The Future of Legal Aid: Systems

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 a procedure.

Some legal aid leaders believe systems degrade or depersonalize legal services. This is simply not true. Systems can improve the quality, effectiveness and the cost of services. Just as manufacturing systems (e.g. assembly lines) improved the quality and cost of products, systems have greatly improved services as well. On-line auctions became a billion dollar industry because a system was developed for ensuring that the sellers could be trusted. The restaurant business is testament to the fact that systems can improve quality and reduce costs. Even medical providers are now using systems like electronic medical records to improve quality and efficiency.

The need for systems arises from the origins of government funded legal aid. Legal aid was generally patterned after services provided by private practitioners. This made sense as this was the primary delivery model in existence at the time. However the goals of a private practitioner are much different than the goals of a legal aid program. Practitioners are only trying to generate enough clients to meet their billable hour goals. They are not trying to serve as many clients as possible. They usually do not have case priorities as long as the cases fall within their expertise. They don't have to serve hard-to- reach clients or those with limited English proficiency. While productivity might be nice, it is not critical when billing by the hour. Also the desire to provide

services that positively impact the entire client community is not a concern, since most clients cannot afford precedent setting litigation.

I was a staff attorney in the early days of legal services and it quickly became clear that the private practice model did work in a community with an overwhelming need for free legal services. We quickly became swamped with a broad range of case types causing attorney turnover to reach about 50 percent per year. The response was to implement various procedures that prevented attorneys from becoming overwhelmed. However, I believe we overreacted and became far too bureaucratic. We also abandoned the goal of trying to serve as many clients as possible and focused instead on quality.

If legal aid was designed from scratch today, it would probably look very different, as the service industry has considerable experience in maximizing services without sacrificing quality. This is accomplished by specialized systems that streamline delivery and quality control mechanisms that maintain high quality. Therefore, I believe the future of legal services is the adoption of a wide range of new systems with built-in quality control mechanisms.

There are three different categories of these systems:

- Delivery systems that provide a specific legal service such as advice or assistance with an uncontested court case
- Systems used to handle a common case type such as a no-asset, Chapter 7 bankruptcy or a child support case
- 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 this 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. This is because centralized intake can ensure that cases are sent to the least expensive, appropriate system and prevent clients from being bounced from program to program through uncoordinated referral mechanisms.

II. Systems for Delivering Specific Services

A. Introduction

Legal services primarily consist of the following services: advice only; limited action[1]; negotiation; help with uncontested court cases; assistance with 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 makes no 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 program. 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

[1] 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

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 (negotiation, contested court cases), and specialized staff using streamlined processes and procedures (limited action; administrative cases). These systems are discussed in more detail next.

B. 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 scheduling clients, reminding them about their appointments and the downtime caused by no-shows. Telephone advice calls average between seven and fifteen minutes, whereas face-to-face advice can easily average a half hour or more[2].

Research has shown that the outcomes produced by hotlines are comparable to those produced by face-to-face advice[3]. 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[4]. Hotline

[2] Wayne Moore, Delivering Legal Services to Low-Income People 124-5 (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

[3] 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).

[4] 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, supra note 2, at 111.

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[5]. We once operated a hotline where a full-time equivalent attorney in private practice handled 7872 cases per year[6]. Since the attorneys were paid 50 percent more than staff hotline attorneys, this is equivalent to 5248 staff cases.

C. 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 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[7]. This is an area where more experimentation and innovation is needed to reduce the time now spent on these cases.

D. 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

[5] Wayne Moore, supra note 2, at 124-5.
[6] Id
[7] Id at 145.

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 and they don't provide advice which requires more expensive quality control. Kiosks or computerized document generators allow client's to prepare their own forms with limited help from staff[8]. A staff person can assist around 3000 people per year[9].

