

Auditors can help detect and deter bribery and kickbacks.

# Corruption: Causes and Cures

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BY JOSEPH T. WELLS

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**“Y**ou’ll never catch Burgin,” television investigative reporter Marsha Halford said to me during an off-camera interview regarding rumors of bribery in the Mississippi senate. “He is the smartest and most corrupt politician in the state.”

The Federal Bureau of Investigation had Senator William G. Burgin Jr., chairman of the Mississippi State Senate Appropriations Committee, under scrutiny. As the agent in charge of the case, I wasn’t allowed to answer her. But I knew something that Halford and even Burgin didn’t know: We’d just about nailed him, and he wasn’t very smart after all.

Within a month of that interview, Burgin was indicted for pocketing at least \$83,000 in bribes. He later was convicted and served three years in federal prison. The Burgin investigation illustrates a checklist of classic lessons that CPAs can apply when confronted with allegations or suspicions of bribery.

## **RUMORS OFTEN ARE TRUE**

Those who accept illegal payments usually have a motive for doing so. For most people, it is debt; but once they pay their debts, they end up spending the rest of the loot. Coworkers often notice extravagances and report them; CPAs should be alert to rumors or complaints about employees who seem to live beyond their means.

***Burgin’s lifestyle.*** For years Burgin—a part-time legislator—had one of the most successful solo law practices in Mississippi and lived the life of a wealthy plantation owner. Because of his visibility as a politician, people noticed his ostentatious wealth, and it was one of them who tipped the FBI off to his illegal scheme. Evidence later showed that one of the principal reasons for his “success” was that his firm served as a conduit for the lucre of corruption.

## **LOOK TO THE TOP**

At some point, regardless of internal controls or safeguards, a person at the top of an organization has the ultimate authority to decide how it spends its money; lower-level employees must contend with restrictions. This means that within an entity the chief purchasing agent or similar officer would be the most likely suspect for corruption.



CPAs therefore should satisfy themselves that controls over purchasing managers are adequate and are not being overridden.

### **Bribery and Kickback Red Flags**

- Rising expenses for goods and services.
- Slow deliveries from or substandard performance by a vendor.
- Rapidly increasing purchases from one vendor.
- Excessive purchases of goods or services.
- No division of duties between new vendor approval and authorization for purchasing.
- Contracts written to limit competition (for example, sole-source contracts).
- The same vendor always wins contracts by small margins.
- The contract always goes to the bid received last.
- Splitting one purchase into multiples to avoid the approval process.
- Paying above-market prices for goods or services.

Source: *Fraud Examiners Manual*, Third Edition, Association of Certified Fraud Examiners, Austin, Texas, [www.cfenet.com](http://www.cfenet.com), 1999.

***Burgin's opportunity.*** As chairman of the Mississippi Senate Appropriations Committee, Burgin was the state's chief purchasing agent of sorts. The state neatly divided its finances according to revenue and appropriations. While the Senate Revenue Committee raised money to fund state programs, Burgin's committee was in charge of spending it. Every check the state wrote was within his powerful domain. There were controls, of course—but none the enterprising politician couldn't bypass.

### **THE "SNIFF TEST"**

In theory, any employee authorized to spend an organization's money is a possible candidate for corruption. Those paying the bribes tend to be commissioned salespeople or intermediaries for outside vendors. The following players usually are present in a corruption scheme.

***The gift bearer.*** Illegal inducements often begin when a businessperson routinely offers inappropriate gifts or provides lavish entertainment to an employee with purchasing authority or otherwise tries to ingratiate himself or herself for the purpose of influencing those in charge.

***The odd couple.*** When a purchasing agent becomes the “friend” of an outside vendor, beware. A key technique bribe-givers use is to befriend their targets. They go to lunch together, take trips and engage in other social outings. But often the pair has nothing in common except for an illegal scheme.

***The too-successful bidder.*** A supplier who consistently wins business without any apparent competitive advantage might be providing under-the-table incentives to obtain the work. Be alert to sole-source contracts and to bidders who nearly always win, who win by thin margins and who bid last. These are indicators someone at the company is supplying the winning bidder inside information.

***The one-person operator.*** Some suppliers, rather than directly engage in payoffs, hire someone—called a bagman—to do the dirty work. Be alert to independent sales representatives, consultants or other middlemen, as they are favored conduits for funneling and concealing illegal payments.

