TRACKING CLIENT OUTCOMES: A QUALITATIVE ASSESSMENT OF CIVIL LEGAL AID'S USE OF OUTCOMES DATA, WITH RECOMMENDATIONS

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ABSTRACT

In virtually all sectors of society, people are using data to improve what they do. Everyone, it seems, is interested in data, and is searching for best strategies to draw on its power. The stakes are high in the civil legal aid community, where strengthened advocacy can enable people to preserve their homes, their relationships with their children, their life savings, their physical and emotional well-being, and even their freedom.

Yet, in the civil legal aid community, awareness of the power of data is just beginning to take root. Traditionally, civil legal aid has been thinly funded, with little infrastructure or capacity for tracking data, and little consensus in the field as to what data should be tracked. Insofar as data is tracked, the focus in legal aid has traditionally been on "outputs:" the kinds of details that include the number of cases handled or the nature of lawyering tasks performed. Only in recent years, have leaders in the community begun to urge focusing increased attention on "outcomes," the results obtained by clients, and the larger impacts those results may have in our society.

The value of outcomes data lies in its potential to enable legal aid programs to understand the impacts achieved through their work, to improve the quality of their work, and to help explain the value of their work to the public. Better data on outcomes, collected carefully and deliberately, is essential to accomplishing the goals of advocates, organizations, and clients, and to determining whether those goals are in fact being achieved. Intentional pursuit of outcomes data also prompts a valuable consideration of the views of clients and of those who work with them in the social services sector about what defines success for clients.

If a mantra exists in some places for using outcomes data to understand, improve, and explain civil legal aid, it is not yet pervasive in the legal aid community in New York City or in the national civil legal aid community. Among civil legal aid providers and funders who are enthusiastic about outcomes tracking, there is little consensus on best strategies and models. And among skeptics, there are continuing

concerns about the burdens of collecting data, the risks of over-relying on data, the limited practical value of data, and more. To some extent, the lack of consensus suggests room for progress: everyone we spoke with saw value in providers, funders, and client communities learn about the priorities for each constituency and working together.

In this article, we build on a series of interviews with leaders in the provider and funder communities to offer a snapshot of current perspectives on working with outcomes data. We also rely on insights provided by a panel of expert advisors (researchers, legal aid providers, experts in the use of data), and obtained through a review of the literature. We describe the conversations that are happening on the ground today about the leading issues in outcomes tracking, including the arguments for and against certain models and strategies, and the opportunities for moving forward with best practices.

In a first set of recommendations, we identify options for unlocking the power of outcomes tracking through practices that civil legal aid programs can pursue today, and that some providers and funders are already pursuing. First, we gather and endorse suggestions for simply using outcomes data effectively. Second, we urge connecting basic outcomes findings to "big goals:" specific, mission-related, achievements that are important to clients, for example, client safety, stability, family integrity, and more. Third, we recommend combining outcomes data with other data to understand and explain the importance of the work of legal aid programs. Fourth, we recommend increasing the level of communication between funders and providers, both to increase the value of data collected and reduce the burdens inherent in collecting it.

In a second set of recommendations, we highlight the importance of pursuing solutions to harder challenges in tracking outcomes. Our recommendations include developing systems for tracking "systemic advocacy," securing feedback from clients and from other service recipients about outcomes they achieve, generating better court data on litigant outcomes, and developing systems to track outcomes for clients who are referred elsewhere for services for their multiple legal needs.

In a third set of recommendations, we underline the importance of preserving the integrity of outcomes data at all times. We recommend that providers adopt a culture that supports the exercise of care in gathering, organizing, and analyzing data. Second, we recommend that programs take steps to manage the challenge of "causation" – the fact that multiple factors may contribute to winning and losing cases, and that an over-reliance on data can sometimes mislead audiences, or produce skewed incentives. More fundamentally, we encourage a consideration of multiple research strategies, including randomized controlled trials, as part of a larger message in support of using outcomes data while being mindful of the complexities that surround it.

As the civil legal aid community works to draw on that power, this article seeks to introduce the hard questions, capture the leading edge discussion about the answers, and to explain, explore, and recommend best practices as a means of strengthening the funding and the provision of civil legal aid.

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I. INTRODUCTION

There has never been enough civil legal aid to go around. While the contribution of legal aid seems self-evident to those who do the work and who care about the clients, the public has yet to support legal aid sufficiently to provide it to all who need it but who are unable to afford it. The empirical understanding of legal aid is also, to date, thin.

In the civil legal aid community, interest is growing in using data to deepen understanding of legal aid, improve the quality of service, and explain legal aid to the public. Providers have for years used data to report on the activities of civil legal aid programs, but the current focus of the legal aid community, and the focus of this report, is on using data to understand "outcomes."

In the sections that follow, we describe our methodology, then offer a snapshot of the New York City landscape in which civil legal aid providers and funders are carrying out their daily work. Next, we introduce leading edge issues in using outcomes data to accomplish the following purposes: to understand the work civil legal aid does, to strengthen that work, and to explain the work to others.

II.   RESEARCH METHODOLOGY AND DEFINITIONS

Our research relied on surveys, interviews, conversations with a range of experts including on measurement and on legal aid, a literature review, and consideration of measures currently being used by civil legal aid organizations. The "observation" sections in Part IV draw from anonymized quotes gathered throughout this process. The work was carried out with the assistance of a pro bono team from Morgan Lewis & Bockius LLP and in periodic consultation with members of an expert advisory panel.

Over the course of two weeks in Fall 2017, we invited legal aid leaders from 24 programs to answer questions about their use of outcomes data.[1] We did the same with 17 funders of civil legal aid. The surveys were anonymous (so we may have received multiple responses from some institutions), but invited respondents to volunteer their identity information. Participants were also invited to consult with their colleagues to answer the questions. We received 18 responses from

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[1] The surveys and responses are on file with the authors.

leaders in civil legal aid programs, with 12 respondents providing the names of their legal aid programs. We received 17 responses from funders, with 10 respondents providing the names of their organizations.

We then conducted 36 interviews through Fall 2017 and Winter 2018. Of these, we conducted 23 with providers and 13 with funders. Most of the interviews focused on the use of data within civil legal aid programs in New York City, although we also interviewed three providers in New York State (outside of the City) and five in other parts of the country. Interviews were generally held to an hour and most often conducted in person at the organization by two or more interviewers including at least one of the authors and, often, a member of the Morgan Lewis Bockius, LLP pro bono team partners. Questions were geared toward understanding the organization's activities in tracking and using outcomes data, its perspective on the pros and cons of using outcomes data, and its interests in learning more about outcomes data.[2]

We supplemented the surveys and interviews with a review of the literature on outcomes measurement, including articles focusing on outcomes measurement in the context of civil legal aid.[3] We also reviewed studies drawn from outcomes data.[4] Our research included an initiative to gather sets of measures that providers and funders are relying on to track outcomes in New York City and in other parts of the country, focusing on those that are new, comprehensive, and/or influential in some other respect.[5] Finally, our research also took into account an "Outcomes Catalog" containing 500 measures collected by the Legal Services Corporation ("LSC"). The Catalog is presented on the LSC website as part of LSC's "outcomes toolkit."[6] LSC produced the toolkit to help implement an LSC funding requirement that asks programs to confirm, as part of their grant applications, that they have adopted a methodology of their own selection to track outcomes data in extended service cases.[7] In addition to the Catalog, the toolkit offers videos introducing outcomes measurement and highlights four legal aid programs' experiences with

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[2] The interview questions and notes are on file with the authors.

[3] For a complete bibliography, see *Tracking Outcomes: A Guide For Civil Legal Aid Providers & Funders*, *Appendix 3*, Nat'l Ctr. for Access to Justice, http://ncforaj.org/wp-content/uploads/2018/06/Sources-Pertinent-to-Tracking-Outcomes-App.-3.pdf.

[4] *Id.*

[5] The authors have collected sets of outcome measures used by providers and funders in Cleveland, Florida, Michigan, Virginia, California, and New York City. These measures are organized into an appendix which is available online at
Tracking Outcomes: A Guide For Civil Legal Aid Providers & Funders, *Appendix 2*, Nat'l Ctr. for Access to Justice, http://ncforaj.org/wp-content/uploads/2018/06/Sources-Pertinent-to-Tracking-Outcomes-App.-3.pdf.

[6] *Outcomes Catalog,* Legal Serv. Corp., https://www.lsc.gov/grants-grantee-resources/civil-legal-outcomes/outcomes-catalog (last visited Jan. 31, 2019).

[7] *Program Letter 6-15,* Legal Serv. Corp., https://www.lsc.gov/program-letter-16-5 (last visited Jan. 31, 2019).

outcomes.[8]

It is a big change for civil legal aid programs to track outcomes. To start, a common vocabulary is required. Developing that vocabulary begins with considering the meaning of "inputs," "outputs," "outcomes," "measures," and "indicators."

Inputs are things that allow civil legal aid programs to be productive. For example, the number of lawyers in an organization is an input. Many other inputs are important as well, ranging from features of the office and the organization's funding, to features of the courthouse, to features of the law itself.

Outputs are things that civil legal aid programs produce using inputs. Outputs include the numbers of people served, numbers of matters handled, and numbers of each type of services performed (for example, advice, brief service, traditional representation). Outputs also include the specific actions performed by attorneys (for example, numbers of motions filed, settlements procured, and hours spent on cases). Providers and funders have traditionally tracked a broad range of outputs, since both share an interest in knowing "how much work a program does."

Outcomes are the consequences, impacts, or effects of the services provided. Outcomes may be viewed in terms of the results achieved for individuals, families, communities, or even for the larger society and the law itself. Outcomes can include the legal result in cases (for example, the wins, losses, dismissals); the specific achievements (i.e., the tenant can remain in the apartment for three weeks, the amount of rent owed is reduced); the change of status in a client's life (for example, the family moves to a safer home); impacts on a community (for example, the homeowner stays in the home which helps to stabilize market values in a neighborhood); and impacts on the law itself (for example, a decision announces a new legal principle).

Measures are what they sound like: specific concepts that, if established through findings, document phenomena as observed or otherwise quantified. Inputs, outputs, and outcomes can, in theory, be measured.

However, theory only goes so far. Some outcomes do not have readily available measures, so to determine their existence requires relying on the most accurate measures. Thus indicated, if not exactly measured, these outcomes can still be considered established. An "indicator" is like a "measure," but rather than treating the measured data-point as an end in itself, the indicator treats the data-point as an indication of some other concept that is important to establish but less amenable to

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[8] Case Studies, Collecting Outcome Data on Limited Services: A Case Study of Atlanta Legal Aid Society's Enhanced Services Project, Legal Serv. Corp., https://www.lsc.gov/grants-grantee-resources/civil-legal-outcomes/case-studies.

direct measurement.

For example, if a legal services lawyer succeeds in preventing a client's eviction, the program could report on the outcome in several different ways. The program could report on simply having "prevented eviction" (a case "decision outcome measure" commonly used by funders).[9]

Or the program could report on the client's answer to a question as to whether the client feels more secure following the receipt of legal assistance (a "perception outcome measure").

The program could also treat the decision outcome measure and/or the perception outcome measure as indicators of a different outcome that is useful to consider, but harder to measure, such as the following: the client's living arrangement is more secure. This last outcome is less connected to the measured data-point, but reflects the program's conclusion based on the data, and may be useful in helping stakeholders understand a concept of potentially larger significance surrounding the work done by the program to prevent evictions.

III.   THE CURRENT LANDSCAPE IN NEW YORK CITY

In New York City, across the country, and around the world, people risk their homes, their physical and psychological safety, their rights as parents, their jobs, their savings, even their food, medicine and basic security because they are unable to resolve civil legal disputes. As a consequence, families unnecessarily become homeless, and people become injured, ill, isolated, hungry, and fall into greater debt. Some may even slip into the criminal justice system.

Civil legal aid is important. In the face of these risks, civil legal aid programs perform a vitally important role. Whether acting on behalf of individuals or groups, advising people about their rights or representing them in cases, relying on attorneys or non-lawyer paralegals, working independently or in coalitions, or carrying out dozens of other important roles, civil legal aid programs help to solve high stakes problems in people's moments of greatest need. Their work changes lives for individuals and often for entire communities. One legal aid lawyer in a courtroom that previously had none can change the dynamic between the powerful and the vulnerable, in the courthouse and beyond. Legal aid work is heroic, it is under-sung, and even a minimal introduction to it is a reminder of how difficult, and also important, it can be.

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9 "Prevented eviction" is the first outcome in IOLA's list of "client benefits" obtainable in the practice area of housing. *See* Appendix, at attachment A.

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New York City's adoption of a universal program to assure legal representation to all who are facing eviction in housing court is a new and a path-breaking development.[10] It requires a multi-year phase in that is currently under way. Still, it is evident that in most places and in most practice areas, too many people will continue to go without legal aid in the foreseeable future. Indeed, research shows that the need is greater than is visible, since many people do not come forward with their legal problems because they assume their concerns are not legal in nature and not amenable to legal solutions.[11] Unmet need across multiple practice areas including housing remains substantial in the City, the state,[12] and the country.[13]

Providers. Dozens of civil legal aid programs operate in New York City, offering services in multiple practice areas, providing differing levels of service, and selecting their clients based on differing intake models. Practice areas include housing, foreclosure, consumer, family, employment, maintenance of subsistence benefits, and many more. Services include advice and counseling, brief assistance, traditional representation, pro bono assistance, public education, and more. Intake models sometimes target specific client populations, often focus on people living in specific zip codes, and in most instances make eligibility contingent on having incomes that are beneath either 200% or 125% of the federal poverty line (the latter level governs services funded by revenue distributed by the federally funded Legal Services Corporation).

Funders. Dozens of funding entities support the delivery of civil legal aid in New York City, including governmental funders at the federal, state, and city levels of government, and many private funders, both philanthropic institutions and individuals. In New York City, a few

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[10] 2017 N.Y.C. Local Law No. 214B, N.Y.C Admin. Code § † 26-1301-05.

