

A Common Sense Guide to Effective Lobbying on Capitol Hill

BY PETE LEVITAS

THERE HAVE BEEN BIG CHANGES recently on Capitol Hill—control has shifted from the Republicans to the Democrats, and new rules circumscribe the relationships between K Street and the Congress. Still, no matter which party is in power and whether or not lobbyists are allowed to pay for lunch, careful and thoughtful advocacy will always be effective at getting your issue considered by the decision makers.

Before You Start

There are a number of things to keep in mind as you decide whether or not a lobbying strategy might be effective and, if so, what that strategy should be.

Lobbying Covers More than Changing the Law. Often when people think of lobbying they think of an effort to pass legislation, but lobbying encompasses a much broader array of efforts to influence public policy.¹ For example, if you have concerns about a merger, your legislative options are quite limited, yet there are numerous ways to enhance the level of scrutiny given to a particular deal. You could advocate for Congressional hearings on the deal, and work to have specific issues evaluated at the hearings; you could focus on having letters sent from the appropriate oversight committees to the relevant agencies; or you could brief staff in an effort to persuade members or staffers to weigh in personally on the issue. None of these approaches assures the desired result, of course, but all of them offer the real possibility of success and are worth considering as part of a lobbying strategy.

The Effectiveness and Limitations of Lobbying. One preliminary point that should be communicated to potential clients: lobbying is merely a strategy, not a guarantee of any particular outcome. Recent ethical and criminal violations have reinforced the idea that political favors can be bought for the right price, but the fact remains that legislative and oversight decisions are driven by some combination of the public policy beliefs, political convictions, and political calculations of the various members of Congress. Effective lob-

bying may convince a member of the merits of an argument or convince a member that the political consequences of an action are too great to risk, but members rarely make decisions on important issues purely because one side or the other has hired a specific lobbyist with “access” to that member. Instead, it is usually a combination of the policy or political power of the argument, the persuasive abilities of the advocate, and the advocate’s lobbying strategy that carry the day. While all of these things may be affected by the lobbyist’s relationship with and knowledge of the member being lobbied, there is rarely a simple one-to-one correlation between employing a specific lobbyist and achieving the desired result.

Lobbying Is an Important Part of the Policy-Making Process. Members, and to an even greater degree staff, rely on lobbyists to help them do their jobs. Effective lobbyists provide information and help explain the various policy and political arguments surrounding an issue and act as a conduit in bringing the concerns of the broader community to the attention of the Congress. They play a critical role in the process and good staffers understand and value their efforts. Accordingly, a lobbyist should not have to go to extreme lengths to get an audience with congressional staff; if the staffer is doing his or her job, meetings or conversations should routinely be scheduled if requested.²

Your Strategy Must Accommodate Many Different Power Centers. Advocacy on Capitol Hill has a complexity all its own because of the wide range of constituencies that must be considered as you create and execute your strategy. Much of what you want to accomplish will likely require joint action by a number of members, or at least a tolerance of that action by most of the members. Accordingly, you will need to tailor your approach to accommodate the personal and political sensibilities of a wide range of politicians. Further complicating the calculus is that you will not always deal directly with the elected officials; in fact, you are likely to spend most of your time and energy dealing with their staff, sometimes more than one staffer per office. While most staffers are intelligent and hard-working professionals who try to implement the political agendas of their respective bosses, their ability, expertise, and level of autonomy vary dramatically, as do their ages and professional styles. This environ-

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ment requires that you think carefully about what you are trying to accomplish, and how you can make that goal acceptable to as many constituencies as possible.

The House vs. the Senate. The House and the Senate have very different institutional and political atmospheres. House members have less personal power to block action, and House rules are such that the majority is often able to impose its will without significant input or modification by the minority. Accordingly, in the House you may be able to succeed purely by convincing the majority party to take or block an action. Such an approach offers some advantages: you have fewer members to target and you will have a smaller range of ideologically based objections to accommodate. However it also means that you need to maintain the support of virtually all of the majority party members—something which is often made more difficult by the fact that the media and the public are generally more tolerant of legislation that has bipartisan support.

The Senate rules are much more protective of the rights of individual members. Senators generally have more procedural power than House members, and the smaller number of members and the traditions of Senatorial privilege and courtesy make it much less likely that the majority can simply push through its agenda without paying attention to the wishes of the minority party. In fact, often all it takes is a personal request from one Senator to another, even of another party, to stop something dead in its tracks.

