

MEMORANDUM

To: Robert Grey, Chair, LSC Finance Committee
John Levi, Chair, LSC Board of Directors

From: Dennis Groenenboom, Chair, NLADA Civil Policy Group
Steven Eppler-Epstein, Chair, NLADA Resources Committee
Don Saunders, Vice-President for Civil Legal Services

Date: June 10, 2013

Re: NLADA Recommendation for FY 2015 LSC Funding Request

The National Legal Aid & Defender Association's (NLADA) Board of Directors and Civil Policy Group submits this recommendation to LSC in response to your notice seeking input regarding LSC's request to Congress for funding for Fiscal Year 2015.

We urge the Finance Committee to recommend a figure of **\$560 million** for FY 2015 for consideration by the LSC Board. This figure represents a reasonable increase to our recommendation from last year following our long-standing goal of consistent growth aimed at closing the Justice Gap in the United States.

This figure is also consistent with the well-reasoned requests submitted to Congress by LSC for previous years. Those recommendations define a multi-year plan for the measured, reasonable growth of federal support, aimed in part to return the LSC grantee community to the level of capacity that existed before the onset of this long period of recession. The approach likewise continues an effort to close the 55% turn-away rate of applicants with meritorious claims indicated by LSC's 2009 report on *Documenting the Justice Gap in America*.

We submit three fundamental rationales for this request:

- 1) *The huge gap between the availability of, and the need for, civil legal assistance for people living in poverty in the United States;*
- 2) *The continuing loss of capacity among LSC grantees due to an increasingly challenging fiscal environment; and, most compellingly,*
- 3) *The depth of positive outcomes for low-income Americans resulting from the federal investment in LSC and its grantees.*

1) **The Justice Gap.**

We understand that LSC is looking at a variety of data and evidence to support its budget request. We think the amount of our request for federal support for the justice system is justified by a wide range of empirical indicators that clearly demonstrate the huge, and growing, need for legal aid in the United States.

Census Bureau estimates project that over 60 million Americans are now eligible for services from your grantees. Defining the exact parameters of need among such a huge number of people is understandably difficult, as hard needs-based data does not exist at this point in time. However, there can be no doubt that the scope of unmet need in this country is overwhelming.

As we pointed out in detail regarding the FY 2014 request, comparing the level of federal support to the level provided in 1981 under the “minimum access” formula that was used in the formative days of LSC shows just how far congressional support for the civil justice system has slipped over the years. This analysis indicates that federal support relative to need for the basic infrastructure of the legal aid system in this country has fallen precipitously using today’s dollars. The relative level of funding has fallen by 300% since 1981, while the number of eligible clients has grown nearly 50% since 1981.

As your FY 2014 Budget Request dramatically indicated, since 1995 LSC funding per poor person in inflation adjusted dollars has endured a devastating 55% drop.

Of most immediate relevance is the steep decline in federal support for LSC over the last three years. Congressional funding for LSC has decreased from a high of \$420 million in FY 2010 to the current level of \$340.8 million, an erosion approaching 19%. During that same time period, poverty in the United States continued to spike as a result of the stubborn economic downturn. This juxtaposition could not have come at a worse time for those Americans in need of access to the civil justice system to vindicate their most basic and critical legal rights.

These cuts have led to the total loss of 923 personnel in LSC grantee programs across the nation – a 10.3% loss in just two years. Thirty offices have been closed due to these cuts. These losses also forced 71% of LSC offices to reduce client services, which lead to a 10% overall decline in cases closed in 2012, including a 5.5% reduction in the number of domestic violence cases, 10.1% reduction in child custody and visitation cases, 13.5% reduction in child support cases, and 10.7% reduction in landlord/tenant cases that were closed nationwide.

NLADA certainly welcomes, and will support in any way we can, the efforts of LSC and others to develop better data defining the actual need for legal assistance among the nation’s poverty population. We have committed significant new resources to research and gathering evidence-based analysis around critical issues related to civil legal assistance. Our new website, www.legalaidresearch.org, is making research available to the broader community in a much more systematized fashion.

However, there can be no doubt, based upon existing evidence and the clear experiences of your grantees in the field, that the current demand far exceeds the capacity of our system to respond. A request of **\$560 million**, while providing much needed assistance to your grantees and the clients they serve, would not begin to fully address the need for resources in the field.

