



Public Policy Forum
Perspectives on New York
State's Lobbying Law
Presented by
David Grandeau

April 4, 2006

Thomas L. Gais:

Welcome to the Rockefeller Institute. My name is Tom Gais and I'm co-director of the Institute. I'm very happy to welcome you today for another one of our series of Public Policy Forums. David Grandeau, who is executive director of the New York's Temporary State Commission on Lobbying, will speak today on perspectives on New York State's lobbying law.

I am delighted personally to have David here today. I used to do quite a bit of work on campaign finance issues, and I always thought that lobbying regulations, and lobbying in general, was sort of an underappreciated area. There has always been quite a bit of interest in the media in how much is spent on campaigns; however, when I did a book some years ago — about 10 years ago this year — I tried to count the amount of money spent on campaign financing for a set of national associations compared to the amount of money they were probably spending on lobbying. I think I came up with a ratio of about fifty-to-one in favor of lobbying.

It's a lot of money out there, but it's a far more complicated, far more elaborate, set of issues. One of the interesting things here is that New York State covers a much wider array of lobbying activities, and I think David will be talking about that a bit.

That reminds me, back in my early years, before I was a political scientist, I worked for a budget director in a state far from here, who would count at various meetings with association representatives, the number of lawyers, and multiply them by just how much they were paid; this gave sort of a good indication of how much this organization really cared about this issue. So that was my introduction to disclosure.

David Grandeau is executive director of the Lobbying Commission; he has been so for about 10 years. He has a staff of 40, and they are widely recognized as one of the most effective oversight agencies throughout the country. The agency is charged with administering and enforcing all provisions of the Lobbying Act, and they monitor the activities of thousands of lobbyists and their clients in an industry that surpassed the record \$144 million dollars expended in 2004.

Prior to his 1995 appointment as executive director of the Lobbying Commission, Mr. Grandeau was the Troy City Manager. He has also served as counsel to the Albany County Airport Authority and the Solid Waste Commission, and the Ceridian Corporation; he's a 1984 graduate of Albany Law School.

David Grandeau:

Well, thank you for the opportunity to talk to you today. Anytime that I'm speaking, and I go longer than five minutes without somebody correcting me, I get nervous. So feel free as we're going through this to consider this kind of like a conversation between us. I hope to learn as much from you folks in the audience today, as maybe you can get from me.

It must have been about three or four months ago that the Rockefeller Institute asked me to speak. And as I often do with these things if it's far enough out I say, "Yes," automatically figuring the day is never going to come when you have to do it anyway.

But I said, “Yes.” Then I started thinking, “Well, what am I going to talk about?” Procurement lobbying had just been passed. That seemed like a pretty good thing to talk about. And I think maybe even Howard Grievess and I talked about the title, “Perspectives on New York State’s Lobbying Law.”

But, as I was considering what I was going to do today, I look back on an editorial I had written originally for *The New York Times*. When I originally wrote it for the *Times*, they sent it back to me and asked me — and I’m trying to think of the right word they used — but effectively they said, “dumb it down.” Okay, I’m getting it. You know, readers have got to have a little bit lower bar.

So I “dumbed it down,” resubmitted it to them, and they said it was still “not dumb enough.” So, I gave it to the *New York Daily News*, who printed it. Now I don’t know what that says — I don’t know what that says about *The New York Times*, or the *Daily News*, or me, but be that what it is, I decided that today I was going to follow that same thought pattern, and I would talk about the same things I wrote in the editorial.

So I got ready to leave this morning, and as I came downstairs wearing my suit, my six year old — who really doesn’t care about much of anything, other than this time of year playing baseball, and the fact that in this weather he’s not going to get to practice this afternoon — looked up from his Cheerios and said, “Where you going?” because I was earlier and I was wearing a suit. I said, “I have to go give a speech today.” He says, “What are you speechifying about?” I said, “They are going to let me talk about what I think about the lobby law. And I don’t know, maybe it might be kind of boring for them.”

Well, he went right back to his Cheerios, but the 10 year old, who was doing his math homework, which may account for why he was in such a bad mood, says, “Since when do you care about boring people? All you want to do is listen to yourself talk.”

So, at the risk of either overestimating your interest in this topic, or over-indulging myself, I’m going to at least give you my perspectives on the Lobby Act.

Existing Law is complicated and confusing

- > Lobbying has become a \$149 million dollar a year business 2005 reported the highest lobbyist expenses to date.
- > Invites opportunity for Misinterpretation, Avoidance, and Abuse.
- > This law opens more loopholes, than it closes.
- > Make clear, simple, and understandable rules.
- > NOT cater to special interests.

As many of you know, lobbying is a big business. It was over \$149 million in 2005. Since I arrived in 1995, the chart just keeps going up and up. There has only been one year in the last decade where it hasn't increased, and it certainly picked up the year after that to make up for it. I don't anticipate next year being less than this year.

I think lobbying will continue to be a big business in Albany. Although, when you look at the size of the budget and you consider this as an investment in that budget, it's actually a pretty small number. The budget is up to \$112-114 billion, depending on who's adding it up nowadays. That's an investment of \$149 million. As a return on investment, that's pretty good. It wouldn't surprise me to see this number exceed \$200 million if not in 2006, certainly in 2007.

At the heart of what we do at the Lobby Commission is the Lobby Act. That act was first passed back in the mid-70s, as a result of Watergate, and it has grown over time to include more and more, at least on its face. The act was amended last year to include procurement lobbying. I know a lot of the good government groups applauded the fact that New York State was now joining California and Texas in starting to cover procurement lobbying.

I know that *The New York Times* — not to pick on them, even though they didn't publish my op ed — congratulated the Legislature and said what a wonderful thing it was. Folks in the Legislature patted themselves on the back and said, "We've done reform, now re-elect us." We'll talk today about whether or not that procurement lobbying bill actually does what these people all said it did and the effect of that.

Be that as it may, as a result of that, we were able to get quite a bit more funding at the Lobby Commission. So we're not 25 staff members anymore, we're now up to 40. We take almost two full floors in one of the Agency towers. And the Lobby Commission staff, I would like to think, is one of the best, if not the best, disclosure agencies in the country. If you take a look at what we have done over the last ten years, I think it's quite dramatic.

When I got there, there were eight employees including myself. I had the men's room all to myself on the 17th floor of the Lobby Commission. They did not aggressively, shall we say, ensure that there was compliance with the act. I think when I arrived we had about \$40,000 in the fund that we have for monies that we fine people. That fund grew to a little over a \$1.8 million before government does what it does, and stole it from us. But there are always plenty of lobbyists out there we can continue to fine, so I'm sure that fund will grow again.

And the people at the Commission spend an awful lot of time ensuring that the data that are provided to us by the lobbying community is made available in a useful and informative fashion.

Our website and the electronic filing that we do are second to none. If you file a form now, it goes electronically to the website, and it goes real-time to the outside world. So, what you do as a lobbyist today, the public is reading immediately and able to make judgments about.

I mentioned earlier that what we do is we enforce this law. So, it's vitally important to those of us in the Commission that the law is something that is clear, simple, and understandable. I'd like to stand before you today and say that our Lobby Act is clear, simple, and understandable, but that would be a lie; it's not. The Lobby Act probably opens more loopholes than it closes. And I think that's a direct result of the fact that we shouldn't cater to special interests.