Additionally, committee chairs and ranking members receive a great deal of deference on issues within their jurisdiction, which creates another set of potential roadblocks to action. Even individual members without committee chairmanships in the relevant issue area can use “secret holds” on legislation and nominations and the threat of filibuster to delay or even block action on a wide range of issues.

For all those reasons, a bipartisan approach is usually needed in the Senate.³ Bipartisan support is also very useful if the House and Senate pass different versions of the same legislation because those differences must be resolved before the bills can become a law. Such disputes are generally resolved in a joint House-Senate conference, which is made up of members of the majority and minority from each house. So, to the extent that representatives of the Senate minority party agree with the position of the House minority party, any version of the legislation that comes from the House with only majority party support will be harder to sustain. Of course, laws are often passed with only the support of one party, especially when the Administration is also controlled by that party, so either approach may make sense in different circumstances.

Common Principles

There are many effective ways to lobby and many different elected officials and staffers, who must be approached in different ways, but certain key principles will apply in virtually all circumstances. Following these principles will help you to

make sure that your issue is considered on the merits and that your advocacy is as effective as possible.

Figure Out What You Want to Accomplish. As noted earlier, there are often numerous ways to achieve your goals, and in many instances legislation is neither necessary nor even the best option. Of course, if you want to change the actual law of the land, legislation is the only route. Even then, however, you have many different options depending on what you are trying to accomplish. If you want to change the substantive law or create a program, you should consider whether you want to attempt to pass a stand-alone bill (either through the committee process or not), or work to get someone to introduce your idea as an amendment to other legislation that will be voted on the floor. If you are looking for project funding then you need to get your project into an appropriations bill, which likely entails working with appropriation staff and, if the request is not controversial, may be finalized without much more than a couple of staff meetings.⁴

The legislative process, however, can be cumbersome, and as previously described, members who oppose your goals have a wide range of options to prevent bills from turning into laws. In fact, it is axiomatic that it is far easier for a member to block legislation than it is for a member to pass legislation. Accordingly, when possible, you should consider a number of non-legislative options that require only one member, or even one staffer, to help you achieve your goal.

HEARINGS. Although hearings are a critical part of the legislative process, they also can be valuable as a way to educate members and staff, call attention to an issue and exert public pressure on the private sector or public officials whom you are trying to influence. In fact, a quick scan of the congressional calendar will show dozens of hearings every week, many with no legislative purpose at all—the goals of these hearings are often purely oversight.

Nonetheless, hearings can be very effective. For example, if you represented an advocacy group that had a mission to decrease white-collar crime and the group was concerned that the Antitrust Division was not adequately emphasizing its criminal enforcement agenda, a well-crafted hearing on price-fixing enforcement would allow a thorough evaluation of the Division’s efforts.⁵ Importantly, having a hearing scheduled is often relatively simple as long as you have one member interested in the issue. Hearings are held at the discretion of the committee or subcommittee chair, but often a request for a hearing by any member will be accommodated by the chair merely as a matter of comity.⁶

Remember, however, that hearings often require a lot of preparation by the staff, and by the chair as well, which means that they are usually reserved for issues of policy or political significance that justify extended examination. Members and staff have limited time and try to avoid holding hearings that are sparsely attended and generate little attention. Also, most hearings are designed to explore all aspects of an issue, so the views of your opponents are likely to be represented at the hearing as well, either in the form of

opposition witnesses or hostile questions to your witnesses or, most often, both.⁷

LETTER OR CALL FROM THE MEMBER. Often you can achieve the desired result with a personal phone call from a member to an agency or the head of a company or association. For example, the Assistant Attorney General for the Antitrust Division would likely be very responsive to a letter or a call from the Chairman of the Antitrust Subcommittee concerning the criminal enforcement program. The AAG would likely prefer to discuss the issue and allay any concerns without a hearing, and would certainly have incentive to address any problems as aggressively as if a public hearing were held. In any event, a letter or a call certainly would be a reasonable first step, either in lieu of a hearing or as a predicate to a hearing if concerns were not resolved.

