

Baruch COLLEGE
SCHOOL OF PUBLIC AFFAIRS

CENTER FOR NONPROFIT STRATEGY AND MANAGEMENT

NEW YORK CITY NONPROFIT ADVOCACY CASE STUDIES

BACKGROUND PAPER:

UNDERSTANDING NONPROFIT ADVOCACY



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This is the background paper for a series of three multi-media cases on advocacy by nonprofit organizations in New York City. The three cases are:

- **Case 1: Solid Waste Management and Environmental Justice.**
- **Case 2: Child Welfare and Foster Care**
- **Case 3: Education Finance Equity**

The cases consist of a written narrative and accompanying videos of nonprofit advocates discussing their work. Also available are *Teaching Notes* that provide instructors with additional information on how to use the cases, study questions for classroom discussions or assessment assignments, and an analysis of the lessons learned for all three cases.

All documents and links to additional materials are available on the NEW YORK CITY NONPROFIT ADVOCACY CASE STUDIES website at:

<http://www.baruch.cuny.edu/spa/researchcenters/nonprofitstrategy/CaseStudies.php>

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CENTER FOR NONPROFIT STRATEGY AND MANAGEMENT

The School of Public Affairs (SPA) at Baruch College established the Center for Nonprofit Strategy and Management (CNSM) to address the needs of the nonprofit organizations that are pivotal to the health and well-being of New York City. The CNSM community of professors and practitioners takes seriously the relationship between research and practice—practice informs the faculty’s development of theory as much as theory informs their approach to practice. Faculty members engage directly and vigorously with area nonprofits and the institutions that support them and command a wide range of expertise. The School has substantial strength in organization theory, budgeting and finance, public communications, advocacy and lobbying, technology diffusion, population studies, strategic planning, housing policy, human services management, and health care policy.

SPA and the CNSM offer a wide range of academic and non-credit programs and services that address the complex issues facing the nonprofit sector, including strengthening leadership and building a pipeline of future leaders. These programs include a Master of Public Administration with a concentration in nonprofit management, monthly seminars for nonprofit professionals, conferences, the annual Consulting Day, the annual nonprofit executive outlook survey, the Emerging Leaders Program, and support for and collaboration with various “umbrella organizations.”

For more information about SPA and CNSM see:

<http://www.baruch.cuny.edu/spa/home.php>

<http://www.baruch.cuny.edu/spa/researchcenters/nonprofitstrategy/index.php>

ROBERT STERLING CLARK FOUNDATION

The Robert Sterling Clark Foundation supports advocacy through its program on "Improving the Performance of Public Institutions." The underlying premise of the Foundation's interest in government performance is that government agencies and employees will deliver better services in a more cost-effective manner if their activities are scrutinized, evaluated, and held up to public view. While there are a number of public sector entities that monitor government spending, we believe that outside organizations play a critical role in examining existing policies and programs, identifying deficiencies, and promoting reforms that are responsive to changing societal needs. At times, this function has been carried out by the press, but for persistent attention to complex social problems and public bureaucracies, we have come to rely on non-profit organizations that make use of the following strategies to advance the public good:

- Conducting research to determine the efficacy of government programs;
- Communicating information about government performance and policy options to the media, policymakers, and the general public;
- Organizing citizens to bring collective pressure on public agencies to be responsive;
- Helping government officials develop and implement sound policies and programs; and
- Litigating when government agencies are not complying with applicable laws, and other actions fail to improve their performance.

The Foundation's focus on advocacy also reflects our desire to maximize the impact of our limited philanthropic dollars. By influencing government policies and programs, our grantees affect the expenditure of millions of dollars in public funds--an impact many times the size of our grants budget. As exemplified by the three case studies presented in this series, our Public Institutions program supports advocacy efforts across a wide range of issue areas.

A primary objective is to safeguard the wellbeing of low-income New Yorkers and other vulnerable individuals who are most dependent on government programs. We are particularly interested in ensuring that all children in the State receive adequate care and education from birth onward, and that young people and adults receive the education, training, and other supports necessary to become productive workers and community members. In addition, we recognize that government affects the wellbeing of the entire public by shaping the physical and environmental characteristics of the communities in which we live. Thus our grantmaking also supports efforts to improve city and state policies in areas such as solid waste management, land use planning, and government operations, with particular attention to their impact on low-income communities.

Policy change rarely happens quickly or easily. As the case studies demonstrate, it often requires years of class action litigation and persistent monitoring of government agencies, advocacy, and public engagement activities. To mount these kinds of long-term campaigns, advocates need long-term funding. Thus, the Robert Sterling Clark Foundation has provided some \$2 million in grants from 1979 to the present to Children's Rights to support its litigation, research, and advocacy to reform New York City's child welfare system. Over a similar 30-year period, the Foundation awarded a total of \$2 million to the Natural

Resources Defense Council and the Environmental Defense Fund, and additional grants to allied groups, for their work to reform New York City's solid waste management policies and programs. Beginning in 1993 with the filing of the *CFE v. State* lawsuit, the Foundation has provided over \$1 million dollars in support of fiscal equity litigation and advocacy conducted by the Campaign for Fiscal Equity and the Alliance for Quality Education.

