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To: SPCComments@lsc.gov

From: Gerry Singsen

Re: Initial Comments on Evaluation Instrument

This memorandum presents some initial comments on the Sixth Draft (August 9, 2002) of the State Justice Communities Planning Initiative Evaluation Instrument.

The Instrument represents a substantial amount of work by the consultant, John Greacen, LSC staff and, particularly, the excellent design team. When put into use, the Instrument is designed to achieve important purposes. The Introduction to the draft states the purpose of evaluation to be “to improve the [planning] process itself.” (The design calls for providing the evaluation instrument to state grantees well before an actual evaluation, so that grantees can “revise or enhance their planning efforts before the evaluation takes place.”) But the purpose of the State Justice Communities Planning Initiative is described as much more ambitious: “to insure the highest quality and maximum level of services for potentially eligible poor persons . . . with the ultimate goal of fully meeting all of those needs.” Even with the necessary limitation of this evaluation to the work of LSC grantees and the legal needs and legal services they may lawfully provide with LSC funds, this is a great ambition.

I want to urge all those involved not to shrink from this ambition.

The first, and by far the most developed section of the current instrument envisions extensive evaluation of the planning process, with detailed inquiries into the participants, entities, structures, events and plans produced. The second section, only sketched in broad outlines so far, anticipates evaluation of how well the plan, as drafted, has been implemented. The third section proposes eight specific numerical measures of “the performance of state legal services programs; all eight measure dimensions of capacity building and service delivery at the core of client centered legal services.” The actual measures, however, primarily examine the structural elements of the delivery system, including its cash and pro bono resources and whether their deployment is relatively equitable both geographically and in terms of the characteristics of client groups.

Nothing in the evaluation instrument attempts to measure the “quality” or effectiveness of services. Nothing in the evaluation instrument attempts to determine the benefits for clients, or the cost to clients, of the state plan and its implementation. Process, plan and structure are reviewed, but not outcomes.

A Little Background

The LSC “state planning” initiative began in 1995, in the face of potential elimination of LSC funding by the “contract with America” Congress. Its major purpose was to compel the participants in the state’s system for delivering legal services to low income persons to face the possibility of an end of federal support and to prepare for a future without LSC. That didn’t happen. Nevertheless, the idea of state-level planning and responsibility for service delivery seemed right, and some states made major changes in their delivery systems, including reconfigurations, as a result of the 1995 state planning effort and the Congressional restrictions. (Among those states were Washington, Connecticut, New Hampshire, Vermont, Massachusetts, Delaware and Pennsylvania.)

After John McKay became LSC President, the present state planning initiative took shape. Through Program Letters and staff activity, LSC effectively guided its grantees, more or less in partnership with other service providers depending on the state, to formulate a state-level plan. The plan was to deal with improving access, effectiveness, resources, client self-help, pro bono, the use of technology and efficiency. An important part of the plan (increasingly important over the last four years) was finding the “configuration” of LSC grant service areas that would best support achievement of the other state planning goals. Late in 1998, LSC announced that it would reconfigure some service areas in the San Francisco, California area even though the state plan did not call for such change.

During 1998, and each year thereafter, LSC has been urged to take stock of the consequences of state planning, including reconfiguration. Given that major state planning changes began in 1995-96, and included substantial reconfigurations, there was obvious experience that could be evaluated. Successes and failures, benefits and costs, could be assessed and could be reported on by LSC. This might provide other states with guidance as they planned and implemented their own state-level systems.

Both the Project Advisory Group and NLADA, beginning in 1998, asked LSC to undertake evaluation of the results of state planning. But LSC, sometimes through the direct statements of President McKay, refused. Indeed, the idea of evaluating and learning from the results of state planning was sometimes characterized as resistance or as a tactic for protecting “turf.” For LSC leadership, it was apparently self-evident that “state planning” would be good for clients, and that planned communities would be better than historical ones. It sometimes appeared, however, that self-examination might threaten the agenda of the LSC leadership. If some aspects of state planning proved wasteful or ineffective, required mid-course corrections might be embarrassing.

The New Evaluation Instrument

I support state planning and I am encouraged that LSC is embarking upon an evaluation of state planning. The development and implementation of state plans has proven to be very challenging. Even after seven years, most states are only in the early stages of developing a comprehensive, integrated, client-centered, effective and efficient high-quality statewide delivery system offering a full range of services for the highest priority legal needs of the state's low income residents. Most of the initiatives planned but not implemented in many places have already been tried in others; there is still time to learn and guide.

