Legal Services Programs Can Avoid Service Reductions by Improving Efficiency and Effectiveness

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Funding for civil legal aid programs is declining at a time when the need for services is greater than ever. Aid was about $1.6 billion at the beginning of 2010. LSC funding was then reduced by 17 percent from $420 million in FY2010 to $348 million for FY2012. Interest on Lawyer Trust Account (IOLTA) funds, derived from pooling interest from lawyers’ trust accounts, are also decreasing. In 2007, IOLTA income reached an all-time high of $371.2 million nationally; now it is half that. Since this funding is based on the interest rates paid by banks, the situation won’t improve any time soon. The Federal Reserve recently announced that it would hold interest rates low through late 2014. States and cities cut spending at the end of 2011 by more than any time in a decade and it cannot be expected to grow significantly in the near future.

In response, legal services programs have been laying off staff. In an LSC survey of its grantees in January 2012, programs reported that they anticipate laying off 393 employees in 2012. In

1 Legal Services Corporation (LSC) $420,000,000; other public (federal and local) $283,853,000; state general revenues and filing fees $420,249, 500; IOLTA $183,708,000; foundations/corporations $112,272,000; legal community/bar $76,245,000; Cy Pres $20,310,000; Other $90,958,000. Alan Houseman, Civil Legal Aid In The United States, An Update For 2011, Center For Law And Social Policy, April 2011 at http://www.ilagnet.org/jscripts/tiny_mce/plugins/filemanager/files/Helsinki_2011/national_reports/USA_National_Report_ILAG_2011.pdf.
3 Neeta Pal, Cuts Threaten Civil Legal Aid, Brennan Center for Justice, April 22, 2011 at http://www.brennancenter.org/content/resource/the_economy_and_civil_legal_services1.
5 Dennis Cauchon, Spending by States and Cities Declines, USA Today, February 13, 2012 at 1.
6 Steve Barr, supra note 2.
2011, they lost 833 positions through layoffs and attrition. Together, the loss of 1226 full-time personnel represents a reduction of nearly 14 percent from 2010.

This article explores how services can be preserved despite the decline in staffing. The conclusion is that services can be maintained or even increased if some legal services programs streamlined their operations and maximized the effect of their services.

The first section of this article provides evidence that some LSC programs handle caseloads and other advocacy comparable to those of other programs, but use fewer staff. It also describes some accepted methods for boosting staff output and efficiency. Improving efficiency does not mean working faster or shortchanging time spent with clients. Generally, legal aid staff is hard working and dedicated. Instead, the focus is on using better technology (document generators), methods (telephone conversations can take a sixth of the time required by face-to-face conversations), and systems (assigning common, routine cases to specially trained staff who use streamlined processes). This section does take the somewhat controversial position that programs should provide only the services that clients cannot perform for themselves. This is referred to as unbundling services. This approach is becoming more common among private practitioners who serve middle income clients who simply can’t afford full representation. Of course, advocates need to monitor clients in these cases and provide additional services when necessary.

The second section defines effectiveness and shows how some programs can increase their effectiveness and have a greater impact on their clients and the client community. The third section asserts that greater efficiency and effectiveness cannot be achieved without the proper measurements; it proposes a workable set of measurements that will not be burdensome to

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7 Id.
collect. The article concludes with recommendations to funders and programs that can help them maintain or even increase services despite declining staff.

To understand this article, an explanation of the data LSC collects from programs is required. For each closed case, LSC collects the types of services that were provided; specifically: counsel and advice, limited action, settled without litigation, settled with litigation, administrative agency decision, uncontested court decision, contested court decision, appeal, other, and extensive services. Extensive and “other” services account for only 3.4 percent of cases and are not discussed. Counsel and advice and limited action cases don’t involve negotiation or representation before a court or administrative agency, require an average of only a few hours to close, and represent 78.1 percent of all cases. An uncontested court decision involves cases where the opposing party does not dispute the client’s position; these cases are particularly amenable to greater efficiencies and make up 4.7 percent of cases. An appeal represents the review of a case by an appellate court and is the service most likely to impact the client community in addition to the represented clients. The remaining cases are referred to as “key services,” as clients are least likely to find these services elsewhere. Finally, advice and limited action cases are sometimes referred to as brief services. The remaining cases, including key

9 Id.
10 Id.
12 Of the low-income people who received help from a lawyer, 74 percent reported that they received that help from a lawyer in private practice. ABA Consortium on Legal Services and the Public, Findings of the Comprehensive Legal Needs Study: Legal Needs among Low-Income Households 53 (1994). Most of these cases involved advice and limited action. Neighborhood Legal Services of Los Angeles County handled 49,100 cases at four court-based self-help centers in one year, whereas the total number of uncontested court cases closed in 2010 by all LSC grantees was 44,258. Diana Avendano, Self-Help Project Coordinator, Neighborhood Legal Services of Los Angeles County, e-mail to author dated July 20, 2006 and LSC Fact Book 2010 at 19, supra note 8. Thus advice, limited action and help with uncontested court cases are most likely to be found elsewhere.
services, uncontested court cases, extensive services, and "other" are sometimes called extended services.

I. Doing more with less

A. Some programs appear to provide comparable services with less staff

Evidence indicates that some legal services programs use fewer staff than others to close a comparable number of cases. There could be several reasons for this: 1) complexity of services provided (e.g., court representation including trial takes much longer than an advice only case), 2) types of cases handled (e.g., foreclosures usually require more time than cases involving wills), 3) number of appeals handled (these cases can take hundreds of hours), (4) amount of advocate time devoted to services other than reported cases, 5) percentage of staff other than paralegals and attorneys (support staff can help advocates handle more cases), 6) types of clients served (e.g., limited English speaking clients often take longer to serve), and 7) differences in the efficiency of the programs. The third issue arises because LSC grantees report the total number of advocates (attorneys and paralegals) instead of those dedicated solely to the reported cases.

1. Service complexity

The impact of case complexity on the number of closed cases can be determined by plotting 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 key services, since these are the most complex cases (other than appeals, which are discussed below). The number of advocates is determined by adding the total number of attorneys and paralegals

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13 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 key services. The annual average number of closed cases per advocate is 178 and the percentage of key services is 29 percent. 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).
employed by each program. The following graph shows the relationship between the total number of closed cases per advocate and the percentage of key services cases they handled in 2009 for all LSC grantees, except those that only serve Native Americans, Guam, and Micronesia.14

As expected, a strong correlation appears between the number of closed cases per advocate and the percentage of key services. Programs that handle a larger percent of key services close fewer cases per advocate. But the graph also shows that LSC grantees that fall well below the sloping line. (Two outlier LSC grantees are omitted from the graph: (0.6, 768) and (7.1, 1257)).

14 LSC’s response to author’s request, Id.
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 key
services ratio for two programs is 10 percent but one closes 90 cases per advocate per year (9 key
services cases, 81 others) and the other closes 300 per advocate per year (30 key services cases,
270 others). This shows that factors other than case complexity cause the disparity in the data.

To analyze the effect of the six remaining factors (case type, number of appeals, amount of other
services, percentage of other staff, client type and efficiency), it is helpful to use other related
data. As explained above, closed cases of LSC grantees can be divided into two categories: brief
services and extended services. One can calculate the overall average time that LSC grantees
spend on a brief services case and the average for an extended services case using national
data\(^\text{15}\). 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\(^\text{16}\).