INTRODUCTION TO THE NEW YORK CITY NONPROFIT ADVOCACY CASE STUDIES

The Center for Nonprofit Strategy and Management has developed three multi-media case studies on landmark attempts by nonprofit organizations to drive policy changes on key issues in New York City. The three issues are:

Case 1: Solid Waste Management and Environmental Justice. This case examines the continuing work of community-based organizations and public interest lawyers to promote equitable and environmentally sound solutions to waste handling in New York City.

Case 2: Child Welfare/Foster Care. This case study focuses on the campaign to eliminate racial and religious bias from the New York City foster care system, to protect children in foster care from abuse and neglect, and to improve child welfare services.

Case 3: Education Finance Equity. This case study examines the advocacy work in support of the *Campaign for Fiscal Equity v. State of New York (1993)* that brought together a coalition of education advocacy groups, parent organizations, and community school boards to push for more equitable funding of NYC schools.

The three cases document the background of the advocacy campaigns, identify the outcomes and impacts, analyze the role of the advocacy organizations and coalitions, and determine the key factors in the success or failure of the different elements of the campaigns. They highlight key elements of advocacy campaigns, including: the importance of grassroots campaigns and building a public constituency; the dynamics of complex coalitions; the pro and cons of litigation as an advocacy strategy; the role of policy research; and the importance of and preparing for a long-term commitment.

The cases are multi-media, with written narratives and accompanying videos of interviews with the advocates highlighted in the cases. The case narratives describe the unfolding of the events, identify the advocacy strategies used by the nonprofit organizations, and analyze the major lessons learned. Each case has an appendix with links to supplementary online documentation and to numerous examples of print and visual media coverage of the issues.

An additional background paper, *Understanding Nonprofit Advocacy*, explores definitions of advocacy and the challenges in evaluating the outcomes of advocacy campaigns. Also available are *Teaching Notes* that provide instructors with additional information on how to use the cases, study questions for classroom discussions or assessment assignments and an analysis of the lessons learned for all three cases.

All materials are available on the case study series website.

NEW YORK CITY NONPROFIT ADVOCACY CASE STUDIES

BACKGROUND PAPER

UNDERSTANDING NONPROFIT ADVOCACY

INTRODUCTION

The three case studies in this series focus on the advocacy work of nonprofit organizations in New York City on the issues of solid waste management, foster care, and equitable funding for education. They analyze the dynamics of advocacy and draw conclusions about the strategic choices made by nonprofits involved in attempts to influence a range of government policies and practices.

In this background paper we look at the definitions of advocacy, explore the range of possible advocacy activities and the legal restrictions that nonprofits face. We also look at the recent trends in advocacy and at the difficulties in evaluating outcomes.

DEFINING ADVOCACY

Advocacy is any attempt to influence public policy and practice or any other decisions of institutional elite.¹ It involves the active espousal of a point of view or a course of action² and can include high profile legal challenges and other openly political actions, as well as less visible, more subtle processes of influence. Advocacy activities may be aimed directly at the decision makers or they may be seek to influence indirectly through shaping public opinion and voter intentions or by disseminating alternative models of policy and practices. While advocacy is primarily seen as seeking to influence government and the public sector, it can also focus on promoting changes in the private sector.

The term advocacy is used in these case studies in the broadest possible sense as the catch-all term for the work of nonprofits speaking out to change minds, mobilize public will, and influence government. Advocacy is any deliberate act to enhance the power of an organization to influence other actors in the policy making process. Other related terms are also used within the nonprofit sector to describe aspects of this work, including *activism, advising, campaigning, commenting, consulting, engagement, giving voice, providing input, lobbying, negotiating, organizing, policy work, political action, and social action*, which are all used to describe attempts to directly influence, while terms such as *educating, disseminating information, innovating and modeling* are used to describe indirect activities. There are evident differences in meanings between these terms, and in some circumstances there are specific legal definitions that distinguish between advocacy, campaigning and lobbying (see the section below on legal restrictions on advocacy), but

¹ GrantCraft 2005, Jenkins 2006, Casey and Dalton 2006.

² Salamon 2002.

nonetheless they are often used interchangeably and there are considerable variations in their use. The term chosen to describe the advocacy work of a nonprofit organization is more likely to be the result of which label sits comfortably with the participants involved than of any strict academic or legal definition.