Requesting a call or letter from one or more members has several advantages. Such an approach takes less time to set up and also allows more of the work to be done at a staff level, saving scarce member time and avoiding the difficulty of working around the member's busy schedule. In this regard, a letter is even easier than a phone call, and both are easier than a hearing. Members vary considerably regarding when they prefer to call and when they prefer to write. A phone call is a more private communication and, accordingly, is not open to public scrutiny, but it is susceptible to misinterpretation. In contrast, a letter is usually very public, which may limit the candor of the communication but provides the safety of a clear record of precisely what the member communicated. The preferred course of action may be dictated by the complexity of the specific issue, the existence of a relationship between the member and the recipient of the contact, or the preference of the interested party. In any event both are viable and relatively easy options which should be considered.

CALL FROM THE STAFF. This is the least powerful option, but it is also the easiest to arrange and is often sufficient to address the problem. To stick with the same example, a call from the appropriate staffer on the Antitrust Subcommittee to the AAG conveying the concerns of the Chairman about the criminal enforcement program would no doubt prompt a serious conversation about the issue. It is understood that the call is being made with the knowledge of the member or, if the staffer has sufficient independent authority to make the call, it is understood that any such staffer would likely be able to prompt the member's personal intervention if needed. Accordingly, while such a call would not generate the same reaction as a call from the member, it would likely make a difference and some staffers are willing to take that step in appropriate circumstances.

See If You Can Work It Out in Advance. No matter what the issue or what you need done, your chances of success are greatly improved if you can offer legislators a consensus position. Congressional resources, while significant, are still limited and time is always short. Accordingly, members and staff rely a great deal on input from those directly

affected by various issues. If legitimate representatives of all the affected parties—say labor interests, business interests, and consumer interests on a particular issue—were to come to the Congress with a request for legislation to resolve a problem they were facing, that combination would instantly have a great deal of credibility. The fact that those groups with traditionally opposing interests had come to agreement would signal that the legislative proposal had substantive and political merit, and vastly enhance the chances of its passage. Under these circumstances, few staffers would likely spend a great deal of time and energy exploring the issue unless something raised obvious concerns.⁸

Thus, it may be worth considering whether you can develop in advance a consensus among the various affected interests, or at least modify your proposals to limit any conflict. If you cannot strike a deal with your opponents, it is often useful to unify your potential allies. Creating an industry coalition to support a particular position will help assure a strong base from which to fight for that position and provide some reassurance to members and staff that the position is a reasonable one with a broad range of support, rather than just a specific request that will merely help one client with one specific interest. Take, for example, a case where a company was having difficulty navigating the merger review process of a foreign antitrust enforcement agency because that agency was protecting the parochial interests of its domestic industry. That company would likely want the U.S. enforcement agencies to use their institutional relationships to assure a fair process overseas, and oversight and interest from the Congress would help make the U.S. enforcement agencies more comfortable taking that action. Similarly, members of Congress would be more comfortable intervening if the issue were broader than just the problems of one company. If you could show that this foreign enforcement agency often abused its processes to the detriment of a wide range of U.S. companies it would be relatively easy to assemble a significant bipartisan coalition in support of your efforts.

Decide Whom You Need to See. To lobby effectively you usually need to decide which member or set of members will be your focus. Some major issues, of course, require a lobbying effort that encompasses the entire legislature. For example, the various efforts to pass asbestos litigation reform during the last several Congressional sessions—and the concerted counter-effort to modify and/or block those reforms—employed a small army of lobbyists for months at a time. Further, the high-profile nature of the issue ensured that most, if not every, member was personally lobbied on the issue. Asbestos litigation reform, however, was an unusually complex and contentious tort reform issue, which drew great interest among the business and labor communities in virtually every state and which also had a major impact on individual victims of asbestos exposure all over the country. Very few issues offer that combination of political and policy significance and very few require that type of massive lobbying effort.

Instead, even important and politically difficult issues can often be addressed by focusing on a few key members who have either institutional, home state, or other specific political or policy reasons to be interested in the issue. So, for example, if you were trying to rally Senate opposition to a merger of two major domestic petroleum producers, you would want to contact the Chairs and Ranking Members of the Antitrust Subcommittee, the full Judiciary Committee, the Commerce Committee, and the Energy Committee to see if you could generate hearings and letters of opposition to the transaction. For the most part, members who have shown a particular interest in competition or energy issues throughout their careers might be expected to have membership on one or more of those committees and you would want to approach them as well. You would also be well-advised to contact anyone who had been particularly critical of current energy policy, or any member who is from a state that would be negatively affected by plant closings or other merger-related changes.