Perhaps more important, LSC needs to be careful about the effect of the measures it chooses and does not choose. It is a truism of measurement systems that "you get what you measure." Right now the draft Evaluation Instrument is primarily measuring process, planning and structure. Even the numerical measures emphasize process (e.g., distribution of resources). It is predictable that the state planners will bend their efforts to produce more process, planning and structure if that is what LSC measures and gives value to. But the goals we all agree on are about effects in clients lives — the outcomes produced for clients through the process, planning and structure. At the very least, the consequences of process, planning and structure need to be visibly measured and given high value in order to avoid the message that they don't matter.

The Evaluation Instrument should be extended to include the aspiration that state planning lead to higher quality and more effective services and increased levels of service. The Evaluation Instrument should test the impact of planning and implementation on the quality, effectiveness and quantity of different kinds of client services in the state.

I do not know how best to do this, but can put forward a couple of ideas that might indicate what I mean. For example, add a new Section 4 that asks what actions were planned to improve quality, effectiveness or increased services and whether or to what extent they have had that effect. Like Section 2, this section might score on several criteria, such as the extent to which the effect was achieved, how the state knows about effect, and whether the state has paid attention to effects.

Another example might be to interview some advocates whose work might reasonably have been expected to be affected by elements of the state plan that have been implemented. Perhaps a small sample of all advocates in the state would be interviewed. These advocates could be asked how client lives had been changed as a result of cases and matters they had completed, and how those results had been improved or affected by implementation of the state plan. (E.g., Lawyer 1 reports on a sampled case that a newly implemented state training plan led her to know how to negotiate an eviction case, resulting in a client staying in her apartment for at least six months rather than just one, which was the more normal result obtained before the training.) Obviously, these reports would be anecdotal and assessment of causality between actions implemented and results obtained subjective, but that does not appear to be a problem elsewhere in the draft Evaluation Instrument.

Similarly, the evaluation instrument should encompass the consequences for clients seen through

services provided by both LSC-funded organizations and by other organizations that were affected by the planning, such as social service agencies providing assistance to self-representing individuals who use web-site and pro se materials.

Because resources are so limited, the Evaluation Instrument should also pay attention to what state planning is costing. The costs are varied. Some experimental technologies fail entirely, or fail to produce what they promise. Perhaps the aggregated greater individual benefits of a few extended representation have been traded for the lesser individual benefits of many “advices” or brief services, or a very substantial investment in telephone advice has yet to produce the promised volume of brief services. Service area consolidation may have so taxed management and leadership resources that the quality and quantity of client services have dropped because new systems have yet to work, experienced staff have been replaced by inexperienced and suddenly larger programs are still mired in a higher volume of administrative duties. Perhaps inquiries of this sort could be added to Section 2. Without inquiries in this area, LSC may foster the false impression that change is good regardless of its cost and that state planners should ignore the financial and opportunity costs they incur when choosing the actions they take (or forego).

The issues I have raised here are very substantial, and developing the ways to include quality, effectiveness and cost/benefit analysis will take a lot of thought. But without that thought the results of this new evaluation process will be too little for their costs.

The ultimate questions about state planning involve its contribution to client services. Each state is an experiment in progress on these questions. While the ultimate answers are not yet available, we’ve been doing this long enough that we should figure out what is happening. Process and plan and structure matter, or at least so we believe. But to what? Do they matter to ultimate client benefits? LSC should do the work to find out, and not just develop an expensive and time-consuming process to measure process.

I look forward to helping, in whatever way I can, in the important venture to make this evaluation process successful at finding out how state planning leads to better outcomes for clients. In the meantime, however, there are some smaller issues and problems in the draft which I will briefly mention because I anticipate that the testing of the initial draft will go forward without resolving the larger questions I have raised. These smaller issues and problems might well be dealt with before the first test of the evaluation instrument.

Initial Comments on Smaller Issues and Problems in the Draft

General Comment: The Draft does not appear to answer two relatively important questions about its use in the LSC funding system.

