

Advocacy in Aging Policy: Working the Bills on Capitol Hill(s)

By Iris C. Freeman

Caricatures of activists and the legislative process sell movies. In the 2003 movie *Legally Blonde 2: Red, White, and Blonde*, the lead character Elle Woods (played by Reese Witherspoon) arrives in Washington to fight for animal rights, bubbles her way through Congress, drafts a bill faster than one can jot a gift card, meets adversity with unlimited creativity, and triumphs in a pink and pleasantly scented flash. With her zany passion for the issue, her mission is achieved in less than two hours, with front-page parades, noble demands met, and justice meted out to wrongdoers. To borrow from Ernest Hemingway (1926), “Isn’t it pretty to think so?”

But, of course, if Elle’s story were presented realistically, it might have a bit less cinematic oomph. A documentary would show Elle and her allies precisely defining their problem, clarifying what law or rule must be written or changed, and researching the pertinent federal and state authorities to identify the decision maker to be targeted. Cut to the starlets specifying their goal, their dream scenario, and their fallback; pondering their advocacy strategy; drafting their proposal and assessing its feasibility. Imagine them identifying the “stakeholders” and the friends who could be relied on to help,

*How to do it
in the real world.*

counting their resources, admitting their gaps, recognizing their opponents and obstacles, drafting a short- and long-range action plan and dividing the labor, all with an

underlying commitment to routine evaluation.

The foregoing agenda, however, is not the stuff of entertaining movies; it is the accustomed lot of nonfictional, long-haul advocates, including those in aging. These are the real pathways to appropriations for Alzheimer’s research, to required credentials for home health aides, to a prescription drug benefit in the Medicare program, to the availability of winter fuel-assistance for poor older people in cold climates. Real advocacy is plied with steady routines and the more mundane realities of human relations.

To give the fictional renditions of the process their due, there can be an element of drama in the intrigues, competition, and periodic reprisals that occur in real-life Washington and state capitols. One does have to learn the informal processes that seem to outnumber the recorded rules of engagement, as well as whom to trust for information. One should also learn the parliamentary maneuvers that can be employed to derail a bill or to revive a bill presumed defeated. Nonetheless, the realities of moving the machin-

ery of aging policy are not box-office material, and they cannot be briefly described.

What follows, then, is a look at the essentials: a kit containing illustrative elements of legislative and administrative lawmaking systems, recommended sources of legislative and administrative information available on-line, and, to summarize, a dozen practical principles for action.

LEGISLATIVE SYSTEMS

Key ecological elements of lawmaking and rulemaking systems shape advocacy strategy. Effective approaches and actions follow, determining the locus of decision making, the background and functions of key persons, the workings and timing of pertinent processes. Among the states and the federal government, there are both parallels and differences in the official roles and processes. Across all, the advocate's goal is to persuade interrelated people who are operating in a formal but not universally predictable context.

Persuading public officials, especially those hostile to your proposal, is topic enough for a separate paper. Basically, three considerations should dominate your planning (Richan, 1996). First, where is the individual's attention focused? If the official is wrapped up in funding a new football stadium, a low-key social service program may be of no immediate interest. Second, what does the individual appear to believe to be true about your issue? Those perceptions should determine how you frame your argument and whether intermediaries might be needed. Third, what can you draw on to illustrate parallels between the official's values and yours? There is no breach of ethics in showing pictures of your grandchildren in the cause of funding a training program for nursing home staff.

At the executive level are elected officials—the president and governors who initiate a budget and legislative agenda, have nearly unlimited power to draw attention to their causes, and can sign veto messages. Assuming that direct access to the executive is unlikely, inside advisors, while also difficult to reach, are ideally placed to influence aging policy. One needs think only of the history of Arthur Flemming,

President Nixon, and the dawn of the Older Americans Act, for an example. Agency and department staff have fundamental roles in budgeting, program development, and rulemaking. Generally, the executive's appointees are ideologically compatible and term-limited, while civil service personnel are more diverse and enduring. Agencies are, nonetheless, colored by their administrations, so the distinction is not valuable at a practical level.

Few advocates can know all legislators well. Successful advocates will concentrate on these: pertinent committee chairs, key committee members, and those with a reputation for knowing the pertinent substantive area or being experts in the legislative process. In seeking support, you will also incline toward those in safe districts (who are more likely to be bold because their reelection is not in question) and those who work well in bipartisan relationships, as well as your own legislators (Schneider and Lester, 2001).

