



## MEMORANDUM

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

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

Date: June 7, 2012

Re: NLADA Recommendation for FY 2014 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 2014. 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 service from your grantees.

We strongly urge that the Finance Committee recommend a figure of **\$516.5 million** for FY 2014 for consideration by the LSC Board. This figure is consistent with our recommendation from last year and reflects the well-reasoned request submitted to Congress by LSC for FY 2012. That recommendation was part of a three-year plan for measured, reasonable growth of federal support for civil legal aid intended 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*. Since 2011, the financial situation facing legal aid providers in the country has rapidly deteriorated, while the poverty population has grown significantly with the recession.

While we understand that LSC is looking at a variety of data and evidence beyond the *Justice Gap* report to support its budget request, we think this amount of 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 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 2013 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 federal support for the civil justice system has slipped over the years. In 1981, when 43 million poor people were eligible for legal services, Congress provided \$321 million for LSC. This funding provided two

lawyers for every 10,000 eligible clients. The equivalent commitment in today's dollars would amount to \$1.16 billion. The FY 2013 level, which of course included a cut of 14.8% in basic field funding from the prior year, would only provide two lawyers for every 33,430 eligible clients. This analysis indicates that federal support relative to need for the basic infrastructure of the legal aid system in this country has fallen by a factor of 3 while the number of eligible clients has grown nearly 50% since 1981.

The 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 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 state justice communities must be constructed. 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 relatively high levels of non-LSC funding, the erosion of those other sources of revenue is growing at an alarming rate. Grantees throughout the nation are suffering from serious funding cuts resulting from the economic downturn. In 2010, IOLTA income fell below \$100 million for the first time since the 1990's. That level compares with revenues over \$300 million in 2009. This stunning drop reflects both dwindling IOLTA fund balances and the miniscule federal funds interest rate. We are also hearing from a number of states that state appropriations and other sources of revenue are shrinking due to budgetary pressures related to the economy.

During this period, LSC grantees have faced significant new challenges beyond the growth in the number of clients eligible for their services. These include the provision of service to a growing 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.

LSC's own data illustrates an increasingly bleak landscape, indicating that grantees anticipate layoffs of 14% of their advocates and almost 13% of their support personnel between 2010 and 2012. We have heard about a significant number of office closures or plans to close offices in the near future, thus further reducing access in hard to reach areas.

The equal justice community has exhibited tremendous resiliency in adapting new technologies and delivery innovations to expand their reach and capacity to serve client communities. LSC deserves credit for challenging its grantees to be creative in developing new service techniques through its oversight processes and its technology initiatives. We are excited to be working with LSC in helping plan the upcoming technology summit in Washington. Nothing, however, can make up for the fact that a crisis in financial resources exists in much of the United States to meet even the minimal civil legal needs of low income families.

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. NLADA itself is committing significant new resources to research and evidence-based analysis around critical issues related to civil legal assistance. 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 \$516.5 million, while providing much needed assistance to your grantees and the clients they serve, would not begin to address the real need for resources in the field.

And such an investment by the federal government would pay real, long-term dividends. LSC grantees serve as a critical and unique resource to help poor 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 low-income people 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. For example, adequately funded legal services providers can make a significant difference in the health and well-being of low-income communities by:

- Preserving homes from illegal evictions or foreclosures;
- Ensuring that domestic violence survivors live in homes free of violence;
- Increasing household income by helping those who have lost their jobs access unemployment insurance, food stamps, and other needed public assistance;
- Protecting families and the elderly from unscrupulous contractors or debt collectors; or
- Helping individuals with disabilities to gain access Supplemental Security Income (SSI), medical insurance and/or care.

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.

Furthermore, some of our most vulnerable citizens – children - are the hardest hit by the increased poverty rate. In addressing myriad legal issues, legal aid providers have learned firsthand the stark reality that children are the fastest growing segment of the “new poor”, those who have recently fallen into poverty. The most current census numbers show that **22% of children in the United States now live in poverty**. Child poverty rates have increased dramatically at the same time that the poverty rates of the elderly have been dropping. [Map of children and elderly poverty data across U.S.](#)

Legal aid programs address a number of issues that help ensure that every young person has a shot at success later in life. Civil legal services directly impacts young people by:

- *Keeping families in housing/ warding off unfair foreclosures.* A homeless child is very likely to suffer dire consequences – health, education, even regarding the ability to sleep well.
- *Improving housing conditions.* When substandard housing is improved, toxins are eliminated and the health (e.g., intensity and rates of asthma attacks and amounts of medications required are all reduced) of everyone in the household improves dramatically.<sup>1</sup> This also lowers health care costs.
- *Holding unscrupulous creditors to task.* All across the United States, large creditors are filing suits against alleged debtors. Some of these debts are legitimate – however, some are not. Sometimes the interest rates are reasonable – often they are not. A family that has fallen into debt often can never get out. And many of these families may have legitimate ways to contest, eliminate or reduce these debts, yet never know how. This cycle of indebtedness and poverty is very likely to trap the next generation.
- *Getting kids access to appropriate special education when needed.* Such representation dramatically increases the likelihood that kids can graduate from secondary schools and go onto college success, which could make all the difference for their future economic mobility.
- *Helping victims of domestic violence achieve safety.* Providing civil legal services to domestic violence victims has a direct impact on the rate of victimization, lowering the rates of domestic violence greatly.<sup>2</sup>

<sup>1</sup> [http://www.medical-legalpartnership.org/research-and-evaluation#Medical-Legal\\_Partnership\\_Outcomes; and http://meeting.chestjournal.org/cgi/content/abstract/130/4/83S-b](http://www.medical-legalpartnership.org/research-and-evaluation#Medical-Legal_Partnership_Outcomes; and http://meeting.chestjournal.org/cgi/content/abstract/130/4/83S-b).

