

Quality Assurance at the Provider Level: Integrating Law Office Approaches with Funder Needs

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Introduction

The challenges in producing consistently high quality legal services for needy clients are daunting. The partial successes described and analyzed below derive from my 23 years of experience as director of the Hale and Dorr Legal Services Center of Harvard Law School (the Center). The Center is different from most legal services offices because it is a clinical teaching facility for Harvard law students. The educational philosophy of the Center is that students learn best in a realistic, fully functioning law practice setting. The Center is explicitly modeled after a teaching hospital where delivery of services and professional development are intertwined in an atmosphere of heightened scrutiny, study, and experimentation to identify best practices.¹ Therefore, even though the Center has a clinical education dimension, its experience is relevant to the staffed, legal service organizations (LSOs) that are the prevalent model of legal service delivery in the United States.

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¹ The evolution of what is now the Hale and Dorr Legal Services Center of Harvard Law School is described in Jeanne Charn, "Client Service and Legal Education: A Report on the Experience of Harvard Law School from 1972-2001," unpublished manuscript on file with the author, prepared for and presented at the Pan-Pacific Legal Aid Conference: Multi-Dimensional Needs for Legal Services, December 6-7, 2001, Tokyo, Japan. Section Three of that paper sets out the educational premises of the "teaching law office," analogous to the teaching hospital.

Part One outlines the quality issues in legal services that have informed the efforts and strategies of the Center since its founding in 1979. Part Two sets out the quality assurance program at the Center. Part Three attempts to link the provider perspective with a funder or system-wide perspective. Such a linkage is crucial to assure quality throughout the delivery system. Moreover, the Center's experience suggests that the absence of an external, funder based and resourced quality agenda makes it more difficult to achieve consistent, high quality service at the local office level.

Part One ~ The Quality Problem in Legal Services

Gary Bellow pioneered clinical education at Harvard Law School when he arrived as a Visiting Professor in the fall of 1970. Like many other first generation clinical law teachers, Bellow's vision of the program he hoped to build at Harvard was rooted in his experience as a public defender in the District of Columbia in the early 1960s and, more so, his nationally recognized work representing migrant farm workers at California Rural Legal Assistance later in the 1960s. When Bellow arrived at Harvard Law School, he believed that the United States would follow the trajectory of legal aid in such countries as Britain and Canada² and embark on a period of substantial expansion of publicly funded legal services.³

In 1970, however, Bellow was already on record expressing concerns that growing legal services caseloads would erode the quality of service and inhibit the potential of

² See Alan Paterson and Tamara Goriely *Resourcing Civil Justice* (1996); Alan Paterson, et al., *The Transformation of Legal Aid* (1999); and H. Glennerster, J. Hills, T. Travers, and R. Hendry, *Paying for Health, Education and Housing* (2000).

³ The election of the Democrat Jimmy Carter as President in 1976 initiated just such a period of expansion. During the Carter administration, the budget of the Legal Services Corporation reached its historic high point in real dollars. Neither Bellow nor most supporters of expanded legal service in the United States foresaw Regan's upcoming assault on federally funded legal services.

strategic lawyering to benefit the poor.⁴ At Harvard, Gary Bellow embarked on a more rigorous examination of legal aid casework. He published his findings in 1977 in the seminal article “Turning Solutions Into Problems: The Legal Aid Experience.”⁵ In his article, Bellow described legal aid casework as characterized by: *excessive routinization*,⁶ *low client autonomy*,⁷ *narrow definitions of client concerns*,⁸ and *inadequate outcomes*.⁹

These case-handling patterns were consistent across regions and across variations in program size, staffing, and other characteristics. Equally consistent was evidence of advocates’ intelligence, dedication to legal aid work, and genuine concern for their clients’ welfare.¹⁰ Thus, Bellow looked to systemic constraints, dynamics, and failures, rather than to shortcomings of the individual professional, to explain the discrepancy between the apparent capacity and commitment of staff and the outcomes evidenced in their casework. The following features in the U.S. legal aid system, most of which Bellow identified in 1977, continue to pose challenges to consistent quality in legal aid practice.

⁴ Gary Bellow, “Reflections on Case-Load Limitation,” 27 Legal Aid Briefcase 1995 (1967).

⁵ 34 *NLADA Briefcase* 106 (August, 1977), available at www.garybellow.org.

⁶ Client matters were sorted by simple categories which dictated an unimaginative service “protocol,” most often unwritten, but described by providers as “all that’s possible.”

⁷ The lawyer’s relationship with clients involved little dialogue or open-ended exchange.

⁸ Lawyers typically addressed only issues that clients presented. Even when clients mentioned other issues, lawyers often dismissed the issues as “tangential,” “another matter,” and not pertinent to the case at hand. For example, a divorce matter was just that, even when a client’s debt burden had caused the marital discord.

⁹ Settlements dominated case outcomes so much that staff recalled few or even no cases resolved by judgment or negotiation *after* trial. Nor did the vast majority of settlements reflect a discounted value of likely trial result, taking into account the cases’ legal and factual strength. Rather, lawyers justified settlements as the best result in light of unsympathetic judges and aggressive or heartless opponents.

¹⁰ This is not to suggest that no individual advocates performed poorly. After all, the inadequate outcomes were from the aggregated work of *individuals*. Individual performance, however, varied little despite differing levels of experience, extent and quality of training, prestige of degree, writing and analytic skills, and other typical indicia of professional competence or capacity.

Demand for assistance greatly exceeds resources – The enormous mismatch between client demand and limited resources creates perverse dynamics. Service dynamics might evolve as follows: a chronic lack of resources requires advocates to decline most clients' requests for help. Compassionate, dedicated, but inexperienced¹¹ advocates find it difficult to decline so many cases and continue to accept them, hoping to offer beleaguered clients at least a little assistance.

Caseloads creep up, quickly reaching levels where advocates cannot effectively service each client. While neglected cases sit in file drawers, the next needy person in the waiting room captures the attention of the advocate, who opens a new case, compounding overload and neglect. The overloaded advocates burn out and eventually exit legal aid work, producing the high turnover rates characteristic of legal aid work since its founding.

In this way, the mismatch between resources and the demand for service can cause legal aid lawyers to sacrifice quality so that they can serve, albeit less than adequately, a larger number of clients.¹² Legal Services Corporation data is consistent with this scenario. That data shows that, since 1982, eighty per cent of cases closed each year by LSC grantees involve only advice, brief service or referral. While it is possible that most clients seeking assistance need nothing more than a bit of advice to properly resolve their legal problems, my experience¹³ suggests that most of these clients need, but do not receive extended service. That is, most are receiving service that is inadequate to their needs.

¹¹ Novice advocates are commonly assigned the most routine service work or to intake and advice units.

¹² Such a rationale violates the ethical norms of the legal profession. Preferring the client in the waiting room to the client whose case is already in the office is an impermissible conflict of interest under the ABA's Model Rules of Professional Conduct. *See also* Gary Bellow and Jeanne Kettleson [Charn], "From Ethics to Politics: Confronting Scarcity and Fairness in Public Interest Practice," 58 B.U. L. Rev. 337 (1978).

¹³ My experience in legal aid work goes back continuously to the summer of 1968 when I first represented a client as a law student advocate in an O.E.O. funded program at Harvard Law

To insulate advocates from the demand crush, many offices have located intake (first contact with people seeking assistance) in a separate unit. Also, the union movement in legal services has bargained for caseload limitations.¹⁴ Once caseloads are under control, it becomes possible for advocates to provide high quality work, but absent attention to other powerful dynamics, the practice habits learned in the over-loaded era too often continue in the case limited era. The result is a situation where quality has not improved but productivity has declined sharply.

