

**POLITICAL CORRUPTION AND CAMPAIGN FINANCING:
Brazil's Slow Shift Towards Anti-Corruption Laws**

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This paper will review the nature of political corruption in Brazil as revealed by a series of exposés and investigations since 1985, and analyze the attempts to remedy this situation. The relationship of political corruption to campaign financing also will be assessed, as well as the expected effects of recent modifications in the legislation adopted in September 1993, regulating campaign finance in the 1994 elections.

1.0 - HISTORICAL OVERVIEW

The practice of political corruption in Brazil has a long history since the colonial period, along two dimensions: 1) the manipulation of political decisions to favor private economic gains; and 2) the illegal appropriation and "detour" of public funds by politicians and/or their designates (persons or institutions).

The first dimension involves private economic gains for the decision makers themselves, or for other parties or institutions. In the latter case, usually the decision makers involved receive some material benefit in return.

The second dimension is more complex and involves a large variety of schemes and strategies: "sweetheart" loans from public financial institutions, "no-show" public employees, over-invoiced public contracts with "rigged" bidding procedures, destination of public funds to "philanthropic" foundations linked to the decision makers, allocation of funds to local governments for public works and services never executed, requiring a percentage kickback from government contractors to insure disbursements for services and public works already executed, etc. In some cases, such "detours" of public funds to local "pork barrel" projects by members of Congress do not return directly to the latter's pockets, but garner "political capital" for use in the next reelection campaign in favor of these politicians' "political survival". (Ames, 1987)

Traditionally, prior to the military takeover in 1964, these two dimensions of political corruption existed but on a scale stage consistent with the scarce public resources available during that of Brazil's economic development.

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Although one of the rationales for the military intervention in 1964 was to "end political corruption", and despite numerous military inquests to this end, the levels of political corruption increased significantly during their 21 years in power, in direct proportion to an increased role of the State in economic development, and increases in GDP and federal budgets (direct administration and state enterprises). One of the reasons the military leadership sought an "honorable exit" from political power was the institutional erosion of the armed forces during this period, due, in large measure, to increased levels of corruption. (**Geddes & Ribeiro Neto, 1993**)

After the "political opening" (liberalization) in 1974, this situation became public as press censorship was gradually lifted and investigative reporters began exposing an ever increasing number of cases of government corruption. (**Assis, 1984**)

During the final months of the military regime (1983-1984), the press revealed a case of political corruption with direct consequences for the presidential succession campaign of 1984/1985. The then Chief of the National Information Service (SNI) and contender to succeed President Gen. João Figueiredo, Gen. Octávio Medeiros, was implicated in a scandal involving CAPEMI (military retirement fund). Despite total inexperience in the area, CAPEMI "won" a contract to extract valuable hardwoods from an area to be flooded by new Tucuruí hydro electric project. (**Pedone, 1989**) The over invoicing and consequent kickbacks were destined to Medeiros' campaign slush fund. The services were only partially performed, the CAPEMI subsidiary went bankrupt, and the French bank loan to finance the operation (brokered by then Brazilian Ambassador in Paris, ex-Finance Minister Delfin Neto) became "uncollectible". Needless to say, Medeiros' candidacy was imploded.

2.0 - THE RETURN TO CIVILIAN GOVERNMENT

Two slates of civilian candidates competed for the indirect presidential election by an electoral college on January 15, 1985: **PDS** (Democratic Social Party, which had supported the military regime) - Ex-Governor of São Paulo, Paulo Maluf & Federal Deputy Flávio Marcílio (PDS-CE); and the **Democratic Alliance** (which joined the **PMDB** (Party of the Brazilian Democratic Movement) and the **Frente Liberal** (Liberal Front, a dissident splinter from PDS) - Sen. Tancredo Neves (PMDB-MG) & Sen. José Sarney (ex-PDS-MA).

The Democratic Alliance slate won by a landslide 300-vote margin, but Tancredo Neves was taken sick the night before the inauguration scheduled for March 15, 1985, never recovered and José Sarney became president until March, 1990.

In 1986, congressional elections were held for the next regular four-year period and charged with the task of elaborating a new Constitution. The latter, promulgated in October, 1988, reestablished many of the prerogatives and powers of Congress which had been suppressed during the military period, including "the power of the purse", especially the power to review and alter the federal budget submitted by the Executive Branch. Under the military, the Congress was allowed to pass a "Yes-No" judgement on the budget, with no alterations.

In late 1988, a special congressional investigating committee (CPI) investigated political corruption of Sarney's government, and voted out a report recommending that impeachment proceedings be initiated. However, in early 1989, the then acting President of the Chamber of Deputies, Innocência de Oliveira (PFL-PE) unilaterally decided to archive the case, and not transmit same to the floor of the Chamber for a collective political decision.