Committee chairs have wide-ranging power as your allies and create sky-high barriers if they are not. As allies, they can choreograph the hearing on your bill and influence their party members. Conversely, they can block your bill from being heard or schedule it on a short agenda where it can be torn to shreds. Whether committee chairs are friend or foe, lines of communication have to be kept flowing. Power counts, yet one is well advised also to develop connections with first-term legislators who are interested in aging issues and looking for opportunities to shine. You can build a working relationship that will endure.

It is essential that you be visible. Plan appointments, and study the background of the person with whom you've planned to meet. Attend a committee meeting on a related issue, and introduce yourself to the legislator afterwards. Invite legislators to meet your clients or to speak to your group. Identify allies who know the legislator so you can mention them as an "icebreaker" (Schneider and Lester, 2001). That said, being affable and being right and having a barrel of data will not ensure victory. Many factors influence legislators' votes: the sociology of the district, colleagues, party leadership, media, and staff.

Experienced advocates point to legislative staff as the gatekeepers. Staff are also important

for these reasons: their technical know-how; their ability to position witnesses on an agenda (you do not want to be the seventy-sixth witness at a hearing on budget cuts); and negotiating compromises. Most desirable is a scheduler (the staff member who controls the legislator's calendar) who likes you.

Whatever the jurisdiction, allies and opponents in the audience are vital sources of information. Some, more likely opponents, have the money and influential constituencies to build teams of lobbyists, but there are legendary lobbyists who build solid reputations on a shoe-string budget and established their influence with good information, mobilization, and dogged persistence (Jansson, 2003). Make people like them your mentors.

"The essence of the process is making choices between conflicting objectives" (Haynes and Mickelson, 2003). Most familiar is the conflict between the desire to take credit for reducing taxes and the desire to take credit for delivering popular public services. The choices occur in a context of formal calendars and protocols. Most state legislatures do not meet regularly during the whole year. Some meet in organizing sessions prior to meeting in decision-making sessions. Some meet to make decisions once in a biennium and focus on policy research in the other year. Some focus on the overall state budget in one year and on capital improvements in the other. Congress is in session seemingly endlessly, with seasonal recesses. The calendar is the starting point for scheduling your visits, your proposals, and constituents' calls and letters.

Beyond the basic time frames, advocates will need to consider the pertinent rules for how bills are drafted and prepared for introduction, the rules for bill introductions (e.g., is prior notice or publication required?), how bills are referred to committees and those committees' jurisdictions, and committees' tiers of leadership in the majority and minority parties. Advocates must be able to describe accurately whether bills are authorizing, have open-ended appropriations, or create an entitlement. They must be aware of when and how bills may be amended, how to gain access to engrossed (changed) versions, and when fiscal analyses from the congressional or state budget office are required.

Further, one needs to know how bills are selected for action by the full chambers, how many "readings" are required before final action can be taken, and whether a simple majority is sufficient to pass the measure. Nearer the end of the road are protocols for messages between the chambers, conference committees and the naming of conferees, re-passage, and rules for executive action. All of these phases offer opportunity for advocacy, and sometimes it is required if the bill is to move forward. Advocates may need to work to have a bill scheduled for hearing, for its funding to be supported—not just its policy, for it to be included in the final compromises of a conference committee, and for it to be actually signed into law. These points in the legislative process are typical triggers for calls for help ("advocacy alerts") and timely action.

While state and federal publications are silent on the informal dynamics, they are nonetheless very important in the legislative process. Personal influences and relationships, the perceived value of an initiative to an official's reelection plans, and the comparative party affiliations of the executive and the leaders of the two chambers can turn or stall events. The 1998–2002 Ventura administration in Minnesota pitted an Independent governor against a conservative Republican House of Representatives and a liberal Democratic Senate. Even seasoned activists met new challenges as they constructed numerous strategies for potential battles.

ADMINISTRATIVE ADVOCACY

Visualize winning. Visualize a stunning victory. A photograph of the governor signing the bill will grace page one of your newsletter—but it will probably not signal the end of advocacy on the initiative. Although for many people, passage of a law is viewed as a culmination, it is, instead, simply a milestone marking where the work progresses to another branch of government. Many people view laws and rules as synonyms that mean "must," but the two are distinct. "A law is a mandate from a legislative body that provides guidelines to govern behavior and decision making, while administrative regulations provide directives for the law's implementation" (Haynes and Mickelson, 2003).

Once a law is enacted, appointed and civil-service administrative agency personnel make decisions that determine how the measure will affect the lives of its intended beneficiaries. Effective advocates consider these individuals to be targets on a par with legislators. Even where no rulemaking is required, laws are implemented by people in agencies, not by legislative backers, although the latter may be called on to jump-start a stalled implementation process.