Law schools do not prepare graduates to practice law, and no post-graduate program fills the gap – A second systemic problem is inadequate training of lawyers in the United States. U.S. law schools do not purport to prepare students to practice law. The J.D. degree can be achieved without attention to the full range of lawyer skills and without mentored introduction to professional practice. All ABA accreditation rules mandate that law students take a course in professional ethics, but they are not required to take courses in evidence, trial or clinical practice.¹⁵ Law schools offer these courses but only as electives in an every growing menu of courses after the first year.¹⁶

School. After graduation, I was a staff attorney in that program; then a staff attorney at Massachusetts Law Reform Institute; then to Harvard Law School working with legal aid programs as student placements prior to the founding of the predecessor of the Hale and Dorr Center in 1979.

¹⁴ When addressed, whether by union contract or office decision, caseload limits tended to be uniformly imposed despite sharp differences in the degree of difficulty and time frames for resolution of different types of cases.

¹⁵ In the 1970s, the American Bar Association and some federal circuits seriously considered requiring lawyers who wanted to practice in the federal bar to have taken courses in evidence and/or trial practice. Law schools vigorously blocked these efforts. See, Robert Clare, “Incompetency and the Responsibility of Courts and Law Schools,” 50 St. John’s L. Rev. 463 (1976). The President of the Association of American Law Schools told Clare, “Even if you recommend that trial lawyers should have only a course in evidence, we will fight you to the death.” *Id.* at 465. Clare served as Chair of the Advisory Committee on Qualification to Practice Before the United States Courts in the Second Circuit.

¹⁶ For the definitive histories of the modern law school, see Robert Stevens, *Law School: Legal Education in America from the 1850s to the 1980s* (1983). Only a few law schools require law

Apprenticeship, once a requisite for bar admission, is no longer required in any U.S. jurisdiction. This leaves the novice J.D. subject to whatever norms of practice prevail in her post-graduate employment.

Some large firms, federal government and other offices have developed training programs for entry level lawyers as well as programs for continuing professional development. However, there are no standards for such efforts, no research on the effectiveness of various approaches, little collaboration on best practices, and no certification or accreditation to assure that all novice lawyers get at least minimal supervision and training. Legal services programs continue to develop good training events and materials as well as an impressive array of manuals and practice aids. To the extent that there have been problems with timely updates or wide availability, technology offers a solution.¹⁷

Novices, however, require more than ready access to rules and practice information. They must have supervision and mentoring to achieve competence. Busy legal aid offices may not retain enough experienced lawyers (at least not in service

students to take clinical courses. For example, the University of New Mexico School of Law requires students to complete 6 credit hours in a law school clinic. *See* The University of New Mexico Clinical Law Programs, Clinical Graduation Requirement, *at* <http://lawschool.unm.edu/Clinic/pr/supervision/graduation_requirement.htm> (last visited Feb. 5, 2003). The University of Montana requires all third year students to take 4 semester hours of clinical training, which is typically fulfilled in the law school clinics. *See* University of Montana Law School, Clinical Program Guidelines, *at* <<http://www.umt.edu/law/SHClinicGuidelines.htm>> (last visited Feb. 5, 2003).

¹⁷ One of the most innovative efforts in the United States is Probono.net, a non-for profit organization that produces on-line legal resources for *pro bono* lawyers, legal aid lawyers, and the general public. *See* probono.net, *at* <<http://www.probono.net>> (last visited Feb. 5, 2003). Probono.Net has also created another innovative website, LawHelp.org/NY. *See* LawHelp.org/NY, *at* <<http://www.lawhelp.org/NY>> (last visited Feb. 5, 2003). By providing their borough or zip code, users can find resources near them which are specific to the legal area in which they need help. For example, a Brooklyn resident with a housing discrimination problem can find contact information for the Brooklyn Legal Services Corporation. Users can also find links to other websites with substantive information about the law.

operations) to provide the needed mentoring. Besides, when turnover for novices is high, it does not make sense to program directors to allocate experienced casework resources to new staff. Of course, when novices are not supervised and mentored, this exacerbates the turnover problem – which in turn justifies the decision not to invest in the supervision and professional development of novices.

Established interests shape practice norms and structures - A third systemic problem is the power of established interests to define and disproportionately influence practice norms and routines. The novice legal aid lawyer is often assigned to the lower trial courts, public benefit bureaucracies, and other agencies and institutions that process the claims and grievances of low-income people. Insiders, who know the ropes, even if they may not know the law, colonize such entities.

The legal aid novice, fresh from a law school classroom and perhaps a moot court trial, appears in a landlord-tenant session, for example, having researched the substantive and procedural law but not knowing that “the equities” often trump rules. The novice has prepared a five-minute argument on the merits of the client’s claims, not understanding that if argument is allowed at all, it should be less than a minute. In other words, the novice knows nothing about how the lower trial courts actually operate. Once in the session, clerks and experienced lawyers take the novice aside and let him how things are done. They explain why it is a waste of time to file “impractical” motions or that judges do not like technical, procedural claims that “only serve to delay.”

It is in such courts and in understaffed, overworked benefits bureaucracies, that the novice legal aid lawyer learns to practice law. The dilemma is that the modes of practice he learns may better serve the needs of established interests¹⁸ than the needs of his own

¹⁸ See Marc Galanter, “Why the Haves Comes Out Ahead,” 9 Law and Soc. Rev. 95 (1974).

clients. Resisting the tacit and explicit pressures to cooperate in the institutional marginalization of low-income clients requires skill and critical analysis. Both resisting *and* effectively advocating is even more difficult. Scarce resources, weak education and training, and inadequate supervision make it likely that all but the most resilient and independent novices will capitulate and make accommodations in ways that, at least to some extent, perpetuate their clients' disadvantaged legal standing.

Direct client service is sharply distinguished from law reform and policy advocacy

- While the above dynamics are beyond the immediate control of legal aid offices, legal aid lawyers themselves continue to draw a bright line between service and law reform or policy-oriented activities. Bellow criticized this separation as follows:

”[R]outinized case handling in legal aid practice receives validation from the widely held view . . . that individual client service, although desirable, bears little relationship to efforts to use the law for political or social change. . . . “[S]ervice” to clients is generally thought to be [a] simple, routine, often dull, effort. Thus, lawyers who do service work are thought to be quite justified in handling large numbers of cases and are not expected to raise “test case issues” or spend too much time on any particular case. . . . [T]he conception of the legal problems of clients as capable of division between large (and political) “test case” claims, and routine (apolitical) grievances not only depreciates the importance of day to day legal aid work but actually fosters the very limiting perceptions of what can be done . . .¹⁹

When the most able legal aid lawyers are promoted to law reform units, it further depletes the supply of capable supervisors for new recruits doing service work. This is true even though the ratio of experienced to inexperienced advocates in the program as a whole has not changed. Lawyers who are eager for challenges and who do not have the opportunity to “move up” to policy work may leave the program. Those left behind, having lost another colleague, now consider leaving as well.²⁰

¹⁹ Bellow, *supra* note 5, at 119.

²⁰ For a fascinating account of how law reform work evolved from one of many strategies for aggregate change to an end in itself, see Jack Katz, *Poor People's Lawyers in Transition* (1982).

