

MAINE STATE LEGISLATURE

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Report of

THE MAINE COMMISSION
ON LEGAL NEEDS — 1990

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Report of

THE MAINE COMMISSION ON LEGAL NEEDS

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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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.

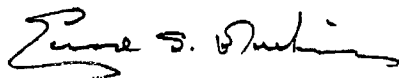
Existing free legal services are simply not meeting the demand. The supply of legal services attorneys, paralegals and support staff, and the distribution of legal services offices, leaves most of the poor with far too little access to the system and for many, none at all. The private bar has done a 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

Findings and Recommendations

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

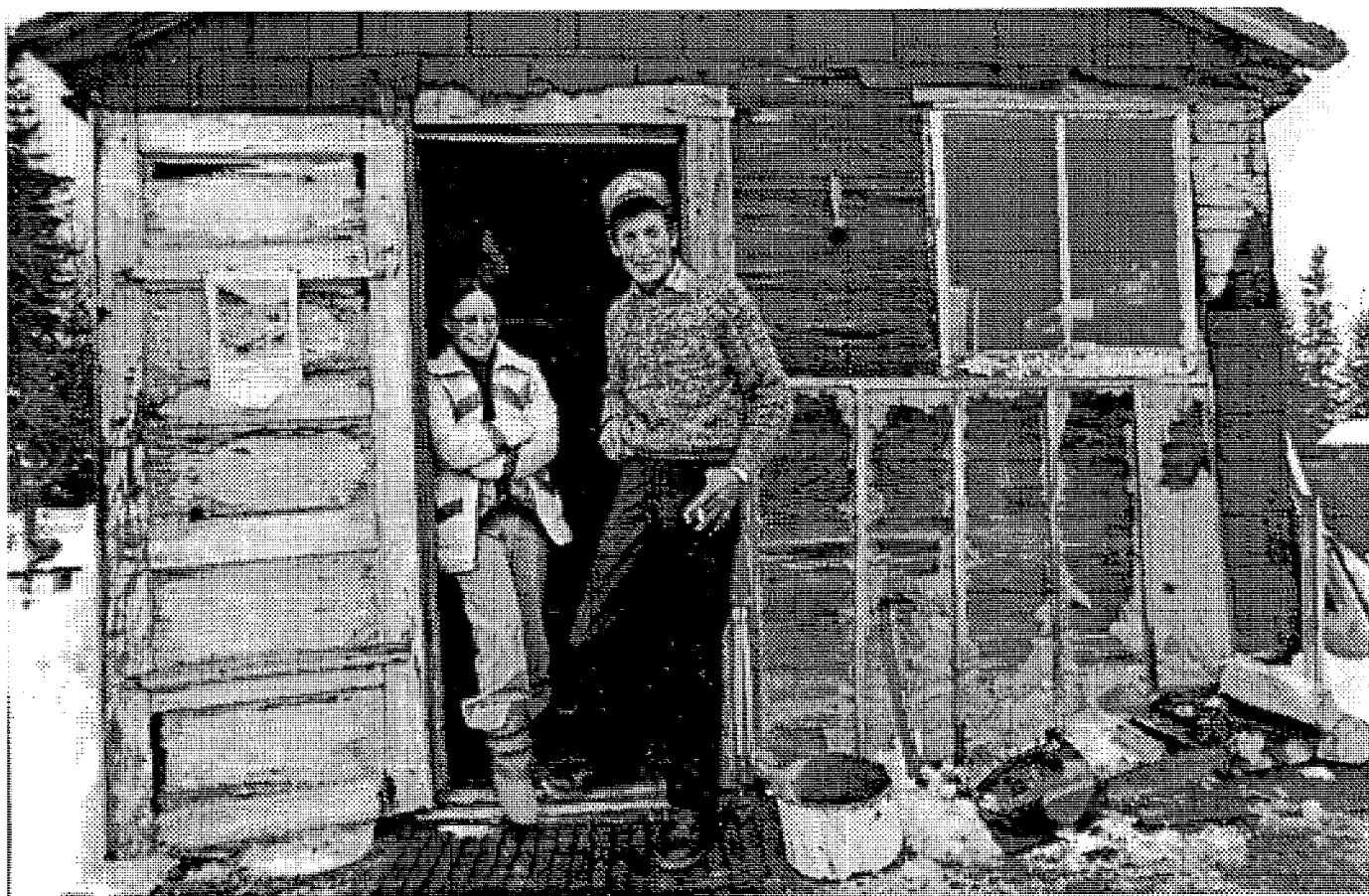
of-residence factors, such as residence in the northern or southern part of the state, residence in an urban or rural area, and population center size do not significantly affect the volume of legal problems experienced, the receipt of legal assistance, the receipt of free legal assistance or awareness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

- 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 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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Maine Trial Lawyers Association
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CHAPTER I

POVERTY AND LEGAL PROBLEMS IN MAINE

The United States Office of Management and Budget establishes, and each year adjusts for inflation, an annual income figure known as the "poverty level." Those whose annual incomes are below 125% of this level are eligible for certain federally-funded legal services.¹ It is on this population in Maine that the Legal Needs Study focused. In Maine in 1980, according to the U.S. Census, 19.5% of the state's population lived at or below 125% of the poverty level. Projecting that percentage to Maine's 1987 population of 1,186,988,² 231,463 Maine citizens had incomes at or below 125% of the poverty level in that year. The meaning of these levels and percentages can be expressed in terms of dollars. In 1980, 125% of the poverty-level income was \$5,263 for an individual and \$10,438 for a family of four. In 1989, these figures were \$7,475 for an individual and \$15,125 for a family of four.

Who are the people who live in poverty? What are their lives like? In 1989, the Maine Commission on Legal Needs contracted with the Spangenberg Group, a Massachusetts-based research company specializing in legal needs research, to conduct a telephone survey of 521 households in Maine with incomes at or below 125% of the poverty level.³ This survey,

¹In Maine, the work of Pine Tree Legal Assistance is tied to this eligibility requirement, as is that of the Volunteer Lawyers Project. The Cumberland Legal Aid Clinic uses it as well. Legal Services for the Elderly focuses its work on the most socially and economically needy of those 60 years of age and older but is not bound by strict income eligibility requirements. These organizations are discussed in Chapter III.

²Maine State Planning Office estimate.

³The telephone survey results are reported in the Maine Legal Needs Study: Telephone Survey Final Report. The Spangenberg Group, 1990. Hereinafter, telephone survey.

the basic research tool for the Legal Needs Study,⁴ yielded data describing the conditions of poverty in Maine. From the survey, and from a 1985 study by the Maine State Planning Office,⁵ we know these facts about the poor and their lives:⁶

- * *Disproportionate numbers of the poor are children, elderly, female, single, and live in single parent families.*
- * *The poor have a high incidence of health and handicap problems.*
- * *The poor are substantially more likely to be jobless or to hold seasonal, unskilled, or low-paying jobs than is the population at large.*
- * *The poor are more likely to be renters than the non-poor and are more likely to live in substandard housing, whether rented or owned.*
- * *Educational levels of the poor are significantly lower than those of the non-poor.*

The poor often need legal assistance for problems which arise directly from these conditions. Inadequate incomes lead to evictions, utility shutoffs and consumer problems; discrimination in employment, housing and education occurs frequently; abuse, neglect, abandonment and divorce are common.

Our society has not been oblivious to the economic and social needs of those who live in poverty. At the state and federal levels, we have established programs of services and funds which address those needs. These programs are intended to, and in fact do, help to alleviate the economic and social conditions to which they respond. However, they also confront the poor with another set of needs for legal assistance. Programs such as Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI), Medicare, Medicaid, job training, unemployment benefits, general assistance, Food Stamps, rent subsidies, public housing, housing rehabilitation and weatherization, Head Start, and remedial and special education involve complex eligibility and procedural

⁴The background and methodology of the Legal Needs Study are found in Appendix A.

⁵Poverty in Maine, 1970-1980, Volume 1: "Causes and Conditions." (March, 1985) Hereinafter, SPO Study. The study relies on and interprets data from the 1980 United States Census and provides additional information.

⁶The data, analysis and discussion which are the basis for the statements which follow are found in Appendix B.

requirements. When benefits or services are denied, inadequately provided, reduced or withdrawn, appeals are equally complicated. These problems are also true of Social Security which, while not a program created to alleviate poverty, is a major or sole source of income for many of the poor.

The testimony of a Maine attorney at the Commission's Portland public hearing graphically characterizes the needs of the poor for legal assistance:

"The legal problems of poor people are not like those of the middle class, that is, individual and peculiar to the client, which may be quickly resolved by one or two conferences so that the client may return to his normal, smooth life. On the contrary, the legal problems of the poor are chronic, interwoven and tend to involve issues common to the entire economic class. Poor people must continually go to the unemployment compensation office, to the local general assistance office, to the State Department of [Human Services], and to public housing agencies. There they confront complex rules of eligibility and reporting, which over and over, in decisions too numerous to list, the Federal and state courts have declared illegal.

High income people require extensive legal advice. The needs of the middle income group are totally different. They do not ordinarily consult lawyers. They try to avoid them. They purchase books like How to Avoid Probate and How to Avoid Lawyers. Their basic concerns are for a good home, two cars, a reasonable income, a cottage at the lake, a few savings, and otherwise to be left alone. When they do consult a lawyer, it is usually for a personal problem, such as a title search, a divorce, or a will.

Life is not so manageable for the poor. They confront a contemporary America every bit as complex and challenging as that of the rich. The majority live in sub-standard housing which is a constant danger to their health and safety. Imagine the effect on a single parent family ... with several children being evicted on a ten day notice. While half of the poor receive Social Security benefits or state and local welfare, there are frequently mistakes in their grants, and hearings are common. The poor are continually in danger of losing their children. Their lack of adequate clothing, shelter and food is often raised by social workers as proof of child neglect. Even when they have money to pay for a good or service, they are frequently discriminated against because of the source of their income - namely, public assistance. They may not be able to purchase housing or nursing home care with that source of income. The point is that many poor persons, like rich persons, are continually in need of legal advice and representation."

A Pine Tree attorney at the Machias hearing stated what these needs mean for the poor:

"Being a poor person in America requires more legal sophistication than any job I know."

In the Legal Needs Study, the Commission sought a detailed understanding of the needs for legal assistance summarized by these statements. The Commission wanted to know the nature of the problems requiring legal assistance, and their frequency and distribution. For the information it needed, the Commission went to the poor themselves. It also went to those who work with the poor in legal service agencies, social service agencies, government and the courts. It went to the private bar and its organizations.

In the telephone survey and in the Commission's eight public hearings, people living in poverty described the nature and extent of their legal problems. The hearings also provided an opportunity to hear from those who could not be reached by telephone, such as migrant workers and the homeless. In questionnaires, interviews and at the public hearings as well, others with an awareness of the legal needs of the poor provided valuable information and insights. They also spoke for those among the poor who could not speak for themselves, for example, women in abusive relationships, prisoners and children.

The information gathered from all of these sources enabled the Commission to identify and quantify the kinds of problems for which the poor need legal assistance and permitted analysis of the relationships between these problems and demographic characteristics. The following facts emerge.

Incidence of civil legal problems. Respondents to the telephone survey were asked to identify whether they had experienced any one of a series of 39 civil legal problems within the past year.¹ These problems were grouped into 11 general categories: consumer, utility, housing, employment, education, health, income maintenance, family, wills and estates, discrimination, and other.

The 521 households contacted in the telephone survey experienced a total of 493 civil legal problems in the past year, an average of just less than one civil legal problem (.95) per household. In the year covered by the survey, however, these civil legal problems were

¹The most frequently reported individual legal problems, in declining order of frequency, were: access to medical, dental or mental health services; threatened or actual utility shutoff; child support, maintenance or alimony dispute; "other"; consumer problems, including denial of credit, defective car or major appliance, and unsatisfactory repairs; Food Stamp problems; and Medicaid or Medicare problems. The specificity of the wording of the 39 individual legal problems was intended to increase the accuracy of the respondents' identification of problems as "legal."

concentrated among 33% of the households. The 171 households that reported a legal problem averaged close to three problems per household. The number of problems in these households ranged from one to 13, with nearly 75% of them reporting between one and three such problems. Eleven percent of these households experienced six or more civil legal problems during the past year. It is clear that poor households in Maine facing one legal problem often had to deal with a cluster of legal issues. This clustering of problems, also noted in public hearing testimony, was typified by one telephone survey respondent:

"I am permanently injured. A doctor says I'm incapable of work and supporting myself. In the meantime, I have spent every stitch of money I have saved. I've been served an eviction notice; the phone is about to be shut off; the electricity is next."

Incidence of problems in relation to demographic characteristics.

All people living in poverty in Maine were not equally vulnerable to civil legal problems. Although little variation exists in volume or type of problem based on size of population center⁸ or region of the state,⁹ statistically significant variations do appear in the frequency of problems based on certain demographic characteristics: age of head of household, household structure, and the presence of a disabled member in a household.

⁸Neither the volume of legal problems nor the incidence of any particular kind of problem was related to the size of the city or town in which the respondent lived. Memorandum of Craig McEwen on town size and distance from legal service center data, February 22, 1990, based on his reanalysis of the telephone survey data. Hereinafter, McEwen Memorandum.

