

Guidance for the LSC State Planning Report
Due October 1, 1998

During the ABA convention in late July, Guy Lescault convened his usual meeting of state planning coordinators. About 10 states attended. Much of the discussion was about the LSC State Planning Report due on October 1st.

As the discussion proceeded, it became clear that participants did not share a common base of information. In particular, some participants did not know the history of the state planning effort. Others did not understand that the report due on October 1st is the first step in a long-term effort by the LSC to improve program quality using state planning. Still others were unsure what to put in their report.

This article 1) describes the context of the LSC state planning effort, and 2) offers an approach that states may want to use when preparing the October 1st report.

Background

LSC recipients in every state are required to submit a report on their state planning process to the LSC on October 1, 1998 (endnote 1). A state planning process is defined in LSC Program Letter 98-1 as a process “to examine, *from a statewide perspective*, what steps should be taken... to develop further a comprehensive, integrated statewide delivery system (2).”

Program Letter 98-1 identifies seven issues that must be addressed by each state (3):

- 1) Intake and provision of advice and brief services;
- 2) Effective use of technology;
- 3) Increased access to self-help and prevention information;
- 4) Capacities for training and access to information and expert assistance;
- 5) Engagement of private attorneys;
- 6) Development of additional resources; and
- 7) Configuration of a comprehensive, integrated statewide delivery system.

For each of these issues, state planners, in their report, are asked to

- “Assess the strengths and weaknesses of the current approach;
- establish goals to strengthen and expand services to eligible clients; and

- determine the major steps and a timetable necessary to achieve these goals (4).”

The issues to be considered in the state planning process are discussed in LSC Program Letter 98-1, and in *State Planning Considerations*, a document distributed with Program Letter 98-6 (5). Key issues in both of these documents have been summarized in “Instructions for State Planning Reports”, also distributed with Program letter 98-6. Anyone working on the October 1st report should read Program letter 98-1 and *State Planning Considerations* rather than rely on the brief descriptions of key issues in “Instructions for State Planning Reports”.

Part 1: Context

LSC Commitment to State Planning

It is vital that states understand that the LSC is committed to the development of a comprehensive, integrated *statewide* delivery system in each state. In fact, development of a comprehensive, integrated statewide system could be seen as the LSC’s primary goal. As states that participated in the latest round of competitive bidding are well aware, the FY1999 RfP required each applicant to describe in some detail the steps it has taken, or will take, to address the seven issues listed above, and to coordinate with legal services providers in its state and with non-legal providers in its service area (6). Over the next few years, LSC recipients can expect to see an even greater emphasis on coordination and integration in the LSC’s RfP’s.

More immediately, states can expect that the LSC will read the October 1st report carefully. LSC staff have considered using expert panels to help them review parts of the plan. Groups similar to those used when there is more than one applicant for a service area in the competitive bidding process may be used to review plans (7).

All states should expect to receive some kind of LSC response to their October 1st report, probably in early 1999. States should expect to then enter into a continuing dialogue with LSC staff regarding the development of a comprehensive, integrated statewide delivery system in their state, with particular emphasis on the seven issues outlined in Program Letter 98-1.

The Past

An understanding of events leading to the LSC's state planning initiative can be helpful in deciding how to prepare the report to be submitted to the LSC on October 1st.

The state planning effort originated in two meetings held in June, 1995. One, in Washington, brought together program directors and the staffs of NLADA, CLASP, PAG, and the LSC. The other, in Chicago, was attended by members of several ABA committees, ABA staff, and the then president of the LSC, Alex Forger. At the time, LSC funding stood at \$400 million. But it was clear that a substantial cut in LSC funds was coming, that competitive bidding and restrictions would be imposed, and that states would be given control of welfare and other programs of major importance to poor people.

Both groups agreed that steps had to be taken immediately to preserve poor people's access to a full range of services, to prepare for the cut, to preserve state and national support, to expand advice and brief services, and to mitigate the effects of competitive bidding. Further, because delivery systems and non-LSC resources varied so much from state to state, the locus of planning and action would have to shift from the national to the state level. Hence, the name "state planning effort".

State planning, as envisioned in the two June meetings, was to be done by a broad-based group consisting of legal services directors, staff, and board members; representatives of the private bar; other service providers; representatives of client eligible groups (8); and, depending on the state, judges, legislators, representatives of business groups, and others with an interest in equal justice. This group was to take responsibility for the preservation and development of civil legal services for the poor in their state. As a practical matter, that meant that the group would seek substantial new funds at the state level; ensure that each state had at least one unrestricted program; mobilize private attorney resources to preserve access and cover cases that could no longer be handled by LSC recipients; find a way to preserve training and support for advocates; and consider creating legal hotlines, pro se support, and other activities intended to cushion the effect of the cut in LSC funds.