Both law reform and service types view the opposite decision, to stay in service work, as a decision to forgo professional advancement. Those lawyers who choose careers in direct service tend to be comfortable in routines, seeking security and predictability, rather than challenge. They are all too ready to accept, even embrace, the view that while service work is not productive as measured by way of legal outcomes, it meets other important goals. These goals include helping clients find their voices, empowering clients to see the unfairness of “the system,” or simply bearing witness to client struggles.²¹

Lawyers who embrace such goals may include those who doubt their choice of a legal career. They welcome the diminution of legal services from skilled advocacy to a helping profession with modest ambitions. Service work can become a refuge for lawyers who find the craft and technical aspects of lawyering a poor fit, but find satisfaction in “just helping people”.

These and other structural features constitute a complex of mutually reinforcing dynamics that militate against high quality service work. Advocates in a legal aid program with these dynamics often do not perceive them or their extent or impact. Many legal aid lawyers are skeptical of the suggestion that numerous everyday legal problems of low-income people are complex, challenging, and require a broad range of legal skills. For these lawyers to entertain the possibility that service work is professionally challenging would require them to question and ultimately reject the routines that define their role and sense of worth. They would also have to reject many of the rationales that sustain both career law reform and career service work lawyers.

²¹ William Simon, “The Dark Secret of Public Interest Lawyering: A Comment on Public Interest Lawyering in the Post-Modern, Post-Reagan Years,” 48 U. Miami L. Rev. 1099 (1994). Simon critically examines what he sees as the replacement of the goals of distributive and systemic change with a vague and internally contradictory client empowerment agenda.

No data or information is available to assess the extent of these systemic problems.²² There may be a great many, some, or perhaps only a few offices with these dynamics. What this paper suggests is that dynamics exist that tend to drive down the quality of legal aid practice. An individual's talent, commitment, and experience are probably not sufficient to sustain the quality of the advocate's practice in the face of such dynamics.²³ Training and professional development of individual advocates, which is the paradigmatic professional response to problems, will not be enough to assure consistent quality in an office or in the larger legal aid system. Systemic problems that undermine quality cannot be reversed one lawyer at a time. Systemic solutions are required to counter the perverse dynamics external and internal to legal aid. It was with optimistic plans to counter these dynamics that the Legal Services Institute, predecessor of the Hale and Dorr Legal Services Center, opened its doors to clients in January 1979.

Part Two~ Quality Assurance at the Provider Level: The Experience of the Hale and Dorr Legal Services Center

Outcome data, annual practice unit reports and peer file reviews suggest that the quality of casework at the Center has improved in the past decade.²⁴ From my vantage

²² Jeanne Charn, "A Comment on the Current State of Government and Charitably Funded Legal Services for the Poor in the U. S.," discussion paper prepared for the International Legal Aid Group Conference, Melbourne, Australia, June 13-17, 2001. Part II of this paper discusses the evidence from available data that quality issues may be common. In addition to indications of low productivity and the dominance of limited assistance over more extended representation, LSC case outcome data provides no information about substantive results. In a program concerned with quality one would expect to know, for example, whether disability cases were won or lost, whether tenants retained possession in eviction actions or were rendered homeless, and whether custodial parents received appropriate child support (determined by formula in some jurisdictions).

²³ Suppose a legal aid program hired a skilled lawyer defecting from private practice. Assume that this attorney has skills, commitment, and energy in abundance. If the office, however, has no litigation budget, no investigators, no law clerks, no relationship with experts, a poor case management system, and a deeply and sincerely held conviction by staff that the legal system does not offer much to the poor, the new recruit will have a rough time.

²⁴ The Center's budget will approach \$2.5 million in the 2002-03 academic year. Harvard Law School will provide about \$2.1 million. Revenue from client co-payments and statutory attorney's

point as Director of the Center, I would categorize most of the Center's casework, using Paterson and Sherr's scale as "competence plus," with similar amounts of the remaining casework falling into the "excellent" and "threshold competence" categories.²⁵

The Center has improved results for clients by adhering to practice systems, monitoring cumulative outcomes for clients, and reviewing the performance of staff and practice departments each year. The following describes key components of the Center's quality assurance program. First, the Center has established case handling processes and practice systems that provide the input and support for quality legal work. Second, the Center documents and measures case outcomes of each advocate for the practice units. These outcome measures indicate whether advocates are actually producing quality work.²⁶ Third, the Center conducts annual performance reviews for all advocates, for each practice unit and for the Center as a whole.

1. Case Handling and Practice Systems

Practice systems do not, by themselves, produce quality practice,²⁷ but a sound practice system can generate dynamics that encourage quality service. A carelessly

fees should approximate \$140,000. The Center will receive an additional \$260,000 for contracts to provide legal services. These funds support 19 lawyers and paralegals, an Associate Director, case manager, office manager, receptionists, and translators. In addition to paid staff, as many as 80 law students practice at the Center each semester for clinical credit or to satisfy Harvard's new *pro bono* graduation requirement.

²⁵ Paterson and Sherr rank the quality of legal services casework into five categories, ranging from highest to lowest: non-performance, inadequate professional services, threshold competence, competence plus, and excellence. See Alan Paterson and Avrom Sherr, "Quality Legal Services: The Dog That Did Not Bark," in Francis Regan, Alan Paterson, Tamara Goriely, and Don Fleming, *The Transformation of Legal Aid: Comparative and Historical Studies* (1999).

²⁶ See Avedis Donabedian, "A Primer of Quality Assurance and Monitoring in Medical Care" in *Law Practice and Quality Evaluation: An Appraisal of Peer Review and Other Measures to Enhance Professional Performance: The Report on the Williamsburg Peer Review Conference*, ALI-ABA (1987).

²⁷ See Donabedian, *supra* note 26, at 101; Paterson and Sherr, *supra* note 24, at 235.

designed practice system²⁸ and inadequate practice supports risk reinforcing the systemic problems identified in Part One that undermine quality. A well-designed practice system will counter those negative dynamics and perhaps create beneficial dynamics.

Ideally, the components of a practice system would seamlessly relate to and reinforce one another. The resulting system would remain stable over time. In reality, even a good system contains duplicative components, sticking points, and cul-de-sacs where cases can become lodged. Also, practice needs and circumstances change, requiring offices to make adjustments. Thus, managers must accept that system monitoring and revision are on-going functions of a high performing law office.

Case handling and practice systems and supports at the Center include the following:

Practice supports assure that advocates have the resources they need to produce good outcomes for clients. Examples of essential support inputs are: (i) systems to check conflicts of interest before accepting new cases; (ii) a litigation fund for depositions, expert witnesses, filing fees, and other case related expenses; (iii) up-to-date form and brief banks; (iv) easily accessible process servers; stenographers; and frequently used experts; (v) translators if the client population is multi-lingual; (vi) runners, clerks, and couriers to assure court filings, service on opponents, and other important errands; (vii) client trust accounts and procedures to handle and document all expenditures and funds received from or on behalf of a client; (viii) a law library and on-line research tools; (ix) time-keeping systems for cases with the potential for statutory attorneys fees; (x) systems to collect co-payments from clients (charged by the Center for most work); and (xi) routines for closing, storing and retrieving case files.

²⁸ The separation of service and law reform activities could be understood as an example of poor system design.

