

CLEARINGHOUSE REVIEW

JOURNAL OF POVERTY LAW AND POLICY



**SHRIVER
CENTER**

Sargent Shriver National Center on Poverty Law

How to Increase Legal Aid Substantially with Existing Resources

BY WAYNE MOORE

During this period of stagnant and even shrinking funding for legal aid, we cannot abandon our passion for expanding access to justice. Since we cannot rely on more resources, now is the time to look inward to find ways to do more with what we have. This requires us to be brutally honest about our delivery systems and admit that we can do better. Our current delivery systems can become both more efficient and more effective. As described below, some inefficiency is caused by our cumbersome intake and case distribution systems. Effectiveness suffers from not handling enough cases that are critical to the well-being of our clients. Some of these problems are a result of the historical evolution of our delivery systems. The rest come from the failure to adopt modern delivery techniques.

Here I discuss the efficiency and effectiveness problems that have historical origins and how to correct them by using examples from my own career. I then describe new methods that are being developed to handle specific case types better. I also offer methods that programs can use to identify other areas of inefficiency and ineffectiveness. I conclude with an estimate of the increase in services that can be achieved with these improvements in efficiency and effectiveness.

Historically Created Deficiencies

Current legal aid practice was patterned after private law firms because firms were the predominant delivery model in the mid-1970s. I worked in a neighborhood legal aid office that used this delivery

model at that time; clients were served on a first-come, first-served basis beginning with a face-to-face interview after the client satisfied an eligibility screening. The goal was to provide extended representation, but, due to lack of resources, clients often received brief services instead.¹ The intake system was very efficient

In 1980 LSC required programs to spend 10 percent of their grant funds on private attorney involvement (the requirement is now 12.5 percent).

because clients could walk in and meet with an attorney the same day. But the attorneys' reluctance to turn away clients soon created unmanageable caseloads. Attorneys quickly burned out, and turnover rates were nearly 50 percent annually.

When we realized that the private-practice model was not working, we made adjustments. One important change came from the Legal Services Corporation (LSC), which required grantees to set case priorities in order to receive funding.² This requirement caused programs to change their efficient intake systems to a multistep process that usually ended in a weekly, officewide meeting where all advocates decided which cases would be accepted for service. Paralegals then called clients back to

inform them of the group's decision. This change came at the expense of efficiency and client satisfaction. Clients did not know whether they would be helped until two or three weeks after first contacting the program as intake also involved an eligibility screening and a separate face-to-face, fact-gathering interview. This new

system solved the staff turnover problem, but caused anguishing delays for clients.

VOLUNTEER LAWYERS' PROGRAMS

In 1980 LSC required programs to spend 10 percent of their grant funds on private attorney involvement (the requirement is now 12.5 percent).³ The program I directed, AARP Legal Counsel for the Elderly, was one of six grantees that were funded by LSC to test this new concept as part of a delivery system study. We then were asked to train all other LSC grantees how to establish and manage volunteer lawyers' programs as part of the implementation of the 10 percent requirement. Most of these pro bono projects were not fully integrated into the grantees' delivery systems. Instead they were appended to programs, and they referred to volunteer attorneys' cases that the staff attorneys did not want or otherwise could not handle. Priority setting meant that programs did not accept cases, such as uncontested divorces, that some volunteers were willing

1 The Legal Services Corporation (LSC) categorizes legal aid services by the reason for a case's closure, namely, advice only; limited action; extensive services; settlement without court action; settlement with court action; uncontested court decision; contested court decision; administrative agency decision; and appeals. The last six services are called extended representation. The first three are called brief services.

2 45 C.F.R. § 1620 (2014).

3 *Id.* § 1614.

to handle. Pro bono projects often did not receive cases that matched the expertise of the volunteers, and this resulted in many volunteers failing to receive cases every year—a problem that persists to this day.⁴

This delivery problem caused many of the pro bono projects to be spun off to bar associations. But initially the bar still relied on legal aid programs to refer the necessary cases. When enough placeable cases were not forthcoming, the bars established their own intake systems. But this created other problems because restricting intake to referable cases was difficult; bars were stuck with cases they could not place. Also, incoming cases usually had to be developed before referral because volunteers wanted to know how much time and expertise a case would require before they accepted it. Thus bar associations had to collect additional facts and documents or call third parties or do both. After development, sometimes all that was needed was brief services. A referral to a volunteer only created additional delays, duplication of effort, and the underutilization of the volunteer's abilities. Both internal and external pro bono cases face another problem, namely, the amount of time and effort required to find a volunteer who will accept a particular referral. This can involve time-consuming phone or e-mail tag and long delays.