Equally important, when creating any lobbying plan, you need to figure out where the possible sources of opposition are likely to come from and develop a strategy to mitigate that opposition. While a hearing might not be too difficult to arrange, you are not likely to sneak a major change in policy past opponents without notice,⁹ so it is often worth considering whether to seek a compromise that meets your needs and addresses the concerns of your opponents. If that is not possible, then you marshal your supporters and work to convince the Congress of the merit of your position.

Another group you should always keep in mind is those who have a particular interest in budgetary issues. There are a number of members who may have little or no concern about the substantive goal you are attempting to achieve but may oppose it because it will require spending they consider to be excessive. The intricacies of the budget process offer numerous ways for such members to block various initiatives. Accordingly, it may be worth some consideration of how you can address their concerns.

Finally, leadership on both sides of the aisle must be factored into your analysis. Even if you can successfully move your legislation through the relevant committee it must receive floor consideration before it can pass the Senate or House, and those decisions are made by party leaders, who are under intense pressure to allocate scarce floor time among a tremendous number of competing interests. Literally hundreds of bills pass through committees each year and never receive a vote on the floor, some because of active opposition by other members, some because of concerns of the leadership, some just for lack of a champion to help move that one issue to the head of the line.

Decide Whether or Not You Need to See the Member.

Once you have figured out which members need your attention, you have to decide which individuals in that member's office you need to see. For the most part, you probably do not need to see the member directly—it is a big expenditure of

energy and political capital and most issues can be successfully resolved without doing so. In fact, there are a number of benefits to addressing an issue with staff and a number of disadvantages to meeting directly with the members.

First, a member meeting requires more preparation by everyone—the lobbyist, the clients who may attend the meeting, and the staffer as well. For your part, you need to come up with a very concise and clear message to deliver to an elected official who has a tremendously crowded schedule and very little time to spend on your issue. You will likely feel obliged to spend at least part of the short meeting on pleasantries that may not be necessary with the staff, leaving you with even less time on your actual topic. Even worse, you cannot count on the allotted time being available to you. Unexpected floor votes, phone calls from other constituents or members, and sudden schedule changes all can disrupt your meeting and end the proceedings before you get to the critical issues. Also, you give up a good deal of control of the meeting itself—members decide how things are going to proceed, and you are much less able to steer the conversation back on course if for some reason the member decides to take it in a different direction. If you have the client with you in the meeting you have to help manage the interaction of the client with the member, which adds another layer of complexity to the lobbying effort.

That is not to say that you should never meet with the member directly. In fact, sometimes the person you are representing will demand it. For the most part, CEOs of companies and heads of organizations will request a direct meeting, and often they are accommodated. Other times, the lobbyist will meet the member without the client, either because of a personal relationship with the member or because the issue is important enough substantively or politically to merit a direct conversation. In many instances those are productive meetings. And, of course, a good meeting with the member may lead to an immediate positive decision.¹⁰

It is always worth considering, however, whether you can accomplish more at the staff level, at least initially. Without having to worry about preparing the boss for a meeting, staffers can spend more time understanding the substance of the issue before meeting with you, which makes the meeting faster and more productive. Meetings with staff are also more casual and likely more open to give-and-take, with more opportunity for extended discussion on all the aspects of an issue. This offers you a better chance to help educate the staff on your position and a better chance to fully understand their potential objections. A good staff meeting often will obtain the support of the member without the need for a direct meeting, or at the very least, pave the way for a smoother and more productive member meeting later on.

If you decide to meet with staff, you are usually better off meeting with the most senior person possible, but not always. Again, consider how important and difficult your issue is before you make your request. It will be considerably hard-

er to get a meeting with the chief of staff or the legislative director than it will with a legislative assistant who works on the particular issue, knows the topic, will not require as much background explanation, and may in fact have the complete confidence of the decision makers in the office.

The Actual Lobbying. Although staffers are usually interested in hearing your concerns and helping when possible, many are overworked and scrambling to meet a wide range of obligations at any given time. The more prepared you are and the easier you can make it for them to focus on your issue the more likely you will get a good reception and achieve your goals.