One can also calculate the total time they actually used to close their caseload if their advocates

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\(^{15}\)One can use LSC national data for 2008 and 2009 to determine the average amount of time used to close a brief
services case and an extended services case (assuming advocates spend 1200 hours annually on these closed cases
and the averages are about the same for both years). The average times for 2009 are 25.76 hours for an extended
services case and 2.6 hours for a 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 4174
attorneys and 1577 paralegals (total = 5751 FTE advocates). If one multiplies 194,626 by 25.76 and 725,821 by 2.6,
adds them (6,900,700), and divides by 1200, this yields 5751. LSC Fact Book 2008 1, 11 at

\(^{16}\)For example, in 2009 one LSC grantee closed 1471 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). LSC’s response to author’s request, supra note 13.
each spent 1200 hours annually on them. Finally one can compare the total actual time with the total “average time” as a percentage.

Some programs spend less time than average on a case and are designated by negative numbers in the following graph, where the “x” axis represents the various states numbered 1 to 53 (including DC, PR, VI), and the “y” axis is the percentage of additional (or less time) that a LSC grantee takes to close a case compared to the national average. Programs that spend more time than average appear above the x axis. By definition, half the grantees fall above the x axis and half below.

\[ \frac{34800 - 23403}{23403} \times 100 \]

(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).

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17 In the above example, the program had 29 advocates. If each spent 1200 hours on these cases, they would have actually spent a total of 34,800 (1200x29) hours to close these cases. (It is reasonable to assume that legal aid advocates 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 1640 hours worked. Some legal services directors report that about 75% of worked hours are devoted to direct client services, for a total of 1230 billable hours (source: conversation with John Arango on 5/2007)).

18 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 \times 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).
Graphs 1 and 2 show a high correlation. All but nine of the 65 LSC grantees that fall at or below the sloping line in graph 1 appear above the x axis in graph 2 (spend more time per case). Also, all but one of the 64 grantees that appear above the sloping line fall below the “x” axis (spend less time per case). The results in graph 2 are more favorable than graph 1 as a net of eight programs that appear below the sloping line (perform poorer than average) appear above the x axis (perform better than average).

2. Case type
One can use data available from LSC’s website to determine the case types handled by each of
the 129 grantees in graphs 1 and 2. Case type is reported in ten categories: family, housing,
consumer/finance, income maintenance, employment, education, juvenile, health, individual
rights and miscellaneous. Eighty five percent of all cases fall into four categories: family,
housing, consumer and income. LSC grantees can be divided into five categories based on the
largest and second largest categories of cases handled by each grantee, namely: 1) family,
housing, 2) family, consumer, 3) housing, family, 4) housing, income, and 5) other. The data in
graph 2 can be plotted verses these case type categories where the categories are numbered: 1) 5,
2) 10, 3) 15, 4) 20 and 5) 25, respectively. This is shown in the following graph.

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19 See [http://www.lsc.gov/local-programs/program-profiles](http://www.lsc.gov/local-programs/program-profiles). Although the data is for 2011, it is not likely to vary much from 2009 data, as the percentages of case type usually do not change dramatically from year to year. The percentage of family, housing, consumer and income cases were 35, 25, 12 and 13 in 2010 and 35, 25, 13 and 12 in 2009. LSC Fact Books for 2010 and 2009 at 23 and 15 respectively, supra notes 8 and 15.

20 LSC Fact Book 2010 at 23, supra note 8.

21 See note 19 supra.
The graph shows that results for programs that predominately handle family and housing cases (5 and 15) are similar to those that predominately handle housing and income cases (20), family and consumer cases (10) and other (25). Therefore these categories do not appear to significantly impact the average time spent on a case. It is possible that a particular case type could have an impact on average time spent, but it is unlikely as no case type constitutes more than 5.3 percent of all cases, except for divorce (13.4), custody/visitation (9.7), and landlord/tenant (14.1)\textsuperscript{22}. The impact of these three case types should be apparent from graph 3 if these case types had a

\textsuperscript{22} LSC Fact Book 2010 at 20-2, supra note 8.
significant influence. Thus, the complexity of services delivered rather than case type seems to be the reason certain cases take more time.

3. Number of appeals.

The number of appeals handled is likely to have an effect on the data, as programs that handle more appeals per advocate should average more time per case than those that do not. Plotting the data in Graph 2 versus the average number of appeals per advocate for the period of 2008 and 2009 results in the following graph:

\[ y = -52.537x + 5.3438 \]

\[ R^2 = 0.0228 \]

See LSC’s response to author’s request, supra note 13 and the 06/24/08 LSC response to author’s Freedom of Information Act request for 2008 data (on file with author).
Surprisingly, there does not appear to be a significant correlation between the number of appeals per advocate and the average amount of time spent on a case. In fact, grantees with a high number of appeals per advocate spend less time than average on a case. As explained below, these programs may be so efficient that efficiency off-sets the effect of their time consuming appeals. Therefore, graph 5 suggests that reasons other than appeals explain the significant variations in the data.

4. Amount of services other than casework

Another factor is the amount of time program advocates spend on services other than the reported casework. The data in all of the above graphs assume that advocates spend all their time on the corresponding casework. Obviously this is not true, since advocates can spend over 25 percent of their time on other client services. NLADA believes a strong correlation exists between the percentage of funding that a program receives from LSC and the percentage of staff time devoted to casework\(^\text{24}\). The reason given is that programs that receive substantial funding from other sources are likely to do more non-case activities such as community education, materials and website development, coalition building, community economic development, and other community advocacy\(^\text{25}\). Also NLADA believes they are more likely to serve non-LSC eligible clients (e.g., moderate-income seniors) and provide assisted self-help services where it is difficult to screen clients for LSC eligibility, such as court-based self-help programs\(^\text{26}\). Data on


\(^{25}\) Note that LSC programs are asked to include in their LSC case reports all the cases of LSC eligible clients that are funded by both LSC and others. LSC, *Case Service Report Handbook* at 2, supra note 11.

\(^{26}\) If a client is not screened for LSC eligibility or is ineligible under LSC guidelines, the services provided to the client cannot be counted as a case under its guidelines. Id.
the percentage of LSC funding for 2009 is available for the 129 LSC grantees in graph 2\textsuperscript{27}. Plotting the data in graph 2 versus the percentage of LSC funding results in the following graph.

(Three outlier LSC grantees are omitted from this graph (18, 356), (48, 160), and (51, 168))

There does not seem to be a significant correlation between the average time spent on a case and the time spent on other services (reflected by the percentage of LSC funding). This implies that grantees with a high percentage of LSC funding provide as many non-case services as grantees with a lower percentage.

\textsuperscript{27} See supra note 19.
5. Percentage of other staff

Advocates with more support staff are likely to close more cases annually. Plotting the data in graph 2 versus the percentage of staff other than attorneys and paralegals yields the following graph:\(^\text{28}\):

![Graph 6](image)

(Three outlier LSC grantees are omitted from this graph (39, 160), (36, 168) and (28, 356))

There appears to be a slight correlation between the percentage of other staff and the average amount of time that advocates spend on a case. Programs with a higher percentage of other staff tend to spend less time on a case. However, many programs are able to achieve the same low

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\(^{28}\) See LSC’s response to author’s request, supra note 13.
times with a much lower percentage of other staff. Thus the percentage of other staff is not a significant reason for the great diversity in the data.

6. Client type

Client type is analyzed next, particularly those who have limited English speaking skills, as it typically requires more time to serve these clients. The vast majority – 77 percent – of people age five and older who speak a foreign language at home live in 11 states. One can use data available from LSC’s website to determine the client types served by each of the 129 grantees in graph 2. The percentage of limited English proficient clients is approximated by determining the percentage of clients who are Hispanic, Asian or other. Plotting the data in graph 2 verses these percentages yields the following graph.