⁹To allow for regional comparisons, the survey design treated the state as divided into two regions, A (northern, interior and eastern counties) and B (southern counties), from which the sample was drawn. See Appendix B, page B-1 for greater detail. There is no statistically significant variation between Regions A and B in the distribution of legal problems. In Region A, 38% of households had one or more legal problems compared to 28.2% in Region B. These differences cannot be attributed, however, to location in the state. Rather, they result from other demographic factors, such as age and family status of household members, which are distributed unevenly between the two regions. The only statistically significant difference in the telephone survey between the two regions is in the second most frequently reported category of legal problems. This category, consumer problems, ranked fifth in frequency statewide, but was the second most frequently reported in Region A.

Poor households headed by individuals aged 65 or older were far less likely than those headed by younger persons to report legal problems.¹⁰ Of the 197 elder households in the survey, only 14% reported legal problems, compared to 26% among households headed by 50-64 year olds, and 54% among those headed by 18-49 year olds. The explanation for this relatively low reporting rate may rest on a variety of factors. The telephone survey instrument was designed to reflect the broad spectrum of civil legal problems experienced by the poor. It was not designed to cover problems unique to the elderly. For example, the survey did not include a question which specifically asked about problems related to continued personal autonomy in the face of declining capacities, an area of great concern to the elderly. In addition, experts in gerontology and elder law suggest that the elderly are reluctant to complain about problems generally and hesitant to identify their problems as legal.

¹⁰A weighted total of 197 households in which the head of household was 65 years of age or older ("elder households") was represented in the telephone survey. Their response indicates some of the demographic characteristics of the elderly poor in Maine. Nearly half the elderly live alone, compared to 29.4% of the total survey respondents. Elder households were no more likely to report that a member of the household was either physically or mentally disabled (20.7%) than the general survey population (20.2%). The vast majority of the elder households had no household member employed (84.4%). Although not unexpected, this figure is considerably higher than the 51.2% reported in the general survey population. Elders surveyed had housing problems which were almost identical to those of the overall survey population. Nearly 58% lived in single family homes, 24% in apartments and 14.5% in mobile homes. A larger proportion of elders owned their dwellings. Sixty-seven percent of elderly respondents said they were owners, compared to 60.8% in the general survey population. When they were renters, elders in Maine were more likely to live in public housing (48.3%) than was the general survey population (36.2%). Finally, a considerably larger proportion of elders had lived at their current address for more than 20 years (48.6%), compared to the general survey population (30.2%).

The categories of legal problems that elder households reported experiencing did not differ considerably from those reported by the general survey population. Income maintenance and health-related legal problems were mentioned most frequently. The two categories of the "most serious" legal problem for elders also correspond with the categories identified by the survey population in general. Thirty-one percent of the elder respondents said their most serious problem was either a health-related legal problem or an income maintenance problem.

Households headed by a single female parent¹¹ reported significantly more problems than did either other households with children or other households without children.¹² While only 20.9% of households without children reported having had a civil legal problem, 57.2% of households headed by a single female parent reported experiencing at least one civil legal problem during the survey year.

¹¹Survey respondents who indicated that their household was headed by a "single female parent who has sole responsibility for the children in the household" were considered single female parent households. Twelve percent of survey respondents are in this category. Households headed by single female parents tend to be larger than in the survey as a whole. Over half of them have three or more members (54.5%), compared to 37% of the general survey population. These household heads tend to be younger than those in the sample as a whole. Nearly half (48.6%) are in the 18-34 year old age group, compared to 21.6% of the general survey respondents. The rate of unemployment was less for single female parents than for the general survey respondents. Forty-one percent of the single female parent households reported that no household member was employed at the time of the survey, compared to 51.2% in the total households surveyed. A much higher proportion of this sub-group receives public benefits (62.6%, compared to 37.7% of general respondents). The single female parents included a proportion with no high school diploma (34.1%) similar to that of the general survey population (31.5%).

Some of the greatest demographic differences for single female parent households occur in the area of housing. They are considerably more likely to live in apartments (39.6% of the single female parent households versus 26.5% of the general survey households), to rent their dwellings rather than own them (62% are renters versus 37.7% of the general survey), and to have lived for less than one year at their current address (24.6% versus 11.5% of the general survey). Single female parent households are slightly more likely to live in mobile homes (16% versus 14%) and a somewhat higher proportion of them live in public housing (41%) than does the general population surveyed (36.2%).

¹²Single female parent households experienced 2.1 legal problems per household, compared to an average of 1.6 problems for other households with children and an average of .48 problems for households without children. Multiple regression analysis confirms the statistical significance of these differences.

The four categories of problems most frequently experienced by single female parent households were family (28.5%), income maintenance (24%), consumer (22%) and health (19.2%).

The percentage of legal problems for which single female parent households received assistance is similar to the overall survey figures (see Chapter II). For 22% of their problems single female parent households received assistance; for 77.4% of them they did not.

Households with a disabled member also had significantly more problems than other households.¹³ Forty-one percent of these households reported experiencing at least one civil legal problem in the past year, compared to 30.8% of other households. This is an average of 1.3 civil legal problems per household, compared to .86 for other households.

Most frequently reported legal problems. Of the categories of legal problems, income maintenance was the most frequently reported. Forty-three percent of households with problems (14.1% of all households) reported at least one problem¹⁴ with income maintenance, including difficulties with AFDC, Food Stamps, general assistance, Social Security, SSI or SSDI, veterans benefits, unemployment, Workers Compensation and pensions. Applying this percentage to the number of poverty households in Maine, there were approximately 16,100 income maintenance problems experienced by these households; 12,200 of these went without legal help.¹⁵ When they face denial or reduction in benefits, those affected often are afraid to challenge the decisions or feel that they cannot alter them:

"I didn't do anything about [my problem]. I'm afraid they would take away my benefits if I make waves -- I need them to pay for all my medication."

¹³Demographic characteristics of households in the telephone survey having a member with a physical or mental disability (disabled member) include a larger percentage of households in which no one was employed at the time of the survey (67.4% to 51.2%) and a larger percentage which receive public benefits (66% to 37.7%).

A higher percentage of households with a disabled member reported having a civil legal problem in the categories of income maintenance (25.8%), health (21.2%), consumer (11.2%), discrimination (8.4%), and employment (6.7%) than in the general survey population. Households with a disabled member received legal help for 32% of problems, compared to 23% for the general survey population. The physically disabled or mentally ill poor population has been the focus of special legal services initiatives and programs.

As their "most serious" problem, households with a disabled member identified health-related legal problems most frequently (31%). Income maintenance problems were second most serious in rank (28.5%). Consumer problems were third.

¹⁴For purposes of analysis, multiple problems in one category were counted only once. A household which experienced problems with, for example, Food Stamps, AFDC and general assistance was counted only once in the income maintenance category.

¹⁵Total numbers of problems for which no legal assistance was received are stated in this Chapter. The frequency and distribution of legal assistance is discussed in detail in Chapter II and Chapter III.

"I got Social Security and they said I was getting too much money. So the AFDC stopped the benefits. I have no [health] insurance now."

"It's a minor problem to the Social Security Administration because the dollar amount is small, but it's a major problem to us. They are holding back the 16-year-old's benefits . . . because they claim they overpaid. We don't feel they are paying enough based on our situation."

The catastrophic difficulties created by even a delay in payment of benefits were illustrated by testimony at the Lewiston public hearing. There the Commission was told about an AFDC mother from Auburn who travels each day to the University of Southern Maine to attend classes:

"She receives child care and travel reimbursements through the ASPIRE program. Without notifying participants, ASPIRE recently changed its reimbursement schedules, which resulted in substantial delays in payment of her travel and child care reimbursements. Due to these delays, this AFDC mother was unable to pay her child care, which jeopardized her ability to continue receiving child care. She had to use other needed funds to pay for the child care for if she had stopped attending classes, she would then have been dropped from the ASPIRE program. In addition to the numerous financial problems caused by this change in the ASPIRE program, (there was) enormous physical and emotional strain . . . placed upon both her and her children."

Health was the second most frequently reported category of legal problems. Thirty-six percent of households with problems (12% of all households) had legal problems involving such issues as access to medical, dental, mental health or nursing home care, and problems with Medicaid or Medicare benefits being denied, stopped, penalized, reduced or paid very late. Applying this percentage to the number of poverty households in Maine, there were an estimated 13,200 health-related problems; approximately 11,700 of these went without legal help. These problems weighed heavily on the households experiencing them:

"I have a child who has been in a psychiatric hospital for 2 1/2 months who needed placement. The hospital told us we need an advocate. The advocates told us because we hadn't been turned down for services we could not get any help. I am not alone in this situation. I have been to see the Advocate, Pine Tree Legal and the Volunteer Lawyers Project and there is no help out there. This is a kid who can no longer talk for himself, he is beyond human reaching, he needs an advocate. This is an area of real serious need, the advocates are not doing it and there is no legal services to help him."

Utilities problems constituted the third most frequently reported category of legal problems recounted by the survey respondents. Almost 27% of households with problems (9% of all households) faced issues such as a threatened or actual utility shutoff. Given Maine's cold winters and the problems of rural isolation, such problems pose significant threats to the health and safety of households. In this category, roughly 7,500 problems went without legal help. At the public hearings the Commission heard from many about utility problems, including a representative of a Community Action Agency:

"The people in Washington County do not have money for wood or oil and they do not have any money for legal fees. They do not know which way to turn.... There are so many different things we cannot help people with.... We do almost 5,000 fuel assistance applications in Washington County per year. If you get into trouble [with your utilities], sometimes you have to stay that way because there are no answers."

At least one problem in the family problems category was reported by just over 25% of households with problems (8% of all households). Among the individual problems in this category were divorce, separation and annulment, child custody and visitation disputes, and government action to remove a child from the home. Projecting from the survey data to the total number of poverty households suggests there were 10,200 family legal problems, 5,000 of which received no legal help. Testimony about these problems was poignant:

"I can't afford to pay for an attorney and without an attorney I can't get a divorce because there is kids."

"There is no mechanism to provide people who can't afford it with legal help at the time of the break-up of a relationship involving children. The sad part is that it is the children who end up suffering."

"What do women do who want to file for divorce, and don't have any money for a retainer? It's not just that they want a divorce, but they need one."

"I had to settle for less child support because I couldn't afford a lawyer."

"We can't even come close to scratching the surface for the need that exists in domestic relations."

"The thing that strikes us day in and day out is that we don't do very much family law. My numbers indicate that we [Pine Tree Legal, Machias] probably turn away about 700 people with family law problems per year. The Volunteer Lawyers Project was able to meet the needs of 50 of those people."

Because the telephone survey could not probe the sensitive areas of spousal and child abuse, the quantitative data may substantially underrepresent the need for legal assistance for family legal problems. Testimony before the Commission, interviews and questionnaire responses provided information where the telephone survey was silent. At each of the eight public hearings the Commission heard from women who were in desperate need of legal assistance to secure Protection from Abuse orders or to deal with former spouses' physical or sexual abuse of children in joint custody. They spoke candidly about the problems they face:

"If you are a poor person whose spouse may be abusive or ... an actual danger to the children ... and you have no resources, you have no way of going to court and getting any kind of defense and custody of those children unless you happen to find a volunteer lawyer who is willing to do it."

"These divorces are messy and prolonged. Even when the divorce is over, abuse and domestic violence being what it is, the tactics of control go on and on through issues of custody and property and those kinds of things. Some of these situations are extremely dangerous, and women are trapped."

Many current and former battered women pointed to the substantial power imbalances between them and their abusive partners that made the need for legal assistance even more crucial:

"There is a desperate need in Maine for lawyers to help battered women advocate for themselves through the legal system and not give up what is rightfully theirs and their children's because of intimidation by the abuser."

From a number of people who work with battered women, both in shelters and within the judicial system, the Commission heard that these women are often deliberately isolated by the abuser, see themselves as powerless and are simply unable to represent themselves with any degree of skill or forcefulness. When they attempt to find legal assistance, they often fail. The terrible irony for many of these women is that when the abusive partner becomes a criminal or civil defendant he often receives free legal assistance, leaving the victimized woman even more powerless.

For battered women and for others in divorce situations, the inability to reach binding and enforceable permanent custody settlements affects their lives in numerous ways. If they are not able to obtain adequate support for children, problems with food, housing, utilities and medical care are inevitable.

In interviews and on questionnaires, social service providers and lawyers reiterated the extent and seriousness of family legal problems. Although the information from these sources, like that from the public hearings, does not have the statistical basis of the telephone survey data, the reality of what is described cannot be doubted.

Other civil legal problems. Although less frequently mentioned by telephone survey respondents, the individual experiences of housing, discrimination, employment, education, and consumer difficulties were often devastating to those who faced them.¹⁶ Public hearing testimony included these examples:

"The landlady came down and asked me for my rent. I told her I was not paying my rent because the place was condemned...because the toilet pipe goes out on the lawn. The landlady says I have to be out in three days and I do not know what to do. I really don't want to move right now. I am paying \$200 a month for a two bedroom trailer. My bathroom floor is caving in and there are leaks behind the kitchen stove. I am tired of living like a pig and being pushed around by people like that. They said they would fix it up since we moved in. I am trying to get my GED and get back on my feet. I do not know where to go to get help."

"I haven't been able to get winterization assistance since 1981...I have to depend on mini-bus, friends, neighbors in order to get to an attorney and I couldn't afford an attorney. I am blind and I do receive disability and food stamps but I have not sought an attorney."