Two important definitional distinctions often emerge in discussions of nonprofit advocacy:

- Individual and systemic. Individual advocacy seeks a remedy for a single person or for a situation involving a small group of people, while systemic advocacy seeks changes at an institutional or policy level. The relationship between individual and systemic advocacy is a subject of some controversy -- some commentators maintain that the aggregation of individual concerns or grievances must be the basis for systemic change (and class-action law suits work on this presumption), while others maintain that a focus on individual advocacy is the equivalent of putting “band aids” on social problems and tends to ignore broader structural issues.
- On behalf of the constituency of an organization and on behalf of the organization itself. There is a “business imperative” that compels organizations to work with legislators and administrators to ensure continued funding and political support for the work of the organization, which does not always coincide with the wider needs and interests of the clients or other constituencies.

The case studies in this series focus on systemic advocacy by New York City nonprofit organizations aimed at influencing government policy and practice on behalf of their constituents and to promote other policy interests of the organizations.³

ADVOCACY ACTIVITIES AND STRATEGIES

There is an extensive repertoire of possible advocacy strategies and activities that can be used to attempt to influence government policy and practice and so drive social change. In the U.S. there is a tradition of pursuing change through legal remedies, so public interest litigation has long been at the forefront of advocacy efforts. But other tactics that seek to influence political and administrative decision-making are also deployed. Table 1 outlines the range of possible advocacy activities. It should be noted that some of these activities,

³ This paper focuses primarily on the work on 501(c)3 and 501(c)4 charities, foundations, and public interest advocacy organizations. It does not address partisan advocacy and political lobbying by organizations set up with the specific purpose of influencing the outcome of political campaigns. While such work is generally considered to be outside the scope of activities of 501(c)3 and 501(c)4 organizations – see the section in this paper on Legal Restrictions on Campaigning and Lobbying – there appear to be increasing concerns about the “abuse” of such organizations. The New York Times recently published a series of articles on the foundations and charities created by members of Congress that organize “charity” events, generally funded by corporate donations, which appear to have as their main purpose promoting the image of the lawmaker (see, “Congressional Charities Pulling in Corporate Cash”, <http://www.nytimes.com/2010/09/06/us/politics/06charity.html>). Also, the January 2010 Supreme Court decision in *Citizens United v. Federal Election Commission*, which stated that funding of independent political broadcasts in candidate elections cannot be limited under the First Amendment, has further drawn a wider range of nonprofits into partisan political activities.

such as public education and media outreach, only become advocacy when the specific intention is to directly or indirectly influence government decisions.

Table 1: Advocacy Activities

CATEGORY	EXAMPLES OF ADVOCACY ACTIVITIES
Legal	<ul style="list-style-type: none"> • Initiate or support public interest litigation • Provide expert evidence for litigation
Legislative and Administrative	<ul style="list-style-type: none"> • Encourage legislators to vote for or against specific legislation/proposition (direct lobbying) • Encourage members of the public to express support for, or opposition to, specific legislation/proposition/regulations through phone calls, letters, e-mails etc. (indirect or grassroots lobbying) • Encourage people to vote for or against specific candidates/parties (campaigning) • Inform public about candidates' platforms/policies • Organize electoral or legislative forum/discussion • Contact elected or appointed officials, staffers and advisors to promote changes in regulations, guidelines, and other administrative practices
Research and Policy Analysis	<ul style="list-style-type: none"> • Prepare and disseminate research reports, policy briefs, etc. • Evaluate effectiveness and outcomes of existing programs • Provide data/access to external researchers
Coalition Building and Capacity Development	<ul style="list-style-type: none"> • Create and sustain new organizations • Create and sustain coalitions of organizations
Education and Mobilization	<ul style="list-style-type: none"> • Prepare and distribute print or online materials to educate community about an issue • Organize or promote educational, art, cultural and community activities • Organize or promote campaign to contact legislators or administration to express concerns • Organize or promote petitions • Organize or promote boycott • Organize or promote demonstration, rally, street action, or civil disobedience
Communication and Media Outreach	<ul style="list-style-type: none"> • Send letters to editors • Post blog entries, tweets, and comments on online forums • Prepare press releases or opinion articles • Express opinion during media interviews
Government Relations and Oversight	<ul style="list-style-type: none"> • Participate in on-going formal government consultation or advisory processes • Participate in ad-hoc consultation or advisory processes such as "town halls" and legislative hearings, or respond to requests for advice • Prepare submission to government enquiry • Engage in independent "watchdog" activities to monitor and evaluate government activities
Service Delivery	<ul style="list-style-type: none"> • Implement and disseminate new model of service delivery

Many of these activities can be mapped along a continuum from confrontation to cooperation. Demonstrations, boycotts, or critical media coverage put nonprofits in direct conflict with government decision makers, while participation in an advisory committee, responding to requests for information, or participating in the development of new service delivery models involve partnership and coproduction with government. Strategic decisions about which advocacy strategies to pursue are based both on the political and administrative context of the issue being addressed and the organization's own "theory of change" and its beliefs on the best strategies for influencing decisions. Some nonprofits choose to be "outsiders" employing more militant and confrontational activities, while

others are “insiders” that choose to cooperate with government and work within the system.

