BARRIERS TO ACCESS TO JUSTICE

IN MASSACHUSETTS:

A REPORT, WITH RECOMMENDATIONS,

TO THE SUPREME JUDICIAL COURT

FROM THE

MASSACHUSETTS
ACCESS TO JUSTICE COMMISSION

JUNE 2007

Barriers to Access to Justice in Massachusetts:
A Report, with Recommendations,
To the Supreme Judicial Court

June 2007

The Justices of the Supreme Judicial Court formed the Access to Justice Commission in June of 2005. The main mission of the Commission is to find means to make legal assistance available in important civil matters to all persons of low income without discrimination. It is apparent to all in the legal community that there are numerous, substantial barriers to justice in the Commonwealth. The Commission, whose members are listed in Appendix A, has concentrated on identifying those barriers to justice and finding solutions for people of low income, specifically persons who, because of their low income levels, qualify for assistance from legal services agencies. In order to identify barriers and various means of overcoming those barriers, the Commission conducted four open hearings in the past year. Some of our recommendations, if adopted, would help all segments of society facing barriers to justice, regardless of income.

The hearings consisted of presentations in panels by individuals who had first-hand experience in dealing with particular areas of concern involving obstacles to justice. The Springfield hearing in the Hall of Justice on May 12, 2006, had a panel of court personnel, a housing panel, a domestic violence/health panel, and a panel of lawyers. The November 2, 2006, hearing in the Superior Courthouse in New Bedford had two panels on immigration, two on domestic violence, two on education, one on health/elder/guardianship matters, and a panel of lawyers. In Lawrence in the Housing Court in the Fenton Center

on March 16, 2007, the subjects were: aging out of the foster care system, post-dispositional advocacy in the Department of Youth Services, the rights of juveniles in detention, certain problems of consumers, and the delivery of legal services in rural areas. The final hearing in the Adams Courthouse in Boston on April 4, 2007, had panels on housing, elder issues, labor and employment, and domestic relations. The panels, each listed by subject and their members with their affiliations, are set forth in Appendix B.

The Commission received a wealth of information (too full to cover completely in this report) and numerous suggestions from a wide range of people, many of whom were not lawyers. The Commission appreciates the willingness of these people to give freely of their time and advice. These people know the problems of accessing justice because of their direct involvement in areas of the Commission's interest. The Commission also appreciates the work of the various legal services organizations and others in arranging the panels and organizing the hearings. Our thanks go to the Trial Court Department for providing facilities, security, and stenographic assistance. We also thank the staff of the Supreme Judicial Court for assistance in the use of the Adams Courthouse. Further, we thank the Justices of that Court who attended one or more of our hearings.

These hearings revealed many barriers and suggested possible ways to overcome them. This report sets forth the Commission's observations and conclusions formed as a consequence of its investigations, particularly the open hearings.

There are many barriers to justice in the Commonwealth. Some could be eliminated by the judicious expenditure of funds; others could be eliminated, not by spending substantial amounts of money, but rather by concentrated attention to the circumstances that created them. Not all barriers are in the judicial system, and many that are cannot be removed solely by the judicial system. People who confront barriers to justice often do so as an integral part of the larger problem of their economic disadvantage.[1] People of low and even moderate income face these obstructions. Studies suggest that because of inadequate funding for legal services programs, far less than half of those who qualify for free legal assistance can obtain it.

People whose income is modest and such that they do not qualify for assistance are not significantly better off in overcoming barriers than those who qualify for assistance. The well-to-do can surmount, indeed can often altogether avoid, these problems. In most instances, if competent legal assistance were available, justice would be within reach, even for those of modest means.

Our findings and recommendations for action follow.

[1] "There's a point at which we don't really think through what it's like to be a poor person, a disabled person, someone on hard times. And so I know that we have talked a lot about cultural difference, and I'm sure that's come up before, and I'm sure the possibility of cultural competence or training to make sure people are sensitive to a variety of issues has come up. I really think it would be very helpful if we had some sensitivity about what the experience of poverty is like and what it is that people go through. How really difficult their lives are." Megan Christopher, Esq., South Middlesex Legal Services. April 4 in Boston.

