

Outsourcing Representation: Why Corporations are Expanding Their Use of For-Hire Lobbying Firms in Washington

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Abstract:

When companies lobby, they do so through both in-house lobbyists and outside lobbying firms. This article argues that these different approaches are strategic choices and analyzing them that can help us better understand corporate lobbying. Since the mid-1990s, two significant trends have occurred: 1) Companies that do not have their own Washington offices have increasingly hired Washington law and lobbying firms to effectively serve as their Washington offices; and 2) Companies that already have Washington their own offices have increasingly contracted with Washington law and lobbying firms to conduct lobbying activities on their behalf in conjunction with their D.C. offices. This article argues that the first change represents an increasingly transactional relationship to a growing number of targeted benefits available and that the second change represents a select group of companies becoming more aggressive and comprehensive in their approach to lobbying.

Over the past several decades, American corporations have become increasingly active in federal politics. (Drutman 2010, Hillman 2003, Rehbein and Schuler 1999, Shaffer 1995, Vogel

1996), and a large and growing body of research has explored the reasons why businesses participate in the political process. (Brasher and Lowery 2006; Drope and Hansen 2006; Hansen and Mitchell 2000; Rehbein and Schuler 1999; Hansen, Mitchell and Jepsen 1997; Humphries 1991; Boies 1989; Andres 1985; Zardkoohi 1985). While the literature has increasingly moved away from PACs as the sole indicator of political activity to also include measures of lobbying expenditures, it has largely ignored the fact that these expenditures are of different types. In particular, some of these expenditures involve paying full-time company employees to lobby, while other expenditures involve hiring external lobbying and law firms as contract lobbyists. This article argues not that these differences types of expenditures represent strategic choices on the behalf of politically active firms, and moreover, that the changing patterns in which companies are employing these strategies highlights the changing nature of Washington lobbying.

While research into interest group strategies has focused on such questions as the determinants of which legislators to lobby (Austen-Smith and Wright 1994; Baumgartner and Leech 1996; Kollman 1997; Hojnacki and Kimball 1998; Hall and Deardorff 2006), of when to use direct (“inside”) lobbying strategies as opposed to grassroots (“outside”) lobbying strategies (Gais and Walker 1991; Hojnacki and Kimball 1999; Nicol 2007), and of choices of venues (Holyoke 2003), the strategic choice of whether to use internal or external lobbyists has been ignored by this literature. Wilson (1990) provides a rare example of a survey that recognizes this is a strategic choice, though his analysis is purely descriptive. DeFigueiredo and King (2004) attempt to analyze the determinants of the strategic choice, but their study is limited to a single industry (telecommunications) at a single venue (the Federal Communications Commission) on a single issue (payphone compensation for dial-around calls). Thus, their conclusion that

companies with more proprietary information do more lobbying internally because they are concerned about information leakage may not be broadly applicable. Given the range of firms active in Washington across a wide range of venues and issues, a more general explanation is needed.

Moreover, there has been substantial change in the balance and usage of in-house as opposed to contract lobbyists. Since the mid-1990s, two significant trends in companies' usage of these different approaches to lobbying have taken place: 1) Companies that do not have their own Washington offices have increasingly hired Washington law and lobbying firms to effectively serve as their Washington offices; and 2) Companies that already have Washington their own offices have increasingly contracted with Washington law and lobbying firms to conduct lobbying activities on their behalf in conjunction with their D.C. offices. Both of these trends need to be explained.

This article extends the study of corporate lobbying in a three ways. First, it highlights the differences between conducting lobbying through full-time company employees and through contract lobbyists. Second, it examines and explains corporations' increasing use of for-hire lobbyists. Third, in explaining the reasons for these changes, it highlights the fact that the corporate lobbying environment in Washington is dynamic, not static. Companies are becoming more exhaustive in their lobbying strategies, and going after more targeted benefits.

This article relies on two sources of data. Sixty interviews conducted with both internal and external corporate lobbyists between October 2007 and March 2008 provide rich qualitative insights into how companies and lobbyists view the decisions to lobby internally or externally. Data from the *Washington Representatives* directory on the number of both types lobbyists

retained by corporations provide quantitative evidence for the trends discussed. Using transaction-cost economics, this article develops and tests predictions of when companies will conduct lobbying services internally or externally. I conclude that the shifts toward external lobbyists represent the increasing number of available distributive benefits and increasingly proactive approaches to lobbying.

Theory

Transaction-cost theory provides a way of thinking about why companies would choose to hire their own full-time lobbyists or contract with outside lobbying firms. In standard economics, transaction-cost theory helps to explain the make-or-buy decisions that corporations face on a wide range of goods and services — whether to rely on markets by contracting out goods and services or to internalize production and instead rely on the management authority of hierarchies. Both markets and hierarchies have advantages and disadvantages, which vary depending on competition, customization, ease of evaluation, and other characteristics. (Klein et al. 1978; Williamson 1979, 1985, 1996; Holmstrom and Milgrom 1991, Teece 1986, Oxley 1997)

For the question at hand, a particularly useful framework within transaction-cost theory is Williamson's (1979) three types of investments: Nonspecific, mixed, and idiosyncratic. Nonspecific goods are standard equipment — generic products like paper clips that serve the same function for every purchaser. For such products, quality is easily observable and a competitive market determines price. At the other end of the spectrum are idiosyncratic investments. These are products and services that are unique to a particular business, lack a competitive pricing

market, and involve specific “investments of transaction-specific human and physical capital” (Williamson 1979, 241).

As investments move from nonspecific to idiosyncratic and from occasional to recurrent, so do the costs and difficulties of establishing and enforcing a contract. This is due to the range of contingencies and the increasing possibilities for both parties to exploit the fact that the other party has made a unique investment production. Goods and services become subject to the “hold-up problem.” As Holmstrom and Roberts (1998) write, such an “investment is relation-specific; that is, its value is appreciably lower (perhaps zero) in any use other than supporting the transaction between the two parties. Moreover, it is impossible to draw up a complete contract that covers all the possible issues that might arise in carrying out the transaction and could affect the sharing of the returns from the investment.” (74) When this is the case, the legal and monitoring costs are such that the company would benefit from bringing the service under the company hierarchy, where it is easier to monitor and also to properly align the incentives. (Demsetz 1988; Holmstrom and Milgrom 1991; Holmstrom and Roberts 1998).

Applied to lobbying, it is difficult to imagine a lobbying firm providing any purely nonspecific service. When a company hires a lobbying firm, the lobbying firm must take some time to get to know the company’s issues and to develop a company-specific plan, agreeing on goals and timelines. However, there exists a continuum of lobbying services that range from relatively nonspecific to idiosyncratic and from occasional to recurrent. A company that hires a lobbying firm to help it get a provision in a specific appropriations bill or to provide access to a specific committee chair is engaging in a different kind of relationship than hiring a lobbying firm to represent it on a range of issues over an indefinite period of time.

As the issues and political strategies become more complicated, the baseline expectations and methods of evaluation become more uncertain, and hiring an outside lobbying firm starts to look less and less like buying a paper clip. If a company has ongoing needs in Washington, a lobbyist who represents the company must invest significant time and energy into learning the particularly policy concerns of that company and developing a specific custom strategy. As this happens, representation becomes more and more idiosyncratic.

