

EXCELLENCE IN NATIVE AMERICAN PROGRAMS

A REVISED PAPER

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INTRODUCTION

Prior to this conference and the materials prepared for this conference, little had been written about the delivery of civil legal assistance to Native Americans over the past 15 years or so.¹ The articles included in the conference materials are an excellent beginning. Moreover, the discussions held during the conference provided much new information and began an important dialogue that needs to continue. This revised paper is one attempt to further advance that dialogue.

From the outset, the delivery of civil legal assistance to Native Americans has been unique within the federal legal services framework. OEO funded special programs for Native Americans which LSC ultimately took over and expanded to attempt to cover most (though not all) Native Americans residing on or near reservations of recognized tribes. The only other population to receive LSC-earmarked funding was migrant farmworkers and there was considerable difference between the approach taken by OEO and LSC to migrant farmworkers and the approach taken for Native Americans.²

Improving the delivery of civil legal assistance to Native Americans poses a huge challenge for LSC, NLADA/CLASP, the state planning process and the civil legal assistance community. Native Americans face severe access difficulties (including physical access barriers as well as ethnic and cultural barriers, complex language barriers and others) and a huge array of special legal problems arising from the unique status of Native Americans within our country. Moreover, representation of Native

¹The only comprehensive LSC analysis was done in 1978-1981 as part of the 1007(h) Study of Special Access Difficulties and Special Legal Problems of Veterans, Native Americans, People with Limited English-Speaking Ability, Migrant and Seasonal Farmworkers, Residents of Sparsely Populated Areas, the Elderly and Persons with Disabilities. Note that the actual 1007(h) study was done by LSC staff and contains recommendations approved by the LSC board and implemented by LSC. Sometimes, the American Indian Population Study done by the Tosco Foundation and the law firm of Getches and Greene is incorrectly referred to as the 1007(h) study. The Population Study was not approved by the LSC Board and did not form the basis for LSC policy in 1980 and beyond.

²For example, the funding levels per population were higher for many Native Americans funded prior to 1979 than for migrant farmworkers and the unique legal problems of Native Americans required more specialization than those of migrant farmworkers.

Americans is intertwined with the stability and development of Indian Tribes and with the tribal court systems that have been emerging during the last 50 years. As a consequence, Native American programs, including components or branches of general programs with earmarked Native American funding, often focus their legal assistance activities toward assisting tribes as their “general counsel” and helping tribes develop their tribal court systems.

In addition, there are significant LSC funding disparities among Native American programs and components. Some programs that were funded prior to 1979 received a higher funding level than programs funded after 1980. This was in part due to a significant change in Native American funding policy at LSC in 1979 and 1980. This policy has never been carefully reexamined since it was first implemented. Moreover, there are several states with large Indian populations (such as New York) which have no earmarked funding at all.

As we collectively proceed to improve the delivery of civil legal assistance to Native Americans, it is necessary but not sufficient to apply the general learning about civil legal assistance to the delivery of legal services to Native Americans.³ In addition, both state planning and national initiatives must address the unique nature of Native American representation and take into account the fundamental relationship between Native American programs or components and tribal governments.

FUNDAMENTAL ISSUES

At the outset, we need to consider four fundamental issues that directly affect Native American delivery and require immediate and long-term attention.

A. SUPPORT AND TRAINING

We must rebuild and revitalize the support and training infrastructure for Native American programs, components and advocates.

The Native American delivery system has historically had access to support services, co-counseling, training, manual preparation and national advocacy undertaken by the Native American Rights Fund (NARF). On occasion other national entities and, in a few instances, state support programs also provided support and assistance to Native American advocates. The elimination of LSC funding for support in 1995 has caused the reduction in the availability of critical support assistance for Native American advocates. With some funding available after the loss of LSC funds, NARF was able to continue some of its previous activities. More recently, NARF has only been able to

³While this article focuses on civil representation, it am fully aware that some Native American programs and components engage in criminal representation that is permitted under LSC funding for misdemeanors or lesser offenses in Indian Tribal courts. Tribal funds can also be used for any criminal representation. While such representation should be included in any reexamination of Native American delivery, I do not proposed to focus on that here.

answer limited requests for assistance, but it has not been able to co-counsel with Native American programs or advocates. Although there is a training conference under consideration for the Fall or next Spring, since the elimination of LSC funding, there has not been adequate funding to provide critical training for Native American advocates. Moreover, in most of the states where there are large number of Native Americans and programs and units funded for Native Americans, the state support system has not recovered from the 1995 funding termination.

It is critical for the Native American delivery system to fund and rebuild its national support structure. It must take advantage of technology and the possibilities technology provides for support and training. Equally important, Native American programs and advocates must work with others within the state planning process to make sure that state efforts to rebuild state support include the needs of Native American advocates. Both this national system and the state systems in states with a recognizable number of Native Americans need to ensure the following:

1. Information dissemination

A critical role of support efforts involves information dissemination. The Native American support system must ensure effective monitoring, analysis and timely distribution of information regarding relevant national and state legal developments to individual and institutional providers and others participating in the Native American delivery system.

The Native American support system must also create and maintain an efficient state-of-the-art information dissemination network which includes at least four elements. First is 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 on Native American issues in community-based organizations. Second is a civil legal assistance web site and other methods of communication to provide up-to-date information about legislative, regulatory and policy developments affecting low-income Native Americans as well as other information relevant to the delivery of civil legal assistance to Native Americans.⁴ Third, Native American providers must have access to an electronic library of briefs, forms, best practices and proprietary texts and client information materials, which are accessible by all institutional providers and private attorneys providing civil legal assistance to Native Americans. Fourth, Native American providers must have access to a coordinated research capacity integrating Internet usage, on-line services, proprietary sources, and other resources.

⁴I assume that NARF is the appropriate home of such a web site, although one of the Native American programs could also house such a web site. If necessary, the Project for the Future of Equal Justice web site could create a Native American section to provide a temporary home.

In addition, Native American programs, in conjunction with NARF, should convene regular meetings of, or communications among, attorneys, paralegals, lay advocates and others working on Native American legal issues to discuss common issues, problems, subject areas, client constituencies, techniques of advocacy and strategies to make the most effective and efficient use of resources.

2. Coordinated education and training activities

Education and training activities must be available for all individual and institutional providers of civil legal assistance to Native Americans to develop expertise in all major areas of legal services practice affecting Native Americans, to update advocates on new developments and emerging trends in law and policy affecting Native Americans, to ensure the use of new strategies, tools, skills and techniques of advocacy, to develop managers and new leaders, and to maximize opportunities for professional staff development for all experience levels of staff.

The conference under consideration for the Fall or Spring is a good beginning. However, training activities need to be carried out both at the workplace and outside of the workplace for maximum efficiency and effectiveness. State support entities and NARF must also provide assistance to local providers to ensure development of appropriate local training and education activities and materials. Native American providers and NARF should coordinate with continuing legal education programs offered by state or local bar associations or other entities. Finally, all Native American providers must provide opportunities for staff to participate in national and regional training and collaborations where relevant to civil legal assistance activities for Native Americans. One example would be the development of a Native American training track at the NLADA Substantive Law Conference for the summer of 2000.

