



A Conversation with Legal Services Program Executive Directors in Four States with Access To Justice Commissions

On March 5, 2008, four legal services program executive directors discussed their experiences with access to justice commissions with the *MIE Journal*. The directors included: *Jonathan Asher*, Colorado Legal Services, *Sam Buchanan*, Mississippi Center for Legal Services; *Randy Chapman*, Texas Legal Services Center; and *Nan Heald*, Pine Tree Legal Assistance.¹ *Patricia Pap*, Executive Director of Management Information Exchange, served as moderator.



Jonathan Asher.



Sam Buchanan.



Randy Chapman.



Nan Heald.

PATRICIA PAP: The Access to Justice Commission structures of your state have been described elsewhere in this *MIE Journal*. From your perspective, what is the distinctive quality about the commission in your state and what sets it apart from bar representation on program boards or bar legal services committees?

NAN HEALD: In Maine, the distinguishing characteristic is court leadership. Federal court judges have led the commission and justices from the Maine Supreme Court come to every meeting.

RANDY CHAPMAN: The Texas Commission is recognized as a hands-on blue ribbon panel with support from the Supreme Court and the organized bar. Other commissioners are appointed by the Speaker, the President of the Senate, and the Governor. The Commission is possibly unique with its independent authority to support legislation proactively without prior approval by the state bar or the judiciary. Its success is due to strong leadership from the State Bar and Supreme Court and staffing by attorneys with a solid background in legal aid through Texas Lawyers Care.

JON ASHER: The Colorado Access to Justice Commission is distinctive in two ways. It is effective despite its lack of formal authority — it is a joint venture of, but not a creature of, the Supreme Court and the state bar. Both make appointments to and support the commission. The Commission also has been effective in stimulating the creation of local committees in half of the state's judicial districts. The local committees support and augment local court and bar activities.

SAM BUCHANAN: Our Supreme Court played a prominent role in launching the Commission, and one of its associate justices is our best and most vocal advocate. The Commission is distinctive for its very diverse membership, which includes the judiciary, bar, business sector, legislature, counsel for the governor, and representatives from grassroots organizations, and eight providers of legal services serve as ex officio members.

PAP: How much difference has your Commission made? Are there things that might not have been accomplished without the Commission?

HEALD: The Maine Commission, called the Justice Advocacy Group (JAG), has a long list of accomplishments, beginning with formation of a spin-off legal aid

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program to maintain advocacy for low income Mainers in legislative and administrative forums. The Court took a leadership role in supporting the use of filing fee surcharges as a new source of support for legal aid, including restricted advocacy activities. More recently, a unified fundraising campaign among all providers in Maine was implemented and is generating five times as much money as was raised by individual programs. The climate created by JAG also made it easier for rule changes creating mandatory IOLTA and comparability to gain approval.

Non-funding initiatives also have been important, for example, making courts more aware of the needs of non-English speakers and providing interpreters throughout the court system. One bar rule change facilitates a second season of service, and another allows lawyers from other states to practice in legal services for two years before having to take the bar, making it easier to attract new lawyers. A year long planning process that just concluded in 2007, has increased the energy to move forward in making our civil justice system work more effectively for low income clients.

CHAPMAN: The Texas Commission had some initial resource development successes including the adoption of a *pro hac vice* fee. In addition to legislative support, the Commission was critical in securing a Supreme Court order to implement an IOLTA comparability rule that is expected to result in over \$10 million in new money next year. Also, legal services programs struggled for years to secure the rights of public benefits recipients to seek judicial review of decisions regarding food stamps and Medicaid. Commission heavyweights came in on Valentine's Day last year and lobbied the legislature and ultimately the right to judicial review was signed into law by Governor Perry.

The Commission deserves credit for greatly simplifying the process for securing waivers of court costs known as paupers' oaths — legal aid and *pro bono* attorneys now can certify a client's eligibility and have all fees waived. The Commission has brought together top technology experts from major law firms to assist in the design, purchase, and support for using the latest technology for legal services delivery. On the federal level, Access to Justice commissioners have joined officers of the state bar and the judiciary in attending the ABA lobby days in Washington to secure additional LSC funding.

BUCHANAN: In Mississippi, a variety of new

funding sources would not have happened or happened as quickly without the Commission's efforts, including *pro hac vice* from the Supreme Court, legislative passage of a \$5 filing fee surcharge, mandatory *pro bono*/contribution reporting, and mandatory IOLTA. If current figures hold true, these sources will add roughly \$2 million more to the system in 2007/2008, an increase of 30 percent. Also, a recent rule change allows inactive retired attorneys to handle *pro bono* cases.

ASHER: The Commission has secured a number of Supreme Court rules from continuing legal education for *pro bono* work to a second season initiative to allow retired lawyers to take *pro bono* cases without paying active registration. Most recently the Commission provided strong support for ten access hearings to be held throughout the state which hopefully will lead to an increase in the state appropriation for legal aid.

PAP: Beyond these specific gains, are there other values that you can identify?

