

Justice for All: A Report of the Justice Action Group

Statewide Access to Justice Planning Initiative

Executive Summary

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Assurances of equal access to justice appear to the poor to be meant for others. Their experience in the pursuit of justice has been frustration, loss of dignity and all too often denial. Understandably, their faith in our legal system has been shaken. The problem carries implications for all our society. It concerns the most basic principles of our social and legal order.

Senator Edmund Muskie, Chairperson
Maine Commission on Legal Needs, June 15, 1990

Chair's Preface

Sadly, despite all of the progress that has been made in the 17 years since the late Senator Muskie wrote these lines, the core truth of his words remains unchanged. The principle of equal access to justice is a central tenet of our democracy, and yet access to justice is far from a reality for Maine's neediest and most vulnerable citizens. Despite the valiant efforts of Maine's legal aid providers and the private bar, access to justice remains an inspiring, but decidedly elusive goal. Today, as in 1990, more than 80% of those who need legal representation - to meet basic human needs for food, clothing, shelter and health care, to maintain custody of their children, to gain protection from abuse - are unable to obtain it.

Why? What else can we do to ensure access to justice for all? Justice for All: A Report of the Justice Action Group Statewide Access to Justice Planning Initiative attempts to provide answers to these questions by offering an array of concrete strategies - some new and innovative, others excellent old ideas - which the planning group believes can make a measurable difference, over the next decade, in making equal access to justice a reality for all Mainers. Some of the recommended strategies will not require significant additional resources and can be implemented relatively quickly. Others are longer-term in nature and will require years of sustained focus and persistent effort to be brought to fruition. Many of these strategies will require new resources, and the Report contains new approaches to expanding resources from both public and private sources.

The Report also underscores the critical need to create a broader and more diverse coalition of Mainers who understand and are willing to become advocates for justice in our State. Failure to provide equal access to justice has significant implications for Maine that extend far beyond the reach of the bench and bar. The problem is just too big for the legal community to solve alone. Ultimately, as Senator Muskie pointed out in the 1990 Report of the Maine Commission on Legal Needs, providing equal access to justice is a public responsibility and requires a substantial commitment of public dollars, especially in cases where basic human needs are at stake and the individual cannot afford a lawyer. We are all concerned about the cost, of course, but it is important to remember that the costs to society of *not* making this investment are also substantial, in both economic and human terms.

The time frame for implementation of the recommendations of the Report is the coming decade. It is my fervent hope that the next 10 years will come to be seen as "the justice decade" - the decade in which we conquered our tendency to say "this is too big ...it will take too long...it requires too much...it can't be done." And, by the end of the decade, in 2018, we will be able to say that we have closed the civil justice gap, and that all Mainers, including our poorest and most vulnerable citizens, have equal access to our justice system.

Colleen A. Khoury, Chair

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Maine's Civil Justice Gap

At times of crisis, legal assistance or advice can make all the difference. It can help someone meet basic human needs and ensure that they have adequate food and shelter and access to programs that are designed to support them. It can ease personal pain. It can lead to self-sufficiency that may ultimately reduce the need for governmental support. Yet, the vast majority of Maine's low-income and elderly residents are unable to obtain the legal representation or assistance that would make a measurable difference in their lives. Most are forced to navigate the court system and administrative proceedings on their own, without adequate knowledge or assistance, even in proceedings where their basic human needs are at stake. For these individuals, the promise of "equal justice for all" is a hollow promise indeed.

The Justice Action Group's Planning Initiative: Why Plan? What are the Issues?

Maine should be proud of all that has been accomplished over the past decade to expand access to our civil justice system for our most vulnerable and disadvantaged citizens. Yet, despite the progress that has been made, much remains to be done to make equal justice under law a reality in our State. The Justice Action Group (JAG) launched the Statewide Access to Justice Planning Initiative to stimulate further progress and to develop and implement a vision of what the civil justice system should look like a decade from now for those who need the assistance of a legal professional but are unable to obtain it.

Since the spring 2006, more than 100 lawyers, judges, consumer advocates, social service providers and others – from diverse backgrounds and experiences and from all over Maine – have worked together to identify, evaluate and recommend strategies and best practices that would expand and enhance access to justice for all Mainers. Access to justice, for this purpose, has been defined broadly to mean access to the courts, to administrative agencies and to all other forums in which legal rights are determined.