The Delivery of Legal Services

The quality of legal services delivered to people of low income in the Commonwealth is generally excellent; the quantity is not. Many times each week a person seeking assistance from a legal services entity is turned away (or given less assistance than really needed) because that agency lacks the resources to meet that person's needs.

Massachusetts has been a leader in the funding of legal services. (a) IOLTA (Interest on Lawyers Trust Accounts) funds have made a significant contribution. The recipients of IOLTA funds – the Massachusetts Legal Assistance Corporation, the Massachusetts Bar Foundation, and the Boston Bar Foundation – have worked diligently to identify and distribute funds to worthy legal assistance organizations. (b) The Legislature has been responsive in funding legal services, but, as this report shows, substantial additional funds are sorely needed. The Legislature is the only source of funding that can be readily increased. (c) The bar has been responsive with funds and services. Pro bono services have been of great benefit, as we note at various points in this report. There is, however, a need for more lawyers to offer their services free from time to time. (d) Funding from the Legal Services Corporation has been beneficial. However, unlike many other states, where federal funding has been a major source, federal funding has been only about 15% of the annual funding for legal

services in Massachusetts (thanks obviously to the contributions of the other funding sources).

The Supreme Judicial Court, bar associations, and others need to do more to encourage lawyers to meet and to exceed the aspirations expressed in Rule 6.1 of the Massachusetts Rules of Professional Conduct. The rule states that a lawyer should annually provide 25 hours of pro bono public legal services or contribute "from $250 to 1% of the lawyer's annual taxable, professional income to one or more organizations that provide or support legal services to persons of low income."

When we refer to legal services, we refer not solely to services of lawyers. Realistically today, in many instances, the most that can be done is to give general guidance to a person seeking assistance, perhaps from a supervised paralegal [2] or an instructional pamphlet.[3] We shall give specific attention later to assistance that can and should be given inside courthouses. Much good could flow from the availability on the internet of (a) instructions for people who are self-represented and for those who aid people in need of help and (b) uniform forms for use state-wide by legal service agencies, lawyers, and perhaps even persons

[2] "Under the supervision of an attorney, I do believe that lay advocates can play a broader role to help overcome the problems that most limited pro se litigants face when they are forced to use our court system. It is in no measure a perfect response, but simply for us in legal services a cost-effective way to increase our reach in serving low-income communities." Gordon Shaw, managing attorney for the Massachusetts Justice Project in Holyoke. May 12 in Springfield.

[3] "[W]herever we go and whoever we talk to, people will tell us. 'I just didn't know (about housing laws).' So I think that access to general, legal information is a really important component to access to justice. People are looking for user-friendly, easy-to-understand pamphlets and guidelines that give them general guidelines. They don't have to read the statutes or know every single thing about the procedure." Anna Engley, paralegal at the Massachusetts Fair Housing Center, serving Central and Western Massachusetts. May 12 in Springfield.

needing legal assistance. Such instructions could explain in simple, readable terms (and not only in English) practices and processes in dealing with particular problems, such as eviction notices, small claims, and domestic violence proceedings. For statutes that direct readability of certain material and the availability of material in foreign languages, see G.L. c. 176B, s. 7; G.L.c. 175, s. 2B; G.L.c. 151A, s. 62A; and G.L. c 209A, s. 96. The suggestions made here are not new, and steps have been taken to achieve the desired results. In many instances, excellent documents explaining various processes and procedures exist, but their distribution has been spotty.