Any decision to hire a lobbyist also involves a principal-agent problem. Principal-agent problems emerge when principals delegate tasks to agents who have different incentives and when principals have a difficult time obtaining information about the actual efforts of the agent (Laffont and Martimort, 2002). The interests of companies and lobbying firms are not entirely aligned. Companies want to spend the least possible amount of money to achieve a desirable political outcome. However, lobbying firms wish to maintain their paying clients for as many services and for as long as possible. Lobbying firms thus may try to convince companies that they should be engaging in a more full-court press on a given issue, may find additional issues on which companies should be active, or may extend the amount of time it takes them to provide a given service.

The chaotic and frequently oblique nature of politics gives lobbyists a potential information asymmetry to exploit. Surveys find large companies whose top-level managers are politically uninterested and uninformed. For example, Watkins et al. (2001) found that among Fortune 100 companies (almost all of which spend at least some money on politics), “77 percent [of government relations staff in the firms] rated the typical senior executive as having a mediocre

–or worse – grasp of the way governmental processes work.” (10) Or, as one government relations professional put it in their study:

If there is a group of people in America who don't really understand the political system, it is corporate executives...I've spent a lot of time meeting with people in the business community who, if they took over a chain of fast-food restaurants, would never do it without learning everything they could possibly learn about the fast-food business. But they make no real effort to learn about the impact of politics on their companies. (61)

Similarly, Rogan Kersh (2001), who followed around 11 health care lobbyists for two years, concluded that: “Most clients possess a very limited understanding of Washington policy activity and of government decisions, even those directly affecting their interests...Whatever policy knowledge these clients do have is obtained largely from their lobbyists themselves through memos, e-mail exchanges, and telephone conversations...All 11 lobbyists I followed referred at one time or another to the need to ‘educate’ their clients.” Lobbyists may report back to their clients a long list of meetings that they've had, but the volume of meetings is not always a very good indicator of progress. The challenges of monitoring may encourage companies to hire their own lobbyists.

To be sure, there are many sophisticated lobbying clients. But even in such cases, the fluid nature of Washington, with its long stretches of tedium punctuated by short bursts of frenzy, does not make for easy monitoring.

Two Approaches to Washington Lobbying

In deciding whether to be active in Washington, a company has choices. It can simply rely on a trade association to represent it (Ozer and Lee 2009, Tucker 2008). Or, if it has company-

specific issues that go beyond the lowest-common-denominator industry representation that trade associations typically provide (Drutman 2011), it can either hire its own full-time Washington lobbying staff, hire a Washington law or lobbying firm to effectively serve as its Washington office, or hire a mix of full-time lobbying staff and Washington lobbying firms. In the 2006 Washington Representatives directory, more than half of the companies listed had no full-time company lobbyists and a single outside lobbying firm to represent it. But a handful of very large companies had small armies of lobbyists: General Electric, for instance, had 32 in-house lobbyists and had contracted with 21 different lobbying firms; AT&T had 29 in-house lobbyists and had contracted with 32 different outside lobbying firms.

For ease of reference (though at risk of adding additional argot to the discipline) I refer to firms that merely hire outside lobbyists as “renters” and I call firms that have at least one full-time registered lobbyist in Washington “homeowners” Like real-world renters, corporate lobbying “renters” are more likely to come and go, being only tied to Washington by a renewable contract. These companies hire a law and/or lobbying firm to in effect operate as the Washington office of the company. In such an arrangement, the company hires the lobbying firm on a retainer. The lobbying firm will develop a plan, and then report back to the company on a regular basis with descriptions of communications, meetings, hearings, bill introductions, and other indicators of purported political progress. When the plan’s objective is achieved or no longer seems feasible, the client can either end the relationship or pursue another political objective.

Homeowners, by contrast, have a dedicated government affairs department within the company and a full-time presence in the Capitol – typically an office suite on the K Street corridor housing one or more company employees who work full-time to represent the company

by attending meetings, keeping tabs on the latest scuttlebutt, and pressing the company's case throughout town. These Washington offices then report to corporate headquarters, most commonly through the General Counsel or a Vice President of Public Affairs, occasionally directly to the CEO. I call these companies "*Homeowners*" because, like buying a house, hiring a full-time staff suggests a more permanent commitment and an investment in the neighborhood. The majority of these companies also hire outside lobbyists.

Such a distinction mirrors one that Hillman and Hitt (1999) make between transactional and relational approaches to political strategy. They argue that while most of the literature assumes that companies only formulate responses to specific, salient issues (the transactional approach), "many firms, however, pursue political strategies over the long term, rather than on an issue-by-issue basis. This represents a more *relational* approach to political strategy." (828) Homeowners take the more relational approach, while renters are more transactional.

The Trend Toward More Outside Lobbying

There has been a rough doubling of the number of domestic companies listed in the *Washington Representatives* directory since 1981, and most of the growth has been in more renters coming to Washington. In 1981, there were 2,250 domestic companies listed, and 1,769 were renters; In 1991 those numbers were about the same: 2,310 domestic companies, 1,737 renters. But in the 1990s, the number of renters grew dramatically: to 3,654 in 2001 and 4,261 in 2006, accounting for all the growth in companies in Washington. In fact, between 1991 and 2006, the number of homeowner companies actually decreased, from 573 to 547, while the number of renter companies more than doubled. (See Table 1)

Renters account for the majority of all companies in Washington, but a much smaller percentage of the total lobbying expenditures. As of 2006, the vast majority of companies with Washington offices were “renters.” Renters make up 87 percent of the companies listed in the *Washington Representatives* directory, and two-thirds of the companies reporting lobbying expenses to the Senate Office of Public Records. (See Table 2.). Although homeowner companies are fewer in number, they account for the vast majority of lobbying activity

Homeowners and renters differ not just in whether or not lobbyists are full-time staff, but also in their size, persistence, and involvement in political contributions. In general, homeowners tend to be significantly more engaged politically than renters. (See Table 3.)

1. Homeowners spend much more on lobbying

Homeowners spend roughly 10 times more on lobbying than renters. The median expenditure for homeowners is \$800,000; the median expenditure for renters is \$80,000. The *mean* homeowner lobbying expenditure is \$1.6 million; the *mean* renter expenditure is \$142,000.

2. Homeowners stick around at much higher rates

Homeowners also are much more likely to stay politically involved from year-to-year. The percentage of homeowner companies active in any given year who are active the next year is 96%, whereas the percentage of renter companies who stay active is 79%. The rates drop for both when we extend to two years, and the difference becomes greater. Homeowners persist at a 93% rate over two years, as opposed to a 66% rate for renters.

3. Homeowners are much more likely to use PACs

Homeowners are about four times more likely to have a PAC. Between 1998 and 2006, roughly two-thirds of homeowners (70.4%) maintained a PAC, whereas only about one in six

renters (16.8%) maintained a PAC. Homeowner PACs also tend to be about three times larger than renter PACs (among companies that maintain PACs, homeowners have an average PAC of \$353,564, whereas renters have an average PAC of \$113,426).

Why Own When You can Rent?

