

**THE MISSING LINK IN STATE JUSTICE COMMUNITIES:
THE CAPACITY IN EACH STATE FOR
STATE LEVEL ADVOCACY, COORDINATION AND SUPPORT**

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THE MISSING LINK IN STATE JUSTICE COMMUNITIES: THE CAPACITY IN EACH STATE FOR STATE LEVEL ADVOCACY, COORDINATION AND SUPPORT

INTRODUCTION

In a number of states, a critical component of statewide efforts to achieve equal justice for all is missing: the capacity for state level advocacy, coordination, information dissemination and support.

The civil legal assistance community is moving toward a comprehensive, integrated statewide system of civil legal assistance in each state, now known as “state justice communities.”ⁱ Such state justice communities not only require a range of critical services and a community of advocates, but they also require:

- ! **Advocacy** on statewide issues of importance to low-income persons including statewide litigation and representation before legislative and administrative bodies;
- ! A systematic effort to ensure **coordination** of all legal providers and their partners in all state level legal forums on matters of consequence to low-income persons; and,
- ! A system to **support** that advocacy, the advocates and their partners through education, training, research and resource development

While a few states have a well-developed system for ensuring that state level advocacy occurs for most critical legal problems affecting low-income persons, many have limited or no systems. In addition, many states do not have effective coordination among legal aid providers, and some state justice systems are not providing support and training for advocates within the state. The **missing link** of state level advocacy, coordination and support in state justice communities, needs to be addressed as state planning moves forward.ⁱⁱ

Prior to 1996, state level advocacy was viewed as necessary and important to protect and enhance the rights and interests of low-income persons. In the era of devolution – the now-common description of the shift in responsibility from the federal to the state level for social programs –state level advocacy is recognized as essential. Today, many key policies affecting low-income persons and key implementation decisions on federal programs are made at the state level. In addition, devolution has created fundamental changes in the rights of members of the low-income community, necessitating different ways of providing legal assistance as well as a need for new and different training and much more effective coordination and collaboration among a range of providers.¹

¹ See Attachment B for a detailed discussion of the need for state level advocacy, coordination, information dissemination and support.

This paper is an attempt to set out the modern day components of an effective system for state level advocacy coordination and support. It is based in part on a survey of state advocacy and support conducted by the Project for the Future of Equal Justice (hereafter Project) during 2000 and 2001. The paper also builds on the work done by the Delivery Working Group on Support that was completed during 1994 as well as earlier work on state support that had been conducted by LSC and by state support entities and organizations.²

As each state justice community engages in state planning and implementation, it must work toward putting in place in each state a system of state level advocacy, coordination and support. In a number of states with little state advocacy and support, creating an effective system will take time and involve incremental steps. Even so, it is necessary to begin putting such a system in place. To aid state planners in their efforts, the Project for the Future of Equal Justice provides the following recommendations:

RECOMMENDATIONS

First, effective and comprehensive state level advocacy must occur in all areas of poverty law and in all forums: the courts; administrative agency adjudicatory forums; administrative rulemaking and policy making bodies; state legislative bodies; state houses and state executive offices; other public and private entities whose decisions have an impact on the lives of the legal aid client community. A key component of state level legal representation is policy advocacy, which affects state policy decisions made by officials, legislators and administrators and is key to the fullest representation of the interests of low-income persons.

Second, each state must have a **system to coordinate such advocacy** and to provide concrete advice and assistance to the lawyers, paralegals and policy advocates undertaking such advocacy.

Third, to develop effective state level advocacy, including policy advocacy, states must have in place **technologically up-to-date monitoring and information dissemination systems.** Such systems must have the capacity to monitor, analyze and disseminate information on relevant legal developments for all individual and institutional providers of civil legal services to low-income persons. This includes a state-of-the-art information dissemination network and regular meetings and communications among advocates through statewide taskforces, listservs, audio conferences and other methods. These information dissemination and communication systems are essential to ensure that policy advocates know what is really going on at both the state and grassroots levels and to ensure that civil legal assistance staff working at the local level are fully informed about critical policy and legal developments throughout the state.

² See Attachment C for the history of state support and state support studies.

Fourth, states must consider and, where appropriate, develop **coordinated statewide education and training activities** either within each state or through regional consortia.

Fifth, state justice communities must make a commitment to **raising new funds and reallocating existing funds for state level advocacy**, including policy advocacy. The entity carrying out the advocacy must be an **aggressive fundraiser at the state, regional and local level**. It is not likely that a national fundraising effort focused on national foundations (as opposed to local, community and regional funders) and linked to civil legal assistance will result in substantial funding for state level advocacy.

Sixth, states must consider and, where appropriate, develop other critical **coordination and support functions** that may include:

- ! Coordination and dissemination of community legal education information.
- ! Coordinated statewide research.
- ! Administrative coordination and support
- ! Coordination with other advocacy groups
- ! Coordination with other states, with national civil legal assistance organizations and with national substantive policy institutions.

Seventh, structure does matter. Our experience over the last 30 years of state support demonstrates that, on balance, **independent entities with independent boards of directors** not dominated by local program project directors **have been more effective at raising funds and providing these critical advocacy and support functions** than coordinating entities controlled by local program project directors. There is not, however, one approach to successful state level advocacy and support. A few states have developed effective state level advocacy and support as a component of a statewide legal services program. A few other states have developed effective mixed systems involving both an independent provider of state level advocacy funded with non-LSC funds and a separate state support funded with LSC funds.

