



WORKSHOP T.

Moving Towards Civil Gideon

*2014 Legal Assistance
Partnership Conference*

Hosted by:

The New York State Bar Association
and The Committee on Legal Aid



**Copyright © 2014
All Rights Reserved
New York State Bar Association**

NEW YORK STATE BAR ASSOCIATION 2014 PARTNERSHIP CONFERENCE

T. EFFECTIVE LEGISLATIVE ADVOCACY FOR LAWYERS AND ADVOCATES

AGENDA

**September 12, 2014
1:30 p.m. – 3:00 p.m.**

Panelists:

Harvey Epstein, Esq., Associate Director, Urban Justice Center
Kate Rubin, Managing Director, Civil Action Practice, The Bronx Defenders
John Wright, Principal, The Wright Group NY

- | | |
|--|--------------------------|
| I. Introduction & Overview | 1:30 pm – 1:45 pm |
| II. Key Concepts for Legislative Advocacy | 1:45 pm – 2:25 pm |
| a. Understanding the NYS Legislature | |
| b. Building Your Campaign | |
| c. Legal Issues and Bill Drafting | |
| III. Case Studies | 2:25 pm – 2:45 pm |
| IV. Debriefing Case Studies | 2:45 pm – 3:00 pm |

Table of Contents

Substantive Outline.....	1
Organizing with Clients for Legislative Reform	13
Changes to NYC Lobbying Law	25
Biographies	27

Substantive Outline

T. EFFECTIVE LEGISLATIVE ADVOCACY FOR LAWYERS AND ADVOCATES
OUTLINE

I. OVERVIEW

A. Introduction

1. Who is in the audience? Staff attorneys? Advocates? Supervisors/Managers? Others?

B. Goals:

1. Provide a basic understanding of the legislative landscape in New York State
2. Share tools and tips for identifying issues, building a coalition, and developing a strategic campaign
3. Explore both the opportunities and the legal limitations for non-profits engaging in legislative advocacy

C. Framing Themes:

1. Playing the long game
2. Power mapping
3. Allies and champions
4. Role of race and gender
5. Legal Issues and Bill Drafting
 - a. Federal, state and city laws set certain registration and reporting requirements for organizations conducting lobbying activities. There are four regulatory schemes governing lobbying activities: The Internal Revenue Code, the Federal Lobbying Disclosure Act, the New York State Lobbying Act and the New York City Lobbying Act. This memo discusses the varying definitions and requirements under each of these schemes. The material can be dense and confusing at times, so please do not hesitate to contact me with any questions you have.
 - b. *What is lobbying?*
 - i. **Federal Definitions under the Internal Revenue Code:** Direct lobbying is defined as an attempt to influence legislation by communication with the legislator or legislative body (or their employees) regarding specific legislation or proposed legislation. Grass roots lobbying is an attempt to influence specific or proposed legislation by encouraging others to take action with regard to that legislation. An exception to lobbying is providing technical advice or assistance to a governmental body in response to a written request by that body or subdivision thereof. Legislation includes actions by Congress, state legislative bodies, local legislative authorities, as well as public votes in regard to referenda, ballot initiatives, and constitutional amendments. Legislation excludes administrative rulemaking or other action and executive action not subject to federal or state legislative approval.

- ii. **Federal Definitions under the Federal Lobbying Disclosure Act:** Lobbying activities include any oral, written or electronic communication to a covered executive branch official¹ or a covered legislative branch official² regarding the: 1. formulation, modification or adoption of federal legislation (including legislative proposals); 2. formulation, modification or adoption of a federal rule, regulation, executive order, or any other program, policy or position of the U.S. government; 3. administration or execution of a federal program or policy (including the negotiation, award, or administration of a federal contract, grant, loan, permit, or license); 4. nomination or confirmation of nominee by the Senate.³
- iii. **State Definitions:** The state laws define lobbying activity as any attempt to influence: 1. the passage or defeat of any legislation by either house of the state legislature; 2. the approval or disapproval of any legislation by the governor; 3. the adoption, issuance, rescission, modification or terms of a gubernatorial executive order; 4. the adoption or rejection of any rule or regulation having the force and effect of law or the outcome of any rate making proceeding by any state agency; 5. the outcome of any rate making proceeding by a state agency; 6. any determination by a public official, or by a person or entity working in cooperation with a public official related to a government procurement; 7. any determination by an officer or employee of the unified court system, or by a person or entity working in cooperation with a public official or unified court system related to a governmental procurement; 8. the passage or defeat of any local law, ordinance, resolution or regulation by any municipality or subdivision thereof; 9. the adoption, issuance, rescission, modification of terms of an executive order issued by the chief executive officer of a municipality; and 10. the adoption or rejection of any rule, regulation or resolution having the force and effect of a local law, ordinance, resolution or regulation. Lobbying activity includes administrative as well as legislative advocacy.⁴
- iv. **City Definitions:** Under city laws, lobbying activity is any attempt to influence: 1. the introduction, passage, or defeat of any local law or