In order to understand why companies would chose to rent or own, it helps to know something more about Washington, DC for-hire lobbying firms. There are almost 2,000 lobbying firms in Washington, DC, ranging greatly in size. The largest, law and lobbying giant Patton Boggs LLP, reported \$39.6 million in lobbying income for 2010 and listed 283 clients, from the Ad-hoc Coalition to Preserve Clinical Lab Services to YRC Worldwide (a trucking company), from Air France-KLM to Wegman's Food Markets, from the American Ambulance Association to Wake Forest University. The firm has 116 registered lobbyists in 2010 who covering just about every issue area and government agency. Lobbyists in the firm represented anywhere from one to 39 different clients at the same time. The mean number of clients a single Patton Boggs lobbyist represents is eight. Multiple lobbyists within the firm often provide work for a single client at the same time.¹

Other firms that are much smaller, with just one or a few registered lobbyists, a few clients, and a very targeted issue focus. Some lobbying firms specialize in taxes, others in earmarks, others in more specific issues. Some, like Patton Boggs, are law and lobbying firms. Others combine lobbying and public affairs and strategic communications. None are shy in advertising

¹ Data in the proceeding paragraph all come from www.opensecrets.org

what they are capable of doing and why are they so effective. Consider some advertising prose from leading Washington lobbying firms:

Van Scoyoc Associates: VSA's original specialties were appropriations and taxation, but the firm quickly developed practices in more than 20 different areas, ranging from agriculture to water resources... Such institutional capacity is necessary today, when Federal Government affairs are more complicated than ever. A successful government relations campaign often requires effort across a wide front and entails much more than shepherding a request through Congress.

The Podesta Group: With rolled sleeves and a can-do approach, we have built a reputation of producing superior results for more than two decades. From policymaking to crisis communications, online advocacy to grassroots strategy, we understand how to chart a winning course in Washington and have the know-how to deliver.

Prime Policy Group:

40 government relations experts representing:

- Both sides of the aisle
- Both chambers of Congress
- Four of the last Administrations
- Swing coalitions such as Blue Dog Democrats and moderate Republicans
- Both major political parties
- Top trade associations, think tanks and interest groups

Prime's experts have successfully navigated such diverse challenges as:

- Securing federal support for an urban mass transit project
- Ensuring a balanced approach was achieved in a landmark telecommunications bill
- Assisting with the complicated procurement process for U.S. contractors
- Helping a foreign government manage its transition to a multiparty democracy

One in-house lobbyist for a smaller company (who described receiving a constant stream of pitches) noted in an interview the remarkable degree of unabashed salesmanship in the business:

“Everybody around here knows everybody and everybody here is all things to all people. It’s just amazing. You never find anyone who says they don’t know everyone or can’t do everything.”

Overweening salesmanship aside, hiring a Washington lobbying firm does offer a company several advantages. First and foremost is expertise. A company that just showed up in Washington would be unlikely to know where and how to start. Who are the players? What is the policy history? How do you present your requests? For example, A medical research company with a blood-clotting product may think its product should be included in all military first-aid kits, but who in such a company would have the kind of expertise to navigate that process?²

It is also more cost-effective, assuming a company’s needs are limited. The median annual expenditure for a renter company was \$80,000 in 2006. That’s far less than the cost of a full-time registered lobbyist, plus an office rental and additional support staff.

Hiring a Washington lobbying firm also means that the client gets access to all of the firm’s connections, and all its policy and process knowledge. It can spread out its resources to have access in multiple venues in a way that a single individual simply cannot. One for-hire lobbyist at a large lobbying firm put the advantage this way:

² Brownstein Hyatt Farber Schreck uses the case of Z-Medica’s QuikClot as a advertising on its website. “In the post-9/11 world and with our troops in harm’s way, QuikClot needed to be on the front lines immediately. Z-Medica partnered with Brownstein Hyatt Farber Schreck’s Government Affairs Group to introduce this life saving product to the appropriate Federal decision-makers. In the 2006 fiscal year, working with the Connecticut Congressional delegation, Brownstein’s Washington, D.C.-based team helped to ensure that there were sufficient federal funds so that the U.S. military would be able to purchase QuikClot. The next year, efforts were again successful in securing funding so that additional branches of the U.S Armed Forces could purchase needed quantities of QuikClot.” See, “Saving Lives with Z-Medica’s QuickClot,” Brownstein Hyatt Farber Shreck LLP, <http://www.bhfs.com/Practices/CaseStudies/SavingLiveswithZMedicasQuikClot>

Washington is a big complicated place, and being successful on an issue is invariably a multi-venue operation. You need to be active on the Hill, at the White House, at the agencies, and then you need to know which committees, which parts of the agencies. It's expensive to have both depth and breadth. Finally, hiring a for-hire firm gives a company much more flexibility. A lobbying firm can be hired on a retainer of as little as a few thousand dollars per month, and can be dropped relatively easily. If the issues of interest to a firm are episodic or limited, it makes little sense to have a full-time lobbyist during the natural pauses in activity. It is much more costly and difficult to fire a full-time company employee and dismantle an office than to simply sever a contract.

From the company's perspective, one of the biggest challenges in hiring a lobbyist is feeling confident that the lobbyist is pursuing both an effective and cost-efficient lobbying strategy, since it is very difficult for a manager who doesn't know much about politics to be sure the hired lobbyist is actually providing value. The principal-agent problem is real. As one lobbyist put it, "The joke in this town is that you have these breakfasts with 100 people there and [then Ways and Means Committee] Chairman Rangel speaking and then in the hall you have 20 people on the phone saying they just had a conversation with Chairman Rangel."

In interviews, for-hire lobbyists confirmed that client companies are frequently both clueless and anxious about Washington, given the tortuous and confusing ways in which the federal government operates when they are accustomed to the crisp, quarterly accountability of the business world. One for-hire lobbyist put it this way:

Clients get very nervous sometimes. They don't understand the process. There is a need to educate clients. They think that their issues are the center of the world and they want results. You have to constantly prove to them you are working, so you document every phone call and e-mail and meeting.

Another said:

The hardest part is trying to communicate the completely unpredictable nature of DC. Clients are more comfortable with precise results. It's hard trying to explain why you didn't get something done because the chairman was mad at somebody for something unrelated.

Lobbyists, of course, do have a substantial information advantage. After all, it is the job of the lobbyist to provide the company with intelligence about what is happening in Washington. This means that lobbyists are empowered to use this information to advise companies on how much they should spend on lobbying. Kersh (2001) documented a pervasive climate of lobbyists stringing their clients along.³ Several for-hire lobbyists I interviewed spoke of how important it was to “manage expectations” and to “educate clients.”

Many companies are sensitive to the importance of managing the consultants. One company lobbyist had this to say:

With consultants, my view is you only get out what you put in. I don't believe most folks understand this stuff [the company specific issues], and it's not worth their time to get up to speed. Most folks don't get the most out of [the relationship] – they don't work with them closely, or they just go to the biggest and most impressive firm and pay a lot of money.”

Explaining the Shift to More Renting

The number of renters has increased substantially. But why? Transaction-cost economics leads to the hypothesis that lobbying services have become more nonspecific, or at least mixed, in the last several decades. Or, at the very least, there are more opportunities for companies to hire lobbyists for relatively nonspecific services.

