Alchemizing Volume

BY LEE RICHARDSON, JASON AUER, AND KEVIN DE LIBAN

Today, as I was wending my way through my 80 cases for an open case review, I closed at least 10 for reasons that disappointed me. Either legal issues had sat so long that they resolved themselves, or clients had grown frustrated and given up. I was upset at the thought that I had let the clients down, given a bad impression of Legal Aid of Arkansas, or consigned the clients to fighting whatever battle they had without the benefit of an attorney. Then I asked myself if I could have done anything differently. And the only answer occurring to me was equally distasteful—my colleagues and I could have forgone the immensely time-intensive impact cases that had so defined the last year.—Kevin De Liban

The frenetic tension between high-volume direct service work and high-impact work vexes many legal aid organizations.[1] Legal Aid of Arkansas for years has gaspingly recited the "impact" mantra while wearily staggering on the "volume" treadmill. Now, finally, undeniable injustice in housing and Medicaid forced us to turn the emergency shutoff key and focus on achieving impact through strategic campaigns. In the last year alone, Legal Aid of Arkansas, with significant contributions from the state's only other legal services organization, the Center for Arkansas Legal Services, effectively defeated Arkansas's one-of-a-kind criminal eviction statute for 60 percent of the state's population and, for the first time in decades, forced the interests of Medicaid consumers to the attention of the highest levels of the Arkansas Department of Human Services, our state's Medicaid agency.

The Medicaid campaign and the criminal eviction campaign demonstrate different transfigurations of volume into impact. Whereas the Medicaid advocacy uniquely harnessed dozens of individual cases to create impact, the housing campaign recognized volume as the key to finding the proper clients through whom the winning legal arguments could be raised. In both instances, however, what had been a multitude of disjointed individual cases became cohesive fuel for change.

Before discussing the campaigns in depth, however, we explore the organizational shifts that allowed Legal Aid of Arkansas—an organization that receives funding from the Legal Services Corporation—to alchemize volume into impact. We close with a frank acknowledgment that the campaigns sacrificed some clients' interests for others, and we contemplate how the organization can further manage volume in the interest of impact.

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Organizational Background

Legal Aid of Arkansas's strategic planning in 2010 inaugurated a major, yet slow, shift from a geography-based, office-centric, generalist approach to legal services provision to a workgroup-based, statewide model expected to enhance client access, develop substantive expertise, and foster focused advocacy. Although similar shifts were undertaken long ago by many legal services providers in urban settings, Arkansas's rural nature delayed organizational restructuring. Legal Aid of Arkansas's service area features a population density of only 54.9 people per square mile and

1 See Gary F. Smith, *Poverty Warriors: A Historical Perspective on the Mission of Legal Services*, 45 Clearinghouse Review 34 (May–June 2011). See also Victor Geminiani, *Whence We Come: Review of Earl Johnson Jr., To Establish Justice for All: The Past and Future of Civil Legal Aid in the United States*, Clearinghouse Article (July 2015); Gary F. Smith, *Remembering Edward V. Sparer: An Enduring Vision for Legal Services*, 39 Clearinghouse Review 329 (Sept.–Oct. 2005).

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has some offices located as many as 300 miles apart, a distance that lends itself to significant regional independence.

Under the old service model, advocates from a regional office functioned as a unit, with little specialization and interaction with other regional offices. This arrangement yielded a distinguished history as a high-volume organization, counting success by the number of people served in fairly routine issues more than by the laws changed or the scope of injustice remedied. The approach attracted devoted advocates willing to work hard for their many clients. Our institutional knowledge emphasized compassion, immense competence in routine issues, and significant domestic relations court experience. However, we lacked advocates who were well versed in the nuances of complex litigation, were able to translate individual cases into wider impact through litigation or other approaches, or had authored complex appellate and motion briefs enough that such work was undaunting. Repeatedly seeing the same problems not only raised questions about Legal Aid of Arkansas's stewardship of scarce resources to promote justice in a meaningful way but also led to a lack of morale for advocates seasoned and new who were unable to see progress.

