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## Assessment of Systems for Delivering Legal Services

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# REPORT OF THE WORKING GROUP ON ASSESSMENT OF SYSTEMS FOR DELIVERING LEGAL SERVICES

## INTRODUCTION

WHILE the Group<sup>1</sup> had in common a firm belief in the importance of assessment in the delivery of quality legal services to low-income people, we had diverse focuses and perspectives on the approach to, importance of, and values that should guide assessment. The Group included individuals from large and small legal assistance organizations, from law and social science academic institutions, from a funding organization, and from local and national public policy advocacy groups. Perhaps our most important point of agreement was the common recognition that assessment is always a value-laden endeavor and that it is crucial that the values that underlay assessment be made apparent. In the broadest sense, the Group shared the view that assessment should be used to support and enhance the delivery of legal services, and that delivery of quality legal services is a critical social goal. Perhaps our most significant point of tension was our differing views about the best way to use severely limited resources to address overwhelming need—whether we continue to emphasize direct legal representation of clients and other direct services, or we favor hotlines, community legal education or other more volume-oriented approaches.

The differences in perspective in the Group about how to deliver assistance reflected an important ongoing theme of discussion and debate in the community of people concerned with the delivery of legal services—a theme reflected in discussions throughout the conference. The Group did not try to come to consensus on this issue. Rather, *in toto*, the recommendations reflect a compromise—that these are legitimate concerns, but that they could lead to a fairly significant redefinition of the value system of the community of providers, and that we were not ready to engage in resolving the issue. Indeed, our compromise was to recommend that the evaluation and assessment of legal services programs give us enough information to have an informed discussion on this crucial issue. Our compromise was reflected in our discussion of the areas to be looked at, the kinds of data to be collected, and the challenges and concerns of evaluation.

Following is the specific set of recommendations developed by the Group. These recommendations represent the consensus of the

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1. Group Leader: Russell G. Pearce. Author: Andy Scherer. Participants: Helaine M. Barnett, Martha Bergmark, Clark D. Cunningham, Marie A. Failinger, M. Victor Geminiani, Steven H. Hobb, Marianne Lado, Carrie Menkel-Meadow, Patricia Pap, Fern Schair, Carroll Seron, and Gregg G. Van Ryzin. The Group thanks Lauren E. Fleischer for helping to record the Group's discussions.

Group and were intended to give broad perspective and some specific guidance relating to assessment of legal services programs. The recommendations are organized around a series of questions that we felt best framed our task. The commentary that follows each of the recommendations is intended to give the flavor of the discussion and concerns that led to the recommendation.

### I. WHAT IS THE PURPOSE OF ASSESSMENT?

**Assessment and evaluation are necessary components of efforts to improve the ability of legal services delivery systems to fulfill the mission of achieving equal and full access to justice.**

**119. Assessment should address whether low-income people have access to the information and assistance they need to resolve their legal problems and to use the justice system to protect and promote their legal, economic, and social interests.**

**120. Assessment should promote the effectiveness and enhance the capacity of funders and providers in using their resources to achieve these goals.**

This first recommendation reflects the recognition that there are values inherent in any assessment and therefore it is important to articulate those values. This recommendation articulates a set of core values about the delivery of legal assistance held by the Group. First, we recognized that assessment and evaluation are enormously important in achieving quality legal assistance and that we as a community owe it to our clients and selves to regularly reevaluate the efficacy of our efforts. Second, the recommendation reflects our recognition that meaningful access to legal assistance requires something more than simply defending clients in litigation. Legal assistance is necessary to protect and promote interests as well as to resolve problems, and legal assistance providers need to consider the client community's need for information as well as representation.

Further, we recognized that evaluation can be simply a punitive tool for a public or private funder or some other entity with narrow interests, so that it is particularly important to articulate explicitly the common (if broad and somewhat vague) agenda or overarching purpose that should guide assessment. Since the mere notion of providing free legal services to low-income people has been so highly politicized, we recognize the danger of evaluation as a tool of those hostile to effective delivery of services because of their political biases. Thus, we wanted to make a strong statement that assessment should provide a context for supporting and improving the delivery of assistance, not an opportunity for intimidation, investigation or inquisition. On the other hand, we recognize that assessment can also have the political value of articulating and publicizing the value of legal services.