¹ Covered executive branch official includes the president, the vice president, any officer or employee or any other individual functioning in that capacity in the executive office of the president; individuals serving in a position in level I to V of the Executive Schedule; members of the uniformed services whose pay grade is at 0-7; and certain individuals serving in a position of a confidential, policy-determining, policy-making, or policy-advocating character under the U.S. Code.

² Covered legislative branch official includes members of Congress (and their employees), employees of a committee of Congress, elected officers of Congress, the leadership staff of Congress, a joint committee of Congress, a working group/caucus organized to provide legislative services or other assistance to Congress, and any other legislative branch employee serving under the Ethics in Government Act of 1978.

³ For the complete definition of lobbying under the Federal Lobbying Disclosure Act, see Lobbying Disclosure Act of 1995, 104 P.L. 65 § 3.

⁴ For the complete definition of lobbying under state laws, see The New York State Lobbying Act, Consolidated Laws of New York, Legislative Law Chapter 32, § 1-c.

resolution or determination by the city council; 2. the approval or disapproval of any determination made by the mayor to support, oppose, approve, or disapprove any local legislation or resolution, whether or not such legislation or resolution has been introduced to the city council; 3. any determination made by an elected city official or an officer or employee of the city with respect to the procurement of goods, services, or construction; 4. any determination made by the mayor, the city council, the city planning commission, a borough president, a borough board or a community board with respect to zoning or the use, development or improvement of real property subject to city regulation; 5. any determination made by an elected city official or an officer or employee of the city with respect to the terms of the acquisition or disposition by the city of any interest in real property, with respect to a license or permit for the use of real property of or by the city, or with respect to a franchise, concession or revocable consent; 6. the proposal, adoption, amendment or rejection of any agency rule having the force of law; 7. the decision to hold, timing, or outcome of any ratemaking proceeding before a city agency; 8. the agenda or any determination of a board or commission; 9. any determination regarding the calendaring or scope of any city council oversight hearing; 10. the issuance, repeal, modification or substance of a mayoral executive order, or; 11. any determination made by an elected city official, officer, or employee to support or oppose any state or federal legislation, rule, or regulation, including any determination made to support or oppose that is contingent on any amendment of such legislation, rule, or regulation, whether or not such legislation has been formally introduced and whether or not such rule or regulation has been formally proposed.⁵

c. ***Do I need to register at the federal, state and/or local level?***

- i. ***NOTE*:** For calculating the compensation/expenditure amounts spent on lobbying, you must calculate the monetary value of persons' time spent on lobbying. For example, if someone spent a total of 10 hours on a particular lobbying activity, and such person's salary is \$40,000/year, then the amount you would calculate for those 10 hours would equal: $\$40,000 \div 12 \text{ (months a year)} \div 4 \text{ (weeks a month)} \div 5 \text{ (work days a week)} \div 8 \text{ (work hours a day)} \times 10 \text{ (hours spent lobbying)} = \$ 208$ of compensation/expense for lobbying. If the lobbying time is volunteered then there is no accounting needed.
- ii. **Federal Internal Revenue Code:** Under the Internal Revenue Code, there is no registration, per se. However, "no substantial part" of a 501(c)(3) organization's activities can consist of carrying on propaganda

⁵ For the complete definition of lobbying under city laws, see The New York City Lobbying Act, NYC Administrative Code, §3-211.

or otherwise attempting to influence legislation. The determination of whether a group's lobbying activities are a substantial part of its activities is inherently a subjective determination. In 1976, Congress enacted a lobbying expenditures test, with clear definitions on lobbying limits. For the lobbying expenditures test to apply, organizations must make an election called the 501(h) election. Organizations make such an election on form 5768, a one-page form, and subsequently report expenditures for lobbying activity in Part VI of Schedule A of Form 990; no additional reporting to the IRS is required. The election is a one-time event. **We recommend that organizations who carry out lobbying activities undertake a § 501(h) election.**