Civil Gideon

Here, and in other states, there is a strong movement pressing for public funding of counsel for persons of low income in all civil matters of importance. The American Bar Association has adopted a resolution calling for the appointment of counsel for 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." This effort has been given the title "Civil Gideon." That title may be misleading in that the mandate of furnishing counsel at public expense in criminal matters espoused in Gideon v. Wainwright was based on the Federal Constitution. Civil Gideon proponents are not solely advancing a constitutionally-based argument, and

perhaps they are advancing no such argument at all. They seek their goal through legislation or through court rule or decision.

The Commission acknowledges the soundness of the basic purpose of the A.B.A. resolution. The Commission believes, however, that the limitation of the A.B.A. resolution to the furnishing of a lawyer in all instances is not currently realistic. "Legal assistance" is a sounder characterization, leaving the furnishing of a lawyer for serious or complicated matters. Legal assistance through written materials, videos, and trained lay personnel often could provide what is needed at less cost. However, we do not discount the merit of the A.B.A. resolution as expressing an ultimate objective. At its May meeting this year the Commission unanimously adopted a resolution "that the Massachusetts Access to Justice Commission supports the concept of providing legal assistance, as a matter of right and at public expense, to low-income persons in those proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health or child custody."

Massachusetts has statutes that authorize (but normally do not mandate) the appointment of counsel in a number of civil matters. We suspect that the range of these statutes is broader than like statutes in most other states. There remain, however, a number of critical areas where no statute authorizes the appointment of counsel (or even assistance in some other form). It is toward these areas that the Commission suggests that first steps be taken to implement Civil Gideon, particularly when a low-income person is opposed by a lawyer for the other side. We suggest the following areas for immediate attention: court

hearings in eviction proceedings, civil contempt proceedings where incarceration is a possibility,[4] and proceedings by the Department of Youth Services to revoke the "conditional release" of a juvenile (an adult has a State constitutional right to have a lawyer in proceedings to revoke his or her parole). Although, under G.L.c. 119, s. 29, counsel must be appointed for a youth in a custody-related proceeding brought by the Department of Social Services, for some reason, where custody of a youth arises in a guardianship proceeding in the Probate and Family Court under G.L.c. 201, s.1, no counsel is provided for (even if DSS indirectly supports the proceeding). Counsel should be provided in all such cases. We also recommend that, when a criminal case and a civil matter involve the same issue, the lawyer appointed to represent the indigent in the criminal matter should also be appointed to represent the indigent in the civil case. But we recognize that expansion of the kinds of proceedings in which a statute or court rule allows or directs the appointment of counsel will be effective only if adequate funds are available.

The Commission does not discount the possibility that some aspects of the goal of Civil Gideon could be achieved by court rule. Rules of the Supreme Judicial Court concerning cases in which counsel had to be made available to an indigent charged with a crime kept ahead of the series of Supreme Court cases that increasingly mandated the appointment of counsel in criminal matters.

[4] "The Committee for Public Counsel Services takes the position that there's no case law, statute or rule for right to counsel in civil contempt cases even though the defendant faces possible incarceration. Personally, I believe that when one's liberty is at stake, that defendant has a right to counsel. And my suggestion to remove the barrier is for the SJC to promulgate a rule that civil-contempt defendants that face the possibility of incarceration have a right to counsel." Hon. David Sacks, Hampden County Probate and Family Court. May 12 in Springfield.

Section 2 of Supreme Judicial Court Rule 3:10 recognizes that a party's right to be represented by counsel may be established by a rule of that court.

Services in the Courthouse

Legal assistance in one form or another must be available in the courthouse in order to afford fair treatment of low-income people. Throughout the Commission's hearings this need for assistance came up again and again. Personnel in clerks' and registrars' officers can go only so far because they may not practice law and must preserve impartiality. These personnel need guidance and assurance, however, that they may help people seeking assistance without exceeding proper limits. For example, court personnel can provide legal information although they may not advise a person what course to pursue.[5] For advice about what legal course to follow, help must come from some other source.