Deficiencies in information and understanding. The difficulties of the poor in dealing with their civil legal problems are compounded by inadequate knowledge and understanding about their rights and responsibilities and about the way in which our system of law and justice works.¹⁷ As was stressed in questionnaire responses, public hearing comments and interviews, such knowledge is directly related to the ability to avoid legal problems, to manage and resolve problems on one's own, to differentiate between legal and non-legal problems, and to deal effectively with the judicial and administrative systems. Even more fundamentally, our legal system assumes a high degree of basic literacy skills which enable one to read, write, listen to and understand complex language. Data demonstrating that the educational levels of the poor are low suggest that their ability to function effectively within the legal system is compromised at the level of these fundamental skills.

¹⁶The estimated number of problems for which no legal help was received are: consumer, 6,400; housing, 6,300; employment, 3,500; discrimination, 4,700; education, 500.

¹⁷Clearly, the poor are not alone in these deficiencies. Numerous studies and polls indicate that they exist in the general population to a degree which has troubling implications for the functioning of our system of law and government. The need for education cuts across all lines.

For some among the poor, limited knowledge translates into fear and distrust of the system:

"Lots of poor people are scared of the legal system. We don't like to mingle with law offices --we don't know any lawyers and are afraid to get involved."

"I have a fear of going to the court house."

"It was just the way it was. I simply accepted whatever assistance was offered -- I accepted the system as it is."

"Court procedures are very complicated..women actually become afraid of the court system...."

Others feel they are unable to command the fair treatment that our system promises. Pride keeps them from begging for help:

"How many calls [to lawyers] do you have to make and be turned down until you lose all of your dignity?"

"Why do you have to get down on your knees and degrade yourself to get [legal] assistance?"

Data from the telephone survey indicate that less than one-third of those responding to the survey were aware that there were free legal services available to them. Respondents were asked, "Are there free legal services for non-criminal problems that you know are available to you or members of your household?" Only 32.6% responded affirmatively. Nearly 51% of the respondents categorically stated that there are no free legal services. Just over 16% said that they did not know whether such services existed.

Free legal services are at least theoretically available throughout Maine. The survey results indicate that a large proportion of the poor may not be getting legal assistance simply because they do not know that such services exist.¹⁸ Analysis of survey data indicates that poor people who live in a city in which an office of either Pine Tree Legal Assistance or Legal Services for the Elderly is located are twice as likely to know that free legal services exist.¹⁹ According to testimony at a public hearing:

¹⁸It is clear, however, that at present levels of funding, staffing and organization, the providers of free legal services could not handle the volume of problems that would flow to them if all of those eligible for services were aware that they exist. See Chapter III.

¹⁹McEwen Memorandum.

"Most of the people who are very poor don't even have a phone or transportation. They don't know about Pine Tree or the Volunteer Lawyers Project. These are words that are Greek to most of the people in that level of poverty. I don't know how that gap is [bridged] between what is available and those who don't even know it is available. It is a great problem."

Others' lack of knowledge and understanding also contributes significantly to the difficulties of the poor in dealing with legal problems. Responses from all groups, in questionnaires, interviews, and at the public hearings, pointed out that many of those with whom the poor come in contact possess little knowledge or understanding of their lives and needs. Judges, administrators, court clerks, lawyers, paralegals, law students and others do not understand the sources of the legal problems of poverty and the realities of the lives of the poor. Social service providers have better knowledge of the conditions of poverty but may lack understanding of basic legal rights and responsibilities and of the legal system, which impairs their ability to advocate for their clients. These providers are not always aware of available legal services and, because they may not know the kind of legal assistance offered, may make inappropriate referrals. Similarly, legal services providers and others in the legal system do not understand clearly the roles of the social service agencies and the services each agency is able to provide. These shortcomings prevent the two provider groups from working together to help their clients gain better access to legal assistance. For example, social service agencies may be able to assist with transportation to a legal services office, may be able to help overcome difficulties posed by impairments of hearing, speech, sight and other physical handicaps, and may be able to assist in working with the mentally handicapped.

Finally, the public as a whole does not understand the conditions of poverty and the needs of the poor for legal assistance.

From the information detailed in this Chapter, the Commission concludes that the needs of those living in poverty for legal assistance are beyond question. We turn, then, to the next inquiry: to what extent is legal assistance received?

CHAPTER II

POVERTY AND LEGAL ASSISTANCE: THE UNMET NEED

The telephone survey was the principal research tool used by the Commission to measure the extent to which civil legal assistance²⁰ is received by the poor. The Commission wanted to be able to compare the total volume of civil legal problems experienced by those living in poverty and the total amount of legal assistance received. It wanted to know whether the availability of assistance varied with type of legal problem. Because the private bar has traditionally assumed an obligation to provide legal assistance to the poor, the Commission wanted to understand the nature and scope of the assistance available from the private bar. Quantitative answers to these inquiries are the subject of this Chapter.

Total problems and legal assistance. For 77% of the problems which the survey households experienced in the study year, no legal assistance was received. Of the 171 survey households that experienced legal problems, 64% had no legal assistance with any of their problems. Projecting these data to Maine's poor population as a whole, the state's 85,000 poor households experience 80,000 civil legal problems in a year. For an estimated 61,000 of these problems, they receive no legal assistance.

The percentage of problems for which legal assistance, whether paid or free, was received varies for the different categories of legal problems. In the employment area, assistance was received for just over 31% of the reported legal problems. Such problems included unfair treatment by an employer; unfair firing for reasons other than discrimination; job loss due to plant closing, without legally sufficient notice or required severance benefits; and problems such as wage claims, unsafe or unsanitary work conditions and unpaid fringe benefits. Employment issues were exemplified by one telephone survey respondent:

"In January, [my husband and I] were laid off from the mill. Last month the mill sold out and it's not reopening. We received no severance or anything. Our unemployment ran out."

²⁰ Respondents were asked, in relation to each legal problem they reported having experienced, "Did you receive legal help?" The term "legal help" was not defined. For some, it may have included information, self-help guidance, and referral. For others, it may have meant only representation in court. It is clear that the unmet need encompasses various forms of assistance. It should not be assumed, for example, that all unmet needs involve court representation which, if provided, would only further burden an already overburdened judicial system.

Legal assistance was received for only 24% of respondents' legal problems with income maintenance. Only 4.3% of respondents' problems with the Food Stamps program received legal assistance, as did only 8.3% of problems with other benefits programs such as fuel assistance, WEET, ASPIRE or WIC. Eligibility for such benefits is very frequently contested:

"Poor people don't get Food Stamps, general assistance, fuel assistance or anything without fighting for it."

Only 18.7% of the respondents' housing problems received legal assistance. Housing problems included eviction or lock out; deprivation of heat, gas, water or electricity by a landlord; unsafe, unsanitary or dangerous conditions such as rats, lead paint or exposed wiring; refusal to return a security deposit or an unfair charge for repairs; threat of or actual eviction from a mobile home park, or refusal of permission to sell a mobile home by a park owner; threat of or actual foreclosure; and inability to pay property taxes and refusal of property tax relief. Testimony at the public hearings provided additional information on the unmet need for legal assistance in housing matters:

"I was told by my landlord that if I did not come up with the rent, I was going to be evicted. I am on AFDC and I can't make it. I need [legal] help, more help than what I am getting."

Of the consumer legal problems reported by survey respondents, including denial of credit, purchase of a defective major appliance or car, and payment for unsatisfactory repairs on a product, only 14.8% received legal assistance.

Legal assistance was received for only 11.1% of the reported education problems. Compelling testimony was received at the hearing in Washington County, where the Commission heard from the adoptive father of handicapped children unable to get the local school system to meet their special education needs:

"If you disagree with how your handicapped child is being educated or for their just blatantly providing [regular] educational services, you must fight it in a manner called due process. The first problem comes in finding a lawyer who knows school law...We could not afford their fees." (He stated that the school district was represented by a large law firm specializing in education law, and that although Pine Tree Legal helped him in the past, he recently had to proceed without counsel because the Pine Tree office was overburdened. He lost a hearing in which the decision was rendered that one of his children was not handicapped, even though the child has no arms.) "I was told...that my child...was not handicapped

and does not qualify for special educational services. I have appealed and will have to file a brief. I hope Pine Tree is not too busy to help me because I do not know how to write a brief."

Only 11% of the health-related legal problems received legal assistance. Legal assistance was almost entirely absent for problems with Medicaid or Medicare, including benefits being denied, stopped, penalized, reduced or paid very late.²¹ Testimony at public hearings and telephone survey respondents' comments also made clear that people often are denied access to health care because of inability to pay:

"I have a son who has back problems. [There's] nothing I can do. I go to the hospital but I can't pay the bills so they won't see you. I can't get financially beyond the rent and groceries."

Only 9.4% of the reported problems of discrimination in employment, housing, loans, credit, education, and insurance received legal assistance.

Only 4.0% of respondents' utility problems received legal assistance, including that received from the Public Utilities Commission. These problems included having a utility company threaten to turn off, actually turn off, or refuse to turn on phone, gas, electric or water service.

In two categories, a relatively high percentage of problems received legal assistance. In the family legal problem category, 50.8% of the reported problems received help, leaving nearly half that received no help. In the category of wills and estates, 60% of the problems received help.

²¹There are several areas where Medicare advocacy is needed. One area is the reasonableness of limitations on health care coverage. For example, a recipient may need a seat lift chair because she or he is too weak to get out of a chair without assistance. Medicare rules limit coverage to those with severe arthritis of hip or knee, muscular dystrophy or other neuromuscular disease. Those whose weakness is related to congestive heart failure are denied coverage. Another area is denial of benefits. In the July-September quarter of 1989, Medicare B offices in Biddeford denied 73,366 claims in full or in part. The net disallowance was almost .84 million dollars. During the period, 9,299 requests for review were filed. Denials were affirmed in 2,937 cases; 6,638 denials were reversed. Only 59 Requests for Fair Hearing were filed. Only one request for a full administrative proceeding was received. (Information from Advocates for Medicare Patients, a specialized program of Legal Services for the Elderly, drawn from reports by Blue Shield of Massachusetts Medicare Program: "Carrier Appeal Reports" for July, August and September of 1989 and "Quarterly Supplement to the Carrier Performance Report for the 4th Quarter of 1989.")

"Most serious" problems and legal assistance. For 73% of the legal problems which respondents identified as their most serious,²² no legal assistance was received. Thus there is only slightly greater access to legal assistance for the most serious legal problems of the poor than for their civil legal problems generally.

The perceived seriousness of these problems is not reflected in ready access to free legal assistance. Health-related legal problems were most frequently identified by respondents as their most serious. For 7.3% of these problems, free legal assistance was received. The categories next most frequently reported as most serious were income maintenance problems, utility problems and family problems. For these problems, free legal assistance was received for 15%, 4% and 15.4%, respectively.

Social services and legal services providers, asked to identify the most pressing legal needs of the poor in Maine, overwhelmingly identified family legal problems. Second most frequently mentioned were various housing and landlord-tenant problems. Also frequently mentioned were problems involving income maintenance, consumer matters, and various health matters. When the question was phrased in terms of unavailability of legal assistance, these providers again most often mentioned family and housing problems.

Legal assistance by private attorneys. Respondents who reported receiving legal assistance were asked to identify the source of the assistance from a list of six choices: the Volunteer Lawyers Project; Pine Tree Legal Assistance; Legal Services for the Elderly; the Law School's Cumberland Legal Aid Clinic; a private lawyer; and "other" providers.²³

²²Respondents who reported legal problems were asked to identify, of all the problems they had discussed, their most serious legal problem. The intent of this question was to identify differences, if any, between a legal problem and a legal problem perceived as particularly serious. Did the more serious problems receive more legal attention? Were they different from the problems most frequently mentioned? For the purposes of analysis, if the household identified only one legal problem, that problem was treated as that household's most serious. Respondents with more than one legal problem were asked to identify one problem as the most serious. The top four categories of problems reported as most serious are the same as those reported most frequently; the rank order is different.

²³For some questions in areas such as consumer, utility, housing, employment, health and discrimination, additional providers were added to the list of choices. These included, where applicable, the Attorney General's Office, the Bureau of Consumer Credit Protection, the Public Utilities Commission, and the Maine Human Rights Commission. These data are included in the "other" category.

A substantial proportion (59%) of all cases with legal help were reported to have been handled by a private attorney.²⁴

In order to be certain of respondents' accuracy in identifying the source of assistance, all who said they had obtained legal assistance were asked if they had been charged. All of those who reported receiving assistance from Pine Tree Legal Assistance, for example, appropriately indicated that they had not been charged. Of those reporting assistance from private attorneys, 86% had been charged, which is consistent with expectations of the amount of unpaid assistance received from attorneys outside of organized pro bono programs. Thus, these responses appear to confirm respondents' identifications of sources of assistance.

Respondents who reported having been charged for assistance were asked whether the charge was more than \$125.00. The point of the question was to differentiate between assistance provided for a reduced fee (the assumption was made that an attorney may only have been covering expenses if the charge was less than \$125.00) and assistance for which a full fee was charged. A fee was charged in 53.4% of the problems for which assistance was received.²⁵ In half of these, the charge was more than \$125.00.²⁶ In about 35% of them, private attorneys either did not charge

²⁴The second highest reported category of legal assistance was the "other" category. If it is assumed that most of those problems reported as being handled by "other" providers were in fact handled by Pine Tree Legal Assistance, Legal Services for the Elderly, the Volunteer Lawyers Project or another free legal service provider whose identity respondents simply were unable to recall, then as many as 25% to 30% more cases could in fact have been handled by the free legal service providers.

