

How Volunteers Saved Legal Aid in the 1990s

By Calien Lewis

What follows is a brief description of the Herculean efforts of volunteers—chiefly lawyers—to make good on the promise of access to justice for all Maine citizens, especially the poor and most vulnerable. It is offered in thanks and as tribute to those who labor in practical ways to give life to one of this country's noblest ideals—justice for all.

The 1980s ended with a surge of concern for the availability of legal assistance for poor and low-income Mainers. Misgivings about the course being taken by the Reagan administration to de-federalize legal assistance had given way to grudging acceptance of the Legal Service Corporation's mandate to provide legal services at the state level. Maine's court system had promulgated rules supporting the Interest on Lawyers Trust Accounts (IOLTA) concept in Maine,¹ and a steady income stream supported the Maine Bar Foundation's efforts to supplement federal assistance to legal aid programs around the state. It was a good moment to assess the effectiveness of these efforts.

At the instigation of the leaders of Maine's legal community, the Maine Commission on Legal Needs was formed with Senator Edmund S. Muskie serving as chair. Over the course of a year, the commission "examined the relationship between poverty and justice in Maine."² Its recommendations, issued on May 1, 1990, became the touchstone for all future efforts to improve access to justice in Maine. In retrospect, it is hard to imagine how Maine could have weathered the turbulent 1990s without such a guide.

The commission's report led to the enactment of legislation to create a Civil Legal Services Fund to support Maine's primary legal services providers: Pine Tree Legal Assistance, Legal Services for the Elderly, the Cumberland Legal Aid Clinic

and the Volunteer Lawyers Project.³ However, the legislature failed to provide a funding source for the fund and it remained for years an empty promise.

Thus the 1990s dawned with increased awareness of the failures of the legal system to make good on Maine's constitutional guarantee to every person that "right and justice shall be administered freely and without sale, completely and without denial, promptly and without delay."⁴ Indeed, all too often, it was clear that courts and agencies could not be navigated without professional counsel. Worse, lawyers were seldom available to guide those without the substantial funds to afford them. Difficult as the situation seemed in 1990, it was to get much worse as the decade wore on. Maine's economy faltered and with it the revenues generated through the IOLTA program. At the same time, a trend toward congressional conservatism eroded support for the Legal Services Corporation (LSC), the New Society creation that supported legal services throughout the country and funding cuts soon followed. By the fall of 1995, funding cuts of more than \$1 million—and restrictions on the types of clients and services LSC-funded organizations could serve—had decimated legal aid in Maine:

- Pine Tree Legal Assistance had shrunk from twenty-seven to six attorneys, leaving one attorney for every 38,000 eligible clients;
- Legal Services for the Elderly had only three attorneys on staff—one for every 20,000 people over the age of sixty;
- No designated attorneys were available to assist certain immigrants

or prisoners with civil cases, nor to develop class action cases or advocate before state legislatures or agencies.

In his remarks to sixty-five members of Maine's legal community at a 1995 Forum on the Future of Legal Services, former Chief Justice Daniel E. Wathen framed the problem as a question and a challenge: "Do the drastic changes in federal funding for legal services mean that Maine has to ration justice and abandon its goal of providing equal justice for its most vulnerable citizens?"⁵ The answer provided by those present was swift: they committed to develop alternative delivery systems and to find new funding sources for legal aid in Maine. Chief Justice Wathen—in partnership with Federal District Court Judge Frank M. Coffin; Associate Justice Howard H. Dana, Jr.; President of the State Bar Association Susan E. Hunter; and Maine Bar Foundation President Vendean V. Vafiades—created the Justice Action Group (JAG) to explore and further develop the ideas generated by participants of the forum. Representatives from the judiciary, private bar and legal services community served on JAG and seven task forces focused on areas of need. In the early part of 1996, volunteers met to refine and test the proposed ideas. By that fall, task force reports were ready for review. A second forum was held in October to update the larger community and to call for assistance in implementing the developed proposals. Over the next several years, JAG and its task forces, augmented by additional volunteers, worked diligently to find ways to meet the ever-increasing need for lawyers and legal information. The list of accomplishments that flowed from this multi-year effort is noteworthy.