Understanding that resources will never be sufficient to grant total access to all those in need, Legal Aid of Arkansas overhauled its delivery system. Each advocate was assigned to a workgroup that developed case-acceptance priorities and made all case-acceptance decisions. The workgroup model was empowered by technology-driven information sharing. Linked by an organizationwide Dropbox, workgroups could share pleadings, memos, treatises, and advice letters to create a repository of knowledge. A case management system upgrade in the third year of the strategic plan further enhanced the ability to collaborate. We implemented a novel HelpLine model requiring every staff attorney to work one or two intake shifts per week in that attorney's substantive workgroup to ensure that the intake line's practices would work in full concordance with workgroup priorities.

While many long-term advocates resisted these changes, Legal Aid of Arkansas recruited a banner crop of freshly minted attorneys to fill Equal Justice Works AmeriCorps and state AmeriCorps fellowship slots.[2] The new advocates developed within the workgroup framework and were better able to learn the nuances of a particular area of law and transmit the knowledge to the rest of the group. Even modest substantive knowledge was better preserved by the workgroup model.

As of 2015, advocates had developed deep enough expertise to initiate several challenges to problematic laws or practices through affirmative litigation or appellate court work. However, the organizational restructuring did not feature any practical steps to offset the increased workload generated by the higher-level advocacy. Resource fluctuations also complicated matters by forcing advocates to absorb more work from occasional staff contractions. The Medicaid and housing advocacy thus took place in the context of a struggle against the vestigial pressure toward volume.

What We Accomplished

Our accomplishments must be seen in light of the degree of difficulty, which is generated as much by our organizational history as by the extent of the substantive injustice we sought to ameliorate.

Medicaid. Any program with mature and effective Medicaid advocacy is unlikely to be impressed by the outcomes of our efforts. After all, those programs can already boast of regular meetings with state agency officials to share concerns and information, complex litigation involving the most arcane federal regulations, and appellate advocacy challenging problematic state policies and assuring that hearing officer decisions have adequate oversight. We, however, could not boast of such things. No Legal Aid of Arkansas representative in the last two decades had met with high-level Department of Human Services officials to raise consumer concerns, filed an affirmative Medicaid suit in either state or federal court, commented on proposed state regulations, or undertaken any significant appellate Medicaid work.

Given our lack of history of Medicaid advocacy, nobody at Legal Aid of Arkansas planned for 2015 to be the year for a breakthrough change. Advocates in our economic justice workgroup had their usual assortment of public benefits, disability, and employment law cases and prioritized those according to pressing deadlines or human needs. We were trying to learn more about Arkansas's Medicaid expansion as best as we could when individual cases came in or as we had time in between the other daily rigors.

The lack of a history of Medicaid advocacy and the haphazard efforts at learning became problematic when we were faced

2 A full discussion of the extensive criticisms surrounding the shift is outside our scope here.

with an abundance of clients facing the same Medicaid problem. We saw that processing delays in applications for expanded Medicaid far outnumbered intakes for any other Medicaid issue.[3] Anecdotal evidence suggests that Medicaid expansion has been a great boon to our clients, and statistics show that Medicaid expansion has reduced the rate of uninsured Arkansans from 22.5 percent in 2013 to 9.6 percent in 2015.[4] However, in early 2015, clients started calling every week to report that they had applied for Medicaid months before and were still waiting on a decision from the Department of Human Services. Many had a critical need for insurance to receive prenatal care, cancer treatments, or management of chronic conditions such as diabetes and heart disease. Our contacts in the health insurance marketplace navigator network likewise told us about their frustrations with long application-processing times, which were routinely running between three and six months.

The lack of a history of Medicaid advocacy and the haphazard efforts at learning became problematic when we were faced with an abundance of clients facing the same Medicaid problem.

