

INTRODUCTION: ACCESSING JUSTICE—ITS PAST, PRESENT, AND FUTURE

The Honorable Frank M. Coffin

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INTRODUCTION: ACCESSING JUSTICE—ITS PAST, PRESENT, AND FUTURE

*The Honorable Frank M. Coffin**

I. PREFACE

This symposium issue of the *Maine Law Review* is a far-sighted event. It opens the door to grappling effectively with a vital need in our society that often is overlooked or undervalued. It is to share more fully the benefits of our justice system with those not able to find the key to the courthouse or other available resources of help. The offerings in this issue reflect on the past, report on the present, and engage with the future. This is also a rare effort to enlist a varied cast of experienced participants in gathering wisdom from all the components of our legal community. The editors have acknowledged a special interest in examining the impact of hard times on Maine's legal system but have also invited contributions of wider scope.

What I seek to do in this introduction is to provide some background, some foreground, and some informed thoughts about the future of efforts in this field. One is tempted to ask: This is such a large subject. Why should we have the temerity of attempting to blaze the trail? Do we have any credentials? My own involvement gives me the answer. Wholly apart from any parochial pride, I can say that over the years Maine activists have established a very credible basis for sharing our state's experience with audiences far beyond our boundaries. We most certainly can learn from others, but what we have done and are doing are also exportable.

Although we are not unique in facing hard times today, dealing with hard times is not new to us. We are a state of limited financial resources. We have found, however, that we have an abundance of human resources and have learned how to use them. We have indeed learned some lessons, discovered our strengths, and realized our weaknesses.

II. THE MAINE STORY: THE BEGINNINGS (1967-1995)

In Maine, helping the indigent access the justice system was, up to the mid-sixties, a function left to individual lawyers. There was no institutional center of responsibility. Then, in 1964, the War on Poverty established the Office of Economic Opportunity (OEO) and eventually funding to stimulate organized legal assistance efforts. In 1967, OEO made a grant to the brand new Pine Tree Legal Assistance (Pine Tree) organization, the first truly statewide legal services provider in the country. Other legal service providers followed: the Cumberland County Legal Aid Clinic in 1971, Legal Services for the Elderly in 1974, and the Volunteer Lawyers Project in 1983.

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For a time, our legal aid providers made excellent progress, and Pine Tree was able to station attorneys in many municipalities statewide. Then serious budget and staff cuts were made in the Reagan Administration. Concern over these led to the establishment of the Maine Commission on Legal Needs, which Senator Edmund Muskie chaired in what was to be his last major public service. Its report, delivered in 1990, showed that a fifth of our population lived near the poverty level and that only one fourth of those with legal problems received any assistance.

III. THE JUSTICE ACTION GROUP (JAG)

Almost on the heels of the Muskie Report in 1995 came the drastic further slashing of funds for providers. Pine Tree had to reduce staff even more; others suffered similarly. Exacerbating the cuts were Congressional prohibitions on using federal monies for class actions, advocating policy changes before state agencies, lobbying, helping prisoners, or engaging in fee-generating cases.

This was a genuine crisis, and the question became whether legal assistance for the indigent would survive. In what now appears to have been one of Maine's finest hours, Chief Justice Wathen, together with the Maine Bar Association and the Maine Bar Foundation, convened a fall forum (Forum). In his opening remarks, on October 11, 1995, he identified the purpose of the Forum as to do "what folks in Maine are good at . . . to solve a problem the best way we can within our means."

I did not realize it at the time, but this is where I joined the legal assistance company. In September, I had been visited by Nan Heald, Pine Tree's executive director since 1990. She told me of their dire straits and asked if I would be interested in attending the Forum. I said I would. I have wondered just why I did. My work as a federal appellate judge kept me fully employed. But there was something about joining other like-minded, committed people in my own state in breathing new life into a most worthy cause.

