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CAPITAL THINKING

BUSINESS, FINANCE, POLITICS—AND THE LAW

DESPITE
SOME BAD
PRESS,
DEMAND
FOR LOBBYISTS
IS SURGING

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THOMAS HALE
BOGGS, JR.
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Lobbying
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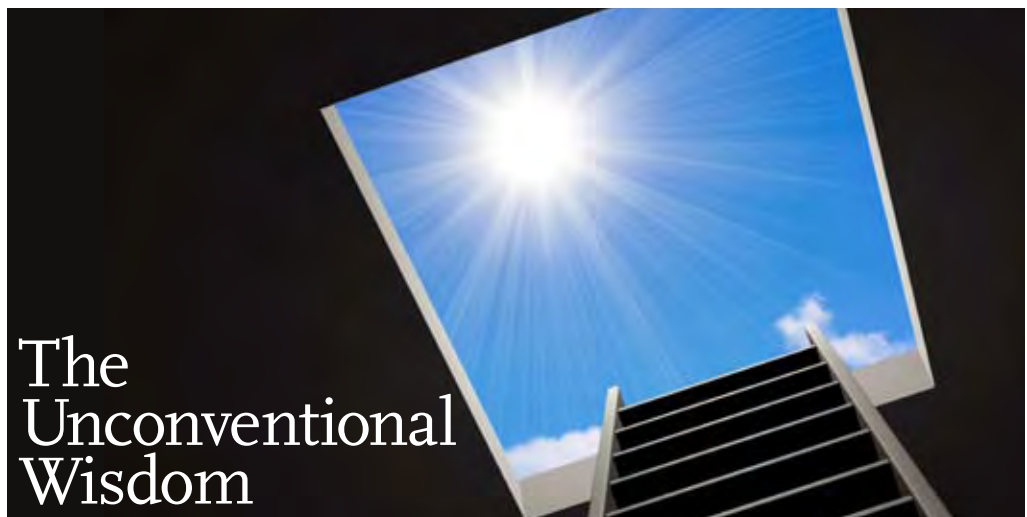
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SHUTTERSTOCK



The Unconventional Wisdom

It may be axiomatic that the conventional wisdom exists to be questioned. And yet, it prevails. So it is that the following statements still resonate: Commercial real estate is dead. “Lean” manufacturing slashes jobs. High-speed rail will never fly in America. Lobbyists’ days are numbered. Clean technology is the province of the behemoth companies that can afford to develop it.

As we see in this issue, none of those statements rings true. Take real estate lender Willy Walker, who says, “There are plenty of opportunities [in commercial real estate] for investors willing to heed the lessons from the past few years.” Or Jim D’Addario, who applied the Lean approach to his guitar strings and accessories business and increased profitability and productivity while improving employee morale and *adding* jobs. Or Carolina Mederos and Rodney Slater, who explain how high-speed rail can (and will)

reshape America’s economy and environment.

Similarly, such veterans of government as Kevin Martin (former chair of the FCC) and Rosemary Becchi (who worked with lobbyists at the Senate Finance Committee and the IRS), both of whom are now partners at Patton Boggs, explain that lobbying—or advocacy—is having a heyday because, as Martin notes, “one of the most important roles of advocates is...framing an issue in a way that” ensures success “but also fits in with the...overall regulatory direction.”

And as for helping the U.S. take the lead in clean technology, Alain Castro, president of Akuo Energy USA, says it best: “Lean entrepreneurial ventures are entering this sector and thriving.”

Perhaps the conventional wisdom exists to be debunked. *Capital Thinking* exists, in part, to aid in the debunking.

MIKE WINKLEMAN, *Editorial Director*

“For consumer, industry and governmental interests alike, this bill is not about opposing causes but achieving a shared objective.”

—Stuart Pape, on the bipartisan effort to develop food safety legislation

CURRENCY

BY JEFF HEILMAN

ESTATE TAX: The Levy Breaks?

Among the provisions of the 2001 Republican-led tax-cut bill: phased reductions leading to a repeal of the federal estate tax in 2010. At present, that can mean a total exemption from inheritance taxes, depending on estate value.

So why do lobbyists for small businesses, farmers, construction workers and related constituencies, historically opposed to the estate tax, now want it back? Because in 2011, by law, inheritance taxes must revert to pre-2001 rates—for estates above \$2 million per married couple, a scorching 55 percent.

“Lobbyists do not want the law reinstated per se, says Patton Boggs partner Rosemary Becchi, who represents various interests that could be affected by the changing laws, “but they are looking for a compromise.”

The push is on for exemptions below \$10 million per couple with a 35 percent tax above that amount—and time is of the essence. “Changing the law becomes much harder the longer Congress waits,” says Becchi. And with Congress absorbed with health care and other priorities, anxious months ahead are certain. CT



Watchful Eye on the Food Supply

Listeria. Cryptosporidium. Shiga toxin-producing E.coli (STEC) O157:H7. Feverish and chilling just to mention, the threat of these and other foodborne pathogens found the national spotlight last year with cases involving peppers, spinach, pistachios and, most glaringly, the sickening of hundreds, some fatally, by Salmonella-tainted peanut products.

Heightening criticism over outdated regulatory and oversight standards was a collaborative 2008 report from the Centers for Disease Control and Prevention and other agencies finding little progress in preventing outbreaks of foodborne illnesses. As deputy director of the CDC’s Division of Foodborne, Bacterial and Mycotic Diseases Robert Tauxe noted, “We have reached a plateau in the prevention of foodborne disease and there must be new efforts to develop and evaluate food safety practices from the farm to the table.”

Both the House and the Senate have responded by developing food safety legislation. The House-passed bill—the Food Safety Enhancement Act of

2009—is a move that Patton Boggs managing partner Stuart Pape says “will attempt to change the paradigm” of food regulation. “This bill would give the Food and Drug Administration higher authority and responsibility over the national food supply, while clarifying for companies and suppliers across the industry their obligations to ensure food safety,” says Pape, a principal advisor to the Grocery Manufacturers Association, a leading trade group.

With the landmark bipartisan bill now pending in the Senate, Pape is optimistic about its passage into law. “Most people give it a high likelihood of making it to the finish line,” he says. “For consumer, industry and governmental interests alike, this bill is not about opposing causes but achieving a shared objective.”

Meanwhile, tainted food outbreaks persist. Among a number of 2010 recalls, a Missouri-based meat packer recalled 14,000 pounds of beef suspected of E. coli contamination, while Salmonella fears led Cincinnati-based The Kroger Co. to pull two onion soup and dip mixes. CT

Prime Time for Brazil

For decades, Brazilians and outside observers alike have wondered when this resource-rich South American nation would crest the tipping point and finally establish lasting global prominence. From all appearances, Brazil's days on the verge may finally be over.

According to Kristin Wells, a public policy partner in Patton Boggs' international group and an avid student of Brazil, the world's fifth-most populous nation could never quite surmount its persistent economic, political and social challenges—until now. “Sustained reforms have effectively resolved the key fundamentals of Brazil's political and financial systems,” says Wells, “and produced a functioning democracy.”