[11] See, e.g., Rebecca L. Sandefur, *What We Know and Need to Know about the Legal Needs of the Public*, 67 S.C. L. REV. 443 (2016); Rebecca L. Sandefur, *Bridging the Gap: Rethinking Outreach for Greater Access to Justice*, 37 U. ARK. LITTLE ROCK L. REV. 721 (2015); Rebecca L. Sandefur, *Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study*, AM. B. FOUND. (2014), http://www.americanbarfoundation.org/uploads/cms/documents/sandefur_accessing_justice_in_the_contemporary_usa._aug._2014.pdf.

[12] For example, in 2016, 27% of tenants facing eviction in NYC housing court had legal representation. *See* NYC OFFICE OF CIVIL JUSTICE, 2016 ANNUAL REPORT, *available at* https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ%202016%20Annual%20Report%20FINAL_08_29_2016.pdf. The number is significantly lower for consumer debt cases. In 2015, 14.4% of defendants in consumer debt cases had legal representation. *See* Appendix, PERMANENT COMM'N ON ACCESS TO JUSTICE, REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK, STATE OF N.Y. UNIFIED COURT SYS., (2017), https://www.nycourts.gov/accesstojusticecommission/PDF/2017-ATJ-Appendices-Final.pdf, Testimony from the New York City Broken Lease Task Force, New York State Permanent Commission on Access to Justice, 2016 Public Hearing, September 27, 2016, at 284.

[13] THE JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS, LEGAL SERV. CORP. (June 2017), https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf.

large institutions that are significant funders of civil legal aid, have also been significant influences on programs through their approaches to tracking outcomes data. We describe these funders below: IOLA, the LSC, the NYC Human Resources Administration, the New York State Judiciary, Robin Hood, and the New York Community Trust.

- The New York State Interest on Lawyer Account Fund ("IOLA") uses outcomes measures that have served as an important shared reference point for providers and funders of civil legal aid in New York City.[14] IOLA makes grants to providers in the City and in the State. IOLA's measures are used not only in New York, but also have been borrowed and/or adapted for use by some providers and funders outside of the State. Staff of IOLA were interviewed for this report and IOLA's general counsel served as a member of the expert advisory group that provided input for the project.

- LSC, the largest single funder of civil legal services in the United States, provides grant support in New York City to a single grantee organization, Legal Services for NYC, which provides civil legal assistance to low income individuals in neighborhoods across the City. In recent years, LSC has encouraged recipients of LSC funds to collect and present data on outcomes in addition to data on outputs that the programs have traditionally recorded and provided to LSC. LSC has posted materials on its website to guide programs on tracking outcomes to improve client service, enhance program management, and enrich public understanding of civil legal aid.[15] Currently, LSC programs are required to assert to LSC that they are tracking outcomes in extended service cases when applying for LSC funds and "explain how they are using outcomes tracking in extended service cases to manage towards their strategic goals."[16]

- The Office of Civil Justice ("OCJ") at the Human Resources Administration in New York City administers City-funds that support the provision of civil legal aid. To date, OCJ has relied on measures originally adapted from IOLA to track outcomes in eviction cases. However, OCJ is considering new measures for this

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[14] The measures were developed with Ken Smith at The Resource for Great Programs. For more information, see THE RESOURCE, http://www.greatprograms.org/.

[15] LEGAL SERV. CORP., OUTCOMES TOOLKIT AND CASE STUDIES, available at https://www.lsc.gov/grants-grantee-resources/civil-legal-outcomes/case-studies.

[16] *See Program Letter 6-15,* LEGAL SERV. CORP., https://www.lsc.gov/program-letter-16-5 (last visited Jan. 31, 2019). ("In Calendar Year 2017, grantees will have to confirm that they are collecting outcomes data for all extended services cases. In Calendar Year 2018, grantees will also have to explain how they are using outcomes data in extended services cases to manage towards their strategic goals.").

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purpose as part of the implementation of the new universal access law.[17]

- The Office of Court Administration ("OCA") in the New York State Unified Court System is another significant funder of civil legal aid in New York City. Currently, OCA does not require its grantees to track data on outcomes but rather since 2012 has required civil legal aid grantee programs to submit narratives of outcomes related to the "essentials of life:" housing, family matters, access to health care and education, and subsistence income. Twice a year, OCA requires its grantees to respond to a questionnaire seeking "program highlights" which may include representative stories, descriptions of collaborations, and discussion of outreach efforts related to outcomes in the essential areas.[18]

- The Robin Hood Foundation provides grant support to some civil legal aid programs in New York City. The organization employs a distinctive approach to measuring outcomes. It asks for reporting on the activities performed by lawyers and the favorable or unfavorable legal decisions obtained. Robin Hood assigns dollar values to those outcomes based on their cash value (e.g. maintenance of an entitlement) or their anticipated health impact (e.g. prevention of homelessness) for the client. Where possible, those estimates are based on underlying studies in which researchers relied on randomized control trial methodology.[19]

- The New York Community Trust ("NYCT") provides grant support to organizations which promote effective and fair justice systems, provide legal representation and information in civil law areas that are otherwise under-funded, and/or identify ways to increase New Yorkers' access to justice and legal solutions. NYCT is a funder of research, advocacy, and direct services and has long been interested in outcomes achieved through the provision of civil legal aid.[20]

Survey Responses. Through the initial survey of providers and funders we obtained answers identifying important themes that informed our thinking and helped to guide the interviews we carried out with legal

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[17] We also met with and exchanged thoughts on outcomes tracking with the Civil Justice Coordinator who heads the OCJ as well as OCJ staff, all of whom were among the people interviewed during the preparation of this Guide.

[18] Interview with Dan Weitz, Office of Court Administration, 12/11/17 (transcript on file with the authors).

[19] *See* ROBIN HOOD FOUNDATION METRICS, https://robinhoodorg-production.s3.amazonaws.com/uploads/2017/04/Metrics-Equations-for-Website_Sept-2014.pdf.

[20] NYCT funded the research that led to this article.

aid leaders and funder program officers.[21] Here is an overview of the survey answers regarding the main theme that emerged; that outcomes data is useful but under-used:
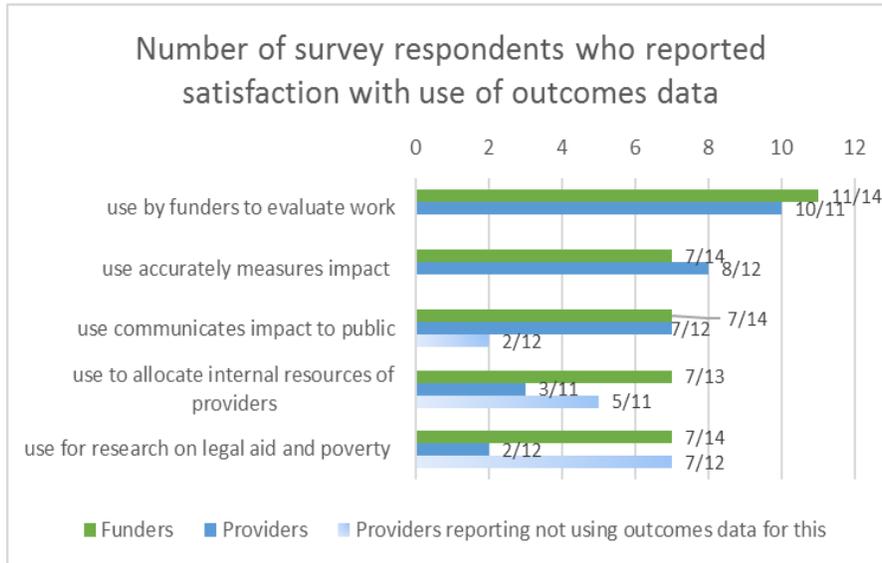
IV.   OBSERVATIONS AND RECOMMENDATIONS

In this part, we introduce leading edge issues in outcomes tracking that are important to providers and funders of civil legal aid in New York City. In the first sub-section, we explain opportunities for doing more with outcomes tracking today. In the second, we focus on pursuing solutions to harder challenges with tracking outcomes. In a third section, we highlight fundamental aspects of working with outcomes data that are important at all times, such as the preservation of data integrity.

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[21] The survey questions and responses are all on file with the authors.

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A. Unlock the Potential of Outcomes Data Today

1. Use existing outcomes data more effectively

In New York City, civil legal aid providers are using outcomes data to deepen understanding of their work, to strengthen their work by adjusting the services they deliver, and to explain their work to others. Although programs described using outcomes data in these ways, only a few programs provided examples of doing so, and the use of outcomes data by civil legal aid programs appears not yet widespread New York City.

a. Observations[22]

Supporting Narratives with Numbers. Providers and funders speak of the importance of civil legal aid in multiple settings and through media, including by making informal remarks, issuing press releases, posting on social media, publishing annual reports, and writing grant proposals. These narratives tell compelling stories and are a rich source for understanding impact. Some providers are using outcomes data to go beyond the narratives, reporting on the numbers of people who preserved their apartments, the amounts of money saved for clients and for communities by securing benefits, and the ways in which advocacy enables families to stay together.[23] One funder observed, "it is best to combine intuitive gut evaluations with hard data. Numbers tell one story, narratives tell another."

Adding new measures. Some providers look to their own outcomes data (beyond what their funders ask them to track) to gain an understanding of nuances not captured by funders' outcomes indicators. For example, one program added a field to its software, incorporating into its reporting a subjective measure that labels an outcome not only as "favorable" or "unfavorable," but also as "in between." The new field allows the program to learn that a positive result has been achieved in the client's life, even though at a first level of analysis, the decisional outcome, i.e., losing the apartment, is adverse.

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[22] In all of the following "observation" sections, the information is drawn from interviews with providers and funders. The interviewees were told their comments would remain anonymous, and so we do not cite many of the quotations that follow. The authors have all original interview notes on file.

[23] See, e.g., testimony by Empire Justice Center on outcomes from DAP program, SUSAN ANTOS ET AL., EMPIRE JUSTICE CENTER TESTIMONY, JOINT LEGISLATIVE PUBLIC HEARINGS ON 2018-2019 EXECUTIVE BUDGET PROPOSAL (2018), https://empirejustice.org/wp-content/uploads/2018/03/Budget-Testimony-2018-Human-Services.pdf.

Using data to reallocate staffing and other resources within the organization. Over time, transparent collection and internal distribution of data can prove useful across the organization to better understand staff and program performance, ultimately improving outcomes for clients. Some providers advised us that they rely on outcomes data as a factor in staff evaluations, but never mechanically. Rather they treat outcomes data as a data point alongside other data points, so that outcomes do not dictate evaluation results. One director explained that management at his organization "doesn't believe that every negative outcome is bad. Every time we talk to staff about outcomes, we say that losing cases is o.k.— we want people to take hard cases and to take risks." Outcomes data is a resource to begin conversations, and must not be relied upon exclusively given the many diverse factors that determine outcomes in civil legal aid programs.

Flagging emerging trends. One organization has developed an informal data collection process enabling staff to flag emerging trends in the office. By designating a unique hashtag for use in case management, staff can learn from one another when designated scenarios arise in cases handled across the office. The organization periodically reviews hashtag usage to assess whether data is emerging that should be formally incorporated into the organization's overall system for data collection. The process helps track outcomes as well as other phenomena. Staff report that the use of hashtags in data collection has identified important issues for the organization to investigate. For example, one hashtag was tracking whether a client had a problem with bedbugs, which encouraged more advocates to inquire about and respond to the problem.

Confirming trends. Some legal aid programs told us they do not yet analyze outcomes data to identify trends. However, even this group acknowledged that outcomes data can confirm trends originally identified anecdotally and through staff meetings. A member of our expert advisory panel described how resources can be selectively directed to particularly hot spots to respond to emergent needs based on data showing that more cases are being brought against low income people and more people are losing cases in those hot neighborhoods over a given period of time.

Continued commitment. Many providers cited the power of outcomes data to identify trends, but emphasized that the key to the use of the data for this purpose is the organization's flexibility, particularly its willingness to change indicators, as needed. One provider established a staff-led committee that continually monitors how outcomes tracking is working, engaging in ongoing dialogue with staff about the findings, tweaking its approach and criteria along the way, as new ideas and new client scenarios arise. Another program holds quarterly meetings to identify and review data trends.

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Researchers. Some providers are collaborating with researchers in universities to explore connections and trends uncovered through outcomes tracking. Universities are often welcome collaborators. For example, one organization worked with students at a nearby university to try to capture outcomes achieved by consumers who made calls to a hotline. Another organization is currently collaborating with a university to compare outcomes between those who receive brief service and those who receive full representation. Establishing collaborative relationships between legal aid programs and academic researchers can be complicated. Finding the right academic department for the type of research that is needed is important.[24]

b.   Recommendations[25]

1. **Use outcomes data** – Rely on outcomes data reported to funders to deepen understanding of legal aid, improve service, and explain the value of legal aid to new audiences.

2. **Identify trends** – Monitor outcomes for patterns that point to changes in legal needs in the low income community. including by correlating findings with data sets held by social services organizations.

3. **Go deeper with research partners** – Pursue research in collaboration with social scientists and others.

2.   Move to "big goals" and client-centered measures to report outcomes

Traditionally, civil legal aid programs (and funders) have used data to learn about inputs and outputs, as distinct from outcomes. The measures used by the programs have typically tracked such readily

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[24] This might include social scientists in Urban Affairs or Public Policy departments, sociologists, economists, or even legal academia. Upfront discussions about researcher access to data are necessary, and programs should be prepared for those discussions. More tools are coming online to assist in collaborations. The Evaluation Feedback Project is a new initiative housed at the A2J Lab at Harvard Law School that matches providers with experts who, on a volunteer basis, provide guidance to programs that seek feedback on new data design tools, available at http://a2jlab.org/resources/evaluation-feedback-project/. The Legal Aid Data Analysis Framework Tool is an online resource, intended to help legal aid programs frame and analyze their data, which contains a list of university research partners open to possible collaborations, available at https://daf.lsntap.org/home.