THE 2000-2001 STUDY

The Project for the Future of Equal Justice undertook a study of state level advocacy, coordination and support in 2000 and 2001 in order to learn what was going on in each state.ⁱⁱⁱ We were particularly concerned about these activities because prior to 1996 they had been funded primarily by LSC but, in 1996, state and national support entities lost all of their LSC funding, which totaled over \$25 million. The study was based on a detailed questionnaire that was administered by Project staff and recorded electronically

and in writing.³ The Project completed the initial stage of the 50 state surveys. However, because of several technical problems, we were unable to compile the data in an accessible database. Instead, we have used the information collected to help us develop strategies to obtain increased funding for state level advocacy and to expand state level advocacy activities. This has been done primarily through the various grants pools and regranting initiatives that have been conducted by several national organizations including CLASP and funded by the national foundations.

For purposes of the remainder of this paper, we will label training and the activities set out in our questionnaire as “state support” activities. These include, as we describe in detail below, state level advocacy as well as coordination and support.

The survey revealed that since the loss of LSC funding for national and state support in 1996:

- (1) A few states have preserved and/or strengthened the capacity for state level advocacy, coordination and information dissemination, have increased training and developed very comprehensive state support systems that carry out virtually all of the activities inquired about in the questionnaire;
- (2) In a number of states, there has been no state level policy advocacy, no significant training of staff, no information sharing about new developments, no litigation support and no effective coordination among providers; and
- (3) In a number of states, some state support activities have been undertaken by new entities or carried on by former LSC-funded entities. Those activities that do exist vary widely and no generalizations can be made from the information we collected. In some states an existing entity continued to exist but at lower funding. In other states, a new entity was created to replace an existing entity or to work along side an existing entity. In still other states, entirely new ways of providing state level advocacy, coordination and support have emerged.

The study also revealed that there is not a single approach that has been adopted in every state. Instead, states have developed somewhat different approaches depending on the following factors:

- **The number and mission of programs delivering civil legal assistance within the state.** States with one program or one large non-LSC funded program (and a few states with one very large program and a few smaller programs) usually carry out state support within the framework of the principal program’s existing mechanisms and do not have a specified state support unit. Some “single program” states do have a person or unit with state support responsibilities. Several states with a number of programs have set up separate entities in some form to carry out the state support activities, but these entities are not always independent organizations.

³ See Appendix A.

- **The prior history of state support within a state.** States that had independent state support centers prior to 1996 have preserved these independent centers with few exceptions. States that had small coordinating entities that were not independent have not fared as well. Many of these entities have disappeared. “Single program” states with previously strong state support activities integrated within the program have generally survived and remain strong. “Single program” states with previously weak or nonexistent state support capacities have generally not developed or continued their state support activities.
- **Amount of non-LSC funds available and the kind of restrictions that they carry.** The existence of non-LSC funds including IOLTA funding, other state funding, foundation funding, private bar campaigns and other private fundraising is very important. In states where only LSC funds exist or where there are very small amounts of unrestricted non-LSC funds, there are likely to be minimal state support efforts, no effective state level advocacy and no policy advocacy (even when it is permitted). Where there are extensive unrestricted non-LSC funds, there tend to be very extensive state support efforts. However, there are exceptions to both generalizations. There are states with only LSC funds or very few unrestricted non-LSC funds that have managed to develop an effective state advocacy and support system and states with significant unrestricted non-LSC funds that have minimal state advocacy and support effort.
- **The existence of public interest and public policy organizations with unrestricted funds.** There are several states where public interest and public policy organizations that undertake substantial state support for the legal assistance lawyers in the state existed previously or have developed since 1996.
- **Whether there are large law firms with pro bono programs.** While it is generally true that states have not tapped into private firms to the degree possible, it is also the case that states with large law firms with extensive pro bono programs have been able to utilize such pro bono efforts as a critical component of state support. A few states have successfully used pro bono lawyers to engage in policy advocacy and lobbying before state legislatures.
- **Whether there are individual private lawyers or small law firm that have the capacity and interest to carry out state level advocacy for the poor.**
- **Whether there are law schools willing to make resources available directly or through clinical programs.** Several states have developed new relationships with law schools in their states to take on significant state support activities.
- **The existence of leaders within the state who understand the need for state level advocacy.** Such leaders may be in civil legal aid programs, in private law firms or involved in state access to justice efforts.

- **The existence of other advocacy organizations that focus on state level advocacy but are not a part of the civil legal assistance system.** In some states, there are very well organized and effective advocacy organizations that are significantly involved in policy work at the state level. For example, there are a number of child advocacy groups, Children’s Defense Fund branches, health care advocacy groups, state fiscal groups associated with the Center on Budget and Policy Priorities and grassroots groups that are very active and effective at the state level. Unions and trial lawyer associations have also played critical roles in some states. The existence of these other advocacy groups may lessen, although not eliminate, the need for the civil legal assistance system to undertake significant state level policy advocacy. These advocacy groups also need input from and coordination with civil legal assistance providers to be effective.