1) Will the scores on individual items (e.g., 1.1.8) be added or aggregated together in some fashion, or will the scores on major headings (e.g., 1.1 Overall Rating) be aggregated with other major headings, or will the Overall Ratings for the Parts (e.g., Part I) be aggregated with the scores on the other parts, or is the only final “score” for Section I the “Overall Rating” in Part 5? Same question for Sections 2 and 3. Is there any sense of “weight” assigned to different questions, subquestions and subsubquestions? If there is no comment on this, all separate measures may be accorded similar weight, and the highly detailed listings in Section 1 may appear to be of greater importance than the implementation assessments.

2) What are the potential consequences of any or all of the scores? Perhaps some comment on this would be appropriate?

General Comment: The State Planning Considerations, in Program Letter 98-06, and the original state planning encouragements in the 1995 letter and in Program Letter 98-01, were explicitly designed to urge states to take responsibility for the whole spectrum of the state’s delivery system and to improve access to services, quality, effectiveness, resources, assistance to self-representing individuals, pro bono, the use of technology, configuration and efficiency. Planning was a critical tool to achieving these ends, but the ends were what mattered. The structure of the draft Evaluation Instrument is not consistent with these goals because it emphasizes, in both length and sequence, the process concerns rather than the results of the work.

Perhaps a symbolic change would put the emphasis more where it belongs. Make the current Section 2 (implementation of the state plan) into Section 1. Put the proposed Section 4 (does it produce good results for clients) as Section 2. Leave the numerical measures as Section 3 and make the current Section 1 (evaluation of process and structure) into Section 4.

Trivial Comment: pagination of table of contents is off.

Section 1:

General comment: The criteria for the top scores contain a number of state plan elements which do not appear in any prior LSC statement of state planning considerations. For example, to get a top score in 1.1.6, a state plan would have to have: “state planning body has authority to compel involvement of all programs.” That’s new. (It also is not clear to me whether the reference to “all” includes the “programs” that are not LSC-funded, although I suspect the answer is that it is limited to LSC grantees.)

LSC should prepare a document stringing together all of the “5” point criteria used in the Evaluation Instrument. This might be provided to grantees as a new state planning guide. Or, in the alternative, to the degree these “5” criteria are quite a bit beyond current requirements, LSC might prepare guidance for the evaluators on why the states are being scored on criteria that have not applied to them.

1.1.1 “Expressed goals of clients” needs definition. For example, is this a reference to demand for services expressed through phone calls and people coming to offices, to legal needs surveys or to client council preferences? Similarly (and this is true in several places in the instrument), how does LSC mean to assess the interaction of “state” priorities with the required program priorities under 45 CFR 1620?

Similarly, the low score for planning “dominated by planners’ views of the needs of their clients” seems crudely stated. What if the planners are drawing on extensive studies and choose to emphasize that information over some special interest pleading? Is LSC trying to valorize authentic client voices over social science research? If so, it might be best to say so directly, and explain why. Needless to say, this possible conflict is not dealt with meaningfully in the current state planning considerations and guidelines. Similarly, if the real point is to give a low score to state planning in which executive directors of LSC-funded organizations exclude concerns about the legal needs of clients and the voices of clients from planning, it might be best to say so more directly.

1.1.2 Here and elsewhere the Evaluation Instrument may not be well designed to assess success in large-population states that are using regional delivery systems, such as New York, California, Florida, Ohio and Pennsylvania. LSC has accepted these regional systems and the scoring criteria should not automatically assign lower scores to such states. One of the reasons for regional systems is that a state plan in such complex states may reasonably conclude that decisions about many issues are best made regionally (within a state system that pays attention to ensuring that decisions are, in fact, made).

1.1.3 and 1.1.6 The reference to “programs” in the criteria is confusing — does it mean “LSC-funded programs” or must the “authority” be accepted by all providers (e.g., the Protection and Advocacy system, the Area Agencies on Aging and the courts in their dealing with assistance to self-representing litigants)?

Here and elsewhere in the Evaluation Instrument, a new vision appears of the authority of the state planning body and the state plan. It is a vision not hinted at in earlier guidelines and considerations. At the very least, the terms by which states are to be judged need to be defined. What do “authority” and “compel” (see 1.1.6) mean in this context, and to whom do they apply? As John Arango has suggested more generally, terms of this sort are more appropriate for regulatory enactment than back-door enforcement through evaluations.