[25] All recommendations are addressed to providers, unless by their explicit terms they refer to providers, courts, and/or other institutions and entities.

quantifiable features as level of staffing, nature of services performed, number of instances of service provided, and number of people served.

This emphasis on outputs helps to demonstrate that a lot of work has been done but it can make it hard to communicate with people and institutions outside of the field about the importance of the work, even though engaging such audiences may be critically important to securing essential funding and strengthening the legal aid bar. People who are not already part of the legal aid community are not always inspired by numbers of cases and types of activities performed.

In an effort to capture and convey more useful information about the impacts of civil legal aid, communities in New York and across the country have been developing outcome measures.[26] However, because there are many funders and many providers, some of the sets of measures are themselves quite varied.

Variation is natural, as certain programs will need to track very specific outcomes. However, when programs are reporting many similar but different data-points to many different funders, significant administrative burdens can be generated. Also, the lack of a comprehensive set of measures means that findings cannot easily be compared from one community to the next, or one program to the next, and that larger patterns in clients' needs and outcomes may not be as discernable as would otherwise be possible and useful.

In recent years, some civil legal aid programs, and/or the larger networks of providers and funders surrounding them, have begun to reconsider their missions, activities, and accomplishments, and to intentionally identify a set of "big goals" that capture what they are trying to achieve through their work. This is happening not only in the civil legal aid field, but also in other fields, such as education and medicine. It offers a way of aligning goals within a program, focusing findings on the things that possibly matter the most, and establishing common purpose even across a community of providers and funders.

One approach, commonly termed a "logic model," relies on the premise that programs, and potentially larger communities (including not just the larger legal aid and funder community, but also the social services sector and others), aspire to accomplish big goals on behalf of clients or service recipients, and that a logical connection can be identified between the specific tasks performed by each staff person in the program or community, and those big goals.[27] The exercise facilitates identification of the big goals, while also helping staff to understand their roles and the

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[26] *See* NAT'L CTR. FOR ACCESS TO JUSTICE, *supra* note 6.

[27] For a basic introduction to the logic model process in the context of civil legal aid, *see* Amy Widman, *What Do We Talk About When We Talk About Civil Legal Aid Outcomes (2007)*, http://ncforaj.org/wp-content/uploads/2018/04/When-we-talk-about-outcomes-11-21-17-FINAL.pdf.

particular measures important to achieve. For example, big goals important to civil legal aid programs might include increasing the clients' financial security, stabilizing housing, keeping children in school, or staying in a neighborhood that is safer.

Reporting on the achievement of the big goals still turns on ensuring that the underlying measures focus on outcomes important to clients. Outcomes are tracked against sets of measures established by the providers and/or funders, and those measures themselves may need to be updated and modified to do a better job of focusing on outcomes that are meaningful to clients, as contrasted with tasks that are viewed as defining the work done by lawyers. An exercise to identify big goals can sometimes reduce complexity and burdens associated with traditional measures that, having developed less reflectively over time, may embody values traditionally important primarily to lawyers.

a. Observations

The reaction to the "big goals" exercise from the civil legal aid lawyers we interviewed was positive. Some legal aid programs had already carried out a similar exercise within their own organizations to identify their big goals and to strengthen their own sets of outcome measures. Others were beginning to consider tracking outcomes in this way. Others had not considered this approach but could see potential value in pursuing it. In some parts of the country, communities had gathered together to pursue a big goals approach involving multiple providers and funders.

Implementing a big goals approach. In New York City and nationally, the civil legal aid field would benefit from investing additional time and energy into a process not only to establish a broader consensus on big goals within and across programs, but also to help clarify and establish specific indicators that will facilitate more accurate tracking of outcomes. Some of the potential value would be internal to the organization and its staff. The "big goal" exercise encourages strategic planning and benchmarking. It can also help to establish a sense of ownership by legal aid program staff over their respective roles in furthering the mission of the organization, as well as over the data that would be likely to become important to individuals' understandings of their progress in carrying out their jobs. It can help organizations gauge their impact more accurately, and to adjust their services so as to increase their impact accordingly. It can help organizations find new allies and create new partnerships that integrate efforts.

Identifying big goals. Deciding on the big goals can help lawyers think about their work from a different perspective and then focus on accomplishing goals that are not easily understood from data on the number of legal matters handled or decisions obtained. Identifying big

goals starts with a program considering how it hopes its work will affect the lives of the people and the communities it serves. Often these goals are part of a program's mission or strategic vision, and include examples such as: safety, financial stability, home preservation, access to education and work, good health and access to healthcare, and access to justice. A program might have other big goals: one program added a big goal that captured procedural justice values such as the "client's perception of his or her self-empowerment."

Connecting each big goal with its associated outcome indicators. Once a program has identified the big goals that are important to its mission, the next step is to re-sort the measures it uses to track outcomes. For example, IOLA's outcomes measures are currently sorted by practice area. It is possible to re-sort IOLA's measures in the big goal framework as well (i.e., mixing multiple practice areas to group indicators by goal). Two measures currently sorted under IOLA's "consumer outcomes" are "avoided or delayed utility termination, or secured utility services" and "obtained protection from financial services." These are outcomes one might track when helping a client with a consumer law dispute, but the service provided also helps the client accomplish the big goal of "safety."

Re-sorting to track big goals can rely on existing case management systems. Significantly, re-sorting outcome indicators does not have to mean changing current case management systems. Rather it can be done as a second-level tagging of existing data points reported against existing measures (for example, IOLA measures, or the LSC measures in the "case service reporting" (CSR) process, and other funder requirements). A computer program can link such concrete outcomes as winning the right to stay in an apartment with the big goal of stabilizing a client's life.

Editing outcome measures to be client-centered. During our interviews, some legal aid leaders expressed frustration over current indicators that are seen as too legalistic to be much use when trying to communicate the impacts to non-lawyer stakeholders such as funders, politicians, and the general public. As one provider said: "IOLA outcomes don't capture impact in a translatable way. I can tell you how preventing evictions is great, but how does that translate for non-lawyers." Interviewees suggested making measures more client-centered as a means of help providers communicate the importance of their legal work more effectively to others. Editing for client-centeredness can be accomplished partly through an intentional thought-exercise, but can be facilitated and deepened by consulting with clients and with the staff of social services organizations that work closely with client populations.

Building outcome measures that reveal the most meaningful consequences. It is desirable to consider changes to measures that will help to highlight the most meaningful consequences of legal interventions. For example, IOLA's measure for the family law legal

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outcome "obtained guardianship or adoption of dependent child" could be edited to say "the child enrolled in a new school as a result of guardianship or adoption."

Reducing administrative burden. In changing measures to track client-centered outcomes, programs will want to consider the level of knowledge the legal aid program is likely to possess about the consequences of its advocates' work. Not every lawyer will know that guardianship led to a better school placement and programs cannot be expected to do extraordinary research. But sometimes the consequences will be inherent and apparent in the work (or readily accessible by asking the client), and the "big goals" exercise offers an occasion to re-think what is knowable. It also offers the opportunity to identify and remove non-essential indicators, which can help to streamline tracking while maximizing its value.

Partnering with funders. Funders are likely to support the big goals exercise. One funder explained that such a process might help "shift lawyer brains around to a more institution-building mindset." Staff of IOLA advised us that IOLA intends to move toward a web-based system that will be able to provide the community with more analysis of raw data through multiple "lenses"– for example, analyzing outcomes by case type or by geographic region. Staff also indicated that IOLA is supportive of providers and funders working collaboratively toward selecting "big goals" that could provide another lens through which the raw outcomes data could be presented, while recognizing that the "big goals" process described in this guide might require some changes to the wording of IOLA's current outcomes measures both to highlight outcomes from a client-focused perspective and to link outcomes more naturally to the "big goals."

Engaging the staff. The logic model exercise with its focus on big goals can inspire staff to think proactively (instead of reactively) about the role of outcomes data in advancing the work. A data analyst in one organization that serves as both a provider and a funder explained to us that after completing interviews with every staff person, he was convinced that each person had come to understand his or her specific role in helping to advance the mission of the organization.

Establishing a circle of learning. Once the initial process has been completed, a virtuous loop is created in which the organization can use its outcomes data more effectively on an ongoing basis to sharpen its vision and strategy, even as it also sharpens its data collection. One legal aid leader explained, "data allows us to continuously ensure we are stewarding this organization to best serve our clients." Through its initiative, the organization learned that it could remove measures that were almost never being used, and could add new measures to evaluate its progress toward the big goal of "assuring access to justice." The

organization added explicit measures to track clients' language access needs and disability needs, even though its staff were already helping clients to secure interpreters and disability accommodations. Tracking these tasks as explicit outcomes "signaled [their] importance," sharpening efforts of staff across the organization.

One executive director explained that the organization "now sees clients' case results as relating directly to the big goals the organization has chosen to pursue. This allows their advocates to circle back and see if their case choices and client advocacy are achieving the goals for clients that have become the organization's focus."

Presenting outcomes using polling research. Research has shown that certain messages about civil legal aid programs are most effective even though they may be counterintuitive to stakeholders.[28] One funder thought that "forming a common language in the civil legal aid community, with guidance from the focus group findings on messaging that resonates with the public about the value of legal aid, could provide a way for both providers and funders to tell the story of legal aid to the public."

Relying on big goals to capture deeper intuitive meanings. The big goals "have an intuitive sense to them and provide a back story." Thus, one provider pointed out:

> In a family law case where a woman might choose to forego an order of protection in order to receive uncontested custody, this might be the best choice for the safety of the child, although the legal decision recorded might not reflect this favorable dimension so clearly. Oftentimes there are such choices being made and current outcome measures do not always capture these larger.

A process where a custody decision is also tagged as having helped to accomplish the big goal of "safety" would help provide context to those using the data to communicate about the outcomes achieved for the clients going forward. One funder thought this process would "have great value for foundations because it helps them get to the heart of the matter."

Transitioning to big goals. The transition to a big goals system would require an upfront commitment of time to go through the exercise that establishes the tagged linkages and best language. The exercise might also prompt participants to reformulate certain existing measures, and to drop or add certain measures. The daily reporting burden might change, or might not, depending on how the organization (or the community)

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[28] Celinda Lake et al., Building a Civil Justice System that Delivers Justice for All (Voices for Civil Justice, 2017), *available at* https://voicesforciviljustice.org/wp-content/uploads/Voices-2017-Messaging-Researc-Findings-LRP-ASO-Report-July-2017-Slides.pdf. *See also* Voices for Civil Justice, https://voicesforciviljustice.org; Lake Research Partners, http://www.lakeresearch.com/.

chooses to proceed, though the exercise offers an opportunity to intentionally seek to reduce the burden. Significantly, and as noted above, the eventual use of the big goals is accomplished by software programming that links the big goals to specific outcome measures, and therefore does not create additional work for staff.

Avoiding double-counting. Since some outcomes are likely to be linked to more than a single big goal, organizations want to make sure that the big goal approach does not lead to double-entering (or double-counting) of the data even if there are multiple tags to the big goals.

Taking skepticism seriously. Some programs did not see the value added. Some were satisfied with the current IOLA measures in New York, and were not overly concerned with the legal tone of some measures. One funder echoed this view, citing a preference to "measure what is clearly measurable: inputs, outputs, and those legal outcomes that are known." Some felt that measuring outcomes is a wrongheaded approach altogether, and that what is needed instead is a return to trust and communication between funders and legal aid leaders. One provider observed that "this sort of data might be useful for some nonprofits but not for advocacy. What you want to incentivize is people who have a vision and all of this focus on data makes lawyers become robots." At least one legal aid leader was deeply skeptical of the value of outcomes tracking, asking "where is the data that tracking outcomes leads to better outcomes?" Progress will depend on airing skepticism of this nature and talking it through.

Taking enthusiasm seriously. Even those who are generally satisfied with the IOLA measures or generally skeptical about the utility of outcomes data accepted the idea that value could be added by improving the language formulations of the measures currently in use to make them more clearly client-oriented and less legalistic. Leaders at IOLA also agreed that "the pruning or re-phrasing of measures that might result from the re-sorting work involved in the big goal approach could add value for the community." They emphasized "the benefits of maintaining long-term consistency, so while tweaking and streamlining current indicators might be good," they were hesitant about "major structural changes which would lose the value of decades of comparative data."

Paying dividends. One provider observed that "it's hard to build programs" when "chasing funding." Connecting outcomes to the mission and vision of the organization can pay dividends in that it can make data collection more manageable, lessen the perception of burden, improve the quality of the data, and lead to conservation of staff resources when insights are obtained about how best to target services. Some programs reported obtaining funding to integrate a strategic plan with data collection processes.

b.   Recommendations

1. **Develop "big goals"** – Develop "big goals" that connect client outcomes to the mission of civil legal aid, including such goals as improving stability, security, and well-being.

2. **Make measures client-centered** – Re-shape outcome measures in collaboration with clients and with social services providers to highlight the outcomes most important to clients. See also, Appendix A (collected sets of outcome measures).

3. **Pursue a process** – Pursue a collaborative process with multiple providers and funders to develop big goals and client-centered measures for all stakeholders in New York City.

3.   Combine outcomes with "big data" and other data sets[29]

The last decade has seen increases in the amount of data collected in all fields, and improvements in data analytics technologies. "Big Data"[30] is used to refer not only to the large amount of unstructured and available information from a variety of institutions, but also to the software processes that capture and analyze the data. As one expert explains:

> "Big Data" has no single definition; it is used to describe a variety of recent developments in automated systems for analyzing information. In general, processes that earn the name "Big Data" differ from the decision tools and digitized systems of the recent past in two ways. First, Big Data handles vastly larger amounts of information, including data from sources that previously were either inaccessible or nonexistent. Second, Big Data systems analyze that information in

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[29] The authors appreciate the substantial assistance of Morgan, Lewis & Bockius LLP and, in particular Julie Goldemberg and Kate Vasduvan in conducting initial research and drafting for this section.

