

Global Integrity Scorecard:

United States

United States: Reporter's Notebook

By Ken Stier

When Securities and Exchange Commission (SEC) staff attorney Gary Aguirre wanted to question John Mack, a Wall Street titan, now CEO and chairman of the investment bank Morgan Stanley, about some suspicious trading activity flagged by the New York Stock Exchange, Aguirre's supervisors were supportive — until they weren't. A flurry of targeted calls from a posse of defense attorneys to more senior SEC offices led to the abrupt change, Aguirre claims, in an account largely corroborated by a yearlong Senate Finance and Judiciary Committees investigation report released in August 2007.

The upshot: What might have been a blockbuster insider-trading case that could help curb one of the most important abuses in U.S. capital markets was effectively derailed. (Mack would be questioned a year later, as the SEC finished out an investigation, but circumstances led many to wonder if it was not with diminished zeal.) Aguirre was fired soon afterward, and the Senate investigation determined this was "closely connected to his objections to the special treatment afforded John Mack." Sen. Charles Grassley, ranking member of the Senate Finance Committee, said in releasing the report. But when Aguirre brought these serious allegations to the SEC's Office of the Inspector General (OIG), there was "no attempt to conduct a serious, credible investigation," Grassley noted. "The Inspector General merely interviewed SEC management, accepted their side of the story, and closed the case. This is unacceptable. It is the role of the Inspector General to be an independent finder of fact, not a rubber stamp of management."

It is just one of many recent examples of the highly uneven — many would say deteriorating — performance of this critical component of the country's civil service, which was created to ensure the efficient and impartial functioning of the federal bureaucracy. The system of inspectors general was created by Congress in 1978 to provide independent oversight of Cabinet departments and major federal agencies, initially 30, extended to 34 more through a 1998 amendment.

The law contained strong provisions for ensuring independence, a seven-day letter response requirement, robust investigative powers, including subpoena authority, and a ban on secretarial interference, provisions that "clearly make the IG the most independent, unfiltered voice below the secretary in any federal department," said Eleanor Hill, the Defense Department IG from 1995 to 1999, in recent congressional testimony. Key to the IG's unique role is its hybrid reporting function — internally to the agency head, and externally to Congress — which stokes the critical tension between the executive and legislative branches. All in all, it was a "stroke of congressional brilliance," Hill said.

The IGs created by the 1998 amendment differ in several key respects from the original cohort of IGs. The latter are appointed by agency heads, while those in the original group are appointed by the president, with Senate confirmation. While charged with the same responsibilities, they cannot initiate criminal investigations. In practice, the newer IGs (see lists of both) are more "closely aligned to independence standards for internal auditors" than those for external auditors, explained the Government Accountability Office (GAO).

This system is not window dressing. There are close to 12,000 employees working with a combined budget of US\$1.9 billion, up from US\$1.5 billion in 2002. (Although the Central Intelligence Agency has an IG, neither the size of its staff nor its budget is made public.) The IGs seem to be a very good investment for taxpayers. Collectively they recovered US\$6.8 billion for the public coffers from fines, settlements or recoveries, and investigations. The investigations also yielded 8,400 successful prosecutions, 7,300 suspension or debarments, and 4,200 personnel actions, all in a single year (2006), according to the most recent report from the President's Council on Integrity and Efficiency, a supervisory board chaired by the deputy director of the Office of Management and Budget.

An additional US\$9.9 billion in potential savings has been identified through audit recommendations. "These performance levels are consistent with previous years' efforts: IGs have been and continue to be a primary means by which we identify and eliminate waste, fraud and abuse," OMB Deputy Director Clay Johnson III told a Senate oversight committee in July. "The IGs play a critical role in identifying mismanagement of scarce taxpayer dollars," added David M. Walker, U.S. comptroller general. "As we enter a period where great transformation will be needed in the way government does business [because of escalating deficits and limited resources], it will be increasingly important to consider the IGs' role in this process, and to take advantage of the opportunities to make the IG offices more efficient and effective."

But rather than investing in these "profit centers" OIGs are generally under-funded, particularly when compared with the growth of their agencies, the multiplying complexity they face and their increased reporting demands. The Justice Department, for instance, has grown about 30 percent in the last 15 years, from 83,000 employees to 110,000, but the OIG there has essentially remained the same - with about 400 staff rather than the 520 it would have if it were keeping pace. "I am concerned that inadequate resources can affect both the thoroughness and timeliness of projects that are, by necessity, staffed more thinly than warranted...[and] that our employees may be burned out when we continually ask them to do more with less," Glenn Fine, the Department of Justice's inspector general, told Congress recently.

In this context, it is usually an indication of problems when an IG moves to cut his own staff. The administrator of the General Services Administration (GSA), Lurita Doan, moved to make significant staff cuts after the IG, Brian Mill, started investigating procurement practices. Doan proposed to have external contractors perform "surveys" instead. The EPA's IG, Bill Roderick, moved to slash his own staff by 60, out

of 360 positions, even while his budget increased. This has led some to advocate allowing OIGs to submit their budget requests directly to Congress and the OMB rather than having them controlled by the agency heads.

Another problem is the sometimes serious mismatches between the size and budget of the IG's office compared to the agencies it is meant to oversee, or to its overall importance. At the SEC, for instance, which has a critical role overseeing U.S. capital markets, there is an OIG of just 10 staffers, which is smaller than its counterpart at the Library of Congress (17), the National Archives and Records Administration (16) and the Smithsonian Institution (14). The SEC's IG office is expected to expand with a new IG; the last one retired the day the critical Senate Finance Committee report came out. He had been the SEC's first and only IG.

The biggest concern, though, for this highly sensitive layer of the civil service is the increasingly political nature of key appointments, which sabotages the IGs' mission of disinterested service to the public. This was particularly apparent in the Bush administration, which, until the Republican Party lost control of Congress in 2006, did not have to worry about Senate approvals. More than 60 percent of IGs appointed by President Bush had prior political experience (either at the White House or as Republican congressional staff), while fewer than 20 percent had prior audit experience, the House Committee on Oversight and Government Reform reported in 2005. During the Clinton years, more than 60 percent of IG appointees had prior audit experience. Even this is low considering that enabling statutes require IGs be selected "without regard to political affiliation, and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration or investigations."

Clearly the system of IGs — which turns 30 next year — is due for some rejuvenation. This may explain the recent percolation of activity by congressional committees, the GAO and elsewhere in the capital's financial audit and accountability community, whose reports have provided the basis for this review. A survey of recent IG performances should be a warning of what further neglect may bring.

Perhaps the most blatant instance of IG partisanship was the tenure of Janet Rehnquist, daughter of the late Supreme Court judge William Rehnquist, at the Department of Health and Human Services (DHHS). DHHS has 1,445 IG staffers and a budget of US\$222 million, making it the largest OIG in the system, just ahead of the Department of Defense's. Rehnquist faced a number of charges of mismanagement, including forcing out senior staff, hiring outside civil-service procedures and questionable travel expensing. More serious was the charge that she delayed the audit of a state pension fund until after an election at the request of the top aide of Florida Gov. Jeb Bush. A number of the allegations were substantiated by investigations by the GAO and an IG supervisory board, including the shredding of potentially relevant documents, which helped lead to her resignation in 2003.

Another alarming allegation of top-level interference took place at the Department of Homeland Security (DHS) when it was headed by its first secretary, Tom Ridge. In response to IG reports highlighting critical shortcomings at the new agency — failures to detect weapons at airports and to consolidate multiple-agency terrorist lists, as well as excessive executive bonuses and extravagant employee award ceremonies — Ridge allegedly complained to IG Clark Kent Ervin. Ridge tried to "intimidate me, to stare me down, to force me to back off, to not look into those areas that would be controversial, not to issue critical reports," recounted Ervin in media accounts after he was forced out in 2004.

Another category of problems is when IGs themselves do not appreciate or respect their true mission. This has led a number of IGs to shield their agencies from outside scrutiny. A congressional inquiry into whether Defense Department IG Joseph Schmitz blocked criminal investigations of senior Pentagon officials led to his resignation in 2005. Schmitz's office colleagues reportedly used code names to refer to people under investigation for fear that their boss would tip off the targets of these probes; he was also suspected of having given a report to the White House before it was issued.

The concept of inspector general goes back to 17th century Europe, first deployed within militaries, where there have been myriad opportunities for illegal enrichment. Congress nodded to the verity of war profiteering when it created the Special IG for Iraq Reconstruction in 2004 and empowered it with a US\$34 million budget and staff of 155, making it the second largest of the agency-appointed IGs, headed by Stuart Bowen. A series of scathing reports about extensive waste, abuses and fraud by U.S. government employees and private contractors led to so far unsuccessful efforts, some involving subterfuge, to terminate the ad-hoc office.

The latest, and perhaps the most egregious, alleged OIG abuse to come to light is what has taken place at the State Department under Howard Krongard. He is alleged to have repeatedly thwarted investigations into contracting fraud within the US\$3.6 billion spending that the State Department has overseen in Iraq and Afghanistan. He also is accused by seven former and current staffers of censoring politically embarrassing reporting. "One consistent element in these allegations is that you believe your foremost mission is to support the Bush administration, especially with respect to Iraq and Afghanistan, rather than act as an independent and objective check on waste, fraud and abuse on behalf of U.S. taxpayers," said a 14-page letter from Rep. Henry Waxman, chairman of the House Committee of Oversight and Government Reform, which has an ongoing investigation. "Your strong affinity with State Department leadership and your partisan political ties have led you to halt investigations, censor reports and refuse to cooperate with law-enforcement agencies," the letter added. One example of the consequences: Tests of kitchen facilities at the new US\$600 million embassy in Baghdad short-circuited the electrical system; wires were found to be "counterfeit," reducing State Department employees to eating MREs.

Particularly problematic is the classic conundrum of who should be "the guardians of the guardians." As Eleanor Hill noted, "If the system is to have any credibility, the public must be assured that those who enforce high ethical standards on others are themselves held to those same standards. There must be a clear and convincing answer to the question "Who's watching the watchdog?"

The current answer is two supervisory councils. The President's Council on Integrity and Efficiency (PCIE) oversees the presidentially appointed IGs, while the others are supervised by the Economic Council on Integrity and Efficiency (ECIE). Both councils are headed by the deputy director of the OMB, which many consider too political a position to ensure impartiality. To improve oversight, an Integrity Committee was established in 1996, chaired by the FBI assistant director of investigations and staffed by career FBI agents, three IGs and the directors of the Office of Government Ethics and the Office of the Special Counsel, along with a staff advisor from the Justice Department's Public Integrity Unit.

This is still no guarantee against unfortunate stalemates, such as the case of NASA IG Robert Cobb, who is alleged to have suppressed investigations and unfairly penalized staff for doing their jobs. A six-month investigation by the Integrity Committee determined that Cobb had indeed compromised his authority by alerting the NASA administrator to audits and even search warrants being issued by the FBI. This "created an appearance of a lack of independence," according to a redacted 1,000-page committee report that recommended disciplinary action "up to and including removal." That was enough for both congressional oversight committees to call for Cobb's resignation, but so far NASA has been circling the wagons, denying there were any violations.

For "both agency heads and OMB to ignore these investigative findings mocks the mission of the President's Council on Integrity and Efficiency, and sends a clear message that these agencies are unconcerned with preserving the integrity of the system of inspectors general," charged Danielle Brian, executive director of the Project on Government Oversight (POGO), an independent watchdog group, in a letter to OMB's Johnson.

The standoff highlights the fact that however well-structured the IG system is, it critically depends on the quality of the people staffing those positions. "While statutory protections are very important, it goes without saying that IGs also have to be comfortable with their independence, fully understand its importance, be willing to exercise it, and be prepared to defend it, if necessary," explained Hill, who is now a lawyer in private practice.

Effective, functioning IGs also need sensible counterparts running key government agencies. Both must have a deep respect for the vital role IGs play and they must find a professional working relationship that allows that function to be carried out. Congress could do a more robust job of making sure, during the confirmation process, that department and agency heads understand and fully accept the mission of inspectors general and the statutory independence upon which that rests — and then remain vigilant to their performances.

United States: Corruption Timeline

November 1992 — Arkansas Governor Bill Clinton, the Democratic Party candidate, is elected president.

August 1994 — A federal court appoints former Bush Solicitor General Kenneth Starr as independent counsel to investigate whether President Clinton and his wife, Hillary, committed fraud in connection with the Whitewater Development Corporation, an Arkansas real estate venture in which the Clintons were partners from 1978 to 1992.

November 1994 — The Republican Party takes control of both the Senate and House of Representatives for the first time in 40 years. Newt Gingrich, a fierce critic of President Clinton, assumes leadership as speaker of the House.

April 1996 — Vice President Al Gore attends a fundraiser at a Buddhist temple in Los Angeles and raises US\$140,000 for the Democratic National Committee, the party's fundraising wing. The event itself was illegal-tax-exempt religious institutions are not allowed to host political fundraisers. Furthermore, a substantial portion of the money turned out to have been illegally funneled through nonexistent donors.

November 1996 — Clinton is re-elected president.

December 1996 — The House Ethics Committee issues a report concluding that Speaker Newt Gingrich used US\$300,000 in tax-exempt public funds for his own political gain, and then misled authorities investigating the matter. The House formally reprimands Gingrich and fines him US\$300,000.

February 1997 — Clinton releases a list of 938 guests who stayed overnight in the White House's famed Lincoln Bedroom, insisting that they did not have to pay for the privilege. The maneuver is in response to an August 1996 report by the nonprofit investigative journalism organization the Center for Public Integrity revealing that more than 75 Democratic donors and fund raisers had been invited to stay in the Lincoln Bedroom.

July 1997 — The Senate Governmental Affairs Committee begins hearings into possible fund-raising abuses in the 1996 presidential campaign, when the Clinton-Gore campaign and the Democratic Party allegedly accepted illegal foreign donations. The following March, the committee concludes the Clinton administration deliberately evaded campaign-finance rules but makes no recommendations that anyone be prosecuted.

September 1998 — Kenneth Starr reports to Congress that he has found evidence of 11 impeachable offenses by Clinton. The next month, the House votes to hold a full inquiry into whether or not to impeach the president.

November 1998 — In congressional elections, the Democrats gain five seats in the House, though leaving the Republicans with an overall majority. Speaker Gingrich steps down from leadership after the unexpected surge defies his predictions of large Republican gains.

November 1998 — Legislation implementing the Organization of Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Officials in International Business Transactions takes effect, bringing the United States in line with international anti-bribery standards.

December 1998 — The House votes to impeach Clinton on two articles, charging him with perjury and obstructing justice to cover up his relationship with White House intern Monica Lewinsky.

January 1999 — Following a 21-day trial in the Senate, senators vote to acquit Clinton of both impeachment charges. A follow-up motion for censure also fails.

February 1999 — Vice President Gore hosts the first global conference on fighting corruption among security, justice and budget officials.

October 1999 — Kenneth Starr resigns as independent counsel and is replaced by his assistant, Robert Ray. Ray continues investigating until the last day that Clinton holds office, when he reaches a deal stripping Clinton of his law license for five years and fining him US\$25,000 in exchange for not criminally prosecuting him following his presidential term. Ray clears the Clintons of all wrongdoing related to Whitewater and several other charges.

September 2000 — The Inter-American Convention against Corruption is ratified and deposited at the Organization of American States.

October 2000 — Congress passes the International Anti-corruption and Good Governance Act of 2000, which authorizes the president to establish foreign aid programs that improve governmental transparency and accountability.

November 2000 — The polls close on Nov. 7, with no clear winner in the presidential election. While Vice President Al Gore earns more overall votes nationwide, Texas Governor George W. Bush appears to have earned more electoral votes. However, the apparent victory by Bush is complicated by voting irregularities in Florida, where Bush wins by only a few hundred votes. Over the course of 36 days, state and federal courts, and eventually the Supreme Court of the United States, weigh in on the matter until a politically divided Supreme Court orders state officials to stop recounting the ballots and allows Bush to be declared the winner.

January 2001 — On his last day in office, President Clinton issues 140 executive pardons and commutes the sentences of 36 felons. Among those pardoned is international fugitive Marc Rich, whose ex-wife was a major donor to the Democratic Party, Clinton's presidential library and the Senate campaign of her close friend Hillary Rodham Clinton. Rich faced up to 300 years in prison for evading more than US\$48 million in taxes. Several people convicted in the Whitewater investigation and officials tied to the investigation of Mike Espy, Clinton's former secretary of Agriculture, are also pardoned.

January 2001 — Bush refuses to publicly release former President Ronald Reagan's records as mandated by the Presidential Records Act of 1978. He instead issues an executive order giving himself and all past and future presidents the authority to veto the release of presidential records. Both Bush's father and several high-level officials in his government had worked for Reagan. The censored papers are believed to contain information related to arming radical Islamist forces in Afghanistan, building up the Iraqi military and supporting dictators in Asia and Latin America. Bush eventually releases 68,000 pages of Reagan's records.

May 2001 — Republican Senator James Jeffords quits the Republican Party, allowing Democrats a 50 to 49 majority in the Senate.

October 2001 — The USA Patriot Act ("Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism") is signed into law by President Bush. The law, enacted in the wake of the Sept. 11 attacks, reduces several constitutional protections and enhances law enforcement powers. The law broadens the definition of domestic terrorism, allows the government to detain non-citizens for up to seven days without filing formal charges, expands the government's wiretap powers and allows intelligence agencies to share information with domestic law enforcement agencies.

October 2001 — Attorney General John Ashcroft sends a "Guidance Memo" to all federal agencies stating that the Justice Department would stand behind any refusal to comply with the Freedom of Information Act, unless the decision lacks a "sound legal basis" or adversely affects the ability of other agencies to protect other records.

December 2001 — Energy Company Enron declares bankruptcy after admitting that it used fraudulent accounting to hide its losses. Enron, which had overstated its earnings by more than US\$567 million since 1997, is President Bush's largest campaign contributor, and its leaders had met repeatedly with Bush and Vice President Dick Cheney. The Justice Department launches a criminal investigation in January. Through the course of the year, several Enron officials plead guilty to various charges, and Arthur Andersen, Enron's accounting firm, is found guilty of obstruction of justice for destroying relevant documents. In January 2004, Chief Financial Officer Andrew Fastow pleads guilty to two counts of conspiracy and promises to aid the prosecution. In May 2006, former Chief Executive Officers Kenneth Lay and Jeffrey Skilling are convicted on multiple counts of fraud, conspiracy and other charges for lying to investors, regulators and employees about Enron's financial condition. Lay dies in July 2006.

February 2002 — In its first-ever lawsuit against the government, the General Accounting Office (GAO) sues Vice President Dick Cheney to get access to records of an energy task force he organized in 2001 to help draft a national energy plan. After a federal court rules in favor of Cheney in December, the GAO drops its lawsuit, allegedly as a result of pressure from Republican lawmakers. Two civil society groups also sue for access to the records, claiming that energy companies—including Enron and its then-chairman Kenneth Lay—had been given exclusive access while environmental groups were prevented from attending the task force's meetings. A court orders Cheney to release the documents, but in June 2004, the Supreme Court remands the case to a lower court for further proceedings. Supreme Court Justice Antonin Scalia is criticized for participating in the decision despite having gone on a duck hunting trip with Cheney after the Court agreed to hear the case. In May 2005, the lower court rules that Cheney does not have to release the documents and dismisses the suit.

March 2002 — President Bush establishes the Millennium Challenge Account, a foreign-assistance fund that will disburse money to developing countries that satisfy criteria covering commitment to government transparency, anti-corruption, poverty eradication, and respect of citizens' basic rights.

March 2002 — President Bush signs into law the Bipartisan Campaign Finance Reform Act, a sweeping change in campaign finance regulations which prohibits unlimited donations to political parties and places restrictions on campaign advertisements. Several Republicans and a wide variety of interest groups immediately sue, challenging the constitutionality of the law. In December 2003, the Supreme Court upholds most of the law's key provisions.

June 2002 — WorldCom Inc. admits that it inflated its earnings by US\$3.8 billion. The figure is later amended to US\$11 billion. The Securities and Exchange Commission immediately files fraud charges against the company and top officials. The following month WorldCom files for bankruptcy, costing investors more than US\$175 billion. In 2003, the SEC fines WorldCom US\$500 million, the largest penalty in the agency's history. In 2005, former WorldCom CEO Bernard Ebbers is convicted of conspiracy, securities fraud and filing false documents with regulators and is sentenced to 25 years in prison.

July 2002 — Congress passes the Sarbanes-Oxley Act, a law designed to protect investors from corporate accounting fraud by requiring executives to personally validate their companies' financial statements.

July 2002 — The House of Representatives votes to expel Rep. James Traficant from office. In April, the Ohio Democrat was convicted on 10 counts of bribery, conspiracy, tax evasion, and racketeering charges and was sentenced to eight years in prison.

September 2002 — The Federal Election Commission, the federal agency enforcing campaign finance laws, imposes a record-setting fine of US\$719,000 against participants in various 1996 Democratic Party fund-raising scandals. Among those penalized are the Clinton-Gore campaign, the Democratic National Committee, and dozens of individuals and corporations who channeled illegal foreign contributions to Democrats.

October 2002 — New Jersey Senator Robert Torricelli stops his re-election campaign 36 days before the election. In July, the Senate Ethics Committee found that Torricelli had improperly accepted gifts and cash from a contributor. Seven people eventually plead guilty to making illegal contributions to his 1996 campaign.

November 2002 — Republicans win several seats in the Senate and maintain control of both chambers of Congress.

February 2003 — The Center for Public Integrity publishes a leaked government document detailing a secretly drafted sequel to the USA Patriot Act. Apparently drafted by the Justice Department and shared with Vice President Cheney and the speaker of the House, the draft bill would authorize secret arrests, ease restrictions on racial profiling, block prisoners' access to information, create a DNA database of suspected terrorists and allow deportation of anyone identified by the government as terrorists. Following public outcry, the draft bill is never formally proposed.

January 2004 — The Supreme Court refuses to hear an appeal requesting the identity of more than 700 men imprisoned at a U.S. military base in Guantánamo Bay, Cuba following Sept. 11. In June, however, the Supreme Court rules that Guantánamo Bay prisoners have basic due process rights. Military tribunals set up by the Bush administration to try the prisoners are struck down by the Court in 2006 as an illegal extension of presidential powers and a violation of the Geneva Conventions.

April 2004 — The national media break the shocking story of Abu Ghraib, an Iraqi prison at which U.S. military personnel subjected detainees to acts of abuse and torture.

November 2004 — George W. Bush wins a second presidential term.

September 2005 — Republican House Majority Leader Tom DeLay is indicted on a charge of criminally conspiring to funnel illegal contributions into 2002 Texas state elections that helped the Republican Party solidify its control of the House. He resigns from Congress in June 2006.