It's my belief that when they drafted the procurement lobbying amendments last year, there was a desire to make it look and appear that we were covering procurement lobbying; this was reform. It may have been an actual desire on the part of some of the good government groups and some in the media.

So, they have a definition that says, "We're covering procurement lobbying," and then the various special interests come in and start talking to the people that are drafting this bill. And before you know it, while the law appears to cover procurement lobbying, a close and careful review may lead you to a different conclusion.

I know that I've spent the last six months looking closely at that bill, and I think I'm finally getting to the point where I understand what it actually does. I don't have any clue what it was supposed to do, I'm not sure how they got there, but I think I understand what it actually does. And I have the luxury of being able to focus all my attention on this one piece of legislation. I understand Blair Horner and the New York Public Interest Research Group (NYPIRG) and the others can't do that. You have a whole bunch of stuff you've got to look at, so you do it, and then you move on to the next issue. I suggest to you that this is an issue you ought to revisit, because I don't think you got what you wanted.

Judge Lewis Brandeis said, and I quote "If we desire respect for the law, we must first make the law respectful." I think this is very important when you consider the Lobby Act if you want the public to have respect for its elected officials, respect for the very important job that the lobbyists do.

You know, it's not a bad thing to be a lobbyist. It amazes me, and I think at the heart of what they did in procurement lobbying is a belief that lobbyists are bad, that's somehow bad for the system; it's not. They play a vitally important role. Unfortunately, when you get tagged with that kind of a thought that they are bad people, you end up drafting laws to avoid labeling people as lobbyists, and that's a problem. You shouldn't have to do that.

The actual definition of lobbying in this statute takes 305 words to define what lobbying is. I suggest to any of you who have actually read the definition, it's not easy to understand. But, worse than the fact that it's a complicated, verbose definition is that 1,635 words later they tell you all the things that aren't lobbying. Believe me, when it takes 300 words to define something, and then 1,600 words to tell you what isn't in that definition, there's a problem. There's a big problem. It's not simple, it's not understandable, and it doesn't do what you think it's going to do, or what it should do.

How do we make this law respectful?

- Takes **305** words to define lobbying.
Takes **1,635** words to describe all of the exceptions to the definition under the new lobbying law.
- **Reality:**
Lobbyists, clients and public corporations who anticipate expending, incurring, or receiving, or who actually expend, incur, or receive, in any biennial period, more than \$5,000 of combined reportable compensation and expenses for lobbying.
- **Solution:**
Require registration by any person being paid more than \$20,000 to have contact with a public official.
 - Eliminate confusion over who is and who is not a lobbyist.

When I first read the new procurement lobbying law six months ago, I didn't get it. I didn't understand it. I probably read through it about 10 times; still didn't get it, still didn't understand it. I went to the lawyers we had on staff and had a meeting with them. We all sat down with the law in front of us and went through it

line by line. I still didn't get it, still didn't understand it, for a very simple reason. None of us did procurement lobbying. There was language and terms in there that we just didn't know what they meant or how they applied.

I've been dealing with the regular lobby act for ten years; I think I'm fairly knowledgeable about it. A large part of that was because I come from a background where I understood what it took to do legislative advocacy. But procurement lobbying? I didn't have a clue.

So, after realizing that I didn't have a clue about it, I tried to hire Lisa Fox away from the Office of General Services (OGS), because I knew that Lisa understood procurement lobbying. But Lisa was a little brighter, and she said, "I don't think you guys are going to be around. Why should I leave a nice, safe job at OGS?" So she turned me down.

And I started looking around to find someone else who understood procurement lobbying, and at the end of that search we hired a fellow by the name of Steve Hensel. I don't think any of you guys know Steve. He came from the Attorney General's Office and did their contract work. He is extremely knowledgeable about procurement lobbying and at a point in his career where he didn't mind taking a chance of coming with an agency run by someone like myself, whose reputation may be a little bit out of the ordinary. For me there was a double bonus: I got a guy who actually understood procurement lobbying and could teach me. Plus, I was able to steal someone from Elliot Spitzer, which I felt was kind of ironic.

So, Steve came on board and in the last two months we worked very hard at the Lobby Commission to fully understand what procurement lobbying is. I think we're hopefully at a point where we can start taking some positions on it. The Commission has a meeting on April 25th, at which time they intend to pass guidelines regarding procurement lobbying. I suggest to anyone who has an interest in this that you attend that meeting. I think it will be vitally important to see what the commissioners decide they think procurement lobbying is and what it is not.

As I said, let's start from the premise that what they wanted when they say the Legislature and the governor wanted to cover procurement lobbying, they wanted to include that in the definition of lobbying.

Agreements not subject to the requirements of the Act:

- Agreements for less than \$15,000
- Grants
 - **Example:** Department of Labor agreements with labor organizations and trade associations for training.
- Agreements with not-for-profit organizations covered by Article II-B of the State Finance Law
 - **Example:** Agreements with the Office of Mental Retardation and Developmental Disabilities for Supported Housing.
- Intergovernmental agreements
 - **Example:** Department of Transportation agreements with municipalities for snow and ice removal on state highways.

If you start with that as your premise and now go immediately to what is not covered, I think it's illustrative of how far you have to go to find what is covered. Here are the things that are not covered by procurement lobbying: Any agreement for less than \$15,000. And by the way, I think each and every one

of these exceptions makes perfect sense if you don't want people to have to register. If

you take the position that registering with the Lobby Commission is either a burden, or a stain, or some kind of a bad thing, each one of these makes perfect sense.

If you start with the proposition that being a lobbyist is not a bad thing, and it's something you should be proud of, and registering with the Lobby Commission is just a way to let the world know what you're doing and who you're doing it for, none of these make any sense. But, having said that, any agreement for less than \$15,000 is not covered by procurement lobbying.

Grants are not covered by procurement lobbying, and I think any of you who follow where the money flows, knows that's a huge, huge loophole. A lot of money goes out of this budget in the form of grants.

Agreements with the not-for-profit organizations covered by Article 2(b) of the state finance law are not covered. Now, I have no idea what Article 2(b) of the state finance law is. Steve Hensel tells me that means agreements with the Office of Mental Retardation and Developmental Disabilities for supported housing. Okay, whatever it is, he knows and it's not covered.

Intergovernmental agreements are not covered, people who are snow-plowing roads, etc. Railroad and utility force accounts are not covered. Utility relocation agreements are not covered.

Agreements not subject to the requirements of the Act:

- > Railroad and utility force accounts
 - **Example:** Department of Transportation agreements with railroads for grade crossing relocation work.
- > Utility relocation agreements
 - **Example:** Thruway Authority agreement with National Grid for transmission line relocation on an overpass.
- > Eminent domain transactions
 - **Example:** Department of Transportation agreement with business owner for compensation for taking property for highway project.

Anybody know any of these things? But these things are all not covered by procurement lobbying. Eminent domain transactions are not covered, so if the state is going to take your property, you can hire somebody to represent you in that, a lobbyist, a person with some influence to get you a

better price if they can. No one needs to know about that. It's not covered.