Advocacy is constitutionally protected in the U.S. by the right to freedom of speech and is seen as one of the fundamental roles of nonprofit organizations. The 1973 federal Commission on Private Philanthropy and Public Needs (more commonly known as the Filer Commission)⁴ identified the following advocacy-related activities as core functions of the nonprofit sector: ‘initiating new ideas and processes’ ‘developing public policy’, ‘supporting minority or local interests’, ‘overseeing government’, ‘overseeing the market place’, ‘bringing sectors together’, and ‘furthering active citizenship and altruism’.

However, in the decades since the Filer Commission, it is the direct service functions of the nonprofit sector that have gained more prominence, and attitudes to advocacy work vary greatly. For example:

- It is generally promoted if it seen as strengthening democratic society, giving voice to marginalized communities, providing oversight of public institutions, and promoting innovation in public policy.
- It is generally rejected if it considered too openly partisan, or as promoting private or narrow interests, particularly if they are seen as impinging on the rights of others.
- Some advocacy activities, particularly lobbying on specific legislation or campaigning for candidates for office, are restricted if using public funds or tax deductible private donations. Registration regulations for nonprofits, tax codes, and caveats on public funding all impose limitations on the use of some funds for advocacy activities.

Nonprofits will embrace advocacy if it considered to be core to their mission and as helping to gain legitimacy with their constituency, but they will avoid it if it is seen as compromising funding (public or private) by being too controversial, “biting the hand that feeds”, or violating the conditions of funding or registration.

There are a minority of nonprofits such as public interest law and issue-based organizations, as well as associations and umbrella groups that represent the sector, which focus the bulk of their work on advocacy. However, the vast majority of nonprofits studiously maintain an appearance of being “non-political” and prefer not to identify advocacy as a core activity of the organization. The National Taxonomy of Exempt Entities (NTEE), the classification system used by the IRS and many foundations, identifies nonprofits by their primary purpose and by their activities within that purpose, based on self-reporting by the organizations. If the NTEE can be considered an indicator of advocacy work, the results suggest that it is only a marginal activity of the nonprofit sector, as less than 1% of all registered organizations identify advocacy as a primary purpose -- of the 1.5 million registered nonprofits in the US, only 11,463 declare that their primary purpose is NTEE Category R (Civil Rights, Social Action, Advocacy) and only an additional 159 are Category I-83 (Public Interest Law), the two categories most directly linked with advocacy. Similarly in all other NTEE categories, less than 1% declare that their activities include Advocacy (Activity Code 01). Of the 211,246 Category B (Education) nonprofits, only 1,109

⁴ Filer Commission 1975.

list 01 as an activity code; of the 98,225 Category P (Human Services) nonprofits, only 160 list 01 as an activity code.⁵

However, in other types of research and reporting considerably more nonprofits identify advocacy as a purpose or activity of the organization. In a nationwide survey of 872 organizations by the Johns Hopkins Listening Post Project, 73% reported conducting some type of policy and advocacy or lobbying activity.⁶ The wide discrepancy between the NTEE self-reports and the survey results is partly due to the different sampling frames (differences in size and types of the organizations surveyed), but also due to the differences in responses elicited by macro-level questions (e.g. Is advocacy a purpose or activity of the organizations?) and micro-level questions (e.g. Have you contacted a legislator or public official in the past year?), and to differences between reporting about advocacy on behalf of constituents and advocacy on behalf of the organization itself (NTEE self-reporting most likely includes very little of the latter), as well as a certain reluctance by organizations to label their activities advocacy when reporting to the IRS or other funding sources.

The Johns Hopkins Listening Post report concluded that among the surveyed organizations “advocacy is very much alive”, but also that “the vast majority of the organizations spent only scant resources on advocacy activities.” Other survey and ethnographic research also confirms that while only a very small minority of nonprofits are openly political advocacy organizations, a significant majority of nonprofits engage in some form of advocacy either directly or through intermediary organizations, although it tends to be a minor part of their activities.⁷

Should nonprofits engage in more advocacy? Has the service role become too prominent, to the detriment of the policy development and oversight roles of nonprofits? Are the service and advocacy roles incompatible? These questions continue to be debated in the nonprofit sector -- some commentators claim that too many nonprofits have reneged on representing the interests of their constituencies by focusing only on “non-political” service delivery, while others argue that the advocacy continues to be a major focus and that nonprofit service delivery and partnerships with government are innovative and drive social change, even if they are not labeled advocacy.⁸

Currently, nonprofits appear to be re-asserting their right to advocacy, parlaying their greater proximity to government and increased public profile into a more active participation in the policy process. As the Aspen Institute notes, “nonprofit organizations operating in partnership with government must be permitted to pursue their privately supported advocacy activities.... [as] active participation in the policy process is a fundamental function of the nonprofit sector in a democratic society and one that must be encouraged.”⁹ From the foundation sector there appears to be a renewed interest in

⁵ All figures from the National Center for Charitable Statistics, October 2009.