October 2005 — Vice President Cheney's chief of staff, I. Lewis "Scooter" Libby, is charged with obstruction of justice, perjury and making false statements during an investigation into whether administration officials deliberately blew the cover of CIA agent Valerie Plame to reporters in 2003 in order to discredit her husband, former ambassador Joseph C. Wilson IV, who claimed that Bush had distorted intelligence to justify the Iraq war. It is later confirmed that White House Deputy Chief of Staff Karl Rove discussed Plame with reporters. As of August 2007, Rove avoids prosecution. He announces that he will step down from his post at the end of August 2007. Subsequent court filings also indicate Cheney had a role in the effort to discredit Wilson. Libby is sentenced to two-and-a-half years in prison by U.S. District Court for the District of Columbia for lying and obstructing Judiciary.

November 2005 — Republican Congressman Randy "Duke" Cunningham resigns from Congress after pleading guilty to taking more than US\$2 million in bribes from defense contractors.

December 2005 — The New York Times reports that in 2002 President Bush authorized the National Security Agency to eavesdrop on the e-mail, phone calls and fax communications of U.S. citizens without obtaining a warrant, in apparent violation of the law.

January 2006 — Influential Washington lobbyist Jack Abramoff pleads guilty to corruption, fraud and tax evasion charges related to his lobbying activities. As part of his plea deal, Abramoff agrees to cooperate with authorities in an ongoing influence peddling investigation that seems certain to bring down many other lobbyists and lawmakers.

March 2006 — Claude Allen, President Bush's domestic policy adviser, is arrested for stealing more than US\$5,000 from Washington, D.C.-area retail stores through a fraudulent merchandise return scheme. He eventually pleads guilty to misdemeanor theft and is sentenced to probation and US\$850 restitution to retail stores.

May 2006 — The Federal Bureau of Investigation raids Democratic Congressman William Jefferson's congressional office after Jefferson had been videotaped accepting US\$100,000 from an FBI informant, allegedly intended as a bribe, and later stashed the money in a freezer in his home. The raid, the first time the FBI has searched a congressional office, provokes a constitutional showdown between the legislative and executive branches over separation of powers. Jefferson is indicted on June 2007 for money laundering and taking bribes worth more than US\$400,000 for years by trying to arranging business deals in Africa.

June 2006 — David H. Safavian, former chief procurement policy officer in the White House, is convicted of lying to investigators and obstructing justice during an investigation into his ties to Jack Abramoff.

July 2006 — The American Bar Association, the country's pre-eminent lawyer organization, issues a report condemning President Bush's excessive use of signing statements, which presidents use to claim the authority to selectively enforce -or even outright ignore- the laws they sign.

August 2006 — Former Ukrainian Prime Minister Pavlo Lazarenko is sentenced to nine years in U.S. federal prison and fined US\$10 million for money laundering and extortion via American banks while he was the prime minister of Ukraine.

November 2006 — The Democratic Party gets control of the Senate and House of Representatives in mid-term elections. Nancy Pelosi becomes the first female leader of the House of Representatives.

November 2006 — Defence Secretary Donald Rumsfeld steps down.

February 2007 — A Grand Jury fills indictment against three Army Reserve officers and two civilians. The indictment says US\$8.6 million in reconstruction funds were awarded to a contractor in exchange for kickback including vehicles, jewelry and real estate. U.S. Army Reserve Col. Curtis Whiteford, being the top military official, Army Reserve Lt. Col. Debra Harrison, and Army Reserve Lt. Col. Michael Wheeler are the officials indicted.

June 2007 — World Bank President Paul Wolfowitz resigns. The resignation decision comes soon after the World Bank executive directors meet to discuss his sending Shaha Riza, an employee in the Bank with whom he had a relationship, to the State Department for an assignment in 2005. Ms Riza's salary at the State Department was raised to US\$193,590, a pay rate better than Secretary of State Condoleezza Rice's salary. The increase is claimed to be more than double what she would have got at the World Bank. A panel of executives at the World Bank says that President Paul Wolfowitz broke bank rules in awarding a pay rise to his girlfriend.

Robert Zoellick, former deputy secretary of state, becomes the new president of the World Bank.

United States: Facts

The Global Integrity Report provides a mix of qualitative and quantitative data. The Integrity Indicators, which provide a framework for qualitative reporting, also include detailed quantitative scores on 304 discrete measures of governance. To encourage comparisons between our data and existing international datasets, we have collected some of the latest and most relevant work and made it available for download here in an Excel spreadsheet. We encourage our readers to use this data to make comparisons to the Integrity Indicators, and to use our source data in their original research. If you have done work based on the Integrity Indicators, or are considering it, we want to hear from you.

Press Freedom Index	16.00
Economic Freedom Index	81.98
Human Development Index	0.95
Bribe Payers Index	7.22
Corruption Perception Index	7.20
Failed States Index	33.60
WBI: Control of Corruption	1.30
WBI: Political Stability	0.31
WBI: Government Effectiveness	1.64
WBI: Voice and Accountability	1.08
Combined Gross Enrollment Ratio for Primary, Secondary and Tertiary schools (%)	93.30
GDP per Capita(Constant 2000 US dollars)	38,165.25
Foreign Aid Per capita (US dollars)	
Total Government Expenditure %GDP	21.00
Unemployment, total (% of total labour force)	6.00
Gross External Debt (US\$ millions)	11,787,295.00
Poverty Rate	
GINI	40.80
Net Foreign Direct Investment inflows (as% of GDP)	0.90
Female Economic activity rate %	59.60
Life Expectancy	77.50
Legatum Prosperity Index (Material Wealth)	90.00
Legatum Prosperity Index (Life Satisfaction)	94.00
Religious Freedom	Yes

United States: Integrity Indicators Scorecard**Overall Score: 87 - Strong**

Category I	Civil Society, Public Information and Media	87	Strong
I-1	Civil Society Organizations	86	Strong
I-2	Media	96	Very Strong
I-3	Public Access to Information	78	Moderate
Category II	Elections	84	Strong
II-1	Voting & Citizen Participation	94	Very Strong
II-2	Election Integrity	82	Strong
II-3	Political Financing	74	Moderate
Category III	Government Accountability	85	Strong
III-1	Executive Accountability	80	Moderate
III-2	Legislative Accountability	85	Strong
III-3	Judicial Accountability	80	Strong
III-4	Budget Processes	93	Very Strong
Category IV	Administration and Civil Service	89	Strong
IV-1	Civil Service Regulations	76	Moderate
IV-2	Whistle-blowing Measures	96	Very Strong
IV-3	Procurement	93	Very Strong
IV-4	Privatization	92	Very Strong
Category V	Oversight and Regulation	87	Strong
V-1	National Ombudsman	52	Very Weak
V-2	Supreme Audit Institution	100	Very Strong
V-3	Taxes and Customs	92	Very Strong
V-4	State-Owned Enterprises	100	Very Strong
V-5	Business Licensing and Regulation	90	Strong
Category VI	Anti-Corruption and Rule of Law	93	Very Strong
VI-1	Anti-Corruption Law	100	Very Strong
VI-2	Anti-Corruption Agency	83	Strong
VI-3	Rule of Law	96	Very Strong
VI-4	Law Enforcement	92	Very Strong

1: Are anti-corruption/good governance CSOs legally protected?

1a *In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.*

Score: YES

References: The First Amendment of the U.S. Constitution protects the right of association generally, stating: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

1b *In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.*

Score: YES

References: While some CSOs with Middle East ties claim post-9/11 security concerns have unfairly restricted their ability to raise money from domestic and foreign sources, these CSOs do not generally focus on anti-corruption/good governance issues. See, for example, "Muslim Charities Say Fear Is Dampening Flow of Money," Washington Post, August 9, 2006, p. A3.

Peer Reviewer's Comments: Citation to terrorist financing laws may be useful.

1c *In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.*

Score: NO

References: The U.S. Internal Revenue Service (IRS) typically classifies anti-corruption CSOs as non-profit, tax-exempt 501(c)(3) organizations. The IRS states: A tax-exempt organization is generally not required to disclose the names or addresses of its contributors on its annual [tax] return. [\[LINK\]](#). However, 501(c)(3) organizations are restricted in the amount of political and legislative (lobbying) activities they may conduct. For example, all section 501(c)(3) organizations are absolutely prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office. [\[LINK\]](#)

2: Are good governance/anti-corruption CSOs able to operate freely?

2a *In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.*

Score: 100

References: According to Transparency International USA's president Nancy Boswell: "In the USA, there is a climate that allows civil society to thrive and be powerful watchdogs promoting government accountability. They are permitted to organize, speak freely and participate in political decision-making. However, maintaining government integrity is a constant challenge and there are thousands of NGOs working on various aspects of this problem. [The] most recent examples are their efforts to fight attempts to restrict access to information and to address corruption in political finance and in the legislature." U.S. DEPARTMENT OF STATE, Bureau of International Information Programs, "The Role of NGOs in Battling Corruption" February 8, 2007, [\[LINK\]](#)

In 2007, there were no media reports of anti-corruption NGOs being prevented from organizing. [Lexis-Nexis search]

2b *In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.*

Score: 75

References: An example of CSO participation in the political process can be found here: REPEALING LIMITS ON PARTY SPENDING FOR CANDIDATES, TESTIMONY-BY: FRED WERTHEIMER, PRESIDENT OF DEMOCRACY 21, US Senate Committee on Senate Rules and Administration, April 18, 2007

Social Scientist's Comments: As the Boswell quote above indicates, there is a healthy civil society in the U.S. However, only a few, well-funded anti-corruption CSOs operate at the national level (The Center for Public Integrity among them). And while their investigations and advocacy efforts receive media attention from time to time, the impact of these efforts is largely muted in the long run as these efforts clash with the goals of extremely well-funded lobbyists and their corporate clients. And while recent improvements in transparency and ethics rules in Congress likely can be tied to the work of Democracy 21, Common Cause and others, the positive results have been more more likely due to well-publicized congressional scandals in which criminal charges led to the ouster of powerful members of Congress. This view was confirmed in an August 16 interview with Common Cause's Communication Director Mary Boyle. While Boyle likes to think CSOs play a "central role" in ethics reform, she admitted that "more often than not they don't listen to us" and that it requires scandals to initiate real reform. She did mention, however, that Common Cause and other corruption CSOs work behind the scenes on the details of reform (e.g, the House task force currently deciding on whether to establish an independent ethics body). See also: "Ethics bill leaves some waiting for next step," Gannett News Service, August 8, 2007.

Peer Reviewer's Comments: Everything the lead researcher writes is accurate. But I would say that civil society organizations like Common Cause and Democracy 21 have a 100 percent ability to actively engage, even if they have less than full success in being heard and achieving their goals. Common Cause Communication Director Mary Boyle's comment about working behind the scenes on congressional reform seems to indicate full engagement in the process. I admit this is nitpicking, and perhaps the small number of CSOs like CC and D21, in comparison to the large number of corporate and other lobbyists, puts this back to 75.

2c *In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.*

Score: YES

References: No media reports of such cases. [Lexis-Nexis search]

Social Scientist's Comments: Most Americans citizens cherish the right for organizations to criticize the government, so closing down an anti-corruption CSO would be a very unwise strategy for government officials. Instead, they merely need to pretend they will clean up their act and then wait a sufficient amount of time for the concerns to die down (and hope they aren't voted out of office).

3: Are civil society activists safe when working on corruption issues?

3a *In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.*

Score: YES

References: In 2007, there were no media reports of civil society activists working on corruption issues being imprisoned.

Peer Reviewer's Comments: Not sure if you want to get into how some advocacy groups and "independent" activists have been fined and detained in anti-war protests. There is a tradition or practice by activists in the United States of purposefully violating some administrative and even criminal laws to draw attention to their causes. But, they do so knowingly and with an affirmative assumption of the risk.

3b *In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.*

Score: YES

References: In 2007, there were no media reports of civil society activists working on corruption issues being physically harmed.

3c *In practice, in the past year, no civil society activists working on corruption issues have been killed.*

Score: YES

References: In 2007, there were no media reports of civil society activists working on corruption issues being killed.

4: Can citizens organize into trade unions?

4a *In law, citizens have a right to organize into trade unions.*

Score: YES

References: National Labor Relations Act of 1935 and the Taft-Hartley Act of 1947 guarantee the right of employees to organize and to bargain collectively with their employers or to refrain from all such activity. [\[LINK\]](#)

Peer Reviewer's Comments: Other sources of law you may want to look at include Supreme Court cases on trade union and labor issues.

4b *In practice, citizens are able to organize into trade unions.*

Score: 75

References: "U.S. trade unions have seen a steady decline in their influence. While corporate opponents of unions say this decline is due to larger economic trends related to globalization and a move to a service-oriented economy, unions and academics believe this decline is the result of concerted "union busting" efforts by corporations. See: Kris Maher, "Signs of a Possible Power Shift In Congress Have Unions Going All Out to Reach Voters," "Wall Street Journal, August 28, 2006; p. A2; and Shaan K. Hathiramani and Amanda Shapiro, "Busting the Busters," Harvard Political Review, August 8, 2006."

5: Are media and free speech protected?

5a *In law, freedom of the media is guaranteed.*

Score: YES

References: The First Amendment of the U.S. Constitution and subsequent Supreme Court rulings protect the media's right to criticize the government. "An Unfettered Press" U.S. Department of State, Bureau of International Information Programs, 1994. [\[LINK\]](#)

Peer Reviewer's Comments: Although freedom of the press has been broadly guaranteed by the U.S. Constitution and Supreme Court decisions, there is concern about the absence in some states of shield laws that protect journalists from having to reveal sources to law enforcement authorities.

5b *In law, freedom of speech is guaranteed.*

Score: YES

References: The First Amendment of the U.S. Constitution and subsequent Supreme Court rulings protect the public's right to free speech and to criticize the government. "Individual Rights" [\[LINK\]](#)

Peer Reviewer's Comments: But there are limits to certain types of speech, such as speech meant to incite violence, although Supreme Court decisions have held that these restrictions must be narrowly tailored.

6: Are citizens able to form print media entities?

6a *In practice, the government does not create barriers to form a print media entity.*

Score: 100

References: James C. Goodale, THE FIRST AMENDMENT AND FREEDOM OF THE PRESS, [\[LINK\]](#); Krinsky, George A. et al. Hold the Press: The Inside Story on Newspapers. Baton Rouge, LA: Louisiana State University Press, 1996. According to Freedom House, "the United States is home to more than 1,500 daily newspapers geared primarily toward local readerships." [\[LINK\]](#)

6b *In law, where a print media license is necessary, there is an appeal mechanism if a license is denied or revoked.*

Score: YES

References: N/A No license required.

6c *In practice, where necessary, citizens can obtain a print media license within a reasonable time period.*

Score: 100

References: N/A No license required.

6d *In practice, where necessary, citizens can obtain a print media license at a reasonable cost.*

Score: 100

References: N/A No license required.

7: Are citizens able to form broadcast (radio and TV) media entities?

7a *In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.*

Score: 75

References: "The Federal Communications Commissions (FCC) reports it received 30,000 inquiries from persons seeking to start radio broadcast stations in 2005. Less popular frequencies in the broadcast spectrum are easy to acquire. However, the FCC auctions off the most highly desired broadcast television or radio slots, thereby creating considerable financial barriers and has resulted in more highly corporatized media entities. See: "How To Apply For a Broadcast Station," FCC, [\[LINK\]](#); and Amol Sharma and Amy Schatz, "'Bidders will vie for slice of U.S. airwaves,'" Seattle Times, August 7, 2006, p. C1. "

7b *In law, where a broadcast (radio and TV) media license is necessary, there is an appeal mechanism if a license is denied or revoked.*

Score: YES

References: FCC rulings are frequently appealed through the U.S. Court of Appeals for the District of Columbia. See FCC Website for press releases of appeal decisions. [\[LINK\]](#)

7c *In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.*

Score: 50

References: According to FCC licensing officer Hossein Hashemzadeh, application timing is difficult to estimate because of the many factors involved (e.g., how many applications have been filed during a window, if they are mutually exclusive, or if they cause interference to existing stations). Some broadcast applications take as little as 3 months, but others take much longer. An overview of the process can be found at: [\[LINK\]](#)

7d *In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.*

Score: 75

References: For non-competitive broadcast slots, licenses and related administrative permits may be acquired at reasonable rates. See, e.g., the FCC's Mass Media Services Application Fee Filing Guide. In addition, Congress does allow "the Commission to waive, reduce, or defer payment of a fee where such action would promote the 'public interest.' (e.g., state and local governments, amateur radio operator licensees and non-profit organizations)." [\[LINK\]](#). Nevertheless, the auctioning of competitive broadcast licenses significantly favors moneyed interests, which relates in part to increasing media concentration in the United States. See: Norman Lear and Robert W. McChesney, "Does Big Media need to get bigger?" Los Angeles Times, August 5, 2006, p. B17; and Freedom House 2005 Freedom of the Press U.S. report.

8: Can citizens freely use the Internet?

8a *In practice, the government does not prevent citizens from accessing content published online.*

Score: 100

References: Freedom House. United States Report 2007:
The number and influence of Internet sites and blogs have expanded greatly in recent years, and blogs have proven to be an important source of information in certain political controversies. Blogs devoted to public policy questions often lean to the highly partisan, and while their proliferation adds to the richness of press diversity, it also contributes to ideological polarization. On two occasions, the U.S. Congress has tried to impose censorship legislation on Internet content, but both attempts were ruled unconstitutional by the courts. According to the Center for Democracy and Technology, proposals are pending to make internet service providers liable for removing allegedly illegal or improper content. Nearly 69 percent of the population was documented as having internet access at year's end.

Even congressional attempts to censor pornography have failed due to First Amendment concerns. "U.S. judge blocks law criminalizing Web porn that reaches kids, saying filters work better," Associated Press. March 22, 2007

Peer Reviewer's Comments: There is currently great debate in Congress over "net neutrality" and whether the Internet providers should be regulated to ensure equal download speeds and access to content providers of all sizes. Some fear that, without regulation, service providers would provide better, faster access to wealthier Internet entities. See <http://www.pcmag.com/article2/0,2704,2182534,00.asp>

8b *In practice, the government does not censor citizens creating content online.*

Score: 100

References: The explosion of political blogs in the U.S., many of which are quite critical of presiding officials, is testament to the Internet freedoms enjoyed by Americans. For examples of blogs on both side of the political spectrum, see: [\[LINK\]](#) and [\[LINK\]](#).

Peer Reviewer's Comments: I would reference additional blogs here. This is a super-picky point, however.

Peer Reviewer's Comments: So called "decency laws" could be used to censor content.

Global Integrity Report: United States

9: Are the media able to report on corruption?

9a In law, it is legal to report accurate news even if it damages the reputation of a public figure.

Score: YES

References: According to Freedom House, "The United States has a long tradition of legal protection for press freedom," making it "quite difficult to bring a successful libel case against a journalist in the United States." 2005 U.S. Country Report

Peer Reviewer's Comments: But libel and defamation prohibitions do exist; you may want to cite.

9b In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

Score: 100

References: Neither the government nor media entities encourage self-censorship about corrupt officials. Adherence to First Amendment norms (cited above) prevent the government from doing so, while financial incentives to report on corruption (which draw large audiences) compel media entities to do so. Indeed, the last two years have witnessed a significant increase in stories about corrupt politicians (from both parties).

Social Scientist's Comments: However, the current administration's attempts to clamp down on media freedom for "national security" concerns pose a risk that corruption stories could be censored. According to a recent report by Reporters Without Borders, The United States (53rd) has fallen nine places since last year, after being in 17th position in the first year of the Index, in 2002. Relations between the media and the Bush administration sharply deteriorated after some in the media accused the president of using the pretext of national security to regard as suspicious any journalist who questioned his war on terrorism. The zeal of federal courts which, unlike those in 33 US states, refuse to recognize the media's right not to reveal its sources, even threatens journalists whose investigations have no connection at all with terrorism." [\[LINK\]](#)

Freedom House's review of the US also exposes the potential for corruption cover ups. [\[LINK\]](#)

Peer Reviewer's Comments: Media corporations also sometimes censor or fail to report corruption-related stories in instances where the story might damage political allies and/or where the likelihood for drawing large audiences is small.
See: http://www.sfbg.com/entry.php?entry_id=4452&volume_id=254&issue_id=313&volume_num=41&issue_num=49&l=1

9c In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

Score: 100

References: While no cases of pre-publication censoring of corruption stories were revealed in 2007, the possibility that concerns about national security may be used to quell reporting unearthing corruption is of concern.

10: Are the media credible sources of information?

10a *In law, print media companies are required to disclose their ownership.*

Score: YES

References: Hold the Press: The Inside Story on Newspapers. Baton Rouge, LA: Louisiana State University Press, 1996. As with broadcast media, there are increasing concerns about ownership concentration, especially as newspapers become increasingly less profitable with the growth of the Internet.
"Why newspapers are buyout targets", May 3, 2007, The Christian Science Monitor

10b *In law, broadcast (radio and TV) media companies are required to disclose their ownership.*

Score: YES

References: The FCC requires broadcast stations to file a report with the names of the owners and their ownership interests, any contracts related to the station that are required to be filed with the FCC, and the identities of any interests held by the station licensee in other broadcast stations. [\[LINK\]](#)
Ownership disclosures reveal an increasing concern about media concentration in the United States. According to Freedom House, "this controversy has intensified in recent years following the purchase of media entities, especially television networks, by large corporations with no previous experience in journalism." [\[LINK\]](#)

10c *In practice, journalists and editors adhere to strict, professional practices in their reporting.*

Score: 75

References: Major media outlets employ ombudsmen and/or possess codes of conduct to promote ethical behavior. See, for example, The New York Times Ethical Journalism Guidebook. Independent organizations such as the Project for Excellence in Journalism help to ensure a healthy debate about journalistic practices.
However, Freedom House notes that "the Bush administration itself drew sharp criticism for having paid several political commentators who supported certain domestic policy initiatives through grants from agencies of the federal government. A report by federal auditors concluded that the administration had disseminated "covert propaganda" by paying columnist Armstrong Williams through grants from the Department of Education for columns that praised Bush's education policies. It was also revealed that the Department of Defense had hired a public relations firm to place stories with media outlets in Iraq that were written by U.S. military officers and depicted conditions in the country in a favorable light." [\[LINK\]](#)

Peer Reviewer's Comments: In addition, there have been some recent allegations of plagiarism by journalists of other journalists' work.