Among the first emerging markets to begin recovering from the recession, Brazil is economically and fiscally stable, distinguished by a rising GDP, robust public markets, investment-grade debt, striking industrial growth, foreign reserves and a



Wells

solid reputation in world markets. Importantly, too, the Brazilian government is meaningfully addressing long-standing educational, income and social gaps toward solidifying a growing middle class and creating a skilled labor force.

It all points to Brazil's drawing power as an investment destination, and hosting both the 2014 FIFA World Cup and the 2016 Summer Olympic and Paralympic Games can only heighten the appeal: From

new airports to revamped transportation networks, many billions of dollars in new construction and infrastructure upgrades are planned.

“Even a small piece of the action can be immensely profitable,” says Wells, “but for foreign investors, getting in means engaging the Brazilian government.” The wrap of politics around both events is assured—and in a country where many large companies are family-run and business is still conducted at the personal level, she adds, “partnerships are paramount.” **CT**



The U.S. Supreme Court's recent decision allowing corporate and union funds to be used for independent efforts supporting or opposing individual candidates has opened up many options for political participation. The decision will significantly impact the 2010 campaign and those in the future.

Corporations, unions, trade associations, nonprofits and individuals are assessing the new tools that now enjoy First Amendment protections. These include independent expenditures urging the election or defeat of specific candidates; ads naming candidates close to an election; and unlimited voter registration, candidate comparison and get-out-the-vote messages about individual candidates.

“This landmark decision removes the barriers to corporate speech and ensures that independent speech plays a role in the election process,” says William McGinley, Of Counsel at

Patton Boggs and political law blogger at expressadvocacy.com. “It provides for sharper advocacy or criticism of incumbents when voters are paying the most attention.”

The majority decision upholds disclosure and disclaimer requirements as well as the ban on direct contributions to candidates.

“*Citizens United* will increase the amount of political speech,” says Ben Ginsberg, partner at Patton Boggs. “However, the restrictions on how much candidates and political parties can raise from any one source places them at a disadvantage. Unless those limits are lifted, the election messages will become more and more driven by independent outside groups.” **CT**

TOP TEN

HOW TO MAXIMIZE ONLINE IP RIGHTS

BY DEBORAH LODGE

- 1▶ Make sure your trademarks stand out—in bold, in logos, as headers. Use © if registered, ™ otherwise.
- 2▶ Screen new trademarks to make sure they are free to use and do not infringe others.
- 3▶ Register your trademarks with the USPTO to enhance your rights.
- 4▶ Most website content is protected by copyright. Copyright notice is no longer required—but is easy to add.
- 5▶ Adopt—and post with prominent links—an online privacy policy that specifically suits your needs and meets your user's concerns.
- 6▶ A privacy policy should identify the kinds of personal information that will be collected from users.
- 7▶ Consider: Will you have the right to transfer user or customer data to a successor? Can users update or correct their personal data? Do you want to share the data for marketing purposes?
- 8▶ Follow your own privacy policy. Many FTC cases involve companies that did not.
- 9▶ Make sure your service provider contracts address privacy and data confidentiality.
- 10▶ Review your privacy policies and practices annually to make sure they fit your needs and comply with current laws.



WALKER
 "There are plenty of opportunities for investors willing to heed the lessons from the past few years."



RITZ PLAZA, NEW YORK
 "We're going to continue to see growth in the major metropolitan areas of the country," says Walker.

REAL ESTATE

A Tale of Two Worlds

In commercial real estate, it's "bulletproof" and everything else

BY WILLY WALKER
 WALKER & DUNLOP

Commercial real estate, after holding up initially in the downturn, is now at a crossroads. While single-family housing is starting to come back, commercial real estate—particularly multifamily, which was the last into the cycle—has been showing signs of stress. Yet the multifamily market promises to stabilize more quickly because of some interesting dynamics. And there are plenty of opportunities for investors willing to heed the lessons from the past few years.

Here are some of the axioms emerging:

■ **Big money is still interested.** With the stock

shape and takes the money out to take care of a problem asset. Asset-specific underwriting has been replaced by borrower-specific underwriting.

■ **There are two worlds: the haves and the have-nots.** With investors still feeling their way in the brave new world, there is too much capital chasing the great deals, particularly in hot markets such as Washington, D.C. At this point in the cycle, if you've got a less-than-perfect asset or market, you are starved for capital. If you've got a great asset and a great market, you have more capital than you'll ever need.

market stable and interest rates at rock bottom, life insurance companies are looking to commercial real estate for solid returns. Somewhere between \$30 billion to \$40 billion of life insurance money may be put into commercial real estate this year. From a portfolio management standpoint, there's a need to put money back into commercial real estate, and hence a degree of built-up demand.

■ **Borrowers are being scrutinized.** Investors are cautiously returning to commercial real estate, but they're seeking a bullet-proof investment. With today's lending conditions, you need to really understand the borrowers, their track records and their other exposure. You want to avoid a situation where a borrower refinances an asset that is in good

Waste Not, Earn More

“Lean” manufacturing can reduce costs, save jobs and even improve morale

BY JIM D’ADDARIO
D’ADDARIO & COMPANY

■ **Geography still matters.** We’re going to continue to see growth in the major metropolitan areas of the country, particularly with rising fuel costs and people wanting to be close to public transportation. Moreover, jobs, educational institutions and medical services are all in the big cities and suburbs. Also consider the recent relocations of companies such as Lockheed Martin and Volkswagen, which both moved to Washington, D.C., to be nearer decisionmakers that affect their industries. Bruce Katz, director of the Brookings Institution Metropolitan Policy program, has documented a big shift to living in major metropolitan centers: That’s where the money is, that’s where the lending is going to be, and that’s where real estate investors want to be as well.

■ **Interest rates still matter too.** The Federal Reserve is going to work very hard to keep short-term interest rates as low as possible, but that doesn’t influence the 10-year Treasury rate, which is the basis for most commercial real estate lending. The market is going to dictate what happens on the 10-year, and the ability to sell 10-year paper to the international community—Japan, China, the Middle East—is all market-dependent. If the stock market rises, yields on Treasuries are going to have to increase, and that’s going to increase the cost of borrowing for everyone.

Yet the Fed’s influence on interest rates plays out in another dynamic. About \$130 billion of commercial real estate will require refinancing in 2010, and of that, at least \$100 billion sits with banks. Banks are holding the majority of the risk in commercial real estate right now, and the Fed is keeping short-term rates very low to allow banks to continue to heal their balance sheets and boost their profits.

As they continue to make money, taking write-downs on assets or extending those loans becomes far more palatable. If the banks can refinance all of the commercial and single-family inventory they have sitting on their balance sheets, they can start lending again—and the economy, at some point, begins to heal itself.

