

MEMORANDUM

TO: Legal Services Corporation

FROM: Jonathan D. Asher

DATE: September 27, 2002

RE: Comments on State Justice Communities Planning Initiative Evaluation Instrument

On behalf of Colorado Legal Services, I appreciate the opportunity to comment on the State Justice Communities Planning Initiative Evaluation Instrument. The Instrument obviously reflects considerable time and effort on behalf of the Design Team and LSC staff. Those of us in the field are the beneficiaries of your labors. Nonetheless, it is respectfully submitted that the document is overly long, will require inappropriately large amounts of staff time and resources to complete, is not sufficiently nuanced or flexible, does not adequately take into account the numerous variations and local circumstances in each state and may not be politically well advised. The Instrument also holds Legal Services Corporation funded programs accountable for many decisions, processes and results over which the program and its leadership may at most have influence but no actual control. I believe the basis for these concerns literally spill from the Instrument and need not be detailed. If, however, you wish me to do so, I would be pleased to respond to your request.

A few overriding concerns are worthy of note however,

- Frequency of data collection. The data required to be collected annually may be prohibitively time consuming and expensive. Even requiring the collection of data every three years may be too often to expect for an assessment as extensive as is contemplated by the Instrument.
- Many of the items call for an evaluator's "overall impression". This is hardly a uniform, objective, predictable or probably helpful standard and its utility and validity will depend in large part on the skills, experience, values, time and judgement of the evaluator. It may not be worth the time and cost involved.

- There are complicated issues of legal responsibility of LSC and other program Boards of Directors and the authority of a state planning body. Such issues should be more thoroughly considered in evaluating the issues of accountability.
- A full range of service should be provided but requiring a detailed description of how it is achieved is beyond the authority of LSC and may even be politically unwise to request. LSC's interest in ensuring a full range of service is understandable and well intended. An Instrument designed to capture detailed information on restricted work within a state is beyond what LSC should seek or expect.
- Without staff and adequate funding the expectations implicit in the Instrument are unrealistic. In states with an integrated Bar or other fortunate circumstances such staffing and resources may be available. In states with voluntary Bar Associations, shrinking judicial department budgets and a sagging economy and competing needs, it is unreasonable to expect that significant resources will be committed to this effort. Some support and limited resources may be available. What it will take in time and resources to fully assess legal services as contemplated in the Instrument is highly unlikely.
- The assumption that if something is not in writing that it is not being done is probably erroneous. Many things are best committed to writing and accountability frequently is increased if a course of action is put on paper. It is not, however, uniformly the case that if it is not written it is not happening.
- The Instrument seeks to assess data, particularly on pro bono programs, that does not currently exist, would be very expensive to collect and in some places is even beyond the control of the LSC funded provider to collect.

A few other issues should also be specifically addressed.

1. Client-Centeredness (1.1.1) needs to be more fully defined and explained.
2. What is included in the term "all legal services programs (1.1.5)" needs to be limited and better defined.
3. Organizational Structure (1.1.11). It is questionable whether the formal planning bodies preferred in the Instrument, in fact, will better serve low-income clients in every state. The Structure should flow from wise political judgement, not necessarily a preference (more points) for a Supreme Court Rule or Statute. There may be situations in which

such a structure would be unwise or even counterproductive to the needs of low-income clients.

4. Diversity (1.3). The Instrument seems to require and to hold LSC funded programs accountable for ensuring diversity when non-discrimination may be all that is appropriate or allowed. National origin, religion, and sexual orientation may not either be obvious nor an appropriate subject of inquiry. Thus, to require such diversity on a state planning body may be politically correct, but legally indefensible. Someone's sexual orientation is not a proper subject of inquiry and may not be common knowledge. Planning bodies should, however, reach out to organizations which may well serve such diverse populations. Furthermore, how big a group would be required to include "all" nationalities?
5. Equity in resource allocation (Section 3, C 1). For those of us struggling to build a truly statewide program the notion of geographic equity in the allocation of resources raises the specter of resource "entitlement" by county which may be counterproductive to statewide effectiveness. Equity in resource allocation smacks of the way things used to be - equitable, but ineffective. There must be better ways to ensure reasonable access to services than to expect that dollars per county will translate into uniform benefit for clients.

It is my hope that through consideration of constructive comments, as these are genuinely intended to be, and through increased dialogue with programs and our other partners and certainly through the field testing of the Instrument, a more manageable, more limited and more helpful Instrument will evolve.

If you have any questions concerning these comments or if I can be of any further assistance in this important effort please let me know.