10d *In practice, during the most recent election, political parties or independent candidates received fair media coverage.*

Score: 100

References: Compared to other countries, election news is largely independent of the political parties involved. In addition, most U.S. citizens enjoy access to the Internet and Blogosphere, which provide access to political news that might go uncovered in more traditional news media outlets (the Blogosphere is far more politically biased than are traditional sources such as newspapers and magazines. Nevertheless, there are signs that American media sources generally are becoming more partisan. See, for example, "Red Media, Blue Media" in which the authors argue that "there is the real possibility that news will no longer serve as a "social glue" that connects all Americans; instead, the very same lines that divide voters will also divide news audiences." By Shanto Iyengar and Richard Morin, Washington Post, May 3, 2006.

10e *In practice, political parties and candidates have equitable access to state-owned media outlets.*

Score: 100

References: The vast majority of political media operates in the private sphere, and in the few cases where the U.S. government operates state-owned media outlets the only claims about political bias come from the party already in power. One major area of controversy, however, is the process by which aspiring presidential candidates are allowed to participate in presidential debates. The organization in charge of this decision has been criticized for being biased toward the traditional two political parties. See, for example, the NOW television special on "Politics and Economy", September 24, 2004, in which the director of Open Debates is interviewed.

Peer Reviewer's Comments: The lead researcher is correct and makes an excellent point about the "open debate" issue. Is he or she considering the Public Broadcasting System and National Public Radio as "state-owned" media outlets?
I know they are supported in part by the government, but I'm not sure they are equivalent to the British Broadcasting Corporation, for example. I think the outlets the researcher has in mind should be mentioned in the comment, and the exact nature of the government's involvement in and control of these media outlets should be spelled out a bit more.

11: Are journalists safe when investigating corruption?

11a *In practice, in the past year, no journalists investigating corruption have been imprisoned.*

Score: YES

References: Transparency International news search
No journalists were imprisoned for corruption stories, although the New York Times reporter Judith Miller spent 85 days in jail for refusing to reveal her sources in a criminal investigation.

[\[LINK\]](#)

11b *In practice, in the past year, no journalists investigating corruption have been physically harmed.*

Score: YES

References: Transparency International news search

11c *In practice, in the past year, no journalists investigating corruption have been killed.*

Score: YES

References: Transparency International news search

Social Scientist's Comments: While no reporter investigating corruption per se was murdered in 2007, one of Oakland, California's long-time investigative journalists, Chauncey Wendell Bailey Jr., was murdered on Aug. 2 while reporting on a story regarding the suspicious activities of the Your Black Muslim Bakery.

[\[LINK\]](#)

12: Do citizens have a legal right of access to information?

12a *In law, citizens have a right of access to government information and basic government records.*

Score: YES

References: At the federal level, Title 5, Section 552 of the U.S. Code grants citizens the right to public information that does not fall under the nine exemptions of the code (e.g., classified information). References: Freedom of Information Act (FOIA), [\[LINK\]](#). It should be noted that certain executive entities exempt from the provisions of the FOIA: White House Office; Office of the Vice President; Council of Economic Advisers; National Security Council; Office of Policy Development; Domestic Policy Council; Office of National AIDS Policy; National Economic Council; and President's Foreign Intelligence Advisory Board. [\[LINK\]](#)

12b *In law, citizens have a right of appeal if access to a basic government record is denied.*

Score: YES

References: At the federal level, Title 5, Section 552 of the U.S. Code grants citizens the right to sue for access to records that a government agency has denied. References: [\[LINK\]](#)

12c *In law, there is an established institutional mechanism through which citizens can request government records.*

Score: YES

References: However, each federal agency is responsible for fulfilling its individual information requests, so there is no universal federal institution or process.

13: Is the right of access to information effective?

13a *In practice, citizens receive responses to access to information requests within a reasonable time period.*

Score: 25

References: The law does not stipulate any limit on the amount of time an agency can take to respond, although it does require agencies to respond in some manner within 20 days (which often takes the form of notify the requesting party that the request has been received). Actual processing of the request often drags on far longer, with some information requests going unfilled for nearly two decades. The Associated Press reports backlogs are increasing at most agencies, "Overall, the total number of requests pending at the 15 executive departments at the end of Fiscal Year 2004 was 147,810, a 24 percent increase over the previous year." In particular, the AP asserts agencies involved with national security are clamping down on the amount of information they release to the public. Critics contend the process remains backlogged, despite a December 2005 presidential order to repair the process. In response to mounting criticism, two House members (one Republican and one Democrat) have sponsored legislation to improve the process, although few believe the bill will pass. References: "A Report on Federal Agency FOIA Backlog," National Security Archive at George Washington University; and Martha Mendoza, "Agencies Missing FOIA Deadlines," Associated Press, March 12, 2006. Note also that each state has its own public information law, each with its own unique exemptions and process for requesting data. See: [\[LINK\]](#)

Social Scientist's Comments: According to a report from OpenTheGovernment.org and People For the American Way Foundation, government secrecy has only increased. [\[LINK\]](#)

13b *In practice, citizens can use the access to information mechanism at a reasonable cost.*

Score: 100

References: The law prevents U.S. federal agencies from charging excessive fees for information requests. Most charge nominal fees or no fee at all. For example, see: Department of Justice Freedom of Information Act Reference Guide.

Peer Reviewer's Comments: Many agencies have provisions allowing for the waiver of fees if the applicant can demonstrate that he or she does not have the means to pay.

13c *In practice, citizens can resolve appeals to access to information requests within a reasonable time period.*

Score: 50

References: The law requires an agency to respond to any appeal within 20 days, and notify the appellant if any extension is required. Should the agency continue to deny a request (which critics charge is likely given the agency was the entity who initially denied the request), the requesting party can sue the agency in a federal court, a process that can take years.

13d *In practice, citizens can resolve appeals to information requests at a reasonable cost.*

Score: 50

- References:** High legal costs are the result should the appeals process go to court. In a July 26, 2006 congressional hearing, a representative of small newspapers argued that "very few newsrooms can afford to use this remedy." As such, critics support the establishment of an independent ombudsman to oversee the appeal process of each federal agency. Reference: Tonda Rush, Public Policy Director, National Newspaper Association, House Government Reform Committee hearing on Freedom of Information Act Implementation.
- Peer Reviewer's Comments:** High legal costs are the result should the appeals process go to court. In a July 26, 2006, congressional hearing, a representative of small newspapers argued that "very few newsrooms can afford to use this remedy." As such, critics support the establishment of an independent ombudsman to oversee the appeals process of each federal agency. Reference: Tonda Rush, Public Policy Director, National Newspaper Association, House Government Reform Committee hearing on Freedom of Information Act Implementation. If all but a few newspapers can afford to appeal, I would bet that most middle-class residents of the United States would have a difficult time, too.

13e *In practice, the government gives reasons for denying an information request.*

Score: 50

- References:** There are nine formal exemptions typically given for why a FOIA request is denied. (See: [\[LINK\]](#)). Each federal agency must provide an assessment of FOIA requests and exemptions used to the Department of Justice on an annual basis. [\[LINK\]](#) Catherine Neilsen at George Washington University's National Security Archives notes that agencies often offer vague reasons for why a particular exemption is warranted (particularly for national security reasons).

14: Is there a legal framework guaranteeing the right to vote?

14a *In law, universal and equal adult suffrage is guaranteed to all citizens.*

Score: YES

References: The U.S. Constitution and subsequent amendments guarantee the right to vote to all 18 year old adults (although some states disqualify felons and those with extreme mental disabilities). D. Grier Stephenson, Jr., "The Principles of Democratic Elections," [\[LINK\]](#)

Peer Reviewer's Comments: Minor suggestion: Cite the article and amendments.

14b *In law, there is a legal framework requiring that elections be held at regular intervals.*

Score: YES

References: Federal elections held on the Tuesday after the first Monday in November, which was initially established in 1845 (3 U.S.C. 1) for the appointment of Presidential electors in every fourth year. 2 U.S.C. 7 established this date for electing U.S. Representatives in every even numbered year in 1875. Finally, 2 U.S.C. 1 established this date as the time for electing U.S. Senators in 1914. Other elections (e.g., primary) elections take place on pre-assigned dates set by each state. U.S. Electoral Assistance Commission, [\[LINK\]](#)

15: Can all citizens exercise their right to vote?

15a *In practice, all adult citizens can vote.*

Score: 75

References: Economic disparities create unequal voting experiences. For example, voters in poorer neighborhoods tend to wait in far longer lines for their opportunity to vote--thereby increasing the possibility of lower turnout. And according to the nonpartisan League of Women Voters, many states have developed laws, rules or procedures that limit access to the ballot box. For example, many states have chosen to implement the statewide database requirement of the Help America Vote Act (HAVA) in ways that make it harder for eligible applicants to register. Together, these new requirements disproportionately impact those citizens who have been historically marginalized in the political process: women, low-income people, members of ethnic and racial minorities, youth, people with disabilities and seniors. Mike Slater, Laura Kyser and Jo-Anne Chasnow, "New Barriers to Voting: Eroding the Right to Vote," The National Voter, League of Women Voters, June 2006.

15b *In practice, ballots are secret or equivalently protected.*

Score: 100

References: Ballots are almost always secret or equivalently protected. "U.S. Elections Frequently Asked Questions," Bureau of International Information Programs, U.S. Department of State. It should be noted that secret ballots have come under fire recently, because the voter is given no permanent record of his or her vote that can be used in the case of a recount, and new electronic voting software is subject to hacking. "New voting machines failed test", Sarasota Herald-Tribune (Florida), August 9, 2007

15c *In practice, elections are held according to a regular schedule.*

Score: 100

References: As noted above, election dates have typically been predictable in the US, although states have been competing to have earlier primaries for the 2008 presidential election. Frustrated, States Try to Change The Way Presidents Are Elected, New York Times, august 11, 2007.

16: Are citizens able to participate equally in the political process?

16a *In law, all citizens have a right to form political parties.*

Score: YES

References: Citizens may form political parties, although numerous institutional and financial barriers prevent independent or third parties from challenging the dominant Republican and Democratic parties. See: John F. Bibby, "Political Parties in the United States," Bureau of International Information Programs, U.S. Department of State. [\[LINK\]](#)

Peer Reviewer's Comments: Could you cite the U.S. Constitution on freedom of association or right to political participation in electing president/legislators?

16b *In law, all citizens have a right to run for political office.*

Score: YES

References: Citizens may run for any office, although the Constitution places some restrictions on certain offices (e.g., a candidate for president must have been born in the United States). U.S. Constitution, Article II, Section 1.

16c *In practice, all citizens are able to form political parties.*

Score: 100

References: Although Democrats and Republicans dominate elections, other parties (including the Greens) participate in elections. For a list of parties, see: [\[LINK\]](#). The most recent significant impact by a third party in a U.S. presidential election came in 1992, when billionaire Ross Perot garnered 19% of the vote. See: John F. Bibby, "Political Parties in the United States," Bureau of International Information Programs, U.S. Department of State. [\[LINK\]](#)

16d *In practice, all citizens can run for political office.*

Score: 75

References: While it is extremely rare that citizens are barred from the ballot through government abuse of official rules and/or unofficial pressure, the increasingly high price of state and especially national offices effectively prohibits entry for candidates who are not themselves independently wealthy or do not enjoy access to a steady stream of wealthy contributors. See, for example, the op-ed by former Democratic senator Ernest F. Hollings, "Stop the Money Chase," Washington Post, February 19, 2006.

Peer Reviewer's Comments: You may want to come back to the native-born requirement for running for president.

16e *In practice, an opposition party is represented in the legislature.*

Score: 75

References: The high level of partisanship over the last 13 years has created a legislature in which the party in power dominates the institution, even when that party has a only slight majority control. Congressional Democrats had promised to be more conciliatory to their Republican brethren upon taking control of Congress in November 2006, but Republicans claim to have been shut out on numerous legislative processes. Still, Congress has seen a greater degree of bipartisanship on issues pertaining to Iraq and malfeasance in the Bush administration, in part driven by Bush's decreased political clout.

"Pelosi proud of Dems' work in first 100 days," San Francisco Chronicle, March 29, 2007. For a fuller view of Congress' problems, see The Broken Branch: How Congress is Failing America and How to Get it Back on Track, Brookings Institution, 2006.

Peer Reviewer's Comments: It's a close call, but this seems more like a 100 to me. The minority party almost always has some influence on proceedings via the Senate rule of 60. I would rate this a 90 or 95 if I could.

Peer Reviewer's Comments: You could also raise the congressional redistricting issue, which is typically a move by the party in power to limit representation of minority parties.

17: In law, is there an election monitoring agency or set of election monitoring agencies/entities?

17 In law, is there an election monitoring agency or set of election monitoring agencies/entities?

Score: YES

References: While the Federal Electoral Commission enforces campaign finance rules for federal offices, administration and monitoring of all elections takes place at the state level, typically under the office of the state secretaries of state. A new agency, the U.S. Election Assistance Commission (EAC) was established by the Help America Vote Act of 2002 (HAVA) as a national clearinghouse and resource for information and review of procedures with respect to the administration of Federal elections. Currently, the EAC lacks any enforcement powers, although its budget has increased over time. [\[LINK\]](#)

Peer Reviewer's Comments: It's Federal Election Commission.

18: Is the election monitoring agency effective?

18a *In law, the agency or set of agencies/entities is protected from political interference.*

Score: NO

References: The vast majority of secretaries of state are elected positions, making them highly political. [\[LINK\]](#) As the Oregon's largest newspaper editorializes, "in Oregon and 36 other states, the secretary of state is both player and umpire, running elections and running campaigns at the same time. The Oregonian, February 18, 2006. This arrangement raised little controversy until recently, when the presidential election results in Florida (2000) and in Ohio (2004) became extremely controversial, in part because in each case the overseeing secretaries of state also helped direct President Bush's election campaign in those states. For an example of lingering animosity and suspicion, see: Robert F. Kennedy, Jr., "Was the 2004 Election Stolen?" Rolling Stone, June 1, 2006. The political importance of the position has made it increasingly coveted by party leaders. See: Jill Lawrence, "Top vote counter becomes prize job," USA Today, August 17, 2006.

Peer Reviewer's Comments: I am not sure whether the Federal Election Commission should be mentioned here, although, with the discussion over the appointment of Hans A. von Spakovsky as a commissioner, inclusion of the FEC would not change my view that the answer to this question is "no."

18b *In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.*

Score: 25

References: A review of secretaries of state biographies reveals many in the position lack professional election experience prior to assuming the post, beyond being elected to office. See: National Association of Secretaries of State, [LINK](#)

At the national level, Federal Election Commission appointees are typically loyal partisans. For example, President Bush's most recent appointee, Hans von Spakovsky, was a former Republican Party chairman in Georgia. "Democrats Criticize Bush's FEC Nominee," Associated Press, June 13, 2007. "He failed to understand his role was not to be a representative of the Republican Party," said Joseph Rich, a former voting section chief who worked under von Spakovsky, who was then counsel to the assistant attorney general for civil rights. "Hearing on FEC Pick Could Add Fuel to Debate Over Justice Dept." Washington Post, June 8, 2007.

Peer Reviewer's Comments: Unfortunately, "to the victor, go the spoils."

18c *In practice, the agency or set of agencies/entities has a professional, full-time staff.*

Score: 100

References: Nearly all offices of secretary of state have professional, full-time staff, with the number ranging from 7 in Wisconsin to 443 in California. [\[LINK\]](#)

Peer Reviewer's Comments: The Federal Election Commission had a full-time staff of 391 as of July 14, 2004.
See: <http://rules.senate.gov/hearings/2004/071404LottOpen.htm>

Peer Reviewer's Comments: Maybe describe the Federal Election Commission structure.

18d *In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.*

Score: 100

References: The vast majority of secretaries of state file election reports. [\[LINK \]](#)

Peer Reviewer's Comments: The Federal Election Commission also issues periodic reports. See: <http://www.fec.gov/disclosure.shtml>

Peer Reviewer's Comments: Media also reports, using exit polls.

18e *In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.*

Score: 50

References: Non-financial complaints regarding federal election irregularities (as well as all state and local election issues) are overseen by secretaries of state or similar agencies. The Help America Vote Act of 2002 revised state-based administrative complaint procedures to remedy grievances (Sec. 402). However, election fraud continues to be a major concern: See, for example, Wall Street Journal columnist John Fund's Stealing Elections: How Voter Fraud Threatens Our Democracy, Encounter Books, 2004.

Peer Reviewer's Comments: The Federal Election Commission also regularly imposes fines on campaigns for violating campaign financing laws.

19: Are elections systems transparent and effective?

19a *In practice, there is a clear and transparent system of voter registration.*

Score: 75

References: The registration process works effectively for the vast majority of voters, but concerns remain about barriers that affect traditionally disenfranchised voters. See: "Federal Office to Probe Vote Procedures," Boston Globe, November 24, 2004. Numerous NGOs focus solely on improving voting conditions. See, for example, the Center for Voting and Democracy, Project Vote Smart, and the American Civil Liberties Union.

19b *In law, election results can be contested through the judicial system.*

Score: YES

References: State voting laws allow for challenging elections or reporting election fraud. Information on Florida, for example, can be found at: [\[LINK\]](#)

Peer Reviewer's Comments: A brief sentence about 2000 elections and the role of the state and federal judiciaries may be necessary. Bush v. Gore.

19c *In practice, election results can be effectively appealed through the judicial system.*

Score: 75

References: Voting issues can be appealed through the judicial process in a timely manner, although the political affiliations of some judicial positions taints the process in some cases. See, for example, Bush v. Gore, the Supreme Court decision that effectively decided the 2000 presidential election. Congressional Research Service, "Election Reform: Overview and Issues," March 2004, [\[LINK\]](#)

19d *In practice, the military and security forces remain neutral during elections.*

Score: 100

References: In both law and practice, the military are prohibited with interfering with the elections process, and polling places are unguarded. "Political Activities by Members of the Armed Forces on Active Duty," Department of Defense Directive, August 2, 2004.

Peer Reviewer's Comments: Can you cite the law?

19e *In law, domestic and international election observers are allowed to monitor elections.*

Score: YES

References: There are no laws prohibiting election monitors, although their presence is rare. There are exceptions when stakes are particular high, or when problems have occurred in the past, such as in Ohio in 2004. "Voters Find Long Lines and Short Tempers, but Little Chaos at Polls," New York Times, November 3, 2004.

Peer Reviewer's Comments: Note that the Organization for Security and Cooperation in Europe is now observing US elections, but only in a limited fashion.

19f *In practice, election observers are able to effectively monitor elections.*

Score: 100

References: The 2004 presidential election marked the first time that international elections monitors oversaw a U.S. election. "Cold War Relic To Dispatch Observers For American Presidential Election," New York Sun, October 28, 2004.

Peer Reviewer's Comments: See Organization for Security and Cooperation in Europe Election Report.

20: Are there regulations governing political financing?

20a *In law, there are regulations governing private contributions to political parties.*

Score: YES

References: In 1975, Congress created the Federal Election Commission (FEC) to administer and enforce the Federal Election Campaign Act (FECA) - the statute that governs the financing of federal elections. The majority of state secretaries monitor campaign finance contributions and expenditures at the state and local level. See: [\[LINK\]](#) and [\[LINK\]](#).

Peer Reviewer's Comments: I would add that the Federal Election Commission enforces limits on contributions to political parties by individuals and political action committees at the national and state levels.
See: <http://www.fec.gov/pages/brochures/contriblimits.shtml>

20b *In law, there are limits on individual donations to candidates and political parties.*

Score: YES

References: Citizens may contribute no more than \$2,300 per federal candidate per election. Other limits exist that restrict contributions to and from political parties and political action committees. See "Contribution Limits-2007-08," FEC, [\[LINK\]](#)

20c *In law, there are limits on corporate donations to candidates and political parties.*

Score: YES

References: Federal election law prohibits "any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office." TITLE 2. THE CONGRESS, Chapter 14 Federal Election Campaigns Subchapter 1 Disclosure of Federal Campaign Funds, § 441b.

20d *In law, there are limits on total political party expenditures.*

Score: NO

References: There are no limits on expenditures by parties (although parties must disclose expenditures). TITLE 2. THE CONGRESS, Chapter 14, Federal Election Campaigns , Subchapter 1, Disclosure of Federal Campaign Funds. An exception pertains to presidential candidates who agree to accept matching federal campaign funds. However, the high cost of presidential elections means it is increasingly common for candidates to forego these funds in order to spend whatever amount they deem necessary to win.
Source: Interview with Candice Nelson, co-author of "The Money Chase: Congressional Campaign Reform," Brookings Institution Press, 1990.

20e *In law, there are requirements for disclosure of donations to political candidates and parties.*

Score: YES

References: The FEC and state election offices require financial disclosure of campaign contributions. See: [\[LINK\]](#) and [\[LINK\]](#). According to a Center for Public Integrity report on state campaign finances, "nearly half the states received a failing grade for the campaign finance disclosure required of state-level political party organizations." "Undisclosed," September 26, 2002

20f *In law, there are requirements for the independent auditing of the finances of political parties and candidates.*

Score: YES

References: The campaign finance law permits the Commission to conduct an audit of any political committee. The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance. [2 U.S.C. §438(b)] The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Federal Election Campaign Act. In addition, the Commission is required by law to audit presidential campaigns and convention committees that accept public funds. FEC Enforcement Matters, [\[LINK\]](#).

20g *In law, there is an agency or entity that monitors the political financing process.*

Score: YES

References: As noted above, the Federal Electoral Commission monitors the political financing process. [\[LINK\]](#)

21: Are the regulations governing political financing effective?

21a *In practice, the limits on individual donations to candidates and political parties are effective in regulating an individual's ability to financially support a candidate or political party.*

Score: 50

References: Numerous financial loopholes exist to allow contributions to one official to be redirected through political action committees to another candidate. Source: Interview with Candice Nelson, co-author of "The Money Chase: Congressional Campaign Reform," Brookings Institution Press, 1990. Also see: M.E. Sprengelmeyer, "Hefley aims to do away with 'leadership PACs'," Rocky Mountain News, July 19, 2006. Even with the new changes to congressional ethics laws, members of Congress will be able to accept invitations from lobbyists to events that are widely attended, including receptions and charity golf tournaments. "Congressman, It's (Still) on Us: The Ethics Law's Many Loopholes," Washington Post, August 11, 2007

21b *In practice, the limits on corporate donations to candidates and political parties are effective in regulating a company's ability to financially support a candidate or political party.*

Score: 50

References: The 2004 presidential election witnessed many cases of "bundling", in which high-level corporate executives encourage their employees to contribute to the same candidate. See: Source: Interview with Candice Nelson, co-author of "The Money Chase: Congressional Campaign Reform," Brookings Institution Press, 1990. See also, "Office politics: banned from making political donations, companies harvest them from employees instead," CFO The Magazine for Senior Financial Executives, July 2004.

