



## The Rapid Expansion of “State Access to Justice” Commissions

By Robert Echols<sup>1</sup>

Between April 2004 and April 2005, new Access to Justice commissions were created by state supreme court order in Arkansas, New Mexico, Oklahoma, the District of Columbia, and Massachusetts. As this article was written, proposals to create new commissions are pending before the supreme courts of Alabama, Georgia, Mississippi, and West Virginia.



I have been involved in, or at least been in a position to observe, the development of this new group of Access to Justice commissions through my work for the Access to Justice Support Project.<sup>2</sup> The project provides support to the state leaders involved in these efforts in a variety of ways, including the annual National Meeting of State Access to Justice Chairs, now in its fourth year, an annual report, a web site ([www.ATJsupport.org](http://www.ATJsupport.org)) hosted jointly by NLADA and the ABA, and direct technical assistance.

Because it has happened on a state-by-state basis, the rapid expansion of this model has not received much attention at the national level. However, I believe that it represents a significant development in the history of civil legal aid in this country, potentially a turning point.

### The Access to Justice Commission Model

These new commissions follow the same basic model:

- They are created by supreme court rule or order, in response to a petition or request by the state bar, sometimes with formal support from other key stakeholder entities as well.
- Their members are representative of the courts, the organized bar, civil legal aid providers, law schools, and other key entities, and are either appointed directly by these entities or appointed by the supreme court based on nominations by the other entities.
- They are conceived as having a continuing exist-

tence, as distinct from a blue-ribbon body created to issue a report and then sunset.

- They have a broad charge to engage in ongoing assessment of the civil legal needs of low-income people in the state and to develop, coordinate, and oversee initiatives to respond to those needs.

Similar commissions have been in existence in a few states for a decade or more: the Washington State Access to Justice Board, the California Access to Justice Commission, and Maine’s Justice Action Group. Several others have been created in the past five years, including the Montana Equal Justice Task Force (2000), the Texas Access to Justice Commission (2001), and the Colorado Access to Justice Commission (2002). In addition, new entities created in 2004 in Vermont (Access to Justice Coalition) and New York (Equal Justice Commission) also bring together the courts, the bar, and legal aid providers in somewhat different structures.<sup>3</sup>

The most important thing about these commissions is that they provide an ongoing structure for the engagement of the very highest levels of the state courts and bar (specifically, the state supreme court and the governing body of the bar) in the delivery of civil legal aid. Indeed, the very process of their creation has already increased the awareness of state supreme courts, bar boards of governors, and other high-level state institutions of the legal needs of low-income people in the state. This is what distinguishes these entities from the traditional bar-based legal aid or access to justice committee. Although bar committees have been (and continue to be) extremely effective in a number of states, an entity created by the state’s highest court in conjunction with the state bar’s governing body has a built-in credibility and visibility that a bar committee typically does not have. (It is largely for this reason that the very active and effective bar committees in Georgia and New Mexico, to name just two examples, decided

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to move forward with development of a state Access to Justice commission.)

In addition, this new group of state commissions, like the existing group on which they were modeled, is characterized by a level of buy-in and a sense of ownership on the part of the bar and the courts that distinguishes them from the typical “state planning body” created in the 1990s under LSC’s state planning initiative. It is true that, with only one or two excep-

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tions, the states with new or pending Access to Justice commissions are “post-reconfiguration” in that they either reconfigured their LSC-funded programs as a result of LSC’s state planning initiative or at least had a significant process that considered reconfiguration. However, the recent impetus to create permanent commissions in these states came not from LSC but from leadership within the state bar and/or the state courts. In the majority of the states with new or pending commissions, the process that led to their creation was independent from the earlier reconfiguration process. Typically, the example of Access to Justice commissions in other states inspired one or more prominent bar or judicial leaders to take leadership in creating one in their state. In a few of the states, the impetus to create a commission did develop from the LSC-initiated process, after the reconfiguration phase was ended, but this phase of the process had (and required) bar and court leadership that was stronger and broader than in the reconfiguration phase.<sup>4</sup>

### The Potential

I see the most significant impact of these developments

in the increased engagement of state supreme courts. As a result of the processes leading to the creation of the new commissions, there is a growing cadre of state supreme court justices, including chief justices, who have developed a real understanding of the civil legal assistance delivery system and a personal stake in supporting it. This has the potential to pay off in a variety of ways. The chief justice and supreme court command a high level of visibility that can help raise awareness in the legal community, the legislature, and the public about civil legal needs and the legal aid delivery system. A number of chief justices have identified support for legal aid as a top priority in the round of “state of the judiciary” addresses that took place in early 2005. In September 2004, the Texas Supreme Court held a day-long hearing on access to justice that yielded widespread press coverage and statements of editorial support. In a couple of states, new funding for legal aid has been included in the chief justice’s budget submission; in others, the chief justice has testified in support of new funding before the legislature.

