

## Citizen Support for the Courts: Getting Specific

Remarks of United States Senior Circuit Judge  
Frank M. Coffin at conference of Justices of  
the Supreme Courts of Maine, New Hampshire,  
and Vermont. Cape Elizabeth, Maine, May 25,  
1994.

### I. Introduction

Just as we are meeting at this juncture of the northeastern corner of the country and the vast and trackless Atlantic, so we are meeting at a critical juncture in the life of our courts. For nearly half a decade you have found yourselves in a deepening crisis. You are all too aware of the practice of the executive to consider the third branch as just another office or agency; the inherent tension with legislatures whose members, often overworked, underpaid, and understaffed, are subject to pressures on all fronts; and the impotence of the judiciary to persuade the other two branches to meet the justice needs of the state with balanced and adequate funding.

Although the trauma of the first shocks is history, we find ourselves in a time of subtle danger -- that your heroic coping with successive cuts over the years will imperceptibly result in a public acceptance of the judiciary's position as just another agency which must trim its operations to fit its allocation, not as an independent and coequal branch whose job it is to provide a ready and realistic access to quality justice for everyone.

If you were resigned to accept as inevitable fate that you must continue to fight your solitary battles, friendless, fundless, and feckless, I doubt that we would be here today. For sharing concerns, aspirations, and ideas with each other is the first step toward affirmative action. A second step is to realize that we are on the verge of a new era when we can no longer sit back and assume that decision makers in the executive and legislative branches will automatically act sensitively and responsibly to meet the needs of the courts. We shall be forced, in the interest of the branch we serve, to act in unfamiliar and even uncomfortable ways. In the past, we have always been reluctant to engage with the public, outside of the demands of particular cases. We are apprehensive of being misinterpreted, of being drawn into the pit of controversy, of suffering the loss of the appearance of impartiality, of somehow putting our independence at risk.

Despite these reticences, courts are already developing external agendas contemplating systematic relationships with the legislative and executive branches, with the media, and with the public. They are not merely reacting out of institutional self interest to remorseless pressures, but are seizing an inviting opportunity to educate not only the other branches but the citizenry at large on what is involved in having a society rooted in law and justice. In a sense they are meeting a long deferred obligation.

I propose that we have a look at what is going on in the country today and then think specifically about what options are open for an external agenda that will best suit your own needs and tastes and practicalities.

### I. Response to the ABA's "Call to Action"

The idea of a broad-based citizens' coalition, what I have called a new kind of CCC -- "Citizens Caring for Courts," is familiar to many in this room. I have sounded this theme in talks to the bars of New Hampshire and Maine and to the New England Bar Association in Newport,

and in my book, On Appeal. More importantly, the American Bar Association's Special Committee on Funding the Justice System, after commissioning the first national survey of all state justice systems, focused on seventeen "crisis points," and issued its "Call to Action" in August, 1992.

The report recognized that complete breakdown of the justice system could be forestalled only by achieving "adequate and balanced funding" of all parts of "a single, interrelated system." It called on the organized bar to serve as a catalyst to bring together groups having a stake in an effective justice system in a "Coalition for Justice." Strategies could include legislative advocacy, justice impact statements for proposed legislation, public information campaigns, funding formulas, and even litigation.

Following the "Call to Action," the Special Committee was consulted by a number of states about building a coalition. In its August, 1993, publication, "Saving Our system," it acknowledged "that such coalition-building was difficult." It resolved to try to spark further activity by a "jump start" National Conference on the Crisis in America's System of Justice in June of 1993. It commissioned a second national survey, found the justice system in many states "a neglected stepchild," and renewed its call to action. Finally, in February, 1994, the Special Committee met again and considered updated information on fifteen states.

I have reviewed this material to see what actions have been taken that were relevant to your concerns. I found much interesting information, not merely about the status of the various systems, but about the efforts being made to attract public support.

The first thing we note is the variety of sponsorships of these efforts. They include the following: the Judicial Council, the Chief Justice, the Supreme Court as a body, the Governor, in one instance the Mayor of a large city, the Legislature, the Bar, and the State Justice Institute.