We discussed and rejected recommending that assessment hold a specific priority in the scheme of activities of a provider. While the Group clearly felt that assessment is important and "necessary," we also recognized that much assessment is informal and ongoing and that this approach, given the limitations on resources and dedication of providers, is reasonable. In the absence of funding and a supportive infrastructure for assessment, we were not willing to assign assessment a specific mandatory role in program operations. Thus, the recommendation contains no proposed frequency for assessment and no suggestion that funders make assessment mandatory.

## II. WHAT ARE THE GOALS OF THE ASSESSMENT?

**121. Assessment should foster the improvement of the delivery of legal services by addressing concerns related to three general areas:**

- (a) National, state, and local system and program designs for serving client communities and promoting justice. Assessment in this area should:**
  - (i) identify met and unmet legal needs;**
  - (ii) assess whether the mission is responsive to the needs of the client community;**
  - (iii) assess whether systems and programs have fulfilled their missions, met their goals and objectives, and satisfied their own standards;**
  - (iv) provide the ability to compare the effectiveness of traditional and innovative delivery systems and strategies;**
  - (v) assess the program's responsiveness to the diversity of the community it serves;**
  - (vi) evaluate the extent and effectiveness of stakeholder involvement in delivery of services;**
  - (vii) explain to and document for the public the benefits of investment in legal services, including its cost-effectiveness for government and society as well as its intrinsic value in contributing to a more just society; and**
  - (viii) assist in strategic planning processes.**
- (b) Quality of client services. Assessment in this area should:**
  - (i) evaluate client satisfaction, including: ease of access to services, whether services respond to problems and needs, and clients' perception of quality;**
  - (ii) evaluate outcome and impact of services on clients' lives;**
  - (iii) assess quality and competence of the services provided; and**

- (iv) evaluate how the program addresses diversity in the interaction between program staff and clients.
- (c) Leadership, Management, and Administration. Assessment in this area should:
  - (i) enhance program efficiency and productivity;
  - (ii) enhance the program's ability to raise funds and provide services;
  - (iii) assess the program's success in promoting and maintaining a diverse staff, management, and governing body;
  - (iv) enhance the program's ability to recruit, evaluate, train, retain, and supervise staff;
  - (v) enhance the program's process for setting priorities; and
  - (vi) assist the program's governing bodies in fulfilling their policymaking functions.

This second, multi-part recommendation was an effort to articulate the specific elements, in light of the overarching goal articulated in the first recommendation, that should be examined to assess the extent to which that overarching goal is being achieved. The recommendation reflects the recognition that, in order to assess the efficacy of a program, an evaluation should consider what is not done, as well as what is done. In other words, to provide the appropriate context for evaluating the productivity of activities of a program, we must assess the need and to what extent resources are being used effectively and rationally to address that need. We need to know, for example, whether the people who need services the most are able to find and access those services. These recommendations also reflect client empowerment as an implicit value underlying evaluation and assessment. Moreover, the recommendations reflect our agreement about the importance of administration and management in the effectiveness of system as well as the importance of diversity.

There was some debate in the Group over whether it makes sense to compare the traditional approach to delivery—direct representation of individual clients or client groups—to alternative approaches to delivery such as telephone hotlines or community legal education. This discussion was the closest the Group got to joining issue on differing views on delivery of service. Some felt this comparison could be unfair since the traditional approach is more likely to produce a better outcome for the client because of the amount of effort and attention devoted to an individual client's problem. However, we ultimately agreed that it made sense to compare approaches. While representation may be more helpful to the individual, non-traditional methods such as hotlines reach far more people. Programs need to assess the relative advantages and disadvantages of different ap-

proaches to make an intelligent and informed decision about how to allocate resources.

### III. WHAT DATA SHOULD BE COLLECTED?

- 122. Data should be collected and analyzed in furtherance of the goals listed above under the categories of: national, state, and local system and program designs for serving client communities and promoting justice; quality of client services; and leadership, management, and administration. Areas in which useful data could be collected include:**
- (a) administrative data, e.g., client characteristics, types of services being provided, client outcomes, funding sources, and staffing patterns;**
  - (b) existing government and organizational statistics, including community and court data;**
  - (c) surveys of clients, staff, and community, addressing issues such as client satisfaction, client understanding of information, and client outcomes;**
  - (d) focus groups of clients, staff, and community members;**
  - (e) information regarding legal, social, economic, and political contexts, such as changes in entitlements or other laws affecting clients; and**
  - (f) literature, such as legal needs surveys, cost-effectiveness studies, model standards, other published reports, articles, etc.**

