The Future of Legal Aid

I. Introduction

You may remember the scene in "The Graduate" in which a businessman takes aside Dustin Hoffman and says, "I just want to say one word to you -- just one word –"plastics". Similarly, I believe the future of legal services can be described in just one word: "systems". A system is a means or procedure for providing services to the public. This is very different than technology; however, the latest technology is often part of the procedure. These future systems will most likely focus on the quality, effectiveness and efficiency of legal aid providers.

The reason I believe these systems are the future is that other means of change, including those used in other countries, are not possible in the US. For example, in Victoria, one of seven states in Australia, a funding crisis was addressed by changing the eligibility requirements and eliminating services for certain types of cases throughout the state[1]. This was possible because most of the funding comes from government sources and IOLTA[2] and most services are delivered by a single entity, Victoria Legal Aid. Therefore system-wide changes are feasible in Australia. In England and Wales, legal aid was administered by an independent commission, but due to funding cuts, it is now administered directly by the government. Cuts have been

[1] Mary Anne Noone, Making the Hard Decisions: Victoria's Legal Aid Funding Crisis, 7-10 at http://www.ilagnet.org/jscripts/tiny_mce/plugins/filemanager/files/The_Hague_2013/Session_Papers/4.2.1_-_Mary_Anne_Noone.pdf

[2] Interest on legal trust accounts (IOLTA)**:** A system in which lawyers place certain client deposits in interest-bearing accounts, using the interest to fund programs. Legal service organizations that provide services to clients in need may use this method.

accomplished by top down decisions on eligibility and cases types[3]. Both Canada and the UK have made substantial changes to their delivery methods over the years by converting from primarily a Judicare system to a more balanced mixture of Judicare and non-profit staff attorney programs[4]. Again, this was possible because most of the funding comes from government which can therefore impose these changes.

The reason that the above methods of change are not possible in the US is that legal services are highly fragmented. No one knows how many independent legal services programs exist, but there may be as many as 2000[5]. Funding is also very diverse as funders include the federal government, most state governments, and numerous IOLTA programs, foundations, United Way organizations, law schools, area agencies on aging, courts, law firms, and individual lawyers[6]. Since case type priorities are made locally by each provider and eligibility requirements are decided by each funding source, making these system-wide changes are not feasible in the US. Similarly, any attempt to consolidate the providers into a coordinated network or standardize their delivery mechanisms is also likely to fail. Since each individual provider has its own board of directors, any attempt to consolidate governance will be extremely difficult, if not impossible, since no single funding source or other entity is in a position to force these changes.

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[3] Steve Hynes, Country Report- England and Wales, 1-2 at http://www.ilagnet.org/jscripts/tiny_mce/plugins/filemanager/files/The_Hague_2013/National_Report/England_and_Wales_National_Report.pdf

[4] Id at 3; Jacqueline Schaffter, ILAG 2013 National Report – Canada, 4 at http://www.ilagnet.org/jscripts/tiny_mce/plugins/filemanager/files/The_Hague_2013/National_Report/Canada_National_Report.pdf

[5] Alan Houseman, Civil Legal Aid In The United States an Update for 2013, ___, at http://www.ilagnet.org/jscripts/tiny_mce/plugins/filemanager/files/The_Hague_2013/National_Report/USA_National_Report.pdf. and Peter A. Joy & Robert R. Kuehn, The Evolution Of ABA Standards for Clinical Faculty, 188 at http://www.clea.memberlodge.org/Resources/Documents/clinical_standards_art.pdf; http://www.n4a.org/ (there are 134 LSC funded programs; about 900 pro bono projects; programs for seniors funded by 629 area agencies on aging; numerous state funded programs; at least __ court-based self -help centers and law student clinics funded by 175 law schools)

[6] Alan Houseman, supra note 5, at 10.

Other potential methods of improvement in the US include:

- Significant increases in funding,
- Establishment of a right to counsel for low-income clients with critical legal needs, namely contested cases affecting housing, health, safety, nutrition, etc.,
- Establishment of other types of governance with the authority to make system wide changes, and
- New technology that allows more self-help

Unfortunately, substantial increases in funding in the foreseeable future are not likely in the current climate of budget cuts. Even other countries that place a higher priority on legal services are making substantial cuts[7]. The right to counsel movement is gaining some traction, but it too will be limited by budget restraints. 32 states have established access to justice committees composed of all the stakeholders involved in legal aid including representatives of law schools, legal aid funders, the legislature, the executive branch, federal and tribal courts, as well as others from outside the legal and government communities.[8] This network of committees is continuing to expand. While their activities can include planning, education, resource development, coordination, delivery system enhancement, and oversight, they generally do not have or want the overall responsibility for governance or be accountable for outcomes, which are necessary to impose system wide changes. Finally, while technology can help low income people to represent themselves, it cannot replace the need for an advocate, especially for those who have limited reading ability, education, access to computers, and/or the ability to use computers

[7] See Mart Anne Noone, supra note 1, at 2 and Steve Hynes, supra note 3, at 1.
[8] See http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/resource_center_for_access_to_justice/state_atj_commissions.html and http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_atj_definition_of_a_commission.authcheckdam.pdf

Therefore the best tools that U.S. providers and funders have for expanding and improving legal assistance are systems that enhance quality, effectiveness and efficiency. This is because all providers can improve these factors regardless of their size, role in the service network or funding source. Also all funders are obligated to the sources of their funds to ensure its grants are effectively and efficiently used and generate quality services.

The fact that systems can substantially improve the number of people served and the impact and quality of the services is demonstrated by the current revolution in the use of systems, similar to the revolution in manufacturing caused by the assembly line and other innovations. In the mid-70s when legal aid programs were first funded by LSC, the use of systems by the service industry was still in its infancy. Yet, as evidenced by self-serve gasoline stations, fast food restaurants, Walmart, Amazon and eBay, new systems have allowed new entrants to dominate the service industry by driving traditional providers out of business.

II. Role of funding sources

A. Metrics

Funding sources have an important role in the adoption of systems. While they should not impose specific systems on providers, they can evaluate and require them to adopt the systems necessary to improve their performance. This allows providers the discretion of selecting the systems, but leaves them accountable to the funders to demonstrate that the chosen systems improve their performance. If performance is not sufficiently improved, the funder can insist on more changes.

In order for funders to conduct this evaluation, they should first establish performance standards for effectiveness, efficiency and quality and the metrics needed to measure them. In my writings,

I have encouraged the Legal Services Corporation (LSC) to develop these standards and metrics[9], and, to my delight, they have made these tasks part of their strategic plan[10]. Below I offer some potential metrics and questions that should be answered by the new standards.

In the future, evaluations should include the following steps. The first step is to require the providers to report the data and information necessary to calculate the metrics and answer the questions. The next step is to calculate the metrics and compare them to those of other providers. This is a critical step, because it is impossible to evaluate metrics in a vacuum. For example if a program annually closes 90 cases per advocate, where 10 percent of these cases (9) involve extended services, is it performing well? You can't be sure until you learn that other programs close 300 cases per advocate where 10 percent (30) involve extended services. The third step is to identify potential problems based on the metrics and the answers to the questions. This establishes areas in need of further inquiry. The metrics do not provide conclusive evidence of poor performance, but merely indicate where more inquiry is required. This inquiry can be in the form of more questions or an onsite evaluation. The next step is for the funder to require the provider to correct the problems verified by the further inquiry. The final step is to recalculate the metrics to determine if the necessary improvements have been made and, if not, require more changes. This evaluation system is well within the traditional duties of funders.

While evaluating our legal hotline, we measured the percentage of time that the hotline lawyers spent on the phone with the clients, as this is the only time spent on direct client services. We

[9] Wayne Moore, Delivering Legal Services to Low-Income People (2011) at http://www.amazon.com/Delivering-Legal-Services-Low-Income-People/dp/1453674055/ref=sr_1_1?s=books&ie=UTF8&qid=1367267792&sr=1-1&keywords=wayne+moore+delivering; Wayne Moore, Legal Services Programs Can Avoid Services Reductions by Improving Efficiency and Effectiveness at http://www.lsc.gov/sites/default/files/July%2011%2C%202012%20%288%29.pdf

[10] LSC, Strategic Plan 2012 to 2016, 6-7 at http://www.lsc.gov/sites/default/files/LSC/lscgov4/LSC_Strategic_Plan_2012-2016--Adopted_Oct_2012.pdf

found this percentage was only 10 to 20 percent. This suggested that a problem existed. Upon further inquiry, we found that the attorneys spent a lot of time on unsuccessful call backs. We therefore changed from a delayed call-back system to a same day call-back system and the metrics improved.

