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The World Is Round: Why We Must Assure Equal Access to Civil Justice

Jon D. Levy

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THE WORLD IS ROUND: WHY WE MUST ASSURE EQUAL ACCESS TO CIVIL JUSTICE

The Honorable Jon D. Levy

- I. INTRODUCTION
- II. EQUAL ACCESS TO JUSTICE AS A FOUNDATION OF DEMOCRACY
- III. THE UNMET NEED FOR CIVIL LEGAL ASSISTANCE
 - A. *The Extent of the Unmet Need*
 - B. *The Role of the Private Bar*
 - C. *The Role of Court Personnel*
- IV. DEFINING THE CONTOURS OF EQUAL ACCESS TO JUSTICE
 - A. *Full Legal Representation as Illustrated by Up-Stream Intervention*
 - B. *Limited Representation: The Example of Forcible Entry and Detainers*
 - C. *Tailored Court Processes and Services*
 - D. *The Overarching Benefits of a Spectrum Approach*
- V. THE BENEFICIAL RIPPLE EFFECTS OF PROVIDING EQUAL ACCESS TO CIVIL JUSTICE
 - A. *Household Members*
 - B. *Landlords and Employers*
 - C. *State and Local Government and Charitable Organizations*
 - D. *Widespread Economic Effects*
- VI. CONCLUSION

THE WORLD IS ROUND: WHY WE MUST ASSURE EQUAL ACCESS TO CIVIL JUSTICE

*The Honorable Jon D. Levy**

I. INTRODUCTION

In 1972, the astronauts of Apollo 17, NASA's final manned-mission to the Moon, took a photograph of the entire hemisphere of Earth. The photograph shows the continents of Africa and Antarctica in hues of red and brown, surrounded by the vibrant blue oceans and topped by swirling white clouds.¹ It has become an iconic image. Studying the Earth from afar, Eugene Cernan, Apollo 17's commander, reported to the Houston command center with just a touch of irony: "We're not the first to discover this, but we'd like to confirm, from the crew of Apollo 17, that the world is round."²

Likewise, the significance of the increasing number of people who appear, pro se, without a lawyer, in America's civil courts is best understood when viewed from a distance. The image of the Earth floating in space captured by the Apollo 17 crew teaches that, notwithstanding the planet's billions of people and diverse habitats, it is, in the end, a single ecosystem. Perspective matters. This is certainly true for the civil justice system. A broad perspective allows us to appreciate the far-reaching social consequences that flow from the manner in which we deliver civil justice.

Spend a few days observing the people who pass through the doors of any courthouse in Maine and you will undoubtedly appreciate that civil justice touches people from every walk of life. Participating in a court case is among the most direct and memorable experiences many people have with their government. Whether it concerns the custody or adoption of a child, the break-up of a business, the collection of a debt, or protection from domestic violence, the decisions that get made in civil courts have life-altering consequences. The outcome in a single case frequently has a ripple effect that extends far beyond the participants, reaching their families, neighbors, communities, employers, and others. This is where a broad perspective is essential. Such a perspective demonstrates that the continued vitality of civil justice depends on whether we assure that every person who is party to a case involving basic human needs such as housing, food, health care, and child custody, receives the minimum level of legal assistance needed to assure that the person makes informed decisions, the process is fundamentally fair, and that justice is done.

In this Article, I examine equal access to justice within the framework of the civil legal system by looking first at its critical role in maintaining American democracy. I then document the scope of the vast unmet legal needs among low-

* Associate Justice, Maine Supreme Judicial Court. I would like to thank Travis M. Brennan, Esq., Law Clerk, and Sarah M. Riddleberger, Summer Intern, for their substantial contributions.

1. NASA, Apollo 17 Image Library, AS17-148-22727, <http://history.nasa.gov/alsj/a17/as17-148-22727.jpg> (last visited Feb. 16, 2010).

2. Eric M. Jones, Apollo 17: Lunar Surface Journal: A Running Start – Apollo 17 up to Powered Descent Initiation (1995), <http://history.nasa.gov/alsj/a17/a17.prepdi.html> (last visited Feb. 16, 2010).

income citizens. What follows is a discussion that defines the meaning of equal access to justice and an articulation of the multifaceted approach that is required to implement it under current economic conditions. Finally, I describe the beneficial ripple effects—both social and economic—that flow from expanding equal access to justice.

II. EQUAL ACCESS TO JUSTICE AS A FOUNDATION OF DEMOCRACY

Society has a vital stake in assuring equal access to justice because it is not possible for our democracy to sustain the rule of law without it. Our nation's founders understood this fundamental truth.

Establishing and maintaining justice was at the heart of the rationale for forming our nation. On July 4, 1776, the Second Continental Congress declared its purpose of establishing a government of laws to secure for the people “certain unalienable rights [A]mong these are Life, Liberty and the pursuit of Happiness.”³ It also declared that these rights could only be realized through independence from Great Britain because of, among other things, the King's refusal to give his “Assent to Laws, the most wholesome and necessary for the public good,”⁴ and his “obstruct[ing] the Administration of Justice, by refusing his “Assent to Laws for establishing Judiciary powers.”⁵ Justice was a central focus of the new Constitution completed in 1787, the very first sentence of which declares its purpose as being to “establish justice.”⁶ The Constitution's reference to justice is no coincidence given our founders' belief that justice was the paramount objective of government. James Madison, writing in the Federalist Papers, explained: “Justice is the end of government. It is the end of civil society. It ever has been, and ever will be pursued, until it be obtained, or until liberty be lost in the pursuit.”⁷

The vital connection between assuring individuals the ability to access justice, on the one hand, and sustaining liberty, on the other, was expressed by Chief Justice John Marshall in *Marbury v. Madison*:⁸ “The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection.”⁹

In Maine, the connection is expressly addressed in Article I, section 19 of the Declaration of Rights of the Maine Constitution, originally adopted in 1820: “Every person, for an injury inflicted on the person or the person's reputation, property or immunities, shall have remedy by due course of law; and right and justice shall be administered freely and without sale, completely and without denial, promptly and without delay.”¹⁰

These foundational statements remind us that maintaining a system of civil

3. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

4. *Id.* at para. 3.

5. *Id.* at para. 10.

6. U.S. CONST. pmb1.

7. THE FEDERALIST NO. 51, at 375 (James Madison) (Hong & Johnson eds. 2004).

8. 5 U.S. (1 Cranch) 137 (1803).

9. *Id.* at 163.

10. ME. CONST. art. I, § 19 (1820, amended 1988).

justice that is responsive to the evolving needs of people is required to sustain democracy and guarantee individual liberty. Judge Learned Hand succinctly captured the vital link between adequate support for civil legal aid and assuring justice when, speaking at the 75th Anniversary of the Legal Aid Society of New York in 1951, he stated: “If we are to keep our democracy, there must be one commandment: Thou shalt not ration justice.”¹¹

The right to justice is central to both the Federal and Maine Constitutions, but for the unrepresented, this right is threatened by the complexity of today’s civil legal system. We are, in the twenty-first century, truly a nation of laws—an intricate web of interrelated federal, state, and local laws, rules, and ordinances, the complexity of which could not have been anticipated by our nation’s founders in the agrarian society of the late eighteenth century. As the system has grown more complex, so too has the need for civil legal services by low-income persons. Today, according to the Legal Services Corporation (LSC), low-income households have between 1.3 and 3.0 legal needs a year.¹²

The increased frequency with which low-income persons must address legal issues each year has directly led to the high volume of civil litigants who find themselves in court without a lawyer. The complexity of the judicial process is a substantial barrier for self-represented persons to meaningfully participate in the process. The operation of the summary judgment rule¹³ illustrates just one of the many ways that a self-represented litigant can run afoul of the process-related requirements of civil litigation.