■ **“Trickle down” will get the economy moving up.** It makes perfect sense right now that investment capital is going to the best markets and the best projects. But as the economy heals, you will start to see a shift in deals. For a life insurance company that wants to put money into the Washington, D.C., area but can’t get in on the best deal, maybe the next best is an almost-perfect deal in Baltimore, or Richmond, or New York City, or New Jersey. The result is a sort of a trickle-down effect, where everybody goes from what they really want to do to the next level. That’s what starts the markets fully healing—when you get capital going to the places where it won’t go now. **CT**

WILLY WALKER is president and CEO of Bethesda, Maryland-based Walker & Dunlop Inc., one of the largest multifamily lenders in the United States.

About five years ago, consultants came to my office and pitched me on something called “Lean.” Frankly, I didn’t understand it, and I didn’t take the time to understand it. It sounded like a way to improve the bottom line by laying off staff. So, like executives at many other companies, I assumed it wasn’t going to work for us.

That was then. These days, I’m a fierce advocate for Lean.

The Lean approach was first described in an influential 1986 book, *Kaizen: The Key to Japan’s Competitive Success*, by

Masaaki Imai. Lean (as used to describe something that has no fat) wasn’t just about saving jobs; it was about making sure that a company (in this case, *our* company) would succeed long term. And that meant eliminating waste.

All too often, even if employees see better ways to do things, they are afraid to suggest them, and their managers are afraid to implement them. Lean appealed to me because it allowed *everyone* to participate on a daily basis, whether they were an executive, a machine operator or a bookkeeper. Once we got all of our



D’ADDARIO “Lean appealed to me because it allowed everyone to participate... whether they were an executive, a machine operator or a bookkeeper.”

D'ADDARIO "We saved jobs because we were able to concentrate on getting more business and pricing more competitively."



managers on board, we had the core to drive the rest of the team. Input was encouraged from everybody. They felt valued. Each became a quality inspector, and everyone benefited.

We separated each step involved in manufacturing guitar strings into value-added activities (those things that the customer is actually willing to pay for, such as production and packaging) and non-value-added activities (those things that the customer is not willing to pay for, such as poor quality control and inefficiencies of all types). We mapped out the whole process, timed every step and got a clearer understanding of our operation.

The idea is to get incrementally better every day with very little capital investment. It's more about what you do, and could do, with what you have. By reducing the number of hours to produce a set of strings, maintaining the right amount of inventory at every step, and eliminating the need for "do-overs" and wasted materials, we were able to lower our costs and increase our profitability. We saved jobs because we were able to concentrate on getting more business and by pricing more competitively. And we *hired* almost 100 people to do the work that had been done overseas.

Initially, we manufactured our guitar straps here in the States. But in 2000 we decided that we could cut costs by importing them from China. When we implemented Lean and started analyzing our value stream map, we discovered all kinds of hidden costs when importing outsourced products. The lead time was 110 days, so we needed to maintain a large inventory here. We had to pay inspectors to go to the factories in China in addition to paying freight costs and tariffs. So last year we took our mothballed sewing machines back out, created a Lean Work Cell for strap sewing and began making straps here again.

Now, even though it costs us about 12 cents more to make a guitar strap here, we only have to keep two weeks of inventory because every time it drops down to a certain level, we can produce just the number we need. We implemented a "quality at the source" program in the string-winding department. At one time, we had 2.7 percent scrap; almost every third string out of a hundred was rejected. We've gotten that down to 0.19 percent.

We received additional benefits through Lean. First, it has helped cut down on accidents (most

of them minor) by 50 percent at our headquarters, our wire mill in Massachusetts and our reed factory in California. Second, although there aren't enough tax breaks, New York state and our local town have reimbursed a sizable portion of our consultant costs and we've been given electrical utilities credits as well. Third, following the airing on CNN of a piece on our company, we received almost a thousand emails and letters, many of them expressing appreciation that we've made the commitment to manufacture our products in the

U.S. "Made in America" still means quality to a lot of people, especially those who have become fed up with value-engineered products made in China that fall apart.

Some executives are still skeptical about Lean. I tell them it's really the company's job to make it work. "If you want it to work, you can," I say. "You just have to believe in it. Give it two years, invest in it, and see what happens."

I sometimes wonder whether some of the big corporations that had to be bailed out might have escaped those problems if they had embraced Lean. **CT**

JIM D'ADDARIO is chairman and chief executive of D'Addario & Company, one of the world's top makers of strings for musical instruments and musical instrument accessories, which is based in Farmingdale, New York.

TRANSPORTATION

Why We Need High-Speed Rail

It can increase productivity, cut carbon emissions and create jobs

BY CAROLINA MEDEROS & RODNEY SLATER
PATTON BOGGS

When President Dwight D. Eisenhower signed the Interstate Highway Act in 1956, he transformed America with one stroke of a pen. By approving the first sophisticated effort to tie the entire country together through a web of highways, Eisenhower made a bet that a national interstate highway system would fuel our economy and improve our quality of life. He was right. The Interstate System has shaped our lives, affecting everything from where we live and work

to the development of cities and entire industries.

Today, we have another opportunity to impact our economy, this time through the development of high-speed rail. Once again, the creation of a national transportation network can reshape America, revitalizing our economy, improving the environment and boosting quality of life.

The idea of high-speed rail in the U.S. first developed during the 1930s when such companies as the Union Pacific

and Burlington Railroad competed to create trains that could go 100 mph. Under the administration of Bill Clinton, the government took the first major step forward with the introduction of the Acela Express service along the Northeast corridor. But the possibility of building a nationwide system took on new life in April 2009 when President Obama announced \$8 billion in funding, part of the stimulus package, aimed at jump-starting the development of such a plan. Targeting 11 regions around the country, the effort would create train lines covering distances of 100 to 600 miles.

Some of the funding is for improving existing rail service. For example, more than \$1 billion targets speeding up travel from Chicago to St. Louis with trains going up to 110 mph. A significant part, however, is aimed at building bullet trains like the systems in Japan and Europe. There is \$2.25 billion allocated to help California in its ambitious effort, approved by voters in November 2008, to develop a system allowing passengers to travel from San Francisco to Los Angeles at 220 mph. And \$1.25 billion has been allocated to build 84 miles of track in Florida from Tampa to Orlando.

The stimulus money is only the tip of the iceberg, however. Much more money will be needed to bring the plan to fruition. The House Transportation and Infrastructure Committee draft of surface transportation legislation now being considered by Congress includes a \$50 billion authorization for high-speed rail development. But federal money won't take care of the whole tab. Creative public-private partnerships could provide a significant share of funding over time.

In the short term, a national system will create jobs in everything from construction to manufacturing and integrating complex parts and technology. While the U.S. can tap the resources of foreign companies already providing train parts to Europe and Japan, there's also significant opportunity for U.S.-based manufacturers. The city of Detroit, for example, is poised to take on a

major role. Producers of highly sophisticated train engines, like GE, as well as defense industry manufacturers could clearly be part of the effort.

In the long term, high-speed rail can have a major impact on productivity. For example, it will allow people to live in one city and work in another easily, contributing to the development of new industrial regions. There also are significant environmental considerations. According to Environment America, high-speed rail uses a third less energy per mile than automobile or air travel. A nationwide system could cut oil use by 125 million barrels a year.