Another example pertains to the evaluation I did of another program. I found that many of its attorneys were closing far fewer cases each year than attorneys in other programs. If this was due to handling very time-consuming cases, the disparity would be understandable. Instead, I found the poor metrics were due to a program policy which only allowed the attorneys to maintain 10 to 15 active cases at a time. The number of cases closed annually by these attorneys was not even calculated.

Below is a sample of possible metrics that can be calculated with data already collected by LSC programs, except where indicated:

1. Impact advocacy[11]: LSC developed an evaluation system for these activities for the Delivery System Study[12]. Impact scores were assigned to each of a program's impact efforts using expert judges. The same judges scored all the programs and divided the scores by the programs' annual budgets. The scores were not intended to be precise but to separate programs into tiers with high scoring programs in the top tier and low scoring ones in the bottom tier. This helps programs determine whether they are engaged in enough activity which is likely to positively affect the client community

[11] This includes such activities as community economic development, forming strategic alliances, injunctive relief, legislative advocacy, media exposes, administrative rule making, changing court rules, policy advocacy, class action litigation, precedent setting litigation, investigative reports, etc

[12] Legal Services Corporation, The Delivery Systems Study: A Policy Report to the Congress and the President of the United States (June 1980).

2. Community education: Pre- and post-tests should be conducted to determine what the participants learned from the presentation

3. Court appeals per advocate: This metric is determined by dividing the number of closed appeals by the total number of attorneys and paralegals in the program; it is calculated for the most recent two year period, as this number can fluctuate considerably from year to year. This metric ranged from 0 to 1 and averaged 0.09 for all LSC programs in 2008 and 2009. This helps programs determine whether they handle enough appeals, which can positively affect many more people than the represented parties.

4. Number of "right to counsel" cases closed annually per advocate. These are cases that are considered to be so important that "right to counsel advocates" believe they warrant a right to counsel. This metric is determined by adding all bankruptcy/debt, collection, utilities, education, employment, child custody, support, abuse, adoption, guardianship, parental rights, paternity, juvenile, health, housing, income, and individual rights cases closed annually by negotiation without litigation, negotiation with litigation, administrative decision and contested court decision – and dividing by the number of full-time equivalent attorneys and paralegals in the program that are devoted to casework[13]. The average for all LSC grantees in 2011 was 20.6 cases per advocate and ranged from 4 to 88[14]. This helps programs determine whether they handle enough "right to counsel" cases.

5. Percentage of court decisions that involve an uncontested case: This metric is calculated by dividing the annual number of closed uncontested court decisions by the

[13] If one attorney only handles casework and another spends half time on casework, this constitutes 1.5 full-time equivalent attorneys.

[14] These metrics were calculated using the total number of attorneys and paralegals in a LSC funded program, instead of those devoted solely to casework as the latter information was not available. Since the vast majority of legal advocates are devoted to casework, this flaw in the data is not the major reason for the disparities in the metric.

sum of the closed uncontested court decisions and contested court decisions and multiplying by 100. This ranged from 2.7% to 89.4% and averaged 58 percent for all LSC programs in 2009. This helps programs determine how many of these cases receive full representation and whether this time could be better spent.

6. Allocation of staff: The metric is calculated by dividing the total number of staff who are not attorneys or paralegals by the total number of staff and multiplying by 100. This ranged from 6.8% to 64.3% and averaged 35.2% for all LSC programs in 2009.This helps a program determine if they have too many support staff.

7. Ratio of managers to non-manager staff attorneys and paralegals: This metric is used by government law offices, which strive for a ratio of 0.10 to 0.15[15]. This ratio averaged 0.25 for all LSC grantees in 2010[16].

8. Use of volunteer attorneys: This is calculated by dividing the number of volunteer attorneys accepting cases by the number agreeing to accept cases and multiplying by 100. This ranged from 2.3% to 100% and averaged 29.5% for all LSC programs in 2009. This helps programs determine if they are effectively using their volunteers[17].

9. Efficiency: One way to measure this is to compare the time advocates devote to closing their cases with the national average time for the same number and mix of cases[18]. This ranged from 81 percent less time to 356 percent more time than average.

[15]See James Wilber, Altman Weil, *Best Practices of City and County Civil Law Offices* at http://www.altmanweil.com/dir_docs/resource/b0541231-be60-491b-96ab-c6f1d5e1b4c5_document.pdf

[16] 1128 managing and supervising attorneys and 4553 staff attorneys and paralegals. 2010 LSC Fact Book at 35 at http://grants.lsc.gov/sites/default/files/Grants/Fact_Book_2010.pdf. See also Wayne Moore, Delivering Legal Services to Low-Income People, supra note9, at 193.

[17] The reason these percentages are low is due, in part, from the fact that many programs don't weed out the inactive attorneys from their calculation of the number of attorneys who agree to accept cases.

[18] One can use LSC national data for successive years to determine the average amount of time used to close an advice/brief services case and an extended services case (assuming staff spends 1200 hours annually on these closed cases and the averages are about the same each year). The average times for 2009 are 25.8 hours for an extended services case and 2.6 hours for an advice/ brief services case. (One can double check these times as follows: In 2009,

Another way to determine efficiency is to plot the total number of cases closed annually per advocate by case complexity for every LSC grantee. Case complexity is determined by calculating the percentage of cases that are closed with negotiation (with or without litigation), an administrative hearing or a contested court decision, since these are the most complex cases (other than appeals, which are discussed above). The number of advocates is determined by adding the total number of attorneys and paralegals employed by each program[19]. Graph 1 below shows the relationship between the total number of closed cases per advocate and the percentage of complex services cases they handled in 2009 for all LSC grantees, except those that only serve Native Americans, Guam, and Micronesia[20]. Note that the total number of attorneys and paralegals was used to make these calculations as the number devoted solely to casework was not available. Since most legal aid advocates are devoted to casework, the disparity in the following data cannot be primarily attributed to this factor.

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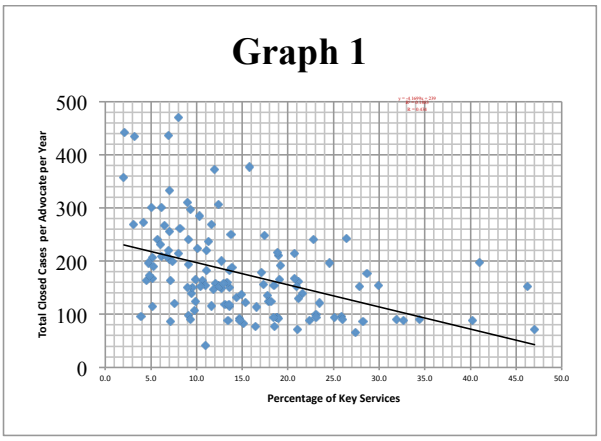
grantees closed 194,626 extended services cases and 725,821 advice and brief services cases (total = 920,447) with 4181 attorneys and 1577 paralegals (total = 5758). If one multiplies 194,626 by 25.8 and 725,821 by 2.6, adds them (6,908,485), and divides by 1200, this yields 5758. Note that if another figure is used instead of 1200 hours the results are the same, since comparisons are involved. These two averages can then be used to calculate the total time required to close each grantee's annual 2009 caseload if its advocates spent the average amount of time on each case. One can also calculate the total time they actually used to close their caseload if their advocates each spent 1200 hours annually on them. Finally one can compare the total actual time with the total "average time" as a percentage. For example, in 2009 one LSC grantee closed 1471 advice/brief services cases and 760 extended services cases with 29 attorneys and paralegals. Assuming an average amount of time was used, its advocates would have spent 23,403 hours on these cases, or (760x25.76)+(1471x2.6). If each of the 29 advocates spent 1200 hours on these cases, they would have actually spent a total of 34,800 (1200x29) hours to close these cases.
Since the "average time" was 23,403 hours and the actual time was 34,800, these advocates spent 49 percent more time than average on the cases (34800-23403)/23403*100). (Note that it does not matter how many annual hours per advocate are assumed as this number drops out when calculating the percentage; but the analysis does assume that the average annual number of hours for a program's advocates is the same as the national average).
Source of data is LSC's response to the author's 03/03/2011 Freedom of Information Act request for 2009 data (on file with author).