Despite the "state planning" name, the goal was not to produce plans, but to take immediate and effective action. To support this effort, the ABA Board of Governors funded a proposal submitted by the Standing Committee on Legal Aid and Indigent Defendants (SCLAID) to create a joint ABA-NLADA project, based at NLADA, called the State Planning Assistance Network (SPAN) (9).

The LSC formalized its commitment to state planning in mid-1995, when it required each state to submit a report on its state planning process by November, 1995. The issues to be addressed in this document were similar to those in the broader planning process, with one exception: the LSC required states to examine the number and size of LSC funded programs in its state, and to consider whether client services could be improved through mergers and consolidations of programs.

In the short run, the LSC planning process appeared to have little effect. LSC staff did not follow-up on the plans, in large part because the first rounds of competitive bidding absorbed all of their time. The emphasis on program size also appeared to have little impact: few mergers took place in 1995. But, over the next two years, some LSC recipients did merge. A roundtable meeting on the effects of these mergers in early 1998 found that, although mergers were almost always hard to pull off, the outcomes were generally good: clients appeared to be better served by the programs that had merged during 1996 and 1997 (10).

By the fall of 1997, more than two years had passed since the original call for state planning. Almost every state had created a state-based process. In some states, very significant progress had been made: the legislature made new funds available, in the form of dedicated filing fees or general fund appropriations; unrestricted programs were in place; training and support for advocates continued; pro bono programs had been expanded; “legal hotlines” had been created; and judges were considering ways to make the courts more “user friendly”. Many other states had less impressive records, but still had something to show—usually, new funds or significantly expanded pro bono programs. But some states—especially in the south and the mountain areas—had been unable to make much progress.

Although the gains over the past two years had been strikingly uneven, there was a sense in mid-1997 that the first round of state planning had run its course. Nevertheless, much remained to be done, even in the states with the best records. But what did “state planning” now mean?

Part of the answer emerged during the Effective Delivery '97 Conference in Dallas in September, 1997: the legal services community had finished its mourning over the cuts and restrictions Congress had imposed on the LSC. Instead, there was a palpable sense of commitment to finding effective ways to address the most important issues in our clients' lives. Every workshop provided proof of a new sense of energy in legal services. New issues were being addressed, using new delivery techniques. Legal hotlines and “holistic delivery,” once seen as newfangled ideas, were now clearly part of mainstream legal services. Startling advances had been made in use of

computers to improve communication between advocates, and more importantly, to make information available to poor people.

Happily, this new energy coincided with the beginning of the Project for the Future of Equal Justice (PFEJ) (11), an Open Society Institute (OSI, funded by George Soros) and Ford Foundation initiative to support efforts to ensure that all Americans have access to equal justice. Immediately after the conference, the PFEJ announced several new initiatives to support change in legal services programs, beginning with a full scale effort to improve use of computer technology.

Legal services was clearly moving again, but where was it headed? And how would we get from here to there? All signs pointed to the need for planning at the program, state and national levels. But every plan starts with a vision—something practical, achievable, and better in some important way than what now exists. In 1995-96, crisis generated vision. It didn't take a lot of imagination to realize that programs needed more money and clients had to have access to a full range of services. But what now, when resources were so different from state-to-state, and when devolution had given states such power over the lives of the poor?

So an effort began to stimulate a new vision for legal services. That effort, which is still underway, reached a milestone with the publication by PFEJ of *Discussion Draft: Comprehensive, Integrated Statewide System for the Provision of Civil Legal Assistance to Low Income Persons to Secure Justice for All*. This document contains a new vision for civil legal services based on a single fundamental premise:

“Each state should create and maintain a comprehensive and integrated system for the provision of civil legal assistance to all low-income persons with legal needs” with the aim of “securing equal justice for all.”(12)

The envisioned system provides services that go far beyond anything now in place, and very far beyond what can be accomplished with LSC funds. This vision needs to be widely discussed and perhaps changed. Once accepted—not through some formal process, but by commitment of hundreds of leaders to make the vision real—the stage will be set for a new round of state-based planning and action. Planning and action that will go on for years, because any vision that we can accept will require a long-term effort involving many organizations and major new resources.

