

2015

Menendez and America's Public Corruption Problem

Jeffrey Bellin

William & Mary Law School, jbellen@wm.edu

Repository Citation

Bellin, Jeffrey, "Menendez and America's Public Corruption Problem" (2015). *Popular Media*. 346.
https://scholarship.law.wm.edu/popular_media/346

Copyright c 2015 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.
https://scholarship.law.wm.edu/popular_media

Menendez and America's public corruption problem

By Jeffrey Bellin

Updated 8:14 PM ET, Tue April 7, 2015



Politicians in hot water 12 photos

1 of 12



Story highlights

Jeffrey Bellin: Politicians need to raise huge sums from donors for whom they do favors

Are politicians leaving themselves open to

Jeffrey Bellin is a professor at William & Mary Law School and a former prosecutor at the U.S. attorney's office in Washington. Follow him on Twitter: [@BellinJ](#). The opinions expressed in this commentary are his.

(CNN)After a jury convicted ex-Virginia Gov. Bob

selective and politically inspired prosecutions?

McDonnell, I wrote an [op-ed](#) calling attention to the "real stars" of the McDonnell case: "the vague public corruption statutes that took down the

former governor and the elusive distinction they draw between 'politics as usual' and criminality."

With the indictment of Sen. Bob Menendez, these stars are back, reaching across the political aisle to headline a new drama. Once again, it will be easy to get distracted by the lurid details of [the new case](#), but it would be better to focus on the big picture.



Jeffrey Bellin

American politicians face a harsh reality. The average Senate campaign costs more than [\\$10 million](#)! Point the FBI at any elected official, and I suspect it can uncover a contributor who received special treatment: a meeting with staff here, a call to an agency there. None of it is necessarily illegal.

Americans are not only allowed to give money to politicians, the Supreme Court has said they have a constitutional right to spend money on campaigns. Elected officials, in turn, have

unfettered discretion to decide which calls they answer, what meetings they arrange, how to craft legislation and whom it benefits.

Legally, what turns this volatile mix into a federal crime is any agreement to trade gifts for "official acts." Absent this quid pro quo, it's politics as usual. In other words, the line between the corrupt politician and the successful one is drawn somewhere in the politician's mind.

Agreements are hard to unearth, so the law makes generous allowances for circumstantial proof. In the McDonnell case, the jury was instructed, as is typical, that the agreement need not be explicit; all that is required is a "knowing wink and nod." A prosecutor presents the circumstantial evidence of gifts and subsequent favors, and asks the jury to infer the underlying, often unspoken, quid pro quo. Juries can easily find one lurking in the political murk; perhaps because it is often there.

It could be, then, that what sets Menendez and McDonnell apart from other politicians is not the (alleged) illegality of their conduct, but that the FBI took such a hard look at them. Thankfully, the FBI's interest doesn't appear to be political. More likely, agents became interested in these cases the same way they get interested in lots of things; they happened upon public corruption while looking into something else.

The FBI reportedly was [investigating](#) Jonnie Williams' company for securities fraud when it stumbled upon his gifts to McDonnell.

Menendez's troubles apparently began when an anonymous [tipster informed the FBI](#) that

Menendez and a donor frequented prostitutes (a charge that was [never substantiated](#)). The prostitution and securities fraud cases never panned out, but once the FBI started snooping around it found something unsurprising. The donors allegedly got something in return for their generosity. (Menendez has pleaded not guilty and vowed to fight the corruption charges against him.)

There are two important lessons here, one for politicians and one for the rest of us. The politicians need to distance themselves from their rich donors. Ethics aside, it is simply too risky to take contributions and gifts from people whose interests you intend to advance. And if that means you don't get as many contributions (and it probably does), that's OK. Better to lose an election (or travel in coach) than to go to federal prison.

Everyone else should start thinking about prosecutorial discretion. It's bad enough that our political system seems to be populated with felons. We should also worry about how prosecutors pick and choose among them to decide whom to imprison.

Haphazard selection, which appears to explain the Menendez and McDonnell cases, is the least of our worries. The real concern is politically motivated prosecutions, which are made all too easy in a system flush with cash and regulated, if at all, by malleable public corruption statutes. Sadly in a pay-to-play political system, once FBI agents direct their investigative firepower at a particular politician, the likelihood of a federal indictment may only depend on how hard they look.

[Read CNNOpinion's new Flipboard magazine.](#)

[Follow us on Twitter @CNNOpinion.](#)

[Join us on Facebook.com/CNNOpinion.](#)