[30] Big Data has also been defined in terms of "the V's": **Volume:** refers to the amount of data generated and stored; **Velocity:** refers to the speed at which the data is generated and processed in real-time; **Variety:** refers to all the data that may be generated either by humans or by machines in diverse forms of raw, or "unstructured" data such as audio, video, image, and text-based files coming from an ever-increasing number of sources; **Veracity:** refers to the need to ensure that the data is correct or consider the amount of error tolerance they are comfortable with; **Variability:** the meaning of the data is changing, sometimes rapidly. Data lacks consistency; **Volatility**: refers to the need to consider where to draw the line and whether to give current data more weight in any analysis; **Visualization:** refers to the need to display data using complex graphs that can include many variables while still remaining understandable and readable; **Value:** refers to the analyses done on that data and how the data is turned into information and knowledge. This framing was first conceptualized in by Doug Laney, see Doug Laney, 3D Data Management: Controlling Data Volume, Variety and Velocity, Meta Group Research (Feb. 2001), https://blogs.gartner.com/doug-laney/files/2012/01/ad949-3D-Data-Management-Controlling-Data-Volume-Velocity-and-Variety.pdf.

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new ways, especially because of their heavy reliance on artificial intelligence and machine learning.[31]

Online data tools can help civil legal aid programs locate data that is potentially useful for communicating with target audiences. Providers can use these "mining" or "scraping" tools to create data sets from sources of raw data across the web.[32] Mining and scraping are shorthand terms for software applications that can scan large and sometimes unorganized datasets for information useful to the searcher. The process can identify patterns, make sense of large amounts of data, or generate data sets that are illuminating when compared to other data sets, such as outcomes data maintained by providers.

Obtaining publicly available datasets. Civil legal aid programs can also obtain data sets, sometimes very large sets, from many organizations and institutions that post databases online. These databases, some curated more than others, are often available at little or no cost, and more come on line every day. Some of the sources of publicly available datasets that may be useful specifically to civil legal aid programs are included in the appendix. Civil legal aid programs may also be able to exchange useful data with other institutions that have roles concerned with the provision of legal aid—for example, other civil legal aid providers, bar associations, funders, access to justice commissions, social scientists carrying out research initiatives, national organizations, and the Legal Services Corporation.

Correlating outcomes with other datasets to cast light on effectiveness, demographics, policies. Providers should consider opportunities for using other forms of data in combination with their own outcomes data to illuminate specific dimensions of their clients' accomplishments. Programs can show patterns in the outcomes that are linked to demographic data (available by block group, census tract, zip code, county, congressional district and metropolitan statistical area) and that are broken down by any of a number of categories from race, sex, age, income, and poverty to more niche or specialized data sets such as veteran status, disability status, religious and political ideology, school enrollment, health insurance enrollment, food insecurity, languages and

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[31] Robert D. Helfand, *Big Data and Insurance: What Lawyers Need to Know and Understand*, 21 J. of Internet L. 1, 3 (2017).

[32] *See*, e.g., TheDataWeb - DataFerrett (U.S. Census Bureau), The DataWeb - DataFerrett (U.S. Census Bureau), https://dataferrett.census.gov. ("DataFerrett is a data analysis and extraction tool to customize federal, state, and local data to suit your requirements. Using DataFerrett, you can develop an unlimited array of customized spreadsheets that are as versatile and complex as your usage demands then turn those spreadsheets into graphs and maps without any additional software."). For a chart of various free tools for data acquiring, cleaning and presenting, *see Chart and image gallery: 30 free tools for data visualization and analysis* Computerworld (2016), https://www.computerworld.com/article/2506820/business-intelligence/business-intelligence-chart-and-image-gallery-30-free-tools-for-data-visualization-and-analysis.html.

use of broadband internet. Geospatial data sets provide an even more contextualized snapshot of the community served by the legal aid program.[33] Outcomes data can also, potentially, be matched against policies that are present in the courts as a way of examining the impacts of those policies.[34]

Identifying patterns and trends. Data analytics that use outcomes data sets in this way are potentially powerful. In theory, such analysis can bring to light patterns and trends, such as changes in win rates over time, in certain neighborhoods, based on certain income levels, in light of certain race dynamics in the population, and in light of the presence or absence of legal aid attorneys in the community. There are resources available online that can assist a civil legal aid program with analysis.[35]

Telling a story to a target audience. Once data are gathered, civil legal aid programs will want to consider the best way to tell the story behind the numbers. The outcomes story should be tailored to the target audience by identifying, as an initial step, the key audiences and their constituencies whose influence matters to them. For example, a key constituency for a congressperson might be the people, businesses, or advocacy organizations in the legislator's district.[36] For funders or community groups, a key constituency might be children, veterans, or people with disabilities, the elderly, immigrants, or communities of color.

Considering options for data visualization. Next, programs should consider how to best present outcomes data visually.[37] This is where the

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[33] For more on GIS mapping generally, *see* Alison Davis-Holland, *GIS Test Drive: What a Geographic Information System Is and What it Can* SELF-REPRESENTED LITIGATION NETWORK (2016), *available at* https://www.srln.org/system/files/attachments/GIS%20Test%20Drive%20by%20Alison%20Davis-Holland.pdf. GIS data sets are available from SRLN, which offers access to interested persons in the civil legal aid community. For more information, *see* https://www.srln.org/GISservices.

[34] *See* NATIONAL CENTER FOR ACCESS TO JUSTICE, THE JUSTICE INDEX, *available at* https://justiceindex.org/ (offering data sets comprised of policies that support different aspects of access to justice in states).

[35] For example, the Data Analysis Framework tool, which is hosted by the Legal Services National Technology Assistance Project and was created by Strategic Data Analytics and Scott Friday Designs, guides the legal aid community through the process of using data strategically to better serve their clients. The Framework grew out of an LSC Technology Initiative Grant that funded a partnership between The Legal Aid Society of Cleveland, Montana Legal Services Association, Strategic Data Analytics, the Northeast Ohio Data Collaborative, and Cleveland State University to improve its strategic use of internal and external data. *See* https://daf.lsntap.org/home.

[36] For example, in preparation for a meeting with a council member, LSNYC developed a map of the council member's district displaying the location of clients served by the organization and the type of service provided. This allowed the council member to easily see that a significant number of constituents had received services related to rental housing and other issues in the past year. Several maps with such data visualizations were provided to the council member showing information about constituents' demographics and other key data points. *See* Legal Problem Code Category, LEGAL SERV. NYC, http://ncforaj.org/wp-content/uploads/2018/04/LSNYC-Data-Viz-Problem-Codes-2015.pdf. Outcomes data can be incorporated into this approach, potentially offering additional force in efforts to educate the public and move policy.

[37] Legal services programs can access a range of free resources to learn about and execute

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integration of outcomes data with other data sets, as described above, can be especially effective. Civil legal aid programs can amplify outcomes findings by showing how clients are able to prevail in claims, whether in specific neighborhoods, or in specific types of cases, or despite specific vulnerabilities, or taking into account specific behaviors of third parties. The presentation of outcomes data, enhanced through correlations with big data or other publicly available data, can help inspire funders to support the work, persuade government officials to respond to problems, and increase awareness of and respect for the program in the community it serves.

Modern Methods for Presenting Data: Some of the fundamental tools for presenting data at the present time are described below:

- *Dashboards:* Dashboards visually display outcomes data consolidated and arranged to be monitored at a glance. The displayed data is automatically updated. Community Legal Aid of Ohio, for example, posts quarterly dashboards displaying outcome information by case category, a client spotlight, a financial update and an outreach summary.[38]

- *GIS and Mapping Data:* GIS technology enables the creation of thematic maps that can be used to organize Census data and other categories of outcomes data to display findings of interest. Florida Bar Foundation has produced maps assessing legal vulnerability of populations.[39]

- *Scorecards:* Scorecards will show a measure, its value, its target, and a visual indication of the status (e.g., a green circle for good, yellow for warning, and red for bad) on each row. A spark-line can also be used to show trends.

- *Pivot Tables:* A pivot table is a "data processing tool used to query, organize and summarize data or information between spreadsheets, tables or databases."[40] A user can apply specific criteria to quickly extract and summarize the most relevant information from a large data set, such as an Excel spreadsheet.

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different data visualization techniques. *See* Appendix, at attachment B.

[38] *See, e.g.*, Quarter 4 Dashboard - YTD, Community Legal Aid (2017), *available at* https://drive.google.com/file/d/1tLT-xDesURVl69nqD53B0CzqboHJmnqh/view.

[39] *See, e.g.*, Nancy Kinnaly et. al, *What's in it for Me? How to Use Geospatial Data Visualization to Inform and Engage Decision Makers*, Self-Represented Litigation Network (2017), https://www.srln.org/system/files/attachments/Presentation WIIFM Florida.pdf.

[40] Pivot Table, Technopedia https://www.techopedia.com/definition/14649/pivot-table (last visited Feb. 4th, 10:25 PM).

Monitoring Risks of Relying On Outcomes Data Sets. The rise of big data and the growth of publicly accessible data sets yield opportunities, but also raise privacy and ethical concerns. Moreover, data are only as objective as the gatherer. As a society, we are just beginning to recognize the ways in which hidden biases can infect data and findings.[41]

As programs consider how best to share their data sets, preserving the privacy of clients becomes a significant concern. One solution is "anonymization," the process of removing or replacing individual identifying information from a communication or record. Records can be made anonymous by removing all identifiers or made pseudonymous by assigning each individual a replacement identifier, like a 10-digit code. But even anonymization does not guarantee privacy, as third parties who possess knowledge of the underlying facts can sometimes piece together a complete picture from an anonymized fact pattern; stories of incomplete or ineffective anonymization are common.[42]

Privacy concerns are expected to increase over time because as more data becomes available, stored in accessible databases, and shared with more third parties, the risk of data breaches increases. Legal providers will need new strategies to maintain the cyber-security precautions that will be necessary to preserve client anonymity in years ahead. The legal aid community must remain vigilant in identifying and addressing these concerns.

Ethical issues may also exist, distinct from privacy concerns. Predictive analysis, the use of artificial intelligence to predict future outcomes based on past outcomes, has attracted attention not only for its potential insights and efficiencies but also because it can go awry in troubling ways. Some law firms see value in relying on past patterns of litigation to project likely outcomes for prospective clients before undertaking representation in their cases. While civil legal aid programs are not yet relying on big data for this purpose, it seems likely that this technology will become more available at lower cost in the future. Computers are sometimes seen as free of the personal subjectivity that can cloud the judgement of a lawyer or judge.[43] But they raise a new

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[41] *See, e.g.*, Will Knight, *Biased Algorithms Are Everywhere, and No One Seems to Care*, MIT Tech. Review (July 12, 2017); *Big Data: A Tool for Inclusion or Exclusion?*, Fed. Trade Comm'n (Jan. 2016), https://www.ftc.gov/system/files/documents/reports/big-data-tool-inclusion-or-exclusion-understanding-issues/160106big-data-rpt.pdf.

[42] David Walton, *Big Data raises big legal issues*, Inside Counsel Mag. (March 28, 2014, 4:00 AM) ("In one of the most infamous incidents, the Massachusetts Group Insurance Commission released anonymized data on state employees' hospital visits in the mid-1990's as part of a study. In order to prove the existing limitations of anonymization, then graduate student, Latanya Sweeny, publicly identified Governor William Weld without difficulty. Continuing her work on this topic, Sweeney showed in 2000 that 87 percent of all Americans could be identified using only three data points: birthdate, gender and zip code.").

[43] Although as mentioned above, the human that designed the algorithm may not have had this type of objectivity. New York City recently passed legislation establishing a task force that will

concern, which is that potential clients with meritorious cases may unjustly be denied legal representation if data analytics show their claims likely to fail, be expensive to pursue, or are just too uncertain (if data are insufficient to allow a prediction). There are efforts underway to systematically address these issues.[44]

Still another concern is that reliance on data analysis of past case outcomes may unintentionally incorporate historic biases into the analysis going forward, giving rise to inaccurate predictions. For example, in a community in which thousands of evictions of minority residents have taken place in recent years, data analytics may show the pattern continuing, suggesting that outcomes in individuals' future cases will also be evictions. Yet if new laws or trends are in place, what has happened before may not be an accurate template for what will happen next. Worse, studies have shown that malignant biases can become stronger over time through unknowing reliance on biased data. Vigilance is called for, beyond criteria built into the software. As with all data, human interpretation remains vitally important.[45]

a. Observations

For the civil legal aid community, working with publicly available data (whether from structured data sets available from single sources, or big data generated by scraping the web) can magnify the value of outcomes data as a means of understanding the value of civil legal aid or persuading audiences of its importance. The following examples highlight how some civil legal aid programs are using data sets and big data to accomplish specific goals:

- *Learning more about client populations and the outcomes they obtain.* The Veterans Assistance Project at the City Bar Justice Center partnered with a consulting firm, Stout Risius and Ross, to analyze the value of the outcomes obtained by veterans who received help from the project. The firm created "a financial

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provide "recommendations on how information on agency automated decision systems may be shared with the public and how agencies may address instances where people are harmed by agency automated decision systems. *See* Automated decision systems used by agencies, NY INT. No. 1696-2017. *See also*, Lauren Kirchner, *New York City Moves to Create Accountability for Algorithms*, PROPUBLICA (Dec. 18, 2017), https://www.propublica.org/article/new-york-city-moves-to-create-accountability-for-algorithms.

[44] For an example of these efforts, *see* WASH. STATE ACCESS TO JUSTICE TECH. PRINCIPLES, *available   at* https://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=am&set=ATJ&ruleid=am atj02principles.

[45] EXECUTIVE OFFICE OF THE PRESIDENT, BIG DATA: SEIZING OPPORTUNITIES, PRESERVING VALUES (May   2014), https://obamawhitehouse.archives.gov/sites/default/files/docs/big_data_privacy_report_5.1.14_fin al_print.pdf.

analysis tool to determine the lifetime value of each successful veteran's case." The new tool "uses the client's age, race, gender, monthly compensation award, retroactive compensation award, and the closing date of each case to project the future value of each award." By cross referencing data on clients' awards with data on people's lifetime expectancy as indicated in a database available from the federal Bureau of Labor Statistics[46] the Center is now able to show "the monetary difference in lifetime award outcome [obtained by veterans] with assistance and without."