Federal law gives a Medicaid state agency 45 days from the date of application to render a decision on eligibility.[5] With the Department of Human Services out of compliance by several months, the question was how to respond. Individuals can request fair hearings for the failure to process applications in a timely fashion, but we did not see how a few scattered fair hearing requests would fix the underlying systemic issue.[6] Without class action capabilities or a ready organizational plaintiff, we deemed individual suits unattractive because of the likelihood of easy mootness. And we did not have ready connections in the Department of Human Services to bring up the issue to officials with the power to undertake any remedial measures. Moreover, the department had already signaled its likely response when it told the press that delays were due to technology problems caused largely by contractors working to update the state's antiquated case management database.[7]

At that point, we realized that "volume" could work to our advantage and termed the resulting plan the "Medicaid Extravaganza." The idea was to collect as many individual cases as possible in a two-week span and then make a massive set of fair hearing requests to the Department of Human Services to signal the enormity of the problem. We decided on this course of action in late April 2015 and gave ourselves three weeks to put the plan into place. We alerted our state's health insurance marketplace navigator network, community health center partners (with whom we have medical-legal partnerships), and other allied community groups to let any applicants who had been waiting more than 45 days know that they could call Legal Aid of Arkansas for help if desired. We built and staffed a special Medicaid intake line to accommodate the expected influx of calls, standardized case handling to minimize the time between the client call and the return of forms needed to authorize our action, and coordinated with the Center for Arkansas Legal Services to streamline referrals to ensure statewide impact. During the two-week Extravaganza, we received around 110 Medicaid-related calls, 1,000 percent of what would normally be expected in the same span. Three quarters of those calls involved application-processing delays. Within a few weeks of the Extravaganza (some time was required for paperwork to be returned), Legal Aid of Arkansas and the Center for Arkansas Legal Services had made over 50 fair hearing requests, a number that ballooned to over 200 by the end of 2015. The clients served in the first weeks after the Extravaganza received nearly universal approvals and functioning Medicaid within one to two weeks of lodging the fair hearing requests. The department acknowledged the efficacy of our strategy by asking us to modify our fair hearing requests to include the applicants' addresses so that the requests could be processed more quickly.

The Extravaganza was not a stand-alone tactic. We paired it with a thorough, 25-item open records request designed to obtain statistics on the number of applications pending, the waiting times for pending applications, the reasons for the processing delays, the department's consideration of possible solutions, and any communications between the department and the Center for Medicare and Medicaid Services, the federal body that oversees state Medicaid agencies.[8] The request was wholly refused, with the department claiming that it had no responsive documents and asserting

3 The next most frequent issue we encounter relates to home-and-community-based waiver programs. The waiver issues led us to the state court of appeals, but they have not been the subject of a strategic campaign.

4 Dan Witters, *Arkansas, Kentucky Set Pace in Reducing Uninsured Rate*, Gallup (Feb. 4, 2016).

5 Timely Determination of Eligibility, 42 C.F.R. § 435.912 (2016). See also State Plans for Medical Assistance, 42 U.S.C. § 1396a(a)(8) (2014).

6 When a Hearing Is Required, 42 C.F.R. § 431.220. See also 42 U.S.C. § 1396a(a)(3).

7 See generally Gina Mannix et al., *How to Protect Clients Receiving Public Benefits When Modernized Systems Fail: Apply Traditional Due Process in New Contexts*, Clearinghouse Article (Jan. 2016).

8 See Freedom of Information Act, Ark. Code Ann. §§ 25-19-101–110 (2010).

that it did not need to compile information. The unreasoned refusal suggested that the department, in fact, lacked an adequate remedial plan and evinced a troubling disregard for accountability and responsiveness.

At the same time as the Extravaganza was being planned and executed, a community partner set up a meeting with high-level officials at the Department of Human Services to discuss consumer issues. The partner invited us to participate in the meeting, which took place approximately one month after the Extravaganza. At the meeting, we used data gained through the Extravaganza to illustrate the extent of the application delays and associated issues such as out-of-pocket costs. Department officials expressed interest in our data but did not offer any indication of planned systemwide remedies or timelines. They did not acknowledge the existence of any widespread problem of application delays and attributed our clients' experiences to technical problems.