A good *case management* systems makes it easy for advocates to: (i) complete required forms; (ii) record standard client information; (iii) maintain a docket²⁹ of legally relevant events; (iv) secure and catalogue critical or original documents; (v) enter file notes for all important events, strategies, and decisions; (vi) document the resolution of the matter and the reasons for the outcome; and (vii) complete closing forms and send the case files to storage. In addition, the office must have an up-to-date record of all open cases, their status, and the advocates responsible for them.

Well-maintained and organized files and an up-to-date office docket directly affect client service. When a client calls with an emergency and his or her counsel is in court, on vacation, or ill, a colleague cannot easily respond if the case record is out-of-date or does not exist. Additionally, when an advocate leaves the office, his or her cases are at a high risk of being neglected upon transfer to a new advocate. It is always a chore for an advocate to acquaint him or herself with a matter that a predecessor began. It is a nightmare when prior advocates leave their case files incomplete or their cases unintelligible or unrecorded.

Not only do well-kept case records improve client service, they make file reviews easier. Reviewing case files, which is a time-consuming task for supervisors under the best of circumstances, becomes impractical if case files are poorly documented or missing key pleadings, or evidence. In addition, supervisors must have an accurate list of cases to evaluate the productivity of staff and to assign cases according to the office's policies and priorities.

Put simply, if the staff in an office does not know who its clients are, who is responsible for every case, what it has undertaken for each client, and the progress or

²⁹ "Docket" means two things in the Center's lexicon: (1) the calendar of key procedural dates in a case, which appears on the "docket sheet" in the case file, and (2) an advocate's list or "docket" of cases.

current status of every case, it cannot assure quality. Unfortunately, legal aid lawyers, like many members of the bar, are notoriously poor file and record keepers. They view time spent on file notes as time away from client service. They assert that they alone, not their supervisors, are accountable to their clients, and accountable through results, not file entries. The Center tries to make case documentation and management as painless as possible for lawyers. The Center also tries to assure staff “buy-in” to the proposition that quality files are part of quality service. Even when staff do not buy-in they must comply with case management standards. Thus case management and documentation skills are important criteria in annual performance reviews.

Technology facilitates both the practice support and case management systems. The Center has an excellent technology base, with computers for all staff and one computer for every two students. (Students are not scheduled full-time so a computer is always available to those present). Each computer provides access to Lexis and Westlaw, the Internet, e-mail, and basic office software, form files, model pleadings, standard case documents, standard letters, information sheets, etc.

In 1999, the Center moved to a computerized, networked case management system. The goal is a system in which advocates maintain files on-line, printing out what is necessary for paper files. This computerized system makes it easier to update case records. The software also has standard report functions capable of producing up to the minute office dockets and other reports. Thus, when an advocate covers for an absent colleague, the covering advocate can access case information at his or her own desktop.

The *Quality/Quantity Committee* leads the quality agenda at the Center. The Quality/Quantity Committee, or “Q/Q Committee,” or simply “Q/Q,” is responsible for increasing both the quality and quantity of the services available to clients. The Q/Q

Committee is composed of the managers of each of the five practice units,³⁰ the Director, and the Associate Director. The Q/Q Committee developed the Center's Quality Assurance program,³¹ and monitors it.

The Quantity/Quality Committee meets at least quarterly to discuss productivity and case results, review and change various practice systems and supports, and in all respects lead the office in continued innovation and improvement. Practice unit managers are responsible for encouraging staff discussion of Q/Q agenda items, soliciting input from staff on Q/Q proposals, and encouraging staff innovation. In addition, full staff meetings debate, discuss, and sometimes approve or reject Q/Q recommendations. The Q/Q's structure and interaction with staff has proved effective in maintaining open discussion among staff, while assuring that Q/Q's decision process is reasonably efficient and informed.

Casework protocols capture successful approaches to typical practice problems and aims to make that successful approach an office routine. Bellow identified excessive routinization or "slotting" of cases as a problem,³² but it would be more accurate to criticize *simplistic* routinization as a problem. The antidote to slotting cases into simple response patterns is not 100% individualized advocacy, but sophisticated case-handling

³⁰ The five practice units include the Community Enterprise Project, Medical Legal Services Unit, Family and Children's Law Practice, Immigration Law, Housing Law and Litigation Practice, and General Practice Unit. Each practice has four or five staff, including a managing attorney and in some units a paralegal. The size is small enough to allow everyone to provide full and effective input. For a description of each of these programs, see Harvard Law School, The Hale & Dorr Legal Services Center, at <<http://www.law.harvard.edu/academics/clinical/Prereg/PlaceBk/Clinics/lsc.html>> (last modified Mar. 31, 2000).

³¹ Donabedian uses the term "Quality Enhancement" program. See Donabedian, *supra* note 26, at 100.

³² See *supra* note 5 and accompanying text.

strategies that are consistently or routinely deployed. Casework protocols are such desirable routines.

Center protocols are not simply checklists that track filing deadlines and case stages. They attempt to set out strategies and tactics that have proved effective or efficient. They warn of pitfalls and point out opportunities to benefit clients. While formal rules and procedures state, for example, when to file what pleading in which court, protocols might suggest characteristics of successful pleadings. In landlord and tenant cases where conditions of disrepair are at issue, protocols require lawyers to obtain photographs of the conditions. Protocols further suggest that lawyers take a series of photographs from identical vantages at intervals of several weeks to document whether or not the disrepair continued or worsened.

In child support cases, it is important to obtain the opponent's wage records to verify the assertions of annual income. If the opponent refuses to release wage records, procedural rules allow lawyers to depose the employer's business manager. Such depositions, however, are time-consuming and expensive – typically over several hundred dollars.³³ In contrast, a subpoena for wage records costs about \$20. Therefore, the Center's protocol is to subpoena records to any interim court hearing. Usually after receiving the subpoena, the opponent's employer releases wage records to avoid waiting in court the day of the hearing. Thus for a fraction of the cost, lawyers obtain the documents they need.

Practice standards – Practice standards (which are different from *practice systems* and *practice support*) are guides or to-do lists for specific tasks. For example, one of the

³³ Discovery requests for documents from third parties are not permitted under US discovery rules. One must notice a deposition of a third party, even if little or no testimony will be taken and subpoena the relevant documents to the deposition.

Center's practice standards specifies what lawyers should and should not record in case files. Another standard assures that when advocates are on vacation, the office can reach them and that colleagues will cover their cases. A further practice standard specifies how to transfer cases when an advocate stops working at the Center.

2. Outcome Measures and Assessments

Outcomes at the Center are benchmarked for both substantive quality and quantity of cases expected from each practice unit. Benchmarked outcome goals are also set for individual advocates (these vary based on such things as experience and non-case work responsibilities) and for the Center as a whole. The Center also has a benchmark or goal for annual revenue from client co-payments and statutory attorney's fees.

Qualitative benchmarks are set by the best outcome for a category of cases that the office knows about or has obtained. For example, when the Center began work in 1979, the norm in Massachusetts in eviction for non-payment of rent cases was that legal services lawyers could delay evictions, but not prevent them. Similarly, tenants could possibly expect a waiver of their unpaid rent, but not a cash payment from the landlord for disrepair of the premises. In light of the age and condition of housing in low-income Boston neighborhoods, our legal analysis suggested that: tenants ought to win possession most of the time; landlords would frequently be liable for damages that would exceed any unpaid rent; and if a landlord insisted on gaining possession of the apartment, and the tenant was able and willing to move, then the landlord should buy out the tenant's entitlement to possession.