3. Coordinated civil legal assistance liaison

Native American providers should collaborate with other civil legal assistance providers within the state and nationally to coordinate civil legal assistance liaison with all major institutions affecting or serving low-income people in legal matters, including Tribal, 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.

4. Coordinated national and statewide research

Finally, the Native American civil legal assistance system must ensure both substantive and delivery research is systematically undertaken. Delivery research should focus on improving the delivery of civil legal assistance to Native Americans. As part of these efforts, Native American programs also need to identify and promote systemic "best practices" in areas such as outreach, community legal education, intake, priority-setting and needs assessment, tribal representation, case management,

techniques of advocacy and strategy development. In addition, Native American programs and NARF should undertake research on relevant demographic trends and new and emerging legal problems that affect low-income Native Americans.

5. How to Get There

To rebuild and revitalize the Indian support system will require new funding both from new sources as well as from within the existing Native American delivery system. NARF will need to seek out funding where there are possibilities. But there may well be very limited possibilities for earmarked funding for support and training. Therefore, Native American programs and components will have responsibilities to help raise the necessary funding. It is not likely that funding sources will provide separate funding for support and training. LSC is not likely to be a funding source, because Congress will not fund for support and training. Instead, support and training will come from programs receiving funding for legal assistance. In short, we are in a new era for support within the LSC system.

Funding support and training is not just the responsibility of Native American programs and components, though it must begin there. The national leadership in legal services and the national institutions—NLADA and CLASP—have responsibilities to work to see that the Native American support and training infrastructure is rebuilt. A Native American track at the NLADA Substantive Law Conference is one example, but only one example of what needs to be done.

In addition, the Native American community cannot ignore other entities on the national level, even though they may not be experienced or knowledgeable about Native American law. For example, CLASP and the Center on Budget and Policy Priorities both work extensively on TANF policy developments nationally and within states. Neither have focused on Native American issues or the issues around including tribal governments in welfare Administration.⁵ On the other hand, while neither have significant expertise on immigration issues, both have focused attention on the loss of public benefits for various categories of aliens.

Finally, Native American programs cannot totally ignore newly emerging state advocacy groups or state support entities that remain after the LSC funding termination of state support. While state support and state level training may not be able to fully meet the needs of Native American advocates, much more can be done than is currently the case. Some state support entities have in the past developed some expertise on Native American issues and have included Native American issues in some training programs. Moreover, if we are going to make sure that Native Americans residing in urban areas obtain legal assistance, we need to focus support and training on general programs serving those areas. As a beginning step, it might make sense to

⁵For a more detailed discussion, see Robert J. McCarthy, "Tribal Welfare Reform: The Miner's Canary, March-April, 1999, *Clearinghouse Rev.* at p. 554.

include several key state support and state advocacy group advocates from states with large Native American populations in any training that NARF undertakes.

B. FUNDING DIVERSIFICATION

Improvements in the Native American delivery system and support will not come about unless there is increased funding. It is essential to seek ways to obtain increased LSC funds to address both funding inequities and to expand capacities of all Native American providers. However, it would be foolish to assume that any new funding can only come from LSC and that there will soon be sufficient change in the political environment in Washington to produce sizeable increases in LSC funding. Of course, within the limits of the appropriations restrictions, we should continue the efforts to increase LSC funding from Congress, and Native American advocates have played a critical role in such advocacy. We must be realistic. The history of LSC funding since 1981 when LSC achieved its highest relative level of funding is not promising,⁶ and the current political climate does not appear to be changing significantly enough that we can anticipate anything other than small, incremental funding increases over the next several years.

Even if the prospects for increased LSC funding improve and more LSC funds are available for Native American delivery, they will not be sufficient to take even the minimal steps necessary to address the access barriers and special legal problems of Native Americans nor will they be sufficient to put in the place the system described below. Therefore, it is essential for Native American programs to seek funding from a diverse set of sources including, but not limited to: federal, state and tribal governments, private foundations, United Way campaigns, line items in collaborations with tribes and human services agencies, and a host of other sources. The funding initiative proposed by Steve Moore is a good example of the kind of steps that need to be undertaken. Moreover, increase funding will also require direct participation by Native American programs and components in the state resource development plans being developed in many states through the state planning process. Although it is difficult and will require learning new skills, it is the responsibility of every Native American program director and even the responsibility of program component managers to seek to diversify funding for Native American delivery.

Finally, there is some evidence from experience in a number of states that have succeeded in obtaining increased funding, that funding follows delivery improvements, not the other way around. While this evidence is not conclusive, few recent successful

⁶LSC funding increased substantially from \$71.5 million in 1975 to \$321 million in 1981. Had funding continued at just the inflation level, LSC funding would be over \$700 million today. Instead, LSC funding was reduced in 1982 to \$250 million and did not again reach \$321 until 1991. It rose to \$400 million in 1995, but was reduced again to \$278 in 96 and is only back to \$300 million today.

state efforts have been premised on the assumption of funding “more of the same.” Funders are looking to fund new and innovative approaches, not the same old approaches (even if the old approaches are working.) This includes both governmental and private funders. If so, it is not a sufficient answer to the challenges that face the Native American delivery system to assert that without additional funding, changes cannot be made. Instead, the Native American delivery system and the programs that are funded as part of that system, have to begin making changes and to propose additional changes in the way they operate, in order to attract increased funding.

C. PARTICIPATION IN THE STATE PLANNING PROCESS AND THE EFFORTS TO ACHIEVE AN INTEGRATED, COMPREHENSIVE STATE SYSTEM OF CIVIL LEGAL ASSISTANCE

The framework for funding and delivery for civil legal assistance has fundamentally changed since we last grappled with how to promote excellence in Native American civil providers. The civil legal assistance system is primarily state based and its growth and future directions will be determined on a state-by-state basis. There are many more stakeholders now involved in civil legal assistance and a much broader community of advocates. The current and future system is not primarily an LSC system because there are many non-LSC full-service providers and specialized programs. LSC is no longer the primary funder of civil legal assistance, although it remains the single largest funding source. Funding is far more diverse and far more state based than 15 or 20 years ago and significant growth in funding will be occurring at the state and local level, not primarily at the federal level. In order to secure future funding for civil legal assistance, LSC, NLADA/CLASP and most of the civil legal assistance community have recognized that it is essential that we create a comprehensive, integrated delivery system in each state which will include providers of civil legal assistance to Native Americans.

Native American programs and the Native American community cannot ignore the state planning initiatives and other actions being taken to develop comprehensive, integrated state delivery systems. While in the past there may have been good reasons to retain separate funding and delivery systems, and while there are legitimate fears of state government involvement in Indian legal services delivery, Native American programs will lose an opportunity if they do not participate. Only by direct and effective participation can Native American programs influence the new system to take into account the critical needs of Native Americans both on reservations and in urban areas. Moreover, to access vital new funding that is emerging and will continue to emerge will require participation. It is essential for Native American programs to reach out to the broader civil legal assistance community while, at the same time, continuing to focus on efforts to improve legal assistance for Native Americans.