2) Erosion of other funding sources.

The nation’s justice gap would be far greater except for the fact that the original idea of funding a minimum infrastructure at the federal level has indeed led to significant, though disparate, growth in other revenue sources that add to the numbers of LSC- grantee attorneys in the field. However, there can be no mistake that a fundamental commitment of adequate resources at the **federal level** is the critical building block upon which the development of these other revenue streams within state justice communities has been constructed.

Strong federal support for LSC is particularly important in regions that have historically lacked other resources to support their civil justice systems. That federal support is particularly critical on the Indian reservation, in the Deep South and Rocky Mountain regions, and for politically disfavored populations in need of justice. The

quality of the justice system should not be dependent upon where one lives in a country founded on principles of equality and justice under the law.

However, even in states with historically high levels of non-LSC funding, the erosion of those other sources of revenue is growing at an alarming rate. Anecdotally, NLADA has heard over the past year from a number of experienced leaders in the LSC grantee community who feel as if the current combination of funding cutbacks and growing client need has resulted in the most difficult conditions for their work and the civil justice system in their collective memories.

Grantees throughout the nation are suffering from serious funding cuts resulting from the economic downturn. In 2011, IOLTA income continued its downward trend, falling below \$94 million for the first time since the 1990's. That level compares with revenues over \$300 million in 2007. This stunning drop reflects both dwindling IOLTA fund balances and the continuing miniscule federal funds interest rate.

Except for private giving campaigns, data collected by the American Bar Association indicates that every other general category of funding to support civil legal aid is currently trending downward. For the first time since this information has been collected, the overall funding level is in decline.

In recent years, LSC grantees have faced growing challenges beyond the growth in the number of clients eligible for their services. These include the provision of service to an increasing number of cultural and linguistic minority communities who compose significant populations in many areas of the country ill-equipped to address the special needs of these populations. Programs have likewise found it even harder to serve large rural areas in light of the significant decrease in federal support for the delivery of civil legal services.

The obstacles facing LSC grantees in responding to the legal needs of the ever-growing number of people and families living in poverty in this country are overwhelming. In some states, these obstacles are being exacerbated by additional losses resulting from LSC's census redistribution. Given the difficult, austere fiscal climate that has been taking a growing toll on LSC grantees ability to meet their most basic challenges, the importance of growing support for civil legal aid at the federal level is more critical than ever.

3) An investment in LSC is an investment in good government.

LSC grantees serve as a critical and unique resource in helping low-income people and their families escape the shackles of poverty and become self-sufficient members of society. In these extraordinarily difficult fiscal times, the federal investment in legal aid ensures significant positive outcomes for our society that empower the poor and vastly increase the health and vitality of the communities in which they live.

Many legal aid offices now measure outcomes achieved for the families that they assist. Statistics from legal aid programs throughout the country demonstrate the positive results realized for clients from their access to legal services.

Legal aid is the "emergency room" of the legal profession. LSC grantees help clients with legal emergencies such as:

- leaving an abusive situation with the children;
- working with their landlords to preserve their housing;
- challenging mortgage companies to save their homes;
- appealing administrative agency decisions denying access to health insurance or disability income; or
- putting their lives back together after devastating natural disasters, as evidenced by the recent response of the legal aid system to Superstorm Sandy and the Oklahoma tornadoes.

Addressing any of these legal issues not only helps keep the individual client from falling further into poverty and despair, but also saves the communities in which these individuals live the high cost of providing shelter, increased social services and acute care that often becomes necessary when legal intervention cannot be secured.

The benefits of legal aid reach far beyond those who benefit from direct representation. The economic benefits of legal aid services have become increasingly apparent in the last few years, as pointed out extensively in LSC's FY 2014 Budget Request.

A recent report by Community Services Analysis, LLC (CSACO) illustrated many additional benefits to the community from the work of the LSC grantees in Arizona. Increased property values from reduced numbers of foreclosures, long-term employment of lower-income individuals due to enforcement of employment rights and significant savings on emergency housing are just a few of the many additional benefits shown by the study. During 2011, the CSACO study found that Arizona Legal Aid Services closed 3,522 legal matters resulting in \$3,167,599 in immediate direct financial community benefits and \$13,350,240 in long-term consequential financial benefits. The study found that the \$13,191,509 provided to Arizona programs in 2011 created a net value of \$84,328,327 to the communities they serve. This figure represents a social return on investment of **639%**. In other words, for every \$1 of investment in Arizona LSC providers, a value of \$6.39 was realized in these communities.