Summary judgment is a tool that, when employed by trained attorneys, is intended to achieve the efficient and less expensive determination of a controversy in which the material facts are not in dispute. The opposite is true in cases involving self-represented litigants, however, because the rule’s requirements are complex and unforgiving to those who fail to comply with them. The price for failing to properly deny or qualify the moving party’s assertions of material facts—with proper record citations to admissible evidence—is that the assertions are deemed admitted, and the right to contest those assertions at a trial before a judge or jury is lost.¹⁴

The complexity of summary judgment practice is evidenced in its nomenclature. To understand the preceding paragraph, the reader must appreciate the contextual meaning of the terms “deny,” “qualify,” “material facts,” “record,” “citations,” and “admissible evidence.” When a self-represented party fails to comply with all that is required to effectively dispute alleged facts, the judicial fact-finding that results is accomplished through the default operations of the rule. The opportunity for a trial at which the party would have had the opportunity to testify

11. The Legal Aid Society of New York, *Thou Shalt Not Ration Justice*, <http://www.legal-aid.org/en/homes/thoushaltnotationjustice.aspx> (last visited Mar. 1, 2010).

12. LEGAL SERVICES CORPORATION, *DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS* 15 (2009) [hereinafter LSC].

13. ME. R. CIV. P. 56.

14. ME. R. CIV. P. 56(h)(4). *See, e.g., Saucier v. State Tax Assessor*, 2000 ME 8, ¶ 5, 745 A.2d 972, 974 (“Where a party opposing a motion for summary judgment fails to file a statement of material facts in dispute with citations to the record . . . all facts alleged in the moving party’s statement of undisputed facts are deemed admitted.”) (internal quotation marks and citation omitted).

and tell his or her side of the story is lost.¹⁵ Because of their complexity, summary judgment and various other procedural rules are a veritable thicket for the uninitiated.

III. THE UNMET NEED FOR CIVIL LEGAL ASSISTANCE

Despite the complexities of the civil legal system, as suggested by summary judgment practice, most parties navigate through this system without an attorney. Today, as more fully documented in a report of the Maine Justice Action Group (JAG), we face a crisis in the delivery of civil justice because of the unending waves of persons who appear in court or address important legal issues without the benefit of a lawyer:

Studies in Maine and nationally consistently show that roughly 75% of the litigants in the civil justice system are not represented by counsel. Virtually all of these individuals are unable to pay for an attorney or to obtain assistance from already overburdened legal aid providers and *pro bono* attorneys. These litigants must navigate the court system on their own.¹⁶

The crisis in the delivery of civil legal aid services is easily explained by the law of supply and demand. The demand for civil justice keeps rising with the ever-expanding body of laws that address legal rights and responsibilities. At the same time, the supply of lawyers who are available to assist unrepresented low-income parties is shrinking. As a result, nationally, approximately one out of every two eligible persons who seeks legal assistance from a program by the LSC is not assisted because of inadequate resources.¹⁷ This figure represents only a fraction of the unmet need because it “do[es] not include those who do not seek out help, those who were turned away from non-LSC funded legal aid providers, or those who received limited advice but required full representation.”¹⁸

The insufficient number of legal aid lawyers is apparent when one considers the number of lawyers who are employed to provide such representation. The ratio of legal aid lawyers providing civil legal services to the income-eligible population is one lawyer for every 6,415 people.¹⁹ The ratio of private lawyers providing civil legal services to the general population is one lawyer for every 429 people.²⁰

In Maine, there were only thirty-five full-time legal aid attorneys throughout

15. Summary judgment, as applied to self-represented litigants, can generate two barriers to achieving a just outcome. First, a judgment is issued based on factual assertions that were not properly tested through the operation of the rule because of a procedural default by the self-represented non-moving party. As a consequence, the “undisputed” facts that form the basis for the court’s judgment may not be accurate. Second, the unrepresented litigant, whose legal fate has turned on his or her failure to comply with a rule that can tax even those with the benefit of a legal education, may leave the process convinced that they were literally never “heard.”

16. JUSTICE ACTION GROUP, JUSTICE FOR ALL: A REPORT OF THE JUSTICE ACTION GROUP 5 (2007).

17. LSC, *supra* note 12, at 9.

18. DAVID UDELL & REBEKAH DILLER, ACCESS TO JUSTICE: OPENING THE COURTHOUSE DOOR 4-5 (2007), available at http://brennancenter.org/content/resource/access_to_justice-opening_the_courthouse_door/ (last visited Apr. 23, 2010).

19. LSC, *supra* note 12, at 19.

20. *Id.*

the entire state in 1990.²¹ According to a report published in 1990 by the Maine Commission on Legal Needs, chaired by Senator Edmund S. Muskie, an additional 232 full-time legal aid attorneys were required to meet the perceived need.²² Today, Maine has fewer than forty-four full-time legal aid attorneys working at Maine's six primary legal aid providers: (1) University of Maine School of Law's Cumberland Legal Aid Clinic; (2) Immigrant Legal Advocacy Project; (3) Legal Services for the Elderly; (4) Maine Equal Justice Partners; (5) Maine Volunteer Lawyers Project; and (6) Pine Tree Legal Assistance.²³ The unmet civil legal need in Maine creates a range of practical and ethical issues for all parties involved in the judicial process, including attorneys, litigants, court personnel, and judges.²⁴

A. *The Extent of the Unmet Need*

In 2008, nearly 54 million Americans qualified for LSC-funded legal aid, which is three million more than the year before and the largest number in LSC history.²⁵ This figure means that in 2008, almost 18 percent of all Americans qualified for LSC services.²⁶

In Maine, nearly 17 percent of the state population qualifies for LSC services.²⁷ The depth of the unmet need for civil legal assistance in Maine—both court and non-court related—is further represented in the following table. It depicts the extent to which several of Maine's statewide legal service providers were able to serve the needs of individuals who sought their assistance. Overall, the percentage of clients who sought assistance and had their needs met was about one out of four.

21. ME. COMM'N ON LEGAL NEEDS, REPORT OF THE ME. COMM'N ON LEGAL NEEDS, AN ACTION PLAN FOR THE 1990'S, at 5 (1990). The term "full-time" appears to refer to the number of attorneys who were working at one of the four civil legal service providers referenced in the report: (1) Pine Tree Legal Assistance, Inc.; (2) Legal Services for the Elderly, Inc.; (3) the Cumberland Legal Aid Clinic, sponsored by the University of Maine School of Law; and (4) the Volunteer Lawyers Project. *Id.* at 4-5.

22. *Id.* at 5.

23. Nan Heald, *Miles to Justice: Many Traveled, Many More to Go*, 24 ME. BAR. J. 216 (2009).

24. See generally Russell Engler, *Ethics in Transition: Unrepresented Litigants and the Changing Judicial Role*, 22 NOTRE DAME J.L. ETHICS & PUB. POL'Y 367 (2008).

25. Legal Services Corporation, New Census Data: More Americans Eligible for Civil Legal Aid, http://www.lsc.gov/press/updates_2009_detail_T246_R21.php (last visited Mar. 1, 2010). The 54 million Americans who qualified for LSC-funded legal aid included 18.5 million children and 20.7 million adult women. *Id.*

26. *Id.*

27. See U.S. Census Bureau, Maine S1701, Poverty Status in the Past 12 Months, http://factfinder.census.gov/servlet/STTable?-geo_id=04000US23&-qr_name=ACS_2008_1YR_G00_S1701&-ds_name=ACS_2008_1YR_G00_ (last visited Mar. 1, 2010).

