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Cover Page Footnote

School of Public Affairs, Baruch College, City University of New York. The authors would like to thank Carrol Seron for her helpful input and guidance throughout the preparation of this Article. We would also like to acknowledge the members of our Working Group on Assessment who generated critical ideas, questions, and insights that guided to our final revisions.

EVALUATING SYSTEMS FOR DELIVERING LEGAL SERVICES TO THE POOR: CONCEPTUAL AND METHODOLOGICAL CONSIDERATIONS

Gregg G. Van Ryzin
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INTRODUCTION

WHEN legal services are delivered to low-income individuals and communities, what are the results or impacts? Are the services meeting the identified needs and achieving the intended objectives? Do the individuals or communities targeted by the services benefit from them? What change, if any, has occurred in society as a result of these programs? How efficient are these services compared to alternative delivery systems? These are some of the basic questions of assessment or evaluation of legal services to the poor, and undoubtedly many of those involved in the field have asked themselves these questions many times. They probably have some answers as well, answers that are good enough to convince them that their work is worthwhile or to suggest refinements and improvements to their everyday practice. The issue in evaluation research, however, becomes how to observe and assess a legal services program objectively and systematically such that it enables program administrators and staff to improve program performance and that it is credible and communicable to funders, policy makers, and other stakeholders, some of whom may be skeptical about the program or simply uninformed about its activities and accomplishments.

This Article provides an overview of the conceptual and methodological issues involved in the systematic evaluation of legal services to the poor, with a focus on rendering guidance to providers of legal services and their funders. Funding constraints, a mandate to measure performance in federal government agencies (including the Legal Services Corporation), greater emphasis on private funding, and new technologies require legal services providers to pay more attention to the systematic evaluation of their activities and programs. The diversity of legal services programs and the complexity of the objectives they seek to achieve, resource limitations, the unique nature of legal representation as a service, and an historical distrust of evaluation among many legal services providers, however, present conceptual,

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methodological and practical challenges. This Article discusses several important conceptual issues that providers should consider before implementing an evaluation. It then reviews methodological approaches to evaluation that can be accommodated within the practical constraints of the legal services field.

It should be noted that the American Bar Association ("ABA") published Standards for the Monitoring and Evaluation of Providers of Legal Services for the Poor, which details a set of professional and ethical guidelines regarding the responsibilities and obligations of both funders (and their hired evaluators), as well as providers of legal services during the evaluation process.[1] These standards have been carefully thought out, and those involved in the evaluation of legal services would do well to follow them, as we attempt to do when describing particular approaches to evaluation or presenting examples. The ABA standards, however, do not provide much guidance on specific conceptual and methodological issues—the actual approaches to consider in planning and implementing an evaluation—which is our main concern in this Article. Also, somewhat in contrast to the ABA standards, we direct ourselves as much to the administrators of legal services programs, interested in self-evaluation of their own activities and innovations, as to funders interested in monitoring their grantees for compliance. Evaluation need not be seen only as a means of oversight; instead, the evaluation methods outlined below are tools available to local programs aiming to improve their delivery of services to meet the legal needs of the poor.[2]

I. WHY EVALUATE? THE NEED TO ASSESS LEGAL SERVICES

Government and private funding sources for legal services regularly review the expenditures and activities of the programs they support, a form of evaluation often referred to as monitoring or auditing. A number of forces, however, have combined in recent years to put greater pressure on funders and especially providers of legal services to evaluate their activities and accomplishments more comprehensively. These forces include funding constraints and greater reliance on private funding, technological innovations, new federal mandates

1. Standards for the Monitoring and Evaluation of Providers of Legal Services to the Poor (1991).

2. This Article echoes a theme sounded by Gary Bellow in the 1980 article, *Legal Aid in the United States*. Gary Bellow, *Legal Aid in the United States*, 14 Clearinghouse Rev. 337, 343 (1980). Bellow criticizes the lack of assessment and the tendency toward "self-protectiveness" at the level of the individual program. *See id.* Since 1980, the experiences of local programs may have reinforced such tendencies. Nonetheless, as Bellow wrote, it is critically important for neighborhood offices to consider their effectiveness: "Day-to-day work which ignores systematic issues or standards of quality becomes, at best, shallow and, at worst, another form of support for the status quo." *Id.* at 345.

to measure performance, and increased demand for legal services to the poor.

Legal services to the poor have never been amply funded, and there has been a pattern of funding cutbacks in recent years. For example, congressional funding of the Legal Services Corporation ("LSC") declined from $415 million in fiscal year 1995 to $283 million in fiscal year 1997, a one third reduction. The LSC estimates that, as a result of this reduction in funding, 300 neighborhood law offices have closed and 900 attorneys have been lost from its program nationally, representing a twenty to twenty-five percent decline in capacity.[3] As a result, many legal services programs have turned increasingly toward more limited private funding sources. This scarcity of resources places both internal and external pressures on the remaining legal services providers to evaluate themselves. Internally, providers must constantly strive to do more with limited resources and to search for new, more effective methods of accomplishing their objectives. This search requires efforts to find out how effectively and efficiently existing systems operate and to test alternative, perhaps more cost-effective approaches. Externally, the scrutiny of funders and competition for non-federal funding require that legal services providers demonstrate results as well as financial accountability. Evaluation also becomes a kind of marketing tool for programs that are seeking to attract the attention of new funders.

