

INSIDERS TALK WINNING WITH LOBBYISTS



READERS EDITION

Samples

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Dedication

Oh the joy when the son surpasses the father,
dedicated to Benjamin M. Guyer, Ph.D.

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WHEN FACTS MATTER AND WHEN THEY DON'T

New lobbyists presume lawmaking is rational and that technical facts and studies are persuasive. However, in practice the value of technical facts and studies ranges from zero to critical. Zero most of the time because few in the legislature have specialized knowledge sufficient to understand the scientific, social, legal, and economic details of the myriad of complex issues facing the state with which facts and studies deal.

Occasionally technical studies do become important; not as coolly cogent tools but rather as political weapons to be used, offensively or defensively. Studies gain *critical* legislative importance when—normally in response to political attack—the legislature asks the highly educated experts employed by state executive agencies to comment on a bill's technical foundation.

Yet, a bill still needs a respectable set of facts in support; not a full blown study, just a decent set of facts. These facts do not persuade as much as give political cover to supporters backing the position.

However, at this point don't fret over the lesser importance of technical information in lawmaking. Generally lawmakers leave to state executive agencies the details of implementing legislative policy via agency rulemaking in which technical facts and studies matter greatly.

LAWMAKING IS LOGICAL BUT IRRATIONAL

The formal legislative process is logical in that it is step-by-step. A state's formal legislative procedure is found in the legislature's joint rules, chamber rules, and individual committee rules. States commonly publish their own state-specific flow charts. All bills start at the first box on the chart and those that succeed end up at the last box.

However, just because it is logical and step-by-step doesn't mean the process is technical, fact-based, or even *rational*. The making of laws is not rational in large part because legislators do not have the time, interest, or technical backgrounds to read, much less assimilate, technical materials. Lawmaking proceeds in a logical manner but within a volatile context in which most lawmakers never read the bills on which they vote, much less understand them if they do. Perhaps this is why President James Buchanan said, "Abstract propositions should not be discussed by a legislative body."⁶⁰

THE LEGISLATIVE PROCESS IS BASED ON POLITICAL SELF-INTEREST

Politics is based on an almost, but not quite, *quid pro quo* system. "You help me, and I help you" is the primary unwritten and unspoken political rule. The exchange is never mentioned; any hint of it could be considered bribery and destroy legislators' and lobbyists' careers.

Most legislators act in their own self-interests, the interests of their important supporters, voters, and perhaps constituents. A legislator's purpose is to gain political advantage, followed by benefiting the greatest number of lawmakers in his or her party, followed by helping his or her supporters, followed by promoting the well-being of his or her district, and, finally, benefiting the state. Benjamin Franklin said, "Would

you persuade, speak of Interest, not Reason.”⁶¹ The importance of technical materials can be summarized as, “Facts don’t vote.”⁶²

BILLS STILL NEED FACTUAL SUPPORT

Although facts do not garner votes, lobbyists cannot ignore them. A bill must have a sufficiently sound technical foundation to protect supportive legislators from embarrassment and shame lawmakers who don’t know the facts. Lawmakers trust lobbyists to present them with substantive bills supported by solid technical information. Buttressing is necessary so if anyone were actually to read the bill and background material, then supporting it would make good sense.

While discussing the technical side of bills with lawmakers is unlikely, advocates nevertheless need to be prepared to do so. To illustrate, I was lobbying Michigan State Senator Vern Ehlers. New to my job, I had not yet learned to thoroughly research my customer before making the sales call. Sen. Ehlers has a Ph.D. in nuclear physics from the University of California, Berkeley. He asked me extremely detailed, technical questions most people could not answer. Fortunately, I am an engineer as well as a lawyer, and I knew my technical and legal facts pretty well. Even so, he stumped me on a few questions. This example underscores the need to be prepared to answer difficult technical questions, if not from legislators, then from agencies’ technical advisors.

