

"What Can We Do?"

Address of U.S. Senior Circuit Judge Frank M. Coffin
Annual Recognition Banquet
Kennebec-Somerset Legal Secretaries Association
Waterville, Maine, May 16, 1996

Tonight I want to approach the subject of recognition on two levels. First, I am here because of my profound appreciation of the services performed by this organization to the citizens and court system of Maine. Second, it is my solemn hope that other organizations will pay you the ultimate tribute, by seizing on your example and multiplying your work by adapting it to their communities. This means that I shall be telling you some things that you know better than I do, but my purpose is to reach a much wider audience.

First, let me sketch in a backdrop that puts your undertaking in perspective. This will help make clear the criticality of the work you are doing.

-- To begin, we are, hopefully, nearing the end of a period of massive undersupport of the Maine court system. Proclaimed in 1994 by the National Institute of State Courts as the hardest hit of all fifty state court systems, Maine has the smallest ratio of trial judges per population in the country and the largest caseload per judge -- two and one half times the national average. Judicial staff is smaller than it was ten years ago; judicial salaries in real terms have eroded over 16 percent in the past seven years; and total expenditures for our courts is not much more than half the national average and that of our sister states here in the northeast.

-- This persistent level of not-so-benign neglect exists at a time when domestic dispute litigation (divorce, custody, child support, child abuse, domestic violence, and paternity cases) is literally exploding. Paternity cases, in an effort to reduce welfare costs, have multiplied seven times, from 1008 in 1990 to 7000 in 1996. Domestic abuse cases have almost quadrupled, rising from 1500 in 1986 to 5500 by 1993. And - a fact heavily impacting on the time of judges - in two thirds of all divorce cases, one party is not represented by an attorney; in one half the cases, neither party has an attorney.

-- To exacerbate this increasing gap between institutional court supply and demand, federal funding has been drastically slashed for legal services to the poor. The national Legal Services Corporation has just emerged as the worst victim of the 1966 budget battle in Congress, and its survival in the future is wholly up in the air. The state is not only unable to take up the slack but is even unwilling to advance modest amounts to help cushion the shock for Pine Tree Legal Assistance and Legal Services for the elderly.

-- But there is some light on the horizon. Imaginatively using federal funds newly found to combat child abuse, the Department of Human Resources is financing two new judges, seventeen new caseworkers, two and one half new prosecutors, a ten percent raise for foster parents, and family centers for supervised visits of parents with their abused children.

-- This will help clear dockets but, as Chief Justice Wathen said, is "a long way still from a full-fledged family court system." Yet it offers both hope and stimulation for a renewed thrust toward the optimum use of volunteers. Writing recently in the Washington Post, Robert Kuttner, in calling for the revival of the idea of "civil society," observed that "The most dynamic private civic institutions are often allies of public ones. PTAs are adjuncts of the quintessential local public institution, the public school."

In response to the threat to our own civil society inherent in the depressed level of support of Maine's courts and the need to create a broader and deeper public understanding of court needs through citizen participation in court-related functions, Chief Justice Wathen and I were fortunate to obtain a foundation grant to fund a two year experiment in Maine, in which we could explore specific opportunities for volunteer "friends of the court." Our project, funded by the Culpeper Foundation through the Governance Institute, with which I am associated, bears the upbeat "I lead" state motto, "The Dirigo Project." It is headed by the highly respected Buzz Fitzgerald, recently retired Chief Executive Officer of the Bath Iron Works, who chairs a marvelous committee. Your faithful and wise advisor, Bob Marden, has already appeared before a Dirigo workshop, obviously impressing all the participants with your vision and proven achievement. It is the kind of initiative which we had hoped to encourage.

For yours is a story fit for these trying times. It is inspiring from the very beginning when, in 1993 you consulted Bob Marden, seeking a family law project. Realizing that Pine Tree Legal Assistance was being forced to cut its services, you asked the simple question, "What can we do?" Then, early in 1994 you began by responding to another simple question, "What is needed to get documents into court?" Concentrating on pro se litigants in divorce cases, cases involving parental rights, and post-judgment changes of custody, visitation, and child support, you also find yourselves dealing with family violence and the increasing number of housing cases, where you hear the plaintive cry, "Where do I go?"

You do not give legal advice and clearly tell your "clients" that you do not; you usually do not, unless requested by your firms, record last names. You have remained singularly free from any real or perceived problem of legal ethics. For over two years you have served over one hundred and sixty unrepresented persons by supplying teams of two of your number on the mornings of the first and third Wednesday of the month in Waterville District Court. Your clientele is advised of your existence by a bulletin board notice, which gives your office hours and a sign-up sheet. You then often hold an initial session, telling your litigants what information they will need to fill out the necessary forms. They set about collecting the information and return to you later for help in completing the forms. You take notes and give them back to your clients, keeping track only of basic statistics. You also give them information about options open to them, choices to be made, and resources available, such as the existing providers of legal and other services.

When I first learned of your activities, I thought they were indeed helpful and admirable. But I wondered what was so important about helping people with forms. If you can't give legal advice, how can you be of help? Then one day, at our Dirigo workshop, Bob Marden distributed two forms, one for a person without children seeking a divorce, and one for a person with children. Well, the roof fell in and I could see the point. To say this was an eye-opener is an understatement. Our court system has made valiant efforts to enable litigants to thread their way through the court processes in divorce cases by providing these forms. And a team within the court system on pro se divorces is hard at work making them more understandable. But at best they are daunting challenges.