- a) Under § 501(h), lobbying expenditures limits (including both direct and grass roots lobbying) are: 20% of the first \$500,000 in exempt purpose expenditures, plus 15% of the next \$500,000, 10% of the next \$500,000, and 5% of the remaining exempt purpose expenditures up to a total cap of \$1 million. Grass roots lobbying may be no more than 25% of your total lobbying limit.
- b) The penalty for an electing organization that goes over the lobbying limits is a 25% excise tax on the excess lobbying expenditures. In contrast, nonprofit organizations that have not made a § 501(h) election may have its exempt status revoked if lobbying becomes a substantial part of its activities.

iii. **Federal Disclosure Lobbying Act:** Under the Federal Disclosure Lobbying Act, nonprofit organizations need to register if the lobbying organization has made at least two legislative contacts *and* has spent at least 20% of its time on lobbying activity in a semi-annual period; *and* the organization spent at least \$24,500 on lobbying during that semi-annual period. The Federal Disclosure Lobbying Act does not cover state, local, or grass roots lobbying. Thus, you must determine whether your federal lobbying activities alone meet the above thresholds.

iv. **State level:** If your organization anticipates expending over \$5,000 on lobbying activities, your organization must register as lobbyists with the state. Lobbying under the state definitions include city-level lobbying. Thus, if you anticipate a combination of your state and local lobbying meeting the threshold, then you must register with the New York State Joint Commission on Public Ethics (the "Commission").

v. **City level:** The Office of the City Clerk oversees lobbying registration and reporting for New York City. If your organization anticipates spending greater than \$5,000 on lobbying activities in 2014, your organization must register as lobbyists with the city. City lobbying definitions do not include lobbying done on the federal or state level. Therefore, you should consider only the lobbying done at the local level

when determining the threshold for city registration. No accounting is needed for volunteered lobbying time because it is not “reportable compensation and expenditures”. However, if the organization incurs expenses on behalf of the volunteer lobbyists, those expenses are counted toward the \$5,000 threshold. Once the organization exceeds the \$5,000 threshold, then it must report all of its lobbying expenditures for every client, even if not compensated.

d. ***Do I register and report as both lobbyist and client?***

i. Because your organization’s employees lobby on behalf of the organization, the organization is both a lobbyist and a client for the state and state if you meet the same thresholds as discussed above (\$5,000 for state and city).

ii. **State:** For the state, you must file a Semi-Annual client report. In order to do so, you must first obtain a client user ID and password. You can find the forms for this on the state’s website. There are two semi-annual reporting periods:

a) January-June (report due July 15)

b) July-December (report due January 15)

iii. **City:** To register as a client with the city, you click as both the client and lobbyist in the lobbyist profile within the online system. The city’s client annual report is due on January 15th for the previous year’s report.

e. ***What are the deadlines for registration?***⁶

i. **State:** For organizations that anticipate spending greater than \$5,000 in the upcoming calendar year on lobbying activities, the deadline is January 1. If you did not file by January 1 because you did not reasonably anticipate spending over \$5,000, but then actually did incur or receive combined compensation and expenses exceeding \$5,000, then you must file within 10 days of the date on which you exceeded \$5,000.

ii. **City:** If you reasonably anticipate expending or incurring in the upcoming calendar year in excess of \$5,000, you must register by January 15. If you did not file by January 15 because you did not reasonably anticipate spending over \$5,000, but then actually did incur or receive combined compensation and expenses exceeding \$5,000, then you must file within 15 days of the date on which you exceeded \$5,000.

iii. ***NOTE*:** Volunteer Lobbyists are not required to register as lobbyists unless they exceed the \$5,000 threshold.

f. ***How do I register?***

i. The **state** strongly encourages filers to obtain a user ID and password to file online. You can also access ODF and print versions of

⁶ For the most up-to-date information on deadlines and fees, check with the New York State Joint Commission on Public Ethics (518) 474-7126 and the NYC Clerk’s Office (212) 669-2778.

the forms. You must complete, sign and mail the forms (even for forms obtained electronically) to the New York State Joint Commission of Public Ethics at their address in Albany. See

