

To: Legal Services Corporation

From: Mark Marquardt, Assistant Director
Lawyers Trust Fund of Illinois (IOLTA)

Date: September 24, 2002

RE: "State Justice Communities Planning Initiative Evaluation Instrument, Sixth
Draft, August 9, 2002"

[Note: The following comments are based on my personal opinions, and do not necessarily reflect those of my employer or of any group or coalition with which I am affiliated.]

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"The great enemy of clear language is insincerity."

- George Orwell

"Politics and the English Language"

"I feel like a number."

- Bob Seger

"Feel Like a Number"

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When I was in college I would occasionally turn in ten-page papers with titles like "Broken Crockery and Shattered Expectations: Imagery in *The Taming of the Shrew*," and they'd come back marked "84." I would always wonder: "Why 84? Why not 85, or for that matter, 83?"

As I skimmed "State Justice Communities Planning Initiative Evaluation Instrument, Sixth Draft, August 9, 2002" – and I say "skimmed" rather than "read," because it cannot be read in any meaningful sense – my heart sank. Here is something that goes overboard in the opposite direction. In an effort to make the evaluation process appear objective rather than arbitrary, the evaluation instrument has been made unnecessarily complicated and, most likely, a waste of everyone's time.

Let me be clear that I am not in the camp that believes LSC does not have the right to ask all these questions. I salute LSC for pursuing the "state planning" agenda. Without pressure from Washington, D.C., I believe that many bad programs would still be in existence and many mediocre programs would still be in denial, making sad excuses as the world changed around them and they proved less and less able to adapt. The very fact that we have "state justice communities" is a step in the right direction, and I believe that my own state, Illinois, has made remarkable progress since 1998.

The basic problem is that a survey instrument of this type is exactly the wrong way to measure that progress. A critique of a state planning effort should be like the critique of a novel or a symphony, taking into account history and context, stories and characters, momentum and motive. What we have instead, in this draft, is a set of standards for rating the efficiency of an air conditioner. It is an attempt to capture complexity *using* complexity, which is like trying to catch a baseball with a brick.

To illustrate the hopelessness and misguided nature of this process, I have chosen the following passage more or less at random:

3.1.2. Plan identifies various conditions, regulations and limitations imposed on legal services programs by their funding sources, ensures that processes are in place to comply with such limitations, and uses multiple funding sources to afford services to all potentially eligible poor persons with legal needs.” Rating: 1 2 3 4 5

By way of being helpful, the section continues.

Instructions and Definitions: Most funding sources target their funding to specific classes of persons in need of legal assistance. The integrity of legal services programs and the continuing support of funders depend upon good faith adherence to the limitations accompanying program support. Each legal services program in a state has a stake in the reputation of legal services throughout the state in adhering to the terms of support grants. On the other hand, planning for comprehensive legal services requires careful meshing of a variety of funding mechanisms to afford maximum services to all potentially eligible poor persons with legal needs. Evaluator will assign a score based upon his or her overall impression of the plan’s provisions for ensuring the state’s conscientiousness in complying with eligibility limitations in program grants and its effectiveness in meshing a variety of funding mechanisms to afford maximum services to all potentially eligible poor persons with legal needs. A score of “5” reflects a full articulation of limitations arising from the sources of legal services funding, a comprehensive process to ensure compliance with them, and success in constructing a comprehensive services plan from a variety of restricted and unrestricted funding sources. A “3” reflects an adequate breadth of understanding of, and compliance with, limitations arising from the sources of legal services funding. A “1” reflects a failure to address these issues with any degree of sophistication. Evaluators may use ratings of “4” and “2” as well. Evaluator comments should note areas of particular need.

My first response to this, as a native speaker of English with a reasonably expensive liberal arts education, a grounding in the social sciences, and a dozen years of involvement with legal services funding, is: “*Huh?*” (That is only **one** question. There are 55 pages of this stuff!)

My second response is that this “question” or “standard” is a dog’s breakfast of rebuttable presumptions. To wit:

“Each legal services program in a state has a stake in the reputation of legal services programs throughout the state in adhering to the terms of support grants.”