Concerned by the lack of responsiveness, we filed another open records request, reiterating many of the previously rejected requests while removing anything potentially requiring compilation. Although the department responded to many of the items, it claimed that it lacked, among other missing data, any information about the number of pending applications and the processing times for those applications. Buried in its responses were documents suggesting that the department did, in fact, have the numbers we sought. Accordingly, in late August 2015 and aided by a pro bono partner, we filed suit in state court to enforce our right to information pursuant to the state Freedom of Information Act.[9] The lawsuit prompted extensive discussions with department officials about the data sought and the underlying problem of application-processing delays. The department took a remarkable position. It claimed that it did not have the capacity to produce regular reports about application-processing delays; it stated that only one person in the entire state had the technical knowledge and that having him run such a report cost the state $70,000 each time. In other words, the state had no way of determining how many applications were pending at any given time or how long those applications had been waiting. The last report had been run in November 2014, six months before our first open records request. The department was also unwilling to commit to a regular schedule for running such reports and refused even regular quarterly updates. To the extent the department made some efforts to be amenable in response to the lawsuit, the information that it disclosed was not directly relevant to the problem of application-processing delays. More problematic, it had taken two open records requests and a lawsuit to get to that point.

Eventually the department authored and released a "Proposed Plan to Increase Capacity and Improve Customer Service" and vehemently denied that consumer advocacy had anything to do with the development of such a plan.[10] The plan aimed to hire more staff to process applications. However, the plan still contained no capacity to generate reports regarding the number of and wait times for pending applications. Instead the department intended to track progress by evaluating whether its newly hired employees had anything left to do. The department seemed to wish to remain as uninformed about the problem as possible.

As the open records kerfuffle was ongoing, individuals continued to seek our services because of application-processing delays. Our earlier efforts had gotten significant

9 See John Lyon, *Lawsuit: Arkansas DHS Withholding Info on Medicaid Verification Delays*, Southwest Times Record, Aug. 26, 2015. We did not anticipate litigation at the time of the open records request and did not thoroughly consider the issue of witnesses. Once litigation became necessary, we realized that the person who was most familiar with the requests and the data sought would have had to serve as a witness and could not therefore have served as counsel at the same time.

10 To be fair to the Arkansas Department of Human Services' claim, the Freedom of Information Act suit was not initiated until after the publication date of this plan. However, by the time the plan was released, we had already initiated the Medicaid Extravaganza, made two open records requests, and met with department officials as part of a larger group of consumer advocates. Eligibility and renewal problems had also been covered by the media.

attention in the press, and the wider network of navigators knew that help was available. We continued making batch fair hearing requests while contemplating further action. From the individual cases, we noticed a particularly disturbing problem. A spate of applications originally made through the federally facilitated marketplace and determined to be likely eligible or definitely eligible for Medicaid had never been acted upon by the Arkansas Department of Human Services.[11]

In early October 2015, we filed the first federal lawsuit on behalf of a Medicaid consumer in Arkansas in decades.

The new problem demanded a new level of advocacy. After we requested fair hearings for the failure to determine eligibility promptly, the department dismissed the fair hearing requests; it asserted that the applicant had to request a fair hearing through the federally facilitated marketplace instead of the state. This position outlandishly violated Medicaid law and erected even more bureaucratic hurdles to access for people who had already been waiting up to six months for a decision. After receiving several fair hearing dismissals, we attempted to leverage the new relationships with department officials to tackle the issue at the policy level. We were rebuffed with faulty legal reasoning, and we responded with a second attempt at conciliation. Our efforts were ignored.

As a result, in early October 2015, we filed the first federal lawsuit on behalf of a Medicaid consumer in Arkansas in decades.[12] Within three weeks of filing, we had won a 43-page preliminary injunction order, which guaranteed complete relief to our client and prompted significant favorable media attention. The federal district court judge rejected every argument from the department. Some back-and-forth motions continued, but, because we secured complete relief, the case was rendered moot and was recently dismissed.[13] The lasting impact of the case has been demonstrated in the department's willingness to accord the relief won in the lawsuit to other individual clients presenting the same issues.

The successful federal litigation was the culmination of eight months of strategic advocacy incorporating several tactics—the Extravaganza, open records requests, meetings with department officials, a Freedom of Information Act lawsuit, attempts at informal resolution, and, ultimately, a federal lawsuit.[14] We did not plan for the campaign; it developed in response to immense client need. As a result, we did not have the opportunity to reduce caseloads or implement other time-freeing measures. Our economic justice workgroup ended up working even longer hours, the members covering hearing and intake dates for one another, and developing a sense of teamwork that had not been present before.

