

# NLADA Substantive Law Conference

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## **First, Do No Harm**

### **Notes for Attorneys Working With Groups Fighting for Environmental Justice**

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#### **Where there is an active community group and no obvious slam dunk case:**

It is generally wise to save the big law suit for last, for a lot of reasons.

They can be disempowering – everyone stands around and watches the suit (unless the other stuff is hot). And, they frequently take a long time.

They cost tons of money, so lots of time is spent raising money (instead of raising hell).

If clients raise too much hell, you or someone, will worry about upsetting or alienating the Judge, or providing ammunition to the opposing party.

If you lose, the group will be discouraged – the courts, who have the final say, will have put their stamp of approval on the bad behavior you are challenging.

Why should you let someone, who probably shares very few of your client's life experiences, decide who wins?

They tend to make you (the attorney) the key decision maker - not the group.

If the community organizes first, and does end up filing a case, they will have already developed community sympathy and support.

If you buy this approach then make sure your clients understand that you will not win this for them they will win it for themselves. They will not do less work because you are on board – probably more. You will help them understand how things fit together, who can give them what they want, where the pressure points are likely to be. Assess their willingness to continue on.

## **So, how can you use your legal training?**

### **1. Expand your research beyond traditional legal research.**

Get to know everything about the situation:

- Learn about the opponent.
- Figure out who/what your opponent really is...ownership, affiliates, big customers, financing.....
- Figure out what your opponent cares about (its not enough to say “making money”) public perception? (Dayton Walther – Ford wanted to sell cars in the African American Community. (Business Week).
- Of course, all applicable laws.
- The political environment (all levels; where each elected official is in the election cycle)
- Possible allies
- Establish rapport with regulatory agencies. Understand what they can realistically do given mandates and funding, e.g., good surveillance, weak enforcement.
- Be ready to jump on the problem quick, it’s much easier to stop something before it starts.
- Know the strong points in your client’s position – e.g., history of the area in factory farm case.

Listen to your clients – they may see/understand things differently than you or many state things in unfamiliar ways.

- Do not quickly dismiss concerns/issues that seem irrelevant; e.g., sewers and air emissions.

Visit the community – walk the streets/meet the people/sit in their living rooms.

It’s not all business – it’s your opportunity to meet some great, fascinating people.

Attend the group’s meetings – sit in the back and watch.

- How many folks are really involved?
- How do they make decisions?

- What kind of things are they willing to do?
- What skills do they have?
  - Know how to work with the press?
  - Know how to organize a demonstration, give a speech, write an article, set up a web-site or email list, use social media, get access to public records? Do they have the ability to understand and analyze technical documents?

**2. Help the group develop the skills they will need. Encourage them to tap their various networks of contacts/friends. Working class and low-income groups may not have many of the skills they will need and may not know people with these skills. You can introduce them to people who can help them.**

There are special issues related to working with technical experts. Some tend to want to take over the group and dictate how group should act, respond to info, etc. You need to mediate this. The expert's job is to teach people and explain things. Help the group choose tech folks who can do that.

**3. Look for administrative, legislative (local) or other types of actions that turn up the heat, help frame the issue, develop forward momentum, and keep the group and the issue in the press.**

- For example, an environmental justice complaint frames the issue as a class, race problem.
- Permit hearings...(public hearings).
- Letters to people with power, e.g. Attorney General regarding Trotwood well logs.

Pay special attention to the local level – lots of power here – particularly through zoning.

- Refusals to rezone. Understand the law.
- Know the law about how to overturn decisions through referendums.
- Befriend folks in local planning, zoning office.

Periodically send out public records act requests to all public offices that might have relevant documents.

**Miscellaneous Notes:**

Use a calendar – plot significant events and the progression of activities.

Client will fixate on failure of government (agency) to do their jobs and protect them.

- Push the agency as far as you can...but keep the focus on the company.

Balance pushing regulators with befriending them.

- E.g. removing agency from EJ complaint was repaid with tips about public documents being received.

Need to capitalize on the group's few natural advantages

- For example, the ability to move quickly; e.g., press conference re company's own tests, before the company announced the results.

So, you need to monitor the relevant information daily.

- Newspaper, on-line sources.
- Other folks in the group – what are they hearing?
- Your “informants” in the regulatory/political arenas, etc.

Don't engage in personal attacks – people love this stuff but don't do it and discourage it.

- Can backfire – create sympathy.
- Creates animosity – makes it harder for the other side to give in.
- Its time not spent explaining the real issue.
- Golden rule.

If you or other group members have nagging concerns about a decision on how to proceed, do not brush them aside – make sure that all of the down sides of a decision are teased out. Grass roots groups can not afford too many mistakes; e.g., decision to attack Greene County Health Commission in GEC Campaign.

Finally, if the campaign stalls – take a step back. Sometimes the group just needs to go back to the original game plan.

**There are a lot of excellent books on community organizing. A recent one is “*The Good Neighbor Campaign Handbook, How to Win*”, Edited by Paul Ryder, iUniverse Inc., 2006, available from Amazon.**