

Talking Law

NEW COMMUNICATIONS STRATEGIES
FOR ENVIRONMENTAL LITIGATORS

resource | media

“Thanks to what we have learned through the *Talking Law* materials and presentations, our legal and communications teams work more closely together to determine the best spokespeople, timing and messaging for our legal cases.”

Cindy Hoffman, Vice President of Communications, Defenders of Wildlife

“Thanks for a very helpful presentation. The workbook is an excellent compilation of all the stuff that ought to live somewhere in every good p.r. person’s mind. Thanks for making it easily accessible. I’ve already shared it with a young colleague, who pronounced it “AWESOME.”

Kathy Westra, Director, Advocacy Communications, The Wilderness Society

“Attendance at this training should be required for everyone who comes to this conference.”

Participant, ELaw Conference, 2008

Talking Law

PROLOGUE

America's natural resources are always going to be threatened by a wide range of special interests. The truth is, no matter who's in power – Republican or Democrat – effective legal strategies play an essential role in helping to protect our land and wildlife. But, while environmental advocates often win in the courtroom, too often we lose in the court of public opinion.

As an environmental attorney, I have seen huge conservation victories as well as some stunning losses. Win or lose, I continue to be inspired by the hard work and dedication of my colleagues in the environmental community. For all of us, the question isn't whether to turn to the courts – it's how to make communications an integral part of our legal strategies when we do.

What does it take? It takes making friends, building alliances and sustaining those relationships over time – with farmers, ranchers, hunters, anglers, elected officials and others. It takes putting the human face on our fights, telling stories about real people and what they care about and talking about solutions. It takes planning effectively, building support, working in communities and with the media. It takes time and hard work.

Just as we need legal strategies to win lawsuits, we need communications strategies to win public support. Drawing on interviews, research and experience in the field, *Talking Law* demonstrates how to do just that. When put into practice these strategies lead to real solutions. I've seen what happens as a result. And that is the biggest victory of all.

*Johanna Wald, Senior Attorney,
Natural Resources Defense Council*



INTRODUCTION

Several years ago, Resource Media staff identified a trend in news coverage of environmental lawsuits. There was a surge of stories with the headline, “Environmentalists Sue,” appearing in newspapers across the country.

At the same time, our partners in the field related that they were concerned about media coverage of environmental litigation. These stories often portrayed environmentalists as the bad guys and this frame was undermining their ability to work with communities, state houses, Congress and the federal government.

We decided to find out what was going on by doing in-depth research and analysis to see if we could identify new practices to address the problem. This report is the result of that inquiry.

Despite potential shifts in policy priorities in the years ahead, challenges to environmental safeguards can be expected to continue. As a result, environmental advocates will continue to turn to the courts to protect public land and wildlife.

But given negative public perception of environmentalists and litigation, media coverage of environmental lawsuits may come with an unanticipated price. News stories of these lawsuits often focus on the legal process, eclipsing the values at stake. And polling reveals that while Americans support the protection of land, water and wildlife, they often distance themselves from environmentalists.¹

In this context, public interest lawyers are often trusted less than developers. The repeated broadcasting of headlines that read “Environmentalists Sue” can reinforce the perception that today’s environmentalists are obstructionists. At the community level, particularly in conservative areas, negative coverage of environmental lawsuits can overshadow efforts to put forward a positive vision that resonates across audiences and is based on values such as family, prosperity and tradition.

To avert these unintended outcomes, Resource Media has developed new communications strategies for environmental litigators who focus on wildlife and public lands. Our work is based on the belief that legal action is fundamental to environmental protection and that filing lawsuits often provides an opportunity to secure news coverage. However, repetition of the “Environmentalists Sue” story can produce negative results for individual campaigns and cripple the larger effort to broaden popular support for conservation.

To address these challenges, Resource Media conducted research to identify how to improve the coverage of lawsuits. Our work included field interviews with a wide range of advocates and litigators in both private and public practice. We then conducted a framing analysis of coverage — identifying its shape, content and structure. We also looked at public opinion research, analyzing relevant regional and national polling data.



Our research revealed that media coverage of lawsuits is often framed so that the central issue is defined as a legal question, rather than an environmental or economic issue. In particular, many legal complaints center on process violations and do not generate media coverage that focuses on commonly held values. Lawsuits can unintentionally brand environmentalists who use technicalities to prevent progress and forestall compromise.