President Fernando Collor de Mello (PRN-AL) was elected President in the second round run-off in December 17, 1989, and took office on March 15, 1990. Amid accusations of massive corruption which included testimony of his own younger brother, (**Collor de Mello, 1993**), the Congress was forced to install a CPI on June 1, 1992, to investigate these charges. On August 25, 1992, this CPI decided that the evidence gathered merited installation of impeachment proceedings. Its report was transmitted to the lower house, which on September 29, 1992 decided in favor the trial of Collor by the Senate . (**Krieger, Novaes e Faria, 1992; Naumanne, 1992; Mendes, 1992; & Suassuna & Pinto, 1992**) Collor was temporarily suspended from the Presidency for 180 days on October 2, and in an historic vote, the Brazilian Senate decided to impeach Collor and strip his political rights for eight years by an overwhelming vote on December 30, 1994. (**Brooke, 1992**)

Brazil thus became the first presidential system to impeach a sitting president, and Venezuela became the second, by impeaching Pres. Carlos Andrés Perez in 1993. In early 1993, criminal indictments were brought before the STF (Supreme Court) against ex-President Collor and several of his co-conspirators. Judgements are expected by the end of 1994. (**Fleischer, 1993a; Weyland, 1993**)

Collor's Vice President, ex-Senator Itamar Franco (PRN-MG) was allowed to take office on October 2, 1992 to serve out the remainder of the Presidential term through January 1, 1995.

Almost exactly one year later, a second (or better, a "continuation") CPI was installed on October 16, 1993, to investigate a massive scheme of corruption involving the Congressional Joint Budget Committee, a "cartel" of large Brazilian construction companies, and appropriate decision makers in the Executive Branch. (**Krieger, Rodrigues & Bonassa, 1994; Granato, 1994; & Rodrigues, 1994**) All told, this "Budgetgate" CPI investigated 43 of its peers, three governors and many others in the private and public sectors during 94 days. However, the CPI's conclusive report recommended the sacking of 18 members of Congress, further investigations of 11, and the innocence of another 14.

During the following five months, the Chamber of Deputies passed judgement regarding its 42 members including in the CPI report, and the Senate regarding the single senator included.

Under the 1988 Constitution, the Chamber and Senate can only render a political judgement by voting to expel members. Such a decision then allows the Federal General Prosecutor's Office (PGR) to bring criminal charges, where applicable, before the STF, based on criminal evidence gathered with the assistance of the Federal Police (PF).

Because the CPI uncovered evidence of participation of Executive Branch employees in the "Budgetgate" scheme, including activities during President Itamar Franco's tenure (after October 2, 1992), the President constituted a Special Investigating Commission (CEI) to investigate the accusations and recommend possible political action and criminal changes.

During this period, numerous other corruption scandals were uncovered, including: fraud in disbursements of social security funds; and "protection" payments to politicians and others by the numbers' racket in Rio de Janeiro and other states.

During the Itamar Franco Presidency (October, 1992 through December, 1994), both the Executive and Legislative Branches sought to remedy this situation with legislation aimed at: 1) modifying the bidding process on public contracts; 2) improving election legislation regulating campaign finance; and 3) creating a new Secretariat of Internal Control.

3.0 - THE IMPEACHMENT CPI OF PRESIDENT COLLOR, 1992

In fact, the Collor episode was not the first time that the Brazilian Congress went to the extreme of impeaching a President.

During the first half of November 1955, faced with a political conspiracy to impede the inauguration of Juscelino Kubitschek, who had been elected President by a relative majority in a direct popular vote on October 3, 1955 (a conspiracy supported by the then Governor of the state of Alagoas, Arnon de Mello (father of Fernando Collor de Mello), the Congress voted the impeachment of acting President Carlos Luz (PSD-MG) who was President of the Chamber of Deputies, and the then Vice President of the Republic, Café Filho (PRP-RN), who had taken office following the suicide of President Getúlio Vargas in August 1954. This episode occurred during a short period of ten days, under severe pressure (in favor of Kubitschek) from the tanks of War Minister, Gen. Henrique T. Lott, which had effectively occupied the streets of Rio de Janeiro. The next in line of presidential succession, Senate President Nereu Ramos (PSD-SC), was sworn in and governed under state of siege until Kubitschek's inauguration on January 31, 1956. Truly a much different "impeachment process" than that of 1992.

Prior to 1990, during the Sarney and previous presidencies, corruption of a more decentralized nature was known to exist and even "tolerated". Isolated decision makers, especially within the Executive Branch, operated their own corruption schemes with kickbacks of the order of 10% to 15%, often as not tied to campaign financing schemes for the next election.

In late 1988, a CPI was constituted to investigate corruption charges against Pres. Sarney's government, due, in part, to centralization attempts on the part of Sarney's immediate family. Significantly, the then Senator Itamar Franco (PL-MG) was one of the main leaders of this CPI.

In contrast, the Collor group inaugurated a new modus operandi of political corruption in 1989, during the election campaign.

Collor had been elected PMDB Governor of the state of Alagoas in 1986 mainly due the ability of his campaign treasurer, Paulo Cesar (PC) Farias, to "collect" more contributions from sugar mill operators than his opponent who was tied to the same interests. In 1988, with the 1989 campaign in mind, Collor and PC returned to the sugar interests with a concrete proposal: the Governor would exempt sugar from the state-levied sales tax in return for a percentage kickback to the campaign war chest which reportedly amounted to some US\$20 million. These funds were used to "prime the pump" during the "start up" phase of Collor's campaign in the first 5 months of 1989.