Thus pro bono projects are not well utilized. Many volunteers do not receive referrals in a given year. Cases that the volunteer attorneys close with advice alone cost three times as much as they would if they

4 On average only 30 percent of active volunteers receive cases each year. Thirty percent of active volunteers received cases in 2008; 33 percent in 2006; 30 percent in 2005; and 31 percent in 2004 (Legal Services Corporation response to my Freedom of Information Act request (June 1, 2009) (in my files)). These percentages are lower than the actual number because most programs do not cull inactive volunteers from their lists of active pro bono attorneys. But even if one-third of these attorneys were inactive, this percentage would be only about 45 percent.

were closed by a paid hotline attorney.⁵ In some programs the number of staff required to support the pro bono project could easily do the work themselves.⁶

LEGAL HOTLINES

Many programs also adopted legal hotlines, a system AARP originated in 1985. Hotlines efficiently provide legal advice and some limited-action services. Again, hotlines are generally appended to the front end of legal aid programs rather than fully integrated. This creates two problems. First, the hotline is sometimes installed in the main office, but branch offices conduct intake and provide advice in the less efficient, traditional way. Second, even if the hotline serves as the intake for the entire program, it usually cannot commit the program to providing more than hotline services and has to refer clients needing more services to the program's multistep intake system that typically rejects half of them.⁷ Rejected cases are recorded as closed by (hotline) advice, but the needs of clients are clearly not met. If the hotline is external to a program, all cases referred by the hotline to the program are usually subject to the multistep intake process. The first problem means that a lot of advice is still provided inefficiently. The second problem results in (1) an inefficient intake system being used for all cases that need

5 Forty-nine percent of cases that are referred to volunteers involve only advice; 22 percent, limited action and extensive services; and 28 percent, extended representation (Legal Services Corporation, *Grants: Case Service Report (CSR): [Private Attorney Involvement (PAI)]—by Case Type (2012)*). One full-time-equivalent pro bono coordinator on average refers 450 cases a year, where placing advice cases takes nearly as long as placing extended-representation cases. However, only one-third of a full-time-equivalent hotline attorney is needed to close 450 advice cases because hotline attorneys can close 1,360 advice cases annually (see my *DELIVERING LEGAL SERVICES TO LOW-INCOME PEOPLE* 178, 299 (2011)).

6 LSC-funded staff attorneys and paralegals close an average of 254 cases per year. Of those cases, 79 percent involve brief services and 21 percent are extended representation cases (DELIVERING LEGAL SERVICES TO LOW-INCOME PEOPLE, *supra* note 5, at 190–92).

7 Legal Services Corporation, *Documenting the Justice Gap in America* 4 (June 2007).

more than hotline services and (2) clients not receiving the services they need.

Thus hotlines are not usually well utilized. Their intake function is duplicated for all cases needing more than hotline services. The inefficient intake process is still used. And currently 58 percent of cases closed by advice or limited action actually require more services.⁸

COURT-BASED SELF-HELP CENTERS

On average 57 percent of the cases an LSC grantee closes with a court decision are uncontested.⁹ Some LSC programs average 21 billable hours on these cases.¹⁰ A reasonable estimate of a full-time LSC attorney or paralegal's annual number of billable hours is 1,230.¹¹ Thus one full-time-equivalent attorney or paralegal can be expected to close 59 of these uncontested court cases annually. Even in programs that spend only half this time on these cases, one attorney or paralegal can close only 118 of these cases per year. Court-based self-help centers have proven to be very effective in dealing with uncontested court cases.¹² One full-time-equivalent attorney or paralegal placed in a courthouse can help 3,000 litigants per year with their uncontested court cases.¹³ Part of the reason for this productivity is that a very efficient "first come, first served" intake is used for peo-

8 *Id.* at 6 n.8.

9 Legal Services Corporation, *2012 Fact Book* 17 (July 2013).

10 Data from the programs are in my files.

11 A reasonable assumption is that legal aid attorneys and paralegals work about 37.5 hours per week with 13 holidays and an average of 5.6 weeks of vacation and sick leave. This results in 1,640 hours worked. Some legal aid directors report that about 75 percent of worked hours are devoted to client services for a total of 1,230 billable hours. The rest of the time is spent on administrative tasks, staff training, and meetings (John Arango, Algodones Associates, *Civil Legal Aid System Planning Model Manual* (April 2007) (in my files)).