Recommendations

Effective framing and media strategy can help shape coverage so that environmentalists win in the court of public opinion as well as in the court of law.

FRAMING:

- Reframe legal stories as human stories, using new messages and messengers.
- Highlight primary values such as family or prosperity.
- Develop messages that highlight solutions, not just problems or processes.

STRATEGY:

- Build public support for action well before a lawsuit is filed.
- Segment media campaigns whenever appropriate to focus on key target audiences.
- Evaluate whether no media is the appropriate approach.

FRAMING ANALYSIS

A frame is the structure of a story in all four of its dimensions — who tells it (the messenger), how it's told (the message), who hears it (the audience) and when and where it's told (the setting). The frame of the story is critical because it defines the central issue. To put it simply, a story's construction determines its meaning.

Litigators frame all the time, although they do it in a different context. They have to convince the court what the relevant laws are and how they apply. Jeffrey Toobin summed it up well when he wrote in *The New Yorker*, “Often a trick for Supreme Court litigators is how to define the question in the most advantageous terms.”

In our framing analysis, we examined a total of 207 articles covering litigation and environmental issues and we analyzed the messengers, messages, audience and setting. (For details on our methodology, see page 13.)



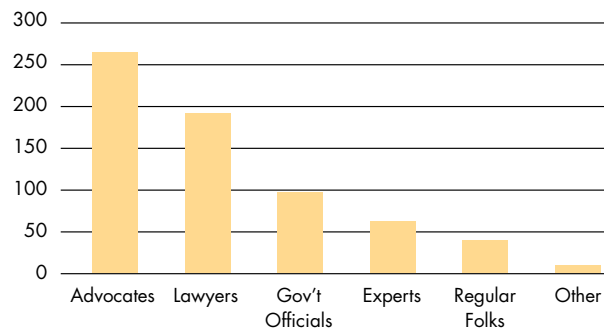
The frame's first dimension

MESSENGRERS

The identity of a spokesperson plays a key role in influencing the shape of a story. Accordingly, we sought to identify the most common messengers in litigation stories.²

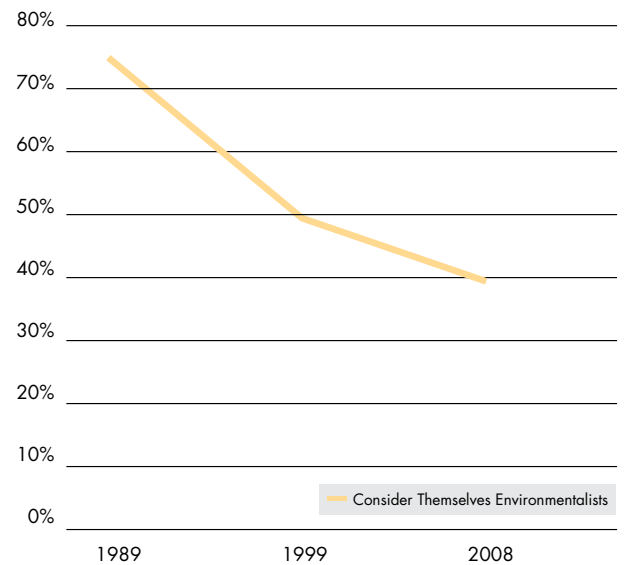
In the 207 stories, we counted the number of quotes delivered by different types of messengers who were advocating a conservation position. The greatest number of quotes, 269, came from advocates. Almost 200 quotes came from lawyers, the second most quoted messengers. Government officials were quoted about 100 times. Experts were quoted only 75 times and regular folks were only quoted 35 times. There were about 15 quotes from other types of messengers.

Figure 1. Number of quotes by messenger.



Since advocates and lawyers are commonly quoted in the stories, we looked at how they are perceived. In 1999, a Gallup report noted that the percentage of Americans who considered themselves environmentalists declined from 76% in 1989 to 50% in 1999. An ABC News poll conducted in July of 2008, showed that number dropped to 41%.

Figure 2. Percentage of Americans who consider themselves environmentalists.