²⁵Nearly 40% of the cases in which a fee was charged were in the family legal problem category. Individual family legal problems in which respondents were charged for assistance centered on three problem areas: divorce; child support or alimony, and child custody. Income maintenance was the second most frequently mentioned category; 15.5% of instances in which fees were paid were in this category. Individual income maintenance problems where a fee was charged included Social Security, SSI or SSDI; veterans benefits; unemployment; workers compensation; and pension benefits. A fee was charged in two-thirds of the unemployment cases and just over one-third the Social Security cases.

²⁶Family legal problems accounted for 57.6% of those instances in which a fee of more than \$125.00 was charged. The income maintenance area accounted for 15.6% of these instances.

or worked for a reduced fee.²⁷ Where private attorneys charged less than \$125.00, approximately two-thirds worked for free while one-third charged some amount less than \$125.00.²⁸

These percentages represent Maine attorneys' reduced-fee and unpaid assistance to the poor, provided independent of the organized pro bono program. (Assistance provided through the Volunteer Lawyers Project, the state's organized pro bono program, is discussed in Chapter III.) It is difficult to quantify the extent of this independently-provided assistance, as there is no mechanism for its recording or reporting. There are, however, several indications that attorneys' independent assistance is substantial. The responses to the telephone survey from the recipients of such assistance, discussed above, are one indication. Another is the testimony of both clients and lawyers at the public hearings to numerous instances of independently-provided free legal assistance. Maine attorneys' willing adherence to the spirit of Bar Rule 3.10, which calls for "unpaid public interest legal service," is also shown by their financial support for legal services for the poor. At 73%, Maine attorneys' participation in the state's voluntary IOLTA²⁹ program, is higher than any other state with a voluntary program and higher than many states with comprehensive (mandatory) programs. Private attorneys also contribute funds to support legal services for the poor through a voluntary checkoff on the Board of Overseers of the Bar annual registration statement.

The private bar could play a still larger, more varied and more effective role in increasing the legal assistance available to the poor. This expanded commitment might be made in a number of ways. If the Volunteer Lawyers Project were more extensively funded, the 1,200 Maine attorneys who do not participate in it could join the 1,500 who do. The

²⁷In 15.2% of the instances in which a fee was charged, respondents did not know if the charge was greater than \$125.00.

²⁸The major legal services providers all reported heavy utilization of the Maine Lawyer Referral Service (MLRS) of the State Bar Association. Clients whom they could not assist were often referred to MLRS and from there to a private attorney for one-half hour free consultation. This referral of last resort may account for a substantial part of the reduced fee and no fee cases. In 1989, 7,793 cases were referred to attorneys by MLRS, including both poor and non-poor clients. Contact with an attorney was made in 4,832 cases, most for only the initial interview. The \$15.00 service fee was collected by the Maine State Bar Association in about one-fourth of the cases.

²⁹Interest on Lawyers Trust Accounts. This program provides significant funds to support legal services for the poor. It is discussed in Chapter III.

bar could create a way to systematically encourage³⁰ and measure independent pro bono assistance. It could give serious consideration to a requirement of pro bono work.³¹

Financial contributions to legal services could be increased through a comprehensive IOLTA program, a negative bar registration checkoff and appropriately measured monetary substitutes for direct pro bono service. The private bar, in conjunction with legal services providers, the courts and the Legislature, could institute innovative approaches to increasing and improving legal services to the poor. Such approaches might include participation by private attorneys as co-counsel with legal services attorneys in class action suits, the establishment of a revolving fund to cover up-front expenses in cases involving the poor, the design of a system of court-appointed counsel in civil cases, and the reconsideration of the parameters of legal assistance by paralegals and other trained non-lawyers.³² In the area of continuing legal education, regular offerings of programs on poverty law issues would increase the bar's familiarity and expertise in these areas. Such programs could be provided by the Bar Association with the assistance of the legal services providers and the Law School, and subsidized or offered without charge to pro bono and legal services attorneys. The bar, individually and collectively, could put its substantial skill and strength into efforts to obtain increased public funding for legal services to the poor.

While it may appear that the poor receive help from the private bar for a remarkably high percentage of their legal problems (59%), it must be recalled that assistance was received, from all sources combined, for only 23% of all legal problems (26% of those identified as most serious). Thus, help from the private bar was received for 13.5% of all problems (15.4% of most serious problems). Substantially more assistance clearly is needed; equally clearly, the private bar could significantly increase the assistance it provides. However, an important point must be stressed:

³⁰A number of law firms have policies in place which encourage pro bono work and accord it status equivalent to other work of the firm. It is not known how widely such policies have been adopted among Maine law firms, corporate legal departments and government agencies.

³¹Mandatory pro bono service is under consideration in other states but is not yet adopted in any. Such a requirement presents legal and practical problems which must be carefully weighed. Rau, Wendy. "The Unmet Legal Needs of the Poor in Maine: Is Mandatory Pro Bono the Answer?" Comment in preparation for publication in Maine Law Review, Volume 42:2, 1990.

³²A relevant analysis is presented in McMorran, Kelly, "Paralegals and lay advocates who provide legal services to the poor and the unauthorized practice of law." Unpublished University of Maine Law School independent study, May, 1989.

even the most extensive efforts of the private bar could not, by themselves, fully meet the needs of the poor for legal assistance. Nor should this obligation belong to the private bar alone. Meeting these needs is a fundamental public responsibility.

Whether the poor turn to the private bar or do not, their ability to afford that assistance must be examined. While legal problems vary greatly in complexity and in the time required for their solution, averages may be instructive. A 1987-1988 study of the practice of law in Maine showed that the average hourly charge for legal services statewide was approximately \$60.00.³³ Statistics compiled by the Volunteer Lawyers Project show that legal matters handled by the Project's lawyers required an average of eight hours. Thus, the average per case cost of full private representation would be \$240.00. Clearly this figure is very large in proportion to the incomes of those living in poverty.

As was repeatedly pointed out at the public hearings, no programs of sliding fee scales, extended payments or pre-paid legal services insurance exist in Maine to make it more possible for the poor to utilize legal assistance at ordinary private bar rates. Contingent fee litigation is frequently not available to the poor; problems with proof of injury and with the level of tangible damages (e.g., lost wages, lost earning potential) often mean minimal recoveries, a significant deterrent for private attorneys if a case requires substantial time. The inability of the poor to cover up-front expenses also limits the availability of the private bar.³⁴

³³The 1988 Survey of the Practice of Law in Maine, Appendix I-A. Consortium for the Study of the Future of the Maine Legal Profession, 1988. Hereinafter, Consortium Survey.

³⁴The ability of the "near poor" to obtain legal assistance is also of serious concern. The Legal Needs Study did not inquire specifically into the problems and needs of those whose incomes are just over the 125%-of-poverty level. Because Pine Tree Legal Assistance is the largest provider of legal services to the poor in this State and because Pine Tree is required to use the federally-established 125%-of-poverty as its eligibility standard, that standard was the logical and practical way to identify the population on whose problems and needs the Study would focus. Moreover, the needs of those who live below that income level are most acute. At each of the eight public hearings, however, the Commission heard from people who had been turned away from Pine Tree and other providers as income-ineligible, but who nonetheless could not afford the ordinary fees of private attorneys:

"I was one of those cases just over the borderline to get free legal assistance. I want to know why in some cases one person is provided with free legal assistance and the other person isn't?"

(continued...)

Given the very high percentage of legal problems for which no assistance is received, and the inability of the private bar alone to meet the need for free assistance, the next area of inquiry is the role of the organized providers of legal services to the poor. Who are they? What services do they offer? Who knows about and uses their services? How, and at what levels, are they funded and staffed? How does their funding and staffing compare to the need for assistance? How does the legal assistance they provide compare to the overall need and to the needs in particular problem areas?

³⁴(...continued)

"There definitely should be a sliding fee scale for persons who are above income guidelines for legal help."

"Have a place where people can go for legal help. Don't give it to them for nothing, no way. Make them pay what they can afford to pay...of course without going without necessary things like heat, food and clothing. If they can afford to pay have them pay."

CHAPTER III

THE ORGANIZED PROVIDERS OF CIVIL LEGAL SERVICES TO THE POOR

The major organized providers of legal assistance to the poor in Maine are Pine Tree Legal Assistance, Legal Services for the Elderly, the Volunteer Lawyers Project and the University of Maine Law School Cumberland Legal Aid Clinic. A number of other agencies and organizations also provide legal assistance to the poor, though not necessarily exclusively.

The providers. PINE TREE LEGAL ASSISTANCE is Maine's principal provider of legal services to the poor, serving the broadest spectrum of both clients and problems statewide. Pine Tree is supported primarily by federal funds administered by the federal Legal Services Corporation. Created in 1966 and first staffed in 1967,³⁵ Pine Tree operates through six local offices located in Portland, Lewiston, Augusta, Bangor, Machias and Presque Isle. A specialized unit for Migrant Farmworkers and a Native American project are located in the Pine Tree offices in Bangor and Augusta respectively.

With the exception of work supported by funds from other public sources, Pine Tree's work is closely regulated by the Legal Services Corporation through statutes and regulations. Pine Tree can only serve people whose income is below 125% of the federally-determined poverty level and only in civil matters. It cannot handle matters involving certain issues, such as desegregation and abortion, nor can it generally take matters which are "fee-generating." Because of resource limitations, Pine Tree, through a complex priority-setting process, has further restricted the kinds of cases it handles. Each local office has an individual priority plan and is also guided by an overall Pine Tree priority plan. As a whole, Pine Tree currently emphasizes housing and income maintenance cases. Most offices also handle some employment, domestic violence and other civil cases.

LEGAL SERVICES FOR THE ELDERLY is Maine's statewide program serving elderly clients. It has offices in Portland, Lewiston, Augusta, Brewer and Presque Isle and regularly staffs 20 outreach sites throughout the state. A specialized program, Advocates for Medicare Patients, is located

³⁵For a thoughtful review of the history of the legal services in Maine and Pine Tree's early years, see J. Page, "Legal Services Come to Maine: Assessing the Impact of Pine Tree Legal Assistance, 1966-1973." Unpublished paper, University of Maine Law School, 1984.

in the Augusta office.³⁶ First established in 1974 within the Bureau of Maine's Elderly in the Maine Department of Human Services, Legal Services for the Elderly has been an independent nonprofit corporation since 1978.

The program represents persons who are 60 years of age or older in a broad range of civil matters. It concentrates on the income, health and housing entitlements of the elderly, and their rights to independence and freedom from abuse and exploitation. There are no financial eligibility requirements, as the program is prohibited from setting such requirements by the federal Older Americans Act, under which it receives significant funding. Simultaneously, however, the Older Americans Act requires grantees to focus their services on the "socially and economically needy" elderly, and 70% of Legal Services for the Elderly's clients are poor. Well over 90% of its more extensive representation efforts are on behalf of clients whose incomes are below 125% of the poverty level.

THE VOLUNTEER LAWYERS PROJECT was founded in 1983 as a project of the Maine Bar Foundation. It is jointly funded by the Maine Bar Foundation and Pine Tree Legal Assistance. Through a paid staff of five and the use of lay volunteers and "lawyers of the day" it operates a toll free pro bono referral service. The Project uses the same financial eligibility standards as Pine Tree. It provides brief service and information, and refers accepted cases³⁷ to a panel of approximately 1,500 volunteer attorneys throughout Maine. Each volunteer attorney agrees to take up to three cases per year. For reasons which include geographic imbalances in supply and demand and the inability in some instances to provide a lawyer with a particular expertise, the number of cases actually handled is much less than the theoretically available resource.

THE UNIVERSITY OF MAINE SCHOOL OF LAW CUMBERLAND LEGAL AID CLINIC, founded in 1971, serves only those whose incomes are below 125% of the poverty level. Two-thirds of its 1988 cases were civil, and it supplies a not insignificant proportion of the total legal assistance provided to the poor in Maine. Its services are primarily limited to Southern Maine.

The Clinic differs greatly from the state's other legal services providers. Third-year Law School students, closely supervised by faculty-member attorneys and specially authorized by rule to appear in Maine's state and federal courts, represent the Clinic's clients. The program is an elective course for four credits in one semester. The Clinic's primary purpose is the legal education of its student lawyers. Supervision by faculty attorneys is directed to this end, and also serves to ensure the quality of representation. The role of the Clinic in educating future members of the legal profession as to the problems and needs of the poor may be an important contribution in the long run to serving those needs.

³⁶Despite large numbers of Medicare denials and reductions (see Fn. 21, p. 41), awareness of this advocacy program is minimal. In 1988, Advocates for Medicare Patients closed 215 cases, recovering \$237,000 in benefits.

³⁷The Project has established case acceptance criteria by which it determines which cases will be referred to participating attorneys.

Other agencies and organizations which provide legal assistance. The Consumer and Anti-Trust Division of the Maine Attorney General's Office operates a complaint mediation program staffed by approximately 20 volunteer mediators. The Division also investigates consumer complaints and conducts consumer litigation on behalf of the state and the Attorney General's Office. There are no income eligibility restrictions.

The Maine Lawyers Referral Service of the Maine State Bar Association, established in 1973, makes referrals to participating private attorneys throughout the state. There are no income restrictions and participating attorneys have agreed not to charge for the first half-hour of consultation. However, to utilize this service, the client is required to pay a service fee to the Maine State Bar Association.³⁸ Many poor individuals use the program for brief consultation. In 1988 the Service made 6,581 referrals of which 5,765 involved civil matters.