Also, a recent Supreme Court decision allows corporations and labor unions to fund political advertising leading up to an election, thwarting efforts to restrict the practice. "POLITICAL ADS; A horrible ruling; Court decision could mean a return to the days of attack ads funded by corporations and unions just before an election." Milwaukee Journal Sentinel, June 26, 2007

On a positive note, new congressional ethics rules require lawmakers to disclose the names of lobbyists who raise \$15,000 in contributions in a six-month period through the bundling of donations. CONGRESS VOTES TO TIGHTEN RULES ON LOBBYIST TIES, New York Times, August 3, 2007; "Tougher Rules Change Game for Lobbyists," New York Times, August 7, 2007

21c *In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.*

Score: 0

References: N/A There are no expenditure limits.

21d *In practice, when necessary, an agency or entity monitoring political financing independently initiates investigations.*

Score: 50

References: Democracy 21, an elections watchdog group, calls the FEC a "failed agency." Its report asserts "structural problems of the FEC are compounded by the extraordinarily cumbersome enforcement procedures built into the statute - what Congressional Quarterly referred to as 'procedures mandated by Congress and designed to protect incumbents and challengers from overly aggressive investigators.'" Democracy 21 Report: "No Bark, No Bite, No Point," 2002. Candice Nelson confirms this assessment.

21e *In practice, when necessary, an agency or entity monitoring political financing imposes penalties on offenders.*

Score: 25

References: The FEC imposes fines in cases of finance irregularities in federal elections, although many have criticized the agency as being too lax (in part because its commissioners comprise an equal number of Democrats and Republicans, often leading to stalemates). Candice Nelson believes the fines offer little deterrent value, as most campaigns adopt the attitude of "If you get fined you get fined; it's the cost of doing business." She also notes that it is the campaign treasurer who gets fined, because the campaign is over and the organization has disbanded by the time the FEC acts. Also see: Jim Drinkard, "Agency that referees elections protects parties first," USA Today, November 11, 2002; and "The FEC's Reluctant Regulators; The agency's inaction means Congress ought to step in," Washington Post editorial, June 9, 2006, p. A22.

21f *In practice, contributions to political parties and candidates are audited.*

Score: 50

References: According to the Democracy 21 report, "The Commission cannot make its own findings that a violation occurred, cannot seek court injunctions to halt illegal activity while it is occurring, and cannot conduct random audits of campaigns. In short, Congress created an enforcement agency that, on its own, can do little to actually enforce the law. Although the agency, by a mandated process of conciliation, can attempt to settle cases and negotiate the payment of civil penalties by respondents, it has (with limited exceptions) no power to actually adjudicate complaints itself or to require that violators face sanctions." "No Bark, No Bite, No Point," p. 13.

22: Can citizens access records related to political financing?

22a *In practice, political parties and candidates disclose data relating to financial support and expenditures within a reasonable time period.*

Score: 100

References: The FEC requires parties and campaigns to disclose their contributions and expenditures once per quarter. Ref. §434, Reporting Requirements ([\[LINK\]](#)). It should be noted that this disclosure requirement also has a political benefit, in that campaigns can demonstrate the strength of their support through public disclosures.

22b *In practice, citizens can access the financial records of political parties and candidates within a reasonable time period.*

Score: 100

References: The FEC makes financial reports available on its Web site. [\[LINK\]](#)

22c *In practice, citizens can access the financial records of political parties and candidates at a reasonable cost.*

Score: 100

References: The FEC makes financial reports available on its Web site. [\[LINK\]](#)

23: In law, can citizens sue the government for infringement of their civil rights?

23 *In law, can citizens sue the government for infringement of their civil rights?*

Score: YES

References: The First Amendment of the U.S. Constitution grants citizens the right to petition the government for a redress of grievances.

24: Can the chief executive be held accountable for his/her actions?

24a In practice, the chief executive gives reasons for his/her policy decisions.

Score: 75

References: While the White House press officer holds nearly daily press briefings to explain Bush Administration policy positions, this Administration has gone to great lengths to weaken the media's ability to access information. George Bush himself address rarely makes himself available to the White House press corps for open question-and-answer sessions. A January 2004 account in the New Yorker noted that "Bush had held only eleven solo press conferences, fewer than almost any modern president. Over a comparable period, his father held 71 and Bill Clinton 38." Ken Auletta, "Bush's Press Problem," January 13, 2004. When Bush himself interacts with the media, it is often with smaller, local media outlets, who are less equipped to offer well-researched questions or criticisms. Also see: Troubled ties: Godfrey Sperling, "Bush and the Press," Christian Science Monitor, May 4, 2004; Post- 9/11 security concerns provide an additional excuse to further isolate the president from the press. According to Howard Fineman, Newsweek's chief political correspondent for 20 years, "The trend line is to fewer press conferences, smaller press pools, fewer opportunities for the reporters to eyeball the president." At the same time, there's "more security, more distance, more assertiveness by the Secret Service...more isolation. The logic of security knows no limits." Quoted in Lori Robertson, "In Control," American Journalism Review, February/March 2005. For a comparison of Bush with past presidents, see: One President Who Didn't See the Press as an Enemy; Ford Had a Warm Relationship With Many Journalists," Washington Post, January 1, 2007.

Peer Reviewer's Comments: There is an extra word, "address," on Line 3 of the "Description of sources."

24b In law, the judiciary can review the actions of the executive.

Score: YES

References: Article III of the U.S. Constitution grants authority to the Supreme Court for all cases arising under the Constitution or other laws of the United States. Section 13 of the Judiciary Act more explicitly authorizes the Supreme Court "to issue writs of mandamus, in cases warranted by the principles and usages of law, to any courts appointed, or persons holding office, under the authority of the United States." It is the 1803 Supreme Court case Marbury v. Madison, however, which most definitively established the principle of judicial review. [\[LINK\]](#); and [\[LINK\]](#)

24c In practice, when necessary, the judiciary reviews the actions of the executive.

Score: 75

References: The Supreme Court hears cases on actions of the executive, but does not initiate such reviews. While the Supreme Court is formally non-partisan, there is increasing concern that the Court is becoming more partisan as a result of an increasingly partisan and highly-politicized confirmation process. According to a 2005 report in the Christian Science Monitor, "Many analysts - including some of the justices themselves - have expressed concern that the increasingly partisan and ideologically driven nomination process is politicizing the court, tainting its credibility as dispassionate arbiters of the law." Warren Richey, "How a new justice could change the court," July 10, 2005.

Peer Reviewer's Comments: The U.S. Supreme Court often declines to grant cert in all types of cases, including cases involving executive actions.
The U.S. Supreme Court has developed certain judicial doctrines, such as the political question doctrine, that it cites in refusing to hear some cases involving "political" actions by the other two branches of government.

"Independent Judges, Dependent Judiciary: Institutionalizing Judicial Restraint," John A. Ferejohn and Larry D. Kramer. http://www.law.nyu.edu/journals/lawreview/issues/vol77/no4/ferejohn_kramer.pdf

24d In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

Score: 50

References: Executive orders are commonplace in the U.S., although they rarely engender animosity from the opposition party. [\[LINK\]](#) President Bush's use of executive orders differs little from his predecessors, with Bush issuing 242 through August 16, 2007, compared to Clinton's 364 during the latter's eight year term. "Executive Orders Since President Kennedy," Associated Press, August 16, 2007.

More worrisome, however, is President Bush's increased usage of "signing statements" which allow presidents to disregard or decline to enforce all or part of a law the president has signed. The American Bar Association's Bipartisan Task Force calls this practice "an unconstitutional power grab," and notes that "Bush has used signing statements to challenge more than 800 laws, more than all previous presidents combined. At the same time, Bush has vetoed just one bill - the fewest number of vetoes since the 1800s, sharply limiting Congress's ability to override his judgments." Charlie Savage, "ABA Urges Halt to 'Signing Statements'," Boston Globe, August 09, 2006 Pg. A2.

Social Scientist's Comments: In addition, a recent report by OpenTheGovernment.org and People For the American Way Foundation found that: President Bush has used executive orders to limit use of the Freedom of Information Act and Presidential Records Act, expanded the power to classify information for national security reasons, and created a range of new categories of "sensitive" information. In some cases, the government has gone so far as to reclassify documents that had been available to the general public for many years. [\[LINK\]](#)

25: Is the executive leadership subject to criminal proceedings?

25a *In law, the heads of state and government can be prosecuted for crimes they commit.*

Score: YES

References: The Constitution grants Congress the authority to impeach the president, vice-president and all civil officers of the United States for, and conviction of, treason, bribery, or other high crimes and misdemeanors. The House of Representatives serves as a quasi-grand jury in deciding whether to impeach the president, while the Senate decides whether the impeachment proceedings warrant removal from office. In the case of President Clinton, the House determined he had committed perjury and referred the case to the Senate, but the Senate decided against removing him from office. [LINK](#)

Peer Reviewer's Comments: I think the indicator is looking for information on criminal investigation/prosecution as opposed to impeachment. You may want to look into issues of "qualified immunity" for public officials.

25b *In law, ministerial-level officials can be prosecuted for crimes they commit.*

Score: YES

References: The Constitution grants Congress the authority to impeach the president, vice-president and all civil officers of the United States for, and conviction of, treason, bribery, or other high crimes and misdemeanors. The House of Representatives serves as a quasi-grand jury in deciding whether to impeach the president, while the Senate decides whether the impeachment proceedings warrant removal from office. In the case of President Clinton, the House determined he had committed perjury and referred the case to the Senate, but the Senate decided against removing him from office. [LINK](#)

Peer Reviewer's Comments: Look at immunity from prosecution and "qualified immunity."

26: Are there regulations governing conflicts of interest by the executive branch?

26a *In law, the heads of state and government are required to file a regular asset disclosure form.*

Score: YES

References: Certain senior officers and employees of the executive branch are required to file a public report disclosing their financial interests as well as the interests of their spouse and minor children. These include: the President; Vice President; officers and employees of the executive branch whose basic rate of pay meets a certain threshold amount (including Generals and Admirals of the uniformed services); Certain other less senior executive branch employees whose duties involve the exercise of discretion in sensitive areas such as contracting, procurement, administration of grants and licenses, and regulating or auditing non-Federal entities are required to file confidential financial disclosure reports. Office of Governmental Ethics site: [\[LINK\]](#); U.S. Response to OAS First Round Questionnaire, [\[LINK\]](#) Note: It is the responsibility of the OGE interpret the rules pertaining to conflicts of interest, post-employment restrictions, standards of conduct and public and confidential financial disclosure statements. However, OGE has no enforcement powers, which are invested in the inspectors general offices of each executive agency. This system has been criticized for its lack of independence, as each inspector general reports to the cabinet member at the head of that agency.

26b *In law, ministerial-level officials are required to file a regular asset disclosure form.*

Score: YES

References: The Office of Governmental Ethics and the agencies maintain a separate public disclosure system for Standard Form (SF) 278 Public Financial Disclosure Reports filed by high-level executive branch officials. Copies of the reports of Presidential appointees subject to Senate confirmation, designated agency ethics officials, and certain other officials are available from OGE directly by filing the appropriate access form, OGE Form 201. SF 278 reports of those officials and all other public filers are also available from the officials' own employing departments and agencies throughout the executive branch. These records are available, not under the FOIA, but the under the Ethics in Government Act of 1978 (5 U.S.C. appendix, § 105) and OGE's regulations thereunder, subject to certain restrictions on use (including a general prohibition on commercial use, except for dissemination to the general public by news and communications media). [\[LINK\]](#)

26c *In law, there are regulations governing gifts and hospitality offered to members of the executive branch.*

Score: YES

References: Executive branch employees are subject to restrictions on the gifts that they may accept from sources outside the Government. Generally they may not accept gifts that are given because of their official position or that come from certain interested sources ("prohibited sources"). Those sources include persons (or an organization made up of such persons) who: are seeking official action by the employee's agency; are doing or seeking to do business with the employee's agency; are regulated by the employee's agency, or have interests that may be substantially affected by performance or nonperformance of the employee's official duties. There are a number of exceptions to the ban on gifts from outside sources. These exceptions would allow the acceptance of gifts in the following circumstances: where the value of the gift is \$20 or less; where the gift is based solely on a family relationship or personal friendship; where the gift is based on an outside business or employment relationship; or where the gift is in connection with certain political activities. "Summary of the Executive Branch Standards of Ethical Conduct," [\[LINK\]](#)

New changes passed by Congress and waiting on Bush's approval would affect the executive branch as well. For example, presidential candidates would have to pay the full charter rate when flying on private jets, rather than the current practice of paying merely the price of a first class commercial ticket. "Overhauling Congressional Ethics," New York Times, August 3, 2007.

26d In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

Score: NO

References: According to the U.S. State Department, "In the executive branch, the respective employing agency reviews the financial disclosure report of an officer or employee. Reports are reviewed for internal consistency and for facial completeness, but they are not audited. In addition to the review of the report (which can include Internet searches and other research geared towards cross-checking information with public sources), a number of other means exist to verify the information on a report. A reviewer can ask a filer questions to ensure all relevant information appears on the report and is correct. Also, the scrutiny of the media and of persons familiar with a filer can lead to allegations that a filer has omitted or misrepresented certain information on a publicly available financial disclosure report. Therefore, instead of using an independent auditor, the government relies on "public and media cultures that reward investigative reporters who uncover government scandal; that reward system gives incentive to investigative reporters to examine and investigate public financial disclosure reports closely." U.S. Response to OAS First Round Questionnaire, [\[LINK\]](#). Former Director of the Center for Public Integrity Chuck Lewis argues, however, that a system that relies primarily on media investigation is hindered by numerous obstacles, including complicated ethics rules, vague disclosure reports (e.g., assets are listed as ranges, not discrete amounts), and the media's decreasing investment in investigative reporting. Personal interview, spring 2003.

26e In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

Score: YES

References: Executive branch employees are subject to certain restrictions on their activity after they leave Government service. Two of the restrictions apply with respect to particular matters involving specific parties that were involved with while in Government service. If the employee's involvement in such a matter was personal and substantial, then the employee is permanently barred from representing anyone back to any Federal department, agency, or court on that same matter. If the matter was under the employee's official responsibility during the last year of Government service, then the employee is barred for two years after leaving Government service from representing anyone back to the Government on that same matter. In addition, certain high level officials are subject to a so-called "one-year cooling off period." For a period of one year after leaving a "senior" position, these officials may not make any appearance on behalf of any person (other than the United States) before his former agency with the intent to influence the agency on any matter in which that person seeks official action. "Ethics Program Topics" [\[LINK\]](#)

26f In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

Score: 25

References: It is very common for senior agency officials to travel from industry to government and back (or to a lobbying position for industry). This "revolving door" practice has increased significantly during the Bush Administration, and its impact on policy and public confidence in government is detailed in a 2005 collaborative report written by a collection of watchdog organizations: "A Matter of Trust," [\[LINK\]](#).

26g *In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.*

Score: 75

References: Compared to Congress, far less controversy surrounds gifts received by members of the executive branch. As a member of the President's Commission on Federal Ethics Law Reform points out "In Congress, but not in the executive branch, officials may accept luxurious travel, accommodations and meals anywhere in the world as long the trip has some official purpose, such as giving a speech or participating in a conference." Jan Witold Baran, "Can I Lobby For You?" Washington Post, January 8, 2006, B1. Nevertheless, in 2005, President Bush received \$17,316 in personal gifts, according to financial disclosures released by the White House, including a \$5,474 bike and \$515 cycling shoes from Trek Bicycle Corp. Vice President Cheney accumulated \$39,722 in gifts, including a \$15,000 oil painting of his home by Thomas William Jones and a \$6,125 Colt revolver from U.S. Firearms Manufacturing. Amy Argetsinger and Roxanne Roberts, "The Reliable Source," Washington Post, May 17, 2006. And in some cases, the "personal friend" exception can be used as a convenient loophole to hide improper gifts. Jeffrey H. Birnbaum, "Ex-Aide To Bush Found Guilty; Safavian Lied in Abramoff Scandal," Washington Post, June 21, 2006, p. A1.

26h *In practice, executive branch asset disclosures (defined here as ministers and above) are audited.*

Score: 0

References: According to the U.S. State Department, "In the executive branch, the respective employing agency reviews the financial disclosure report of an officer or employee. Reports are reviewed for internal consistency and for facial completeness, but they are not audited. In addition to the review of the report (which can include Internet searches and other research geared at cross-checking information with public sources), a number of other means exist to verify the information on a report. A reviewer can ask a filer questions to ensure all relevant information appears on the report and is correct. Also, the scrutiny of the media and of persons familiar with a filer can lead to allegations that a filer has omitted or misrepresented certain information on a publicly available financial disclosure report. Therefore, instead of using an independent auditor, the government relies on "public and media cultures that reward investigative reporters who uncover government scandal. That reward system gives incentive to investigative reporters to examine and investigate public financial disclosure reports closely." U.S. Response to OAS First Round Questionnaire, [\[LINK\]](#)

27: Can citizens access the asset disclosure records of the heads of state and government?

27a *In law, citizens can access the asset disclosure records of the heads of state and government.*

Score: YES

References: Individuals who wish to receive a copy of the financial disclosure report of an individual employed by the executive branch must file a request with the agency that employs the individual or with OGE if the agency is required to transmit a copy of the report to OGE.

27b *In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.*

Score: 75

References: There is no online database for public disclosure forms. OGE requests are filled within one or two working days. Source: Interview with OGE official Denise Shelton, September 15, 2006

27c *In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.*

Score: 100

References: Reports numbering less than 333 pages are free. (The vast majority of reports fall into this category, including, for example, the report for Secretary of State Condoleezza Rice.) Requested reports longer than 333 pages are charged for the entire job @ 3 cents per page. Source: Interview with OGE official Denise Shelton.

28: In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

28 *In practice, official government functions are kept separate and distinct from the functions of the ruling political party.*

Score: 50

References: Formal regulations and the Hatch Act divide activities devoted to government or campaign purposes. For example, official staff often resign to work on campaign activities, and are paid out of campaign funds. The Bush Administration, however, is coming under increasing fire for blurring the line between government and partisan objectives. For example, Bush's Attorney General (and former White House aid) is under fire regarding the firing of federal prosecutors solely on partisan grounds. And government officials, including the U.S. Surgeon General, have revealed that their work was heavily controlled for partisan reasons. Congress is also investigating whether executive branch officials were encouraged to help defeat Democrats in past campaigns. "GSA Chief Grilled on GOP Political Presentation," Washington Post, March 29, 2007; "Bush Administration Under a Cloud," Associated Press, April 22, 2007. "I was muzzled: ex-surgeon general; Says Bush officials kept hot-button issues from public," Chicago Sun Times, July 11, 2007.

Peer Reviewer's Comments: The researcher makes many great points, but I think many of the comments describe improper and partisan White House interference in official government functions, not the Republican Party per se taking on the functions of the executive branch.
The Hatch Act problem of the bright line between official activities and campaign activities that the researcher references does appear to fit within this category, that is, officials taking on the functions of partisan campaigners on "company time." I would rate this overall as a 75.

29: Can members of the legislature be held accountable for their actions?

29a In law, the judiciary can review laws passed by the legislature.

Score: YES

References: The federal judicial branch is composed of judges, appointed by the President and confirmed by the Senate, and various employees hired to support judicial functions. Judges receive a lifetime appointment without diminution of pay and can only be removed by the Congress after impeachment. Federal judges, located at various U.S. district and appeals courts throughout the United States, can check the legislatures and executives actions to ensure that they do not violate constitutional prerogatives and limits. U.S. Response to OAS First Round Questionnaire, [\[LINK\]](#)

Peer Reviewer's Comments: You may want to add a line about Marbury v. Madison and judicial review.

29b In practice, when necessary, the judiciary reviews laws passed by the legislature.

Score: 75

References: While the judiciary is formally non-partisan, there is increasing concern that the system (especially the Supreme Court) is becoming more partisan as a result of an increasingly partisan and highly-politicized confirmation process. According to a 2005 report in the Christian Science Monitor, "Many analysts - including some of the justices themselves - have expressed concern that the increasingly partisan and ideologically driven nomination process is politicizing the court, tainting its credibility as dispassionate arbiters of the law." Warren Richey, "How a new justice could change the court," July 10, 2005.

Peer Reviewer's Comments: The U.S. Supreme Court often declines to grant cert in all types of cases, including cases involving legislative actions.
The U.S. Supreme Court has developed certain judicial doctrines, such as the political question doctrine, that it cites in refusing to hear some cases involving "political" actions by the other two branches of government.

"Independent Judges, Dependent Judiciary: Institutionalizing Judicial Restraint," John A. Ferejohn and Larry D. Kramer. http://www.law.nyu.edu/journals/lawreview/issues/vol77/no4/ferejohn_kramer.pdf

Peer Reviewer's Comments: I think the comment is good, but is a bit off point. Yes, the U.S. courts do exercise judicial review, but sometimes elect not to do so out of deference to the legislature.

29c In law, are members of the national legislature subject to criminal proceedings?

Score: YES

References: Article 1, Sec. 6 of the U.S. Constitution states that Members of Congress "shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place." The Constitution also places the responsibility for overseeing congressional behavior on the House and Senate, respectively, with neither chambers' ethics committees being especially aggressive. Nevertheless, the Department of Justice's Federal Bureau of Investigation (FBI) will from time to time investigate and prosecute Members for egregious wrongdoing, such as bribery. In a recent case, the FBI raided the office and home of a Louisiana congressman who was suspected of bribery. "FBI Searches Congressional Office of Louisiana Lawmaker," Washington Post, May 21, 2006.

Peer Reviewer's Comments: Reps. Duke Cunningham and Robert Ney have also been prosecuted and convicted recently on corruption charges.

30: Are there regulations governing conflicts of interest by members of the national legislature?

30a *In law, members of the national legislature are required to file an asset disclosure form.*

Score: YES

References: Both House and Senate rules require members and senior staff to file financial disclosure forms. They must disclose income (earned and unearned), assets, liabilities, transactions in securities and real property, certain gifts, travel paid by a private source, outside positions, and agreements. Financial information regarding spouse and dependent children generally must be disclosed as well. Records are kept only for a six year period (the length of one term in the Senate), after which they are destroyed. [\[LINK\]](#); [\[LINK\]](#)

Social Scientist's Comments: New changes passed by Congress and waiting on Bush's approval would require additional disclosures:

1) Lawmakers must disclose those lobbyists who raise \$15,000 or more for them within six months by "bundling" campaign donations from numerous givers. 2) Senators seeking a special spending project, or "earmark," must disclose it two days before a vote and certify that they and their immediate relatives have no direct financial interest in it. 3) Leaders of the majority party, not the Senate parliamentarian, would rule on whether the earmark disclosure requirements have been met. 4) Lobbyists must disclose payments made to presidential libraries, inaugural committees or organizations controlled by, or named for, members of Congress.