The second fact observed is that very specific targets of group activity were resorted to a greater number of times than the broader goal of support of the justice system. In ten states, committees and other groups had been formed to deal with the problem of indigent defense. In seven states, group activity centered on prison overcrowding, corrections generally, or crime. And in seven states the effort was aimed at internal court operations, ranging from planning to alternative sources of revenue, alternative dispute resolution, and race and gender discrimination.

For our purposes, the seven states with groups having broader goals hold the most interest. I shall mention them in some detail.

In California, not only has the Judicial Council formed a 40 person Executive and Legislative Action Network (ELAN), but, as of 1994, under Chief Justice Lucas (a member of the Special Committee), had formed a broad-based "Coalition for Justice," which "seeks non-partisan membership from law firms, businesses and interested individuals who will help advocate that the judiciary be treated as a co-equal and critical branch of the government."

In Indiana, the Indiana Justice Forum, "which lobbied on behalf of salary increases for judges in 1993, is composed of judges' associations, defense and plaintiffs' associations, the League of Women Voters and a wide variety of other groups."

In Maryland, the bar-initiated Baltimore City Community Coalition Against Substance Abuse, although directed toward a single goal, the investigation of drug abuse, deserves mention. Composed of a diverse group of community leaders, it has not only developed a plan for a treatment-based drug court, but, the "Saving Our Systems" report tells us, "has raised 50% of the funds needed for the court from state and federal sources, and is confident of securing the remaining funds needed soon."

In Massachusetts, the Supreme Judicial Court has created the Massachusetts Court

Reform Coalition, made up of representatives from the Massachusetts Taxpayers Foundation, the Massachusetts League of Women Voters, Common Cause, Massachusetts Citizens Action Group, the Massachusetts Bar Association, and several lawyers. It has asked the Special Committee for technical assistance.

In Missouri, the Mayor of St. Louis created the Ad Hoc Commission on Crime to report to a conference of neighborhood leaders. The courts, academia, police, corrections and parole agencies, public defender, and state legislators were represented on the commission.

South Carolina presents an instructive experience. The 1993 Survey reported, "The South Carolina Bar recently created a Task Force on Justice For All, which includes judges and members of the Bar. The task force is dedicated to finding alternative sources of funding for justice system programs." But in the updated survey for the February, 1994, meeting of the Special Committee, it was reported that the Task Force "has had some problems in gaining support from various judicial groups. Thus far, it seems as though little progress will be made unless there is support from a broad base of people. The Special Committee is being asked to assist the Task Force in developing a strategy to break the log jam and to get the Task Force back in focus."

Finally, and on a more positive note, in Texas, prompted by a State Bar study of inadequacy in court funding, the judiciary prepared a plan for systemwide improvement, and in 1989, before the ABA's "Call to Action," the Alliance for Judicial Funding was created. The "Saving Our Systems" survey reports:

Initially the non-profit, non-partisan organization focused on improving judges' salaries and promoting statewide salary uniformity. Once this was accomplished, the alliance successfully lobbied to obtain modernized equipment for courts, including essentials such as computers, photocopiers and fax machines.

The Alliance has established for the judiciary a unified, coordinated presence in the legislative budget arena, and around the state. The alliance draws on the resources and expertise of its board members to help ensure that the judiciary maintains a voice in the highly politicized process of resource allocation.

In preparation for our session today, I recently talked with Robert Spangenberg, whose Spangenberg Group staffs the work of the Special Committee and prepares the nationwide surveys. For the next eight or ten weeks, his Group will be updating all the state reports for an August, 1994, meeting of the Special Committee. Then, in September of 1995, there will be a nationwide conference on Funding of the Courts, funded by the State Justice Institute, and sponsored by the National Center of State Courts and the American Bar Association. So we can be sure that both information and efforts in the area of forming citizen coalitions will be increasing.