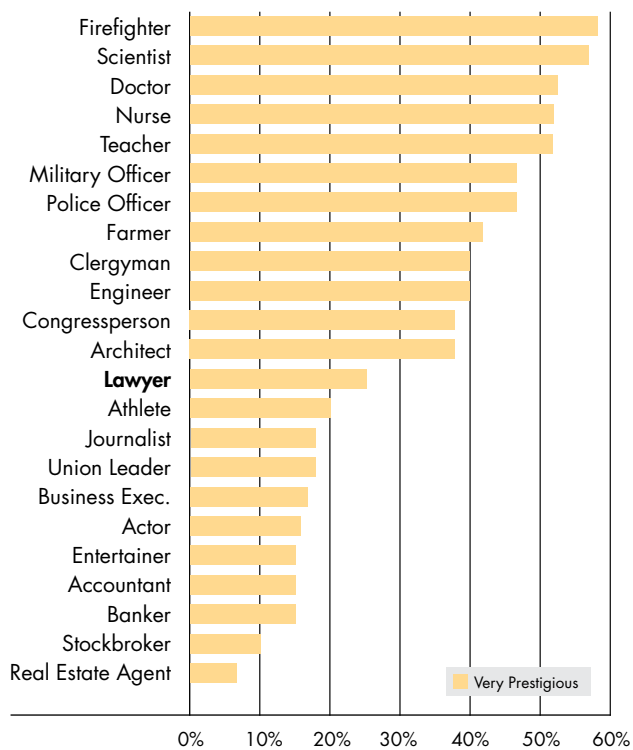


The poll asked adults nationwide "Do you consider yourself an environmentalist or not?" Source: Gallup Poll, 1989 and 1999, ABC News Poll, 2008.



A poll commissioned by the American Bar Association on prestige and occupations shows that lawyers are also not held in very high esteem (see Figure 3).

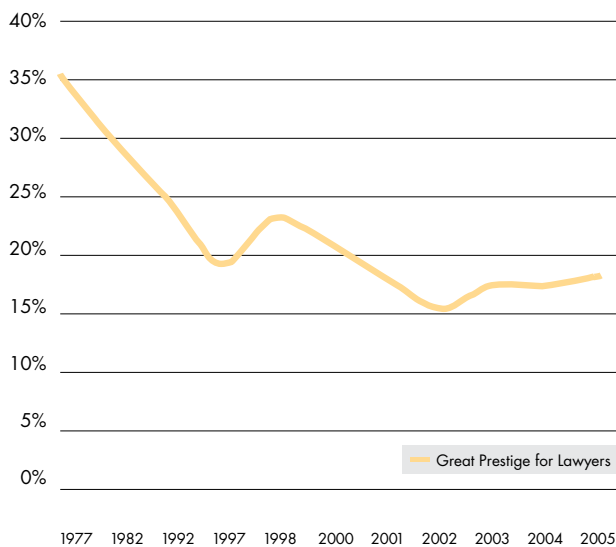
Figure 3. Prestige associated with various occupations.



The poll asked, "For each, would you tell me if you feel it is an occupation of great prestige, considerable prestige, some prestige or hardly any prestige?" Source: Harris Poll, July 2008.

And as Figure 4 shows, the prestige of lawyers has diminished over time, indicating that what good will there was in the past for the work of lawyers has eroded.³

Figure 4. Percentage of people who named "lawyer" as an occupation of great prestige.



The poll asked, "Is it an occupation of great prestige, considerable prestige, some prestige or no prestige at all?" Source: Harris Poll, 1977-2005.



Other polls point to lawyers' lack of credibility. That includes public interest lawyers working on environmental issues. In one national survey of public attitudes about the Endangered Species Act, public interest lawyers were identified as the least believable messengers, ranking below developers (see Table 1).

Table 1. Public attitudes about the Endangered Species Act.

Group or Individual	% Believable
Wildlife biologists	92
Scientists	91
U.S. Fish & Wildlife Service	91
National Academy of Sciences	84
Conservationists	86
American Indian tribal council	80
Farmers and ranchers	80
Environmental groups	73
Clergy	67
Hunters and anglers	65
Hunting guides and outfitters	62
Developers	34
Public interest lawyers	31

The poll asked, "On the issue of endangered species, do you find each of the following groups very believable, somewhat believable, not very believable or not at all believable?"
Source: Decision Research, February 2004, national poll based on 1,006 interviews.

Extrapolating from the data in this and the previously cited polls, there seems to be a mismatch between which messengers are credible and which messengers are being quoted in the press.²

The frame's second dimension

MESSAGES

As part of our framing analysis of the coverage of litigation and environmental issues, we tracked specific types of messages, including the following:

- Stewardship/Conservation
- Political Context
- Legal Process
- Wilderness Preservation

We found that messages are inconsistent across the board. No single message stands out from any side of the debate.