Analyzing our impact, we now know much more about Medicaid than ever before, have relationships with high-level Department of Human Services officials that may be adversarial but are largely respectful, can boast of a decisive victory involving complex federal litigation, are recognized by the press as competent representatives of consumer interests, and have the confidence and experience to do similar work in the future. Our impact is likely heightened by the department having been unaccustomed to being held to account to Medicaid consumers through this level of legal advocacy.

Despite being a watershed victory in the context of our organizational history, the 2015 Medicaid advocacy must be seen as only the first step toward a level of advocacy routinely seen in other legal aid organizations. After all, the Department of Human Services has not implemented systemwide reform that prevents the problems causing clients to need our help and has not extended the relief afforded to our clients to those low-income Arkansans who do not come to Legal Aid of Arkansas. We recognize that our gains are modest. Thus, moving forward, we aim to consolidate our victories, apply the heightened advocacy to other Medicaid issues, and thereby protect consumer interests during possible changes in our Medicaid system; such changes include the renewal of Medicaid expansion, the introduction of managed care, and those related to the home-and-community-based waiver programs.

Housing. Arkansas is undeniably the most landlord-friendly state in the nation. Over the past 100 years, Arkansas has developed a scheme of statutory and common law that completely favors landlords and is

11 Arkansas does not operate its own health insurance exchange.

12 *Walker v. Selig*, No. 2:15-cv-00166 (E.D. Ark. Oct. 9, 2015). See *Arkansas Department of Human Services Sued for Alleged Delay in Private Option Coverage*, La Opinión, Oct. 20, 2015; *Lawsuit Against Arkansas DHS Alleges Private Option Delay*, TVH11, Oct. 9, 2015; John Lyon, *Woman Sues Arkansas DHS over 10-Month Wait to Enroll in Private Option*, Southwest Times Record, Oct. 10, 2015.

13 *Walker v. Selig*, No. 2:15-cv-00166 (E.D. Ark. Jan. 15, 2016).

14 We also had several significant hearings and did some appellate work in Medicaid areas other than application-processing delays. These cases certainly form part of our increased competence and confidence, even if they do not deal directly with processing delays.

wholly devoid of the many tenant protections that have developed and thrived across the country. Examples are as numerous as they are shocking. Arkansas is the last remaining state to embrace caveat lessee by not implying a warranty of habitability into lease agreements. The effect is that a landlord has no implied obligation to ensure that rental units are safe and livable. Another example is Arkansas's version of the Uniform Residential Landlord-Tenant Act. The National Conference of Commissioners on Uniform State Laws created the act in 1972 to be a comprehensive and fair scheme to govern state landlord-tenant relations. Arkansas adopted roughly half of the act in 2007 but deleted nearly all tenant protections before passing it.[15] While the lack of an implied warranty of habitability and half of a landlord-tenant act are indeed unfortunate, the most striking example of the legal imbalance favoring landlords is that Arkansas is the only state where missing a rent payment is a criminal act.

Arkansas's criminal eviction law was a unique concept even when it was enacted in 1901. As originally conceived, the law made it a misdemeanor for tenants to fail to vacate their home after receiving a 10-day written notice from their landlord.[16] Tenants who failed to vacate were subject to a per diem fine of up to $25. Amendments enacted in 2001 heightened the penalty by introducing the possibility of jail time for any tenant who pleaded not guilty and was subsequently convicted. Interestingly, tenants pleading guilty were not subject to the prospect of incarceration.[17]

Many Arkansas landlords love criminal eviction. It gives the landlord an easy way to coerce a tenant to move out without being troubled by hiring a lawyer or paying a civil filing fee. The landlord's only obligations are to give a 10-day notice and then make an affidavit at the local prosecutor's office. From there, the prosecutor does the work, and the taxpayers foot the bill. Roughly 2,000 such prosecutions take place per year statewide.[18] During 2012 over 500 prosecutions took place in the Little Rock area alone.[19] To make matters worse, the number of actual prosecutions likely pales in comparison to the number of tenants coerced out of their homes by the threat of criminal charges. Since the 10-day notice is typically given by the landlord prior to state intervention, we have no way to track the number of tenants who simply decide not to fight the process.