[19] For example, one LSC grantee reported to LSC that it closed a total of 10,849 cases in 2009, employed 61 attorneys and paralegals, and closed 3110 of these cases using complex services. The annual average number of closed cases per advocate is 178 and the percentage of complex services is 29 percent. Id.

[20] Id.



As expected, a strong correlation appears between the number of closed cases per advocate and the percentage of complex services. Programs that handle a larger percent of complex services close fewer cases per advocate. But the graph also shows that LSC grantees that fall well below the sloping line have counterparts above the line that handle a similar complexity of cases. Yet those below the line close 100 to 200 fewer cases per advocate than those above. For example, the complex services ratio for two programs is 10 percent but one closes 90 cases per advocate per year (9 complex services cases, 81 others) and the other closes 300 per advocate per year (30 complex services cases, 270 others). This shows that factors other than case complexity cause the disparity in the efficiency of the providers.

10. Billable hours by case type and service. This is determined by calculating the number of billable hours spent on a particular case type and service for each advocate and averaging them. For example, for domestic abuse cases, one would determine the average billable hours spent on each service by each advocate annually (the services are advice,

limited action, negotiation without court involvement, negotiation with court involvement, uncontested court decisions, contested court decisions and administrative agency decisions). This calculation is performed for all case types. This is used to spot advocates or offices that are spending significantly more hours on these cases than others. This might be due to the nature of the cases, which is fine, or inefficiencies in the casework, which is not. This is the method used by the UAW legal services plan to monitor performance[21].

B. Standards

Below are the questions that should be addressed by the standards:

1. Efficiency

Programs can use the graphs and other data discussed above to identify potential areas in need of improvement. They can then explore these areas using the appropriate questions below.

Outreach

- Do you have efficient methods for reaching clients with limited English proficiency and hard-to-serve clients?

Intake

- Do you match clients with the least expensive delivery system within the program that can address their problems (e.g., legal hotline, pro bono program)?
- Do you make referrals to other programs based on information that ensures they are successful? Do you measure the success?
- For each intake point within the program, what process do you use from the time the client first contacts the program until he or she is approved for services? How long does it take, from the time of initial contact with the program, for clients to learn whether

[21] See http://www.uawlsp.com/

they will be represented? Can this be shortened? Do the vast majority of clients, who receive advice-only or limited action, only interact with two staff? If not, can this be changed?

- Is intake centralized?
- Do you use case acceptance meetings?

Advice

- Do you resolve most cases requiring advice-only during the clients' first contact with your program? Do you handle most of these cases by telephone?
- Is technology available to help advocates quickly conduct conflict checks, record case notes, and generate follow-up letters to clients?

Limited action cases

- Does dedicated staff handle common, routine cases?
- Do they handle most of these cases entirely by phone?
- Do they use streamlined procedures and document generators to create all documents?
- Are cases monitored until conclusion?

Uncontested court cases

- Do you use unbundled services to resolve these cases, whenever possible?
- Do you use document generators for all documents?
- Do clients represent themselves at most court hearings?
- Are cases monitored until the court decision is made?

Staff attorneys and paralegals (advocates)

- Do attorneys and paralegals use document generators to prepare most documents?
- Do they use unbundled services whenever possible?

Supervision

- Do managers monitor the number of hours billed to cases on an ongoing basis and intervene when necessary?
- Do they monitor the age of cases, number of open cases, number of closed cases per month, and the percentage of key services?

- Do they use work plans?
- Do they periodically review best practices and quality control systems?
- Do they conduct statistically valid client satisfaction surveys?
- Do they ensure document generators and other technology are actually being used?
- Do they minimize the number of uncontested court cases that receive full representation?
- Do they ensure staff uses unbundled services whenever possible?
- Do they strive to create a paperless office?
- Do you use an efficient ratio of supervisors to non-supervisory advocates?
- Do you use an efficient percentage of staff other than attorneys and paralegals?

2. Effectiveness

Programs can use the following questions to identify opportunities for improvement in effectiveness:

Outreach/Intake

- Do you have effective methods for reaching clients with limited English proficiency and hard-to-serve clients?
- Do you coordinate outreach with other program activities and objectives to achieve synergy?
- Do you conduct outreach at locations that primarily reach the same clients, or are they more diverse, including community events, festivals, churches, radio shows, public access TV, newspaper columns, etc?
- Is outreach proactive, targeted at underserved client communities, or is it reactive, based on requests from the community?
- Do you analyze your annual number of closed cases to determine how they are allocated geographically and by ethnicity, age, gender, and language? Do you compare these allocations to census data for the low-income population to determine if any local community or client group is underserved? If so, do you target outreach to these underserved client groups?

- Do you try to screen out cases requiring extended services when these services are not available?

Advice

- Does advice generally produce expected, favorable outcomes for clients? When it does not, do you provide these cases with more services in the future?

- Do managers listen to a sample of telephone advice calls (with client consent) to determine if advocates give advice clearly and make sure clients understand it?

- Do advocates receive call management training?

- Are outcomes recorded for a statistically valid sample of advice and limited action cases?

- Do all materials given to clients meet readability standards?

- Do you use interpreters and translators for limited English speaking clients?

Limited action cases

- Do you monitor these cases to completion to ensure clients receive the expected outcomes?

Extended services cases

- Do advocates specialize?

- How many open cases do advocates have? How many are active? How do they control their caseloads?

- Are resources or expert staff available if staff advocates need help?

- Does staff receive the training they need? What training have they had recently?

Volunteer lawyers

- Do they handle extended services cases whenever possible?

- Do nearly all recruited volunteer attorneys accept at least one new case each year? If not, can this be corrected?

- Do you monitor the progress of their cases with periodic phone calls?

Supervision

- Do supervisors monitor each advocate's billable hours and average time spent on advice, limited action and uncontested court cases?

- Do they conduct statistically valid client satisfaction surveys?

- Do they evaluate staff annually and, if so, how is this done?
- Do they set goals regarding the quality of work done?
- Do they review all cases periodically? If so, how is this done and does it happen at least quarterly?
- Do they establish impact advocacy objectives, action steps, milestones, and measurements for all advocates?
- Do they compare outcomes with measurements for impact cases?
- Do they periodically review the quality of staff's significant casework, depositions, and agency and court hearings?
- Do you have a committee which oversees the quality and quantity of work done by the program?
- Is priority given to "right to counsel" cases, contested court cases and appeals?
- Are partnerships with other non-profits created to address client community problems? If so, are they formalized in writing? Have they created a strategic plan for creating change?

3. Quality

They key to determining the quality of casework is to measure case outcomes.

Other reasons for measuring outcomes include the following:

- Determining whether a program really makes a difference in the lives of people
- Giving program staff a clearer picture of the purpose of their efforts
- Demonstrating to staff and volunteers that their efforts are worthwhile
- Attracting and retaining talented staff who want to make a difference
- Garnering support for new efforts
- Raising new and retaining existing funding
- Attracting agencies to form partnerships and strategic alliances

- Identifying staff and volunteer training needs
- Gaining public recognition
- Developing and justifying budgets to correct identified deficiencies
- Targeting the most effective services for expansion
- Preparing program improvement plans
- Focusing board members on programmatic issues

Outcomes can be analyzed in a variety of ways:

- Collect outcome results both when the case is closed and one year later, particularly for those case types that tend to be unstable, such as domestic violence, evictions, certain public benefit cases, etc. This will determine the long-term effects of legal interventions.
- Separately analyze results for different client groups, particularly those with the lowest incomes, disabilities and health problems, low education levels, and limited English ability. While some interventions may work well with more capable clients, programs should know how they work with more vulnerable groups.
- Compare outcome results over time and analyze any changes. Some changes may be due to systemic problems that require law reform.
- Compare outcome results among advocates who handle some of the same cases. Differences may indicate a need for better sharing of strategies or more training.