Some help, short of providing counsel, is available from legal service organizations. But these agencies cannot meet the demand. An able mediator may be able to help the parties resolve the dispute. In other circumstances, a

[5] "There's a big difference between offering legal advice and providing information and assistance to pro se litigants when they come to the counter. . . . In Norfolk County, we have a full time Pro Se Facilitator who's one of our most experienced people and that's his job all day; people come in, he assists them with filling out forms, telling them what they should be filing, explaining the process to them. We've also taken our most experienced people in the Registry Office and put them on the front counter where they'll deal with people as they come in the door and they're giving them information so that people are getting the correct information when they come in." Richard P. Schmidt, Assistant Judicial Case Manager, Norfolk County Probate and Family Court. April 4 in Boston.

nonlawyer (for example, a community organization's housing specialist acting for a low-income tenant) may be able to help a low-income party resolve matters with an opposing party (such as a landlord or his lawyer). Of course, the greater goal is to establish processes by which disputes never reach the courthouse.

Some interesting, beneficial activities are being encouraged in courthouses. (a) The lawyer for the day programs help and need to be expanded. (b) The Commission heard from former Probate and Family Court Judge Edward M. Ginsburg who described his Senior Partners Program in which retired lawyers and others agree to take on a client from time to time. He is working to expand that program. He advises that for the program to work logistic support is needed from a legal services program. (c) The use of family law facilitators in the Probate and Family Court should be expanded. Facilitators are attorneys, employed by the court, primarily to assist indigent and marginally indigent litigants in completing pleadings, in explaining court procedure to them, and in making referrals in and outside the court. This form of assistance should be available in all courts in which low-income people are involved. (d) In the District and Housing Courts such a person could be called a pro se facilitator.

A promising experiment in "limited assistance representation," known colloquially as "unbundling," is being conducted in the Probate and Family Courts in Suffolk and Hampden Counties. This process, encouraged by the Supreme Judicial Court's Steering Committee on Self-Represented Litigants, permits an attorney to enter an appearance for a client in only part of a proceeding. The Commission endorses the concept and hopes that it will be a

success. Legal service organizations should consider whether they could effectively help more clients achieve their goals by taking advantage of "unbundling." The Commission also favors lawyers' assisting low-income people in the preparation of petitions and the like without disclosing their involvement, a practice described as "ghostwriting."

Innovative steps are needed. Experienced, trained lay advocates working for legal and social service agencies can give guidance to low-income individuals but may not appear in court on behalf of a client. For example, in the Housing Court, they may give advice to tenants (and landlords) and may stand with the person in court but generally may not speak on behalf of the person in the courtroom. Counselors for victims of domestic violence may advise but may not speak in court on behalf of the victim (unless asked).

In terms of assisting low-income people obtain a fair hearing, win or lose, the system's refusal to permit well-trained lay people (perhaps certified by the court) to speak on behalf of a client in the courtroom may represent a true barrier to access to justice. It would seem that the availability of the supportive views of a paralegal would tend to produce a more informed decision maker and likely a fairer result, particularly when the opponent (landlord, alleged batterer) is represented by counsel (or is, for example, a sophisticated landlord). The Commission urges that the Supreme Judicial Court authorize trained nonlawyers to act in court on behalf of people of low income in designated circumstances.[6]

[6] "We're on a second hearing on a restraining order. The batterer is there. . . He has a lawyer. I'm there as an advocate. I'm not allowed to speak. My husband is absolutely convinced I'm going to have a stroke some day in court not being allowed to speak. With my client, she does not have legal representation, and she's overwhelmed. She

Immigrants

Immigrants confront barriers to justice that others do not: linguistic, educational, and cultural. In many instances the immigrants' barriers are outside the courts, and they are real, personal, and obstructive.

An immigrant who does not speak English has difficulty dealing with society in general and with the justice system in particular. He or she, of course, needs an interpreter during court proceedings. The timely, effective availability of a qualified interpreter in a court proceeding is most important in order to avoid the cost to all of a continuance. To the low-income person a needed day's wages can be lost. The cost to the Commonwealth of a continuance caused by the lack of an interpreter is obvious. The Commission recommends that the trial court department make a study of those instances in which an interpreter was requested and not produced.