The Forum had been carefully planned. Some sixty-five staffers and board members of service agencies, judges, lawyers, and legislators were assigned to smaller groups for discussion of specific issues. A skilled facilitator was on hand to guide us and keep track of our discussions. At the end, most of us signed up to continue to work on one of the issues. Shortly thereafter, the chief justice organized a meeting with the Maine Bar, the Maine Bar Foundation, legal aid providers, the Judiciary, and the Legislature represented. I was included, for both the chief and I were firm believers in what Alexander Hamilton wrote in *The Federalist* No. 82: our state-federal justice system is One Whole.

The chief justice also prevailed on me to use my chambers as the site, and asked that I chair what he called the Justice Action Group (JAG) to preside over whatever needs presiding over. We set to work, devising a simple structure. The JAG was our policy-making, coordinating vehicle. The key operational support was the Legal Services Response Team made up of provider directors, bar leaders, and a public representative. Our cutting edges were task forces, manned largely by volunteers. They devised with new ways to meet gaps and surmount obstacles.

What followed was surprising. We—the JAG—had no charter or rules, no legal status or authority, no budget or permanent staff. I was chair from 1995 to

2000. As I look back over the achievements of those years, by all who answered our call—volunteers, professionals, lawyers, judges, and lay people—I recall these highlights:

- Creation of Equal Justice Project/Partners, which, not receiving any federal funds, was free to work with state agencies to advocate policy changes and also create a quasi-law firm by partnering with law firms in class actions;
- Agreement of banks to pay a higher rate of interest on lawyers' trust accounts (IOLTA), amounting to more than \$1 million annually;
- Gaining approval to raise the state's low filing fees for civil cases, resulting in generating nearly \$1 million to a Civil Legal Defense Fund, recommended by the Muskie Report but never funded;
- Creation, through the chief justice, of a family division in the district court of case managers, free to concentrate on divorce and child custody matters;
- Securing a grant from Libra Foundation to fund a coordinator of volunteers to help court personnel in routine chores and assist unrepresented litigants at courthouses. The hope had been that this could become a state responsibility, but that hope has not yet been realized;
- Establishment in 1998 by twelve law firms in Portland of the Coffin Fellowships in Family Law, funding each year two full-time family law practitioners;
- The commencement of the Immigrant Legal Advocacy Project's operations in 1998.

There was much other exploratory work done by task forces, leading to sharing equipment and technology, a start in unbundling legal services into smaller chunks short of full representation, and development of ways to serve self-represented litigants. Grants were made by the Maine Bar Foundation for pilot projects in mediation, elder abuse, prison impact on youth inmates, immigrants, and courthouse assistance.

This had been an exciting beginning. Although lacking legal power, JAG was respected. We reached out to professionals, lawyers, staffers, volunteers and sought their ideas. Busy people were willing to give their time and talent. We recruited them in task force work. The key provider leaders were ingenious and resourceful. They worked well together. We found that turf battles did not erupt. There was a searching for consensus and a willingness to follow decisions thoughtfully made. At bottom, an entire legal assistance community was developing.

In 2000, my colleague, Circuit Judge Kermit Lipez succeeded me as chair of JAG. Under his leadership, a higher degree of professionalism developed. Agendas and meeting reports were packed with information. Without trenching on Judge Lipez's memoir in this issue, I can signal the seminal report of a study he initiated on statewide access to justice, led by the University of Maine School of Law's professor and former dean, Colleen Khoury, who was chair of the Planning Initiative Committee, appointed by Judge Lipez. This document, "Justice for All," set forth an ambitious agenda for the forthcoming decade, which has already been a major influence in developing new initiatives. During this period, the annual Campaign for Justice was established, showing steadily increasing support by Maine lawyers. Today, nearly 1,000 lawyers participate and nearly 100 contribute more than \$1,000 or more a year.

