

Senator Hastings, Representative Nass, and members of this Honorable Committee:

It is a distinct honor to appear before you today. My name is Jon Levy and I am an Associate Justice of the Maine Supreme Judicial Court. This is the fourth consecutive year that I have appeared before you in my role as the Chair of the Maine Justice Action Group to talk about equal access to civil justice.

I have been a judge now for 17 years. That experience informs my belief that we must look at the concept of justice on more than one level. The first, most visible level is, of course the delivery of justice in individual cases. Regardless of the type of case, whether a family dispute or complex commercial litigation, a good judge will always assure that at least three things occur: First, that the procedure complies with the minimum requirements of due process; second, that the judge applies the right legal standards to the facts in order to reach a principled result; and third, that every party to the case, regardless of whether they are happy or unhappy with the result, leaves the experience knowing that they were heard, understood, and dealt with respectfully.

That is justice at the level of the individual case. But, if you zoom out and look at the bigger picture, there is another level of justice—the systemic level. Today, the greatest challenge we face in delivering systemic justice in Maine is in meeting the needs of the unprecedented number of people who go to court without a lawyer and without ever having spoken to a lawyer. As the law has grown more complex, the frequency with which people confront legal issues has also increased. Yet many people cannot afford a lawyer. In some of our dockets, as many as 3 out of 4 people appear without a lawyer. Chief Justice Leigh Saufley has described this as a crisis in our courts, and indeed, it is.

One way we have responded to this crisis is by being innovative in shaping the rules, processes and our forms so they are accessible to unrepresented people. Judges also have modified some of their approaches to better assure that the public understands what is happening in court. But no matter how user-friendly the process becomes, those changes alone can offer no assurance that unrepresented people will have the knowledge and judgment needed to make informed decisions, or the skill needed to present their positions. The fact is, uninformed and misinformed decisions by unrepresented people increase the complexity of cases and the time needed to resolve them, and reduce the likelihood that a judge or jury will receive the right evidence needed to reach a solid decision.

What is it like to be unrepresented? Imagine that you are at home and a deputy sheriff arrives at your door to serve you with a summons and

complaint from your next-door neighbor claiming that your house encroaches on her property, that she wants your house ordered moved immediately and the payment of money damages. Or perhaps it is a summons and complaint by your ex-spouse who alleges that you are a bad parent and requesting that a judge uproot your children and transfer their custody immediately. Receiving papers like that is, for many, the beginning of a period of anxiety and worry that may last many months or even years. But imagine how much worse that experience would be for you if you had to defend yourself on your own, without a lawyer. It's like crawling through a cave with a weak flashlight -- there's no way to know whether you'll ever find the right way out.

The wave of unrepresented people passing through Maine's courts affects everyone. The challenge it presents to our ability to deliver both "case-specific justice" and "systemic justice" is enormous. No matter how hard we work, we cannot defy the laws of nature: If we simply keep processing more and more unrepresented people through our courts, we will eventually reach a tipping point after which justice, as we understand it, will begin to vanish. As the famous judge Learned Hand said more than fifty years ago: "If we want to keep our democracy, there must be one commandment: Thou shall not ration justice!"

JAG's mission is to make sure that never happens. JAG is a coalition of the State and Federal courts, the University of Maine School of Law, major justice organizations, and Maine's six leading legal aid providers. JAG was founded in 1995 by the late Judge Frank Coffin and former Chief Justice Dan Wathen. As JAG's chair, I bring you both good news and some not so good news regarding the delivery of civil legal assistance in Maine.

First, some good news: Maine's largest legal aid programs – Pine Tree Legal Assistance, Legal Services for the Elderly, the Cumberland Legal Aid Clinic, Maine Equal Justice Partners, Immigrant Legal Advocacy Project, and the Volunteer Lawyers Project are, in my estimation, highly effective at what they do and, unlike in some other states, work collaboratively with each other to serve as many Mainers as possible. The providers are fully engaged in this issue, doing everything they can to target their services in the most effective ways.

There are many examples of this, but I'll share just one: Pine Tree's initiative to provide legal assistance to veterans and military families. As you may know, Pine Tree was selected to build a national website for military and veteran households with legal needs, and its "statesidelegal.org" was launched in 2010 at a Whitehouse event. In 2012, "statesidelegal" will be expanded to address the unique legal needs of women in the military. Pine Tree also received a grant from the VA to provide legal services to homeless/at risk veterans, in partnership with Preble Street Resource center;

a Maine Community Foundation grant to create Maine specific legal resources for veterans and current service members; and it is also undertaking a comprehensive legal needs assessment of Maine's veterans. This is just one example of the targeted approaches I described.

