

## Organizing Toolbox ♦ Charlotte Brody

# If It Works For Al D'Amato, It Can Work For Anybody

## Getting Public Officials To Do The Right Thing

From a distance it looked like a pretty typical January press conference in front of the Long Beach, Long Island incinerator. The leaders of the Coalition to Close the Long Beach Incinerator were there, along with a Democratic county legislator and a few other supportive local officials, to celebrate the closure of this major dioxin and mercury spewing burner. What was unusual was the presence of a man who had an environmental voting record of zero in 1996, Republican Senator Alphonse D'Amato.

How did a man who voted for cutbacks in funding for the US EPA, rolling back environmental protections for grazing on federal lands, and the storage of nuclear waste at Yucca Mountain, Nevada, become the heavyweight anti-incinerator champion of New York? What kind of conversion experience transformed Al D'Amato, whose own brother, Armand, has worked as an incinerator lobbyist?

The answer provides a lesson for all of us on how to get elected officials to do the right thing, even if they do it for a very different set of reasons than those that motivate the rest of us.

In August 1996, Senator D'Amato was in deep trouble with New York voters, especially women. His role as the chief Republican finger pointer at President and Hillary Clinton's involvement in Whitewater, especially given his own history of ethics problems, had dropped him to the bottom of the senatorial popularity ratings. His advisors were warning him that unless he could turn his approval ratings around, he couldn't expect to be reelected in 1998.

What to do? In Washington DC, Republican pollster Linda DiVall was handing out advice. Her firm was circulating a poll showing that "our party is out of



sync with mainstream American opinion on the environment." In New York, D'Amato protege, Governor George Pataki, was busily demonstrating how his own transformation on the environment (the creation of a \$1.75 billion environmental bond) had increased his approval ratings to above 50 percent for the first time since he took office.

Senator D'Amato may not be a longtime friend of the environment, but he

is his own best friend when it comes to re-electing Al D'Amato. So he started paying attention to the activists who were addressing the dramatically high incidence of breast cancer on Long Island and the activists who were focusing on the dramatically high emissions by the Long Island Incinerator.

Two million dollars worth of television ads appeared across New York State. There was Senator D'Amato snuggling his granddaughter while his daughter Lorraine D'Amato narrated:

"Good neighbors always help each other. My dad taught me that-Al D'Amato. That's why he's done so much for so many and why he's fighting now to shut down that incinerator plant in Long Beach, the one throwing poisonous toxins into our air and water. That plant may be responsible for the high rate of breast cancer here on Long Island."

Think about it: Al D'Amato spending two million dollars on television advertisements linking incinerator emissions and breast cancer two years before his Senate term is up. Think about the D'Amato story and what grassroots environmental groups usually do when they need a government official to make a decision to protect the environment and public health.

Here are the most common actions:

- Gather names on a petition.
- Get people to sign postcards or add their names to a sign-on letter.
- Insist on a public hearing or meeting and then mobilize people to attend.

All of these actions require a large investment of human and financial resources. Unfortunately, even if you've been successful at getting 10,000 names on petitions or 500 people to attend a public hearing, you still have no guarantee

## Four Ways to make Elected Officials Do the Right Thing

### 1. Tell them the stories of other elected officials

Make sure they know the story of Al D'Amato and the Long Beach incinerator. It might also help if they know that in 1996, eighty-five percent of defeated Republican incumbents were Members of Congress who were strongly identified with the Contract on America efforts to destroy environmental protections (overall, only 6 percent of incumbents lost).

### 2. Use polling data

Political campaign consultants command huge fees to teach people running for office that they must use expensive polling data to shape their messages. We can use politicians' dependence on polls since they repeatedly have shown that the American electorate cares about the environment. Swing voters, the part of the electorate that most politicians worry most about, are usually strongly concerned about the environment. Ask your local librarian to help you do a little research on what recent polls have shown about voters in your area. Look at the most recent polling done by local newspapers and universities, especially those with schools of journalism. Sometimes you can ask these newspapers and universities to add a question or two to their next poll. When you find results that show how important your issues are to local voters, make sure that elected officials see those results.

### 3. Repeat their own campaign promises to them.

Keep a file of what they say about the environment. During election season, when candidates are all looking for photo opportunities and handshaking sessions, ask them to visit your group and see, first hand, the problem you are working on. Record everything they say. Ask them what they would do to solve your problem if they are elected or reelected. Then use the media, your newsletter and letters and visits to remind them of their promises. When CCHW and 100 other groups placed a full page ad in the Florida editions of USA Today urging President Clinton to get the EPA to relocate all 358 families in the Mt. Dioxin community in Pensacola, Florida, the ad began with the President's quote from his acceptance speech at the 1996 National Democratic Convention.

### 4. Use their list of contributors

We all know that money plays a gigantic role in politics. Hopefully that will change. But until it does, we have to look at whose money is going where and how we can use that to our advantage.

that you'll get what you need from government. Why? Because elected and regulatory officials know from previous experience that they can ignore these actions without losing their jobs.

Tactics like petitions, postcards, letters and public hearings are all based on the assumption that government officials respond to the will of the people and the common good. While that's the ideal, it certainly isn't the reality. We have to win real world victories. So, we need to be asking real world questions: What can we do so public officials understand that making the right decision for public health and the environment will also protect their jobs?