³ “Most clients possess a very limited understanding of Washington policy activity and of government decisions, even those directly affecting their interests... Whatever policy knowledge these clients do have is obtained largely from their lobbyists themselves through memos, e-mail exchanges, and telephone conversations... All 11 lobbyists I followed referred at one time or another to the need to ‘educate’ their clients.” (242)

In the TCE framework, when companies weigh the make-or-buy decision, they are weighing whether the service they are buying is nonspecific enough that there is an adequately competitive market for it, whether they can adequately evaluate the quality and effort that goes into making the good, and whether unique investments in the production of the good will produce any “hold-up” problems that require complicated contracting.

Certain lobbying services are both more nonspecific and more occasional than others. In particular, lobbying for specific benefits — such as federal funding, particular tax cuts or subsidies — tends to be relatively nonspecific and occasional. Such narrow targeted goods are more likely to be one-off events. They do not reflect an ongoing relationship with the government. These are the types of issues that Wilson (1973) described as *client politics* and Lowi (1964) described as *distributive politics* — narrow concerns in which only specific actors benefit directly and so only those specific actors are involved. Were those specific actors not to be involved, it is unlikely that anybody in the government of their own accord would bother to make sure that they were getting their desired policy outcomes.

Since small companies would prefer to free-ride on the efforts of larger companies and trade associations, when they hire lobbyists it indicates that they are primarily interested in securing private goods for themselves (Godwin and Seldon, 2002) This leads to the hypothesis that the rise in renter lobbying companies will track widespread opportunities for lobbying on appropriations and subsidies and taxes, and in general, targeted advocacy efforts to achieve specific, measurable outcomes.

This largely seems to be the case. The top five issues (budget/appropriations, health issues, taxes, defense, and transportation) are issue areas that are dominated by target and specific

efforts to achieve federal funding or support for specific programs. Appropriations (48,793 reports) is generally dominated by funding requests. Health issues (22,578 reports) is generally dominated by requests for specific disease groups. Taxes (20,620 reports) is dominated by requests to change the tax code. Defense (19,639 reports) is dominated by contracting. Transportation (17,538 reports) is dominated by project requests. (See table 4)

Even more notably, between 1998 and 2010, the number of clients filing Budget and Appropriations reports has grown by a remarkable 240 percent, from 1,466 clients in 1998 to 4,982 clients in 2010. A similar trend occurred in Defense lobbying, which went from 685 lobbying clients in 1998 to 1,887 clients in 2010 (an increase of 175 percent). Health lobbying has grown from 938 clients to 2,4000 clients (an increase of 156 percent). Taxes and Transportation have both grown as well, though not quite as aggressively. (See Table 5)

Appropriations

One of the more remarked-upon trends in Washington over the last two decades has been the growth of congressional earmarks, also known as directed spending. When a member of Congress directs federal funding to go to a specific project, this is known as an earmark. Said one lobbyist:

The lobbying that goes on in the appropriations realm is totally out of hand. Twenty years ago, there weren't any earmarks. When you passed a bill, you'd pass a bill. Now the number of people working on appropriations has exploded.

While some scholars see the rise of earmarks as a way to “grease the wheels” of the appropriations process (Evans 2004), and others see the rise of earmarks as a positive development that actually allows Congress to better serve local needs (Frisch and Kelly 2011), there is widespread agreement that the number of earmarks has grown dramatically, creating more

opportunities for lobbying⁴. Watchdog group Citizens Against Government Waste (CAGW) has calculated an increase in the number of earmarks, from 546 projects worth \$3.1 billion in 1991 to a high of 13,997 projects representing \$27.3 billion in 2005. Since then, however, there has been a slight decline. In 2010, CAGW identified 9,129 earmark projects worth \$16.5 billion.⁵ However, these are still substantial numbers.

Military Contracting

Another area where there has been a good deal of growth is in federal contracting. Due in great part to two prolonged wars in the 2000s, the defense procurement budget of the U.S. Military grew from a 1998 low of \$62.9 billion to a 2010 high of \$147.2 billion (in 2010 dollars). In other words, it more than doubled, adding almost \$85 billion worth of new federal dollars available for contractors. At the same time, the overall military budget grew almost as fast, from \$458.56 billion in 1998 to \$817.68 in 2010 (again in constant 2010 dollars).⁶ It's no wonder that the number of clients lobbying on this issue increased.

Taxes

In 2005, a presidential panel noted that since the Tax Reform Act of 1986, “there has been nearly constant tinkering – more than 100 different acts of Congress have made nearly 15,000 changes to the tax code.”⁷ The report’s cover letter noted: “Our tax code is rewritten so often that it should be drafted in pencil.” Between 1974 and 2010, the number of pages in the CCH

⁴ For a more detailed narrative of the growth of earmark lobbying, see Robert J. Kaiser, *So Damn Much Money*, 2008

⁵ CAGW’s lists and methodologies are available at: <http://www.cagw.org/reports/pig-book/>

⁶ Office of Management and Budget, “Historical Tables: Budget of the U.S. Government,” 2011

⁷ The President’s Advisor Panel on Tax Reform, November 2005, “Simple, Fair and Pro-Growth: Proposal’s to Fix America’s Tax System” p. 16; Available at <http://www.taxfoundation.org/blog/show/1156.html>

Standard Federal Tax Reporter more than tripled, going from 19,500 pages to 71,684 pages⁸, one measure of the growing complexity of the federal tax code. A good example of tax lobbying is the 2004 American Jobs Creation Act, which began as a narrow technical fix to solve a WTO dispute and wound up as a 633-page laundry list of distributive politics. As one commentator wrote at the time: “Multinational corporations. Makers of ceiling fans, archery equipment, sonar fish finders and tackle boxes. Owners of NASCAR tracks, growers of tobacco and makers of movies. If you count yourself among one of the above groups, rejoice. You are a likely beneficiary of the fat new \$140 billion tax bill signed into law Friday by President Bush.”⁹ (VanderKnyff 2004) The *Economist* magazine dubbed it “No Lobbyist Left Behind.”¹⁰ Alexander et al. (2009) have estimated that for 93 companies that lobbied on the tax bill, the combined tax savings amounted to \$62.5 billion¹¹ – not bad for combined lobbying expenditures of \$282.7 million that year. (Economist, 2004)

What these three issue areas have in common is that they are full of targeted policy outcomes that narrowly benefit a specific company. For a company outside of Washington, it is very easy to monitor the outcome: either the earmark, contract, or tax subsidy is achieved or it is not. Moreover, while such benefits may vary in substance and size, the service of winning such a benefit, especially in the case of earmarks and contracts, is relatively nonspecific and occasional.

While the correlation is clear, a definitive causal story is much more difficult to tease out.

That’s because both of the trends described here — the growth of narrow, targeted benefits in

⁸ The CCH Federal Tax Reporter describes itself as “The most comprehensive and current federal income tax law authority in the industry, providing you with a complete and up-to-date picture of federal income tax rules, organized in the way most logical to many practitioners — by Internal Revenue Code section.” (<http://tax.cchgroup.com/FED/default.htm>)

¹⁰ “Lobbyists’ Delight: America’s tax policy hits a new low,” *The Economist*, October 14, 2004.

¹¹ The bill changed the tax rules regarding repatriation of profits earned abroad, giving U.S. companies the chance to pay 5.25% in taxes on these earnings (as opposed to the normal rate of 35%) for a year.

