



Evaluating Legal Advocacy:

A How-To Guide for Evaluators,
Funders and Advocates

PART OF THE *STEPPING INTO THE FIGHT* SERIES

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I. Introduction

The ever-changing environment of the advocacy field makes it of particular interest to many evaluators, and over the years, various resources for advocacy evaluators have been developed. These include the American Evaluation Association's Topical Interest Group (TIG) on Advocacy and Policy Change along with materials developed by independent organizations. But, there has been much less emphasis on how evaluators can best evaluate legal advocacy as a specific strategy.

Legal advocacy refers to advocacy that uses the legal system (e.g., the judiciary, the courts, regulations) to achieve goals of interest. While legal advocacy evaluation can pull on some similar tools from advocacy evaluation, its unique use of the system of law creates an opportunity for evaluators to develop new methods, outcomes, and approaches.

Over the last year, TCC Group, in partnership with the Center for Evaluation Innovation via the Atlas Learning Project funded by The Atlantic Philanthropies, researched legal advocacy. After dozens of interviews with practitioners, funders, and experts, we developed a series of briefs that introduce legal advocacy, how organizations can use it as a strategy, and how funders should think about supporting legal advocacy. We also supported the development of a paper aimed at legal practitioners to think about the context of the current judicial system (for more information on these pieces, see the Appendix).

This paper expands on our previous work by introducing an evaluation framework for legal advocacy, along with information about how legal advocacy evaluators can use various approaches to evaluate these strategies.



II. Setting the Stage

What Is Legal Advocacy?

When most people think about legal advocacy, they imagine landmark lawsuits – such as *Brown v. Board of Education* that set the stage for desegregating schools. But, there are a whole host of other activities, beyond litigation, that fit under the legal advocacy umbrella. Some of these include:

- Research and publications
- Writing draft policy
- Administrative or executive advocacy
- Legal aid or legal support
- Writing amicus briefs

While each of these activities requires unique foci and resources, we believe there is enough similarity in overall goals to use the same evaluation principles and approaches.

Legal Advocacy Evaluation vs. Traditional Advocacy Evaluation

Advocacy evaluators are accustomed to working through four common challenges:

1. Context complexity
2. A long-term timeframe
3. Shifting context and strategies
4. Limited resources

Legal advocacy evaluation approaches a few of these challenges in a similar fashion to traditional advocacy evaluation, while creating new solutions to other challenges. In this section, we break down the similarities and differences related to these challenges.

1. Context complexity. Context complexity – or the fact that there are many different efforts, actors, and outside influences – as a challenge, is typically approached by emphasizing contribution over attribution. This allows evaluators to draw a direct link between the efforts of the advocacy organizations and some changes happening, even if they can't say 100% of the change was due to the influence of the advocate. In legal advocacy evaluation, the evaluator has the ability to move beyond contribution into attribution. This is because legal actions are often more explicit (e.g., introducing a legal case, or writing a brief with specific language), and can be tracked over time to see how that action influenced the overall arena.

2. A long-term timeframe. It can take years, if not decades, to see the fruit of advocacy efforts. Traditional advocacy evaluation focuses on measuring interim outcomes and progress. This is particularly helpful for learning, as advocates can get ongoing information about their work and efforts. For legal advocacy evaluation, the timeframe can be split up by focusing on milestones. When are legal actions introduced? When is a case decided on? When does an appeal take place?

3. Shifting context and strategies. As all advocates know, there are many unpredictable events that can cause a shift in strategy. An upset election, a natural disaster, or a media exposé can bring new attention to an issue that had been relatively stable. These moments can be ripe opportunities if advocates are prepared to adapt their strategies. But, if advocates do adapt their strategies, the evaluator must also adapt.

In traditional advocacy evaluation, evaluators are accustomed to using an adaptable approach that allows for broad changes. With legal advocacy evaluation, shifting context and strategies are less likely to be a challenge for evaluators because the overall strategy has less flexibility to shift, given that the work is legal in nature.

4. Limited resources. Many evaluators are familiar with working on small budgets and being resourceful in getting data, and this need is no different for legal advocacy evaluators. This means being flexible with evaluation demands put on the advocates and looking for ways to streamline the evaluative burden.

Table 1: How Traditional and Legal Advocacy Evaluators Approach Common Challenges

Challenges for evaluators	How traditional advocacy evaluators approach these issues	How legal advocacy evaluators approach these issues
1. Complexity of context	Focuses on establishing contribution	Focuses on attribution
2. Long time-frame	Focuses on interim outcomes and progress	Focuses on achieving milestones
3. Shifting context and strategies	Uses an adaptable approach	Has limited impact on evaluation
4. Limited resources	Keep burden low	Keep burden low

Why Evaluate?