Experienced lawyers at the Center began using this legal analysis in their non-payment of rent eviction cases. In less than a year, the Center obtained a \$10,000 cash settlement to compensate for conditions of disrepair. In addition, the landlord bought out

the tenant's right to retain possession. This settlement validated the Center's legal analysis, caused a stir in Housing Court, became a benchmark for the Center in non-payment of rent eviction cases, and inspired the Center to try to raise outcomes for tenants in other kinds of housing disputes.

Quantitative benchmarks measure advocates' productivity by the number of cases they close or "turn over" in a year. Legal aid offices too often assess advocates' productivity by the number of cases they handle at any given time. Advocates' caseloads, however, ought not be confused with their productivity. Suppose that Advocate A and Advocate B work in the same unit, have the same experience, and the same complexity of cases. Advocate A carries a caseload of 100; Advocate B's is 25. At first glance, it seems that Advocate A is much more productive, representing four times as many cases as Advocate B. Advocate A, however, closes only 30 cases in a year, and carries over the balance - many of which may have lain dormant for years. Advocate B turns over 25 cases three times a year, for a total of 75. Advocate B at all times has a lower caseload than Advocate A - but is 2 ½ times more productive than Advocate A.

Each practice unit sets benchmarks for annual case closings by asking advocates to examine their experience and propose a challenging but realistic number. The Q/Q committee then discusses the proposed numbers and makes adjustments based on comparisons among practice areas. For example, advocates handling trial-intensive, conflict-heavy, landlord-and-tenant cases are expected to close the fewest cases. Advocates engaged in purely transactional practices (such as wills and estates, real estate, and small business) or whose practices consist of offering limited assistance are expected to close many more. The Q/Q Committee also adjusts benchmarks based on advocates' experience. A lawyer just out of law school is not expected to turn over as many cases as a lawyer with ten years experience.

The Center itself has benchmarks for earnings from client co-payments and statutory attorney's fees. Of the Center's five practice units, two have produced most of the Center's revenue from these sources. A third unit is beginning to generate more revenue. A fourth unit's source of funding bars it from collecting client co-payments or statutory attorney's fees. Thus, revenue in some practice areas indicates productivity and, in the case of statutory attorney's fee, success.

When a unit manager evaluates an advocate, the performance review includes the advocate's success in meeting qualitative and quantitative benchmarks. Practice units also receive performance reviews. When I review a unit with its manager, the unit's success in meeting qualitative or quantitative benchmarks is part of the review. However, advocates and unit managers might miss – or exceed – benchmarks for many reasons. Thus benchmarks are a starting point for discussion about unit performance, not a hard and fast definition of success or deficiency.

3. Annual Performance Reviews

Annual performance reviews assess the work of every advocate and every practice unit at the Center. The review has several components, each of which offers a different perspective on the advocate's casework and on the aggregate outcomes in the advocate's practice unit. The system is peer-based in that a colleague who practices every day with the advocate conducts the review. It is also hierarchical in that the colleague conducting the review is the "Senior Attorney" or Unit Manager.³⁴ In consultation with the Director,

³⁴ Until 1997, in my role as Director, I conducted annual performance reviews for all advocates. It was difficult, however, for one person to undertake a comprehensive assessment for 18 to 20 advocates. Each assessment entailed writing a report with 20 or more pages of scaled assessments and another 20 or more pages of detailed narrative comments, and holding one or more conferences for each advocate. Now I appoint Unit Managers who conduct the assessments. With no more than five or six staff in any one unit, the managers can complete the annual performance reviews and write-ups on a timely basis.

the Unit Manager decides whether to renew advocates' contract and other retention issues. The Unit Manager also determines annual salary increases. Thus the Center's approach blurs the sharp distinction that the management literature often makes between the judgment/evaluative dimension of performance review and the helping/collaborative dimension.³⁵ This potentially difficult straddle seems to work at the Center because: (i) advocates accept the basic concept of performance review; (ii) practice units are small enough for all staff to know each other well; (iii) there are many opportunities for collaboration, support, and back-up in which the Unit Manager's role is the same as unit staff; and (iv) Unit Managers are experienced (all five Unit Managers have at least 15 years of experience as lawyers) and their productivity, skill, and case outcomes are also high. Unit staff recognize and respect this experience and demonstrated competence.

The components of the professional performance system include the following:

Quarterly and annual closing and outcome reports are mandatory for all staff. The Center strongly encourages, but does not require advocates to submit case closings and outcome reports every quarter. Advocates must, however, submit case closings and outcome reports by the close of every service year.³⁶ Outcome data reports, which are two pages or shorter, are standardized by case type.³⁷ They request data about the factors that impact the outcomes of various case types, as identified by experienced advocates. They also request brief narrative comments.

The Q/Q Committee uses quarterly reporting to assess whether units are likely to miss, meet, or exceed goals. Advocates are encouraged to report case closings every three

³⁵ Gregg Krech, ed., *Systems for Legal Services: A Step-by-Step Guide to Planning and Development for Legal Services Programs*, Legal Services Corporation (1980).

³⁶ The service year runs from June 1 to May 31.

³⁷ For example, the Individualized Rights Unit has outcome data reports for the following case types: estate and permanency planning, disability rights, and employment rights.

months to stay current and to avoid missing their annual reporting deadlines. Legal services advocates across the country commonly complete service to a client but neglect to close the file for months or even years. Thus, in many legal services offices, annual case closings do not reflect the work actually done in that year. National LSC data is plagued by this problem. The Center partly measures the annual productivity of advocates by their case closings, which spurs advocates to meet the annual case-closing deadline. This in turn keeps the Center's case reporting and annual productivity data current. The fact that unit managers practice with advocates and know advocates' cases also allows the Center to monitor productivity less formally.

Annual case file audits check the record of all cases to assure that all required forms are in place (i.e. retainers, financial eligibility information), the date of last activity on the case, and compliance with record keeping and documentation standards. A team consisting of the Associate Director and two or three non-advocate staff members audit case files every year. The team checks the file for (1) whether it contains the necessary forms (i.e., retainers, financial eligibility information, etc.), (2) the entered date of case activity, and (3) whether it complies with file-keeping and documentation standards. The team reports its results to the advocate, the advocate's Unit Manager, and the Director.

When audits identify that an advocate's files do not conform to documentation standards, the Associate Director and the advocate devise a plan to bring the files into conformance. The audit team might schedule a second audit a month or two to check on improved compliance.

In addition, compliance problems tend to correlate with substantive advocacy problems. Depending on the problems that an audit has identified, the Unit Manager might meet with an advocate for a substantive review of the advocate's cases.

Limited and extended file reviews involve direct review of the substantive work of all advocates. Each year the Unit Managers reviews all closed cases and a sample of active cases for every advocate in the unit. For less experienced advocates, Unit Managers automatically review all active cases. As part of the limited file review, advocates may identify additional files that reflect their general work, files that reflect their best work, or files on which they would like advice.

If the limited file review identifies substantive problems, the Unit Manager reviews every one of the advocate's open cases. This additional process is called an extended file review. As mentioned before, Unit Managers also conduct extended file reviews for less experienced staff annually. Once they know about problems, Unit Managers have a number of options, such as: acting to address immediate client needs; consulting with the advocate about resolving these problems; offering to make training available to the advocate; serving as co-counsel on some or all cases; assigning another staff member to consult or co-counsel on some or all cases; and conducting a follow-up case review to confirm that the advocate has improved.