The following contacts aren't covered. Keep in mind that in order to require registration you have to earn more than \$5,000 to influence procurement in excess of \$15,000. Then, if you meet that definition, you still don't have to register if your contacts are of the following nature, they are all excluded, and they are part of those 1,600 words that I was talking about. By the way, this is the longest I've gone without anyone telling me I'm wrong in a long, long time, including my wife. So, by all means if you have a question, feel free to just ask it. And if I don't understand it, Lisa's here, so she can at least tell us what the procurement part is.

Contacts not considered lobbying under the Act:

- Contacts relating to procurements authorized by section 162 of the State Finance Law on behalf of the blind and severely disabled.
 - **Example:** Preferred source agreements with not-for profits to provide commodities and services produced by the blind and visually handicapped or severely retarded.
- Participating in a conference provided for in a solicitation.
 - **Example:** Attendance at a pre-bid conference required by or provided for in a request for proposals.
- Contacts solely for the purpose of negotiating the terms of a contract after its tentative award.
 - **Example:** Representatives of successful bidder meeting with agency personnel to agree upon terms and conditions of the proposed contract.

But the following contacts are not covered: Any contact relating to a procurement authorized by Section 162 of the state finance law on behalf of the blind and severely disabled is not covered.

Participating in a conference provided for in a solicitation. You go

to the pre-bid conference, it's not covered. So, if you want to hire who you consider to be a plugged-in lobbyist and have him sit at the table so that everyone there knows who is on your side, that person doesn't have to register.

Contacts solely for the purpose of negotiating the terms of a contract after its tentative award are not considered. You got the deal, and now you want to negotiate how much, when, where, how, and why and you want to hire one of those high-paid attorneys you were talking about. Don't worry; the lawyer doesn't have to register. In fact, you're not going to hire a lawyer, let's say you just hire a consultant to help you negotiate the contract. That person doesn't have to register either.

Contacts solely for the purpose of negotiating the terms of a purchase from an existing state procurement contract. Lisa, I'm assuming this is one of those things where there is a backdrop. Is that what they call it? What's this one?

Lisa Fox:

No, this would be more of a commodities issue, for example, if you want to deliberate in a 60-day period instead of the standard 30, or if you wanted to negotiate a lower, more favorable price language.

Contacts not considered lobbying under the Act:

- Contacts solely for the purpose of negotiating the terms of a purchase from an existing state procurement contract
 - **Example:** Office of General Services centralized state contract awardees representatives meeting with agency personnel to arrange shipping, delivery, setup, etc.
- Protesting, appealing or seeking a review of a procuring agency's award, seeking a final administrative review or subsequent judicial determination.
 - **Example:** Unsuccessful bidder filing protest with agency challenging award to another bidder or filing Article 78 for judicial review.
- Filing a complaint of improper conduct relating to a governmental procurement with the attorney general, inspector general, district attorney or court of competent jurisdiction.
 - **Example:** Allegation of illegal activity rather than unfavorable administrative determination.

David Grandeau:

Protesting, appealing, or seeking a review of a procuring agency's award, seeking a final administrative review or subsequent judicial determination. In other words, if you are not happy with who did get it, you can go hire one of those high-powered lobbyists and have them complain about it. It's not going to be covered.

Filing a complaint of improper conduct relating to a governmental procurement with the attorney general, inspector general, district attorney, or court of competent jurisdiction. This is when you're really pissed that you didn't get the award. So, you think someone else did something wrong. Hire the right guy or girl, it's still not covered.

Peter Chynoweth:

I'm with CMA Consulting Services. You said contracts solely for the purpose of negotiating terms of a contract after its tentative award. And a lot of the contracts that are awarded, a lot of times the contract you're selected for award, but then has to be approved by OSC. So there's an interim step there. Does that mean that you can actually go and negotiate some more of the terms of that before OSC approval?

David Grandeau:

Let me be real clear about this. There's a real bright line between what we deal with at the Lobbying Commission and what folks like Lisa deal with at OGS. I have no idea what we can and can't do under state finance law. Never read it, don't intend to read it. I don't even do our own procurement at the Lobby Commission. We use the Division of the Budget to do our procurement. We tell them what we want and then they go out and follow all the rules, because it is a very specific area of law. I don't know the answer to your question. But I can tell you this: Whatever you are doing, it's not going to be covered by procurement lobbying. So hire whoever you want to do it, you don't have to list it.

Andrew S. Roffe:

We assume that, when you talk about grants not being covered, that to the extent that a grant is embedded in the budget bill or piece of legislation, what is that?

David Grandeau:

If you hire a lobbyist to advocate for the inclusion of a grant in a budget, you're getting in the legislative side because the actual grant wouldn't be covered under procurement lobbying.

Contacts not considered lobbying under the Act:

- Complaining of improper conduct by a municipal agency or local legislative body relating to a governmental procurement with the office of the state comptroller.
 - **Example:** Seeking review of municipal action by State Comptroller's Office of Municipal Affairs.
- Submitting a bid or proposal in response to a solicitation.
 - **Example:** Responding to a Request for Proposals in the form and manner directed.
- Submitting written questions relating to a solicitation when all written questions and answers will be distributed to all potential offerers.
 - **Example:** Request for Proposals often provide for the potential bidders to submit written questions about the RFP, which will be answered in writing with both questions and answers provided to all potential bidders.

Complaining of improper conduct by a municipal agency or local legislative body relating to a governmental procurement with the Office of the State Comptroller is not covered. Just keep in mind; procurement lobbying is supposed to cover procurements at the local level in communities over 50,000. If they

did something you didn't like, you can still go complain to the Office of the State Comptroller (OSC) and it's not going to be covered, or hire someone to do it for you.

Submitting a bid or proposal in response to a solicitation is not covered. Now this is huge. I think if you went out on the street and asked the general pedestrian out there, "Who's covered by procurement lobbying," if they understood what procurement meant, they would tell you anyone that does business with the State of New York. I can tell you one my commissioners, who has spent a lot of time in government, when I asked him just the other day, "Who do you think is covered by the procurement lobbying bill?" He said to me, "Well, anyone who sells services or goods to the State of New York." Well, no they are not because if you are doing it pursuant to a bid, you're exempt. That's a big chunk of that group you guys thought you were covering, isn't it Blair?

Blair Horner:

Drafting bills is not covered in the current law, as you know. And that was the legislative intent through this.

David Grandeau:

But the difference is when you are drafting a bill, it doesn't matter until it actually becomes a bill, and then you are going to know about it.

Blair Horner:

But a draft bill can get killed in the lobbying process before it gets introduced, and that was the rationale for why that proposal was in the bill.

David Grandeau:

So, it's bad there; let's make it bad here.

Blair Horner:

I pointed that out to them. They didn't like it.

David Grandeau:

Submitting written questions relating to a solicitation when all written questions and answers will be distributed to all potential offerers is not considered lobbying. If you've got a question about the request for proposal (RFP), as long as you give it to everybody, no matter who asked the question for you, and it's in writing, it's fine.

As I said, all these make perfect sense if the goal is to not have someone register as a lobbyist. If you are trying to get them out of the definition, these all have reasonable explanations for them.