Our survey revealed that the loss of over \$10 million in state support funding as a result of the Congressional funding decision made in 1995 has taken a large toll on the state support structure that was previously in place. Since the demise of LSC funding, in many states, there has been no significant training of staff, information sharing about new developments, state level policy advocacy, litigation support or effective coordination among providers. In others, only a few of these activities have been taken up by new entities or carried on by former LSC-funded entities. Many of the state support units and the regional training centers that were part of larger programs have been eliminated. Nevertheless, a number of entities have developed to carry on state level advocacy, particularly policy advocacy.⁴ Many were formed after 1995 while others have been in existence previously but are now focusing much more on state level advocacy. Although most of these entities are severely under funded and understaffed, there are some organizations that are very well funded and provide a range of comprehensive services including advocacy that can no longer be carried out by LSC-funded providers.⁵ Most of the remaining freestanding state support programs that existed prior to 1996 have survived.⁶ Some have not made up the loss of LSC funds while others have grown and expanded. Several states have created new

⁴For example: the William E. Morris Institute for Justice (Arizona); Colorado Center for Law and Policy and the Colorado Fiscal Policy Institute; National Center on Poverty Law in Illinois; Project Safety Net in Kentucky; Maine Equal Justice Partners and Maine Center for Economic Policy; Legal Services Advocacy Project (Minn); Center for Civil Justice in Saginaw, Michigan; Nebraska Appleseed Center; New Mexico Center on Law and Poverty; North Carolina Justice and Community Development Center; Oregon Center for Public Policy; South Carolina Appleseed Legal Justice Center; South Dakota Peace and Justice Center; Tennessee Justice Center.

⁵ For example, the National Center on Poverty Law and the North Carolina Justice and Community Development Center are relatively well funded.

⁶These include: Western Center for Law and Poverty; Massachusetts Law Reform; Legal Services of New Jersey; Greater Upstate Law Project; Texas Legal Services Center; Ohio State Legal Services; Florida Legal Services; and Virginia Poverty Law Center.

initiatives to provide state support.⁷ Two have developed relationships with law schools that are unique and new.⁸

WHERE DO WE GO FROM HERE?

It is essential that a system of advocacy, coordination, information dissemination and support be reconstructed in some form in those states that have few state support activities. However, far more is needed in most states. State level advocacy and the range of state support activities must increase to be able to provide effective assistance to low-income people on their legal problems. There must also be a capacity independent of LSC funded providers to engage in restricted representation that cannot be undertaken by LSC funded providers. There is no question that rebuilding a state advocacy and support system will require new funds and increased fundraising efforts for state advocacy and support. In some states, there may need to be contributions from existing providers of civil legal assistance. In a few states, the entire civil legal assistance system may have to be restructured in order to ensure some level of state support. It will take time and involve incremental progress. There is not one way to ensure state level advocacy, coordination and support; there are several paths that can be taken and several that will not likely work and should not be taken. However, it is essential that state planners focus on whether their states have the essential state support capacities and, where they do not, to develop concrete plans to get there.

Those engaged in state planning and, where they exist, state planning bodies need to specifically focus on how to ensure in each state that the following activities go forward:

RECOMMENDATION 1 – BROAD STATE LEVEL ADVOCACY IN ALL FORUMS

While it has always been necessary to effectively represent the rights of low-income clients at the state level, in recent years state level advocacy has become essential to ensuring that the rights and interests of low-income persons are protected and enhanced.⁹ Such advocacy should cover major areas of poverty law including but not limited to: TANF, Food Stamps, Medicaid, SCHIP, child welfare, child support, child care, domestic violence, employment, workforce development, benefits to immigrants, unemployment insurance, housing, consumer, elderly, education, community economic development, civil rights, disability, tax issues affecting low-income persons and a host of other issues. There are four components of state level advocacy:

⁷ See, e.g., Michigan Poverty Law Project and the Missouri Legal Services Support Center.

⁸ The Michigan Poverty Law Project is a cooperative effort of the University of Michigan Law School and Legal Services of Southeastern Michigan. MPLP has a staff of 13 and provides a full range of support and state level advocacy. MPLP contracts to provide legislative and administrative advocacy on public benefits, health care, education, housing, elder law and consumer rights. The law school clinical program, which is a part of MPLP, focuses on systemic impact cases and projects, including appeals, class actions, or other law reform litigation. See www.mplp.org for more information. Ohio State Legal Services has a relationship with Ohio State Law School through which law students provide research for Ohio civil legal assistance programs.

⁹ See Appendix B for more detail.

Representation in the Courts: Each state justice community should have the capacity to effectively address the legal problems of low-income persons who cannot afford civil legal assistance. This cannot be limited to local issues and local courts nor can it be limited to representation that LSC providers can undertake. Instead, state justice communities must provide the capacity to represent low-income persons at both the trial level and at the appellate level in cases of statewide importance or that have significant impact on low-income persons in the state. State justice communities must also ensure that a capacity exists to provide representation on restricted cases and for clients who cannot be represented by LSC-funded providers. States can provide state level advocacy through LSC and non-LSC funded civil legal assistance staff providers. But states should also have the capacity to seek out private attorneys to undertake such advocacy. A few states have effectively used pro bono providers and the state's private attorney involvement initiatives to engage in state level advocacy. States should also develop systems to facilitate arrangements between staff and private attorneys co-counseling on critical cases of statewide importance. Finally, state justice communities should provide amicus assistance in cases of statewide importance or significant impact including those brought by private attorneys or public interest organizations that are not part of the state justice community.