MAKE AN APPOINTMENT, IF POSSIBLE. It is not good practice to regularly drop in to see congressional staffers. Most have very busy schedules that are made more hectic by a range of unpredictable events, such as sudden floor votes or urgent demands from members, so they usually cannot easily accommodate unplanned lobbyist visits. Of course, staffers do not generally mind when someone stops by quickly to drop off some papers or just ask a quick question, but if you do it routinely you are probably taking advantage of the relationship.

DO YOUR HOMEWORK. Prepare for these meetings as you prepare for any other. You should know the member's committee assignments, any issues that are of particular interest to the member, and if there is anything about his or her political situation or past voting record that would make some aspect of your issue particularly difficult or attractive. Make it your business to know if the staffer is brand-new or has been doing this particular job for ten years, and if the office has any recent experience or position on this issue.

ASK FOR A CERTAIN AMOUNT OF TIME AND STICK TO IT. The length of the meeting will vary widely based on a number of factors, but for the most part if an issue is worth discussing then most staffers will probably allot between 30–60 minutes to it. Once you have delivered your message, end the meeting. The staff will appreciate your brevity, and very few issues are so complicated that they require more than an hour to discuss, at least initially. Also, do not try to get a meeting scheduled by promising to take ten minutes and then staying for an hour; it may work once or twice, but not after that, and you will lose credibility with the staff.

SET THE GROUND RULES. Many staffers will treat your discussions as confidential where possible, but do not assume it. If it is important that they not inform others in the industry or in the Congress that you have been lobbying, or what you are saying, explicitly request that your conversations be held in confidence.

BE CLEAR. Introduce the issue quickly, explain why you need assistance, request suggestions on how to address the problem or ask specifically that they consider a certain course of action, and then be prepared to discuss further. Explain enough so that the staff understands your issue, but avoid speaking for so long that you lose their attention or run out of time. Your instinct may be to provide extensive back-

ground, but experienced Hill staffers often are familiar with the issue on which you are lobbying and can usually understand new issues fairly quickly. They will not be shy about asking questions or asking for more information, so start with the minimum background needed to tell a coherent story and add to it later if necessary.

PLAY IT STRAIGHT. Of course, you need to be truthful and clear in explaining the situation that prompts your request. Equally important, you should answer staff questions with candor. Most times when you lobby you are not presenting staff with a slam-dunk political gift—in fact, you likely would not be lobbying if there were not significant political opposition to what you are requesting, and staff knows that. It is the job of a staffer to explore all aspects of an issue, including those that may not support your position. Just because they are asking difficult questions does not mean that you are failing in your efforts or that the staffer is opposed to your request. However, one sure way to decrease your chance of success is to evade the hard questions or provide poorly thought-out responses. This is your chance to convince them—take on the tough issues directly and give your best answer. There is no need to panic if you do not have all the facts right at the moment; staffers understand that these are complicated issues and sometimes they ask questions that are beyond what a lobbyist has reason to know. In that situation, avoid the temptation to wing it. Tell them you will find out and make sure to provide the answer promptly.

AVOID ASKING FOR THE MOON. In other venues it is often the best strategy to take the most extreme position that can be supported by the law and facts and advocate that position. On the Hill that is not as likely to work. Often, staffers are going to resist that approach on policy grounds or, just as likely, on political grounds. So it is worth considering in advance whether you can help your client even if you only get part of the way to the goal. If so, you may have better luck in getting a member to go along with a more limited request. In all events, however, be cognizant of the political environment surrounding an issue and do not ask members to take policy positions, no matter how well-founded, that are politically unsupportable. Be aware of public opinion, keep track of the positions taken by committee and floor leadership, and try to formulate your requests for assistance in a way that allows the member to do what you want without directly opposing party leadership or powerful constituencies. Of course, some issues cannot be finessed and will require tough political choices, but many times thoughtful strategy can help you achieve your goals without creating conflict with others and difficulty for the member you are lobbying.

TRY TO FIND A CONSTITUENT INTEREST. It is hard to overstate the significance of home-state or home-district politics to those who serve in Congress. Any time you can show how your issue affects their constituents you are much more likely to get serious consideration for your request.