In addition, high court involvement has a potentially significant role in addressing one of the biggest challenges facing the legal aid community: the development and expansion of state-level systemic advocacy and the capacity to represent people who cannot be represented with LSC funds. In this area, my experience is that high court judges are more likely to “get it” than legislators and even bar leaders. Those who do get it are well positioned to make the case for meeting this need.

Other obvious areas where supreme court leadership can have a major impact include pro bono rules and recruitment and making the courts more responsive to the needs of low-income people, including self-represented litigants. Whatever particular efforts high court judges may undertake, the bottom line is that their involvement increases their personal and institutional stake in supporting legal aid.

By emphasizing the importance of increased high court involvement, I do not mean to downplay the importance of bar support. Access to Justice commissions increase the level of bar involvement by exposing more bar leaders to these issues, giving the issues a higher profile, increasing support and positive reinforcement for bar leaders who are involved, and creating a context in which new leadership can emerge. In several states, the process of creating an Access to Justice commission has led to the involvement of individual bar leaders who were not previously active but are now extremely effective and influential advocates for legal aid in the state. This group is also increasing the pool of effective,

politically well-connected advocates for LSC funding in the Congress.

Finally, Access to Justice commissions also bring in other key institutional players—legislators, representatives of the state executive branch, and others. The potential benefit of building these relationships is clear.

### **Maine: One State's Example**

I offer one example of what these entities can accomplish. The Justice Action Group (JAG) in my home state of Maine is our equivalent of an Access to Justice commission. For several years, I have been working as a volunteer with the group, having chaired a task force on resource development and following up on the implementation of its recommendations. Consequently, I know the JAG's work first-hand, from the perspective of a volunteer, not just as someone working on a national project.

The JAG is chaired by a U.S. Court of Appeals judge; the vice-chair is a state supreme court justice.<sup>5</sup> Maine's chief justice is an active member and attends each meeting. Other members include the leadership of the bar association, bar foundation, and association of trial lawyers, the dean of the law school, board members of the state's legal aid programs (including one that provides systemic advocacy and one that provides representation for immigrants), legislators, and representatives of the administrative branch, including the governor's office. The executive directors of the legal programs and the bar foundation attend and participate. The group includes strong, well-informed, committed leaders who have been unequivocal in articulating the responsibility of the bar and the courts for supporting civil legal aid, the importance of treating systemic advocacy and representation of unpopular clients as essential parts of the delivery system, and above all, the need for increased state funding.

A resource development retreat convened by the JAG in 2003 resulted in the creation and spin-off of a combined private bar fundraising campaign that in its first year more than quadrupled the previous year's combined contributions to the programs involved, yielded one of the highest per-lawyer contribution levels in the country, and substantially increased legal aid's visibility among the bar. This spring, the legislative phase of the resource development campaign was launched, with the introduction of a bill to increase the current court fine surcharge benefiting legal aid, as well as a new appropriation. A legislative hearing on the bill, accompanied by a press conference, featured the chief justice, the bar and bar foundation presidents, the

state's attorney general, the leaders of JAG, and other prominent supporters from the bar and the community.

Other recent JAG initiatives have included development of a set of recommendations on improving access to the courts for people with limited English proficiency, creation of a pilot program for providing civil legal aid to prisoners, changes in ethical and procedural rules to permit the "unbundling" of legal services, and design of a training session on due process and access to justice for state administrative agency hearing officers.

### **Fulfilling the Potential**

There are undoubtedly particular factors that have enabled Maine to move further and faster than many (though not all) other states. However, I have seen the emergence of a similarly committed group of leaders (again, including the state supreme court and bar leadership) in a couple of the most conservative and poorest states in the country.