Contacts not considered lobbying under the Act:

- Providing technical services to explain, clarify or demonstrate the qualities, characteristics of an article of procurement, as long as the technical services are provided at the time and in the manner provided for by the procuring entity, and do not contain any recommendations or advocate contract provisions.
 - **Example:** Responding to the Office for Technology's request for input on the Statewide Wireless Network project while specifications were being developed.
- Applying for licenses, certificates and permits authorized by statutes or local laws or ordinance.
 - **Example:** Applying for a Department of Environment Conservation permit to cut timber on state land.

Providing technical services to explain, clarify, or demonstrate the qualities, characteristics, yada, yada, yada. I think we will probably see quite a few consulting groups formed to provide these technical clarifications because you can talk to them all day long about the technical aspects, and you are not going to be

required to register no matter who you are.

Applying for licenses, certificates, and permits authorized by statute, I guess that one actually does make sense, but it's not covered.

My favorite: acting as a commissioned sales person, as defined in the Act. We'll talk about commissioned sales persons quite a bit more. I love hypocrisy in government, and I don't think there is a bigger piece of hypocrisy in this Lobby Act than

commissioned salespeople. We'll send you to jail if you do a contingent fee contract for legislative advocacy; it's a misdemeanor. Do it in the procurement world, we'll call you a commissioned salesperson, and not only is it not illegal; you don't even have to register.

Contacts not considered lobbying under the Act:

- Acting as a commission salesperson as defined in the Act.
- Communicating after the award of a contract in the ordinary course of providing an article of procurement.
 - **Example:** This is the routine business process of providing the commodity or service in accordance with the terms of the agreement.
- Contacting a member of the state legislature concerning a governmental procurement; the contact cannot, however, relate to a procurement of the legislator's house of the legislature

So who is covered?

Communicating after the award of a contract in the ordinary course of providing the article of procurement is not considered lobbying. This is another good one. This is the business development model. You got the bid and now you send your lobbyist in there to get more business. As long as it is in the

ordinary course of providing the bid you just got, you can go ahead and have some conversations about what other work they may need or want.

And the last one, we like to call this the “Guy Vellela exception” at the Lobbying Commission. Contacting a member of the state Legislature concerning a governmental procurement, as long as it's not one of their own, is not considered lobbying. Why in God's name can't you talk to anyone other than the designated contact, but you can go talk to any legislator and have them go talk to the people that are buying it? I'm at a loss. Any idea on this one, Blair? I don't mean to pick on you, unless someone else here is willing to admit they had something to do with drafting this bill?

Blair Horner:

You know, I pointed it out them. I used those exact words.

David Grandeau:

Okay. So, the real question when you get to the end of this exercise is: Who is covered? Who is covered under this new procurement lobbying bill that we have? I'll tell you what

I think is covered, who I think is covered, and it is very, very limited. As I said, I'm anxious to see what the commissioners say on the 25th. And I'm anxious to hear if anyone in the audience has a different perspective on it.

I think there are two areas where we have people who are covered: 1) if you contact anyone outside of the designated contact person during the blackout period. This much I do know about state finance law, I think. Once procurement begins, the procuring entity has to designate someone who all the contacts go through. If you contact someone other than the designated contact, you have to register. Of course, you run the risk of being debarred and not getting any more state work also. So it's a really bad thing to do that, but if you do it, you should register. In other words, admit that you are doing this bad thing, let everyone know who the person is you hired who's having this contact outside of the restricted area, so that they can be properly punished. Does anyone really think that anyone is going to voluntarily register their lobbyist, who is having contacts outside the designated contact? I don't think so.

And the other area, and this one is a "maybe," is before the bid goes out if you hire a lobbyist to try to affect what the actual bid is. When I was in municipal government, I think we called that "bid rigging," but I'm sure there is a more politically correct term for it. But if you hire a lobbyist to do that, they may have to register. And I say, "may" for the simple fact that registration is only required for procurements over \$15,000, and before the bid goes out you don't have procurement at all. Procurement starts, I'm assuming, Lisa, with the blackout period?

Lisa Fox:

The blackout period starts when you have the request for the proposal, not the development specification.

David Grandeau:

Development specification is before the procurement?

Lisa Fox:

It should be.

David Grandeau:

And that is, I think, the argument that people who don't want to register will make. They don't even want to register if they are trying to affect the bids and specs.

So, at the end of the day we have those committing illegal conduct and those who, maybe, don't have to register at all. In short, I don't think there's anyone who's covered by this procurement lobbying bill. I don't think the king has any clothes, and I'm waiting to see if anyone else is willing to say that.

I can tell you that as of last week, only 100 entities had registered for procurement. We've sent a letter to each and every one of those 100 entities for the simple reason that when they registered each and every one of them said they didn't know what they were lobbying on. They are registering, but they don't know why. And I think, at the end of the day, they are registering because they are afraid of what the Lobby Commission may do to them. That's not what we do. I know it's what people think we do, but it's not what we do.

Brian Stenson:

David, I'm Brian Stenson, the Deputy Director of the Institute, here. Just to elaborate that last substantive point you made, it's just to clarify a bit. I have prior experience at SUNY Central, where I did a lot of procurement, from that side of it. Are you saying that the intent is that before an actual RFP or an official RFP is issued, a person could come in and lobby someone in an agency, in any of the services or commodities and bring all kinds of lobbying pressure to bear?

David Grandeau:



That's the one area that if you stretch the definition — and Steve Hensel and I argue about this all the time — you may be able to make the argument that person is required to register. However, if you take the position that you only have to register if you are trying to influence procurement — take a look at state

finance law — the procurement didn't start yet. So, I think that we're going to have some trouble if someone actually wants to make the point that, "I don't have to register, because the procurement hasn't begun, and I only have to register my contacts for procurements over \$15,000, not while drafting the bid up." Yeah, I think that's where we ended up. But let's wait and see. Maybe none of them have a contract they are actually lobbying on. None of them are willing to tell us what they are actually lobbying on.

Yeah, I'm going to do it anyway. The worse that happens is I get in more trouble than I'm already in.

We sent letters out back in January to the 12 people who were on this advisory panel for procurement lobbying that is set up in the statute. We said, "Look, we're trying to enforce this statute." Elliot Spitzer has already told me I should resign if I'm not willing to enforce it immediately. Forget the fact that it doesn't apply to anybody, but we're going to enforce it so that we don't have to deal with that. "Help us. Tell us who has contacted you so that we know who to go look for to see if they are registered."

Those were the 12 people, the 12 procuring entities that were on the advisory panel, and Elliot Spitzer at the Attorney General's Office. So, we figured, who better to know or understand the Act than these folks? We didn't get any substantive responses.

So, then Steve Hensel sent out another 400 letters to all the procuring entities that Lisa's group was kind enough to identify on their website as being subject to the State Finance Law provisions. We sent the same letter. It would be the equivalent to sending letters, I guess, to the Legislature for legislative advocacy, asking them to tell us who is lobbying them, right? Who better to tell you who is lobbying on procurement than the people being lobbied?

So those letters went out. And we started to get a very strange response from those who bothered to respond at all. "You're not entitled to this information. State Finance Law doesn't require us to tell you. All we are required to do is keep a record of who has contacted us during the restricted period, who has contacted the designated contact."