TELL THEM WHAT THEIR ROLE IS VIS-À-VIS OTHERS. Sometimes you may be asking only for the help of one mem-

ber, but often your lobbying effort will be much broader. In those instances, it may be important for the staffer to know who else you are approaching for help with your issue, either because they have a relationship with the other offices or because their level of involvement will be determined by who else is involved and at what level. For example, if you are asking a member to sign a letter opposing a merger, it is important for staff to know which other members are considering signing and who is going to be the lead signatory. Give the staff enough information to understand your general strategy and tell them who you are working with on the issue so that they are not surprised later.

TAKE OFF YOUR LOBBYING HAT WHEN YOU CAN. This may be the hardest thing to do—it is certainly the riskiest, and sometimes you cannot do it and still effectively represent your client. However, there are times when the official position of your client is clearly not going to be accepted by the member and asking will just waste time and diminish your credibility. In those instances, you may be more effective by backing away from the extremes and advocating some more limited options. Similarly, during your discussions it may be useful to deviate from the talking points and acknowledge that in certain areas the other side may have a decent argument. You are not likely to be conceding anything that the staff does not already realize and, if they can trust you to advocate in a balanced way, it will help develop a more candid two-way relationship for the future.

DO NOT GIVE UP JUST BECAUSE THE STAFFER IS NOT INTERESTED. Sometimes staffers will tell you right away that for policy or political reasons they cannot help you. However, experienced staffers will often give you some ideas about other members or staff who might be interested, or

they might give you ideas about different approaches you might take in addition to or instead of the one you are currently trying. If the member is unalterably opposed to your position, you are not likely to get this sort of help, but in many instances it is worth asking.

PROVIDE PAPER. Virtually everyone you lobby will be happy to have a “one-pager,” which can actually be one or two pages explaining the basics of what you just discussed. The one-pager will act as a reminder for the staffer, and it is also an opportunity to provide a little bit more background and explanation than you may have time for during a meeting.

FOLLOW-UP. Maintain contact when appropriate and, if you promised to provide further information or respond to specific questions, make sure to do it in a timely way. If the staff cannot count on you to make good on your commitments then your ability to persuade them is dramatically diminished. Similarly, inform staff of any new developments, whether or not they help your arguments in this particular matter. They are likely to find out about them anyway, and even if it harms you in the short-run, you are not doing yourself or your client any favors by trying to convince a member of Congress to take action based on circumstances that no longer exist.

Conclusion

Lobbying, like all other forms of advocacy, requires precision and careful planning, but once you become accustomed to the complexities and peculiarities of the legislative process much of it boils down to common sense and preparation. Paying attention to these basic principles should help you to professionally and successfully advocate your positions to the Congress. ■

¹ For ease of explanation, in this article I often assume that passage of legislation is the desired goal and, in many instances, the strategy and analysis described apply equally well to any of a range of lobbying efforts. However, to the extent that different goals require different approaches I have tried to make that clear.

² Of course, not all staffers acknowledge the important role played by lobbyists in the legislative process, and not all have the courtesy to conduct themselves professionally when dealing with the lobbying community. If a staffer is particularly difficult you may have to consider going to someone else in the office, but that should not be done lightly—even if your action is justified, you are likely to increase the level of antagonism on the part of the original staffer, and you may create greater problems down the road.

³ Under Senate rules any individual member may filibuster any floor action merely by gaining recognition on the floor and then refusing to cede control. As powerful as this right is, it is given even more impact by the current practice of allowing individual members to block action without actually going through the physically demanding and time consuming process of filibustering. If a member alerts leadership that he or she will block an action, for the most part that action is delayed while efforts are made to resolve the concerns of the member. If the concerns cannot be resolved and the leadership of the majority party decides to move forward despite continuing objections, the member will often refuse consent to end debate and vote on the issue. This refusal can only be overcome by a successful cloture motion to end debate; successful cloture motions require 60 votes instead of the usual majority. Because members of the same party will often support each other

on cloture votes, even if they disagree about the underlying issue, it is often very difficult to overcome the objections of any particular member and significantly more difficult to overcome widely held objections among members of either party.

⁴ Keep in mind the distinction between authorizations and appropriations. If you are attempting to create a new program you will usually need to implement an authorization bill, which can be done by any of the committees that have jurisdiction over the issue. When you are attempting to fund a program, you will be working towards getting money allocated in an appropriations bill.

