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Court Re-form: The Maine Way

By Frank M. Coffin

This issue of *Maine Policy Review* features four articles reviewing recent developments in Maine court reform by active participants. It is my theme that something is happening in our current efforts to improve the justice system by way of changes in the roles of judges, lawyers, and litigants that reflects Maine civic culture at its best—a culture sparked by concern for justice for all, fueled by self-reliance, collaboration and initiative, led by imagination, and sustained by the persistent selfless commitment of many.

Reform in the Past

Court reform in Maine through the first half of the last century brings to mind the effort and time required to cause a great ocean liner to alter course. An example, in which I played the part of a rowboat trying to push, was the tortuous path leading to the abandonment of common law pleading and the adoption of new rules of procedure. In 1949, though still a law clerk to new United States District Judge John D. Clifford, Jr., I attended the mid-winter meeting of the Bar Association and made a motion to appoint a committee to look into the matter.

A committee of five was duly appointed, including me and four venerable leaders of the profession. We never met. The chair asked for written views. The prevailing sentiment was voiced by one of my elders as such: “It has taken me about thirty-five years to become acquainted with our state rules, and I fear that it would take me another thirty-five years to become familiar with the federal rules.” The committee report boldly recommended a “thorough-going and deliberate investigation” and disbanded.

Change finally happened a decade later, after a plea for action by Justice Sullivan and leadership from respected

Portland lawyer Israel Bernstein.

The lesson to be drawn from this was that for change to take place, it not only had to proceed with the greatest deliberation, but had to be led by the acknowledged leaders of the profession. And although in the ensuing decades the pace of change picked up, the reforms were mainly in substantive law and court procedure subjects that mattered a great deal to lawyers and judges. But, by and large, they did not penetrate the consciousness of the public, including litigants.

Current Reform Efforts

As will soon be obvious to the reader of these papers, court reform at the present differs dramatically from that in earlier eras, both in content and in style of effort. There are three major target areas on today’s reform screen: the reshaping of courts to deal with newly ascendant problems; the devising of procedures to fit current needs; and the creation of new modes of widening access to courts. The first field is the subject of Justice Jon Levy’s paper about drug court and of Justice David Kennedy’s and Director Wendy Rau’s paper concerning the Family Division of the Maine District Court. The second is the domain of Justice Nancy Mills, who discusses the procedural innovations of the Single Justice Assignment Project and its allied settlement conference. The third terrain, a broad one, is summarized by Calien Lewis in her review of heroic volunteer efforts in the last decade.

The Reshaping of Courts

The juvenile and adult drug courts and the Family Division both break away from traditional court practices. They share a more informal relationship between litigants and the court, a more hands-on and continuing role for the

judge, and close collaboration with non-judicial resource personnel. Each focuses on a different stage of court involvement, as befits the nature of the proceeding.

Drug court comes into play after an offender is sentenced. The judge, aided by a community resource team (case worker, probation officer, treatment provider, prosecutor, etc.), continues to play a leadership role through regularly scheduled sessions to review the offender's progress toward rehabilitation and to invoke accountability through rewards and sanctions.

Family Division, on the other hand, seeks early control of the progress of a case to maximize the chances of positive results. It features a case management system in which a case management officer holds a prompt hearing in a new family law action involving children, with the objectives of identifying issues, stabilizing family relations, meeting the needs of children, and setting the stage for mediation and parenting education.

We can predict further expansion of this expanded role concept for courts and judges. A drug court approach underlies a new pilot program in two court locations dealing with domestic violence. The Muskie Fellowship for Legal Services has recently published "A Voice for Low-Income Children," containing a probing analysis of the need for the funding, training, and utilization of guardians ad litem in not only child protection cases but in divorce and parental rights cases. And Chief Justice Saufley, in her first "State of the Judiciary" report, announced a new educational effort directed at attorneys representing parents in child protective proceedings. Three courthouses already have the equipment to enable a judge to hold a video hearing on an initial petition for protection in a domestic violence case.

"New Age" Procedures

Accompanying the above described reshaping of courts is, as the reader may have noticed, a different kind of in-court proceeding. However, impacting on the vast traffic of traditional cases, is another procedural reform that is far more significant than its simple label heralds. Indeed, Single Justice Assignment not only centralizes the management of a case in the hands of one judge, with all the advantages Justice Mills identifies, but it also sets the stage for increased resort to "settlement justices" to preside at conferences exploring settlement. Chief Justice Saufley also referred in her report to a new program mandating recourse to alternative dispute resolution prior to trial.