After the celebration, advocates must monitor, and sometimes press for, rule drafting and publication, and must persist through the comment periods, revisions, implementing bulletins, budget allocations, and enforcement. Along the way, advocates have to make strategic decisions, for example, about whether more flexible rules or broader language will be of greater value to clients. For example, how high should provider standards be set in a new mental health program for rural elders to achieve both consumer protection and access to basic services? The administrative process cannot be taken lightly, as mistakes in rulemaking are no easier to correct than mistakes in lawmaking. But even the rules are not the endpoint.

There are many ways that administrative agency staff can later counteract the intent of a law without working to repeal it. They can shift staff, fail to enforce, and reduce their outreach. If, for example, a department of health ceases responding to complaints about residents' rights because their limited resources have to be reserved for allegations of serious injury, the law that promised certain information and freedoms to the residents becomes meaningless.

Nonpartisan civil-service personnel who collect data, draft rules, allocate funds, and administer programs have specific expertise and may have long tenures that survive many administrations. Advocates are well advised to begin working with these civil servants at the point of bill development to resolve potential conflicts over the resources the agency estimates will be needed to implement the law. Year-round, regardless of whether a bill or rule is in question, advocates' cooperative relationships with agency personnel yield data, technical drafting advice, and, in confidence, valuable strategic information. These relationships are built on

trust over time. The fact of civil service by no means inures these staff to the reality of being in a politically charged atmosphere (Jansson, 2003). Advocates' independence and insiders' facts can produce, if not marriages made in heaven, at least well-grounded action.

Since federal policy influences and even dictates much of the aging agenda implemented at the state level, one should look to state agency staff for connections to federal officials and processes. Richan (1996) observes that state agency directors may be more powerful with federal agencies than is the directors' executive, the governor.

The rulemaking process varies from state to state and among other jurisdictions, such as counties. Procedures set out in the Administrative Procedure Act (APA), passed by Congress in 1946, are the model most used by other levels of government. Public input on federal rules follows publication of the rules in the Federal Register, and final rules must be published not less than thirty days before rules go into effect (Haynes and Mickelson, 2003). Regardless of whether the target is state or federal, take advantage of opportunities to advocate through individual meetings, with written comments, and at public hearings. In sufficient numbers, these comments produce beneficial changes in draft language.

Viewed as a triangle, a group of influential legislators, regulators, and advocates has considerable power to shape and implement substantive legislation and budget items. When these parties have built a working relationship over many years, they can erase barriers and expedite events (Jansson, 2003). By the same token, expect the worst outcome when the powerful triangle is composed of influential legislators, regulators, and the advocates' opposition.

LEGISLATIVE INFORMATION ON-LINE AND ELSEWHERE

While senior colleagues and reference librarians are ideal sources of legislative information, much information about government processes available on-line can be used to inform strategy and tactics. The website *State and Local Government on the Net* provides access to websites

maintained by states and public agencies and can serve as an entrée to directories, committee listings, and protocols. From its home page, one can link to a website for any state (as well as the District of Columbia, Tribal Governments, Puerto Rico, the U.S. Virgin Islands, American Samoa, and Guam). Each of these links begins with a fact sheet, which includes information about how to make further connections to a state's homepage, statewide officials, the legislative, judicial, and executive branches, boards and commissions, counties, cities, libraries, and other listings that can be of great use to an advocate in a specific locale. If instead, your search is for an area of public policy, such as aging, this site will guide you to a listing of state units on aging. Federal resources, like the Census Bureau, and national organizations, like the National Association of Counties, the National Association of State Budget Officers, the National Conference of State Legislatures, and the National Governors' Association may also be reached through this site (State and Local Government on the Net, 2003).

Advocates in aging can find additional practical information at NPAction (<http://www.npaction.org/>), a website hosted by OMB Watch in Washington, D.C. NPAction contains state advocacy guides with lobbying laws, legislative directories, and legislative protocol, plus forms for corresponding with state officials. The website offers additional advocacy training resources on such topics as rulemaking and means by which citizens and organizations can influence public rulemaking (NPAction, 2003).

For information on the federal level, there is no more important resource than THOMAS—U.S. Congress on the Internet. A service of the Library of Congress, THOMAS is named, says its banner, in the “spirit of Thomas Jefferson.” This is your quick link to bill summaries, texts, and status, including appropriations bills, and public laws passed in the 93rd to 108th Congresses. U.S. House and Senate Committee information and reports are available, along with the Congressional Record, which is so valuable in policy research.