Benefits of legal advocacy evaluation include:

- *Improving advocates' ability to understand the quality of strategies.* Like all evaluation, legal advocacy evaluation allows legal advocates to understand what is working and what is not working in their current strategies.
- *Improving advocates' ability to improve allocation of resources.* With proper feedback, legal advocates can better understand which strategies are leading to impact, and allocate their resources to those strategies.
- *Better understanding of the advocacy organization or group within a broader movement.* Evaluation can help a legal advocacy organization or coalition better understand the role it is playing, therefore advancing a particular issue area.
- *Allowing for replication.* Legal advocacy evaluation can help other legal advocates identify what the key points of a successful strategy are and how they may be replicated in other areas.
- *Assessing value.* Evaluation can take a look at the value being provided by legal advocacy work.
- *Making an outcome-orientation more explicit.* Evaluators can ensure that an emphasis on outcomes remains top-of-mind for legal advocates.
- *Revealing unintended consequences.* Evaluation can help reveal any unintended consequences, which can then inform future work.
- *Accountability.* Finally, evaluation can help with the overall accountability of legal advocacy work.



III. The Legal Advocacy Evaluation Framework

Though there is a level of individualization in any evaluation, there is some uniformity in what outcomes make the most sense to measure with regard to legal advocacy. In this section, we present a framework that evaluators can adapt for their own legal advocacy evaluations. The framework is presented in three sections: assessing readiness, measuring quality of strategies, and measuring impact.

1. Assessing readiness. This section focuses on what readiness for legal advocacy looks like and how it can be measured. Readiness in this context is considered specific to moving forward on legal advocacy, and does not include general elements of organizational readiness (i.e., elements not unique to engaging in legal advocacy). Elements of readiness we focus on include: access to resources, vision, and legal readiness. Measuring readiness can allow advocates to understand where they have resource strengths and challenges.

2. Measuring quality of strategies. This section focuses on how to measure the quality of various legal advocacy strategies. These strategies include: partnering, research and publications, writing draft policy, administrative and executive advocacy, legal support, writing amicus briefs, litigation, and overall effective strategy. Because each legal advocacy strategy is slightly different, we have provided unique measures that can illustrate the quality of each of these strategies. Measuring the quality of strategies allows legal advocates to understand how well strategies are being executed and to what extent they are effectively leading to impact.

3. Measuring impact. This section focuses on the overall change or movement to which legal advocacy strategies are contributing. These include: increasing issue visibility, changing the media narrative, empowering the affected community, legal wins, legislative or executive wins, and a win in the court of social norms. Measuring the overall impact allows evaluators and advocates a better understanding of what was accomplished and to what extent the advocates were able to achieve their goals.

Assessing Readiness

Our work has found that readiness for legal advocacy work falls into three main areas: access to resources, vision, and legal readiness. For example, access to resources may be measured by looking at the amount or flexibility of funding. Readiness in vision may be assessed by looking at the extent to which a long-term

vision is shared across partners. Legal readiness may be measured by looking at the quality of the legal team as well as to what extent an appropriate legal context exists (e.g., one in which precedents have been established). Table 2 shows each of these areas along with suggestions for how they can be measured.

Table 2: Ways to Measure Readiness

Elements of readiness	What do I measure?
Access to resources	<ul style="list-style-type: none">▪ Amount and quality of communication resources available▪ Amount of flexible funding available▪ Amount of funding solely for legal advocacy work▪ Amount and quality of legal resources available▪ Ability to properly manage resources
Vision	<ul style="list-style-type: none">▪ Organizational vision for end-goal of legal advocacy work▪ Level of commitment and vision of the key defendant▪ Vision of strategy▪ Level of shared vision among partners
Legal readiness	<ul style="list-style-type: none">▪ Connection to non-legal strategies▪ Selection of court in which to bring the case forward▪ Precedent established by other legal work▪ Quality of legal team

Measuring Quality of Strategies

Legal advocates use a host of different strategies depending on their current stage and desired end goal. Below, we have outlined the most commonly used strategies of legal advocates along with potential measures. Named strategies include partnering, research and publications, writing draft policy,

administrative or executive advocacy, legal support, writing amicus briefs, litigation, and collaboration. While some of these strategies are not unique to legal advocacy efforts, we believe measuring the quality of strategies broadly may be helpful to those evaluating this work.