One problem with these centers is that court staff cannot provide legal advice. Since these cases are uncontested, staff can usually provide case-specific information in a way that avoids this problem. Some courts address this problem by contracting with legal aid programs to provide the services, including legal advice. For these centers to work, courts usually need to standardize their forms and pleadings.

E. 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[10]. 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 billable hours[11]. An advice case handled by a paid hotline attorney requires only 0.06 percent of the attorney's annual billable hours[12]. Providing these services cost-effectively is the greatest area of need for more experimentation and innovation, as little effort has been devoted to this issue.

[8] Id at 237-8.
[9] Id at 160-1.
[10] Id at 178.
[11] 1/450*100 = 0.22 percent
[12] 1/1700 *100 = 0.06 percent.

F. 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 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 for self-help services. Volunteer lawyers are not a useful resource (except for SSA and maybe unemployment) since most are not familiar with the rather complex law that is involved.

III Systems for handling common case types

A. Introduction

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 conducting 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. Unfortunately, many legal aid programs still use this antiquated approach. Nearly 80 percent of the cases handled by Legal Services Corporation (LSC)[13] grantees involve 17 case types, namely: divorce, support, child

[13] Legal Services Corporation**:** An independent 501(c)(3) nonprofit corporation in the U.S. that promotes equal access to justice and provides grants for high-quality civil legal assistance to low-income Americans. LSC's funding comes from Congress and its board members are appointed by the President.

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[14]. 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. 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).

B. Unbundled legal services (no court representation)

Probably the most promising approach involves unbundled legal services[15]. 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

[14] 2011 LSC Fact Book 20-2 at http://grants.lsc.gov/sites/default/files/Grants/RIN/Grantee_Data/fb11010101.pdf
[15] See http://www.americanbar.org/groups/delivery_legal_services/resources.html.

pleadings is ethical under the old rules that don't specifically authorize unbundling[16]. 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 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[17]; the client can then be referred to social services for additional help, and an

[16] See http://www.americanbar.org/content/dam/aba/migrated/media/youraba/200707/07_446_2007.authcheckdam.pdf
[17] See, for example, http://www.dccadv.org/img/fck/Protection%20Order%20Brochure.pdf.

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[18].

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 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.

C. Unbundled legal services (with court representation)

[18] 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

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

D. 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, they could also serve unrepresented, eligible clients who appear in court that day.

E. 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[19]. 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.

F. Contracts with private practitioners

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[20]. Some programs find it more cost effective to contract with attorneys in rural areas, instead of having staff travel to rural courts.

G. 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

[19] See http://www.hcreceivablemgnt.com/service.php?services=Appeals
[20] See http://www.stanbeutlerjd.com/;

me[21]. 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.

H. Summary

Case Type	Efficient methods
1. Bankruptcy, debtor relief	Unbundled; In-court small claims lawyer
2. Collections (repossession, Deficiency, garnishments)	Unbundled; In-court small claims lawyer
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	Attorney dedicated to these hearings

[21] See http://www.sourcingmag.com/content/c060508a.asp http://www.managedoutsource.com/legal/immigration-paperwork.htm

housing	
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

IV. 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"[22]. These systems include: telephones, client intake, document production, and document storage and maintenance.

A. 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[23] and 2) a message that tells clearly ineligible clients that

[22] Workshop handout prepared by John Wachsmann of Wachsmann & Associates in Englewood, Colorado (undated and in possession of the author).

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.

B. 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[24]. 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[25]. 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[26]. These meetings can use over seven percent of advocates' annual billable hours and delay the commencement of services by

[23] This should not be complicated as some low-income people will not use it.
[24] Wayne Moore, supra note 2, at 34.
[25] 2013 LSC Fact Book, supra note 14, at 19.
[26] 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

more than a week[27]. 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 $5.20 per call as a result of economies of scale and more efficient use of staff[28]. 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 resources. 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[29]. But the needs of a few shouldn't be a reason for all clients to receive more expensive intake processing.