Environmental advocates and lawyers are quoted about process (for example, deadlines and scoping), enforcing litigation, the litigation itself and political strategy. Values such as prosperity, family or stewardship are rarely mentioned.

In our field interviews, environmental advocates and litigators reported that they often talk about prosperity and community when journalists interview them. But the data from our media analysis strongly suggests that they are unlikely to be quoted about these values. This is consistent with information gleaned from our discussions with journalists who report that they are looking for quotes from lawyers that center on litigation because the law is their field of expertise.

"We've filed for an injunction. Our main thrust is that the court should block all of the rules right now while we litigate."

—Land Letter

"What I would like to see is that critical habitat be made a part of the recovery planning process and that the deadlines be shifted accordingly."

—Portland Press Herald

"The plaintiffs appealed the case and filed for an urgent motion for injunction asking for a ruling by May 20, the date that grading is scheduled to begin."

—Hayward Daily Review



The frame's third dimension

AUDIENCE

An audience's values and experience inform how it understands what is going on in the world and how it will respond to messages.

To measure the power of messages in recent stories about litigation, we ranked them in the following table. The ranking comes from a well-established body of academic literature, which has also been corroborated by many field studies of human values.⁴ Primary values are the most significant motivators in public debate and trump secondary and tertiary values.

None of the most common messages in our framing analysis fall into the category of primary values. And some of the most common messages were about process, which is the least important of the values listed in Table 2.

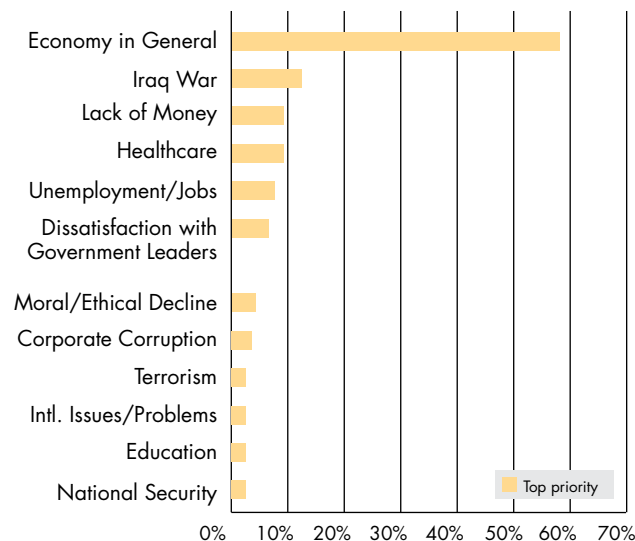
Table 2. Ranking of values found in litigation messaging.

Primary	Secondary	Tertiary
Prosperity	Stewardship	Process
Family	Fairness	
Faith	Accountability	

Source: Rokeach, Milton. *The Nature of Human Values*.

The second facet of the audience dimension is experience. How does the audience experience the issues being discussed and how relevant are these issues to their lives? One way to measure relevance is to ask people what order of priority they give to issues such as those in Figure 5.

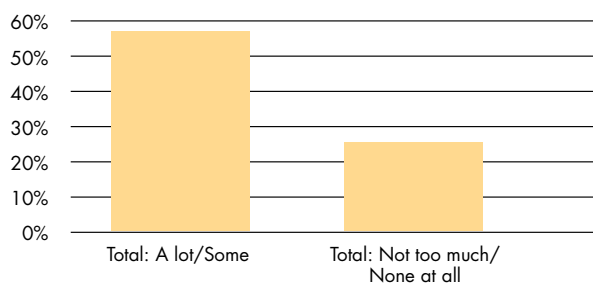
Figure 5. Issues people considered the most important problem facing the country:



The poll asked, "What do you think is the most important problem facing this country today?" (open-ended question) Source: Gallup Poll, November 2008

Unfortunately, most audiences don't see environmental problems as particularly acute. In addition, a majority of people think progress has been made on environmental issues over the last five to ten years (see Figure 6).

Figure 6. Perception of progress made on environmental issues.



