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Money Talks: Lobbyists Pulling the Strings on Capitol Hill

From less than 100 in the 1960's to more than 10,000 today—the demand for lobbyists is booming like never before.

BY BRUCE LOVE

Lobbying is big business in D.C.—probably much bigger than most people realize. And in 2022, it's set to grow even further as client demand increases, making it ever more important for businesses to have a voice in the halls of power.

The issues that Washington's cadre of lobbyists will need to address in 2022 will be diverse and far-reaching—from lobbying for a share of funding from last year's infrastructure bill and various appropriations bills, to dealing with the repercussions of America's continuing trade war with China—as rising concern about inflation impacting the economy as well as the country's continuing supply chain difficulties add up to a busy time for Beltway lobbyists.

2022 is also an election year, which means politics heading into November will likely color even the most non-political of issues. Pocketbook issues like the price of gasoline and groceries, and social issues like welfare and child tax credits will drive legislative activity. And even if this activity does not culminate in bills being signed, it will certainly amount to a frenzy on K Street.

Most pundits agree, 2021 was a bumper year for the public policy practices of D.C. law firms and the various lobby shops clustered around K Street. Lobbying Disclosure Act figures for the first three quarters of last year put total revenues at \$2.74 billion. LDA revenues have been on a marked increase the past five years, with 2020 setting a record of \$3.53 billion total spend. Many believe that record will be beaten in 2021.

Beyond the LDA

Though there is intense focus on LDA figures as a measure of the advocacy business, the figures show just a portion of overall activity. LDA disclosure is strictly a measure of the money spent on relationships and

outreach to government officials and staff by representatives or agents of U.S. organizations—mostly corporate or trade bodies but sometimes individuals. There is plenty of outreach activity these figures do not show—like advocacy on behalf of the interests of other nations, and those of foreign companies. Work for foreigners is instead captured under the Foreign Agents Registration Act.

Ed Newberry, the global managing partner of Squire Patton Boggs' public policy business, said if you added its FARA business to its LDA filings, it would likely be one of the highest-earning public policy businesses in Washington.

"While people's focus on the LDA was probably totally appropriate 25 years ago, today it misses the bigger picture," Newberry said.

According to the nonprofit accountability tracking organization OpenSecrets, by the end of the third quarter last year, Squire had brought in \$17 million from lobbying, placing it eighth on the leaderboard



Squire Patton Boggs offices in Washington, D.C. March 2015.

Photo by Mike Scarcella

of LDA revenue top earners. At press time, Squire's total annual LDA figures seemed on track to hit \$24 million, with its FARA revenues about \$20 million.

Over the years, Squire has made a name for itself advocating for sovereign states, but representing and advising foreign-owned corporations are also a sizable revenue stream. Not only does it provide direct advocacy on The Hill, but often it also ostensibly runs the D.C. offices of companies such as Huawei, providing expertise and strategy for the local operatives of foreign firms.

All in Who You Know?

Squire is one of only four full-service law firms consistently in the top 10 LDA earners, along with Brownstein Hyatt Farber Schreck, Akin Gump Strauss Hauer & Feld, and Holland & Knight. While these law firm public policy practices share the top 10 slots with dedicated lobby shops like BGR Group and Cornerstone Government Affairs, their service offerings—and subsequent revenue streams—are often so much broader than pure advocacy and making connections with lawmakers on Capitol Hill. At their disposal are deep benches of subject matter legal experts in regulation, compliance, and even litigation, that help them provide extra insight and a multi-practice service to their clientele.

In fact, the trade that law firm public policy practices ply today is reminiscent of the services envisioned by one of the early innovators of modern-day lobbying,

Tom Boggs, back in the 1960s, Newberry said.

Patton Boggs was founded in 1962 representing newly independent African nations who needed help in New York joining the United Nations and building relationships with the United States, said Newberry's colleague, Robert Kapla, adding the firm has "always had a very strong stable of foreign sovereign government clients."