We are even more concerned about linguistic problems outside the courthouse -- the difficulty in communicating with social service agencies, lawyers, law enforcement personnel, and others. Means of communication and understanding are fundamental to affording assistance to non-English speaking immigrants (and others).

Written instructive materials in foreign languages are important and so are people who speak English and one or more foreign languages to whom an

---

becomes emotional, unable to speak. She has too much money to qualify for legal services. She has too many assets, but she does not have enough money to come up with that $1,000 or what it is to have somebody represent her. It's a common problem, a serious problem. . . ." Barbara Noonan, Safe Plan Senior Advocate for Barnstable County. November 2 in New Bedford.

immigrant may turn in a courthouse or administrative agency. Instructions for immigrants in other than English should be encouraged.

Many immigrants need education on their basic civil rights. They often come from countries where the police and other authorities are feared. They are reluctant to turn to authorities for assistance.[7] In turn, many public employers, police, court personnel, and others whom an immigrant may encounter lack adequate sensitivity to cultural and ethnic differences. Ways should be found to sensitize judges and other court personnel to the cultural problems that immigrants present.

Immigrants are subject to particular types of abuse in society generally. The abusers become problems for the judicial system only if a proceeding of some sort is brought. They are nevertheless barriers to just treatment, and ones that most Massachusetts residents do not face.

Some people seek to take advantage of immigrants. The Commission heard testimony about tenants who are reluctant to complain of code violations for fear of retaliation -- an eviction leading them to even worse living circumstances. We heard of day workers (some of whom are undocumented aliens) who dare not complain that their wages were not paid because they fear that they will be denied future work[8]. Additionally, we heard of predatory "street

[7] "A lot of my clients come from cultures where you don't approach a police officer. You run away from police officers. You don't even want to get involved in the court system." Bennett Jaffee, Esq., South Coastal Counties Legal Services. November 2 in New Bedford.

[8] "[T]he temp. industry has successfully exempted itself from most licensing and regulatory requirements." Monica Halas, Esq., Senior Employment Attorney at Greater Boston Legal Services. April 4 in Boston.

corner" notaries who claim they will help with an immigrant's status, but instead take his or her money and disappear. The Commission heard testimony about mortgage brokers who take advantage of immigrants (and others) in encouraging the purchase of homes that the borrower could not afford. We were advised that the availability of low-cost legal representation before the borrower makes a commitment would prevent many disasters.

Immigration law is complicated and changing. The number of experienced lawyers available to help low-income immigrants is small.

Domestic Violence

The Commission heard witnesses who believed that some judges and other court personnel are not sufficiently versed in the nature of domestic violence. For example, that domestic violence tends to be progressive.[9] Proponents of such a program said that some judges were concerned that participation in an educational program would impair their impartiality. It would seem that a balanced program explaining (a) circumstances in which false claims

[9] "It is this progressive nature of the violence that is most frequently misunderstood and leads to frustration with the court personnel. And that frustration, unfortunately, is communicated to victims. Training of judges and other courtroom personnel, security, clerks and so forth can also have a significant impact on response to domestic violence in the system. Prosecutors and judges, frustrated with women who recant or vacate, should be aware . . . that a woman seeking to withdraw a protection order is in fear and may have been threatened by the abuser. Judges can also affect victim's safety and batterers accountability through their demeanor. When seeking assistance through the legal system, many victims fear retaliation from the abuser and are intimidated as well by an unfamiliar and complicated legal system and process and disbelief by the presiding Judge. Our victims tell us that they feel re-victimized by the system. Judicial demeanor sets the tone for the courtroom personnel." Pamela McLeod-Lima, Executive Director of Women's Center. November 2 in New Bedford.

are made and (b) the interests of alleged batterers should eliminate concerns about any loss of impartiality. Such programs do exist. The Commission urges that the judiciary continue its program of education on the nature of domestic violence. The problem may be that judges who might benefit most from such a program do not attend them.