D. ENGAGEMENT WITH CLIENTS AND THEIR COMMUNITIES

Those involved in civil legal assistance for Native Americans must be in constant touch and dialogue with the low-income Native Americans and families in communities so that providers understand the values, concerns, needs and problems of low-income Native Americans including what they know about existing or potential legal problems they may face and how they are reacting to changes directly affecting their lives. Such client engagement may require changes in how the Native American programs operate.⁷ Native American programs may be more effective in engaging clients than most civil legal assistance providers because of the historical need for such programs to relate directly to Native American communities and tribes and because many Native American advocates have had to live on reservations in order to effectively work in their programs. Because of the critical importance of client engagement to Native American advocacy, I will set out what I believe are necessary indicators of client engagement which I hope are being already met in most programs.

First, Native American provider staff will have to view their work as encompassing client engagement. Their job will include community and Tribal meetings and interaction with clients in Tribal and community settings as well as increased outreach efforts to communicate with low-income Native Americans in a variety of settings, such as BIA offices, housing projects, hospitals, tribal facilities and festivities and a host of other settings. This client and community orientation to their work, to be effective, will need to be written into job descriptions and used as a basis for evaluation, salary increases and job promotion.

Second, Native American providers and their partners will have to expand the places where intake is done, as well as utilize a wider range of intake techniques, including telephone intake and hotlines (discussed below).

Third, Native American providers, including general programs in areas where there are large numbers of Native Americans, must be sensitive to the values, cultures and aspirations of Native American households. To assume effective communication and responsiveness will require diverse staffing patterns within and among providers and the use of community volunteers or lay advocates. When there are a large number of Native American households that speak a language other than English, providers must ensure that there are advocates and interpreters who can speak the language of the clients.

⁷Client engagement is not the same as “client involvement” as legal services have traditionally used that term. Client involvement works well when there are strong, viable client groups that represent broad constituencies and when client representatives are themselves involved in leading social change. Unfortunately, that is not the case today in many communities. Thus, without giving up the historic and value-laden strong commitment to client involvement, legal services must focus on client engagement—an active, outreach effort that involves community lawyering and the development of options and opportunities for clients.

THE FRAMEWORK FOR DEVELOPING INDICATORS OF EXCELLENCE FOR CIVIL LEGAL ASSISTANCE TO NATIVE AMERICANS

A. GENERAL WORK ON EXCELLENCE IN CIVIL LEGAL ASSISTANCE

We can learn from the more general thinking about excellence and quality in the delivery of civil legal assistance that had been the subject of several efforts over the last ten years. The challenge is to apply the more general work on civil legal assistance to the unique problems in the delivery of civil legal assistance to Native Americans.

There are two critical areas of work that we need to draw upon. First, is the LSC Performance Measures developed by an LSC Advisory Group (of which I was a member) as part of the Comparative Demonstration Project conducted by LSC in 1993. These have been refined since the initial efforts and are now part of the LSC Refunding application.

The second involves the thinking about comprehensive, statewide, integrated delivery systems. LSC has done considerable thinking in its two programs letters, 98-1 and 98-6. It has further refined that thinking in subsequent communications providing feedback on the state plans that were submitted in October of 1998. In addition, the Project for the Future of Equal Justice prepared a document **The Discussion Draft** which attempted to set out the objectives for and characteristics of a comprehensive, integrated statewide system for the provision of civil legal assistance to low-income persons to achieve equal justice for all.⁸

However, some caution is necessary in using either of these as the framework from which to work. The LSC Performance measures were developed to evaluate LSC-funded programs through a peer review process. The process was just beginning in a systematic way in 1994 and 1995 when Congress fundamentally altered the role of LSC in evaluating performance by depriving them of funds to undertake such evaluations except in the context of competitive bidding. Therefore, we do not have sufficient experience or data to know whether the measures provide a useful basis for evaluating program quality and excellence.

Moreover, no effort was made to take these more general measures and develop a specific set of performance measures for Native American programs. Indicators of excellence will differ from Native American programs from other programs because of the severe access difficulties (including physical access barriers as well as ethnic and cultural barriers, complex language barriers and others) and the huge array of special legal problems unique to Native Americans.

⁸I was the primary author of the Discussion Draft, though I had substantial assistance and input from staff of the Project For the Future of Equal Justice and numerous leaders from the civil legal assistance community.

The LSC Program Letters and the Discussion Draft characteristics were designed to focus on the state as a primary framework for viewing civil legal assistance, but they did not intend to provide a comprehensive framework for the entire civil legal assistance delivery system and did not focus specifically on the unique needs and problems of providers to Native Americans (or migrant farmworkers for that matter).

B. OTHER RELEVANT CONSIDERATIONS

In discussing excellence in Native American programs, it is essential to distinguish between Native American clients of recognized tribes residing on or near a reservation; Native American members of unrecognized or terminated tribes residing on or near a reservation; and Native Americans not residing on a reservation but in an urban area. Each of these groups has different levels of access problems and special legal problems.

Moreover, in considering how to improve the delivery of civil legal assistance to Native Americans, it is important to distinguish among several programmatic approaches that the Corporation has employed. Some services are provided by special Indian programs serving clients of recognized tribes residing on or near a reservation. Some services are provided by a general legal services program with no special earmarked funding. And, some services are provided by special Native American components or branches of a general program, often with some form of earmarked funding.

C. THREE APPROACHES TO EXCELLENCE

1. Individual Program Indicators of Excellence

The emphasis of the LSC Performance Measures was on individual program performance and the evaluations to be conducted were of individual program effectiveness. The Performance Measures set out four basic areas for inquiry by peers who would evaluate legal services programs:

1. Effectiveness in identifying and targeting resources on the most pressing needs of the low-income community.
2. Effectiveness in engaging and serving the client community.
3. Effectiveness of legal representation and other program activities intended to benefit the low-income population in its service area. This measure explicitly incorporated the ***ABA Standards for Providers of Civil Legal Services to the Poor***.
4. Effectiveness of administration and governance.

The concept of “effectiveness” is the cornerstone of the criteria. Effectiveness encompasses an emphasis on both (1) results achieved for clients and the client community and on (2) cost-efficiency, meaning that given a program’s goals and objectives, the program achieves the maximum possible in the most economic manner.

One task for Native American delivery is to adapt the framework of the Performance Measures and modify and adjust them to produce a system of indicators for excellent Native American civil legal assistance providers. The existing Performance Measures and Evaluation Guidelines do not take into account the unique aspects of access, community legal education, service delivery, tribal representation, lack of phones and technology infrastructure on reservations, difficulties of assessing legal needs, language and cultural barriers, and the like.

A second necessary task is to undertake peer review of Native American programs and program components. Native American programs will need to undertake their own peer review process because there is not likely to be new or nationally earmarked funding for peer review and because neither LSC nor IOLTA may undertake evaluations of program quality.

Finally, all Native American providers should also consider periodic efforts to evaluate their services and staff performance through structured client efforts. It may be possible to use client satisfaction surveys in some Native American service areas, although such surveys may not be efficient and effective for many Native American services areas. In addition, Native American programs should consider other

approaches. For example, a few legal services programs have successfully convened focus groups of clients to assess services and provide information on clients' needs and perceptions.⁹ Native American providers should experiment with such techniques as well.

2. State Integrated Comprehensive Systems of Delivery

Over the last four years, the approach to thinking about legal services delivery has fundamentally changed. The emphasis is now on the entire system of legal services delivery, particularly at the state level. While a statewide emphasis does not fit perfectly for Native American programs, it does provide one framework for looking at civil legal assistance. Thus, we need to examine Native American programs and components in the context of newly emerging comprehensive, integrated state delivery systems. A beginning for such an examination is sketched out in the next several sections of this paper.

