, much less breaking any laws. But Speakergate could be the end of the current leadership, which has taken an ideological approach to the state's problems, and a return to the not-so-old days of pragmatic conservative government.

Copyright Texas Monthly, a Division of Emmis Publishing, LP May 2004