Student Legal Services of the University of Maine provides advice and court representation to students.³⁹ It is estimated that 90% of the people served by this program have incomes below 125% of the poverty level.

The Maine Coalition for Family Crisis Services, through a number of affiliated projects throughout the state, provides various levels of law-related services to clients. One of the projects responding to the questionnaire reported that it works with a volunteer lawyer. The rest provide referrals, lay assistance and counseling to victims of family violence for matters such as protective orders and divorce. All of the projects expressed the view that legal services for their clients should come from other sources.

The Maine Civil Liberties Union provides free representation on constitutional and civil liberties issues, through its volunteer lawyer-members. The MCLU estimates that 75% of its cases involve persons with incomes below 125% of the poverty level.

The Maine Department of Corrections and the Maine Department of Mental Health and Mental Retardation both maintain Offices of Advocacy. These offices assist clients with problems with the institutions in which they reside and provide a range of advice and information on other matters. Both offices make referrals of civil legal problems not involving the state to Pine Tree Legal Assistance, under representation contracts.

The Maine Bureau of Veterans Services and other groups such as the Veterans of Foreign Wars and the Red Cross provide assistance to veterans seeking Veterans Administration and other benefits.

³⁸The current service fee is \$15.00.

³⁹Student Legal Services is funded through Student Government of the University of Maine and serves undergraduate students.

The Public Utilities Commission's Consumer Assistance Division provides information and investigates complaints concerning public utilities, including billing disputes, utility terminations, and denials of service.. The Consumer Assistance Division has statutory authority to issue oral or written orders to resolve disputes.

Maine Advocacy Services provides limited civil legal assistance in areas involving developmental disabilities, including Social Security, vocational rehabilitation, mental health and special education.

Statistics kept by these other agencies and organizations are generally minimal or are not directly relevant to the Legal Needs Study. Because they have very different purposes and goals, there is little uniformity among those statistics that are kept. For these reasons, it is not possible to make generalizations about the volume or types of legal services which they provide.

Funding: changes in amounts, sources and purposes. During the past ten years there have been significant changes in the sources and amounts of funding for legal services for the poor in Maine. Funding to support Legal Services for the Elderly, to support voluntary representation by the private bar and to support law-student representation have increased. Funding for Pine Tree Legal's direct delivery of legal services to the poor has decreased. Table 1 sets out sources and amounts of funding for Pine Tree, Legal Services for the Elderly, and the Volunteer Lawyers Project in 1980, 1984 and 1988.

TABLE 1

Sources of Funding for Legal Services Providers, by Year⁴⁰

	1980			1984			1988		
	P.T.L.A.	L.S.E.	V.L.P.	P.T.L.A.	L.S.E.	V.L.P.	P.T.L.A.	L.S.E.	V.L.P.
IOLTA	0	0	0	0	0	0	129,141	22,000	22,638
Other M.B.F.	0	0	0	0	0	33,085	0	0	19,953
L.S.C.	1,404,274	0	0	1,128,497	0	124,900	1,343,515	0	154,931
Other Federal Funds	22,458	39,486	0	0	0	0	0	8,031	0
Older Americans Act	0	60,000	0	0	68,161	0	0	133,424	0
State Appropriations	0	0	0	75,000	34,250	0	90,000	0	0
State Agency Grants and Contracts	0	27,360	0	0	74,300	0	85,606	201,500	0
Attorneys' Fee Awards	0	0	0	45,903	0	0	46,367	4,000	0
United Way	15,295	0	0	16,894	0	0	45,377	0	0
Other Sources	34,327 ⁴¹	6,537	0	33,938	34,000 ⁴²	0	20,424	66,995	0
TOTALS:	\$1,476,354	\$133,383	0	\$1,300,232	\$210,711	\$157,985	\$1,760,430	\$435,950	\$197,522

⁴⁰Because the Cumberland Legal Aid Clinic's funding is unique and largely attributable to its role in the Law School, it is not included in the Table.

⁴¹Mostly interest income.

⁴²Mostly donated space.

In 1980, the federal government was virtually the sole source of funds, which were provided to state legal services programs. Ten years later, sources of funds are more diverse. While the federal government is still the major source, it directs a significant portion of its funding to a specific category of clients, the elderly. Of the federal funds provided for legal services to the poor in general, a mandated percentage supports voluntary efforts of the private bar and increased restrictions limit the uses of the remainder.

While the total funds available for legal services to the poor in Maine have increased slightly since 1980, actual increases appear only in specific areas: services to the elderly; services provided voluntarily by the private bar through organized pro bono efforts; and services provided by law students in the Law School's clinical program. Increases in the first two areas result from changes in federal law and policy. The increase in the latter area results from the nature of the clinical program and from its existence in the curriculum of an educational institution. Since 1980, federal funds for direct assistance to the non-elderly poor, excluding those which support the voluntary efforts of the private bar, have decreased in actual dollars as well as in dollars adjusted for inflation. New funding from other sources, such as state appropriations, contracts, and private bar contributions, have not made up the difference. Nothing indicates that the total funds available in 1988 have reduced the distance between resources and needs.

The major cutbacks in federal funding in the early 1980s forced a retrenchment in services by Pine Tree Legal Assistance from which it has not recovered. In 1981, the administration in Washington proposed to end all federal funding for legal services for the poor. An outpouring of support from the organized bar, both nationally and in Maine, prevented the elimination of the Legal Services Corporation. However, its funding, and therefore Pine Tree's, was reduced by 25% for the 1982 fiscal year. The impact on Pine Tree was devastating. Although it managed to keep all of its offices open,⁴³ Pine Tree's staff was reduced by 35% between 1980

⁴³Residence near a legal services offices is an important factor in the receipt of legal assistance, whether free or paid. Data from the telephone survey indicate that households with legal problems are far more likely to receive legal assistance, whether free or paid, if they are in a city or town in which either Pine Tree or Legal Services for the Elderly has an office. Legal assistance was received for 62% of the problems experienced by households located in such cities or towns, compared to 34% of problems experienced by households located outside of them. The use of free legal assistance (Pine Tree, Legal Services for the Elderly, and Volunteer Lawyers Project) was concentrated in cities and towns with either a Pine Tree or Legal Services for the Elderly office. Free assistance was received for 24% of problems experienced by households located in those cities and towns, compared to less than 4% of problems of households located outside of them. McEwen Memorandum.

and 1984. With assistance from the Maine Bar Foundation, a small state appropriation and some small increases in federal funding, staffing improved slightly from 1984 to 1988. However, Pine Tree's staff levels in 1988 were still 21% below 1980 levels.⁴⁴

The 25% funding cut in 1982 was accompanied by a requirement that each Legal Services Corporation grantee spend 10% of these reduced funds on private bar involvement. This percentage was increased in 1983 to 12.5%, where it remains. In 1983 the Volunteer Lawyers Project was founded in Maine. Since then, Pine Tree's private bar involvement funds have been directed to the Volunteer Lawyers Project.

As shown in Table 2, federal funding for Pine Tree Legal Assistance, (excluding mandated funding) decreased both in actual dollars (-4.3%) and constant 1988 dollars (-34%) from 1980 to 1988. During this time, the poverty population in Maine increased by approximately 7%.⁴⁵

TABLE 2

Total Federal Funding for Pine Tree Legal Assistance
(excluding mandated funding for Volunteer Lawyers Project)⁴⁶
in actual and constant dollars

	1980	1984	1988
Actual Dollars	1,426,732	1,128,497	1,342,515
1988 Dollars ⁴⁷	2,048,216	1,284,907	1,342,515

In 1980, Legal Services for the Elderly had a staff of six and was unable to provide services throughout the entire state. Federal funding for the program, through Title III of the Older Americans Act, was \$60,000 in 1980. Funding by state grants, through the Bureau of Elderly and Adult Services, was \$27,000. From all sources, Legal Services for the Elderly's 1980 funding was \$133,383. By 1988, its funding had grown to \$434,950, enabling expansion of staff to 17 and establishment of a meaningful statewide presence. However, Legal Services for the Elderly's resources

⁴⁴Pine Tree had 71 staff positions in 1980, 46 in 1984 and 56 in 1988. These numbers do not include the Volunteer Lawyers Project staff.

⁴⁵Maine State Planning Office estimate.

⁴⁶In 1984 and 1988 Pine Tree was required to spend 12.5% of its basic federal Legal Services Corporation budget on private bar involvement.

⁴⁷Using Consumer Price Index inflation adjustment figures, 1980 dollars are multiplied by 1.4356 and 1984 dollars by 1.1386.

remain inadequate to comprehensively address the needs of the elderly for legal services throughout Maine. Assistance in such matters as boundary disputes, probate concerns and other less pressing cases is severely limited.

The Maine Bar Foundation has become an important source of funding. Established in 1983, largely in response to federal cuts in funds for legal services, the Foundation has been the focal point of efforts by the private bar to provide legal assistance to those living in poverty in Maine. It makes grants to legal services providers and contributes additional funding to the Volunteer Lawyers Project. It also makes grants to other organizations whose work focuses primarily on the civil legal needs of the poor.

The primary source of the Bar Foundation's funds is the IOLTA program. As noted above, the rate of participation by Maine attorneys in the IOLTA program is greater than that in any other state in which participation is voluntary. The program produces substantial revenues.⁴⁸ The Foundation distributes IOLTA funds annually by means of automatic grants to Pine Tree Legal Assistance, Legal Services for the Elderly, and the Cumberland Legal Aid Clinic. For the fiscal year ending September 30, 1989, \$257,054 was distributed through these automatic grants; an additional \$138,493 was distributed through discretionary grants to other organizations.⁴⁹ The Bar Foundation's support for the Volunteer Lawyers Project, originally provided as an automatic grant, has been made a line item in the Foundation's budget.⁵⁰ The Foundation also distributes to the Project the voluntary contributions from Maine attorneys solicited in conjunction with the annual Board of Overseers of the Bar registration.

⁴⁸Many states have converted from voluntary to comprehensive IOLTA programs. Based on current income, conversion to a comprehensive IOLTA program in Maine would increase the gross monthly income by \$22,000, for an annual increase of \$264,000. These figures do not reflect the additional administrative costs (which average \$5,606.00 per month currently) of managing a comprehensive program.

⁴⁹For the fiscal year ending September 30, 1988, automatic grants to legal services providers totalled \$185,213; discretionary grants totalled \$43,760.

⁵⁰Table 3 shows the sources of Volunteer Lawyers Project funding for 1985 and 1988.

TABLE 3

VOLUNTEER LAWYERS PROJECT FUNDING, BY YEAR⁵¹

	1985	1988
Maine Bar Foundation	7,481	43,022
Pine Tree Legal Assistance	137,452	154,931

In addition to these sources, funds for legal services to the poor come from state appropriations, contracts, grants and other sources. Table 4 shows the total funding in 1980, 1984 and 1988 for the four major legal services providers in Maine.

TABLE 4

TOTAL FUNDING FOR LEGAL SERVICES IN MAINE
FROM ALL SOURCES, BY YEAR

	Actual 1980	Adjusted 1980 ⁵²	Actual 1984	Actual 1988	%Change 1980-88 (inflation (adjusted)) ⁵²
PTLA ⁵³	1,476,354	2,119,454	1,300,232	1,760,430	-17.0%
LSE	133,383	191,485	210,711	435,950	+128.0%
VLP	-0-		157,985	197,522	--
CLAC	<u>140,349</u>	<u>201,485</u>	<u>202,399</u>	<u>295,313</u>	<u>+46.6%</u>
	1,750,086	2,512,424	1,871,327	2,689,215	+7%

⁵¹The first full year of operation of the Project was 1985. The Project estimates the value of time contributed by lay volunteers to have been \$27,792 in 1985 and \$30,000 in 1988. The value of donated attorney hours was estimated as \$455,510 in 1985 and \$490,994 in 1988.

⁵²Adjusted for inflation to 1988 dollars based on the Consumer Price Index. The CPI for all items increased from 82.4 in 1980 to 118.3 in 1988, an increase of 43.56%.

⁵³Does not include funds for Volunteer Lawyers Project.

Providers' salary levels. Salaries for the staffs of legal services providers are generally lower than those of similar public sector staffs and private bar salaries, for all classes of employees. Some of the comparisons are striking.

The 1988 starting salary for Pine Tree attorneys was \$21,000. For Legal Services for the Elderly attorneys, the 1988 starting salary was \$20,000. A new attorney with the Attorney General's office started at \$25,480 in 1988.⁵⁴ The 1987 statewide median starting salary for a new associate in private practice was \$25,000. For greater Portland, the median 1987 starting salary for an associate was \$34,000.⁵⁵

In 1988, the highest-paid attorneys employed by Pine Tree and Legal Services for the Elderly, respectively, earned \$35,000 and \$28,594. These attorneys had up to nineteen years of experience.⁵⁶ In the Attorney General's office the highest paid non-supervisory attorneys earned \$42,536; supervisors earned approximately \$50,000.⁵⁷ In 1987, a ten year associate in private practice earned a median salary of \$50,000 statewide and \$60,000 in larger firms.⁵⁸ These salary differentials provide a strong disincentive for law school graduates carrying a heavy student loan burden to enter legal services practice. Unlike the medical profession, the legal profession does not provide incentives such as loan forgiveness programs to permit graduates to enter lower paying public interest jobs.

