

"Neither Trick nor Treat"  
Keynote Address  
U.S. Senior Circuit Judge Frank M. Coffin  
Fall Forum II  
Civic Center, Augusta, Maine  
October 31, 1996

My job this morning is to put this Fall Forum II in perspective -- to refresh our memories as to why we are here, where we have traveled in the past year since Fall Forum I, and to make clear the special opportunities for the future of today's session. For those who are with us for the first time, this will help bring you up to speed. For those who have been with us since the creation, I hope these reflections will spark renewed pride and determination. For the basic lesson on this day of Halloween is that our fate has been neither treat nor trick, but a benign witch's brew of heart, grit, will, and skill.

First, the Why that brings us together. Over a year ago, when the foul scent of the evisceration of federally funded legal assistance for the indigent hung heavy in the air, our Chief Justice, the Maine State Bar Association, and the Maine Bar Foundation responded by calling the first Fall Forum. In his remarks, Chief Justice Wathen pithily set the stage:

Our problem can be simply stated: Do the drastic changes in federal funding for legal services mean that Maine has to ration justice and abandon its goal of providing equal justice for its most vulnerable citizens? I don't know what our solution is going to be, that is what you are here for, but I do know that in Maine we can only answer that question one way -- "Not by a damn sight."

I regret having to say that the crisis today remains alive and well. Pine Tree Legal Services has seen its FY 1996 budget slashed and its complement of attorneys reduced from 27 to 6 to serve our indigent population of 230,000, a ratio of one lawyer for 38,000 persons, clearly the lowest in all New England. Legal Services for the Elderly has similarly been cut, and its staff reduced to three attorneys, with a ratio of one attorney to 20,000 eligible clients. And the Law School's Cumberland Legal Aid Clinic has also seen its funding eroded. Adding insult to injury, the Congress has barred federally funded agencies from advocating before legislators, advising administrative agencies, undertaking class actions or any kind of fee generating case, and representing immigrants.

On September 30, on the eve of the new fiscal year, the President signed an omnibus appropriations bill which included \$283 million for the Legal Services Corporation, the source of most of our federal funding. This is essentially flat funding, particularly when inflation is considered, being only \$5 million more than the previous year. Even so, the outcome is far better than was once feared, for not so many months ago the specter of zero funding in the House of Representatives was chillingly real. However, all but one of the shackling restrictions have been kept. You will be intrigued to know the story behind the removal of the ban against assisting alien victims of domestic violence. In California an immigrant woman was stalked by her former lover; unable to get legal aid help for a restraining order, she went by herself to the courthouse and was there shot to death by the stalker. We now know what moves Congress to act: the violent deaths of those in need of legal assistance.

As for state funding, we struck out in an effort to include in a supplemental budget request the modest sum of \$250,000, which would have somewhat cushioned the shock for Pine Tree and Legal Services for the Elderly. Next Tuesday we shall all be asked to vote for

referendum Question 6, which would authorize an eleven million dollar bond issue to provide "access to capital" for small business and resource-oriented agricultural enterprises. This is laudable, but perhaps we may be forgiven if we think a few hundred thousand to provide "access to justice" for our most vulnerable human beings is not too much. But the worst may yet threaten, as Maine faces its towering deficit, largely caused by past tax reductions.

At this juncture, we can see no light at the end of either the federal or the state funding tunnel; all we can hope is that there will be a turn in both tunnels soon, with a glimmer of light visible.

So, given that depressing scenario, where have we been and what have we been doing? Our big league federal ball park has been largely shut down. Our minor league state ball park allows only a few games. So we have been playing a lot of sand lot ball. To begin, I have not seen a more seminal day than Fall Forum I. From that single session germinated a spread of ideas which our facilitators grouped into categories. Out of this grouping came the structure we work under today: six task forces, who report to a Legal Services Response Team, which in turn reports to the Justice Action Group that I have the honor of chairing. Let me sketch their activities.

The earliest product was that of the New Structures Task Force, chaired by Professor Mike Mullane of the law school. Within three months of Fall Forum I, a proposal had been made, acted upon by the Maine Bar Foundation, partially financed, and staffed by two dedicated former Pine Tree personnel. This is the Equal Justice Project, organized to do what Pine Tree cannot do: to advocate before the legislature and administrative agencies. Already, working cooperatively with agencies, it has been instrumental in enabling child support payments to pass through directly to needy families rather than be diverted to the federal government, in devising a formula to channel heating assistance money to those most in need, and in persuading the Department of Human Services to promulgate rules governing Medicaid managed care issues. Lying in wait are issues concerning legal immigrants, foster care, child support, and welfare reform.

Another branch of the Equal Justice Project is to promote and staff a network of lawyers willing to work on class action and "impact" cases. Thirty-nine veteran attorneys have already signed up. But I close this tribute to accomplishment by signaling that this splendid new enterprise is in dire need in the immediate future of supplemental funding to assure its continued existence. The bar and all groups interested in a more just society will find few such opportunities to realize such a big bang for the buck.

