

Citizens as Friends of Court

Keynote Address of Frank M. Coffin
U.S. Senior Circuit Judge
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Law Day is a unique kind of holiday. Of recent invention, it offers no opportunity to skip work or school. Nor is it an occasion for feasting, for celebrating a seasonal passage, patriotic events, national heroes, religious or ethnic fealty, mothers, fathers, love, or labor. It celebrates a function of constitutional, democratic government. A vital function.

But "celebration" generally implies evidencing pride in achievement and rejoicing. We meet today in circumstances not too unlike those that faced Lincoln at Gettysburg. There was much to mourn, little to celebrate. The only appropriate response for the living was "to be dedicated here to the unfinished work which they who fought here have thus far so nobly advanced."

While, as we shall see, we have something to celebrate, and much to be dedicated to, we have cause for both grieving and grievance. We first mourn the recent death of Senator Muskie. He not only bestrode our state and nation, larger than life, but made a place in these last busy years of his spectacular life for taking the leadership in this state in addressing what he called "the relationship between poverty and access to justice." As Chair of the Maine Commission on Legal Needs, he was instrumental in planning and executing the lengthy, in depth study of the legal needs of the poor and near poor in this state, attended public hearings and Commission meetings, and involved himself deeply in the deliberations, drafting, and dissemination of the final report.

Not only this, but, year after year, he would journey from Washington to Augusta to be the linchpin of Law Day ceremonies. He was to have been our speaker today. Although he had scheduled his leg operation, he looked forward eagerly to coming here and once again sounding the trumpet. This is probably the first and perhaps the last engagement he made that death canceled.

But he left us a legacy. Not one of wealth, goods, or privilege. But one of opportunity and obligation. Were he on this platform today, he would not be rejoicing in a job well done. It was a job superbly well done, but it has been undone. The Muskie Commission documented the hard fact that one fifth of our people, some 230,000, live at no higher an economic level than 125 percent of poverty, some 85,000 households. Three quarters of the legal needs of these people were unmet; the Commission estimated that no fewer than 232 salaried legal services attorneys would be needed to fill all needs. Ed Muskie ended his Chairman's Preface, on Law Day six years ago, by saying that "Our most basic recommendation is addressed to all members of society. . . . It speaks to the absolute necessity of directing greatly increased funds to the provision of civil legal services for the poor."

These past six years have seen not only the blasting of any such hope, but the drastic withdrawal of funding support, with Congress not being content with sharply curtailing the scope of public legal aid but threatening to end all federally financed legal assistance. Pine Tree Legal Assistance, our nationally respected, 27 year old agency, has had to slash its staff to the point where it has fewer than seven attorneys providing basic services throughout the state -- a ratio of

one attorney to 34,000 eligible clients, with less than half the staffing of even smaller states like New Hampshire and Vermont. Legal Services for the Elderly has similarly seen its funding sharply reduced, to the point where only three full time attorneys plus its "hotline" operators serve over 90,000 socially and economically needy elders.

This marks an unprecedented retreat from a national responsibility for providing what in reality is a safety net for those who have fallen through safety nets supposedly provided by programs of welfare, AFDC, social security, Medicaid, fuel assistance, housing, and child support decrees. Yet it has taken place with little or no concern on the part of the public; perhaps the ship is rocking so violently that one just doesn't notice the loss of lifeboats. Nor has the state moved to cushion the shock. We could rouse no state interest in a pitifully small emergency request for \$250,000 to help sustain Pine Tree and Legal Services for the Elderly.

Legal aid programs in all fifty states have been affected by this withdrawal. But in Maine not only have we seen the field of legal assistance for the poor so abandoned, but the blow falls on us with greater impact because of years of not so benign neglect of our entire supporting court system. We do not like to hear unpleasant truths about our state. We are justly proud of so much about us. But we cannot be anything but humbled by the fact that, as the National Center for State Courts reported in 1994, Maine's court system "has probably been the most hard-hit of any court system in the United States."

Consider these facts. We have the smallest number of trial judges, relative to our population, of any state (1 judge for 21,000 people compared to a national average of 1 for 9,200). Our trial judges handle two and one half times the national average of civil and criminal cases (1 judge for 3000 cases compared to 1 for 1,200 nationally). This in the face of exploding case loads: paternity cases, in the effort to reduce welfare costs, rose from 1008 in 1990 to 7000 in 1996; domestic abuse cases rose from 1500 a year ten years ago to 5500 by 1993. Staff for the entire court system is below the level of ten years ago. Judicial pay in real terms has declined 16.4 percent since 1989. And total expenditures for our courts amounts to \$18.99 per capita, compared to a national average of \$31.18 and levels fifty percent higher in our sister states of Vermont (\$27 per capita) and New Hampshire (\$29 per capita).

As is true of the national picture, this unconscious withering-on-the-vine treatment of our state court system has gone basically unnoticed by our press and public. In short, what we have seen nationally is a massive, intended demolition of structures specifically designed to help the poor gain access to our courts. What we have seen at home is a surreptitious, unintended weakening of the very structure to which access is so desperately sought. Whether deliberate or not, both phenomena represent a shift in values in which justice is no longer a priority of our society. This shift cannot continue, without changing us fundamentally from the kind of country we have labored to be for the past two centuries, which offers equality before the law to all, to a country where that offer is restricted to the more advantaged.

