

## THE BACK PAGE



# Getting Out of Our Corner and Stepping Up Our Leadership

*By John Tobin, Executive Director, New Hampshire Legal Assistance*

Legal services leadership has transformed itself in the four decades that I have been a legal aid lawyer. We have learned that, for our programs to work best for our clients, we need to be visionary and efficient managers as well as top-notch lawyers. We have learned to raise money from many sources, and we continue to improve our fundraising skills and expand our reach. With limited resources, we have learned to use technology to help us manage the overwhelming demand for our services and provide information efficiently and appropriately to a wide swath of people in our community who do not need extended legal services or whose needs are beyond our capacity to meet. Perhaps most importantly, we have learned to think about legal services beyond the borders of our individual 501(c)(3) organizations, in order to create integrated delivery systems on a regional and statewide basis.

We should be proud of how much we have learned about how to be leaders and managers. However, we have not yet broken out of our isolated and resource-starved corner of the legal system. Access to justice, unlike access to health care, is not even on the periphery of America's political discourse and policy agenda. It is vital that we ask ourselves fundamental questions about this painful but undeniable fact.

In our relentless legal emergency-room environment, we see the heart-breaking damage that poverty, with its complex blend of cosmic, structural, and self-inflicted causes, does to our clients' daily lives and their spirits. Understandably and appropriately, we have argued passionately, with considerable support from many religious traditions, that our government and our communities have a special moral and economic duty to address and alleviate poverty.

There is nothing wrong with this —it is noble and selfless. But we have missed an opportunity, and, I would argue, failed to meet a compelling duty, to learn about and speak about the broader and worsening failures of the legal system and the impact of this decline on working class and middle-class Americans. And by speaking only about the poor, we have fought a losing cultural battle, because of the deep-seated myths about poverty and opportunity, and the central place of the working poor/blue collar and middle class in our country's collective political consciousness.

The legal system's basic operating principle remains "pay to play." And it is far too generous to call our fragmented and uncoordinated array of legal resources and institutions a "system." Because of restrictions on the practice of law, some warranted and some harmful to the public, it is not even a truly free and unfettered market.

The limits of this flawed marketplace as an allocation system for access to lawyers — and justice —have been especially apparent in the past few years. On the one hand, we have seen the emergence of the much-discussed "lawyer glut," which has led to many unemployed or underemployed lawyers and the resulting decrease in law school enrollments. At the same time, access for poor and middle class people, never adequate, has been shrinking dramatically. The perception that the legal system is only accessible to rich individuals and corporations is widely embraced by the middle class and the working poor, not just by legal aid advocates and our clients.

My vision and hope has been that the escalating lack of affordability and declining access to lawyers by both middle-class and poor people would lead to political pressure from outside the

*Continued on page 52*

© THE BACK PAGE  
*Continued from page 55*

---

legal system's regular players for reforms and restructuring that would increase access for all. Poor people do better when the programs that help them also help the middle class. (Compare political support for Social Security to support for TANF.)

Despite valiant efforts by particular judges and bar leaders to address the gaps and inequities in the courts and the legal profession, no one is managing or leading the legal system as a whole in any state. Ideally, the judicial branch would exercise more proactive leadership, aiding in the operation of the private market when possible, but also confronting its limitations and making noise about them in the political arena. But such an approach would conflict, in style and substance, with their adjudicative responsibilities.

Legal services leaders are in a unique position to step into this larger role. We know how to envision, create, and manage a coherent integrated multi-organizational system. We know how to make big changes when needed and how to stretch limited resources. We know how the legal system works and how it fails our people. And unlike many lawyers, we are not seen as simply trying to protect and enhance our financial interests.

If we in legal services are to take the lead in breaking out of this enduring tangle, we will have to broaden the constituency we champion. We will have to be willing to shine a harsh light on the broader failures of the legal system in ways that might offend or dishearten our allies in the bar and in the courts. And the solutions that we could help develop and implement would likely result in less autonomy and more accountability for a profession and a branch of government that have cherished their independence and de-centralization.

After years of trying, we have not altered the fundamental flaws of the legal system. Let's try a new strategy, more broadly based and perhaps more risky and more disturbing to some of the current system's stakeholders, knowing that we have a great deal to contribute to the debate and to the creation of a system of real equal justice.