Table 3: Ways to Measure the Quality of Strategies

What is the strategy?	What do I measure?
Partnering	<ul style="list-style-type: none"> ▪ Strength of partnerships ▪ Number and quality of partnerships in needed areas (e.g., with community organizers, with legislators, with the media) ▪ Shared vision of partners ▪ Clear communication of partners ▪ Participation in a relevant coalition, if applicable ▪ Extent to which legal advocates can cite other community work happening on the issue
Research and publications	<ul style="list-style-type: none"> ▪ Citing of publications by other sources ▪ Citing of publication data or arguments in court decisions ▪ Number of downloads ▪ Amount of press traction ▪ Number of requests for more information
Writing draft policy	<ul style="list-style-type: none"> ▪ Quality of the policy as assessed by experts ▪ Incorporation of the policy into law ▪ Feedback on the policy by lawmakers ▪ Feedback on the policy by lobbyists
Administrative or executive advocacy	<ul style="list-style-type: none"> ▪ Quality of relationships with the department in question ▪ Ability to cite the harms of the regulations in place ▪ Ability to make an argument for changes in regulation ▪ Number of regulations that change ▪ Number of changed regulations that are implemented
Legal support	<ul style="list-style-type: none"> ▪ Number of individuals with a positive case outcome ▪ Number of new arguments or ideas that can be brought forward
Writing amicus briefs	<ul style="list-style-type: none"> ▪ Arguments cited in court decisions ▪ Arguments used for future cases ▪ Feedback from lead litigators
Litigation	<ul style="list-style-type: none"> ▪ Case decision ▪ Setting of new and positive precedent ▪ Impact of overall case ▪ Opportunities for positive appeal ▪ Media coverage of the case ▪ Public support for the case
Collaboration	<ul style="list-style-type: none"> ▪ Strength and quality of partnerships ▪ Extent to which advocates are working in coordination with organizations using other advocacy strategies ▪ Extent to which legal advocates can cite other community work happening on the issue ▪ Participation in a relevant coalition, if applicable ▪ Time spent debriefing after “wins” or “losses”

Measuring Impact

Finally, there are a variety of impacts that legal advocacy work may wish to achieve. Impact, of course, varies based on what strategies are chosen. The list of potential impacts below is meant to be comprehensive (though not exhaustive) and take a view beyond the legal arena.

To that end, impact includes increasing visibility of the issue, changing the media narrative, and empowering the affected community, in addition to the legal win. Table 4 showcases these impacts and includes potential measurements for each.

Table 4: Ways to Measure Impact¹

What counts as impact?	What do I measure?
Increasing visibility	<ul style="list-style-type: none"> ▪ Number and type of media hits on the issue ▪ Coverage of the issue geographically ▪ Number of leaders talking about the case/issue ▪ Extent to which the issue is carrying over into policy work
Changing the media narrative	<ul style="list-style-type: none"> ▪ Number of media pieces with a quote from the plaintiff, lawyers, or similarly involved person ▪ Extent to which key words or phrases from press releases are being picked up ▪ Media approach to the issue ▪ Change in media approach to the issue over time
Empowering the affected community	<ul style="list-style-type: none"> ▪ Number of media pieces with quotes from plaintiffs or community members ▪ Extent to which the community's interpretation and language are being brought forward by the legal advocates ▪ Extent to which community members feel their voices are increasingly heard ▪ Extent to which community members are involved in mobilizing or in work related to the issue
A legal win	<ul style="list-style-type: none"> ▪ Defeating efforts to dismiss the case ▪ Securing good information through discovery ▪ Breadth of the win ▪ Precedent setting ▪ Judicial relief ▪ Recovery of fees ▪ Positive settlement ▪ Changing the court's understanding of an issue or of rights ▪ Number of people likely to be impacted
A legislative or executive win	<ul style="list-style-type: none"> ▪ Change in number and type of complementary or supportive policies emerging through legislative channels ▪ Change in number and type of policies emerging that are against the ideal legal outcome
A court of social norms win	<ul style="list-style-type: none"> ▪ Change in polling on the issue among different demographic groups ▪ Change in the involvement of community groups

¹ Note. Reprinted from *Stepping into the Fight: A Funder's Guide for Understanding and Supporting Legal Advocacy and Stepping into the Fight: A Guide for Nonprofits to Understand and Engage in Legal Advocacy*, by Jared Raynor and Deepti Sood, retrieved from www.tccgrp.com/legaladvocacy. Copyright 2016 by TCC Group.



IV. Evaluation Approaches

No evaluator can approach a client with a list of outcomes unconnected to an overall strategy. Here, we outline how legal advocacy fits into four common evaluation approaches: monitoring, formative, summative, and developmental.