Washington, and the growth of companies hiring outside consultants — reinforce each other. Kaiser (2008) tells this story using the history of one prominent earmark lobbyist (Gerald Cassidy) as a proxy for the larger shift in Washington towards earmark lobbying. As lobbyists learn the trade and build relationships, they seek out more clients to lobby for. In interviews, for-hire lobbyists report always being under pressure to engage in “client development” — finding new paying clients who might not even know they need representation. Meanwhile, companies pay attention to their competitors, and when they read about similar companies getting special benefits, it leads them to start calling around to Washington lobbying firms. And as the market expands, more lobbyists get into the business of appropriations, defense contract, and tax lobbying, knowing that the clients are out there.

Why *Homeowners* are Hiring More Outside Lobbyists

The second significant trend in lobbying strategies is that, over time, homeowner companies have shifted to relying more on outside lobbyists than in-house lobbyists. Figure 1 below tracks the in-house and outside lobbying firms retained by a moving sample of medium and large-sized companies — the 500 companies in the S&P 500 Index at the beginning of each year

For most of the 1980s, these companies expanded their in-house offices but kept their reliance on outside consultants relatively small. In the mid-1990s, this shifted. While the number of in-house lobbyists declined, the number of outside lobbying firms retained by these companies increased quite substantially.

Homeowner companies’ needs for outside lobbyists are different than renters’ needs. Whereas renters hire a lobbying firm to act as their Washington office, homeowners already have

a Washington office. They are hiring outside lobbyists to help them extend their existing capacities.

In interviews, three primary reasons emerge for why homeowners want to hire outside lobbying firms: 1) additional access; 2) process and issue expertise; and 3) extra intelligence-gathering.

Access

Washington, DC is a town that thrives on connections and relationships. A large percentage of those working as lobbyists have some prior government experience¹² (Salisbury et al. 1989). In particular, many lobbyists are particularly valuable because they came from the Hill and built up relationships that provide them unique access to key decision-makers (Bertrand, Bombardini, and Trebbi 2011, Vidal, Draca, and Fons-Rosen 2010). McGrath (2006) argues that “*There are three important things to know about lobbying: contacts, contacts, contacts.*”

These relationships are valuable not just because of the ability to get meetings and make phone calls, but also because lobbyists who have worked in particular member offices and on committees know the idiosyncrasies and personalities that drive outcomes. They know how to package policies, what issues will appeal to whom, and even how different decision-makers like information and issues presented to them. One company lobbyist put it this way:

You hire consultants because there is no way you can reach all 535 members, all the committee staff, and all the agencies, with the small staffs that we have. You bring in consultants that have more relevant experience on a particular issue or have better access to certain parts of the government.

¹² According to one study, “More than 2,200 former federal government employees registered as federal lobbyists between 1998 and 2004...Altogether, records show, more than 12 percent of current lobbyists are former executive and legislative branch employees. This includes more than 200 former members of Congress (175 from [the House](#), 34 from [the Senate](#)) and 42 former agency heads.” “More Than 2,000 Spin Through Revolving Door: Nearly 250 former members of Congress and agency heads register to lobby” Center for Public Integrity, 2005

Additionally, as Washington has become more partisan, it has increasingly become the case that there are Democratic lobbyists who specialize in reaching out to Democratic offices and Republican lobbyists who reach out to Republican offices. Several company lobbyists (interviewed in 2007 when Democrats had taken control of both the House and Senate for the first time in 12 years) talked about the need to hire Democratic lobbyists in order to have access to Democratic lawmakers. Said one:

We needed to beef up our Democratic consulting base, so right off the bat, we hired two Democratic consultants. That got us started to make sure we're doing the things we needed to do. Then we hired another Democratic consultant.

Process and Issue Expertise

One of the most important services that lobbyists provide in the policy process is expertise and information (Wright 1996, Esterling 2004, Allard 2008). Many lobbyists achieve access by becoming valued experts in particular issues. Such issue expertise can also be very valuable to companies. Numerous company lobbyists said in interviews that they hire additional lobbyists for their particular issue area expertise. For instance, a high-tech company hired an energy expert when that company began to get into energy issues. As the company's lobbyist explained:

Most of us in the office are generalists. On new issues like energy, we didn't know the concerns, so we need specialized talent. We're a lean shop here, and we're not going to hire an energy expert, so we go to the consultant who can offer a percentage of time for issue expertise. One of our consultants knows the Energy and Commerce Committee very well, so we hire them to explain what the issues are.

Often, lobbyists are hired for their combination of political and policy expertise. Said one company lobbyist of consultants he had hired:

[NAME OMITTED] came to us over tax matters. He is very close with a number of Republican Senators and when I have a problem on an issue and we have to talk to a Republican Senator, he probably has 10 or

12 close friends who are Republican Senators, so I will call him and we'll go talk to Senator X. And we have seven or eight consulting arrangements on that basis. Some came out of the Ways and Means Committee and some came out of the Finance Committee and some came out of the Energy and Commerce Committee and it goes on and on.

Intelligence Gathering

A third reason that companies turn to additional lobbyists is for intelligence gathering. In surveys of lobbying activity, monitoring consistently ranks among the most important tasks of the lobbyist (Schlozman and Tierney 1986; Heinz et al. 1993; Nownes 2006). Monitoring involves reading government documents and staying on top of Hill news, both by reading the papers and knowing the people. Deals often happen very quickly when they happen, and as the old Washington saying goes, "if you're not at the table, you're probably on the menu."

Any individual company lobbyist can only hear so much, and can only be plugged into so many channels. If a company wishes to increase its likelihood of getting valuable gossip at a time when it is in fact able to do something about that gossip, it helps to hire additional lobbyists to be on the lookout for issues affecting the company, wherever they may arise.

For instance, one company lobbyist described hiring one consultant for issue expertise, and a second for intelligence gathering. The lobbyist said: "One we have for legislation having to deal with tax law because that's too big a spectrum of potential issues for me to cover. The other is a small operation that gives me information on things because I'm only focusing on [my company], but they have lots of other clients. They might hear information about things that might affect us."

All three of the above services are relatively non-specific, and following the insights of transaction-cost economics, we would expect companies to contract out for them. Access to any

particular government official is a relatively non-specific service. It also has a strong likelihood of being occasional. The service is easy to evaluate: either the lobbyist secures a meeting with the desired contact or doesn't, and either that desired contact takes the meeting seriously or doesn't. Targeted access also is likely to be occasional. New legislative issues often arise and require new legislative contacts. Leadership roles and committee assignments change with each Congress. For a company that wants to extend its reach to multiple offices, it makes sense to hire outside lobbyists. There are only so many decision-makers any one in-house lobbyist can maintain a working relationship with, and it is much easier and cost-effective to hire those relationships on an as-needed basis than to develop them oneself.

Like relationships, issue area expertise can be a relatively non-specific service. Knowledge about a particular section of the tax code is equally valuable to any company that wishes to know about that section of the tax code, and it's generally more efficient to call in an expert than develop the expertise in-house. However, as that issue expertise becomes more tailored to a company's particular needs and develops over a longer period of time, it may become increasingly idiosyncratic. In other words, companies would be most likely to contract out for issue expertise when they are expanding into a new issue on which they don't have existing experience, and for an issue that they may expect may see resolved in a limited time frame.

