

MAINE STATE LEGISLATURE

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Report of

THE MAINE COMMISSION ON LEGAL NEEDS

An Action Plan for the 1990's

EXECUTIVE SUMMARY

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An Action Plan for the 1990's

EXECUTIVE SUMMARY

May 1, 1990

Plan of the Report

The *Report of the Maine Commission on Legal Needs - 1990* consists of this *Executive Summary* and the full *Report*.

The *Executive Summary*, based on the full *Report*, contains a brief summary of the *Report*, together with the Findings and Recommendations of the Commission and the proposed Action Plan. The full *Report* contains a detailed analysis of the data gathered, which supports the Findings and Recommendations. The full *Report* also contains appendices, one of which describes the background and methodology of the Legal Needs Study and a bibliography.

Five thousand copies of the *Executive Summary* were printed as a separate document and distributed to the members of the Maine Legislature, to all persons registered to practice law in Maine and to the members of the Press. Limited copies of the *Executive Summary* are available on request from the Maine Bar Foundation, 124 State Street, Augusta, Maine, 04330. Four hundred copies of the full *Report* were printed and placed in the State Law Library at Augusta, the University of Maine Law Library at Portland, the county law libraries, major public libraries throughout the state, and the offices of the Maine Congressional Delegation. A limited number of copies of the full *Report* are available for purchase through the Bar Foundation.

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Neville Woodruff, Esq.
Chief Attorney, Legal Services
for the Elderly, Inc.

Chairman's Preface

Over the past year The Maine Commission on Legal Needs has examined the relationship between poverty and access to justice in Maine. We have found that relationship to be distressingly direct and simple: the legal services that are available to the poor are wholly inadequate to meet the need.

The legal problems of the poor are many and fundamental. They have to do with basics: income, food, health, shelter. They occur frequently and are often interrelated. They defy attempts at self-help, because they involve laws, regulations and processes of overwhelming complexity.

To deal with these problems the poor need the assistance of those to whom our system of justice responds best: lawyers. They need legal assistance which is accessible, and which is free. Poverty-level incomes, by definition, are too small to provide adequate food, clothing and shelter. They cannot afford to pay for legal assistance.

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 in our society. It concerns the most basic principles of our social and legal order.

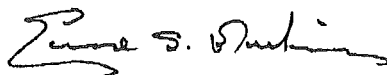
Existing free legal services are simply not meeting the demand. The supply of legal services attorneys, paralegals and support staff, and the distribution of legal services offices, leaves most of the poor with far too little access to the system and for many, none at all. The private bar has done a very commendable job of trying to fill this gap, but clearly needs to do more and must do all it can. However, an increased effort on the part of the private bar alone cannot do the job.

No single entity can solve the problem. There must be a coordinated effort between the public, the practitioners and the private sector. The broadly based Legal Needs Commission has completed its research, has made findings of fact, has developed recommendations, and presents an Action Plan to turn those recommendations into reality.

Our most basic recommendation is addressed to all members of society, as the beneficiaries of its universal, yet unrealized, guarantee of equal access to justice. It speaks to the absolute necessity of directing greatly increased funds to the provision of civil legal services for the poor. The major part of these funds must come from the tax dollars which represent the public commitment to our system of government and to the statement in Article I of the Maine Constitution, "[that all persons] shall have remedy by due course of law; and right and justice shall be administered freely and without sale, completely and without denial, promptly and without delay."

Let us not forget that 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.

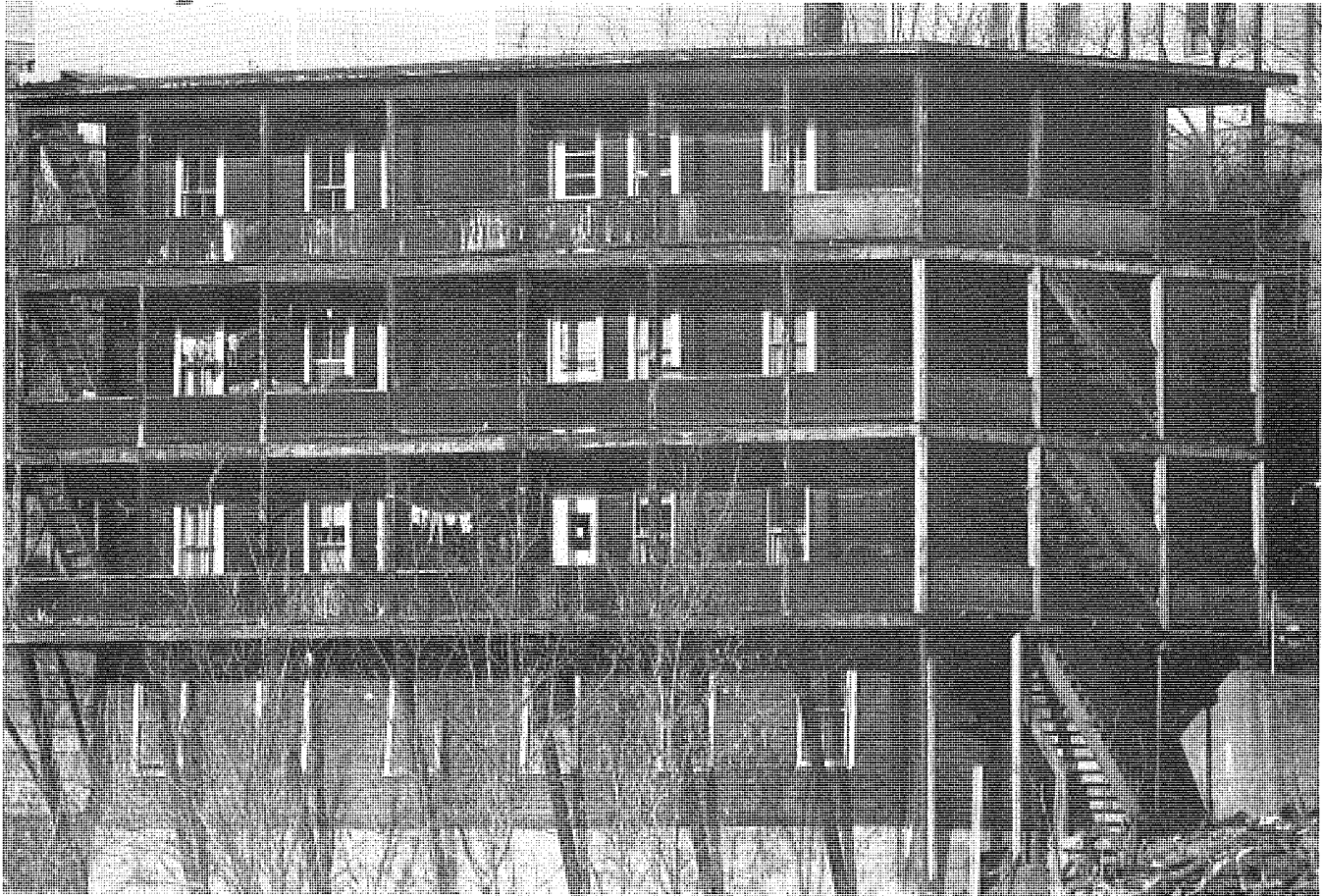
Edmund S. Muskie
May 1, 1989
Augusta, Maine