Alternative forms of transportation are vital to lowering carbon emissions. In recent testimony before the Senate, American Public Transportation Association President William Millar said, "If we only address vehicle efficiency and carbon content of our fuels, we will fall far behind in achieving environmental goals. Without action to address the growth in vehicle travel, greenhouse gas emissions from on-road sources will remain roughly at 2005 levels through 2050." That would fall far short of the Obama administration's goal of an almost 20 percent reduction in emissions by 2020.

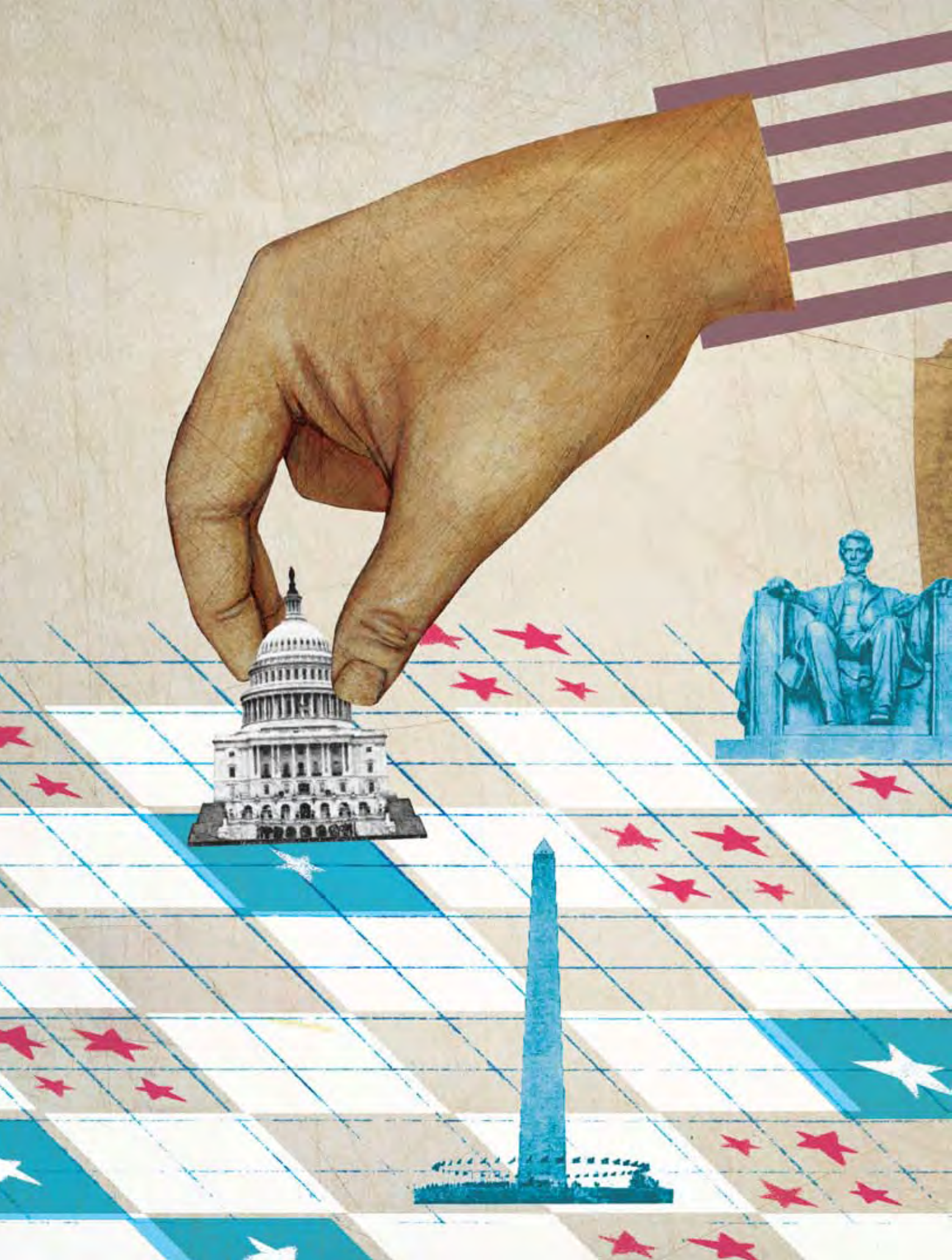
It comes down to a matter of choice. By making high-speed rail travel attractive and efficient, Americans will be able to select the type of transportation that best suits their needs. In some cases, air travel will continue to be the best route. In others, it may be easier to hop in a car. And in others, traveling on a high-speed train will be the fastest, most cost-effective and convenient choice.

For those interested in improving productivity, creating jobs and reducing carbon emissions, high-speed rail holds great promise. It's an idea whose time has come. **CT**

CAROLINA MEDEROS is chair of Patton Boggs' Transportation and Infrastructure Practice. **RODNEY SLATER**, a partner at Patton Boggs, is a former U.S. Secretary of Transportation.



SLATER, MEDEROS "In the short term, a national system will create jobs.... In the long term [it] can have a major impact on productivity."



The Advocates

Lobbyists may be everyone's favorite scapegoat, but, as it turns out, they can be a policymaker's best friend

BY RICHARD SINE

Illustration by Daniel Chang

A funny thing happened in Washington last year: Even as the political rhetoric vilifying lobbyists reached new heights, and recession-shocked businesses and organizations slashed their budgets in virtually every other area, spending on lobbying actually increased.

"Lobbying appears recession-proof," said Sheila Krumholz, executive director of the Center for Responsive Politics, in a release announcing the spending data. "Even when companies are scaling back other operations, many view lobbying as a critical tool in protecting their future interests, particularly when Congress is preparing to take action on issues that could seriously affect their bottom lines."

Any lobbyist seeking to sell his profession could not have said it better. In 2009, a newly activist federal government, facing financial crisis, recession and a supposed mandate for change, sought to change the rules for much of the American economy. No business could afford to sit this one out. Their voices had to be heard, and in most cases they found that the best way to get heard was by hiring

advocates (or lobbyists). In fact, 2009 may become known as the year that having an advocate in Washington went from being "nice to have" to an absolute must.

And it wasn't just businesses. Unions, professional associations and a wide variety of political interest groups also joined the fray. "Lobbyists are usually caricatured as hired guns for 'special interests,' blocking Ma-and-Pa legislation to benefit big corporations," Patton Boggs partner Nick Allard wrote in a guest column in a recent issue of *Newsweek*. "In truth, all Americans have lobbyists working for them in some capacity. Among the organizations that spent the most on lobbying in 2009 are the decidedly people-oriented AARP (\$15 million) and the American Cancer Society (\$3 million). Teachers, firemen, police officers, soldiers, entrepreneurs, doctors, nurses, kids—they all have lobbyists."