The Court & Administrative Reform and Bar Rules Task Force, formerly chaired by our departed friend Dean Wroth and now by William Devoe, has addressed fundamental issues concerning the playing field for increased efforts by volunteers. It has identified the following areas in need of changes by rule or statute to protect participants while ensuring adequate ethical standards: disclosure of scope of services to be rendered; avoidance of solicitation of pro ses; clarification of the concept of unauthorized practice; flexible standards of care to apply to lawyers providing only brief, single-shot service; and avoidance of conflicts of interest.

The Pro Bono Task Force, co-chaired by Douglas Chapman and William Harwood, has been concerned with enlisting players for the playing field. Beyond the loyal cadre of those in the Volunteer Lawyers Project, it seeks to expand the use of paralegals and legal secretaries. The most notable pioneer is the two-year-old project of the Kennebec-Somerset Legal Secretaries' Association, advised by Bob Marden, which sends its members to district court to help pro ses fill out complicated forms. The task force also hopes to create a civil lawyer of the day program

in Hancock County and elsewhere, and to create panels of attorneys to be available in eviction and foreclosure proceedings.

The Fourth task force on Coordination and Effective Delivery of Services within Existing Resources, chaired by Barry Mills, has identified these additional areas for action: expansion of training for attorneys and non-lawyers, development of a clearing house via the Internet to report on who is doing what, expansion of the presently sporadic reduced or sliding scale fee systems, and encouragement of lawyers and volunteers to travel to rural areas on a sustained basis. Still ahead lies a serious exploration of the feasibility of a centralized telephonic intake system for all in need of any legal service.

The Legislative Task Force, formerly chaired by Jill Duson, who was just succeeded by Charles Soltan, was active last winter in the abortive attempt to obtain some help in the supplemental budget. Its big challenge lies ahead, with even the existing level of state funding in jeopardy. The Fundraising Task Force, chaired by Susan Hunter, has tackled the thankless task of exploring the advantages and disadvantages of a combined, United Fund-like system. So far, the providers prefer to live with the ills they know than to flirt with unknown hazards.

I do have some better news to report. Joanne D'Arcangelo of the Maine Bar Foundation has alerted the bar through her September article in the Maine Bar Journal of the opportunity to encourage the 45 Maine banks which handle lawyers' trust accounts to consider raising the interest rate on such accounts. Here is a rare opportunity. Consider. In 1991 with only 70 percent of Maine attorneys participating, but with interest rates of 3-4 percent, IOLTA (Interest on Lawyers Trust Account Program) received \$712,000. In 1995, a smashing 91 percent of Maine attorneys participated -- one of the highest ratings in the country. Yet the income had slipped by 40 percent to \$445,000 because of a slide in interest rates. But some banks slid farther than others. A survey of the current rates paid by the 45 banks indicates that 21 banks pay from 1 to 2 percent; 20 pay from 2 to 3 percent; and four pay from 3 to 4 percent.

Does this look like rates are engraved in stone? I think not. Is there any room here for improvement by some? I think so. IOLTA funds could be increased by as much as one fourth or one third with minimum effort by the two thirds of the banks lagging behind the leaders. It seems to me that the Maine State Bar Association, so proud of its members' participation in IOLTA, has a heaven sent opportunity to appeal to the conscience, common sense, and enlightened self interest of the banking community.

So this past year has been a time of inventing a new entity, exploring in depth many avenues of legal assistance that do not depend on state or federal funding. In the course of this work we all became aware of a universe of which we had had only the dimmest of comprehension. And this brings me to my third point, the nature and purpose of Fall Forum II.

One of the new enterprises launched this past year has been the Dirigo project, aimed at increasing the use of volunteers in court related activities and the consequent developing of a community of citizens deeply interested in and knowledgeable about the needs, services, and ways of the Maine court system. As we began to explore areas of possible action, we found, like Robinson Crusoe, that someone had been there before us - Bob Marden's group, the CASA lay advocates and guardians ad litem for children enmeshed in court proceedings, and many others. This revelation gave us both great stimulation and encouragement, but also a growing concern that we had come to a point in this state where it was absolutely essential for everyone in the playing field to know better who else were in the game and what they were doing. A quiet revolution had been building; it was time to look closely at the guerrillas, see what they are doing, minimize overlap, and avoid duplication.

More than this, it seemed equally important that this existing, vital community be tapped for ideas as to how they could be helped and how they could help, and what needs to be done that is not being done or needs to be better done. And finally we see a need to develop ways of binding this community together, not in any repressive structural way but in ways that will encourage mutual stimulation, the exchange of experience, the generation of new ideas that are not floating in the stratosphere of abstraction but are down to earth, practical, and specific, and, not least, the according of recognition to citizenship as it is practiced at its best. Our hope is that the year ahead will see more concrete action in all areas on the part of both legal professionals and the vast army of citizen volunteers.

So, on Halloween, let us confess that it can be a treat to trick fate by Fall Forums just like this. May we all have a very good day.