12 See my *How to Design and Establish a Technology Based Self-Help Legal Center* (Feb. 2004).

13 DELIVERING LEGAL SERVICES TO LOW-INCOME PEOPLE, *supra* note 5, at 161.

ple who are already in court seeking help. A court attorney can assess a litigant's case and determine what forms need to be completed and filed. The court attorney can give the litigants the necessary court forms with instructions for filling them out. Most self-help centers use staff or volunteers to help the litigants complete the forms. The litigant then files the forms and arranges for service of process; if there are any filing problems, litigants can get assistance in correcting the forms on the same day. Because the cases are uncontested, the litigant can receive handouts with step-by-step instructions on collecting the necessary documents, finding the relevant witnesses, and identifying the questions that must be answered at the court hearing. Legal advice, which is not usually given by self-help centers, is usually not needed. Since the cases are uncontested, as long as the necessary proof is given, the judge has little discretion in deciding the case.

Since most LSC grantees close at least 116 uncontested court cases a year, they are well advised to assign at least one attorney or paralegal devoted to these cases to a court where the attorney or paralegal can serve many more clients. Most courts are willing to establish these self-help centers, especially if staff is provided by an external entity.¹⁴

Necessary Delivery System Changes

Five simple changes can eliminate many of the above efficiency and effectiveness problems. First, legal aid programs should centralize their telephone intake systems. Branch offices should not conduct telephone intake because centralized intake can better ensure that all cases are directed to the appropriate unit within the

program. Branch offices can have walk-in hours for clients with special needs and conduct targeted intake. Targeted intake is usually performed in conjunction with other agencies serving low-income people to find those with specific legal problems. Targeted intake is intended to find priority cases that are not being referred by centralized intake. Any other legal problems encountered during targeted intake are sent to centralized intake.

Second, whenever possible, the centralized intake unit should use protocols to refer to the volunteer lawyers' program cases that need more than hotline services and do not need additional development. Other cases requiring extended representation should be sent to staff attorneys or paralegals, and all other cases should be referred to the hotline. These protocols should allow some nonpriority cases to be sent to the volunteer lawyers' project for

the volunteer lawyers' project fails to place should also be forwarded to staff attorneys or paralegals. Cases referred by the hotline should not go through another intake process. Fourth, cases that are not sufficiently developed for referral to a volunteer but need more than hotline services should be referred to a staff paralegal for development. If a case needs only a brief service after development, this should be provided as part of the development process. Developed cases that need extended services and are placeable should be referred to the volunteer lawyers' project. The remaining cases should be sent to managing attorneys for placement with staff advocates. And, fifth, cases requiring an uncontested court decision should be referred to a staff attorney located in a court self-help center.

The net effect of these very feasible changes will be that the hotline will close all cases that can be resolved by hotline

Giving priority to the volunteer lawyers' project will maximize the likelihood that all active volunteers receive cases.

referral to volunteers who otherwise would not be used. Third, the hotline should close the cases it can and be allowed to commit available program resources to handling cases that need more than hotline services with the qualification that in limited circumstances a case may not be accepted, such as when a volunteer lawyer is not available. The hotline should refer sufficiently developed and placeable cases that need extended services to the volunteer lawyers' project (whether internal or external) and the rest to managing attorneys for distribution to staff attorneys or paralegals. The volunteer lawyers' project should have the first choice so that all available volunteer lawyers are utilized; cases that

services, and the volunteer lawyers' project will have the first choice of cases referred by the intake, hotline, and development units. Giving priority to the volunteer lawyers' project will maximize the likelihood that all active volunteers receive cases.¹⁵ Nonpriority cases will be sent to volunteers who otherwise would not be used. The development unit will close cases that can be resolved with its services (advice and limited action), and cases that cannot be closed by the volunteer lawyers' project, the hotline, or the development unit will go to staff attorneys or paralegals. Cases re-

¹⁴ See Conference of Chief Justices and the Conference of State Court Administrators, [Resolution 31 of the Conference of Chief Justices and the Conference of State Court Administrators](#) (Aug. 1, 2002).

¹⁵ Volunteers who accept cases on average accept 2.5 cases per year ([Legal Services Corporation, Fact Book 2011](#), at 37 (June 2012)).

quiring an uncontested court decision will be handled efficiently by self-help centers.

The ultimate result of my suggested changes is that no cases that need additional services will be closed. All cases closed will be closed by the least expensive delivery system capable of doing so, and volunteer lawyers' projects, hotlines, and self-help centers will be well utilized.¹⁶

Best Use of Staff Attorneys and Paralegals

What remains for discussion are contested cases referred to staff attorneys and paralegals. This is an area ripe for change. Over 77 percent of contested cases involve 17 case types, namely, divorce, support, child custody, domestic abuse, federally subsidized housing, public housing, private landlord/tenant, mortgage foreclosure, Medicaid, Supplemental Security Income (SSI), Social Security Disability Insurance (SSDI), unemployment benefits, welfare, Supplemental Nutritional Assistance Program (formerly known as food stamps), bankruptcy/debtor relief, collection (repossession, deficiency, garnishment), and wills and advance directives.¹⁷ If special systems are developed for each of these common case types, staff can handle many more of them with the same resources. New delivery approaches can be used for these cases, namely, unbundled legal services without court representation; unbundled legal services with court representation; placement of staff attorneys in specialized courts; and efficient systems developed by others (see tbl. 1).