Intelligence-gathering also fits the definition of a non-specific service as long as the knowledge would be equally valuable to a broad number of purchasers, as much political intelligence is. Hiring a lobbyist for information gathering can be seen as akin to subscribing to a trade publication for a single column that occasionally has very valuable information. Different

lobbyists provide different streams of information, and companies can easily judge whether they are getting enough valuable information or not.

Why then, have companies largely expanded their hiring of outside lobbying consultants, but not their in-house staff since the mid-1990s? Has something changed in the environment of Washington? Or has something changed about the way that companies operate in Washington? Or both? Let us evaluate three possible explanations here

1. Increased complexity is driving the shift to outside lobbying.

With an additional 5,000 pages of statute and roughly 60,000 pages of Federal Register content added each year, policy specialists are becoming ever more specialized, and policy generalists are increasingly useless. As Hecló (1978) noted more than thirty years ago, such layering of change upon change makes everything more complicated. “The very fact that so many policies have already been accumulated,” he wrote, brings with it a “sort of complexity and unpredictability.”

Building rules on top of rules requires much more thought, much more attention to how new provisions will interact with old ones. More problems are also global, and the ever-spreading interconnections have made the world a more complicated place. “The biggest thing is that issues have become more complex,” said a lobbyist with almost two decades of experience. “And the level of sophistication of members and staff on policy issues has just grown.” Or, as another experienced lobbyist put it: “The legislation itself is by a logarithmic jump far more elegant. It’s not as blunt an instrument as it was when I first came.”

At an institutional level, new rules and structures tend to be built on top of old rules and structures, adding to institutional complexity (Schickler 2001). With passing time, there are more

overlapping jurisdictions, more overlapping sources of authority, more people who need to be consulted earlier rather than later. If a bill is moving, multiple committees often try to claim jurisdiction so they can have their say. One veteran pharmaceutical lobbyist put it this way:

Back when I started, if one had a Medicare problem, there were five or six members of Congress to go to. Now on any given issue, every member of every subcommittee that deals with it considers himself an expert and wants to make certain that they are heard and whatever their policy tweak is, it's incorporated. Markups last longer.

Potentially, the increasing complexity of legislation, existing rules, political issues, and political jurisdictions could require more lobbyists. The more areas of specialty and expertise, the more likely it is that companies would need to hire additional outside lobbyists.

Turning to the data on S&P 500 lobbying (see Figures 2 and 3), an interesting pattern emerges. The growth of outside lobbying is largely concentrated in seven industries — companies in banking, high-tech, defense, telecom, pharmaceutical, insurance, and utilities. All show substantial growth in the number of outside lobbyists hired, generally tripling their outside lobbying force between 1994 and 2004, all the while keeping their in-house lobbying forces roughly constant, or in the case of the telecom industry, actually reducing it following the landmark 1996 Telecommunications Act. These seven industries are also the seven industries that have been the most highly active generally.

If the complexity explanation holds, it would require making the case that the policy environment in these industries was significantly more complex. Certainly, five of these industries (telecom, banking, pharma, insurance, and utilities) are heavily regulated, and two of them (telecom and banking) underwent major deregulations in the late 1990s in which rules of competition were fundamentally re-written and made substantially more complicated. The fact

that the two industries that have maintained the highest number of in-house lobbyists (defense and high-tech) are the least regulated industries of the bunch certainly suggests that regulatory complexity is at least roughly correlated with the number of outside lobbyists.

Still, the fact that the vast majority of industries have remained constant in their use of outside lobbying does not count as evidence in favor of the complexity hypothesis. The data show that in industries already substantially mobilized by the mid-1990s, there was a major push to hire outside lobbyists. That five of seven of these industries were heavily regulated suggests that regulatory complexity is likely a factor. But by itself, increasing complexity does not explain these patterns.

2. Increased partisanship is driving the shift to outside lobbying.

The shift towards more outside lobbying in the mid-1990s corresponds to the growing polarization of Congress, in particular after the Republican takeover of the House in 1995. Polarization led to a contentious legislative process in which it has become very difficult to even transact routine business. (See, e.g., Sinclair 2000, 2006; Mann and Ornstein 2006; Eilperin 2006.) In interviews, numerous experienced lobbyists waxed nostalgic about the days when the Speaker Thomas P. “Tip” O’Neill (D- MA) and Minority Leader Bob Michel (R- IL) would regularly go golfing together. As one lobbyist with more than 30 years of experience put it: “The whole system kind of broke down and a lot of easy things started not being resolved...Now it’s a horrendous system and completely plugged up...The frustration level is very high.”

One consequence of the increased partisanship for lobbyists is the increased importance (and difficulty) of avoiding getting caught in partisan rancor by ensuring that issues have bipartisan support. As one lobbyist put it: “You could have an idea with a Democratic or Republican

champion, but just by mentioning the individual's name, that could be radioactive with some member. Ideally you come forward with some bipartisan champions. That's always beneficial."

In a more collegial era, it mattered much less which party the "champion" belonged to. Now building winning bipartisan coalitions is much more work. As a result, heightened partisanship may require more hiring of lobbyists with very specific contacts and relationships. "It's become so specialized," said one lobbyist, "I heard somebody is hiring for a shop now, and they're looking for a Democratic lobbyist from the House to deal with the Ways and Means Committee only. When I joined nobody was that narrowly targeted." When the Democrats took over Congress in 2007, lobbying firms raced to hire Democrats and show their new bipartisanship.¹³ Most companies I interviewed in 2007 stressed how bipartisan their lobbying staffs were.

As with the preceding hypothesis, one way to assess this hypothesis is to look at the changing use of in-house as opposed to outside lobbyists, since companies use outside lobbyists both for access and intelligence-gathering, both of which might become more difficult in an increasingly partisan environment.

The shift fits with increasing partisanship and in particular the Republican takeover of Congress in 1995. If a government relations operation suddenly needs a Democratic lobbyist and a Republican lobbyist, that's two lobbyists where it previously only needed one. More partisanship would also require companies to hire more people for intelligence-gathering, since

¹³ Jeffrey Birnbaum of the *Washington Post* reported in April 2007: "The Democratic takeover of Congress has not only been good business for Democratic lobbyists, but it has also turned into a bipartisan boon: In the four months since the midterm elections, the number of new lobbyist registrations has nearly doubled to 2,232 from 1,222 in the comparable period a year earlier." And "For lobbying shops that employ only Democrats, there has been a gusher of new business." Jeffrey Birnbaum, "Lobbyists Profit From Power Shift In Congress As Democrats Get Jobs, Republicans Stay On," *Washington Post*, April 23, 2007.

with fewer lines of communication between Democrats and Republicans, a company would need more lobbyists in order to be plugged into all possible sources of scuttlebutt.

One problem with this explanation is that it can't by itself explain why the big increases in lobbying presence only happened in certain industries. Were some industries more likely to be caught up in political polarization than others? Again, the it is certainly possible that polarization was only relevant for those industries that were already substantially mobilized because of the contentious of their particular issues, and so were most likely to be affected by polarization. A more detailed analysis could look at the affiliations of hires in these industries to see whether they reflect the partisan hypothesis, but that is beyond purview of this paper.