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24 See supra note 19. This is 2011 data but should not be significantly different than 2009 data, as client type does not change appreciably over time. The percentage of Hispanic, Asian and other staff served by all LSC grantees was 20, 1.9, 4.3 in 2009 and 18.7, 2.1, 3.9 in 2010. LSC Fact Book 2009 at 18, supra note 15 and LSC Fact Book 2010 at 26, supra note 8.
25 Other is all clients other than Hispanic, White, African American, Native American, and Asian/Pacific.
As expected, limited English speaking clients take longer to serve, but this still does not explain the great diversity in the data.

7. Efficiency

In summary, the average time spent on a case is significantly affected by the complexity of the services provided and the types of clients served, but not case type, number of appeals per advocate, percentage of other staff or the amount of time spent on non-case services. Thus efficiency remains as the most likely additional reason for programs doing more with less. To assess the impact of efficiency, one needs to remove the effect of service complexity and client type from the data. In graph 1, the complexity of the services provided by programs appearing
below the sloping line is comparable to the complexity of the services provided by those above the line. This means that the same is true of programs that appear above and below the x axis in graphs 2 through 6. Thus the difference in the average time spent on a case between the two groups must be based on client type and efficiency. But the effect of client type can be minimized by omitting programs from graph 6 where more than 40 percent of their clients have limited English speaking skills as shown in graph 8.

(Two outlier LSC grantees are also omitted from this graph (28, 356) and (4, 160))

This demonstrates that efficiency alone accounts for the differences between the group of programs above the x axis and the group below it. In other words, technology, methods, and/or
systems can make a huge difference in amount of services delivered. If these efficiencies were more widely adopted, the existing level of funding could support services to many more people.

I have served on teams that have evaluated two of the grantees that fall at the bottom of graph 1 (and the top of graph 2). As described in more detail below, both grantees had notable inefficiencies. They both had inefficient intake systems and one of them had a policy that limited caseloads to 10 to 15 open, active cases; advocates did not accept additional extended services cases until some of these active cases were closed. Advocates in the two programs did not use document generators to produce pleadings and other documents. Neither program used unbundled services to the extent possible, although the ethics codes allowed them. One program had central intake, but not enough intake staff, creating a bottleneck that resulted in a lot of down time for hotline advocates. The other program did not use centralized intake. Neither program used quantity/quality committees. Both programs used case acceptance meetings for intake. Both programs did operate hotlines for advice cases, but many advice cases were not handled by their hotlines. I could not determine the effect these inefficiencies had on the programs’ overall performance until I later developed the above data analysis. This is why measurements are so important.

While the above analysis is not definitive proof that inefficiencies exist, it is sufficient to justify further inquiry about the reasons for differences in the data. In fact, measurements rarely prove that a problem exists. Their purpose is to identify potential problems that may not be detected otherwise. For example, the billable hour measurement is very important to large law firms. If this measurement is low for a first-year associate, further inquiry about the underlying reasons is warranted. However, if it is low for one of the firm's rainmakers, it does not raise concern. Because the above measurements are not ideal, I recommend new ones in Section III.
Convincing programs to use the above analysis or a similar one to assess their efficiency will not be easy. Generally they are resistant to using reported data to spot these problems. Also there is not a culture of efficiency among legal services programs. In part, this is because the legal profession in general does not emphasize efficiency as most extended services are still billed on an hourly basis. Also funders of legal aid do not stress efficiency in their performance criteria, grant conditions or evaluations.

In contrast, prepaid legal services, which serve a high volume of clients with similar problems, are obsessed with efficiency through streamlined methods, technology and time-saving systems. Since they generally receive either fixed fees or a set price per member for their services, their income depends on their efficiency. Also the employers, unions and employees who pay for these services are very cost conscious. Legal aid programs and their funders need to develop the culture that is prevalent in the prepaid industry.

8. Other data that reflect on efficiency

The ratio of managers to non-managing advocate staff can also affect efficiency. Consultants that advise city and county government law offices recommend that the ratio of management attorneys to non-management attorneys be no more than 0.10 to 0.15. In contrast, the average ratio of management attorneys to non-management attorneys and paralegals for all LSC grantees in 2010 was 0.25. While time spent managing volunteers may account for some

of this difference, program directors should calculate this ratio and determine if it can be reduced.

B. Methods that can improve efficiency

Much can be learned about efficiency by studying programs that occur below the x axis in graph 8. However, some efficiencies are well known. Two are discussed above: reduction of the ratio of managers to non-managing advocates, and reduction of the percentage of other staff. Others appear below.

1. Use of streamlined systems to handle cases

Advice

Available data demonstrate that advice delivered by phone takes much less time than that delivered face to face, so the telephone should be used unless the client has special needs or complex documents. Research indicates that the outcomes of telephone advice services are as good as or better than those of face-to-face services. A rule of thumb in the prepaid legal services industry is that the average telephone advice call lasts less than 10 minutes. Hotlines that collect this information report averages between 7 and 15 minutes. Time spent recording case notes and sending follow-up letters should not average more than 20 or 30 minutes using commercially available technology. Therefore, most advice-only cases should average less than one hour.

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30 Author’s conversation with John R. Wachsmann of Wachsmann and Associates, P.C., Englewood, Colorado, who serves five national and regional prepaid plans.
31 Wayne Moore at 125, supra note 34. See also Wayne Moore at 21, supra note 35.
Longer averages may be the result of providing face-to-face services to too many clients, failure to use document generators and standardized paragraphs to record case notes and prepare follow-up letters, or failure to use good call management techniques.

By far the most efficient way to handle advice-only cases is a legal hotline\(^\text{32}\). This is not only due to the efficiency of the phone and addressing the client’s matter upon the first contact with the program, but also to the efficiency of the technology, processes and the quality control system. A hotline advocate can close 1360 cases annually and refer 340 more cases to other parts of the program\(^\text{33}\). This means advice cases take less than an hour to close\(^\text{34}\). Some advocates close as many as 2982 cases annually\(^\text{35}\). Hotline advocates do not have to be in the same location (although this has some advantages), so a program can easily create a hotline by designating existing staff to receive incoming calls during certain hours each week. A centralized intake system can facilitate this process. If a program uses a hotline but the average time to close an advice case is higher than an hour, the program should improve the hotline’s efficiency and ensure that it handles most advice cases instead of less specialized advocates.

Hotline advocates should periodically keep track of the time spent on the phone to identify those who need more training in call management skills. Advocates can reduce excessive non-call time by using standardized paragraphs to prepare case notes and follow-up letters and by minimizing call-backs.

*Limited action*

\(^{32}\) Id at 117-33.

\(^{33}\) Id at 123-126.

\(^{34}\) See supra note 17. Assuming hotline advocates spend 1200 hours annually on cases, they average 53 minutes per case (1200/1360*60).

\(^{35}\) Elizabeth Shearer, *To Study Telephone Legal Advice Services*, Winston Churchill Memorial Trust of Australia 11 (2003); if they spent 1200 hours annually, they would average 24 minutes per case.
The average time spent on limited action cases should range between two and three hours. Some units that specialize in limited action cases only handle cases that require less than two hours of service\textsuperscript{36}, since these cases are limited to investigation, advice, and document preparation, but not negotiation or other forms of representation.