Once an employee crosses the line and accepts kickbacks, he or she hardly is in a position to complain to the vendor about goods or services. The vendor knows this and often reacts by supplying items of poor quality and raising prices for purchases.

When a corrupt employee takes bribes, the underlying business arrangement usually is flawed. For instance, the products or services the dishonest worker contracted for, besides being substandard, are often unneeded, purchased from remote or vague sources, bought at odd times or from odd places or make little economic sense. To help uncover fraudulent transactions, CPAs should employ skepticism when examining the rationale for material purchases by the company.

***Burgin’s scheme.*** My investigation of Bill Burgin had commenced a year earlier when a confidential banking source alerted me to a contract between the state of Mississippi and Learning Development Corp. (LDC). Because the document was public record, I went down to the secretary of state’s office to take a look.

I discovered there were two contracts under which the state would pay LDC a total of \$860,000, purportedly to provide “educational services for disadvantaged youths in the state of Mississippi.” In examining the details of the agreements, three items jumped out at me. First, they were sole-source contracts—ones with no competitive bids. The second oddity: LDC was headquartered in Nashville. With the pressure on politicians to create jobs in their own states, I wondered why the contracts didn’t go to a Mississippi service provider. And there was one other thing—it was hard to decipher what the contract said and what LDC actually had to do for its money.

## **UNDER-THE-TABLE PAYMENTS**

Being the conduit or bagman for bribe money is a profession of sorts; learning to pass bribes and get away with it takes experience and know-how. This particular profession tends to attract a small cadre of sleazy people. They typically are one-person operations and pass bribes for a variety of “clients.” For example, during the Pentagon procurement scandals of the 1980s, just one bagman represented some of America’s largest defense contractors. And when I investigated corruption in the private sector, I found the same trend. CPAs therefore should be alert to shadowy “consultants” on the payroll.

***Burgin's "consultant."*** Burgin's bagman was D. Flavous Lambert, a lobbyist and former politician with a questionable reputation. On the surface the two men seemed to have little in common. I theorized that if Burgin's job was to see that the state approved the LDC contract, Lambert's task was to work with LDC to ensure the twosome got their take.

Since the contracts didn't pass the sniff test, I decided to take the investigation to the next level by examining LDC's books. The odor got worse. In tracing the corporation's receipts and disbursements, a pattern emerged. LDC received its state payments in monthly installments of \$65,000. Each time LDC deposited a state check, it would immediately disburse \$32,500—exactly half of the deposit amount—to Developmental Associates, a Georgia concern. The disbursement code identified it as a "finder's fee." Development Associates turned out to be nothing more than a bank account in Atlanta with only one name on the signature card: D. Flavous Lambert. The following business day, Lambert would send a share of the money to the bank account of Burgin's law firm. Believe it: Burgin was accepting bribes by check. The only reason I could figure for his flagrancy was that he had been corrupt for so long that he felt immune to discovery.

## **THE BRIBE-TAKER GETS INVOLVED**

Anyone who takes a bribe makes a pact with the devil. Since the employee is committing a crime, he or she will go to extreme lengths to avoid discovery; that means keeping the bribe-giver happy. Corrupt employees must frequently intercede to resolve problems for the vendor, such as demanding that payments be expedited or requesting that substandard work be accepted. CPAs should look for these anomalies.

***Burgin's downfall.*** No physical evidence linked Burgin to the crime until he interceded directly for LDC. In fact, Burgin didn't even sign the contract between the state of Mississippi and LDC. Instead, welfare commissioner Fred St. Clair signed it. Later, before a federal grand jury, St. Clair admitted he had been pressured by Burgin to approve the deal. St. Clair also told the grand jury that problems with LDC led to the checks from the state being delayed. But shortly before the holidays, Burgin showed up at the welfare commissioner's office demanding he be given LDC's overdue \$65,000 check at once. Otherwise, the senator lamented, "Employees of LDC are not going to have a Christmas." It was obvious to St. Clair that LDC or Lambert had pressured the senator to intercede. Burgin, on the other hand, denied the incident ever occurred. Evidence to incriminate Burgin would be so important that, wearing surgical gloves in order not to contaminate any fingerprints on the check, I spent two days in the bowels of the dusty state archives examining canceled checks. Once I located the "Christmas check," the FBI lab found Burgin's thumbprint right in the middle of it. Sure enough, the check had been deposited to the LDC bank account.