Presenting a bad set of facts is the equivalent of lying. In a system running on trust, all it takes to destroy trust is one lie, one half-truth, one instance of “technically accurate but not totally forthright,” or one failure to clear up a misunderstanding on the part of a legislator.

Ultimately, political not technical facts matter. Legislators want to know there is agreement among the parties before they decide to vote.

The most vote-getting factual testimony to a legislative committee simply is, "All parties interested in this bill agree on the draft before you." The legislative lexicon in Virginia and a few other states expresses the idea this way, "There is peace in the valley."

LEGISLATURES ARE SWAMPED WITH MORE INFORMATION THAN THEY CAN PROCESS

Of the hundreds to thousands of bills in a legislature during a four-week to six-month session, how many bills can legislators review, much less understand? Some bills are the size of small telephone books and deal with arcane topics. There is just too much information and too little time and expertise to process facts. Legislative committees at times welcome technical help. That's why they listen to lobbyists and their clients. For example, former Congressman William Clay said, "Without the information provided by business, labor and special interest group lobbyists, we could not pass legislation that does the least amount of harm to the fewest people."⁶³ Clients help legislators first as technical experts, and lobbyists help them primarily as political experts.

Regardless of state, lobbying materials have to help legislators. If materials don't help legislators and especially staffs do their jobs, they will have little interest in them.

Lobbyists visit the 10 to 20 percent of lawmakers who matter to them; associations flood the state legislature on their annual "Lobby Days" creating a human cacophony of teams of three to five advocates meeting with every legislator, including the irrelevant 80 to 90 percent. They hand deliver to legislators and staff white papers, kits, and brochures that are often ignored or glanced over. In addition, groups from each district visit their legislative delegation, leaving their supporting documents. Legislative offices receive letters from constituents,

nonconstituents, regulatory agencies, and special interests. Major lobbying organizations prepare studies adding to the stacks. Gratuitous materials are dropped off by those thinking legislators and their staffs “ought to read” them or “might find them interesting.” Other people send e-mails and faxes. The legislature is bursting with information for which there is not enough time, interest, or technical background to process.

Staff generally prefers electronically delivered information: “If you want to get your message to my boss, you better get it to me in a format I can cut and paste.”⁶⁴ At the same time, however, electronic delivery makes ignoring materials easier. A member of the Florida House of Representatives told me he loves electronic communications because he goes through his inbox and deletes e-mails from everyone he doesn’t know. Electronic communications allow legislators and staff to say studies or communications never arrived.

Finally, staff usually wants no more information than is absolutely necessary. A former Oregon legislative staffer once said to me, “Bob, no more than three bullet points. That’s all I need.” Give them what they need, no more.

TECHNICAL STUDIES AS POLITICAL TOOLS

If most legislators don’t read bills, why would we think they would read supporting studies? So, what use are studies? In short, they are used as political weapons. “In politics, evidence is typically used as a weapon—mangled and used selectively to claim that it supports a politician’s predetermined position that is policy-based evidence, not evidence-based policy.”⁶⁵ The impact of facts depends on a legislator’s bias in favor of or against a position. Favorable facts bolster and protect supporters. The same facts threaten neutral and opposing legislators for ignoring them.

In reality, technical facts are largely “media rhetoric” but don’t win votes. Legislators don’t need to understand technical details to enact policy into law, and most statutes lack detail for a good reason: Legislators don’t want to get into the particulars for both political and technical reasons. State agencies wade into the particulars and fill in the blanks in the rulemaking process.

TECHNICAL STUDIES ARE POLITICALLY RISKY

Too much information can become politically risky. First, a study may provoke other special interests to produce rebutting studies. The flood of information may bog down the lawmaking process thereby generating hostility towards advocates and their bill; perhaps to the point both become too much trouble for the legislature to consider further.