Herein lies the contradiction: Even as attacking lobbyists remains Washington's favorite bloodsport, the demand for professional advocacy continues to surge. The rarely discussed reason for that demand: Government officials often find lobbyists to be tre-

“These days things don’t get done for groups, and someone needs

mendously helpful. The best lobbyists, it turns out, earn their considerable influence through a combination of expertise and political savvy.

In the current political environment, few inside Washington are eager to acknowledge the value of lobbyists in keeping the government moving. But occasionally a little light shines through—even if accompanied by sarcastic humor. “[L]obbyists are like Baathists in Baghdad,” *New York Times* columnist Matt Bai recently acknowledged. “If you send them all home, there aren’t enough people left who know anything about running a government.”

A HELPING HAND

When the federal government makes policy, the stakes are high and the issues can be maddeningly complex. Even agency heads will admit that under such circumstances, they could use a little help. Just ask Kevin Martin, former chair of the Federal Communications Commission.

Even with a budget of several hundred million and a staff of about 2,000, the FCC was not fully equipped to “understand the impact of its rules on all companies, on their services and on consumers,” says Martin, now co-chair of Patton Boggs’ Technology and Communications practice. That’s why he frequently met with advocates “to understand what they wanted and how that fit in with the broader goals of the agency and the direction the agency was taking.”

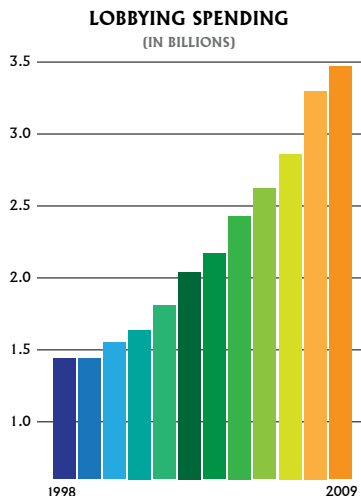
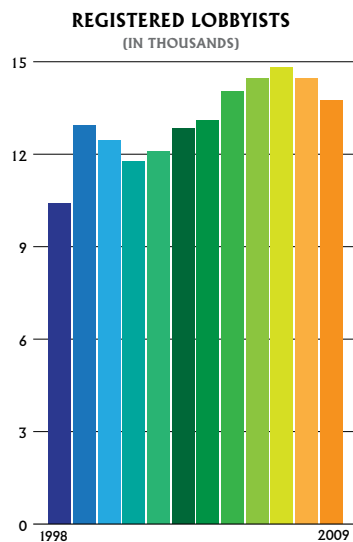
As FCC chairman from 2005 until 2009, Martin helped to create a regulatory environment that encouraged infrastructure investment and broadband competition, leading to greater coverage and lower prices for Americans. While many critics of lobbying may see corporate and public interests as always opposed, Martin’s experience at the FCC shows that they can be intertwined.

“At the FCC or any agency making complex public policy decisions, you want to understand the impact on consumers directly but also on the companies that are providing those services to consumers,” Martin says. “You want to create an environment where companies can compete so consumers can benefit from the innovations those companies provide.”

As Martin makes clear, good advocacy is all about making the right case to the right people at the right time. And that requires an intimate knowledge of an agency and its interplay with Congress and the administration. Who are the key agency staffers working

Growth in registered lobbyists and lobbying spending

Both lobbying spending and the number of registered lobbyists have increased since 1998.



SOURCE: CENTER FOR RESPONSIVE POLITICS

NOTE: DECREASE IN LOBBYISTS SHOWN IN 2009 MAY BE DUE TO LOBBYISTS WHO DEREGISTERED WHILE REMAINING IN THE BUSINESS OF POLITICAL INFLUENCE, THE CENTER SAYS.

on the issue? Which members of Congress, or administration officials, also care about the issue? Which of them might be enlisted to help plead the case, and how should they do so? And given the processes and schedules by which the agency works, when should the case be made to have the biggest impact?

At the FCC, Martin was unimpressed with advocates who were willing to take any line of reasoning—no matter how inconsistent—to support their case. The best advocates understood “the process and the history of the agency in dealing with similar issues,” Martin says, and strove to find common ground between their client and the agency. “One of the most important roles of advocates is making sure you’re framing the issue in the way that gives you the greatest likelihood of success, but also fits in with the government’s or agency’s overall regulatory direction.”

A BRIDGE TO MAIN STREET

While the public may perceive lobbyists as consummate insiders, they actually provide a bridge between Main Street and Washington, says tax and financial services attorney Rosemary Becchi. Becchi frequently worked with lobbyists as tax counsel on the majority staff of the U.S. Senate Finance Committee, and at the Office of Chief Counsel at the Internal Revenue Service, before joining Patton Boggs as a partner in February. “I actually enjoyed working with lobbyists and corporate people,” Becchi says. “You got a sense of what was really going on, rather than having to try to figure it out.”

Becchi knows the abstract realms of the tax code well. But when it came down to understanding how a change in that code might actually impact a given business or industry, she sometimes needed some help. “Often, what is perceived as helpful isn’t really helpful,” she explains. In areas such as the stimulus or small business assistance, Becchi says, policy decisions shouldn’t be made in a vacuum.

Most of the lobbyists Becchi encountered were highly experienced tax lawyers, so their expertise was a given. Becchi’s favorite advocates combined that with a deep knowledge of their clients’ business and how the tax code affects it. “You have to know the business well enough to understand the impact that various perceived solutions will have. Often what is perceived as the right solution for one business may not be the solution that others support. You need to understand the

one constituent. They get done to bring those constituents together.”

business well enough to discuss how a business will be impacted by different solutions,” she says.

Lobbyists also helped Becchi understand exactly which organizations favored or opposed any given provision. “Good lobbyists can build coalitions to bring other people to the table that are very useful when trying to get a message across,” she says. “These days, things don’t get done for one constituent. They get done for groups, and someone needs to bring those constituents together.”

The naïve view of Washington is that lobbying is as simple as writing a letter or making a visit to your congressman or senator on an issue—John Q. Public goes to Washington. But the average citizen or business executive “doesn’t always know who he needs to talk to or how to get his message across,” Becchi says. “Lobbyists help do that. They know which committees, which members of Congress are interested in an issue, and they can help you frame the issue to help explain why they should care. Then they can help identify other people who are impacted and build broader support for it.”

A TRUSTED RESOURCE

It’s a common misperception that lobbying is simply about getting through the door. What matters, says Jeffrey L. Turner, co-chair of the Public Policy and Regulatory Department at Patton Boggs, is how good you are at helping members and staff understand both the substance and politics of an issue. Policymakers are looking for “a resource to help them sort through issues with someone they trust.”

Why is that important? More than 20,000 bills are introduced in a typical congressional term, and reams of federal regulations are published. For agency and especially congressional staff, the variety of issues quickly becomes overwhelming. “The average member of Congress has maybe six people handling a thousand issues,” says Turner. “There’s too much going on and too few hours in the

day to do everything themselves.”

