Foreword to the Fifth Edition

This Fifth Edition of *The Lobbying Manual* is usefully compared with its predecessors. Most striking are the various directions over time the law has taken in governing the conduct of lobbying activity—“lobbying” understood to refer to the different means of influencing the shape of public policy. The practitioner must, of course, ground her advice in lobbying law that goes by that name, such as the Lobbying Disclosure Act, but also—to cite a handful of other sources—in campaign finance law, tax law, the ethics rules of the legislative and executive branches; enactments directed at specialized concerns, like the STOCK Act (the uses of political intelligence) and the Byrd Amendment (lobbying with appropriated funds); and the evolving theories of public corruption by which abuses present the risk of criminal exposure.

In short, we are a long way from the legal regime in place for most of American history, one characterized by no rules, or by rules enacted with self-defeating gaps and followed by indifferent enforcement.

This account may seem odd to the passing contemporary observer who has listened to the public debates about the state of the law and the need for reform. The most prominent line of argument and analysis holds that the law in this field is weak in design and/or, for want of competent administration or enforcement, in near collapse. Certainly the changes in political practice in the last several decades have taxed the capacity of the law to catch up with them. Today, any discussion of campaign finance will turn quickly to the Roberts court and its limiting jurisprudence on campaign finance, and to the aftermath of cases like *Citizens United* in which super PACs have grown in visibility and, arguably, impact.

But in the background of these large and important issues remains a complex of legal requirements and challenging legal issues that have transformed the lawyer’s role in guiding lobbying and public policy advocacy. It is decidedly not a world in which “anything goes.” The business of “influence”—influencing electorates, legislatures, the executive, and the public—has been systematically regulated. Some may believe that it is insufficiently regulated and others that it is regulated too much, but there is no doubt that it is regulated.

These chapters also demonstrate the ways that the relevant laws and rules intersect, which must be a fundamental concern for practitioners and clients alike. The ethics rules in the legislature and executive branch impose restrictions on gift giving, and the issues presented under these rules overlap with those under the illegal gratuity statute and in “honest services” public corruption investigations and prosecutions. A campaign contribution, which enjoys significant constitutional protection, is not a bribe, except in the circumstances where it might begin to resemble one—or at least figure in a thorough and competent assessment of legal liability. Lawyers who work in this field appreciate the risks of viewing any one law or rule governing political activity in isolation from the others. They will find in this manual considerable assistance in maintaining this focus—in keeping the “dots connected.”
This is good enough reason for a unique resource allowing practitioners to understand the legal lay of the land and to see how those dots connect. *The Lobbying Manual* has met this need now for several editions. In the pages of this Fifth Edition, as in the previous editions, are found lucid, expert presentations on a host of statutory and regulatory requirements for conducting lawful activities to influence government policy and decision making.

A strength of this treatment is the inclusion of rich context and sound practical advice. Together with the identification of specific laws and regulations are discussions of the sensitive constitutional environment in which this lawmaking takes place. There is also a vitally important emphasis on the course of interpretation and enforcement, which enables readers to appreciate how the Government Accountability Office has audited compliance with federal lobbying disclosure law, how the Department of Justice has investigated compliance with the Foreign Agents Registration Act, and how trends have developed in the criminal and civil exposure faced by the individual lobbyist. The manual closes with expert counsel on the elements of an effective federal compliance program.

The American Bar Association has been fortunate over the years to have recruited leading practitioners to direct the project and to contribute to the volume. This year, my colleague Rebecca Gordon and the ABA’s Thomas Susman, two well-known experts in this field, have collaborated in a splendid compendium of pieces that will stock the shelves of anyone who works on these kinds of issues. It is a genuine achievement, a true service to the Bar.

Robert F. Bauer