Edmund S. Muskie
Chairman

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*The conditions of poverty
give rise to the legal problems
which have a critical impact
on the lives of the poor.*

Findings and Recommendations

The Maine Commission on Legal Needs was established by the Maine Bar Foundation and a consortium of nine other organizations representing the public, private, and academic sectors of the legal system. The Commission's charge was to determine the extent to which the poor lack access to justice for their civil legal needs, to assess the existing sources of civil legal assistance for the poor, and to make recommendations for action to establish equal access to justice for all Maine citizens. To carry out this charge the Commission undertook the Maine Legal Needs Study. This *Report* presents the results.

The Maine Legal Needs Study had four components: (1) A scientifically designed and administered telephone survey of 521 low-income households in Maine. (2) A series of eight public hearings conducted at various locations throughout the state. (3) Various questionnaires mailed to legal and social service agencies and their staffs; lawyers, judges, and court personnel; and Maine State legislators and executive officers. (4) A series of personal interviews with social service agency personnel. The data and information derived from all of these sources, summarized in this *Executive Summary*, are analyzed in detail in the Commission's full Report. The background and methodology of the Legal Needs Study are described in detail in an Appendix to the full *Report*.

The Commission's findings, set forth in this *Executive Summary*, may be summed up as follows:

- More than 230,000 people in Maine live in poverty.
- These individuals require access to the civil justice system in order to share fully in our society.
- The poor cannot afford to pay for the legal services essential to access to justice.
- The free civil legal services provided by public funding and the substantial voluntary efforts of the private bar are wholly inadequate to meet the needs of the poor.

To address these needs, the Commission has prepared and offers to the people of Maine its Action Plan, with which this *Executive Summary* concludes. The Action Plan is designed to provide the ideas and resources that will assure equal access to civil justice for all Maine Citizens.

*It is important that all citizens
in our society have the kind of
representation they need to
have equal access to justice.*

Governor John R. McKernan
November 2, 1989

Findings and Recommendations

Poverty and Access to Justice

Poverty is a systemic condition in which lack of basic necessities creates a vicious circle. Those who must struggle for food, shelter, and health care are prevented from obtaining the education and training that lead to employment and income that can in turn provide adequate food, shelter, and health care. Poverty deprives individuals of the capacity to participate fully in our society and thus deprives society of the resource that the excluded individuals represent.

Fundamental to access to the responsibilities and rewards of society is access to justice. This basic promise of our social order is critical for the poor, because the vicious circle of poverty is enmeshed in a tangle of law and regulation which others rarely confront. The poor face their fellow citizens in eviction proceedings, utility shut-offs, repossessions of credit purchases, and suits on unpaid bills. They face their own family members in violent disputes and crises often engendered by the very conditions in which they live. And they face, always, "the System," the welfare agencies which disburse the income maintenance, housing, medical, and other benefits which society provides to alleviate the lot of the poor.

Though the poor have greater need for the counsel, representation, and advocacy that are the essence of access to justice, their share is far less than that allotted to the affluent. Since 1967, Pine Tree Legal Assistance, Inc., and other agencies funded by the federal and state governments have provided free civil legal services to the poor of Maine. (Representation in criminal cases is paid for by the state as a matter of Constitutional right.) Today there is one paid legal services lawyer for every 6,500 individuals living in poverty in Maine. By contrast, there is one lawyer for approximately every 400 individuals in the population as a whole. The extensive voluntary efforts of Maine lawyers who represent poor clients without fee "*pro bono publico*" (for the public good), though they lead the nation, do not begin to make up the difference.

Underlying the problem of equal access to justice are two far greater problems: (1) The root causes of poverty lie in the structure of American society where they reflect not only long-held social and psychological attitudes toward poverty, class, and race, but also the rapid political and technological changes of our times. (2) Our legal and administrative institutions are overburdened and ineffective in dealing with the concerns of all individuals in this increasingly complex society. The Commission has not proposed solutions to these larger problems. Rather, the Commission's goal is to increase the capacity of the poor under the present system to deal with the conditions of poverty and to develop the dignity, confidence, and skills to address its root causes.