## II. Older Court Reform - Citizen Participation Efforts

After learning about the ABA Special Committee's work, I struck another ore-bearing vein, one that has been mined for nearly four decades. The impetus has not been adequate funding but the broad area of court reform. As Frances Zemans, the Executive Vice President of the American Judicature Society, put it to me, many citizens, particularly in the larger states, are concerned about the performance of courts. At the moment, they turn a deaf ear to talk of salaries and funding. They want to see court operations realigned to adopt the attitude of service providers. If progress is made on this front, long run public support will follow.

The paradigm of this model is The Fund for Modern Courts in New York. I talked and corresponded with Robert M. Kaufman, a prominent partner in the Proskauer law firm and longtime chair of the Fund. For forty years this privately financed research and information source has pursued the goals of taking politics out of selecting judges, streamlining the complex maze of trial courts, upgrading court facilities, and securing adequate funding. It has developed a system of volunteer court monitoring; in 1993 600 volunteers monitored and reported on courts in 15 counties. It has produced seminal reports on the Housing Court and Family Court Facilities. It has a legislative action affiliate, The Committee for Modern Courts, working on merit selection of judges, simplifying the network of 13 different kinds of courts, adequate funding, and improvements in jury service. It has issued a "how to do it" "Citizens' Court Projects Manual" to share experience gained in court reform efforts and to stimulate the involvement of concerned citizens. Interestingly, judges are not on the boards of directors of either organization.

New York is not alone in this kind of enterprise. A similar organization is Pennsylvanians for Modern Courts, formed in 1988 to implement recommended court reforms. These two organizations have similar goals and confer with each other. In the District of Columbia, there is the Council for Court Excellence. Judges are included on its board. In Louisiana there is the Louisiana Organization for Judicial Excellence. Mr. Kaufman gave me the names and addresses of the Executive Directors of these organizations. Although they do not have the broader base of the justice system coalitions envisaged by the ABA's Special Committee, they are doing important work and have good track records.

### III. The Next Step

It seems to me that, with all of this history and experimentation, the time has come for us to try to move from a level of comfortable generality and flesh out what steps should be taken to reduce the concept of a Coalition for Justice to possible action. We can profit from what has gone before. Let me try to catalogue the issues to be considered.

A. Objectives. To begin the process of further thinking, I suggest that there be discussion of objectives. At the moment, these appear to me as leading candidates:

- a network of groups and individuals that will be listened to by the chief executive and lawmakers;
- action goals based on thorough knowledge of the legitimate needs of the courts;
- and people motivated to have a continuity of involvement;
- without threatening the dignity and independence of the judiciary.

B. Focus. Which model is most feasible, the new type of coalition sparked by the ABA's Special Committee's Call to Action, or the older court reform model? My feeling is that the distrust of and unhappiness with courts that may be acute in the larger states does not prevail in your states. I would think that you would find enough organizations and citizens who care about your continued ability to perform with work of quality to work with you without having a prefixed reform agenda. With the development of a concerned community of citizens, there would obviously be opportunities for the flow of ideas in both directions.

C. Scope. Should any effort be confined to the courts or should it embrace all parts of the justice system, including the prosecution, defense of the indigent, corrections, and probation and parole? There are advantages in the comprehensive approach but also difficulties in taking on too much. You will have the best judgment on this issue.

D. Level of effort. Should the "coalition" be regional? state? smaller than state? I suspect that the most practical level for this group to consider would be each state. Indeed, one

great advantage all of you share is that your state is small enough for you to know possible groups and leaders, to know what will work and what won't. You are three interesting laboratories. This does not rule out later regional collaboration and sharing of experiences.

E. Sponsorship. Under whose auspices should the organization be founded?

1. Judiciary? As we have seen, Chief Justices, Supreme Courts, and Judicial Councils have all encouraged and stimulated the Bar and others. But it is doubtful that any citizens' group should be actually led by the judiciary.

2. Bar Association? It would be a natural activity, and one within its aspiration (Maine Bar President Paul Chaiken has put the support of the court system high in his agenda.) But the public perception might see this as solely self interest. Moreover, the concept of the bar as catalyst would seem to accord the Bar ample room for its energies, talents, and contacts.