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say it also builds camaraderie and serves as continuing legal education for less experienced attorneys.

[27] Wayne Moore, supra note 2, at 83

[28] 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.

[29] Community Legal Service, supra note 3, 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).

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.

C. Document production

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[30]. 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[31].

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

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

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.

D. Document storage and maintenance

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.

E. 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[32]. It is essential that programs monitor these cases until conclusion to ensure that clients obtain their objectives[33]. Also, one should be mindful that unbundled services can sometimes consume less time per case and with better results than group services.

F. 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

[32] AARP Foundation, Pro Se Legal Services Directory (May 2002).
[33] 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).

staff[34]. 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 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).

G. 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 and for finding impact cases. 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

[34] 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

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.

V. 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[35] 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:

A. 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"[36]. California describes these cases as "matters involving critical issues affecting basic human needs"[37].

[35] 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

[36] 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.

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

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 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[38].

U. S. legal aid programs are currently required to set priorities for case types[39]. 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.

B. 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[40]. 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[41]. Yet, some legal aid programs average 21 hours on these uncontested cases[42]. The time saved could be spent on more "right to counsel" cases.

C. Use of metrics

[38] 2011 LSC Fact Book, supra note 14, 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.
[39] 45 CFR 1620 at http://www.law.cornell.edu/cfr/text/45/1620
[40] 2011 LSC Fact Book, supra note 14, at 19.
[41] See Section III.B above.
[42] Data from program in author's possession.

While metrics are a new frontier for legal aid management, they are well established in both the profit and non-profit worlds. Other providers of legal services use them as well. Large law firms rely heavily on billable hours and prepaid legal services programs use billable hours, case types and case complexity (in the form of case closure codes) for performance management. Metrics are very helpful for spotting performance problems. Poor metrics do not prove that problems exist, as an in depth inquiry is usually necessary to establish this. However, without metrics, some problems would never be discovered. In fact, the best feature of metrics is that they allow the calculation of national averages, which grantees can use to discover potential problems. As mentioned above, if one office of a prepaid provider has better metrics than another, an inquiry is made to determine why. Sometimes the differences are due to different client types or even different laws and court procedures, which is fine. But sometimes they are due to correctable deficiencies such as the use of document generators. Metrics are particularly useful in finding deficiencies in efficiency and effectiveness, which are otherwise hard to assess. Also, it is much easier to convince staff to change, if one can show what other similar programs have accomplished.

There are several useful metrics that can be used to spot problems (the data below is from LSC[43]):

1. Impact advocacy[44]: LSC developed an evaluation system for these activities for the Delivery System Study[45]. Impact scores were assigned to each of a program's impact

[43] Unless otherwise indicated this data is from 2009 LSC Fact Book at http://grants.lsc.gov/sites/default/files/Grants/factbook2009.pdf and LSC's response to the author's 03/03/2011 Freedom of Information Act request for 2009 data (on file with author).

[44] 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

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

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. "Right to counsel cases" per advocate. 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 attorneys and paralegals in the program. The average for all LSC grantees in 2011 was 20.6 cases per advocate and ranged from 4 to 88[46]. This helps programs determine whether they handle enough "right to counsel" cases.

[45] Legal Services Corporation, The Delivery Systems Study: A Policy Report to the Congress and the President of the United States (June 1980).
[46] See note 38, supra.

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 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[47]. This ratio averaged 0.25 for all LSC grantees in 2010[48].
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[49].

[47]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
[48] 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, supra note 2, at 193.
[49] 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.

