

Richard Sloane

From: Don Saunders <D.Saunders@nlada.org>
Sent: Wednesday, July 11, 2012 7:43 PM
To: Richard Sloane
Subject: NLADA Comments on draft LSC Strategic Plan
Attachments: Comments on Draft Strategic Plan.2. 7 12 (2).docx

Hi Richard. I hope you are doing well in this sweltering environment.

Please find attached the comments of NLADA on the LSC draft Strategic Plan. We look forward to discussing these comments more broadly in the future.

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MEMORANDUM

To: Richard Sloane, Chief of Staff and Special Assistant to the President, LSC

From: Dennis Groenenboom, Chair, NLADA Civil Policy Group

Don Saunders, NLADA Vice President, Civil Legal Services

Re: Comments on Draft LSC Strategic Plan 2012 – 2016

Date: July 11, 2012

The National Legal Aid and Defender Association (NLADA) appreciates the call for comments issued by LSC regarding its draft Strategic Plan covering the years 2012 – 2016. This response reflects the views of a wide range of NLADA volunteer leaders both from within and outside the LSC provider community.

We agree with the draft's premise that your planning process occurs at a critical, even extraordinary, time in this nation's effort to ensure that our legal system provides equal justice for people living in poverty in the United States. The long and deep recession that has torn at the fabric of our nation has led to 64 million people living at or near the poverty line being eligible for legal services from your grantees. As you note, the economic times have also created extraordinarily tight budgets for LSC organizations.

The draft represents a serious and significant effort by LSC to prioritize its activities over the next five years. Such an effort is vital to communicate a vision and aggressive strategic approach that marshals LSC's scarce resources in the most effective manner. You should send a clear signal as the largest funder of civil legal aid in this country to recipients and the broader stakeholder community about what is important to you.

While we agree with and support many of the objectives contained in the current draft, we will only comment on areas of concern.

There are several issues we submit for your consideration as you go forward:

- **Goal 1. Maximize the Availability, Quality, and Effectiveness of Legal Services**

- 1) **LSC Funding.** In our view, as pointed out in NLADA's letter to LSC regarding the funding mark for FY 2014, your advocacy in the Congress for more LSC funding is the most important function of the Corporation. It is essential that you lay out a vision, rationale and clear statement of need to maximize the federal component of funding necessary to meet our society's promise of equal justice for all Americans. While that responsibility is suggested in several parts of the draft, we believe that

this function and commitment of LSC should be stressed explicitly, as it was in LSC's last Strategic Plan (Goal 1, Objective 4).

The fact that LSC's grantees are unable to serve millions of disadvantaged individuals and families seeking their assistance underscores the need for LSC to focus its energies on educating the Congress about this terrible gap in our justice system. We support your stated goals of developing more compelling data to underscore the need for and effectiveness of civil legal assistance. Convincing policy makers on both sides of the aisle about the value of investing in the LSC-funded system should be a paramount function over the next five years. As we have pointed out many times in the past, federal funding for LSC remains the essential building block upon which the entire civil justice system for poor people is built.

2) Best Practices. We support your focus on using the resources of LSC to identify and promote best practices beneficial to the maximization of effectiveness in the legal aid community. We particularly support the inherent recognition in the draft of the wide range of best practices relevant to improving the quality of civil legal assistance. We view an effective delivery system to include a **wide continuum of services** - from strategic impact advocacy, to unbundled legal services, to effective use of technologies and data sources to greatly expand the reach of the system to serve those who can effectively represent themselves when provided with the information they need. While your grantees may differ greatly as to the resource choices they make along this continuum of service, LSC should ensure that its expansion and sharing of best practices covers the wide array of management and advocacy practices relevant to your grantees.

We would also suggest that your commentary on best practices be much more specific as it relates to issues of **diversity and cultural competence**.

The LSC website contains a "Diversity Statement" that LSC embraces diversity as a core value. The absence of even the word diversity in the 2012 Strategic Plan is a significant concern. The Strategic Plan is a document that signals to the country and the world how issues of difference will be engaged by LSC management and board. We encourage that you incorporate a clear and early statement in the 2012 Strategic Plan that mirrors the Diversity Statement from LSC's website which states:

LSC embraces diversity as a core value. We recognize that our success as a corporation depends upon creating and maintaining a diverse team of talented professionals, and we are committed to a workplace that reflects and supports diverse individual backgrounds and perspectives. Our commitment to diversity, inclusion, and non-discrimination includes race, sex, age, religion, national origin, sexual orientation, gender identity/expression, personal appearance, genetic information, political affiliation, marital status, family responsibilities, disability and status as a veteran, and any other characteristic protected by federal, state, or local laws or regulation. We strive to have a workplace that is comfortable and welcoming for everyone.