The continuing confluence of a growing poverty population and a significant erosion of the overall financial foundation upon which our legal aid system is built make it more important than ever that LSC send a strong signal to the Administration and Congress of the need for federal support for civil legal assistance.

We appreciate the consideration the Committee and Board have given in the past to the recommendations we have submitted on behalf of the field as well as your strong advocacy before the Congress with regard to funding for the delivery of civil legal assistance to the millions of clients in need of assistance from your grantees. Your FY 2014 request sent a strong signal of your commitment to advancing the cause of justice in the United States and provided a strong and eloquent message as to why significantly enhanced federal support is so crucial. That support is greatly appreciated by the field and contributes to boosting the morale of your grantees, who struggle daily to make the ends of justice meet in their local communities.

We are very aware that LSC must present its request for FY 2015 in an intensively competitive environment for very limited discretionary federal funding. Yet, as the primary messenger to the Administration and Congress, LSC must remain steadfast in presenting the case that our democracy's promise of equal justice remains a paramount priority of our nation, particularly in times so challenging for millions of Americans.

SPECIFICS BUDGETARY ISSUES

There are several specific issues that NLADA would like to recommend with respect to various lines within the FY 2015 request.

Because of the overwhelming need for these basic field services (including migrant and Native American grants) we believe that the great majority of LSC funding should be granted to programs to provide those services to clients rather than be earmarked for any special projects. Local control over priorities and expenditures has been an enduring principle that has brought great strength, flexibility and efficiency to the legal aid system over the past thirty-six years. We urge you to continue to honor this principle as a general rule as you proceed in your

administration of LSC.

However, we ask that funds be specially allocated for two continuing LSC initiatives: 1) continuation of the Herbert S. Garten Loan Repayment Assistance Program; and 2) Technology Initiative Grants.

- **Herbert S. Garten Loan Repayment Assistance Program (LRAP).** NLADA remains committed to finding ways to assist legal aid lawyers in meeting the often staggering law school debt they face. We think that the reports to date of the Garten LRAP program indicate that it can play an important role in retaining high quality lawyers in LSC grantee programs. Additionally, you are aware that Congress has chosen to discontinue funding for the Civil Legal Assistance Attorney LRAP program and it appears unlikely that such funding will be forthcoming in the immediate future.

Therefore, we urge you to seek funding of at least **\$1 million** for loan repayment assistance for FY 2015. We would also offer to work with LSC in the coming year to develop more detailed data on the effectiveness of the program and to consider whether or not it is appropriately targeted to meet the most pressing needs in the attorney community in light of other existing LRAP programs.

- **Technology Initiative Grants.** NLADA has worked in partnership with LSC and its grantees in helping the civil legal assistance community make great strides in using technological innovation to expand the reach and quality of legal services. The LSC Technology Initiative Grants (TIG) have played a vital role in helping states and local programs to improve their ability to use technology to better serve their clients and to develop a national infrastructure necessary to support state and local efforts. Therefore, we strongly support the continuation of the Technology Initiative Grant program. We recommend that the FY 2015 appropriation request contain at least **\$3.4 million** for TIG.

As we have suggested in prior years' memoranda, we also remain concerned about certain specific areas related to delivery that remain in need of study by LSC:

- **Native American Special Grants.** NLADA continues to request that LSC study methods to address the significant disparities in funding for Native American programs and to help develop strategies to improve the delivery of services to Native Americans.
- **Training and Other Assistance for Substantive Advocacy.** We remain concerned about the need for training, professional development and advocacy support within the legal aid community. In today's environment of shrinking budgets, these issues are often neglected. Failure to invest in professional growth and expertise is both a short term mistake and a long term threat to the entire vitality of the system. NLADA would like to continue discussions with LSC about how it can work with the field to reinforce the importance of training and support and strengthen the capacity of the current system to meet these needs.

NLADA sincerely appreciates the support that every member of the LSC Board of Directors and staff have shown for advancing federal support for LSC. We recognize and commend your work with the Congress and the White House during the entirety of your time in office. We stand willing to support your efforts in any way we can.