

**Ray LeBov:** Hello. I'm Ray LeBov. On today's podcast we'll be talking about common mistakes that lobbyists make. Joining me to provide more insights is my colleague, Chris Micheli.

Let's start with a really egregious yet obvious one. Believe it or not, many lobbyists don't read the bill! How many times have I discussed a piece of legislation with an interested ally or opponent only to find out that they've very little idea of what it says? What a conversation strategizing stopper that is.

**Chris Micheli:** I too, Ray, am often surprised by our colleagues not looking at the bill language and relying on somebody else's description, or just on the talking points and never having looked at the bill itself. I'm one who often brings a bill to committee and actually cites page and line items for legislators to follow along.

I think another common mistake that lobbyists often make is not doing their due diligence in the legislator that they choose to author their bill. The significance of this decision cannot be overstated, and it's very complex at times. What do you think, Ray, about the difficulty in picking a legislator for your bill?

**RL:** I would have to totally agree with you that it's perhaps the most complex and critical decision that a lobbyist makes, and is honored in the breach in terms of the rigor that is applied to that analysis.

For me, I have a 15-item checklist that I use before every bill author selection. I go down and ask myself and that leads me to the right answer. I could cite numerous occasions where having picked the right person to do it eventuated in success. Whereas if I had selected anyone else, the likelihood is we would've failed.

**CM:** Well, I look forward to seeing and hearing about that 15-point checklist.

**RL:** Happy to discuss it with you. Another mistake I see occur pretty often is not knowing when to stop.

I'm just going to cite one single example, and this is just meant to be illustrative. It's not certainly the only type of situation where this occurs. I've seen witnesses lose a bill in committee by continuing to speak past the point of effectiveness.

When I was working for the Assembly Judiciary Committee, our Chair would sometimes help witnesses avoid this error by asking them, "Do you want your bill, or do you want to talk?"

**CM:** I've seen that way too often, myself. Many of us will sit in the audience and laugh when the Chair says something along the same lines that you just mentioned. Then the witness looks up, stops momentarily, and then returns to reading their prepared statement.

I think another mistake often made by lobbyists, I think, is what you've defined as not managing client expectations properly. You really have to have a clear understanding of what your client wants, what's achievable, and then managing those expectation throughout the legislative process.

As I'm sure we've both experienced over the years, some of our clients have unrealistic expectations. So first we have to temper those expectations, but then we have to manage those expectations throughout the legislative process.

**RL:** And when a client doesn't have any idea how the process works, and I guess it gets compounded when they think they do, they often get antsy. They apply pressure to "Do something, anything!"

And it's like, wait a second. If I'm going to do what you're wanting me to do right now, we're taking our chances from reasonably likely to impossible. But that's not an easy thing to manage. After all, it's their interest that's at stake, their money.

**CM:** I was going to say their paying the bill.

**RL:** They're paying the bill. And they have every right to be as concerned as they are. But they hired you for a reason and managing that expectation, defining success for example, is one particular aspect of that.

Another common mistake is ignoring minority party members and staff. This may seem like an unwarranted drain on precious time and resources, but it isn't. Even when you're sure you have the requisite votes from the majority party members there's a lot of reasons for this - common courtesy; you may actually need their votes and not realize it; you WILL need them on some future issue; they may raise issues you haven't thought of; and of course, no one likes to be ignored.

**CM:** Well I couldn't agree with you more, and I would add in the don't take anyone for granted. A lot of my clients are in the business community, and so their natural allies are Republicans - clearly in the super-minority these days - and you can't always count that everybody is on your side. Even your natural allies.

So, I agree with you. You can't ignore anybody. Even in a surefire, you think your bill will get out, I still pay the common courtesy, as you've described, to every member of the committee and his or her staff.

**RL:** Plus, you don't even always know who's going to show up. You may have counted the votes and they're not there.

**CM:** Right!

And as we know, in some committees they replace - in the Assembly but not in the Senate - and what's the impact? Absolutely.

There's been many times I've heard that so and so legislator wasn't going to be at the hearing only because I dropped by their office to see how they might vote on the bill. I think another common mistake that you've often identified is what you call the persistence plus patience is needed in roughly equal quantities because there isn't the right balance between persistence and patience. Can you expand on that just a little bit more?