Technically, they are right. In fact, New York City went even farther. They said, "You are not entitled to anything, because we are not subject to the State Finance Law."

A letter went back to them, "We understand that legally you are not required to tell us," although I think we can probably get it if we really pushed hard enough. But more importantly, "Don't you want to?" I mean, if the point was to inform the public about who is involved in procurement lobbying, the point is to register those people that are lobbying the procuring entities. "Tell us. You don't have to. You should want to do it."

We get very formal letters back now that we're not entitled to that information. I'm amazed by it. Maybe I haven't become a large enough cynic. I would think that if it was important enough to pass a bill, it's important enough to assist the Lobby Commission in identifying the people who actually are lobbying you on procurement.

You want a dirty little secret? I don't think that anybody is lobbying them as our definition reads. So, you know what? You could have said, "We're more than happy to help you. No one has contacted us who's required to register." But the first reaction of

those in positions of power was to not help, but to say, “You’re not entitled to the information.”

So with that thought in mind, let me tell you what I think should be done before we move off of the definition, and this is my position. I don’t now if it’s the position of the Lobby Commission. I hope it is.

We should just simplify the definition of lobbying. If you are paid more than \$20,000 — I use \$20,000 because when we do statistical analysis of it, we capture almost 93 percent of the dollars, but we get rid of 24 percent of the filers. If you want \$15,000, or \$25,000, or \$50,000, pick your number. Whatever number you pick, we can tell you what portion of the lobbying community we’re going to be excluding. But pick a number and say if you earn more than that — if someone pays you more than that to have a direct contact with a public official — you register. You don’t have to worry about the exceptions and the exclusions. It’s not going to be about what you talk about, it will be about who you talk to.

And if you go back to the original seminal case — you see, I did learn something in law school about constitutional law. The seminal case on lobbying regulation, *Harris vs. U.S.*, or *U.S. vs. Harris*, whichever one it was, that’s what the justices were talking about — direct contact. The actual act of being paid money to go and buttonhole a public official requires registration and disclosure. Not the media campaign. You know what? You don’t need to disclose your media campaign, we see it. We know what it is. It’s not hard to follow the media campaigns. It’s not hard to follow the billboards.

I just read in the paper an article about private school funding and what the Catholic Church was doing, and what Randi Weingarten’s people were doing. The media was able to write that story because those billboards and ads are out there. They don’t need to go to our site to find out how much money was spent on that, they won’t find it yet. They are not required to give us that information until the next reporting period. All they needed to do was go and look on Interstate 787 and see that United Teachers was spending a lot of money on their billboards.

So, anyway, my point is: Let's just simplify it. If you get paid more than \$20,000 and have direct contact with a public official, you register. If someone is willing to pay Andy Roffe of *Robinson & Cole, L.L.P* \$20,000 to go find out whether or not the governor wears boxers or briefs — and Andy's willing to ask that question — you know what? I don't know why they want to pay him that kind of money for that answer. But somebody thinks it's important. Register and disclose, and I'll trust that the media will go ask you, Andy, why that happens. Although I doubt you'd do it for \$20,000, you'd probably ask a little bit more than that.

That's enough on the definition. As you can tell, I think that what's happened as a result of the way it is drafted is that we have a situation where it certainly is not achieving what you wanted it to achieve. It certainly is not achieving what *The New York Times* said it achieved. And I don't even think it's achieving what the rank and file lawmakers wanted it to do. Hopefully it will change, although I don't have a whole lot of faith that's going to happen, although one never knows.

Let's talk a little bit now about the rest of what's in the Act unless someone has a question. Andy?

Andrew S. Roffe:

Earlier you indicated the amount was \$5,000 biannually. In the budget, didn't they discuss making it \$5,000 annually?

David Grandeau:

Yeah. But you know what? At the end of the day, we've had this argument inside the office about whether it's biannually or annually, and certainly, in 2006 it's annually. I would question that in 2007. It doesn't matter. There are maybe 20 or 30 people who have these small contracts. And I've got to tell you, no matter what you make a year otherwise, we don't pay any attention. If you are not earning a significant amount of

money, the worst that is going to happen is if you file late, you'll get hit with that \$10.00 a day late filing fee. These are not the folks that we focus our attention on in the office.

Andrew S. Roffe:

But as you blend the two, it's just one question that I think would maybe shed some light on the issue. Let's say you are a lobbyist and you are getting \$20,000 from a couple of different clients, and you are moving into procurement and somebody asks you to make a query for them, even if you are not charging them. If it's a not-for-profit, or anything else, if you are registered for anyone else in the threshold, you have to register at that point. Is that it?

David Grandeau:

Well, you are absolutely correct that once you've registered for one, you have to register for all, including your pro bono clients. However, if the activity that you are involved in meets one of those exceptions or exclusions, you don't have to. There's a Chinese proverb: "Laws control the lesser man, right conduct controls the greater one." How do we make this more respected?

How do we make this law respectful?

This law effects three types of people:

- > Honest - Don't need rules.
- > Loophole Lovers - Use the rules to avoid ethical conduct.
- > Dishonest - Don't care about the rules.

This is, once again, my belief. I think there are three kinds of individuals who we're going to deal with, either as lobbyists or as public officials. I think these three types of individuals exist throughout society, and I think most of you out there know it. Chances are that most of you in this room fall into one of those first

two categories, hopefully the first. There's honesty, you don't need rules. I've never read the penal code, but I'm pretty sure that I'm not violating them. I think you can do what's

right without having to worry that you're violating the law. You don't have to read our gift ban exceptions. If you are an honest, moral person, you are not going to violate it.

The last category, the dishonest people, they don't care about the rules. It doesn't matter what rule or law you pass. Jack Abramoff did not care what laws there were or were not. Guy Vellela didn't care what laws there were or were not. These people are going to break the rules. That's why we have the criminal justice system and that's why the jails stay filled up. Most of those people in jail didn't read the penal statute and say, "I better not do this." Whatever causes them to do it, they do it.

It's that middle area that we end up spending an awful lot of time with, the loophole lovers. These are the people who actually read the statute and say, "Huh, if I do this, it's not illegal."

I tell you I hear all too often the statement made by people who should know better saying, "Well, it's not illegal." Well, you know what? It's not always about whether it's legal or illegal. Sometimes it's just flat out wrong. If you're going to dinner every night of the week and a lobbyist is paying for it and you're a public official, there was a time when that wasn't illegal, before we changed our \$75 an event to \$75 a year. And you know what? It's wrong.

At the Lobby Commission's last meeting, the commissioners said that we're going to start imposing on ourselves a zero tolerance gift limit, not only for the staff, but for the commissioners themselves. Well, you know what? They didn't need to say it. We know it. Most of the people in my office know you've got to be purer than Caesar's wife. You're going to laugh. I brought my own water today, only because I didn't check whether or not the Rockefeller Institute is registered. I'm certainly not going to have any of your bagels and coffee. It's just not worth it. I mean, you don't need to do it.

When I go to lunch — believe it or not, I still have some friends who are lobbyists — I pay not just my share, I pay for both of us. Because if we're going to go to lunch, it's

not a big deal, let me pay. There's going to come a time, unfortunately, when I'm back in the private sector. Then I'll let them pick up the tab. But for now, why take a chance?