With the campaign inertia thus gained, Collor was leading the popular presidential preference polls, with close to 50% by June. PC Farias then began visiting potential "donors", large businesses mostly in Southern Brazil, and especially in São Paulo. Contributions in US\$ millions were judged by scale (degrees of access to the President once elected). Collections at that point were relatively easy, due to the front runner status of Collor **versus** the second and third place candidates (Luiz Ignácio "Lula" da Silva of the PT, and Leonel Brizola of the PDT, respectively) who expounded nationalist, anti-business policies -- but especially for the second round runoff election held December 17, 1989, when Collor narrowly defeated Lula by a 3% margin.

During the "transition" period, prior to Collor's inauguration on March 15, 1990, PC made a second round of visits to surprised Brazilian and foreign business leaders. Collor's "bagman" informed the "donors" that the 1989 contributions were "to avoid the election of Lula or Brizola", but now the "investments" were to "qualify" their companies to "do business with the new government" -- "no pay, no contracts". Several of the more indignant CEOs refused this second round, had their disbursements for goods and services already performed thru 1989 halted, were blacklisted from any new contracts, and the more vulnerable firms forced into bankruptcy in 1990. This was further exacerbated by the freezing of all financial assets for 18 months, decreed the day of Collor's inauguration, as part of the new Government's anti-inflationary, economic stabilization program.

Two major differences distinguished the "new Collor style" of political corruption in 1990:

1) a nearly total centralization of all schemes within PC Faria's front enterprise in São Paulo (EPC), which had offices in Brasília and several other state capitals, linked by computer/modem communications; and

2) the great increase in level (40%), as compared with the 10% to 15% "charged" during previous governments.

In Brazil, it is common practice for businesses to keep double books. The "second box", or caixa dois, is usually used to hide excess profits from taxation, but is also used for "illegal disbursements", such as campaign contributions -- normally made in spot cash (local currency or US dollars).

The EPC centralized scheme helped solve the latter problem through an apparently "legitimate" operation, where businesses channeled "first box" funds to EPC in return for false receipts for "services rendered" -- consulting fees and frequent charter air service by PC's dummy charter flight enterprise. The latter also served to remit US dollars to pay for false plane leasing contracts outside of Brazil.

This centralized arrangement gave the Collor government great political power over all funds so received and their utilization, but also provided strong coercive power over those decision makers who attempted to organize alternate (decentralized) schemes of corruption at the federal level. The latter were quickly "exposed" and eliminated.

This new scheme had three main objectives:

- 1) individual financial gain for PC Farias and Collor (PC threw a big party in Paris in December 1990 to celebrate his first US\$ billion);
- 2) selected investments in the election of Federal Deputies, Senators and Governors in the 1990 general elections; and
- 3) a "dynasty" strategy to insure continuation in power after 1995, for perhaps another 20 years.

The second and third objectives involved the election of a massive Collor majority in Congress in 1990, backed up by friendly governors in key states, who would proceed to change "the rules of the game" as of 1994, to assume Collor's perpetuation in power.

Two alternatives via constitutional revision were available: 1) allow reelection of the president (exactly what Argentine President Carlos Menem planned to achieve in 1994); or 2) if a parliamentary system were to be adopted (which seemed a good possibility in 1991/1992), Collor would resign and run for Congress in 1994, elect himself and a massive majority, and then become prime minister for as long as he could maintain a majority.

To facilitate matters, Collor appointed co-conspirators to most key decision positions within ministries and state enterprises. In many cases, certain Ministers were political appointees, and those concretely operating the scheme articulated with PC Farias were appointees at the Secretary General and Under Secretary levels. Moreover, Collor moved swiftly to "trash" the internal control organizations within each ministry and federal agencies. Once rid of these independent inspector general auditors, and because Congress was conveniently amiss in its constitutional function of oversight of Executive Branch operations, the corruption scheme operated freely.

Blessed with excellent TV communication skills, Pres. Collor easily dampened most accusations in the media, and enjoyed the complacency of most TV networks, most notably the Globo TV Network, which had been instrumental in his election in 1989. **(Lima, 1993)**

The Collor-PC scheme began to unravel in 1991, as the press covered an ever increasing number of corruption accusations (many stemming from leaks from within the administration), which included manipulation of state enterprise pension fund investments in the stock market to "favor" selected stocks. Brazilian journalists even travelled to South Florida to investigate the activities of PC's Brasil Jet aviation leasing and parts supply operation, only to learn that the DEA and FBI had said operations under surveillance. Over invoicing/kickback schemes were uncovered in supply contracts for the Ministries of Health and Education, as well as basic sanitation projects in other ministries. Minister of Labor, Antônio Magri, was accused on accepting a kick back of US\$30,000.00 for a sanitation project in the state Acre, by way of a hidden recording device used by a subordinate. Later, the then Governor of Acre, Edmundo Pinto, was murdered in his hotel room in São Paulo, after having apparently negotiated this and other contracts with a major construction company, whose representatives were lodged on the same floor of the hotel.

The major blow up occurred in May 1992, when in retaliation against the attempt by PC and Pres. Collor to establish an alternative media empire in Maceió in competition with the Collor family business managed by younger brother, Pedro Collor, the latter made public accusations of how the massive corruption scheme had operated. **(Collor de Mello, 1993)**

No longer could the Congress ignore the situation and to placate public opinion installed the "Collor/PC CPI" on June 1, 1992. Although the political class had a distaste for Collor and his modus operandi, most felt that this CPI would come to naught.