The ABA Standards have two standards (2.4 and 2.5) that relate specifically to diversity and cultural competence in addition to an inclusion of the concepts throughout the document from the

introduction to the last standard. We would encourage a similar overview of the entire Strategic Plan to incorporate language that evidences LSC's strong commitment to diversity, inclusion and non-discrimination as core values.

3) Performance Management. This initiative holds a number of concerns that we would urge you to seriously consider. We clearly understand the need for LSC and the entire legal aid community to develop evidence-based data to improve the quality and effectiveness of the legal services grantees provide and to generate demonstrable results for funders and other stakeholders. However, as currently drafted, the Strategic Plan is ambiguous at best regarding a number of points we believe to be vital to the current system of delivery.

First, the draft is silent about the role, if any, of the existing LSC Performance Criteria as a quality tool going forward from the adoption of the new Strategic Plan. The criteria were developed with painstaking care through a process that involved a number of recipients and others knowledgeable about quality in the delivery of legal services. They are also indexed to the ABA Standards for the Provision of Civil Legal Aid. These criteria have been in use since 2007 and have served as the basis of LSC oversight and quality improvement initiatives for a considerable amount of time. Our general feedback around the usefulness and relevance of the criteria has been uniformly positive. The criteria clearly define the various areas of legal representation essential for quality legal assistance and have useful indicators to help measure a program's success toward the respective performance goals. We recognized that much has changed, and the need for updating is obvious. However, we suggest that you develop that revision using the framework already in place with the existing Performance Criteria.

Second, our most serious concerns center around the draft language related to quantitative metrics. The performance standards and metrics as they relate to measuring **outcomes** clearly suggest to us that LSC is moving toward a system of national outcome measures, identical in their application to each of your 134 grantees.

In the past, LSC has considered the imposition of a national system of outcome measurements on its grantees. We urge you to reject that approach as you give final consideration to your Strategic Plan.

A national outcome measurement system that focuses on generic results obtained for clients would serve to stifle creative local program efforts to develop ways to use outcome measures to improve program management and to increase program quality and effectiveness. These efforts should be tied to existing demographics and priority areas of service as they greatly differ among your various geographical components. You should avoid such a dramatic shift to centralizing delivery at the national level. LSC can develop systems to capture more effective evidence-based data and measure program performance differently while still honoring the concepts inherent in providing local flexibility in deciding how to spend scarce federal resources in conjunction with other funding sources in a coherent whole.

A national set of outcome criteria should not be used as an indicator of the quality of a particular program's services. LSC rejected this approach in the past after giving the issue careful consideration and considerable analysis and concluding that collecting national case outcome data is beset with significant difficulties and not essential to helping LSC determine whether a civil legal aid program grantee is effective. In addition, there are a variety of burdensome administrative

recordkeeping and cost issues involved in collecting such data that raise significant cost-benefit and accuracy concerns. Furthermore, there may well be severe unintended consequences from collecting that data when seeking funding, particularly at the federal level, including adverse reactions in Congress and imposition by Congress of its own narrow access-focused outcome system.

Therefore, NLADA does not believe that LSC should proceed to include within the Strategic Plan an effort to develop a national outcome measurement system. That is not to say that NLADA does not support LSC in its effort to gather, maintain and use data on the outcomes achieved by its grantees in their local communities. Instead, to move toward the goals of this Initiative, LSC should encourage its programs to establish their own outcome measurement systems that are keyed to the outcomes the programs themselves have determined are relevant to their own priorities and management objectives. In conjunction with grantees and their representatives, LSC should develop templates and tools to assist grantees to set goals and measure outcomes.

To date, a number of states and LSC grantees have adopted their own outcome measures as a means of addressing local priorities and differing client goals and needs. A one-size-fits all set of national outcome measures is antithetical to the highly decentralized civil legal aid delivery systems.

Moreover, any national system of outcome measurement administered by LSC may result in the imposition of very detailed and time-consuming record keeping and documentation requirements that LSC will feel compelled to impose in order to ensure that the data is “accurate” and fully documented.