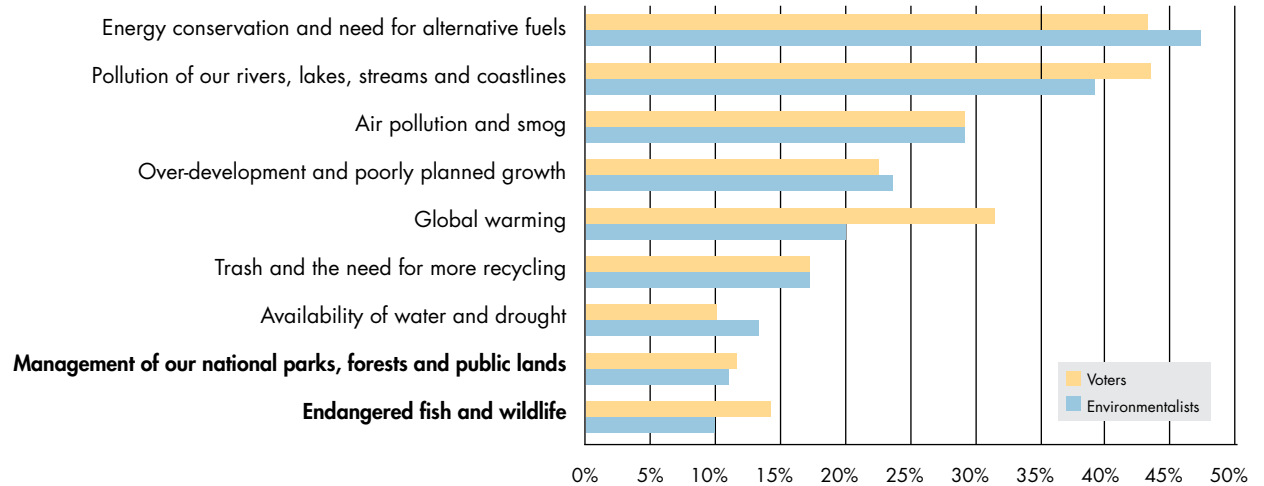
The poll asked, "Overall, thinking about our country's efforts to protect our land, air and water, how much progress would you say we have made over the last five to ten years?" (Response options: a lot, some, not too much, none at all.) Source: Public Opinion Strategies and Hart Research, Nicholas Institute Research Project 2005.



Finally, polling reveals that issues such as the management of national parks, forests and public lands rank very low relative to other environmental concerns, as Figure 7 indicates.

Figure 7. Levels of personal concern about environmental issues.

The poll asked, "Please tell me how much you personally worry about this problem." Source: Public Opinion Strategies and Hart Research, Nicholas Institute Research Project 2005.



In sum, if the audience doesn't perceive a problem, it's difficult to position lawsuits as a solution.

The frame's fourth dimension

SETTING

The final dimension to the story is the setting: either the setting for the actions themselves or the setting where the story is being told. In the coverage we analyzed, the setting is usually the courtroom. These stories generally start with the filing of a lawsuit and often follow the issue by following the legal case. The news hook is the legal action and most of the action of these stories takes place within the legal system. As a result, the story is located in the courtroom and is timed to a courtroom calendar.



Summary of framing analysis

Taken altogether, the four dimensions of most litigation coverage create a courtroom frame that defines the fundamental issue as a legal issues. This coverage does not highlight primary values such as family or prosperity.

In this courtroom frame, the most common messengers are lawyers. The quotes are often about the legal process. The setting is typically the courtroom. And the story is told to an audience that does not see a major problem with the status quo and does not value the legal process. As a result, the story is framed as a legal story, not a story about people and human values.

When we consider all elements — the interviews, framing analysis and public opinion data — several challenges emerge:

- In the courtroom frame, the fundamental issue is defined as a legal question.
- Process lawsuits focus attention on secondary values, not primary values such as family or prosperity.

RECOMMENDATIONS

Based on our research and framing analysis, we recommend the following framing and media strategies to improve environmental litigation coverage:

FRAMING

- **Reframe legal stories as human stories and feature effective messengers.**

Often, scientists, farmers, fishermen or other spokespeople change a story's frame by shifting the focus from legal process to stewardship, prosperity or family.² They can also change the setting of the story from the courtroom to their own backyards. A farmer can move the story to a field — likewise a fisherman can move the story to a river or fishing rig. In addition, reporters are more likely to quote these messengers about values, whereas lawyers and environmentalists are likely to be quoted on process or legal issues.