Now it is time for me to report better news. Not exactly light at the end of the tunnel, but some life-saving illumination as we continue to probe our way through that tunnel. As funding has been withdrawn, we have discovered a new resource -- people. People with ideas, with energy, with commitment. This is not a complete substitute but it will have to do for the time being.

First of all, people professionally within the court system, bench and bar, have been energized. Foreseeing the crisis, Chief Justice Wathen, joined by the Maine Bar Foundation and the Maine Bar Association, held a Fall Forum last October for some 65 lawyers and judges and

legal service providers. Out of this tremendously fruitful gathering emerged, not a plan, but a structure for coping with the immediate emergency and with longer range planning. This includes a Justice Action Group, which I chair, supported by a broadly representative Legal Services Response Team, and some seven task forces which focus on all parts of the legal services spectrum, from efforts by the bar and improvement of delivery and coordination of existing resources, to developing new structures and involving non-lawyers and accomplishing changes in substantive laws and ethical rules that such involvement would make necessary.

Already there has been created, with the vital support of the Maine Bar Foundation, the Equal Justice Project, Inc. Depending on its being able to secure private funding, this will carry on the invaluable function, which Pine Tree may no longer be allowed to perform, of working with and advocating before both the executive and the legislative branches on issues affecting the legal problems of the poor. There is also under way an organized effort to interest experienced lawyers throughout the state in volunteering their services and in working cooperatively in significant constitution and statute-based class action litigation, which federally funded agencies will be barred from undertaking.

All of this builds upon earlier initiatives within the court system: judge-chaired teams charged with making forms and procedures more user friendly to pro se litigants generally and, more specifically, to those seeking protection from child abuse and spousal harassment; a pilot project testing the potential of court-ordered alternative dispute resolution, through the assistance of some 100 trained volunteer attorneys in four counties; and the heralded mediation program in which parties to divorce proceedings involving children are required to invoke the services of one of the 45 dedicated mediators. I must also mention the contribution of all the Maine lawyers who accept appointments to represent indigent criminal defendants at rates of compensation that may barely, if at all, exceed office overhead. And of course there is the model Volunteer Lawyers Program, in which volunteer lawyers for the day man the telephone lines and match needy litigants with willing lawyers throughout the state.

So professionals within the system are at work. But our people resource does not stop there. In January, the Chief Justice, in an address to the Bangor Rotary Club, announced a new emphasis on "citizen understanding and involvement. . . . using citizens to help neighbors who can't afford trained counsel." A new vehicle for exploring this vast field is the Dirigo Project. It is the happy result of a collaboration between me and Chief Justice Wathen, resulting in a grant from the Culpeper Foundation to the Governance Institute, which I serve as a founding director. The two year grant is for the express purpose of pursuing the goals of citizen involvement in and support of the Maine court system. As most of you know. Buzz Fitzgerald, former CEO of the Bath Iron Works, is the chair. Assisted by a committee of eleven other distinguished citizens, he has already successfully launched this newest vessel, not a destroyer, but a cruiser deploying guided volunteer missiles to widen access to courts.

This Committee will be looking at existing areas of citizen involvement in court related matters, such as the Kennebec-Somerset Legal Secretaries Association, whose members contribute their time to serve as courthouse information centers for unrepresented users; the CASA volunteers, who undertake guardianship duties for youths under court supervision; the Community Dispute Resolution Center's Victim Offender Mediation program, which has shown that juvenile offenders participating in this program have lower recidivism rates than non-participants; and others, such as the Maine Coalition for the Homeless and the Maine Association of Interdependent Neighborhoods, who are represented on today's program.

But Dirigo will also explore other resources, from law students, secretaries, and para-

legals to retired lawyers and senior citizens. The major theme will be: what kinds of tasks can be performed in a courthouse, or related to what goes on in court, by trained and committed non-professionals that would meet a felt need by users of the justice system, whether they be present or possible litigants, groups representing members frequently requiring help from the courts, candidates for mediation, prospective or actual witnesses or jurors, those foreseeing time spent in court with a need for day care service, teachers, students, or just curious citizens,

The involvement of volunteers need not stop with serving those who use the courts. There may well be a place for volunteer citizens to assist permanent court staff in some administrative functions, in conducting courthouse tours and other community outreach activities, in polling court users, in "court watching." in planning periodic court operations and needs conferences.

So this Law Day is a different one. We are trying to take the "awe" out of Law. We look not so much to law as master but as servant. In lieu of distance and aloofness, we stress participation. In lieu of mystery, openness.

In a sense we are going way back to the roots. Way back in the 13th century, there was king of France, Louis IX, whose reign has since been looked on as a golden age, and who was so good a man that people marvelled that he should be so good a king. The ancient chronicler Joinville reported, "Ofttimes he would go, after Mass, and seat himself against a tree in the wood of Vincennes, and make us sit around him. And all those who had any cause in hand came and spoke to him without hindrance or usher."

Without hindrance or usher. That is the kind of thing we are interested in creating. We see this as not only a clear and present way to help those who need the court system and are not able to afford professional help. But we see also that the last best hope for the improving health and efficacy of our court system lies with citizens whose involvement with user friendly courts has both educated and motivated them to be, in the most meaningful sense, amici curiae, friends of court.