⁶ Salamon and Lessans Geller 2008. Note that an earlier Johns Hopkins research report found that only 16% of nonprofits indicated expenditures on advocacy (Salamon 2002) .

⁷ See Casey 2004.

⁸ See the discussions on the websites listed in Appendix 1: Online Resources for Nonprofit Advocacy. In particular, see the National Council for Nonprofits webpage *Nonprofit Advocacy is Needed* at <http://www.councilofnonprofits.org/nonprofit-advocacy/power-knowledge/nonprofit-advocacy-needed>

⁹ Aspen Institute 2002: 8.

promoting advocacy¹⁰, as attested by increasing number of “how to” guides¹¹ and calls for the lifting of the existing restrictions.¹²

LEGAL RESTRICTIONS ON CAMPAIGNING AND LOBBYING

As noted earlier, advocacy is a constitutionally protected activity. However, there are restrictions on the activities that certain classes of nonprofits can engage in and on the use of public funds and tax deductible private donations for some types of advocacy. The restrictions are imposed through the conditions for registration as nonprofits, eligibility for tax exempt status (particularly regarding the tax-deductibility of donations), the conditions set by some funders, and by other legislation related to electoral activity and the work of professional lobbyists.

The Internal Revenue Code restrictions refer to “political work” (or “campaigning”) and “legislative activities” (or “lobbying”), which consequently have specific legal definitions -- campaigning means working on behalf of or in opposition to a specific candidate for elective office, while lobbying is an attempt to influence the passage of legislation, referendums or ballots.¹³ It is important to note that although these are the definitions used by the IRS, in the vernacular of the nonprofit sector the terms continue to be used more loosely. For example, many nonprofits organize “lobby days” in Washington DC or the state capital, when they take constituents to meet legislators to talk about the work of the organization and other issues of concern. If the discussions do not press for action on specific legislation or if they focus on the work of executive, judicial, or administrative bodies, they do not in fact constitute lobbying according to the IRS definition. Similarly, nonprofits may conduct a “campaign” on an issue of concern, but if the work does not involve directly supporting or opposing a candidate then it is not campaigning according to the IRS definition.

Moreover, the IRS restrictions on these activities apply only to organizations that have 501(c)3 status under the Internal Revenue Code and not to other nonprofit classifications. In general terms the restrictions on organizations that have 501(c)3 tax deductible status are:

- 501(c)(3) organizations are prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office (i.e. they cannot engage in campaigning). However, non-partisan voter education activities, including encouraging people to participate in the electoral process through registration and get-out-to vote activities, are permitted.
- 501(c)(3) public charities (but not private foundations) are permitted to conduct lobbying to influence legislation, only as long as it is “no substantial part” of the organization’s activities and expenditures. 501(c)3 organizations classified as private foundations are not permitted to lobby and cannot make grants that directly support legislative lobbying by others, but they can make general support grants to organizations that lobby.

¹⁰ Foundation Center 2010.

¹¹ See GrantCraft 2005 and the online resources list at the end of the paper.

¹² See Sherlock and Gravelle 2009.

¹³ IRS 2010

- To help allay concerns over what constitutes “no substantial part” and the application of expenditure tests, Subsection 501(h) of the tax code allows 501(c)3 organizations to elect to have the question of whether they are engaging in too much lobbying decided on application to the IRS. This is known as the “501(h) election” and it provides organizations with very clear guidance to permitted expenses. In general, organizations who take the 501(h) election are permitted to expend up to 20% of the first \$500,000 of their budget on lobbying and reduced percentages of budget amounts above \$500,000, with an overall cap of \$1 million. Activities that do not violate restrictions on lobbying can include contacts with the executive and judicial branches, activities related to regulations (as opposed to legislation) and “self-defense” activities related to legislative proposals that would affect the organization’s own existence or powers.¹⁴

These restrictions apply only to the Section 501(c)3 registration status under the federal tax code, and ultimately to the question of whether contributions to these organizations are deductible for Federal income tax purposes. There are other forms of nonprofit registration that do not restrict campaigning or lobbying using private contributions, including other categories of Section 501(c), such as 501(c)4 for social welfare and civic organizations and 501(c)6 business leagues and professional associations, as well as Section 527 for political organizations. Contributions to these organizations are not tax deductible as charitable contributions, but may be deductible for some individuals and corporations as business expenses.

Other restrictions on advocacy may be imposed by funding sources (e.g. federal grants and contracts generally cannot be used for lobbying), by registration requirements for professional lobbyists (e.g. federal, state, and most large local governments require organizations that spend a threshold amount of time and funds on seeking to influence legislators to register as lobbyists), by laws and regulations related to the electoral process (e.g. the Federal Election Commission and state Election Boards set the conditions for financing elections), or by other specific legislation (e.g. the Lobbying Disclosure Act prohibits 501(c)4 organizations from receiving federal grants, loans, or awards if they engage in lobbying).