The most efficient way to handle many routine limited action cases is to dedicate specially trained staff and use document generators and streamlined procedures. For example, in debt cases where the client is judgment-proof, advocates can use document generators to prepare letters to creditors for the clients’ signature and mailing, with supplemental self-help materials for further guidance (average two hours). Clients are provided addressed, stamped envelopes and are instructed to call the advocate if the problem persists. Higher averages are usually the result of providing too many clients with face-to-face services, failure to use document generators, failure to use specially trained and dedicated advocates, or failure to use streamlined processes to handle routine cases.

\textit{Uncontested court cases}

The average time spent on uncontested court cases should range between three and four hours if unbundled legal services are used. Court-based self-help centers average less than an hour on these cases\textsuperscript{37}. As discussed below, I provided unbundled services in case types commonly handled by legal aid programs and achieved these time averages over a three-year period.

\textit{Other extended services cases}

The most cost-effective method for handling these cases is using volunteer attorneys. Therefore, volunteers should be used for extended services cases whenever possible.

\textsuperscript{36} Wayne Moore at 145, supra note 34.
\textsuperscript{37} Id at 158-61.
2. Use of document generators

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. 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.

3. Use of unbundled legal services

Most states allow lawyers to deliver 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 performs the remaining tasks on his or her own.

After retiring from AARP, I successfully engaged in a fee-for-service, unbundled law practice for three years serving low- and moderate-income people in DC, Maryland, and Virginia. 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)
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 usually only handled cases where opposing party was pro se, except in uncontested cases), and 4) whether the decision maker (e.g. judge) had little discretion (I usually only handled these cases).

Nonetheless, many court cases were amenable to unbundled services. I handled these cases as follows:

- **Bankruptcy (Chapter 7, no-asset):** While interviewing clients, I filled out most of the forms in pen (forms for pro se clients don’t need to be typed); I then asked them to fill out forms F, I, and J and return them to me along with other documents. (Best Cases software has a feature that allows all creditor and debt information from the three credit bureaus to be downloaded onto F forms, which then can be supplemented by the client). I reviewed the returned forms and documents over the phone with clients, made necessary changes to the petition using white-out, and mailed the client the complete package of forms with post-it notes indicating where to sign. I did not sign the forms. Clients filed the forms and represented themselves at hearings following my written and oral advice. They also represented themselves at hearings to allow the retention of a car. I served hundreds of clients in DC, MD and VA in this way and didn’t encounter a problem; but if one does arise, attorneys can always enter their appearance in the case. Average time: three hours.

- **Child support:** I used document generation to complete all the required forms and prepared pro se subpoenas and other documents needed to obtain the opposing party’s income and health insurance information. I also calculated the amount of child support that should be awarded using state formulas. Clients filed all the papers, arranged for service of process, and represented themselves at the hearing using the subpoenaed documents and papers proving
their own income. I provided oral and written advice throughout the process. Average time: two to three hours.

- Enforcement of child support, alimony, and custody orders; visitation cases where a spouse was being denied visitation and no abuse was being alleged; and cases seeking reasonable changes to child support or visitation orders: I handled these the same way as child support cases. Average time two to three hours.

- Domestic abuse – temporary protective orders: Although I did not handle these cases, court staff and others successfully use unbundled services by preparing pleadings and affidavits and informing clients on how proceed pro se. The client can then be referred to social services for additional help, and the attorney can reenter the case as needed.

- SSA/SSI disability cases: These cases can be contracted to private practice attorneys by paying them the difference between an agreed-upon flat fee and the payment they receive from SSA, if necessary. The cost is usually much less than having program staff handle these cases. This allows the program to handle other cases where alternative representation is not available.

- Unemployment compensation: There is evidence that these cases can be handled pro se with advice and document preparation assistance.

- Landlord/tenant cases with no defenses: In some states pro se clients who have been coached can obtain as much time to move out as those who are represented. (Clients with defenses

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41 See, for example, http://www.dccourts.gov/dccourts/superior/dv/index.jsp.
42 Social workers are better trained than lawyers to handle clients’ safety and other issues.
must receive full representation; even representation during negotiation isn’t very effective unless the attorney is willing to proceed to trial).

- Contested divorce: 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.

Programs should calculate the average number of hours billed to the above case types, if the averages are significantly above two to four hours, consider the above approach.

These cases should be monitored until conclusion to ensure clients obtain their objectives. The attorney can enter an appearance in the case whenever necessary. Sometimes the advocate can also reopen or appeal cases with unfavorable outcomes. Furthermore, programs can use outcome information to develop better protocols for screening out cases that are inappropriate for unbundled services.

Note that I was able to engage in unbundled services in Virginia even though its courts and ethics codes do not specifically authorize unbundled practices. This was because the courts I
dealt with allowed the ghostwriting of court pleadings without disclosure of the name of the drafting attorney.

4. Use of streamlined intake systems

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\(^\text{45}\). 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, because LSC grantees have complicated eligibility and documentation criteria. The second contact should be able to accept the client for services, and, preferably, be able to close most cases requiring only advice or limited action, as these are the majority of cases closed\(^\text{46}\). In a few circumstances, the second person should provisionally accept cases for representation, such as clients sent to the pro bono unit where a volunteer may not be available.

Many programs still use case review meetings to screen cases\(^\text{47}\). These meetings can use over seven percent of advocates’ annual billable hours and delay the commencement of service by more than a week\(^\text{55}\). These meetings should be eliminated. The training and camaraderie benefits 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 more efficient.

\(^{45}\) Wayne Moore at 34, supra note 34.
\(^{46}\) LSC Fact Book 2010 at 19, supra note 8.
\(^{47}\) These meetings usually occur weekly or sometimes bi-weekly and include most of the advocates working in an office or unit. These advocates spend two to four hours discussing the facts of each case, the issues involved, and whether it should be accepted for representation. Over half the cases are not accepted. Programs support this practice by saying that it is a good way to spot issues that individual advocates might miss and to brainstorm strategies; they say it also builds camaraderie and serves as continuing legal education for less experienced attorneys.
\(^{55}\) Wayne Moore at 83-4, supra note 34.
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\textsuperscript{48}.

Centralized intake staff can more easily use protocols to ensure that cases are handled efficiently. They can refer all cases likely to need advice-only to a hotline, if the program has one. They can schedule appropriate clients for the next pro se clinic; refer certain high-volume, routine cases directly to a staff member who specializes in them; and send cases appropriate for volunteers to the pro bono unit, thereby helping to utilize all available volunteers. Cases likely to require complex services can be referred to the appropriate manager for assignment to staff or a referral back to intake to decline representation. These processes minimize steps and send cases to the most efficient case handler.

The intake system is the first and often only contact a client has with a program, since most intake systems turn away more eligible people than they accept\textsuperscript{49}. Centralized systems can be better managed to make sure that rejected clients are not reluctant to use services in the future and their friends and neighbors aren’t discouraged from calling at all. They can also better maintain accurate lists of referral agencies and their eligibility and contact information.

Clients with communication, emotional or mental health problems; certain farm workers, Native Americans and people with limited English proficiency; and others with special needs will


require a more expensive intake system\textsuperscript{50}. But the needs of a few shouldn’t be a reason for all
clients to receive more expensive intake processing.

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

5. Use of group services

Delivering some services to groups rather than individuals can be more efficient.

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\textsuperscript{51}. It is essential that programs
monitor these cases until conclusion to ensure that clients obtain their objectives\textsuperscript{52}. Also, one
should be mindful that unbundled services can sometimes consume less time per case and with
better results than group services.