2009 Survey of Unmet and Underserved Legal Need in Maine²⁸

Law Type	Unable to Serve	Unable to Serve Fully (may include limited service insufficient to meet client need)	Total Unable to Serve or Unable to Serve Fully	Advice/ Brief service cases that resolve the matter	Extended Service Cases Accepted	Provider capacity to meet need	Percent of client requests/ need met
Consumer	421	216	637	210	26	236/873	37%
Education	26	31	57	0	10	10/67	15%
Employment (including tax)	106	108	214	33	17	50/264	19%
Family	933	560	1,493	127	163	290/1783	16%
Juvenile	12	34	46	0	6	6/46	13%
Health	82	74	156	83	23	106/262	40%
Housing	317	489	526	221	163	384/910	42%
Foreclosure	161	143	304	10	11	21/325	6%
Income/Gov Benefits	187	168	355	35	16	51/406	13%
Individual Rights (including immigration law)	154	86	240	80	30	110/350	31%
Miscellaneous (including self determination and criminal)	475	81	556	169	75	244/800	30%
Total	2,874	1,990	4,864	968	540	1508/6372	24%

Further exacerbating the problem, federal appropriations for legal services organizations have fallen far behind the need. In 1981, Congress appropriated \$321.3 million for LSC.²⁹ Adjusted for inflation, this would equal \$687.1 million in 2005.³⁰ Nevertheless, LSC's allocation for 2007 was only \$348.5 million,³¹

28. See Press Release, Nan Heald, Justice For Some (on file with the author). This table is also based on data from Pine Tree Legal Assistance, Maine Volunteer Lawyers Project, Legal Services for the Elderly, Cumberland Legal Aid Clinic, Maine Equal Justice Partners, and Immigrant Legal Advocacy Project survey results (March 15 - May 16, 2009). CLAC and MEJP did not track the issue of advice/brief services cases that resolve the matter. *Id.*

29. UDELL & DILLER, *supra* note 18, at 4.

30. *Id.*

31. *Id.*

about half of what was required in real dollars to keep pace with inflation. Consequently, America fares poorly when compared with the level of financial support that other major democracies provide for civil legal aid. It has been estimated that the combined federal, state, and local governmental support for civil legal services in the United States was \$2.25 per capita in 1998.³² This stands in sharp contrast to Germany, which spent \$4.86 per capita, the Netherlands, which spent \$9.70 per capita, and England, which spent \$26.00 per capita.³³

B. *The Role of the Private Bar*

In Maine and elsewhere, the number of legal aid lawyers available to provide civil legal assistance is only part of the picture. No less important is the American legal profession's great tradition of *pro bono publico*—providing free legal services to those who cannot afford such services. There has been a renewed commitment by the private bar in this area, represented by several important Maine initiatives:

- A committee of representatives of Maine's statewide legal aid programs, organized by JAG, has adopted a new focus on early, "upstream" legal intervention. This committee identified the need for a foreclosure diversion process that ultimately led to the Legislature's authorization, and the Judiciary's implementation, of mandatory mediation in most foreclosure cases.³⁴
- The Maine State Bar Association (MSBA) has been at the forefront of access to justice issues in Maine in recent years. An officer of the MSBA now serves on JAG's Executive Committee, and it was the MSBA that, at JAG's request, launched a new standing committee on pro bono and public service. This committee now has a roster of distinguished members that are committed to expanding the range of opportunities for lawyers to provide pro bono service and to elevate the level of prestige associated with it.
- The Maine Volunteers Lawyer Project (VLP) has launched highly successful courthouse based pro bono assistance programs in courthouses across the State and has offered training opportunities to members of the bar.
- County bars, with Penobscot and Androscoggin being the most recent examples, have launched their own creative pro bono walk-in clinics and programs.
- JAG has launched a new initiative, named, appropriately, "The Collaboration," that will focus on creating a partnership between Maine's legal aid providers, the courts, the bar, and Maine's public libraries. The Collaboration recognizes that the public library is frequently the first place many people turn to for legal information. The Collaboration will build on this, in order to assure that public librarians receive informed guidance in the use of web-based resources, and can make appropriate referrals to courthouse-based pro bono assistance and legal aid organizations, as well as

32. *Id.*

33. *Id.* This data is based on 1998 funding levels.

34. See P.L. 2009, ch. 402 (effective June 15, 2009).

to private lawyers for limited or full representation.

- A new chapter of the New England Corporate Counsel Association (NECCA) has recently been organized in Maine and is committed to engaging Maine's corporate lawyers in pro bono work.
- The Legislature enacted the Maine Indigent Legal Services Commission, which, though concerned primarily with indigent criminal defense, will be a vehicle for focusing Augusta's attention on the extraordinary pro bono contributions of Maine's attorneys.³⁵
- In October 2009, the University of Maine School of Law sponsored the first biennial Access to Justice Symposium, which is reflective of the school's core commitment of instilling a strong identification with *pro bono publico* as part of what professionalism means.
- Maine's law firms and attorneys continue to provide significant and sustained financial support for civil legal aid through contributions to the Campaign for Justice, the Coffin Fellows program, and the Muskie Dinner.

In short, something that many have long hoped for is coming true—a renewed commitment to *pro bono publico* service by the bar; innovative and highly—organized opportunities for lawyers to provide that service; and a concerted effort by JAG and others to assure that policy-makers and the general public appreciate how valuable and important this defining aspect of the profession is for the people of Maine. Even with the expansion of *pro bono publico* in Maine, the need for civil legal aid will continue to far outstrip the need. As laudatory as the volunteerism of the Maine Bar is, the volunteerism of Maine's private attorneys will simply never be sufficient to fill the need.

C. The Role of Court Personnel

The void created by the absence of attorneys from the judicial process cannot be filled by court personnel. Maine's courts are chronically underfunded. They do not always have sufficient staff to assure the safety of those who appear in court, no less guarantee that those who appear without a lawyer will understand the intricacies of the legal process. The large number of self-represented persons in the court system negatively affects the ability of court staff to address all civil dockets, including those in which the parties are represented by lawyers. The confusion and uncertainty that many self-represented persons inevitably experience complicates the process for everyone involved, contributes to continuances and delay, and taxes limited judicial resources.

IV. DEFINING THE CONTOURS OF EQUAL ACCESS TO JUSTICE

The Due Process Clause of the Fourteenth Amendment establishes the constitutional minimum as to the quality and quantity of process that every litigant must be afforded. The Due Process Clause is invoked when a liberty or property

35. See P.L. 2009, ch. 419 (effective June 17, 2009).

interest is at stake³⁶ and has been interpreted to provide litigants with the right to notice³⁷ and an opportunity for a hearing.³⁸ Aside from these minimum procedural protections, the United States Supreme Court has not recognized a constitutional right to counsel for self-represented litigants in civil cases.

In 1981, the Court held in *Lassiter v. Department of Social Services* that there is no constitutional right to court-appointed counsel for indigent litigants in parental rights termination cases.³⁹ In *Lassiter*, the Court applied a three-factor balancing test developed in *Mathews v. Eldridge*⁴⁰ to determine whether due process necessitated that a parent be provided legal counsel.⁴¹ This test considered “[1] the private interests at stake, [2] the government’s interest, and [3] the risk that the procedures used will lead to erroneous decisions.”⁴² The Court balanced these three factors against “the presumption that there is a right to appointed counsel only where the indigent, if he is unsuccessful, may lose his personal freedom.”⁴³ In Maine, however, the Law Court has recognized a due process right to counsel for parents in child protective cases.⁴⁴

In the criminal context, by contrast, the Supreme Court’s landmark decision in *Gideon v. Wainwright* held that “reason and reflection require us to recognize that in our adversary system of criminal justice, any person hauled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.”⁴⁵ Thus, while indigent criminal litigants are provided counsel at the state’s expense, in the civil law arena, self-represented litigants must navigate, unaided, through the complex intricacies of the legal process and are held to the

36. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976).