After a slow start, the CPI received bombastic testimony from a driver and secretaries who detailed the scheme sufficiently to uncover a vast paper trail of checks issued by false (phantom) bank accounts. The CPI ordered the Central Bank to break bank secrecy of hundreds of accounts and soon had thousands of checks to analyze.

As part of the economic stabilization plan adopted in March 1990, the Collor government had ended the Brazilian practice of checks written with "Cash" as the payee, and other anonymous financial transactions. Since then, all checks must state the full name of the payee. To get around this new norm, PC Farias set up scores of bank accounts under false names with false income tax and ID numbers, with the connivance of bank managers.

At this point it became apparent to most observers that Collor was vulnerable to political impeachment, as well as criminal charges together with the co-conspirators. However, the case was beginning to "snowball" and threatened to involve many politicians by the tracking of checks through the paper trail presented by Central Bank and telephone records. The CPI quickly finalized its report against Collor, without further investigations, which was approved on September 25, 1992, by a 16 to 5 margin.

In less than 30 days, the Chamber of Deputies, under the leadership of its then President, Dep. Ibsen Pinheiro (PMDB-RS), examined the CPI report, and by a voice roll call vote, carried

live by all TV networks, a total of 441 deputies voted in favor of admissibility, 36 against, one abstention and 25 absent -- 105 votes above the necessary constitutional quorum of 336 votes (2/3 of 503).

Thus, in a week of very unusual political activities, in perfect harmony with the 1988 Constitution and with no interference by the Armed Forces, Brazil's political institutions (the National Legislature with the help of some favorable decisions by the STF, and decisive investigations by staff from the Internal Revenue Service, Federal Police, PGR, Central Bank, etc.) decided to initiate impeachment proceedings of the first directly elected president since 1960 on Tuesday, September 29; formally removed the latter and installed the Vice President on Friday, October 2; and the next day, October 3, some 90 million Brazilian voters orderly went to the polls to elect municipal council members in 5,000 municipalities. These elections were without serious incidents, except for the capital (Maceió) and several other cities in the ousted President's home state of Alagoas.

This "colorful" telenovela was by no means over with the final impeachment of Collor by the Brazilian Senate on December 30, 1992, because the ousted President appealed the Senate decision (to strip his political rights for 8 years). Minutes before the Senate vote, Collor's lawyer read a hand written note from the President resigning the Presidency. This was a desperate attempt to save his political rights and thus be eligible to run for office in 1994.

Survey research in late 1993 showed that, despite impeachment, Collor could be elected federal deputy in almost all states (under the current PR system) and Senator in at least six. By a 71 to 9 margin, the Senate decided to proceed with the impeachment trial in spite of the resignation, and was finally decided by a 75 to 5 vote. The STF finally ended Collor's aspirations on December 17, 1993 by upholding the Senate's decision, and Collor remains ineligible until the 2002 elections.

In 1993, when Federal Police and PGR investigations were about to produce his indictment by the STF and consequently his preventive detention on tax evasion charges by a federal judge, PC Farias fled Brazil, via Paraguay and Argentina, to London. One step ahead of Scotland Yard, he then fled to Thailand, where he was recognized by a Brazilian tourist who reported same the Brazilian ambassador, who in turn requested action by local police. PC was arrested for having violated Thailand's visa regulations and was summarily deported to Brazil. PC had forgotten that Brazil's VARIG Airline had recently initiated direct flights from Bangkok to Rio with a technical refueling stop in Johannesburg.

Criminal proceedings continue before the STF and PC remains in preventative custody in Brasília, where he was also called to testify before the "Budgetgate" CPI in late 1993.

4.0 - THE "BUDGETGATE" CPI, 1993/94

The "Budgetgate" scandal actually began in late 1991 (prior to the Collor scandal and impeachment), after newspapers brought public attention to a scandal involving the Joint Budget Committee in Congress and the "incestuous" relations between the Committee Reporter, João Alves

(PFL-BA) and his six sub-reporters (nicknamed the "Seven Dwarfs" due to their short stature) with certain government agencies and construction companies. To save face, Alves was removed by the Congressional leadership, and substituted by PFL floor leader, Dep. Ricardo Fiuza (PFL-PE).

However, by November 1991, the necessary signatures of members of Congress had been gathered to convoke a CPI. Dep. Fiuza was no better than Alves, and in early 1992 he was accused, in collusion with Congress President Sen. Mauro Benevides (PMDB-CE), of having added an additional 197 items to the budget, after final approval by Congress, to the tune of an extra US\$204 million. In return for such notable services being rendered, Fiuza was appointed Minister of Social Action, where most of the extra amendments had been channeled. Actually, Pres. Collor advised Fiuza of the impending appointment while the latter was still closeted in the PRODASEN (the Senate data processing center) finalizing the 1992 budget. **(Krieger, Rodrigues & Bonassa, 1994:93-114)**

Confronted by a potential explosion with unknown consequences, the Chamber and Senate leaderships procrastinated until May 11, 1992, when, faced with the possibility of installation of the "Collor - PC" CPI, the elected officers of both houses decided to "archive" the "Budgetgate" CPI request, in anticipation of the former.

