

To: Legal Services Corporation

From: L. Jonathan Ross, Chair, Standing Committee on Legal Aid and Indigent Defendants

Re: Preliminary Comments on State Justice Communities Planning Evaluation Instrument

Date: September 27, 2002

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I write to provide preliminary comments on the Legal Services Corporation's proposed "State Justice Communities Planning Initiative Evaluation Instrument." I cannot provide formal comments at this time on behalf of the Standing Committee, because the committee will not have an opportunity to review this matter until its next meeting on November 16, 2002.

Let me begin by recognizing the immense amount of thoughtful work that LSC staff and consultants have done in furthering this initiative. The instrument correctly recognizes throughout the significant contributions made by private lawyers and the organized bar to planning and implementing a state delivery system, and in providing services within that system.

I also believe that it is important that funders and those who participate in building strong state justice communities have at their disposal some tools to use in judging the success of the system in meeting client needs. It is vital that we insure that limited resources are used efficiently.

While it is important to evaluate our achievements in building state justice communities, it is equally important that (1) the cost of measurement does not itself consume a disproportionate amount of resources, and (2) there is a realistic probability that the results of the measurement process will improve the delivery of service to clients. I am concerned that the initiative as conceived and the instrument as drafted does not comport with these principles. It appears that this will impose very significant burdens in terms of personnel time and direct costs for collection of data. This threatens to divert those limited resources from the actual delivery of services. And it is not clear at all that there will be sufficient benefits from this measurement process to justify even a more modest expenditure of resources.

Having participated in LSC's Task Force for development of standards for state planning configuration determinations, I was pleased to see that this initiative incorporates that Task Force's report. At the same time, however, I am concerned that the draft instrument seems to impose a number of additional policies/standards that significantly extend the Task Force's report. Would it not be more appropriate for LSC to use a similar blue-ribbon task force, or even to use a negotiated rulemaking process, before adopting significant new state planning standards?

In reviewing the "Objective Measures" portion of the draft instrument, several concerns came to mind. Most importantly, I am not aware of any reliable way to collect information on the number of hours spent by the private bar in providing pro bono services. Only two states require attorneys to report information to the bar or the state supreme court. Our experience has been that voluntary reporting systems are woefully inadequate for gathering such information. It does not seem reasonable to impose on legal services programs and/or the bar a duty to gather information that cannot reliably be gathered absent a mandate by the state supreme court.

Thank you for the opportunity to submit these preliminary comments. I will bring this matter before the full committee when it meets in November, and will provide further comments to LSC at that time. We look forward to participating in future debate and discussions as this initiative evolves.