3. A governmental group such as a commission, representing all three branches plus the public? This would have the benefit of a governmental endorsement, but query whether a legislature would create a body charged with lobbying for more funds. And also query whether this would be truly independent. There is, however, something to be said for attracting some key legislators, for, as Ms. Zemans told me, making them "insiders" in the task of supporting the courts is desirable.

4. A foundation? While foundations would be valuable in developing the idea, it is open to question whether a foundation could properly be an operating vehicle.

5. Law schools? They should be participants but query if they should have the leadership role.

6. A non-governmental group of civic leaders and/or broadly based organizations? As the South Carolina example illustrates, such a group may be difficult to convene and direct. But in the long run, it is likely to be most effective.

F. Membership.

1. Should it be a membership organization?

2. If not, what?

3. If members, should it be solely organizations? solely individuals? or both?

4. Possible participants: industry, labor, agriculture, fisheries, higher education, elementary/secondary education, media, League of Women Voters, Common Cause, and other public interest groups, chambers of commerce, churches, ethnic and racial minorities, elderly, poor, homeless, disabled, and of course the bar association and law schools, and judges.

G. Modus operandi.

1. Should there be continuity of organization and operations, or ad hoc? If continuity, how avoid burdensome overhead and bureaucracy? If ad hoc, how assure institutional sensitivity, sophistication, and memory?

2. What kind of governance for the group? How assure a sense of participation? How keep up interest and flow of information? Would an annual meeting of the group with the judiciary be a useful forum? or only on emergencies? Should there be interim meetings with judges? legislators? the executive branch?

3. How avoid interference with values and judgments of the judiciary?

4. How should action issues be chosen?

5. What kinds of action could the organization take? Resolutions? Petitions? Letters? Press conferences and releases? Testimony? Large public meetings? Meetings with legislative and executive committees? One-on-one lobbying? Other?

H. Funding.

1. Assessments and special individual contributions.
2. Foundation support.
3. A mixture. An example is The Fund for Modern Courts in New York. Its budget is around \$280,000 a year. This comes from a half dozen foundations (including IOLTA), some 50 law firms, 32 corporations, and 120 individuals. With such a broad base of support, it is obvious that no one is called on for very large contributions.

I. How to Begin. If these are the kinds of questions that should be explored, who should launch the effort? How should it be conducted? These are questions as to which you have your own experience and instincts to guide you. Here are some preliminary thoughts;

1. My thought is that there be, first, some informal discussions among judges, with members of the bar, and perhaps with members of the Judicial Council or similar advisory group. Perhaps the Chief Justices of some of the states which have launched justice coalitions, or their representative, could furnish helpful comments on their experience.

2. Then, after ideas have jelled a bit, a paper should be prepared describing what is to be explored and for what purpose. It should contain a specific proposal for one or a series of workshops and a list of desired participants.

3. The proposal could then be presented to the organization which would issue the invitations. This could be a judicial council, an ad hoc citizens' committee appointed by the court, or the court itself.

4. Funding for the workshops ought not involve a large amount of money. It might be attractive to the State Justice Institute, particularly if there were considerable overlap in the planning for each state workshop and some mechanism for sharing and exchanging views. But I do not see this kind of workshop as expensive. When I spoke with Robert Spangenberg, he was most encouraging and supportive. While neither his group nor the Special Committee could pay for travel or participants, he said that his office stood ready to provide information, even help staff such a workshop, and prepare papers for discussion. In this way you could have the benefit of the accumulating experience of the other states.

Most participants would probably be able and willing to pay for their travel and lodging. The relatively small amounts needed for meeting space, logistical support, and publication would seem to me not to present an insuperable problem, even in our impecunious states. The respective state bar foundations might well be interested.

\* \* \*

The end result would be either a proposal for a specific kind of citizen surrogate for the courts, with details, based on all the currently available experience and advice as to organization, membership, operational methods, and funding, or, on the contrary, a measured judgment that a citizen effort of this kind would just not flourish at this time in this world of competing demands on the time and energy of individuals and organizations. In the former event, a giant step toward ensuring the continued independence and excellence of the courts would have been taken. I frankly would not like to contemplate the latter.