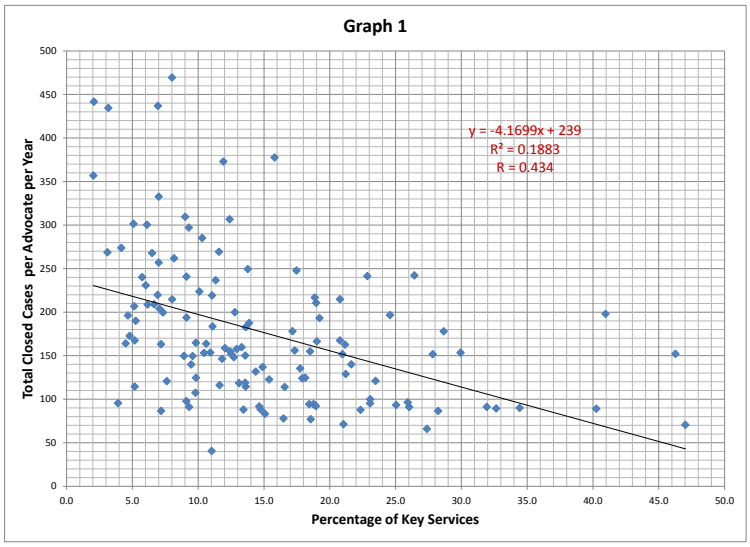
9. Efficiency: One way to measure this is to compare the time advocates devote to closing their cases with the national average time for the same number and mix of cases[50]. This ranged from 81 percent less time to 356 percent more time than average.

   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, 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[51]. 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[52].

[50] 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, 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).

[51] 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.

[52] 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 data.

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 (e.g. advice, limited action. contested court decisions). This 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[53].

D. 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 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 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.

E. New methods for achieving impact.

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

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 actions 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 impromiseable advocacy. Much more effort needs to be spent on developing these methods.

F. Systems for better utilization of volunteers

1. 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 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.

2. 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.

G. Systems to better coordinate legal aid providers

Coordination among providers can improve the delivery of services by: helping to eliminate duplication, sharing best practices, partnering on impact advocacy, and improving the client referral process. 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[54]. 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[55]".

VI. Centralized intake for a state or large region

The key to coordinating all of these systems is centralized intake. 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:

- Legal services delivery in the US is very fragmented consisting of programs funded by the Legal Services Corporation (LSC), non-LSC funded staff programs, legal hotlines, court-based self-help centers, protection and advocacy organizations, Title III funded programs for seniors, pro bono and legal aid programs operated by bar associations, law school clinics, law libraries, free standing kiosks and websites that provide free legal information and documents. A centralized system can eliminate the hassles now experienced by clients trying to access this network.
- 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

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

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. 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[56]. 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. It can also send certain case types to the specialized delivery systems described in section III, above.

[56] 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, supra note 14, at 9. Therefore 45 percent of all cases do not receive the services they need.

- 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. 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.
- 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.

VII. 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.

VIII. Analysis

The reader may wonder why I predict that systems will be the future of legal services, at least in the U.S. Other possibilities could include:

- Radical shift in delivery systems from the staff attorney model to a Judicare or prepaid model
- More accountability through centralized oversight and governance by access to justice committees or state funding entities such as those that administer IOLTA funds
- Greater role for the private bar
- New paradigms of legal services
- New right to counsel laws

There are several reasons why the systems approach is more likely to prevail:

A. Current funding is too diverse. Funding for court-based self-help centers comes largely from the Judiciary; substantial funding for pro bono programs comes from the private bar; even LSC only provides 43 percent of the funding for its grantees[57]. Thus no single funding source has the influence necessary to make a major shift in the delivery system, significantly increase the role of the bar or establish an oversight structure.

B. Programs are well established and battle hardened. Most LSC grantees are nearing their 40th birthday. The pro bono movement is over 30 years old and hotlines have been around since 1985[58]. Even the court-based self-help movement is well over 10 years old[59]. Many legal aid programs have been under attack by conservatives for their entire existence and

[57] 2011 LSC Fact Book, supra note 14, at 7.
[58] Wayne Moore, supra note 2, at 1-2
[59] Wayne Moore, supra note 2, at 3-4

they have fought countless battles to preserve their funding; they know how to oppose attempts to change the delivery model or substantially increase the role of the bar.