The agency may be annoyed having to process technical matters which is better done in the “facts and law” “take all the time your need” rulemaking process rather than in the “facts don’t vote” “there is too little time” politics of the legislature. A study may shift the emphasis from the political to the technical thereby giving the agency, especially a hostile one, too much influence over your bill.

Studies may produce information harmful to supporters. The media may become involved. Advocates may end up losing what control of the narrative they had.

The legislature is a policy body that likely won’t be interested in or benefit from detailed technical information. Studies are not for legislatures, they are for agencies.

TECHNICAL STUDIES ARE FOR AGENCIES

Legislators and staff probably are not going to read studies. However, if it seems important enough, the legislature may ask the agency responsible for implementing a proposed law to comment on it. The agency knows if a bill becomes law, then it will have to deal with the study in rulemaking. The state's Administrative Procedure(s) Act requires the agency consider all technical information placed into the rulemaking record. By providing studies to agencies early, and if they are substantive enough, they may influence both legislative and agency lawmaking.

It is important to gain as much agency support as possible and resolve agency objections before committees of jurisdiction consider a bill. Therefore, after taking the political risk to do a study, it makes sense to give it to the appropriate agency long before giving it to the legislature. In addition, it is wise to offer the agency an opportunity for the technical experts who prepared the study to meet with agency technical experts to woo the agency to their views.

If the agency considers a study useful in advancing what the agency wants, it may recommend the study favorably to the legislature. With agency support the legislature will likely vote favorably. Legislatures seldom oppose agency *technical* recommendations.

On the other hand, if the agency opposes a bill, it is almost impossible to overcome agency opposition in the legislature, before the Governor, or in the rulemaking process. If an agency's experts read the study and tell the legislature it is flawed or worse, an advocate could be labeled a liar, credibility damaged, and, if the damage is severe enough, he or she might as well abandon the lobbying effort.

THE LOBBYIST'S ROLE IN DECIDING UPON A CLIENT'S STUDY

A lobbyist's counsel is critical to the client in determining whether or not to produce a study; and if so, to what degree of detail. Studies can be expensive and as noted above generally are quite unnecessary *legislatively*. But occasionally studies do become indispensable, especially in big legislative fights.

A good set of bullet points could be sufficient, rather than commissioning a full-blown study. Could a study be delayed until the enacted law more clearly defines study parameters appropriate for agency rulemaking? In both legislative and agency fora, will studies be unnecessary or critical? Will your study lead to the production of counter information harmful to you?

Because technical studies can be quite expensive and politically risky, a lobbyist's knowledge of the capital, key lawmakers and their staffs, agency staff, special interests, and process has significant political and economic consequences. Excessive information will be ignored for being too labor intensive to process. Less is more.

SUMMARY CHAPTER 4

Technical, legal, and economic studies have limited applicability in the legislative process. Legislators do not have the time, interest, or technical backgrounds to evaluate studies much less impartial facts. They first vote political facts, that is, the political costs-benefits to themselves.

However, lobbyists and clients must provide sound technical foundations for the actions they want lawmakers to take. This avoids embarrassing legislators down the line. Failing to reveal a bill's weak technical foundation is the same as lying. It is the lobbyist's and client's job to be honest, accurate, and credible.

While most legislators do not understand technical matters, agency staffs do. Agency expert opinions count with legislators, and their recommendations to the legislature can make or break a bill.

While most lawmakers are law abiding, some become corrupted by the capital. In our next chapter, we discuss power and corruption among legislators.

ENDNOTES

- ¹ John L. Zorack, *The Lobbying Handbook* (Washington, D.C.: Professional Lobbying and Consulting Center, 1990), 773.
- ² A bill is “enrolled” when the political and administrative leaders of each chamber certify it has been approved by their chambers. An enrolled bill goes to the executive, President at the Federal level or Governor at the state level, for executive action, approval, or veto.
- ³ Campaign manager, e-mail communication with author, March 7, 2017.
- ⁴ Media consultant, LinkedIn communication with author, 2014.
- ⁵ Association lobbyist, e-mail communication with author, November 2, 2017.
- ⁶ President, managed health care system, e-mail communication with author, October 31, 2017.
- ⁷ “A short official note, typically recording a sum owed.” *English Oxford Living Dictionaries* accessed August 28, 2017, <https://en.oxforddictionaries.com/definition/chit>.