<http://www.jcope.ny.gov/forms/lobbying.html> for filing forms and instructions. There you will find the lobbyist registration form.

ii. The **city** now requires that registration be done electronically. You must first enroll in the city's electronic system, and must do so before filing a registration statement. See <http://www.nyc.gov/lobbyist> for the enrollment screen and further information on enrolling. The same website will take you through the procedures for electronic registration. The following website is also updated with information about the city's lobbying requirements:

http://www.cityclerk.nyc.gov/html/lobbying/lobbying_bureau.shtml.

g. ***How often do I need to register?***

i. Beginning calendar year 2005, the **state** requires lobbyists to register biennially. If the lobbyist files an initial registration during the second year of the two-year period, the registration fee will be prorated. An organization that anticipates crossing or actually crosses the \$5,000 threshold only in year one of the two years or that does not cross the threshold at all cannot later ask for a refund.

ii. **City** registration must be done annually.

h. ***What information do I need in order to register?***

i. Both the state and city registration forms require listing subjects on which you expect to lobby; persons, agencies, municipalities or legislative body you expect to lobby; bill, rule, regulation or rate numbers, etc. You must also attach a copy of the organization's existing written lobbying contract, also called a retainer letter. For organizations conducting your own lobbying, you will need a letter authorizing individuals of your organization to lobby on your organization's behalf. We can help you with such a letter.

ii. Registration statements for the city have to list the names, home addresses and home phone numbers of (a) the registered lobbyist, (b) any employee or officer who engages in any lobbying activity, (c) employees and officers employed in an organization's division that engages in lobbying activities and (d) the spouse or domestic partner and unemancipated children⁷ of the registered lobbyist. Note: Unpaid volunteers receiving only reimbursement for travel and lodging expenses are not required to register.

⁷ An "unemancipated" child includes any unmarried son, daughter, stepson, or stepdaughter under the age of 18 at the time of reporting and living in the household of the lobbyist. After much outcry from registrants over the invasion of privacy in listing names of children, the City is considering proposals to remove the requirement for organization's to list names of unemancipated children. However, the registration currently requires listing such information.

iii. When using the city's online system, you must also give the name of the chief administrative officer, or "principal officer" and the names of two designees who can file electronic reports and who will receive email updates and information from the City Clerk. Only the principal officer will have access to the online certification page for registration statements and reports.

i. ***What are the registration filing fees?***

i. The fee for the **state** is \$200 if reportable compensation exceeds or will exceed \$5,000 in one calendar year of the two-year period. There is no filing fee if incurring \$5,000 or less.

ii. For the city, the registration fee is \$150.

j. ***How do I submit a report?***

i. For the **state** forms, go to

<http://www.jcope.ny.gov/forms/lobbying.html>.

ii. As with its requirements for registration, the **city** requires that all reporting be done electronically. The website for registration is also the website for submitting reports: <http://www.nyc.gov/elobbyist>.

k. ***What information do I report?***

i. The **state** forms and website offer detailed instructions for what to report to the State Commission.

a) As an overview, for the state reports, reportable expenses include advertising, telephone, electronic advocacy, food, beverages, tickets, entertainment, parties, receptions or similar events, advocacy rallies, consultant services, courier services, expenses for non-lobbying support staff and retained lobbyist payments for lobbying employees' salaries. A good faith estimate will suffice where it is not possible to determine exact dollar amounts. Expenses for printing, mailing, and reproduction are not reportable until such expenses exceed \$500, at which point the entire cost is reportable. You do not need to report lobbyist's personal food, travel, and lodging as well as lobbyist's office rent and utility expenses.

b) An expense in excess of \$75 must be fully identified and include the name of the person or entity to whom it was paid, as well as the purpose for which it was paid. You must be able to document any expense of more than \$50 by receipt or cancelled check for a period of three years from the date of filing. The State Commission will be conducting random audits of filings which may require you to produce books, records, papers or memoranda relevant to the preparation of the selected filing. Failing to retain these records may subject you to a civil penalty of \$2,000.