6. Use of quality and quantity committee

A number of programs have enhanced the quality and quantity of services by creating a
central committee that focuses on quality and best practices and sets quantitative goals for
advocate staff\textsuperscript{53}.

II. Effectiveness

\textsuperscript{50} Community Legal Service at 20, supra note 36. Note that hotlines have been successfully used to serve limited
English speaking populations. See National Asian Pacific American Bar Association, \textit{Increasing Access to Justice
for Limited English Proficient Asian Pacific Americans} 46-7 (Mar. 2007).
\textsuperscript{51} AARP Foundation, Pro Se Legal Services Directory (May 2002).
\textsuperscript{52} Proper monitoring can increase case completion rates from 15 to 25 percent to 80 to 88 percent. Gabriel
Hammond, \textit{Tides of Change: Access to Justice Programs in Hawaii}, Management Information Exchange Journal 47,
49-50 (Summer 2000).
\textsuperscript{53} Jeanne Charn, \textit{Quality Assurance at the Provider Level: Integrating Law Office Approaches with Funder Needs},
20-7 at www.mbf.org/JAGWG5QualityAssuranceattheProviderLevel.pdf
Evidence suggests that some legal services programs could be more effective, based on the following definition.

A. Definition of effectiveness

Case outcomes are one component of effectiveness. These are what clients want and advocates strive to achieve. Another component is value added. This means providing only the services the client needs. If programs provide more services than needed, other clients go unserved. If programs provide fewer services, desired outcomes may not be achieved and the services largely wasted. The third component is providing services that low-income clients are least likely to find elsewhere\(^4\). Since legal services are usually the resource of last resort, they should focus on services unavailable elsewhere. The forth component is handling case types that are the highest priority based on local needs assessments.

This definition of effectiveness is well suited to legal services for low-income clients, as clients can often achieve favorable outcomes without receiving full representation. For example, a detailed study of telephone legal advice found that advice alone can help low-income clients obtain favorable outcomes for many types of legal matters\(^5\). Court-based self-help programs provide legal information and assistance with drafting documents, which help many clients obtain favorable court decisions, particularly in uncontested cases\(^6\). Of course, clients need full representation in some matters. Maximizing effectiveness is different from maximizing the number of clients served, which primarily involves providing advice and limited action.

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\(^4\) See supra note 12.
\(^5\) The 2002 Hotline Outcomes Assessment Study found that in cases involving a dispute with a private party, 59 percent were resolved favorably based on legal advice alone. The same was true for cases requiring court action where 46 percent were favorably resolved with advice only. In cases requiring an agency decision, 33 percent were favorably resolved. Center for Policy Research at 43, supra note 36.
\(^6\) See supra note 12.
B. Evidence that some programs can improve effectiveness:

1. Cases that warrant a right to free counsel

   The services most critical to low-income clients involve cases that are so important that advocates believe they justify 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”\(^{57}\). California describes these cases as “matters involving critical issues affecting basic human needs”\(^{58}\).

   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 (i.e., key services). They generally cannot be resolved by counsel & advice, limited action, or uncontested court decisions. Yet for some programs these four complex services make up a small percentage of their cases, while other programs handle a high percentage of them. This is shown in the following graph, which includes all LSC grantees for 2009 except for those that serve only Native Americans, Guam, and Micronesia. The five grantees that are basically hotlines are also not included as they generally don’t provide key services.

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\(^{58}\) Sargent Shriver Civil Counsel Act (California AB 590) at http://brennan.3cdn.net/bc0ba4fe66e59bb83c_0h66b98c.pdf.
This graph shows the percentage of key services for each program in a state where states are numbered from 1 to 53, including the District of Columbia, Puerto Rico, and Virgin Islands. It is hard for a program to justify a low percentage as surveys find that only about 20 percent of the
need is being met and programs typically turn away more than 50 percent of eligible clients who contact them. Thus, some programs should handle more “right to counsel” cases.

2. Cases provided partial services when more extended cases are needed

A report by LSC states: “LSC grantees were asked to capture the number of clients that they assisted in a limited fashion where full extended representation would have been more likely to enable the client to obtain a satisfactory outcome. LSC grantees counted 76,000 such cases in the two-month period. This figure does not include cases where the programs judged that the advice and brief service provided was sufficient to resolve the problem presented. Programs estimated that, during the two-month study period, 54,000 cases were resolved in this manner.” Extended representation was not provided because of a lack of resources. Handling a certain number of these cases is inevitable, because the services required for a particular problem are not always clear during intake. A case accepted for brief services may turn out to need extended services that are not available. But when these cases can be identified at intake, effectiveness would be enhanced if these cases were rejected in favor of cases where all necessary services can be provided.

3. Uncontested cases

Fifty-seven percent of fully represented clients who obtain court decisions have uncontested cases. Nevertheless, experience with court-based self-help centers and unbundled services indicates that many of these cases can be handled with advice and document preparation

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60 Legal Services Corporation at 4, supra note 57.
61 Legal Services Corporation at 10 fn 8, Id.
62 LSC Fact Book 2010 at 19, supra note 8.
where the clients represent themselves in court. This would free up time that could be spent on other cases and make programs more effective. The following graph shows this percentage for all LSC grantees in 2009 except for those that serve only Native Americans, Guam, and Micronesia and the five hotline grantees.

63 See Section I.B.3.
4. Volunteer lawyers

The vast majority of programs do not use all their recruited volunteer lawyers every year, mainly because they don’t always have cases that correspond to the expertise or interest of these lawyers. Nevertheless, using all recruited volunteer lawyers should be possible, since programs turn away over 50 percent of the eligible clients who contact them.

Also, because of the cost of recruiting and training volunteer attorneys and screening and referring cases to them, it is much cheaper to use paid staff to close advice and limited action

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64 Wayne Moore at 179, supra note 34.
65 See LSC at 4, supra note 57.
cases. As shown in the following table, about two-thirds of referred cases are of this briefer nature.

### TABLE 1

<table>
<thead>
<tr>
<th>Year</th>
<th>Advice</th>
<th>Limited Action</th>
<th>Referral after legal review</th>
<th>Withdrew</th>
<th>Negotiation, Court/Agency Decision or “Other”</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>42.3%</td>
<td>22.3%</td>
<td>-</td>
<td>-</td>
<td>35.4%</td>
</tr>
<tr>
<td>2007</td>
<td>42.0%</td>
<td>21.6%</td>
<td>0.8%</td>
<td>3.5%</td>
<td>31.3%</td>
</tr>
<tr>
<td>2006</td>
<td>42.1%</td>
<td>18.3%</td>
<td>1.7%</td>
<td>4.2%</td>
<td>32.7%</td>
</tr>
<tr>
<td>2005</td>
<td>43.2%</td>
<td>18.1%</td>
<td>1.3%</td>
<td>4.4%</td>
<td>32.4%</td>
</tr>
<tr>
<td>2004</td>
<td>43.1%</td>
<td>17.9%</td>
<td>1.8%</td>
<td>4.8%</td>
<td>31.5%</td>
</tr>
</tbody>
</table>

Since the legal work is free, volunteers should be used for more complex cases whenever possible. In addition, programs need to develop better methods to ensure that nearly all volunteers accept cases annually.