**RL:** Yeah, I, when I talk to people who are sort of new at lobbying and they've heard a lot of people talk about how important it is to persevere, they somehow think, they equate that with persistence alone.

Really, you really need to think of it in terms of patience being the other, roughly equal, aspect of perseverance. For example, take an extreme example, if you're just being persistent without applying the requisite degree of patience, you may find you're being thrown out on your ear with someone who says to you, "Which part of no don't you understand?"

You've got to go back at the right time in the right way.

**CM:** Yeah. I've, we were working on a bill earlier this summer and one of the fellow lobbyists reported back that this particular office didn't want to see him anymore. \*chuckles\* they were persistent, but overly persistent.

**RL:** Exactly. You need to temper it with patience.

So here's a classic that everybody, if they don't know it they learn it the hard way. Unfortunately, it's a lesson that in the process of learning it you may have really harmed your career permanently. That is, you make the mistake of not telling the truth.

Lying can gain you an illusory short-term advantage, but it's going to destroy your reputation, credibility and ability to succeed. And, of course, the truth is easier to remember.

**CM:** I couldn't agree with you more. It's often surprising how a limited number, I would say, of our colleagues, often lose sight of ... they may have won the battle but lost the war. I've been here for 20 years and have another 25 or 30 years ahead of me, and I look very long term.

Besides that, in my opinion, if I lobbied Ray LeBov as an Assembly Member and lied to him, how could I go back tomorrow and ask again for his vote? So I couldn't agree with you more.

I think another common mistake is anything that you put in written form will quickly be known by everybody else. In one of my first clerkships in the Governor's office during my second year of law school here at McGeorge. Working for the Legal Affairs

Secretary, she said, who later went to become a member of the California Supreme Court, Janice Rogers Brown, she said, "Anything that you put in writing, make sure that you're okay if it were on tomorrow's front page of the Los Angeles Times."

And I would point out that was before the internet.

**RL:** Exactly.

**CM:** And social media and everything else.

**RL:** Well, when I teach this aspect, I cite the fact that that used to be the rule. But that today the rule is if you're comfortable with anyone who's ever lived, lives now, or will live in the future seeing it in the next millisecond - fine, you can feel free to publish it. Otherwise, no.

**CM:** Couldn't agree with you more.

**RL:** Here's an important one - not sufficiently researching a legislator's or staff member's background and interests before communicating with them. Minimize surprises. Do your homework.

Chris you cited do your homework on one of the earlier ones. Here's a classic instance when you go in to talk to somebody and you haven't found out what their hot buttons are, what their likes are, what their dislikes are, what their relationships are, who their supporters are, what their history is.

If you don't do your homework and research those sorts of things and really become familiar - and it's really not that hard to do - there's all sorts of things you find out...

**CM:** The Red Book.

**RL:** Starting with the Red Book. Find out online from others who have dealt with them. When I worked for the Judicial Council we kept a file on every single legislator and every single major staff person and anything that ever occurred relative to them in print went in there, as well as debriefings from any meetings we have them. That went into the file so that if someone new was going to meet with them, they could research it. But if you don't do that, you're going to commit and - not just a faux pas, but a series of faux pas that will bite you.

**CM:** I think your guidance is very helpful in that regard. I would just add to it that it often surprises me how some of my colleagues don't modify their message. They know their key points, but some work for some members and some work better for a different member. You can't have the exact same spiel for every single legislator because some of those talking points may not be important to him or her, they may not be relevant for their district, or their political philosophy or other things that could impact their decision making.

But again, as you pointed out, that's part of doing your homework.

**RL:** You know we might call that spin a little bit. But it certainly doesn't transfer over to what we talk about earlier, which is not telling the truth. You're telling each of them the truth. It's just you're emphasizing different things.

**CM:** Yeah. And I think another common mistake which you've pointed out, which sort of relates to properly managing client expectations and that is letting the perfect be the enemy of the good. Can you expand upon that?

**RL:** Sure. You know, sometimes it's also referred to as falling in love with your bill. This is a political arena. There's lots of horse trading, there's lots of negotiating that gets done. Usually, pretty rare that someone gets everything that they want. And if you're being hardline about it to the extent that you're not even open to conversations and negotiations, you know, you may lose everything in your effort to get 100% of what you want.