- c) You will report all lobbying activity occurring in the period covered including the names of all persons before which you have lobbied and the subject matter lobbied.
 - ii. The **city's** website includes instructions for reporting requirements.
 - a) Information you are to report to the city includes compensation (salary, fee, gift, payment, benefit, loan, advance or any other thing of value paid, owed, given or promised to the lobbyist) as well as reimbursed expenses received by the lobbyist (excludes reimbursements for lobbyist's personal food, travel and lodging expenses). You should not include printing, reproduction or mailing expenses for letters, memos or other written communications if they are less than \$500 a year, at which point the entire cost is reportable including itemized expenses exceeding \$75.
 - b) You will report all lobbying activity occurring in the period covered including the names of all persons before which you have lobbied and the subject matter lobbied.
- 1. ***How often do I have to report?***
 - i. The **state** requires bi-monthly reports. For the state, reports are due 15 days after the last day of the reporting period. The reporting schedule is as follows:
 - a) January 1 – last day of February (report due March 15)
 - b) March 1 – April 30 (due May 15)
 - c) May 1 – June 30 (due July 15)
 - d) July 1 – August 31 (due Sept. 15)
 - e) Sept. 1 – Oct. 31 (due Nov. 15)
 - f) Nov. 1 – Dec. 31 (due Jan. 15)
 - ii. The **city** requires both periodic reports and an annual report. Lobbyists who are required to file an annual report and who earn or incur expenses in excess of \$5,000, must file a periodic report, subject to an exception stated below. However, you only need to submit a periodic report during a giving period if, during that period, you earned or incurred expenses in excess of \$1,000. Periodic reports for the city are due on a bi-monthly basis, on the same schedule as the state's. Thus, the schedule is as follows:
 - a) January 1 – last day of February (report due March 15)
 - b) March 1 – April 30 (due May 15)
 - c) May 1 – June 30 (due July 15)
 - d) July 1 – August 31 (due Sept. 15)
 - e) Sept. 1 – Oct. 31 (due Nov. 15)
 - f) Nov. 1 – Dec. 31 (due Jan. 15)

- iii. An organization that lobbies solely on its own behalf by utilizing the services of its employees and earns or incurs combined reportable compensation or expenses in an amount in excess of \$5,000 but equal to or less than \$10,000, need only file two periodic reports. The schedule for these reports is as follows:
 - a) Jan. 1 – June 30 (due July 15)
 - b) July 1 – Dec. 31 (due Jan. 15)
 - iv. If there is a change in the information filed with the City, you must submit an amended report to the city clerk.
 - v. The annual report with the city is due January 15th of each year for the annual report covering the previous year.
 - m. ***What are the fees for reporting?***
 - i. There are no fees in connection with filing lobbyist reports either with the state or the city. There is a \$50 fee for filing the semi-annual client report with the state.
 - n. ***What if I know I will not be able to register or report on time?***
 - i. You may request an extension of filing time in writing to the State Commission's office prior to the filing due date. The Executive Director of the Commission has the discretion to grant the request.
 - o. ***What if my submitted registration form or report contains mistakes?***
 - i. There is a process for amending registration forms and amendments. See the state and city lobbying websites for further information
 - p. ***What are the penalties for not registering or reporting?***
 - i. There are no exceptions under the New York State Lobbying Act, the New York City Lobbying Act, and the Federal Lobbying Disclosure Act for non-profit corporations. Your organization could be subject to civil penalties, late filings fees, a cease order on all lobbying or even misdemeanor criminal penalties for failing to report or otherwise comply with these laws.
 - a) **State:** The New York State Joint Commission on Public Ethics may impose civil penalties for knowing and willful violations of the State Lobbying Act, and may impose late filing penalties of \$10 per day for first-time filers and late filing penalties of \$25 per day for others.
 - b) **City:** The Clerk's Office will assess late penalties that will accrue daily, similar to the penalties imposed under the state statute. The City Clerk may, at his discretion, waive or reduce penalties based on several factors set forth in section 3-223(c)(2)(i)-(v), including whether the lobbyist has filed late in the past and the annual operating budget of the lobbyist or client. Moreover, at some point, the City Clerk will establish a 6 month amnesty period in which a lobbyist who has never filed can file an application for amnesty, summarize its lobbying expenses for the

previous year, and register, and all its late penalties will be waived. The penalties the City Clerk may impose on lobbyists range up to \$20,000 for some violations and \$30,000 for other violations.

q. ***Are there any other requirements?***

i. The City requires that lobbyists who are required to file an annual report complete a training program biennially (the program is to be created by the city clerk “as soon as practicable”). If you are an organization that lists 5 or more officers or employees who engage in lobbying activities or are employed in the division that engages in lobbying activities and identify 30 or more clients on whose behalf you lobby, you must send 2 officers to the program. All other lobbyists must send 1 employee or officer to complete the training program biennially. Any lobbyist registering for the first time must complete the training program within 15 days of beginning lobbying.