Get a copy of the officials' contributor list. Sometimes your local newspaper already has this list. If your targeted person is a local or state official you can get the list from the state board of elections. If it is a U.S. Senator or Member of

Congress, contact the Federal Election Commission (1-800-424-9530) or the Center for Responsive Politics' National Library on Money and Politics (202-857-0318). The Center for Responsive Politics Follow the Money Handbook (\$10.00, available from CRP at 202-857-0044) will guide you through the details of obtaining campaign finance information.

Once you've received the list you can use it in two ways.

You can use the list to identify individuals or groups that may be willing to carry your message to the official. Did the Trial Lawyers contribute heavily to this official's campaign? This group of lawyers are often willing to be political allies to grassroots groups. What about residential real estate developers? They are often big political contributors. Does the toxic problem you're trying to stop or correct have an impact on residential

property values? If it does, you need to get that message to the real estate contributors who can then get the message to the elected official they support financially.

You also can use the list to embarrass the elected official into doing the right thing. To get reelected, politicians have to look like they haven't been totally bought. A press event at which your group expresses its concern about the independence of an official who received so many dollars from the group you're fighting can result in an official doing the right thing to prove that they're not a puppet of special interests.

If non-elected regulatory officials will be making the critical decisions in your campaign, it often helps to target the elected officials who sit over them, using the tactics described above. Other ideas that can work include:

*Continued page 27*

The issue of how lawyers get paid creates problems for people with environmental concerns. Most typically, the polluter has money to hire lawyers and the victims of the pollution do not. The government is supposed to look out for the interests of its citizens, but this rarely happens. Remember, the government has a close relationship to the polluters as a result of campaign contributions, social contact or just the fact that the government itself is a polluter, and identifies more readily with the interests of the polluters than that of the victims. Even when the government would otherwise be inclined to side with victims, it often lacks resources or runs into other political interests. As a result, citizens are most likely to get representation either via an attorney's fee statute or an action for damages which, if successful, results in a pot of money from which the attorney can collect a fee.

Each of these ways to create funds to pay a lawyer also creates problems. The problem grows out of the fact that the fee is tied specifically to the type of recovery in those limited kinds of actions. For instance, under the environmental statutes, what a citizen can complain about and the kind of relief that is available is quite restricted. Thus, the successful environmental lawsuit that can generate fees to pay a lawyer may not be targeted to the kind of relief that you want. An injury case is typically for personal injuries or property damage (personal injury can include emotional distress, medical monitoring, and punitive damages at times). However, in order to make a substantial recovery for damages, the plaintiff must demonstrate large damages. Often, this is not the thrust of what people are seeking (such as getting a facility to shut down or stop a particular practice). Some attorneys have been inventive in getting damages based on the cost of cleanup and others have argued that the damages should be based on the amount the company pocketed by not investing in pollution prevention.

For people with very severe damages, their problem may be proving scientifically that their injury was due to the pollution. Many others without such

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severe injuries have even greater difficulties showing that their problems were caused by the pollution because their injuries may not look all that different from the problems of other people in normal situations. The need to pay attorneys often forces people to concentrate on the kinds of relief that will provide the attorney's fees, and quite often these do not fit neatly with the injured person's true needs.

How a case ultimately is resolved is among the most difficult issues. It goes without saying that the final authority on all questions is in the hands of the client, and if any lawyer you talk to does not understand this, *you do not want to have any further discussions with them.* But implementing this simple rule is not easy. You are relying on the professional judgement of the lawyer to advise you about likely outcomes, and you have to understand that professional judgement is a fancy word for an educated guess. The problems are most acute when the case involved large numbers of clients. How is the lawyer to handle negotiations if there are a great many clients? It is obvious that each of the clients cannot be involved in every single step. On the other hand, *it is essential that the clients be involved in the negotiations.* Those of you who have read the book *A Civil Action* know that the lawyer who handle the Woburn case did not involve his clients in the action either by having them participate in the negotiations or in the courtroom. I have heard of nothing that would justify removing the clients from participation in their own case in this way. You must be sure that this does not happen to you. One way to do this is to work with the attorney to set up a committee which is authorized by the entire community group to participate in settlement discussions. That way the

lawyer cannot claim that the clients were left out because it was not practical to involve the whole group.

I want to close my answer by noting that this topic is far and away the most important that we discuss in this column. A famous judge once counseled attorneys with the old Italian proverb, "the only thing worse than a lamb in the mouth of a wolf is a client in the hands of his own lawyer." Your relationship with the attorney is crucial and it must be based on trust. But trust does not mean that the client says, knows and does nothing and simply trusts the lawyer to do the right thing. Trust means that you work out beforehand the terms of the relationship and discuss the difficult issues and agree on a framework about how they will be resolved.

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***Continued from page 25***

Making the track record of these regulators a public issue. A little publicity about the worst previous decisions of the same regulators, or their predecessors, can provide these decision makers with a reason to improve their batting average.

Uncovering unauthorized meetings or other special favors granted to the other side can net the same results.

Asking the elected officials who oversee the budget of the regulatory agency to intervene on your behalf. This doesn't need to be a threatening phone call. But just knowing that the people who control the purse strings are watching can make a difference.

Finding out what's worked before. Most government bureaucrats are creatures of habit. If they've made any decent rulings in years past, it can really help to identify the factors that lead up to that ruling.

We win when we convince the people in charge to make the right decision. But we shouldn't expect them to make the right decisions for the reasons that seem right to us. Grassroots activists have to figure out how to convince decision makers that its strategically smart for them to do what's right for the environment and public health.

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