CHAPMAN: Our key success has been that the judiciary has taken formal ownership in helping ensure access. For example, access to justice priorities are regularly discussed in the State of the Judiciary speech by the chief justice as well during judicial training for new judges. The judiciary has also been helpful in designing and reviewing model legal forms that are posted on *TexasLawHelp.org*.

HEALD: Similarly in Maine, the most important quality of the Justice Action Group has been its ability to promote controversial ideas in a way that would be awkward or impossible for either a provider board or our IOLTA foundation. Formation of the Maine Equal Justice Project is one example. The filing fee surcharge was controversial and would not have happened so quickly without JAG.

ASHER: The Commission has given greater visibility and credibility to the access to justice issue, not just among the usual suspects, but also it has provided information to and obtained support from a more bipartisan segment of the court and bar. By doing so, it has increased institutional and bipartisan support for the importance of addressing ATJ issues.

BUCHANAN: Our Commission has made more visible the legal needs of low income people and the work of legal aid programs. A new DVD showcases legal aid clients and their stories. Public hearings in congressional districts will highlight information on the need for free legal services. The Commission has involved people who are not traditional legal services supporters, and they have become open to the need and supportive of the legal services provided.

PAP: Has there been a downside?

BUCHANAN: Programs have needed to provide information and support outreach in areas the Commission undertakes. So far, the Commission itself has not been staffed, although that seems about to change. This is an issue that needs to be taken into consideration.

ASHER: A commission takes effort and work. There are no downsides, but early on there were potential risks. Whenever you reach beyond known supporters to unknown members of the commission, it takes work and effort and support, and you never know for sure how it will play out. In my experience, the benefit of reaching beyond the narrow circle in which we had traditionally traveled is well worth the effort

CHAPMAN: I see no downside in the long term associated with the formation of the Commission. However the Commission was formed during the time that the Legal Services Corporation forced program mergers and a lot of effort was required to build trust between legal aid providers and the Commission and its members.

HEALD: When it was first created, the commission in Maine made the decision to exclude provider directors from the commission. It was painful at the time. In hindsight, it was probably the correct decision because it gave others the opportunity to do some of the hard work that needed to be done. Now the directors sit at the table, although not as formal members of the commission. We do have board members who serve as members.

PAP: How would you respond to program directors and boards who raise concerns about giving up "control" of the delivery system?

ASHER: It takes a level of confidence in the real value of the work we do, and an understanding that unless we build broader support and take certain risks we are not likely to develop the sort of support that our clients need and deserve. We have an eminently saleable case to make and it is worth the risk to broaden potential allies for the work we do.

BUCHANAN: I agree. Concerned legal aid programs need to analyze what causes them concern against the potential that can be brought about by taking a risk on a commission.

HEALD: In our process, the bar and bench leaders were initially distrustful of providers to act beyond their institutional interest. This has evolved over time and current leadership is more respectful of the role of the providers. Providers have relaxed about ceding control and the JAG has relaxed about providers' ten-

dency to be territorial. However, an ongoing challenge exists in Maine because the membership of the JAG has been very fluid, and many members change every year. There is a need to keep educating new members on those tendencies which people would otherwise bring to the room.

BUCHANAN: We had good relationship with bar leadership because many people had been involved in the state planning body, but one thing which is significant is that the Commission has given more credibility to our work and so other bar members are more inclined to listen.

CHAPMAN: Membership of the Texas Commission is different because of the appointment process from different groups. Each brings a different perspective but in the end each constituency also brings a new source of support for the work being done by legal aid programs. The key is having a strong chair and longer term commitments through task forces or committees to work in various areas such as technology, media relations, and legislative advocacy.

ASHER: I am member of the Commission. There are appointments by a variety of entities. It is a politically diverse, savvy group. Most members are lawyers. I think that they have been surprised I am not more territorial and that I have been so respectful of the broader view of access to justice beyond the four corners of our program. They respect that the delivery of civil legal assistance is more complicated than many of them might have thought. They better appreciate the limits of our on resources, and the virtually unlimited demand for representation.

PAP: Some advocates have expressed concerns that ATJ Commissions may not be fully supportive of aggressive advocacy on behalf of low-income clients. They note that in some states there has been a history of outright opposition to legal services by the courts and the organized bar. Political opponents of legal services might play a role on a commission, or by virtue of becoming more a part of the system, participation in a commission would blunt aggressive advocacy on part of the legal aid program.

CHAPMAN: Legal aid program directors were not initially represented on the Commission and now fully are Commissioners. The Texas Commission has been helpful to clients served by legal aid programs in identifying gaps in the state justice system and discussing approaches to filling those gaps. There is room for disagreement when we discuss the fair distribution of

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resources, *e.g.*, a program to provide access for prisoners or for certain immigrants, but on the whole, the Commission has been very supportive of efforts to ensure that there are resources available for specialized population groups.

ASHER: The difficult issues are not around aggressive advocacy. They are around the adequacy of resources for necessary translation services, representation of undocumented people, and meeting huge unmet need.