This recommendation reflects the Group's recognition that there is a paucity of useful data on legal need; that delivery of legal services is an area of social policy that is particularly barren of data. There is no meaningful definition, let alone any ongoing study, of the extent to which access to the legal system is denied because of poverty. There is no equivalent of the Center for Disease Control that tracks data on legal need and activities undertaken to address that need. The Group therefore suggests that the U.S. Department of Census should begin to track data on legal need. It is virtually impossible to evaluate the extent to which programs rationally allocate resources to address legal need in the absence of a broad empirical understanding of that need. Collection of data would, we hope, lead to greater acknowledgment of legal need and would help legitimize efforts to address the need. Moreover, an obligation to collect data would probably have salutary influence on courts. Courts are very sensitive to data; reporting requirements often drive judicial behavior. If courts participate in tracking the unmet legal needs of low and moderate-income people, they may become more sensitive to the need for legal services and more active in promoting measures to provide legal services.

The Group considered and rejected for the present any recommendation that compliance with ethical standards become part of the evaluative process. Legal services attorneys are subject to the same ethical rules, disciplinary proceedings, and consequences for violating ethical norms, as other attorneys, and there does not appear to be a need to carve out different ethical standards. There was some argument regarding whether there should be somewhat different standards for legal services organizations around issues such as confidentiality, to enable legal assistance providers to gather data without waiving attorney-client privilege and perhaps to reach a wider client population. However, others saw risk in setting a separate set of ethical standards for programs representing poor people. The Group was thus not ready to reach any kind of consensus and decided to file this issue under the category of "further study."

There was also some disagreement on what evaluative criteria should be recommended to be used or emphasized. We recognized that the emphasis on a particular set of criteria would alter the nature of the data collected. The majority felt we should emphasize outcome of the client intervention. In our adversarial legal system, the culture of law is outcome-driven: win or lose is the traditional attorney measure of litigation. However, outcome can be defined in ways other than win or lose in the narrow litigation sense. Outcome can be defined as whether the client is materially better off as a result of the intervention (was the client's home preserved or improved or kept or made affordable; did the family remain together; was the problem resolved, regardless of the technical outcome of the litigation?). Some in the Group suggested that other criteria for evaluation could be as or more important than outcome, such as client education (how much does the client know after interchange with a services provider) or procedural justice (the client's perception that justice has been done regardless of outcome). Rather than select and recommend one approach, the recommendation implicitly suggests a range of evaluative criteria.

#### IV. WHO SHOULD BE INVOLVED IN ASSESSMENTS?

**123. Assessment should involve participation from a wide range of stakeholders, including, where appropriate: clients, legal services program staff, management and governing bodies, advocacy groups, community-based organizations, social service providers, private attorneys and bar associations, courts, law schools, social scientists, and public officials.**

This recommendation reflects our recognition that legal services do not operate in a vacuum; legal assistance providers are part of a larger community that serves low-income people and the legal needs of low-income people are a reflection of broad social and economic

problems. Thus, assessment of legal assistance programs benefits from the participation of the broadest range of persons and entities with an interest in and concern for delivery of legal assistance. The recommendation also reflects the recognition that academics and social scientists have the interest, expertise, and time to participate in evaluation, and that they should be encouraged to do so. Finally, the recommendation reflects the concern that, without the participation of a broad range of clients and other "stakeholders," evaluation can become too staff-oriented, and that programs can too easily define themselves around staff interests and priorities without a look at broader concerns.

#### V. METHODOLOGY: HOW SHOULD ASSESSMENT BE UNDERTAKEN?

- 124. National, state, and local organizations as well as researchers and academics should formulate model data collection instruments and methods and should collect what has already been done in related fields. Law school clinics, in particular, should design and test models for assessment.**
- 125. Local programs should be encouraged to collaborate with law schools, social science faculties, and other academic institutions, foundations, and non-profit research institutes and persons affiliated with the American Evaluation Association to set research agendas and undertake research.**
- 126. In the interest of efficiency, programs should collect data useful for evaluation as part of the ongoing operation.**

The Group considered and rejected recommending any particular set of standards for delivery of legal services for two reasons. First, we realized that we would not come to a consensus on what those standards should be. Second, we recognized that local, community-based decisionmaking on priorities is an important attribute of a successful program and that this community involvement conflicts with the notion of any broad national standards. Ultimately, we agreed that that programs should, at minimum, achieve the standards they set for themselves.

The Group felt that law schools can be particularly useful laboratories for developing methodologies for assessment, since the academic, rather than service, mission of law schools lends itself to more deliberative analysis.