The 1988 starting paralegal salaries were \$11,792 and \$12,800 for Pine Tree⁵⁹ and Legal Services for the Elderly respectively. These compare with starting paralegal salaries in state government in 1988 of \$16,972.⁶⁰ In the private bar, both statewide and in greater Portland, the median starting salary for a paralegal in 1987 was \$15,000.

⁵⁴In 1989 District Attorney salaries were put on a par with the Attorney General's office. These figures thus provide a broad picture of public sector salaries.

⁵⁵Consortium Survey, Appendices I-B and II-B.

⁵⁶This includes supervising attorneys but not the directors of the two programs.

⁵⁷Attorneys in the Attorney General Office receive annual state government cost-of-living increases. After three years they are eligible for additional increases based on the type and quality of their work.

⁵⁸Consortium Survey, Table 8, p. 17.

⁵⁹Pine Tree paralegals and secretaries are paid on the same salary scale.

⁶⁰In the state's classified service a Paralegal Assistant started in 1988 at \$16,972. A Legal Services Consultant, the classification for some paralegal jobs, started at \$20,820 in 1988.

Pine Tree's highest paid paralegals in 1988 received \$20,832. Legal Services for the Elderly's highest paid paralegals received \$19,632. In the salary ranges for state-employed paralegals, the highest salaries in 1988 were \$22,692 and \$28,558.⁶¹ The median 1987 private bar salary for a paralegal with ten years of experience was \$22,000 both statewide and in greater Portland.⁶²

Pine Tree's and Legal Services for the Elderly's 1988 starting legal secretarial salaries were \$11,792 and \$11,200, respectively. These compare with starting secretarial salaries in the Attorney General's office of \$14,352, and with private bar 1987 starting salaries of \$12,000 statewide and \$15,000 in greater Portland.

Salaries in 1988 for the highest-paid legal secretaries employed by Pine Tree and Legal Services for the Elderly were \$20,832 and \$16,134, respectively. These compare with \$18,761 in the Attorney General's Office and with median 1987 private bar salaries of \$20,000 statewide and \$22,000 in greater Portland, for secretaries with ten years of experience.

Law student summer interns, rarely used by legal services providers because of funding shortages, are paid from \$250.00 to \$350.00 per week, compared to private sector rates ranging from \$480.00 to \$850.00 per week. A few law schools, including the University of Maine Law School, provide a limited number of Public Interest Summer Fellowships for students to supplement legal services salaries. These fellowships are inadequate in number and dollar amount to meet either student demand or the needs of providers.

Changes in staff levels. Since 1980, staffs of Legal Services for the Elderly, the Volunteer Lawyers Project and the Cumberland Legal Aid Clinic have increased. The staff of Pine Tree Legal Assistance, Maine's principal provider of legal services to the poor, has decreased by more than 20%.⁶³

During the 1980 to 1988 period, Legal Services for the Elderly increased its total staff from six to 17.⁶⁴ The number of attorneys, other

⁶¹These salaries are for Paralegal Assistant and Legal Services Consultant, respectively.

⁶²The highest paid legal services paralegals have considerably more experience.

⁶³Staff numbers are augmented to a very limited extent by law students on work-study internships and Public Interest Fellowships. Available funds for both programs are small.

⁶⁴Staff numbers throughout are full-time equivalents. Two half-time employees are counted as one full-time position.

than the director, increased from two in 1980 to seven in 1988. The number of offices maintained by the program increased from one full-time office with eight outreach sites in 1980 to five full-time offices and 20 outreach sites in 1988.

The Volunteer Lawyers Project did not exist in 1980. It was founded in 1983 and in 1988 had a staff of five: a full-time attorney-director, two paralegals, a part-time volunteer coordinator and a full-time secretary.

The University of Maine Law School Cumberland Legal Aid Clinic has had the least change in staffing, probably because of its status as part of an educational institution. Since 1980 the Clinic has added one part-time supervisor and one part-time secretary. In addition, IOLTA funds enabled the Clinic to employ a visiting lawyer as a full-time supervisor for half of each year. While the number of students handling cases through the Clinic declined for a period of time, partly because of a smaller student body and partly because of a decision to limit supervisory loads, that trend appears to have been reversed with increased class sizes and increased supervisory capacity. Further increases in supervisory time, an increase in credit hours allotted, or the establishment of a clinical practice requirement would mean that additional cases could be handled.

The number of total staff employed by Pine Tree Legal Assistance dropped precipitously between 1980 and 1984. From 1984 to 1988 staff size increased, but remains substantially below 1980 levels. Pine Tree employed 27 attorneys in 1980; it employed 23 in 1988. Paralegal staff has been reduced from 14 to 11. Total staff went from 71 in 1980 to 56 in 1988.⁶⁵

Providers' efforts: types of service. The changes in staffing patterns discussed above are accompanied by changes in the providers' caseloads, in terms of the type of services provided. (See Table 5.) In 1980, Legal Services for the Elderly and Pine Tree together handled a total of 10,424 matters. For those cases, the providers gave either "brief service," that is, information, self-help advice or referral,⁶⁶ or

⁶⁵The Volunteer Lawyers Project staff is not included in these figures.

⁶⁶"Brief service" (Column A in Table 5) means different kinds of service in different kinds of cases. For example, a typical brief service client in the income maintenance category might call because he or she has no money and no food. The caller would be told where to apply for the appropriate benefit program, that there was a right to make a written application, and that there was a right to receive assistance or a written denial within twenty-four hours. The caller would also be told to recontact the legal services office if there were further problems. A typical brief service client in the family legal area might call with a
(continued...)

"extended representation"⁶⁷ or "litigation."⁶⁸ While Legal Services for the Elderly's records do not distinguish between the types of representation given in 1980, its ratio of brief service to extended representation/litigation in 1984 was 56% to 44%. In 1988, increases in staff and funding were accompanied by a change in the ratio to 40% brief service and 60% extended representation/litigation.

TABLE 5

Categories of Cases By Provider, Type of Service and Year⁶⁹

Categories of Cases By Provider, Type of Service and Year ⁷⁰																		Volunteer Lawyers Project					
Legal Services for the Elderly ⁷⁰									Pine Tree Legal Assistance														
1980			1984			1988			1980			1984			1988						1988		
Case Type	A	B	C	A	B	C	A	B	C	A	B	C	A	B	C	A	B	C	A	B	C		
Consumer			125			80			240	35	457	116	158	1097	47	54	975	26	33	618	77	32	
Education											39	11	11	85	8	5	65	9	18	13	3	2	
Employment			6			14			21	17	97	21	8	216	9	15	250	16	4	62	1		
Family			248 ⁷¹						29	2	583	26	293	1193	11	57	1295	32	230	2342	258	158	
Juvenile														24			31			63	1		
Health						129			232	54				16			243	36	22	17			
Housing			252			127			274	87	738	354	276	2372	188	202	3691	291	412	372	64	15	
Income Maintenance			175			143			145	82	4782	394	640	1834	218	298	2357	357	265	247	85	133	
Individual Rights			73			109			450	45				77	2		64	4	9	39			
Other			120						220	34	316	50	79	554	8	9	468	1	4	612	44	20	
TOTAL			997			829	585	54	1305	1811	356	6992	972	1483	7470	491	638	9439	772	995	4387	538	360
Percentage of Cases/total			100%			56%	40%	4%	40%	48%	11%	74%	10%	16%	87%	6%	7%	84%	7%	9%	83%	10%	7%

(A) Brief Service

(B) Representation without litigation

(C) Litigation

⁶⁶(...continued)

problem involving divorce, custody or visitation. Unless the case met the narrow parameters of the Volunteer Lawyers Project case acceptance criteria, the client would be referred to a local book store or the public library for a self-help manual. Because of extremely limited resources, no further help would be available for this client. In some cases, brief service amounts to little more than a denial of service, or at least to much less service than the client might want or need.

⁶⁷"Extended representation" (Column B in Table 5) is representation involving a more extended attorney-client relationship.

⁶⁸"Litigation" (Column C in Table 5) includes representation in judicial and administrative proceedings.

⁶⁹In 1988 the Cumberland Legal Aid Clinic handled 496 family law cases of which 41 involved litigation and 455 were brief service. The Clinic handled an additional 81 miscellaneous civil cases of which 12 involved litigation, 4 representation without litigation and 65 brief service.

⁷⁰Legal Services for the Elderly handled a total of 997 cases in 1980 but made no breakdown by type of service. For 1984 its analysis by case category combined types B and C.

⁷¹This figure does not include any substantial number of family legal cases as that term is used elsewhere in this Table. It was used by Legal Services for the Elderly in 1980 primarily to designate estate matters.

In contrast, Pine Tree's 1980 ratio of brief service to extended representation/litigation was 74% to 26%. Its 1988 ratio was 84% to 16%. This ratio is a slight change from its 1984 ratio of 87% brief service to 13% extended representation/litigation. Pine Tree's funding and staff also increased slightly between 1984 and 1988.

In 1988, Pine Tree, Legal Services for the Elderly, the Volunteer Lawyers Project and the Cumberland Legal Aid Clinic handled a total of 20,338 legal problems. The overall ratio of brief service to extended representation/litigation for all providers was 75% brief service (15,651 problems) to 25% extended representation/litigation (4,687 problems). Because the Volunteer Lawyers Project did not exist in 1980, and because the records of Legal Services for the Elderly and the Clinic did not then distinguish between types of service, it is not possible to directly compare the overall ratios for the two years. However, Pine Tree and the Volunteer Lawyers Project, both of which provide services to the general population of the poor, each gave over 80% of their 1988 services as brief service.

Applying the overall 1988 ratios to the estimated 61,000 legal problems for which no assistance was received, 45,750 (75%) of these problems should have received brief service and 15,250 (25%) should have received extended representation/litigation. These figures are conservative, as the ratio reflects the type of service the providers were able to offer, which was not necessarily the service required. In fact, information presented by clients and providers at the public hearings and in questionnaire responses indicates that large numbers of clients were given brief service not because their problems could be easily solved but because the legal service providers lacked the resources to give extended representation or litigation service. Thus, it would be more realistic to assume that brief service would have sufficed for half of the 61,000 problems for which no assistance was provided, and that these 30,500 brief service problems could have been handled by paralegals with appropriate lawyer supervision.⁷²

To handle the 30,500 problems that required extended representation/litigation would mean expanded resources on the part of all providers. An additional 7,200 problems could be handled through the private bar if each of the 2,700 active practitioners were enrolled in the Volunteer Lawyers Project and handled three cases. This increase would greatly augment the 1,198 cases referred and the 900 cases closed in 1988. By doubling its caseload, the Clinic's contribution could be increased by 150 cases. There would remain 23,150 problems requiring extended representation/litigation service. Pine Tree and Legal Services for the Elderly attorneys now each handles approximately 100 such cases per year. Assuming present workload levels and case assignment practices, 232 staff attorneys would be required to carry this caseload and paralegal supervision, administration and other client service matters. Put another way, if the average extended representation/litigation matter requires 10 hours of attorney time, 231,500 attorney hours would be required for these cases. Private sector attorneys in Maine bill about 1,750 hours per year

⁷²At an average of two hours per problem, the equivalent of an additional 30 paralegals would be needed to handle these problems.

to their clients. Thus, the equivalent time of 132 attorneys, engaged solely in direct client representation and handling only extended representation/litigation cases, would be required.

Providers' efforts: cases handled. Free legal services supplied to the poor by the organized providers are primarily in the areas of housing, income maintenance and family legal matters. Significant but lesser numbers of cases are handled in the areas of individual rights, consumer and health law. (See Table 5.)

Pine Tree Legal Assistance handled the bulk of the housing and income maintenance cases, while Legal Services for the Elderly handled more of the individual rights cases, health cases and consumer cases. The Volunteer Lawyers Project provided the greatest amount of representation in the family legal area. The Cumberland Legal Aid Clinic classifies its civil cases as "family" and "miscellaneous." By far the largest number of its civil cases were in its "family" classification.

Pine Tree's income maintenance cases included general assistance, AFDC, Food Stamps and SSI cases. Social Security cases were generally referred by Pine Tree to the Volunteer Lawyers Project. The housing cases handled by Pine Tree were mostly eviction and other landlord-tenant cases, such as warranties of habitability. Many fewer of its housing cases involved client-owned housing, although this varied substantially from office to office.

Most of Legal Services for the Elderly's individual rights cases involved defense or removal of guardianships or conservatorships and the seeking of less restrictive alternatives, such as powers of attorney. Others involved death decisions, living wills, and nursing home and boarding home cases. Most of its health cases involved Medicare and Medicaid issues. Its consumer cases raised traditional consumer law issues.

The family legal cases handled by the Volunteer Lawyers Project and Cumberland Legal Aid Clinic were generally divorces, while those handled by Pine Tree generally involved protection from abuse. Pine Tree's divorce cases came mostly through its contracts with the Maine Department of Mental Health and the Maine Department of Corrections. Pine Tree's family problem caseload has increased slightly since 1984, when it virtually ceased working in this area to concentrate on critical "food, fuel and shelter" issues represented by benefits and housing cases. Pine Tree's work remains crisis-oriented:

"We are helping the people with the basic necessities of life and that is about it. I don't feel that I am solving problems as much as giving band-aids or dealing with symptoms."

"That is the general nature of the work that we do, it is crisis work. It is like the emergency room. When people come to us they are about to be on the streets, they are about to lose all of their income. It is crisis work."