- Compare outcomes with other legal services programs and analyze differences to help identify ways of improving performance. This suggests that some outcome measurements should be standardized to allow comparisons.

  Outcomes are usually captured as a matter of course for extended services cases, so data collection should not be a problem. The question is whether outcome data should be collected for advice and brief services cases. Since these comprise the vast majority of cases at least a statistically valid sample of these cases should be evaluated.

C. Coordination of providers:

Another area where funders can improve efficiency and effectiveness is by requiring its grantees to coordinate with each other and other providers in the same service area. This can result in more effective referral systems where programs agree to handle cases referred by others if they have capacity to do so. It also can also result in shared training and brief banks and the coordination of community education. Programs can also co-counsel time consuming impact litigation and share best practices.

Some have developed effective systems for achieving this coordination. For example, the New Legal Assistance Forum in Australia is comprised of three types of groups: executive group, a main forum and working groups. The executive group operates informally and through quarterly meetings to ensure plans and activities progress between the quarterly meetings of the main forum. A main forum decides on and develops the NLAF activities. Working groups are established on an ad hoc basis to consider and address issues and to then report back to the main forum. Working groups have defined tasks and – importantly - a life span. New working groups

are established as needs are identified[22]. The NLAF has been described as "… as one of the most effective and important initiatives for the legal assistance sector in NSW [New South Wales] in the past decade"[23].

D. Centralized intake

Finally, funders can work together to establish a centralized intake system to insure clients have easy access to all existing legal services. By centralized intake, I mean a single point of access to all free legal services in a state or a large area of a highly populated state. There are several reasons why centralized intake is crucial:

- Centralized intake is particularly important as it can serve as a single point of access to a very fragmented delivery system.
- Millions of dollars are wasted every year because every program and typically every program office have their own intake systems. These multiple points of intake are confusing to clients and those agencies that refer them. Worse, clients are often "bounced" from one intake system to the next in search of services, wasting more than $16 dollars on each bounce. A centralized system minimizes costs through the economies of scale and by making more accurate referrals.
- As mentioned above, available volunteer attorney resources are underused in most states. A centralized system can more easily ensure volunteers receive the cases they want.
- The quality of legal services is largely unknown as programs do not determine the outcomes of most of their cases. Centralized intake systems can efficiently follow-up with referred clients to determine their outcomes and notify programs of any problems.

[22] See http://wic041u.server-secure.com/vs155205_secure/CMS/files_cms/307_Seagrove_C.pdf
[23] Id.

This provides an independent system for finding and fixing problems within the overall service network.

- LSC grantees report that 45 percent of those clients who receive services do not receive all the services they need, because of a lack of resources[24]. Yet if programs used unbundled legal services, many of these clients could receive the necessary services without an increase in funding. Centralized intake systems can use protocols to find and direct clients capable of self-help to programs that use unbundled practices.
- Services are maximized when clients are referred to the least expensive delivery system that can address their problems. A centralized intake system can use protocols to refer advice-only cases to legal hotlines, uncontested court cases to court-based self-help centers, and extended services cases to pro bono attorneys.
- Since intake is so fragmented, most intake systems don't have the resources to accommodate many limited English speaking clients or serve hard-to-reach clients. Thus, most services go to those who are capable of negotiating the often cumbersome intake process, leaving the most vulnerable clients without services. Also, most intake systems can't afford to maintain referral data bases that keep tract of every provider's priorities, eligibility requirements and current capacity to accept cases for each case type. Knowing the current capacity for each case type is particularly important because the lack of capacity is the main reason most clients are denied services. As a result, their referrals are likely to be inaccurate and trigger the bouncing process described above. Centralized intake can maintain the data base necessary to avoid these problems.

[24] 58 percent of advice and brief services cases do not receive all the services they need. See note 35, supra. Advice and brief services cases constitute 77.5 percent of all cases. 2011 LSC Fact Book at 9. Therefore 45 percent of all cases do not receive the services they need.

- When funding for services increases or decreases, changes are either based on politics or are apportioned equally among providers, because funders lack the necessary information to respond otherwise. A centralized intake system can assess which clients or types of cases account for the greatest unmet need, which programs can best meet these needs, and spot problems within a network of providers, such as programs rejecting cases that should be accepted. This information would allow funders to make better decisions.
- The intake system is the first and often only contact a client has with a program. Since most intake systems turn away more people than they accept and inadequately refer those who aren't accepted, they can discourage clients from using them again and their friends and neighbors from contacting them at all. Centralized intake systems can minimize this problem by helping clients find services anywhere within the network and more importantly tell them when services are unavailable, thereby eliminating the frustrating process of learning this for themselves. They can also tell clients to call-back if their referrals are unsuccessful, since they are in the best position to make a successful second referral and the feedback can help them improve referral protocols and databases for better referrals in the future.

In my opinion, centralized intake should not be operated by a provider of legal services. This avoids the inevitable concern that the intake process favors the host provider. Also the intake center should refer cases to the least expensive, appropriate delivery system, which is undermined when operated by a provider. Finally, it prevents the intake system from serving as an independent monitor and evaluator of the entire network. However, the intake center should be governed by the providers and funders through a board of directors or an advisory board, so the center is accountable to and can be coordinated with the providers.

III Role of providers

A. Overview

The role of providers is to adopt new systems that will enhance their efficiency, effectiveness and quality. There are three different categories of these systems:

- Delivery systems that provide a specific type of service such as advice or assistance with an uncontested court case
- Systems used to handle common types of cases such as no-asset, Chapter 7 bankruptcies or child support cases
- General systems that improve overall productivity and client satisfaction such as the use of document generators or systems that allow clients to check the status of their cases online

A system is not satisfactory unless it meets other conditions. The most important is quality control. Case outcomes must be collected to determine which clients and case types are appropriate for each system. Quality control mechanisms must be tailored to fit the design of the system. Most systems should use volunteers to extent possible, as this is an excellent way to generate more services with limited resources. Finally a network of systems produces the best results and serves the most people when intake is centralized in a state or large region of a heavily populated state.

B. Systems for Delivering Specific Services

1. Introduction

Legal services primarily consist of the following services: advice only; limited action[25]; negotiation; help with uncontested court cases; representation in contested court cases; and representation before an administrative agency. Another category is impact advocacy which includes policy advocacy, community education, court appeals, community economic development, etc. It doesn't make sense to use the same delivery system to handle an advice case as a contested court case. An advice-only case should be resolved upon a client's first contact with a provider. The more steps that are used (scheduling an appointment, face-to-face interviews, case selection meetings), the more a case costs with no added benefit to the client; in fact the delay caused by the extra steps often hurts the client. On the other hand, cases needing extended services should be more carefully screened to ensure they are a priority and, ideally, can have impact beyond the party being represented. Examples of these major delivery systems are hotlines (advice only), court-based self-help centers (uncontested court cases), pro bono programs (limited action, negotiation, contested court cases), and specialized staff using streamlined processes and procedures (limited action; negotiation, contested court cases, and administrative cases). These systems are discussed in more detail next.

2. Advice

The most common system for handling advice is a legal hotline, also called a legal advice line. The goal of legal hotlines is to provide the advice during the client's first contact with the program or during a same-day call-back. The hotline is very efficient and delivers quality advice. Using the telephone to provide advice eliminates the cost of

[25] Limited action usually involves advice and document preparation, but does not involve negotiation or representation in court or at an administrative hearing. Legal Services Corporation(LSC), Case Services Report Handbook 20-3 (2008) at http://lsc.gov/media/newsletters/2007/lsc-updates-august-15-2007

scheduling client appointments and reminding them of these appointments, the downtime caused by no-shows, and the time spent on courtesies required by face-to-face meetings. Telephone advice calls average between seven and fifteen minutes, whereas face-to-face advice can easily average a half hour or more[26].