The best lobbyists “become an extension of the staff,” he says. That’s why it’s common for lobbyists to draft suggested language for a bill for staff to consider. Periodically, Turner reads a news story that treats it as a scandal when some of a lobbyist’s language actually makes it into a published bill or regulation. “That’s news?” he asks rhetorically.

A lobbyist who becomes that trusted resource must do more than simply understand the issues, Turner says. He or she must also be honest with the officials he or she lobbies about where support or opposition can be found. And because reputation is paramount, lying to or threatening an official is strictly verboten. When the Supreme Court ended a ban on direct corporate political spending in January, a lawyer suggested to *The New York Times* that a lobbyist could tell any elected official: “If you vote wrong, my company, labor union or interest group will spend unlimited sums explicitly advertising against your election.” While an angry executive might consider such a maneuver, no decent lobbyist would do so, says Patton Boggs Chairman Thomas Hale Boggs, Jr.: “If they engaged in that kind of tactic, they wouldn’t be an effective lobbyist for very long.”

That’s not to say that advocates aren’t willing to employ hard-nosed strategy on behalf of their clients. Unlike lobby shops without lawyers, lawyer-lobbying firms (such as Patton Boggs) can take a three-pronged strategy to advocacy. They can advocate with Congress for legislation that supports their cause. They can advocate before an agency for rules that interpret the law in a way that suits their interests. And finally, they can sue (or threaten to sue) in an effort to get the courts to order an agency to interpret the law in the way that supports their interests.

Sound aggressive? Sure, but it can also be effective. And if your organization isn’t doing it, chances are your competitor is. **CT**

Lobby for America?

In January, the U.S. Supreme Court overturned bans on political spending by corporations in elections, citing free speech. The dissenting justices feared that the ruling would allow corporate money to swamp elections and corrupt democracy. But some argue that the best way to enhance democracy is not to squelch the voice of corporations, but to amplify the voice of the common man.

“Contrary to conventional wisdom, the solution is more lobbying, not less,” wrote Patton Boggs partner Nick Allard in the February 22 issue of *Newsweek*. “Instead of trying to limit the use of expert advocacy, we need to find ways to give the less advantaged more access to legislative muscle.” How so? The legal industry offers a useful model, Allard says. “We should set industry goals for the amount of pro-bono work every lobbyist does annually, recognize outstanding contributions, and make this form of public service part of our professional job description—much as it is part of the American Bar Association’s rules of professional conduct for lawyers. This is no pie-in-the-sky idea. Many firms—Patton Boggs included—already do a significant amount of pro-bono public policy work for nonprofits and public interest organizations. We should also empower Main Street Americans by helping them establish lobbying coalitions—groups of individuals united by a common purpose. People are already able to join their legal claims in class actions, and, often to the chagrin of big corporations, use contingency fees to retain lawyers they could not otherwise afford. A similar system could help individuals seeking to put their support behind a policy claim.”

Allard also suggests that colleges provide loan-forgiveness programs to graduates who lobby for underrepresented groups. He even suggests setting up “Lobby for America,” modeled after Teach for America. And, most important, he says, “we should provide all Americans with the access and know-how to use email and social media, because, more and more, we interact with our government online.” **CT**



The Next



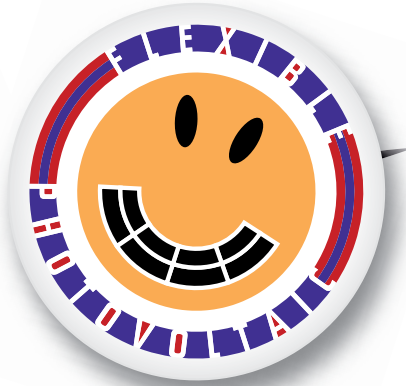
“Cleantech” promises to transform industries worldwide. Can the U.S. take the lead in developing the technologies that power the clean energy economy?

BY MERYL DAVIDS LANDAU *Illustrations by Robert Pizzo*

If you think of solar power, a rigid, acres-long array of solar panels undoubtedly springs to mind. Which is why even industry veterans were thrilled when, at a nanotechnology and renewable energy conference in Denver last year, what looked to be a rolled-up car floor mat was revealed to be a thin, flexible photovoltaic. Suddenly, the crowd envisioned a technology that might not only be incorporated into roof shingles or vinyl siding, but could even be sewn into a jacket or cap to warm a frigid skier. That presentation (during a conference co-hosted by the University of Denver, the University of Colorado,

Colorado State University and the Colorado School of Mines) was one of many bringing the enthusiastic attendees to their feet.

Industry insiders aren't the only ones juiced up about the prospects for what's being called the "cleantech industry" or the "clean energy economy." No less than President Barack Obama has touted its potential to "create new industries and revive old ones... open new factories and power new farms...lower costs and revive our economy." In his State of the Union speech this past January, Obama went so far as to declare that "the nation that leads the clean energy economy will be the nation that leads the global economy," concluding that "America must be that nation."



Tech Revolution

Of course, the United States remains far from that ideal. China is much further along in its implementation of cleantech projects. Europeans have understood the value of developing and supporting this industry for years. Plus, the Great Recession—and the resulting credit crunch—has forced some American companies to scale back their efforts.

But with its large pool of talent, money and enthusiasm, the U.S. cleantech industry is drawing plaudits for innovation and growth. “There’s an excitement here that hasn’t been equaled in decades,” says Carolyn McIntosh, a Patton Boggs partner in Denver who specializes in solving complex environmental problems. “Cleantech is becoming the new Silicon Valley, but in some ways even better: It’s not limited to one geographic location, and the benefits can be understood by people outside the field.”

Barely a blip on the radar screen a decade ago, cleantech has become the darling of the finance world. Venture capital funding in the U.S. soared from \$74 million in 1995 to \$4 billion in 2008, before scaling back a bit due to the recession (see chart, page 14).

“Cleantech is a win-win concept,” explains Patton Boggs partner Scott Stewart, an authority on environmental litigation and regulation and a former trial attorney for the Environmental Enforcement Section of the Justice Department, explaining its growing popularity with investors, manufacturers and consumers. “The belief is that it will add economic value by raising productivity or lowering costs, or by reducing a user’s consumption of resources with the ancillary benefit of being better for the environment. Although some technologies clearly aren’t there yet, the idea is that customers will eventually get something that performs as well or better for less money, and has a softer environmental footprint.”

Projects included under the cleantech rubric stretch well beyond renewable energy. According to the Cleantech Open, a San Francisco-based organization that nurtures industry startups, it includes all technologies that improve resource availability and pollution control, boost energy efficiency, reduce the impact of building construction and operation, provide power innovatively, link information technology to electricity delivery (the so-called smart grid),



“Lean entrepreneurial ventures are entering this sector and thriving.”

—ALAIN CASTRO, PRESIDENT, AKUO ENERGY USA

and advance the transportation of goods and people. These technologies affect nearly every industry and Main Street American, adding to cleantech’s widespread appeal.