We received recommendations that, during a G.L. c. 209A hearing, a court officer should stand between the alleged violator and the alleged victim; that the two parties should be physically separated while awaiting the hearing; and that, to prevent intimidation, the alleged violator should not be allowed to leave the courthouse until the alleged victim has had a chance to get safely away.

It appears that in a G.L. c. 209A proceeding, some judges are not ordering support where it would be appropriate. There is no reason to require a separate proceeding to determine child support [10]

We heard that the interests of children were not adequately represented in G.L. c. 209A proceedings. Moreover, children should not be in the courtroom if old enough to understand what is being said. Certainly a child should not be used as an interpreter. Indeed, care must be taken in all cases to avoid using a family member or an otherwise interested person as an interpreter. The need for day care facilities in courthouses is particularly intense in the instance of G.L. c. 209A proceedings. Legal assistance of a lawyer or at least a domestic violence advocate should be available to a low-income complainant. We were

[10] "It is almost impossible to get child support orders in district court restraining order actions, even though it is permitted by statute and encouraged by the guidelines". Megan Christopher, Esq., family law attorney from South Middlesex Legal Services. April 4 in Boston.

told that less than one-half the relevant courts have a trained domestic violence advocate to work with victims.

We also heard that some police did not know of the availability of court orders on weekends (or at least did not tell victims of the availability of a judge).[11]

There are programs to help batterers reform. It appears that such a program might be a beneficial alternative to incarceration of a batterer convicted of battery,[12] although we do not know enough about the success of such programs. Places in programs are generally available only if one can pay for the services.

Although the Commission heard of G.L.c. 209A proceedings in terms of domestic violence, G.L.c. 209A concerns abuse prevention generally. Many of the Commission's comments about domestic violence proceedings are fully applicable to all G.L.c. 209A proceedings.

---

[11] "We are getting a lot of people that are coming in lately and saying well, the police told me I couldn't get an order over the weekend. 'I had to wait for court to open.' Clearly we have judges on call to do that, so I'm not sure if that's a lack of training or people do get jaded because victims do go back to their batterers for many reasons." Catherine Phillips, Legal advocate for the Women's Center at SSTAR in Fall River. November 2 in New Bedford.

[12] "The Massachusetts Commissioner's Office on Probation did a study two years ago, which showed that the recidivism rate is much lower with a client who has completed the Batterer's Intervention Program. So I believe strongly in it. The only real solution, I think, is the education of the judges and the district attorneys who would hopefully argue for [it]." Dan Buckley, Director of the Batterer's Intervention Program at SSTAR in Fall River and at High Point in New Bedford. November 2 in New Bedford.

Housing

All courts that deal with evictions should endeavor to duplicate the various practices that the Housing Court Department follows in the handling of eviction proceedings.

The Lawyer for the Day Program of the Boston Bar Association operates separate tables to advise landlords and tenants, assists people in mediation, and is starting to try cases on behalf of landlords and tenants.[13] The Volunteer Lawyers Project and Greater Boston Legal Services train lawyers to sit at the tables to advise people of their rights, backed up by legal services lawyers. Then some lawyers help in mediation in some cases usually where one side has counsel and the other does not. The Housing Court has adopted a beneficial standing order that permits a lawyer to act in mediation without a commitment to try the case, if mediation fails. The project will provide young lawyers trial experience and will tend to produce a just outcome. The program could not work effectively without the assistance of a legal services organization.

The Commission is persuaded that trained lay advocates for tenants facing eviction should be allowed to participate in a proceeding before a judge. We heard from such a person who spends time in the Boston Housing Court attempting to work with unrepresented tenants. We have discussed the

[13] "[T]here's nothing like the feeling when you're walking back to your office in the morning after having staffed that table, and . . . realize that you helped somebody save their home. These are experiences that a lot of people went to law school thinking that they're going to get in their careers, that as you move on through your career that you lose and miss." Samuel B. Moskowitz, Esq. April 4 in Boston.

desirability of lay advocacy in various settings elsewhere. Here we had a clear example of the merits of such a practice.[14]

We are also confident that a coordinator in a court could facilitate the distribution of particular cases involving pro se litigants to the appropriate service. The Commission recommends that each court dealing with eviction matters have such a coordinator.