All of these measures strive for simplicity, manageability, and full exploration of possibilities for resolution of controversies without the delay and expense of full-blown litigation.

Access to Justice

The magnitude of current efforts to improve our justice system is demonstrated by Calien Lewis' summary of the support of access to courts, first declining, then ascending, since the Muskie Report on legal needs in 1990. The defining feature of these efforts has been the overwhelming and unstinting contribution of a wide variety of participants.

First comes the court itself. Former Chief Justice Wathen and now Chief Justice Saufley provide a deep personal as well as an institutional commitment. Judges at every level have done important work, both within the court structure and in the key coordinating mechanism, the Justice Action Group (JAG). My own five-year stint as chair, with U.S. Circuit Judge Kermit Lipez succeeding me, underscores a unique facet of our Maine enterprise, the united efforts of the judiciary, state and federal.

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Next come the providers, their officers, boards, employees, and volunteers. The original quartet, Pine Tree Legal Assistance, Legal Services for the Elderly, the Cumberland Legal Aid Clinic, and the Volunteer Lawyers Project, have been joined by the Equal Justice Project and Equal Justice Partners. Newcomers on the scene are the Immigration Legal Advocacy Project, and the Maine Civil Liberties Union's prison project. Despite slashed federal funding and the lack of state appropriations, the providers have

been enabled to survive through legislative permission to use increased civil filing fee funds and through generous action by Maine bankers in making available a higher percentage of interest on lawyers' trust accounts. Another notable action was that of the Levine Family Foundation, whose grant made possible, along with help from the Maine Bar Foundation, the hiring of an executive coordinator for the JAG.

as filling out forms. The Association of American University Women have managed a neutral and safe environment for the exchange of children in custody matters issuing from the West Bath District Court. And the statewide organization of Court Appointed Special Advocates has performed a heroic service in supplying sorely needed help in child protection cases.

financial resources during the past few years, the conclusion might be drawn that there is no need for additional funding. Sadly, this is not the case. The Maine court system is seriously underfunded. A grand total of fifty-seven judges at all levels to administer justice to over a million and a quarter people spread over territory half the size of New England means that all judges are working at or beyond what should be expected of them. The new approaches discussed here are, for judges, hands-on and labor intensive. And funding for the providers of legal services for the indigent has not begun to catch up with the needs identified by the Muskie Commission a dozen years ago.

The current profile of Maine court reform reveals the fullest reliance on self-help, initiative, use of volunteers, and collaboration among bench, bar, and legal service providers. The time is long overdue for the legislature to apply equal commitment to addressing and pursuing over time the priority needs of Maine's justice system. 🐟

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Lawyers themselves have been part of the general reform movement through their long-standing and impressive participation in the Volunteer Lawyers Project, the groundbreaking creation by twelve large Portland firms of the two Coffin fellowships in family law and, finally, the rule of court allowing lawyers to commit themselves to limited legal services, an "unbundling" that promises to significantly expand affordable legal services.

Litigants now have increased support in their efforts to represent themselves. Court forms have been simplified. A move is under way to supply courthouses with computers to assist litigants. Pine Tree Legal Assistance and Legal Services for the Elderly have developed invaluable self-help materials.

Non-lawyers have also joined in important undertakings. The Legal Secretaries' Associations in Waterville and Bangor contribute time each week to assist individuals at court in such matters

The Common Theme

The theme underlying all of these efforts has not been to abolish either doctrines of substantive law or established rules of procedure. It is rather to add to traditional court practices a different way for courts and judges to operate in order to deal most effectively with particular kinds of problems. That is why I have given the word "re-form" to this introductory paper; we are in the process of changing part of the roles, missions, and procedures of not only courts and judges, but also lawyers and litigants. The entire exercise is driven by a new awareness of the importance of making our justice system user-friendly. This necessarily requires a broadscale effort involving not merely the formal bench and bar, but users, providers, legislators, and many volunteers. Reform is no longer a closely held job for the insider. I would add this sobering caveat: There is a danger that, so much having been done with so few

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Prior to that Judge Coffin practiced law in Lewiston and Portland, was a

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