Through THOMAS, one may access documents that describe the contrasting procedures of the Houses of Congress, written by the par-

liamentarians of the U.S. House and Senate. These documents offer detailed explanations of such matters as how “days” are counted, committee rules, quorum, debate, amendments, engrossments, final passage, and further action. Both the U.S. House of Representatives and the U.S. Senate describe the steps of the legislative process on their websites as well (U.S. House of Representatives, 2003; U.S. Senate, 2003). Arcane as the details may be, a working knowledge of them is essential to effective advocacy at the federal level.

Aging policy is further determined by federal budgetary decisions: the President's budget request, the Congressional budget resolution, the scoring (estimated cost) of budget proposals by the Congressional Budget Office, House and Senate action, and budget reconciliation. Whether a program is merely authorized or is intended for federal funding in the near term is a vital distinction. Many “brief” introductions to the “process” fail both to be brief and to describe a process, but the Center on Budget and Policy Priorities has recently revised a short and clear introduction (Coven and Kogan, 2003).

Conference committees write the final versions of bills in the billions that add up to a federal budget in the trillions. These committees, while integral to the process, are widely condemned for their lopsided partisan appointments, their insularity, shenanigans, and arrogance. A contemporary application to aging policy is, “In effect, a dozen legislators are deciding the future of Medicare, but few rules control their deliberations” (Pear and Hulse, 2003). A description of the limited guidelines for conference committee operations is found in a report for Congress prepared by the staff of the Congressional Research Service (Rybicki and Bach, 2002).

PRACTICAL PRINCIPLES FOR ACTION

Conference committees could be said to test the limits of the description of our system as “flawed but actual democracy” (Kushner, 2002). But, trusting that opportunities for progress persist despite these blemishes, and with the belief that collective action for sound aging pol-

icy beats the alternative, these practical principles for action follow as summary.

1. *Proximity counts.* Even in this electronic age, proximity counts in policy advocacy. If, because of geography or job duties, you cannot be at the Capitol, identify a like-minded intermediary individual or organization that is a Capitol regular. Your intermediary can provide the information that will permit you to take timely action and communicate with public officials.

2. *Go beyond facts and figures.* Facts and figures are good starting points, but they are just ingredients; you must go beyond these to make your case. Present the human face of your issue.

3. *Plan your strategy.* Strategy has to be planned. "Plan" cannot be defined as "see how it goes and then plot the next step." While no one can control all the variables, a shared sense of direction and action are necessary for advocates to build support and respond to opposition.

4. *Enlist citizen supporters.* If you are the "technical lead" in a legislative or administrative effort, you need citizen supporters, directly affected by the issue, who are ready to act. The week of the hearing is not the time to teach civics and the specifics of the initiative. People need the background and confidence to act. AARP and the Alzheimer's Association, the ARC and the Children's Defense Fund, as examples, do year-round mobilizing and advocacy through their websites.

5. *Begin advocacy in advance.* The closer you are to the beginning of the process, the more influence you have on the outcome. Later, the foundation is set, and you will be quibbling about trimmings. Know your objectives, and begin advocacy well in advance. Long before public budget messages and hearings, agency division directors are already preparing initiatives and cuts for their agency heads.

6. *Pay early attention to statutory language.* Another important factor that requires early attention is statutory language. If you want some feature to glide through the legislative process as an "innocuous little technical change," timing is everything. Get your wording incorporated early. Your desired formula change in a reimbursement mechanism can hide comfortably in a department's collection of unrelated narrow items known by such titles as its

omnibus technical bill. But your little formula change presented as a separate piece of reimbursement legislation would be much more likely to be controversial.

7. *Watch the budget process.* Regardless of whether you are promoting a new budget item, watch the budget process carefully, as that is where current programs can be disrupted and dismantled, without any change to statutory provisions.

8. *Send the best messenger for the audience.* A legislator who is immune to an ombudsman's call for adequate nursing home staffing will more likely be moved by the testimony of a nursing assistant who describes her recent shame at being so hurried that she could not sit beside a man who was dying.

9. *Apply just enough pressure.* Unswerving attention to detail is warranted, because pieces of paper do get lost in the process, but pestering busy people is counter-productive.

10. *Never slam a door.* Opponents don't necessarily wear the label for life. Sometime in the future, that angry, blustering, wrong-headed lawmaker is going to make a speech on the House floor praising your "very reasonable" bill. Scratch your head, enjoy the moment, and continue to keep those clinical diagnoses to yourself.

11. *Clean wins make nice movies.* Most significant gains require concessions, and expectations of idealized bill drafts being signed into law are likely to be unmet. Prepare yourself and your allies for celebrating the incremental wins and picking up after the losses. Major gains in aging policy or in any effort to achieve social justice are measured in generations, not legislative sessions. Move past debating whether the proverbial glass is half-full or half-empty. Create enough heat to spin and reform the glass. ☪

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