r. **Helpful Resources**

i. Internal Revenue Service Form 5768 & Instructions (for § 501(h) election): <http://www.irs.gov/pub/irs-pdf/f5768.pdf>

ii. New York State Joint Commission on Public Ethics Website: <http://www.jcope.ny.gov/us/>

iii. New York City Lobbying Bureau: http://www.cityclerk.nyc.gov/html/lobbying/lobbying_bureau.shtml

i. New York City Lobbyist Filing System: <https://www.nyc.gov/portal/site/eLobbyist>

II. KEY CONCEPTS FOR LEGISLATIVE ADVOCACY

A. Understanding the New York State Legislature

1. Relationship between Senate, Assembly, and Governor
2. Role of leadership and Caucuses
3. Key Players
4. Building relationships and operating strategically
5. Common mistakes

III. BUILDING YOUR CAMPAIGN

A. Identifying issues

1. Documenting and analyzing patterns
2. Strategic filters

B. Involving clients

1. Talking to clients about systemic reform
2. Creating a structure (Organizing Project, Client Advisory Board, Speaker Bureau, etc.)
3. Clients and press

C. Building coalitions

1. Identifying allies and champions

2. Achieving clarity about roles and decision-making
3. Making partnerships sustainable

D. Bill drafting

1. Common legal hurdles (preemption)
2. Working with bill sponsors
3. Additional resources
4. Negotiation and compromise

E. Implementation

1. After the momentum of the campaign is over, ensuring that policy changes are implemented.

IV. CASE STUDIES

A. Divide into small groups.

1. Each small group brainstorm issues impacting clients and choose one issue to build a campaign around. Consider the legislative landscape, feasibility, and resources available.
2. For your campaign, roughly sketch your legislative strategy
 - a. Who are the targets (decision-makers)? How will you influence them?
 - b. Who will be your main allies? How will you engage them?
 - c. Who will be your main opponents? How will you neutralize them?
 - d. What resources will you need? Where will you get them?
 - e. What are the first 3 steps you'll take?

V. DEBRIEFING CASE STUDIES

Two small groups (more if time permits) will present their campaigns. The full group will ask questions, provide critique, and further refine strategies through a discussion facilitated by the session leader.

Organizing with Clients for Legislative Reform



ORGANIZING WITH CLIENTS FOR LEGISLATIVE REFORM

*HARVEY EPSTEIN
JOHN WRIGHT
KATE RUBIN*

LOBBYING

**Generally, is an attempt to
influence a specific piece of
legislation**

501(C)(3) ORGANIZATIONS CAN LOBBY...

**A careful and educated organization
can lobby to further its tax exempt
mission**

...WITHIN LIMITS

- 501(c)(3) organizations are absolutely prohibited from participating in, or intervening in, any political campaign for elective public office
- 501(c)(3) organizations may take positions on public policy issues, but may not have messages that favor or oppose a candidate
- Voter education and voter registration activities are acceptable if conducted in a non-partisan manner

EXAMPLES OF LOBBYING

- Giving elected officials ideas for a bill, drafting bill language
- Asking staff in council member's office to encourage member to introduce a bill so long as the bill is introduced
- Working with council committee lawyers on bill language
- Seeking funding for member item or discretionary funds from elected official

NOT LOBBYING ACTIVITIES

- Meeting with elected officials and their staff about general issues or problems
- Joining a council member's mailing list
- Discussing general policy goals
- Asked to speak at a public hearing about legislation
- Responding to RFP

TWO TYPES OF LOBBYING

...both count as “lobbying” under New York law

Grassroots lobbying and Direct lobbying

GRASSROOTS LOBBYING

- An attempt to influence legislation by encouraging others to take action with regard to specific or proposed legislation
- Advocates a position for or against the legislation
- Must contain an explicit or implicit call to action

DIRECT LOBBYING

- An attempt to influence legislation by communicating with an elected official, their staff, or agency with regard to specific or proposed legislation
- Only includes advocacy that takes a position for or against the legislation

TRACKING YOUR TIME

Assume that your organization is in support of a proposed bill S234 which would ban the use of animal products in cosmetics. Your organization decides to send members to Albany to rally support for this bill.