Findings and Recommendations

The Legal Needs of the Poor

At least 230,000 (19.5%) of Maine's nearly 1.2 million people have incomes below 125% of the federally established poverty level. In 1989, this figure was \$7,475 for an individual and \$15,125 for a family of four. The 85,000 households that compose this poverty population experienced more than 80,000 legal problems between July 1988 and July 1989. This represents an average of approximately one problem per household. Most significant, however, are the instances of multiple problems: among the households which reported legal problems, the average was nearly three problems per household.

A lot of the people at the bottom of the ladder of our society believe that the legal system isn't interested in their problems and that there is no help available.



Findings and Recommendations

The poor have a substantially higher unemployment rate, a higher incidence of health problems, and lower educational levels than those above the poverty level. The poor often live in public housing and their housing, whether rented or owned, is more likely to be substandard. These conditions give rise to legal problems which have critical impact on the lives of the poor. About 65% of the total legal problems reported in the Legal Needs Study telephone survey of poverty households involved basic necessities: income maintenance and employment, health, utility problems, housing, and education. Another 13% of reported problems were family and domestic issues, and an additional 10% were consumer problems. The four areas in which problems arose with greatest frequency and were viewed as most serious were, in descending order, income maintenance, health, family, and utility problems.

FINDING: In the economic and social conditions which poverty imposes, the poor face civil legal problems which are significant in number, fundamental in nature, and burdensome in effect.

The Availability of Legal Assistance for the Poor

Data from the telephone survey and from the legal services providers indicate that Maine's poor obtained legal assistance for only 23% or slightly more than 18,000 of the more than 80,000 legal problems which they experienced from July 1988 to July 1989. Thus, over 61,000 legal problems (77%) went without legal assistance of any kind. Of the problems categorized as "most serious" in the telephone survey, only 27% received legal assistance. Moreover, in more than half of the cases where legal assistance was obtained, a fee was charge. Yet the poor cannot afford even the average rates charged by the private bar in Maine to paying clients.

FINDING: The amount of free legal assistance available to meet the needs of Maine's poor for help in managing and resolving their civil legal problems is wholly inadequate. The poor cannot afford to pay for legal help.

Meeting the Unmet Need: The Delivery of Legal Assistance

A. Level of Legal Services

Civil legal services for the poor in Maine are provided by publicly funded legal services agencies and by private lawyers who give their time voluntarily. Pine Tree Legal Assistance, Inc., is the statewide, base-line legal services provider, primarily funded by the federal Legal Services Corporation. Legal Services for

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the Elderly, Inc., funded by the federal and state governments, provides legal assistance to senior citizens, also statewide. The University of Maine Law School sponsors the Cumberland Legal Aid Clinic, in which students, with faculty supervision, represent clients primarily in southwestern Maine. The Volunteer Lawyers Project is a statewide *pro bono* referral panel of 1500 private attorneys who have each agreed to take up to three *pro bono* referrals per year. The Project, sponsored by the Maine Bar Foundation, leads the nation in the percentage of private lawyer participation. In addition, many private lawyers independently provide significant *pro bono* service.

Information provided by these four programs shows that together, they logged a total of 20,338 matters in 1988, providing brief service (one-time advice or referral) in 15,651 cases and extended representation (research, preparation of documents or negotiations) or litigation service (court or administrative proceedings) in 4,687 cases. A substantial proportion of the brief service cases would have received extended representation if resources had been available.

Each Pine Tree and Legal Services for the Elderly, Inc. lawyer handles an average of 100 extended representation or litigation cases per year. Volunteer Lawyers Project lawyers on average are assigned less than one extended representation or litigation matter per year. Volunteer Lawyers Project extended representation and litigation cases average about eight hours of lawyer time each. In the Clinic, each of 36 students handle approximately four extended representation or litigation civil cases per year. There is currently no means to document the independent *pro bono* contribution of private practitioners.

There are at present only 35 full-time equivalent lawyers employed to provide legal services for the poor in Maine. Salary levels for these lawyers and support staff are not competitive with other public sector jobs let alone with the private sector.

Projections from the telephone survey data show that in the year of the survey the poor had 61,000 legal problems for which they had no representation. Conservatively assuming that half of those cases would have required only brief service, there remain 30,500 cases for which extended representation or litigation service should have been provided. To meet even this conservatively stated unmet need would require a threefold increase in the present level of free legal services. There are presently 2,700 lawyers registered as active practitioners in Maine, and the Volunteer Lawyers Project handles 900 extended representation or litigation cases per year. If each private attorney accepted the *pro bono* referral of three extended representation or litigation cases per year, an additional 7,200 cases would be covered. If the Clinic were to double its caseload by adding 150 cases, 23,150 cases would remain to be covered by Pine Tree and Legal Services for the Elderly, Inc. This added caseload would require the equivalent of 232 additional salaried legal services lawyers.

Findings and Recommendations

If we assume that the remaining 30,500 cases could have been handled through brief service at a minimum of two hours each, the equivalent of 30 full-time paralegals would be required to provide this service. An increase of this magnitude in the number of lawyers and paralegals would obviously require significant expansion of support staff and investment in physical facilities and equipment.

FINDING: The poor experience at least 30,500 civil legal problems per year which require extended representation or litigation service that can be provided only by significant expansion of the capacity of existing legal services providers.