At the same time, technological innovations have opened up a range of new methods for the delivery of legal services to the poor, a topic which is the focus of other articles and commentaries in this issue.[4] A report by the LSC's Office of Inspector General concluded that the capacity to provide legal services to the poor could be expanded significantly through the use of new information technologies.[5] For example, one such innovation is the use of centralized telephone-based intake and delivery systems, which not only direct telephone inquiries to appropriate offices but serve as a method of dispensing legal information to those who do not require full representation. (Of course, such innovations raise questions of ethics, such as whether these new forms of service delivery meet practice standards, questions that other articles in this issue address). The LSC has funded a number of programs to acquire and implement such intake

3. *See* Legal Servs. Corp., *LSC Strategic Plan FY 1998-FY 2003* (visited Feb. 6, 1999) <http://ltsi.net/lsc/spv01.html> [hereinafter Legal Services Corporation, *Strategic Plan*].

4. *See, e.g.*, Richard Zorza, *Re-Conceptualizing the Relationship Between Legal Ethics and Technological Innovation in Legal Practice: From Threat to Opportunity*, 67 Fordham L. Rev. 2659 (1999) (discussing the use of technology in the delivery of legal services).

5. *See* Office of Inspector General, Legal Servs. Corp., Increasing Legal Services Delivery Capacity Through Information Technology (1996).

and delivery systems.[6] Another innovation is the use of information kiosks, typically containing a touch-sensitive computer terminal that can answer queries and provide information. Such kiosks can be placed in courthouses, waiting areas of government agencies, and other key locations where individuals must navigate the complexities of the legal and administrative system. Finally, although access to the Internet, particularly for low-income persons, remains an unresolved issue, the Internet opens up a great many possibilities for the provision of legal information and services of various kinds. Much remains unknown about the efficacy of these new technologies when applied to the provision of legal services to the poor, and thus, systematic evaluation in this area is essential.

Another force compelling providers of legal services to evaluate their programs is less subtle: the Government Performance and Results Act ("Results Act") enacted in 1993.[7] The Results Act mandates that all federal agencies establish explicit goals, measure performance against the stated goals, and report on the results. Although the LSC is not legally subject to the Results Act, it has nevertheless elected to follow the requirements and planning steps of the Results Act. Thus, the LSC's Strategic Plan for fiscal years 1998-2003 presents an Annual Performance Plan, including an outline of performance goals and a framework for the evaluation of performance indicators.[8]

Finally, the need to evaluate systems of delivering legal services reflects a number of major demographic and policy trends that have increased the demand for such services. First, the U.S. population is aging, with the number of people over sixty-five years old growing by thirty-three percent between 1980 and 1996 (from 25.6 million to 33.9 million) and the number over seventy-five years old growing by over fifty percent (from 10 million to 15.2 million).[9] As this trend continues, the demand for legal services related to Social Security and Supplemental Security Income, Medicare and supplemental insurance, disability rights, and wills and the disposition of assets will continue to increase. Second, documented and undocumented immigration has remained at historically high levels in the U.S. over the past decade,[10] resulting in a heightened demand for legal services related to deportation, work eligibility, and government benefits. Lastly, the enactment

6. *See* Legal Servs. Corp., *Intake Systems Report: Innovative Uses of Centralized Telephone Intake and Delivery in Five Programs* (visited Feb. 6, 1999) <http://ltsi.net/lsc/acces9xx.html>.

7. Government Performance and Results Act of 1993, Pub. L. No. 103-62, 107 Stat. 285 (codified as amended in scattered sections of 5, 31 & 39 U.S.C.).

8. *See* Legal Servs. Corp., *Strategic Plan*, *supra* note 3.

9. *See* Bureau of the Census, U.S. Dep't of Commerce, Statistical Abstract of the United States 15 (117th ed. 1997), *available in* U.S. Bureau of the Census, *Current Population Reports*, No. 14 Resident Population by Age and Sex: 1980-1996 (last modified Dec. 3, 1997) <http://www.census.gov/prod/www/abs/cc97stab.html>.

10. *See* U.S. Immigration and Naturalization Serv., 1996 Statistical Yearbook of the Immigration and Naturalization Service 11-71 (1997).

of welfare reform in 1996,[11] with its new work requirements and time limits on eligibility, has begun to put new demands on providers of legal services to the poor. These are just some of the trends that together have led funders and providers of legal services to reexamine more closely their existing delivery systems and to assess alternatives to meet the growing and changing demand for their services.

II. How to Evaluate? Conceptual Issues

Given the internal and external demands to evaluate innovative as well as traditional legal services programs for low-income people, how should funders and providers approach the task? There are various methodological options, which will be discussed shortly, but there are several important conceptual questions to address first: Who will be doing the evaluation, and who are the stakeholders who constitute the users or audience of the evaluation? What are the goals and objectives of the program? What is the program's working theory? To what extent will the evaluation focus on needs, processes, outcomes, or costs? And what comparisons or controls are available for purposes of analysis?