Research has shown that the outcomes produced by hotlines are comparable to those produced by face-to-face advice[27]. Quality is ensured by using experienced attorneys and having case notes reviewed by a supervising attorney. Follow-up letters can be prepared concurrently with the entry of case notes into the computer, which is done during or shortly after the call[28]. Hotline attorneys can usually close two cases per hour resulting in 2400 closed cases annually assuming 1200 "billable" hours. Since up to 30 percent of these cases usually involve referrals instead of the provision of advice, this translates into about 1700 closed advice cases per year[29]. We once operated a hotline where a full-time equivalent attorney in private practice handled 7872 cases per year[30]. Since the attorneys were paid 50 percent more than staff hotline attorneys, this was equivalent to 5248 staff cases.

3. Limited action

Many limited action cases can be handled by specialized advocates, who use streamlined procedures and document generators. Often these cases can be handled by paralegals. An

[26] Wayne Moore, Delivering Legal Services to Low-Income People, supra note 9 at 124-5
[27] Center for Policy Research, Hotline Outcomes Assessment Study: Final Report – Phase III: Full-Scale Telephone Survey 67 (Nov. 2002) at http://www.nlada.org/DMS/Documents/1037903536.22 ; Community Legal Service, Methods of Delivery, Telephone Advice Pilot: Evaluation Report 52 (Sept., 2003).
[28] Hotlines are not well-suited to advice cases that require a lot of time such as debt counseling; also they should not be used for certain types of clients, namely clients with serious learning disabilities, severe mental disabilities, limited communication or reading skills, or for cases that are too complex to discern the facts over the phone. Wayne Moore, Delivering Legal Services to Low-Income People, supra note 9 at 111.
[29] Wayne Moore, Id at 124-5.
[30] Id

example of a streamlined procedure is one used to handle the debts of clients who are judgment proof. Typically a paralegal prepares and provides the client with copies of a computer generated letter, which demonstrates the client is judgment proof and asks the creditor to cease all contact with the client. The client then signs and sends a copy to each creditor. The client is told to contact the program if any problems arise. One paralegal can close around 450 of these cases per year[31]. This is an area where further experimentation and innovation is needed to reduce the time now spent on these cases.

4. Uncontested Court Cases

Court-based self-help centers are proving to be a very efficient way to handle these cases. Court staff explains court procedures and helps clients fill out and file the necessary court forms; they also tell them what to bring to the court hearing. These centers are even more efficient than hotlines because they have virtually no intake costs, as clients are served on a first come, first served basis. Also carefully supervised non-attorney volunteers can be used to help clients fill out the necessary forms. Volunteer attorneys can be used productively, as they can help three to six clients in one morning. Kiosks or computerized document generators allow client's to prepare their own forms with limited help from staff[32]. A staff person can assist around 3000 people per year[33].

One problem with these centers is that court staff cannot provide legal advice. With uncontested cases, staff can usually give the necessary information without providing advice; but advice is nearly always needed for contested court cases. Some courts address this problem by using volunteer attorneys or contracting with legal aid programs to

[31] Id at 145.
[32] Id at 237-8.
[33] Id at 160-1.

provide the necessary advice. For these centers to work, courts need to standardize their forms and pleadings.

5. Negotiations and contested court cases

One way of handling some of these cases is to refer them to volunteer attorneys. Volunteers are not free. One pro bono coordinator can usually recruit, train and refer cases to about 450 volunteers per year[34]. Since the legal work is free, it is not cost-effective to refer advice cases to volunteer attorneys. Referral of an advice case requires 0.22 percent of a coordinator's annual salary and overhead[35]. An advice case handled by a paid hotline attorney requires only 0.06 percent of the attorney's annual salary and overhead[36]. The cost-effective use of volunteer attorneys is the greatest area of need for more experimentation and innovation, as little effort has been devoted to this issue.

6. Administrative law cases

U.S. legal services programs are leaders in using paralegals to handle administrative appeals for Medicaid, SSI, SSA, Medicare, unemployment compensation, veteran's benefits, etc. This is more cost-effective than using paid attorneys. Additionally the other delivery systems discussed above are not well suited to handling these cases. Hotlines are best for determining whether clients are eligible for benefits and helping them with simple matters like routine overpayment problems; most other matters are too complicated to be resolved by limited action. Also, administrative agency procedures do not allow many cases to be resolved by negotiation. Volunteer lawyers are not a useful

[34] Id at 178.
[35] 1/450*100 = 0.22 percent
[36] 1/1700 *100 = 0.06 percent.

resource (except for SSA and maybe unemployment cases), since most are not familiar with the rather complex law that is involved.

C. Systems for handling common case types

1. Introduction

This is an area where the use of systems can make a big difference. This is because legal aid programs primarily use specialized systems in connection with specific services (e.g. advice) or general office procedures and practices (e.g. document generators). However systems can be very useful for specific case types. For example, I remember my first landlord/tenant hearing as a newly hired legal aid lawyer in 1976. I was opposed by an infamous landlords' lawyer. After spending the morning waiting for and then handling my hearing, I realized that I had just handled one case, but the landlords' lawyer had handled more than 20 cases during this same time period. He had a system where he filed 20 to 30 cases for the same court date and spent most of the day resolving them. The procedures used by my program would have required 30 lawyers to spend their morning defending these cases. I remember thinking that my program needed a better system for these case types. Nearly 80 percent of the cases handled by LSC grantees involve 17 case types, namely: divorce, support, child custody, domestic abuse, federally subsidized housing, public housing, private landlord/tenant, Medicaid, SSI, Social Security Disability (SSDI), unemployment benefits, welfare, food stamps, bankruptcy/debtor relief, collection (repossession, deficiency, garnishment), and wills/advance directives[37]. Nearly all other case types represent less than one percent of cases handled. If special systems are developed for each of these common case types, programs can handle many more of them with the same resources.

[37] 2011 LSC Fact Book 20-2 at http://grants.lsc.gov/sites/default/files/Grants/RIN/Grantee_Data/fb11010101.pdf

There are several approaches that can be used to develop these systems, namely: unbundled legal services (no court representation); unbundled legal services (court representation); placing attorneys in specialized courts; adopting efficient systems developed by others; outsourcing to foreign countries; and using paralegals for administrative law cases (as discussed above).

2. Unbundled legal services (no court representation)

Probably the most promising approach involves unbundled legal services[38]. These are services where a lawyer and client agree that the lawyer will provide some, but not all, of the work involved in traditional full-service representation. The lawyer performs only the agreed-upon tasks, rather than the whole "bundle," and the client performs the remaining tasks on his or her own.

After retiring from AARP, I engaged in a flat-fee-for-service, unbundled law practice for three years serving low- and moderate-income people in DC, Maryland, and Virginia. Even though Virginia courts and ethics codes do not specifically authorize unbundled practices, we engaged in unbundled services, because the courts we used allowed us to ghostwrite pleadings without disclosing our involvement. The ABA has issued an ethics opinion that holds that ghost writing pleadings is ethical under the old rules that don't specifically authorize unbundling[39]. I handled the following case types: divorce, support, child custody, private landlord/tenant, bankruptcy/debtor relief, and wills/advance directives. These cases took me between three to four hours to resolve.

I found that clients could handle the following tasks with coaching and written materials: filing court papers, arranging for service of process, and assembling the necessary evidence and

[38] See http://www.americanbar.org/groups/delivery_legal_services/resources.html.
[39] See http://www.americanbar.org/content/dam/aba/migrated/media/youraba/200707/07_446_2007.authcheckdam.pdf

witnesses. If they encountered a problem, I could usually coach them through the necessary corrective action. They also represented themselves at the court hearing. I drafted all the required court papers including the proposed order. I supplied them with the questions they and their witnesses would have to answer at the hearing. I also prepped them by phone prior to the hearing. Occasionally, they would forget to bring a necessary document or witness, and I simply provided them with copies of the pleadings and coached them through a re-filing of the case. Since uncontested cases involve little judicial discretion, clients could usually obtain the court judgment they were seeking, if they brought the necessary documents and witnesses.

I was even able to help clients with certain contested cases such as child support where the incomes of the parents were easily established; custody where one spouse was denied all visitation rights; enforcement of custody and child support orders; Chapter 7, no-asset bankruptcies; and landlord/tenant cases where the client needed more time to move out. While I didn't handle domestic abuse cases, court staff and others successfully use unbundled services by preparing pleadings and affidavits for a temporary protective order and informing clients on how proceed pro se[40]; the client can then be referred to social services for additional help, and an attorney can enter the case when needed. There is evidence that unemployment benefit cases also can be handled pro se with advice and document preparation assistance[41].