<sup>2</sup> <http://www.nasams.org/DMS/Documents/1195248210.25/Explaining%20Decline%20in%20Domestic%20Violence.pdf>.

A child exposed to violence in the home is much more likely to suffer mental and physical health problems, miss days of school (sometimes due to safety risks of a child being sent to school where the abuser knows where to find the child), and perform poorly in school – all of which place this child at greater risk of falling into or staying in poverty. Domestic violence also raises the health care costs to a family<sup>3</sup>, thereby forcing family resources to pay for these additional health consequences of the violence.

No statements of need or data sets on outcomes, however, can state the value of legal aid representation as clearly as the human stories which reflect the work of LSC grantees. The following actual cases provide the best types of illustrations we have:

### **Domestic Violence**

*Elaine has been married to Jerry for 13 years, and although abuse had begun early in the marriage, Elaine tried to make the marriage work for the sake of her son. On July 8, 2009, Jerry got into a drunken argument with a neighbor, and loaded his gun. Elaine begged him to keep the loaded gun out of sight of their ten-year-old son. But as soon as she turned her back, he assaulted her on the back of her head. At the sight of his wife lying semi-conscious in a pool of her own blood on the floor – with more pouring out of her head – Jerry taunted her, “you’ll never see your boy again!” and ran into the woods with their son. Her daughter called 911 upon finding her blood-soaked mother, who lost consciousness by the time paramedics had arrived. Luckily, Elaine survived, and she was immediately put in touch with Legal Aid of West Virginia. Her Legal Aid lawyer was ultimately able to secure Elaine the divorce she’d sought unsuccessfully on her own, and found her funding to pay the more than \$20,000 she owed in medical bills relating to her injuries from that night. “Without Legal Aid,” says Elaine of her experience, “I wouldn’t be alive. I would be dead. The future is bright. I know that my son and I will be ok!”*

### **Home Preservation**

*In 2010, Ms. Simmons, a 70-year-old client, came to a Massachusetts legal services organization for help with a pending foreclosure on her home. In 2005, Ms. Simmons became involved with a company that she thought would help her avoid foreclosure. As it turned out the company ran an elaborate equity stripping scheme. The unscrupulous company induced Ms. Simmons to enter into a number of sale documents, one that deeded her home to a resident of Ohio. The Ohio resident then obtained a loan from Long Beach Mortgage, using Ms. Simmons’ home as security, and proceeded to strip \$80,000 from her home’s equity. A national bank took over Ms. Simmons’ mortgage when it purchased \$1.9 billion of Long Beach’s troubled loans. The national bank foreclosed on Ms. Simmons’ home in late 2009. In response, her legal services attorney filed a civil action for Ms. Simmons challenging the national bank’s right to the property, maintaining that the Long Beach loan and the subsequent foreclosure were invalid. In early 2011, the case was resolved and Ms. Simmons’ home was returned to her free of mortgage liens. This type of scheme is now illegal and the head of the equity stripping company is in federal prison. With the help of legal services, Ms. Simmons maintained her rights and her home after being victimized by predatory lending practices.*

### **Veterans’ Representation**

*A veteran and cancer survivor was let go from his job after he took time off to recover from a recent cancer diagnosis and side effects from treatment. He applied for unemployment and was denied, then turned to a legal aid program in the District of Columbia for support. His Legal Aid attorney*

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<sup>3</sup> [http://caepv.org/getinfo/facts\\_stats.php?factsec=2](http://caepv.org/getinfo/facts_stats.php?factsec=2)

*accompanied him to a hearing before an Administrative Law Judge, who awarded the veteran benefits, since she understood that the man had lost his job through no fault of his own. Now that he is recovered from treatment, he can look for work to successfully putting his life back together.*

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 about to be exacerbated by additional losses resulting from LSC's census redistribution. The continuing confluence of the deep recession with a significant erosion of the overall financial foundation upon which our legal aid system is built makes 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. An aggressive message of support from LSC would also serve to provide a significant boost to the morale of its 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 2014 in an intensively competitive environment for very limited discretionary federal funding. Yet, as the primary messenger to the Administration and Congress, LSC must be 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 a number of specific issues that NLADA would like to recommend with respect to various lines within the FY 2014 request.

First, we must note that the percentage of the overall LSC appropriation dedicated to LSC management and the Office of Inspector General has grown significantly over the last two years as basic field funding shouldered the entirety of the federal cutbacks. As you approach your funding decisions for FY 2014, we urge you to consider a return to the admirable balance between limited administrative costs and the basic field funding that existed in FY 2010.

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 believe that several items are critical to the future vitality of the field, and therefore we recommend that funds be set aside for: 1) continuation of the Herbert S. Garten Loan Repayment Assistance Program; 2) Technology Initiative Grants; and 3) Native American Special 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 2014. We would also offer to work with LSC in the coming year to develop better 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 2014 appropriation request contain at least **\$3.4 million** for TIG.

**Native American Special Grants.** NLADA continues to support a dedicated appropriation of **\$1,500,000** to address significant disparities in funding for Native American programs similar to that sought by LSC in its FY 2006 budget request and by NLADA in its recommendations for each subsequent year thereafter.

**Training and Other Assistance for Substantive Advocacy.** We remain deeply 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 greatly appreciates the opportunity to work with the LSC Board as you go forward in fulfilling your critical role as a lead voice for equal justice in America. Your request will send a clear signal of support to your grantee programs, which struggle every day to address the unmet needs of hundreds of thousands of financially disadvantaged families in need of legal assistance.

NLADA is confident that the board will be a strong and tireless advocate for adequate funding for legal aid and we stand willing to support your efforts in any way we can.