IV. AN ERA OF RENEWED COMMITMENT OPENS

In 2008, Maine Supreme Judicial Court Justice John Levy became the third chair of JAG. He brought with him a hands on background of service as presiding judge in the pioneering Juvenile Drug Treatment Court, and, when Chief Judge of the Maine District Court, as founder of Maine's Domestic Violence Courts. One of his first actions was to seek the assistance of the University of Maine School of Law in organizing a symposium responding to one of the recommendations of the Khoury Report: addressing issues upstream before they lead to a confrontation between a court proceeding and a vulnerable, helpless litigant. Dean Peter Petigoff readily accepted the mission and, through the painstaking work of Professor Deirdre Smith and her planning committee, they laid the foundations of a remarkable day-long symposium entitled: "Expanding Justice in Maine: Upstream Solutions to Downstream Problems."

This symposium really signaled a new call to action, a call echoed by this issue of the *Maine Law Review*. The heightened enthusiasm evidenced by the two hundred or more registrants, representing all sectors of the Maine legal assistance community, was unprecedented. Justice Levy, in his closing remarks, observed that the day's proceedings conveyed a sense of renewed commitment.

The symposium speakers, panelists, and materials revealed a surprising collection of initiatives that had blossomed even in these hard times. They reflect the Khoury Report's endorsement of priority strategies that require little or no new funding. To begin, there were new efforts not only to recruit pro bono lawyers, but to give them needed training. The JAG and the Maine State Bar Association have sponsored a Standing Committee on Pro-Bono and Public Service which will develop means of giving appropriate recognition to pro bono work and adequate reporting of it. The recently established Maine Commission on Indigent Legal Services, resulting from a study led by Supreme Judicial Court Justice Robert Clifford, will give new court-appointed lawyers training focused on their new role. The Volunteer Lawyers Project is already helping lawyers in several cities who volunteer a half day a week to consult with unrepresented litigants at courthouses for a limited period of time. And recently some forty attorneys volunteering in Protection from Abuse cases also signed up to take specialized training.

A second simple but effective device to help low income people access our

justice system is a comprehensive resource list of not only legal services but many others often needed by the same people. Another helpful handout is a “Know Your Rights” card. KIDS LEGAL paves the way for identifying the hidden needs of its youthful clientele, listing in a handy, readable card some eight available resource programs and their agencies. And, KIDS serves as a convenient reference center. JAG itself has a list of some eleven kinds of services available and what agency or group provides them.

A third kind of assistance is not a specific function of a specific group but rather the encouragement of working together. JAG’s Self Represented Task Force and its Technology Task Force have joined with Chief Justice Saufley’s Librarian Task Force to form a coalition to spread the availability of web-based services, equipment, and other relevant resources to persons who can easily come to libraries and other convenient gathering places. Then there is the medical-legal partnership between KIDS LEGAL and the Barbara Bush Children’s Hospital. When a doctor suspects that a young patient’s health problems (such as asthma) are suspected to be caused by a substandard lodging (i.e., cockroaches), the youth, through the hospital-based KIDS office, is referred to legal help. Justice Levy would like to carry the idea of such a partnership to the business community, where employers have every incentive to go upstream and identify an employee’s problems before crises arise.

An additional step has been taken by a partnership of JAG’s Advisory Committee of Providers and the Maine State Bar Foundation organized to establish a Supreme Judicial Court-sponsored pilot project on foreclosure diversion in York County. It is based on the 2007 legislation sanctioning predatory lending practices and the 2008 law relating to foreclosure diversion. This project envisions a forum to make sure that a person threatened by foreclosure knows her rights, knows the responsibilities of the lender-mortgagee, gathers and submits all the appropriate information, and is given every opportunity to invoke mediation before experienced mediators, including former judges. Based in the Springvale District Court, under the supervision of a knowledgeable district judge, the system is scheduled eventually to go state-wide and to be funded by foreclosure filing fees.

All these recent examples of upstreaming illustrate new approaches to getting at roots of problems that have been ignored in the past. They all fit together: not only recruiting pro bono lawyers but equipping them with sensitive training for the precise but somewhat unfamiliar roles they will play; making all information concerning relevant sources of help easily available to low income people; establishing partnerships and coalitions among providers of different kinds of services to assure continuity of help; trying out an approach to dealing with a newly discovered issue as in the foreclosure diversion pilot project. All seem very practical steps to take in hard times.