- *Learning about life outcomes of families who move following foreclosure.* One program uses post-office change of address records and Census data to help determine where homeowners move after struggling with foreclosure, and how their new environments compare to their original neighborhoods.[47]

- *Building a claim of unlawful government lending practice.* Attorneys at one organization noticed a pattern in their outcomes data that raised a concern for them about their client community, but the outcomes data, alone, was not clear enough to document the problem and support a cause of action. They secured additional data by making a FOIA request to the Department of Housing and Urban Development. The combined data sets then enabled them to produce maps that showed house auctions occurred disproportionately in certain ethnic neighborhoods.

- *Demonstrating specific client financial outcomes in asset seizure cases.* Another organization recently had success using FOIA to gather information about the specific amounts of money that the NYPD had seized from defendants.[48] Once it had the amounts, the office could present the fuller picture of the financial benefits of the services it had provided.

- *Targeting vulnerable populations in need of assistance.* A data analytics provider, Sum All, "developed a tool that uses court records, shelter histories, and demographic information to

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[46] City Bar Justice Center Staff, *Economic Impact: How Do We Put a Value on Help to Those Who Served Our Country?*, City Bar Justice Ctr. (Dec. 8, 2017), https://www.citybarjusticecenter.org/news/put-value-help-served-country.

[47] Leo Goldberg, et al., East New York: Preserving Affordability in the Face of Uncertainty, Ctr. for NYC Neighborhoods (2017), https://cnycn.org/wp-content/uploads/2017/03/ENY-report-full.pdf.

[48] *Bronx Defenders vs. NYPD*, The Bronx Defenders (Aug. 4, 2016), https://www.bronxdefenders.org/the-bronx-defenders-v-nypd/.

identify individuals who are at risk of becoming homeless."[49] Working with CAMBA, a social service organization, Sum All was able to "geocode" the list of evictions so that social workers could easily target which evictions were in their service area. Then, Sum All created targeted lists of "the most at-risk cases. 'At-risk' indicators included previous experience with the shelter system (using data from the city's Department of Homeless Services), education level, employment status, age and even factors going back to childhood such as interaction with the foster care system," all public information. CAMBA then relied on the "at-risk" lists to send personalized communications to those individuals, inviting them to use special hotline numbers which gave them priority in the program's intake process, connecting 50 percent more families in the test neighborhood with eviction prevention services.[50]

- *Predicting outcomes through scraping of court records.* Programs have an opportunity to draw on the potential for scraping court records to evaluate legal service outcomes by comparing those outcomes to the entire litigant population and filtering by specific demographics and variables. One provider applies machine learning software to court records in order to combine its own data with data scanned from voluminous court records. Working collaboratively with academics and others, this program is working toward "piloting a button that would predict outcome with and without representation at the moment the case begins."[51]Although this pilot project currently has a high error rate, the attorney is tweaking it and anticipates it will get better over time.

b. Recommendations

1. **Share data sets** - Leading institutions in the access to justice community should make measures and data sets available and accessible to all stakeholders.

2. **Preserve privacy** - The community should develop best practices for ensuring clients' privacy.

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[49] Maura Ewing, *Data Could Help Some of the 200,000 NYC Households That Get Eviction Notices This Year*, Next City (Jan. 2015), https://nextcity.org/daily/entry/evicted-help-new-york-homelessness-prevention.

[50] *Id*.

[51] This description comes from our telephone interview with Jonathan Pyle at Philadelphia Legal Services. For more on this project, see Appendix, at attachment B.

3. **Be vigilant against bias** - The community should develop best practices to reduce risks of bias in the design, collection, and analysis of data.

4. **Fund data analysts** - Funders should make grant support available (through unrestricted grants and/or through dedicated revenue) to pay for providers to hire data analysts to improve the quality of data analysis.

5. **Increase the use of big data and publicly available data sets** - Rely on multiple data sets to show: 1) broader implications of outcomes achieved by clients, 2) impacts on communities, and 3) needs of the client population.

6. **Use data visualizations** - Improve the quality and number of data visualizations.

4.   Build communication between funders and providers

Funders and providers, alike, urged increasing the level and quality of communication with one another to develop better outcomes measures. As the funder and provider communities gain experience in working with data, both see opportunity to make more intentional choices about what to track and report. To date, conversation about measures is likelier to occur in the context of applying for and implementing grants for projects, rather than in the context of a more general conversation about pros and cons of specific measures to track data.

a.   *Observations*

Improving communication. Providers voiced a common theme as one legal aid leader observed, "[we] would like the ability to have more open conversations about data tracking with funders to ensure that reporting is capturing real outcomes for clients." An executive director said, "it would be helpful to have funders really talk to and listen to providers before they pick their data points."

At the present time, providers do not find it easy to initiate these kinds of conversations with funders. One attorney explained:

> There are very few opportunities to engage funders in discussion of best criteria for using data to track outcomes and other aspects of our work. The funders have the funds, and the balance of power is clear. We are reliant on them, there simply aren't comfortable opportunities to question the criteria.

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Providers leading funders. Some providers have had success in driving conversations forward with funders. One provider urged that "it's important for providers to get ahead of tracking outcomes and lead funders to the extent that providers can set the terms of reporting to their funder at the beginning of the grant."

Relying on outcomes measures to sustain funding. According to one executive director, "our primary use of outcomes is communicating with funders. We have sustained our foreclosure program for nine years now (all grant funded) in large part because the evaluation and outcomes system we designed has kept funders engaged."

Reducing the burden, increasing the impact. Funders expressed a desire, as one observed, to "ideally collect a smaller amount of data that says more about impact." One funder commented that "case outcome data currently fail to tell a lot of the picture for civil legal aid." A funder explained that it "has no interest" in "burdening providers with collecting data that is unnecessary." Some funders have made a conscious choice to align their outcomes data requirements with IOLA measures to reduce the burden, while others focus on different measures altogether because they know IOLA is already capturing certain information.

Coordinating funders with one another. Some funders acknowledged, however, that they could do more to coordinate with one another to reduce the burden of differing measures. One observed that foundations could "do more to talk with IOLA and coordinate." Another acknowledged that "funding sources have different outcomes that don't talk to each other."

Removing measures that don't work. Another executive director urged discussion of the fact that more data points are being added, asking "why we are collecting this data and what amount of money [are] funders […] willing to put forth for us to gather this data." The director explained that he "had never had a funder remove a measure because it has been proven to be not useful."

Examining issues of trust. Our interviews also revealed a wish for greater trust between providers and funders. One provider said, "Funders don't understand the nature of the work." Several people in legal aid programs reported that some funders are most interested in being able to report high numbers of people served. In an example, some providers cite pressure to close cases in 12-months, while some funders object to case files that remain open longer than 12 months, concerned that matters might have been fully resolved. Some funders cap "re-enrollment," so a provider can only count a client's case once in the first 12-month reporting cycle, even if the dispute requires work in a subsequent year. Providers view the policy as rooted in distrust: "I think they [the funders] think we're hiding something [with our complaints about caps on re-enrollment], that we won't open a new case for every case that closes."

Funders, for their part, point to norms of administration and accounting, and concern about leaving files open for long periods of time.

Wondering if data collected is actually used. Providers question whether certain measures are necessary and how those measures are used to understand outcomes:

> In all honesty, it's not even always clear how funders use the data we provide them. So it's not so much that we're afraid of being judged in the wrong way (although that is also a valid concern) it's that the relationship between what we're trying to achieve and the practicalities of data collection and analysis is loose at best, all up and down the chain.

One funder agreed, expressing deep skepticism about the value of tracking additional outcomes other than immediate and known decisional results because "anything else is a huge burden on the provider and not so meaningful."

Partnering to improve measures. In 2017, the Florida Bar Foundation undertook a substantial new initiative in which it worked with its civil legal aid grantees to reconsider the community's approach to tracking outcomes. The collaboration produced 62 problem codes, with multiple subsets and hundreds of outcome measures.[52] The new measures were uploaded into the existing case management platform used by all grantees, and programs were allowed to customize additional measures. The Foundation "intended to create a standard set of primary outcomes across all substantive areas that would help all stakeholders to understand legal aid's impact on their clients, their communities, and the public fisc."[53] As of this writing, the results are pending, and the Foundation expects to have its first analysis sometime during 2018.

b.   Recommendations

1. **Build provider-funder communication** - Providers and funders should communicate with each other about, and ideally co-create, outcomes to track as a means of reducing burden and sharpening the providers' work.

2. **Educate funders** - Explain to funders the provider's goals and its reporting capacities and limitations at start of the grant relationship.

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[52] *See* Florida Bar Foundation outcomes measures in Appendix, at attachment A.

[53] Quote from Jennifer Wimberly, Director of Grants at Florida Bar Foundation, October 16, 2017.

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3. **Declare goals for using each measure** - Funders should explain the rationale for each measure and the funder's planned use for each outcomes finding.

4. **Develop consensus among funders** - Funders should reach consensus with one another on measures that are essential, and seek providers' input.

B.   *Pursue Solutions to Harder Challenges in Tracking Outcomes*

1.   Track "systemic" outcomes

Civil legal aid providers and their funders have always wanted to know with greater certainty that the provision of legal aid is improving lives for people and having positive impacts in society. Because funding for civil legal aid is limited, providers and funders have an interest in seeing that every dollar has a significant impact. One way for providers potentially to increase impact is through systemic advocacy.

Providers may have a beneficial impact on large numbers of people by i) handling large numbers of direct service cases, ii) handling individual matters that set precedent, iii) representing individual clients in class actions, or in groups or in coalitions, or iv) representing individual clients or groups in actions targeting specific institutions or specific communities. The work to solve systemic problems is not limited to litigation, as it may include legislative advocacy, administrative rules reform, simple court observation, and other methods of calling attention to the need to solve problems in the society.

a.   *Observations*

Although the topic is much discussed, a consensus is yet to emerge in the provider or funder communities on best practices for tracking the outcomes of systemic advocacy. It is possible, in some instances, to estimate the number of people affected by a particular act of advocacy, and to attach a number to the benefit that accrues to individuals and to the group. But, challenges arise with identifying, gathering, and presenting information on these elements.[54]

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[54] For an example of an advocacy outcomes exercise, *see* Candidate Income Indicators: Advocacy Program, The Urb. Inst. (2015), https://www.urban.org/sites/default/files/advocacy.pdf.

Building consensus in light of collaboration. Several providers mentioned that building measures to track systemic advocacy might be easier with systemic advocacy than with individual services, since systemic advocacy links providers to one another in collaborative activities that include coalition building, communications, and litigation. A provider said that due to there being "lots of collaboration, consensus on best measures to track these outcomes might be easier to obtain."

Monitoring risks of retaliation. There is also anxiety among some in the community that publicly reporting systemic advocacy and system outcomes might make it easier for opponents of civil legal aid to take action against the providers or their clients in retaliation for their systemic success. For this reason, some programs track and recognize systemic advocacy outcomes internally only – and do not include these outcomes in their grant reporting.

Conducting research to reveal systemic outcomes, being mindful of cost. One provider worked with researchers to reveal the effect of policy advocacy that was done to support a campaign to modernize the unemployment insurance claims system. The researchers used federal data showing the number of claims filed during the pendency of the campaign. After prevailing in the campaign, they ran a time series regression analysis to determine whether the advocacy process had altered the outcome of the campaign.[55] However, it isn't always affordable or realistic (absent pro bono help) for organizations to do these kinds of regressions for each instance of systemic advocacy.

Considering the value of systemic outcomes. Some providers reported that funders treat each matter as a single case, even if the matter involved systemic advocacy that affected many people. Some pointed out that this may create a perverse incentive to handle only simple matters: "A focus on just the number of cases, judged equally, could create an incentive for an organization to pursue easier, faster cases." One provider offered the example of a class action (brought in collaboration with another legal services provider) that generated retroactive payments of $75 million to thousands of people, plus collateral savings to many more by stopping collection of sanctions. But the case only counted as a single matter for funding purposes, despite its complexity and wide-ranging impact. Another provider gave an example of a case that changed the interpretation of a provision of the Uniform Commercial Code, leading to broader benefits for all future similarly situated litigants, but that was reported to funders as a single case.

Focusing on the number of people involved and the benefit each may obtain. One funder recognizes that "keeping track of systemic legal work

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[55] This description comes from our telephone interview with Jonathan Pyle at Philadelphia Legal Services, November 22, 2017.

has been a topic of conversation but so far it always seems to reduce to counting how many people participated in an event." In illustration of this focus on the number of people involved, one provider explains that when representing tenants in a building-wide claim, the provider relies on the number of tenants to report a total number of cases, even though as a technical matter only a single case is involved, and reasons that this approach reflects accurately the increased work involved in bringing such a systemic claim. While counting the number of people involved measures the work done and an outcome achieved, it doesn't capture the entire impact of systemic work. It doesn't, for example, factor in "the gift that keeps on giving through the work. If our advocacy efforts reduce lead poisoning, we still need a way to capture how many kids going forward will reap the benefits of that reduction."

Considering according greater weight to systemic advocacy outcomes by relying on a "risk assessment" (or "case weighting") approach. Risk assessment in the context of civil legal aid would offer one method for overcoming the natural disincentive to take hard cases involving greater risk that occurs if all matters, easy or difficult, are treated alike by funders when acknowledging the value of legal aid or determining program funding levels going forward. The assignment of greater value based on a category of systemic advocacy could also be used to supplement more concrete outcome measures such as numbers of people affected, dollars saved, especially if those data-points are unavailable. One provider observed:

> Case weighting has been done in confined spaces, it would be great to do across the New York legal community as a whole. It involves assigning the case a particular weight at the beginning. These weights are based on the expected time involved for a similar case and the possible outcome to be expected from a similar case. For example, a class action would be weighted more heavily than a garden variety individual action. If this is done across the range of cases, it could help the civil legal aid bar be more comfortable with the amount of money received for each case.