Before addressing these questions, it is important to note that programs (or interventions) and hence evaluations can be focused at many different levels of human or institutional activity. For example, the research of Clark Cunningham analyzes the interactions and communication patterns of an individual attorney and his or her client, a micro-level assessment.[12] In contrast, an evaluation could examine the outcomes of an entire statewide system of legal services, a macro-level assessment. Somewhere in between lies evaluation of a local program that serves a single community, which tends to be the focus of our examples below. However, most of the issues we address are relevant to various levels of legal services activity.

A. Evaluators and Stakeholders

Evaluations can be initiated under various institutional arrangements and address different audiences, and these perspectives matter to the design of the evaluation. Typically, funders require evaluations, but program administrators increasingly employ evaluation as a management tool on their own. Even when an outside funder requires an evaluation as part of a grant agreement, it nevertheless may give the grantee the responsibility for evaluating itself and reporting back. Regardless of whether an evaluation is required or voluntary, funders or

11. Pub. L. No. 104-193, 110 Stat. 2105 (codified as amended in scattered sections of 7, 8, 21, 25 & 42 U.S.C.)

12. *See* Clark D. Cunningham, *Evaluating Effective Lawyer-Client Communication: An International Project Moving from Research to Reform*, 67 Fordham L. Rev. 1959 (1999).

TABLE 1
ADVANTAGES AND DISADVANTAGES OF VARIOUS EVALUATION ARRANGEMENTS

How the evaluation is initiated	How the evaluation is implemented		
	Funder hires outside evaluator (consultant)	Grantee hires outside evaluator (consultant)	Grantee evaluates itself
Funder initiates or requires an evaluation of its grantees	Done by larger funders and experienced consultants, these evaluations tend to be sophisticated if somewhat detached and less useful to local program administrators	Routine arrangement for smaller grant programs, these evaluations are sometimes incomparable across programs and thus of limited use to funders	Typically involves collecting administrative data and making routine reports
Grantee initiates an evaluation of its own activities	Rarely occurs	Typically involves a low-cost evaluation with much dependent on the quality of the consultant	Potentially rewarding but requires significant staff time and in-house expertise

managers still must decide whether to hire an outside consultant or to perform the evaluation in-house. Table 1 presents the possible evaluation arrangements along with some brief commentary on their basic advantages and disadvantages.

Differences among audiences or users of an evaluation influence its scope and design. While funders and managers typically constitute the users of an evaluation, findings also can be useful to others, such as front-line workers, clients and their representatives, interested members of the communities served by the program, and administrators of contingent or related programs. Many of these stakeholders will not directly be involved in the evaluation, however a plan to do evaluation that overlooks a process or outcome of particular interest to an important stakeholder group risks producing findings that will be seen as biased or flawed. Thus, the evaluators should consider the interests and concerns of various stakeholders through informal discussion and an invitation to comment on the proposed evaluation or even direct collaboration in the identification of performance measures and the development of an evaluation plan.

B. Goals and Objectives

Programs that provide legal services to the poor represent purposeful individual and organizational activity. Therefore, it is necessary to begin with a clear articulation of the goals and objectives of

that activity. If an evaluation is going to assess effectiveness, there must be some explicit statement of what the program seeks to achieve in order to judge effectiveness. This is not as obvious or straightforward a task as it first may seem. To begin with, the goals and objectives of a program are often intangible, or they may remain implicit, so that there may be no clear statement at hand. Consider, for example, the declaration by Congress of the purpose of the LSC, which includes not only concrete goals such as the "need to provide high quality legal assistance to those who would be otherwise unable to afford adequate legal counsel,"[13] but also the finding that "for many of our citizens, the availability of legal services has reaffirmed faith in our government of laws."[14] Indeed, legal services was initially a project of the Community Action Program launched by the Office of Economic Opportunity, itself a part of the War on Poverty.[15] A speech drafted by Edgar Cahn and given by then Attorney General Robert Kennedy in 1964 captured the flavor of the problem: "The poor man looks upon the law as an enemy, not as a friend. For him the law is always taking something away."[16] The history suggests that legal services seeks not only to assist individuals who are in danger of eviction or provide advice on the drafting of wills, for example, but through the sum total of its activities, to address a helplessness that "can stem from an inability to assert real rights."[17] Legal services could help ensure that even the poorest of Americans have a stake in the legal system.[18]

How, then, is an evaluation at the program level to articulate such goals? Returning to the question whether technological innovations such as information kiosks are effective means of achieving objectives demonstrates the necessity of bringing to the fore even these intangible goals. What are the ramifications of replacing personal contact with informational kiosks if programs goals include the affirmation of faith in the legal system and addressing a sense of helplessness? Perhaps personal contact is necessary. On the other hand, putting basic information directly in the hands of community members or clients may be more empowering. However the issue is ultimately decided,

13. Pub. L. No. 93-355, 88 Stat. 378 (1974) (codified as amended at 42 U.S.C. § 2996 (2)).

14. *Id.*

15. *See* Earl Johnson, Jr., Justice and Reform: The Formative Years of the American Legal Services Program 39-70 (1978) (describing the process that culminated in the founding of a federal office of legal services).