PLAYING TO AMERICA’S STRENGTH

In many ways, the expansion of this industry plays right into America’s strengths. Some companies that might have been based overseas are settling in the U.S. instead. Global Energy Options is a prime example. Founder John Dee had created several environmentally oriented companies in his native Australia over the years. Dee had long been intrigued by the promise of hydrogen fuel cell technology, and several years ago he decided to seriously pursue it. But Dee wasn’t looking to create a technological showpiece; he wanted to make a successful, commercial venture. “The Australians are extremely inventive, and Europe is very progressive environmentally,” Dee says. “But it was clear to me that the U.S. is the best place to launch new technology because of its relentless focus on business and financing.” Four years ago he moved from Australia to Denver and set up shop.

Using proprietary technology in conjunction with their own patented, friction-reducing lubricant, GEO’s engineers have spent the past three years developing their hydrogen-enhanced retrofit technology for various commercial diesel engines. “In laboratory settings, hydrogen has long been shown to improve fossil fuel use and greatly reduce carbon emissions. But no one had been able to make it work reliably in the outside world,” Dee says. Until now, that is. Recent testing of GEO’s HHarmony System confirms that it reduces fuel use by 17 percent, simultaneously dropping toxic emissions like nitrogen oxide by 30 percent and particulate matter by 80 percent.

While this technology offers promise for America’s vast trucking fleet, GEO has set its sights on railroads, the largest fuel consumer in the country and one that currently faces increasingly stringent air emissions limitations. GEO has entered into a business deal with two major railway companies to fund and conduct independent testing of the technology. “If the tests are as successful as we expect them to be, the railways will save enough in fuel to pay for our equipment in just one and a half years,” Dee explains.

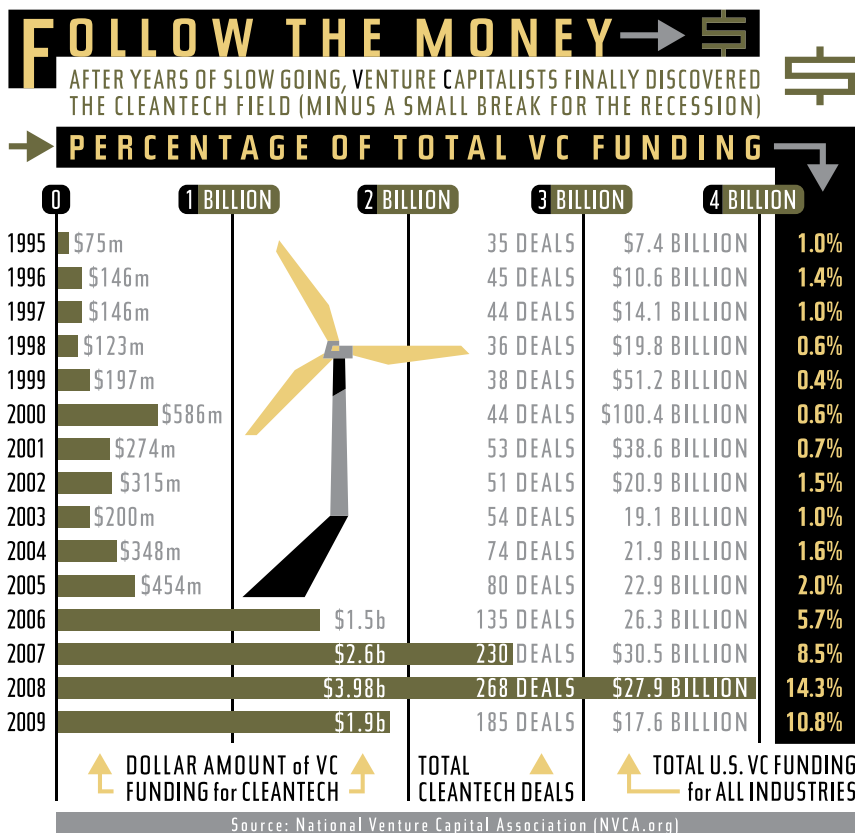
A LEVEL PLAYING FIELD

It’s no surprise that major corporations like BP, Samsung, Walmart, Siemens and others are looking to make a mark in clean technology. But one unique aspect of this business is the ability of a new generation of small and mid-size companies to compete on a level playing field. “Lean entrepreneurial ventures are enter-

ing this sector and thriving,” says Alain Castro, president of Akuo Energy USA, a 55-employee, Chicago-based renewable energy subsidiary of Akuo Energy. The Akuo Energy entrepreneurs previously founded Perfect Wind, which became the second-largest generator of wind energy in France, and then sold the business to Iberdrola. In the U.S. since 2007, the Akuo USA team will be financing and commencing construction over the next nine to 12 months on several wind projects totaling 400 to 600 megawatts of clean energy capacity (representing a \$750 million investment). Furthermore, within the next three years, Akuo expects to finance and build at least 1,100 megawatts of clean electricity plants around the U.S.—enough to provide power to 1.5 million households. Akuo’s plans for power generation largely involve wind, the company’s specialty, but also hydroelectric, biomass, solar photovoltaic and solar thermal energy (a technology that uses mirrors to amplify the power of the sun).

Castro, an American who spent several years in Paris, is excited about doing business with his home country. “People in Europe always wondered why the U.S. wasn’t waking up to clean energy, but I knew that when it did, it would fast become the leader,” he says. “When the U.S. decides to take a new direction, it’s amazing how dynamic its people and companies become. In Europe, there are very old ways of doing business. They don’t easily shift or reinvent themselves like they do here.”

Still, the biggest challenge in the American market for Akuo re-



mains the lack of unified support from the federal government. “Each state has its own plan, so it’s like doing business in 50 separate countries,” Castro explains. “The variety of programs will help Congress identify the best incentives when it develops national legislation. But for us, each time we enter a new market we have to relearn the rules of the game.”

LOCALIZED SUPPORT

Given the fragmented nature of federal assistance, it’s not surprising that some states have taken it upon themselves to attract and buoy cleantech companies inside their borders.

The Colorado legislature, for example, has passed several laws offering financial and regulatory support; recently, it enacted the Colorado Innovation Tax Credit to provide credits for investments in innovative state-based companies involved in new technologies. The state’s universities also provide opportunities for companies to capitalize on their research. With the backing of corporate partners, for instance, Colorado State University is ramping up an algae fuel farm in the state, a fuel source that the National Renewable Energy Laboratory (itself headquartered in Golden, Colorado) estimates could produce up to 10,000 gallons of oil per acre per year—100 times the output of canola or soy.

Meanwhile, the State of Colorado is working to attract more cleantech companies. As part of this effort, a nonprofit supported by both Patton Boggs and the City of Denver called CORE, the Rocky Mountain sustainable business practices trade association, recently conducted a cluster study of the industry. “A wind farm not only needs the manufacturer of the blades and the equipment that turns them, it also needs the company producing the electricity transmitting cable and its copper wiring,” says McIntosh, who currently serves as the group’s president. “CORE’s study aimed to identify those gaps so the state can attract all parts of the supply chain.” In addition to Colorado, other hot spots for the industry include Virginia, Texas, California (especially Silicon Valley), the Boston area and the Pacific Northwest (Seattle/Portland). In those places, some of the necessary legal, technical and financial assistance are more firmly in place.