This type of weighting could be done, and has already been occurring in some specific legal areas: "Conversation about classifying cases and creating a payment structure for different classifications has been happening in the immigration field [where] the cases are classified as supportive, side-line cases; main bread and butter cases; and really hard, complex cases." Of course, developing a weighting scheme would pose its own challenge given the broad range of practice areas and case types in the civil legal aid community.

Reporting internally, but not publicly. Programs believe in the value of their systemic work and have honored important outcomes both within the programs and in more public annual reports, usually relying on the

narrative form. For example, one program created an "impact docket" with a stated set of criteria defining what makes it onto the "impact docket." Every advocate reports his or her contributions to the docket and this information is shared with funders and staff, and recognized with annual awards. While some prefer relying on qualitative data for these types of cases, there is a recognition that even a narrative can't capture the "ripple effects that flow from changing a law, a precedent, or, even if the law fails to pass, [that] the advocacy may have changed perceptions, and laid the groundwork for future change."

Determining when to report systemic outcomes. Some advocates observed that outcomes do not necessarily occur at the conclusion of these types of advocacy efforts, i.e., when the case has been settled or resolved. In addition, there are often multiple outcomes that flow from one impact case or project. "Some systemic impacts occur before the conclusion of a case, for example one program brought a case against the New York Police Department concerning the availability of interpreters for domestic violence calls. During the course of the negotiations, NYPD started a pilot program that changed practices." Advocates should be able to count such "interim" outcomes as they happen along with final outcomes that occur at the resolution of the case.

b.   Recommendations

1. **Build consensus on systemic measures** - Providers and funders should work toward consensus on which outcomes to track in systemic advocacy initiatives with systemic impacts—for example, numbers affected, benefits obtained, laws changed, other societal impacts.

2. **Measure roles in collaboration** - Funders should invite reporting of outcomes from multi-organization collaborations and credit providers for roles performed in coalition.

3. **Measure collateral outcomes** - The community should work toward consensus on how best to credit providers for collateral outcomes achieved during the course of systemic advocacy initiatives that are not yet complete.

4. **Measure ripple effects** - Funders should support research on the societal outcomes obtained through systemic advocacy.

5. **Make the case to the public** - The community should rely on outcomes data to help the public understand the importance of

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systemic advocacy that benefits vulnerable people, while remain alert to the risk of retaliation from entities wed to the status quo.

2. Secure feedback on outcomes[56]

Providers and funders would like to develop reliable systems to secure feedback from individuals who receive traditional civil legal aid representation and those receive only brief service.

All have an interest in obtaining multiple types of feedback, including: i) whether individuals are satisfied by the services received, ii) whether the recipient took actions recommended by the provider, and iii) whether the recipient achieved the outcomes desired. This feedback, if obtained, can help a provider improve services. However, it can be costly, time-consuming, and difficult to collect.

Our survey indicated that legal service programs are using a variety of different approaches to collect feedback—for example, paper/postcard client satisfaction surveys; in-person interviews; telephone surveys; text message surveys; and electronic mail surveys.[57] The most common way programs collect feedback on outcomes is by surveying their clients.[58] A new initiative, Listen for Good, is supporting social sector efforts to use feedback to inform and improve the quality of service, including within the legal services community.[59]

Systematic surveys using any of these methods can be expensive, but the availability of lower cost technology such as text messaging can reduce administrative expenses. When deciding on an approach for collecting feedback, an organization should assess the cost of each approach, the estimated response rate and the amount of time required to collect and analyze the feedback.

Complicated or lengthy surveys are not necessary, but programs should understand the process of implementing and drafting client surveys and recognize that time should be spent on understanding good survey practices.[60] A free consulting service has been established by the A2J Lab at Harvard Law School to help connect programs interested in

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[56] The authors appreciate the substantial assistance of Morgan, Lewis & Bockius LLP and, in particular Callie Kim, in conducting initial research and drafting for this section.

[57] *See A Few Questions on 'Outcomes' Tracked by Civil Legal Aid Programs*, NATI'L CTR. FOR ACCESS TO JUST. AT FORDHAM LAW SCH. (Nov. 2017), http://ncforaj.org/wp-content/uploads/2018/04/Provider-Survey-on-Outcomes.pdf.

[58] MARTIN D. ABRAVANEL, SURVEYING CLIENTS ABOUT OUTCOMES, THE URB. INST. (2003), https://www.urban.org/sites/default/files/publication/42751/310840-Surveying-Clients-about-Outcomes.PDF.

[59] Fund for Shared Insight, Listen for Good, *available at* https://www.fundforsharedinsight.org/listen-for-good/.

[60] *Id.*

developing surveys and other approaches with social scientists and other trained researchers who can review survey instruments and help in other respects.[61] The objective is to produce a reliable instrument that will net a high response rate and collect high-quality information that can be easily understood.[62]

a. Observations

Obtaining feedback on service. Most of the programs we interviewed had collected feedback at some point after representation or other service had concluded. Some programs received grant money for pilot programs to seek feedback, while other programs ran feedback surveys as part of a grant-funded delivery program with dedicated funds toward follow-up. Still others worked with local universities to develop and manage survey instruments.

Providers commonly relied on open-ended questions to ask about the quality of service – for example, asking for the perception of the services received, whether the services helped the respondent better understand the law and the options available, whether respondents were satisfied with the communication they had received, and whether the matter was resolved in a satisfactory way.[63] While open-ended questions like these may help with the collection of anecdotal information, they make it difficult to compare responses in a standardized way.[64]

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[61] The Evaluation Feedback Project is a new initiative housed at the A2J Lab at Harvard Law School that matches providers with experts who, on a volunteer basis, provide guidance to programs that seek feedback on new data design tools, available at http://a2jlab.org/resources/evaluation-feedback-project/.

[62] *See* The Urban Institute, "Surveying Clients About Outcomes," at 15, 2003 (Some drafting practices to keep in mind for results that can be compared and analyzed are as follows: (1) Choose terms that clients can understand. Try to avoid legalese and convoluted questions. Keep questions simple and clear, and be cognizant of language barriers; (2) avoid leading or biased questions; (3) provide appropriate and reasonable time references. It will be difficult for respondents to recall reliable information if asking about services that occurred more than a year ago; (4) keep questions consistent to allow for comparability; (5) use ranges for numerical responses. Respondents may relate more to ranges than to specific, precise answers; (6) avoid unnecessary questions and any questions or calculations that would discourage respondents from completing the surveys; (7) communicate with respondents that responses are voluntary and will be kept confidential). *See also*, De Jonge et al., *Homogenizing Responses to Different Survey Questions on the Same Topic: Proposal of a Scale Homogenization Method Using Reference Distribution*, 117 Soc. Indicators Res. 275-300 (May 24, 2013), https://link.springer.com/article/10.1007/s11205-013-0335-6 (in addition to language barriers, cultural differences in research participation should be taken into account and findings normalized to ensure comparability. For example, the way in which respondents use rating scales may vary by region. Some respondents tend toward the upper end of the scale, scoring higher than the average, while others make use of the entire scale, resulting in a lower score compared to the average).

[63] NAT'L CTR. FOR ACCESS TO JUSTICE, *supra* note 56.

[64] For example, one provider describes its surveying efforts as "focused on client satisfaction," and it notes that the data is collected for internal use. *Id*.

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There is room for more research on whether perceptions of satisfaction are due to quality of service provided, the outcomes achieved by the clients, the recipient's interest in obtaining additional assistance, and/or other factors. A line of social science research has shown that litigant perceptions of fairness appear to be more influenced by the perception and experience of being treated with respect, than by the experience of winning (or losing) their claims.[65]

Understanding and boosting response rates. Response rates are usually lower where programs had less contact with the individuals from whom the feedback is sought. Shorter periods of advocacy, or the provision of only brief service, are unlikely to establish a deep connection that inspires a desire to provide feedback. Programs may want to consider offering incentives to increase the response rates when seeking feedback. Programs could offer a gift card or other monetary incentive, tickets to an upcoming event, or a chance to receive merchandise. One program had success offering a $100 gift certificate lottery as a response incentive. Response rates among programs we surveyed and interviewed generally hovered between 10-15% for matters in which only "brief service" was provided to the individual.[66]

Moving toward tracking outcomes rather than satisfaction. Programs are experimenting with tracking perspective on client outcomes rather than on degree of satisfaction. Methodologies are mixed, as are results. One provider follows up with client outcomes within a few months following resolution of a case. Another provider combines the approaches and "conducts an annual survey of randomly-selected clients, looking at service level, outcomes and other client feedback." That provider "finds the results worth the effort and investment." Another provider collects "narratives of impact" from its clients through follow-up procedures and the executive director says "they get very good qualitative data from it."

Considering the initial work being pursued by the Legal Aid Society of Cleveland. This provider's text messaging project began as a means to capture outcomes from individuals who had received "brief service." The program closes approximately 80% of its cases as brief service and had no way, initially, of learning about outcomes in these cases. The organization worked with FrontlineSMS to develop a texting program to seek feedback from individuals who had received brief service.[67]

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[65] *See, e.g.*, E. ALLAN LIND & TOM R. TYLER, THE SOCIAL PSYCHOLOGY OF PROCEDURAL JUSTICE (1988); Tom R. Tyler, *Social Justice: Outcome and Procedure*, 35 INT'L J. PSYCHOL. 117 (2000).

[66] One exception was the Legal Aid Society of Cleveland. This program recently began a grant-funded outcomes texting project and received a response rate in excess of 60%. *See* Fund for Shared Insight, Listen for Good, *supra* note 58.

[67] *Id.*

To encourage responses, the program initially engages individuals on more than outcomes in order to build a connection with the individual that is likely to result in greater communication when it is later requested.[68] For example, the program establishes texting relationships early with introductory and informational messages before sending the messages requesting outcomes information.

The outcome messages included three to five questions asking about the brief service provided. For example, persons who received brief service in eviction cases were texted the following questions:

1) Legal Aid gave you advice and papers about representing yourself when your landlord sues you for money. Did you file an answer with the court using these forms? Text Y or N to let us know.

2) Legal Aid gave you advice and forms regarding a claim your landlord filed against you for money. Did Legal Aid's advice and forms help you reduce or avoid the amount owed to your landlord? Text Y or N or NOT YET to let us know.

3) You told us the case with your landlord was not yet resolved. Did Legal Aid's advice and forms help you to reduce or avoid the amount owed to your landlord? Text Y or N to let us know.[69]

The Legal Aid Society of Cleveland has presented initial findings based on these and similar text survey questions. Findings suggest that this approach to collecting outcomes feedback from service recipients may be more effective than other approaches. In initial presentations, provisional findings have indicated response rates as high as 60 percent in some categories of cases.[70] The field is currently still in its early stages, and efforts like this rely on establishing a relationship with service recipients, drawing on the expertise of tech providers, and using short concrete questions focused on actions performed and outcomes achieved. These results are pointing the way to next steps forward.

b. Recommendations

1. **Seek outcomes reporting from service recipients** – Providers and funders are focusing on securing feedback on actions taken

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[68] *Id*. (The organization developed three different types of text messages: (1) outcome messages, (2) informational messages, and (3) community legal education and outreach messages.).

[69] *Id*. All participants received all questions as no branching logic was used. Participants could respond to any message (i.e., a client may not respond to the first text message but then respond to the second).

[70] *Id*.

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and outcomes achieved, as distinct from feedback only about quality of service.

2. **Insist on clarity in survey design** – Survey preparers should consult experts and consider drafting guidelines to achieve simplicity, clarity, objectivity, consistency, and confidentiality in the design of survey instruments.

3. **Consider texting and other technologies** - The community should continue to investigate pros and cons of technology for texting projects to secure outcomes in brief service.

3.   Partner with courts to improve outcomes data

With so many institutions sharing an interest in outcomes data – providers and funders, but also courts, attorneys, law schools, Access to Justice Commissions, and others – it is useful to consider which institutions are best situated to collect which types of data, taking into account the focus, expertise, funding, infrastructure of each.

a.   Observations

Relying on courts to track outcomes for litigants without legal representation. Civil legal aid programs pointed out that courts are in a position to track the numbers of represented and unrepresented litigants, and outcomes achieved, because courts follow cases to completion in large numbers of cases.[71] Courts may also be able to track why some litigants are not represented—for example, whether individuals declined an offer of representation, or were ineligible for, or unaware of, legal aid services. Courts may also be able to track data related to the process and quality of representation by asking, for example, "how often are lawyer re-assignments granted and how much time do litigants spend with their lawyers before appearance."

One provider thought that engaging courts in outcomes tracking would help "providers to understand the efficacy of advice and counsel by offering the follow-up outcomes data that providers often don't have access to when giving brief advice."

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[71] Strickland et al, Virginia Self-Represented Litigant Study: Outcomes of Civil Cases in General District Court, Juvenile & Domestic Relations Court, and Circuit Court Virginia Self-Represented Litigant Study: Outcomes of Civil Cases in General District Court, Juvenile & Domestic Relations Court, and Circuit Court (2017) (recommending that court case management systems "should have a means for the data entry clerk to clearly denote that a party is self-represented").

Relying on courts to track outcomes for litigants who have legal representation. Another civil legal aid provider suggested that "courts could help with quality assurance by providing a way for providers to double check their reporting information and especially if there were an easier way for providers to link into status reports of cases."

Relying on courts to track outcomes, disaggregated by race, ethnicity, and other factors. Many people highlighted the fact that courts rarely make data available to the public that is disaggregated by race, ethnicity and other factors. Such disaggregation is essential to understanding whether justice is neutral and non-discriminatory.[72]

Relying on courts to track outcomes for litigants who return to court. One provider said "courts are well-situated to capture whether clients are going back to court." Providers could use such information to learn about outcomes beyond the term of their representation, and could potentially design better programs that would better meet clients' needs. However, some providers pointed out that data about litigants who return to court is problematic because it can be misused. At least one government funder said it does not track repeat litigants because it is "not interested in creating rap sheets, that kind of flagging can create bias."