So we spend most of our time drafting laws for the first and last category, and yet, the people who really we should focus our attention on are those loophole lovers in the middle.

Integrity has no need of rules. I guess this follows closely behind that Chinese proverb. You don't need a gift ban exception for the honest people. The people in that last category couldn't care less what you are going to do, and all you do when you write a gift ban is you provide the loopholes for the people who don't have the integrity that they should.

How do we make this law respectful?

- Gift Ban Exemptions
 - Political Campaign Contributions
 - ☐ Any denomination of money given to a public official as a campaign contribution.
 - Gifts from Family Members
 - ☐ 'Lobbyist' son/brother/daughter/nephew/sister/ wife/husband buys a Cadillac for his/her 'Public Official' relative.
 - Complimentary Attendance at Political Events
 - ☐ Public official gets free admission to a fundraiser at fancy golf course.
 - Payment for Transportation, Meals, and Accommodations for a Participant or Speaker at an Informational Event.
 - ☐ Public official flown first-class and given a suite in a five star hotel in return for a 15-minute speech on ethical government.

But let's talk about gift ban exceptions anyways. The Lobby Commission has recently clarified its rules on gifts. We now take a position that it's \$75 a year, which is similar to what state ethics does. I'll tell you that as an attorney, I think that is a misreading of the statute. I think the way the statute was drafted was \$75

an event. Having said that, I think it's great that we're going in a direction where we're limiting the gifts. But at the end of the day, any public official that wants to take that gift is still going to take it if they really want it bad enough.

Instead of taking the meal, they'll just take the campaign contribution and then pay for the meal themselves out of their campaign account. It's ridiculous. I mean, all you need to do is take a look at some of these public officials' campaign accounts and what they are spending their campaign money on. Maybe I'm naïve, but I thought you spent campaign accounts on campaign events, not on the kinds of things you see on these campaign filings.

Having said that, a gift ban exception still exists on political campaign contributions, any denomination of money given to public officials as a campaign contribution, I would say “legal” campaign contribution. We’ll see about that shortly, because Jim Featherstonhaugh is presently suing the Lobby Commission regarding one of its investigations into Susquehanna Railroad. Jim’s position is actually kind of an interesting one. Jim takes the position that if anything given to a public official that could have been claimed as a campaign contribution it is outside of the Lobby Commission’s jurisdiction on gifts. Now this isn’t just that which is claimed and it isn’t even that which legally could be. Jim’s position is “anything.”

So if you were a lobbyist and you were to pay to take a public official to a Yankee game, you got him four tickets at \$80 a piece and you didn’t report it as a gift ban, Featherstonhaugh’s position is: since you could have made that an “in-kind” contribution, the Lobby Commission doesn’t have a jurisdiction. Not even that you actually did, as long as you *could* have, as long as the Board of Elections *should* have dealt with it, the Lobby Commission doesn’t.

I hope he loses his lawsuit obviously. Because if he wins there will be no need for a gift ban. All a lobbyist would have to say is, “Well, I guess I could have declared that as an in-kind, even though it’s in excess of the legal limit. Therefore, go talk to the Board of Elections about it being a violation.” Is there much hope that the Board of Elections will do anything about it?

Blair Horner:

Not in this century, no.

David Grandeau:

That’s a pretty big loophole that’s out there. And it’s out there right now for the legal stuff, no doubt about it. If you wanted to take a legislator to dinner and make an in-kind

campaign contribution to him of that dinner, it's perfectly fine, even if it's \$100 a person, as long as you are not exceeding that campaign amount.

Let's talk about gifts from family members. A lobbyist's son, brother, daughter, nephew, sister, wife, husband; in fact, the statute really doesn't say what level of consanguinity. The statute doesn't say how far out you go on that fancy word. As long as you have some relationship to the public official, give him the Cadillac. It's going to be exempt from gifting.

Then there's complimentary entrance at political events. If you get free admission to a fund raiser at a fancy golf course, that's still okay. If you want to give them tickets to Congressman Y's fund raiser at Winged Foot, it's exempt.

Also, payment for transportation, meals, and accommodations for participants or speakers at an informational event. You can fly a public official first class, give him a suite in a five-star hotel, all the food he needs while he is there, and all he has to do is give some kind of speech. We put fifteen minutes, it could be five, on any subject at all, and all of that is exempted from the gift ban. So, theoretically, if the Rockefeller Institute wanted to, they could pick us all up, take us all to Maui, pay for the whole shot, as long as I talk to you for a lot less time than I've done today, and then we can go play golf.

Now keep in mind, these are the exceptions that exist after the Lobby Commission has for the last year tried to close as many loopholes as we possibly can. These are the exceptions that exist after the Lobby Commission has issued guidelines that I think contracted the gift ban further than even I would have with a straight face said we should have done. So we can't do much more than we've done. And there's still the opportunity to, I guess, have the need for rules because integrity doesn't seem to be doing the job. In fact, on that point, I guess, is DeLay going to resign? I read that in today's paper. You talk about integrity and it struck me as odd. One of the quotes he had in there was: "They did some internal polling and it looked like he was only going to win by a small margin." Win by a small margin, and that was too big a risk to take, so he's resigning. Winning by a small margin is too big a risk to take.

So, how do we fix it? Let's have a total gift ban. Penny one, bring your own water to these kinds of events. But if you are going to do that, you've got to make sure that you don't have any exceptions. And I've seen the proposals and they all start talking about exceptions, and once you start carving out the cup of coffee, you are

The slide is titled "How do we make this law respectful?" and contains the following text:

- > Solution:
 - > Enforce a Total Gift Ban
 - Eliminate the exceptions for what is or is not a gift
 - Restore respect for the process of advocacy
 - Promote a gift free relationship between lobbying and government.

on a slippery slope that will lead you to right where we are today, which is arbitrary, capricious — something that they can, at least, pat themselves on the back and say, “This works.” But it doesn't work at all.

If you really want to fix the problem, eliminate it entirely and that includes campaign contributions, which I'm sure is unconstitutional, but that's about the only way you are going to stop the pernicious effect of gift giving. If you can do that, you'll restore respect for the process of advocacy. I read lobbyist Pat Lynch's comments and I thought it was great. She doesn't do it anymore. I hope she is telling the truth, because I think that goes a long way to restoring respect for lobbying.

Lastly, it will promote a gift-free relationship between lobbyists and government. And you know what? I hear over and over again, “You can't buy me for a dinner.” You see the public official saying that. You can't buy me for a free dinner. But you know what? It seems you can rent them for a short period of time at least.

I actually saw it on a C-SPAN. Don't ask me why I'm watching C-SPAN. They were having a panel discussion about lobbying, and one of the panelists was a former elected official who said, “Well, we need to go to dinner with lobbyists, and we need to go on vacation with them because it helps promote camaraderie and the ability to exchange ideas.” You know what? B.S. If it really did help you do that, I'll tell you what, you pay for the lobbyist. We'll see how quick that ends.