RECOMMENDATIONS:

- (1) Increase the number of lawyers employed or retained by legal services providers in Maine and provide adequate paralegals, support staff, facilities, and equipment to support them.
- (2) (a) Increase salaries, wages, and benefits for legal services attorneys, paralegals, and support staff to levels adequate to attract and retain qualified individuals. (b) Establish a loan forgiveness fund to enable law school graduates who undertake civil legal work for the poor in the public sector to repay educational loans.
- (3) (a) Encourage all lawyers licensed and registered for active practice in Maine to contribute a minimum of 25 hours of unpaid time per year to direct representation of the poor or volunteer work for organizations providing such representation, or to make an appropriate financial contribution to a legal services provider in lieu thereof. (b) Require all lawyers to report annually to the Board of Overseers of the Bar the hours spent or financial contribution made. (c) Provide appropriate recognition of such service or contribution.
- (4) Increase the use of paralegals and other non-lawyers in providing legal services through the Volunteer Lawyers Project or other *pro bono* agency.
- (5) Study ways of increasing the unpaid participation of the private bar in the provision of legal services, including (a) increased recognition for *pro bono* activity, (b) establishment of a requirement of a specific amount of unpaid *pro bono* representation, or an appropriately measured financial contribution in lieu thereof, and (c) establishment of a mentor program to encourage each lawyer to contribute 50 hours of unpaid representation of the poor during the first year of admission to the bar.
- (6) Encourage law firms, corporate legal departments and government law agencies, to adopt express *pro bono* policies giving the same respect, the same credit for time spent and the same attorney and support resources to the provision of legal services to the poor, as are allotted to fee-generating matters or statutory responsibilities.

Findings and Recommendations

- (7) Expand the scope of for-credit clinical programs and the number of students participating in them at the University of Maine Law School.
- (8) Establish a public interest fellowship program to subsidize law student internships in civil legal services offices.
- (9) Increase the number of continuing legal education programs on poverty law issues and related trial skills and offer them at a reduced or no fee for legal services and *pro bono* attorneys.

B. Systemic Change

Class actions have historically been an effective means for asserting and establishing the rights of large numbers of the poor opposing a single defendant or challenging a single legal doctrine or regulation. Such proceedings require major resources of time and money, as well as sophisticated lawyering skills. With their limited staffing Pine Tree and Legal Services for the Elderly, Inc. must forego use of the class action in situations in which it would be effective. Large law firms have the capacity to support such actions.

The very limited resources available to legal services providers have forced those agencies to devote their principal efforts to representation aimed at securing the basic necessities of existence for the poor, whether in court representation or legislative advocacy. There is currently no systematic effort to direct resources to bring about political and economic changes that would address the underlying causes and broad social effects of poverty.

FINDING: Additional resources and skills are needed to permit greater use of the class action for vindicating the rights of the poor. There is no coordinated mechanism for seeking systemic change, whether through litigation or legislation, on behalf of the poor.

RECOMMENDATIONS:

- (1) Encourage private attorneys, including those in major law firms, to work with legal services providers as co-counsel in class actions and major law suits seeking systemic change.
- (2) Increase the efforts of legal service providers and other organizations in the area of systemic change, including legislative advocacy to the extent permitted by funding agencies.

C. Litigation Costs

Often litigation on behalf of the poor involves significant outlays for expenses that may be recovered as costs if the plaintiff prevails. Private attorneys may be reluctant to make such outlays because of the small amount at stake.

Findings and Recommendations

FINDING: Lawyers would be encouraged to take complex and fee-generating cases for the poor if initial litigation expenses could be met.

RECOMMENDATION:

- (1) Establish a revolving fund to cover costs and expenses, other than lawyers' fees, for poor clients in complex litigation.

D. Priorities

Among the four most frequently reported and most seriously regarded categories of problems identified in the telephone survey, free legal assistance was provided in only 15% of the income maintenance problems, 7.3% of the health problems, 15.4% of family problems, and 4% of utility problems. The caseloads of the legal service providers are in some areas out of line with the frequency and seriousness data from the survey. In particular, consumer (including utility), employment, and health cases occupy significantly less of the total provider caseload than their frequency and seriousness appear to warrant, and housing and individual rights cases, such as guardianships, occupy significantly more.

FINDING: The priorities of the legal service providers may not be fully in accord with the actual or perceived legal needs of potential clients.

RECOMMENDATIONS:

- (1) Request that legal services providers assess areas of common concern in order to maximize the use of public funds and develop a coordinated approach to the delivery of legal services.
- (2) Develop a system of court-appointed counsel in certain civil cases, including landlord/tenant cases, domestic and family law matters, and defense of collection and other civil actions.

Meeting the Unmet Need: Access to Legal Assistance

A. The Problem of Location

Poor people living in a city in which a legal service office is located were nearly two times more likely to obtain legal assistance, and six times more likely to have obtained free legal service, than those not living in such a location. Residents of these cities were also twice as likely to be aware of the availability of free legal services.

Data gathered for the Legal Needs Study demonstrate that this proximity to a legal service office is the only "location" factor of significance. Other place-

Findings and Recommendations

of-residence factors, such as residence in the northern or southern part of the state, residence in an urban or rural area, and population center size do not significantly affect the volume of legal problems experienced, the receipt of legal assistance, the receipt of free legal assistance or awareness of free legal services.

FINDING: Poor people living outside cities where legal services offices are located are substantially less likely to obtain legal assistance than those living within such cities.

RECOMMENDATIONS:

- (1) Increase the number of locations where legal services are available to the poor and improve the distribution of legal services offices in the state.
- (2) Develop a system of contracting with members of the private bar to provide free or reduced fee legal services in those areas not adequately served by legal services offices or voluntary programs.

Most of the people who are very poor don't even have a phone or transportation. They don't know about free legal services.