37. *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (stating that the right to be heard “has little reality or worth unless one is informed that the matter is pending and [one] can choose for himself whether to appear or default, acquiesce or contest”); *see also* *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985); *Schroeder v. City of New York*, 371 U.S. 208, 212-213 (1962).

38. *See Mathews*, 424 U.S. at 333 (stating that “some form of hearing is required before an individual is finally deprived of a property interest”); *see, e.g.,* *Wolff v. McDonnell*, 418 U.S. 539, 557-58 (1974); *Phillips v. Comm’r of Internal Revenue*, 283 U.S. 589, 596-97 (1931); *Powell v. Alabama*, 287 U.S. 45, 68 (1932) (“It never has been doubted by this court, or any other so far as we know, that notice and hearing are preliminary steps essential to the passing of an enforceable judgment, and that they . . . constitute basic elements of the constitutional requirement of due process of law.”); *Dent v. West Virginia*, 129 U.S. 114, 124-25 (1889).

39. 452 U.S. 18 (1981).

40. 424 U.S. at 335.

41. *Lassiter*, 452 U.S. at 27-32.

42. *Id.* at 27.

43. *Id.*

44. *Danforth v. State Dep’t of Health & Welfare*, 303 A.2d 794, 801 (Me. 1973) (“Because of the nature of the interest protected by the Constitution we must and do hold that procedural due process requires that counsel be appointed at State’s expense . . . upon a proper showing that the party or parties against whom the proceeding is commenced is indigent unless the right to counsel is knowingly waived.”). Today, the Court’s holding in *Danforth* is codified in ME. REV. STAT. ANN. tit. 22, § 4005(2) (2004 & Supp. 2009-2010): “Parents and custodians are entitled to legal counsel in child protection proceedings. . . . They may request the court to appoint legal counsel for them. The court, if it finds them indigent, shall appoint and pay the reasonable costs and expenses of their legal counsel.”

45. 372 U.S. 335, 344 (1963).

same stringent standards as attorneys.⁴⁶ This is the legal reality for self-represented litigants despite the longstanding recognition that “[l]aymen cannot be expected to know how to protect their rights when dealing with practiced and carefully counseled adversaries.”⁴⁷

Momentum, however, has been building to recognize a right to counsel as fundamental for indigent civil litigants. In 2006, the American Bar Association, with the Maine Bar Association as a co-sponsor, adopted a resolution advocating for expanded access to legal counsel for indigent litigants:

RESOLVED, That the American Bar Association urges federal, state, and territorial governments to provide legal counsel as a matter of right at public expense to low income persons in those categories of adversarial proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health or child custody.⁴⁸

In 2009, California became the first jurisdiction to enact a law that creates a pilot program to study the effect of providing counsel of right in civil cases.⁴⁹ The statute provides for the creation of projects to:

[P]rovide representation of counsel for low-income persons who require legal services in civil matters involving housing-related matters, domestic violence and civil harassment restraining orders, probate conservatorships, guardianships of the person, elder abuse, or actions by a parent to obtain sole legal or physical custody of a child, as well as providing court procedures, personnel, training, and case management and administration methods that reflect best practices to ensure

46. See, e.g., *Dyer Goodall & Federle, LLC v. Proctor*, 2007 ME 145, ¶ 18, 935 A.2d 1123, 1127 (“[S]elf-represented parties are subject to the same standards as represented parties.”).

47. *Bhd. of R.R. Trainmen v. Virginia*, 377 U.S. 1, 7 (1964). Earlier, in *Powell v. Alabama*, 287 U.S. 45, 68-69 (1932), the Court discussed how due process was threatened for self-represented litigants:

The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. If that be true of men of intelligence, how much more true is it of the ignorant and illiterate, or those of feeble intellect. If in any case, civil or criminal, a state or federal court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing, and, therefore, of due process in the constitutional sense.

Id.

48. AMERICAN BAR ASSOCIATION, REPORT TO THE HOUSE OF DELEGATES I (2006).

49. See Assem. B. 590, 2009-2010 State Assem. (Cal. 2009). More recently, Chief Judge Jonathan Lippman of the New York Court of Appeals announced a similar initiative for New York to be spearheaded by the State’s judges and lawyers. See Joel Stashenko, *Lippman Pledges Effort to Boost Civil Legal Services for the Poor*, N.Y. L. J., May 4, 2010, available at http://www.law.com/jsp/nylj/PubArticleNY.jsp?id=1202457594838&Lippman_Pledges_Effort_to_Boost_Civil_Legal_Services_for_the_Poor (last visited May 12, 2010).

unrepresented parties in those cases have meaningful access to justice, and to gather information on the outcomes associated with providing these services, to guard against the involuntary waiver of those rights or their disposition by default.⁵⁰

Funding for the California projects will be derived from a portion of various civil court fees for a variety of court services.⁵¹ The act expressly recognized that:

There are significant social and governmental fiscal costs of depriving unrepresented parties of vital legal rights affecting basic human needs, particularly with respect to indigent parties, including the elderly and people with disabilities, and these costs may be avoided or reduced by providing the assistance of counsel where parties have a reasonable possibility of achieving a favorable outcome.⁵²

Sound public policy requires that states transform their civil court systems to account for the influx of self-represented litigants and to dispense justice. The status quo is ineffective and unfeasible. We should not become complacent and accept that a civil justice system in which large numbers of participants receive little or no professional assistance can sustain justice. A new vision is required.

Central to a new vision is a clear understanding of what equal access to justice means. Initially, the concept appears amorphous, but on closer examination it can be seen as having several concrete underpinnings:

[P]eople require access to the courts, to administrative agencies and other forums that is meaningful, with representation by qualified counsel, the opportunity to physically enter the court or other forum and to understand and to participate in the proceedings, and the assurance that their claims will be heard by a fair and capable decision-maker and decided pursuant to the rule of law.⁵³

These concrete requirements, which help to illuminate our understanding of equal access to justice, can be synthesized into two hallmark characteristics: (1) meaningful participation; and (2) informed decision-making. People must have the right not only to physically access the location where their legal rights will be determined, but also to be active and engaged participants in the process.

True justice is produced when the participants are in a position to make voluntary and knowing choices. That is frequently not possible when people must act as their own lawyer. We would never conclude that a person with a serious illness has been afforded meaningful access to health care if that person is permitted to enter the hospital and make use of its facilities, but without the involvement of a trained doctor. Articulated another way, New Hampshire's Chief Justice John T. Broderick stated "If you and I went to the hospital and they said, 'Do you have insurance?' and we don't, and they said, 'There are some textbooks over there with some really good illustrations,' we would think that was immoral."⁵⁴

50. CAL. GOV'T CODE § 68651(b)(1) (West 2009) (effective July 1, 2011).

51. *Id.* § 70626(d).

52. Assem. B. 590, 2009-2010 State Assem., § 1(d) (Cal. 2009).

53. JUSTICE ACTION GROUP, *supra* note 16, at 50.

54. MALANCA CLARK & MAGGIE BARRON, FORECLOSURES: A CRISIS IN LEGAL REPRESENTATION 16 (2009), available at <http://www.brennancenter.org/content/resource/foreclosures> (last visited Apr. 23, 2010).

We should not accept that a person involved in a civil case has been afforded meaningful access to justice simply because they are permitted to enter the courthouse and make use of its facilities, but without the benefit of any professional assistance. To *achieve* justice, we must assure that when people become engaged in the civil justice system, they actually *experience* justice.