UNBUNDLED LEGAL SERVICES WITHOUT COURT REPRESENTATION

Probably the most promising approach to

handling more cases involves unbundled legal services. 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 alone performs the remaining tasks.

Probably the most promising approach to handling more cases involves unbundled legal services.

After retiring from AARP, for three years I established and ran an unbundled law practice that charged a flat fee to low- and moderate-income people in the District of Columbia, Maryland, and Virginia. Even though Virginia courts and ethics codes do not specifically authorize unbundled practices, we were able to engage in unbundled services because the courts we used allowed us to ghostwrite pleadings without disclosing our involvement. The American Bar Association has issued an ethics opinion holding that ghostwriting is ethical under the old Rules of Professional Responsibility, which do not specifically authorize unbundling.¹⁸ I handled the following contested case types: divorces where the parties were willing to negotiate a settlement with each other, most child support cases, child custody cases involving enforcement of a court order or where a nonabusive parent was denied visitation, private landlord/tenant cases where the tenant needed more time to move out, and Chapter 7 bankruptcies. These cases took me between three and four hours to resolve.

I found that clients could, with coaching and written materials, handle the following tasks: file court papers, arrange for service of process, and assemble the necessary evidence and witnesses. If they encountered a problem, I could usually coach them through the necessary corrective action. Clients also represented themselves at their court hearings. I drafted all

of the required court papers, including the proposed order, supplied them with the questions they and their witnesses would have to answer at their hearing, and prepared them by phone before their hearings.

While I did not handle domestic abuse cases, court staff members in the District of Columbia successfully provide unbundled services; they help prepare the pleadings and affidavits for temporary protective orders and inform clients on how to proceed *pro se*.

UNBUNDLED LEGAL SERVICES WITH COURT REPRESENTATION

The area requiring the most new research and experimentation is unbundled legal services with court representation. Unbundling in legal services typically does not involve representation in court. However, this is what most clients want and need. 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

¹⁶ Namely, advice and some limited-action cases by the hotline; other brief-services cases by the development unit; uncontested court cases by the self-help centers; and extended-representation cases by the volunteer lawyers' project.

¹⁷ Legal Services Corporation, *supra* note 9, at 19.

¹⁸ See [American Bar Association Standing Committee on Ethics and Professional Responsibility, Formal Opinion 07-446: Undisclosed Legal Assistance to Pro Se Litigants](#) (May 5, 2007).

Internal Revenue Service or subpoena their spouses' employers *pro se*. The retainer agreement can stipulate that representation at a hearing is conditioned on the client's ability to provide the necessary evidence several days prior to the hearing. In these cases the client is helped to file the case *pro se*, and the attorney enters his or her appearance only at the hearing.

LAWYERS ASSIGNED TO SPECIALIZED COURTS

Another approach is the daily placement of a legal aid lawyer in a landlord/tenant or small claims court to handle collections, debtor relief, landlord/tenant, and other cases. A lawyer also can be assigned to handle all restraining order hearings if the volume justifies it. Staff members of a legal aid program develop these cases and transfer them electronically to the in-court lawyers, who handle the hearings.¹⁹

EFFICIENT METHODS DEVELOPED BY OTHER PROVIDERS

A fourth approach is to study and adopt variations of the systems used by other high-volume legal services providers. 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. For example, many hospitals use private law firms to help patients qualify for Medicare or Medicaid or to appeal denials of coverage for hospital services.²⁰ Some private practitioners who specialize in one case type (e.g., SSDI) have developed efficient systems that could be copied. All of these systems are very effective because the private practitioners are usually paid only when they win; thus

effectiveness determines the amount of their profits.²¹

metrics with others to determine which are above and below national averages.²³ Based on my understanding of effective-

TABLE 1. RECOMMENDED METHODS OF LEGAL SERVICES DELIVERY.