- Is preparation time, such as members' meetings and planning, in support of this trip to Albany lobbying? If so, why?
- Is the travel time to and from Albany lobbying? If so, why?
- Would a meeting with the legislators in Albany be lobbying? If so, why?

TRACKING TIME (CONT.)

- Is preparation time, such as members' meetings and planning, in support of this trip to Albany lobbying? If so, why?
- Yes, it is grassroots lobbying since it is an attempt to influence legislation by encouraging others to take action with regard to that legislation.
- Is the travel time to and from Albany lobbying? If so, why?
- No, staff travel time does not count towards lobbying. Staff lodging or personal food also does not count towards lobbying.

FEDERAL LIMITATIONS

For organizations making 501(h) election:

**20% of first \$500,000, 15% of next \$500,000,
10% of next \$500,000, 5% of remaining up
to cap of \$1MM**

**Grassroots lobbying can't be more than
25% of total lobbying limit**

WHEN TO FILE AS A LOBBYIST

If organization anticipates spending over \$5,000 on lobbying must register with NYS Joint Commission on Public Ethics

Includes local-level lobbying

ORGANIZING TO WIN

DEVELOPING A CAMPAIGN

- **Identify issues (surveys, focus groups, conversations, data, etc...)**
- **Is there a legislative fix?**
- **Is it a state issue or a city issue?**
- **Allies and opponents?**
- **Can we build momentum?**
- **Do we have the resources?**

WINNING STRATEGY

- **Work in coalitions**
- **Understand who has power and how they will use it for you (or not)**
- **Build relationships with staff**
- **Find a champion**
- **Think long-term**
 - **Legislative victory might be an end in itself *or* a tool to get to that end**

CONSIDERATIONS FOR BILL DRAFTING

- **Involve all stakeholders**
 - Getting early buy-in pays off later
- **State or local**
 - Can be easier to move legislation locally but raises state law preemption issues
- **Identify a sponsor**
 - Someone who has influence AND will be a champion

CASE STUDIES

CHARITABLE BAIL ORGANIZATION BILL

- **Only pursued state legislative fix after ruling out all other avenues**
- **Behind the scenes**
- **Unlikely ally (Assembly Republican)**
- **Likely allies (Assembly staff, Bronx Senate sponsor)**
- **Role of Governor**

SWEAT

- **Securing Wages Earned Against Theft**
- **Grassroots campaign with UJC in legal support role**
 - Bill drafting, meetings with electeds, trouble-shooting legal issues
 - Goals, liens against business owners during litigation to prevent hiding assets and income
- **Sponsors: Rosenthal, Peralta**
- **Role of governor**

*SMALL GROUPS &
REPORT BACKS*

Changes to NYC Lobbying Law

On January 1, 2014, a new law altering the New York City lobbying regulatory scheme went into effect. The law makes several changes to the circumstances under which a lobbyist must register with the City and file reports and how often those reports must be filed, among other changes. Here are the relevant modifications:

Expanded Definition of “Lobbying”

The new law expands the definition of “lobbying.” The following acts are considered “lobbying,” effective in late May, 2014 (150 days after the bill’s enactment). Any attempt to influence:

- any determination by the city council or any member thereof with respect to the introduction or substance of any local legislation
- any determination by the mayor to support or oppose any local legislation or resolution, regardless of whether the legislation has been introduced
- the proposal by an agency of any rule having the force and effect of law
- the decision to hold or timing of any rate making proceeding before an agency
- the agenda of a board or commission
- any determination regarding the calendaring or scope of any city council oversight hearing
- the issuance, repeal, modification, or substance of a mayoral executive order
- any determination made by an elected city official, an officer, or an employee of the city to support or oppose any state or federal legislation, rule or regulation

Increased Dollar Threshold for Obligation to Register

The threshold for lobbying expenditures that triggers an obligation to register as a lobbyist and file reports is increased to \$5,000 from \$2,000. Lobbyists that expect to spend less than \$5,000 in a given year need not register.

Eased Periodic Filing Requirements

Lobbyists that spend between \$5,000 and \$10,000 on lobbying and lobby only for themselves must file two periodic reports a year instead of the current six. This change takes effect in January of 2016, unless the city clerk is ready earlier. Further, a lobbyist only has to file a periodic report if he expends \$1,000 or more on lobbying during a given period. The old law set the threshold at \$500; this change takes effect on January 1, 2014.