3. Homeowner companies are becoming more aggressive.

A third possibility has nothing to do with changes in the external environment. It is that companies themselves became more aggressive in Washington. As a result, they needed to hire more lobbyists to help extend their reach. The active a company, the more different offices and committees a company would need to have connections to, the more expertise it would need to purchase, and the more it would need to know what is happening across a range of legislative jurisdictions.

This hypothesis can adequately explain why the growth of outside lobbying was much greater in certain industries than others: companies in these industries, once they discovered the importance of politics to their business, became more aggressive in maintaining activity in Washington. The data suggest a kind of threshold point — once an industry reaches political maturity, it takes off. And hiring a fleet of outside consultants marks a more aggressive stage in a company's political development.

This explanation also fits with a second pattern in the data, which is the increasing correlation of the number of in-house and outside lobbyists over time. In the 1980s, the correlation between the two among companies in the S&P 500 Index is only modest (generally around 0.4), suggesting the two strategies are substitutes, akin to the homeowner/renter distinction. But in the 1990s this shifts, and the correlation becomes much more solid, approaching 0.7. Thus it is the companies with the largest in-house staff that are also hiring the most outside staff and strongly indicates that homeowner companies who are actively pursuing lobbying campaigns are the ones who are most likely to need that extra help to fill in the gaps in their access and expertise. (See figure 4)

Conclusion

The growth of for-hire lobbying firms represents an important development in the organization of Washington lobbying. Over the last few decades, corporations have utilized for-hire lobbying firms in two distinct ways. The larger share of companies listed in the Washington Representatives directory (87 percent as of 2006) have simply used Washington lobbying firms as their Washington office. I call these companies “renters” reflecting their limited commitment to Washington and the fact that they are in effect renting representation. The second trend is that, starting in the mid-1990s, companies with existing Washington offices transitioned to greater reliance on outside lobbying firms as well.

Transaction-cost economics provides theoretical insights into the decision that companies face as to whether to make-or-buy lobbying services. To the extent that lobbying services are relatively non-specific and occasional, it makes sense to buy them. To the extent that they are idiosyncratic and recurrent, it makes sense to rent them.

The growth of renters in Washington starting in the 1990s (from 1,675 in 1981 and 1,623 in 1991 to 3,605 in 2006) correlates with a rising number of short-term, discrete private benefits available through earmarks, federal contracts, and changes in the tax code. Such lobbying services are largely non-specific, occasional services, which is why companies prefer to buy them. This indicates a broader shift in corporate lobbying towards more proactive activity.

The trend of homeowner companies hiring more outside lobbyists also represents a more proactive approach. It suggests that certain companies are taking a more aggressive stance in Washington, hiring more outside lobbyists to provide non-specific services such as access, expertise, and intelligence-gathering as they attempt to expand into a greater number of issues.

Certainly, there is more work to be done pinning down these different explanations. But hopefully the research presented here will highlight that companies' decisions about whether to make or buy lobbying services represent important strategic choices that can tell us something about the environment in which they are lobbying. Moreover, the changing balance between the strategies highlights the fact that corporate lobbying is dynamic and evolving, and future research into corporate activity should reflect this.

Tables and FiguresTable 1. *Homeowners and Renters in the Washington Reps Directory, 1981-2006*

	1981	1991	2001	2006	'91-'06 CHANGE
Homeowners	481	573	507	547	-4.5%
Renters	1769	1737	3147	3714	+113.8%
Total	2250	2310	3654	4261	+84.5%

Table 2. *Activity of Homeowners vs. Renters, 2006*

	PCT. OF COMPANIES IN WASH REPS*	PCT. OF WASH REPS LOBBYING PRESENCE**	PCT. OF REGISTERED LOBBYING COMPANIES***	PCT. OF REPORTED LOBBYING \$****
Renters	87%	57%	68%	14%
Homeowners	13%	43%	32%	86%

* From *Washington Representatives Directory, 2006*

** From *Washington Representatives Directory, 2006*, Lobbying presence measures the total of in-house lobbyists and outside firms hired and counts them equally.

*** From publicly-disclosed lobbying expenditure data in four industries (retail, pharma, high-tech, and financial services). This may over-represent homeowners because companies reporting less than \$20,000 a year do not have to report.

**** From publicly-disclosed lobbying expenditure data in four industries (retail, pharma, high-tech, and financial services).

Table 3. *Homeowners vs. Renters, 1998-2007*

	HOMEOWNERS	RENTERS	RATIO/DIFF
Mean Total Lobbying Expenditure (In-house and outside)	\$1,682,013	\$141,718	11.9-to-1
Median Total Lobbying Expenditure (In-house and outside)	\$800,000	\$80,000	10-to-1
1-year persistence rate	96%	79%	+17%
2-year persistence rate	93%	66%	+27%
Have a PAC	70.4%	16.8%	4.2-to-1
Mean PAC Size	\$353,564	\$113,426	3.1-to-1
Median PAC Size	\$176,504	\$60,925	2.9-to-1

Source: SOPR data

Table 4. *Reports filed 1998-2011*

ISSUE	TOTAL REPORTS FILED (1998-2011)
Budget and Appropriations	48,793
Health Issues	22,578
Taxes	20,620
Defense	19,639
Transportation	17,538

As of August 11, 2011.

Table 5. *Change in reports filed in high-volume issue areas*

ISSUE	# OF CLIENTS FILING REPORTS, 1998	# OF CLIENTS FILING REPORTS, 2010	1998-2010 CHANGE
<u>Fed Budget & Appropriations</u>	1,466	4,982	+240%
<u>Defense</u>	685	1,887	+175%
<u>Health Issues</u>	938	2,400	+156%
<u>Education</u>	459	1,129	+146%
<u>Medicare & Medicaid</u>	487	930	+91%
<u>Transportation</u>	839	1,602	+91%
<u>Taxes</u>	1,203	1,885	+57%
<u>Environment & Superfund</u>	799	1,195	+50%