16. *Id.* at 41 (quoting Edgar Cahn).

17. *Id.*

18. A decade before, Gunnar Myrdal had made a similar point regarding levels of distrust of the law among African Americans. *See* 2 Gunnar Myrdal, The Negro Social Structure: An American Dilemma 525 (1964). Myrdal wrote that African Americans "will not feel confidence in, and loyalty toward, a legal order which is entirely out of their control and which they sense to be inequitable and merely part of the system of caste suppression." *Id.*

the example illustrates both the value of including the full range of program goals, as well as the sometimes indeterminate nature of the enterprise.

To complicate matters further, program personnel and stakeholders also may have quite different ideas about the goals and objectives of the program. Even when there is agreement, the objectives subscribed to may be logically or practically inconsistent with one another, such as the conflicting objectives of serving the legal needs of a community versus effectively representing an individual client. Consider the legal services office with a contract to provide direct services to at least 200 clients in a particular category—for example, in matters of housing, referral to special education, disciplinary hearings, disability, or child custody. Many of the hearings in which legal services personnel participate are routine, and a number of the lawyers or management in the office propose alternative methods of handling the individual cases (such as off loading to trained pro bono attorneys, students, or paralegals) in favor of developing impact litigation to address problems faced by multiple clients.[19] How should the office prioritize case selection? Should staff reduce individual caseloads to allow for the development of potential impact litigation, endeavors that can be extraordinarily time consuming and risk the expenditure of office resources with little short term payoff? Without explicit consideration of program goals, administrators and staff may lack a framework for resolving these questions. Often such conflicts and inconsistencies persist because of the tendency for program funders, planners, and administrators to construct and rely on rather vague goals, which function more as symbolic compromises rather than as standards against which an empirical outcome can be assessed.

The task of defining goals and objectives can certainly begin with existing charters and mission statements, but it probably should not end there. Discussions may need to be held with program personnel, clients, community representatives, funders, and other stakeholders. The more extended list of goals that will inevitably result from such a process can then be examined and refined. The LSC has developed a set of performance criteria that provide a useful starting point for thinking about some of the specific goals and objectives that a legal services program might define for itself.[20] Table 2 summarizes LSC's performance criteria, which are organized in terms of broader performance areas.

19. For recipients of LSC funds, any such litigation would need to comply with LSC restrictions, which, among other things, prohibit LSC recipients from initiating or participating in a class action or advocating welfare reform. *See* Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, § 504(a), 110 Stat. 1321, 1321-53; 45 C.F.R. 1610.8 (1997).

20. *See* Legal Servs. Corp., LSC Performance Criteria (1995).

TABLE 2
PERFORMANCE CRITERIA OF THE
LEGAL SERVICES CORPORATION

Performance Areas	Performance Criteria
Effectiveness in identifying and targeting resources on the most pressing legal needs of the low-income community	1. Periodic comprehensive assessment 2. Ongoing consideration of needs 3. Setting priorities and allocating resources 4. Implementation 5. Evaluation and adjustment
Effectiveness in engaging and serving the client community	1. Dignity and sensitivity 2. Engagement in the client community 3. Access and utilization by the community
Effectiveness of legal representation and other program activities intended to benefit the low-income population in its service area	1. Legal representation 2. Other program services to the client population 3. Other program activities on behalf of the client population
Effectiveness of administration and governance	1. Basic administration 2. Board governance 3. Financial administration 4. Personnel administration 5. Internal communication 6. General resource development and maintenance 7. Coherent and comprehensive delivery structure
Source: Legal Servs. Corp., LSC Performance Criteria (1995).	

An important final step involves coming up with an operational definition of the achievement of a goal or objective. For example, if the goal is to provide assistance to a higher percentage of the population in need of legal services and, with limited resources, the means chosen aim to increase the effectiveness of pro se litigation, how will the achievement of that outcome be measured? Counting the number of participants in a training program or recipients of program materials will not provide data on the effectiveness of the litigation. Clearly the evaluation must examine outcomes, but here the legal field presents unique challenges. Counting judgments in favor of pro se litigants generally would be inadequate because so many legal matters never reach the courtroom or are settled at the courtroom door. Moreover, settlements are rarely clear-cut victories or defeats for any given client. Even a judgment against a client is not necessarily a wrong or bad outcome, provided the client was adequately represented, because not all cases are equally meritorious or have comparable probabilities of success. In other words, the program objective of providing effective representation may not necessarily be measured reliably by the attainment of a substantive financial or legal outcome. The LSC has defined a variety of indicators for each performance criterion

shown in Table 2. These indicators (which are too numerous to include in Table 2) provide suggestions for operationalizing outcomes of legal services programs.[21] One indicator of engagement in the client community, for example, might be the number of relevant community events or meetings attended by program staff in a given time period.