The first concrete result of these efforts was the creation of the Maine Equal Justice Project (MEJP) from the remains of Pine Tree's advocacy team. The MEJP linked its staff to members of the private bar to create a network of attorneys willing to develop class action cases where necessary to address systemic legal problems. The MEJP also aimed its advocacy efforts at the administrative agencies where welfare reform was under way, which was threatening to undercut hard-won benefits for poor families. In rapid succession, the MEJP obtained heating assistance money for those in need, streamlined child-support payment systems, and established guidelines for enrolling Medicaid recipients into managed-care plans.⁶

With the assistance of corporate counsel and private practitioners, members of the legal service community crafted economies of scale to identify savings in equipment, services and supplies. A review of the process by which people identify and contact legal aid lawyers resulted in a coordinated intake and access system with call transferring technology. Today, with one phone call, someone in need of legal assistance can be put in touch with the appropriate service provider. That effort also has resulted in a unified, technological approach to case management, which means that appropriate legal research and information can be shared statewide through the Internet, an efficiency unique to Maine.

New educational materials were developed at Pine Tree Legal Assistance and Legal Services for the Elderly. Where no lawyer was available, clients were given simplified instructions for self-representation with volunteers and staff assigned to "talk them through" court proceedings and forms. Legal secretaries volunteered

to assist, and Community Action Program (CAP) agencies in several counties provided funds for court-based legal assistance. But funding shortages continued to cripple efforts to fully restore legal aid. In 1997, the Maine Bar Foundation, which administers the IOLTA funds for legal services, organized an effort to educate and lobby bankers around the state. Spearheaded by the late Duane "Buzz" Fitzgerald, this campaign of private attorneys persuaded Maine's banking community to raise interest rates on IOLTA accounts and to drop service charges. To this day, IOLTA rates are perceived by bankers as a community-building effort, and Maine still enjoys one of the most successful IOLTA partnerships in the nation. Last year alone IOLTA generated \$1 million.

In that same year, the JAG Legislative Task Force working with the legislature was able to pass a bill to create a funding stream for the Civil Legal Services Fund and a commission to oversee allocation of those funds. Within a year, Senator Muskie's dream of a state fund for legal aid was realized. Today nearly a million

Difficult as the situation seemed in 1990, it was to get much worse as the decade wore on.

dollars is generated from minimal filing fees on certain civil legal cases to provide for legal services.

Not only has a heightened awareness of the problem inspired numerous volunteers to spend hours and days crafting programmatic solutions, it also has led many lawyers to take pro bono cases through the Volunteer Lawyers Project and, in Portland, it has led to the creation of a fellowship for family law, the most requested and least available legal service.⁷ Named for Judge Frank M.

Today, Maine remains unable to fully meet the legal needs of its citizens whose limited means or other limitations make obtaining private counsel difficult or impossible.

Coffin, whose tireless efforts as chair of the Justice Action Group inspired much of the reformation of legal services, the Coffin Family Law Fellowships provide funding for two young attorneys to handle the most difficult family law cases in Cumberland County. Since its inception, the Coffin Family Fellows have handled literally hundreds of cases so complicated and protracted that volunteer attorneys were unable and/or unwilling to take them.

Other projects have been crafted to fill the gaps left by prohibitions placed on government-funded agencies as well. In 1999, the Immigrant Legal Advocacy Project was launched with private grants and support from the Maine Bar Foundation. The Prison Project based

at the Maine Civil Liberties Union was undertaken to address civil rights' concerns at Maine's jails and prisons. The Cumberland Legal Aid Clinic, based at the University of Maine School of Law, has sought and obtained grants to expand its client services in southern Maine.