The Commission also heard that unsupervised "mediation" in courthouse hallways can result in inequitable agreements. If the tenant has a lawyer assisting in the mediation, the results are fairer.[15] The fact that there may be a trial with a lawyer involved for the tenant does much to induce the landlord to agree to a fair settlement. It was suggested to the Commission that it recommend a new disciplinary rule that would require a lawyer dealing with an unrepresented litigant to adhere to the same standards that apply when a lawyer makes representations to a judge. [It would appear that current Rules 4.1 (Truthfulness in Statements to Others) and 4.3(a) (dealing with an unrepresented person) already provide substantially similar protections.]

---

[14] "And unfortunately if we're not able to negotiate something out in the hallway and I do go before the judge, I'm mute. I have no standing, I'm unable to express what I can offer, what a possible resolution is because I'm not a lawyer. So therefore, I stand beside the tenant hoping that I've prepared them enough. But often times not because they're intimidated. So they are struggling to make their case of something that they don't understand." Cheryl Lawrence, Tenant Organizer, City Life/Vida/Urbana. April 4 in Boston.

[15] "I believe that if you have an unrepresented litigant and a lawyer in a hallway and they reach an agreement, it's likely to be more imbalanced than an agreement that is reached if you have a neutral sitting in the room." Honorable Jeffrey M. Winik, First Justice, Boston Housing Court. April 4 in Boston.

The Commission received a suggestion that there be guidelines for a judge's colloquy when the judge considers the acceptance for a proposed settlement and further when a landlord seeks an execution because the tenant did not comply with the settlement agreement. The best practices in the various Housing Courts suggests a process that may not exist (and perhaps cannot be achieved) in various District Courts. The question of the expansion of the Housing Court's geographic jurisdiction was discussed.[16]

Judges face a difficult challenge when litigants are unrepresented. Best practice calls for the judge to explain the process at the opening of court -- what's going to happen and what resources are available to assist litigants to resolve problems. The judge needs to do more than sit passively but rather should be alert to cultural differences and should seek out the facts and the equities.[17]

In the course of the Commission's hearing in Boston on housing the question of handling a litigant with a mental disability arose. The subject of mental impairment is, of course, of wider concern than in housing matters. A person with a disability that affects that person's mental functioning can have difficulty understanding legal rights and processing. For example, such a person may not comprehend that particular conduct was a violation of his or her lease.

---

[16] "[I]t would be beneficial because this really is a specialized area of law with a lot at stake. We are talking about the loss of a home." Stefanie Balandis, Esq., a housing lawyer at Greater Boston Legal Services. April 4 in Boston.

[17] "I have more confidence when I have two lawyers before me that the legal issues and the factual issues and the equitable issues are being presented to me competently. If I have a pro se litigant before me, either two of them at the same time or one, I have to listen. . . carefully to make sure that I'm not missing the equitable piece. I can pretty well pick up the facts. I can pick up law; it's the equitable piece that I have to be extra careful of." Honorable Jeffrey M. Winik, First Justice, Boston Housing Court. April 4 in Boston.

The Commission received specific recommendations for dealing with mentally-impaired tenants, including a study of what court personnel and others need to know in order to identify persons with mental difficulties and to help them have equal access to judicial proceedings.[18]

Juveniles

At the Commission's hearing in Lawrence panelists presented three circumstances concerning the treatment of juveniles. One topic involved a refreshing example of efforts to deal with the circumstances that juveniles face when they "age out" of the foster care system. The other two subjects concerned situations in which the treatment of juveniles appeared to be unsatisfactory. We also heard that some systems were taking minor school discipline problems to the Juvenile Court that should be handled in the schools.