I even handled some contested divorce cases where the other side was represented by a lawyer. I prepared my client's court pleadings and a draft separation agreement favorable to my client, which could be used as a starting point in my client's negotiations with his or her spouse. I told

[40] See, for example, http://www.dccadv.org/img/fck/Protection%20Order%20Brochure.pdf.
[41] See D. James Greiner & Cassandra Wolos Pattanayak, *What Difference Representation? Offers, Actual Use, and the Need for Randomization,* Yale Law Journal, Vol. 121, 2011 at http://biolawgy.files.wordpress.com/2011/03/what-difference-representation.pdf

my client not to talk to the opposing attorney but to speak only to the spouse. I would help the client through the discovery process by preparing interrogatories, motions, requests for documents, and pro se subpoenas. By this time, the opposing spouse's legal bills had usually reached $5000 to $8,000, whereas my client had spent less than $1000. This difference in fees often caused the opposing spouse to agree to settle the case with guidance from his or her counsel. I advised my client throughout the process, but didn't sign any pleadings or talk to the opposing counsel or anyone else.

I developed four criteria that I used to decide whether a case was appropriate for unbundled services: 1) abilities of the client (I didn't serve clients with mental disabilities, limited English speaking skills, or hectic lives where they could not be expected to represent themselves), 2) the simplicity of proving the case (cases that can be proven with testimony or the submission of simple documents), 3) presence of an attorney for the opposing party (I mostly handled cases where opposing party was pro se, except in uncontested cases), and 4) whether the decision maker (e.g. judge) had limited discretion in deciding a case.

3. Unbundled legal services (with court representation)

This is the area requiring the most new research and experimentation. Unbundling in legal services typically does not involve representation in court or at an administrative hearing. However, this is what most clients want. In part, this is because they don't understand the court procedures involved and the need for all the accompanying paperwork. But, they do know the value of having a spokesperson in court or at a hearing and are often afraid to represent themselves. Yet there are situations where representation at a hearing requires little preparation, so long as the client gathers the necessary evidence and witnesses. One example is a child

support hearing where the client is able to provide pay stubs for both parties or a recent federal tax return. Even if clients lack access to this information, they can be coached on how to obtain information from the IRS or subpoena their spouse's employer. The retainer agreement can stipulate that representation at a hearing is conditioned on the client's ability to provide the necessary evidence 48 hours prior to the hearing. In these cases the client is coached to file the case pro se and the attorney only enters his or her appearance at the hearing.

Other examples of these cases include:

- Child custody cases where the client provides the necessary witnesses and there are no allegations of substance or physical abuse
- Small claims cases where the client provides the necessary evidence
- Federally subsidized housing, public housing, and private landlord/tenant cases where the client wants more time to move, can prove that the rent has been paid or can provide the necessary evidence of housing code violations
- Medicaid, SSI (age based), unemployment, welfare, and food stamps cases where the client can provide proof of income and other eligibility criteria; also SSI and SSA overpayment cases where the client has a valid defense.
- Permanent restraining orders in abuse cases where client provides the necessary witnesses and other evidence
- Other cases where the client can gather the necessary evidence

4. Lawyers assigned to specialized courts

Another approach is the placement of a legal aid lawyer in a landlord/tenant or small claims court to handle collections, debtor relief and private landlord/tenant cases. A lawyer also could be assigned to handle all restraining order hearings, if the volume justified this. Staff throughout a legal aid program would develop these cases and transfer them electronically to the in-court lawyers, who would handle the hearings. This is the legal aid counterpoint to landlord and collection lawyers who dominate these courts. If an in-court attorney has a light caseload during a particular day, he or she could also serve unrepresented, eligible clients who appear in court that day.

5. Efficient systems developed by others

A forth approach is to study and adopt variations of the systems used by other providers of high volume legal services. Many attorneys who participate in prepaid legal services have devised streamlined methods for handling certain case types. Some for-profit providers handle a high volume of certain case types very efficiently, as this determines the amount of their profit. For example, many hospitals use these firms to help patients qualify for Medicare or Medicaid or to appeal a denial of insurance coverage for hospital services[42]. Judge Advocate General (JAG) attorneys handle a high volume of wills and advance directives and are willing to share their methods and software. Child support divisions of governments are very proficient at obtaining child support to reimburse the state for welfare benefits provided to the children. Some private practitioners that specialize in one case type (e.g. bankruptcy, SSDI) have developed very efficient systems that could be copied.

6. Contracts with private practitioners

[42] See http://www.hcreceivablemgnt.com/service.php?services=Appeals

Some private practitioners can handle cases less expensively than legal aid staff. In fact most SSDI cases could be transferred to lawyers who specialize in this practice, since they are paid out of the clients' retroactive benefits; the downside is that clients receive less money. But the money saved by legal aid could be used to help clients, who do not have access to **any** legal services. Legal aid could also refer SSI cases to these private practitioners in exchange for paying the difference between the lawyers' fees and the amount payable out of SSI retroactive benefits. Some private practitioners might be willing to do a block of cases (e.g. unemployment) for a flat fee. Also there are lawyers who specialize in specific tasks such as preparing QDROs and can handle them at a much lower cost[43]. Some programs find it more cost effective to contract with attorneys in rural areas, instead of having staff travel to rural courts.

7. Outsourcing to foreign countries

Certain work can be outsourced to other countries. For example, I outsourced the preparation of immigration papers to a firm in China that produced them at a fraction of what it would cost me[44]. QDROs can also be outsourced. It may even be possible to outsource the coaching of pro se litigants if it can be limited to legal information.

8. Summary

Case Type	Efficient methods
1. Bankruptcy, debtor relief	Unbundled; In-court small claims lawyer
2. Collections (repossession,	Unbundled; In-court small claims lawyer

[43] See http://www.stanbeutlerjd.com/;
[44] See http://www.sourcingmag.com/content/c060508a.asp http://www.managedoutsource.com/legal/immigration-paperwork.htm

Deficiency, garnishments)	
3. Custody/visitation	Unbundled
4. Support	Unbundled; systems used by child support collection agencies
5. Divorce/separation	Unbundled
6. Domestic abuse	Unbundled; attorney dedicated to these hearings
7. Medicaid	Systems used by for-profit providers; paralegals
8. Food Stamps	Paralegals
9. SSDI	Private practitioners; paralegals
10. SSI	Subsidized private practitioners; paralegals
11. Unemployment	Subsidized private practitioners; paralegals; unbundled
12. TANF	Paralegals
13. Federally subsidized Housing	Attorney dedicated to these hearings
14. Public housing	Attorney dedicated to these hearings
15. Private landlord/tenant	Unbundling; in-court tenant lawyer
16. Mortgage foreclosure	Volunteer lawyers
17. Wills/advanced directives	Systems used by JAGs; partnership with Legal Zoom

D. Efficient office procedures and practices

One law firm that serves members of prepaid legal services plans has a motto: "systems, not smiles, assure excellent services"[45]. These systems include: telephones, client intake, document production, and document storage and maintenance.

1. Telephone systems

A good telephone system can be a huge timesaver. Each staff person should have his or her own telephone number which can be given to existing clients for direct call-backs. Also unique numbers should be given to significant sources of incoming calls, so staff knows when a call originates from one of these sources. For example, if an agency, like a court or centralized intake center, refers numerous clients to the legal aid office, the agency can be assigned a unique telephone number so the staff can treat those calls as a priority. Non-clients should be given a separate number to distinguish their calls from those of clients and referral agencies.

The phone system should greet new clients with a 1) menu that allows clients to be directed to the appropriate unit within the program[46] and 2) a message that tells clearly ineligible clients that they can't be served (e.g. criminal matters). All numbers should allow call forwarding so a staff person can receive calls outside the office and calls can be forwarded to volunteer lawyers. If a staff person or unit is not available, an administrative person can answer the call and arrange a time for a call-back to eliminate phone tag. Alternatively the client can be asked to leave a message indicating times they will be available for a call-back. Having calls go automatically to the right person and the reduction of phone tag can save considerable time.