- **Highlight values such as family, prosperity and stewardship.**

When coupled with effective messengers, messages should highlight community values, not legal values such as process or the law. A fisherman who has just lost his job will speak of concerns about family and prosperity. This is much more compelling than a public interest lawyer talking about filing a lawsuit.

- **Develop messages that highlight solutions, not just problems.**

Once a threat has been established — such as the loss of jobs, iconic places or quality of life — providing solutions is key to framing stories. Audiences are often moved by what can be done rather than by a steady drumbeat of “the sky is falling” stories.

- **Frame process lawsuits as “doing it right” stories.**

Stories that include coverage of lawsuits should highlight fairness and a community's right to comment or weigh in.

MEDIA STRATEGY

- **Generate media coverage before a lawsuit is filed to build support for the issue.**

Early media coverage can establish the problem and the threat to commonly held values. Then legal action can be positioned as the solution instead of the problem.

- **Segment media campaigns — narrowcast or broadcast to reach target audiences.**

Once goals are clearly established at the outset of a campaign, strategy and outreach designed to reach key audiences can successfully mobilize the most effective decision makers.

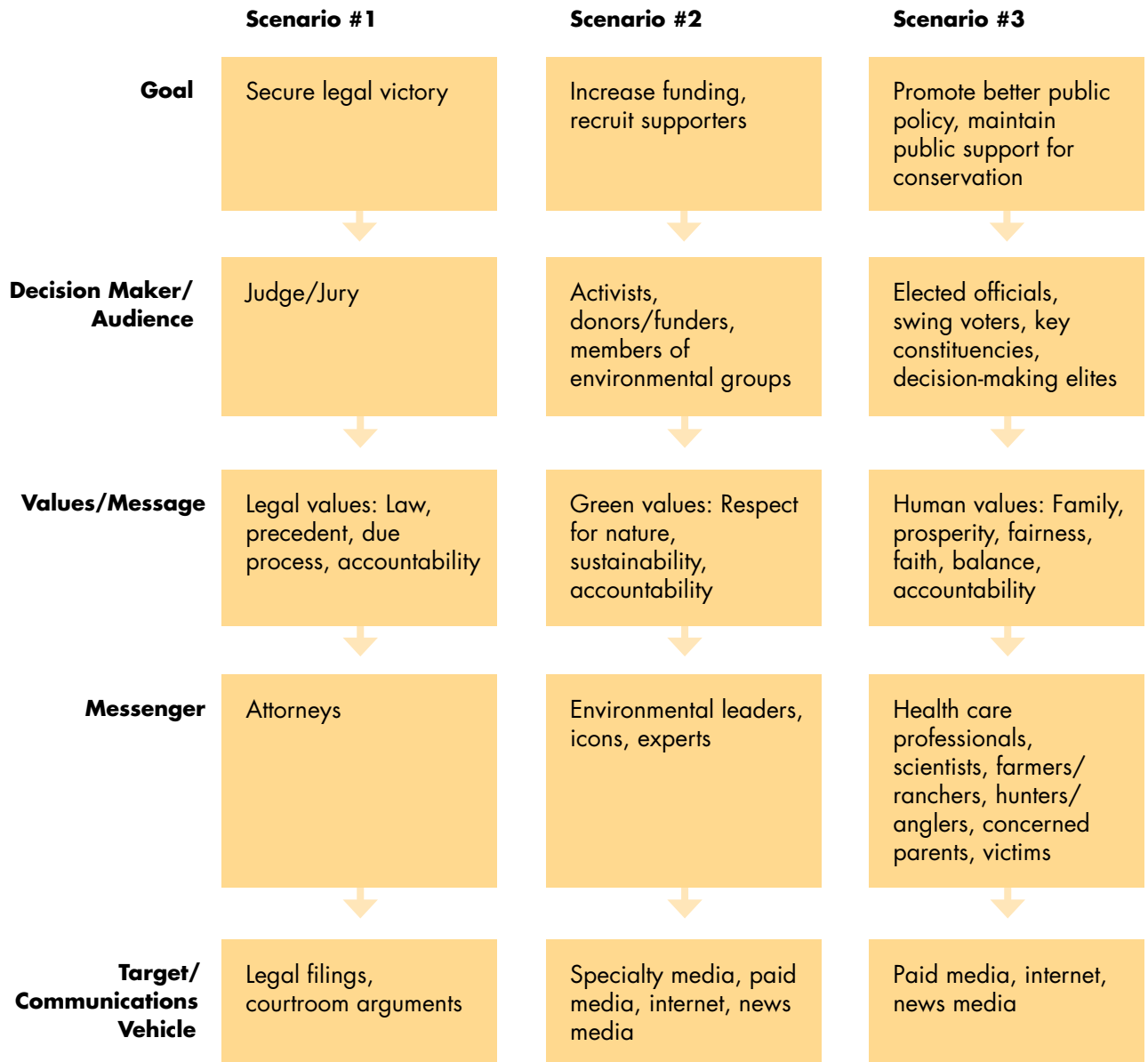
- **Consider no media or keeping a low media profile.**