Informed decision-making is a necessary prerequisite for meaningful participation. Informed decision-making recognizes the fundamental notion that choice is premised on information and a basic understanding of the consequences that flow from that choice. Informed decision-making by litigants is also critical for the fact-finder. When an untrained person represents him or herself, there is no assurance that a judge or jury will receive the necessary evidence to fully understand and adjudicate the dispute. This point is well illustrated in the context of child custody determinations, where judges must analyze the facts presented within the framework of eighteen best interest criteria codified by the Legislature.⁵⁵ Ultimately, the quality of the resulting best interest determination will depend upon the quality of the information introduced by the parties.

The next issue concerns developing the components of a civil justice system that embraces the hallmarks of equal access to justice. Equal access to justice in the civil justice system is best conceptualized by considering a spectrum of approaches: (A) full representation; (B) limited representation; and (C) a tailored court process.

A. Full Legal Representation as Illustrated by Up-Stream Intervention

At one end of the spectrum, low-income civil litigants are afforded full legal representation. Full representation by an attorney is necessary in many instances to ensure that a person knows his or her legal rights, makes informed decisions, and, if the representation involves administrative or judicial proceedings, is competently represented before the tribunal. The beneficial results produced when a party receives the benefit of full representation extend far beyond that single individual and influence the lives of many others.

There is ample evidence that people who proceed without a lawyer in court are more likely to receive an unfavorable outcome. One study reports that parties with lawyers increase their odds of a successful outcome by 72 percent over parties who represent themselves.⁵⁶ To experience justice, people not only require civil legal services in formal court proceedings but also in settings beyond the courtroom. The legal advice and assistance people require outside of the court process can be just as critical to their lives as the legal assistance required to navigate courtroom proceedings.

Recognizing this need, we must re-conceptualize our notion of what it means to provide civil legal assistance. This concept encompasses providing legal assistance to unrepresented parties both in advance or “up-stream” of a crisis rather than after a crisis has arisen. Emphasis, however, is often placed on the latter.

55. ME. REV. STAT. ANN. tit. 19-A, § 1653(3)(A)-(R) (1998 & Supp. 2009).

56. Laura K. Abel, Deputy Director of the Justice Program, Brennan Center for Justice at NYU School of Law, Law & Soc’y Ass’n Presentation on Pressing Questions Encountered by the Access to Justice and Civil Right to Counsel Movements (July 7, 2006).

Providing civil legal assistance to people in advance or “up-stream” can resolve problems long before a crisis comes to fruition and minimize or possibly eliminate the need for judicial involvement. The value of such an approach is demonstrated by the advent of medical-legal partnerships. These partnerships operate on the premise that certain patients’ medical needs cannot be fully addressed without also addressing challenges that low and moderate-income families face, which “are often not perceived as legal issues but that adversely affect the quality of life of their children and the management of chronic illness.”⁵⁷ The first such partnership was established at Boston Medical Center in 1993 by the hospital’s pediatric unit⁵⁸ and addressed the social factors and conditions that, in many instances, determine a child’s health: “[U]nsafe housing conditions leading to lead paint poisoning, asthma and injury; lack of sustainable income affecting childhood nutrition; and poor access to educational and social services for children with special needs, just to name a few.”⁵⁹

The efficacy of an early, “up-stream” legal intervention in this setting is obvious, as demonstrated in the following case reported by Maine’s KIDS LEGAL Medical Partnership:

Unsure of what to do to help their patient, a young single mom and her newborn baby, doctors called a KIDS LEGAL attorney for a consultation. The baby was born with some physical malformations and kidney problems, requiring extensive surgeries. He’s a beautiful and happy baby despite his needs. Unfortunately, the baby’s father was killed serving in Iraq before he ever had a chance to see his child. With his untimely death, the baby’s mother was unable to provide paternity, rendering her baby not only fatherless but without the survivor’s benefits and health insurance coverage available through the military. KIDS LEGAL assisted this young mother in establishing paternity through the courts and now her baby receives military and social security survivor’s benefits and health insurance to assist with his multiple surgeries.⁶⁰

A medical-legal partnership approach “enhance[s] the ability of the health care team to address patients’ stressors in the areas of housing, immigration, income support, health insurance, education access, disability, and family law” by identifying wrongfully denied private insurance or public benefits that are, in fact, available to the family.⁶¹ Recent studies have demonstrated that providing these services contribute to improving clients’ health.⁶² It also enables patients and their

57. David R. Williams et al., *Moving Upstream: How Interventions That Address the Social Determinants of Health Can Improve Health and Reduce Disparities*, J. PUB. HEALTH MGMT. PRAC., Nov. 2008, at S8, S11.

58. Elizabeth T. Tyler, *Allies Not Adversaries: Teaching Collaboration to the Next Generation of Doctors and Lawyers To Address Social Inequality*, 11 J. OF HEALTH CARE L. & POL’Y 249, 250-51 (2008).

59. *Id.* at 251.

60. KIDS LEGAL, Medical Partnership at Barbara Bush Children’s Hospital, <http://www.kidslegalaid.org/professionals/kidsfap> (last visited Mar. 1, 2010). The KIDS LEGAL Medical Partnership is a joint project launched in 2004 between KIDS LEGAL, a project of Pine Tree Legal Assistance, and the Barbara Bush Children’s Hospital at Maine Medical Center in Portland. *Id.*

61. Williams, *supra* note 57, at S11.

62. See Laura K. Abel & Susan Vignola, *Economic and Other Benefits Associated with the Provision of Civil Legal Aid* 16 (Brennan Ctr. for Justice at NYU Sch. of Law, Working Paper, 2009).

families to “navigat[e] the complex bureaucratic regulations that have shifted in recent years from an emphasis on health and families to one of preventing fraud.”⁶³ For hospitals, medical-legal partnerships have the added benefit of generating new collections and billings.⁶⁴

Despite the obvious benefits of such an approach, there is only one medical-legal partnership operating in Maine today.

B. Limited Representation: The Example of Forcible Entry and Detainers

At the middle of the spectrum, civil litigants are provided with an attorney, but only on a limited representation basis. The Maine Rules of Professional Conduct expressly recognize the propriety of this approach in connection with civil legal aid:

Legal service organizations, courts, and various non-profit organizations have established programs through which lawyers provide limited legal services—typically advice—that will assist persons with limited means to address their legal problems without further representation by a lawyer. In these programs, such as legal advice hotlines, advice-only clinics, lawyer for the day programs in criminal or civil matters, or *pro se* counseling programs, an attorney-client relationship is established, but there is no expectation that the lawyer’s representation of the client will continue beyond the limited consultation.⁶⁵

Although each civil litigant may not receive full representation from an attorney, programs that provide limited legal representation can have a substantial impact on assuring equal access to justice.

Consider the example of a forcible entry and detainer action filed by a landlord against a tenant who has fallen behind on rent. The statute’s notice requirements are complicated, and the grounds for eviction depend on the nature of the tenancy,⁶⁶ so it is not unusual for a self-represented landlord to bring an action, but to fail to obtain the tenant’s eviction. Self-representation also works against the interests of tenants who lack the skills needed to raise any applicable defenses or to successfully negotiate a resolution agreed to by the landlord.

The most obvious beneficiary of providing free legal assistance to those who cannot afford it is the individual receiving the representation. Often, it is the involvement of an attorney that makes it possible for the litigants to reach an agreed-upon settlement that addresses the interests of both sides to a dispute. In research assessing the impact of providing legal assistance in eviction proceedings, Justice Howard H. Dana, Jr., compared the outcomes of cases before and after the adoption of a “lawyer of the day” program in forcible entry and detainer actions, at which a lawyer was available to provide legal assistance to tenants who appeared in

63. Williams, *supra* note 57, at S11.

64. See Abel & Vignola, *supra* note 62, at 6. LegalHealth, who provides free legal assistance to low income adults and children at certain New York hospitals, found that its services “resulted in \$345,222 in collections and \$1.3 million in billings” for two participating hospitals. JIMMY BOYLE & ADA CHIU, FINANCIAL IMPACT STUDY OF LEGALHEALTH SERVICES TO NEW YORK CITY HOSPITALS 2 (2007), available at http://legalhealth.org/docs/lgh_financial_impact_study.pdf (last visited Apr. 23, 2010).