⁵ This was chosen because it is hypothetical example; I am aware of no organized effort to question the aggressiveness of the Antitrust Division's criminal enforcement program, and in fact during my time in the Senate the Division brought an increasing number of enforcement actions and secured record criminal penalties.

⁶ In fact, it is difficult for the chair to refuse such a member request because hearings are part of the normal decision-making process of the Congress. Refusing to hold a hearing despite requests by a member can cause the chair political difficulties within the institution and, to a lesser extent, with the public.

⁷ The presence of opposition witnesses is almost always assured by rules which guarantee the minority party the ability to choose some number of witnesses at each hearing.

⁸ One notable exception to this general rule was the recent passage of the Voting Rights Act Extension. Although the political support for the extension

was extraordinarily broad, there were some members who were concerned about some of the policy and constitutional ramifications of the legislation. Numerous hearings were conducted and a great deal of staff time was spent evaluating the legislation. It is difficult to argue that this legislation was rubber-stamped, despite its overwhelming support from politicians and interest groups all across the political spectrum. Nonetheless, in the end the law was passed unanimously in both houses. The power of the political consensus among those most identified with the issue carried the day over the lingering concerns of certain members.

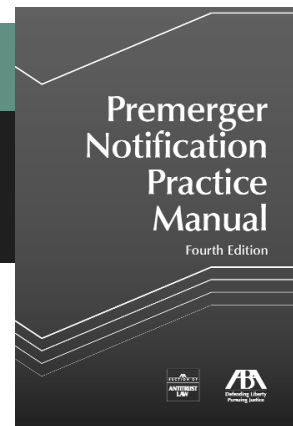
⁹ It is possible, of course, to get something accomplished surreptitiously, sometimes merely with a few lines of text quietly inserted in the middle of a large appropriations bill. In fact, virtually every year the *Washington Post* reports on one or two particularly controversial legislative maneuvers that various members and staffers swear they knew nothing about but which somehow manage to get through the process and turn into law. The most

infamous example in recent times was the "Bridge to Nowhere." It received a great deal of attention after it was enacted but it seems likely that many less controversial legislative actions are completed without similar outcry and are not widely known.

¹⁰ If you decide that a meeting with the member is worth pursuing, as a courtesy you should figure out which staffer is responsible for the issue and notify that staffer that you are going to request a member meeting. Usually the member will want that person to attend the meeting anyway, or at least provide briefing materials in advance and work on the issue afterwards. Alerting the staffer can help make sure that the member is well-informed and also helps to keep the staffer engaged. Equally important, it can be embarrassing for the staff to be cut out of the process. If you have an unexpected opportunity to ask a member personally for a meeting and you decide to do so, let the staffer know as soon as possible and briefly explain the circumstances that led you to set up the meeting without notifying the staff.

New from the Section of Antitrust Law

Premerger Notification Practice Manual Fourth Edition



■ This updated fourth edition of *Premmerger Notification Practice Manual* remains the best and most comprehensive published source for guidance in complying with federal agency rules governing notification of a planned merger. The *Manual* provides summaries and discussions of (a) informal interpretations given by the Premerger Notification Office of the Federal Trade Commission and (b) enforcement actions brought by the antitrust agencies regarding the premerger notification requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and the Commission's implementing regulations.

Like the first three editions, published in 1985, 1991, and 2003, this fourth edition of the *Manual* brings all pertinent guidance materials completely up-to-date, incorporating the FTC Premerger Notification Office's latest positions on the various issues, and adding summaries of interpretations relating to changes that have occurred in the HSR world since 2003, including the new rules, the Formal Interpretation on LLCs, and the amendments to the Act.

As in the first three editions, the summaries are organized by specific sections of the HSR Act and rules. Each numbered interpretation describes the issue and analysis and, in some cases, provides editorial comments on the issue and the interpretation. The interpretations are based upon guidance from the FTC staff, which administers the Act. The *Fourth Edition* also adds summaries of enforcement actions relating to HSR issues brought by the antitrust agencies.

An extensive index enables you to locate relevant summaries quickly and easily. The appendix contains the text of all 17 of the FTC's HSR Formal Interpretations.

Premmerger Notification Practice Manual, Fourth Edition is a unique and essential resource for antitrust and M&A practitioners, as well as corporate counsel.

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