Findings and Recommendations

B. The Problem of Referral

Many of the poor, and social service providers as well, report being shunted from one legal services provider to another, because of either financial eligibility problems or case priorities. In particular, with regard to the Volunteer Lawyers Project, there was universal expression of concern at the difficulty of reaching the Project's central referral office by telephone. Although 1,500 private attorneys have agreed to take up to three *pro bono* cases per year as members of the Project's statewide panel, fewer than 900 cases were referred in 1988. The Project is thus operating at about 20% of capacity.

FINDING: The present decentralized referral system of legal services providers creates confusion and may result in some individuals being unable to obtain services. The intake system for the Volunteer Lawyers Project prevents the present capacity of the Project from being fully utilized and will be totally inadequate if the capacity is increased.

RECOMMENDATIONS:

- (1) Insure a coordinated statewide intake and referral system linking all legal service providers in the state.
- (2) Increase the capacity of the Volunteer Lawyers Project, or develop a new mechanism, to utilize effectively the substantial commitment of the private bar to deliver *pro bono* legal services.

C. Expanded Use of Paraprofessional Assistance

Many problems for which the poor seek legal assistance do not necessarily require the services of a lawyer. For example, in a court house a trained lay assistant could explain procedures and assist individuals in *pro se* representation in small claims matters or other relatively uncomplicated proceedings. Trained assistants in the offices of governmental agencies which deal with the poor could provide guidance through the regulatory maze surrounding most benefit programs. Paralegals could be trained to provide court representation in small claims and other less complex matters and could give advice and draft papers in many situations, provided that the boundaries of the unauthorized practice of law were made clear.

FINDING: Paralegals and other nonlawyers are not sufficiently used to provide legal assistance in situations where either a lawyer is unavailable or a lawyer's services are not required or are not economically feasible.

Findings and Recommendations

RECOMMENDATIONS:

- (1) Develop a system of non-lawyer legal assistants based in court houses and relevant governmental offices to guide people who need help in dealing with forms and procedure.
- (2) Develop licensure guidelines to permit the supervised practice of law by legal paraprofessionals, including client counseling and court representation in routine legal matters or particular types of cases.

D. Barriers to Access

In some areas of the state, where French is the primary language for many individuals, language may be a barrier to obtaining legal services if sufficient bilingual staff are not employed. Asian languages present even more difficult interpretation problems. Similarly, interpretation may be necessary for hearing-impaired individuals. People with other handicaps and disabilities represent a special problem. Poor households in Maine with a disabled member experience more legal problems than do households without a disabled member and receive more legal assistance. Provisions to assure access for these individuals range from making sure that all legal services offices are accessible for handicapped persons to providing special transportation for disabled clients or making it possible for legal services personnel to make "house calls." Social services agencies and volunteer organizations can assist in overcoming these barriers.

FINDING: Poor people who do not speak English or are hearing impaired or otherwise handicapped have special problems of access to legal assistance.

RECOMMENDATION:

- (1) Improve access to legal assistance for persons with language, hearing, and other disabilities, enlisting help from social service agencies and volunteer organizations.

E. Legal Assistance for the Near Poor

Testimony at the public hearings indicated that there are numerous individuals whose economic status renders them ineligible for free legal assistance from Pine Tree and the Volunteer Lawyers Project. Legal Services Corporation regulations, as well as scarce resources, require these agencies to enforce income limitations on the delivery of their services. Even though Legal Services for the Elderly, Inc. has no income limitations, its services, limited to age-eligible individuals, are concentrated on the elderly poor. Poor clients referred to private lawyers by the Maine State Bar Association's Lawyers Referral Service must, like all others, pay a \$15.00 referral fee and a full fee after the initial consultation; the near-poor cannot afford to do so. There is no system of

Findings and Recommendations

People need confidence that they can go to a lawyer without the element of fear that they will not be able to pay.

graduated fees based on income, and establishment of such a system might present problems under present rules of professional responsibility and antitrust regulations. Many individuals who are income-ineligible thus may be less able to obtain legal assistance than those who meet eligibility standards.

FINDING: There is no satisfactory provision of legal services for the near poor and others who are ineligible for free legal services but who cannot afford to pay the full fees for private legal assistance.

RECOMMENDATION:

- (1) Develop ways to meet the legal needs of individuals not eligible for free legal services, such as sliding fee scales.

The Problem of Awareness: The Poor, the Professions, the Public

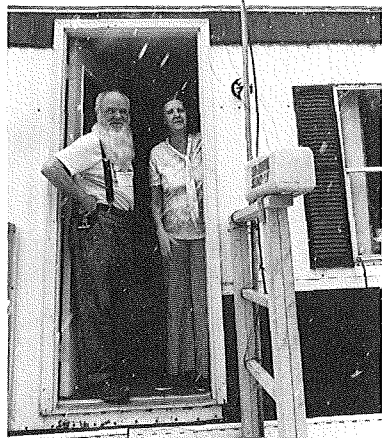
A. The Poor

Less than one-third of the respondents to the telephone survey were aware of the availability of free legal services in Maine. It was also clear from information gathered for the Study that the legal problems of the poor and their need for legal assistance were directly related to their lack of information and knowledge about legal rights and responsibilities and about the way our system of law and justice works. In addition to the legal problems that such lack of knowledge may create or exacerbate, it also brings a sense of confusion, of powerlessness and of frustration, undermining confidence and the motivation to try to resolve problems, whether independently or with assistance. The ultimate result is to destroy faith in the underlying fairness of our system.

FINDING: The poor need better information about the legal assistance available to them. They also need a better understanding of their rights and responsibilities, of our system of law and justice, and of the means of dealing with that system.