65. ME. R. PROF’L CONDUCT 1.2 cmt. 7A (2008).

66. See ME. REV. STAT. ANN. tit. 14, §§ 6001-6017.

court without counsel.⁶⁷ The research disclosed that tenants who proceeded without counsel achieved a generally favorable outcome 58 percent of the time, while those that had the benefit of counsel achieved a generally favorable outcome 85 percent of the time.⁶⁸ In many, if not most instances, the favorable outcome was an agreement between the tenant and landlord establishing a reasonable period for the tenant to vacate the premises. Such outcomes are favorable to both sides because it results in a certain conclusion to the dispute. Settlements also included agreements involving a repayment plan that allowed the tenant to stay in their residence after the attorney had reviewed and re-established their financial obligation to the landlord. Again, both sides benefit from a certain conclusion to the dispute that makes it unnecessary to proceed to a trial and, possibly, an appeal.

Pine Tree Legal Assistance operates a “lawyer of the day” program to assist tenants facing evictions in the five Maine courts with the highest volume of evictions: Portland, Lewiston, Augusta, Bangor, and Biddeford, in addition to Springvale.⁶⁹ The limited representation provided by the Pine Tree attorneys may range from the attorney advising the tenant that he or she has no defenses, to an effort to negotiate a settlement with the landlord, to actual representation in a contested hearing before a judge. As a result, in 51 percent of the cases, the attorney was able to negotiate a settlement that enabled the tenant to obtain more time to secure housing, and in 26 percent of the cases, the representation resulted in the dismissal of the action.⁷⁰

C. Tailored Court Processes and Services

Finally, at the other end of the spectrum, civil litigants are not provided legal representation, but the court process and related services are tailored to meet the needs of the self-represented. As articulated by JAG, the court system itself should be structured to provide meaningful assistance to unrepresented individuals:

67. Justice Howard H. Dana, Jr., *Do Lawyers Make a Difference?* (Jan. 29, 2007) (on file with author).

68. *Id.* at 8.

69. *Id.* at 4.

70. Memorandum from Nan Heald, Director of Pine Tree Legal Assistance, Inc., on the Homeless Advocacy Project 3 (2009) (on file with author). The effectiveness of the program is best illustrated by the following table:

County where Court(s) located	Total # of requests for legal help pursuant to HAP	Percentage of requests involving public housing	Percentage of requests won outright (eviction was dismissed)	Percentage of requests in which the HAP attorney negotiated to secure more time for the tenant to find new housing
Androscoggin	53	17%	23%	49% for an average of 2+ weeks
Cumberland	88	33%	15%	61% for an average of 3 weeks
Kennebec	33	0	42%	30% for average of 2 weeks
Penobscot	18	28%	17%	50% for an average of 2 weeks
York	71	15%	38%	54% for an average of 2 weeks
Total	263	20%	26%	51%

Id.

Maine's Judicial Branch simply does not have enough judges, clerks and other administrative personnel to do all that is required of it. Currently, there is no staff in the court system whose primary job is to focus on the needs of and to assist the huge number of self-represented litigants in the courts. The creation of a Division of Self-Represented Litigant Services would not only provide meaningful legal assistance to the self-represented, but would also improve the efficiency of the court system and allow it to be more responsive to the needs of all litigants. Appropriate staffing would include a Director of Self-Represented Litigant Services, who would develop initiatives and services for self-represented litigants and coordinate a statewide program; qualified paralegals in every region of the State who would provide information and limited assistance to self-represented litigants; and a technology officer. Such staffing will enable the courts to coordinate and oversee the Courthouse Assistance Program . . . and to work with legal aid providers to develop and coordinate an expanded "lawyer of the day" program in high volume dockets, e.g. evictions, protection from abuse and possibly others.⁷¹

A familiar, long-standing example of a tailored approach is the small claims docket of the District Court.⁷² The small claims process features relaxed pleading requirements, easy to use forms, and the opportunity for the parties to participate in informal, court-sponsored mediation.⁷³ A more recent example of a tailored approach is Maine's Foreclosure Diversion Program (MFDP),⁷⁴ which has resulted from efforts by state lawmakers, the judiciary, and members of the bar, to respond to the current foreclosure crisis. It was recently estimated that nearly 2,900 American families lose their homes to foreclosure every day.⁷⁵ This has devastating consequences for families and the communities in which they live. The MFDP⁷⁶ acknowledges that many parties who find themselves in the grips of foreclosure are unrepresented and uninformed about the complexities of the process. The MFDP has been structured so that parties first have an opportunity to attend an informational session at the courthouse where the foreclosure process is explained. At this session, homeowners can ask questions and receive direction about the financial information that is required for them to make informed decisions. Second, all eligible cases proceed to court-sponsored mediation. Third, the summary judgment rule has been amended to blunt its harshness in the context of foreclosures. Specifically, Rule 56(j) postpones action on summary judgment motions until the mediation process has been completed.⁷⁷ This amendment seeks

71. JUSTICE ACTION GROUP, *supra* note 16, at 23-24.

72. *See* ME. R. S.C.P. 1-18 (2007).

73. *See id.*

74. *See* P.L. 2009, ch. 402 (effective June 15, 2009).

75. CLARK & BARRON, *supra* note 54, at 6. The number of houses in foreclosure increased 225% between 2007 and 2008 from over one million homes to over three million homes. *Id.*

76. *See* P.L. 2009, ch. 402 (effective June 15, 2009).

77. ME. R. CIV. P. 56(j). Rule 56(j) provides:

No summary judgment shall be entered in a foreclosure action . . . except after review by the court and determination that (i) the service and notice requirements of 14 M.R.S. § 6111 and these rules have been strictly performed; (ii) the plaintiff has properly certified proof of ownership of the mortgage note and produced evidence of the mortgage note, the mortgage, and all assignments and endorsements of the mortgage note and the mortgage; and (iii) mediation, when required, has been completed or has been waived or the

to provide unrepresented parties with opportunities to meaningfully participate in the court process.

D. The Overarching Benefits of a Spectrum Approach

A spectrum approach to civil legal assistance is responsive to two fundamental realities. First, public financial support for civil legal assistance is critically important and should be invested in targeted ways that account for the degree of legal assistance that is needed to effectively respond to the legal problem that is presented. Second, the public's failure to adequately invest in civil legal assistance will, over the long-term, result in increased social and economic costs for everyone:

The consequences of inadequate access to the courts affect not just the individuals directly involved, but also society at large. When families are evicted from their homes because they cannot obtain counsel in a housing proceeding, for example, their resultant homelessness costs taxpayers in the form of public services. In New York City, the average cost of sheltering a single homeless adult is \$23,000 annually—far more than providing counsel to prevent an eviction. Medical and other costs rise, too, when individuals, particularly senior citizens, lose their homes because they lack access to a lawyer. When victims of domestic violence are unable to obtain help, the health care, criminal justice, and social welfare systems bear the strain. Employers, too, suffer from decreased productivity and increased absenteeism. Many of these societal costs could be ameliorated if low-income individuals had access to counsel to assist them in resolving their legal problems.⁷⁸

An adequately funded spectrum approach will result in tangible benefits for the parties involved and meaningful cost savings for state and local government.