The Arkansas legal services community has long believed criminal eviction to be unjust. One legal aid program brought in 1989 a case challenging the constitutionality of a prior version of the law to the Arkansas Supreme Court; the law was upheld.[20] Then, for a quarter century, legal services brought no significant litigation to quell the use of the procedure. This is not to say that legal services attorneys did not represent tenants, sometimes even successfully, in individual cases, but there was no concerted effort aimed at bringing the practice to an end.

The housing workgroup immediately identified challenging the constitutionality of the criminal eviction statute as its primary goal and developed a practical plan.

The lack of a challenge was particularly surprising considering the 2001 amendments to the statute. Those amendments took an already constitutionally dubious statute and made it an outright affront to the Constitution by introducing the concept of a registry payment. The current version of the statute requires a tenant, at the time of the tenant's arraignment, either to plead guilty or to deposit the amount of rent the landlord alleges is owed into the court's registry.[21] If the tenant fails to deposit the money and pleads not guilty, then the tenant will be subject to heightened sanctions if subsequently convicted. These sanctions include incarceration for up to 90 days and a $25 dollar fine for each day the property is detained. The fine has no upper limit. The process is extremely coercive. A tenant who wishes to maintain innocence must decide either to vacate quickly and face a minimal fine or to incur all of the risks associated with fighting the charge.

In spite of the obvious constitutional deficiencies of the statute, its use raged on for years. In 2010 the climate at Legal Aid of Arkansas began to change with the adoption of our strategic plan and the introduction of our substantive workgroup model. The housing workgroup immediately identified challenging the constitutionality of the criminal eviction statute as its primary goal and developed a practical plan.[22]

15 See generally Marshall Prettyman, *Landlord Protection Law Revisited: The Amendments to the Arkansas Residential Landlord-Tenant Act of 2007, Ark. Code Ann. §§ 18-17-101 et seq.*, 35 University of Arkansas at Little Rock Law Review 1031 (2013).

16 Ark. Code Ann. § 18-16-101 (2010).

17 For a full discussion of the statute, see Lynn Foster, *The Hands of the State: The Failure to Vacate Statute and Residential Tenants' Rights in Arkansas*, 36 University of Arkansas at Little Rock Law Review 1 (2013).

18 *Id.* at 11.

19 *Id.*

20 *Duhon v. State*, 774 S.W.2d 830 (Ark. 1989).

21 The court is simply to take the landlord's word as to the amount owed. There is neither a provision for a predeprivation hearing to set the amount of rent nor any determination of mitigating factors such as the tenant/criminal defendant's ability to pay the fee.

22 Of course, the habitability issue was high on the priority list as well.

We engaged the University of Arkansas Bowen School of Law professors and students who were actively researching the use of the statute and who had begun to speak out about its unfairness. Bowen's Consumer Protection Clinic had begun a vigorous effort to represent criminal eviction defendants in Little Rock. By late 2013, we were holding regular strategy sessions with the Center for Arkansas Legal Services, Bowen, and other community partners to develop the legal arguments and materials necessary to carry out a challenge. In 2014 the American Civil Liberties Union joined our task force, and we welcomed its attorneys' technical and litigation assistance.[23]

With developed legal arguments, the central remaining challenge was finding prospective litigants. Our Helpline was a model filter for identifying promising cases. Because housing attorneys performed or reviewed all of the intakes, we were readily able to identify cases that were promising for a challenge. Other Helpline models, including those staffed by full-time intake-only attorneys, would have been unlikely to have the same alchemistic effect of turning volume into impact.

Legal Aid of Arkansas and the Center for Arkansas Legal Services had brought challenges to the constitutionality of the statute in three separate cases by the fall of 2014. Each potential challenge took a significant amount of time to develop because the individual cases first had to be litigated in the municipal-level district court system before they could be appealed to a county-level circuit court. Once the cases were appealed, we filed a motion to dismiss the charge and a brief detailing the constitutional issues.

The house of cards finally began to crumble on January 20, 2015, when the circuit court in Little Rock became the first court to find the criminal eviction procedure unconstitutional.[24] This ruling immediately halted all active prosecutions in the county, and the prosecuting attorney's office stopped taking new affidavits from landlords. Within three months, two additional circuit judges issued similar rulings.[25] These decisions halted criminal eviction in most of eastern Arkansas.[26] We estimate that our advocacy in all thwarted over 1,000 criminal eviction prosecutions that would have taken place over the past year.