Private attorneys and judges volunteered time to review court rules and statutes to determine where and how changes might make it easier for attorneys to handle cases on a volunteer basis or for low-income clients to navigate the

court system unaided.

At the same time care had to be given to safeguarding the elements of due process so critical to our system of justice.

By necessity a slower process, this effort has nonetheless resulted in a number of changes. Court forms have been rewritten for clarity and ease of use. Many of the more common forms are now available online in interactive formats. Funds have been obtained through government and private sources to create a user-friendly Web site (www.HelpMeLaw.org), where the general public may access these forms and information. Court rules recently enacted allow attorneys to offer limited assistance when clients are able to represent themselves but wish to have coaching or document review for assistance without full representation.

Today, Maine remains unable to fully meet the legal needs of its citizens whose limited means or other limitations make

obtaining private counsel difficult or impossible. A full complement of attorneys is not yet available through legal aid offices. Still, through the foresight of the Commission on Legal Needs and the ongoing efforts of hundreds of attorneys, judges and lay volunteers, Maine is in the vanguard of states addressing the crisis in representation exacerbated by cutbacks in the 1990s. As we enter a new era in access to justice, our way has been paved by members of the original commission, participants of the original 1995 forum, members of the Justice Action Group and its task forces, the Maine Bar Foundation, the Maine State Bar Association, and the men and women of legal services whose efforts went beyond their scope of employment.

In 2002, Maine's legal services are on the cutting edge in the use of computer-based information to assist Maine citizens through terminals in public libraries, schools and through new initiatives in the courthouses themselves.⁸ More importantly, the primary providers of legal aid regularly work cooperatively to avoid overlap and duplication of services. Members of the judiciary and private bar continue to be included in discussions to identify both problem areas in the delivery of legal services and emergent legal issues.

Although much progress has been made, more remains to be done. At the start of the 1990s, Senator Muskie observed, "When we began this experiment in government, we did not instantly achieve an equal chance for every member of our society, but we did promise to work toward it." And so Mainers have. 🐟

Calien Lewis is Executive Director of the Maine Bar Foundation. She practiced as a legal service attorney and municipal lawyer before joining the ranks of non-profit organization administrators.



ENDNOTES

1. Interest on Lawyers Trust Accounts (IOLTA) is a process for accumulating interest on certain funds held by lawyers that by law cannot otherwise earn interest for clients. The interest is pooled to provide for the charitable purpose of assisting legal services and for other law-related projects. IOLTA is the second largest funding source for legal services in Maine.
2. "Chairman's Preface," in *Report of The Maine Commission on Legal Needs: An Action Plan for the 1990s*. Maine Bar Foundation, 1989.
3. 4 MSRA 18-A.
4. Art. I 19
5. Speech to the Fall Forum, in "Legal Crisis 'Alive and Well' for Old, Poor:" *Kennebec Journal* 1 November 1996: 1.
6. The Maine Equal Justice Project was later named MEJPartners when differing funding streams and purposes resulted in a new organization separate from Pine Tree Legal Assistance.
7. Twelve law firms in Portland banded together to finance the fellowship for family law. Founding firms include Bernstein, Shur, Sawyer & Nelson; Curtis Thaxter Stevens Broder & Micoileau; Drummond, Woodsum & MacMahon; Friedman, Babcock & Gaythwaite; Jensen Baird Gardner & Henry; Norman, Hanson & DeTroy; Perkins, Thompson, Hinckley & Keddy P.A.; Pierce Atwood; Preti, Flaherty, Beliveau & Pachios, LLC; Robinson, Kriger & McCallum; Thompson & Bowie; and Verrill & Dana, LLP.
8. Court-based computer assistance is being implemented with funds from federal grants and the Maine Bar Foundation, and will begin in the West Bath District Court. Additional funds are being sought to provide computers in all of Maine's district courthouses.