C. *Program Theory or Logic Model*

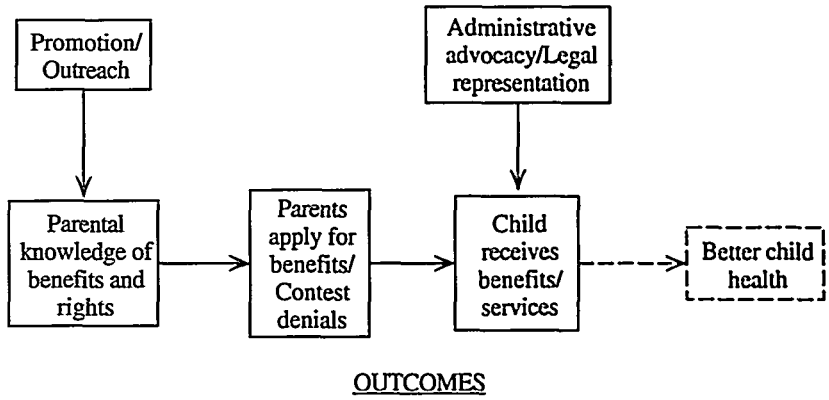
Another important conceptual task in an evaluation is the development of a working theory of the program, referred to as a *logic model* or *outcome line* in the evaluation literature.[22] Although terms like logic model and program theory connote something rather abstract and impractical, a *program theory* turns out to be very useful, especially when resources for evaluation and data collection are limited. In a word, a program theory is a diagram that makes explicit the links between the activities and the outcomes of a program; it describes how the program is supposed to work. The development of a program theory clarifies the activities that need to be monitored and the outcomes that need to be measured in an evaluation. In addition, the process of devising the program theory itself can expose problems or inconsistencies in the overall design of the program, so that modifications of the program can be made often on the basis of this conceptual exercise alone.

It is best to illustrate the idea of a program theory with an example. A legal services program might have a child health initiative that aims to increase parents' knowledge of and access to Medicaid and other medical benefits and services for their children. In addition, the child health initiative may represent children and their parents in legal and administrative disputes over eligibility and the receipt of benefits. To achieve these goals, the program may provide publications (such as "know your rights" brochures), send representatives to attend meetings in the community, and engage in other promotion and outreach activities. In addition, of course, such a program would provide legal representation to parents seeking to obtain or reclaim benefits for their children. Figure 1 presents an outcome line that might be used to describe this kind of child health initiative (following the approach suggested by Mohr).[23] The boxes in the top row represent activities of the legal services program, principally promotion and outreach activities and legal representation, which are designed to produce outcomes, represented by the bottom row of boxes. The arrows connecting the boxes represent causal influences (from activities to outcomes, as well as from one outcome to the next). For example, promotion and outreach activities aim to cause greater parental

21. *See id.*
22. *See* Lawrence B. Mohr, Impact Analysis for Program Evaluation 1-24 (1992).
23. *See id.*

knowledge and awareness of both the benefits available for their children and the due process rights protecting the children's interest in receiving such benefits. Greater awareness in turn is assumed to lead parents to apply for benefits or to assert rights to maintain benefits and, moving to the right on the outcome line, to receive benefits. Legal representation, a program activity, then facilitates the assertion of rights and, specifically, challenges to the denial or termination of benefits. This leads to the receipt and/or maintenance of benefits and, ultimately, health services. Finally, receiving benefits and health services leads eventually to better child health. This last connection is represented with dashed lines because it is beyond the scope of the planned evaluation; it is an ultimate outcome that the evaluators simply assume will result from the achievement of prior outcomes. While this ultimate outcome will not be included in the data collection plan, it is important to include it in the program theory for conceptual reasons.

FIGURE 1



Developing an outcome line like that in Figure 1 provides a method for planning an evaluation and making sense of its findings. To begin with, it suggests what program activities and client outcomes the data collection effort should focus on. In this example, it is clearly important to record not only whether or not children are receiving benefits, but also to gauge the cognitive prerequisite of parental knowledge and awareness and the behavioral prerequisite of applying for benefits. The program theory represented by the outcome line also suggests critical linkages to examine in the analysis of evaluation findings. For example, one would certainly examine the association between promotion activities and awareness among parents in the community as well as the extent to which greater awareness leads parents to actually apply for benefits. Assume that the data suggest that knowledge

and awareness have indeed increased—but that parents are nevertheless not applying for benefits, perhaps because of difficulties experienced in completing the required paperwork. Such a finding might indicate the need for counseling (a new program activity) designed to help parents complete the application process. In this way, a program theory provides a method not only for planning the evaluation but for making the results more useful to program planners and administrators, especially to the extent that they participated in its development.

D. Needs, Processes, Outcomes, and Costs

In addition to specifying objectives and a program theory, it is necessary to decide whether the purpose of the evaluation is to examine needs, processes, outcomes, or costs. *Needs assessment* attempts to document the characteristics and legal services needs of the target population or community for purposes of designing or fine-tuning a program. *Process evaluation* (also referred to as *formative evaluation*) focuses on how the program is working—its implementation and ongoing activities. *Outcome evaluation* (also called *summative evaluation*) focuses on what the program is achieving—its impacts on individuals and communities. *Cost analysis* considers the efficiency of the program in terms of the outcomes achieved for a given investment of resources; it also may involve a comparison of the costs to the quantified benefits of the program (*cost-benefit analysis*). Of course, evaluations can and often should consider several if not all of these perspectives; however, in practice, resource constraints and other considerations often lead to an emphasis on one evaluative purpose over another. For example, providers with an established system of service delivery may be interested primarily in gathering evidence of their program's effectiveness and accomplishments—an outcome (or summative) evaluation—perhaps for purposes of attracting more funding. Providers experimenting with a new or innovative system of service delivery, in contrast, may not expect the program to have achieved any tangible outcomes; rather they may be more concerned about its implementation and the proper functioning of its various components—a process (or formative) evaluation. In still other situations assessing the needs of a community or a target population may be the primary purpose of the evaluation.