C. Access to justice and other oversight entities do not want the ultimate responsibly for providing legal services in their state. They don't want to be responsible for the efficiency, effectiveness and quality of programs. Their goal is usually to help preserve and increase funding and coordinate the heavily fragmented provider network

D. Generally people and organizations resist change and thus proposing a major change will always generate a strong push back.

E. The right to counsel movement is only likely to generate modest funding for a fairly narrow range of case types. This money will be easily absorbed into the current network of programs.

F. The current network of programs is composed of dedicated, competent staff. Full-time staff dedicated to low-income people's rights instead of their paycheck is a formidable force for advocacy. They don't need to be replaced; most don't require radical changes to their delivery structure; they just need to work smarter by using systems.

G. Programs and certainly funders are reluctant to oppose the concepts of improved quality, effectiveness or efficiency. Every provider, no matter how small or their role in the delivery spectrum, can find ways to improve these aspects of their programs, without increasing costs. They can also take pride in their improvements.

H. In my 2011 book, I called for the reform of legal services in the US. This was not my intent when I began the book. But after analyzing the performance data of LSC grantees with information obtained under the Freedom of Information Act, I could not dismiss the glaring problems I found. All the metrics that I analyzed revealed incredible differences

among programs that could not be easily explained (see above). They convinced me that there were serious problems with effectiveness and efficiency in some programs, while other programs excelled. Quality was really an unknown factor as programs had successfully defeated attempts to collect and report case outcomes. While I had conducted numerous on-site evaluations of legal aid programs around the country with other leaders in legal services, this discovery surprised me. I realized that we did not know how to assess effectiveness and efficiency during those evaluations. While we might mention that the intake system seemed inefficient or that the program lacked a good telephone system or document generators, we had no way of knowing their impact on overall efficiency and effectiveness – until I used metrics. I now realize we should have asked a series of questions around these issues that I included in my book[60]. Unfortunately my book caused a national outcry from programs. They attacked my metrics as being flawed and misleading, which was easy to do as no one had ever proposed metrics for measuring legal aid performance. Over the next year I defended my conclusions in numerous writings[61] and to my delight, LSC adopted most of my recommendations as part of their strategic plan[62]. LSC called for the development of both national standards and metrics for quality, efficiency, and effectiveness (effectiveness is under the heading of "needs assessment metrics"), including the reporting of case outcomes. LSC is currently developing these standards and metrics. If history repeats itself, they will be adopted by other funders. I believe this satisfies the need for reform if

[60] Wayne Moore, supra note 2, at 267-274.
[61] See http://lsc.gov/sites/default/files/July%2011%2C%202012%20%288%29.pdf and http://lsc.gov/sites/default/files/Wayne%20Moore%20E-mail%20%28072312%29.pdf
[62] LSC, Strategic Plan 2012-2016 at 6-7 at http://www.lsc.gov/sites/default/files/LSC/lscgov4/LSC_Strategic_Plan_2012-2016--Adopted_Oct_2012.pdf

properly implemented. It also will create an interest in systems that improve quality, effectiveness and efficiency.

I. I believe the implementation of these standards and metrics will naturally lead to an adoption of all types of systems by programs at every level.

J. The focus on systems still allows and even encourages the development of new paradigms. They are essentially new systems that can be incorporated into the network.

V. Conclusion

One can estimate the increases in services that are possible if LSC programs adopted the necessary systems. If 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[63]; 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[64], 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[65] – equivalent to 26,355 more extended services cases[66].

[63] 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.

[64] 2011 LSC Fact Book, supra note 14, at 32.

[65] Id at 9. Programs closed 42,827 uncontested court decisions in 2011. 42,827*(20-4) = 685,232 hours.

[66] 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 50, supra

When one considers the potential of centralized intake and the adoption of systems by non-LSC programs, the increase in services could be quite dramatic, without an increase in resources.