5. **Coordination of services**

Legal services providers deliver a much broader array of services than does a typical small law firm, including advice, limited action, pro se workshops, assisted self-help, negotiation, representation at agency hearings, litigation, appeals, outreach, client education, materials and websites for use by clients and advocates, and impact advocacy. Impact advocacy itself can utilize many different approaches. Thus, to be more effective, providers need better tools to manage these services, because staff must carefully coordinate not only their work but

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66 Wayne Moore at 173, supra note 34.
67 Data include closed cases of Judicare programs and contract attorneys as well; LSC does not report these data separately for pro bono attorneys. See LSC’s 6/24/08 response to author’s request, supra note 23.
68 See Section II. C. 1.
69 Community economic development, building strategic alliances, group representation, individual test cases, investigation and research, fundraising, legislative advocacy, media exposés, rule making, changing court rules, policy advocacy, use of non-attorney volunteers and delivery system development.
also the timing of their work. The proven method for doing this is a work plan\(^{70}\). Nevertheless, few programs use this management tool, although they would be more effective if they did.

6. Litigation and court appeals

Contested litigation resolved by settlement or court decision and court appeals are the kinds of casework most likely to go beyond the parties represented to have a favorable impact on the low-income community. These are the cases most likely to set a precedent, prohibit an unfair business or government policy, or find that a law is unconstitutional, for example. Thus programs can be more effective if they handle more of these cases per advocate. Handling fewer of these cases can be justified if a program engages in other forms of advocacy that can positively affect the client community, such as community economic development and coalition building. The following two graphs show the average number of appeals per advocate over a two-year period (2008 and 2009) and the number contested litigation cases per advocate in 2009 for all LSC grantees other than those that serve only Native Americans, Guam, and Micronesia and the five legal hotline grantees\(^{71}\).

\(^{70}\) Legal Aid Society of Greater Cincinnati uses this approach very successfully.

\(^{71}\) See LSC’s response to the two author’s requests, supra note 23.
Average Number of Appeals per Advocate for 2008 and 2009

Graph 11

Counted Court Cases per Advocate per year

Graph 12
These data indicate that some programs could be more effective.

C. Methods that can improve effectiveness

Much can be learned about effectiveness by studying the programs that score well in Graphs 9 through 12. Several methods for improving effectiveness are described above, specifically: 1) handle more “right to counsel cases”, 2) use work plans, 3) minimize the number of cases that receive brief services when more extended services are needed, 4) reduce the number of uncontested court cases that receive full representation, and 5) handle more contested court cases and appeals per advocate.

Other methods include the following:

1. Develop methods for using volunteer lawyers more effectively

As mentioned above, some programs need to increase the percentage of recruited volunteer attorneys who receive cases each year and the percentage that provide key 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. This method uses an Internet-based scheduling system 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.

2. Improve client satisfaction
Programs should conduct standardized client surveys using statistically valid methods so that results can be compared among programs. It is difficult to truly assess client satisfaction in a vacuum. Comparable data helps programs determine if improvement is needed. Programs could supplement these surveys with their own questions. These standardized questions could include:

“What difference has legal aid made in your life?” (In one survey 55 percent said it made “a lot” and 13 percent said it made “much” difference\(^72\); “Have your legal problems affected your health?” (Results have ranged between 17 and 51 percent\(^73\); “How long did your problems persist before legal services addressed them?” (Many problems persist for years); “Did the legal services you received prevent other problems from occurring?” (Some problems, like domestic violence, trigger a host of others); “Did your situation change due to: a) the legal services received b) your own efforts or c) the matter resolving itself?” (This is to ensure a causal link between services and results); and “Did your problem get better, stay the same, or get worse?” Programs with deficient survey results can use the survey information to identify areas in need of improvement.

3. Have all program materials written for clients meet readability standards

Several websites can determine the reading level of material if it is cut and pasted into a web page\(^74\). Some even identify words and phrases that are particularly problematic. Programs should process all materials through these websites to ensure a 5\(^{th}\) grade reading level\(^75\), and

\(^{73}\) Jennifer Goldberg & Shawniele Predeoux, Maryland Legal Aid Outcomes Survey, Maryland Legal Aid Bureau 4 (July 6, 2009); Pascoe Pleasance, Nigel Balmer, Alexy Buck, Aoife O’Grady, & Hazel Genn, Civil Law Problems and Morbidity, J.Epidemiol Community Health, Vol 58 552 (2004).
\(^{74}\) There are several calculators in one at https://sites.google.com/a/lawny.org/plain-language-library/, http://www.standards-schmandards.com/exhibits/rix/, and http://www.online-utility.org/english/readability_test_and_improve.jsp.
\(^{75}\) Between 40 and 44 million people in the United States have only rudimentary literacy skills and are unable to understand written materials that require a basic reading proficiency. National Work Group on Literacy and Health, Communicating with Patients Who Have Limited Literacy Skills, Journal of Family Practice 4 (Feb. 1998).
someone familiar with literacy issues should edit all materials. In my experience, conflict often occurs between a lawyer author and a non-lawyer editor because the lawyer seeks precision, which usually involves legal jargon, while the editor is trying to make the material understandable. If possible, lawyer authors should receive training in writing for low-literacy readers.

III. Measurements

In order to achieve greater efficiency and effectiveness, one must be able to measure them. These measurements should meet certain criteria:

- Record the outcomes of cases, as this describes how clients are helped;
- Allow the comparison of programs, because it is difficult to measure efficiency and effectiveness in a vacuum. Unless one knows what is achievable, it is hard to convince staff that improvements are needed;
- Measure time rather than cost. It is difficult to compare costs, as they vary with the local cost of living, they are difficult to standardize (the costs reported by one program might not include all the expenses counted by another), and lower costs do not always equate with better efficiency (a program that receives free space has a lower cost per case, but is not necessarily more productive);
- Use current data to the extent possible to minimize the burden of gathering new information.

A. Proposed new measurements for casework

I recommend the following table of measurements for cases closed annually:
<table>
<thead>
<tr>
<th>Case Type</th>
<th>Outcomes</th>
<th>Closure code</th>
<th>Average time spent (billable hours)</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Landlord/tenant Eviction</td>
<td>Counsel &amp; advice</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>prevented</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Limited action</td>
<td></td>
<td>2-3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Settled w/o litigation</td>
<td></td>
<td>10</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Settled w/ litigation</td>
<td></td>
<td>18</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Uncontested court decision</td>
<td></td>
<td>4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contested court decision</td>
<td></td>
<td>25</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Administrative agency</td>
<td></td>
<td>20</td>
<td></td>
<td></td>
</tr>
<tr>
<td>More time to vacate</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>obtained</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Counsel &amp; advice</td>
<td></td>
<td>1</td>
<td></td>
<td>40 days</td>
</tr>
<tr>
<td>Limited action</td>
<td></td>
<td>2-3</td>
<td></td>
<td>40 days</td>
</tr>
<tr>
<td>Settled w/o litigation</td>
<td></td>
<td>10</td>
<td></td>
<td>60 days</td>
</tr>
<tr>
<td>Etc.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Most legal services programs can generate this table using available case management software. It requires only five data fields for each closed case. All LSC grantees and most other
legal services providers already collect three of these using standardized codes: case type, case closure code, and billable hours. Many programs collect the fourth field, case outcomes, for all closure codes except advice and limited action; however, the codes are not standardized. The fifth, “other”, field is optional.

The measurements in this table satisfy the aforesaid four criteria: They include outcomes and time instead of costs. They allow the comparison of programs, and programs already collect most of this data, as discussed below.

1. Case types

This describes the type of legal problem or matter experienced by the client (e.g. child custody). LSC has created codes for the most common legal problems and matters, and most other funders use them as well. As mentioned above, 14 codes cover 74 percent of all cases handled by LSC grantees.76.