Lobbyists must disclose payments made to presidential libraries, inaugural committees or organizations controlled by, or named for, members of Congress.

"A Summary of the Ethics Bill," The Associated Press, August 2, 2007

30b *In law, there are restrictions for national legislators entering the private sector after leaving the government.*

Score: YES

References: "According to House and Senate CURRENT rules: For one year after leaving office: A Member may not communicate with or appear before a Member, officer or employee of either House of Congress, or any Legislative Branch office, with intent to influence official action on behalf of anyone else. Very Senior Staff may not communicate with or appear before the individual's former employer or office with intent to influence official action on behalf of anyone else. A Member, Officer or Very Senior Staff Member 1.) May not represent or advise a foreign government or a foreign political party. 2.) May represent oneself, a state or local government, or the U.S. Government as an official or employee of a government agency or entity. [\[LINK\]](#); [\[LINK\]](#)"

If the ethics reforms are signed into law by President Bush, former senators must wait two years before lobbying Congress in person. Ex-House members and top congressional aides must wait one year. "A Summary of the Ethics Bill," Associated Press, August 2, 2007

30c *In law, there are regulations governing gifts and hospitality offered to members of the national legislature.*

Score: YES

References:	<p>New gift rules (awaiting Bush's signature):</p> <p>1) Senators and candidates for the Senate and White House must pay full charter fare when traveling on private airplanes. House members and candidates may not accept trips on private planes. 2) Members and their staffs may not accept gifts from lobbyists and their clients. 3) Lawmakers may not attend large parties given in their honor by lobbyists at national political conventions. A Summary of the Ethics Bill, Associate Press, August 8, 2007</p> <p>Current rules:</p> <p>The House and Senate gift rule prohibits acceptance of any gift unless permitted by one of the following exceptions: any gift (other than cash or cash equivalent) valued at less than \$50 (however, the cumulative value of gifts that can be accepted from any one source in a calendar year is less than \$100); gifts having a value of less than \$10 do not count against the annual limit ("Buydowns" are not allowed -- i.e., a gift valued at \$55 cannot be accepted merely by paying \$6); gifts from relatives, and gifts from other Members or employees; gifts based on personal friendship (but a gift over \$250 in value may not be accepted unless a written determination is obtained from committee), personal hospitality in a private home (except from a registered lobbyist); free attendance at charity, political, or officially-related "widely attended" events if offered by sponsor, and free attendance at receptions; anything paid for by federal, state, or local government.</p>
30d In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.	
Score:	NO
References:	<p>As with executive officials, the House and Senate ethics committees review financial disclosure forms for accuracy, but there is no independent audit.</p>
30e In practice, the regulations restricting post-government private sector employment for national legislators are effective.	
Score:	75
References:	<p>This rating is increased from 25 to 75, citing the "cultural change" regarding ethics on Capitol Hill (quoting Common Cause's Mary Boyle). This rating also assumes the new rules will take effect as follows: 1) Former senators must wait two years before lobbying Congress in person. Ex-House members and top congressional aides must wait one year. 2) Lawmakers and their aides may not try to influence hiring decisions by lobbying firms and others in exchange for political access. 3) Bars member-turned-lobbyists from setting foot in the Senate or House gym (a previously common place to make deals). "House stiffens ethics rules; The Senate is ready to pass an identical bill, the toughest crackdown on congressional behavior in decades," Los Angeles Times, August 1, 2007</p>
30f In practice, the regulations governing gifts and hospitality offered to national legislators are effective.	
Score:	75
References:	<p>This rating is increased from 25 to 75, citing the "cultural change" regarding ethics on Capitol Hill (quoting Common Cause's Mary Boyle). This rating also assumes the new rules will take effect as follows: 1) Former senators must wait two years before lobbying Congress in person. Ex-House members and top congressional aides must wait one year. 2) Lawmakers and their aides may not try to influence hiring decisions by lobbying firms and others in exchange for political access. 3) Bars member-turned-lobbyists from setting foot in the Senate or House gym (a previously common place to make deals). "House stiffens ethics rules; The Senate is ready to pass an identical bill, the toughest crackdown on congressional behavior in decades," Los Angeles Times, August 1, 2007.</p>

**Social Scientist's
Comments:**

Common Cause's Mary Boyle admits that loopholes will certainly persist despite reforms, but the disclosure mechanisms should help limit malfeasance because "more people will be watching."

30g *In practice, national legislative branch asset disclosures are audited.*

Score:

0

References:

As with executive officials, the House and Senate ethics committees review financial disclosure forms for accuracy, but there is no independent audit. Media and watchdog groups serve as the only real "auditors." See above.

31: Can citizens access the asset disclosure records of members of the national legislature?

31a *In law, citizens can access the asset disclosure records of members of the national legislature.*

Score: YES

References: The Ethics in Government Act of 1978 requires individuals who wish to receive a copy of the financial disclosure report of a candidate for, a member of, or a legislative officer or employee of the House or Senate must file a request with the appropriate office within each chamber.

31b *In practice, citizens can access legislative asset disclosure records within a reasonable time period.*

Score: 75

References: There is currently not an easily accessed online database. The ethics committees make the disclosure documents available to media when they become available in June each year. However, it is left to the media to summarize these disclosures or focus on certain legislators. See, for example, "Disclosures Make Lawmakers' Finances an Open Book," Washington Post, June 15, 2006. Ordinary citizens can view disclosure forms in person, or can fax a written request to view certain disclosure forms to either the Senate or House clerk, copies of which are then mailed out within a day or two. Overnight delivery is available if the requester has a FedEx account. Source: Interview with Senate Office of Public Records. It should be noted that Congress recently made salary levels available online for approximately 20,000 congressional employees. [\[LINK\]](#)

Social Scientist's Comments:

The new rules were supposed to streamline this process further: According to the Christian Science Monitor: 'A key provision that was dropped in the final version of this bill would have made lists of congressional earmarks available on a searchable database. The new version makes that requirement only "if technically feasible." "This is something Amazon.com does every day with its eyes closed," says Bill Allison, senior fellow for the Sunlight Foundation, a public interest group that promotes transparency in government. "We're still going to be in a situation where public interest groups are going to have to get earmarks in a form that's usable. Congress should have done this itself and didn't.'" "Congressional lobby reform aims at disclosure," August 1, 2007.

31c *In practice, citizens can access legislative asset disclosure records at a reasonable cost.*

Score: 75

References: The lack of an searchable online database requires a less than 100 rating here. Delivery via 3rd class mail is free, although copies cost 20 cents per page. Because the complexity of each legislators' finances varies, the total page count ranges from 4 to 236 (Virginia Senator John Warner). Source: Interview with Senate Office of Public Records.

32: Can citizens access legislative processes and documents?

32a *In law, citizens can access records of legislative processes and documents.*

Score: YES

References: The Congressional Record publishes a daily transcript of all congressional hearings and introduced bills.

Peer Reviewer's Comments: <http://www.gpoaccess.gov/crecord/index.html>

32b *In practice, citizens can access records of legislative processes and documents within a reasonable time period.*

Score: 100

References: The Congressional Record is published daily, and is available online. The Library of Congress also provides comprehensive legislative material on its THOMAS Web site. [\[LINK\]](#)

32c *In practice, citizens can access records of legislative processes and documents at a reasonable cost.*

Score: 100

References: Available online.

33: Are judges appointed fairly?

33a *In law, there is a transparent procedure for selecting national-level judges.*

Score: YES

References: The president is responsible for nominating Federal Circuit Court judges and Supreme Court justices and choosing the chief justice. These nominations must be confirmed by the Senate. [\[LINK\]](#)

33b *In practice, there are certain professional criteria required for the selection of national-level judges.*

Score: 100

References: A biographical review of federal judges reveals the vast majority have significant legal experience. [\[LINK\]](#)

Peer Reviewer's Comments: In contrast to many other judicial systems, there is no objective criteria established by law for the appointment of federal judges.

33c *In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).*

Score: YES

References: See above. For Supreme Court and some Appeals court nominations, the process receives a great deal of attention in the media. Senate Judicial Committee hearings on Supreme Court nominations are frequently televised on major broadcast channels.

34: Can members of the judiciary be held accountable for their actions?

34a *In law, members of the national-level judiciary are obliged to give reasons for their decisions.*

Score: YES

References: While no law exists requiring it, opinions of the courts (and often dissents) are well documented and made available to the public.

34b *In practice, members of the national-level judiciary give reasons for their decisions.*

Score: 100

References: An example of a recent campaign financing decision can be found at: [\[LINK\]](#)

34c *In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.*

Score: YES

References: The U.S. Judicial Conference Committee on Codes of Conduct oversees judicial conduct. Actions the courts system may take against a judge include private or public reprimand or censure, request for voluntary retirement, suspension of case assignments, and certification of disability of a judge to hold office. If appropriate, the Judicial Conference may transmit to the House a determination that consideration of impeachment may be warranted.

34d *In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.*

Score: YES

References: Member of the Judicial Conference is limited to the judicial branch, which limits political interference. The Chief Justice of the United States is the presiding officer of the Judicial Conference. Membership is comprised of the chief judge of each judicial circuit, the Chief Judge of the Court of International Trade, and a district judge from each regional judicial circuit.

Social Scientist's Comments: Tom Fitton, president of Judicial Watch (a conservative-leaning government watchdog), believes the non-political nature of the judiciary (at least compared to Congress) makes it far less likely that its internal judicial disciplinary agency can be affected by political interference. Still, he expresses concerns that the lack of an independent review system can be problematic. Interview, August 31, 2007.

34e *In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.*

Score: 50

References: According to U.S. government documents, actions the courts system may take against a judge include private or public reprimand or censure, request for voluntary retirement, suspension of case assignments, and certification of disability of a judge to hold office. If appropriate, the Judicial Conference may transmit to the House a determination that consideration of impeachment may be warranted ("U.S. Response to OAS First Round Questionnaire," [\[LINK\]](#)).

However, an independent review of this system finds numerous problems and a passive enforcement mechanism. "Ethics Lapses by Federal Judges Persist, Review Finds; Violations Involve Stock Holdings And Free Trips," Washington Post, April 18, 2006.

**Social Scientist's
Comments:**

Tom Fitton, president of Judicial Watch (a conservative-leaning government watchdog), expresses concern that judicial investigations, especially of the most controversial cases involving conflicts of interest, are insufficiently thorough.
See also, Implementation of the Judicial Conduct and Disability Act of 1980, A Report to the Chief Justice, The Judicial Conduct and Disability Act Study Committee, Stephen Breyer, Chair. [\[LINK\]](#)

Peer Reviewer's Comments:

The researcher's information is accurate, but it is my understanding that the circuit judicial councils rarely initiate their own complaints against judges. From September 2004-2005, for example, the chief judges initiated zero of the 642 complaints filed against federal judges. See: <http://www.uscourts.gov/judbus2005/tables/s22.pdf>. I would lower the score to 50.

34f *In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.*

Score:

75

References:

According to U.S. government documents, actions the courts system may take against a judge include private or public reprimand or censure, request for voluntary retirement, suspension of case assignments, and certification of disability of a judge to hold office. If appropriate, the Judicial Conference may transmit to the House a determination that consideration of impeachment may be warranted ("U.S. Response to OAS First Round Questionnaire," [\[LINK\]](#)).

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Peer Reviewer's Comments:

It might be worth noting that, between September 2004-2005, federal judicial councils dismissed all 267 complaints that came before them. See: <http://www.uscourts.gov/judbus2005/tables/s22.pdf>

35: Are there regulations governing conflicts of interest for the national-level judiciary?

35a *In law, members of the national-level judiciary are required to file an asset disclosure form.*

Score: YES

References: As with executive and congressional officials, the Ethics in Government Act of 1978 (5 U.S.C. appendix, § 105) and Ethics Reform Act of 1989, Pub. L. No. 101-194, §§ 601-603, 103 Stat. 1716-1760-1763 (1989) requires federal judges to disclose their finances.

Peer Reviewer's Comments: To whom? To the public? To tax authorities?

35b *In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.*

Score: YES

References: the Ethics in Government Act of 1978 (5 U.S.C. appendix, § 105) also places gift restrictions on judges. See also: Code of Conduct for United States Judges [\[NK\]](#)

Peer Reviewer's Comments: The code does not extend to the justices of the U.S. Supreme Court.

35c *In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.*

Score: NO

References: As with Congress and the executive branch, there is no formal auditing of disclosure forms.

35d *In law, there are restrictions for national-level judges entering the private sector after leaving the government.*

Score: NO

References: According to Tom Fitton of Judicial Watch, while there are restrictions for court clerks, there are no restrictions for judges.

Peer Reviewer's Comments: It might be worth mentioning that federal judges enjoy lifetime tenure. Federal judge, or senior federal judge, is often the last job such a judge will ever have.

35e *In practice, the regulations restricting post-government private sector employment for national-level judges are effective.*

Score: 75

References: Tom Fitton, President of Judicial Watch, does not view this a major problem in the U.S. After all, federal judges are appointed for life (Art. III, U.S. Constitution), so they rarely go into the private sector upon retirement. Still, no rules limit their ability to do so.

Peer Reviewer's Comments: Increasingly, U.S. judges are leaving the bench because of low or uncompetitive judicial salaries, and returning to the practice of law.

35f *In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.*

Score: 75

References: The Code of Conduct for United States Judges, which applies to federal judges and contains such standards as: integrity and independence (Canon 1); the avoidance of impropriety or the appearance thereof (Canon 2); impartiality and diligence (Canon 3); disqualification (Canon 3.C) and conflicts of interest (Canon 5). MECHANISM FOR FOLLOW-UP ON THE IMPLEMENTATION OF THE INTER-AMERICAN CONVENTION AGAINST CORRUPTION, 30 September 2005.

Social Scientist's Comments: Tom Fitton of Judicial Watch does not view this as a major problem in the judiciary. When it comes to corporate-sponsored travel however, he admits that the conservative nature of his organization makes it ideologically opposed to express significant concern over such trips.

Peer Reviewer's Comments: Supreme Court justices are not subject to the code. There has been steady concern about "junket" taken by justices and other activities by the justices that create the appearance of impropriety. See <http://abcnews.go.com/Nightline/Investigation/story?id=1534260>
I don't think the last sentence in the comments section is particularly relevant.

35g *In practice, national-level judiciary asset disclosures are audited.*

Score: 0

References: According to Judicial Watch president Tom Fitton, there is no independent audit of financial disclosure reports, only that which is done by his organization or the media.

36: Can citizens access the asset disclosure records of members of the national-level judiciary?

36a *In law, citizens can access the asset disclosure records of members of the national-level judiciary.*

Score: YES

References: As with executive and congressional officials, citizens can access judicial disclosure records.

Peer Reviewer's Comments: How? The Freedom of Information Act?

36b *In practice, citizens can access judicial asset disclosure records within a reasonable time period.*

Score: 75

References: As with Congress, the government does not make it as easy as it could be. Luckily, however, Judicial Watch, the public interest group that promotes integrity and accountability in the judiciary and the government, provides a complete, easy-to-use resource for financial disclosure reports for federal judges. Utilizing the Ethics in Government Act, Judicial Watch has obtained these financial disclosure reports and posts them as a public service. They are accessible at no charge. See: [\[LINK\]](#)

Peer Reviewer's Comments: I would remove "Luckily, however" from Lines 1 and 2.

36c *In practice, citizens can access judicial asset disclosure records at a reasonable cost.*

Score: 75

References: While the public can access the Judicial Watch database free on the Web, Tom Fitton laments that the judiciary charges them \$4,000 to access and modify the database for his organization's Website.

37: Can the legislature provide input to the national budget?

37a *In law, the legislature can amend the budget.*

Score: YES

References: As the National Democratic Institute (NDI) notes, the U.S. Congress plays a far greater role in budgeting decisions than do legislatures in most other democracies, "possessing virtually unlimited amendment powers in the budget process." John Whaley, "Strengthening Legislative Capacity in Legislative-Executive Relations," 2000, p. 14. See also: U.S. Office of Management and Budget, *The Budget System and Concepts: Budget of the United States Government, Fiscal Year 1999* (Washington, DC: U.S. Government Printing Office, 1998), p. 2.

37b *In practice, significant public expenditures require legislative approval.*

Score: 100

References: The NDI report notes "Congress considers the Presidents budget proposals and approves, modifies, or disapproves them. It can change funding levels, eliminate programs, or add programs not requested by the President. It can add or eliminate taxes and other sources of receipts, or make other changes that affect the amount of receipts collected."

37c *In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.*

Score: 100

References: Each chamber has a budget committee with a large number of full-time professional staff. Congress also receives budget assistance from the nonpartisan Congressional Budget Office (CBO). As NDI notes, "the CBO provides Congress the necessary expertise to assess and often counter the Presidents budget. Its staff of economists and public policy experts provide Congress with cost estimates of various policy options, as well as multi-year projections of government income. The CBO is an expensive resource, however. Its fiscal year 2000 appropriation totaled \$26.1 million (of which 87% went to personnel costs)." "Strengthening Legislative Capacity," p. 15.

38: Can citizens access the national budgetary process?

38a *In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).*

Score: 75

References: The majority of the budget process is transparent, with congressional debate and key hearings often televised. However, certain budget items related to intelligence and national security concerns are unknown to the public. For example, the Washington Post notes "the Counterintelligence Field Activity, or CIFA, is a three-year-old agency whose size and budget remain secret. It has grown from an agency that coordinated policy and oversaw the counterintelligence activities of units within the military services and Pentagon agencies to an analytic and operational organization with nine directorates and ever-widening authority. "Pentagon's Intelligence Authority Widens," December 19, 2005. It should be noted, however, that the Senate Select Committee on Intelligence has recently acted to require more transparency in intelligence budgets. "Panel Requires Annual Disclosure of Intelligence Budget," Washington Post, May 28, 2006, p. A6. A budgeting practice known as "earmarking" has also earned considerable scrutiny, as anonymous authors could drop in specifically targeted measures for their constituents. New ethics rules seek to end (or at least shine light on) this practice, although critics remain unconvinced that much will change. See for, example, "Draining the 'Swamp' Is Not So Easy; Skeptics Question Bite of Ethics Rules," The Washington Post, August 7, 2007

38b *In practice, citizens provide input at budget hearings.*

Score: 100

References: A list of witnesses who have testified recently at House budget committee hearings can be found at: [\[LINK\]](#).

38c *In practice, citizens can access itemized budget allocations.*

Score: 100

References: The federal government makes current and past budgets available online: [\[LINK\]](#)

39: In law, is there a separate legislative committee which provides oversight of public funds?

39 *In law, is there a separate legislative committee which provides oversight of public funds?*

Score: YES

References: Scores of committees and subcommittees hold hearings on proposals under their jurisdiction. The House and Senate Armed Services Authorizing Committees, and the Defense and Military Construction Subcommittees of the Appropriations Committees, for instance, hold hearings on the President's defense plan. To consider the budget's proposed changes in taxes, the House Ways and Means and the Senate Finance Committees will hold hearings. "Citizen's Guide to the Federal Budget," General Printing Office, p. 16. [\[LINK\]](#)

40: Is the legislative committee overseeing the expenditure of public funds effective?

40a *In practice, department heads regularly submit reports to this committee.*

Score: 100

References: Reports can be found at: [\[LINK\]](#)

40b *In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.*

Score: 50

References: The party in power occupies a greater number of committee slots on every congressional committee, with the ethics committees being the sole exception. On Appropriations, for example, the House committee responsible for writing each of the 13 annual federal spending bills, Democrats enjoy a 37 to 29 advantage.
[\[LINK\]](#)

40c *In practice, this committee is protected from political interference.*

Score: 75

References: For most of the post-WWII era, the U.S. had a "divided government" in which the president and Congress were from separate parties. This trend has been reestablished with the recent election which brought about Democratic control of Congress. This dynamic ensures that at the very least there will be political competition over the budget. While the Republicans controlled both houses of Congress and the presidency, critics accused the President of "rubber stamping" the appropriations of his fellow Republicans in Congress. "Democrats Pledge to Restrain Spending; Critics Say Party's Goals Are Too Lofty," The Washington Post, December 26, 2006.
For a review of the latter period, see: Thomas E. Mann and Norman J. Ornstein, The Broken Branch: How Congress is Failing America and How to Get it Back on Track. Oxford University Press (2006).

Peer Reviewer's Comments: I am probably misunderstanding this question, but legislative committees are intensely political and operate within the political process. The president, congressional leaders and others will praise or criticize their actions. I do not believe that "improper" motives (family ties, corruption) animate committee members in the overwhelming majority of circumstances, but party and geographic motives do.

40d *In practice, when necessary, this committee initiates independent investigations into financial irregularities.*

Score: 100

References: On a formal level, congressional committees conduct a large number of investigations and hearings on fiscal improprieties. See, for example: [\[LINK\]](#). The GAO also serves as an investigatory arm of Congress. As the willingness of Congress to investigate the executive branch is directly tied to its willingness to be independent of the executive branch, 2007 has seen far more investigative initiative than in the previous year (with the House Oversight and Government Reform Committee leading the way). "Revival of Oversight Role Sought; Congress Hires More Investigators, Plans Subpoenas," The Washington Post, April 25, 2007.

41: Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

41a *In law, there are regulations requiring an impartial, independent and fairly managed civil service.*

Score: YES

References: The Pendleton Civil Service Reform Act of 1883 established an independent civil service. [\[LINK\]](#)

41b *In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.*

Score: YES

References: The Pendleton Act specifically addresses these issues, with the Civil Service Reform Act of 1978 further refining these restrictions. [\[LINK\]](#)
Also, 5 U.S.C 2301 (8) state employees should be protected against arbitrary action, personal favoritism, or coercion for partisan political purposes.

41c *In law, there is an independent redress mechanism for the civil service.*

Score: YES

References: Civil Service Reform Act of 1978 provides for an appeals process.

41d *In law, civil servants convicted of corruption are prohibited from future government employment.*

Score: NO

References: Under 5 U.S.C 2302(b) (10), even a criminal conviction does not automatically justify taking a job action unless a nexus can be established between the conviction and performance of the employee's duties. However, 5 U.S.C 7371 requires any law enforcement officer who is convicted of a felony shall be removed from employment as a law enforcement officer on the last day of the first applicable pay period following the conviction notice date.

Peer Reviewer's Comments: I am not aware of statutory provisions prohibiting future government employment following a corruption conviction, although as a practical matter it is highly unlikely that one convicted of corruption would be able to obtain federal employment in the future.

42: Is the law governing the administration and civil service effective?

42a *In practice, civil servants are protected from political interference.*

Score: 75

References: Although few civil servants lose their jobs as a result of political interference and favoritism, their work content is often influenced by politics (especially as the heads of most agencies are political appointees). See stories related to the U.S. Surgeon General above, and "Profiling Report Leads to a Clash And a Demotion," The New York Times, August 24, 2005, p. A1.