[45] Workshop handout prepared by John Wachsmann of Wachsmann & Associates in Englewood, Colorado (undated and in possession of the author).
[46] This should not be complicated as some low-income people will not use it.

2. Client intake

The cost of intake can represent up to 25 percent of the cost of an extended services case and 50 percent of the cost of an advice or limited action case[47]. Inefficient intake is a common source of lower productivity.

For maximum efficiency, a client should interact with only two people before he or she is accepted (or rejected) for services. One interaction is required to screen for eligibility. The second interaction should determine whether the client will be served and close most cases requiring only advice or limited action, as these are the vast majority of all cases[48]. In a few circumstances, the acceptance can be provisional, such as when clients are referred to the pro bono unit where a volunteer may not be available.

Many programs still use case review meetings to screen cases[49]. These meetings can use over seven percent of advocates' annual billable hours and delay the commencement of services by more than a week[50]. These meetings should be eliminated. The training and camaraderie benefits of the meeting can be provided at much less expense using other methods.

If telephone intake occurs at more than one office or unit within a program, centralizing it at one of these points is much more efficient. Information and referral services find that decentralized intake costs around $16.35 per call, while centralized intake averages about

[47] Wayne Moore, Delivering Legal Services to Low-Income People, supra note 9 at 34.
[48] 2013 LSC Fact Book at 19.
[49] These meetings usually occur weekly or sometimes bi-weekly and include most of the advocates working in an office or unit. These advocates spend two to four hours discussing the facts of each case, the issues involved, and whether it should be accepted for representation. Over half the cases are not accepted. Programs support this practice by saying that it is a good way to spot issues that individual advocates might miss and to brainstorm strategies; they say it also builds camaraderie and serves as continuing legal education for less experienced attorneys. [50] Wayne Moore, Delivering Legal Services to Low-Income People, supra note 9 at 83.
[50] Wayne Moore, Delivering Legal Services to Low-Income People, supra note 9 at 83.

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$5.20 per call as a result of economies of scale and more efficient use of staff[51]. Also centralizing intake allows the intake worker to use protocols to ensure that cases are sent to the office or unit that can most cost- effectively handle the case.

The initial client screening should also determine whether the client is capable of self-help to allow those cases to be referred for unbundled services. During the initial interview, intake sheets should be used for the most common cases to ensure all relevant information is collected. Sometimes the intake sheet can help a clerk enter the information directly into document generation software to produce draft documents, including wills and advance directives. Sometimes these sheets can be forwarded to the client for completion before the interview. Whenever possible, intake forms should be completed on the computer to eliminate the need for later entry. Clients with severe communication, learning, emotional or mental health problems; the homeless; and others with special needs will require a more expensive intake system[52]. But the needs of a few shouldn't be a reason for all clients to receive more expensive intake processing.

Some programs receive cases through informal intake processes, as when an advocate receives a call from a prior client. It is best to eliminate these processes, because they rarely utilize the least expensive delivery system.

3. Document production

[51] Dan O'Shea, Christopher King, et al, *National Benefit/Cost Analysis of Three Digit-Accessed Telephone Information and Referral Services,* University of Texas at Austin 16 (Dec 2004) at http://www.utexas.edu/research/cshr/pubs/pdf/211costanalysis.pdf.

[52] Community Legal Service, supra note 27, at 20. Note that hotlines have been successfully used to serve limited English speaking populations. See National Asian Pacific American Bar Association, *Increasing Access to Justice for Limited English Proficient Asian Pacific Americans* 46-7 (Mar. 2007).

Using document generators instead of filling in forms, cutting and pasting, or drafting documents from scratch can substantially improve productivity. One prepaid legal services provider noted that its Boston advocates were less efficient than those in its Washington, D.C. office. The managing partner found that the Boston advocates were not using the firm's document generator to the extent possible; instead they were using fill-in forms and cut-and-paste. The Boston advocates were told (nicely) that if this wasn't corrected, they should look for other jobs[53]. Subsequently the productivity of the Boston office matched that of the Washington office. Commercial document generators are available to many legal services programs, sometimes at a discount[54].

Computerized document templates should be available to quickly draft follow-up letters to clients to reinforce any advice given. Some prepaid programs use a dictation app, like Dragon, with an I-Phone to prepare drafts of documents. Similarly a dictation app like PocketDictate can be used for longer documents and sent electronically to any contractor worldwide for immediate transcription.

Document generators designed for pro se clients do not enhance program productivity. They take much longer to complete than document generators designed for staff use. In order for staff to review a document generated by a client, he or she will need to collect all the relevant information and carefully review each line of the document; it takes much less time for staff to generate the document from scratch.

4. Document storage and maintenance

[53] Author's conversation with Paul K. Regan, head of Regan Associates Charted, Boston, MA.
[54] See www.directlaw.com

Creating a paperless office introduces many efficiencies from allowing staff to work from remote locations to eliminating the time and cost of maintaining and storing case files. This can be achieved by scanning all documents into the electronic case file and shredding or returning the originals to the client.

5. Use of group services

Delivering some services to groups rather than individuals can be more efficient. Many U.S. programs provide pro se workshops in a variety of issue areas, including family law, housing, consumer, bankruptcy, guardianship, employment, special education, criminal record expungement, advance directives, and driver's license renewals[55]. It is essential that programs monitor these cases until conclusion to ensure that clients obtain their objectives[56]. Also, one should be mindful that unbundled services can sometimes consume less time per case and with better results than group services.

6. Use of quality and quantity committee

Some programs have enhanced the quality and quantity of services by creating a central committee that focuses on quality and best practices and sets quantitative goals for advocate staff[57]. Programs should be required to establish an oversight body made up of case service managers and a cross-section of extended services staff to discusses productivity and case outcomes at least quarterly and create and manage the following systems: casework protocols (checklists of timelines and the tasks required for common

[55] AARP Foundation, Pro Se Legal Services Directory (May 2002).
[56] Proper monitoring can increase case completion rates from 15 to 25 percent to 80 to 88 percent. Gabriel Hammond, *Tides of Change: Access to Justice Programs in Hawaii*, Management Information Exchange Journal 47, 49-50 (Summer 2000).
[57] Jeanne Charn, *Quality Assurance at the Provider Level: Integrating Law Office Approaches with Funder Needs*, 20-7 (2003) at http://lri.lsc.gov/sites/default/files/LRI/pdf/03/030127_charn.pdf

cases, including proven strategies and tips for saving time or conserving costs), practice standards, quantitative benchmarks (goals for the number of case closures for the coming year based on past experience), lawyer development plans, annual evaluations, periodic case reviews and reporting, and client satisfaction assessments).

7. Work plans

The work of legal aid programs is much more complex than that of private practitioners. In addition to casework, legal aid programs engage in community education, the preparation of self-help materials, maintenance of websites, impact advocacy, community economic development, mediation, etc. Programs need to coordinate these activities to achieve maximum impact and often some activities must be completed before others are begun. For example, if the program wants to target poor housing conditions, the outreach and community education staff can be responsible for identifying victims and referring them for intake as well as for possible impact advocacy. Materials development can support this outreach and education. Clients capable of self-help can be given advice and materials that provide step-by-step guidance. Other clients can receive extended services from staff or pro bono attorneys, with training programs and materials developed to support them. The program might also represent a tenant's association that is trying to improve building-wide conditions. It may also engage in impact advocacy. The work plan can ensure the timing and coordination of these activities. It can even sets numerical goals, e.g., "housing conditions will improve for 1000 low-income families," which can be accomplished through self-help, individual representation, and the representation of tenant groups. A work plan ensures every staff member understands how his or her

efforts contribute to the whole. It can also establish objectives for each activity that are monitored to measure success.

E. Systems for improving effectiveness

Several methods for improving effectiveness have been referenced above including the use of unbundled services to replace advice and limited action that are not sufficient to resolve the clients' problems[58] and the use of work plans and quality/quantity committees. Another is the measurement of case outcomes for a representative sample of all closed cases which is discussed later in this paper. Other systems include:

1. Systems for handling more critical needs

U.S. legal aid programs do not handle enough cases that some believe merit a right to free counsel. The ABA has identified these cases to include "adversarial proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health, or child custody, as determined by each jurisdiction"[59]. California describes these cases as "matters involving critical issues affecting basic human needs"[60].