Representation before Administrative Agencies in Agency Adjudicatory Forums: Each state's justice community must also ensure the capacity to provide representation and appeals in administrative cases (such as welfare or unemployment hearings) involving issues of statewide importance or significant impact. This includes staff as well as private attorneys and could involve both advocacy teams and amicus work as well.

Representation before Administrative Rulemaking and/or Policy Making Bodies and Representation/Advocacy before State Legislative Bodies: Each state justice community must also have the capacity to provide advocacy or representation before state rulemaking, legislative or other policy making bodies. This includes staff as well as private attorneys and should involve both LSC and non-LSC funded providers.^{iv} Under the Cohen-Bumpers provisions of the 1996 appropriation restrictions, LSC-funded staff can engage in a range of policy advocacy using non-LSC funds. But LSC-funded staff cannot alone do all that is needed.

It is critically important that each state engage in policy advocacy, i.e., advocacy to influence state policy decisions made by officials, legislators and administrators. To carry out policy advocacy, advocates and organizations engaged in such advocacy must have the ability and sophistication to develop constructive relationships with all key state officials, legislators and administrators, including both Republicans and Democrats. They must also have the capacity to work effectively with adversaries and opponents. They must be able to work with and build broad-based coalitions and collaborate closely with grassroots organizations. Such coalitions and grassroots organizations can give policy groups greater clout as well as help hold the policy advocacy accountable to the constituencies it is intended to serve. To effectively carry out policy advocacy will require staff dedicated to work before state legislative bodies,

administrative agencies and Governor's offices and who can develop the key relationships that are essential to successful state policy work.

Representation and Advocacy on Matters before other Public or Private Entities:

Each state justice community should also have the capacity to identify issues and provide representation before other public or private bodies whose activities affect the rights and interests of low-income persons. This capacity includes participating before judicial committees on court rules, representing groups before the Workforce Investment Board, various advisory boards, engaging with private contractors carrying out state policy and the like.

Our survey revealed that all four representational activities were being carried out to some degree in many but not all states. However, the resources committed to these four critical functions and the breadth of substantive areas covered varied widely. Some states provided very substantial representation before administrative and legislative bodies on the whole range of poverty law policy issues while other states only provide advocacy in a few substantive law areas. Some states ensured an effective presence at the state capitol and with state administrative agencies, others did not. Many states did not ensure advocacy on other public or private entities, while a few were very systematic on ensuring such advocacy. Examples of states with comprehensive state level advocacy capacity include Massachusetts, New Jersey, New Hampshire, Connecticut, Florida, California, Michigan, Minnesota, New York, Vermont, Virginia, North Carolina, Maine, Ohio and Washington. Examples of states that have developed effective but less comprehensive advocacy capacity include Arizona, Colorado, Georgia, Kentucky, Illinois, Nebraska, New Mexico, Oregon, Pennsylvania, South Carolina, Tennessee, Texas and Wisconsin. Missouri has just started a new state level advocacy and support entity. Many states did not involve or seek out private attorneys to become engaged in state level advocacy, although a few (e.g. Massachusetts, Washington) did and did so successfully.

**RECOMMENDATION 2 -- COORDINATION AND ASSISTANCE
ON STATE LEVEL ADVOCACY**

Not only should each state justice community provide state level advocacy, it must also have some ongoing, systematic system to coordinate such advocacy and provide concrete advice and assistance to the lawyers and paralegals undertaking such advocacy. For litigation, a "system" would identify at the trial level cases of statewide importance or significant impact on low-income persons in the state and ensure necessary advice and assistance to the advocates involved, including co-counseling when necessary. A coordinated system would also identify appeals that may result in precedents of statewide importance or significant impact. In addition, the system would develop advocacy teams for appropriate advocacy projects, assist pro bono and other private attorneys engaged in cases of statewide importance, co-counsel when necessary and identify and coordinate amicus work in such cases.

Similarly, in matters before administrative agencies in agency adjudicatory forums, each state justice community should have a “system” to identify administrative cases of statewide importance or significant impact, including administrative appeals, and provide assistance to staff advocates and private attorneys, including co-counseling.

Each state justice community should also establish some “system” to identify regulatory or legislative issues and other matters (e.g. court rules) of statewide importance, ensure appropriate advocacy is undertaken by staff advocates or private attorneys and provide assistance to such advocates. The system should also coordinate work by LSC-funded advocates operating under Cohen-Bumpers and non-LSC funded advocates.

Each state justice community should also establish some “system” to capture stories and examples of client injustices so that these stories and examples can be effectively used in statewide litigation and policy advocacy.

Each state should have the capacity to develop and coordinate statewide civil legal assistance liaisons with all major institutions affecting or serving low-income people in legal matters, including state, local and federal courts; administrative agencies; legislative bodies; alternative dispute resolution bodies; and other public or private entities providing legal information, advice or representation.

Our survey revealed that most states have an ad hoc effort to provide some coordination, but that very few states have developed a coordinated “system” to track cases, regulatory and legislative developments and ensure appropriate advocacy and assistance in such cases or matters. A few (Michigan, Minnesota, New Jersey, California, Washington, Massachusetts, Florida, for example) have developed a focused, systematic effort to make sure that all significant cases are tracked, and that advocates obtain the assistance they needed. These states have also developed statewide civil legal assistance liaisons with all major institutions affecting or serving low-income people in legal matters.