42b *In practice, civil servants are appointed and evaluated according to professional criteria.*

Score: 75

References: The vast majority of the immense civil service force is hired on merit. However, over one thousand high-level positions are political appointees for whom neither professional criteria nor congressional approval are necessarily required. (In fact, a congressional report notes that the number of Schedule C political appointees, who are hired without congressional approval, has increased by over 400, from 1,229 in 2000 to 1,640 in 2005, an increase of 33%). [\[LINK\]](#)

Hurricane Katrina provided a particularly egregious example of a senior official of the Federal Emergency Management Agency who apparently lacked any professional training in this area prior to assuming the position. "Leader of Federal Effort Feels the Heat," New York Times, New York Times, September 3, 2006, p. A17.

42c *In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.*

Score: 75

References: The vast majority of the immense civil service force is hired on merit. However, over one thousand high-level positions are political appointees for whom neither professional criteria nor congressional approval are necessarily required. (In fact, a congressional report notes that the number of Schedule C political appointees, who are hired without congressional approval, has increased by over 400, from 1,229 in 2000 to 1,640 in 2005, an increase of 33%). [\[LINK\]](#)

Hurricane Katrina provided a particularly egregious example of a senior official of the Federal Emergency Management Agency who apparently lacked any professional training in this area prior to assuming the position. "Leader of Federal Effort Feels the Heat," New York Times, New York Times, September 3, 2006, p. A17.

42d *In practice, civil servants have clear job descriptions.*

Score: 100

References: Civil service jobs descriptions are highly detailed. Examples can be found at the federal government's online job search Web site. [\[LINK\]](#)

42e *In practice, civil servant bonuses constitute only a small fraction of total pay.*

Score: 75

References: 5 U.S.C § 5384 states that the amount of a performance award may not be less than 5 percent nor more than 20 percent of the career appointees rate of basic pay.

42f *In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.*

Score: 100

References: See the Federal Employment Statistics division of the Office of Personnel Management, an authoritative source for statistical information on the size and composition of the Federal civilian workforce.
[\[LINK\]](#)

Peer Reviewer's Comments: I think this needs a bit more sourcing. I can't find information on the number of authorized civil service positions.

42g *In practice, the independent redress mechanism for the civil service is effective.*

Score: 100

References: To protect the rights of civil service employees, the U.S. Merit Systems Protection Board was set up in 1978 as an independent, quasi-judicial agency in the Executive branch that serves as the guardian of Federal merit systems. The Board's mission is to ensure that Federal employees are protected against abuses by agency management, that Executive Branch agencies make employment decisions in accordance with the merit systems principles, and that Federal merit systems are kept free of prohibited personnel practices. [\[LINK\]](#)

42h *In practice, in the past year, the government has paid civil servants on time.*

Score: 100

References: There have been no reports of delayed employee disbursements over the past year. Source: Lexis Nexis search.

42i *In practice, civil servants convicted of corruption are prohibited from future government employment.*

Score: 25

References: The law does not require terminating felons, with the exception of law enforcement officers. Employees convicted of a felony may not receive a bonus, however. 5 U.S.C 8148.

Peer Reviewer's Comments: The researcher is correct, but as a practical matter, it is unlikely that civil servants convicted of corruption will be hired for future government employment. As I noted earlier, I am not aware of any statutory provisions prohibiting rehiring, but I think as a practical matter this is the case.

43: Are there regulations addressing conflicts of interest for civil servants?

43a *In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.*

Score: YES

References: See: Standards of Ethical Conduct for Employees of the Executive Branch ([\[LINK\]](#)) and Common Ethics Issues ([\[LINK\]](#))

43b *In law, there are restrictions for civil servants entering the private sector after leaving the government.*

Score: YES

References: If the employee's involvement in such a matter was personal and substantial, then the employee is permanently barred from representing anyone back to any Federal department, agency, or court on that same matter. If the matter was under the employee's official responsibility during the last year of Government service, then the employee is barred for two years after leaving Government service from representing anyone back to the Government on that same matter. In addition, certain high level officials are subject to a so-called one-year "cooling off " period. For a period of one year after leaving a "senior" position, these officials may not make any appearance before or communication to their former agencies on behalf of any person (other than the United States), with the intent to influence them on any matter in which that person seeks official action. [\[LINK\]](#)

43c *In law, there are regulations governing gifts and hospitality offered to civil servants.*

Score: YES

References: [\[LINK\]](#)

43d *In practice, the regulations restricting post-government private sector employment for civil servants are effective.*

Score: 25

References: [\[LINK\]](#)
"A Matter of Trust," [\[LINK\]](#).

Peer Reviewer's Comments:

43e *In practice, the regulations governing gifts and hospitality offered to civil servants are effective.*

Score: 75

References: As noted above, far less controversy surrounds gifts received by members of the executive branch compared to Congress. Nevertheless, a recent bipartisan congressional report shows how corrupt lobbyist Jack Abramoff "spent almost \$25,000 in meals and drinks for the White House officials and provided them with tickets to numerous sporting events and concerts." The report also notes, however, that the lobbyist was not especially successful in getting what he wanted. "Abramoff and Rove Had 82 Contacts, Report Says," New York Times, September 29, 2006.

**Social Scientist's
Comments:**

J. Steven Griles, the second-ranking official in the Interior Department yesterday was sentenced to 10 months in prison for a felony conviction of obstructing a Senate investigation into corrupt lobbyist Jack Abramoff. Giles is the highest ranking member of the Bush Administration to be convicted in connection to Abramoff. "Judge Orders Prison Time for Ex-Interior Deputy," Washington Post, June 27, 2007

43f *In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.*

Score:

50

References:

As "Matter of Trust" notes: The revolving door casts grave doubts on the integrity of official actions and legislation. A government employee could well be influenced in his or her official actions by promises of a future high-paying job from a business that has a pecuniary interest in the official's actions while in government." p. 8.

**Social Scientist's
Comments:**

A recent scandal involving college student loans led to the suspension of a U.S. Department of Education official, Matteo Fontana, after revelations that he owned at least \$100,000 in stock of a loan company that he was charged with overseeing, among other accusations that he aided a former employer. The Chronicle of Philanthropy, May 18, 2007 Friday. Democrats in Congress raised further questions about the ability of the Department's Inspector General to properly monitor the industry. "Justice Department is investigating overpayments to student loan company," Associated Press Financial Wire, May 10, 2007

44: Can citizens access the asset disclosure records of senior civil servants?

44a *In law, citizens can access the asset disclosure records of senior civil servants.*

Score: YES

References: Certain senior officers and employees of the executive branch are required to file publicly available reports. However, certain other executive branch employees whose duties involve the exercise of discretion in sensitive areas such as contracting, procurement, administration of grants and licenses, and regulating or auditing non-Federal entities are required to file confidential financial disclosure reports. The most notable difference between public and confidential reports, however, is that confidential reports are not available to the public. [\[LINK\]](#)

44b *In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.*

Score: 50

References: As noted above, disclosure forms for ministerial level officials are easily available. However, because the disclosure forms of "other executive branch employees" in "sensitive" positions are not publicly available, transparency is compromised. Also, FOIA requests for this material could be rejected based on exemptions related to sensitive personal information. See the OGE FOIA report for 2005: [\[LINK\]](#)

44c *In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.*

Score: 75

References: Cost has little bearing on publicly available disclosure reports. As noted above, however, appealing rejected FOIA requests can be very expensive.

45: Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

45a *In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.*

Score: YES

References: US Code 5 Sec. 2301 (9) states that employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences: (A) a violation of any law, rule, or regulation, or (B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

45b *In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.*

Score: 50

References: According to the CSO Government Accountability Project (GAP), "the Whistleblower Protection Act (WPA) has been eroded to the point that federal workers have virtually no protections from agency retaliation." [LINK 1](#). See also, "Coalition urges House to let whistle-blowers speak freely," The Hill, August 9, 2006.

45c *In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.*

Score: YES

References: The passage of the Sarbanes-Oxley Act of 2002 (Corporate Accountability Act) provides comprehensive whistleblower protections for all employees of publicly-traded companies.

45d *In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.*

Score: 100

References: GAP called Sarbanes-Oxley "outstanding good government legislation. The Act lengthens the statute of limitations and empowers state Attorneys General to prosecute corporate criminals under existing federal racketeering law. Its centerpiece, however, is legal rights for whistleblowers at publicly-traded corporations." Senate Testimony of GAP Legal Director Tom Devine on Corporate Whistleblower Protection, July 10, 2002.

Peer Reviewer's Comments: I would add that under the Federal False Claims Act, 31 USC Sec. 3729, et. seq., individuals may file suit on behalf of the federal government against government contractors they suspect are defrauding the government. The federal government then determines whether it will assume the lawsuit on behalf of the whistleblower. Regardless of whether the government takes on the case, the whistleblower would be eligible for a certain percentage of the funds recovered.

46: In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

46 *In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?*

Score: YES

References: Each federal agency has an office of Inspector General. These 58 offices serve as the clearinghouse for corruption complaints generally, and process about 200,000 complaints of waste, fraud and abuse annually. See Law Enforcement in the United States, by James Andrew Conser and Gregory D. Russell, 2005, Jones & Bartlett.
For an example of an agency OIG hotline, see: [\[LINK\]](#)

47: In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

47a In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

Score: 100

References: In 1978, Congress passed the Inspector General Act, which created high-level officials in each federal agency to conduct independent audits and investigations. These inspectors general had the power to explore agency operations, and they had authority over their own budget and staff. Dona F. Kettl, "Shedding Light on Corruption: Sunshine Laws and Freedom of Information [\[LINK\]](#)

The Office of Inspector General at U. S. Department of Health and Human Services has a staff of 1500 analysts, auditors, attorneys, criminal investigators, and support staff in 8 regional offices and 85 field offices across the United States and Puerto Rico.

[\[LINK\]](#)

47b In practice, the internal reporting mechanism for public sector corruption receives regular funding.

Score: 100

References: The Office of Inspector General at the Department of Health and Human Services, for example, is expected to receive \$45 million in 2008, up from \$39 million in 2006 and 2007. [\[LINK\]](#)

47c In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

Score: 100

References: To use the HHS OIG as an example, since 2004 the office realized in excess of \$36.6 billion in fine savings, recoveries and restitutions to the taxpayers and programs. In addition, more than 760 criminal convictions were obtained, 381 civil actions were resolved, and more than 5,300 exclusion of individuals and entities were imposed for fraud or abuse of Federal health care programs and/or their beneficiaries. [\[LINK\]](#)

Peer Reviewer's Comments: Is there information on how quickly complaints are processed? I can't find any on the Office of Inspector General's Web site.

47d In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

Score: 100

References: In a recent example, HHS OIG is undertaking a broad review of conflict-of-interest policies at the National Institutes of Health, with potentially wide ramifications involving the agency's oversight of nonfederal scientists who conduct research with government money. "HHS Watchdog to Recheck Ethics Cases," Associated Press Online, March 30, 2007.

Peer Reviewer's Comments: I am not sure that there is the same level of initiative in all Inspector General's offices in the federal government. There have been controversies recently about the IG's office in both the State Department and the CIA. See: <http://www.npr.org/templates/story/story.php?storyId=14527825> and <http://www.npr.org/templates/story/story.php?storyId=15225068>.

48: Is the public procurement process effective?

48a *In law, there are regulations addressing conflicts of interest for public procurement officials.*

Score: YES

References: 18 U.S.C. § 208. prohibits government officials from engaging in acts that affect their personal financial interest. [\[LINK\]](#).

In addition, three sets of regulations guide procurement activities: 1) Federal Acquisition Regulation (FAR), which was established to codify uniform policies for acquisition of supplies and services by executive agencies ([\[LINK\]](#)); 2) The Office of Management and Budget's Circular A-110, which sets forth standards for obtaining consistency and uniformity among Federal agencies in the administration of grants to and agreements with institutions of higher education, hospitals, and other non-profit organizations ([\[LINK\]](#)); 3) OMB's Circular A-76, which guides procurement activities related to private operation of government activities. Contract officers go through in house training programs. Senior officers become certified at the Defense Acquisition University at Fort Belvoir, Virginia. Source: interview with Dept. of Defense procurement specialist Andrew West

The Center for Public Integrity has conducted extensive investigations on the procurement process and on many cases found it wanting. For example, the Center's report notes "the Department of Defense Inspector General determined that 13 of the 24 contracts it reviewed did not adequately monitor contractors." In addition, "federal agencies have sometimes hired contractors to oversee the work being done by yet other contractors, a practice that raises questions of conflicts of interest. See "Windfalls of War" at [\[LINK\]](#). The Department of Defense has made some efforts to tighten its enforcement mechanism in response to a major scandal regarding a senior procurement officer who provided the Boeing Company preferential treatment in exchange for a job there. See: Renae Merle, "Pentagon Updates Rules On Post-Government Work, " Washington Post, " November 19, 2004.

High level procurement officials must file a confidential financial disclosure form for the Office of Governmental Ethics. According to a procurement specialist, federal auditors also check to see if too many contracts going to one contractor. Source: Interview with Dept. of Defense procurement specialist, Andrew West.

10 U.S.C. 2304 and 41 U.S.C. 253 require, with certain limited exceptions (see Subparts 6.2 and 6.3), that contracting officers shall promote and provide for full and open competition in soliciting offers and awarding Government contracts. [\[LINK\]](#)

"41 U.S.C. 253(c) and 10 U.S.C. 2304(c) each authorize, under certain conditions, contracting without providing for full and open competition. When the supplies or services required by the agency are available from only one responsible source, or, for DoD, NASA, and the Coast Guard, from only one or a limited number of responsible sources, and no other type of supplies or services will satisfy agency requirements, full and open competition need not be provided for. [\[LINK\]](#) " According to FAR regulations, all federal agencies should provide for inexpensive, informal, procedurally simple, and expeditious resolution of protests. Section 33.103 (c) Losing competitors receive a debrief from procurement officials to explain why they lost. Source: Interview with Dept. of Defense procurement specialist Andrew West. Procurement rules require suspending companies who frequently violate regulations. Source: Interview with Dept. of Defense procurement specialist Andrew West. The Center for Public Integrity's investigation revealed procurement violations by favorite companies often go unpunished. See, for example, "Documents Reveal Concern Regarding Halliburton Contracts," [\[LINK\]](#)

FAR and other procurement-related regulations are available online. See above. According to FAR regulations, contracting officers shall make information available on awards over \$3 million (unless another dollar amount is specified in agency acquisition regulations) in sufficient time for the agency concerned to announce it by 5:00 p.m. Washington, DC time on the day of the award.

FedBizOpps.gov provides an easily accessed point-of-entry for federal government procurement opportunities over \$25,000. ([\[LINK\]](#)), and the vast majority of federal procurement opportunities can be found here. However, an assessment of Department of Defense contracts worth millions of dollars conducted by the Center for Public integrity found that most of the contracts awarded to the very biggest defense contractors were won without what the Pentagon calls "full and open" competition. Of the 10 biggest contractors, only one -- Science Applications International Corp.(SAIC) won more than half its dollars through an open bidding process. Three of the top 10 -- United Technologies, General Electric and Newport News Shipbuilding (now owned by Northrop Grumman) -- collected less than 10 percent of their contract dollars through open bidding. "Outsourcing the Pentagon: Who benefits from the Politics and Economics of National Security?" September 2004 (revised 2006), [\[LINK\]](#). Award information on all federal contracts over \$2,500 can be found at: [\[LINK\]](#)

Under the Clinton and Bush Administrations, the U.S. has stepped up efforts to privatize certain activities that were traditionally government-run. Office of Management and Budget Circular No. A-76 sets the policies and procedures that executive branch agencies must use in identifying commercial-type activities and determining whether these activities are best provided by the private sector, by government employees, or by another agency through a fee-for-service agreement. The term typically used to describe this process is competitive sourcing. U.S. Department of Energy: "What You Always Wanted to Know About the New OMB Circular A-76, but Were Too Confused to Ask." OMB A-76 requires that agencies comply with procurement integrity, ethics, and standards of conduct rules, including the restrictions of 18 U.S.C. § 208, when performing streamlined and standard competitions. [\[LINK\]](#)

As noted above, the Center for Public Integrity has reported on the weak enforcement powers of privatization and procurement regulations. "Outsourcing the Pentagon," [\[LINK\]](#)

OMB Circular A-76 details requirements for competition, and requires an agency to make a formal public announcement (at the local level and via FedBizOpps.gov) for each streamlined or standard competition. Award information on all federal contracts over \$2,500 can be found at: [\[LINK\]](#)

Peer Reviewer's Comments: The URL <https://fpds.gov/> doesn't work for me.

48b *In law, there is mandatory professional training for public procurement officials.*

Score: YES

References: Contract officers go through in house training programs. Senior officers become certified at the Defense Acquisition University at Fort Belvoir. Source: interview with Dept. of Defense procurement specialist Andrew West

Social Scientist's Comments: The Government Employees Training Act, passed in 1958, created the framework for agencies to plan, develop, establish, implement, evaluate, and fund training and development programs designed to improve the quality and performance of the workforce. GETA was codified into Title 5 United States Code Chapter 41.

[\[LINK\]](#)

Peer Reviewer's Comments: Is there a legal provision supporting this?

48c *In practice, the conflicts of interest regulations for public procurement officials are enforced.*

Score: 50

References: The Center for Public Integrity has conducted extensive investigations on the procurement process and on many cases found it wanting. For example, the Center's report notes "the Department of Defense Inspector General determined that 13 of the 24 contracts it reviewed did not adequately monitor contractors." In addition, "federal agencies have sometimes hired contractors to oversee the work being done by yet other contractors, a practice that raises questions of conflicts of interest. See "Windfalls of War" at [\[LINK\]](#).

Social Scientist's Comments: In a recent positive example the Department of Homeland Security's OIG is investigating four of the seven top U.S. Coast Guard officers who retired since 1998, who took positions with private firms involved in the Coast Guard's troubled \$24 billion fleet replacement program, an effort that government investigators have criticized for putting contractors' interests ahead of taxpayers'. "Coast Guard's Purchasing Raises Conflict-of-Interest Flags," Washington Post , March 25, 2007 The article also notes that an expert panel appointed by the White House and Congress found this winter that increased reliance on contractors threatens to "undermine the integrity of the government's decision making processes." Handing off traditional governmental duties -- such as designing major systems and managing huge contracts -- coupled with defense industry consolidation, "increased the potential for organizational conflicts of interest," the panel found.

48d *In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.*

Score: YES

References: High level procurement officials must file a confidential financial disclosure form for the Office of Governmental Ethics. According to a procurement specialist, federal auditors also check to see if too many contracts going to one contractor. Source: Interview with Dept. of Defense procurement specialist, Andrew West.

48e *In law, major procurements require competitive bidding.*

Score: YES

References: 10 U.S.C. 2304 and 41 U.S.C. 253 require, with certain limited exceptions (see Subparts 6.2 and 6.3), that contracting officers shall promote and provide for full and open competition in soliciting offers and awarding Government contracts. [\[LINK\]](#)

Social Scientist's Comments: However, national security exceptions and the war in Iraq have led to a significant increase in no-bid contracts. "Federal No-Bid Contracts On Rise," Washington Post, August 22, 2007. For a specific example, see: "Armored Vehicles Chronically Late; Inspector General Faults No-Bid Deals," The Washington Post, July 12, 2007

48f *In law, strict formal requirements limit the extent of sole sourcing.*

Score: YES

References: "41 U.S.C. 253(c) and 10 U.S.C. 2304(c) each authorize, under certain conditions, contracting without providing for full and open competition. When the supplies or services required by the agency are available from only one responsible source, or, for DoD, NASA, and the Coast Guard, from only one or a limited number of responsible sources, and no other type of supplies or services will satisfy agency requirements, full and open competition need not be provided for. [\[LINK\]](#) "

48g In law, unsuccessful bidders can instigate an official review of procurement decisions.

Score: YES

References: According to FAR regulations, all federal agencies should provide for inexpensive, informal, procedurally simple, and expeditious resolution of protests. Section 33.103 (c)

48h In law, unsuccessful bidders can challenge procurement decisions in a court of law.

Score: YES

References: Losing competitors receive a debrief from procurement officials to explain why they lost. Source: Interview with Dept. of Defense procurement specialist Andrew West.

Peer Reviewer's Comments: Are there examples where losing bidders have filed suit?

Peer Reviewer's Comments: Can you confirm that individuals can petition a court of law?

48i In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

Score: YES

References: Procurement rules require suspending companies who frequently violate regulations. Source: Interview with Dept. of Defense procurement specialist Andrew West.

48j In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

Score: 50

References: The Center for Public Integrity's investigation revealed procurement violations by favorite companies often go unpunished. See, for example, "Documents Reveal Concern Regarding Halliburton Contracts," [\[LINK\]](#)

Social Scientist's Comments: The Project On Government Oversight (POGO) operates a Web-accessed database that shows major contractors continue to receive federal contracts despite significant examples in misconduct. [\[LINK\]](#). For example, Lockheed Martin has 41 cases of misconduct since 2005 (totaling \$553 million in contract funds), but nevertheless enjoyed nearly \$25 billion in federal contracts in 2005.

49: Can citizens access the public procurement process?

49a *In law, citizens can access public procurement regulations.*

Score: YES

References: FAR and other procurement-related regulations are available online.

49b *In law, the government is required to publicly announce the results of procurement decisions.*

Score: YES

References: According to FAR regulations, contracting officers shall make information available on awards over \$3 million (unless another dollar amount is specified in agency acquisition regulations) in sufficient time for the agency concerned to announce it by 5:00 p.m. Washington, DC time on the day of award. [\[LINK\]](#).

49c *In practice, citizens can access public procurement regulations within a reasonable time period.*

Score: 100

References: FAR and other procurement-related regulations are available online.

49d *In practice, citizens can access public procurement regulations at a reasonable cost.*

Score: 100

References: FAR and other procurement-related regulations are available online.

49e *In practice, major public procurements are effectively advertised.*

Score: 75

References: FedBizOpps.gov provides an easily accessed point-of-entry for federal government procurement opportunities over \$25,000 ([\[LINK\]](#)), and the vast majority of federal procurement opportunities can be found here. However, an assessment of Department of Defense contracts worth millions of dollars conducted by the Center for Public integrity found that most of the contracts awarded to the very biggest defense contractors were won without what the Pentagon calls "full and open" competition. Of the 10 biggest contractors, only one -- Science Applications International Corp. (SAIC) -- won more than half its dollars through an open bidding process. Three of the top 10 -- United Technologies, General Electric and Newport News Shipbuilding (now owned by Northrop Grumman) collected less than 10 percent of their contract dollars through open bidding. "Outsourcing the Pentagon: Who benefits from the Politics and Economics of National Security?" September 2004 (revised 2006), [\[LINK\]](#).