Preventing courts from selling and disclosing private court data. Some providers voiced hesitation about what courts do with data they collect. One provider mentioned that "in one instance, court data was sold to credit agencies." This use of data can cause problems for people. Errors in the data can be especially frustrating for people.[73]

Improving the accuracy of court data. Three major credit-reporting firms announced in 2017 that they would no longer include data on judgments in their reporting due to the high error rates in court data sets.[74] One funder in New York City explained that it buys its data on outcomes from a private research firm because it had encountered many errors and missing data points in court data.

Increasing access to, and reducing the expense of, court data. Some civil legal aid funders ask their grantees to track down information from the courts and include it in their reporting. This is not always easy. Some

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[72] ANNIE E. CASEY FOUNDATION, BY THE NUMBERS: USING DISAGGREGATED DATA TO INFORM POLICIES, PRACTICES, AND DECISION-MAKING (2016), http://www.aecf.org/resources/a-race-for-results-case-study-2/.

[73] Court records have been reported to credit agencies, however the credit agencies will no longer include that information in your credit score, partly due to errors. *See, e.g.*, Stacy Cowley, *Your Credit Score May Soon Look Better*, N. Y. TIMES (June 26, 2017), https://www.nytimes.com/2017/06/26/business/dealbook/your-credit-score-may-soon-look-better.html.

[74] *Id. See also*, AnnaMaria Androitis, *Credit Reports to Exclude Certain Negative Information, Boosting FICO Scores*, WALL ST. JOURNAL (March 12, 2017, 6:33 AM), https://www.wsj.com/articles/credit-reports-to-exclude-certain-negative-information-boosting-fico-scores-1489338002.

courts do not store documents electronically. A provider told us: "This [data] is relatively accessible where a court has electronic filing; however, many clerk activities are done by hand and there is no electronic storage. This adds a lot of time to the reporting process. Also, often county-specific systems do not interface with one another." Uniformity across all courts in a given state tracking similar types of data would greatly facilitate data collection.[75]

Some programs would like better access to court data regardless of funder reporting but "court data is not very accessible. This data issue has been a barrier for lots of groups that want to study outcomes using court data. The Housing Court recently shifted its case management system to a new application, hopefully it will improve production and release of data."

One funder understands that "it is hard for providers to get data from courts, and is especially concerned that improvements to both the court's data collection and the providers' ability to access it is needed as the city rolls out its universal access."

Backlog and delay in producing court data is a problem for advocates as well. For example, a civil legal aid leader said that "affidavits of service . . . are so backlogged that they haven't yet been entered into the system when a lawyer is actively contesting service."

Improving the consistency of court data-points. Currently, "court data is of no use on tracking when a case ends, especially on [tenant] nonpayment [case] issues." "More consistent tracking as to when a stipulation is entered and what the terms of the stipulation are would be useful." Another suggestion was for courts in foreclosure cases to "track what happens on a lis pendens between filing and auction, currently courts keep filing records and nothing else."

Relying on agencies to collect data. Beyond the court, there might be other potential third-parties that are well-situated to track outcomes data. For example, one legal aid program contracted with NYPD and NYCHA to have its attorneys notified when a police report was filed with NYCHA. This allowed the attorneys to have outcomes data on former clients, and to track whether their clients had ongoing issues after representation.

Pursuing law, policy, and funding initiatives to enable to build courts' tech and data capacities, and to establish courts' standards for tracking data. Courts, much as with other justice system institutions, are thinly funded, and rely on outdated technologies. More state funding is needed to build courts' capacity to track data. Additionally, stakeholders should support policy development and legislation to help set standards

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[75] *See, e.g.*, Amy Bach, *Missing Criminal Justice Data*, N.Y. TIMES (March 21, 2018), https://www.nytimes.com/2018/03/21/opinion/missing-criminal-justice-data.html.

for data-points and data-analytics that courts should be relying on to increase public understanding of the circumstances of low-income litigants within the justice system.

b.   Recommendations

1. **Make all court dockets digital** - Courts should make their dockets digital.

2. **Make court data, including outcomes data, less expensive and more accessible** - Courts should make outcomes data accessible and inexpensive.

3. **Track court data by race, ethnicity, and other factors** - Courts should track data in forms that are easy to disaggregate by race, ethnicity and other factors that are essential to allowing analysis of whether the justice system carries out its functions in a neutral and non-discriminatory manner.

4. **Pursue law and policy reforms to build standards, funding, and infrastructure for tracking court data** - Providers, funders and courts should pursue law and policy reforms to establish statewide standards, funding and infrastructure to improve tracking and reporting of court outcomes data.

5. **Protect private information** - Courts should adopt protections to better ensure the privacy of litigants consistent with the requirements of law**.**

6. **Increase funding for gathering court data** - Funders should support providers in projects to explore the potential for gathering court data in ways that will boost understanding of outcomes for vulnerable litigants.

4.   Support holistic service by tracking outcomes

Increasingly, providers are using "holistic" approaches that have multiple professionals from multiple backgrounds working collaboratively in the same and/or in separate organizations to assist the same individuals in resolving multiple problems.[76] This phenomenon raises new challenges for tracking and understanding whether recipients of the services are obtaining desired outcomes. The first step in

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[76] *See, e.g.*, Robin G. Steinberg, *Heeding Gideon's Call in the Twenty-First Century: Holistic Defense and the New Public Defense Paradigm*, 70 WASH. & LEE L. REV. 961 (2013).

responding to these challenges is rigorously focusing on the client's experience from the client's perspective. But the need to track multiple actual outcomes in multiple settings introduces new privacy concerns, ethical issues,[77] and communications challenges.[78]

A number of service delivery models aim to integrate the provision of legal services and social services to clients, including court-based civil legal aid;[79] community courts with their focus on comprehensive treatment;[80] holistic indigent defenders;[81] community lawyers with their focus on supporting community leaders;[82] medical-legal partnerships;[83] holistic civil legal aid programs with multi-vector services;[84] city and county-wide anti-poverty pilots;[85] and placement of legal aid lawyers in diverse settings.[86] Each of these delivery models has its own goals, but the extra layer of complexity involved in tracking outcomes is common to all the models.

a. Observations

Strengthening outcomes tracking of referrals. There is widespread enthusiasm for using outcomes data to track referrals and to streamline the referrals process, even among those who voice skepticism about outcomes data generally. Most programs do some tracking of referrals to other legal or social services but only that referrals are made, not whether they are acted upon nor the result the referral produces.

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[77] *See, e.g.*, Paula Galowitz, *Collaboration Between Lawyers and Social Workers: Re-examining the Nature and Potential of the Relationship*, 67 FORDHAM L. REV. 2123, 2135 (1999).

[78] *See, e.g.*, JANE HYATT THORPE, LARA CARTWRIGHT-SMITH, ELIZABETH GRAY, MARIE MONGEON, INFORMATION SHARING IN MEDICAL-LEGAL PARTNERSHIPS: FOUNDATIONAL CONCEPTS AND RESOURCES, MEDICAL-LEGAL PARTNERSHIP FUNDAMENTALS, ISSUE BRIEF ONE (July 2017), available at https://medical-legalpartnership.org/mlp-resources/privacy-brief/.

[79] *See, e.g.*, *Volunteer Lawyer Programs*, N. Y. State Unified Court System, https://www.nycourts.gov/attorneys/volunteer/vap/program_descriptions.shtml.

[80] *See, e.g.*, Midtown Community Court, Ctr. for Court Innovation, https://www.courtinnovation.org/programs/midtown-community-court (focusing on particular litigant populations defined by specific social services needs such as drug abuse, prostitution, and providing array of social services to address the identified needs).

[81] *See, e.g.*, THE BRONX DEFENDERS, https://www.bronxdefenders.org/ (providing defense services, but extending reach to family court and selected civil practice areas). *See also Community-Oriented Defender Network*, NAT'L LEGAL AID AND DEFENDER ASS'N, http://www.nlada.org/community-oriented-defender-network.

[82] *See, e.g.*, MAKE THE ROAD NEW YORK, https://maketheroadny.org/.

[83] *See, e.g.*, NAT'L CTR. FOR MEDICAL-LEGAL PARTNERSHIP, http://medical-legalpartnership.org/.

[84] *See, e.g.*, HOLISTIC LEGAL ASSISTANCE NETWORK, RHODE ISLAND LEGAL SERV., http://www.rils.org/programs_mobi.cfm.

[85] *See, e.g.*, ROCHESTER-MONROE ANTI-POVERTY INITIATIVE, https://www.uwrochester.org/RochesterAnti-PovertyInitiative.aspx.

[86] Ashley Dalton, *How School-Based Legal Aid Can Help Kid in Class*, HARTFORD-COURANT (Oct. 12, 2016); Yvonne Wenger, *Working out of the Library, Maryland Legal Aid Helps People Grapple with Issues Only a Lawyer Can Fix*, BALTIMORE SUN, (Nov. 16, 2017).

One provider is intending to compare outcomes achieved by its clients with data identifying the organizations that refer respective clients to its office. The organization expects to identify the factors that make a strong referral partner and then to expand those relationships.

Another provider suggested that the City could be helpful in creating, guiding the community through, or otherwise incentivizing an organized referral system observing, "this is an area where the city could facilitate collaboration."

Tracking outcomes by referring individuals based on proximity, communication, and extra staff. A few programs have tried to find solutions to the challenge of tracking outcomes when individuals are referred elsewhere for service. Proximity, communication and extra staff are key. In Monroe County, New York, for example, housing all civil legal service providers under one roof has allowed for joint reception and comprehensive data collection.

> Individuals do not present at our offices with a legal issue alone. Often that legal issue has root causes in a variety of social problems including family instability, domestic violence, and/or economic downturns resulting in loss of jobs and health issues. Shared referral systems not only allow us to locate potential clients within a specific target population but also provides us with the appropriate linkages to address additional issues that caused the need for legal intervention.

Another program had success with "an embedded social worker who was able to make sure referrals work, track when they do and don't, and come to useful conclusions about why some referrals aren't working out." Other providers echo a desire to track and better understand "how many legal aid, private lawyer, social services, and library referrals go unheeded or unwelcomed."

Also, "a better understanding of when (during the representation) a referral is made and whether timing has an impact on its outcome would be beneficial to the practice." This sort of tracking requires extra resources however. More commonly, "a receptionist makes a lot of referrals. If required to report and follow up on all of those, there wouldn't be time for reception work."

Other programs handle referrals through a hotline, although tracking outcomes with hotline referrals is not something currently done. Since many callers to a hotline do not become clients, there is very little intake or tracking done with this population, although many of those interviewed expressed a desire to better understand "what happens to all those people they do not end up representing as clients."

Focusing on referral outcomes from a client-centered perspective. Measuring holistic outcomes is currently a struggle. One provider with a holistic service model has been trying to think about how to do this through a universal case management system but currently only has the

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legal department on the system. Although moving toward a unified system, the program did not originally realize how differently its various professional departments operate and how differently the various professions count success. Also, each professional department has different reporting requirements for different funders. Another provider explains that "cases generally stay open for a much longer time period in holistic models, and switching from reporting requirements that count each discrete legal proceeding as a case is an area that needs discussion."

Focusing on collaborations between professionals. More work needs to be done around unpacking the relationship with the client among different professionals. As part of a five-year plan in New York to change Medicaid delivery service and increase value to their patients and the communities, the state has encouraged collaboration between medical and legal services with a new focus on integrating outcomes:

> As part of this initiative, there has been a lot of system integration work about how to bring different professionals together to understand their outcomes. This translation among professionals is hard work. One problem was a lack of understanding about different services. LAWNY now teaches a class to 4th year medical students on how to link up appropriate community services and transportation. The medical students observe a legal services intake and visit shelters and other social services within the community to better understand what questions to ask their patients to assess their needs.

Outcomes data can be combined with other forms of data being tracked internally to provide insights into service delivery. For example, one program "wants to be able to track social worker involvement on a case without double-counting." The program plans to compare housing outcomes from the legal case against other data it tracks as to whether a social worker was involved or not. The program expects to learn something about the value of the integrated service from comparing these two sources of data.

An attempt at a "Stability Index." In 2013, Rhode Island Legal Services created the Holistic Legal Assistance Network.[87] After the first two years of this project, the organization worked with Ken Smith of the Resource for Great Programs to evaluate the impact of its holistic approach to case management. This evaluation produced two new outcomes measures: "stability in the environment for children in the household, and stability of the family's mental health status."[88] However, the organization found it challenging to implement these new measures

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[87] *See, e.g.*, RHODE ISLAND LEGAL SERV., http://www.rils.org/programs.cfm?programid=11.

[88] KEN SMITH, EVALUATION OF THE FIRST TWO YEARS OF THE HOLISTIC LEGAL ASSISTANCE NETWORK (HLAN) PROJECT, RHODE ISLAND LEGAL SERV. (Oct. 29, 2015), http://www.rils.org/documents/RILS-HLAN-Evaluation-Report_Executive-Summary-FINAL-10-29-2015.pdf.

consistently and objectively. It has since adopted an internal tracking approach similar to the big goals approach described earlier. A supervising attorney keeps an excel spreadsheet relating the legal outcomes to the larger goals for the organization's clients of "housing stability," "family stability," "financial stability," and "planning for progress."

Attending to ethical concerns. One provider said "ethical and confidentiality issues have been easier to overcome because the case management system allows for anonymizing and analyzing underlying data." Other organizations with holistic models are "still working out privilege issues between different professionals working together toward shared client goals." One program mentioned "an online sharing platform where community collaborators can share information. Legal services share aggregate data due to confidentiality issues, but other collaborators can share more detailed information."

b.   Recommendations

1. **Track referral outcomes to assure provision of service** - Funders should support providers in tracking outcomes achieved through referrals of clients (and others seeking service) to other organizations.

2. **Develop networks to track outcomes** – Providers and funders should pursue network-building with social services organizations to increase understanding of outcomes achieved through referrals.