Howard Grievess told me a story. He was doing a class down in New York City. One of the people in the class told him that one of his compatriots in Philadelphia, Pennsylvania — where there is no lobby act at all, there's no coverage — related a story where a bunch of public officials were out having dinner or were at a bar or something like that. The bill comes at the end to over \$1,000. And there's no lobbyist at the table, it's just public officials. So one of them gets on his cell phone and calls up a lobbyist to get that lobbyist's credit card to pay for that meal. That's the level it will go to because integrity has no need of rules. For the rest of them, it's whatever they can get away with.

Here's my favorite one. I think this is the one that actually got *The New York Times* to say my op-ed needed to be dumbed down. They didn't like this quote from Voltaire. "It is dangerous to be right in matters on which the established authorities are wrong." The Lobby Commission consists of a group of people who are not exactly invited to many events. You don't have to worry about us showing up at any of these events because we are the fly in the ointment. They don't want to see us. In fact, I can tell you, personally, that I've been in restaurants where I've seen lobbyists come in with clients and seen them notice us and turn right around and leave.

I've been out in public, where I've seen people — people who used to be friends of mine who are in government — see me and walk the other way because they happen to be with someone that they don't want you to know about or our investigators to know about.

For those of you in the lobbying industry, we now have investigators go out to the restaurants in Albany during the week. We'll see who the public officials are eating with. I mean that's the level that it has gotten to, unfortunately. And they are trained to actually see who picks up the tab, who pays, and then they go talk to the restaurant to find out that the right person was paying for it. Because we've seen it get to the level where two or three lobbyists will go out to a lunch and actually split up a lunch tab among them so that they stay below the level.

The people at the Lobby Commission worry every day that, even though we don't cover the public officials, every time we do an investigation, we're upsetting some public official. Because for every gift that's given, there's a taker of the gift, and that taker has to be a public official. Even though it's not a gift case, when it's failure to file properly or false filing, you folks who lobby are very good at what you do.

You get in there and you have an opportunity to talk to the public officials about how bad the people at the Lobby Commission are, how we over-regulate, that we are Lobby Nazis. Yeah, someone called us "Lobby Nazis." We don't do that. We don't get that opportunity to tell the public official that you are lying to them when you do that, that you are overreacting.

How do we make this law respectful?

- Provide protection to the staff of the Lobby Commission.
 - Protect the employees
 - ☐ non-partisan – change in administration should not result in change in Lobby Commission personnel.
 - Protect the Executive Director
 - ☐ remove for cause, not patronage.
- We neither draft, revise, or amend the Lobby Act...
The Commission's purpose is to **Interpret** and **Enforce**
 - Eliminating excuses for parties who continually attempt to bend or ignore the law.
 - We do this through Education, Enforcement and Assistance in all lobbying activities.

So, of course, after enough time, the public official believes it's true. And there we sit with the "Catch-22" that if we vigorously do our job, people are calling for us not to have our jobs. The only way that I know that we're really effective is when people start trying to get me fired. The more people try to get me

fired, the better job I think we're doing. But at some point in time, they are going to be successful in having that happen. And since everyone at the Lobby Commission reports to the executive director, and is hired by me and can be fired by me, the next executive director will control who actually enforces this law.

People like Howard, who have absolutely no political affiliation, didn't come to us through patronage. He came to us because he's good at what he does. He will now have to worry that when we have a change in administration, for example next year, will he be kept on? Or will somebody, who is a patronage appointee, be placed in that position? It's a fight and a battle that we have all the time at the Lobby Commission. I've

had it over and over with my commissioners, who to their credit haven't fired me yet, but it's still early.

It's not a patronage job. Now I will readily admit, I got it through my connections to Senator Joe Bruno, although I assure you that if you were to ask him today, he would say it's one of the larger mistakes that he's made.

I don't know that the next person will be as stupid as I am or as naïve and actually try to do the right thing. I also don't think they will make a mistake next time and put someone in there who actually will be independent. You may very well end up with the kind of person running the Lobby Commission who will go along and get along. For example, when I got there in 1995 they had an actual policy — it was unwritten, but it was there. If a lobbyist listed a public official on one of their filings — for example, they had taken him to dinner and listed him on their filing — we wouldn't process the filing. The Lobby Commission would hold the filing and a phone call would get made to the lobbyist explaining that, "We're going to process this and you are going to be embarrassing a public official." Lo and behold, the public official's name would be removed, no harm, no foul. That's the honest to God truth. That's what used to happen in the early 1990s at the Lobby Commission. Suffice to say, we don't make those phone calls today, and in fact, we'll never, hopefully, make those phone calls.

Anyway, the point I'm making is there's an easy solution to this. The executive director runs the daily operations at the Lobby Commission. And I know this is self-serving, but believe me it's not. As much as I would like to stay as long as I possibly could at the Lobby Commission, this is really intended for the next person who maybe doesn't have the intestinal fortitude or, as I said, is brighter than I am.

If you have an executive director who could only be removed for cause, you know what? They are going to do what is right, regardless of whom it hurts or who it embarrasses, because if they want to keep their job, they won't provide cause to be removed. It's a simple fix. I can't get anyone at the Lobby Commission, any of the commissioners, to agree with me on this. Then I ask them, "Why not? I mean, am I doing

anything wrong right now? Because if I am, terminate me.” I mean, after the last ten years of Dave Grandeau running the Lobby Commission, certainly there must be something that would give you cause to terminate me, and if there isn’t, then ask yourself, “Why should I go because the administration changes?” If that’s what this is really all about, that the administration gets to pick who runs the Lobby Commission, you know what? I should have been a lot nicer to the Republicans for the last eight years and I should be a lot nicer to, probably, Elliot Spitzer right now to make sure that I have a patronage appointee in there. It’s not the way you should do the job though.

The people of New York deserve better -

- > A lobbying law that demands respect by regulating lobbying in a simple, straightforward manner.
- > A Lobbying law that is loophole free.
- > Total Gift Ban
- > Protection for employees on the front lines of the fight against a culture of corruption.

The Challenge

- > Are we prepared to eliminate the excuse and Embrace the opportunity to make the law one worthy of respect?

If it’s important enough to have legislation that requires registration and disclosure, it’s important enough to make sure the people running the agency are protected from the political process, not only at the highest levels but even at the level of the commissioners. They are politically appointed, the

commissioners are appointed by the various bodies, and they have an obligation to respond to their appointed authority. But those of us in the trenches, in the front lines of this fight against the culture of corruption, I think are deserving of that kind of a protection.

Thomas L. Gais:

David, it’s very clear that a lot of people don’t want to be registered lobbyists. Just tell us a bit about why they don’t want to be registered lobbyists. How onerous is it, how difficult and how damning is it? And along those lines, are there any states that you know of that do seem to cover quite a few lobbyists under the registration laws?

David Grandeau:

Let me answer your last question first. There are certainly several states that have a more extensive statute than New York does. Believe it or not, take out the fact that we really don't cover procurement lobbying. If you were to accept Blair's position that we really do, New York would be one of only five or six states that cover both legislative advocacy and procurement advocacy. So from that standpoint, had they passed a procurement lobbying bill that actually did what it said it was going to do, New York would be in the forefront. California, Texas, Wisconsin, and, I think, Kentucky are all these type of states that cover both legislative advocacy and procurement.