The participants in the planning process, working through seven work groups, examined a range of issues that were seen as central to any effort to make equal access to justice a reality in Maine. These include various demographic and systemic issues, as well as some recurring issues and challenges that were identified in the early 1990's in the Reports of the Maine Commission on Legal Needs and the Commission on the Future of Maine's Courts. Among the issues the planning process has sought to address are the following:

The Large Number of Self-Represented Litigants Studies in Maine and nationally consistently show that roughly 75% of the litigants in the civil justice system are not represented by counsel. Virtually all of these individuals are unable to pay for an attorney or to obtain assistance from already overburdened legal aid providers and *pro bono* attorneys. These litigants must navigate the court system on their own. This not only affects the quality of the justice they are able to achieve, but also imposes substantial burdens on the personnel of the court system who spend significantly more time on all aspects of these cases than would be required if the parties were represented by counsel.

The Need to More Effectively Utilize Lawyers in Providing *Pro Bono* Representation

Although historically Maine has been a leader in *pro bono* participation by private attorneys, the changing nature of law firm practice in Maine, the reduction in volunteerism in society as a whole, and growing economic pressures on the profession are challenging Maine's leadership in this area. Moreover, the promise of a 2004 Bar rule authorizing the provision of "unbundled" legal services has yet to be fully realized.

Chronic Underfunding of Legal Aid Providers and the Courts Resources are at the heart of any effort to ensure access to justice. Funding for legal aid providers in Maine and throughout the nation continues to be woefully inadequate. Although additional public and private dollars have been raised for legal aid during the past decade, studies continue to show that Maine's legal aid providers are still able to represent only one in six of the individuals who turn to them for assistance. In addition, appropriations for the Judicial Branch have not kept pace with the growing demands placed upon it in recent years. The court system does not have enough personnel to do all that is required of it. It does not, for example, have staff to provide and coordinate assistance to self-represented litigants. It cannot afford to adopt the advanced technologies or develop new programs that have assisted other court systems in providing enhanced access to justice for all citizens.

The Impact and Costs of Crisis Intervention The planning participants recognized that clients' lives and the justice system itself – legal aid providers, volunteer lawyers, and the courts – are severely stressed by problems that turn into last-minute legal crises. Currently, significant human and financial resources are focused on crisis intervention which diverts our limited resources away from approaches that could foster earlier and more effective resolution of client problems without resort to the legal system.

The Importance of Developing a More Consumer Friendly System The law and the legal process are complicated and are becoming increasingly complex. The current system needs to be more accessible, user-friendly and free of the many barriers that, for some, appear insurmountable.

Underutilization of Technology to Improve the Provision of Legal Services to Represented and Unrepresented Clients The planning group recognized that new and advanced technologies have great potential to provide legal information, advice and more effective access to justice for low-income Mainers. Although Maine has been a national leader in the use of technology to provide client services, it is now falling behind other states which are investing more resources in developing and harnessing the power of technology in the cause of justice.

New and Continuing Challenges in Delivering Legal Aid Some new realities and a few long-term issues pose additional challenges for Maine's civil justice system.

- Maine's demographics are changing – our immigrant and elderly populations continue to grow; there has been an increase in homelessness and a growing number of homeless individuals with mental health issues; many clients are only marginally literate which adversely affects their ability to access services.
- Domestic violence and substance abuse are factors in many more cases.
- There is an increased awareness of the high number of Maine's elderly who are victims of elder abuse.
- The fact that Maine is a large state, in which clients and courts are geographically dispersed, adds to the challenges in providing legal services to low-income Mainers. It is costly to maintain legal aid offices in small

population centers; it is often hard to recruit legal aid attorneys to the more rural areas of the State; and the lack of affordable transportation makes it more difficult for clients to consult with attorneys and to appear in court. In addition, the relatively small number of attorneys in the rural areas of our State imposes greater *pro bono* burdens on the local bar.

Growing Number of Family Law Cases with Greater Complexity The number of low-income Mainers seeking assistance and representation in family law matters continues unabated. Maine's legal aid providers can accept only a small fraction of these cases and most, of necessity, are referred to *pro bono* attorneys. Increasingly, these cases are complicated by such issues as domestic violence, substance abuse, and cultural and language barriers, making them more challenging and time-consuming for *pro bono* attorneys.

Continuing Need for Greater Coordination and Collaboration Among Providers Coordination and collaboration among our legal aid providers, on a broad range of issues from intake and referral to fundraising, has been enhanced and expanded over the last 15 years. Nevertheless, continued exploration of new ways to collaborate and enhance efficiencies has the potential to reduce costs, expand resources and provide services to more of those in need of legal assistance.

Need to Continue to Focus on Ensuring the Right to Publicly-Financed Counsel in Civil Cases Where Basic Human Needs are at Stake Almost two decades ago, both the Maine Commission on Legal Needs and the Commission on the Future of Maine's Courts recommended that the right to publicly-funded counsel in certain types of civil cases be explored. In 2006, the American Bar Association echoed this call urging the federal and state governments to provide legal counsel at public expense in cases in which basic human needs are at stake.