We have confidence that the results of file reviews are strong indicators of the quality of an advocate's work. This basis for this confidence lies in both an analysis and experience. The analysis is based on the fact that every area of legal practice, such as consumer law, relies on: (1) a structure and process that the law has shaped; (2) the actual function of the courts, agencies, and other institutions; and (3) the social and demographic characteristics of clients who produce the facts of each case. Thus, one consumer case does not radically differ from most other consumer cases. The same is true with Social Security cases, which do not radically differ from each other, and divorce and eviction cases. Each case does have some unique features, and an occasional case is an outlier.

These unique features are variations, often subtle, on a theme, but not an entirely different tune.

Materials in files can reveal the familiar patterns of specific practice areas and their subtle variations. A good reviewer can estimate achievable results or a range of achievable results. A reviewer looks in the file for the discrepancies and convergences between what he or she would have done in the case and what the advocate did, and what he or she would have achieved in the case and what the advocate achieved. Greater convergence in these two aspects indicates stronger work, while greater divergence indicates weaker work.

The experience basis for confidence in file review derives from efforts at file review at the Center that dates back to the mid-1980s. In the Center's early efforts, a review team made up of Gary Bellow, me, and another experienced staff lawyer conducted the reviews. Before reviewing any files, the review team discussed what approaches advocates in various practice areas should use and the outcomes they should achieve. The team members usually reached consensus on these criteria.

Then the team randomly selected 20 to 30 files from an advocate's active cases, and divided them equally among themselves. After each team member had reviewed one-third of an advocate's sample, he or she passed the files to another team member for review. Thus, each team member reviewed two-thirds of an advocate's sample of cases. Each reviewer assessed in writing the strengths and weaknesses of the files, using examples to support the assessments. Reviewers then reconvened to present their assessments. The assessments of the three reviewers were consistently similar.

Once the review team had made its findings, reviewers would meet with the advocate to discuss their findings. Most advocates generally agreed with the team's findings, whether largely positive or negative. During five or six years of file reviews, only four or five staff members sharply disagreed with the review team's negative

findings. In these instances, the review team gave the advocate the opportunity to provide information not in the files that the team reviewed; and/or to identify other cases that the advocate believed better demonstrated his or her abilities. Even though some advocates took advantage of these opportunities, none produced additional information or case files that supported a significantly different assessment than the review team's original one.

Thus, file reviews remain a staple of performance review. They are time consuming, but their value makes the time and effort worthwhile.

The Center sends our *client satisfaction surveys* to all clients whose cases have been closed. Clients' response rate has been good. Clients report high satisfaction, including satisfaction with clinical students who handle their cases. Clients' negative comments about advocates are relatively few, but they have tended to correlate with similar observations and comments from peer advocates, support staff, and clinical students. However, client's positive comments do not correlate strongly with peer review of the client's case file, indicating, not surprisingly, that client's are not able to assess weaknesses in the substantive work on their cases.

The Center's *client complaint procedure* responds to client complaints and concerns. The Associate Director, or another staff member who is not an advocate, receives and documents complaints and arranges for follow-up coordinated by the Associate Director. The Center uses informal approaches to resolve complaints. If a complaint remains unresolved and the client remains dissatisfied, the Center provides the client with materials and information about making a complaint to the bar authorities. Few clients complain, but we have found that their complaints about advocates correlate with similar observations from fellow advocates, office staff, and students.

At the end of their clinical work, students complete *confidential evaluations* of both their practice experience and their supervisor. This is a required part of student checkout

from the Center. Students have the option of submitting the evaluation anonymously. The Associate Director aggregates the evaluations to protect the anonymity of even students who included their names on their evaluations. The Associate Director then provides the aggregated evaluations to advocates.

Over the years, students have been consistently frank in their evaluations. Negative evaluations correlate with the results of file reviews, but positive comments do not. In other words, advocates who receive negative evaluations also receive negative file reviews, but advocates who receive positive evaluations do not necessarily receive positive file reviews. Clinical students are also invited to participate in a confidential focus group with the Associate Director. Student participation has been supportive and helpful, leading to constructive improvements in office systems and providing useful feed back for supervisor staff to use in advocates' evaluations.

Annual written performance evaluations are completed for every advocate at the Center. In June and July of each year, Unit Managers evaluate the performance of each advocate in their units. The Unit Managers rely upon all sources of evaluative information, including file reviews, client satisfaction surveys, client complaints, and evaluations from students; and any observations they have made of each advocate at hearings, with clients, in negotiations, or in other interactions with opponents or witnesses. Each Unit Manager completes a written evaluation on a standard instrument that includes main categories and subcategories of performance. For every category, the unit manager rates the advocate's performance on a scale (which is at the end of this paper). For every main category, managers also write narratives.

The manager gives a draft evaluation to the advocate before they meet. If an advocate disagrees with a manager's evaluation, they discuss the disagreements and try to resolve them. If they are unable to resolve the disagreements, the advocate notes the

remaining areas of disagreement before signing off on the evaluation. At the meeting, the manager and advocate also negotiate a plan to address problems that they agree exist and to discuss the advocate's goals for the coming year. The Unit Manager will also set performance and improvement goals in problem areas identified by the Manager even where the staff member does not agree with the problem assessment.

Self-assessment – Advocates may also assess themselves by completing the performance evaluation instrument and commenting as appropriate. Alternatively, the Center encourages advocates to assess themselves in any other format that they choose. Advocates can discuss their self-assessments when they meet with managers to discuss the managers' evaluations. Only a few advocates have taken advantage of this opportunity for self-scrutiny.

Rounds - As part of the clinical program, the Center has developed a peer review process called "Rounds," modeled after medical rounds. A clinical student prepares a concise memorandum outlining a case and highlighting pending strategic, ethical, or judgment issues. The participants in Rounds, who are students and lawyers in the student's practice unit, receive and read the memo before Rounds. They are expected to arrive at Rounds prepared.

A Rounds session involves the presenter making brief opening comments and the participants discussing and critically assessing how the student has handled the case so far. The goals of Rounds are: (i) to develop the skill of presenting issues concisely; (ii) to develop the skill and habit of frank, critical discussion about casework; (iii) to develop skills in giving and receiving positive and negative comments and assessments (positive feedback turns out to be more difficult for most advocates than negative feedback); (iv) to improve casework; and (v) to reinforce the value of collaboration and learning with and from peers.

The Center is paying more attention to *performance recognition*. A characteristic of professional service organizations is flat hierarchies. These organizations contain large numbers of staff who have advanced degrees, work on complex matters, and have high performance expectations. However, flat hierarchies mean that promotional lines are shallow. In a hierarchy with a single leader at the top, several managers in the middle, and many professional staffers at the base, there are few promotional opportunities.

Promotion brings increased salary and perhaps enhanced career opportunities, but peer recognition of professional excellence and accomplishments is usually of equal or greater value.³⁸ Legal service offices and advocates are complex with regard to performance recognition. Legal services advocates often espouse egalitarianism and indifference to (and even disdain for) professional recognition. In contrast, anecdotal evidence indicates that legal services lawyers do desire recognition and validation from their communities and peers.³⁹ While the Center has not yet developed a program of recognition, advocates do receive informal recognition at the Center during many discussions of casework and practice accomplishments, and more recently, on the Center's web site.