Having impeached Collor in the second semester of 1992, and swept the rest of the scandal under the rug, by January, 1992, most of the other anti-corruption accusations had subsided. However, the "Budgetgate" case was reopened after bombastic revelations in October 1993.

Alves and Fiuza had been assisted in their efforts by José Carlos Alves dos Santos, a Senate staffer who had become Joint Budget Committee staff director under João Alves (no relation), and, based on proven "competency", had been appointed Executive Branch Budget Director by Collor in August 1991.

José Carlos' wife, Ana Elizabeth, had been mysteriously kidnapped for ransom the night of November 19, 1992 (according to his version); the alleged kidnappers had broken off contact, and the police found no new leads; and Ana remained missing. The police did not believe José Carlos' story and suspected foul play on his part, but could find no firm evidence to this end. However, on October 5, 1993, the local Brasília police got a second chance. José Carlos was arrested for having purchased a video camera with false US\$100.00 bills. With a search warrant in hand, the police discovered over one million dollars in cash hidden in his home, and even larger amounts of unaccountable wealth evidenced by "conspicuous consumption" since 1988. Under severe pressure with regards the origin of this money, far above his regular Senate salary, José Carlos began to "sing" about the activities of the Joint Budget Committee, and the bundles of dollars he had received in "tips" for services rendered. **(Granato, 1994)**

José Carlos' accusations of the "Budgetgate" modus operandi were taken seriously by the political opposition in Congress, which collected the necessary signatures in record time, and the new CPI was installed on October 20, 1993. This CPI actually began where the 1992 CPI left off. The CPI's labors were divided into four sub-committees, and bank and telephone records of those accused

by José Carlos were subpoenaed. This paper trail soon led to other persons, including three state governors, public employees in the Executive Branch and major construction companies.

The noose closed tighter around José Carlos' neck on October 27, 1993, when the Brasília police discovered the body of Ana Elizabeth in a shallow grave near Planaltina, just north of Brasília proper, by way of the confessions of the two accomplices hired by José Carlos.

The Federal Police achieved a late night court order to search the home of a director of the Noberto Oderbrecht construction firm (also involved with the Acre case), and the results (some 80 kilos of documents and 60 diskettes) were amazing. Apparently, this firm had acted as the CEO for a "cartel" of construction firms controlling all public works contracts in Brazil, in collusion with the Joint Budget Committee and relevant sectors of the Executive Branch, especially in the Ministries of Transportation, and Social Action. The records were so meticulous that each item had a hand written margin note regarding the Deputy or Senator involved and the respective "percentage" allocated. In many cases the bank account movement and/or increase in assets of those receiving said payments were consistent with the value and date in the "cartel's" records. Apparently, the scheme was so sophisticated that, in addition to a previous designation of the "winner" of each public bidding, a "designated loser" was also chosen by the cartel to publicly "complain" about the bidding process -- thus, adding "legitimacy" to the process. **(Krieger, Rodrigues & Bonassa, 1993:185-205)**

Faced with an ever expanding paper trail of bank and telephone records, as well as other evidence, in January, 1994, the "Budgetgate" CPI, at the risk of involving up to one third of the Congress, many state governors, and large segments of the Executive Branch and the private sector in an election year, decided to practice "damage control" and prematurely closed out its investigations after reviewing the involvement of 43 members of Congress (the CPI recommended the sacking of 18, further investigation of 11, and the innocence of 14). The process was then transferred to the Chamber of Deputies and Senate for action against their respective members; first by the Constitution and Justice Committees, and then by an absolute majority floor vote of each house. No action was taken regarding those "recommended for further investigation". Of the 17 deputies recommended for sacking, four resigned to avoid expulsion, seven were finally expelled, and six were absolved. (See Table 01) Senator Ronaldo Aragão was absolved, after condemnation in committee.

The CPI report also recommended that additional CPIs be constituted: 1) campaign financing; 2) the role of the large construction companies; and 3) conspiracy and corruption in the Executive Branch. However, no new CPIs were set up as sequence to the "Budgetgate" CPI, but Pres. Itamar Franco constituted a "Special Investigating Committee" (CEI), chaired by Gen. Romildo Cahim, Chief of the Secretariat of Federal Administration, to follow up on the CPI's recommendations with regards the Executive Branch. This CEI has sacked several executive branch employees, and transmitted evidence to the judiciary for prosecution.

Following the resignation of four of its members to avoid sacking and ineligibility in 1994, the Chamber of Deputies moved quickly to approve new legislation that determined the ineligibility of any member of Congress under investigation who resigned to avoid sacking/ineligibility. However, the Senate balked at approving this measure, because, in addition to "a member of their club" being under

investigation, two sons of Senators were among the accused in the Chamber. Finally, under heavy popular pressure, the Senate passed the measure in April 1994.

The Senate also obstructed the sequential investigations and prosecution of the accused by not transmitting the CPI documentation to the Judiciary. Very different from the "Clean Hands" case in Italy, where the Judiciary conducted the investigations without the fetters of "parliamentary immunity".