V. THE BENEFICIAL RIPPLE EFFECTS OF PROVIDING
EQUAL ACCESS TO CIVIL JUSTICE

Viewed holistically, the beneficial ripple effects of providing civil legal services to low-income persons extend far beyond the parties to a particular dispute. Housing law provides a useful illustration of this phenomenon.

A. Household Members

When an individual who is in court on a housing matter is also a parent, the circumstances and well-being of his or her child will be directly affected by the outcome of the case. The same is true for other members of the household. Litigation frequently has a direct effect on the lives of individuals who are not parties to the litigation.

In the case of school-aged children, the outcome of an eviction proceeding also

defendant, after proper service and notice, has failed to appear or respond and has been defaulted or is subject to default. In actions in which mediation is mandatory, has not been waived, and the defendant has appeared, the defendant's opposition pursuant to Rule 56(c) to a motion for summary judgment shall not be due any sooner than ten (10) days following the filing of the mediator's report.

Id.

78. UDELL & DILLER, *supra* note 18, at 6 (footnotes omitted).

has consequences for the child's teacher and school.⁷⁹ The dislocation caused by a child's sudden change of residence can be substantial. Changing a child's school during the school year is seldom in the child's educational interest. Such a change imposes administrative burdens on the child's existing and new schools, and it can disrupt the work of the teacher and students in the classroom into which the child is transferred.

B. Landlords and Employers

The success of many businesses depends on the stability and availability of their employees. If, with the assistance of counsel, an employee resolves a dispute with the landlord before a forcible entry and detainer action is filed, it is then unnecessary for the landlord to incur the expenses associated with filing a court action and attending court proceedings. Similarly, if the assistance of a lawyer enables a tenant to resolve a dispute before an action is filed, the employer benefits because the employee will not have to miss work to attend court proceedings. Further, the employee will not be laboring under the stress and distraction of a pending, unresolved court case.

C. State and Local Government and Charitable Organizations

Evictions can lead to homelessness, and homelessness creates significant costs for state and local governments, as well as for charitable organizations that provide assistance to the homeless. A study in New York concluded that it costs \$23,000 to provide an individual emergency shelter in New York City and \$36,000 to provide that service to a family.⁸⁰ When tenants facing eviction proceedings were afforded civil legal aid, 90 percent were able to resolve their cases without being evicted.⁸¹ The study concluded that this translates into a financial savings for the city government of almost \$151 million in emergency shelter costs.⁸²

The significance of the negotiated agreements achieved through Pine Tree's lawyer of the day program has been described as follows:

[A]n extension of time [in which the tenant has to vacate the premises] can be critically important to allow a low-income household to keep their furnishings and other possessions intact while they search for new housing. It is our staff[s] impression that most tenants with extra time to move are planning to stay on temporary basis with family or friends, rather than to move immediately into shelter housing.⁸³

The government benefits when tenants are given a reasonable, fixed period within which to arrange temporary shelter in the homes of family or friends because it

79. See generally Erik Eckholm, *Surge in Students Strains Nation's Schools*, BOSTON GLOBE, Sept. 6, 2009, at A11 (stating that "[t]here were 679,000 homeless students reported in 2006-2007, a total that surpassed 1 million by last spring").

80. Coalition for the Homeless, *Basic Facts About Homelessness in New York City*, <http://www.coalitionforthehomeless.org/basicfacts.html> (last visited Oct. 16, 2009). This is in contrast to a cost of just \$12,500 for supportive housing per year, and just \$8,900 for rental assistance per year.

81. Abel, *supra* note 56.

82. *Id.*

83. Heald Memorandum, *supra* note 70, at 3.

avoids shelter-related expenses, thus saving public tax dollars. Landlords benefit when tenants receive sound legal advice that leads to settlements and thus avoids costly and protracted proceedings.

A separate study conducted in New York found that where services were provided up-stream in the form of a homelessness prevention program to address problems leading to eviction proceedings, the program returned four dollars to the public for every one dollar of public funds invested.⁸⁴ The program also reported that 80 percent of clients were able to avoid eviction, making the success rate for those with legal assistance far greater than for those without.⁸⁵

Other programs have similarly reported that legal assistance decreases homelessness and saves money. The Minnesota State Bar Association reported that in 2002, legal aid services prevented homelessness in an estimated 2,650 cases, saving the government roughly \$3.96 million in shelter costs.⁸⁶ In Massachusetts, it has been estimated that it costs approximately \$3,000 per month to shelter a family and \$1,000 per month to shelter an individual, with the average stay for both groups being three months.⁸⁷ The Massachusetts Legal Assistance Corporation (MLAC) reported that its programs delayed or prevented eviction in approximately 600 cases in 2007.⁸⁸ MLAC calculated that \$7.6 million in shelter costs were averted in a single year.⁸⁹

D. Widespread Economic Effects

The beneficial ripple effects of assuring equal access to justice to a person in an individual eviction case in Maine radiate outward and translate into positive tangible consequences for children, other household members, schools, employers, state and local governments, and charities. Those positive consequences are amplified by the thousands of cases that are decided each year.

Measuring the potential positive cumulative effects, economic and otherwise, on the overall economic climate in Maine is beyond the scope of this Article, but the economic climate of our State necessarily benefits when the efficiency of court proceedings and stability in the lives of its people are enhanced.

A recent study of the economic impact of state support for civil legal aid in Texas established that public investment also produces economic stimulus.⁹⁰

84. N.Y. STATE DEP'T OF SOC. SERVS., OFFICE OF PROGRAM PLANNING, ANALYSIS AND DEVELOPMENT & OFFICE OF SHELTER AND SUPPORTED HOUSING PROGRAMS, *THE HOMELESSNESS PREVENTION PROGRAM: OUTCOMES AND EFFECTIVENESS* 3 (1990), available at <http://www.nlada.org/DMS/Documents/1195250846.92/NYSDeptofSS%20-%20Homelessness%20Prevention%20Pram%20Outcomes%20%26%20Effect.pdf> (last visited Apr. 23, 2010).

85. *Id.* at 4.

86. MINNESOTA STATE BAR ASSOCIATION, "WITH LIBERTY AND JUSTICE FOR ALL," *LEGAL AID: ESSENTIAL TO THE JUSTICE SYSTEM* (2003).

87. Memorandum from Lonnie Powers, Executive Dir., Mass. Legal Assistance Corp. to Ben Clements, Chief Legal Counsel to the Governor of Mass. 2 n.4 (Dec. 10, 2007), available at <http://www.nlada.org/DMS/Documents/1236007362.13/MA%20cost%20savings%20memo%2012-07.pdf> (last visited Apr. 23, 2010).

88. *Id.* at 2.

89. *Id.*

90. THE PERRYMAN GROUP, *THE IMPACT OF LEGAL AID SERVICES ON ECONOMIC ACTIVITY IN TEXAS: AN ANALYSIS OF CURRENT EFFORTS AND EXPANSION POTENTIAL* (2009), available at

Although the Texas study was not limited to studying housing cases, its conclusions are nonetheless striking:

- Currently, legal aid services lead to a sizable stimulus to the Texas economy. [It is] estimated the gain in business activity [includes] an annual \$457.6 million in spending, \$219.7 million in output (gross product), and 3,171 jobs.
- For every direct dollar expended in the state for indigent civil legal services, the overall annual gains to the economy are found to be \$7.42 in total spending, \$3.56 in output (gross product), and \$2.20 in personal income.
- Moreover, this activity generates approximately \$30.5 million in yearly fiscal revenues to state and local governmental entities, which is well above their approximately \$4.8 million in contributions.⁹¹

The positive financial returns on public investments in civil legal aid, such as those described in Texas, result at least in part from the infusion of federal money that is secured on behalf of low-income individuals in federal benefits cases. For example, with \$970,000 in annual funding from the state, New Hampshire Legal Assistance (NHLA) was able to generate more than \$4.6 million in benefits for clients in a fifteen-month period.⁹² NHLA also reported that over an eighteen-month period, their clients received more than \$1,589,637 in federal disability payments and Medicare coverage as a result of NHLA's advocacy.⁹³ Similarly, while the Minnesota State Bar Association reported that it obtains more than \$5 million for their clients every year in new federal disability benefits,⁹⁴ Legal Aid in Nebraska reported that it generated \$2,844,732 in federal benefit awards in 2007.⁹⁵

Federal benefit awards directly assist the client and his or her family by increasing the resources that they have available to meet their daily needs. Equally important, however, is the beneficial multiplier effect resulting from the expenditure of those funds within the state's economy.⁹⁶ Ultimately, local businesses and state and local tax revenues all benefit when civil legal assistance results in a federal benefit award for an individual or family.