Really? My guess is that any accounting or grant-allocation screw-up at one program would be investigated and dealt with as an isolated incident, based on the facts. It would not necessarily lead to the conclusion (by the Department of Justice, or the Tri-County United Way, or the Chicago Community Trust) that all legal services programs are presumed to be dishonest or unreliable. (We funders are not always the most fair-minded people, but give us *some* credit.)

If you accept this premise (I don’t), then it is obvious that setting up some type of monitoring system for grant accounting and compliance is a top priority for any state plan, and the scoring system proceeds on this assumption. Consequently, the survey instrument asks if the state plan “ensures that processes are in place to comply with such limitations.”

The Illinois state plan is silent on this issue, so I assume that we would plead “no contest” and receive a score of “1.” However, I would argue that there *are* “processes in place” to assure grant compliance without having to take the time and trouble to set up a miniature Office of the Inspector General as part of the Illinois state plan. (These “processes” are controlled by the multiple layers of accountability built into each organization: staff, board and independent auditors. All of these people are worried about continued funding, not to mention the avoidance of criminal penalties for fraud. These would seem to be much stronger incentives toward compliance than any vague concerns about the statewide reputation of legal services.)

Finally, is this really a priority? At its core, shouldn’t state planning be about setting priorities based on the needs, conditions and realities in a given state? And if a plan is more than a checklist, can a checklist be used to evaluate a plan?

I have a feeling that if the authors of this document were asked to evaluate the U.S. campaign in the Pacific during World War II, their main question would read something like: “Did the plan envision the use of all air, naval and land forces, plus the forces of allies and indigenous resistance movements, to attack and recapture every enemy held island between Hawaii and Japan? 1 2 3 4 5.”

In fact, as we all know, the U.S. won the war by a strategic process of “island hopping,” skipping over dozens of heavily fortified islands and leaving them isolated and ultimately useless. This shows the kind of sweeping creativity that cannot be captured on a checklist.

In state planning, as in war, you have to pick your battles. I think we should afford the armchair admirals who run this process the latitude to think creatively and focus on the big picture, without deflating their score on the basis of minutiae.

As much as I feel for the people who will be on the business end of this survey, I feel even sorrier for the people who will have to use it. My guess is that they will spend a great deal of time each morning and evening at their Hyatts or Holidomes trying to puzzle out exactly what they are supposed to be trying to learn.

If the questions are impossible to figure out, imagine the answers – even to questions as pedestrian as 3.1.2, cited above. Does the state have a grant compliance monitoring mechanism? (“Well, kind of. Not really. But we can create one.”). Does the plan “use multiple funding sources to afford services to all potentially eligible poor persons with legal needs?” (“All legal needs? Well, I mean, its hard to raise any money to do civil work for prisoners. And after those last federal funding cuts we had to close the one office in the 15th Circuit. But we did get that state grant to do children’s SSI cases. But then we lost it when the state budget went into the tank. *Etc., etc.*”) Sounds like a “3” to me!

There are, in my view, two possible explanations for the bad spot we find ourselves in at this point in the process. The most benign is the well-documented phenomenon of “groupthink,” the idea once a collection of individuals ceases to question certain basic premises, then that group is off to the races with very few constraints. Having accepted the need for a highly complex survey instrument that is as littered with jargon as Angola is littered with land mines, this is the logical result. As such, it is a nice piece of work.

A somewhat more melancholy explanation is that we have internalized the slings and arrows of our critics and that we have lost some degree of faith and some measure of heart. We have come to believe that the best way to humor those critics is to slap a “4” on something, so that we can say: “See, its a ‘4.’ A ‘4’ is good. But its not too good. We’re not just handing out ‘5’s’ around here. We’re using objective standards to hold people accountable.”

While I would very genuinely like to be constructive in my criticism, my only real suggestion is that the design team go back to the drawing board. The new process should start with a list of a dozen or so questions – focused on large themes, written in conversational English - - that are likely to generate answers worth reading. These answers could be used to begin a conversation that would further the process of *learning*. That, one assumes, is a large part of the rationale behind “creating state justice communities” in the first place.