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
5. Divorce/separation	Unbundled
6. Domestic abuse	Unbundled; attorney dedicated to these hearings
7. Medicaid	Systems used by for-profit providers
8. Social Security Disability Insurance	Systems used by for-profit providers
9. Supplemental Security Income	Systems used by for-profit providers
10. Unemployment	Unbundled, volunteer lawyers
11. Federally subsidized housing	Attorney dedicated to these hearings
12. Public housing	Attorney dedicated to these hearings
13. Private landlord/tenant	Unbundled; in-court tenant lawyer
14. Mortgage foreclosure	Volunteer lawyers
15. Wills/advanced directives	Volunteer lawyers

Metrics

Another method that programs can use to improve efficiency, effectiveness, and quality is to analyze their metrics.²² Metrics help identify performance problems that otherwise would not be apparent. Yet metrics in a vacuum are not useful; programs must be able to compare their

ness and efficiency problems, I identified two effectiveness metrics and three efficiency metrics that would be helpful for legal aid programs to analyze. I then calculated results for these metrics by using 2012 LSC data.²⁴ Once programs identify their own problematic metrics,

19 The first program I worked for, [Neighborhood Legal Services Program](#) in the District of Columbia, used this method.

20 See [Healthcare Receivable Management and Consulting](#) (n.d.).

21 See *id.* and *infra* note 36.

22 Having provided substantial input in 2011 and 2012 to LSC's strategic planning about the importance of metrics, standards, and measuring case outcomes, I was delighted when LSC decided, for the first time, to establish them for efficiency, effectiveness, and quality (see my [Comments on the Draft LSC Strategic Plan for 2012 to 2016](#) (July 2012) and [Comment on Concerns About LSC's Performance Management Strategy](#) (July 2012)).

23 For a complete listing of metrics, see my [The Future of Legal Aid: Systems 4–11](#) (International Legal Aid Group conference paper June 12, 2013).

24 Legal Services Corporation, [Grants: Case Service Report \(CSR\): CSR—by Reason for Closure](#) (2012). The metric values appearing in this article do not include data for programs that serve Native Americans, Micronesia, or Guam because these programs use special courts.

they should investigate further by using the questions referred to in the footnote.²⁵

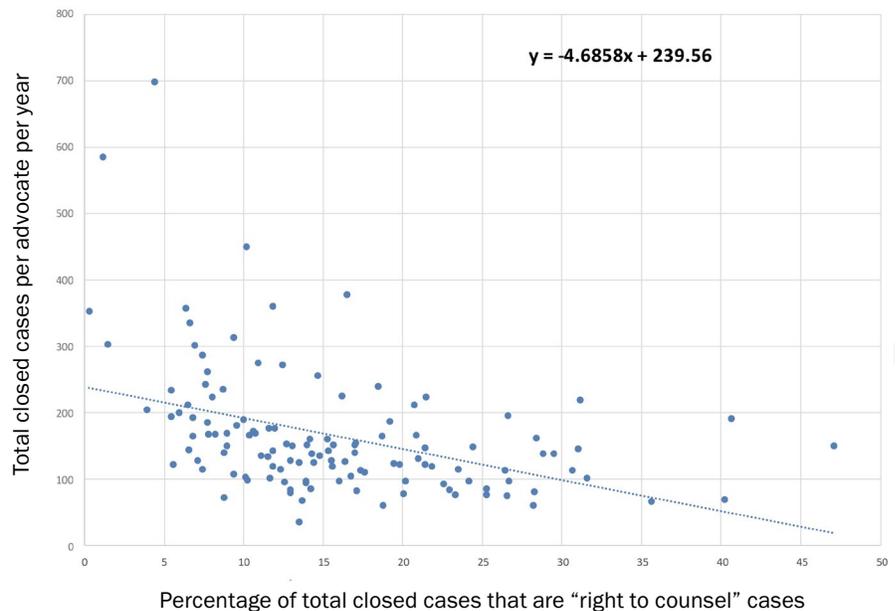
EFFECTIVENESS METRICS

One measure of a program’s effectiveness is the number of “right to counsel” cases closed annually per advocate. These are the cases the American Bar Association has identified as deserving free counsel, namely, cases involving clients’ basic needs that are closed by settlement without court action, settlement with court action, contested court decision, or administrative agency decision.²⁶ This metric determines whether programs handle enough of these cases that are critical to clients’ well-being.²⁷ The other measure is outcomes. Specialized delivery systems are effective only for resolving certain cases. One needs to measure outcomes to determine which these are. This information can then be used to develop intake protocols for referring cases to the least expensive, appropriate delivery system. Without measuring outcomes for a statistically valid sample of combinations of all case types and closure codes, one cannot know the quality of services provided.

EFFICIENCY METRICS

Legal aid programs can use three crucial metrics to evaluate their efficiency. First, programs should calculate their ratio of managers to nonmanager staff attorneys

FIGURE 1. COMPARISON OF THE AVERAGE NUMBER OF CASES THAT LSC GRANTEEES CLOSE ANNUALLY WITH THE PERCENTAGE OF THEIR TOTAL CASES THAT ARE “RIGHT TO COUNSEL” CASES.