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Despite our work, use of the criminal eviction statute persists. It continues to be used heavily in several large cities including Hot Springs, Texarkana, and Springdale. However, Legal Aid of Arkansas and our partners continue to work to protect tenants and the Constitution. We are now confident that we have an organization capable of achieving that goal.

Lessons Learned

The Medicaid and housing stories are remarkable examples of an organization realizing its potential to make an impressive impact after undertaking extensive planning and institutional change. However, we are still very much catching our breath. The success of 2015 came at a cost, and repeating it will be challenging. Client cases that were not encompassed by the impact work received insufficient attention. Although we did not miss any filing deadlines, we were simply not able to deliver the desired service and, perhaps worse, were not able to tell the client either upfront or in a timely manner that we could not deliver the desired service after having formally accepted the client's case. Also, the resulting stress and workload taxed individual advocates beyond sustainable levels. Management, hampered by resource limitations and staff changes, was not fully able to reduce caseloads and otherwise center impact cases as the organization's sustainable focus.

Our shortcomings here can partly be attributed to not anticipating the need for the advocacy that we eventually undertook. Such a lack of foresight is also problematic. It demonstrates an entrenched reactive approach to volume-driven casework that does not allow time and energy to identify issues of widespread concern to client communities and develop affirmative responses. As a whole, then, we had idealized impact without being prepared to take obvious steps to subvert the overwhelming pressures of volume, whether through reduced intake, tighter application of priorities, shifting routine cases to advocates less involved in the impact work, or support mechanisms to embolden compassion-driven advocates to say "no" to more cases, even those involving clients in desperate need. Moving forward, we can employ these simple mechanisms to facilitate impact while also implementing bolder initiatives to systematize impact work.

23 We would particularly like to thank Brandon Buskey, an attorney with the American Civil Liberties Union's Criminal Law Reform Project.

24 *State v. Smith*, No. CR 2014-2707 (Ark. Cir. Ct. Pulaski Cnty. Jan. 20, 2015).

25 See, e.g., *State v. Jones*, Nos. CR 2014-389, 2014-390 (Ark. Cir. Ct. Poinsett Cnty. 2015).

26 Interestingly, Arkansas elected not to appeal any of these decisions.

Informed by the successes and struggles of 2015, Legal Aid of Arkansas's strategic plan for 2016–2020 innovates institutional practices to emphasize impact work in the context of resource limitations and volume pressures. Specifically, workgroups will define "impact" in the context of particular case types and use an "impact matrix" to choose among meritorious cases that otherwise meet priorities. Though initially an administrative task that takes time away from casework, such defining will in the long term form a rational guide for choosing among compelling cases, and the process of building consensus around impact should deepen the teamwork of workgroups. Moreover, Legal Aid of Arkansas is allowing workgroups to move toward campaign-based advocacy, where two or three issues are identified around which a majority of workgroup resources will be oriented for the year, with the remainder of advocate time left for potent individual cases. The campaign-based approach requires the identification of a campaign goal with a measurable outcome and developing appropriate comprehensive advocacy in response, ranging from targeted community education, open records requests, development of press-friendly stories, discussions with key officials, and traditional legal strategies.[27] Client voice is reflected in community-needs surveys, intake data, and client conversations. Campaign decisions will further be influenced by input from community allies.

The world does not give us the resources to answer all injustice present in our state. In 2015 Legal Aid of Arkansas stumbled upon alchemy and haphazardly turned volume to impact. Ironically we must now disavow the magical thinking that led to our accidental discovery. Future efforts will be aimed at making our alchemy a science. We hope to have more success than our medieval forebears.

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27 If carefully crafted and managed, all such tactics can be used within the context of Legal Services Corporation restrictions (see Smith, *Poverty Warriors, supra* note 1, at 39 ("Indeed, to its credit, LSC['s] … 'performance criteria[ ]' … actually encourage programs to engage in advocacy that will achieve systemic benefits and create broad legal remedies not only for individual clients but also for similarly situated low-income persons and indeed for the poor community as a whole.")).