1.1.7 The requirement of “staff support” for state planning is not defined or explored in the state

planning considerations. (See, also, reference to “staff” in 1.1.8.) What does it mean and where does it come from? Is there a new requirement for a separate, funded staff for the state planning body? Is bar staff sufficient? Clearly, staffing by LSC-funded program staff is not an acceptable option, however firmly assigned the staff may be, since it draws only a “3.”

General comment: Taken together, does LSC mean to add a statement to the state planning considerations that would read something like this?

“To be adjudged ‘excellent’, the state shall have a state planning body, with its own sufficient and effective staff support separate from donated staff or program staff, that has the authority to compel all LSC-funded programs in the state (regardless of the complexity of the state) to comply with whatever it puts in the state plan.”

If not, then the current criteria are incorrectly defined. If this is intended, it would be better to say so directly and in a more appropriate fashion than the draft Evaluation Instrument.

1.1.9 Criteria for score of 1 seems awkwardly expressed. Do you mean “. . . would have an impact that participating entities perceive to be adverse”?

1.2 All of these interests are appropriate for a state planning body, but no state planning body will encompass them all. Testing for “inclusiveness” in the manner suggested will be terribly subjective without more criteria than this. Are there, for example, some essential participants under state planning guidelines (e.g., clients)? If 50% of these interests are represented (I assume some sort of matrix of the members and the interests would be constructed) will a state be assured at least a “3”? This needs some work to avoid it becoming an endlessly disputed but almost meaningless measure.

1.4 Is the “vision” referred to the 1998 “vision”, the 2000-7 “vision” or the current “vision.” Must it be a vision of the state planning body (authority to compel) or is something adopted by an earlier, less directive but nevertheless participatory process acceptable? Is the interest here whether the vision was “formally adopted,” whether it has acceptable content (e.g., client-centered, but isn’t there more) or whether the vision has a meaningful connection to the delivery system (generally known and accepted)?

Part 2 Does the use of the word “rigorous” in the title to this part introduce a new criterion for state planning? What is its content? The subsections deal with organized and systematic input from diverse stakeholders, collection and use of empirical data, tracking plan implementation and revision of the plan. Is that “rigor?” Perhaps this isn’t the best word.

2.2 The use of timely empirical data is laudable. Buried in the list, however, is a data source that is distinctly different — “extant program evaluations.” Peer review systems, evaluations or other performance reviews by the state system are expensive, difficult and indispensable to an effective state

delivery system. Their purpose is different in kind from the other data sources listed, which are either about client-centered data (good) or relatively simplistic performance information from statistical systems (useful but limited). It would be better to have a separate subpart which directly inquires about the ways that the state delivery system pays attention to the quality and effectiveness for clients of the legal work of at least the LSC-funded providers (better, of course, all the providers) in the state. "5" might be an implemented system of peer review which is used to guide improvements. "3" might be a trouble response system, peer review in times of local problems. "1" might be no attention to finding out quality or effectiveness.

3.1.1 There is a difference between "addressing" the needs of all the potentially eligible clients from all the groups and actually "serving" those needs. The definitions elide the two concepts. In fact, pursuant to 45 CFR 1620, an LSC-funded program may well exclude one or more groups of eligible clients based on priorities for the use of scarce resources. The plan should address all groups and their needs, and should not discriminate for impermissible reasons, but the criteria for "excluding" are not consistent with 1620.

3.1.2 The phrase "potentially eligible poor persons with legal needs" is too similar to the phrase used elsewhere in the criteria to refer only to LSC-funded program eligibility. Perhaps it would be better to refer to this group as "low income state residents with legal needs".

In the definitions, you might start with an explicit acknowledgment that LSC is one of the funding sources with targets. E.g., "Most funding sources, including LSC, target"

3.1.3 and 3.1.4 These appear to be parts of the same broader criterion — identify and propose realistic means to overcome barriers.

3.2 "Expressed client goals?" See earlier comment. Is there an intention here to avoid saying "full range of legal needs" and "full range of client services," which is the language used in prior state planning guidelines? If there is, it would be better to address the purpose of the language change directly.

3.2.1 and 3.2.2 See earlier note about the distinction between "address" and "serve." What does "address" mean here? How does this relate to 1620. For example, if LSC-eligible low income persons (not yet clients) seek help with name changes, but an LSC grantee gives name changes a low priority and "excludes" those services, can the state get a "5"? I assume the intent of "address" is to have an alternative method of help in low priority matters, such as a website with self-representation forms and explanations. This might be clearer.