If your divorce does not involve children, you have only eleven pages of forms; if there are children, you are blessed with nineteen pages. In the former case, you have to fill out a complaint, a summons and request for temporary injunction, and see that proper acknowledgement of service is filed. Then a financial statement, a federal affidavit, and possibly an application to proceed in forma pauperis. If children are involved, you add a child support affidavit, a child support worksheet, and a statement concerning public assistance.

In the course of this papered public way there are many potholes for the unwary, to say nothing of the illiterate, the poorly educated, the seriously disadvantaged. To begin, you may readily conclude that you are the "plaintiff" but you may not have the ghost of an idea of whether you are "in forma pauperis." As for the basic document, the complaint, Nan Heald of Pine Tree recently told of the judge who had to tell a litigant that she was not in court, that she had not served a copy of her complaint on her spouse. The frustrated litigant replied, "But your honor we don't have a complaint; we have an agreement."

Until very recently, and perhaps the new forms don't yet reflect the change, the plaintiff had to swear that there was "no collusion" between plaintiff and defendant. I wonder how many pro se litigants read this as "no collision." Another quaint requirement until the axe recently fell, was this statement, winding up the federal affidavit, "And further represents the Affiant under Oath that the facts showing that venue was properly laid at the place where this action was brought are as follows:" If the poor pro se leaped the first hurdle of "affiant," he met the higher hurdle of "venue," and if he leaped that, he or she still had to figure out what facts the court had in mind. On the average, I would say that one would have to have finished at least one year of law school to handle this.

Wholly apart from terminology, you have helped people by saying what was involved in mediation and how it worked, and how to choose between getting a deputy sheriff to serve the complaint and summons and getting one's spouse to acknowledge receipt. And when your client came to the financial statement, you guided your charge through seven kinds of assets (which required book and page of any Registry of Deeds real estate record, the dates of acquisition, and estimates of current value, not replacement costs).

Of course your impoverished clients might not be concerned with IRAs or Keoghs, but, more and more these days, you are seeing litigants with property who come to court, being unable or unwilling to pay a lawyer. And both kinds of court users will have to account for twelve categories of income, ten varieties of wage deductions, and some thirty five kinds of expenditures. This burden is doubled in a case involving children where the child support affidavit asks for relevant income, property, and expenses. And the child support worksheet must be explained, its guidelines ranging from \$16 a week as the basic child support entitlement for one child whose parents' combined yearly income is \$6,000 to \$257 for a child whose parents' income is \$126,600.

To shepherd poor, worried, and probably unlettered people through this maze is a concrete example of making access to justice possible. You have done this without cost except to your law firms who have so generously made you available. Both you and your firms should be proud of what is most certainly unique in this state and probably unique in the nation. You have without fanfare put your expertise in family law to concrete use to the specific benefit of your clients, to the general benefit of restored trust in our system, and to the profound satisfaction of the harried district judge, saving her hundreds of precious hours. Judge Rae Ann French, who has seen you through these past two years, used these words in describing to me how she felt: "Dynamite. Well organized. Very professional. A credit to their vocation."

The big challenge now is not yours. It is for the rest of us, and particularly for those communities in which family law traffic is heavy and where there are enough law firms with knowledgeable secretaries, legal assistants, and paralegals like you to maintain a schedule of court office hours.

Obviously, studies must be made of such likely areas and the willingness of secretaries' associations and law firms to participate. In areas where a Pine Tree lawyer is available,

volunteers would have a ready resource at hand. In other areas, groups would have to start from scratch as you have done. The obvious opportunities for a synergistic law firm-secretaries' effort lie in the urbanized southern part of the state. An overall look at district court statistics for fiscal year 1995 for filings for divorce, protection from harassment, and "other family matters" reveals the following list of communities with the heaviest caseloads in these categories:

Portland	2,075
Lewiston	1,108
Bangor	974
Waterville/ Skowhegan	883
Augusta	689
Bath/ Brunswick	675
Belfast/ Rockland	695
Springvale	607
Biddeford	678
Ellsworth/ Bar Harbor	524

All, or virtually all, of these communities boast a fairly sizeable bar with, one must assume, considerable competence in family law matters. The more rural, scattered populations in the north pose more of a problem. But there exist clusters of communities which could be served by "friends in court" on a rotation basis. Possible candidates would be Caribou, Fort Kent, Van Buren, and Madawaska with a 1995 total of 345 cases of the categories we have been discussing (District 1); Houlton and Presque Isle with 404 cases (District 2); and Lincoln, Millinocket, and Dover-Foxcroft with 423 cases (District 13). Here, if there are not enough firms or secretaries experienced in family law, the task would involve painstaking recruiting of retired attorneys, secretaries, paralegals, former CASA volunteers, or totally inexperienced volunteers and providing them with both initial training and sustained support.

And, should more and more communities rally to this cause, there will be a need to provide continuing education in this always changing arena, via an ongoing network involving written manuals, videos, newsletter, workshops, and applications of new technology such as a "Helpline." Some centripetal catalytic, coordinating, encouraging entity will be needed. I have no doubt that, if enough people come to know what a small band of dedicated, practical, modest people have done on their own, a way will be found.

Your achievements have opened our eyes to an immense potential. Let us now ask the same question you posed to yourselves three years ago: What can we do?