VI. WHO SHOULD PROVIDE FUNDING AND RESOURCES FOR DATA COLLECTION AND ASSESSMENT?

127. **Independent entities such as academic institutions, foundations, and non-profit research institutes should be encouraged to conduct research on legal needs and delivery of legal services.**
128. **The federal government (e.g., through the U.S. Census Bureau) should track data on the need for legal assistance and the amount of assistance provided, as is done in other areas such as health, housing, and education.**
129. **In consultation with stakeholders, major funders should form a consortium to fund (a) the development of model assessment methodologies, and (b) a research grant program to assess the effectiveness of different approaches to the delivery of legal services.**

This set of recommendations arose out of our recognition that assessment can be a significant drain on program resources, and that programs should not be expected to expend significant resources on self-assessment. Rather, government and other institutions that fund and are concerned with the delivery of legal services should fund assessment in order to improve delivery of services.

VII. HOW DO WE SHARE INFORMATION?

130. **Establish a national clearinghouse or repository, that, together with other national, state, and local entities, as well as law schools, gathers information about evaluation methods and findings, including assessment, evaluation, and methodology, and including research instruments. Technology should be used to ensure that information is linked and widely and readily accessible.**
131. **Establish a library of existing data related to delivery of legal services.**
132. **Standardize national, state (including IOLTA), and local basic provider data and make it available for research.**
133. **Encourage projects to share methodology and data collected on legal services at every opportunity, including with staff, community, other service organizations and the public, as well as at conferences and through a common forum to be created on the Internet.**
134. **Require sharing of official assessments with the programs' Boards of Directors and, to the extent appropriate, with staff.**
135. **Encourage relevant journals such as MIE and the Clinical Law Review to invite submission of papers on the assessment of legal**

**services programs and to consider special annual issues on assessment of legal services.**

**136. Issue periodic national, state, and local reports on legal needs and available resources to address those needs.**

This series of recommendations reflects a balancing of competing concerns. We recognized that it is enormously important to share information so that we can learn from what has already been done and each assessment need not involve reinventing the wheel; we need to begin to develop a conventional framework for critique. However we also recognized that there are drawbacks to sharing information. One drawback is that making evaluations of staff and program performance public can undermine the ability to use an evaluation or assessment in a constructive way. If people think their evaluation will be shared, they may be far more resistant to the evaluation process, more likely to be defensive about the results, and less likely to change and improve. Another risk of sharing data is that without sufficient context, comparative data can be deceiving; for example, if case statistics are examined, one program may be handling more cases, but if the other program is doing a better job, are there local conditions (e.g. geographic considerations or the structure of the dispute-resolution forum) that explain the differences in data?

The Group also felt that periodic reports about national, state, and local data would enhance and broaden the political support for legal services.

#### VIII. WHAT ARE THE CHALLENGES OF ASSESSMENT?

**137. In undertaking assessment, programs and researchers should:**

- (a) assure that client confidentiality and the attorney-client privilege are protected;**
- (b) respect the integrity of judgments involved in local decisionmaking;**
- (c) recognize that the goal of assessment should not be uniformity of delivery systems;**
- (d) avoid undervaluing what is hard to assess, such as the quality of justice;**
- (e) minimize the burden on clients and programs of data-collection;**
- (f) determine the priority to be given to assessment; and**
- (g) avoid undervaluing informal assessments.**

**138. Assessment should be sensitive to external factors that affect the program such as changes in funding, political culture, and the demographics of the community.**

- 139. Goals and values used to design the assessment should be clearly stated. Assessment should not be used as a device for control and policymaking.**
- 140. Assessment should recognize and avoid the risk of deterring creative, zealous, or controversial advocacy.**

This series of recommendations reflects our concerns about areas of risk in undertaking evaluations. As important as evaluation is, it must not divert precious and limited resources from the delivery of services; the benefit of time spent in data-collection and the expenditure of internal and external resources must be balanced against the drain on resources and energy for delivering services. The Group was concerned that evaluation can have a chilling effect on the creativity of programs because data-collection and the evaluative process can be burdensome and overwhelming.

Assessment can also pose risks to the integrity of a local program and its role in a local community if approached from too broad a political/geographic perspective. Assessment must support, not undermine the mission of providing meaningful access to the legal system for low-income people.

We also recognized that assessment can become too mechanistic and focused on rigid criteria. The social value of legal assistance, for example, is difficult to quantify; yet we should not overlook it and we should strive to find ways to assess it.