RECOMMENDATION 3 -- MONITORING, ANALYSIS AND INFORMATION DISSEMINATION

A critical role of state support involves information dissemination. State justice communities must ensure effective monitoring, analysis and timely distribution of information regarding all relevant legal developments (case law, regulatory and legislative developments, court rules, etc.) to all individual and institutional legal aid providers and others participating in the statewide system. It is also important to provide information and community legal education to client groups, grassroots organizations and coalitions working on similar issues.

Many states have newsletters or periodic memoranda that provide information about substantive developments in a few important poverty law areas. (Examples are the Western Center on Law and Poverty and the National Center on Poverty Law.) Some states have statewide newsletters that provide information on case developments,

legislative and regulatory developments, training opportunities and staff news. A few of these newsletters include information about important events affecting clients, substantive resource information and reports on studies or program evaluations affecting low-income persons. (Examples of comprehensive statewide newsletters are New Jersey and Minnesota.) Ultimately, each state justice community should seek to make all of this information available. While our survey revealed considerable activity in many states, it also revealed that most states were not distributing this information to program staff in advocacy organizations that were not a formal part of the LSC system nor to private attorneys participating in PAI programs or otherwise engaged in advocacy of statewide importance to low-income persons.

States must also create and maintain an efficient state-of-the-art statewide information dissemination network that includes at least five elements.

- ! First is statewide e-mail access for institutional providers of civil legal assistance, such as legal services programs, pro bono programs, law school clinical and related programs, specialized legal advocacy programs and staff working in community-based organizations.
- ! Second is a statewide civil legal assistance web site and other methods of communication to provide up-to-date information about state legislative, regulatory and policy developments affecting low-income persons as well as other information relevant to the delivery of civil legal assistance including community legal education and community economic development. Many states are moving forward with such web site development, but others are lagging behind. Examples of those states where websites are well developed are Michigan (www.mplp.org) and Maine (www.ptla.org). With the help of the LSC Technology Initiative Grants, most states should have a strong statewide web presence by 2003.
- ! Third, state justice communities must establish statewide electronic libraries of pleadings, briefs, forms, fact sheets and policy analyses, best practices and proprietary texts and client information materials, which are accessible by all institutional providers and private attorneys providing civil legal assistance to low-income clients.
- ! Fourth, state justice communities need to develop a coordinated statewide research strategy integrating Internet usage, on-line services, proprietary sources, and other resources.
- ! Finally, state justice communities should develop coordinated data management systems to facilitate information sharing and case file transfers.

Perhaps the most comprehensive statewide information dissemination network is found in New Jersey, but a number of other states are attempting to set up comprehensive systems, including Washington, Minnesota, Florida, Ohio, Michigan and California.

In addition, states should convene regular statewide task forces and periodic statewide meetings of attorneys, paralegals and lay advocates working within the civil legal assistance system to discuss common issues, problems, subject areas, client constituencies, techniques of advocacy and strategies to make the most effective and efficient use of resources. Use of modern conferencing technologies and electronic communication may alleviate the need for in person meetings in some states. These task forces and meetings must include both LSC and non-LSC funded advocates and, where appropriate, should include private attorneys and law firms, attorneys working for governmental entities, corporations, labor unions and human services providers. These task forces and meetings should focus on the entire range of issues, including legislative and administrative developments, which affect the rights and interests of low-income persons.^v Today, such state task forces should be connected by listservs and other electronic means to ensure constant and ongoing communication among advocates.

Our survey revealed that a number of states have statewide task forces that carry out most of these functions. (Examples include Connecticut, Massachusetts, New Jersey, Minnesota, North Carolina, Ohio, Florida, Washington and Kentucky). Most task forces meet in person at some centralized location and many are beginning to function through electronic means and listservs. However, our survey also revealed that the task forces vary widely in term of what areas they covered, how often they met, who was included, what came out of the meetings, and who had responsibility for carrying out task force decisions. For example, in some states, state task forces are not open to younger staff but are viewed as perks for older staff. Often information and decisions at state task force meetings are not circulated to non-task force members, are not included in state newsletters and are not made generally available to all legal advocates. As another example, many states have not set up new task forces to take account of changing legal developments since 1996, but are still using task forces organized around prior legal issues from the 1980s and early 1990s.

RECOMMENDATION 4 -- COORDINATED STATEWIDE EDUCATION AND TRAINING ACTIVITIES

Education and training activities must be available for all individual and institutional providers within the state to:

- Develop expertise in all major areas of legal services practice within a state;
- Update advocates on new developments and emerging trends in law and policy affecting low income persons;
- Ensure the use of new strategies, tools, skills and techniques of advocacy;
- Develop managers and new leaders; and,

- Maximize opportunities for professional staff development for all experience levels of staff.

Training activities should include training and mentoring carried out at the workplace and, when necessary and effective, training programs provided at facilities outside of the office. Training should utilize all available new technologies for efficient delivery. State support entities must also provide assistance to local providers to ensure development of appropriate local training and education activities and materials. States should coordinate with continuing legal education programs offered by state or local bar associations or other entities. Finally, all legal providers must provide opportunities for staff to participate in national and regional training and collaborations where relevant to civil legal assistance activities of the state.