In February, 1998, the LSC announced its second state planning process. This process focused on seven specific issues, and again gave priority to “program consolidation.” The LSC's process is best seen as another in a long series of LSC efforts to push its recipients to improve services to eligible clients. The issues the LSC has asked recipients to address—with

the exception of program consolidation— are those that generated the most excitement during the Dallas conference. But how does the LSC process relate to the vision of each state creating its *own* system to secure equal justice for all?

The Future

Part of the answer lies in understanding where the state-based process may be in, say, five years. Consider the following scenario, which is clearly aspirational, but, at least in my opinion, is achievable in many states:

Discussion of the vision in PFEJ's Discussion Draft produced new commitment at the state level to expand and improve legal services. During 1999, broad-based planning groups (including representatives of client eligible groups) were formed (or revitalized) in every state. Each group first determined what the system in their state actually was. Most were surprised to discover that the number of organizations advocating for the poor was larger than they had expected, and that there was more pro bono and pro se activity than they would have predicted. This gave a higher priority to efforts to coordinate the work of all of the organizations in the system.

After gaining a better understanding of the system, most state planning groups agreed on a short list of ambitious goals. These goals usually included much higher funding (2 to 3 times 1998 levels in many states), substantially expanded unrestricted services, and greater use of computer technology, especially to educate and communicate with community groups. Action plans with long time scales (5-10 years) were then developed. The long time scales enabled the groups to be more strategic in nurturing support for legal services, especially in the organized bar and in the state legislature.

Over the next 5 years, under the leadership of broad-based planning and action groups, substantial new funding was appropriated by state legislatures, and new fund raising campaigns, aimed at many more groups besides lawyers, raised appreciable unrestricted funds. At the same time, better information about the effectiveness of various delivery methods enabled programs to make more effective use of their money. While no state could claim to be providing "100% Access," (13) substantially more people were being served.

By 2004, many states had institutionalized their broad-based planning and action group. These "commissions" as they came to be called, became responsible for legal services in the eyes of providers, bar leaders, judges, the legislature, poor people, and the general public. Services continued to be delivered by local nonprofits organizations with independent boards of directors. But the system as a whole was led by

the commissions, which set priorities for system development, allocated some of the funds (especially from large civil legal services endowments), and developed and enforced standards.

The conversion of legal services into a state based system was significantly aided by the LSC, which, in the absence of much competition for funding, used its staff to further the development of state systems. Taking inflation into account, LSC funds had not increased much since 1998. Nevertheless, the LSC retained considerable influence as a significant source of funds in every state, and as the only national funding source. Its commitment to the development of state-based systems was later seen as an important milestone in the equal justice movement.

While reality will no doubt diverge from the above scenario, it does seem likely that we are on the verge of a significant second state-based planning and action effort, which will:

- Be much more ambitious than the 1996-97 effort.
- Go far beyond the seven issues in the LSC's Program Letter 98-1.
- Create a significant unrestricted capacity in each state. And,
- Lead to the creation, in many states, of institutionalized groups responsible for the development of a comprehensive, integrated system of legal services in their state.

With all this context—past, present and future—in mind, it is time (or, maybe, past time) to turn to the report due on October 1st.

Part 2: Overall Guidance

This guidance recommends that states use two variables to determine the layout and content of their October 1st report:

1. Whether the state has, or has had, a broad-based planning group.
2. Whether the state can demonstrate progress towards the creation of a comprehensive, integrated statewide system.

In brief, the guidance is:

- If your state has, or has had, a viable broad-based state planning group, and/or a demonstrable record of moving towards a comprehensive, integrated statewide system (whether you have had a state planning group or not), use the October 1st report to create a record at the LSC of what your state has accomplished. Use only a small part of the report to respond directly to the LSC seven issues. If the LSC needs to know more, they will get back to you.
- On the other hand, if your state has not had a group and has made little progress towards an integrated delivery system, use the October 1st report to thoroughly and carefully address each of the LSC's seven issues.
- States that fall somewhere in between these extremes (as most do): use part of your report to build the record, and part to address the LSC's seven issues.
- All states should be very careful when discussing the work of non-LSC funded legal services programs, and the relations between LSC and non-LSC funded entities. In general, it is better to say too little than too much. If you have any questions regarding what should be said, contact Alan Houseman or Linda Perle at CLASP (14).
- Avoid making promises you may not be able to keep. Be general rather than specific. For example, say "increase funding in 1999" as opposed to "25% increase in funding by May 31, 1999". It is not yet clear what the LSC will do (if anything) when a state misses a goal.