This short outline does not do full justice to the complexities of restrictions, and any nonprofit that is concerned about the impact on its legal status of any of its advocacy activities should consult an attorney.¹⁵ But it is important to emphasize that nonprofit organizations have multiple legal avenues open to them to engage in all the advocacy activities listed in Table 1. The IRS 501(c)3 regulations provide substantial leeway – charities cannot campaign on behalf of candidates, but they can lobby legislators as long as long as it is not a substantial part of their work, and all activities focusing on executive and judicial branches, regulations or self-defense fall outside the restrictions.

¹⁴ Alliance for Justice 2003.

¹⁵ The Alliance for Justice offers a technical assistance hotline and various publications explaining nonprofit advocacy rules (see references and online resources listed below). See also Mehta 2009, and the National Council of Nonprofits online page Nonprofit Advocacy is Legal <http://www.councilofnonprofits.org/nonprofit-advocacy/power-knowledge/nonprofit-advocacy-legal>

Any 501(c)3 organization that has doubts about whether its advocacy activities will be viewed as substantial enough to violate restrictions can always make the 501(h) election. If that is not sufficient, the organization can choose to operate with multiple legal identities and operate different units or entities as 501(c)3, 501(c)4 and 527 organizations. Many advocacy organizations are in fact multiple legal entities —The Natural Resources Defense Council (NRDC), one of the most prominent environmental organizations, operates as a 501(c)3, which is “parent” to a the NRDC Action Fund that is registered as a 501(c)4, which in turn sponsors specific campaigns, some of which have their own brand and legal identity. JStreet, a lobby group seeking a two-state solution in the Middle East, describes itself as a “family of three legally independent organizations”: a 501(c)(4) registered lobbying organization, a political action committee (PAC), and a 501(c)(3) charitable organization.

Confusion over the meaning of lobbying, campaigning, and advocacy, and the complicated regulations governing these activities is reflected in the tentativeness of some nonprofits to participate in advocacy, or to identify advocacy as part of the work of the organization. They may avoid advocacy because they are unsure of the type of actions permitted under their legal or tax status, or because they fear their actions would be perceived as controversial and alienating to funders or leading to government reprisal. However, most of the fears are unfounded and ultimately the decision to embrace or avoid advocacy should not be based on misperceptions about legal restrictions but on an organization’s own strategic decisions about its operational priorities and its public image.

TRENDS IN ADVOCACY

“Protesters have become politicians; activists have become administrators.” This aphorism captures much of the current thinking about how advocacy has evolved over the last decades, as the relationship between the government and nonprofit sectors has become increasingly intertwined and the resources available to nonprofits through contracting and fundraising have increased considerably. Government contracting, the increasing use of formal processes of policy inputs such as advisory panels, and the rise of lobbyists, think tanks and policy advisors have all conspired to professionalize policy discussions. The tendency has been to move away from confrontational approaches and to focus more on negotiating changes to policy.

Advocacy “with gloves on”¹⁶ has become a cultural norm and this generally means less belligerent outsider activism and more collaborative insider policy work, although in some areas such as the anti-globalization movement and in desperate moments such as funding cutbacks, street mobilizations continue to be common. Placard-waving citizens demonstrating in front of city hall may still occasionally be part of the street theater of advocacy, but most policy negotiations now take place inside, in meeting rooms or courtrooms.

Technology has also had a significant impact on advocacy. Electronic activism and viral advocacy through online petitions, blogs, social media sites and other means of mass communication, have further reduced the need for activists to hit the streets, or to engage in expensive mail and media campaigns, to spread their message. Anyone with Internet access

¹⁶ Onyx et al. 2010.

and an email account is a mouse-click away from showing their support for a cause and recruiting others. Skeptics of online advocacy campaigns have charged that this is not real grassroots organizing, but instead “astroturf” advocacy (the artificial manufacturing of grassroots support) and some deride it as a lazy form of commitment or “slacktivism”. At the same time, many online campaigns have proved highly successful, both in directly influencing policy outcomes and raising funds for activist nonprofits, and online communications is now the primary means of building constituencies and keeping them informed. The mastery of electronic communication and new social media is now an essential part of the toolkit of advocates.