Figure 1. *S&P 500 Homeowner In-house vs. Outside Lobbyists*

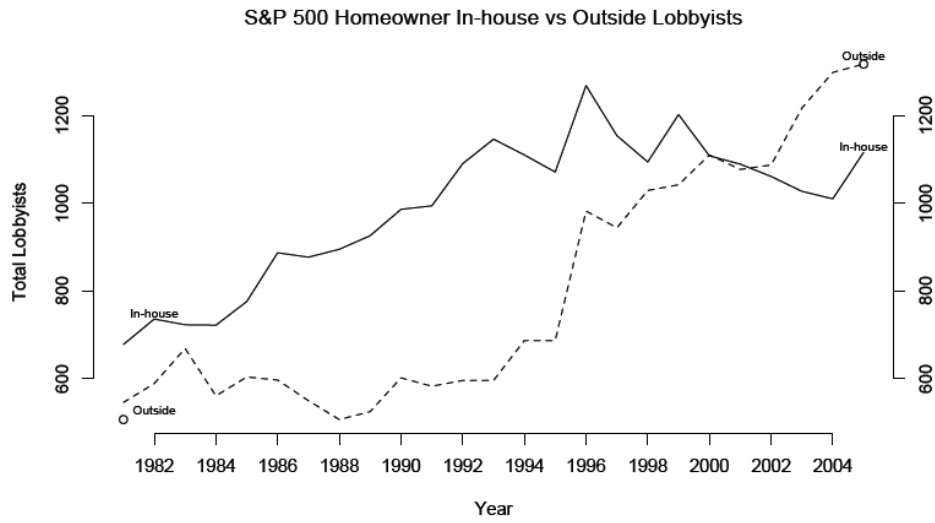


Figure 2. *Outside lobbyists hired by companies, by industry.*

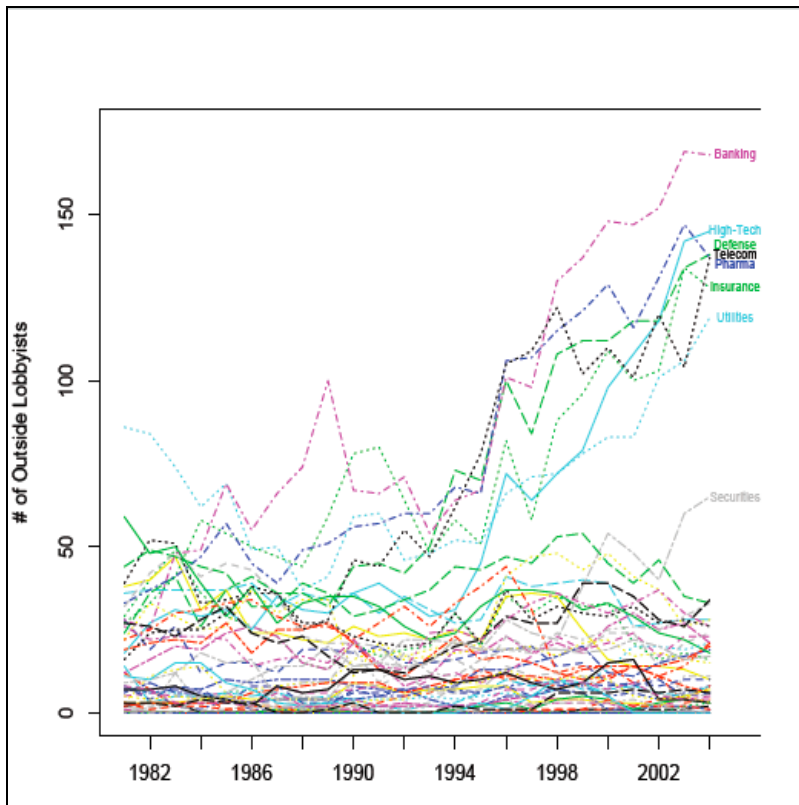


Figure 3. *In-house lobbyists hired by companies, by industry.*

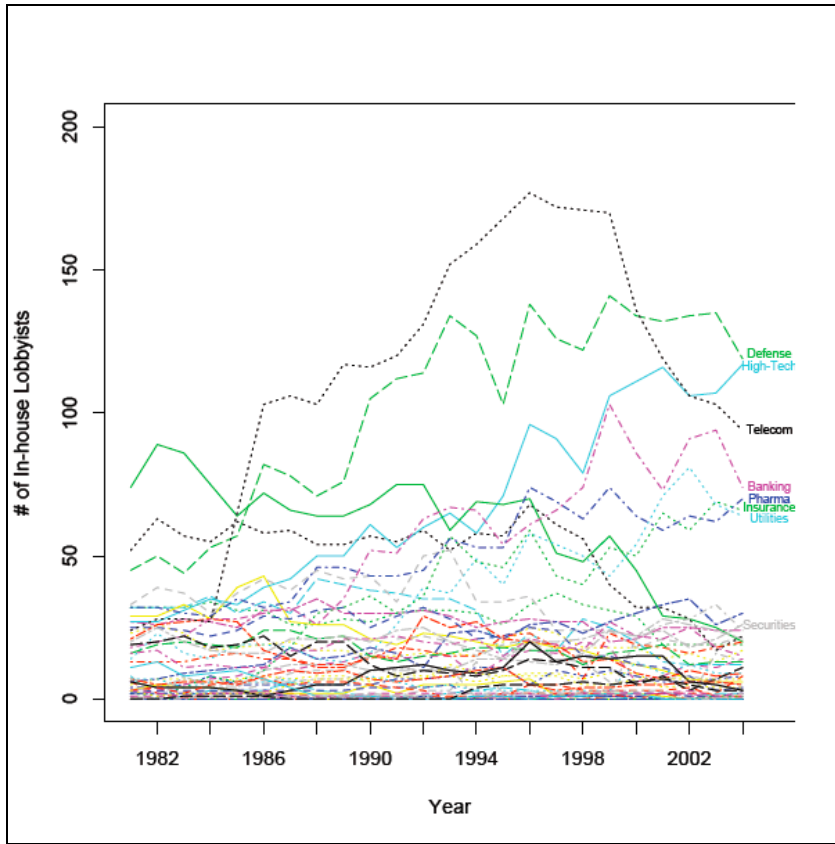
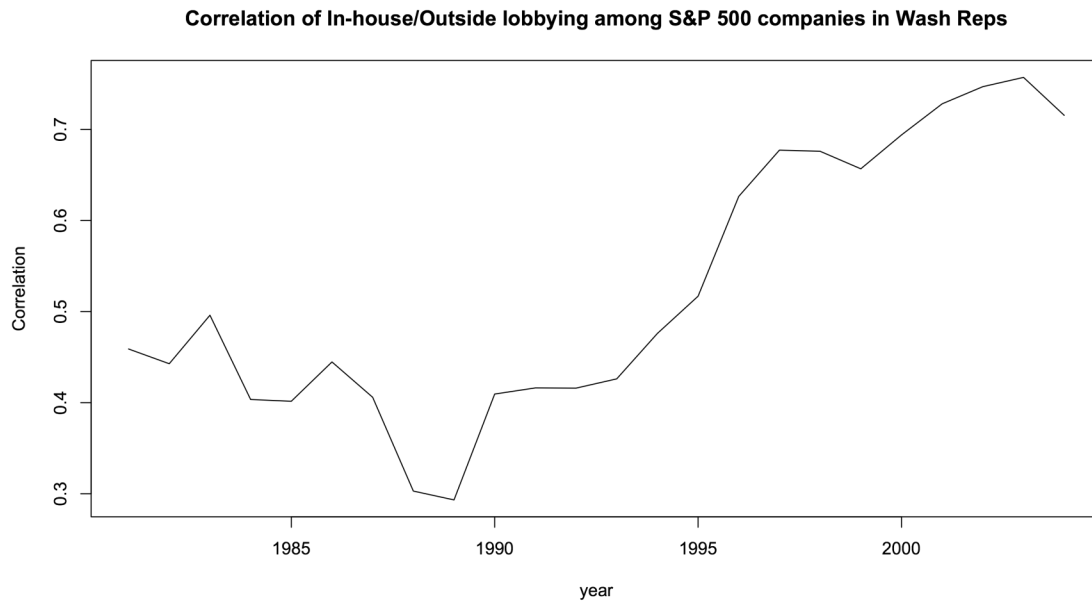


Figure 4. *Correlation of In-house and Outside Lobbying*



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