Sometimes staying out of the news is the best recipe for success. When coverage is likely to focus on process and the he-said/she-said frame, publicizing the case may not be the best strategy.

ROADMAP FOR EFFECTIVE MEDIA CAMPAIGNS

Effective media campaigns are based on clearly defined goals and target audiences. Once those have been determined, the messages, messengers, targets and tactics are developed (targets and tactics will vary depending on the goals of the campaign). At the outset of the campaign, it is important to develop a roadmap indicating how the campaign's strategy will directly support its goals. Figure 8 shows three scenarios.

Figure 8. Three scenarios.



A story's frame — its messenger, message, audience and setting — shapes its meaning and its impact. By taking strategic actions to reframe the story, environmental litigators can help influence media coverage and win over public support for environmental protection.



CASE STUDY

MARTIS VALLEY: FRAME EARLY AND HIGHLIGHT VALUES

Several years ago, the Placer County Board of Supervisors approved a massive plan to allow a major new resort development in the Martis Valley, between Lake Tahoe and Truckee. It included development of more than 6,000 new housing units; new roads and pavement, including widening Highway 267 to four lanes; and destruction of Martis Valley natural resources for resort development, including at least three new golf courses and expanded ski facilities.

The County's decision clearly violated the California Environmental Quality Act (CEQA). Environmental groups sued and won in court. Along the way, they also achieved impressive settlement deals with landowners, reshaping the scope of development. They also raised nearly \$100 million, primarily to protect the Valley, with funds also designated for much needed affordable housing in the area.

Several groups were involved in the case, including Sierra Club. But the lead group was Sierra Watch, a small outfit founded by a few local residents and people with second homes in the area who were concerned about what the development would do to the Valley.

THEIR SUCCESS WAS BASED ON:

- **Getting involved early to build support before filing a lawsuit.**

As soon as locals found out that this development was in process, they evaluated the potential impacts, educated key stakeholders and got them involved in the campaign and lawsuit. By the time they needed to file a lawsuit, Sierra Watch had a united conservation community, broad coverage and editorial support from the press, support from key state agencies including the Attorney General, and support from the neighboring town of Truckee.

- **Targeting key audiences.**

Strong coverage in the Bay Area and beyond raised the profile of the case among key target audiences. The *San Francisco Chronicle* ran several favorable editorials; national outlets including the *Wall Street Journal* and the *Los Angeles Times* covered the story; and there were several television pieces.

The favorable coverage reinforced the demand for the lawsuit, helped Sierra Watch raise the money to hire good attorneys and a top planner and biologist and put pressure on the developers to settle.

“All this development will put more money in my pocket,” says lifelong resident Stefanie Olivieri, sitting in a restaurant above her clothing shop in downtown Truckee. “But it will destroy my quality of life.”

— *The Wall Street Journal*



- **Offering a solution.**

One of the big reasons for success was that Sierra Watch put forth its own vision for development and conservation in the Martis Valley. The vision included suggestions for additional development in places that were already developed and protection of the areas with the highest conservation value.

Offering an alternative vision for Martis Valley provided key benefits. It had important communications value by making Sierra Watch seem reasonable to the press, the Attorney General's office, donors and other key audiences. The fact that the County ignored a viable alternative in its decision-making process made it seem as if the County had rubber stamped the developers' plan.

Having a viable alternative plan made it possible to reach favorable settlements, which also created momentum and positive press.

- **Investing staff time in media relationships.**

Individual media successes were the result not only of traditional press releases but more importantly, media tours with individual reporters.

- **Repeating key messages.**

Campaign message points were not only repeated in media outlets. They were reinforced by every facet of the campaign, including blast emails, public hearings and fundraising appeals.

RECAP

Opportunities to improve coverage of environmental lawsuits include:

FRAMING:

- Reframe legal stories as human stories, using new messages and messengers.
- Highlight primary values such as family or prosperity.
- Develop messages that highlight solutions, not just problems or process.