In Brazil, the Judiciary (STF) can only prosecute members of Congress if they resign, are sacked by their peers, or if their respective House lifts their immunity. Thus, in some cases, the campaign for congressional mandate in Brazil becomes a quest for 4 or 8 years of immunity from any criminal prosecution.

For example, Brasília entrepreneur, Wagner Canhedo, who was suspect in the corrupt privatization of the VASP Airline by the São Paulo state government in 1990, which was the object of CPI and Judiciary investigations, was "discretely" elected Senate alternate in 1990 in the new frontier state of Roraima. Canhedo helped finance the election of a husband-wife team for Governor/Senator. Had the VASP case gotten "rough", the woman senator from Roraima was expected to resign, thus conferring parliamentary immunity (until 1999) for Canhedo, just one step ahead of prosecution.

5.0 - THE "PRECATORIOS" CPI, 1997

During the 1996 municipal election campaign, some rumblings emanated from the Central Bank regarding fraudulent operations in the issuance of debt paper by the São Paulo city government, involving the outgoing Mayor Paulo Maluf (PPB) and his hand-picked successor candidate, Celso Pitta, who had been Secretary of Municipal Finance. At the time, these accusations were characterized as an attempt to favor the candidacy of former Planning Minister, Senator José Serra (PSDB), who was in a distant third position. These accusations had little impact on the campaign, Serra did not make the second round which Pitta won by a large margin over the PT candidate, former Mayor Luisa Eurandina (1989-1993).

However, in early 1997, evidence was accumulated on the "precatório" scheme in other states (Santa Catarina, Alagoas and Pernambuco), which was enough for the Senate to install a special CPI to investigate yet another type of fraud involving "skimming" of public funds.

Since the 1988 Constitution prohibited state and municipal governments from issuing bonds, except for financing the payment outstanding debts of court judgements against these governments, the latter siezed on this mechanism as a way of raising resources to finance budget deficits.

Finance secretaries of these governments gathered past due debts (most of which had already been paid, were falsified, or greatly "inflated" and requested Senate approval for the issuance of bonds in the capital market. With at times reluctant approval of the Central Bank, the Seante approved these issues. But instead of marketing these bonds directly through large public banks (Banco do Brasil or

Caixa Econômica Federal) or large private banks (Bradesco, Itaú or Unibanco) the debt bonds were sold through a sequence of small brokerage houses and at a very large discount.

During this sales sequence, the "profits" quickly disappeared into traditional money laundering schemes, and apparently found their way back to Brazil via Paraguay and other off shore "fiscal paradises".

The Senate CPI presided by Sen. Bernardo Cabral (PFL-AM) and with Sen. Roberto Requião (PMDB-PR) as reporter began its investigations in January 1997. After some initial testimony and data supplied by the federal police and tax authorities, the CPI moved swiftly to break bank and telephone secrecy of those suspected of involvement, and discovered a conspiracy ring organized by public employees in the Secretariat of Finance of the City of São Paulo which had "instructed" the other state and municipal governments in the preparation of issuances of their "precatórios" requests in the Senate/Central Bank, as well as the sequence of brokerage houses to be used.

With considerable "egg on its face", the Central Bank made a preemptive strike in March and closed a number of the brokerage houses and small banks involved in the fraud. By mid-April 1997, enough evidence had been amassed to allow the federal police and public prosecutors to indict some of the smaller fish in the brokerage houses on charges of conspiracy and tax evasion.

However, although there was some indication that part of these "skimmed" funds found their way back into campaign financing in the 1996 campaign and/or into the "warehouses" being accumulated for the 1998 gubernatorial campaigns, no hard "evidence" to this end has been made public by the CPI.

On April 10, the CPI received a major blow, when a Supreme Court (STF) judge issued a restraining order against breaking the phone/bank secrecy of one of the São Paulo Finance Secretariat employees, who had given testimony as a witness, and was in the process of becoming a "suspect" of the CPI. Although the 1988 Constitution gives unlimited investigative powers to CPIs, if the STF establishes this new jurisprudence, this current and future CPIs will be greatly restrained in their actions.

The Senate "precatórios" CPI was to end its work on April 22, but was able to extend its activities for another 45 days through June 7.

6.0 - ELECTION CAMPAIGN FINANCE

In most nations which have attempted to adopt legislation to regulate campaign finance, enactment of tough, transparent legislation has been very difficult, because the political "survival" of legislators themselves is involved. **(Alexander, 1992)**

Brazil is no different. Before 1993, party and election laws prohibited direct contributions to candidates, and contributions from businesses or labor unions (juridic persons). All contributions were

to be made to the political parties. **Ex-post-facto**, after each campaign, political parties were required to present an accounting balance sheet to the election courts in each state. In this exercise in futility, the TREs required that each party involved "endorse" the accounting reports of their adversaries, which usually became a practice of "mutual support."

Only in very rare cases of blatant and ostentatious "abuse of economic power" by certain individual candidates would the TREs intervene to coerce such practices or void a candidacy. Election court judges complained that they were "handcuffed" by very weak and inconclusive legislation in this area, many times despite flagrant evidence of such abuse. (**Fleischer, 1993b**)

This so-called "abuse of economic power" takes two forms in Brazil: 1) public economic power; and 2) private economic power.