Newberry said Boggs—one of the founders of Squire—built his business on the principle that not only did close connections and relationships with key government players counted, but so did the subject matter expertise, and the ability to help clients understand the legal and regulatory space in which they operated, as well as the political.

Another component to Squire's work, said Kapla, is advising foreign leaders on how they can align their country's interests with the U.S. in a way that helps them improve their image.

"We always take it to a substantive level and try to find out how we can help them in Washington," said Kapla, explaining that such work often means sitting alongside a country's embassy team as a "force multiplier," or substantially deconstructing U.S. policy to understand its impact on the client.

Substance has also become increasingly important in a town where power is more dispersed than it ever was, said Newberry.

"When Tom created the modern lobbying world, there were just 68 lobbyists—today there are



Ed Newberry, with Squire Patton Boggs.

around 20,000—and all the power was concentrated in a handful of committee chairmen who could serve as committee chairman for a long time," Newberry said. "So if you knew those people, you were particularly powerful. And if you also knew the substance of the law, you were extraordinarily powerful.

"Now, there aren't six people who run everything. There are many more committee chairman serving for shorter terms. And technology—such as social media—allows every one of those people, and anyone on a committee, an instant voice."

In short, there are more people that require influence and relationships have become commoditized, making substance ever more important.

Beyond the Commoditization

According to Newberry, most American companies have realized they need representation in Washington and have opened their own offices—some with sizable benches of lobbyists—further commoditizing relationship-building.

The target growth area for K Street, he said, is in helping

foreign governments and companies navigate the increasing role and importance of Washington decisions. It's this strategic vision that has led to FARA work becoming such a large portion of SPB's offering, Newberry said.

Whether the client is foreign or local, the substance they need from a public policy practice can take many forms: help understanding the implications of a regulation and formulating a response; insight into how lawmakers and government agencies act in practice and how to interact with them; litigation strategies if a government decision doesn't go their way; and even the substance behind a social media or advocacy campaign.

Even at Brownstein—which regularly sits in the top two LDA revenue earners—LDA work, while a significant portion of revenue, is not the whole story. At time of writing, Brownstein's annual LDA revenue seemed set to hit around \$56 million, yet it is understood to be only around 70% of the national firm's D.C. office revenues.

"Oftentimes, senior leadership at corporations look to their government relations teams to provide advice on broad social and policy issues, rather than only lobbying on a particular bill," said Brownstein's Marc Lampkin, adding that such advice requires a "360-degree view." "For this reason, we staff all of our engagements bipartisan, bicameral, including people who have deep legal and political backgrounds, to give multidimensional advice based on all factors—political, legal and analytics."

Lampkin said the desire for "fulsome and substantive" advice is a growing trend among clients. He said oftentimes, good counsel for government relations clients is breaking down when not to act—for instance, for social and political issues such as voting rights. And such counsel requires a solid substantive understanding of the issues at hand.

"We always advise our clients that it's dangerous to wade into an area where you don't have full command of the facts—the legal knowledge and the analytics—and to get back into issues that have implications for your business and sustaining relationships in a bipartisan way," said Lampkin, who serves as Brownstein's Washington office managing partner, and was previously co-chair of the firm's government relations department.

Hitting the Campaign Trail

In late December, Rich Gold, leader of Holland & Knight's public policy and regulation group, thought that while his annual LDA numbers would come in at around \$35 million, his firm's work on campaigns and other non-LDA work would bump their overall revenues up to around \$80 million.

Campaigns are big business for D.C. law firms with lobby shops, and the work requires extremely high legal subject-matter expertise.

"Our revenues are significantly larger than our LDA disclosures because a lot of the work we do doesn't fit into the LDA requirement," said Gold.