C. Preserve the Integrity of Outcomes Data at All Times

1.   Improve the integrity of outcomes data[89]

The large volume of data gathered by legal aid programs makes ensuring data quality a difficult task for even the most data-savvy and technology-savvy organizations. Unfortunately, analysis of erroneous or incomplete data is counterproductive as a gauge of client service effectiveness and efficiency. At its core, data integrity means ensuring that data is accurate and consistent. Concrete steps that every legal service

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[89] This section draws its content primarily from Rachel J. Perry, *Data Integrity: The Untapped Treasure of Legal Services Data*, in 28 MGMT. INFO. EXCHANGE J. 22 (2014) (used with author's permission and permission of MIE Journal). Rachel is Founder & Principal, Strategic Data Analytics, http://rachel.perry@SDAstrategicdata.com, 216-570-0715. Rachel is a member of the expert advisory panel contributing to this report.

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program can take to strengthen the integrity of the data it collects are explored more below.

The wealth of information at the fingertips of staff can, if properly harnessed, drive better client service. All legal aid programs are required to gather voluminous data about clients, cases, volunteers, services provided, and, increasingly, outcomes. But gathering required data often feels burdensome and prompts frustration, which can undercut efforts to promote quality. Combat the frustration by reframing the required data as a strategic tool, something staff actively decide to gather because it helps increase understanding of the client community and of clients' legal needs. It is not only possible but also important for programs to take steps to assure the integrity of their data at every stage of the process.

a.   Observations

Legal aid leaders responded to our survey by saying they are pursuing a variety of practices to improve the integrity of outcomes data, and that they routinely make choices about who develops outcomes criteria, who enters the data, and how often criteria should change. Some suggested that best practices for data integrity in this section are already in place, but others indicated that more programs could adopt these practices.

A majority of the funders responding to the survey said that outcomes data is reported in a consistent manner and that they monitor and train grantees to maintain data integrity.[90]

Here are some practices that can help to ensure that a program's outcomes data are consistent and useful:

Connecting outcomes measures to strategic goals. One of the best ways to collect good data is to collect data related to the program's core values. Connecting outcomes measures to the program's mission helps guide the data collected and how it will be used. But, more fundamentally, if the data is helping the program measure progress toward its strategic goals, the data will be likely to be more accurate. Fewer than half of the programs responding to our survey in New York City had gone through this process.[91]

Engaging staff in the effort. Consider enlisting staff to improve the organization's use of data. We learned that, over time, a staff committee at one organization was able to take increasing responsibility for tackling problems and innovating solutions. The staff committee increased the

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[90] *See* NAT'L CTR. FOR ACCESS TO JUSTICE, QUESTIONS FOR FUNDERS OF CIVIL LEGAL AID PROGRAMS ON REPORTING OUTCOMES, (Nov. 2017), http://ncforaj.org/wp-content/uploads/2018/04/Funder-Survey-on-Outcomes.pdf (57% said "grantees report outcomes in a fashion that is consistent from grantee to grantee." 79% reported "satisfaction with the definitions and clarity of the outcomes criteria" used with grantees).

[91] For more on this process, see Section IV.A.2, above.

reliance of the program on outcomes data in ways that were beneficial to clients. Additionally, when staff are engaged, they tend to feel ownership, which translates into an improved commitment to providing accurate and complete data.

Improving Measures. Looking critically at the program's current outcome measures will help it to improve the integrity of the data that it is collected. Define the different outcomes and focus on understanding how staff are using them. Periodically assess with all staff where there might be limitations to the data. Identify outcomes where there are consistently missing data, frequently erroneous data, or data that don't translate easily to analyses. Identify ambiguous outcomes or ambiguous recording mechanisms. Identify outcomes that are always skipped over.

Cleaning Up Case Management. Some problems with data integrity are a product of recurring issues with the design of the case management system. These kinds of problems emerge when programs look critically at their outcomes data, but can be cleaned up with simple solutions.[92]

Adding new measures. When considering adding outcomes measures, make sure the new measure will actually allow the organization to gather good data and that the data it gathers will tell it something important about the organization's goals. Assess when an outcome should be reported, and whether outcomes will be updated if a change becomes known.

Standardizing procedures. Standard procedures regarding data that are written, distributed to all staff, reviewed at regular trainings and provided to new members of the organization, help ensure consistent data entry. One option for supporting data entry and promoting data integrity is a two-sided, colorful, laminated reference document that is easily accessible by each staff member when entering data.

Training. Data trainings should be conducted semi-annually, and managers should ensure that staff remain informed about data expectations between trainings as well. Consistency in interpretation among management and staff, across all departments, at all times, is essential. In addition, it is good practice to share any analysis generated from outcomes data across the entire organization. Half of the programs responding to the NCAJ survey said they share analysis of data with staff, while 80% share analysis with attorneys.

Monitoring. Data quality can be improved through regular monitoring. For example, regular (preferably monthly) error-checking reports can be distributed to staff and managers. These reports could flag case coding contradictions or omissions. Giving staff the opportunity to correct errors and engaging in follow-up conversations will provide extra training opportunities, a built-in process for monitoring for obsolete or

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[92] For a checklist of solutions, *see* Perry, *supra* note 88.

otherwise problematic data-points, and create better data. Respondents to NCAJ's survey reported that they had struggled with determining best ways to build error-checking into their systems.

b. Recommendations

1. **Prioritize using data to improve service -** Providers should approach data tracking as a tool for improving service, and not just an administrative burden.

2. **Engage staff with data expertise** - Providers should engage staff in specific practice groups or possessing specific area expertise to have a significant role in defining outcome measures.

3. **Standardize and train on data entry** - Providers and funders should standardize data entry procedures and hold regular trainings on data entry.

4. **Share data transparently** – Providers should circulate data findings and data analyses to all staff.

5. **Review and revise measures** – Providers and funders should remove measures not being used and review patterns of use to determine whether new measures are needed.

2.   Manage the challenge of exploring causation[93]

a.   Observations

While it may seem intuitively clear to many people that legal work done by lawyers on behalf of clients is the cause of the outcomes that follow, the analysis of "causation" has counter-intuitive elements. It is actually difficult to establish that a client won a case due to the assistance of the lawyer when other factors may have influenced the outcome.

Programs should recognize the value of, and claim credit for, the importance of their work. However, given the presence and absence of many factors apart from advocacy that may contribute to a client's victory, it can sometimes be just as misleading for an organization to rely exclusively on win/loss ratios to promote its accomplishments as it might be for the same organization to rely exclusively on win/loss ratios as the basis for positive or negative evaluations of their attorneys. In all of these scenarios, other factors may also be involved, and it is usually difficult to

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[93] The authors appreciate the substantial assistance of Morgan, Lewis & Bockius LLP and, in particular Lauren Carpenter in conducting initial research and drafting for this section.

be confident they are not. Providers have several strategies available to help them determine how best to understand and manage the challenge of establishing that they have caused the outcomes obtained by their clients.

Being transparent about "strongest cases intake." Among the challenging problems for civil legal aid programs through the decades has been determining who to represent when the number of individuals seeking assistance is overwhelming. Some programs selectively represent those potential clients who have the strongest cases. Putting aside debate about whether this is a best practice, one thing is clear: this particular strategy introduces a factor that can elevate win rates. Providers will want always to be transparent about their data, but where the intake strategies or other factors are known to elevate win rates, transparency and explanation may take on special importance to stakeholders, including staff, funders, and other providers that are seeking the same sources of funding.

Considering all factors, not just outcomes data. Many factors may contribute to variation in the outcomes obtained by clients. In addition to skill and intensity of the advocates, other factors may include the quality and consistency of attorneys, their supervision and training, the intensity of advocacy by opposing counsel, the availability of social services resources in different neighborhoods, and the levels of poverty in those neighborhoods. Increased attention to such factors, whether in discussions during staff meetings, presentations to boards of directors, treatments in annual reports, and many other contexts, can help to support a culture of learning in which outcomes data is among the sources of information the provider relies on to deepen understanding of the work, improve performance, and strengthen communication.

Crediting favorable outcomes where litigants historically lose. Sometimes legal aid lawyers take cases in which their clients have previously lost claims, or in which all litigants commonly lose claims. For example, some legal aid programs find that they are undertaking representation for veterans who had previously lost serial claims for disability benefits. Where the client, now represented, is then able to win the case, it is harder to contest the idea that the lawyer brought about the winning result, although it remains possible that other factors are contributing to the result (for example, the fact that clients may be older or more disabled with each subsequent claim). Similarly, tenants who have been evicted pursuant to a stipulation and judgment would have almost no chance of restoring their tenancy on their own, unless a lawyer stepped into the case to assist the tenant in restoring the matter to the calendar and to take the next steps to enable the client to prevail.

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Sometimes courts will trace in their decisions the way in which the lawyer's appearance is linked to the new outcome.[94]

Relying on randomized controlled trials. One of the more powerful tools for investigating causation is the "randomized controlled trial." In the context of civil legal aid, the RCT is a method that tests whether specific interventions, such as the provision of counsel, make a difference in causing outcomes. Used widely in medicine, randomized controlled trials in legal settings are experiments in which people facing similar legal problems (for example, having been served with a nonpayment petition by a landlord) are randomly assigned to a small set of experimental conditions, for example that of receiving some "treatment," such as representation by a lawyer or the receipt of self-help materials. By design and construction, in an RCT the principal difference between the two populations of litigants will be that one group received the treatment, and the control group did not. Differences in the outcomes observed for each group can then be more confidently attributed to the provision of the service.[95] RCTs are largely responsible for the advancement of knowledge over time, especially in the field of medicine.

However, they are not foolproof. The history of RCTs—in studies of salt, sugar, fat, estrogen replacement, and other areas—teaches that findings are on occasion reversed, and that a reliable knowledge base requires a community of objective researchers conducting many experiments with different methodologies that ask the same questions, repeatedly. A single study usually will reflect to some degree the conditions in which it was done. The time and place of the experiment, the distinctive population of clients, the unique skills of the providers, the characteristics of the decision-makers, and the nature of the services (if any) received by the control group are among the factors that may make it hard to generalize the findings from a single RCT to other settings at other times, in other places, in other cases, with different litigants, lawyers, decision-makers, etc. For these reasons, it may be important also to be able to replicate RCT findings before placing great reliance on the findings of a single study.[96] Significantly, even when RCTs fail, they may still prove valuable because their failure often helps to illuminate

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94 *See, e.g.*, Mautner Glick Corp v. Acosta, N.Y. L. J., Feb. 14, 2017.

95 The civil legal aid and courts communities have a great resource in the Access to Justice Lab at Harvard Law School that is leading randomized controlled trial studies in multiple settings, at http://a2jlab.org/.

96 All research methodologies have some limitations and replication is always valuable in establishing reliable findings. A discussion of alternative research methodologies is beyond the scope of this Guide, but for an overview pertinent in civil legal aid and access to justice settings, *see* April Faith-Slaker, *A2J Evaluation and Research Options*, THE ACCESS TO JUSTICE LAB AT HARVARD LAW SCHOOL, http://a2jlab.org/wp-content/uploads/2018/05/A2JLab-Evaluation-Chart-PRO-BONO-EXAMPLE.pdf.

important facts or other considerations that will increase the power of the experiments that will follow.

Claiming without over-claiming. Programs seeking to rely on outcomes data should put their best foot forward by collecting and presenting their outcomes data even in the absence of RCTs. Information about wins and losses, including about the content of the decisions (for example, sums of money recovered, time allowed to remain in an apartment, the right to return to employment, increased child visitation time) can deepen understanding of the work, help determine how best to allocate resources, and help explain the nature of the work to funders and other stakeholders. But, as noted above, it remains important to consider outcomes data in the context of other factors that may be important in explaining the results obtained. One executive director explained that she is "careful to not claim credit for all [favorable decisions], because the program doesn't do everything, rather it is one cause of the result." One program has described its role effectively in the following terms, "[we] provided assistance in X cases in which clients obtained Y relief."

Exercising caution to avoid ratings based on outcomes alone. Comparison of performance can improve quality, but if ratings are tracked mechanically and in ways that overlook underlying factors and choices, or if a program's funding is contingent to too great a degree on ratings, or if a person's job performance is contingent to too great a degree on his or her ratings, the pressure to achieve high scores on the measures can divert people and institutions toward activities that are represented in the measures and away from other parts of their work that are also important but not represented in the data collected. No one wants to be in a scenario, as has been documented in the context of medicine and higher education, in which the incentives to report successes turn into pressure to deny service to deserving people or to manipulate the entry of data.[97]

Insisting on professional standards. A key protection against possible risks of over-reliance on outcomes data is in the culture of the institutions themselves. Where the culture is well established, with training provided, practice supervised, dialogue encouraged, and data transparent, norms of professionalism will be likelier to hold. In the context of civil legal aid, norms of attorney practice are established, but of course no institution in law, medicine, education or other sectors of society, will be invulnerable to ratings pressure. Most importantly, the legal aid community does not currently have the problem of over-relying on data, rather the opposite is the case. Most of the people we interviewed are aware of the value of outcomes data in understanding, promoting, and

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[97] *See* Dave Phillips, *At Veterans Hospital in Oregon, a Rush for Higher Ratings Puts Patients at Risk, Doctors Say*, N.Y. TIMES, Jan. 1, 2018.

explaining civil legal aid, and were interested in finding responsible ways to do more with it.

b.   Recommendations:

1. **Manage causation questions through a culture of learning** – Collect outcomes data, share it within the organization, entrust leadership roles on outcomes data to staff, articulate norms and standards of practice, be transparent about intake practices, and use data internally to foster conversation about the multiple factors influencing outcomes.

2. **Manage causation questions by owning triumphs, without over-claiming** – Inform funders of outcomes achieved by the office, but always be careful not to claim accomplishments that may be caused by other factors in the lives of clients and in the provision of civil legal aid.

3. **Pursue rigorous research, including through randomized controlled trials** – Enlist researchers to use rigorous methodologies to clarify the value of civil legal aid.

V.   CONCLUSION

The civil legal aid communities in New York City and nationally are beginning to use outcomes data to deepen understanding of civil legal aid, strengthen legal aid, and explain legal aid to new audiences. But there is much more that can be done through outcomes data. This article describes opportunities for the civil legal aid community to go farther to unlock the potential of outcomes data today, to pursue emerging strategies for tracking outcomes, and to preserve the integrity of outcomes data at all times.