RECOMMENDATION:

- (1) Design and initiate a comprehensive statewide educational program to provide for the poor and other vulnerable persons a better understanding of their rights and their responsibilities, of the way our system of law and justice works, of the skills for dealing with that system, and of the legal assistance available to them.



Findings and Recommendations

B. The Professions and the Public

Many of those in the legal system have little knowledge of or sensitivity to the conditions of poverty. There is no program of continuing legal or judicial education which endeavors to fill these crucial gaps of knowledge and experience. Similarly, providers of social services to the poor often do not recognize problems as legal and are often unaware of sources of legal assistance. Again, no program of relevant professional education exists. Legal services providers, who logically might best provide this training to their professional and social services colleagues, do not have the human or financial resources to do so on a comprehensive statewide basis. Finally, there is a lack of understanding in the public at large of the fundamental rights and responsibilities which underlie our legal and political system, a lack of understanding of how that system works, and a failure to realize the need for adequate legal assistance for the poor.

FINDING: Many lawyers, judges, court personnel, other public officials, social service providers, law students and others with whom the poor deal have inadequate knowledge and understanding of the conditions of the lives of the poor, their social as well as legal problems, and their needs. The public at large lacks understanding of the functions of law and the legal system in our society, particularly as they affect the poor.

RECOMMENDATIONS:

- (1) Design and initiate educational programs that will provide lawyers, judges, court personnel, other public officials, law students, and others with whom the poor deal with adequate knowledge and understanding of the conditions of their lives, their problems, and their needs.
- (2) Design and initiate educational programs that will assist social services providers to recognize legal problems and make them aware of available legal assistance and the means of obtaining it.
- (3) Encourage and strengthen the legal education component of public education at all levels statewide, including adult education both within and outside the educational system, and develop a comprehensive program to raise public awareness of the need for adequate civil legal services for the poor.

Findings and Recommendations

Funding for Legal Services

A. Funding Needs and Sources

Many of the recommendations of the Commission require significant additional funding. While some recommendations call primarily for increased volunteer commitment and for coordination among agencies and institutions, others involve substantial additions of personnel and support. The most basic conclusion of the Study is that even with the maximum commitment of the private bar to unpaid *pro bono* legal representation of the poor, the total legal needs of the poor can only be met by major increases in the number of paid attorneys employed by statewide legal services providers and the addition of necessary supporting staff and facilities.

While no total cost to meet these needs has been calculated, the magnitude may be judged from the fact that the present annual operating cost of a typical legal services office staffed by three lawyers, one paralegal and two secretaries is about \$200,000, using as the salary component of this cost 1988 competitive starting salary rates of \$25,000 for lawyers, \$16,000 for paralegals and \$14,000 for legal secretaries. In discussion of Finding 4A, it was suggested that, even with the bar providing *pro bono* service, the equivalent of 232 salaried legal services lawyers would be necessary to meet Maine's present unmet legal need. At entry level salary costs, the annual cost for these additional lawyers would be about \$5,800,000. Staff, fringe benefits, equipment, office expense, and space to support these lawyers would amount to at least an additional \$6,000,000 annually. Thus, a funding increase of nearly \$12,000,000 per year would be required to meet the full need.

Between 1980 and 1988, the total funding for legal services in Maine, expressed in constant 1988 dollars, increased by 7% from \$2,512,423 to \$2,689,215, thanks primarily to state legislative appropriations and the Maine Bar Foundation's Interest on Lawyer's Trust Accounts (IOLTA) Program. This increase is illusory, however. During this same period, the low-income population of the state increased by 7%. Moreover, with an eight-year increase in inflation of nearly 44%, Pine Tree, the largest single provider, experienced a 17% budget decrease in 1988 dollars from \$2,119,454 to \$1,760,430. Pine Tree's federal funding from the Legal Services Corporation decreased in actual dollar amounts, not adjusted for inflation, by 4.3% from \$1,404,274 to \$1,342,515. Additional funds during the years 1980-1988 for Legal Services for the Elderly and the Volunteer Lawyers Project have made a major contribution to meeting the legal needs of Maine's poor. Nevertheless, Pine Tree is the statewide, full-service provider of legal services, handling 55% of the total caseload of the four principal providers, 38% of their extended representation/litigation caseload, and 56% of the litigated cases. Secure funding for Pine Tree's work is essential.

In 1988, there were four basic funding sources for civil legal services for the poor in Maine.

Findings and Recommendations

Source	Amount	
1. Federal Funds		
Legal Services Corporation	\$1,498,446	
Other (Older Americans Act, Law School grants)	<u>210,379</u>	
TOTAL	\$1,708,825	\$1,708,825
2. State Funds		
Direct legislative appropriation	90,000	
Other (grants, contracts, University funds)	<u>485,624</u>	
TOTAL	\$575,624	575,624
3. IOLTA - Maine Bar Foundation		
TOTAL		202,447
4. Private Contributions		
Board of Overseers checkoff	19,953	
United Way	45,377	
Other (est. LSE space, donations)	<u>40,000</u>	
TOTAL	105,330	<u>105,330</u>
GRAND TOTAL		<u><u>\$2,592,226</u></u>
(An additional \$96,989 was primarily attorneys' fees and interest.)		

New funding for legal services must be obtained from these four major sources. Primary responsibility must continue to rest with federal and state government, because, above all, we must recognize that meeting the needs of the poor for civil legal services is a public responsibility. Nevertheless, significant additional resources may be realized from the other two funding sources. The Maine Bar Foundation presently administers a voluntary IOLTA program and a voluntary Board of Overseers dues checkoff program. A comprehensive IOLTA program and a negative dues checkoff system would significantly increase funds from those sources. The Maine Bar Foundation could then reexamine its funding priorities to make sure that it is directing the maximum possible resources to provision of legal services to the poor. Finally, the philanthropic community in Maine has barely been reached through individual fundraising efforts of Pine Tree, Legal Services for the Elderly, and the Law School. A concerted development effort among all providers, led by the Bar Foundation, could also be a significant additional source of funds.