Approach #1: Monitoring

DEFINITION:

Monitoring evaluation focuses on tracking data for use internally or externally.

Why Monitoring?

A monitoring approach to legal advocacy is most common. Many organizations engaged in legal advocacy work have rubrics or systems internally structured to track progress on different cases or activities. An evaluation using a monitoring approach can tie into these existing systems and allow for synced evaluation work.

For evaluators using a monitoring approach, consider the following questions:

- How many legal advocacy actions are we involved in?
- What actions consume the most resources?

What Outcomes Fit?

A monitoring approach to legal advocacy evaluation is likely to emphasize straightforward outcomes and outputs. Metrics may include:

- The number of activities that are currently in progress
- The status of each activity
- The verdict of closed cases

There is also an opportunity to measure learning-focused indicators that may not be in pre-existing monitoring rubrics. Some of these may include:

- Favorability of language in the rulings, responses, or media pieces
- Number and quality of amicus briefs
- Number of media pieces that talk about the case or related actions

Example of a Monitoring Approach to Legal Advocacy Evaluation

TCC Group worked with a legal aid and defense organization to adapt a monitoring template to emphasize learning, while still maintaining the

necessary monitoring elements. These shifts allowed the client to ensure it was meeting reporting requirements for foundations, while also engaging staff in a reflective process around the efficacy of their work. A simplified example of this template– with its five main sections – is shown below.

Background information	Data to enter here included the name of the case, the primary court, the lead lawyer, partnering organizations, and other basic information.
Focus area of litigation	This column included information about the main focus of the legal advocacy action. Each focus was explicitly linked to the organization’s logic model.
Case status	Because legal advocacy cases are often multi-year efforts, tracking the status can allow for information about which cases are open, the date cases are brought forward, and the current outcome.
Actions taken	This is an area to enter data around any actions being currently taken – for example, appealing a case, filing a new motion, or filing an amicus brief.
Rating of the case’s success	Finally, this tool would have staff rate the success. As mentioned earlier, success in legal advocacy can take many different frames – but some will likely include whether the goal for the case is accomplished, the favorability of the ruling language, and media coverage.

Approach #2: Formative

DEFINITION:

A formative evaluation is learning-focused and emphasizes real-time data that can be used to adapt strategies.

Why Formative?

Formative evaluation is valuable to advocates because of its emphasis on learning and real-time adaptation. Having data about what strategies are and are not working allows advocates to adapt to changing contexts. Formative evaluations focus on one strategy or program area of an organization, one organization, or one coalition working on a certain issue area.

An evaluator using formative evaluation would likely ask the following questions:

- How well are partners working together?
- How well are partners executing on our strategy?
- What can we learn from recent case decisions?

What Outcomes Fit?

A formative evaluation is likely to focus on the quality of strategies being implemented. In terms of specific indicators, nearly all potential measures in Table 3 would be relevant. A robust formative evaluation will also collect information focused on measuring outcome achievement – specifically short-term indicators that can give advocates a sense of how likely they are to achieve the desired success. These may include:

- Strength of community engagement on the issue
- Amount and tone of media coverage
- Tone of questions being asked by the targeted audience (e.g., the court or the regulatory agency)

Example of a Formative Approach to Legal Advocacy Evaluation

TCC Group has developed a modified Delphi approach to use in formative evaluations of legal advocacy. This approach is used to predict the likelihood of future success of legal advocacy actions in such a way that it can shed insight on the strategies used. This approach has four consecutive steps:

STEP 1

Bring together a panel of experts in a certain issue area – these should include some legal experts, policy experts, academics, mobilizers, and others deeply involved in the key focus area.

STEP 2

Provide these experts with a written summary of the legal advocacy action currently being taken and some brief history of previous work that has been done in the field.

STEP 3

Have the experts write a one-page narrative explaining what they see as the most likely outcome emerging from the legal advocacy action and how they would assess the likelihood of success.

STEP 4

Arrange for a group conversation where each expert has access to all of the narrative documents in order to come to a consensus around the most likely outcome.

Approach #3: Summative

DEFINITION:

A summative evaluation focuses on measuring what's been accomplished in previous work.

Why Summative?

A summative, or retrospective, approach to legal advocacy evaluation assesses what has changed in the field since the work began (or within a time period of interest). A summative evaluation is a great opportunity to look beyond the work of an individual organization and assess field-level outcomes. For example, one could look at advocacy work happening in an entire issue area to explore what impact legal advocacy had compared to other strategies. Questions an evaluator would want to ask in a summative evaluation of legal advocacy may include:

- How successful was the work overall?
- How did the legal advocacy strategy contribute to broader movement of the issue area?
- What about the landscape is different now?