In the abuse of public economic power, office holders or their stand ins usually manipulate public material and human resources favoring themselves and/or allied candidates. Such is the commonly expected human nature of politicians in Brazil, that its election legislation contains a provision unheard of in most democratic systems -- prior resignation of candidates (desincompatibilização). Politicians holding executive office are required to resign same six months prior to the election, if they and/or their immediate relatives wish to run. Career public servants who become candidates are automatically placed on leave without pay during the campaign period. The exception is for members of the armed forces. Non-commissioned officers and officers with less than ten years service who become candidates are automatically retired into the reserve, while those officers with more that ten years service are automatically placed on leave with pay during the campaign and retired if elected.

Such abuse of public economic power is extremely difficult to detect and prosecute under current legislation.

The abuse of private economic power involves several types of campaign activities. Because of the heavy, nearly monopoly, concentration of Brazilian TV networks with focused political agenda (**Lima, 1993**), plus the fact that many local TV and radio station owners have their own political agendas and become candidates -- and that some 70% of Brazil's voters are semi-literate or illiterate and get nearly all their political information from "the tube" -- since 1985 the Brazilian Congress has adopted special election legislation regarding campaign access to radio and TV, over strong protests of ABERT (Brazilian Association of Broadcasters).

1) No privately paid TV/Radio time is allowed in Brazil; only small paid advertisements in newspapers. Two "free" election campaign advertizing slots (daytime and evening) are requisitioned by the election courts 60 days before each election. This time is then divided up among political parties proportionate to their size in Chamber of Deputies, with a very small minimum time allocation going to all parties without regard to size.

2) TV and radio station (and network) owners who become candidates are required to put their managerial position and stock in a "blind trust" and temporarily resign their position four months prior to the election.

3) TV and radio personalities (employees) are required to take leave without pay and are banned from the airwaves four months prior to the election.

Many times, these candidates circumvent the legislation by conveniently being "interviewed" on news programs and talk shows, and TV networks and local stations frequently provide biased news coverage in favor of selected candidates and against others.

In spite of above mentioned legislation, many politicians investigated by the "Budgetgate" CPI alleged that their bank deposits and other assets discovered to be "incompatible" with their declared sources of income were funds "left over from campaign contributions in 1990". By the same token, pressed during the Collor impeachment CPI in 1990, the ex-President's "campaign treasurer", P.C. Farias, testified that the large sums of money used for illegal operations during his presidency had not come from kickbacks, extortion, etc., but rather were left over campaign funds from 1989.

Congress approved new election legislation (Law Number 8713) on September 30, 1994, which actually made matters worse. (Pertence, 1994) The new law allows campaign contributions from businesses (but not labor unions) -- 2% of their gross 1993 income, up to a limit of US\$205,000.00. Physical persons can contribute 10% of their gross 1993 income, up to a limit of US\$41,000.00. Individual candidates have no limits placed on the use of their own resources, which must be included in their party's budget submitted to the election courts. (Article 38)

Parties may only receive contributions in return for an "election campaign bonus", which is issued like a check on specially printed books from the Finance Ministry. The checks are the contributor's receipt which should be declared on the respective 1994 income tax return. The checkbook "stubs" must identify the contributor's name and income tax ID number and amount contributed. Unlike the more "transparent" practices in other nations (Germany, for example), contributors' names and amounts are not made public at regular intervals during the campaign. Parties are required to keep these records for up to five years, in case the election courts or internal revenue service require verification.

In April, 1994, just before the Government mint was to print up these bonus "check books", the TSE came under heavy political pressure not to include the contributors' ID on the stubs, but the Superior Election Court resisted and the bonus were printed as the law requires.

However, the legalizing of campaign contributions by way of the bonus does not resolve the question of the campaign "war chests" amassed by candidates themselves thru the political corruption schemes described above. It thus becomes the responsibility of the TSE and its TREs to detect unaccountable campaign spending, beyond that stemming from the bonuses and private wealth of the candidate (if the latter is compatible with assets declared to the income tax service). Unfortunately, the

current election legislation does not provide Brazil's election court system with the powers necessary to detect and prosecute such abuses.

If this were not enough, in mid-May the STF decided that several sections of Law 8713 were unconstitutional, because it was passed as ordinary legislation and not as a "Complimentary Law":

1) small parties could not be excluded from running presidential candidates in 1994 by an "entry barrier"; and

2) candidates could not be "frozen" to their party affiliation as of January 5, 1994, but rather could change party labels up to the eve of the respective party conventions in May, 1994.

Apparently, this decision meant that if any candidate and/or party accused of violating the campaign finance provisions of Law 8713 in the 1994 campaign would be able to escape prosecution based on this STF decision. Many observers suspect that this "lapse" on the part of the Congress was not by chance, but engendered by Law 8713's reporter, Dep. João de Almeida (PMDB-BA), a geologist whose election in 1990 was funded by his former employer, none other than the Norberto Oderbrecht construction company, mentioned above in section 4.0.

During the 1994 presidential campaign, the candidate of the Partido Liberal (PL), Dep. João Rocha, was forced to resign due to evidence presented by Folha de São Paulo reporters that his campaign was "selling" election bonus to campaign contributors for half of their face value, thus helping "hide" clandestine profits of the latter.