Source: Legal Services Corporation, [LSC Grants, Case Service Report \(CSR—by Reason for Closure\)](#) (2012).

and paralegals.²⁸ By doing so, programs can ascertain whether they have too many managers. Second, programs can compare the average number of cases that their staff members close annually with the percentage of their total cases that are “right to counsel” cases. Figure 1 shows this comparison for all LSC grantees; the total number of attorneys and paralegals was used to make these calculations because the number devoted solely to casework was not available. If your staff attorneys and paralegals spend a lot of time on advocacy other than casework, you can use the number of attorneys and paralegals devoted solely to casework instead of total advocates. But remember that the total number of attorneys and paralegals is used for all other grantees depicted in figure 1.

LSC grantees that fall well below the sloping line have counterparts above the line handling a similar percentage of “right to counsel” cases, figure 1 shows. Yet those below the line close 100 to 200 fewer cases per advocate than those above. For example, the percentage for two programs is 10 percent, but one closes 90 cases per advocate per year (9 “right to counsel” cases; 81 others) and the other closes 300 per advocate per year (30 “right to counsel” cases).

A third way of evaluating efficiency involves calculating billable hours by case type and service. This can be accomplished by calculating the total number of billable hours each advocate spent on a particular case type and service each year. For example, for domestic abuse cases, one would determine the average billable hours spent on each service (e.g., advice, contested court decision) by each advocate. This calculation is performed for all case types and advocates. This is

25 See [my Legal Services Reductions Can Avoid Service Reductions by Improving Efficiency and Effectiveness](#) 51-3 (July 2012) (scroll down 77 pages).

26 American Bar Association, *Basic Principles of a Right to Counsel in Civil Legal Proceedings* (Aug. 2010).

27 I consider all contested cases closed by LSC grantees (i.e., closed by settlement without court action, settlement with court action, contested court decision, and administrative agency decision) to be “right to counsel” cases as most of the common case types they handle concern clients’ basic needs (for the total number of these cases closed annually for each program, see Legal Services Corporation, *supra* note 24). Dividing this number by the total number of attorneys and paralegals in the program yields “right to counsel” cases per advocate. Total advocates are used instead of the number of attorneys and paralegals devoted to handling these cases because the latter numbers are not available (for staffing data, see [Legal Services Corporation, Grantee Profiles](#) (2014)). In 2012 the average number of “right to counsel” cases closed annually per advocate was only 23 and ranged from 4 to 71.

28 This metric is used by city and county government law offices, which strive for a ratio of 0.10 to 0.15 ([James Wilber, Best Practices of City and County Civil Law Offices](#) 8 (Feb. 2002)). This ratio averaged 0.27 for all LSC grantees in 2012 because there were 1,061 managing and supervising attorneys and 3,997 staff attorneys and paralegals (Legal Services Corporation, *supra* note 9, at 32).

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 (which is not). This is the method used by the United Auto Workers legal aid plan, a prepaid legal services program, to monitor staff performance.²⁹

Better Systems, More Cases

From the discussion above, one can estimate the increases in legal services that are possible if programs adopted the necessary systems. If LSC programs improved their efficiency so that programs falling below the sloping line in figure 1 improved their performance to reach the line (i.e., average), this would increase services by more than 221,512 cases or nearly 27 percent of the current total where 80.7 percent would be brief-services cases and 19.3 percent would be extended representation cases.³⁰ If programs increased referrals to available volunteer lawyers from 45 percent to 60 percent and 50 percent of the cases

handled involved extended representation, the volunteers would close 2,202 fewer brief-services cases and 29,630 more extended-services cases.³¹ (Note that this figure does not double-count the 221,512 cases above because the percentage of volunteers used by programs above the line is nearly the same as for those below the line (37.9 percent versus 39.3 percent.) If LSC programs assigned one-half of the full-time-equivalent staff devoted to uncontested court cases to the courts, they could close 218,457 more uncontested cases annually.³²

If a lawyer is assigned to small claims court to handle debt and collection cases and staff advocates develop these cases for the in-court lawyers, 6,923 more

cases could be closed by existing staff.³³ Similarly attorneys assigned to landlord/tenant court could close 23,382 additional cases.³⁴ In contested domestic abuse cases, because legal aid lawyers generally represent the plaintiff, multiple cases could be filed for the same court date where cases are handled by an in-court attorney after development by others.³⁵ This would allow 25,104 more of these cases to be closed with existing staff. And if programs used the procedures deployed by private law firms to handle SSI and SSDI cases, existing staff might close a significantly greater number of these cases.³⁶

Such results can be summarized in table 2, which compares 2012 results with those projected if the recommended delivery systems had been in place in 2012.

29 Telephone conversation with Matt Mason, Assistant Director of United Auto Workers Legal Services Plan (April 7, 2014).