I would estimate that, not counting the states with brand new or pending Access to Justice commissions, there are around ten states in the country that have a level of court and bar engagement that is equal to or approaching what I have described in Maine. These include states with existing Access to Justice commissions and some in which the courts and the bar are engaged through multiple structures or informal partnerships. In a couple of these states, the chief justice personally is the principal organizing and motivating force. Several other states are not yet there but have made significant progress in building supreme court and bar involvement over the last few years. There are a number of other states where achieving this level of court and bar engagement is eminently possible. (In some of these states, it has been mobilized in the past in response to a crisis, but there has been no effort to maintain it.)

With the addition of nine states with new Access to Justice commissions, we are past the tipping point, I believe. The energy associated with the creation of these new commissions is providing a boost to efforts in other states, whether for the creation of new structures or by activating potential leadership in the context of what currently exists. Through the National Meeting of State Access to Justice Chairs and other networking opportunities, state bar and judicial leaders are providing role models and motivating one another. (As I write this article, there are one hundred people from thirty-six states and the District of Columbia registered for the 2005 meeting in Austin.) The growing group

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of engaged chief justices is not only providing mutual support for one another's efforts, but also is having an impact on their peers. The role of the chief justice and the state supreme court in supporting funding for legal services and expanding pro bono is being discussed at the meetings of the Conference of Chief Justices.

The challenge now is to maintain momentum. The new crop of Access to Justice commissions are just getting going. It is important that they achieve their full potential, not just because it will improve and expand access to justice in the particular states involved, but because it will have an impact on other states and at the national level.

Achieving this potential will require the active support from many of the readers of this article. The experience of the states that have high levels of court and bar engagement is that these relationships require ongoing maintenance on the part of the state's legal aid providers. In addition, to be effective, commissions must be staffed effectively. Ideally, the staffing should be provided by creation of a new (possibly part-time) position rather than adding a new responsibility to someone who is already in place. Particularly in a small state, funding a new position can be a challenge. Moreover, these are tough jobs to fill—they require credibility with a wide variety of partners, political skills, and an understanding of legal aid delivery. Nevertheless, there are some outstanding role models in the states with existing Access to Justice structures, and the effectiveness of these staff people demonstrates that these positions are worth the investment.<sup>6</sup>

More support at the national level is needed. National entities should explore ways to get more resources to the states involved to assist them in fulfilling their potential. However, at the same time, national entities need to recognize that their role is limited to support. The potential strength of these state entities lies in the fact that they are home-grown, "owned" by the state leaders who brought them into existence.

Supporting these leaders and their efforts should be a top national priority. The best immediate hope for expanding civil legal assistance lies in building resources at the state level, while maintaining the current level of federal funding. By increasing court and bar engagement, Access to Justice commissions build support for

legal aid and develop committed allies who can make this case for increased resources effectively at both the state and federal levels. The development of this new group of commissions, and the impact that it will have in the states involved, other states, and Congress, may represent the best hope for preserving and growing the civil legal assistance for the foreseeable future.

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- 2 The Access to Justice Support Project is a joint project of the ABA's Standing Committee on Legal Aid and Indigent Defendants (SCLAID) and the National Legal Aid and Defender Association (NLADA). It is the successor to SPAN, the State Planning Assistance Network.
- 3 Several other states bring together the same group of partners in court-created entities focusing on a particular issue, notably the Indiana Pro Bono Commission. Much of what I will say about Access to Justice commissions also applies to them. Information about each state's structure is available in the project's report, "Access to Justice Partnerships, State by State," (May 2005 edition), available on-line at ([www.ATJsupport.org](http://www.ATJsupport.org)).
- 4 Reconfiguration is history, and I see no point to discussing the degree to which it helped or hindered the states discussed here in getting to where they are now. For a good overview of LSC's "state planning" initiative and related initiatives over the last decade, see Don Saunders, "Building State Justice Communities: Where Do We Go From Here?," NLADA *Cornerstone*, winter 2004, also posted at ([www.ATJsupport.org](http://www.ATJsupport.org)).
- 5 The Justice Action Group is unique in having members of the judiciary as both chair and vice-chair. Typically the chair is a bar leader or the group is co-chaired by a bar leader and a member of the judiciary.
- 6 The majority of people who support Access to Justice commissions and similar entities work in the state bar. In several states, legal aid programs make a contribution to the position. Other sources of funding include IOLTA and foundation grants.