49f *In practice, citizens can access the results of major public procurement bids.*

Score: 100

References: Award information on all federal contracts over \$2,500 can be found at: [\[LINK\]](#)

Peer Reviewer's Comments: The URL <https://fpds.gov/> doesn't work for me.

50: Is the privatization process effective?

50a *In law, all businesses are eligible to compete for privatized state assets.*

Score: YES

References: Under the Clinton and Bush Administrations, the U.S. has stepped up efforts to privatize certain activities that were traditionally government-run. Office of Management and Budget Circular No. A-76 sets the policies and procedures that executive branch agencies must use in identifying commercial-type activities and determining whether these activities are best provided by the private sector, by government employees, or by another agency through a fee-for-service agreement. The term typically used to describe this process is competitive sourcing. U.S. Department of Energy: "What You Always Wanted to Know About the New OMB Circular A-76, but Were Too Confused to Ask."

50b *In law, there are regulations addressing conflicts of interest for government officials involved in privatization.*

Score: YES

References: OMB A-76 requires that agencies comply with procurement integrity, ethics, and standards of conduct rules, including the restrictions of 18 U.S.C. § 208, when performing streamlined and standard competitions. [\[LINK\]](#)

50c *In practice, conflicts of interest regulations for government officials involved in privatization are enforced.*

Score: 50

References: As noted above, the Center for Public Integrity has reported on the weak enforcement powers of privatization and procurement regulations. "Outsourcing the Pentagon," [\[LINK\]](#)

Recent congressional testimony indicates the problems continue. See: "House panel digs deeper into use of contractors; According to testimony, mismanagement of federal projects by private companies is a `systemic problem.'" Los Angeles Times, February 9, 2007

51: Can citizens access the terms and conditions of privatization bids?

51a *In law, citizens can access privatization regulations.*

Score: YES

References: OMB Circular A-76 details requirements for competition.

Peer Reviewer's Comments: Can you elaborate a bit more? How do citizens access?

51b *In practice, privatizations are effectively advertised.*

Score: 100

References: Award information on all federal contracts over \$2,500 can be found at: [LINK 1](#)

Peer Reviewer's Comments: <https://fpds.gov/> doesn't work for me.

51c *In law, the government is required to publicly announce the results of privatization decisions.*

Score: YES

References: OMB Circular A-76 requires an agency to make a formal public announcement (at the local level and via FedBizOpps.gov) for each streamlined or standard competition.

51d *In practice, citizens can access privatization regulations within a reasonable time period.*

Score: 100

References: Award information on all federal contracts over \$2,500 can be found at: [LINK 1](#)

Peer Reviewer's Comments: The URL <https://fpds.gov/> doesn't work for me.

51e *In practice, citizens can access privatization regulations at a reasonable cost.*

Score: 100

References: Award information on all federal contracts over \$2,500 can be found at: [LINK 1](#)

Peer Reviewer's Comments: The URL <https://fpds.gov/> doesn't work for me.

52: In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

52 *In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?*

Score: **NO**

References: There is no comparable "ombudsman" for the entire federal U.S. government. Instead, similar duties are "balkanized" throughout government, with inspectors general overseeing the performance of each federal agency, the GAO auditing budgetary matters, the OGE providing outreach and guidance for executive officials, each congressional chamber having its own ethics committee, judicial conduct guided by the Judicial Conference, and the Department of Justice responsible for overall investigation (FBI) and prosecution (Public Integrity Section) of government officials. See U.S. Response to OAS Questionnaire and Web sites of the various aforementioned entities.

53: Is the national ombudsman effective?**53a In law, the ombudsman is protected from political interference.****Score:** NO

References: The lack of a truly independent ombudsman requires a "no" rating here, especially as certain corruption entities (e.g., congressional ethics committees are well known for being influenced by political considerations). However, the U.S.'s "balkanized" anti-corruption structure does prove somewhat helpful in that competing agencies and governmental branches possess incentives to pinpoint corruption elsewhere.

53b In practice, the ombudsman is protected from political interference.**Score:** 50

References: With the exception of the GAO, whose head is appointed to a 15 year term, none of the entity heads enjoy true independence. Congressional ethics chairmen might be another exception, although their independence typically allows them to be an obstacle to anti-corruption efforts instead of a catalyst.

Social Scientist's Comments: A slight rating improvement is warranted since 2006, however, as 2007 exhibited multiple examples of vigorous activity by agency inspectors general. Stuart W. Bowen Jr., the U.S. special inspector general for Iraq and Pentagon Inspector General Claude Kicklighter have shown considerable independence in tracking down fraud and abuse among federal officials and contractors. "Army Combs for Abuses in Iraq Contracts" Washington Post, August 30, 2007. Another Report on Iraq, Another Round of Headaches for U.S., Washington Post, August 6, 2007. The Justice Department's inspectors are investigating whether former Attorney General Alberto Gonzales lied to Congress. "Justice Dept. Probing Whether Gonzales Lied, Washington Post, August 31, 2007

53c In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.**Score:** 25

References: With the exception of the GAO, whose head is appointed to a 15 year term, none of the entity heads enjoy true independence. Congressional ethics chairmen might be another exception, although their independence typically allows them to be an obstacle to anti-corruption efforts instead of a catalyst.

Social Scientist's Comments: A slight rating improvement is warranted since 2006, however, as 2007 exhibited multiple examples of vigorous activity by agency inspectors general. Stuart W. Bowen Jr., the U.S. special inspector general for Iraq and Pentagon Inspector General Claude Kicklighter have shown considerable independence in tracking down fraud and abuse among federal officials and contractors. "Army Combs for Abuses in Iraq Contracts" Washington Post, August 30, 2007. Another Report on Iraq, Another Round of Headaches for U.S., Washington Post, August 6, 2007. The Justice Department's inspectors general are also investigating whether former Attorney General Alberto Gonzales lied to Congress. "Justice Dept. Probing Whether Gonzales Lied, Washington Post, August 31, 2007

53d In practice, the ombudsman agency (or agencies) has a professional, full-time staff.**Score:** 100

References: The lack of resources is rarely an obstacle for U.S. agencies (e.g., HHS inspector general's office received \$40 million in 2006); it is rather the lack of independence or political will. [\[LINK\]](#)

53e In practice, agency appointments support the independence of the ombudsman agency (or agencies).

Score: 50

References: Despite examples of increased activity in 2007 among inspectors general, they are generally appointed for political reasons and have well established party ties. See, for example, the longstanding relationship between DOJ's chief of the Public Integrity Section and Bush's Secretary of Homeland Security in: "Chertoff's Wake: The DHS chief's coattails extend to the administration's highest levels," Legal Times, January 23, 2006.

Peer Reviewer's Comments: See recent revelations about Department of State inspector general and political loyalty.

53f In practice, the ombudsman agency (or agencies) receives regular funding.

Score: 100

References: See above. As with staffing, most corruption-related agencies receive relatively stable funding from year to year.

53g In practice, the ombudsman agency (or agencies) makes publicly available reports.

Score: 50

References: Practices at different agencies vary significantly, making this difficult to score. GAO and DOJ reports are widely available, for example, while congressional ethics reports are almost always confidential. The administration's increased attempts to classify information also hamper full disclosure. [\[LINK\]](#)

53h In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

Score: 50

References: As discussed elsewhere, investigations of high-level officials are often hindered by jurisdictional or political obstacles, although exceptions in 2007 are notable.

53i In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

Score: 50

References: "Aggressive" would not be the adjective to characterize most enforcement examples in the U.S., but enforcement does occur. One of the most high profile cases of the past few years has been the conviction of David H. Safavian, former chief of staff of the General Services Administration, who despite his political connections was convicted in June 2006 of obstruction and making false statements. Additionally, former Ohio Congressman Robert Ney is serving a 30-month sentence in federal prison in Morgantown, W.Va., for performing official acts for Jack Abramoff's lobbying clients between 2001 and 2004 in exchange for luxury vacation trips, sporting tickets, campaign contributions, expensive meals and thousands of dollars in gambling chips. "Ney's Chief of Staff Wore Wire, Was Key To Boss's Conviction," Washington Post, August 13, 2007

Peer Reviewer's Comments: Nit-picking here, but I don't think that the ombudsman equivalents "imposed" the penalties in these cases as stated in question 53i: "In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders." But the "ombudsman" investigations into David Safavian, former chief of staff of the General Services Administration, and Robert Ney, former Ohio congressman, did lead to court convictions.

53j *In practice, the government acts on the findings of the ombudsman agency (or agencies).*

Score: 75

References: As the section detailing the GAO notes, the majority of GAO recommendations are followed by congressional and executive officials. In some cases, agencies are empowered to act on their own. For example, the Department of Justice's FBI investigates and then turns over evidence to the Criminal Division's Public Integrity Section to prosecute. [\[LINK\]](#)

Peer Reviewer's Comments: The URL <http://www.usdoj.gov/criminal/pin.html> doesn't work for me.

53k *In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.*

Score: 75

References: Most corruption-related agencies provide "hotlines" to report malfeasance. See, for example, the FBI's "Tips" program at: [\[LINK\]](#). However, an agency's willingness to act relies greatly on the activity reported and the person involved.

54: Can citizens access the reports of the ombudsman?

54a *In law, citizens can access reports of the ombudsman(s).*

Score: YES

References: DOJ's Public Integrity Section, for example, provides annual reports to Congress. [\[LINK\]](#)

Social Scientist's Comments: The balkanized nature of the multiple OIGs makes it difficult for the public to know where to turn for information on corruption.

54b *In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.*

Score: 100

References: Reports are available online. [\[LINK\]](#)

54c *In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.*

Score: 100

References: Reports available online at: [\[LINK\]](#)

55: In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

55 *In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?*

Score: YES

References: The U.S. Government Accountability Office (GAO) is an independent, nonpartisan agency that report to Congress.
The GAO Website describes its mission: Congress asks GAO to study the programs and expenditures of the federal government. GAO, commonly called the investigative arm of Congress or the congressional watchdog, is independent and nonpartisan. It studies how the federal government spends taxpayer dollars. GAO advises Congress and the heads of executive agencies (such as Environmental Protection Agency, EPA, Department of Defense, DOD, and Health and Human Services, HHS) about ways to make government more effective and responsive. GAO evaluates federal programs, audits federal expenditures, and issues legal opinions. When GAO reports its findings to Congress, it recommends actions. Its work leads to laws and acts that improve government operations, and save billions of dollars.

[\[LINK \]](#)

56: Is the supreme audit institution effective?

56a *In law, the supreme audit institution is protected from political interference.*

Score: YES

References: Paul F. Williams, PhD, is a professor of accounting at North Carolina State University and past chair of the public interest section of the American Accounting Association, "the GAO has remained relatively scandal-free and GAO reports are highly regarded as reliable and objective." The CPA Journal, April 2003, Pg. 14 Vol. 73 No. 4

56b *In practice, the head of the audit agency is protected from removal without relevant justification.*

Score: 100

References: The agency is headed by the Comptroller General, who is appointed to a 15-year term. The long tenure of the Comptroller General gives GAO a continuity of leadership that is rare within government. GAO's independence is further safeguarded by the fact that its workforce is comprised almost exclusively of career employees.

56c *In practice, the audit agency has a professional, full-time staff.*

Score: 100

References: Its 3,300 employees include experts in program evaluation, accounting, law, economics, and other fields.
[\[LINK\]](#)

Peer Reviewer's Comments: The Web site lists 3,260 employees for FY2006.

56d *In practice, audit agency appointments support the independence of the agency.*

Score: 100

References: Paul F. Williams, PhD, is a professor of accounting at North Carolina State University and past chair of the public interest section of the American Accounting Association, "the GAO has remained relatively scandal-free and GAO reports are highly regarded as reliable and objective." The CPA Journal, April 2003, Pg. 14 Vol. 73 No. 4

56e *In practice, the audit agency receives regular funding.*

Score: 100

References: The GAO's budget for 2006 was \$484 million, up \$10 million from 2005.
[\[LINK\]](#)

56f *In practice, the audit agency makes regular public reports.*

Score: 100

References: GAO posts reports on its Web site, which is updated daily. Also, reports may be ordered online from GAO. The Chief Quality Officer will either acknowledge or honor the request within 20 days of receipt, or on expedited basis in which the person requesting the records demonstrates a compelling need.
[\[LINK\]](#)

Peer Reviewer's Comments: The General Accounting Office URL doesn't seem to work.

56g *In practice, the government acts on the findings of the audit agency.*

Score: 100

References: GAO recommendations to improve government operations: 2,097 (At the end of fiscal 2006, 82 percent of the recommendations GAO made five years earlier had been implemented.)
Measurable financial benefits from GAO work: \$51 billion -- a \$105 return on every dollar invested in GAO.
[\[LINK\]](#)

Peer Reviewer's Comments: The citation "Congressional testimony: 240" is unclear to me.

56h *In practice, the audit agency is able to initiate its own investigations.*

Score: 100

References: Responsibilities of the GAO include: evaluating how well government policies and programs are working; auditing agency operations to determine whether federal funds are being spent efficiently, effectively, and appropriately; investigating allegations of illegal and improper activities; and issuing legal decisions and opinions. [\[LINK\]](#)

57: Can citizens access reports of the supreme audit institution?

57a *In law, citizens can access reports of the audit agency.*

Score: YES

References: While GAO is not subject to the Freedom of Information Act (5 U.S.C. 552), GAO's disclosure policy follows the spirit of the act consistent with its duties and functions and responsibility to the Congress.

57b *In practice, citizens can access audit reports within a reasonable time period.*

Score: 100

References: "GAO posts reports on its Web site, which is updated daily. Also, reports may be ordered online from GAO. The Chief Quality Officer will either acknowledge or honor the request within 20 days of receipt, or on expedited basis in which the person requesting the records demonstrates a compelling need."
[\[LINK\]](#)

Peer Reviewer's Comments: The General Accounting Office URL doesn't work for me.

57c *In practice, citizens can access the audit reports at a reasonable cost.*

Score: 100

References: No fee is charged for documents fewer than 50 pages. Fees for research or lengthy reports are nominal. [\[LINK\]](#)

Peer Reviewer's Comments: If they also appear online, this should be noted.

58: In law, is there a national tax collection agency?

58 *In law, is there a national tax collection agency?*

Score: YES

References: The Internal Revenue Service is a bureau of the Department of the Treasury and bills itself as "one of the world's most efficient tax administrators. In 2004, the IRS collected more than \$2 trillion in revenue and processed more than 224 million tax returns." [\[LINK\]](#)

59: Is the tax collection agency effective?

59a *In practice, the tax collection agency has a professional, full-time staff.*

Score: 100

References: According to U.S. News and World Report, the IRS has 89,704 as of September 2003. [\[LINK\]](#)

59b *In practice, the tax agency receives regular funding.*

Score: 100

References: FY 2006 budget was \$10.7 billion, a slight increase over FY 2004 and FY 2005 budgets. [\[LINK\]](#)

60: In practice, are tax laws enforced uniformly and without discrimination?

60 *In practice, are tax laws enforced uniformly and without discrimination?*

Score: 75

References: "Wealthy citizens are more able to hire accountants to help evade taxes (by legal or illegal means)." Kim M. Bloomquist, Senior Economist, Internal Revenue Service, "Tax Evasion, Income Inequality and Opportunity Costs of Compliance," Paper presented at the 96th Annual Conference of the National Tax Association, November, 2003.

61: In law, is there a national customs and excise agency?

61 *In law, is there a national customs and excise agency?*

Score: YES

References: The U.S. Customs and Border Protection (CBP) agency. [\[LINK\]](#)

62: Is the customs and excise agency effective?

62a *In practice, the customs and excise agency has a professional, full-time staff.*

Score: 100

References: CBP has 42,000 employees. [\[LINK\]](#)

Peer Reviewer's Comments: According to the Web site, it is now a 45,000-person workforce.

62b *In practice, the customs and excise agency receives regular funding.*

Score: 100

References: CBP's 2006 budget was \$5.8 billion. [\[LINK\]](#)

63: In practice, are customs and excise laws enforced uniformly and without discrimination?

63 *In practice, are customs and excise laws enforced uniformly and without discrimination?*

Score: 75

References: CBP's jurisdiction also covers border crossings, an area for which CBP has been accused of discrimination. "U.S. Muslims Say Terror Fears Hamper Their Right to Travel," New York Times, June 1, 2006.

Peer Reviewer's Comments: I agree with the researcher on border crossings, but on the narrow issue of the enforcement of customs, and excise laws and duties, I am not aware of any discrimination against Muslims or others. If border crossings are considered a component of customs for the purposes of this report, then I would agree with the 75 score as well.

64: In law, is there an agency or equivalent mechanism overseeing state-owned companies?

64 *In law, is there an agency or equivalent mechanism overseeing state-owned companies?*

Score: YES

References: With the exception of localized public utility companies, and some cities that have experimented with privatizing education, road construction and maintenance, trash collection and other services by contracting them out to private firms, state-owned companies do not generally exist in the United States. [\[LINK\]](#)

Social Scientist's Comments: However, there are exceptions in the cases of public/private state-supported entities, such as the passenger train system known as Amtrak. Under the Rail Passenger Service Act of 1970, Amtrak was created in 1971 and authorized to operate a nationwide system of passenger rail transportation. Historically, Amtrak has received subsidies from the Federal Government. These subsidies are approved annually, and Amtrak's ability to continue operating in its current form is dependent upon the continued receipt of such subsidies and other forms of financing transactions to raise funds. Amtrak Annual Report, 2006. [\[LINK\]](#)

There is no universal agency dedicated to overseeing state-owned companies. However, Amtrak, for example, has its own inspector general similar to executive branch departments. [\[LINK\]](#)

65: Is the agency or equivalent mechanism overseeing state-owned companies effective?

65a *In law, the agency or equivalent mechanism overseeing state-owned companies is protected from political interference.*

Score: YES

References: Amtrak has its a separate Board of Directors that is generally separate from the federal government. The Board, along with the Executive committee, has no direct connection to the government, with the exception of the Secretary of Transportation, who serves on the Board.
[\[LINK\]](#)

65b *In practice, the agency or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.*

Score: 100

References: Amtrak's OIG is well staffed, with offices in six major cities in the U.S.
[\[LINK\]](#)

Peer Reviewer's Comments: Elsewhere, it is written that there are offices of the inspector general in six cities. We need to clarify.

65c *In practice, the agency or equivalent mechanism overseeing state-owned companies receives regular funding.*

Score: 100

References: As with OIG offices in general, the Amtrak OIG receives regular funding and is expected to report annually to Congress.
[\[LINK\]](#)

65d *In practice, when necessary, the agency or equivalent mechanism overseeing state-owned companies independently initiates investigations.*

Score: 100

References: There are about 25 investigative staff, comprised of individuals with varying skills and level of expertise. This group conducts investigations on a variety of fraudulent, abusive, and mismanagement practices. OI staff is located in Washington, Baltimore, Philadelphia, New York, Chicago, and Los Angeles. The offices are aligned consistent with the company's corporate structure, infrastructure needs, and employee population. This allows us to provide service to the business units, maintain communication with management, and stay appraised of changes within the company.
[\[LINK\]](#)

65e *In practice, when necessary, the agency or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.*

Score: 100

References: According to the OIG's report to Congress, Amtrak OIG investigators were involved in hundreds of cases, including those involving credit card fraud and bribery on construction projects.
2007 Letter to Congress. [\[LINK\]](#)

Peer Reviewer's Comments: Again, nit-picking here, but the Office of the Inspector General does not actually impose the penalties.

66: Can citizens access the financial records of state-owned companies?

66a *In law, citizens can access the financial records of state-owned companies.*

Score: YES

References: Amtrak's annual report, including summaries of its federal subsidies, is available online. [\[LINK\]](#)

66b *In practice, the financial records of state-owned companies are regularly updated.*

Score: 100

References: Amtrak's OIG includes an audit division, which annually audits the agency's finances. [\[LINK\]](#)

See also, Semiannual Report to Congress, March 31, 2007. [\[LINK\]](#)

66c *In practice, the financial records of state-owned companies are audited according to international accounting standards.*

Score: 100

References: Amtrak's audit reviews include, but not limited to, the accuracy and reliability of financial information, compliance with applicable laws and regulations, and safeguarding of company assets. Operational, financial, systems, and compliance audits are conducted in accordance with applicable standards, particularly those established by the Comptroller General of the United States as promulgated in Government Auditing Standards (Yellow Book). [\[LINK\]](#)

66d *In practice, citizens can access the financial records of state-owned companies within a reasonable time period.*

Score: 100

References: As noted above, Amtrak's financial reports are available online.

66e *In practice, citizens can access the financial records of state-owned companies at a reasonable cost.*

Score: 100

References: As noted above, Amtrak's financial reports are available online.

67: Are business licenses available to all citizens?

67a *In law, anyone may apply for a business license.*

Score: YES

References: Basic business licenses are readily available, although the specific process varies from city to city and state to state. An example process can be found at the District of Columbia Department of Consumer and Regulatory Affairs Web site: [\[LINK\]](#)

Peer Reviewer's Comments: I think it is worth explicitly stating that obtaining business licenses is a local matter.

67b *In law, a complaint mechanism exists if a business license request is denied.*

Score: YES

References: In D.C., for example, the Office of Administrative Hearings has jurisdiction to hear appeals regarding decisions made by the Department of Consumer and Regulatory Affairs. [\[LINK\]](#)

67c *In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.*

Score: 75

References: In D.C., a licensee can get the appropriate forms on-line which are then mailed to the Department. A license then arrives in approximately two weeks. Source: recent experience starting a small business.

Peer Reviewer's Comments: We need to find additional sources here. How about in California, for example?
See: http://ttc.lacounty.gov/Proptax/Business_License.htm

67d *In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.*

Score: 100

References: Costs of D.C. business licenses vary by the type of business. A bakery, for example, would cost \$334 (\$35 application fee; \$10 business activity fee (bakery); \$289 license fee). [\[LINK\]](#)

68: Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

68a *In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.*

Score: YES

References: These vary by state. In California, for example, employers may find pertinent information at: [\[LINK\]](#)

Peer Reviewer's Comments: Food safety information at the federal and state levels can be found at <http://www.foodsafety.gov/~fsg/fsggov.html>.

68b *In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.*

Score: YES

References: These vary by state. In California, for example, employers may find pertinent information at: [\[LINK\]](#)

68c *In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.*

Score: YES

References: These vary by state. In California, for example, employers may find pertinent information at: [\[LINK\]](#)

Peer Reviewer's Comments: Food safety info at the federal and state levels can be found at <http://www.foodsafety.gov/~fsg/fsggov.html>.