Performance-based compensation - In 2000, the Center instituted performance-based compensation, which awards differential salary increases to reflect the performance of lawyers and paralegals. Outstanding lawyers and paralegals are eligible for a bonus in

³⁸ Organizations commonly reward people who have long and outstanding service by promoting them to supervisory positions. The skills and personal traits that make a great practitioner (e.g., trial lawyer, deal maker, brain surgeon, etc.), however, may not be same ones that make a great supervisor. Promoting someone for past accomplishments rather than prospects of success jeopardizes the quality of professional work. Legal aid offices should be aware of and avoid this phenomenon to assure the quality of their legal services.

³⁹ The Center usually receives one or two solicitations every month for a benefit recognizing someone devoted to public service or public interest work.

addition to increases in base salary. The prior compensation system was a scale, with a fixed, annual increase for each additional year of service.

It is not yet clear whether the variable pay system will play a positive role in reinforcing good performance, or, in the case of lower or no increases, underscore the need to improve. The range of pay differentials is small, both in absolute terms and in comparison to compensation-based pay in the private sector. It may turn out that the quantifiable message of the variable pay scheme – that staff members have made different contributions to the Center’s program – matters more than the dollars themselves.

4. On the Agenda

The Center is considering various additions and improvements to its Quality Assurance efforts.

After care service – This service would be related to the issue of measuring outcomes for clients. An affirmative result at the end of legal work, what we think of when we talk about “winning the case” (for example, obtaining disability benefits, retaining possession in an eviction, averting a mortgage foreclosure) is an appropriate measure of a good outcome. Longer-term outcomes, however, might be better measures of clients’, advocates’, and the Center’s success:

- Did the client retain disability benefits *for at least a year or through the next agency review?*
- Did the tenant remain stably housed *for at least one year* after averting eviction?
- Did the homeowner stay current on the refinanced mortgage *for at least a year* after averting foreclosure?

Obtaining such information would require creating an “After Care Unit” whose staff would stay in touch with clients. The Center would tell clients at the close of their

cases that the After Care Unit would be in contact with them; the Center would also explain why.⁴⁰ After care may be an important aspect of preventative legal work. Clients may need some amount of ongoing contact and support to help them retain any advantages they derived from the original (often crisis provoked) legal assistance.

Cost-benefit assessments – Improving the data base of cases and outcomes will make it easier to assess the costs to the Center and the benefits to clients who have received various types of assistance, whether full representation, assistance in proceeding *pro se*, limited advice, or referral to outside resources. In general, Center resources should be allocated to types of service that produce high benefit to clients. Services offered to clients should reflect data on the most cost-effective approach to producing good results.

Standardized clients – Standardized clients are actors who role play someone seeking assistance from the Center. Their problems are scripted and standardized to test whether providers of legal services correctly assess the issue and provide appropriate advice. A major research project in Britain used this technique to compare the quality of service from different providers in various practice areas.⁴¹ The Center might find this technique useful to assess and improve the quality of service that its advocates provide. In addition, the technique might spur advocates to improve their service because they cannot be certain when they are advising a standardized client.

The Center might use this approach as an instructional or evaluative tool for clinical students, as Harvard Medical School does. Even if clinical students know that they

⁴⁰ When the After Care Unit contacts previous clients, the previous clients might mention legal problems that have arisen since their cases closed. Thus, the After Care Unit could become a source of new cases. Presumably, these new cases would receive some attention, but the Center would have to decide how much attention to devote to them and how much priority to assign them.

⁴¹ See Richard Moorhead et al., *The English Experience, in Quality and Cost: Final Report on Contracting of Civil, Non-Family Advice and Assistance Pilot* ch. 7(2001).

are meeting with a standardized client, the technique would allow the Center to assess and compare their skills on a standardized basis.

Staffing patterns – The Center is experimenting with various staffing mixes in its different practice areas to optimize both the quality and quantity of service to clients as well as the satisfaction and morale of staff. For example, the Center might find that the following mix in a unit is optimal: one or two very experienced attorneys (one of whom may be part time), two experienced paralegals, 12 to 15 clinical students, three graduate fellows (whose role is described soon), and four or five long-term community volunteers. The experienced advocates would supervise less experienced staff and handle the more complex matters.

The Center rejects the notion that, funds permitting, the best staffing decision would be to hire as many experienced and expert attorneys as possible. Such a uniform and expensive staff would not match well with the wide range of problems and issues that clients present. Such an approach would produce mismatches, with highly able staff handling routine matters. Also, such an approach would not take account of the need to develop the next generation of experts or the value of integrating cost-effective volunteers into the service system.

5. Consequences to Date

Since the Center introduced a comprehensive approach to quality assurance, evidence indicates that the quality and quantity of legal services has increased. At the most basic level, we know a great deal more about what we are accomplishing with every annual service cycle. We are building a database that affords richer comparisons and more complex benchmarks for excellent performance. The quality program has, in many respects, been incorporated into the everyday workings of the Center. The annual written performance evaluation remains an event, but much of the basis for that assessment has

become routine. Advocates expect reviews and assessments and expect management to provide support and recognition for good practice. The staff more clearly understands that remaining at the Center requires consistent, strong performance.

The most important practice system components to ensure quality are file reviews and those components that make outcomes visible (reporting and data bases) and goals explicit (benchmarking). Beyond these key components, it is not clear whether case outcomes or volume of service would decline if we eliminated one or another components of the over-all quality assurance and practice system. It may be that it is the whole – an office pervasively concerned with outcome quality and efficient and effective service systems – that assures quality, efficiency, and effectiveness. Thus, individual components may not, by themselves, have much direct effect on quality, so long as there are enough components to generate an atmosphere of concern about quality.

In addition to the cultural and attitudinal improvements that a pervasive system seems to produce, multiple components permit cross-confirmation of performance assessments. Multiple ways to assess an advocate's performance also make it more likely that an advocate will be shown to have succeeded in at least one area. Since success motivates people, highlighting an advocate's good performance in one or more areas may spur him or her to improve weak performance in other areas.

A final note, we do know that when a practice system component is neglected (client satisfaction surveys fell into disuse for a period), the component atrophies and no one seems to notice. It is easier and quicker for a neglected component to disappear than it was to institute that component. It seems, however, much easier to revive a neglected process that was once active than it originally was to institute it.

Part Three ~ the Provider-Funder Connection

A potential source of instability in the Center's quality assurance program is that it is self-imposed with no external validation. No institution, community, statute, regulation, or contract requires that the Center have such a system and almost no one knows about what we do. To our knowledge, most legal aid offices do not have a similar program.

While the Center's apparently unique program is a source of morale and pride for staff, the absence of an external demand for the program leaves it at risk. If internal commitment wavers, or Managers are distracted by other demands, the program will erode along with results. If the Legal Services Corporation (in the United States, the only national authoritative external source) expected the Center to ensure quality, it would reinforce and legitimate the quality program, produce higher visibility, and recognize achievements. All of this would help maintain internal focus and vigilance.

Only a funder of legal services, such as the LSC, which has broad systemic focus and responsibilities, can provide other crucial functions. These include:

- *Information Exchange* – When one legal services office learns valuable lessons, those lessons are not available to other offices because no structure exists to exchange information and publicize best practices.
- *Resources and infrastructure investment*- Funder support, financial and otherwise, is required for quality infrastructure such as technology, professional training and materials, and for practice support systems such as those identified above. Also, central purchasing of products, such as computer hardware, and services, such as computer skilled consultants, is likely to save money and build a common base in quality assurance programs.