Our survey did not request detailed information about training and education activities. However, the information available at the Project suggests that there is enormous variation among states in training and education activities. Some states have very well developed and comprehensive training programs and link to a wide variety of CLE and private training efforts. (California, Minnesota and New Jersey are three examples.) The northeast region of the US has a very well developed training program coordinated by Massachusetts Law Reform Institute that involves advocates from all of the northeast states and includes a range of trainings to improve advocacy skills, keep up with substantive law developments and improve management and supervision of staff. Similarly, Ohio, Michigan and West Virginia have an effective regional training program coordinated by Ohio State Legal Services for advocates and managers in those three states. Many states have annual statewide meetings and others carry out training programs for all advocates within a state. Some have taken advantage of information technology; many have not. Some states are doing virtually no training of staff – even for new staff.^{vi}

RECOMMENDATION 5 – STATEWIDE COORDINATION OF STATE-LEVEL RESOURCE DEVELOPMENT

The ability of a state to provide the full range of services depends on its capacity to raise necessary funds from sources within the state, including both private and public sources. While continued LSC funding is essential, it is clear that state resources are equally vital to creating and maintaining state justice communities. Legal providers and their partners must work together to raise funds for the state system as a whole. Successful state efforts have usually involved unified private bar and capital campaigns, unified approaches to major potential state public sources, and unified liaison with and maintenance of existing statewide sources. In addition, the state system needs to coordinate technical assistance for targeted local funding efforts, coordinate efforts to develop local and regional funding sources and coordinate communication, public relations, media and branding activities.^{vii} Resource development is an appropriate state support function that can be carried out through a variety of approaches. Some states have set up separate fund-raising entities (Wisconsin for example); others have placed responsibility in state access to justice boards. A few state support entities take

on statewide fundraising (New Jersey is one example) while others assist in efforts coordinated by others.

There is no easy solution to obtaining funding for state level advocacy, including policy advocacy. In the end, two conditions must be met:

First, state planners must make a commitment to raising the funds for state level advocacy, including policy advocacy. To make such a commitment will require effective and sustained leadership within the state planning body.

Second, the entity carrying out state-level advocacy must be an aggressive fund raiser, within political limitations, at the state, regional and local level, including community foundations, United Way campaigns, IOLTA, attorneys fees, cy press awards, private bar campaigns and private foundations that are willing to fund advocacy in a state or region. Many of the newer state policy groups need substantial assistance on how and when to fundraise at the state, regional and local level, how to write grants, how to effectively communicate with potential funders, when and how to approach funding from governmental bodies, and the like.

Based on past experience with efforts to raise funds from national foundations that do not have local or regional focus, a national fundraising effort linked to civil legal assistance will have a very difficult time in raising funding for state level advocacy. Few national foundations will fund civil legal assistance initiatives by civil legal aid programs and few will directly fund state advocacy initiatives. Instead, several initiatives that receive national foundation funds and then regrant those funds to state advocacy groups have been successful in raising national foundation funds for state advocacy. One example is the Welfare Redesign Grants Pool that was conducted jointly by the Center for Community Change, the Center on Budget and Policy Priorities and CLASP. This initiative began in 1997 and raised over \$4.5 million dollars that was regranted to state advocacy and grassroots groups to work on welfare reform implementation at the state level. A number of state advocacy groups referenced in footnote 4 above received funding from the Welfare Redesign Grants Pool. Another example is the State Fiscal Initiative of the Center on Budget and Policy Priorities, which coordinates and helps fund a number of state advocacy organizations that focus on state budget issues. More recently, both CLASP and the Center on Budget and Policy Priorities have regranted over \$1 million to state advocacy groups to work on welfare reauthorization.

RECOMMENDATION 6 – OTHER CRITICAL COMPONENTS

In addition to having systems to ensure coordination of advocacy and information dissemination, state justice communities must also consider and undertake the following activities:^{viii}

1. Community Education: State justice communities should designate one provider, or the state support entity, to track and coordinate community education

initiatives and programs, provide assistance to advocates across the state on community education and ensure that community education materials produced by one program are shared with other programs. Several states have comprehensive efforts to ensure effective development and coordination of community education efforts, including Greater Upstate Law Project in New York, Legal Services of New Jersey, Pine Tree Legal Services and Northwest Justice Project in Washington.

2. Coordinated statewide research: State justice communities also must ensure that both substantive and delivery research are systematically undertaken. Delivery research should focus on improving the delivery of civil legal assistance within the state. As part of these efforts, states also need to identify and promote systemic "best practices" in areas such as intake, needs assessment, priority setting, case management, techniques of advocacy and strategy development. In addition, states should undertake research on relevant demographic trends and new and emerging legal problems that affect low-income persons within the state. The degree of delivery and substantive research currently undertaken by state entities varies widely. There are few states that undertake delivery research, but there are more efforts aimed at substantive and demographic research. One example is Legal Services of New Jersey that has been in the forefront of both substantive and delivery research and has hired staff with the responsibility to undertake such research and with the background to oversee and conduct such research.

3. Coordination with other advocacy groups: State justice communities not only must relate to civil legal assistance providers but also must coordinate their efforts with those of other advocacy groups, such as domestic violence coalitions, child advocacy groups, child care, elderly, consumer, housing assistance, immigrant, anti-hunger, community development and similar organizations and associations. Such coordination often goes on at a local level by local providers and local offices of programs. There is, however, a need for statewide coordination, which is a responsibility of the state justice community.