E. Comparisons and Control Groups

When the assessment of outcomes or cost effectiveness is a part of the evaluation, it especially is necessary to include comparisons or control groups. Nearly all attempts to document the achievements of a program must address the question of what would have happened in the absence of the program, sometimes referred to as the *counterfactual.* The effect or impact of the program is the difference between what actually happened to those individuals or communities targeted

by the program and what would have happened to them had the program not been there (the counterfactual). Because we cannot turn back the clock, however, we ultimately cannot know the counterfactual. For example, you can never truly know the effect your chosen profession has had on your life because you cannot go back in time and choose another profession to see how differently things would have turned out.

The answer in evaluation, as in your personal life, is to make comparisons. You compare yourself to the way you were before you chose your profession, or you compare yourself to siblings or friends with backgrounds similar to yours who chose other professions. In evaluation, these comparisons are called controls. The before-after comparison is one type of control, sometimes termed a *reflexive control.* Another is the *control group*, a reference group that is as similar as possible to the targets of the program but that does not receive the program's information or services. The best method of assuring that the control group is similar to the intervention group is random assignment of individuals to each group. When random assignment is infeasible, often evaluators employ *statistical controls*, that is characteristics or variables that describe both groups and that can be used to balance statistically their scores on some outcome measurement (independent of the program's effects). In sum, these various controls offer ways to gauge more accurately the true impact of a program on some outcome of interest and must be included in the planning and design of an evaluation.[24]

III. How to Evaluate? Methodological Approaches

The conceptual issues just discussed help frame and focus the decision about what methodological approaches to use. By methodological approaches we mean tools and techniques for gathering data and making conclusions about the processes and outcomes of a program. Some of the most widely used methodological approaches include analysis of existing data, focus groups, surveys, and experiments. Below we discuss some of the advantages and limitations of each approach for the legal services field.

A. Existing Data

Most legal services providers already collect a fair amount of data as part of the everyday administration of their programs. Intake forms, case files, telephone logs, time sheets, even hits on a homepage provide raw data that offer several advantages for evaluation. To be-

24. *See id.* at 44-79; *see also* Peter H. Rossi & Howard E. Freeman, Evaluation: A Systematic Approach 297-330 (5th ed. 1993) (discussing designs for assessing program outcomes in which control or comparison groups are identified or constructed by nonrandom means).

gin with, existing data are already at hand and relatively costless to collect, particularly if they are stored electronically in a database program. Existing data also are unobtrusive in the sense that individuals do not have to be questioned or observed beyond what normally occurs in the administration of the program. Additionally, existing data are generally gathered regularly over time, so that trends and changes over time can be assessed, including the use of reflexive controls.

Of course, there are limitations on the use of existing data as well. One obvious limitation is that existing data may not record or measure the particular process or outcome of interest to the evaluators. There can be problems with the quality of existing data, such as incomplete or inconsistent record-keeping, missing or discarded records, and lack of standardization in terms of the information gathered and stored. Another frequent limitation is the lack of computerization of existing data, requiring manual data extraction and key-entry into a database before meaningful analysis can be done. Finally, existing data usually include information only on those served by a program and thus cannot provide information on unserved populations that may be important for purposes of needs assessment or analytical comparison. Nonetheless, there may be other sources of data for making such comparisons.

Fortunately, some of these limitations can be overcome with a few simple investments that can have big payoffs in terms of doing evaluation. First, providers should look for opportunities to collect and record pieces of information critical to the evaluation of their program, perhaps by affixing a few additional measures to a case record or other standard administrative form, particularly measures regarding outcomes (such as whether or not a family is evicted). Second, providers should standardize their record-keeping forms and procedures as much as possible as well as invest sufficient time in training staff to be more complete and consistent in their record-keeping activities. One important aspect of standardization is to use numeric coding in place of or along side of text when information is recorded. When only written, open-ended information is recorded, coding must be done after the fact, a less reliable and more time-consuming procedure to follow. Finally, computerization of records greatly facilitates later analysis.

Existing data also are available in the form of government surveys and other statistics produced by the Census Bureau, the Bureau of Justice Statistics, the Federal Judicial Center, and other statistical agencies. These data are published in various summary reports or can be directly accessed through databases (on CD-ROM) or via the Internet.[25] The key to making much of this government data useful for

25. A good place to begin a search for government surveys and statistics on the Internet is the FedStats site. *See* Federal Interagency Council on Statistical Policy,

practical evaluation of a program that serves a particular community is the ability to analyze the relevant variables at the appropriate geographic level of disaggregation. Internet data-access tools, such as the Judicial Statistical Inquiry Form created by Theodore Eisenberg and Kevin Clermont of Cornell University, provide a means to do such customized analysis using Federal Judicial Center data (and soon state court statistics as well).[26] The Census Bureau and other federal statistical agencies also have various data-access tools on their websites that are designed to facilitate customized data analysis and use.