3. The National Network of Native American Programs

Finally, we need to consider indicators of excellence from the perspective of the national network of Native American programs and components funded by LSC with earmarked funding. While there will be significant overlap with both individual program indicators of excellence and the state integrated delivery systems issues, there are unique issues that face Native American programs because of the access difficulties of Indians and the unique legal problems they face. In fact, examining the unique aspects of Native American delivery should help inform both the discussion about individual program indicators of excellence and the state integrated system's indicators.

OBJECTIVES OF NATIVE AMERICAN CIVIL LEGAL ASSISTANCE SYSTEM

At the outset, we need to be clear about the objectives for a Native American civil legal assistance system. We need to reach consensus on what these objectives are for they will provide the ultimate indicators of whether the system is moving toward excellence.

There are two fundamental objectives of the Native American delivery system. One is to provide representation and assistance to tribes to help them develop economically and institutionally. Such representation is necessary in many Native American service areas because the tribes in those areas have not developed

⁹An excellent example of how focus groups can be used and the impact such efforts can have is provided in two articles by James Bamberger and Sally Pritchard, *Challenging Institutional Relevance—Part I* MANAGEMENT INFORMATION EXCHANGE JOURNAL, Vol. VII, No. 3, October 1993 and *Challenging Institutional Relevancy—Part II*, MANAGEMENT INFORMATION EXCHANGE JOURNAL, Vol. VIII No. (November 1994).

necessary institutions to govern effectively or have not developed economically so that they can ensure jobs for their members. While each tribe is different and may require much different levels and kinds of assistance, as a broad generalization, tribes need assistance of lawyers and other advocates to develop tribal legal systems, including tribal court systems, and to develop appropriate legislative and administrative bodies to make and implement policy. Many tribes will also need transactional legal assistance to help them develop economically.

The other fundamental purpose of a Native American civil legal assistance system is to enable low-income¹⁰ Native Americans to address their legal problems effectively.¹¹ To achieve this purpose, the system must carry out three functions:

First, the system must educate and inform low-income Native Americans of their legal rights and responsibilities. Many Native Americans do not recognize that they are in a situation that could be improved with legal assistance. Many Native Americans are unaware of the use of civil legal assistance and many have only a limited understanding of the justice system and its components. The civil legal assistance system should educate and inform Native Americans to enable them to:

- i. recognize their legal rights and responsibilities¹² and unmet legal needs;
- ii. address their legal needs effectively;
- iii. take action to prevent legal problems from arising; and
- iv. promote their legal interests.¹³

¹⁰ I have used the term “low-income” without attempting in any way to delineate who is and is not included among the Native American population. At one point in LSC funding history, for example, the assumption was that 80% of reservation Indians were poor. Since the count on which Native American funding is now based is a percentage of overall Basic Field funding, it is not clear whether the earlier assumptions about the number of eligible reservation Native Americans still apply.

¹¹ The term “legal needs” refers to situations that low-income Native Americans face that raise legal issues and for which legal information, advice, representation and assistance would be helpful. The term “unmet legal needs” is defined to mean legal needs for which low-income Native Americans did nothing or were dissatisfied with the outcome of their own efforts or those of non-legal third parties.

¹² The phrase “legal rights and responsibilities” is taken from the Legal Services Corporation Act as amended. “Legal rights” will be used in this paper to mean the rights accorded to low-income Native Americans through statutes, regulations, constitutions and judicial decisions. “Responsibilities” will mean obligations imposed on low-income Native Americans by statutes, regulations, constitutions and judicial decisions.

Second, the civil legal assistance system for Native Americans must inform Native Americans about options and services available to solve their legal problems, protect their legal rights and promote their legal interests. Even when low-income Native Americans recognize that they have a legal need and are aware of their legal rights and responsibilities, many will not be aware of all possible methods for addressing their legal needs. Some options involve preventive steps, self-help and collective actions that do not involve the formal use of the civil justice system. Other options involve using alternative dispute resolution, negotiation and the judicial, Tribal court and administrative adjudicatory systems. Still other options include community economic development, other transactional assistance and representation before administrative agencies and legislative bodies, including Tribal bodies. Low-income Native Americans need to be aware of the range of options available and the pros and cons of exercising particular options so that they can choose the option that best meets their needs. Low-income Native Americans also need to know about all available legal assistance providers and how to access or make use of those providers.

Third, the civil legal assistance system must ensure that all low-income Native Americans have relatively equal and meaningful access to a full range of high-quality legal assistance programs when they have chosen options that require legal aid and assistance. Such assistance can help low-income Native Americans anticipate and prevent legal problems from arising, solve their legal problems and protect their legal rights. Such assistance can also help promote their legal interests, oppose laws, regulations, policies and practices that operate unfairly against them, enforce and reform laws before legal problems arise, and improve their opportunities and quality of life.

THE UNIQUE CIRCUMSTANCES OF NATIVE AMERICAN DELIVERY AND ADVOCACY CRITICAL FACTORS TO TAKE INTO ACCOUNT

ACCESS FOR NATIVE AMERICANS

The access barriers for Native Americans are particularly difficult to address and are an overriding problem in the delivery of civil legal assistance to Native Americans.

¹³"Legal interests" is used in this paper to mean procedural protections, rights or entitlements that are not recognized as legal rights by statutes, regulations, constitutions or judicial decisions.

A. ACCESS BARRIERS

1. Physical Access

Native Americans face severe physical access barriers. They often reside in isolated, sparsely populated areas that would not be reached by a program without an affirmative commitment and a willingness to do so. This is particularly true for Native Americans residing on or near reservations, including those in the southwest, Alaska, South Dakota and Oklahoma. Where most Native Americans reside are areas that are the least densely populated areas in the country.

2. Ethnic and Cultural Barriers

Native Americans face severe ethnic and cultural barriers preventing access to civil legal assistance. These are often expressed as unwillingness on the part of Native Americans to seek service from a program at primarily or exclusive for their benefit. The perception is that a legal services program cannot develop the trust and understanding necessary to effectively provide effective legal assistance to Native Americans unless the program is focused on their issues and staffed by either Native Americans or people sympathetic and culturally sensitive to their needs.

3. Language Barriers

Third, many Native Americans face severe language barriers that limit their access to civil legal assistance. Some tribes include members who speak primarily a native language and have limited English-speaking ability. Many Navajo Indians, for example, speak the Navajo language, which is almost impossible to learn by non-Navajo speakers. Language barriers may be a significant problem in Arizona, New Mexico, Utah, Alaska and among some tribes in South Dakota. In these service areas, there is a pervasive need for non-English language services.

4. Lack of Awareness of Civil Legal Assistance

Many Native Americans are unaware of the availability and use of civil legal assistance. Often, Native Americans have only a limited understanding of the state civil justice system and its components and may not fully understand new tribal court systems that have developed over the past 30 years.

5. Special Legal Problems

Finally, Native Americans face very special legal problems. They have complex special legal problems related to their status as Native Americans and must therefore have a service delivery system capable of resolving these problems. Information from the old Corporation study on Native Americans, a Section 1007(h) Study, indicated that programs addressing access were most successful where they were in close physical

proximity to the Native Americans served, had expertise on Indian problems, utilized non-English services and, for some, provided representation to the tribes. In view of the unique and pervasive special legal problems of reservation Indians where members are recognized tribes and the need to understand Indian culture, training and specialization are necessary to deliver continuous quality services to eligible Indians.