The providers' allocations of extended representation/litigation across the different categories of legal problems does not correspond to the relative frequency of those problems in the population of the poor. There is one employment case handled by extended representation for every 88 employment problems⁷³ estimated to exist. In the education category, the ratio of extended representation to numbers of problems is 1 to 48.⁷⁴ For the other categories, the ratios are: health, 1 to 38.4; consumer, 1 to 35.4;⁷⁵ income maintenance, 1 to 15.1; family, 1 to 14.1;⁷⁶ individual

⁷³Private attorneys can receive court-awarded fees in many types of employment cases. Other employment cases frequently involve a sum of money from which a fee can be taken. For example, the Unemployment Insurance Commission will approve payment of attorneys' fees out of unemployment compensation awards. These factors may contribute to the relatively small amount of legal service provider representation in employment cases.

⁷⁴Many education cases are extremely time consuming and labor intensive. This may account for the fact that relatively few of these cases are undertaken. In addition, education problems may not be readily perceived as legal problems and clients may less often seek legal representation.

⁷⁵For purposes of these comparisons, "utilities" problems and "consumer" problems are considered together under the heading "consumer." Most of the utilities cases handled by the providers are categorized as consumer cases. Pine Tree also treats utilities cases as benefits cases, seeking general assistance to prevent termination of utility service.

⁷⁶A number of factors may contribute to the demand for legal services in the family area. Family problems were seen as "most serious" far more often than any other category. Forty-one percent of those respondents with a family problem reported that as their most serious problem. This compares with 34% in the health category and in the employment category, and lower percentages in the other categories. Family legal matters have become increasingly complex and more frequently require an attorney. They also more frequently require a court appearance. Finally, they are more easily recognized as legal problems by clients, and may also involve stronger feelings than other legal problems.

rights, 1 to 10.4,⁷⁷ and housing, 1 to 6.8⁷⁸. Clearly, providers' allocations of services should not be determined solely by the volume of problems in given categories. However, the volume of problems is one factor to be considered in setting priorities. The data suggests a need for the providers to evaluate their present allocations of efforts in light of problem volumes.

Providers' efforts: advocacy for change. The focus on individual problems ignores another area of legal assistance which is of great importance to the poor. This is the legal work done to bring about change in the conditions of poverty. Such change has often been brought about by "impact litigation," that is, a class action or an action for declaratory judgment which addresses a problem affecting a large number of the poor. For example, a change in the AFDC program brought about by such litigation may result in increases in benefits for an entire class of recipients. Similar widespread effects may result from cases addressing, for example, public housing programs, Medicare regulations and administration of general assistance. There are those who argue that these cases are the more important and more cost-effective way to provide legal assistance to the poor. It is clear, however, that individual legal problems, many of which represent fundamental crises in the lives of the poor, command the attention and the severely limited resources of the providers.

Legislative advocacy is another form of effort to bring about change. It is frequently argued that it is improper to expend public monies for legislative advocacy on behalf of the poor by legal services providers. It is as frequently argued that private attorneys often provide such advocacy for their clients and that the poor are at a serious disadvantage in legislative decision-making if legal services attorneys cannot advocate for their interests and needs. Federal funding sources impose restrictions on the manner and extent to which funds may be used to support legislative advocacy.

⁷⁷The analysis of individual rights cases may suffer from the survey design. Most of the individual rights cases were handled by Legal Services for the Elderly. These cases generally involve the removal of guardianships or the development of less restrictive alternatives. The telephone survey did not ask elderly respondents if they require assistance in planning for preservation of personal autonomy in the face of declining capacities. Also, for survey purposes, problems involving guardianships were categorized as family legal problems.

⁷⁸Housing problems, especially landlord-tenant issues, are traditionally viewed as legal problems. They frequently involve court proceedings, usually evictions. They are summary process cases and require relatively little attorney time for each case. They involve the basic necessity of shelter and are therefore a priority for the legal services providers. These factors may all contribute to the proportionately higher number of housing cases given extended representation.

Providers' efforts: referral and intake. Apart from the question of adequacy of resources, providers' effectiveness and efficiency in delivering services depends to a great extent on their referral and intake mechanisms. Two types of criticism from the poor and others raise the possibility that the present delivery of services is impaired by difficulties in these areas. Many of those who sought help, and others attempting to make referrals, told of being referred from one provider to another. Apparently, providers' referrals to other providers were sometimes made without knowledge of the second providers' capacity to take the problem or without knowledge of its priorities among problems, so that the serial referrals were fruitless as well as frustrating.

The second criticism was unique to the Volunteer Lawyers Project. The near-universal experiences of being unable to reach the Project by telephone and of the failure to receive a return call to a request left on the Project's answering machine has meant that many individuals and agencies no longer regard the Project as a resource.

"I called Pine Tree Legal and I explained the matter to them and they referred me to the Volunteer Lawyers Project. So I spent three days on the phone calling the Volunteer Lawyers Project, and got no answer, because the line was busy."

The problem appears to be inadequate telephone equipment and capacity; however, these threshold problems may mask staff and volunteer shortages.⁷⁹

These problems strongly suggest the need for better understanding, among the poor, among referral sources, and among the providers themselves, of the services each provider offers, of its capacity, and of its priorities. They also strongly suggest a need for better coordination of referral and intake, if not for a centralized referral and intake mechanism.

It should be noted that in spite of the problems identified, the legal services providers continue to be very highly respected by the poor, the legal community, social services agencies and the public at large.

Before the Legal Needs Study was undertaken, the gap between the needs of the poor for legal assistance and the resources available to meet those needs was apparent to legal services providers, to members of the legal community, to social services agencies and, most painfully, to the

⁷⁹There do appear to be geographic imbalances in both attorney participation and in awareness among the poor of the Volunteer Lawyer's Project existence. In both, the southern part of the state is better served.

poor themselves. The data and information gathered for the Study, and the analysis set out in these Chapters, confirm beyond question the existence of that gap and describe in detail its nature and extent.

The Commission has based its Findings and Recommendations on its analysis of the data. The Findings and Recommendations, set out in the Executive Summary, are the foundation for the Commission's Action Plan to bring about change. Addressed to the institutions and organizations which possess the authority and capacity to cause change, the Action Plan embodies the Commission's conviction that it is critical that the gap between needs and resources be closed.

APPENDIX A

BACKGROUND AND METHODOLOGY OF THE MAINE LEGAL NEEDS STUDY

Background. Private practitioners in Maine have historically provided pro bono (uncompensated) representation to the poor on an individual basis. These efforts were formalized with the establishment of legal aid bureaus in Portland in 1939 and in Lewiston in 1962, under the auspices of the respective county bar organizations. Despite significant personal contributions by many dedicated attorneys, the impact of pro bono legal assistance was limited. There was no systematic and widespread representation of the poor.

Similar situations existed throughout the country, but there was growing belief that adequate legal services were fundamental to any effort to ameliorate and eliminate poverty. Organized legal services programs were begun. In 1965, the Neighborhood Legal Services Program was created within the federal Office of Economic Opportunity (OEO) as part of the War on Poverty. In Maine, Pine Tree Legal Assistance was established to receive OEO funds and to provide legal services to the poor throughout the state. Organized by a group of Maine attorneys with the support of the Maine State Bar Association, Pine Tree Legal Assistance served individual clients with legal problems and also began an aggressive program of law reform through test cases and legislative activity. National controversy over the activities of OEO Legal Services Offices in the states led to the establishment in 1974 of the Legal Services Corporation. Funding for state programs was directed through the Corporation, which had oversight responsibility for their operation. Between 1976 and 1981, annual congressional funding for the Legal Services Corporation increased from \$92 million to \$321 million.

Two other legal services programs were started in Maine in the 1970s. Beginning in 1970, the University of Maine Law School provided legal services to the poor, and practical training for law students, through the Cumberland Legal Aid Clinic.¹ In 1974, Legal Services for the Elderly was established. Operating with federal and state funds, it began a statewide program of legal assistance to the elderly.

By 1982, these three programs had begun to address the legal needs of the poor in Maine. In that year the progress of the federal legal services movement was abruptly halted. The substantial opposition of the Reagan administration resulted in a 25% budget cut for the Legal Services Corporation, with corresponding impact on Pine Tree Legal Assistance, the principal provider of legal services to the poor within the state. Eight years later, the Legal Needs Study was undertaken to measure and describe

¹This resource has been limited to Southern Maine.

the apparent gap between the needs of Maine's poor for civil legal services and the ability of the private bar and legal service providers to meet those needs.

Development of the Maine Legal Needs Study. The Maine Bar Foundation, established in 1983,² developed resources through a voluntary IOLTA (Interest on Lawyers Trust Accounts) program to support legal services for the poor. Both to guide the distribution of its IOLTA funds and to assist the legal service providers in shaping their programs, the Bar Foundation sought to identify the specific civil legal needs of the poor. The Consortium for the Study of the Future of the Maine Legal Profession, an organization of nine institutions and agencies concerned with the law and the legal profession,³ saw its mission to include efforts to increase the degree to which the legal system was meeting the needs of all Maine citizens. In the fall of 1988, these two organizations agreed to a partnership to conduct the Legal Needs Study.

The Maine Commission on Legal Needs was established to oversee the Study. Chaired by the Honorable Edmund S. Muskie, former United States Secretary of State and former United States Senator from Maine, the Commission included fifty volunteers representing the judicial, executive and legislative branches of government, legal service providers, the low income community, public and private practitioners, institutions of higher education, industry, labor and the public. At its initial meeting on Law Day, May 1, 1989, the Commission adopted four goals for the Study:

1. To inventory the existing resources providing legal assistance to the poor and other vulnerable populations in the State of Maine;
2. To survey in depth the legal needs of Maine's poor in order to determine the extent to which those needs are being met by existing resources;
3. To develop a data base to assist in applying existing and additional resources to the legal needs of Maine's poor in ways which are most effective; and

²The Bar Foundation's governing document states its purpose of "...facilitating the due administration of justice by all necessary and proper means, including, without limitation, by promoting the provision of legal services to the poor, supporting legal education and scholarship and engaging in activities aimed at enhancing the legal profession's ability to serve the public throughout the State of Maine."

³The nine groups are the Board of Bar Examiners; the Board of Overseers of the Bar, Legal Services for the Elderly, Inc., the Maine Judicial Council, the Maine State Bar Association, the Maine Trial Lawyers Association, the Office of the Attorney General, Pine Tree Legal Assistance, Inc., and the University of Maine School of Law.

4. To determine a plan of action and develop the resources to meet the legal needs of Maine's poor and vulnerable populations.⁴

The Commission held six meetings during the year, adopting goals and an organizational plan, reviewing interim data, providing direction for the final report, developing Findings and Recommendations, and adopting its Report and Action Plan.

A 12 member Steering Committee was responsible for the conduct of the Study. Chaired by L. Kinvin Wroth, Dean of the University of Maine Law School, the Steering Committee held 12 meetings during the Study year. It prepared background information for the Commissioners, defined the scope, methodology and timetable of the Study, hired project staff, appointed six sub-committees⁵ and reviewed their reports, and prepared interim and final reports for Commission review and action.

⁴To further these goals the Commission gathered information addressing the following questions, among others:

1. What effect does geography have on the extent and seriousness of legal needs in the state of Maine?
2. In which areas of the law is there the greatest legal need in the state?
3. Which legal needs have the greatest impact on the lives of the poor and other vulnerable populations in Maine?
4. To what extent is legal need complicated by factors such as language, disability, race and others?
5. To what extent do existing resources overlap or leave gaps in terms of the legal services they provide and geographic and subject matter areas they cover?
6. To what degree are the poor and other vulnerable populations aware of the legal remedies available to them in dealing with the legal problems they have?
7. What is the political and social cost of failing to meet the legal needs of Maine's poor and vulnerable populations?

⁵The six sub-committees' respective responsibilities were:

1. Development of the telephone survey instrument in conjunction with the Spangenberg Group, Inc;
2. Development of the provider surveys;
3. Development of the human and social service survey tool and the interview process;
4. Organization and execution of the public hearings;
5. Development of the budget and fund-raising, and
6. Drafting, writing and editing the final report.

Funding. Funding for the Legal Needs Study was provided by the Maine Bar Foundation, member organizations of the Consortium, Maine foundations, corporations, law firms, and individual attorneys. Funding sources are listed on page 22 of the Executive Summary.

Methodology of the Study. As the basis of the Study, the Commission collected data directly from those living in poverty, and from the providers of legal services, social service agencies, attorneys, judges, and elected and appointed officials. The following four data collection systems were used.

A Telephone Survey was designed to gather information directly from the poor on the number and types of civil legal problems their households had experienced in the past year. Information was gathered about those problems that received legal assistance and about those that did not. The telephone survey was conducted by the Spangenberg Group of West Newton, Massachusetts, a nationally recognized research consulting firm specializing in studies relating to the legal problems of low-income persons. The firm has conducted similar statewide legal needs assessments in Massachusetts, Illinois and New York. The Spangenberg Group also completed a national telephone survey for the American Bar Association in the spring of 1989. It has been retained for a comprehensive statewide study of the legal needs of low-income elders in Wisconsin and for a statewide legal needs assessment in Ohio which includes a telephone survey component.