2. Case outcomes

Codes have been developed for legal services clients' common case outcomes, but unfortunately, these have not been standardized for all programs. Many programs use a set of codes developed by Legal Action of Wisconsin, an LSC grantee. Examples include the following: obtained bankruptcy protection; obtained or maintained custody of children; obtained a protective order for a victim of domestic violence; and assisted with, obtained, preserved, or increased SSI/SSD benefits/rights.

These codes have a few limitations. They don’t capture unsuccessful outcomes. Also, they gather little information that could guide improvement. For example, in cases of negotiating more time

76 See LSC Fact Book 2010 at 20-2, supra note 8.
for tenants to vacate their premises, it would be helpful to know how much time they received, so that others could learn from those who obtained the best results. The codes also don’t capture the amount of economic benefits clients obtain, which demonstrates the program’s effect on the economy of the low-income community.77

Currently, programs that collect case outcomes don’t do so for advice and limited action cases. Programs really do themselves a disservice by not collecting this information, as demonstrated in footnote 63.

Using a statistically valid sample of advice and limited action cases will allow outcomes to be compared among similar programs, without causing the burden required to collect outcomes for all of these cases. Law students could inexpensively make call-backs to clients to collect this information.

3. Case closure codes

These codes describe the services provided by advocates in closed cases.78 Most non-LSC funded programs use these codes or an earlier version.

4. Average time spent (billable hours) by an advocate to close a case

This is the same as the “billable hour” metric commonly used by attorneys in private practice. This does not include time used for leave, administration, case review meetings and trainings, and similar activities. LSC regulations currently require grantees to record this time for each case and be able to aggregate it using its case management systems.79 But grantees are not required to report this information to LSC.

77 However, many programs do collect this information.
78 See text accompanying note 8, supra.
79 45 CFR 1635.3 Timekeeping requirements.
5. Other

The “other” column can be used to collect information for certain case types to guide future improvements. As discussed above, this can include the economic benefit obtained by the client or more detail about outcomes, such as whether a client receives a spouse’s pension benefits as part of the divorce or the amount and percentage of rent reduction in a warranty of habitability case. This information can be used to evaluate whether some advocacy strategies are more useful than others. During on-site evaluations, funders could also determine why one program in a state has better outcomes than others in the same state and identify best practices. In addition to this closed-case data, programs should continue to collect the following information:

- Total number of attorneys, paralegals and other staff employed by the program
- The percentage of available, recruited volunteer attorneys who accept new cases each year
- Total number of appeals closed during the year

Programs should also collect new data to create Table I and to calculate the ratio of managers to non-manager advocates.

The above table of measurements should be collected for the program as a whole as well as separately for each office and unit within the program. This will help spot problems that only occur in a part of the program. The table can also be used by managers to monitor their staff.

B. Measuring advocacy other than casework

The above data allow the evaluation of a program’s casework, but not its other services, including community education, materials and website development, matters, coalition building.
community economic development, and other community advocacy. However an approach developed by LSC for its Delivery System Study (DSS) can evaluate these other services. The DSS used on-site attorney teams to measure the impact of such services, defining impact as the achievement of relatively permanent improvements or avoidance of relatively permanent deteriorations in the legal rights or basic living conditions of significant segments of the eligible population. Experienced, trained attorneys collected information about each activity using semi-structured interviews with appropriate advocates. A panel of experts reviewed this information and assigned a score to each completed activity. Each judge rated six sets of 25 randomly selected impact reports for a total of 395. Three or four judges reviewed each set, and all 11 judges reviewed 27 of the reports to test the reliability of the scores and provide a means of adjusting scores for differences in judges’ rating behavior. Scores for each of the program’s advocacy activities were added and divided by the total cost of the program.

I propose using the same method, except that programs prepare and submit their own advocacy descriptions on a standardized form to save costs. Also, new projects should not be evaluated until they are completed or reach maturity (if they are intended to be ongoing) so the evaluations are based on results and not potential. Existing LSC evaluation staff could do the scoring. The evaluation should expand to include what LSC refers to as “matters,” or matters could be scored separately. The scores are not intended to be precise, but sufficient to group programs into tiers where successful programs can be identified for learning purposes and programs with poor

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88 Legal Services Corporation, The Delivery Systems Study: A Policy Report to the Congress and the President of the United States (June 1980).
89 The DSS evaluated new, ongoing and completed projects.
90 Matters include referrals to other agencies or sources of assistance; provision of legal education or self-help materials in lieu of further legal assistance; mediation/alternative dispute resolution services; and the provision of court-based services by means of self-help centers or a help desk/kiosk. LSC, Matters Service Report Guidelines for Data Collection and Reporting (October, 2002) at http://grants.lsc.gov/sites/default/files/Grants/MattersDataCollection10-02.pdf.
scores can be targeted for technical assistance and training. Evaluators should send each program
the comments that form the basis of the scores with suggestions on how to improve their
activities. The evaluators may want to score websites separately, as this might provide additional
useful information.

C. How to use proposed metrics

The measurements can be used to identify inefficiencies and ineffectiveness as follows:

- Compare total average billable hours spent on each case closure code with national
  averages. Investigate significant variations from the norm to identify opportunities for
  improvement or best practices. For example, if a program’s advice cases average two
  hours, improvements are warranted.

- Compare average billable hours for each case closure code for most common case types.
  Some prepaid legal services providers use this method to monitor all their advocates
  located in offices throughout multiple states. For example, if uncontested court
  decisions for temporary restraining orders average more than three or four hours,
  remedial action may be necessary. If an advocate or office bills more time than average
  for a particular case type and closure code, supervisors should investigate and can often
  discover inefficiencies this way. Managers can use this information to monitor cases on
  an ongoing basis and intervene if a case seems to be taking too much time.

- Compare outcomes and average billable hours for certain case types: For five of the 14
  most common case types handled by legal aid programs, outcomes and average billable
  hours should be comparable for every closure code among advocates and offices within
  the same program and even among programs in the same state and nationwide. They

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include bankruptcy/debtor relief, Medicaid, federally subsidized housing, Food Stamps, and SSI, all of which involve certain federal laws and procedures. Average billable hours should also be comparable for wills/estates nationwide. For example, the average time to close an SSI case should be comparable for all advocates regardless of closure code (e.g., one hour for advice, 20 hours for an agency decision). Two of the 14 case types, mortgage foreclosures and unemployment compensation cases, should be comparable within a program and among programs in the same state. Significant differences among advocates, offices, or programs should be investigated further, and the practices of top performing programs and advocates shared with others.

- Compare outcomes for different case closure codes: This is useful for spotting case types where outcomes are similar among case closure codes. For example, if the amount of time negotiated for tenants to vacate their premises is comparable for advice-only cases and negotiations, the program may want to handle more of these cases with less time-consuming advice. Also one can conduct experiments with unbundled law to determine if the outcomes are comparable to full representation and adopt the unbundled approach wherever possible. This is particularly helpful for comparing outcomes of uncontested court and limited action cases.

- Compare “other” data for different closure codes and case types. These cases can be reviewed as described immediately above.

- Compare annual billable hours: Another way of comparing programs, units, and advocates is to calculate the average number of annual billable hours per advocate. Programs should also calculate the corresponding average number of hours billed to closed cases for each closure code (i.e., three hours for a closed limited action case).
Programs, units, or advocates with a higher annual average of billable hours per advocate are likely to be more productive. This is not true if the additional time, in the form of more hours per closure code, is being devoted to routine services, such as counsel and advice, limited action, and uncontested court cases.