B. Focus Groups

One of the least costly and increasingly popular methodological approaches to evaluation is the use of focus groups, particularly for needs assessment or process evaluation. A focus group is a small group discussion (involving about eight to ten participants) led by a moderator and focused on a particular theme or topic, such as experiences clients have had with a particular program or service. In the discussion, participants respond to a moderator's questions, confirm or contrast each other's experiences, and typically generate a lively and informative discussion about the given topic. The session is often audio-taped to facilitate recall and the preparation of a short, written summary by the evaluator. At a minimum, two or three focus groups on the same topic are generally needed to represent the breadth and depth of viewpoints, with additional focus groups necessary to represent key subgroups or specialized themes (if the evaluation requires this). Merton, Fiske, and Kendall's classic book on focus group methods served as the standard text for many years,[27] but Krueger's widely used book[28] and other recent sources[29] provide more concise and up-to-date guidance on the focus group technique.

Focus groups have become increasingly popular in evaluation because they cost less than other methods, can be implemented quickly, and produce rich and convincing data that often provide insights useful to program planners. With a little expert advice or training, program staff can plan and implement much of a focus group study on

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FedStats: One Stop Shopping for Federal Statistics (visited Feb. 6, 1999) <http://www.fedstats.gov/>.

26. *See* Theodore Eisenberg & Kevin M. Clermont, *Judicial Statistical Inquiry Form* (last modified Nov. 15, 1998) <http://teddy.law.cornell.edu:8090/questata.htm>.

27. *See* Robert K. Merton et al., The Focused Interview: A Manual of Problems and Procedures (2d ed. 1990).

28. *See* Richard A. Krueger, Focus Groups: A Practical Guide for Applied Research (2d ed. 1994).

29. *See* Debra L. Dean, *How to Use Focus Groups*, *in* Handbook of Practical Program Evaluation 338, 338-49 (Joseph S. Wholey et al. eds., 1994) (discussing when and how focus groups can be used); *see also* David W. Stewart & Prem N. Shamdasani, Focus Groups: Theory and Practice 14 (1990) (providing "a systematic treatment of the design, conduct, and interpretation of focus groups interviews").

their own, providing another advantage. The main drawback of the focus group method is that it fails to provide the kind of systematic, quantitative findings that funders or other stakeholders often demand as proof of a program's effectiveness.

C. *Surveys*

Surveys often come to mind when thinking about methodological approaches to evaluation, particularly surveys of clients. There are a number of texts that discuss in detail how to plan and conduct surveys, including Babbie,[30] Dillman,[31] and Fowler.[32] Obtaining expert advice is also sometimes helpful because even apparently simple surveys often contain subtle complexities (e.g., in sampling or question wording). Surveys are often thought of as one-shot exercises, but it is useful to consider the possibility of incorporating surveys into the routine procedures of a legal services program, such as intake.

The two basic surveying approaches include interview surveys and self-administered surveys. Interview surveys require interviewers who ask people questions in-person or over the telephone. While interview surveys are clearly more expensive and labor-intensive, they have the advantage of allowing for more complex questions (because interviewers can help explain questions to respondents) and producing a higher response rate. When involving a low-income, immigrant, or elderly population, interview surveys offer the added advantage of not depending on the literacy levels or visual abilities of respondents.

Self-administered surveys involve questionnaires that are handed out or mailed to respondents to complete on their own. Computer terminals and the Internet are increasingly being used for self-administered surveys as well. Fewer staff are needed to implement a self-administered survey, and often self-administered surveys can be incorporated fairly easily into the routine administration of the program. Because there is no interviewer present, self-administered questionnaires also offer more privacy and confidentiality, which is especially important for sensitive topics such as drug use or domestic violence. The disadvantages of self-administered surveys lie primarily in their dependence on the literacy level of the respondents and on the willingness and ability of respondents to complete the questionnaires fully and accurately before returning them. Moreover, experience across many different populations suggests that self-administered surveys provide generally lower response rates and thus may result in biased

30. *See* Earl R. Babbie, Survey Research Methods (2d ed. 1990).

31. *See* Don A. Dillman, Mail and Telephone Surveys: The Total Design Method (1978).

32. *See* Floyd J. Fowler, Jr., Survey Research Methods (rev. ed. 1988).

representations of the characteristics or attitudes of the target population.[33]

D. Experiments

Experimentation is often associated with the medical sciences, so that those involved in social or legal services may overlook the possibility of doing an experiment to learn about the effectiveness of the programs they fund or administer. Experimentation, however, is sometimes a quite feasible methodological approach, even with limited resources. Moreover, it is an approach that is widely considered the best and most valid way of convincingly demonstrating the true causal effects of a program.[34] For this reason, experimentation is nearly synonymous with an outcome or summative evaluation.