B. AN OVERALL LOOK AT THE ACCESS BARRIERS

The predominant access barrier for Native Americans in most program service areas is inability to reach a legal services provider when necessary. For tribes within the service area of the program, this barrier is a function of the small size of tribes generally, the distances between tribes (the scattered nature of reservations), the low population density of reservations, and the location of reservations in relatively isolated rural areas.

None of the approaches LSC has used to deliver legal services to reservation Indians has fully addressed the physical access problem. Access to general programs often depends on the overall poverty population in the surrounding area and a program commitment to affirmatively target resources to what is usually a very small part of the eligible population. Special Indian programs serving a number of tribes in reservations appears to give better access to some than others, as they are required to create a special delivery system covering great distances. Approaches that merge Indian and non-Indian representation (including both Indian programs with responsibility for non-Indian clients and general programs with special Indian branches) may offer the best promise of meeting physical access barriers.

Native Americans residing in unrecognized or terminated tribes face many of the same barriers as those residing on or near recognized tribes. Some reside in isolated rural areas, so physical access is limited. Many are likely to be unaware of program services. Limited use of Native American staff may be viewed as a lack of cultural respect. In a few cases, language barriers may be present. However, the main special access barrier encountered by members of unrecognized or terminated tribes is lack of recognition of Indian identity, cultural heritage or special problems.

For urban Indians, the most critical access problem is whether the program recognizes the existence of urban Indians and targets resources and staff with specialization to meet those legal needs. The degree of access difficulties is most influenced by the size of the poor Indian population in comparison to the overall poverty population. Where the size is substantial, the programs are likely to have taken steps to ensure access and provide high-quality services, such as operating an office or undertaking intake at a Urban Indian center. However, even where there are substantial Indian populations, there appears to be a significant lack of awareness of the program and its services by urban Indians.

SPECIAL LEGAL PROBLEMS OF NATIVE AMERICANS

Native Americans confront a breadth of legal problems relating to unique Indian rights created by the special status of Indian tribes under the United States Constitution; treaties may be between the tribes and the United States Government and statutes by the United States and individual states. Of particular significance for members of recognized tribes are legal problems connected with use and occupancy of land and hunting and fishing rights, since the use of land and its resources generally hold the promise of economic self-sufficiency for Indian tribes. Indian land is held in trust for the use and benefit of the Indian tribes or individual Indians. This unique trust status gives rise to a myriad of legal problems including (1) tribal control of land against state jurisdiction, (2) protection of land against outside trespass, such as hunting and fishing, (3) individual Indian rights to use and occupancy of trust land, (4) protection of water resources, and (5) rights and interests in allotted land.

Hunting and fishing rights are usually derived from treaties and often extend beyond reservation boundaries. Because of direct conflict with states, commercial fishermen and sportsmen, these rights often have been controversial and require constant enforcement efforts.

In the past, general basic field programs rarely focused on land, land use, water rights or hunting and fishing cases relating to Native Americans. They had little special expertise on these issues and, unless there was a significant Native American population in their area, did not have the demand to develop that expertise.

In addition to rights relating to land, land use, water and hunting and fishing, Native Americans also experience a high number of consumer and credit problems. One cause is the "trader system," a licensed monopoly granted by the Bureau of Indian Affairs to certain persons to sell consumer goods and extend credit on the reservation. In addition to engaging in trader transactions, Indians often make significant off-reservation purchases and obtain credit. Significant abuses may occur in the dealings between traders and Indians and off-reservation white merchants and Indians.

Native Americans also experience particular difficulty regarding juvenile protections and child custody rights. Of particular importance is the Indian Child Welfare Act which changed the landscape regarding representation in child custody proceedings. There is little expertise in general basic field programs on the Indian Child Welfare Act. Special programs and special units have developed far more expertise.

Urban Indians do face some status problems relating to their Indian status, but also face significant problems in housing because urban Indians tend to live in more crowded, less sanitary housing. In addition, urban Indians face significant employment problems due to a range of factors both cultural and other. For example, there is inadequate vocational training, difficulties in finding work and substantial employment discrimination.

THE FUNDAMENTAL DELIVERY SYSTEM ISSUES

This paper began with a discussion about the need for the civil legal assistance delivery system for Native Americans to (1) rebuild and revitalize support and training; (2) diversity funding; (3) effectively participate in the state planning process and become an integral part of the newly emerging comprehensive, integrated state delivery systems; and (4) engage clients and Native American communities to address their priority legal needs. In addition, the delivery system must:

- Increase awareness of rights, options and services
- Facilitate and enhance access to legal assistance
- Provide a full range of services
- Provide effective tribal representation
- Utilize a full range of providers
- Ensure high quality, coordinate, efficient and effective civil legal assistance
- Use technology to the maximum extent possible

A. INCREASING AWARENESS OF RIGHTS, OPTIONS AND SERVICES

The Native American civil legal assistance system must engage in outreach and community legal education in order to educate and inform low-income Native Americans of their legal rights and responsibilities and the options and services available to solve their legal problems, protect their legal rights and promote their legal interests.

1. Outreach

Throughout the service area of Native American programs or units and in states where there are identifiable numbers of Native Americans, the delivery system must ensure that there is an aggressive, coordinated, systematic and comprehensive outreach targeted to all Native Americans. Such outreach should provide information about legal rights and responsibilities of Native Americans as well as the options and services available from legal providers and their partners. Given the severe access barriers which Native Americans face, it will be very challenging to ensure that Native Americans are reached. There is no doubt that, over time, technology will be available to many Native Americans and will be able to provide access and help address the access barriers, but, until then, more traditional methods of outreach will have to be used.

2. Community Legal Education

In addition, Native American programs and the state integrated system must provide coordinated, systematic and comprehensive community legal education that is targeted at critical legal issues, provided through a variety of means and delivered in a

variety of community and tribal settings. Educating low-income Native Americans about their legal rights and changes in laws and policies that directly affect them can help potential clients understand their options and responsibilities, prevent future legal difficulties from arising and enable low-income Native Americans to seek legal assistance at a time when it can be most valuable. In states without Native American programs or units and where there are identifiable number of Native Americans, care should be taken to make sure that the education and information is culturally relevant to the Native American population groups within the service area.

Native American programs or units as well as the state system must also educate and train staff of community-based organizations, human services providers, tribal judges, court personnel and tribal leaders and others involved in providing legal and other services about critical legal issues facing low-income Native Americans and about the services available from legal providers in order to make appropriate and accurate referrals.