The TSE required all parties to submit their campaign finance accounts as a pre-condition for the issuance of "certificates of election in early December, 1994. These hastily prepared balance sheets were very incomplete in some cases, and in others contained ridiculously low "costs" reported. In spite of these "difficulties", the TSE certified all those elected.

The drafters of the 1995 law governing the 1996 municipal elections attempted to weaken the 1993 provisions regarding campaign finance, but were not successful. However, the special Senate committee charged with drafting a series of "political reforms" which will impact on the 1998 general elections have included campaign finance on their agenda. It remains to be seen whether after final approval by Senate and Chamber floor votes (before the October 3 1997 cut off date) whether campaign finance rules will further strengthened or weakened. Perhaps the final recommendations of the "precatórios" CPI will have some impact.

7.0 - THE FERNANDO HENRIQUE CARDOSO GOVERNMENT

After one year of efforts, in December, 1994, the CEI of the Executive Branch tendered a preliminary report (**Comissão Especial de Investigação, 1994**) to President Itamar Franco, revealing massive corruption, especially regarding contracts in the Ministry of Transports, exactly where the "Budgetgate" CPI had identified the executive branch "connection". However, retired four-star Gen. Bayma Denys, totally rejected the accusations contained in the CEI report, chaired by retired two-star

Gen. Romildo Cahin. In the last days of his mandate, Pres. Franco could do nothing but pass the case along to his successor.

Pres. F.H. Cardoso promptly appointed Clóvis Carvalho as Chefe da Casa Civil (chief of domestic staff), upgrading the position of the status of coordination of all other ministries. Carvalho had been number two at the Ministry of Finance under Cardoso, and had been instrumental in efforts to impede the restructuring of the Brazilian Income Tax Service (to enhance coercion of tax evasion), and the installation of the new Secretariat of Internal Control. While at Finance, in 1994, Carvalho pressured the Bank of Brazil in vain to approve a "sweetheart" loan to the Villares company (where he had made his career) to save it from bankruptcy. In the confusion of the first two weeks of organizing the new Cardoso government, Carvalho was able to manipulate the Bank of Brazil to approve the loan, although the technical evaluation remained negative.

Still worse, Carvalho induced Pres. Cardoso to abolish the Executive Branch CEI, which still had important cases to investigate in 1995. Cardoso's campaign finance accounting report revealed that his biggest contributors were large banks and large construction companies -- many of which would have been subject to investigation during the 1995 phase of the CEI's activities.

This decision turned the investigations over to the Ministry of Finance, the new Secretariat of Internal Control, Federal Prosecutors and the Courts; which do not have the special investigation powers that were given the CEI in early 1994.

Within the Legislative Branch, 1995 got off to a "fast start". Newly elected Senator Amorim (PP from Rondônia) was elected Fourth Secretary of the Senate. Immediately, the press produced massive documentation of over 40 indictments of Amorim, including drug traffic. Senate Pres. José Sarney requested that the STF investigate, and the Federal Police quickly produced enough preliminary evidence to convince the STF to open the investigation. Sen. Amorim requested a "leave of absence" from his Fourth Secretariat position, and the case may produce his loss of eight years of parliamentary immunity if the Senate strips his mandate. (**Jornal do Brasil, 3 February 1995**)

After two years in office, the Cardoso government has done very little in this area, aside from initialing the OAS Caracas Protocol against corruption in the Americas. Under intense pressures from the US and European governments, finally anti-money laundering legislation has been proposed. However, the new internal control agency (Federal Secretariat of Internal Control) was not given political autonomy, nor adequate fundind and staff. Finally, the Ministry of Administration and Reform of the State (MARE) has proposed major changes on the 1988 Procurement Law, which would "streamline" bidding processes, but which most observers feel would facilitate corruption.

8.0 - CONCLUSIONS

The recent 1992 and 1993/94 anti-corruption CPI revelations merely exposed a very small tip of the iceberg threatening governability in Brazil. When politicians are called to pass judgement on

their peers, rarely are the investigations taken to an exhaustive full conclusion. In the above cases, sophisticated "damage control" was practiced and only a few "smaller fish" were actually expelled from Congress, and, if criminal charges are brought against some of the latter, the STF and federal courts will take years to prosecute the politicians and their co-conspirators, respectively. Presently in Brazil, only a few federal judges have the courage to use existing laws to prosecute corruption cases on the basis of the most blatant violation -- income tax fraud.

In spite of the massive accusations generated by the CPI investigations of the "Budgetgate" scandal, most of the accused continued to submit their budget amendments in a normal fashion, and although the "seven dwarfs" have been banished from the Joint Budget Committee, the latter continues to "do business as usual" with the same old vices and corrupt practices. (**Jornal do Brasil, June 26, 1994, p. 3**)

If the 1997 Senate CPI investigating the "precatórios" scandal produces enough evidence to stir public indignation and can link the "skimmed" funds to illegal campaign finance, it is possible that Congress may strengthen relevant legislation in 1997.

Although new tough legislation (internal/external control, bidding regulations on public contracts, external control of the judiciary, campaign finance, white collar crime, election system, budget process, etc.) will certainly help matters, only long term measures to reorganize and upgrade the public service generally, while engendering same with the concepts of public trust and accountability might be able to achieve major change.

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