## **Auditing Vendors**

If an employee in your company is taking bribes, the illegal payment will not be reflected in your client's books, but rather it will be in those of the bribe-giver. The payments often are disguised in the vendor's records as consulting or finder's fees, commissions or similar expenses.

To help keep your vendors honest, you should insist that major suppliers agree to let you audit their books if necessary. Here is a sample of the way such an agreement could be worded.

“Vendor grants to purchaser the right to audit vendor’s books and records, and to make copies and extracts, to the extent the books or records relate to the performance of this contract.”

## **BOOK 'EM, DAN-O**

As corruption schemes progress, conspirators usually get careless.

Frauds—including bribes and kickbacks—normally are not one-time events, but continuous crimes that occur over extended time periods. The Association of Certified Fraud Examiners’ *2002 Report to the Nation: Occupational Fraud and Abuse* concluded the average fraud lasted about 17 months and corruption schemes typically took about two years to be discovered.

The perpetrator’s modus operandi tends to change over time. Initially, the crooked employee carefully covers his or her tracks. But as the crime progresses without being uncovered, perpetrators look for ways to accomplish the same illegal goals with less hassle. In the beginning the suspect may make sure all of the documents appear in order. Later, he or she may not even bother with any phony paperwork.

CPAs should consider major deficiencies in contract documentation to be a significant red flag. Moreover, many fraudsters don’t continue to conceal their ill-gotten gains very well. In short, they get sloppy. In fact, most of the time, the bribe-taker will deposit the illicit funds in his or her own bank account.

***Burgin’s last stand.*** Burgin’s trial, held in Gulfport, Mississippi, lasted about two weeks. The government presented its case against the senator. In his defense Burgin took the stand and claimed he had no idea the money in his firm’s bank account came from LDC. His story—and he stuck to it—was that he had represented Lambert in a legal matter 20 years ago and that Lambert finally was paying the bill.

During the dramatic closing of the trial, Burgin looked directly at the jury and said, “There is no way I would ever deprive the citizens of this great state of their hard-earned tax money.” He then pulled a large red bandana from his breast pocket, dabbed his eyes and honked loudly into the handkerchief.

For the FBI agent in charge of the investigation, the scene was too much; without thinking, I burst out laughing. Then the jurors started guffawing. Burgin’s defense lawyer was immediately on his feet shouting, “Mistrial!” The prosecutor glared at me. The trial recessed for about 15 minutes so the judge could chew me out. Then he sent the case to the jury.

In less than half a day, the jury convicted Burgin and Lambert. A reporter later asked one of the jurors about the strength of the government’s evidence. In his soft Mississippi drawl, the juror said: “Well, when we saw the paper trail, we were

convinced. The only way the case could have been stronger was if the checks to Burgin would've had the word *bribe* written on the description line." ■

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JOSEPH T. WELLS, CPA, CFE, is founder and chairman of the Association of Certified Fraud Examiners and a professor of fraud examination at the University of Texas at Austin. Mr. Wells is a member of the AICPA Business and Industry Hall of Fame. He won the Lawler Award for the best *JofA* article in 2000. Mr. Wells' e-mail address is [joe@cfenet.com](mailto:joe@cfenet.com).

## Corruption Schemes

### ***Bribery and Kickbacks***

Commercial bribery is the offering, giving, receiving or soliciting of anything of value to influence the outcome of a business transaction. It typically is committed by employees such as purchasing agents who have discretion in awarding business to outside vendors.

### ***Economic Extortion***

The flip side of offering or receiving anything of value is demanding it as a condition of awarding business. This is termed "economic extortion." A typical case involves a corrupt lending officer who demands a kickback in exchange for approving a loan.

### ***Conflicts of Interest***

A conflict of interest occurs when an employee, manager or executive of an organization has an undisclosed personal economic interest in a transaction that adversely affects the company or the shareholders' interests. As with other types of corruption, these schemes involve the exertion of the insider's influence to the detriment of the entity.

### ***Illegal Gratuities***

Illegal gratuities are similar to bribery schemes, except that something of value is given to *reward* a business decision, rather than *influence* it. For example, purchasing agents commonly are lavished with expensive vacations and other items when a vendor's contract is approved.

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