Findings and Recommendations

FINDING: There is inadequate funding to maintain even a minimum level of legal services to the poor in Maine. Substantial new resources must be directed to the support of legal services, with the burden of those resources equitably apportioned between federal and state government and the private sector.

RECOMMENDATIONS:

- (1) Through the Maine Congressional delegation and the President of the United States, seek to increase substantially federal appropriations for programs providing legal services to the poor.
- (2) Increase the annual state legislative appropriations for publicly funded legal services providers.
- (3) Establish a negative dues check-off on the Board of Overseers of the Bar's annual attorney registration statement with the proceeds to be applied to the provision of civil legal services for the poor.
- (4) Establish a coordinated approach to soliciting the Maine philanthropic community for the support of legal services to the poor.
- (5) Convert the voluntary IOLTA program to a comprehensive program.
- (6) Reallocate resources of the Maine Bar Foundation to provide more support for direct legal services to the poor.

Implementation of the Legal Needs Study

A. Implementation Mechanism

If Maine's response to the legal needs of the poor is to be significantly improved, the recommendations contained in this report must be implemented as soon as possible. The Maine Bar Foundation has substantial facilities, resources, staff and volunteer capacity, as well as a mission to support legal services for the poor. Therefore, the Maine Bar Foundation would be an appropriate body to carry forward the implementation effort. Each agency with responsibility for some aspect of the process for meeting the legal needs of the poor must be involved in the planning and execution of the Study's recommendations and must be prepared to carry out its own responsibilities.

FINDING: If the Report of the Maine Commission on Legal Needs is to have significant effects, a body must be established to oversee its implementation in accordance with a detailed action plan.

Findings and Recommendations

RECOMMENDATIONS:

- (1) The Maine Bar Foundation should assume responsibility for continuing oversight and implementation of the Commission's recommendations, including support for increased public funding and should assure a broad participation in this effort by the agencies and interests composing the Commission.
- (2) The various involved governmental and bar agencies should carry out the implementation responsibilities as described in the Action Plan. The Maine Bar Foundation should solicit annual reports on the implementation process from action agencies as appropriate.

Poor people living outside cities where legal service offices are located are substantially less likely to obtain legal assistance.



Action Plan

On the basis of the Maine Legal Needs Study, Findings and Recommendations which are the result of the Study, the Commission's Action Plan identifies specific steps to be taken to bring about change. The assignment of specific steps to particular agencies and organizations reflects the Commission's view as to where principal responsibilities lie. Many steps clearly require cooperative efforts. A systematic, coordinated approach must link all of the organizations and their specific responsibilities.

It is the Commission's goal to have the Action Plan fully implemented by May 1, 1995.

Action by the President, U.S. Congress and Legal Services Corporation

- Increase substantially federal appropriations for such purposes as:
 - Increasing the number of lawyers and staff in the legal service agencies serving the poor in Maine.
 - Increasing the number and distribution of legal service offices in Maine.
 - Creating an opportunity for the legal service providers to contract with private attorneys to provide free or reduced fee legal services in those areas which cannot be adequately served by the legal service offices or the Volunteer Lawyers Project.
- Establish a loan forgiveness fund to enable law school graduates who undertake civil legal work for the poor in the public sector to repay federal educational loans.
- Encourage all government law agencies to adopt an express policy, to be communicated on at least an annual basis to all lawyers, encouraging government lawyers to provide *pro bono* legal services.

Action by the Governor and the Maine State Legislature

- Increase substantially the annual state legislative appropriations for publicly funded legal services providers for such purposes as:
 - Increasing the number of lawyers and staff in the legal service offices serving the poor.
 - Increasing the number of locations where free legal services are available to the poor.
- In cooperation with the Supreme Judicial Court develop legislation to create a system of court appointed counsel in certain civil cases.
- Encourage all government law agencies to adopt an express policy, to be communicated on at least an annual basis to all lawyers, encouraging government lawyers to provide *pro bono* legal services.

Action Plan

- Develop legislation to create a system of non-lawyer legal assistants based in courthouses and relevant governmental offices to guide people who need assistance in dealing with forms and procedure.
- Establish a revolving fund to cover costs and expenses, other than lawyers' fees, for poor clients in complex litigation.
- Establish a public interest fellowship program to subsidize law student internships in legal services offices.
- Establish a loan forgiveness fund to enable law school graduates who undertake civil legal work for the poor in the public sector to repay private and state guaranteed educational loans.

Action by the Maine Supreme Judicial Court

- Require all lawyers to report annually to the Board of Overseers of the Bar their unpaid professional service devoted to direct representation of the poor or volunteer work for organizations providing such representation, or financial contributions made in lieu of such services to a legal services provider serving the poor.
- In cooperation with the Legislature develop legislation to create a system of court appointed counsel in certain civil cases.
- Develop guidelines for licensure to permit supervised practice of law by legal paraprofessionals, including client counseling and representation in court in routine legal matters or particular types of cases.
- Convert the voluntary IOLTA program to a comprehensive program.
- Establish a negative dues check-off on the annual attorney registration statement with the proceeds to be applied to the provision of civil legal services to the poor.