Third, we also have concerns with the **efficiency metric**, as it too could be used to centralize legal aid delivery into a one-size-fits-all system that would unduly stress the importance of case numbers over other, reasonable measures of quality. Your 134 grantees operate in very different environments. On a simple measure, a dollar in New York City does not buy as much as a dollar in Albuquerque. To judge program performance on cost-effectiveness alone will not even provide a true measure of quality when used to measure a provider’s cost per case. We also caution you to consider other unintended potential consequences of such an approach, such as the depression of the already abysmally low legal aid salary structure, in an effort to hire more personnel to close more and more cases.

Even more significantly, as the saying goes: “We should avoid valuing what we measure rather than measuring what we value”. As previously noted, your grantees have carefully crafted delivery models that allocate resources to a broad continuum of legal assistance, including representational activities aimed at achieving “lasting results” under Standard 2.6 of the ABA Standards for the Provision of Civil Legal Aid and current LSC Performance Area Three (1)(c). The results of some of the work necessary to address recurring, systemic issues affecting large numbers of eligible clients are difficult to measure under a cost effectiveness approach. Some of these cases are time consuming and expensive. We urge you to avoid a national measure that significantly dulls the incentive to pursue lasting community outcomes by primarily measuring cost efficiencies.

Again, we support the development and use of outcome measures aimed at improving program performance and outcomes. Yet we suggest that you work with grantees, funders and other

stakeholders to address the complexities related to measuring the impact of the legal assistance activities of your grantees. We do not believe that a system of national outcome metrics based upon a primary factor of cost effectiveness based upon the amount of legal services delivered is the appropriate way to proceed as you pursue your Plan over the next five years.

Fourth, with respect to the area of **performance triggers**, we reiterate our strong support for the maximization of the per capita based allocation of LSC basic field funding, particularly in light of the huge financial pressures facing all of your grantees. We ask that any system LSC develops to provide rewards or corrective actions be respectful of this principle.

4) Operational Support. As to training and support, NLADA stands ready to assist and partner in this arena in any way that we can. We appreciate your recognition that many other organizations, both inside the legal aid community (NLADA, MIE, the Shriver Center, etc.), and outside organizations are also involved in this important initiative with your grantees. Some of your focus areas are already being addressed by some of these organizations, though possibly toward a different end than that which you aspire to. We suggest that one area you identify - training for grantee boards - be expanded to cover a wider array of board governance training than simply LSC-specific training issues.

- **Goal 2. Become a Leading Voice for Access to Justice and Quality Legal Assistance in the United States**

Once again, we share this priority with LSC and enthusiastically support your focus on the general concept, both with the public at large and with potential sources of funding for your grantees. Creating and conveying a compelling narrative about the needs of LSC's clients and the work of your programs is essential to your mission, particularly in such trying economic times.

We only have a few comments on this goal:

- 1) Recognition should be given to poor people and community voices in the development, cultivation and delivery of the message.
- 2) We appreciate the sensitivity that the Plan expresses with regard to LSC's efforts to raise private funding for its own internal use to avoid competition with sources that might otherwise provide funding for grantee operations.

- **Goal 3. Ensure Superior Fiscal Management**

We support the concept of LSC doing all it can to ensure its own fiscal integrity and that of its grantees. You should approach this goal with the clear understanding that your grantees are staffed by thrifty, hardworking and underpaid advocates. They are under-resourced programs and providing them with support to ensure superior fiscal management with limited resources of staff, money and technology is certainly an important goal of the plan.

However, since this concept is one of only three strategic goals in the Plan, we urge you to take a broad view of the wide range of responsibilities that LSC has to the provision of quality legal aid in addition to ensuring a high level of fiscal management. As you consolidate your management structure and hire a Vice President of the Office of Grants Management experienced in grants management and internal controls, LSC should also ensure that adequate resources are devoted to supporting the programmatic side of your grantee's work.

As you restructure and pursue the strategic goal of fiscal management, you should ensure that your management and structure reflect both the current financial limitations on LSC's internal capacities and the need to ensure that a variety of tasks, including adequate support for the programmatic side of LSC's management, are addressed.

Thank you for your consideration of these comments. Please let us know if we can provide further information. We look forward to discussing these issues in more detail with you in the future and doing what we can to help LSC achieve its vision of an adequately resourced, quality system of civil legal aid.