B. FACILITATE AND ENHANCE ACCESS TO LEGAL ASSISTANCE

I have detailed earlier the severe access barriers facing Native Americans. In addition, there is little doubt that Native Americans would experience the level of unmet legal need experiences by other segments of the population or worse. Virtually every legal needs study that has been done over the last ten years tells us that the current system is meeting at most 20% of the legal needs of the general population legal services are supposed to be serving. We can assume that Native American programs are not doing better. Yet, the civil legal assistance system for Native Americans has not made a commitment to achieve full access to civil legal assistance for all Native Americans. To do so will involve increased financial resources to be sure. But, as the recent policy report from ABA's Comprehensive Legal Needs Study suggests, achieving access will require new methods of delivery.¹⁴

¹⁴See AGENDA FOR ACCESS: THE AMERICAN PEOPLE AND CIVIL JUSTICE, by Albert H. Cantril, American Bar Association, 1996. The Policy Report calls for: (1) increasing the flexibility of the civil justice system and expanding the options available for people seeking legal help, including hot lines and assistance to those proceeding pro se; (2) developing better ways for people to obtain information about their options when facing a legal situation and more effective referral systems including more legal education through pamphlets, kiosks and other new technologies ; (3) increasing pro bono legal services by the private bar; (4) increasing the availability of affordable legal services to moderate-income individuals and households through sliding fees and expansion of legal services programs; (5) integrating the use of community-based dispute resolution services into the options available for low-income clients; and (6) encouraging legal services programs to retain as much flexibility as possible in deciding what cases to accept.

A plan to achieve access based on what we know about addressing the legal needs of low-income Native Americans would probably include four fundamental elements.

1. Coordinated system of service delivery using all individual and institutional providers

The key to achieving relatively equal access for Native Americans is the development of, or redeployment of existing providers into, a coordinated system of service providers which uses both specialized Native American providers and general civil providers together with private lawyers and lay advocates in order to ensure that services are accessible from all parts of the service area, including remote rural areas and, where relevant, low-income urban neighborhoods. The system must identify and allocate resources and make available specialized expertise in all major substantive areas of the law affecting low-income Native Americans in order to provide an appropriate service for every major legal problem and address the highest priority legal needs of low-income Native Americans within the state. In addition, the coordinated system must provide legal information and assistance in all of the languages spoken by Native Americans.

2. Centralized or coordinated advice and brief services system

Second, the system of both specialized and general providers must develop throughout the service area advice and brief services system to enable low-income Native Americans who believe they have a legal problem to speak by telephone or in person to a skilled attorney or paralegal for accurate legal advice and brief services to help resolve that problem.

Since both specialized and general legal services providers assist some Native American clients through brief service or advice, it is important to focus on how to do this work more efficiently and effectively and how to integrate these activities into the overall state system so that effective advice and quality brief service is seen as central to the work of most Native American programs and to most state systems where there are identifiable number of Native Americans. However, it is also important to recognize the limits of using phone contact and new technologies and the potential costs as well as benefits. Improved brief service and advice systems cannot alone fully identify the most critical issues facing Native Americans, but they can provide some insight and information about them. Using new technologies to enhance contact and assistance to Native Americans must be developed in the context of maintaining and improving lawyer-client relationships, not supplanting them. Providing Native Americans greater information about their rights and responsibilities and giving them information to enable them to understand their situation and take action can be empowering, but it is not the primary means of empowering clients that programs must develop. It is one of many strategies that must be employed.

3. Accessible, flexible, responsive intake systems

To facilitate and enhance access, Native American programs must insure that, throughout the service area, there is an accessible, flexible and responsive intake system or systems which include in-person and telephone screening, case evaluation and referral system(s). These systems must be able to effectively diagnose legal problems and identify legal interests to determine the level of service that each applicant needs. They also must have the capacity to make referral to the system of legal providers including pro bono advice and referral panels and law school clinics. They also should be able to make referral to tribal institutions and community based organizations and other appropriate non-legal organizations accessible by Native Americans.

4. Participation in the state civil legal assistance system

Native Americans should participate in advice and brief services system and statewide intake systems. However, they should not supplant client sensitive intake and advice and brief referral systems for those Native Americans who cannot or do not want to navigate such a system. Such combined systems not only provide critical services that could be used by some Native Americans now accessing the current system, but they offer clients who need a fuller range of legal advice and/or representation easy access to such legal assistance. In addition, such statewide systems also can serve as a clearinghouse of information for staff, low-income Native Americans, tribal and regular courts, pro bono programs, law school clinics and other providers and partners.

C. PROVIDE A FULL RANGE OF SERVICES TO INDIVIDUAL INDIANS

The Native American civil legal assistance delivery system, working in conjunction with the newly emerging integrated state systems, should systematically ensure the collective capacity to provide a full range of civil legal assistance services to all Native American clients regardless of their location or the forum within which their legal problem is best resolved. For example, the system should enable low-income Native Americans and groups to address some legal problems without legal representation, receive advice and brief services in appropriate situations, and receive representation from an attorney or paralegal when necessary. In addition, the system should provide representation when the legal issues affect a substantial number of poor people. Services that should be available include:

- Legal advice and referral;
- Brief legal services;
- Representation in negotiation;
- Representation in the judicial system, Tribal courts and in administrative adjudicatory processes using all forms of representation appropriate for the individual or group being represented;

- Transactional assistance (including community economic development, job creation, housing development, and the like);
- Representation before state, local and Tribal legislative, administrative and other governmental or private bodies that make law or policies affecting legal rights and responsibilities;
- Assistance to clients using mediation and dispute resolution programs, including community-based and tribal-based dispute resolution services (where they exist), and development of linkages with such programs; and,
- Assistance to individuals representing themselves pro se.

1. Continued Sustained Representation

While it is imperative that the Native American civil legal assistance system serve more clients through a vastly expanded range of services and a much wider range of partners, it remains the case that legal services must continue to provide high-quality, effective representation in the trial courts, including tribal courts, and administrative agencies. Only by sustained, continuing representation will low-income Native Americans realize their rights. This representation must include all of the techniques of advocacy that lawyers can pursue on behalf of clients including, for example, class actions and claiming attorneys' fees for which clients are entitled.

There may be greater flexibility within the Native American delivery system than exists for other programs funded by LSC, since Native American programs or units and general basic field programs which receive tribal funds can, under LSC regulations, use such tribal funds for such activities if such use is in accordance with the specific purposes for which the tribal funds were provided.¹⁵ I doubt whether there are sufficient tribal funds within the system to meet the need for the full range of advocacy. If there are not sufficient tribal funds, then the Native American program or units will need to tap into the services available from non-LSC sources within the integrated state system.

2. Representation before Legislative and Administrative Bodies

The Native American civil legal assistance system must provide representation before legislative and administrative bodies and other bodies that make law or policies affecting low-income Native Americans to make sure that low-income Native Americans are at the table when decisions affecting them are made. These bodies make many decisions directly affecting the rights and interests of low-income Native Americans and they are an integral part of the civil justice system. If such representation cannot be provided by LSC-funded programs with tribal funds or other institutional providers, (because of funding restrictions imposed to address the ideological opposition of some

¹⁵See 45 CFR 1610.4(a). Tribal funds are defined as "funds received from an Indian tribe or from a private nonprofit foundation or organization for the benefit of Indians or Indian tribes."

legal services supporters), the Native American system must find ways to provide this vital service. The Native American system has access to NARF which does provide some representation before Congress and federal agencies and in a few states. Another approach, that has not been tapped very often by legal services programs generally, and probably not by Native American programs, is the private bar, particularly large law firms. In a number of states and nationally, the private bar has been able to provide such policy representation pro bono.