"Identified by clients" — this is similar to "expressed client goals" but could just mean "services sought by eligible applicants for services."

A more complicated problem here is that the plan, under earlier guidelines and even under 3.1.2 has to “address” the full range of services for all low income residents. I think the intention of 3.2.1 and 3.2.2 may be to inquire into the plan’s method of dealing with the subset of services and needs that an LSC-funded program can provide. But I’m not at all sure.

3.2.2 In what legal forums may LSC funds not be used? None. The parenthetical is misleading.

3.3 and 3.4 Almost all of these topics deserves to be the subject of a separate score because these are major headings for state planning under PL 98-6. This is the meat of planning, as opposed to the process and structure, and the message of this section is that none of these topics really matter very much.

3.4 The inclusion of “unbundled legal services” is odd. It isn’t like the other topics, it doesn’t appear in earlier guidelines, and it is by no means clear that it is as important as the other tools. I’d drop it. I would add “materials for self-representing individuals” (not limited to litigants, since many self-representation situations, e.g., wills, do not involve litigation).

3.4 and 3.8 The Instruction regarding hotlines is awkward. It would be clearer if worded affirmatively: “A Legal Advice Hotline offers legal advice over the telephone, not just intake eligibility determination.”

3.5 Because PAI is required under 45 CFR 1614, the use of private bar/pro bono attorneys should be in 3.4. It’s meaningless to include “staff attorneys” here. If the question is relevant (where has it ever happened that plans overlooked staff attorneys), it belongs in 3.4.

This Part is about whether the plan is “comprehensive.” Perhaps the remaining categories would be better subjects of a question like 3.1.1. “A state plan should address the possible use of” rather than “the plan calls for use of” each category of professional.

3.6 The state plan should not maximize services to clients eligible for LSC-funded services! It should maximize services to low income residents, some of whom may have the highest priority needs for services even though they, or their specific legal problems, are ineligible for services by an LSC-funded organization. The last sentence of the definition should end at “within the state.”

3.7 Trivial: Engagement “of” or “with”? Probably “with”. Again, it might be more consistent to ask whether the plan “addresses” engagement with the various types of entities. If the point here is collaboration accomplished, as opposed to considered, that should be made clear. If that is the point, does it belong in Section 2?

3.10.2 There is an unintended suggestion in the last sentence of the instruction. It could be read as

asking whether the state plan includes a strategy through which the LSC-funded programs or other legal services providers obtain these types of funding. Since you mean that the plan should include support for the courts or other entities that get these funds, the sentence should probably read “. . . includes a strategy or strategies to assist the courts and other entities to obtain funding”

3.11 The emphasis on the plan including quality assurance strategies is good, but there are too many strategies lumped together here. Again, the meat of state planning is to make a difference in client services. Almost everything listed here is an important part of the delivery system, and many are required. They could be all listed separately and scored separately. Or they could be lumped in smaller groups, perhaps one for learning processes (training and the like), one for assessment processes (peer review and the like), one for standards and one for discipline (bar discipline and client grievance and the like). Please don't send the message that these topics are so trivial that they don't need separate consideration.

4.1 The evaluator should be explicitly asked what alternatives to the current configuration the evaluator has considered, including alternatives that decentralize the configuration.

The heading of 4.1 should not limit the configuration discussion that follows to “maximize access” since the configuration criteria are about more than access.

One of the places where costs of state planning have been high is reconfiguration. If cost is not dealt with in Section 2, it should be raised here through inclusion of a new section 4.1.5:

Implementation Costs and Benefits of Reconfiguration. Evaluator will assign a score based upon his or her impression of the extent to which the configuration of service providers contained in the plan:

Has been implemented in an effective and efficient manner

Has incurred unnecessary or excessive costs

Has been so difficult or inadequately implemented that, to date, the benefits to clients in the state have been outweighed by the costs

Has the potential to eventually produce aggregate benefits to clients in the state that will outweigh the aggregate costs incurred in making the reconfiguration.

Section 2

This Section seems undervalued and underdeveloped in the draft Evaluation Instrument, perhaps because it receives five pages as compared to the thirty-nine accorded to the Process and Coverage materials in Section 1. I suspect appearances are deceiving. A normal state plan, dealing with all the categories of concern in a serious way, will have many dozens of “actions”. Some have hundreds. At what level of detail is the Evaluation Instrument actually designed to be used? Is the Evaluator to list 150 “actions” and then the state (perhaps that sufficient staff mentioned in Section 1?) to respond with a

narrative description for each of the 150? How detailed a narrative is desired? How many additional actions?