- Compare the ratio of FTE managers to FTE non-management advocates with national averages, as described above.
- Compare percentage of FTE non-advocate staff to total staff with national averages, as described above.
- Compare the percentage of key services cases with national averages, as described above.
- Calculate the percentage of cases closed with extended services for all pro bono cases; this requires generating the above table of measurements for pro bono cases. Calculate the percentage of recruited volunteer attorneys who accept new cases each year, as described above. These calculations will help programs maximize these percentages.
- Compare the average number of appeals and litigated cases per advocate with national averages.

IV. CONCLUSION

A. What programs can do

Programs can calculate the data shown in the above graphs from data in their 2009 LSC annual report to compare their performance with other programs. They can also calculate the total average billable hours devoted to advice, limited action, and uncontested court cases. Finally, they can calculate the average annual billable hours per advocate.

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

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

**Intake**
- Do you match clients with the least expensive delivery system within the program that can address their problems (e.g., legal hotline, pro bono program)?
- Do you make referrals to other programs based on information that ensures they are successful? Do you measure the success?
- For each intake point within the program, what process do you use from the time the client first contacts the program until he or she is approved for services? How long does it take, from the time of initial contact with the program, for clients to learn whether they will be represented? Can this be shortened? Do the vast majority of clients, who receive advice-only or limited action, only interact with two staff? If not, can this be changed?
- Is intake centralized?
- Do you use case acceptance meetings?

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

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

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

**Staff attorneys and paralegals (advocates)**
- Do attorneys and paralegals use document generators to prepare most documents?
- Do they use unbundled services whenever possible?

**Supervision**
- Do managers monitor the number of hours billed to cases on an ongoing basis and intervene when necessary?
- Do they monitor the age of cases, number of open cases, number of closed cases per month, and the percentage of key services?
- Do they use work plans?
- Do they periodically review best practices and quality control systems?
• Do they conduct statistically valid client satisfaction surveys?
• Do they ensure document generators and other technology are actually being used?
• Do they minimize the number of uncontested court cases that receive full representation?
• Do they ensure staff uses unbundled services whenever possible?
• Do they strive to create a paperless office?
• Do you use an efficient ratio of supervisors to non-supervisory advocates?
• Do you use an efficient percentage of staff other than attorneys and paralegals?

2. Effectiveness

Programs can use the above data in combination with the following questions to identify opportunities for improvement:

Outreach/Intake

• Do you have effective methods for reaching clients with limited English proficiency and hard-to-serve clients?
• Do you coordinate outreach with other program activities and objectives to achieve synergy?
• Do you conduct outreach at locations that primarily reach the same clients, or are they more diverse, including community events, festivals, churches, radio shows, public access TV, newspaper columns, etc?
• Is outreach proactive, targeted at underserved client communities, or is it reactive, based on requests from the community?
• Do you analyze your annual number of closed cases to determine how they are allocated geographically and by ethnicity, age, gender, and language? Do you compare these allocations to census data for the low-income population to determine if any local community or client group is underserved? If so, do you target outreach to these underserved client groups?
• Do you try to screen out cases requiring extended services when these services are not available? (See Section II.B.2.)

Advice

• Does advice generally produce expected, favorable outcomes for clients? When it does not, do you provide these cases with more services in the future?
• Do managers listen to a sample of telephone advice calls (with client consent) to determine if advocates give advice clearly and make sure clients understand it?
• Do advocates receive call management training?
• Are outcomes recorded for a statistically valid sample of advice and limited action cases?
• Do all materials given to clients meet readability standards?
• Do you use interpreters and translators for limited English speaking clients?

Limited action cases

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

Extended services cases

• Do advocates specialize?
• How many open cases do advocates have? How many are active? How do they control their caseloads?
• Are resources or expert staff available if staff advocates need help?
• Does staff receive the training they need? What training have they had recently?

**Volunteer lawyers**

• Do they handle extended services cases whenever possible?
• Do nearly all recruited volunteer attorneys accept at least one new case each year? If not, can this be corrected?
• Do you monitor the progress of their cases with periodic phone calls?

**Supervision**

• Do supervisors monitor each advocate’s billable hours and average time spent on advice, limited action and uncontested court cases?
• Do they conduct statistically valid client satisfaction surveys?
• Do they evaluate staff annually and, if so, how is this done?
• Do they set goals regarding the quality of work done?
• Do they review all cases periodically? If so, how is this done and does it happen at least quarterly?
• Do they establish impact advocacy objectives, action steps, milestones, and measurements for all advocates?
• Do they compare outcomes with measurements for impact cases?
• Do they periodically review the quality of staff’s significant casework, depositions, and agency and court hearings?
• Do you have a committee which oversees the quality and quantity of work done by the program?
• Is priority given to “right to counsel” cases, contested court cases and appeals?
• Are partnerships with other non-profits created to address client community problems? If so, are they formalized in writing? Have they created a strategic plan for creating change?

3. Follow-up

Inefficiencies identified by the data and confirmed through the answers to the questions can be corrected using some of the ideas in this paper or from other sources.

**B. What funders can do**
Funders tend to follow the lead of the Legal Services Corporation when it comes to performance criteria. LSC has established nine performance criteria for its grantees\(^2\). While they make occasional reference to efficiency, LSC needs to devote an entire, separate criterion to it. Each LSC criterion includes questions that help define its meaning, which is helpful for onsite evaluations because they provide a pool of questions for interviewing program staff. Above are some questions that could help define this new efficiency criterion.

While the LSC performance criteria reference effectiveness more often than efficiency, it should combine references into a separate criterion and expand it to include considerations raised by the above questions for effectiveness. These criteria will help change the current culture which does not give priority to efficiency and effectiveness.

LSC should also collect the measurements recommended in section III to better assess efficiency and effectiveness. This is particularly true of advocacy other than casework, which receives little attention now. However, the data in Sections I and II are adequate for identifying programs that should be evaluated first to determine if their performances can be improved, as well as those that appear to perform very well to learn the methods they use. The fact that these measurements can be improved doesn’t mean that they can’t be used, because measurements rarely provide definite proof that problems exist.

Measurements play an important role after an evaluation is completed to assess whether productivity and effectiveness have actually improved. At this time, LSC and other funders don’t have good mechanisms for doing this. Evaluators can offer programs the suggested

improvements outlined above, but funders don’t have to be in the awkward position of imposing them as long as they insist that the measurements improve.

It is also critical that LSC support the concept of unbundled services and include it in its training programs, instructions and performance criteria. As discussed above, this has the potential to greatly expand existing services.

A few recommendations are so important that funders should consider raising them with programs. One is having each program establish a centralized, streamlined intake system. This is a common cause of inefficiency. Another is requiring the use of document generators, as the experience of prepaid providers suggests. Funders should also urge that volunteer lawyers be used more effectively by referring them more extended services cases. Also more existing volunteers should be used annually. Funders should ensure programs handle enough key services cases to avoid the claim they only provide Band-Aid services. And finally, the better performing programs should be evaluated and their methods shared.

C. Potential impact of improvements

One can estimate to what extent services can be expanded by determining the number of additional cases programs could handle if those below the sloping line in Graph 1 improved their performance to reach the line. This number is more than 218,000 or nearly 24 percent of the current total\(^{93}\); the complexity of these new cases would be the same as existing ones. This would more than compensate for the 14 percent reduction in advocates for 2011 and 2012. If all

\(^{93}\) 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 at the sloping line where \(x\) is the percentage of key 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 is 125. 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.
programs used unbundled services to the extent possible, this increase would even be higher,
since many programs above the sloping line do not use them.