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HEALD: In Maine, our biggest challenge has been in getting the commission to understand the reality of living with unmet need, rather than concern about restrictions on controversial clients. It is not possible to just move pieces around to get a lawyer for everyone. The Maine Commission has embraced the notion that undocumented individuals should have counsel in Maine, but it has sometimes pushed back on issues like creating support systems for *pro se* litigants. Depending on court leadership, JAG may emphasize the need to find lawyers for self-represented litigants rather than consider ways to accommodate them in the court system.

BUCHANAN: Advocacy is not an issue for us at this point. We convinced the Commission that the most important aspect of starting out was the education of the Commission. It is an ongoing process for us to assist the membership in fully grasping the unmet need and the need for aggressive advocacy.

PAP: One concern I have heard is that legal aid programs and courts are competing with one another for the same pot of money from the legislature, both with respect to *pro se* funding and generally for court operations. Does participation give courts more say in allocation of legal services

funding, and do programs run the risk of putting legislative funding at risk because the court's voice in this context undermines funding for legal services?

ASHER: We have had support from the court unless we are trying to get money, when we have faced competition with the court for scarce resources. The Commission has surfaced this tension and made the issue more clearly understood by people who are allies of legal services. It may have made competition by the court less tenable. The court's concern is understandable. The tension over resources would exist whether or not there is a Commission, and the Commission has not exacerbated it. The Commission has made this tension clearer to the supporters of legal services.

HEALD: JAG has been great place for this conversation to unfold. No place existed before the commission was created. In Maine, the court has been able to accept the need for the commission to focus on civil legal services funding, and has not tried to use the commission as a competing voice for court funding.

CHAPMAN: In Texas, it has required greater collaboration. In 2007, the judiciary sought and achieved a long overdue pay increase by raising judicial filing fees by \$37. As a result, an increase in the existing filing fee surcharge could not be used as a vehicle to increase revenue and thus we sought funding from other sources. Having everyone at the table, coordinating what funding pots are available and which committees would consider them, is critically important to ensuring there is no direct competition for resources.

BUCHANAN: We have collaborated and compromised. This year our courts pursued a long overdue pay increase, so legal aid programs decided not go to the legislature, except with a thank you for previous support.

PAP: You all experienced the Legal Services Corporation state planning process, imposed from outside. How is this different from that?

BUCHANAN: For us, we have a greater stake in the creation of the Commission and its mission and goals, compared to state planning which was an imposed mandate from LSC.

CHAPMAN: The state planning process imposed in Texas was received with a high degree of skepticism and resentment. In contrast, the Commission as a home grown product has exhibited leadership, openness and inclusiveness, with legal aid providers, private attorneys and public officials all having mutual respect at the table.

ASHER: We have had difficulty in fully engaging the two Colorado law schools and have not yet fully addressed needs of a number of vulnerable populations. More than the LSC process, the Commission has served as a vehicle for frank and full discussion of access to justice issues which will lay the foundation for more effectively meeting the needs of low income and marginalized people in Colorado.

HEALD: Being the only LSC provider in Maine minimized the controversy that other states experienced. Instead, we have used the LSC performance criteria in a positive way to shape the JAG state planning process without concern by other stakeholders.

One caution — I am constantly surprised by how little depth there is to the education of bar and court as result of our state planning process. Despite active leaders in the court and bar, their involvement has not translated into widespread understanding of legal services programs or our issues. The understanding is limited to members of JAG. The existence of an Access to Justice Commission does not avoid the need for us to work with other members of the private bar and court leaders around the state.

PAP: Recognizing that every state is different, that initiatives need to be home grown, do you have words of advice or lessons to share?

CHAPMAN: The key is having strong leadership at the commission level and an appropriate level of funding for staffing and meetings to ensure that recommendations are researched and ultimately are fully implemented.

BUCHANAN: In considering whether or not to have an Access to Justice commission, don't let fears outweigh the potential benefits that a commission can provide. Give it consideration.

ASHER: I had obvious concerns about a commission when it was first being established. Those concerns were not well founded. The commission has been more helpful and effective than I imagined it might be.

HEALD: Whoever is in the leadership spokesperson role for the commission is critically important, and ideally that person should also be a risk taker. Find a great leader and then make it happen.

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Colorado Rural Legal Services and Pikes Peak/Arkansas River Legal Aid, and became a single statewide program, Colorado Legal Services. He began his legal services career as a staff attorney with Colorado Rural Legal Services in Greeley, Colorado in 1971. Jon attended Harvard College (A.B., 1968) and Harvard Law School (J.D., 1971). Jon currently serves on numerous Boards and bar committees including the Board of Directors and the Civil Policy Group of the National Legal Aid and Defenders Association, the American Bar Association's IOLTA Commission, the Colorado Access to Justice Commission, the Colorado Bar Association's Availability of Legal Services Committee and its Family Violence Program Steering Committee. Jon may be reached at asher3542@aol.com.

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