The telephone survey instrument and sampling plan were designed by the Spangenberg Group, working with a subcommittee of the Steering Committee. The actual telephone survey, conducted by Research Data, Inc. of Framingham, Massachusetts, began on September 15, 1989 and was completed by the end of October, 1989. During this six week period, 521 households with incomes at or below 125% of the federally-established poverty level completed comprehensive 25-minute telephone interviews. Copies of the survey instrument are on file at the offices of the Maine Bar Foundation.

The sample size of 521 households was large enough to produce statewide data within an acceptable confidence interval. Five hundred completed interviews statewide would produce an acceptable confidence interval, at 95%, of between + or - 4-5%. The two-volume Spangenberg Report is available at the Maine State Law Library in Augusta.

Six separate Questionnaires were designed for the major legal service providers, specialized and related service providers, social service providers, elected and appointed government officials, and bar leaders, judges and officials of the judiciary.

All of the major legal services providers responded in detail. Overall, 30% of the questionnaires were returned. The questionnaire data were analyzed by social science, political science and law students at the University of Maine School of Law, the University of Southern Maine, Bates College, and the University of Maine, under the supervision of the respective faculty. A total of 32 students and eight professors participated in this portion of the study. The goals of the questionnaires were:

1. To define what civil legal services are being provided as well as those that are not being provided;
2. To identify the types of civil legal cases being serviced;
3. To identify the geographic areas with insufficient services and to identify those areas with no service;
4. To ascertain organization and agency awareness of civil legal resources and the patterns of referrals between agencies;
5. To determine the number and frequency of public education programs on legal rights; and
6. To collect suggestions for ways to address the unmet civil legal needs of the poor and other vulnerable populations.

Data from the questionnaires were reviewed by members of the Steering Committee and summaries were prepared for distribution to the Commission. Questionnaires and response summaries are on file at the Maine Bar Foundation.

Personal Interviews were designed to gather in-depth information from social service agencies that provide direct services to the poor in Maine and to special groups such as the elderly, children, the Native American population, and refugees. Information was sought regarding the nature and frequency of requests for civil legal services, the type of referrals made, and the level of awareness of the available legal service resources. In addition, each interview solicited information about the existing legal services providers and asked for suggestions to address the civil legal needs of the poor.

A protocol developed by the Spangenberg Group and used in the Illinois Legal Needs Study was employed as the basis for the interview instruments. Members of a subcommittee of the Steering Committee and members of the project staff scheduled and conducted 25 interviews in the month of October, 1989. The subcommittee met to discuss the interviews, review the information gathered and prepare summaries for the Commission. Copies of the interview instruments are on file at the Bar Foundation offices.

Eight Public Hearings were scheduled at:

University of Maine at Machias	October 4, 1989
Houlton Superior Court	October 18, 1989
Caribou Superior Court	October 19, 1989
Rockland District High School	October 26, 1989
Lewiston Multi Purpose Center	November 2, 1989
Downeast School, Bangor	November 9, 1989
Reiche School, Portland	November 16, 1989
Cony High School, Augusta	November 30, 1989

The purposes of the hearings were to:

1. Determine the civil legal needs of the poor in defined geographic areas of Maine;
2. Determine the extent to which those identified needs are not being met;
3. Receive information from poor households without telephones;
4. Determine the level of awareness of the existing resources which assist the poor with civil legal problems;
5. Increase the awareness of the practicing bar regarding scope of the need for pro bono services; and
6. Determine the extent of previously unreported pro bono activity.

Notification of the public hearings was mailed to 18,000 AFDC and Food Stamp recipients, 3,600 members of the Bar, the media, social service agencies, legal service provider organizations, Vocational Technical Institutes, low-income organizations, homeless shelters, organizations serving specific vulnerable populations, and state agencies. Public service announcements were broadcast on local radio and television stations prior to each public hearing and press releases appeared in the weekly and local newspapers in each region prior to the individual hearings.

A standard format for the hearings was developed by the public hearing subcommittee. The hearings were held in handicapped accessible sites. Persons attending were encouraged to present suggestions for improving access to the civil legal system and attorneys in attendance were encouraged to discuss their pro bono service. Over 500 individuals attended the eight hearings, including 114 low-income persons, 62 lawyers and 29 staff members of legal services providers. Sixteen student

volunteers from the University of Maine Law School, Bates College, the University of Maine, and University of Maine at Presque Isle assisted at the hearings. A detailed record was prepared for each hearing, including audio taping of all testimony. These records and tapes are on file at the offices of the Bar Foundation.

APPENDIX B

ECONOMIC AND SOCIAL CONDITIONS OF POVERTY IN MAINE

This Appendix describes quantitatively the economic and social conditions which characterize life in poverty in Maine. The data, analysis and discussion are drawn from the telephone survey conducted for the Legal Needs Study by the Spangenberg Group¹ and a 1985 study by the Maine State Planning Office² which relies on the 1980 U.S. Census. The State Planning Office study was used both as a source of data and analysis, and as a way to corroborate the representativeness of the telephone survey sample and results.

It should be kept in mind that telephone survey respondents were those living at or below 125% of the federally-established poverty level, while the State Planning Office study looks at those living at or below the poverty level itself, a smaller sample. The 521 households with incomes below 125% of the poverty level that were surveyed by telephone are distributed throughout Maine (see Table B-1). The survey sample was drawn so that sample sizes would be large enough to produce statistically valid results within acceptable confidence intervals. A minimum of 500 calls statewide would produce a confidence interval, at 95%; of between + or - 4-5%. Two hundred fifty calls in each of the two regions established by the survey design (Region A: Aroostook, Franklin, Hancock, Oxford, Penobscot, Piscataquis, Somerset, Waldo and Washington counties; Region B: Androscoggin, Cumberland, Kennebec, Knox, Lincoln, Sagadahoc and York counties) would produce a confidence interval, at 95%; of between + or - 6-7%. While the sampling division between Regions A and B roughly reflects the 1980 distribution of the population living at the poverty level in Maine (47.6% in Region A and 52.4% in Region B), statewide numbers were adjusted (weighted) to reflect the actual proportion of poverty households in each region to the poverty population in Maine as of 1980 Census data. The telephone survey included respondents living in all 16 counties in Maine. Those counties with the highest number of completed interviews were the five counties with the largest percentage of poverty-level population. Similarly, the five counties with the smallest percentage of poverty-level population were those in which the fewest interviews were completed. The Spangenberg Group is confident that the distribution of completed calls is broadly representative of the distribution of poverty in Maine.

- * Disproportionate numbers of the poor are children, elderly, female, single, and live in single parent families.

¹Reported in Maine Legal Needs Study: Telephone Survey Final Report. The Spangenberg Group, 1990.

²Poverty in Maine, 1970-1980, Volume 1, "Causes and Conditions." Maine State Planning Office, 1985.

In 1980, 13% of Maine's population lived below the actual poverty level. Of this population, 15.8% were children under 18 and 16.4% were aged 65 and over. Fifty-eight percent were female, compared to 52% in the total population, but 71% of those aged 60 or more were women, compared to 58% in the total population. Single individuals, as individuals, made up 28% of the poverty-level population and represented nearly 58% of its households. One-third of all poverty-level families were single parent families, compared to 12% of families in the total population.

The telephone survey data of those below 125% of the poverty level show a comparable population. Nearly 30% of the respondents lived in single person households and another 33% percent lived in households with two members. The remaining third of the households consisted of three persons or more. The households surveyed were identified by respondents as headed by a female in 40% of the cases, a male in 31% and both a male and female in 29%. Almost 12% of these households were headed by single female parents.

The racial/ethnic composition of the population surveyed by telephone showed 98% of the respondents to be white, with one black, two Hispanic, four Native American and two Asian respondents. This accords with what would be expected in the Maine population as a whole. Nearly one-quarter of the white respondents considered themselves to be Franco-American. Only 2.5% of the entire sample (11% of those identifying themselves as Franco-Americans) said that French was the primary language spoken at home.³

The telephone survey also showed that this population had a substantial proportion of older individuals. Almost 38% of the households surveyed were headed by persons 65 years old or older.⁴

- * The poor have a high incidence of health and handicap problems.

In a study of children's deaths in the years 1976-1980, poor children in Maine were three times more likely to die of disease or

³Nonetheless, for some, language remains a barrier. At the Houlton public hearing, several people testified that French was the primary language for so many that bi-lingual legal assistants, at the least, were needed to address the problem.

⁴The percentage of the 125%-of-poverty households headed by elderly individuals in the telephone survey is somewhat higher than the proportion of this group represented in the 1980 census (33%). Projections and surveys of the State Planning Office indicate that this older segment of the population was expected to, and has in fact appeared to, grow.

accident than those not living in poverty.⁵ The disabled or handicapped were twice as likely to be poor. Twenty percent of the telephone survey respondents reported that at least one household member had either a physical or mental handicap or disability.

- * The poor are substantially more likely to be jobless or to hold seasonal, unskilled, or low-paying jobs than is the population at large.

The poor are less likely to be labor force participants. Fifty-one percent of all heads of poverty households were in the labor force in 1980, compared to 76% for all households. Female heads of poverty households were in the labor force at 40%; compared to 66% non-poor female heads. The 1980 figures show that more than 24% of poor heads of households were unemployed at sometime during the year and 17.4% of these had no work at all, compared to figures of 5.6% and 9.1% respectively for all households.

Of the remaining households below the poverty line, nearly all have at least one member in the labor force. In Maine, as in most other rural states, poverty is characterized by a higher percentage of working poor than the national average. However, their participation in the labor force tends to be more marginal in nature. They fill the unskilled, low wage, seasonal and other poorly paid and irregular needs of the economy. Twenty-five percent of those employed are unskilled laborers and another one-third are in lower-paid industrial and clerical jobs. Eighty-eight percent of those employed full-time earned less than \$10,000. These figures are in large measure accounted for by the seasonal nature of Maine's economy. Only 25% of the poor worked all year, while two-thirds of those with moderate incomes had year-round jobs.

Over half of the respondents to the telephone survey reported that no one in the household was working at the time of the survey. The survey also included a large proportion of those who were working, but nonetheless poor. In 34% of the households, one member was employed, and in 12% two members were working. Of the total respondents, 15% said that the household depended on seasonal employment. Thirty-eight percent said that they received public benefits; this percentage does not include those receiving Social Security benefits.

In 1979, a person working full-time and earning minimum wage could have provided a family of four with income equal to 85% of the federally-determined poverty level for a four-person family that year. By 1985, a minimum wage full-time job provided only 60% of the income required for a family of four. That percentage dropped to only 45% by 1988. The declining value of earnings makes second and third incomes essential to many households. In 1980, the poverty rate for two-parent families was lower than that for single person households and single parent households.

⁵Children's Deaths in Maine, 1976-1980, Final Report. Maine Department of Human Services, 1983.

This was primarily due to the fact that nearly two-thirds of married women were working. Without their additional contribution to the family income, the poverty rate for Maine's families would have doubled. Not surprisingly, poor families are less likely to have more than one family member in the labor force than are non-poor families.

- * The poor are more likely to be renters than the non-poor and are more likely to live in substandard housing, whether rented or owned.

Data from the 1980 Census show that the poor are three times more likely to be renters than the non-poor. The telephone survey shows that 61% of the respondents own their own homes (38% are renters),⁶ including mobile homes. This rate is relatively high compared to the rate in states where large numbers of the poor are concentrated in urban areas. The Maine poor population is also relatively less transient. Fifty nine-percent of the telephone survey respondents have lived at their current address for six or more years.

The housing in which the poor live, whether owned or rented, is more likely to be substandard. According to the State Planning Office study, Maine had the greatest proportion of older housing stock in the country, indicating a greater need for repair, rehabilitation and weatherization; the poor lived in the worst of this housing. Twelve percent the poor lived in housing without complete bathroom facilities.

Data from 1980 indicate that nearly twice as many poor as non-poor live in mobile homes or multifamily housing. Almost 57% of the telephone survey respondents live in single family homes; 14% live in mobile homes; 26% live in apartments. Fourteen percent live in publicly-supported housing.

- * Educational levels of the poor are significantly lower than those of the non-poor.

Among Maine householders below age 65 in the 1980 Census, 56.2% of those below the poverty level had completed high school, compared to 75.6% of those above the poverty level. The high school drop-out rate was 8.3% among these poor youth compared to 3.9% among non-poor youth.

Nearly one-third of the heads of the Maine households responding to the telephone survey had not completed high school. Forty-six percent had finished high school or technical school and 12% had some college education.

⁶These data compare to 56% home ownership among households with incomes under \$10,000 in a 1989 survey by the Maine State Housing Authority. In that same survey, 65% of households with income between \$10,000 and \$20,000 were homeowners. An Overview of Maine Housing. Maine State Housing Authority, 1989. These comparable results suggest the reasonable representativeness of the telephone survey sample.

Table B-1

GEOGRAPHIC DISTRIBUTION OF COMPLETED TELEPHONE INTERVIEWS

<u>County</u>	<u>Number of Completed Interviews</u>	<u>% of Total Completed Interviews</u>
<u>Region A</u>		
Aroostook	64	12.3
Penobscot	45	8.6
Somerset	31	6.0
Washington	31	6.0
Oxford	27	5.2
Hancock	22	5.2
Waldo	18	4.2
Franklin	14	3.5
Piscataquis	14	2.7
<u>Region B</u>		
Androscoggin	68	13.1
Cumberland	49	9.4
York	48	9.2
Kennebec	38	7.3
Knox	29	5.6
Lincoln	16	3.1
Sagadahoc	<u>7</u>	<u>1.3</u>
<u>Total Completed Interviews</u>	521	100.0

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