V. WHAT LIES AHEAD?

In the articles that follow, the reader is given insights into many facets of the quest for ways to widen access to justice.

The professional non-profit providers of legal assistance to low income and other needy persons have contributed articles ranging from long standing issues

such as the need for adequate funding and policy advocating to newer fields such as the juvenile drug treatment program, collaboration among youth-oriented services, and exploitation of the elderly.

Professors from law schools—not only this University of Maine School of Law, but others throughout the country—have offered insights into community lawyering, safety net programs, judicial reform, constitutional issues, warning of an arbitration pitfall, and the use of new technology to facilitate access to documents.

Lawyers have addressed restorative justice and its promise, and the Director of Advocacy of the Chicago Bar Association writes of the vital task of coordinating assistance efforts.

Judges—state and federal, trial and appellate—have weighed in, writing of their JAG experience, giving their reflections, exploring the relationship between healthy public support for assistance programs and an economically sound community, and even, with Chief Justice Saufley, contemplating change in the Maine court system.

This is a rich buffet. There are so many needs and possible approaches. In hard times, by definition, money is scarce. We know that, as Professor Peter Edelman pointed out at the symposium, lifting people out of their low-income status is a prerequisite to assuring access to justice to everyone. But we also know that we need to do what we can without waiting for the ultimate upstream solution. We need to prioritize, to select some approaches for immediate attention and defer others. Yet this very exigency can, in the long run, help a state to put its total public and private apparatus for legal assistance in order.

Were it not for these hard times, we would not have discovered how best to use our energies when the economy is finally restored. This is a time of unprecedented innovation on the part of a legal assistance community in a state with a small population and very limited resources. Innovation with themes of sensitizing, collaborating, partnering, informing, referring, reaching out, and acting together. We are building on an impressive four decade history. Our past and our present have equipped us to deal with the future. Hard times can be great times.

But this is a work in progress, not finished. The hard facts are that the number of low-income people needing assistance hovers at about the same level that prevailed almost two decades ago when Senator Muskie submitted his report. Indeed, the gap may have widened, for a recent study in the spring of 2009 indicated that only 20 percent of those who sought legal assistance could be served. And, according to both Pine Tree and the Volunteer Lawyers Project, one who seeks assistance typically must also deal with three additional legal problems.

So there is no room for complacency. In this era of new commitment, hopefully furthered by this volume, all resources should be pursued, or at least the groundwork laid. The effort that presently, because of the low state of the economy, is the most daunting is to obtain adequate funding from the state legislature. In this instance, hard times are indeed bad times. But there is a job that can be done even before economic recovery. It is to make a fuller, better, more sustained case before legislators of two basic facts: (1) the need to address the intolerably low percentage of people who seek but do not receive needed legal assistance, for lack of sufficient staff; and (2) the vital contribution, pointed out by Justice Levy, of a strongly supported legal assistance system to an economically

sound community. There are knowledgeable legislators and staff who need to be recruited and their understanding and commitment enhanced to the end that they include proper support of legal assistance as a prime claimant for state funding along with other worthy causes. We must welcome them as partners in the justice community.

The rest of the agenda has been set. More lawyers are needed to help in the Volunteer Lawyers Project and in Courthouse Assistance Projects. More paralegal and lay volunteers should be recruited, coordinated, and trained. More of the state's lawyer population should join or increase their support for the Annual Campaign for Justice. More wide-ranging coalitions and partnerships of providers of different services should be formed. More ways and devices to help inform those in need of their rights and sources of assistance are needed. The wider community, including business and charitable foundations, should be part of this justice-expanding effort. Public understanding and support need to be dramatically increased.

May the symposium in the pages that follow lift the levels of understanding, participation, and achievement of this profoundly important movement.