3. Transactional and Economic Development Work

There is also a growing recognition that legal services programs, working with private lawyers, should provide assistance to tribes, community-based organizations and development corporations engaged in venture development and community building activities on reservations or neighborhoods where Native Americans reside. Economic development assistance can help develop housing, nonprofit development projects, and small business ventures and can help initiate and operate social services ventures through community-based organizations such as job training, credit unions, home health care and child care.¹⁶

D. TRIBAL REPRESENTATION

Many Native American programs and components represent tribes in a “general counsel” role and/or provide extensive assistance to tribes to help them develop economically and to develop legal and governing institutions, such as tribal courts, legislative bodies and administrative agencies. This representation role is unique within the civil legal assistance system. It may be useful for the Native American delivery system to develop a more structured approach to tribal representation so that staff have clear road maps about what such lawyering is about and how it can be effectively done. This could include guidelines for effective tribal representation as well as how to work with a human services agencies and housing authorities (run by tribes or by non-tribal entities) that care for and provide services to low-income Native Americans. The guidelines could also address how to avoid becoming involved in tribal politics and the difficulties posed when the Native American program finds itself ensnared in tribal politics .

E. UTILIZE A FULL RANGE OF PROVIDERS

Civil legal assistance for Native Americans will continue to be delivered by staff attorneys, paralegals and lay advocates. However, if the delivery system is going to

¹⁶John Little and National Economic Development and Law Center, *Practicing Community corporate Law*, 23 CLEARINGHOUSE REVIEW 889 (November 1989); Debbie Chang and Brad Caftel, *Creating Opportunities through Litigation: Community Economic Development Remedies*, 26 CLEARINGHOUSE REVIEW 1057 (January 1, 1993).

reach a larger number of Native Americans, then civil legal assistance will have to increasingly involve private attorneys, law students working in clinical and other programs, staff from other community-based organizations, lawyers, paralegals or staff working for other entities (including attorney general offices, corporations, labor unions, civil rights and civil liberties organizations, human services providers and other nonprofit institutions), nonlawyers and Tribal advocates, and others involved in or relating to the civil justice system such as clerks, law librarians and other court personnel. These must all work as a community of advocates.

1. Private Lawyers

In order to achieve access and to meet basic Native American client needs, Native American programs and components will have to form creative partnerships, collaborate with and effectively utilize the private bar. Yet, unlike civil liberties and civil rights organizations, in only a few places does the organized civil legal assistance system take full advantage of private attorneys and their skills.¹⁷

To help meet the challenges of the unmet legal need for Native Americans, and to participate in a coordinated, holistic approach to addressing the legal needs of low-income Native American clients, pro bono programs and coordinators must expand beyond their traditional role of tapping individual attorneys for a particular case and engage in one or more of the following activities:

Undertake complex litigation. There are many cases with solid legal position which LSC-funded legal services programs cannot take on either because the cases involve prohibited activities which cannot be undertaken unless there are sufficient tribal funds or because the cases require resources that legal services programs do not have.

Represent individual Native American clients. Native American civil legal assistance providers can form partnerships with private law firms and pro bono programs to augment the representation of clients who need assistance. This is not the same as referring clients to a pro bono lawyer. Instead, what is contemplated is for a law firm or pro bono program to take on a whole category of cases or a set of legal problems. For example, the American Bar Association created the Children in SSI Project which has mobilized the private bar in virtually every State to prepare volunteer attorneys to represent affected families with many law firms on behalf of parents of

¹⁷For example, the ACLU relies extensively on private attorneys for a significant amount of major civil liberties litigation. Likewise, the Lawyers Committee for Civil Rights Under Law and the NAACP Legal Defense Fund utilize a large group of private lawyers and law firms to handle major civil rights litigation.

severely disabled children denied SSI by the changes in the SSI program.¹⁸ To do so effectively, the participating law firm attorneys and paralegals would have to be trained in the Native American legal issues they are undertaking and provided support and technical assistance, just as was done in the SSI Project. This is not impossible to do, even though the Native American law is specialized and unique. Law firms can also take on a series of specific types of cases as co-counsel with a Native American program, and take advantage of the program's expertise.

Train and mentor legal assistance staff lawyers and paralegals. Many legal assistance staff, and I assume this applies to Native American program staff, are not experienced in advocacy focused on persuasive factual presentations and may lack basic trial advocacy skills and need training on such skills which private firms can do. For example, a private firm could include Native American staff in its own training programs or participate in private firm exchanges with the staff provider.

Undertake critical lobbying and policy advocacy before legislative and administrative rulemaking bodies. Private lawyers can engage in a range of activities related to such policy advocacy including tracking and monitoring legislation and regulations, undertaking analyses of existing or proposed legislation or regulations, drafting legislation or amendments or regulatory comments, analyzing specific issues arising in a legislative or rulemaking context as well as direct participation in the legislative or regulatory process. These activities can be undertaken in collaboration with a Native American provider or undertaken independently if the Native American provider does not have funding permitting legislative or regulatory participation. In conjunction with such advocacy, private lawyers can help legal services and other advocates who are engaged in policy advocacy gain access to key decision makers and as well as key allies.

Provide transactional assistance to job creation and community development efforts. Using transactional legal skills and expertise, private lawyers and law firms can assist Native American programs or undertake directly legal work necessary to help community organizations and even tribes create jobs, build housing or develop parts of reservations or section of urban areas where Native Americans reside.

2. Law School Clinics

¹⁸See Julie Justicz, *Children in SSI Project Update*, in DIALOGUE. at p. 21, Vol. 1, No. 4, Fall 1997

Several Native American programs have helped created or conduct law school clinics focusing on representing Indians and Indian law. For example, the Northwest Justice Project helped create and one of its staff directs the Northwest Indian Law Clinic at the University of Washington School of Law. Such clinics not only expose law students to Indian law and Indian access issues but also provides representation to Indians that would not be otherwise available. Native American programs in other states should consider developing and running such law school clinics.

F. ENSURE HIGH QUALITY, COORDINATED, EFFICIENT AND EFFECTIVE CIVIL LEGAL ASSISTANCE

1. Creating a Community of Advocates

To ensure a full range of legal assistance options to all eligible Native Americans in all civil justice forums, legal providers throughout a state, including Native American programs or units, and their partners need to work together in a coordinated and collaborative manner. In states, where there is not sufficient tribal funds to undertake restricted advocacy, It is particularly important that providers who are restricted in the services that they can provide work with providers who are not restricted in order to ensure the availability of the full range of legal services to low-income Native Americans. In addition, legal providers must work collaboratively with one another and the broader community to use and integrate all individuals and organizations providing civil legal assistance to low-income persons, including Native Americans.

More than collaboration is needed, however. Providers throughout a state, whether they be general programs or Native American programs, must coordinate their activities to make the highest and best use of all available resources; minimize duplication of capacities and administration; develop and maintain coordinated and accessible client intake, advice and brief services and referral systems; and maintain organizational relationships and structures that maximize economies of scale and ensure the effective use of existing and emerging technologies. Providers also need to coordinate to ensure that legal assistance is available when needed and to respond quickly to client emergencies including those created by natural disasters or by significant changes in the law.