69: Does government effectively enforce basic health, environmental, and safety standards on businesses?

69a *In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.*

Score: 75

References: Regulatory compliance and enforcement can be affected by politics because regulatory agencies often reflect the business-mindset of that administration. A recent GAO report, for example, found that the egg industry made several requests for changes in a 2000 Food and Drug Administration rule requiring safe-handling instructions on egg cartons to prevent food poisoning. It cited financial hardship. The final rule, issued Aug. 20, puts the safety information on the inside of the carton. "Washington's Surprisingly Flexible Rulemakers," Washington Post, August 28, 2007

69b *In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.*

Score: 75

References: "Washington's Surprisingly Flexible Rulemakers," Washington Post, August 28, 2007

69c *In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.*

Score: 75

References: See, for example, "Safety Agency Faces Scrutiny Amid Changes," New York Times, September 2, 2007

Peer Reviewer's Comments: In addition to food safety, the recent controversy regarding lead in toys manufactured in China comes to mind. I'm not sure about the role played by government inspectors, including whether it was positive or negative.

Peer Reviewer's Comments: Elaborate?

70: Is there legislation criminalizing corruption?

70a *In law, attempted corruption is illegal.*

Score: YES

References: 18 U.S.C § 201 outlines proscriptions on corruption of public officials and witnesses.

Peer Reviewer's Comments: Does Sec. 201 specifically proscribe "attempted" corruption?

70b *In law, extortion is illegal.*

Score: YES

References: 18 U.S.C § 872 outlines proscriptions extortion by officers or employees of the United States.

70c *In law, offering a bribe (i.e. active corruption) is illegal.*

Score: YES

References: The Standards of Conduct state at 5 C.F.R. ' 2635.101(b)(11) that employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities. Appropriate authorities for employees can include supervisors or appropriate investigative authorities such as an agency's Inspector General. Additionally, all executive branch agency heads are required, pursuant to 28 U.S.C. ' 535 (Attachment 18), to report to the U.S. Attorney General or his delegates any information, allegation, or complaint received in their respective agency regarding a violation of the U.S. criminal code by an executive branch officer or employee.

Peer Reviewer's Comments: I'm not sure that the information contained in the source section is on point. It seems to describe the obligation of employees to report corruption, not that offering a bribe is illegal, per se. Would citing 18 USC Sec. 201, as the researcher does elsewhere, be sufficient?

70d *In law, receiving a bribe (i.e. passive corruption) is illegal.*

Score: YES

References: 18 U.S.C § 201 outlines proscriptions on bribery of public officials and witnesses.

70e *In law, bribing a foreign official is illegal.*

Score: YES

References: The United States has signed and ratified both the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the Council of Europe Criminal Law Convention Against Corruption. U.S. Response to OAS Questionnaire.

Peer Reviewer's Comments: The Foreign Corrupt Practices Act should also be referenced: 15 U.S.C. §§ 78dd-1, et seq.

Peer Reviewer's Comments: Is the Foreign Corrupt Practices Act relevant here?

70f *In law, using public resources for private gain is illegal.*

Score: YES

References: Executive Order 12674 and modified in 1990 by Executive Order 12731 states 14 general principles that broadly define the obligations of public service. Underlying these 14 principles are two core concepts: employees shall not use public office for private gain, and employees shall act impartially and not give preferential treatment to any private organization or individual. [\[LINK\]](#)

70g *In law, using confidential state information for private gain is illegal.*

Score: YES

References: Section 101 (c) of Executive Order 12731 states that employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.

70h *In law, money laundering is illegal.*

Score: YES

References: 18 U.S.C § 1956 outlines proscriptions on laundering of monetary instruments.

70i *In law, conspiracy to commit a crime (i.e. organized crime) is illegal.*

Score: YES

References: 18 U.S.C § 371. outlines proscriptions on conspiracy to commit offense or to defraud United States.

Peer Reviewer's Comments: The Racketeer Influenced and Corrupt Organizations Act, and state laws, could be referenced here.

71: In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

71 In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

Score: YES

References: The U.S.'s strong commitment to separation of powers means that anti-corruption efforts are often diffuse and uncoordinated. Nevertheless, the executive branch's Department of Justice (and its Federal Bureau of Investigation (FBI) and Public Integrity Section have ultimate jurisdiction over corruption. "Public corruption is one of the FBI's top investigative priorities, behind only terrorism, espionage, and cyber crimes," according to the FBI Web site. [\[LINK\]](#).

See also: [\[LINK\]](#)

Members of Congress are also subject to DOJ investigation and prosecution, although the Constitution places most of the onus on Congress itself to manage Congressional behavior.

Social Scientist's Comments: As noted above, it has been argued that a diffuse approach to anti-corruption has its advantages, as various agencies have political and funding incentives to point out misconduct by rival agencies.

Peer Reviewer's Comments: The URL <http://www.usdoj.gov/criminal/pin.html> doesn't work for me.

Peer Reviewer's Comments: There are also inspector generals in government agencies to guard against and to investigate corruption and related conduct. Similarly, you may want to bring in a discussion of the General Accounting Office.

72: Is the anti-corruption agency effective?

72a *In law, the anti-corruption agency (or agencies) is protected from political interference.*

Score: NO

References: Both the FBI director and the Attorney General are presidentially appointed, and as such have close ties to the president and his administration. Former Attorney General Alberto Gonzales provides a stark example, as his intense loyalty to President Bush (and vice-versa) in the face of bipartisan criticism contributed to his stepping down.

Peer Reviewer's Comments: During 2007, Congress investigated charges that several U.S. attorneys, delegates of the U.S. attorney general, were fired by the attorney general at the behest of the White House because of their failure to investigate or prosecute local officials of the opposite party in advance of the 2004 presidential election. If true, these allegations would constitute gross political interference in the prosecutorial function.

72b *In practice, the anti-corruption agency (or agencies) is protected from political interference.*

Score: 50

References: See above and: "In the End, Realities Trumped Loyalty, Washington Post, August 28, 2007.

Peer Reviewer's Comments: U.S. prosecutors scandal should be discussed here.

72c *In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.*

Score: 75

References: Article II, Sec. 4 of the Constitution requires impeachment of civil officers to be limited to "treason, bribery, or other high crimes and misdemeanors."

Peer Reviewer's Comments: If "removal" refers only to constitutional removal, then I agree with the 75 score. But if removal includes removal, or pressuring removal, by the president, then I think the score has to be much lower. I'm thinking of a scenario like Richard Nixon's "Saturday Night Massacre" here.

72d *In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.*

Score: 100

References: Attorneys General (head of Dept of Justice) and FBI Directors are typically well qualified. See: [\[LINK\]](#) and [\[LINK\]](#)

72e *In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.*

Score: 100

References: As of July 3, 2007, the FBI had a total of 30,646 employees. That includes 12,444 special agents and 18,202 support professionals such as intelligence analysts, language specialists, scientists, information technology specialists, and other professionals. [\[LINK\]](#)

72f *In practice, the anti-corruption agency (or agencies) receives regular funding.*

Score: 100

References: In fiscal year 2007, the FBI's total budget was approximately \$6.04 billion, including \$318 million in program increases for our counterterrorism, surveillance, information technology, forensics, training, and information sharing programs. [\[LINK\]](#)

72g In practice, the anti-corruption agency (or agencies) makes regular public reports.

Score: 100

References: See example reports at: [\[LINK\]](#)

Peer Reviewer's Comments: General Accounting Office reports

72h In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

Score: 75

References: The Constitution gives Congress authority to oversee the behavior of its members, and this power creates significant obstacles to FBI investigations into improper congressional activities. In a recent example cited above, both Democratic and Republican members of Congress protested the FBI's raid of a Congressman's office, even though the FBI had amassed a great deal of evidence of wrongdoing.

Social Scientist's Comments: That said, 2007 has witnessed FBI investigations of powerful members of Congress, including Senator Ted Stevens, former Chair and current ranking minority member of the Senate Appropriations Committee, which oversees disbursement of federal funds. "Stevens' Raid May Boost Ethics Reform," Washington Post, August 1, 2007

72i In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

Score: 75

References: While the FBI can act independently, congressional leaders can serve as gatekeepers to FBI investigations into congressional malfeasance. "FBI to Examine Foley's E-Mails: Hastert Calls For Independent Probe," Washington Post, Monday, October 2, 2006; Page A1.

Social Scientist's Comments: The Constitution gives Congress authority to oversee the behavior of its members, and this power creates significant obstacles to FBI investigations into improper congressional activities. In a recent example cited above, both Democratic and Republican members of Congress protested the FBI's raid of a Congressman's office, even though the FBI had amassed a great deal of evidence of wrongdoing.
That said, 2007 has witnessed FBI investigations of powerful members of Congress, including Senator Ted Stevens, former Chair and current ranking minority member of the Senate Appropriations Committee, which oversees disbursement of federal funds. "Stevens' Raid May Boost Ethics Reform," Washington Post, August 1, 2007

73: Can citizens access the anti-corruption agency?

73a *In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.*

Score: 75

References: The FBI has online and telephone methods for reporting corruption. Minor cases get addressed rapidly, but political and constitutional realities may impede corruption claims against more senior officials, especially in Congress. [\[LINK\]](#)

73b *In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.*

Score: 75

References: Ordinary citizens who report corruption are more isolated from retaliation than are government employees (whose jobs are on the line). In addition to being protected by both state and federal laws, citizens enjoy a vibrant media system always eager to report on government corruption. Nevertheless, the sensitivity of the issue (especially surrounding national security revelations) can have a direct effect on the government's response. "Blowing the whistle on fraud against government yields big rewards," Associated Press, November 26, 2004.

Social Scientist's Comments: The House of Representatives does not allow citizens or CSOs to file complaints to its ethics committee, which has oversight over ethical (but not criminal) behavior. The committee's Web site, in contrast to the FBI's, is designed more for helping House members and staff navigate the ethics process than to encourage constituents to report malfeasance. [\[LINK\]](#)

74: Is there an appeals mechanism for challenging criminal judgments?

74a *In law, there is a general right of appeal.*

Score: YES

References: Both the Constitution and federal laws guarantee the right to appeal. [\[LINK\]](#)

74b *In practice, appeals are resolved within a reasonable time period.*

Score: 100

References: Backups are common, but cases are acted upon quickly. See: "The Changing Face of U.S. Courts," [\[LINK\]](#)

Peer Reviewer's Comments: But there are delays and lengthy proceedings due to backlogs.

74c *In practice, citizens can use the appeals mechanism at a reasonable cost.*

Score: 75

References: "While all citizens have access to the appeals process, attorney-related costs can be especially burdensome for lower-income appellants. In addition, empirical data suggests lower-income systems are adversely affected by the lack of legal counsel. The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City's Housing Court: Results of a Randomized Experiment Carroll Seron; Martin Frankel; Gregg Van Ryzin; Jean Kovath, Law & Society Review Vol. 35, No. 2 (2001), pp. 419-434.

75: In practice, do judgments in the criminal system follow written law?

75 *In practice, do judgments in the criminal system follow written law?*

Score: 100

References: The U.S. judicial system relies heavily on written law and precedence to guide decisions. [\[LINK\]](#)

Peer Reviewer's Comments: This could be strengthened a bit by a bit more description, one that could include the fact that in the common law system, judges do look to written law in the form of statute but also rely on case law.

76: In practice, are judicial decisions enforced by the state?

76 *In practice, are judicial decisions enforced by the state?*

Score: 100

References: Judicial decisions are enforced by the relevant federal, state or local jurisdictions. Richard Van Duizend, "The American Court System: Long Traditions, New Directions." [\[LINK\]](#)

Peer Reviewer's Comments: You may want to identify the enforcement mechanisms in the comment section.

77: Is the judiciary able to act independently?

77a *In law, the independence of the judiciary is guaranteed.*

Score: YES

References: Independence is assured by Article III of the Constitution, which guarantees life tenures for federal judges. As the Brennan Center notes, however, state judges usually do not have such protection, even under state constitutions. Most state judges do not enjoy life tenure, and approximately 80% of them must stand for some form of popular election." [\[LINK\]](#)

Peer Reviewer's Comments: Federal judges can only be removed through impeachment for "treason, bribery or other high crimes and misdemeanors." In the history of the United States, federal judicial impeachment has been very rare.

77b *In practice, national-level judges are protected from political interference.*

Score: 100

References: Federal judges enjoy considerable independence, despite being politically appointed by the president. Supreme Court Justice David Souter, for example, was nominated by President Bush's father but has proved a solid liberal vote on most issues. "Miers Makes Rounds On Hill; Some Senators Remain Skeptical," Washington Post, October 7, 2005.

Peer Reviewer's Comments: Unless a judge is impeached and removed from office, his or her salary cannot be diminished during his or her tenure.

Peer Reviewer's Comments: You could also add reference to elections of judges in many states, and the arguments that this can open judges up to political and other influences.

77c *In law, there is a transparent and objective system for distributing cases to national-level judges.*

Score: YES

References: Federal cases are distributed geographically. [\[LINK\]](#) and [\[LINK\]](#)

Peer Reviewer's Comments: Cases within jurisdictions are usually distributed at random to judges of that jurisdiction. See: <http://www.courts.gov/faq.html>

Peer Reviewer's Comments: I think the indicator is about court administration and case management, i.e. how cases are distributed to individual judges and panels within individual courts. Typically, there are systems in place for random case assignment that guard against collusions or conflicts of interest. There are also rules on conflict of interest and recusal to prevent corruption and, just as important, to deal with the perception of corruption.

77d *In law, national-level judges are protected from removal without relevant justification.*

Score: YES

References: Federal judges can be removed only for "treason, bribery, and other high crimes and misdemeanors." In addition, federal judges' salaries cannot be reduced while they are in office. As a result, the decisions of federal judges cannot be influenced by the threat of losing their jobs or income. [\[LINK\]](#)

Peer Reviewer's Comments: Discuss judicial disciplinary procedures. See the Administrative Office of U.S. Courts and judicial ethics.

78: Are judges safe when adjudicating corruption cases?

78a *In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.*

Score: YES

References: While the security of judges is an increasing concern, bodily harm and assault has not been related to corruption cases. "Durbin, Obama Ask Attorney General To Help Immediately Release Funding for Judicial Security," Press Release, Senator Barak Obama, December 2, 2005.

Peer Reviewer's Comments: Try the Administrative Office of the U.S. Courts for information on judicial security. Better than a politician's press release.

78b *In practice, in the last year, no judges have been killed because of adjudicating corruption cases.*

Score: YES

References: While the security of judges is an increasing concern, bodily harm and assault has not been related to corruption cases. "Durbin, Obama Ask Attorney General To Help Immediately Release Funding for Judicial Security," Press Release, Senator Barak Obama, December 2, 2005.

79: Do citizens have equal access to the justice system?

79a *In practice, judicial decisions are not affected by racial or ethnic bias.*

Score: 50

References: Racial disparities are widespread in the U.S. generally, and the judicial system also reflects these disparities. Perhaps one of the most egregious example is the arbitrary sentencing distinction made between crack cocaine (used primarily by African-Americans) and powder cocaine (used primarily by whites). As the Sentencing Project notes, "For powder cocaine, a conviction of possession with intent to distribute carries a five year sentence for quantities of 500 grams or more. But for crack, a conviction of possession with intent to distribute carries a five year sentence for only 5 grams." "Crack Cocaine Sentencing Policy: Unjustified and Unreasonable," [\[LINK\]](#).

Social Scientist's Comments: Three months after this initial assessment, the Supreme Court ruled that federal judges are not bound by federal guidelines calling for tougher penalties for those who sell crack rather than powder cocaine, giving them broad discretion in drug and other criminal cases. In the wake of this ruling, The U.S. Sentencing Commission voted unanimously to allow some 19,500 federal prison inmates, most of them black, to seek reductions in their crack cocaine sentences. "Justices Reinforce Leeway on Sentences," Washington Post, December 11, 2007. "Panel Allows Easing of Crack Sentences" Washington Post, December 11, 2007.

Peer Reviewer's Comments: The researcher is absolutely correct regarding the crack-versus-powder double standard. Furthermore, there have been studies about the racist nature of state death penalty convictions. While racism remains a fact of life in U.S. culture, I think that improvements in civil rights in the past 40 years, and their reflection in the law and the composition of the judiciary itself, make this score more of a 50 than a 25. I think an upgrade is in order particularly when comparing the United States to other countries on this issue.

Peer Reviewer's Comments: You may also want to cite the U.S. sentencing guidelines since you raised the sentencing project.

79b *In practice, women have full access to the judicial system.*

Score: 75

References: While women generally enjoy equal access to the legal system, their lower incomes decrease their likelihood of navigating the system successfully compared to men. In addition, many women's rights organizations argue that some laws (e.g., domestic violence) remain biased in favor of men. See, for example: [\[LINK\]](#)

79c *In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.*

Score: YES

References: Stuart Gorin and Bruce Carey, "Players in the Judicial Process," [\[LINK\]](#)

Peer Reviewer's Comments: Discussion of Legal Aid Corporation and public defenders in the United States?

79d *In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.*

Score: 75

References: Public defenders, while trained, are typically far less experienced and successful than their prosecuting counterparts, leading to high turnover among PDs. Charles J. Ogletree, Jr., "Beyond Justifications: Seeking Motivations to Sustain Public Defenders," Harvard Law Review > Vol. 106, No. 6 (Apr., 1993), pp. 1239-1294

Peer Reviewer's Comments: Furthermore, public defenders often carry enormous caseloads, which makes adequate representation of individual criminal defendants difficult.

79e *In practice, citizens earning the median yearly income can afford to bring a legal suit.*

Score: 100

References: The U.S. is well known for its litigious culture, in which attorneys encourage lawsuits and generally agree to take payment on the condition the suit is successful. In fact, the Association of Trial Lawyers of America, one of the largest lobbying organizations in the nation, works very hard to maintain this system. See: [\[LINK\]](#) and [\[LINK\]](#)

Peer Reviewer's Comments: The ATLA is now known as the American Association for Justice: www.justice.org. I think the researcher gives this organization too much credit. Although I am sure they are a big lobbying group, other lawyers associations, and lawyers overall, push to maintain the system, and go against any reform seen as antithetical to this system (e.g., tort reform).

Peer Reviewer's Comments: Not all attorneys encourage lawsuits. The fee system you are referring to is the "contingency basis." There are others as well.

79f *In practice, a typical small retail business can afford to bring a legal suit.*

Score: 100

References: The U.S. is well known for its litigious culture, in which attorneys encourage law suits and generally agree to take payment on the condition the suit is successful. In fact, the Association of Trial Lawyers of America, one of the largest lobbying organizations in the nation, works very hard to maintain this system. See: [\[LINK\]](#) and [\[LINK\]](#)

Social Scientist's Comments: Also, the U.S. maintains a "small claims" court system to expedite claims. In California, for example, individuals cannot seek more than \$7,500; (\$5,000 for corporations or other entities). [\[LINK\]](#)

Peer Reviewer's Comments: The ATLA is now known as the American Association for Justice: www.justice.org. I think the researcher gives this organization too much credit. Although I am sure they are a big lobbying group, other lawyers associations, and lawyers overall, push to maintain the system, and go against any reform seen as antithetical to this system (e.g., tort reform).

79g *In practice, all citizens have access to a court of law, regardless of geographic location.*

Score: 75

References:

The National Center for State Courts estimates that "rural courts represent approximately 79% of the counties in America," but argues that these courts are often underfunded compared to the urban counterparts. Cullen, Don. Rural Courts: What Makes them Unique. Williamsburg: National Center for State Courts, Institute for Court Management, 2000.

80: Is the law enforcement agency (i.e. the police) effective?

80a *In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.*

Score: 100

References: Unlike many countries, law enforcement in the United States is primarily a local matter, thereby making generalizations difficult. Even at the federal level, there are many different law enforcement agencies, including the FBI, Marshal Service, Secret Service, diplomatic protection, border patrol, airport security, etc. In general, however, most high level law enforcement appointees have professional experience. See, for example, [\[LINK\]](#)

80b *In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.*

Score: 100

References: As noted above, the FBI's budget for 2007 was over \$6 billion, while the Marshal's Service budget was over \$800 million. [\[LINK\]](#); [\[LINK\]](#)

Even local police departments are typically well funded (D.C.'s Metropolitan Police Department's FY 2005 budget totaled \$398 million). However, funding may or may not directly affect the quality of enforcement, and many large urban cities face continued criticisms about poorly trained and inefficient police forces (e.g., Washington DC being a prime example). "Fenty Loath To Extend Emergency Crime Bill," Washington Post, September 30, 2006; Page B1

80c *In practice, the law enforcement agency is protected from political interference.*

Score: 75

References: Federal agencies (e.g., the FBI) have been well covered on this matter above. At the local level, police chiefs are appointed by the local executive (e.g., mayor) and as such often reflect political concerns of that executive or other political leaders (e.g., city council). Washington D.C.'s recent "crime emergency" provides an illustrative example, as evidence indicates the "emergency" may have had more to do with political concerns than an empirically-based increase in crime. "Crime: Up or Down? One month into the official crime 'emergency,' where are we?" Washington Post editorial, August 19, 2006.

Peer Reviewer's Comments: Would this be an appropriate place to discuss the controversy surrounding the politicization of the Justice Department and the US prosecutors?

81: Can law enforcement officials be held accountable for their actions?

81a *In law, there is an independent mechanism for citizens to complain about police action.*

Score: YES

References: Police departments generally maintain some system to field citizen complaints. D.C.'s Metropolitan Police Department's Office of Police Complaints is responsible for this function. [\[LINK\]](#)

81b *In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.*

Score: 75

References: The decentralized nature of U.S. law enforcement makes it extremely difficult to assess this accurately. As above, large, urban police departments earn greater criticism for their lack of responsiveness. The 2005 killing of New York Times reporter David E. Rosenbaum in Washington, DC is an illustrative example. Colbert King, "The Death of David Rosenbaum," Washington Post, February 25, 2006, p. A17.

81c *In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.*

Score: YES

References: Depending on the nature and extent of the corruption, cases are handled either by the specific department's internal affairs division or by the U.S. Department of Justice.

81d *In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.*

Score: 75

References: The aggressiveness of investigations varies significantly by jurisdiction. The Department of Justice is responsible for overall investigation (FBI) and prosecution (Public Integrity Section) of government officials. U.S. Response to OAS First Round Questionnaire, [\[LINK\]](#) [\[LINK\]](#)

81e *In law, law enforcement officials are not immune from criminal proceedings.*

Score: YES

References: Law enforcement officers enjoy no special immunity. [\[LINK\]](#)

81f *In practice, law enforcement officials are not immune from criminal proceedings.*

Score: 100

References: While investigation of law enforcement officers may be lax on some occasions, immunity is not an impediment. See above.