

“Thou Shalt Not Ration Justice”

– Hon. Learned Hand

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Jim Sandman
President, Legal Services Corporation
3333 K Street, NW, 3rd Floor
Washington, DC 20007-3522

June 27, 2014

Re: NCAJ Recommendation
for LSC 2016 Budget

Executive Director

David Udell

Dear Mr. Sandman,

On behalf of the National Center for Access to Justice (NCAJ), I am submitting this recommendation for the Legal Services Corporation’s (LSC’s) Fiscal Year 2016 budget request.

The recommendation responds to your May 12, 2014 letter in which you advised NCAJ that “information that would be most helpful would include data regarding the need for LSC-funded services.” The recommendation is derived from data gathered by NCAJ and its partners in creating the *Justice Index*, www.justiceindex.org, NCAJ’s new on-line data-intensive resource describing the presence and absence in state-based justice systems of best practices for assuring access to justice.

NCAJ specifically recommends that LSC seek \$1.15 billion in its budget request for fiscal year 2016. An appropriation at this level would better equip LSC programs in the 50 states to assure that vulnerable people will be able to protect their rights and their families in civil legal matters arising during 2016.

NCAJ appreciates that substantial increases in appropriation amounts do not occur overnight. Still, the recommendation is real and represents a meaningful statement about the level of commitment required to ensure that all are equal before the law. We describe our reasoning, and the underlying data, below.

I. Overview of the Justice Index

The *Justice Index* is an on-line resource created by NCAJ to promote and support initiatives to increase access to justice in our society. The *Justice Index* shows the extent to which each of the 50 state justice systems is adopting best practices and committing sufficient resources to the goal of assuring access to justice.

The data in the *Justice Index* is organized in four categories reflecting research findings in each state with respect to: i) attorney access (number of civil legal aid lawyers serving the poor), ii) self-representation (systems to assist self-represented litigants), iii) language assistance (systems to assist people with limited English proficiency), and, iv) disability assistance (systems to assist people with disabilities). The data was gathered by attorneys in major law firms serving pro bono, and incorporated into the *Justice Index* by a team at Deloitte, also pro bono.

NCAJ's recommendation for LSC's budget request is based on data in the "attorney access" category of the *Justice Index* since revenue to pay for attorneys (and the costs associated with them) is the core expenditure in the LSC budget.

II. Number of attorneys for the poor, as reported in the *Justice Index*

The *Justice Index* shows the number of civil legal aid attorneys for every 10,000 people in poverty in each state and then compares those numerical findings to the number of attorneys per 10,000 people in the general population in each state.

The *Justice Index's* data on number of civil legal aid attorneys was compiled by the pro bono researchers from multiple sources. The sources varied from state to state, but typically included contacts within civil legal aid programs, courts, access to justice commissions, state funding programs, and other local contacts. This research was conducted in 2013.

The *Justice Index's* data on the number of lawyers for the general population was compiled using information available from the American Bar Association about the number of lawyers in each state in 2012 and 2013.

The *Justice Index's* data on the number of people living in poverty (specifically, below 125 percent of the federal poverty level) in each state was compiled from census data from 2011. Census data from 2011 was also used to obtain the number of people in the general population in each state.

The *Justice Index* contains the following additional pertinent findings. Approximately 1.22 civil legal aid lawyers are present for every 10,000 people in poverty, as compared to 40.52 lawyers for every 10,000 people in the general population. The *Justice Index* findings for the number of civil legal aid lawyers per 10,000 people in poverty vary from state to state, with .43 civil legal aid lawyers per 10,000 poor people in the lowest state, and 4.35 civil legal aid lawyers per 10,000 people in the highest state. (These findings may change slightly, but are not expected to change significantly for purposes of the LSC budget recommendation, when we update and make anticipated corrections to the *Justice Index* in July 2014).

III. How many lawyers should be made available to assist the poor?

It is surprising to most people to learn, as presented in the *Justice Index*, that there are 40 times as many lawyers available on average to assist people in the general population than are available to assist people who are poor.