Specific Guidance

Each of the sections below uses the same outline: your situation, objectives for the October 1st report, overall message you want to deliver, and suggested layout.

Situation: You have a planning group with a record of accomplishments

Objectives: 1) Create a record at the LSC that will serve as a point of reference in future reports to the LSC. 2) Establish the legitimacy of your state's process—at a minimum, membership and authority of the planning group and what it has been able to accomplish. 3) Notify the LSC that your state process has its own set of issues and priorities that may differ from the LSC's seven issues, and that your planning group will continue to work on its issues and priorities (15). 4) Prove that your process has done something worthwhile—describe how delivery has been changed or eligible clients' lives made better. 5) Give a general sense of what will be done in the future.

Overall message: Thanks for your interest in our process. We'll keep you informed of what we decide to do.

Suggested layout:

- 8 pages: Describe membership, authority of group. Show how group has used its membership or authority to secure additional resources, establish the need for expanded services, or make changes in the delivery system.
- 20 pages: If you have a written plan, summarize—but avoid being too specific. Describe in some detail the changes that have been made in the delivery system, and/or in clients' lives. Use your state's framework of issues and priorities, rather than the LSC's 7 issues (16).
- 7 pages: Address the LSC's 7 issues (may be repetitious, but that's OK)

Situation: You do not have a broad-based planning group and have made little progress towards an integrated system

Suggested approach: Skip the basic question about why your state has no planning process. Instead, do the best possible job of addressing the LSC's 7 issues. Don't claim that you will set up a planning process if you have no intention of doing so—the LSC is good at remembering promises made but not kept.

Overall message: Here are the answers to the questions you posed.

Suggested layout: Use all 35 pages to address the LSC's 7 issues

Situation: You have a group but it has not done much yet.
Your intent is to have a legitimate, state-based planning process.

Objectives: 1) Create a record at the LSC that will serve as a point of reference in future reports to the LSC. 2) Establish the legitimacy of your group—its membership and authority. Tell the LSC that it will be dealing with this group—not just LSC recipients—in the future. 3) Give some sense of the issues as seen by the group—using its framework, not the LSC's 7 issues. 4) Give some sense of what the group will do in the future. 5) In the meantime, answer the LSC's questions.

Overall message: We have a group that is starting to address the critical issues in our state system, as seen by leaders in our state.

Suggested layout:

- 6 pages: Describe group membership and authority.
- 6 pages: Describe how group sees the issues: how it categorizes issues, what importance it gives to each of its categories.
- 3 pages: What the group proposes to do.
- 20 pages: address the LSC's 7 issues, using the LSC's framework

Situation: You have a group, but it has not done much. You are uncertain whether you want, or can pull off, a legitimate, state based process.

Suggested approach:

- Use all of your 35 pages to address the LSC's 7 issues. Weave material about the group and its accomplishments (if any) into your narrative. Use the LSC framework. Do not put anything that is critical of the current group in the report.
- Call Guy Lescault at SPAN to discuss ways to create a legitimate state based process.

Situation: You don't have a planning group, but you have still managed to make significant change in delivery. Your intent is to have a legitimate, state-based planning process.

Objectives: 1) Create a record at the LSC that will serve as a point of reference in future reports to the LSC. 2) Briefly describe what issues you chose to address, and why. 3) Describe what you have been able to accomplish. 4) Describe the group you propose to create—its membership and authority. 5) Address the LSC's 7 issues.

Overall message: We have already made effective changes in our delivery system. We will do better when we have a planning group. That group will have ideas of its own, so we are unable to commit to specific future change until the group is formed.

Suggested layout:

- 11 pages: Describe what you have been able to accomplish
- 4 pages: Describe the group you intend to create: membership, authority, likely first action steps
- 20 pages: address the LSC's 7 issues, using the LSC's framework.

Situation: You do not have a planning group but intend to have one in the future. You do not have a record of planned change in the delivery system.

Overall message: We are interested in planned change but it will take some time for us to form a group. That group will have ideas of its own, so we are unable to commit to specific future change until the group is formed.

Suggested approach: 1) Use all of your 35 pages to address the LSC's 7 issues. Weave material into your narrative about the group you propose to create and what it might do. Be conservative: state your support for the idea of state planning, but promise nothing unless you are sure it will happen. Use the LSC framework. 2) Call Guy Lescault at SPAN for help in setting up a state planning process.

Situation: You do not have a planning group and are unsure whether you want one, or could put one together, even if you wanted one. You think you can probably make some effective change in delivery without a group.