What Outcomes Fit?

A summative evaluation will likely have a strong emphasis on achieved outcomes and, therefore, any potential measures identified in Table 4 are likely to apply. However, the evaluator may also want to look at the quality of potential measures as identified in Table 3.

Example of a Summative Approach to Legal Advocacy Evaluation

Methods used in a summative evaluation of legal advocacy are unlikely to differ from those used in summative evaluation. While a list of potential methods for a summative approach are listed below, one potential method we've seen used is a legal analysis of case decisions. For this, evaluators review rulings, amicus briefs, and other relevant case notes to understand the legal arguments being made in favor or against the issue, and the nuance within the language and word choice. This allows evaluators to understand if the ultimate legal arguments adopted the language and tone of the legal advocate. Legal expertise is likely needed to do this well. Other methods to include:

- Expert interviews
- Review of grant reports
- Media scans
- Review of case notes
- Reviews of amicus briefs
- Legal analysis of case decisions
- Context assessments

Approach #4: Developmental

DEFINITION:

A developmental approach to evaluation focuses on situating the work within the ecosystem and assessing changes in the complex, external environment.

Why Developmental?

A developmental approach to legal advocacy evaluation can be useful when the strategy is new or operating in a rapidly changing field. For example, the period of time after a Supreme Court decision is made on an issue area may change what is at stake and what the most effective strategies are. During this period of time, a developmental evaluation may help advocates map their environment and understand what is changing in the broader context.

Evaluators using a developmental approach may ask the following questions:

- Who else is operating in the related area (e.g., media or research on the same issue area)?
- What types of partners do we need at the table?
- What opportunities do we have at this moment?

What Outcomes Fit?

A developmental evaluation is less likely to be tied to measure progress toward certain outcomes. Instead, it may operate in figuring out if there are outcomes that link to the current strategy, and how these outcomes change as the strategy changes.

Example of a Developmental Approach to Legal Advocacy Evaluation

An environmental positioning assessment is a potential method that can be used in a developmental evaluation of legal advocacy. This assessment would position the legal advocacy action(s) in the broader universe of work happening on the same focus area. For example, a legal advocacy organization involved in bringing forward a class action lawsuit on inequitable use of school discipline, would likely want to be aware of other work happening in school discipline as an issue, regardless of what strategies are being used. This includes academic research, media coverage, grassroots movements, legal cases, legislative advocacy, and/or regulatory or executive advocacy. By examining the broader movement, advocates gain a clearer understanding of how legal advocacy is, or is not, a critical strategy for advancing the overall issue area. Advocates can also start to understand how the environment is changing and what these changes mean in terms of strategy.



V. Conclusion

Legal advocacy evaluation, like traditional advocacy evaluation, is amenable to having different foci and approaches. In this paper, we have shared examples of how we have helped clients and colleagues think about the work of evaluating legal advocacy. Legal advocacy is an area of evaluation that is ripe for growth and TCC Group has established a resource page for all things related to legal advocacy – accessible at www.tccgrp.com/legaladvocacy. We also welcome the contributions of others in this field in order to continue the conversation about how evaluators can best service legal advocacy organizations.

Appendix:

An Overview of *Stepping into the Fight* Resources

TCC Group, with the support of The Atlantic Philanthropies and the Center for Evaluation Innovation, prepared several pieces on the topic of legal advocacy. In addition to this piece, other pieces include:

- 1. *Stepping into the Fight: A Guide for Nonprofits to Understand and Engage in Legal Advocacy.***
This guide is tailored to nonprofits interested in using legal advocacy as a strategy. The guide introduces the concept and how nonprofits can approach the issue, while including plenty of information from nonprofits organizations that are already involved.
- 2. *Stepping into the Fight: A Funder's Guide for Understanding and Supporting Legal Advocacy.***
The funder's guide introduces funders to the concept of legal advocacy, and why supporting legal advocacy may be an impactful way for foundations to achieve their missions.
- 3. *Towards a More Just Justice System: How Open are the Courts to Social Justice Litigation.*** This piece, authored by the Lawyers' Committee for Civil Rights Under Law (LCCR) explores the court system itself and the structural barriers and opportunities for lawyers to bring forward legal advocacy actions.
- 4. *Step into the Fight: Philanthropy's Role in Legal Advocacy.*** This introductory video introduces viewers to the topic of legal advocacy using a case study approach and situates legal advocacy as a strategy within a broader network of synergistic strategies like grassroots organizing and legislative advocacy.

All resources are available at www.tccgrp.com/legaladvocacy.



About TCC Group

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