The *Justice Index* researchers reports that one fourth the number of lawyers available for the general population would be an appropriate number of lawyers to serve the poor. Thus, the *Justice Index* identified 10 lawyers per 10,000 people in poverty (one fourth of 40 lawyers per 10,000 people in the general population) as the figure constituting an the aspirational goal.

In targeting this goal of 10 civil legal aid lawyers per 10,000 poor people, NCAJ recognizes that the ratio from which the goal is derived (40 lawyers per 10,000 people in the general population) includes many lawyers who are not actually available to represent regular people. For example, the ratio includes lawyers who represent the government, lawyers whose clients are primarily corporate entities seeking representation in business transactions, legal academics, and others not engaged in providing legal services to individuals.

On the other hand, people who are poor routinely have greater contact with the law and greater need for representation than members of the general population. Thus, the poor include veterans who require benefits to address medical issues (or other issues), women seeking protection from violent partners, mothers seeking to collect child-support, elderly people battling eviction, and families responding to wrongful aggression by debt collectors. These problems are often serious and common for people in poverty who may have nowhere to turn other than to the legal aid bar.

It is not known or readily knowable what precise ratio of lawyers to people living in poverty would let the market for legal services fully clear – that is, would assure that everyone who needs a lawyer gets one. Thus, it would not be unreasonable in light of the foregoing to seek to ensure that those who are poor have equal access to lawyers with the general population – which would warrant targeting a ratio of 40 lawyers per 10,000 people in poverty.

We base our budgetary recommendation on the much more conservative ratio of 10 per 10,000. We do not claim scientific accuracy for this figure. Rather, it is a good faith judgment based on experience, logic and the practical realities of cost and limited resources in our current fiscal climate. The figure is probably too low, but is more grounded than the austere but sometimes recommended figure of just two lawyers per 10,000 people (which, itself, has been unmet since 1981, as reported in *Documenting the Justice Gap in America, A Report of the Legal Services Corporation, Second Edition*, at 1, n 1 (June 2007)). Still, 10 per 10,000 offers at least the beginning of a chance to meet the obligation and promise of equal justice for all.

IV. How much revenue is needed to fund 10 lawyers per 10,000 people living in poverty?

To determine the amount of money necessary to increase from 1.22 civil legal aid lawyers per 10,000 poor people to 10 civil legal aid lawyers per 10,000 poor people, we considered that 8.19

times as many lawyers would be needed as are currently available for the poor (10 divided by 1.22 equals 8.19). We then took the 2012 LSC appropriation of \$352,651,313 and multiplied it by 8.19, yielding a total of 2.89 billion.

V. What is NCAJ's recommendation, taking into account other factors?

While it would make sense to recommend a federal budget increase to the level of 2.89 billion (or even larger, if one were to take into account the fact that LSC funds not only pay for attorneys, but also finance innovation programs and other LSC initiatives that are not incorporated into our computations) we recognize the existence of other factors that are in play.

Significantly, state and local appropriations, as well as private contributions, currently finance a substantial portion of the legal assistance made available to low income people in communities across the country. Thus, it makes sense to adjust the computation of our recommended increase in federal funding for LSC, to take into account the theoretical hope that the amount of available non-LSC funds would also be increased to narrow the justice gap. As LSC has estimated that LSC funds comprise approximately 39.9% of the revenue available for civil legal aid, we have reduced the recommended budget level from 2.89 billion to 1.15 billion (39% of 2.89 is 1.15).

NCAJ recognizes that 1.15 billion would reflect a substantial increase above 365 million, the appropriation for LSC in Fiscal Year 2014. Indeed, as shown above, it is 8.19 times that sum, reduced to account for the theoretical possibility of an increase in non-LSC revenue. However, as noted above, it is real and if we are serious about assuring equal access to those who are most vulnerable, it is the order of magnitude that we must consider.

For the preceding reasons, and based on the data contained in the *Justice Index*, www.justiceindex.org, NCAJ recommends that LSC request \$1.15 billion in its 2016 request to the U.S. Congress.

Very truly yours,

David S. Udell

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