The Importance of Sustaining and Ensuring Quality Access to justice must be accompanied by a commitment to the quality of the justice provided. This commitment to quality must be made by the courts, by those providing assistance (legal aid, court appointed counsel, private bar and non-lawyers), and by administrative agencies.

The Need to Sustain and Promote Leadership for Justice Effective leadership has been an essential element in Maine's nationally recognized access to justice work. It is crucial to ensure that new generations, both within and outside the legal community, will share a commitment to equal access to justice that is comparable to past champions like Senator Muskie.

A Recognition that the Legal Community Cannot Do it Alone The legal community, of course, has a special responsibility to ensure access to justice for disadvantaged Mainers. It has become increasingly clear, however, that the "civil justice gap" has implications for society that extend far beyond the reach of the bench and bar. It is now more crucial than ever to engage a broad, diverse and influential group of stakeholders, from both the private and public sectors, to join with the legal community as passionate advocates to broaden public understanding of the importance of access to justice for all.

Recommendations for Achieving Equal Access to Justice in Maine

The participants in JAG's year-long planning process have developed more than 50 strategies that, when implemented, will have a significant impact on solving the systemic issues and recurring problems outlined above. These strategies are grouped within eight broad Recommendations that seek

to address the areas in which challenges must be faced and overcome if we are to ensure access to justice for all Mainers. These broad Recommendations, which are set forth in greater detail in the full Report, are:

Recommendation 1: Intervene “Upstream” to Solve Problems Before They Become Legal Crises

Principal strategies focus on the creation of processes and tools that can be used to identify the types of client problems that will benefit from early intervention, and to create collaborations with various service providers and other stakeholders to develop strategies that can solve client problems before legal intervention is required. The goal is to reduce the disruption in clients’ lives as well as the likelihood that they will need to engage the civil justice system.

Recommendation 2: Expand and Improve the Use of Technology to Enhance Access to Justice for Self-Represented Litigants and Clients of Legal Aid Providers, and to Assist Court Personnel, Social Service Providers, *Pro Bono* Attorneys and Others to Provide Legal Assistance to Low-Income Persons

Principal strategies include creation of a Legal Aid Technology Resources Center that would support the maintenance and development of client-oriented technology for legal aid and *pro bono* providers, provide technology support for *pro bono* legal assistance by lawyers and other professionals, and manage Maine’s statewide legal resources website (www.HelpMeLaw.org).

Recommendation 3: Ensure Meaningful Assistance to Individuals Who Do Not Have the Services of a Legal Professional

Principal strategies include pursuing the creation of a Division of Self-Represented Litigant Services within the Judicial Branch; the development of a meaningful Courthouse Assistance Program; and working in a variety of ways to remove the barriers that make the civil justice system difficult to navigate for those with physical and other disabilities, language issues and similar problems.

Recommendation 4: Increase the Number of Individuals Who Have the Assistance of a Legal Professional

Principal strategies include creation of a permanent Standing Committee on *Pro Bono* and Public Service; development of new incentives and innovative strategies to support and expand *pro bono* services by private attorneys, mediators and other professionals; and support of a commission to study the adoption of a publicly-financed right to counsel in civil proceedings in which basic human needs are at stake.

Recommendation 5: Expand Resources to Reduce the Unmet Need for Legal Assistance

Principal strategies include expanding efforts to increase direct appropriations for civil legal aid on the federal, state and local levels, including increasing review of various fees that may generate additional revenue; and a host of new approaches to expand and broaden private fundraising efforts and education of funders.

Recommendation 6: Sustain and Ensure the Quality of Maine’s Civil Justice System

Access to justice must be accompanied by a commitment to the quality of the justice provided by all the participants in the civil justice system – the courts, administrative agencies, legal aid providers, *pro bono* and court appointed attorneys, mediators and non-lawyer advocates. Principal strategies include adoption of a Statement of Values for Maine’s Civil Justice System; establishment of written performance guidelines by all participants; education of funders regarding quality standards;

and inclusion of material in continuing legal education programs on the legal needs of vulnerable populations.

Recommendation 7: Sustain and Expand Leadership for Justice

Principal strategies include development and implementation of a comprehensive and coordinated access to justice communications and education program, with the goal of educating the public about the connection between legal justice and social and economic justice and building a broader “coalition for justice”; elevating the profile and prestige of a public commitment to justice; and recruiting participation in access to justice programs from a diverse audience including business, social services organizations, the faith community and minority and immigrant communities.

Recommendation 8: Ensure Continued Focus on Evaluation and Implementation of the Planning Recommendations

Principal strategies are creation of an Implementation Task Force to help ensure that there is a sustained effort to bring the recommendations of the Planning Report to fruition, and a restructuring of the JAG to expand its reach and increase its ability to oversee implementation.