Holland & Knight has people who are advocates in particular substantive areas, but they also have people who are campaign specialists that run political campaigns and understand how to structure and help participants "reach consensus," said Gold. The firm also has people who can help deploy "all the tools in the toolbox" required to implement a campaign—from message testing to message development, as well as a deep understanding of social media, advocacy, grassroots strategies, and press for "full wrap-around impact."

When the work done by public policy practices is viewed as government-facing work, these days it goes far beyond traditional lobbying and relationship building.

And while often the practice can handle the work internally, those operating inside of a full-service law firm are also able to tap other practice areas—either for expertise or advice, or as complementary services for the client.

"People get wrapped up in the LDA numbers in part because that's what they have ready access to," said Hunter Bates, of Akin Gump Strauss Hauer & Feld. "But there is a much larger story of what goes on in lobbying—particularly in a law firm setting like Akin Gump where you have a very large lobbying shop and a very large regulatory shop that work hand in hand."

Bates said Akin Gump public policy experts spend "an extraordinary amount of time every week" not just on LDA activity, but also working "hand in glove"

with regulatory lawyers on a wide range of issues. “Those issues may start out as lobbying but quickly turn into something regulatory, or the other way around.”

It is anticipated Akin Gump’s LDA-reported revenue will be in excess of \$50 million for 2021, and that overall revenue from the practice will be a multiple of that figure.

Tricky Business

Brian Pomper, an international trade lawyer at Akin Gump and member of the U.S. patent bar, describes himself more as a business consultant than a lobbyist.

“Companies are in the business of trying to make profits and advance their businesses, and going up to The Hill and trying to pass a piece of legislation is just one little piece of it,” said Pomper. “As I’ve gotten older, I’m much less of a shoe leather lobbyist and more of an adviser to these companies about what they should be doing—not just politically, but also from a business perspective.”

His clients are often American companies wanting to know things like “what’s going to happen with China and how they should be positioning themselves,” or investment funds “trying to figure out what are the trends and where they should be investing.”

The work may have a lobbying aspect, but it is also deeply substantive in nature.

On K Street—particularly in law firms with deep public policy benches—Pomper said there are people who are experts on regulation and relationship people that understand the politics. “But it feels to me like more and more what companies are looking for is somebody who understands all of it holistically,” Pomper said.

Clients don’t just want to “hire the guy who can get you a meeting with the senator, and then sit back and let you talk,” said Pomper. They want “somebody who really understands how all of these things interact together—the politics, the substance and the policy—because they all impact one another.”

Brownstein’s Lampkin said 30 years ago, dealing with Congress was a lot more binary.

“Clients would give you a specific problem and you’d try to fix it by advocating with a particular representative or senator, whether Democrat or Republican,” said Lampkin. Most lawmakers were “pretty insular” and required little analysis from lobbyists. Now the landscape is vastly different. Every individual member of Congress might have a voice or an opinion, while also dealing with stakeholders from their district and state, as well as their caucus.

“As advisers to corporations and trade associations, we have to understand that intuitively. Our job is to be their intellectual,

political and legal eyes and ears,” Lampkin said. “Our biggest value is ensuring we understand all the hazards and opportunities that present themselves from what happens in Washington.”

And while relationships between lobbyists and The Hill will continue to matter, how those relationships are made and nurtured has become significantly different during the pandemic.

Over the last two years, Holland & Knight’s Gold said while activity was “up about 45%” remote work changed the nature of interactions.

“The transition in lobbying over the last few years has been around remote work and what that means for advocacy,” Gold said. “All of a sudden, the keys to the kingdom are the cellphone numbers of U.S. senators, members or their staff. And that’s a different environment.”

Gold said it is “unclear” if the genie can be put entirely back in the bottle on the perspective of live meetings again. “For a lot of the staff on The Hill, they feel like they’re much more productive when they’re at their desk, doing their work and research. And the idea of live meetings is not something they’re necessarily looking forward to going back to.”

In such an environment, public policy practitioners agree that the lobbyist with substance has—at the very least—a distinct advantage.