At what level of confidence does the draft Evaluation Instrument anticipate that “the evaluator will independently verify the information provided”? Will the verification involve phone calls and interviews, or actual examination of documents and observation of performance? Will the verification be documented as part of the evaluation report, so that disagreements about the information can be resolved?

How will the evaluator be guided in weighting actions implemented and actions delayed when assigning an “overall score”? Indeed, what weights are to be assigned to the “relative importance” of each of the goals of the State Justice Communities Planning Initiative? How is the “relative importance” of each action to be weighed in the scales of those goals?

As an aside, what are “the goals of the State Justice Communities Planning Initiative.” These should probably be explicitly stated.

As already noted, I think this section is much more important than Section 1, and should become the new Section 1. Perhaps more time could be spent figuring out how this is intended to work before the instrument is field tested, since the actual achievements of a state plan are at the heart of what should be evaluated (along with the consequences of those achievements). It is my guess that the report on Section 2 will run hundreds of pages, while the report on Section 1 will be just a few dozen. I am not clear this has been intended by the drafters.

Section 3

I believe in counting, and support the endeavor of this section. But there is a great risk of counting what you can count, instead of counting what you care about. The old joke involves the man looking for his contact lens under the lamppost when he lost the lens up the street. Why is he looking there? Because the light is better.

What we count now, cases closed by type of legal subject matter and extent of service, is a reasonable proxy for the quantity of work that lawyers and paralegals in a program do. But it does not allow meaningful comparison because funding varies so greatly. The possible related count, of cost per case, is more perilous because it introduces a potential for comparison that ignores priorities and effectiveness and outcomes. More than a decade ago I concluded that peer review assessments were the best way to measure what mattered in the work that programs do, even though the results were necessarily subjective, narrative and inherently resistant to quantification. Since then the “outcomes measurement” process has become considerably more refined, and offers some of quantification of the most meaningful aspects of legal services work. LSC has embarked on a performance measurement

inquiry which may lead to good measures at the level that matters.

Meanwhile, the draft Evaluation Instrument seeks some beginning “objective measures of the success of state justice communities planning.” My major comment appears at the start of this comment — there is value to subjective measures of the consequences of state planning, including the consequences in client services. As noted on page 3 of this comment, the Evaluation Instrument should be extended to include the aspiration that state planning lead to higher quality and more effective services and increased levels of service. The Evaluation Instrument should test the impact of planning and implementation on the quality, effectiveness and quantity of different kinds of client services in the state.

I have a few comments on the current proposals for numerical measures:

A.1, A.2 and A.3 Trivial — I think the formula should include “multiply by 100” so that the fractional results called for are converted to an integer between zero and 100, as intended.

A.3. Typo — the last instruction probably should be “coordinated advocacy on issues”

A.4 Technical. The first Instruction will lead to violations of FASB Statement No. 116 if people try to follow it. That Statement requires that pledges and contributions “owing” be reported as revenue when no longer contingent. Many legal services organizations are reporting pledges as revenue because it is required under these accounting standards. So the instruction’s parenthetical should be dropped.

“State and local government” under 45 CFR 1610 includes IOLTA. The second paragraph of the instruction should say whether IOLTA is included or excluded from the definition here.

A.4, A.5, C.1 and C.2 What poverty population should be used in the calculations? A.4 doesn’t say. The other sections use 125% of the federal poverty guidelines, presumably from the 2000 Census results. There are three problems with using 125%. First, as noted in A.5, it isn’t the full eligible population by income. It also isn’t the actual population eligible for services from an LSC-funded program because some of those counted are ineligible. Second, the distribution of funds by LSC is based on 100% because Congress desires a uniform and equitable distribution formula. 125% breaks that uniformity. Inevitably, the LSC data gathered here will be combined with the LSC funding data, but the combination won’t work because one set of dollars per poor person will be using 100% while the other is using 125%. Third, a number of programs do not use 125% for eligibility. The confusion should be cut off now by using 100% data; the state to state comparisons will work just as well either way and almost everyone makes the 100% population eligible (one program at least used to use 80% of the poverty level for eligibility).

Trivial: I would include cents as well as dollars per poor person. While the data is not truly meaningful, it is the tradition to report dollars per poor person in dollars and cents.