Turning to the not so good, or rather, terrible news: The rate of Maine residents living at or below 200% of the federal poverty level, which is the dividing line for eligibility for most of these legal assistance programs, has grown. Today, it is estimated that there are nearly half a million Maine residents living at or below this level, affecting nearly 200,000 Maine households. At the same time, financial support for legal aid in Maine has shrunk dramatically. In the past few years, every major funding source for legal aid in Maine has suffered decreases that range from 15 to 35%.

So, where are we today? Here is one measure that says it all. In 1990 the Maine Commission on Legal Needs found that Maine should have 287 full time equivalent legal services attorneys to meet the need as it existed then. At that time, the poverty rate in Maine was 10.8%. Today, the poverty rate in Maine is substantially worse at 12.9%. But today, there are only 42 full time equivalent legal services attorneys in Maine. By 2013, there will probably be even fewer.

With the need having grown, and the resources having shrunk, it is no wonder that there is a crisis of unrepresented people in Maine's courts.

Mindful of this State's budget woes, as in the past three years, I am not before you to day urging you to consider increased State support for civil legal services. Instead, like the providers, JAG itself has sought to approach the crisis through creative, cost-neutral initiatives.

I want to tell you about just a few of our more recent initiatives in addition to today's Access to Justice Day.

- With the support and input of JAG, the Maine Judicial Branch created the position of Access to Justice Coordinator. The courts recently hired attorney Hanna Sanders to fill this position. She will work to assure that the judiciary affords equal access to Maine's courts, focusing on the needs of those for whom a physical or mental disability, or language, creates a barrier to justice, as well as the needs of the unrepresented. The Judicial Branch established this position within its existing allotment of positions and with no new general fund dollars.

- JAG just sponsored its second bi-annual Access to Justice Symposium in conjunction with the MSBA winter meeting. The Symposium addressed the latest cutting edge approaches to meeting the needs of the unrepresented. In New York, for example, the Courts sponsor

an access to justice van that travels the State targeting locations, such as nursing homes, where people most desperately need to consult with an attorney.

- JAG also continues to develop the project we call the Collaboration – an effort to engage Maine’s public libraries as a portal for information and free pro bono advice for those seeking justice.
- JAG has just launched its Task Force on Outreach to the Private Sector, co-chaired by Federal Magistrate Judge John Rich and Kevin Gildart, a retired Vice President of Bath Iron Works. The Task Force is examining the connection between equal access to justice and the interests of Maine’s employers and workers. Judge Rich will tell you more about that project in a moment.
- Finally, at JAG’s urging, the Supreme Judicial Court has launched the Commission on the Katahdin Counsel Recognition Program, which is chaired by Portland Attorney Ralph Lancaster. The Commission is building a program to recognize private attorneys for their pro bono work. Why?
- First, the pro bono work of Maine lawyers is vital to maintaining justice in this state. Measured in dollars, the value of the pro bono work Maine lawyers provide is, by some estimates, greater than \$4 million dollars per year.
- At the same time, pro bono work is performed largely under the radar of the public, the business community, and Maine’s leaders.
- We know that Maine lawyers are among the most generous in the nation for their financial support for civil legal services, and we believe that they are also among the most generous in donating their time. Pro bono is a defining feature of Maine’s legal profession, and this is something worth celebrating.

The premise of the Katahdin Counsel Recognition Program is simple: Every Maine lawyer who performs fifty or more qualifying hours of pro bono service in a year will be designated and honored as a Katahdin Counsel by the SJC. There will be annual SJC recognition events in October of each year during national pro bono week. We intend to raise the profile of pro bono legal work in Maine, and, by so doing, increase the number of pro bono hours available to assist Maine’s people.

I would like to conclude with two thoughts. First, equal access to civil justice is something we must all care about. It is a non-partisan issue. Everyone has a stake in our civil justice system continuing to be effective in delivering justice.

Second, assuring equal access to civil justice is also the smart thing to do. It affects Maine's employers and workers. It affects our schools and hospitals. It can even mean the difference between life and death. As Chief Justice Leigh Saufley noted in her recent State of the Judiciary speech, research has confirmed what is obvious to those of us who work in the courts: Providing victims of domestic violence civil legal assistance is among the most effective methods available to reduce the rate of domestic violence. To quote one study, "Because legal services help women with practical matters such as protective orders, custody, and child support, they appear to actually present women with real, long-term alternatives to their

relationships[, and] the availability of legal services has a significant negative effect on the incidence of abuse.”

Similar research has documented that civil legal aid can lead to reductions in the rate of homelessness; the rate at which homes are lost to foreclosure; and the need for public assistance by parents supporting children.

The bottom line is this: Equal access to justice is more than a great constitutional principle, it is also a necessity without which the quality of life in our communities is at risk.

I am grateful for this opportunity and I will be happy to answer your questions after Judge Rich speaks.

Thank you.