These "right to counsel" cases, by their nature, require settlement with or without court involvement, an administrative agency decision, or a court decision in a contested case. They

[58] Programs closed 130,000 advice and brief services cases during a test period established by LSC. Programs estimated that, in the case of 76,000 [58%] of these cases, extended services would have been more likely to enable the client to obtain a satisfactory outcome. Legal Services Corporation, Documenting the Justice Gap in America 6 fn8 (Sept. 2005) at http://www.americanbar.org/content/dam/aba/migrated/media/issues/civiljustice/civiljustice_lscreport.authcheckdam.pdf

[59] American Bar Association, Basic Principles of a Right to Counsel in Civil Legal Proceedings, August, 2010 at http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_105_revised_final_aug_2010.authcheckdam.pdf.

[60] Sargent Shriver Civil Counsel Act (California AB 590) *at* http://brennan.3cdn.net/bc0ba4fe66e59bb83c_o0m6bx98c.pdf.

generally cannot be resolved by counsel & advice, limited action, or uncontested court decisions. Legal aid attorneys and paralegals only close an average of 20.6 of these cases per year[61].

U. S. legal aid programs are currently required to set priorities for case types[62]. They need to expand these priorities to include the priority services for each priority case type. For example, in child custody cases, priority could be given to negotiation services and representation in contested court cases, particularly when the other party is represented by an attorney. Other services would not be a priority.

2. Systems to minimize full representation in uncontested court cases.

In the US, fifty-seven percent of fully represented clients who obtain court decisions have uncontested cases[63]. Experience with court-based self-help centers and unbundled services indicates that many of these cases can be handled in three or four hours with advice and document preparation where clients represent themselves in court[64]. Yet, some legal aid programs average 21 hours on these uncontested cases[65]. The time saved could be spent on more "right to counsel" cases.

3. Systems for finding impact litigation

Impact litigation consists of cases that have an impact beyond the clients who are represented. This can include a case that sets a legal precedent or obtains an injunction against the unfair practice of a business or government. It can include a group of cases that targets a predatory

[61] 2011 LSC Fact Book at 1, 20-2. Sum of all bankruptcy/debt, collection, utilities, education, employment, child custody, support, abuse, adoption, guardianship, parental rights, paternity, juvenile, health, housing, income, and individual rights cases closed by negotiation without litigation, negotiation with litigation, administrative decision and contested court decision – and divided by the total number of staff attorneys and paralegals employed by all grantees.
[62] 45 CFR 1620 at http://www.law.cornell.edu/cfr/text/45/1620
[63] 2011 LSC Fact Book at 19.
[64] See Section III.C.2 above.
[65] Data from program in author's possession.

business or a neighborhood that is being blighted by abandoned houses. I was asked by AARP management to create a litigation unit that would specialize in impact litigation. The biggest challenge turned out to be finding cases to litigate. Ideally we wanted cases that raised an important legal issue but had simple underlying facts. We didn't want cases that required substantial development before we could decide whether they were appropriate for impact litigation. I meet with directors of national and state support centers as well as programs that specialized in impact litigation. None of them had systems for finding good cases. The support centers relied on individual legal aid programs to refer these cases. The direct service programs that handled a lot of impact cases relied on what came in through their intake systems. Systems for finding these cases need to be developed. My experience suggests that forming coalitions around major community problems can be helpful as other coalition members can help find cases. Also partnerships with other organizations with a large, low-income client base can be helpful. Sometimes potential clients can also be identified from stories in the news.

4. New methods for achieving impact.

The problem with impact litigation is that it requires considerable resources and can take a long time to complete. Sometimes the impact issue is never reached because of procedural problems like standing. Therefore other approaches need to be found that avoid controversial advocacy such as class action litigation or legislative lobbying. One method used effectively by Appleseed involves developing investigative reports that disclose serious, unaddressed problems in the low income community. These reports are released to the media with hopes that they will create a public outcry to solve the problem. Also an individual case can be used to draw media attention to an outrageous problem. Finally, legal aid programs have had success with forming coalitions of organizations serving the same client group. Together they can engage in a range of advocacy,

where others can use advocacy methods that legal aid programs can't. Legal aid programs can participate in these coalitions so long as their primary purpose is not to participate in impermissible advocacy. Much more effort needs to be spent on developing these methods.

5. Systems for better utilization of volunteers

a. Attorneys

As mentioned above, some programs need to increase the percentage of recruited volunteer attorneys who receive cases each year and the percentage of these volunteers, who provide extended services. One way to do this is to allow the pro bono unit to have the first choice of available cases rather than staff advocates, as is more common. Another method is to simplify the referral process and spend more resources on finding cases that match volunteers' expertise. For example, an Internet-based scheduling system could be used that allows volunteers to commit in advance (and change as needed) the types of cases they will accept and the months during which they will accept them. This commitment process should be a condition of participation. Staff can then refer cases without additional volunteer approval and devote more time to finding the right case mix through partnerships with libraries, social service agencies, and the courts.

Another important consideration is to recognize that volunteers are not free. Sometimes, as mentioned above, tasks can be handled less expensively by paid staff than volunteers. Even in situations where volunteers seem to be more cost effective, they may not be. For example, we conducted a test which used volunteer attorneys on the hotline. Each volunteer had to commit to one half day per month. We found that every hour of volunteer time required an increased hour of staff management time, because of the need by volunteers to refamiliarize themselves with the technology and procedures. Also volunteers often received cases outside their expertise forcing

them to consult with staff before providing the advice. However retired volunteers were cost effective since they could serve a half day every week, allowing them to remember the procedures and technology. Therefore we need much more study about when the use of volunteers is cost-effective.

b. Non-attorney volunteers

This is a valuable resource that is seldom used. But my experience with using non-attorney volunteers in legal services over a 25 year period is that they can be very effective in certain delivery systems such as court-based self-help centers and community outreach centers that provide materials and computer based legal information and document generators. More research is definitely needed in this area.

F. Quality control

Quality is a critical component of all delivery systems. Efficient delivery systems are not acceptable unless they produce good quality work. Every delivery system requires a unique quality control system. For example, in hotlines, managers review all or a statistically valid sample of case notes. In volunteer lawyer projects, volunteers are called periodically to obtain the status of their cases and their results are compared to the intake notes to ensure they are appropriate.

All delivery systems should be evaluated by measuring outcomes of a statistically valid sample of cases, as well as calculating the metrics for efficiency and effectiveness discussed above. Ideally onsite evaluations should be conducted to investigate the reason for any poor metrics and assess other aspects of the program. Outcomes should be continually collected so that intake and referral protocols can be periodically refined to ensure all cases are sent to the right providers.

G. Conclusion

One can estimate the increases in services that are possible if programs adopted the necessary systems. If LSC programs improved their efficiency so that programs falling below the sloping line in Graph 1 improved their performance to reach the line (i.e. average), this would increase services by more than 218,000 cases or nearly 24 percent of the current total[66]; the complexity of these new cases would be the same as existing ones. If programs doubled the percentage of their recruited attorneys who accepted cases annually, this would increase cases by 79,578[67], where most of the cases could involve extended services. If programs used unbundled services to handle uncontested court cases and spent four hours per case instead of nearly 20, this would free up 685,232 hours for more cases[68] – equivalent to 26,355 more extended services cases[69].

[66] One can calculate the total number of additional cases per advocate by: 1) using the formula -4.1699x +239 to determine the total number of cases closed per advocate for each program at the sloping line where x is the percentage of complex services and 2) subtracting the current total number per advocate. For example for one program, the percentage is 27.4 and the current total number of closed cases per advocate is 66. The total at the sloping line is125. Subtracting 66 from 125 yields 59. The total number of new cases can be determined by multiplying the total number of additional cases per advocate by the total number of advocates in the program. In this case it is 244 times 59 equaling 14,396 more cases.
[67] 2011 LSC Fact Book at 32.
[68] Id at 9. Programs closed 42,827 uncontested court decisions in 2011. 42,827*(20-4) = 685,232 hours, assuming programs now average 20 hours on these cases.
[69] Since extended services cases average about 26 hours per case, this is equivalent to 26,355 more extended services cases (685,232/26). See note 17, supra