So there are others that do it. We should be there. I would make the argument that our Lobby Commission is number one when it comes to actually enforcing our statutes, even though we don't necessarily have the best statute to enforce. But I think we do a pretty good job with what we have.

In answer to your first question, I don't know why people seem to feel that registration is a bad thing. I don't think we make it difficult. If you go online, once you are registered to use our online filing system, it is fairly simple. It repopulates itself, it's user-friendly. Once you have done it once, it's not that hard to do again. It's really not that complicated a form. There's not that much information that's on it. Why do people think of lobbyists in a negative light? Take a look at Jack Abramoff. Take a look at the caricature that when you think of a lobbyist, you think of the heavysset guy with the money bag and the martini glass in his hand. That's not the way it is anymore. I guess it still goes on, but the days of the backroom deal.... You know what? I shouldn't say that, because I've never been in the back room.

I can tell you when I was city manager in Troy, I didn't get lobbied an awful lot. And if I did, I didn't realize it was happening at the time. There certainly weren't any backroom deals. Now that may be a result of my belief that you do what's right, and the people knew that pretty early on, so it really wasn't wasting your time.

But Andy, I don't know, I mean, is there a lot of button-holing going on, still?

Andrew S. Roffe:

I'm sure there's a lot of button-holing going on.

David Grandeau:

So maybe that it is then. Maybe it's because there are no smoky backrooms. The smoke is gone.

Andrew S. Roffe:

As a lobbyist/lawyer who does both, the times have changed. It's not a great thing to be walking around saying you're a lobbyist and having your kids and your family say you're a lobbyist. And certainly, they make you pay a lot of attention to the abuses in the system.

David Grandeau:

The abuses are not that widespread; they really aren't. For all you can read, I would say in New York — I'll go out on a limb — 90 to 95 percent of the lobbyists who are out there fall in that first or second category. They are not dishonest. I'll tell you who we catch. We catch the honest ones and we catch the incompetent ones. We catch the honest ones because they actually put on the form that they've spent money or they've done something that they shouldn't do. Those people we catch.

And then we catch the incompetent ones who are stupid enough to talk about it in the newspaper or brag about it on the street. I can't tell you how often my phone rings with some lobbyist willing to dime-out another one. It happened just last Friday.

John Dunne:

Mr. Grandeau, I'm John Dunne. I was in the Senate for 24 years, as a member of the majority. I chaired the Insurance Committee, the Corporations Committee, and the Environmental Committee. I found the information provided by lobbyists to be invaluable, particularly when you are starting off from scratch with a new committee. I also would note I chaired the Prison Committee and didn't have too many prisoners lobbying me, for obvious reasons.

But I think it should be understood, at least it's my understanding that lobbyists make a tremendous, beneficial, positive contribution for what we as sentimental people like to think about the "common good." I couldn't possibly have done the job I did chairing those committees without input from lobbyists.

And I'll take a step further: You know, at the end of the day, if you've been in the majority, particularly if you have some seniority, it's been a long day. And if somebody you can trust wants to take you out to dinner and buy you maybe a better meal than you might have gotten down at one of the good places. I really don't think that's an evil. And one of the byproducts, unfortunately, of your very positive and aggressive activity to date has cast a terrible shadow on that. And I think there's been a serious breakdown.

But let me just conclude with one point that you just raised. You put up here quotes that honest people don't need rules. Honest people do need rules because what is happening now is that honorable, honest people who are trying to influence and make for a better government are being caught in a "gotcha" approach. And this is not to be critical of you. I'm sure you are just carrying out the policy of the Commission, but I believe that rules are essential, more for the honest person than the dishonest person, because the dishonest person doesn't give a damn what the rules say.

The things I lobby for are criminal justice reforms. I think that your Commission has a responsibility to educate the public and to encourage the public, generally, to lobby their elected representatives so that representatives can be better informed.

Pardon me, I didn't mean to make a speech here. Your presentation was terrific. But, as one who has worked at the federal, state, and local level of government — a great spectrum for the people, men and women who work toward bettering the society, including elected officials — I would hope that you could be more positive, rather than the detective out there trying to ferret out crime. Instead, act as a traditional law enforcement person who is looking for a safer community that respects the laws that we enact.

David Grandeau:

Let me respond to that because I hear this a lot, this “gotcha” mentality. And yet, I'm going to ask you: Who have we gotten? People say there's this “gotcha” mentality at the Lobby Commission. Who is it that we're getting? Can you tell me somebody that has been “gotten” that didn't violate the law? Because I know that people want to believe that we're out there looking for the smallest, tiniest transgressions, and that we're hitting them with these huge fines for this. It's not the case. Here are the people who we fined with significant amounts of money: Correctional Services Corporation, which was providing free transportation to Assemblyman Roger Green. Mr. Green was actually convicted. He pleaded guilty to padding or he was getting reimbursed by the State at the same this organization was bringing him to Albany in a chauffeured car. He paid a \$300,000 fine. I don't think that's a “gotcha.”

If any of you remember Phillip Morris back in 1999, when they were giving gifts to public officials and not listing them on their reports. Donald Trump spent over a million dollars trying to effectuate a campaign against casino gambling. Quite frankly — and this is what people don't understand — we don't take positions about good or bad lobbyists. There are only registered lobbyists and unregistered lobbyists. He spent a million dollars and the reason he got fined a quarter of a million dollars is because he did it through front groups. He purposely hid his involvement from us.

These are the kinds of groups that get hit with significant fines. Now, do we fine people \$250 because they have failed to file on time? Sure, 30 to 40 every other month.

But you know what's happened? Before we started that process of the small fines, 22 percent of the people who filed with us did not file in a timely fashion. One out of five didn't file. We had to chase them to get them to file. Today, that number is under one percent. It works. That information is available now to the public in a meaningful and timely way. Part of the downside, as I said earlier, is it's easy to say, and I certainly don't mean to lecture you, Senator. That's not the case at all. It's easy to say, they're going after them and playing "gotcha." But you know what? Tell me who it is so we can respond and have a dialogue about it. I happen to think that what lobbyists do is very important. I don't know that there is anyone who has spoken as much in my position about the good that they do.

Our website contains a way for the public to access the elected official through our website, as a portal, to send information. We, in effect, are providing that access without having to pay a lobbyist for it. And I agree, with the limited time I had in the Legislature as a staff member, lobbyists do provide you information that if you had to go out and get yourself it would take an awful lot of time.

As to the meals, I guess at the end of the day I felt that the gift ban doesn't work. The best thing you could have is disclosure. If you want to go to dinner after a hard day and you want to accept a meal from a lobbyist, I think that's fine, as long as the public knows about it. And as long as you are comfortable with the public knowing that lobbyist A is buying you dinner. I don't think I have any problem with that at all. But that's not where the statute is going. It's not where the elected officials are going. They are going toward a total gift ban. What I'm saying is, if we are going to go there, you know what? Don't be hypocritical, go all the way there and ban everything because what's the difference between a \$74 round of golf on Thursday and a \$76 round of golf on Saturday? One's a crime and one isn't, and that doesn't make a whole lot of sense to me. So, I appreciate you giving me the opportunity to say that.

I want to thank you.