30 See *supra* note 1. One can calculate the total number of additional cases per advocate by (1) using the formula for the straight line in figure 1, namely, $239.56 - 4.6858x$, to determine the total number of cases closed per advocate for each program at the sloping line, where x is the percentage of "right to counsel" cases, and (2) subtracting the current total number per advocate. This calculation is done only for those programs below the line. E.g., suppose a program's percentage is 27.4 and the current total number of closed cases per advocate is 66. The total at the sloping line is 111. Subtracting 66 from 111 yields 45. The total number of additional cases can be determined by multiplying this total number of additional cases per advocate by the total number of advocates in the program. If this total number of advocates is 244, this would yield 10,980 more cases. Using the above methodology, we get the total number of additional cases: 221,512. The composition of these cases is the same as those closed in 2012, namely, settlements without court action (1.6 percent), settlements with court action (5.5 percent), agency decision (3.7 percent), uncontested court decision (4.8 percent), and contested court decisions (3.6 percent) (Legal Services Corporation, *supra* note 9, at 15–22). This means there would be 3,544 more settlements without court action; 12,183 more settlements with court action; 10,633 more uncontested court decisions; 7,974 more contested court decisions; and 8,196 more administrative agency decisions.

31 A total of 32,101 volunteers in 2011 closed 79,578 cases (2.5 cases per volunteer), where 23,873 (30 percent) involved extended representation and 55,705 (70 percent) involved brief services (Legal Services Corporation, *supra* note 15, at 36; [Legal Services Corporation, Grants: Case Service Report \(CSR\): PAI—by Reason for Closure \(2011\)](#)). Assuming that 45 percent of available volunteers handled these cases, this means that a total of 71,336 volunteers were available to handle cases (see *supra* note 4). If 60 percent instead of 45 percent accepted cases, 42,802 volunteers would accept 107,005 cases where each handles 2.5 cases. If more extended-services cases were referred to the volunteers so that 50 percent were extended services instead of 30 percent, then 53,503 (half) would be extended-services cases and 53,503 would be brief services. This is an increase of 29,630 extended-representation cases and a decrease of 2,202 brief-services cases. If the composition of the extended-services cases is the same as those in 2011 for PAI cases (i.e., settlements without court action (4.7 percent), settlements with court action (21.3 percent), agency decision (7.4 percent), uncontested court decision (46.1 percent), and contested court decisions (20.5 percent), this would mean 1,393 more settlements without court action; 6,311 more settlements with court action; 13,659 more uncontested court decisions; 6,074 more contested court decisions; and 2,193 more administrative agency decisions (*id.*).

32 Half of the uncontested court cases closed in 2012 is 19,543. While some programs spend an average of 21 hours on these cases, I will assume 15 hours is more typical (see *supra* note 10). One advocate billing 1,230 hours per year can therefore close 82 of these cases, thereby requiring 238 advocates to close all of them. One advocate in a self-help center can close 1,000 cases per year assuming only one-third of those helped receive court decisions (DELIVERING LEGAL SERVICES TO LOW-INCOME PEOPLE, *supra* note 5, at 161). A total of 238 court advocates can close 238,000 cases or 218,457 more cases.

33 Of these cases, 4,175 were closed in 2012 with a contested court decision or a settlement with court action. I conservatively estimate that 40 percent or 1,670 of these cases could be closed by an in-court lawyer. Some programs average 38 hours on one of these cases (data are in my files). If a more typical figure of 30 hours is used, one full-time-equivalent staff member billing 1,230 hours per year can be expected to close 41 of these cases (Arango, *supra* note 11). A total of 41 full-time-equivalent staff members would be required to close 1,670 cases. Assuming an in-court lawyer can close 4 cases a day and has 164 billable days per year (1,230 hours/7.5 hours/day), the lawyer can close 656 cases per year. A staff member can develop 308 of these cases per year if the staff member averages 4 hours per case. Therefore closing 656 cases per year requires 3.13 staff members. A total of 41 staff members can close 8,593 or 6,923 more cases.

34 Using the same assumptions as above where 14,236 of these cases were closed with a contested court decision or a settlement with court action in 2012.

35 Using the same assumptions as above where 15,311 of these cases were closed with a contested court decision or a settlement with court action in 2012.