- ⁸ Sen. Uvalde Lindsey (D, Fayetteville, AR), personal conversation with author, December 18, 2014.
- ⁹ Florida Senator, presentation to Florida Chemical and Manufacturers Council, circa 1995.
- ¹⁰ Nebraska only has one chamber, a senate, making 99 total U.S. chambers.
- ¹¹ “The Federalist Number 10: The Utility of the Union as a Safeguard Against Domestic Faction and Insurrection (continued),” *Constitution Society*, last modified May 30, 2017, <http://www.constitution.org/fed/federa10.htm>.
- ¹² *The Lobbying Handbook*, 679.
- ¹³ “A short official note, typically recording a sum owed.” *English Oxford Living Dictionaries* accessed August 28, 2017, <https://en.oxforddictionaries.com/definition/chit>.
- ¹⁴ *The Lobbying Handbook*, 732.
- ¹⁵ Robert Guyer and Dean Griffith, “Succeeding in the State Legislature,” *PT: Magazine of Physical Therapy*, 9, no. 3 (2001), 46.
- ¹⁶ Alex Blumberg, “Forget Stocks or Bonds, Invest in a Lobbyist,” *National Public Radio: Planet Money*, January 6, 2012, <http://www.npr.org/sections/money/2012/01/06/144737864/forget-stocks-or-bonds-invest-in-a-lobbyist>.
- ¹⁷ Donald deKieffer, *The Citizen’s Guide to Lobbying Congress* (Chicago: Chicago Review Press, 1997), 168.
- ¹⁸ Government affairs manager, e-mail communication with author, August 2, 2017.
- ¹⁹ “Succeeding in the State Legislature,” 46.
- ²⁰ Jeffrey H. Birnbaum, *The Lobbyists* (New York: Random House, 1993), 198.

- 21 Mark Foley, "Re: Guide to Lobbyists and Lobbying," e-mail communication with author, February 27, 2016.
- 22 Senate Speaker Ramsey said this to a meeting of the Tennessee Lobbyists Association, circa 2009.
- 23 Nilofer Merchant, "Culture Trumps Strategy Every Time," *Harvard Business Review*, March 2, 2011, <http://hbr.org/2011/03/culture-trumps-strategy-every>.
- 24 "Lobbying in Rhode Island," *Rhode Island Department of State*, 2017, accessed November 12, 2017, <http://www.sos.ri.gov/divisions/open-government/transparency/lobbying/lobbying-hotline-form>.
- 25 Doug Mann of Littlejohn and Mann, Tallahassee, Florida said this during his 2002 guest lecture to my graduate class at Florida State University where I served as a visiting professor.
- 26 Alan Rosenthal, *The Third House: Lobbyists and Lobbying in the States* (Washington, D.C.: CQ Press, 2001), 241.
- 27 Government affairs manager, e-mail communication with author, November 26, 2015.
- 28 *The Lobbying Handbook*, 692.
- 29 Robert Wechsler, *The Regulation of Local Lobbying*, (North Haven, CT: City Ethics Inc., 2016), accessed January 29, 2018, <http://www.cityethics.org/files/Regulation-of-Local-Lobbying-Robert-Wechsler.pdf>, 6.
- 30 Craig Holman, Ph.D. and Thomas Susman, Esq., "Self-Regulation and Regulation of the Lobbying Profession," *OECD: Global Forum on Public Governance*, April 23, 2009, <http://www.citizen.org/documents/Self-Regulation-and-Regulation-of-Lobbying.pdf>, 6.
- 31 *The Lobbyists*, 190.

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