In addition to economic stimulus, other studies also reveal the cost-savings that result from public investments in civil legal aid.⁹⁷ For example, a study in Florida

<http://www.nlada.org/DMS/Documents/1236008203.14/FINAL%20Econ%20Impact%20Study%2002-12-09.pdf> (last visited Apr. 23, 2010).

91. *Id.* at 3 (emphasis omitted).

92. NEW HAMPSHIRE LEGAL ASSISTANCE, CIVIL LEGAL SERVICES AND THE "WORKING POOR" PILOT PROJECT 2 (2006), available at http://www.nlada.org/DMS/Documents/1236007823.5/document_info (last visited Apr. 23, 2010).

93. NEW HAMPSHIRE LEGAL ASSISTANCE, NORTH COUNTRY CIVIL LEGAL SERVICES APPROPRIATION, SEMI-ANNUAL REPORT TO THE JUDICIAL COUNCIL 2 (2007), available at <http://www.nlada.org/DMS/Documents/1236008006.48/No.%20Country%20state%20appr.%20report%20July%202007.pdf>.

94. MINNESOTA STATE BAR ASSOCIATION, *supra* note 86.

95. ROD FEELHAVER & JEROME A. DEICHERT, THE ECONOMIC IMPACT OF LEGAL AID OF NEBRASKA 5 (2008), available at <http://www.nlada.org/DMS/Documents/1236007550.3/NE%20impact%202007.doc> (last visited Apr. 23, 2010).

96. STEFAN C. NORRBIN & DAVID W. RASMUSSEN, AN EVALUATION OF TEAM CHILD IN FLORIDA 33 (2002). See also FEELHAVER & DEICHERT, *supra* note 95, at 6 ("It is generally recognized that each dollar spent in an area has a larger effect on that area than the original dollar.")

97. In the area of domestic violence, it is widely understood that victims who do not receive legal assistance have greater difficulty obtaining protection orders and child support, and are more likely to

examined the costs and benefits of operating two legal aid clinics that provide legal representation to troubled youths. The clinics were able to enhance juveniles' access to educational services, mental health and other social services, and reduce the risk of future criminal behavior.⁹⁸ They did so by providing assistance on civil issues such as dependency, educational discipline, and access to health care and federal benefits.⁹⁹ Researchers found at least three economic benefits due to the clinics' assistance: (1) fewer resources were needed; (2) detention was avoided; and (3) victim costs were prevented.¹⁰⁰ Juveniles who participated in the program were also less likely to be rearrested, further reducing costs for the state.¹⁰¹ Finally, the researchers concluded that for every one dollar of program costs, one clinic generated a positive return of between \$2.44 and \$3.91.¹⁰²

There are numerous other examples of the cost-savings resulting from the advocacy of civil legal aid programs. When legal assistance programs help low-income people obtain child support payments, the effect is twofold: children are supported, and the state saves on welfare costs. Both results represent a positive social and economic return on the state's investment in civil legal aid.¹⁰³

VI. CONCLUSION

Like the Apollo 17 astronauts viewing the Earth from space, the delivery of civil justice must be seen as something greater than the sum of the individual court dockets and the myriad of legal problems that people encounter in their daily lives. Viewed as a whole, one cannot help but see that civil justice, a social institution that is intended to resolve crisis, is itself in crisis. If a significant portion of the

stay with their abusers for financial reasons, leading to further violence and health care needs. A Massachusetts legal aid program estimated it could save about \$4.5 million in health care costs by assisting victims of domestic abuse and preventing further assaults. Powers Memorandum, *supra* note 87, at 4. Researchers at the Domestic Abuse Grant Program in Wisconsin reached a similar conclusion. See LIZ ELWART, NINA EMERSON, CHRISTINA ENDERS, DAN FUMIA & KEVIN MURPHY, INCREASING ACCESS TO RESTRAINING ORDERS FOR LOW-INCOME VICTIMS OF DOMESTIC VIOLENCE: A COST-BENEFIT ANALYSIS OF THE PROPOSED DOMESTIC ABUSE GRANT PROGRAM (2006), available at <http://www.nlada.org/DMS/Documents/1176146724.92/WI%20appendix8.pdf> (last visited Apr. 23, 2010). They estimated that the state could save \$30,000 per avoided physical assault and \$115,000 per avoided rape. *Id.* at 12-13. These savings were calculated by assessing the average victim's costs, including medical care, mental health care, property damage, lost productivity, and lost quality of life. *Id.* Research also showed that requests for restraining orders were granted 55 percent of the time on average, but increased to 69 percent of the time when legal assistance was provided. *Id.* at 2.

98. NORRIN, *supra* note 96, at 2.

99. See generally *id.*

100. *Id.* at 26-29.

101. *Id.* at 26.

102. *Id.* at 2.

103. Many legal aid clinics have reported securing millions of dollars in delinquent child support, which reduces state welfare costs and other problems. For example, the Minnesota State Bar Association reported that legal aid reduced the burden on taxpayers by securing \$4 million per year in new child support payments. MINNESOTA STATE BAR ASSOCIATION, *supra* note 86. Similarly, clients of the legal aid clinics in Nebraska were awarded more than \$2.3 million in child support orders. FEELHAVER & DEICHERT, *supra* note 95, at 6. In another report, New Hampshire Legal Assistance reported that the child support payments it obtained for clients allowed women economic independence from their abusers and reduced state welfare expenses. NEW HAMPSHIRE LEGAL ASSISTANCE, *supra* note 92, at 2.

citizenry finds that the civil justice system does not enable them to participate in a meaningful way, cynicism and a loss of confidence in the law and government will follow. The growing frequency with which self-represented people become engaged in legal proceedings, based on rules and laws written for trained attorneys, is untenable. The negative effects of this crisis extend far beyond the lives of the people with low incomes who appear in court or address serious legal issues without a lawyer. Because equal justice under the law is fundamental to who we are as a nation, justice itself is at risk if we continue the downward slide into a system of justice that is, to a great extent, devoid of lawyers.

The time has come for Maine to acknowledge the corrosive consequences of an underfunded civil justice system and to adopt a comprehensive plan to assure that in matters affecting basic human needs, people receive the legal assistance required to experience and receive justice. A holistic view also reveals the positive social and economic consequences that inure to the benefit of everyone if the public provides the resources required to assure equal access to justice for low-income citizens. Just as the world is plainly revealed to be a solitary, round, and vibrant ecosystem when viewed from space, we cannot help but see that all of society benefits when a low-income person or family is provided civil legal assistance.

Perspective matters. Viewed from afar, it is apparent that to reclaim a vibrant civil justice system in Maine, the public must invest in civil legal aid and the courts, and support a spectrum of targeted approaches. Ultimately, the most important beneficiary of assuring equal access to justice is justice itself and, with that, our liberty.