4. Coordination among states: Because policy and legal developments in one state often affect policy and legal developments in other states, particularly as devolution moves forward, it is important for state justice communities to learn about the experiences of other states. State policy bodies such as legislatures and executive departments often look to other states in developing particular social policies, and courts in one state are often influenced by decisions of courts in other states. Efforts to improve the provision of civil legal assistance in one state often have critical influence on decisions in other states. Moreover, there will be occasions when state justice communities from a number of states may want to coordinate responses to common legal developments. While responsibility for enabling such coordination often rests with national organizations,^{ix} state justice communities can and should work to ensure such coordination, especially for issues with a regional impact. Some states are very systematic about such coordination while others do little of this work.

5. Coordination with national civil legal assistance entities: Each state justice community should work with those national entities and institutions involved in supporting, protecting and improving civil legal assistance and participate in national efforts to achieve equal justice for all. These include NLADA, CLASP, the American Bar Association and others. While individual providers have responsibilities here as well, there is a state responsibility to ensure such coordination and involvement. Some state entities and state justice planning bodies are coordinating well with national entities on civil legal assistance and state planning issues; others are not.

6. Coordination with national substantive entities: Each state justice community should also work and coordinate with national entities and organizations involved in advocacy on substantive issues affecting low-income persons. This includes the former LSC national support centers as well as a host of other national anti-poverty, civil rights, child advocacy and other entities that were not part of the LSC national support network, but consistently work on poverty issues. Such coordination involves receiving newsletters, participating in audio conferences and listserves, using manuals and materials, attending conferences and training events, seeking advice and assistance when needed, and sharing information about developments at the state and local level that have national implications. In addition, state justice communities should be engaged in substantive advocacy efforts before Congress and federal agencies by participating in national networks focused on key substantive issues affecting low-income persons. ^x As with many other activities, some states are extremely well connected to national entities and participate very effectively in national advocacy efforts; others are not involved and have little contact with national entities or national advocacy.

RECOMMENDATION 7 – STRUCTURE MATTERS

Prior to 1996, state support entities varied in organizational structure and size. Some were independent organizations with funding from a variety of government and private sources. Some were smaller and funded primarily by LSC. Others were components of local programs and varied in size and responsibility. Still others were entities formed by LSC-funded project directors and funded through program contributions. These too varied in size, funding and responsibility. A few states undertook state support activities through joint ventures among two or more programs. Some states did not form separate entities but organized state support as critical components of a statewide program or through one large program in the state.

Our experience over the last 30 years of state support shows that:

In states with multiple civil legal assistance providers, independent entities with independent boards of directors not dominated by legal services project directors, on balance, do much better at providing the critical advocacy and support functions than coordinating entities controlled by project directors; and,

In states with one or a few providers, a statewide legal aid program can provide state level, advocacy, coordination and support.

Our recent survey confirmed that states with the most effective state level advocacy and with the most comprehensive system of coordination, information dissemination and support have independent state advocacy entities or non-LSC funded statewide civil legal aid programs at the center of these activities.

Thus, we recommend that states that have not established independent state support centers (or non-LSC funded civil legal aid programs) should do so as quickly as possible. We generally recommend that states not establish entities controlled by LSC-funded project directors and should consider discontinuing support for such existing entities, unless they are complemented by independent state support centers.

Independent state advocacy entities, whether they are large or small, have been and will continue to be effective in providing state level advocacy, coordination and support. Because they have been independent, such state support entities have had to raise funds from a variety of sources and develop their own contacts with funders. These contacts have often proved fruitful in bringing additional resources into the civil legal assistance community in the state. In addition, many states with independent state support entities have had access to significant non-LSC funding through IOLTA and other civil legal assistance funding. Such independent entities also have been able to attract experienced substantive staff and high quality management. They have been able to work in broad-based coalitions and with grassroots organizations. At the same time, most of the independent entities have exercised leadership with local civil legal aid providers and have provided extensive support and coordination for the civil legal aid community. Indeed, for state level advocacy, coordination and support to work effectively within a state, there must be a meaningful buy-in by civil legal aid project directors and staff.

In states with one or a small number of providers, it is possible to create within a non-LSC funded entity effective state level advocacy, coordination and support. However, because of LSC restrictions, statewide civil legal aid programs funded with LSC funds will have a difficult time engaging in state level policy advocacy, may not be able to represent all low-income client interests and may not be able to undertake state level litigation involving class actions. While LSC funded programs can transfer non-LSC funds to another entity or to private lawyers to carry out the state level policy advocacy and class action litigation, it will still be difficult for such LSC funded programs to ensure that the necessary state level policy advocacy and other litigation goes forward. In most states, it would be preferable to establish a non-LSC funded entity to have the primary responsibility for policy advocacy. However, it is important to remember that non-LSC funded entities can and should work closely with LSC-funded staff. Under the Cohen-Bumpers provisions, LSC-funded staff may engage in rulemaking and respond to requests from legislative or administrative officials using non-LSC funds.

Assuming adequate non-LSC resources, it is possible to operate both an independent provider of state level advocacy funded with non-LSC funds and a separate state support entity funded with LSC funds. Those mixed systems that have been most effective place responsibility for state advocacy and coordination functions in one entity funded with non-LSC funds and place responsibility for other functions in the LSC funded entity. Most commonly, LSC funded entities have carried out training and professional development functions. In some states, statewide fundraising functions are carried out separate from other state support functions, either by an LSC-funded entity or a non-LSC funded entity. In addition, successful state advocacy initiatives have dedicated staff that focus on state level advocacy, including policy advocacy. In this era of LSC restrictions, it may be essential to separate state level policy advocacy and restricted statewide litigation from other state support and coordination functions that can be undertaken with LSC funds. Even though mixed systems can work, state planners and civil legal assistance leaders should be wary of setting up two separate programs that split the capacities of state advocacy, coordination and support unless the functions can be best carried out in separate entities or unless there is no other practical way of funding coordination, information dissemination and support.