2. Expertise and Flexibility

Legal providers must have the substantive expertise, institutional presence, and experience necessary to provide high-quality legal assistance consistent with the standards of practice within the state and with national standards of provider performance outlined in the ***ABA Standards for Providers of Civil Legal Assistance***. Substantive expertise on Native American land, water rights and hunting and fishing rights, Indian Child Welfare Act and numerous other issues unique to Native Americans is particularly important in Native American advocacy. In addition, institutional presence is important to effective, high quality representation of low-income persons including

Native Americans because of the changing nature of the laws affecting them and the shift in decision making from the federal and state levels. Providers will be called upon to ensure that the rights and interests of low-income Native Americans are taken into account by tribal institutions, tribal courts, state and federal courts, administrative agencies, legislative bodies and other private and public institutions that make decisions affecting such persons.

Legal providers for Native Americans must also have the capacity and flexibility to identify and respond effectively and efficiently to new and emerging legal trends and changes in the nature of the legal problems of low-income Native Americans. Substantive strategies and appropriate techniques of advocacy must be constantly reappraised to respond to changing client legal needs. In addition, providers within a state including Native American programs, need the flexibility to reconfigure their structures, integrate their activities, and reallocate their resources to carry out new or necessary activities to respond to changing client legal needs. Such flexibility cannot be attained unless sufficient support exists within both the state and national system to identify and respond to emerging legal trends and changes in the nature of the legal problems of low-income Native Americans through training, availability of specialized expertise, and other resources.

3. Collaboration with human services providers

To create a true community of advocates, legal providers, including Native American programs and components, will also need to coordinate and collaborate with tribes and tribal institutions, urban Indian centers, human services providers, hospitals, community based organizations, low-income groups and other entities to deliver holistic and interdisciplinary services and to enable non-legal services providers to provide their clients with accurate and relevant information about legal rights and options and how to access the system.

Developing partnerships and collaborations with a variety of providers and community entities, including tribes and local and state governmental agencies, can be a very effective way of providing critical services and maximizing assistance to low-income clients. Often, more clients can be reached through such collaborations than by working in isolation. There are other advantages as well from such partnerships and collaborations. These groups can directly influence policy, often more effectively than the legal services provider. Moreover, joining in partnerships with other human services providers can result in increased funding for the legal services program, either directly or as a line item in the human services agencies budget. Finally, such partnerships can create a greater awareness of the substantive challenges facing low-income persons, including Native Americans and increased understanding of the role of civil legal assistance.

G. EFFECTIVE USE OF TECHNOLOGY

The Native American civil legal assistance system of the future will have to use the most up-to-date technology to ensure efficiency and effective communication, coordination and collaboration, to access a broader base of knowledge, work more efficiently, and reach more clients. Thus, Native American programs and components will need to take full advantage of existing and innovative technologies and maximize the use of technology to deliver high quality legal assistance. These technologies can be divided roughly into three groups: (1) Program management/delivery of legal services to clients by attorneys or other advocates; (2) Support and information for attorneys and other advocates; and (3) Assistance to individuals who choose to or must attempt to access the tribal court system or the state civil legal system without an attorney or other advocate.

1. Program Management/Service Delivery

The most familiar use of advanced computer technology is to automate routine office functions. Computerized forms and pleadings, automatic benefit calculation programs, case management systems that include docketing and calendaring, document assembly and timekeeping software all can increase staff productivity and the number of clients served. If client education materials are made available on-line, advocates can download those materials and easily customize them for their local communities.

In addition to office automation, computer and telephone technologies offer the opportunity to centralize intake and to offer telephone hotlines that provide clients with brief advice and referrals. Although centralized intake and hotlines may not work well for some Native American clients, they should be considered as part of the state planning process. Technology can also be used to link Native American program offices, and to link different organizations, through e-mail and shared databases, which enable staff to perform program-wide conflict checks and to work on cases with people at other offices or organizations. Providers can communicate with courts, share information about clients with social workers, shelter providers and others working on clients' needs, access common statewide resource materials and work easily across the boundaries of Native American and basic field staff programs, private firms, law schools, and other providers.

In addition, technology can help providers better understand the work and productivity of staff and the results which the work is achieving for Native Americans.

Thus, Native American programs and components must invest in technology for acquisition of hardware and software on an ongoing basis. In addition, staff must have access to and adequate training for use of up-to-date technological tools to access information, communicate with colleagues, courts and clients, and work productively.

2. Support

Another major role of technology is to provide Native American advocates with support and resources from outside their own offices. Computer-assisted legal research, including fee-based services, such as Lexis and Westlaw, CD-ROM products, and the Internet, can dramatically reduce time spent on legal research and enable a much wider net to be cast. If they are stored electronically, advocates also can access pleadings from other cases and other organizations, along with articles and other useful documents, and can use practice manual and other substantive law guides. Training modules can be available on the Internet, using interactive and discussion technologies, and advocates also can take advantage of audio conferencing, video conferencing, and videotape.

The Internet can expedite the transmission of information about new opinions, legislation, regulations, and other developments requiring the response of the Native

American civil legal assistance community. “Push” technology can be used to get important information directly into advocates’ e-mail-boxes. Advocates can share information and advice through e-mail, web-based discussion groups, and listservs, including information about substantive law developments as well as upcoming trainings, conferences, and community meetings.

As a result, advocates will develop inter-organizational and lateral communications with advocates in other states as well as inter-connectedness essential to the creation of a broad community of advocates.

3. Client Assistance and Education

Technology also has tremendous potential to educate clients, including Native Americans, about their rights, help them understand when they could benefit from accessing the legal system, and help them find a lawyer or proceed pro se. Interactive technologies have shown great promise to help people proceed pro se. For example, people can fill out standard forms and pleadings on computer kiosks available in courthouses or other social services agencies, or through the Internet, and can access libraries and other substantive resources.

At the same time as technology presents enormous opportunities, it also has the potential to disadvantage low-income people and Native Americans disproportionately, and the civil legal assistance community, including Native American programs, must develop the capacity to address these issues.¹⁹ At the most basic level, Native American programs and other civil providers need to monitor and evaluate their own use of new technologies, particularly in the area of intake and hotlines, to ensure that clients are obtaining favorable outcomes. Similarly, as clients are increasingly required to access courts, government agencies, and private sector businesses through telephone menus and computers, providers must ensure that these systems can accommodate people with limited access to computers and limited educational backgrounds and must be alert to unintended consequences of computerization. Finally, Native American programs, as well as other civil providers, must work with the larger community to ensure that Native Americans have equal access to computers and computer training through public libraries, schools, and social service agencies.

¹⁹ See ***Native Networking: Telecommunications and Information Technology in Indian Country***, published by the Benton Foundation in April of 1999.

CONCLUSION

Native American programs and components and the entire Native American civil legal assistance delivery system face a cluster of challenges that are deep and fundamental if individual programs and the overall system are going to obtain excellence in delivery. Native American programs and components must themselves develop new methods of delivery, effectively engage clients, use technology to the fullest extent possible, improve tribal representation, provide a full range of services to individual Indians, utilize private lawyers and law students and work to rebuild the support system. At the same time, Native American programs must become an integrated part of the state planning process and ultimately the state integrated delivery system. Native American programs must also seek to diversify their funding and work within state resource development efforts to increase funding for Native American advocacy. While LSC, IOLTA and the national organizations such as NLADA and CLASP have critical responsibilities to assist Native American Programs to improve delivery, ultimately such improvements can only occur through effective leadership from the Native American community of advocates.