Other significant changes in advocacy include:

- There has been a considerable rise in the number of nonprofit organizations, which some see as increasing fragmentation and weakening the capacity to act with a unified voice. However, others argue that this has been mitigated by an increasing tendency to work in coalitions that bring together diverse stakeholders.
- The increased use of formal consultative processes in almost all areas of public policy has led to increasing dialog and partnerships between stakeholders who in the past may have seen themselves as having opposing interests. It is no longer unusual, for example, to see police departments working with social service providers, or the business sector working with nonprofit advocacy groups, to cooperatively negotiate policy and operational matters.
- There has been an increase in the number of policy professionals, both in government (legislative staff, public sector policy analysts and advisors) and in nongovernment and private organizations (professional lobbyists, intermediary organizations, think tanks, advocacy organizations). Policy-making in some areas has become the domain of a reduced cadre of policy elites, and individual front-line organizations increasingly expect that intermediary organizations will advocate on their behalf.
- The professionalization of policy work and the increasing focus on data collection and evaluation in almost all areas of nonprofit work has led to a greater reliance on research and evidence in advocacy. Policy-oriented research and the subsequent reports and briefing documents have taken on a greater salience.
- The media, in both traditional and new forms, are seen as an even greater arbiter of public opinion, so advocacy now requires considerable media relations skills.
- Policy discussions are becoming nationalized and even globalized. Comparative analysis has become more important as local polices are increasingly benchmarked against far-flung jurisdictions, and advocates work closely with partners in other states and countries to pressure not only local authorities but also national, international and supranational entities.

Amid these changes is the continuing debate regarding whether the closer connections between government and nonprofits are likely to help or hinder advocacy. Does participation in formal advisory and collaborative processes translate into greater influence in shaping future policy, or is it falling into the trap of participating in and legitimizing trivial rituals concocted by governments seeking to sell their pre-determined policies? Does accepting government contracts stifle dissent and compromise the ability of an organization to be a strong advocate?

As noted earlier, the fear of “biting the hand that feeds” continues to be pervasive, and there are documented instances of vindictive legislators and government officials punishing dissent by withholding funds and restricting access. A significant number of nonprofits steadfastly maintain that to be truly effective advocates they must preserve their independence by eschewing government grants or contracts. However, research also shows that the “chilling effect” of government funding may be more myth than reality. Various studies have shown a positive correlation between the level of government funding nonprofits receive and the level of their advocacy activities, because larger nonprofits, which tend to be the ones that win government contracts, also have the resources to support advocacy and because they have a stake in dialoguing with government to promote the interests of their constituencies as well as their own organizational interests.¹⁷ The studies also show a negative correlation between the level of private donations and advocacy, because direct service provision “sells” better than advocacy to private funders. It appears that the best resource base for advocacy is a mix of government and private philanthropic funds, combined with an organization’s earned income.

FUNDING ADVOCACY

Advocacy is expensive. While organizing ad hoc protests, information sessions, or letter writing campaigns can be done with relatively little money, prolonged advocacy requires considerable resources, particularly if it involves litigation or media campaigns. Legal advocacy depends in large part on the *pro bono* participation of sympathetic law firms willing to do the legal footwork and courtroom representation free or below cost, and it usually also involves significant social research, community organizing and administrative support.

Nonprofit organizations report difficulties in funding advocacy work. Most government grants and contracts exclude advocacy, funding from public and private sources is generally program-based, and advocacy can be hard to sell to private funders.¹⁸ A recent survey by the Foundation Center found that, although there is a trend in recent years towards increases in grantmaker support for research, public education, and resources to policymakers, only 24% of foundations currently either fund or engage in activities that could be considered public policy-related, and even among those foundations only 19% provide more than 25% of their charitable expenditures for such activities.¹⁹

Even though advocacy by nonprofits is clearly “legitimate, encouraged and protected”²⁰ donors generally focus more on the more immediate outcomes of services delivery. Moreover, many donors are reluctant to donate to activities that do not provide tax benefits, or they may not want to deal with the controversy and scrutiny that often results from

¹⁷ Salamon 2002, Chaves, Stephens, and Galaskiewicz 2004, Hwang and Suárez 2008.

¹⁸ As noted in Footnote 3 above, this discussion generally excludes those individuals and corporations that choose to donate to the political campaigns of individual candidates and parties, or for specific political outcomes such as support for, or opposition to, a ballot Proposition.

¹⁹ Foundation Center 2010.

²⁰ Alliance for Justice 2003, 2010. Also see the earlier section on legal restrictions for a discussion of the limitation on advocacy work by nonprofits.

efforts to influence public policy.²¹ Advocacy requires a political and strategic commitment from donors, so fundraising for advocacy must target individuals and foundations with a social change agenda and a long-term perspective in supporting activities that may not result in significant outcomes for many years.

EVALUATING ADVOCACY

Defining the desired outcomes and measuring the effectiveness of advocacy can be problematic. Most would agree that the goal of advocacy is to effect change, but are we measuring profound changes or simply evidence of having left a "residue of reform"? How do we distinguish between short-term success (e.g. having forced a commitment to change) and possible long-term failure (e.g. that commitment is later reneged, or not implemented due to lack of funding)? Even when a court ruling is favorable to the nonprofit advocates, there are no guarantees that the judgment will be properly implemented or that the remedies will have the desired impacts. It is always possible to win many battles, but still lose the war.

Table 2 identifies six possible outcomes of advocacy work.