CONCLUSION

Because of devolution and other policy and legal developments, state level advocacy, including policy advocacy, is more important than ever before. In addition, critical functions of coordination, information dissemination and support must be available to all legal advocates in each state. While a few states have developed and funded these capacities to an effective level of activity, most states have not, and a few are doing virtually nothing. This must change. State planners, the bar and key civil legal assistance leaders in each state must provide the leadership to ensure that there is effective state level advocacy, including policy advocacy, in each state and that each state moves toward a comprehensive and efficient system of coordination, information dissemination and support to all legal advocates providing civil legal assistance to low-income persons. While there are various paths to achieving the necessary level of state advocacy, coordination, information dissemination and support, we know what works well and what does not work. It is time to act.

ENDNOTES

ⁱ These state justice communities seek to create a single point of entry for all clients, integrate all institutional and individual providers and partners, allocate resources among providers to ensure that representation can occur in all forums for all low-income persons and provide access to a range of services for all eligible clients no matter where they live, what language they speak or to what racial, ethnic or cultural group they belong.

ⁱⁱ A comprehensive State planning initiative was undertaken in 1995 by the Legal Services Corporation to respond to the legal services crisis of 1995 and 1996. As a result, State planning efforts were begun in virtually every State, although the breadth and quality of these efforts varied widely. In 1998, LSC issued a new statewide planning letter requiring all LSC-funded recipients to report, by October 1, 1998, on how

they and the other programs in their state were going to address seven issues: intake and the provision of advice and brief services; effective use of technology; increased access to self-help and prevention information; capacities for training and access to information and expert assistance; engagement of pro bono attorneys; development of additional resources; and configuration issues such as mergers and consolidations within states. See **LSC Program Letter No. 98-1**, February 12, 1998. A subsequent Program Letter set out more details on what LSC was seeking, explained how the October report should be presented and clarified how the state planning process would affect LSC grant decisions for 1999 and beyond. See **LSC Program Letter 98-6, July 6, 1998, State Planning Considerations**. Beginning In 1998 and continuing through 2001, LSC has made funding decisions based on state planning. For a discussion of LSC state planning, see **Building State Justice Communities: A State Planning Report from the Legal Services Corporation**, March 2001. LSC programs are now undergoing an assessment of their state planning achievements pursuant to **LSC Program Letter 2000-7**. In addition to the efforts by LSC, the Project for the Future of Equal Justice issued on July 8, 1998, **A Discussion Draft: Characteristics of a Comprehensive Integrated State System for the Provisions of Civil Legal Assistance to Achieve Equal Justice for All**. This statement set out the object of a state civil legal assistance system and then described the key characteristics of such a system.

ⁱⁱⁱ The study was not the only activity by the Project for the Future of Equal Justice (Project) to increase state level advocacy, coordination and support. The Project also conducted a detailed examination of training in 1998 and 1999 and has actively encouraged the participation of state support and policy entities in the NLADA Substantive Law Conferences, the annual NLADA conference and the Litigation and Advocacy Director's Conference. In addition, the Project has also undertaken a project working with a select group of state level advocacy organizations to help them raise stable funds for their work. One concrete result has been the receipt of new national foundation funds by several of these state advocacy groups to work on welfare reauthorization as part of a regranting project conducted by the Center on Budget and Policy Priorities and CLASP.

^{iv} LSC-funded providers can undertake policy advocacy with both LSC and non-LSC funds. See detailed **Memo on Policy Advocacy** by Alan W. Houseman, June 6, 2001.

^v Under the Cohen-Bumpers appropriation provisions and the LSC regulation, 45 CFR 1612, LSC-funded staff can participate in task forces and meetings with non-LSC funded staff and discuss legislative and administrative rulemaking issues.

^{vi} The National Center on Poverty Law recently negotiated a contract with LSC to prepare a new lawyer training manual for distribution to all new lawyers, provide training for new lawyers in 10 states and provide all new lawyers with a free subscription to *The Clearinghouse Review* and free access to Clearinghouse services

^{vii} "Branding activities" refers to deliberate use of distinctive logos and symbols to build public awareness of the civil legal assistance system within the state.

^{viii} Some state support systems have also provided administrative coordination and support to local legal assistance providers. These have included coordinated central purchasing whenever there are significant economies of scale to be realized (equipment, technological systems) and consolidated or coordinated statewide financial operations where appropriate and efficient. A few states have developed statewide norms and policies, such as staff performance standards and referral and conflict procedures.

^{ix} One example of a national initiative is the State Policy Documentation Project conducted by the Center for Law and Social Policy and the Center on Budget and Policy Priorities. This Project has tracked and analyzed state welfare, Medicaid, food programs, and child care developments at the state level since the enactment of welfare reform.

^x LSC restrictions on lobbying and rulemaking (45 CFR 1612) place some limitations on what LSC funded providers can do, but participation in national advocacy is an important role for the state justice system as a whole.