STRATEGY:

- Generate media coverage before a lawsuit is filed to build support for the issues.
- Segment media campaigns whenever appropriate to focus on key target audiences.
- Evaluate whether no media is the appropriate strategy.

FRAMEWORK

GOAL:

Defeat resort development in Martis Valley, California

DECISION MAKERS:

Placer County Board of Supervisors

AUDIENCE:

Community members, San Francisco Bay Area residents (second homeowners), state agencies, state Attorney General, landowners and developers, decision makers, funders

GENERAL VALUES:

Family, stewardship, fairness

MESSAGES:

Tahoe vs. traffic
Tahoe's Martis Valley
Paradise lost

MESSENGERS:

Community members
Sierra Watch staff
Local business owners
Regular visitors

TARGETS/TACTICS :

News media — Early coverage in Bay Area, local and national media outlets



Methodology

To ensure that our data set for the framing analysis was comprehensive, we gathered articles from three distinct, randomly selected areas. The first data set consisted of 102 articles on lawsuits and the environment in general, which we pulled from a combination of news wires and major national and regional newspapers. The search dates spanned the course of a year, from fall 2004 through fall 2005.

The second data set was gathered using the same criteria for outlets and time frame, but with the search terms focusing on three known “anti-environment” litigators: Pacific Legal Foundation, Institute for Justice and Mountain States Legal Foundation. The aforementioned search criteria returned 31 articles.

The third set of data was gathered by assembling an overview of four separate story lines: grazing in Idaho, red-legged frog habitat, the Biscuit Fire and salmon preservation. The case study on grazing in Idaho was from May to July 2005; on red-legged frog habitat from April 2004 to September 2005; on the Biscuit Fire from June 2004 to January 2005; on preserving salmon critical habitat from December 2003 to August 2005; and on eliminating salmon critical habitat from January 2004 to December 2005.

Notes

1. A 1999 Gallup report noted that the percentage of Americans who considered themselves to be an environmentalist declined from 76% in 1989 to 50% in 1999. In 2004, the Yale Center for Environmental Law and Policy reported that only 44% of Americans considered themselves to be an environmentalist.

2. The literature identifying the key role played by spokespeople in the framing of stories is considerable. The spokesperson is generally regarded as one of the four fundamental dimensions of a story frame. For a seminal work on this subject see Goffman, Erving. 1974. *Frame Analysis: An Essay on the Organization of Experience*. London: Harper and Row. See also Gamson, William A. 1992. *Talking Politics*. Cambridge University Press. See also Entman, Robert. 1993. Framing: Toward Clarification of a Fractured Paradigm, *Journal of Communication*, 1993, 43 (4).

3. See also Harris Poll #50 Report, Harris Poll, Oct. 10, 2001, and Public Perceptions of Lawyers: Consumer Research Findings, American Bar Association, April 2002.

4. The literature identifying the ranking or rating of values is considerable. For a seminal work on organization of values, see Rokeach, Milton. *Understanding Human Values*. Macmillan Publishing, New York, 1979. For a recent comprehensive overview of the academic literature on values, see Hitlin, Steven and Jane Alyn Piliavin. Values: Reviving a Dormant Concept. *Annual Review of Sociology*. Volume 30, 2004, pp. 359-393. For a polling-based perspective on values, see Russonello, John. Remarks by John Russonello To the Federation of State Voter Conservation Leagues, Atlanta, April 15, 2005. Monograph. Belden, Russonello & Stewart. Washington DC.

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About us

Resource Media is a communications shop dedicated to making the environment matter. We provide media strategy and services to non-profits, foundations and others who are working to protect communities and the environment in the West.

We work behind the scenes to foster effective collaboration, develop messages rooted in common public values and promote sound environmental policies and practices.

OUR VISION

We envision a time when Americans embrace the policy and practice of protecting the environment and public health as a mainstream ethic, fostered by diverse public dialogue enhanced by compelling, fact-based journalism.

OUR MISSION

Resource Media provides strategic communications and media outreach services to support campaigns, organizations and individuals working to protect the environment and improve public health.

OUR SERVICES

- Communications Strategy and Planning
- Message Development
- Messenger Recruitment and Training
- Communications and New Media Research
- Media Audits and Analyses
- Media Training
- Media Outreach Services

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