36 In 2012 programs closed 11,422 Supplemental Security Income and Social Security Disability Insurance fair-hearing cases with an agency decision (Legal Services Corporation, *supra* note 9, at 21). Some programs spend an average of 39 hours on cases that result in an agency decision (data in my files). Using a more typical time of 30 hours, a staff member billing 1,230 hours per year can be expected to close 41 of these cases. Therefore closing all these cases requires 279 staff members. An attorney in private practice in Indiana, Michigan, and Kentucky, assisted by 1.6 paralegals, closed 180 fair-hearing cases in 2013 (my conversation with Nancy Green, Attorney, Keller & Keller, in Indianapolis, Ind. (Jan. 2014)). In a more typical example of an attorney who is assisted by 1.6 paralegals and closes 140 cases annually (54 cases per advocate), 279 staff members could close 3,627 more cases ($279 \times (54 - 41)$).

TABLE 2. 2012 RESULTS COMPARED TO THOSE ESTIMATED AFTER DELIVERY SYSTEM CHANGES.

	Advice, limited action, and extensive services (brief services)	Settlement without court action	Uncontested court cases	Administrative agency cases	Contested court cases including those closed with settlement	Total
2012 RESULTS						
2012	653,501	13,148	39,086	29,713	74,382	809,830
ESTIMATED 2012 RESULTS AFTER DELIVERY SYSTEM CHANGES						
Existing	653,501	13,148	39,086	29,713	74,382	809,830
Additional cases due to better efficiency	178,982	3,544	10,633	8,196	20,157	221,512
Additional cases by volunteer lawyers	-2,202	1,393	13,659	2,193	12,385	27,428
Additional cases from self-help centers			218,457			218,457
Additional debt/collection cases					6,923	6,923
Additional landlord/tenant cases					23,382	23,382
Additional abuse cases					25,104	25,104
Additional SSDI and SSI cases				3,627		3,627
Total estimated results after changes	830,281	18,085	281,835	43,729	162,333	1,336,263
Total estimated increase after changes	176,780	4,937	242,749	14,016	87,951	526,433

Source: [Legal Services Corporation, 2012 Fact Book](#) (July 2013) (source of "2012 results").

Table 2 shows that LSC grantees could increase closed cases by 65 percent from 809,830 to 1,336,263 without any increase in staff if they changed their systems. "Right to counsel" cases would increase by a whopping 91 percent from 117,243 to 224,147. These increases do not take into account the improvements possible with the adoption of the recommendations in the section titled "Necessary Delivery System Changes" above because most programs in figure 1 have not adopted them yet. Table 2 does not include better efficiencies and effectiveness

that can result from the use of metrics. And table 2 assumes that only 60 percent of active volunteers accept cases annually.

I would be very interested in helping programs implement some of the recommended changes.

WAYNE MOORE

Former Director of AARP Advocacy and AARP Legal Counsel for the Elderly
wmoore95@yahoo.com

SUBSCRIBE TO CLEARINGHOUSE REVIEW

JOURNAL OF POVERTY LAW AND POLICY



Our newly designed and enhanced digital edition delivers timely and engaging information on best practices and cutting-edge approaches to legal advocacy on behalf of people living in poverty.

Don't miss the chance to take advantage of the many benefits of the new digital CLEARINGHOUSE REVIEW, including portability, searchability, and new interactive features.

Experience how the collective wisdom of the best thinkers in the legal aid community can improve your practice. Subscribe to CLEARINGHOUSE REVIEW today.

The 2014 subscription rate is only \$39 per registered user working in a nonprofit program and \$99 for individuals in for-profit programs. That's a savings of more than 60 percent off our previous annual subscription rate per copy of the print journal, and every registered user receives a 10 percent discount on our highly rated national training programs. To subscribe, fill out the form below or subscribe online at povertylaw.org/subscribe.

FIRST NAME LAST NAME ORGANIZATION

STREET ADDRESS

CITY STATE ZIP

E-MAIL PHONE

	NUMBER	TOTAL	
Nonprofit organization rate (\$39/user)			<input type="checkbox"/> Bill me
Individual/for-profit rate (\$99/user)			<input type="checkbox"/> My check is enclosed
			<input type="checkbox"/> Credit card payment <input type="checkbox"/> Visa <input type="checkbox"/> MasterCard <input type="checkbox"/> American Express

If you are purchasing multiple subscriptions, please provide contact information on your staff members so that we may create subscription accounts for them. You may download and fill out the spreadsheet at <http://tinyurl.com/chsubscription> or contact us directly at subscriptions@povertylaw.org.

NAME ON CARD

CARD NUMBER

EXPIRATION SECURITY CODE

SIGNATURE

PLEASE MAIL OR FAX COMPLETED FORM TO:

**Subscriptions
Sargent Shriver National Center on Poverty Law**

50 E. Washington St. Suite 500
Chicago, IL 60602
312.263.3846 (fax)



**The Sargent Shriver National Center on Poverty Law
provides national leadership in advancing laws and policies
that secure justice to improve the lives and opportunities of
people living in poverty.**



50 E. Washington St. Suite 500
Chicago, IL 60602