Table 2: Levels of Advocacy Outcomes²²

Levels of Outcome	Impact on policy
Access	The voices of previously excluded stakeholders are now heard
Agenda	Desired policy change is supported by powerful decision makers
Policy	Desired change is translated into new legislation or regulations
Output	New policy is implemented as proposed
Impact	New policy has intended consequence
Structural	New policy is now widely accepted as the new norm

Ultimately, long-term success should be measured in terms of achieving the intended impact and structural change, but any movement to the next level of outcome from the current circumstances can also be an important affirmation of advocacy work. The desired end result of advocacy may take years to achieve, but significant contributions to the goal of effecting change can be achieved along the way.

But even when we can identify *what* has been achieved, it can still be difficult to evaluate *how* it was achieved. To establish the causality between advocacy by nonprofits and policy outcomes, we have to attempt to peer inside a "black box" of power relationships and legislative and administrative decision-making processes. The difficulty of understanding the motivations of those involved in decision-making, combined with a tendency of all those involved to overstate their role, makes it almost impossible to unequivocally evaluate the outcomes and impacts of nonprofit advocacy.

²¹ GrantCraft 2005.

²² Based on Burnstein et al. 1995.

Despite these challenges, a range of monitoring and evaluation techniques have been developed for measuring the outcomes of nonprofit advocacy, based on “logic models” and “theory of change” frameworks.²³ These techniques adapt those used in other areas of policy and social change research to evaluate key indicators of success in terms of the processes, outputs and outcomes of advocacy. Case studies are one of the techniques typically used in advocacy research. These case narratives help identify the lessons learned from specific campaigns by telling the story of change and documenting the perceptions of the different participants regarding the outcomes that have been achieved and the factors that contributed to that change.

CONCLUSION

The definition of what constitutes advocacy, preferred strategies and methods, and desired outcomes may vary from case to case, and change over time. What remains unchanged is the essential role advocacy plays in a democracy -- giving voice to those who might otherwise have none.

The case studies in this series examine how New York nonprofits practice advocacy in three major policy realms. Each of the case studies ends with a section that analyzes the lessons learned from that campaign and the *Teaching Notes* provide a global analysis of all three cases.

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²³ See for example the advocacy performance indicators in Urban Institute 2010. Also The California Endowment 2005, Alliance for Justice 2007, Harvard Family Research Project (2007), Organizational Research Services 2007, Starling 2010, The Evaluation Exchange 2007, Innovation Network Inc. n.d.

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Minnesota

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North Carolina

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APPENDIX II: ONLINE RESOURCES FOR NONPROFIT ADVOCACY

Alliance for Justice publishes a range of materials that explain advocacy rules for nonprofits (including those listed above under references) and operates a free Technical Assistance Hotline 1-866-NP-LOBBY. The home page for their publications is:
<http://www.afj.org/for-nonprofits-foundations/resources-and-publications/>

Alliance for Justice also operates the Nonprofit Advocacy Project (NAP) and the Foundation Advocacy Initiative (FAI), which provide information and training to serve the advocacy needs of 501(c)(3), 501(c)(4) and other 501(c)s, and 527 organizations. More details about the services are at:
<http://www.afj.org/for-nonprofits-foundations/about-advocacy/>

Center for Lobbying in the Public Interest
<http://www.clpi.org/>

Continuous Progress
Better Advocacy through Evaluation Project (focused on foreign policy)
<http://fp.continuousprogress.org/>

Duke University
Center for Strategic Philanthropy and Civil Society
Case Studies on Advocacy by Nonprofits
<http://cspcs.sanford.duke.edu/casenotes/all/all/all/all/Advocacy>

The Independent Sector: The Basics of Nonprofit Advocacy
http://test.independentsector.org/the_basics_of_nonprofit_lobbying

National Committee for Responsive Philanthropy: Nonprofit Advocacy and Organizing
http://www.ncrp.org/index.php?option=com_ixxocart&Itemid=41&p=catalog&parent=18&pg=1

National Council of Nonprofits: Nonprofit Advocacy
<http://www.councilofnonprofits.org/nonprofit-advocacy>
<http://www.councilofnonprofits.org/capacity-building-for-advocacy>

Nonprofit Action: Strengthening Nonprofit Advocacy Project (SNAP)
<http://www.npaction.org/article/archive/225>

Nonprofit Advocacy: Michigan Primer
<http://www.mnaonline.org/lobbyinfo.asp>

Speak Up: Tips on Advocacy for Publicly Funded Nonprofits Center for an Urban Future;
Annie E. Casey Foundation (Author: Suri Dutch, Suri and Carl Vogel)
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United Neighborhood Houses of New York. Advocacy Toolkit
www.unhny.org/advocacy/pdf/CB/UNH%20Advocacy%20Toolkit.pdf

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<http://www.calendow.org/Category.aspx?id=342>

Urban Institute: Research Initiative on Nonprofit Advocacy
<http://www2.urban.org/advocacyresearch/index.html>

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