Overall message: Here are the answers to the questions you posed

Suggested approach:

- Use all of your 35 pages to address the LSC's 7 issues. Skip the whole issue of what kind of group will do the planning. Instead, focus on the changes you are sure can be made in the future. Be conservative: promise nothing unless you are sure it will happen. Use the LSC framework.
- Call Guy Lescault at SPAN for help in setting up a state planning process.

Other

1. Because the LSC state planning process will continue into indefinite future, the October 1st report should not be seen as an all-inclusive document. If you have concerns about the political impact of something in your report, leave it out. The LSC will get back to you if something important has been omitted; or you can add something to your report at a later date.
2. These reports can be obtained under the Freedom of Information Act. You have no idea who will read your report. Be especially careful about discussing:
 - any activities that cannot be performed by LSC recipients;
 - relations (if any) between LSC recipients and organizations conducting prohibited activities;
 - organizations that are performing prohibited activities, except in the most general terms;
 - any substantive strategies (focus on delivery not substance).
3. There is no reliable information about what the LSC will do about program consolidation ("Configuration of a comprehensive, integrated statewide delivery system"). If your state had a meeting with LSC staff about program consolidation during the last few months, you need to be *very careful* about what you say in the report. All states should describe in some detail any mergers that have already taken place, and any mergers that are highly likely to happen. Beyond that, proceed with care. If you wish to make the case that the current program configuration is the best model, look at the last section of

“State Planning Considerations”. The bulleted list of “factors” may help you decide what to say.

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Endnotes

1. At least one state has obtained a waiver to permit it to submit at a later date.

2. LSC Program Letter 98-1, dated February 12, 1998, p. 1. Italics in the original document. This document has been posted on the LSC’s web at www.lsc.gov . Once at the site, click on “What’s New”, then on “OPO Program Letters”.

3. “In exceptional cases, it may not be possible for a state planning process to fully address all of [the 7 issues]. In such cases recipients should contact the LSC staff member responsible for their state.” Program Letter 98-1, pp. 3-4.

4. Program Letter 98-1, p. 3.

5. LSC Program Letter 98-6, dated July 6, 1998. This document has been posted on the LSC’s web at www.lsc.gov . See footnote 1 for instructions for retrieving Program Letter 98-6. Links to *State Planning Considerations* and “Instructions for State Planning Reports” are embedded in the web version of Program Letter 98-6.

6. For more on the LSC’s RfP, see “Guidance for Applicants Responding to the LSC Request for Proposals for FY1999” at www.algodonesassociates.com .

7. Use of expert panels and/or other review groups will be largely determined by the LSC budget. The larger number of real competitors in this year’s bidding process may mean that few resources will be available for outside review of state plans.

8. Very few states included representatives of client eligible groups in their state planning process. This was a serious omission that must be addressed as soon as possible, by adding client representatives to current

groups, and by ensuring that client representatives are part of any new planning groups.

9. SPAN continues to be a joint ABA-NLADA project based at NLADA. It issues regular reports on the development of civil legal services in each state, and continues to offer assistance to state planning efforts. It also maintains a clearinghouse of information on delivery of legal services. Contact Guy Lescault at NLADA: (202) 452-0620 ext. 18 or g.lescault@nlada.org .

10. The discussion took place during the ABA Mid-Year Meeting in Nashville. Representatives from approximately 15 states participated in the discussion.

11. PFEQ is a joint NLADA/CLASP project housed at NLADA. For more information, contact Martha Bergmark at (202) 452-0620 ext 46 or mbergmark@nlada.org .

12. The Discussion Draft has been posted at www.equaljustice.org .

13. See Ken Smith and John Scanlon, "IOLTA: A Leadership Platform That Can Make 100% Access a Reality" in *Management Information Exchange*, Volume XI, Number 2, November, 1997.

14. Alan and Linda serve as legal counsel to the legal services community. Call them at CLASP at (202) 328-5140, ext. 3. Alan and Linda have also agreed to read October 1st reports prior to their being sent to the LSC. Call before sending a draft.

15. "...some states have ongoing planning processes involving a wide range of stakeholders in the civil justice system. We do not intend such states to repeat past, or supplement current processes. Instead, we ask recipients to ...work within ongoing processes..." Program Letter 98-1, page 3 ("What Is Required by This Letter") of version posted on the LSC web.

16. For an example of a framework that differs from the LSC's see "Planning for Enhanced Outcomes – 1998" at www.wnyle.com . This document lays out New York's framework and priorities to encourage discussion and consensus prior to the preparation of the October 1st report.