Cost and Economic Impact

The recommended strategies incorporated within these eight broad Recommendations reflect creative and new approaches that are tailored to Maine, as well as strategies that have been successful in expanding access to justice in other states.

It is understood that many of the recommendations in the Planning Report will cost more money. However, when assessing costs and benefits, it is also important to recognize that failure to provide meaningful legal assistance to people in need also has significant economic impacts and costs. Studies show that putting money into legal aid is a good investment. Significant savings can be achieved for various social service programs and local communities through appropriate legal intervention that obviates the need for additional services. Moreover, state dollars spent on legal aid have been shown to bring in at least as many new dollars in benefits from non-state dollars, e.g., child and spousal support payments, federally-funded disability payments, and reimbursement of improper debt collection or erroneous overpayments. The court system also may realize savings if the people appearing before them are adequately represented. When one side is represented and the other is not, courts must struggle with issues of judicial neutrality and must take time to ensure that the proceedings and outcomes are understood by self-represented litigants. This slows down the justice system for all litigants, including those who are represented.

Priority Strategies

The Planning Report seeks to provide a roadmap that can be used by JAG and its partners over the next decade in their efforts to expand and enhance access to Maine’s civil justice system for all Mainers. We recognize that implementation of the recommended strategies will require additional financial resources, significant expenditure of human resources and a sustained focus. It likely will be difficult to work on all of the Recommendations simultaneously. In an effort to assist those charged with implementing the Recommendations, the planning group has selected some priority strategies that might guide the JAG and other key stakeholders in making choices about which of the many important recommendations to work on first.

In the first list of Priority Strategies are those recommendations that when implemented will, in our judgment, have the greatest impact in closing Maine’s civil justice gap. We believe that continued focus on these strategies will ultimately enable us to make huge gains -- to “move the needle” as it were -- in achieving meaningful access to justice for all Mainers. The second list reflects those strategies that also will make a significant difference, but can be accomplished relatively quickly with little or no new funding. A chart outlining Action Steps and a Suggested Timetable for Implementation of these Priority Strategies appears at the end of this Report.

The “Big Five” -- Priority Strategies That Will Have Greatest Impact

1. Increase direct State appropriations to expand and enhance provision of legal aid to low-income persons
2. Support speedy implementation of and compliance with the rule changes that would make participation in Maine’s IOLTA Program (Interest on Lawyers’ Trust Accounts) comprehensive and ensure comparability in interest rates on IOLTA accounts
3. Seek additional resources to establish a Division of Self-Represented Litigant Services within the Judicial Branch to improve delivery of civil justice to self-represented litigants and to establish and oversee a Courthouse Assistance Program
4. Create a Legal Aid Technology Resources Center to support maintenance and development of client-oriented technology for legal aid providers and *pro bono* attorneys and to manage the statewide legal resources website
5. Study adoption of a civil right to counsel in adversarial proceedings in which basic human needs are at stake

Priority Strategies that Require Little or No New Funding

1. Establish a standing Task Force on Reducing the Need for Crisis Intervention
2. Ensure that all materials and resources for self-represented litigants meet standards of accessibility, readability and usability
3. Establish a Standing Committee on *Pro Bono* and Public Service
4. Create a level of distinction and prestige around attorneys committed to access to justice
5. Develop an educational forum for private funding sources, e.g., charitable foundations, located within and outside Maine, and the United Way, to increase awareness of the need and support for legal aid
6. Through continued collaboration and coordination among legal aid providers, expand the range of efforts to raise funds from private sources, with initial focus on expanding the Coffin Fellowships in Family Law program and sponsoring special events, modeled on the Muskie Dinner, to increase support from the business community and the general public

7. Endorse and recommend adoption of the proposed “Statement of Values for Maine’s Civil Justice System” by all participants in the civil justice system

8. Convene an annual or biennial Access to Justice Symposium, in collaboration with a broad range of stakeholders, to focus on access to justice issues and assess and communicate Statewide progress toward goals and priorities

9. Build strategic partnerships with and recruit participation in access to justice programs from a diverse audience including businesses, social service agencies, minority communities, the faith community and immigrant and refugee communities

10. Build a broader coalition for justice through the development of a comprehensive, coordinated access to justice communications and education strategy

JAG Should Establish an Implementation Task Force

If these priority strategies and the other recommendations set forth in the Report are to be realized, it is imperative that an Implementation Task Force be created to ensure continued focus on the evaluation, oversight and ultimate implementation of the recommended strategies.

For a copy of the full report: *Justice for All: A Report of the Justice Action Group* go to:
www.mbf.org/justice.htm