A.5 There are two problems with the measure of poor persons per lawyer. First, it does not include FTE pro bono lawyers, contract lawyers or judicare attorneys. At least the latter two, funded with program money, are essential to a proper comparison among the states. Perhaps pro bono should be excluded except for organizations expending a large portion of their resources on encouraging pro bono (e.g., Boston's Volunteer Lawyers Project).

Second, many legal services organizations use paralegals as advocates. For states in which this is true, the measure of poor persons per lawyer produces an artificially high number because the denominator excludes a significant number of advocates. In my experience, the measure poor persons per advocate is the better measure for comparing systems in their deployment of resources among the potential clientele.

B.1 LSC has this data now for each LSC-funded program; why is this to be produced by a separate report?

This isn't really a state plan measure because it excludes the work of organizations without LSC funding. In some states that is the majority of the legal services work done for eligible residents. While the count will never be complete because small organizations will lie beyond the pale and some larger ones won't comply with the CSR and MSR categories, why not make the attempt to count more comprehensively? At the very least, put a question in the planning area about "address the problem of counting how many are served" and ask for more comprehensive information in Section 3.

Cases closed is a flawed measure if "quantity of service provided" is the thing to be measured. Open cases have been worked. It may be true that the number of cases closed captures a normalized representation of the hours worked each year, but I'm not aware that that premise has been tested.

However, the real question may not be cases closed (which LSC knows for its grantees at least) but "penetration." What portion of the eligible population is receiving services during a year. For that data, the open as well as closed case data is essential, and so is a different way of counting our potential clients.

A program serving a 100% of poverty population of 1,000,000 may close 25,000 advice and brief service cases and 6,000 extended service cases in a year. A simple measure of penetration would be 31,000 cases divided by 1,000,000 poor, or 3.1%. (Note: on this measure, the national penetration of LSC-funded programs is about 3%, with one million closed cases and a poverty population of 35,000,000.)

A somewhat better measure would recognize that our clients are either families or unrelated individuals, not "persons" counted by the census (a large share of the 1,000,000 would be children, after all). In a population of 1,000,000 poor, there are perhaps 200,000 unrelated individuals and

800,000 people living in families that average 2.7 persons per household, or roughly 300,000 families. That means that 31,000 cases closed is a “penetration” of 6.2% (31,000/500,000).

But even that undercounts the true penetration because this hypothetical program probably has 5,000 open cases at the end of the year. These are families or individuals who have also been served during the year, for a total of 36,000 and a penetration of 7.2%.

Why is this relevant? Because we aspire to provide access to far more people; indeed, we hope one day to be available to provide an appropriate level of legal assistance through the complex, extended, comprehensive, integrated, client-centered, statewide delivery system to every low income resident with a significant legal problem. Penetration is a measure of how we are doing; closed cases is not.

Part C The heading says this material is to measure “Equity of Output.” In what appears to be the standard jargon of measuring performance, however, resources per poor person is an “Input” measure.

C.1 Who is expected to report this data? The instruction says “states” but it is probably the LSC-funded programs to whom such an obligation can be directed. Failure to provide the data may be a state plan weakness, but that won’t compel the data to be produced by non-grantees of the LSC system. This will also make the measure inconsistent, since the absence of data from some providers will create a reporting disparity separate from actual performance. Perhaps there will need to be a side report from the Evaluator regarding missing data?

As others will say more completely than I, very few states (one or two) have data on the actual numbers of hours spend on pro bono. In Massachusetts, where I served on the Supreme Judicial Court’s Pro Bono Rule Committee, the idea of mandatory reporting provoked a revolt among segments of the private bar, including the leadership of the Massachusetts Bar Association.

C.2 This measure appears to involve a close question. It is desirable to measure penetration in some fashion for each relevant segment of the eligible client population. Similarly, encouraging states to pay attention to such penetration seems congruent with state planning and delivery system objectives. At the same time, each new data gathering will have a cost — and the system changes will make a significant contribution to the unproductive administrative burdens that already drag LSC-funded programs away from serving clients. In addition, I wonder if there is any data suggesting that there is significant discrimination, or ignorance, about the distribution of services among these groups? Is there a real problem which this expense is designed to address? Or is it an example of something that seems sensible and useful but won’t really do much good and will inflict too much cost for the minimal benefits?