Action by Legal Service Provider Programs

- Seek funds to increase the number of locations where legal services are available to the poor and improve their distribution in the State.
- Seek funds to increase the number of lawyers employed or retained by legal services providers in Maine and to provide adequate paralegals, support staff, facilities, and equipment to support them.
- In conjunction with the Maine Bar Foundation, develop a system of contracting for legal services with members of the private bar to provide free or reduced-fee legal services in those areas which cannot be adequately served by the legal services offices or the Volunteer Lawyers Project.
- Develop a system of non-lawyer legal assistants based in courthouses and relevant governmental offices to guide people who need assistance in dealing with forms and procedure.
- Improve access to appropriate legal services personnel for persons with hearing and language barriers and other disabilities, enlisting the help of appropriate social service agencies and volunteer organizations.

Action Plan

- Seek funds to increase salaries, wages, and benefits for legal services attorneys, paralegals and support staff to levels adequate to attract and retain qualified individuals.
- Coordinate and increase the efforts of legal service providers and other organizations in the area of systemic change, including legislative advocacy as permitted by funding agencies.
- Assess areas of common concern to all legal service providers in order to maximize the use of public funds, developing a coordinated approach to the delivery of legal services.
- In cooperation with the Maine Bar Foundation, insure a statewide coordinated intake and referral system linking all legal service providers in the state.

Action by the Private Bar

- Encourage all lawyers licensed and registered for active practice in Maine to contribute a minimum of 25 hours per year of unpaid professional service to direct representation of the poor or to volunteer work for organizations providing such representation or, in lieu of such service, to make an appropriate financial contribution to a legal services agency providing civil legal services to the poor.
- Study ways of increasing the *pro bono* participation of the private bar in the provision of legal services to the poor, including (a) increased recognition of *pro bono* work and (b) the establishment of a requirement of a specific amount of *pro bono* representation or an appropriately measured financial contribution in lieu thereof, (c) establishment of a mentor program to encourage each lawyer to contribute 50 hours of *pro bono* representation of the poor during the first year of admission to the bar, with certification at the end of the year.
- Increase the number of continuing legal education programs on poverty law issues and offer them at a reduced or no fee for legal services and *pro bono* attorneys.
- Encourage private attorneys, including those in major law firms, to work with legal services providers as co-counsel in class actions and major law suits seeking systemic change.
- Develop ways of meeting the legal needs of individuals not eligible for free legal services, such as sliding fee scales.
- Encourage law firms, corporate legal departments and government law agencies, to adopt express *pro bono* policies giving the same respect, the same credit for time spent, the same attorney and support resources to the provision of legal services for the poor, as are allotted to fee-generating matters or statutory responsibilities.

Action Plan

Action by Maine Bar Foundation

- Assume responsibility for continuing oversight and implementation of the Commission's recommendations, including support for increased public funding for legal services, and assure a broad participation in such efforts by the agencies composing the Commission.
- Increase the use of paralegals and other non-lawyers in providing legal services through the Volunteer Lawyers Project or another *pro bono* agency.
- Increase the capacity of the Volunteer Lawyers Project, or develop a new mechanism, to utilize effectively the commitment of the private bar to *pro bono* legal services.
- Establish a coordinated approach to soliciting the Maine philanthropic community for the support of legal services to the poor.
- Prepare a proposal to convert the voluntary IOLTA program to a comprehensive program.
- In cooperation with the legal service providers insure a statewide coordinated intake and referral system linking all legal service providers in the state.
- In conjunction with the legal service providers, develop a system of contracting for legal services with members of the private bar to provide free or reduced fee legal services in those areas which cannot be adequately served by legal services offices or the Volunteer Lawyers Project.
- Reallocate resources of the Maine Bar Foundation to provide more support for direct legal services to the poor.

Action by the University of Maine School of Law

- Expand the scope of for-credit clinical programs and the number of students participating in them at the University of Maine Law School.
- Design and initiate a comprehensive statewide educational program to enable the poor and other vulnerable persons to gain a better understanding of their rights and their responsibilities, of the way our system of law and justice works, of the skills for dealing with that system, and of the legal assistance available to them.
- Design and initiate educational programs that will train social services providers to recognize legal problems and make them aware of available legal assistance and the means of obtaining it.
- Design and initiate educational programs to enable law students, lawyers, judges and others with whom the poor deal to gain adequate knowledge and understanding of the problems, and needs of the poor and of the conditions which characterize their lives.
- Encourage and strengthen the legal education component of public education at all levels statewide, including adult education both within and outside the educational system, and develop a comprehensive program to raise the awareness of the public regarding the need for adequate civil legal services for the poor.

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Nancy R. Chandler
Project Director

L. Kinvin Wroth
Chairman, Steering Committee

Student Volunteers

Anthony Anaman	Jessica Jensen	Kelly McMorran
Lynn Andrews	John Jerabek	Victoria S. Muller
Rachel Binder	Charles Jules	Jennifer Newton
Kathleen Biron	John C. Karolczak-Rohde	Laura M. O'Hanlon
Brenda Buchanan	Michael Kearney	Matthew Ouellette
Christopher Corbett	Thomas R. Kelly	Karen Perreault
Kelly Crowder	Jacqueline Lamb	Sarah Pralle
Norman Curtis	Richard Landry	Nancy V. Savage
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Rebecca Donovan	Mara Lipner	Karen Smith
Teri Dunham	Johanne Lussier	Amy Thompson
Andrew Gould	Mary-Anne Martell	Janet Vivar
Abraham Grayzel	Deirdre McGlinchey	Steve Weatherhead

Staff

Project Director
Nancy R. Chandler

Staff
Linda A. Weston
Linda M. Morin

The Spangenberg Group, Inc.
Amy Salomon, Ph.D
Robert L. Spangenberg, Esq.

Telephone Survey Statistician
Correlation Research
Herbert I. Weisberg, Ph.D

Design & Production
BCI Information Services
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