At its core, experimentation involves randomly assigning individuals either to participate in a new program or delivery system (called a treatment group) or not to participate (a control group). For example, if a legal services program seeks to experiment with the use of nonlawyers, it may randomly assign some number of new cases to nonlawyers (the treatment *Evaluating Legal Services* group), with the remaining cases handled in the usual manner (the control group). Random assignment is done using a random numbers table (included in most introductory statistics textbooks) or the random number generator feature of spreadsheet programs such as Microsoft Excel. After some time, the treatment group and control group are compared in terms of some outcome measure, for example, the maintenance of benefits or the attainment of work eligibility. Any difference between the treatment group and the control group (beyond what would be expected from chance variation due to the initial random assignment) is considered proof of the program's effects.

In concept, experiments can be fairly simple to design and analyze (with perhaps the exception of the required statistical significance testing). Moreover, often the allocation of clients to a new delivery system might as well be done by random assignment anyway. Much of the challenge in implementing an experiment, however, lies in the difficulty of adhering to random assignment in the administration of the program, the threat of participants (particularly members of the control group) dropping out of the experiment (called experimental mortality), and the ethical problems that can arise when services are withheld from individuals with genuine need.

33. *See* Dillman, *supra* note 31, at 49-52 (finding that the response rates to mail questionnaires are lower than the rates associated with in-person interviewing); Fowler, *supra* note 30, at 48-49.

34. *See generally* Thomas D. Cook & Donald T. Campbell, Quasi-Experimentation: Design and Analysis Issues for Field Settings (1979) (outlining the experimental approach to causal research in field settings).

An evaluation conducted by Professor Carroll Seron of the Baruch College School of Public Affairs provides a good example of experimentation in the legal services field.[35] Professor Seron was asked by the Legal Aid Society to evaluate a program designed to test the effectiveness of providing legal help to low-income litigants in New York City's housing court. In the evaluation, legal outcomes were compared for clients who received legal assistance with those who did not. The evaluation had a strong methodological foundation because clients were randomly assigned to the two possibilities. While random assignment required careful planning and control, it turned out to be quite feasible in New York City's housing court because there are many more litigants than the program could possibly provide with full legal representation. This same kind of experimental design also could be used to examine the effectiveness of programs in which legal assistance is provided by non-attorneys (with supervisors) or by information products and counseling.

The use of an experimental design raises complex ethical questions because, by design, some clients will not receive the potentially beneficial treatment under study. A decision about the ethical feasibility of an experimental design must be carefully evaluated on a case-by-case basis. In the example just described, much discussion between the lawyers and social scientists resulted in a judgment that the experimental design was ethically acceptable because the Legal Aid Society could not, in any case, serve all potential clients (as mentioned before, there were many more potential clients than lawyers available to serve them). Furthermore, there was a long-term interest on the part of the Legal Aid Society in demonstrating empirically that a lawyer can make a significant difference in the outcome of a case. The use of an experimental design provided the potential to make the strongest case for expanded funding to provide additional lawyers to serve housing court clients.

One final point must be clarified about experimentation, namely, that experimentation can be done with organizations as the unit of analysis in addition to individual clients. For example, a funder interested in testing a new approach to legal services may hold a grant competition and, perhaps after some initial threshold or eligibility screening, award grants to a group of legal services providers on a random basis. (This is not at all an unreasonable approach, given that there often are many more deserving applicants than available grant funds). Applicants who passed the threshold screening but did not receive awards would become the control group. After some time, data could be collected from both groups and compared, with any statistically significant difference becoming the basis for an inference of

35. Prof. Caroll Seron is currently working on this project and as of yet there is no publicly available report on this evaluation.

program impact. This exemplifies that whole organizations or even geographic areas, not just individuals, can become the elements of an experiment for purposes of evaluating the outcomes of a legal services program.

CONCLUSION

This Article has introduced and discussed some of the conceptual and methodological issues involved in evaluating systems for the delivery of legal services for the poor. Although resolving some of these issues (particularly the details of methodology) may require expert advice, many of the important decisions that determine the appropriateness and usefulness of an evaluation depend on conceptual considerations for which program funders, administrators, staff, and client communities must share responsibility. We hope this Article provides a helpful initiation to the topic of program evaluation for these individuals in the legal services field and will serve to encourage them to see evaluation as a useful tool. Readers interested in more comprehensive information about the conceptual and methodological issues summarized here should consult texts by Rossi and Freeman,[36] Mohr,[37] and Wholey, Hatry and Newcomer.[38] In addition, the General Accounting Office has published several useful manuals for evaluation and performance assessment that cover some of the same issues.[39] Finally, we wish to emphasize that evaluation in the legal services field should not be viewed or employed only narrowly as a mechanism to ensure compliance to the restrictions and regulations of government agencies or other funding sources. Rather, evaluation can and should be put to the more productive use of generating insights and information that help improve the delivery of legal services to those who face economic barriers to adequate legal counsel and limited access to justice and opportunity.

36. *See* Rossi & Freeman, *supra* note 24.
37. *See* Mohr, *supra* note 22.
38. *See* Wholey et al., *supra* note 29.
39. *See, e.g.*, U.S. Gen. Accounting Office, Designing Evaluations (1991) (addressing the logic of program evaluation).