Amnesty Period and Discretionary Penalty Waivers

At some yet-to-be-determined time, the city clerk will establish a six-month amnesty period. During this time, any organization that has never filed as a lobbyist or client can file an application for amnesty, summarize its lobbying expenses for the prior year, and register, and all late filing penalties that would have accrued since December 10, 2006 will be waived. Similarly, the city clerk now has the authority to waive or reduce penalties at his discretion. The clerk’s decision will be guided by five factors set forth in section 3-233(c)(2), including whether the lobbyist has filed late in the past and the annual operating budget of the lobbyist or client.

New Required Training Program

The new law sets out a new requirement that lobbyists complete a training program biennially (the program is to be created by the city clerk as soon as practicable). Organizations with five or more officers or employees who engage in lobbying must send two officers to the program; all other organizations must send one. Any lobbyist registering for the first time must complete the training program within 15 days of beginning lobbying.

Biographies

Harvey Epstein is the Associate Director of the Urban Justice Center. In addition, he is the Project Director of the Community Development Project at the Urban Justice Center which supports dozens of community-based organizations to win legal cases, publish community driven research reports, assist with the formation of new organizations and cooperatives, and provide technical and transactional assistance in support of their work towards social justice. These cases are litigated in both state and federal court and are usually on behalf of groups of individuals organized by the community-based organization. Prior to working at UJC, Harvey was the Associate Director/Managing Attorney for Housing Conservation Coordinators ("HCC"), a community based Not-For-Profit organization which works to preserve decent affordable housing. Prior to working for HCC, Harvey was a staff attorney at the Community Law Offices for The Legal Aid Society. As a staff attorney, Harvey worked in the Housing Development Unit which represented tenant associations in affirmative litigation including rent strikes, and group actions seeking repairs. In addition, Harvey worked with numerous tenant associations in obtaining ownership of their buildings. Harvey was also instrumental in creating a Community Economic Development Project at The Legal Aid Society which assists small businesses and Not-For-Profits with transactional legal matters including incorporation, applications for tax exemption, negotiating commercial leases and loan agreements. Harvey is a graduate of Ithaca College and CUNY School of Law

Kate Rubin, as a Managing Director of the Civil Action Practice at The Bronx Defenders, leads a staff of 30 advocates and attorneys providing comprehensive civil legal representation to thousands of people each year. Responding to the legal needs and priorities of our clients with criminal justice and family court involvement, the Civil Action Practice handles a wide range of issues including housing, employment, public benefits, civil forfeiture, and immigration. The practice also looks beyond individual cases, addressing systemic problems through legislative and administrative advocacy, grassroots organizing, and affirmative litigation. Kate also oversees community legal education programs and Reentry Net/NY, an online resource center on the consequences of criminal proceedings in New York State.

Prior to assuming leadership of the Civil Action Practice in January 2014, Kate established and directed the community organizing and policy reform initiatives at The Bronx Defenders. During her five years as Director of Policy & Community Development, Kate led the office's legislative advocacy activities, community partnerships, and The Bronx Defenders Organizing Project. She has played a key role in multiple victories in both the City and State legislatures, including passage of landmark police reform legislation over Mayoral veto in New York City in 2013, enactment of the Charitable Bail Organization Act in 2012, and reforms of the Rockefeller Drug Laws in 2009.

Before joining The Bronx Defenders, Kate worked as Research Associate in the Economic Justice Project at the Brennan Center for Justice, supporting low-wage worker organizing campaigns, and ran education programs for incarcerated and formerly incarcerated youth. She

holds a BA in History from Cornell University, and serves on the Advisory Committee of the Advocacy Institute and the Steering Committee of Communities United for Police Reform.

John Wright is a seasoned government affairs expert with a proven track record in servicing the needs of not-for-profit organizations throughout New York. John is particularly adept at developing successful collaborations between not-for-profit organizations and government officials to assist under-served communities. Within government, John has a reputation for effectiveness, cooperation, geniality and the ability to help elected officials understand how collaborations with his clients can advance both the clients and elected official's agendas and public priorities. John's in-depth understanding of the not-for profit-community is based on his front line service in several social agencies. John served as Assistant Executive Director for the Center for Children and Families/Safespace, Inc. He was also the Assistant Executive Director of New York City's oldest African-American-run child welfare agency, the Harlem Dowling-Westside Center.