Such assistance recently proved crucial to Magnum D’Or, a small rubber recycler. The company had opened a rubber recycling facility in Canada in 2008 and wanted to expand into the U.S. Magnum discovered a huge collection of discarded tires in Colorado. Known as the Hudson Tire Landfill, the site had been an environmental problem for years.

Like many rubber recyclers, Magnum turns recycled rubber into powders and nuggets that can be molded in various shapes to produce recycled floor mats, bumper stops and other products. But the company’s proprietary technology also allows the rubber to be ground into very fine powder, making it suitable for paint dyes, toner cartridges and the like, explains Magnum COO Bryan J. Brammer. Recent tests by Malaysia’s equivalent of the U.S.’s Un-

Captains of Industry

With cleantech hot spots emerging in Colorado, Virginia, Texas, California, Massachusetts, the Pacific Northwest and, in at least one case, Illinois, there is, says Patton Boggs partner Carolyn McIntosh, “an excitement here that hasn’t been equaled in decades.” Among the players in America’s thriving cleantech sector:



Akvo Energy USA

Power generation through wind, hydroelectric, biomass and solar thermal energy



Global Energy Options (GEO)

Hydrogen-enhanced retrofit technology for commercial diesel engines



Magnum D’Or

Rubber recycling

derwriters’ Lab found that products with up to 30 percent of Magnum’s recycled rubber performed as well or better than virgin products. “Prior to this, products with more than 5 percent recycled rubber were degraded in performance, so this is a significant improvement,” says Joseph J. Glusic, Magnum president and CEO.

Obtaining such a large source of recycled rubber was a perfect fit for the company, but the state had already taken steps to shut down the site before Magnum arrived. “We had to work hard to convince the state that the sale was in their interest, that the site could be an asset, not an eyesore,” Brammer explains. After eight months of active effort, Magnum acquired the site last August.

Understanding the myriad environmental issues involved in cleantech projects is a major challenge for companies in the field. For each renewable energy project Akvo undertakes, for example, it must ensure zoning compliance, acquire numerous permits, secure bank financing (plants cost from \$25 million to \$500 million), lease large parcels

of land from private sources (at the moment, renewables require more land to generate a given amount of energy than a traditional fossil fuel power plant), and structure contracts to sell the electricity to the consumer.

FOLLOWING THE MONEY

With their vast infrastructure and/or valuable intellectual property protection needs, early-stage cleantech companies find it more difficult than their predecessor technology cousins to get adequate and competitive private funding, Stewart notes. “Cleantech is a lot more expensive than investing in four guys with a computer,” he says.

A growing number of cleantech companies are turning to Uncle Sam in the search for cheaper capital. The Energy Policy Act of 2005 provided for loan guarantees and other funding for cleantech, and the American Recovery and Reinvestment Act of 2009 added more funds to the kitty.

It’s an investment the Obama administration is happy to facilitate—and publicize. Last summer Vice President Biden traveled to Detroit to announce that 12 companies in Michigan had been awarded more than \$1.35 billion to develop and manufacture electric vehicles and their batteries. The state estimates this will create tens of thousands of jobs in the field within the decade.

Successfully navigating the mix of private and public funding and harmonizing business planning with developing public policy will be key for companies in the next few years, Stewart believes. “Some will do it successfully. Others will not, even if they have good ideas. Private money is only going to follow something that people believe will be successful.”

Those that navigate well can expect to be amply rewarded. Products that are cleaner, more productive and efficient, cheaper, or provide renewable and sustainable energy will be good not only for those in the cleantech sector, but for every industry in the country and around the world. **CT**

“The need for lobbyists will grow.”

Lobbying has come under fire in Washington even as more organizations come to see it as indispensable. Tom Boggs sat down with *Capital Thinking* to provide some perspective on the past and future of lobbying.

members of the House and Senate are very tech-savvy. Their websites are well done; their transmissions to their constituency and the public are far better. As the system becomes more transparent and people see how it works—that they can actually have an influence on the system, that it’s not all done behind closed doors and smoke-filled rooms—the more you’ll see people wanting to participate. And as more people try to participate, the need for lobbyists will grow.

HOW HAS THE ROLE OF LOBBYING CHANGED IN YOUR TIME?

When I first started lobbying in the late 1960s, there probably were not 100 registered lobbyists in Washington. Back then, government was really run by a handful of people. The president ran the executive branch and had a very good close relationship with the Congress no matter what party controlled the Congress. The Congress was run by about 10 people—the speaker and the majority leader, a handful of committee chairmen. That all began to change with disagreements between Congress and the president over Vietnam and then Watergate. Then Congress enacted a number of reforms, including a sunshine law and changes in the campaign finance rules and seniority system. In the 1970s government went from being run by 10 people to being run by thousands. Lobbying grew dramatically because you needed more people to communicate and translate to policymakers.

Then there were the technological changes in the late 1980s and 1990s. Prior to those changes, the only voice that the policymakers relied upon was that of the government. If Treasury said something, people believed it was accurate. Today, outside sources can provide information more quickly, and probably more accurately, than government sources. And again, the best translators of those outside voices are people in the lobbying trade.

WHERE DO YOU SEE THE LOBBYING INDUSTRY GOING OVER THE COMING DECADE?

Look at the Senate, for example—the “old boys’ club.” Over 20 percent of senators have been elected in the last three and a half years. Most of the newly elected

IN JANUARY THE SUPREME COURT REMOVED BANS ON DIRECT CORPORATE POLITICAL SPENDING. HOW WILL THIS CHANGE WASHINGTON?

The Supreme Court ruling says the First Amendment allows a corporation, a labor organization or a membership organization to use its corporate or union funds to message. It doesn’t say they can give money to a congressperson’s campaign—that’s a different set of regulations and laws. I do think you will see—on issues like card check, which is the issue between labor and management on how labor elections are conducted—corporations taking out ads, using television and radio to communicate on a position. Labor has always been able to do this, more or less. So the pendulum will swing somewhat in favor of business. The impact on lobbying will be more indirect. A lot of publicity and advertising activity will be aimed at policymakers, rather than direct lobbying.

It may also improve the viability of third-party candidates. Up until now, it has been very difficult for a third party to raise the resources to be viable. If a candidate becomes the darling of a particular interest group, that interest group can reach out to many sources for funding, even if there is no coordination between that candidate and the interest group.

IT’S STILL PRETTY EARLY, BUT HOW DO YOU SEE THE MIDTERM ELECTIONS SHAPING UP?

Well, it is early. If you look at history, the only president since [Franklin Delano] Roosevelt who did not lose seats in the House and the Senate in their first election cycle was George W. Bush, and I think that was because of 9/11. So the Democrats are expected to lose seats. The question is how many. I don’t think they’ll lose control of either the House or the Senate. **CT**

“Government went from being run by 10 people to being run by thousands.”