- *Quality targets* - Quality and productivity targets must be set, not by every legal services provider, but nationally, at least in broad brush. The targets must allow providers to take into account unique features of local situations.
- *Data and information collection* – Legal services providers must have a common case database and common outcome reports to compare different approaches among local providers to staffing, training, mentoring, and other practice system and resource allocation issues.⁴² A case data system should allow funders to review aggregate performance data and at the same time, allow providers to monitor themselves to ensure quality.⁴³ Because it is difficult to motivate legal services lawyers to produce information for their own office to use, it would be daunting and wasteful to require that providers produce a different data set for funders. A common database should begin with collecting data that funders need, and expand in each office to collect data that each office needs to ensure quality.
- *Policy research and analysis* – The U. S. legal services program has no independent, skilled program of policy analysis and research. Thus, it lacks the capacity to speak to questions of which to service delivery is likely to produce better results, which is more cost effective, how can quality and cost effectiveness be enhanced? The impressive policy research carried on in other countries suggests that this capacity is much more than a desirable undertaking, “if only there was

⁴² There is great value in differing approaches and in encouraging innovation and creative at the provider level, but there must be a basis for comparatively assessing differing approaches and for abandoning those that are demonstrated to be less effective.

⁴³ As it is difficult to motivate legal services lawyers to produce information for their own offices to use, it would be daunting and wasteful to require providers to produce a different data set for funders. A common database should begin with collecting data that funders need, and expand in each office to collect data that each office needs to ensure quality.

enough money” but a critical component of a well functioning legal aid system. Only a nationally based funder could meet this system wide need.

The challenge, however, is not to recognize the benefits of a common database that is useful to both funders and providers or to imagine the positive synergies of links between funders and providers, but to figure out how to make a database and other links happen. There are many reasons why these databases are difficult to construct, such as the relationship between funders and providers. Providers have a high potential to mistrust funders, and funders have the potential to be inflexible and to have a limited understanding of providers’ needs and problems. Moreover, countries with mature legal aid systems have always had conflicts between providers and funders that they first had to overcome to collaborate effectively. In the United States, with its staff model and fewer than 200 federally funded providers, one would imagine that an improved case reporting system or specification of basic quality indicators would be challenging to develop but straightforward to implement. The history of provider autonomy and mistrust of Washington initiatives, however, suggest that implementation would be difficult. The prospects are high that legal services lawyers in the field would be reluctant and would even organize resistance.

Rather than trying to implement changes across an entire country, funders might establish “Lab Offices” by persuading an existing program to become one, or by funding a new program. Lab Offices would be fully functioning legal aid offices designed so that their process, systems, and outcomes are as transparent as possible, leaving both their errors and successes open to outside scrutiny. Lab Offices could be test sites for software, approaches for data collection and technology configurations, alternative approaches to delivering legal services (providing lawyer, paralegal, or *pro se* assistance), and for

validation of quality indicators. Lab Offices could also be sites for experiments with model clients, peer review, external evaluation teams, and various staffing arrangements. They could be a source of productivity benchmarks. Lab Offices could become training grounds for legal services lawyers by granting fellowships to recent law school graduates. The fellowships would produce trained and valuable staff lawyers for other legal services offices.

Lab Offices would allow funders to design and improve systems in a hospitable setting, and to develop a staff experienced in and supportive of the new approaches. Lab Offices might generate a persuasive and effective cadre of consultants who would help other offices implement quality assurance programs, including databases. Those offices could export lessons and expertise to a second ring of offices, and then a third ring, until the new approaches permeate many offices. This process could quell or contain the resistance of the most skeptical providers. This process might also make it more likely that the entire system implements the new approaches, and more importantly, that providers genuinely invest in and accept them.

Conclusion

In the United States, assuring that the legal services program spends money efficiently and effectively seems an indispensable ingredient in breaking the funding logjam that has plagued the program since 1980. Less instrumentally, everyone who cares about equal access to justice should be able to affirm confidently that each client receives high quality services appropriate to that client's legal needs. Concern for all who need services, but are not reached by the present system, requires that the notion of quality include cost-effectiveness. Now we can be confident of neither quality nor the cost-

effectiveness of legal services. Perhaps a drive for quality, in this broader sense, will be the fourth wave in the international legal services movement.⁴⁴ If not, it should be.

⁴⁴ Paterson and Sherr, *supra* note **Error! Bookmark not defined.**

APPENDIX

Assessment Scale for Clinical Instructor Performance Evaluations **at the Hale and Dorr Legal Services Center**

The following sets out the scale used in Clinical Instructor Performance Evaluations at the Center. Staff have different views on the concept of using a shorthand device like this scale, but its continued use is based on management's judgment that, *with supporting commentary and examples*, it tends to force specific self and peer assessment.

Things to remember about the scale:

- The scale does not include a level for unsatisfactory performance such that service to clients or student learning might be compromised. Such a situation is rare here and requires immediate attention and action to protect clients and students. The scale assumes functioning above this level. Therefore, a "1" really means "Needs Improvement" to reach LSC standards. It does not mean unprofessional or unsatisfactory work.
- The scale should be applied conservatively in peer and self-assessments to assure that the performance evaluation process accurately identifies areas for growth and improvement. In other words, every effort is made in the performance evaluation process to guard against "grade inflation".
- The scale includes very high levels of performance that CI staff are unlikely to achieve in all areas. For those staff with less years of practice and teaching experience it is important to remember that performance at levels 4 and 5 *requires substantial experience*. It is not something to expect of yourself in your first 4-5 years of practice or first year or two of clinical teaching. These very high performance levels are included in the scale to remind us all, even the most experienced, that there is room for improvement and growth.
- Goals for individuals should be the Very Good/High Professional Standards (3) range, with aspects of work in the Excellent/Creative (4) range.
- To serve its intended purpose, it is important that all Clinical Instructor staff be clear on what the scale levels mean. Therefore, the following sets out definitions of each scale level.

CI Performance Evaluation Scale Effective for 1996-97

NEEDS IMPROVEMENT (1-2) - Less than adequate (per LSC standards); prompt attention needed; plan for improvement should be worked out with review dates and goals. This scale level is not an indication that client work is at risk. It does indicate that performance is not at an LSC acceptable level, which is higher than a minimal professional standard.

ADEQUATE/GOOD(3-5) - Meets LSC professional standards, which are reasonably high; full and consistent compliance with office standards, policies and routines; consistently meets deadlines and performs all basic parts of the job well

VERY GOOD/HIGH PROFESSIONAL STANDARDS (6-8) - Meets high professional standards; good self-assessment abilities; initiates self-improvement and further learning and growth; assists co-workers to improve their performance; is a model for new staff; makes positive contributions to office and program

CREATIVE/EXCELLENT (9-11) - Practice expertise and capacities recognized and acknowledged by peers at LSC and in local practice and teaching community; finds new and better ways to carry out practice and teaching roles; understands long run goals and objectives of program and contributes to these; effectively presents and represents Center's model of practice and clinical education within HLS and in professional settings outside HLS

MASTERY/EXPERT (12) - Recognized in field as an expert in teaching and practice; fully independent self-learner; handles highest difficulty cases effectively and efficiently; could step in to cover classroom components of skills courses; fully conversant in policy and substantive courses related to field of practice; makes regular contributions to achieving and advancing long run office and program goals; highly effective initiator and collaborator

INSUFFICIENT OR NO BASIS FOR ASSESSMENT (NB) – too little information to assess

DOES NOT APPLY (NA)