Now, there's going to be some instances of course where you can't compromise - it's an article of faith, it's a reason why your client exists or your interest exists, and it's not something that's negotiable. Of course we recognize that's going to happen. But that's more the outlier than the normal set of affairs where it may pain you on some personal level, "Oh, you know, I hate to give that up."

But you know what, you're going to be a lot better off getting X%, whether it's 85 or so of your desired goal, then holding out for 100 and winding up with 0.

**CM:** That reminds me of my first boss as a lobbyist, Ann Kelly, you may recall her.

**RL:** Very well.

**CM:** She worked for Speaker Brown and was Chief of Staff to Barry Keene when he was the Senate Majority Leader...

**RL:** Maybe the only person he didn't ever fire.

**CM:** That's right. And she made that, in my first year of lobbying, not only don't fall in love with your bill, nor your author. And in that very first year, on a tax bill, we had gotten an Assembly Bill all of the way over to the Senate floor, and before the end of the session, the substance of the bill was transferred into a Senate Bill, not an AB, and obviously not a Senator was the author of our bill and not an Assembly Member. So I got that experience the first year.

**RL:** Taking setbacks personally. You know, this is an environment where that really is a mistake because you're going to have setbacks and for the most part they're not aimed at you personally, there are other people who have agendas that may not be entirely

consistent with your agenda. And yes, it may be true that you've invested an awful lot of yourself into trying to accomplish something, but don't take it personally.

You're not going to be in a position to negotiate and to function properly within this political environment if you're always upset because somebody did something to you. For the most part, they don't, it's not within their desire to hurt you. It's their desire to accomplish their legislative goal.

**CM:** I couldn't agree with you more. I often say a couple of things. One is, this Governor, who's been one of the most successful in the last 50 years, doesn't get everything that he wants. So if the Governor can't get everything, neither can you. I agree with you about taking things personally. It's a rarity if ever a legislator or his or her staff is targeting someone individually or specifically. And the third is I always believe in the long-term adage of: we're friends today, opponents tomorrow, but in the end we still have to work together.

As soon as you start personalizing things, it all goes downhill very quickly.

Another common mistake made by lobbyists is sending the wrong messenger to communicate the client's point of view. I often equate being a successful lobbyist to being a campaign manager. And I think that's difficult for some lobbyists.

Obviously, one of our core roles is to advocate, both verbally and in writing. And so not being the messenger sometimes is difficult for some lobbyists to undertake. But, I think there are many instances in which the lobbyist is not the right voice on a particular issue. It could be the client himself or herself, it could be a trade association, or maybe somebody else in the industry.

**RL:** Yeah, I think that's absolutely right. And it works kind of both ways. Sometimes, as you say, someone from the association is the right messenger. However, sometimes members of the association think they're the right messenger and they think they've got a relationship or they think they can explain it best...

**CM:** And they're actually the wrong messenger.

**RL:** They're actually a person you dread ever going out in public, much less talking to a legislator. Now, that's the exception, not the rule. As I said, it's often very much so that a constituent member of an association is the absolute right person to talk. But you need to figure that out and you need to manage it.

Let's close with one of the most important ones. One of the most important mistakes is that because many laws are not self-implementing or self-executing, a legislative win or loss may just be the battle, not the war. In the case of non-self-executing statutes, regulatory agency play a huge implementation role and the lobbyist's job isn't over when the legislation is enacted.

Chris, you've been very prominent in the regulatory advocacy field. I'd love to hear your thoughts on this.

**CM:** Well, I think as you and I have often shared, it's the proverbial second bite at the apple. It's surprising how many of our colleagues work only in the legislative arena and once a bill gets passed and signed into law they never think about it a second time.

But clearly, in the regulatory arena, in the rulemaking process, there's opportunities to expand sometimes or even narrow. So you may have been successful in passing a bill, and then your opponents go to the rulemaking body and somehow are able to narrow the application of it. Or vice versa, you lost in the legislative arena, and no one pays any attention and you're off in that obscure undermining the underlying statute. So, in effect, you've won.

Don't ever forget that second bite at the apple.

**RL:** Very well said. Thanks everyone for joining us today for our discussion of the most common mistakes that lobbyists make.