[18] "They often can't understand their choices particularly if they're unrepresented and can't assess their own ability to carry out what they agreed to, never mind to fully appreciate what will happen if they fail to comply with the agreement. A court process that does not recognize and adjust for such disabilities not only has failed to make reasonable accommodation but also fails to explore measures that might address what I call the civil recidivism that takes such a toll on the courts, the service agencies, the taxpayers and most of all on the person.

"Drug courts have reduced recidivism significantly by addressing treatment and service issues in the resolution of the case. And so has the Tenancy Preservation Project. I believe courts dealing with housing issues must apply what has been learned so far and must also explore further ways to process housing cases which provide necessary reasonable accommodation to those who meet the ADA disability standard as well as lead to outcomes that reduce what I call the civil recidivism." Ann Anderson, consultant on the Americans with Disabilities Act and its relation to housing. April 4 in Boston.

Aging out. The Honorable Michael Edgerton of the Juvenile Court sitting in Essex County described experimental efforts to help young people placed in foster care in the Department of Social Services (DSS) who will be turning eighteen within one year, and thus leaving the custody of the DSS. These young people have not had the benefit of positive parental guidance, as most youngsters have.[19] They are often unprepared to cope with pressures and responsibilities of living on their own. Many lack family, employment, high school diplomas, and specialized job training.

In late 2005, the Lynn Juvenile Court, with the cooperation of DSS and others, began a pilot project to provide support and guidance by holding permanency planning hearings before a judge when the foster child attains seventeen.[20] DSS prepares a comprehensive report which is available to advocacy attorneys, social workers, and others. Then, each six months a judge holds a hearing at which the foster child can be (and often is) an active participant, discussing his or her future, any personal problems, and what assistance he or she needs. Everyone associated with the pilot project considers

[19] "These young people often are struggling with physical, mental health and social issues. They often have difficulty trusting others, difficulty interacting with their peers, difficulty relating to adult authority figures. Upon reaching the age of eighteen, they suddenly lose the safety net of the Department of Social Services. Many of these young people will be enveloped into society without the planning, skills, or maturity to cope with the daily pressures of life." Hon. Michael Edgerton. March 16 in Lawrence.

[20] "The one thing that I would change about the pilot project that's happening within the North Shore is that the age should be at sixteen. I think it should start a bit younger to be honest. . . I think it's really unfair to cram a life's worth of lessons within two years. . . . Again, a child who grows up with their birth family, it's happened over time that they learned these skills." Eliza Wagner, a former foster child, employed by Speak Out Team, an advocacy group for children in foster care. March 16 in Lawrence.

it a great success. It is being implemented throughout Essex County, and it is hoped Commonwealth-wide.[21]

Judge Edgerton urged that training of lawyers to advocate for foster children be funded and that there be unconditional support for them until they attain the age of twenty-one. The investment would be worthwhile.[22]

Post-disposition Advocacy in DYS. The Commission next heard about the need for appointed counsel for certain youths who have been placed in the custody of the Department of Youth Services (DYS). After a youth has spent time in a DYS locked facility, the youth may be released by DYS into the community on "a conditional grant of liberty," a circumstance that is much like parole for an adult offender. In many instances, a youth will fail to comply with the terms of the conditional grant and will be subject to revocation of his or her release. The youth is entitled to a due process hearing, but he or she is not given counsel according to present practice. The Commission is persuaded that a youth has no practical way to protect himself or herself in presenting a case

[21] "The program needs to be implemented in the Probate Court as well as the Juvenile Court. The children I represent in DSS custody in the Probate Court proceedings are actually far more likely to require highly specialized services. . . . For the most part, these are children who have been voluntarily placed back into the custody of the Department due to the parents' inability to meet the child's needs. For example, many of them are actually disrupted adoptions, so that they are former foster children who were adopted and then returned back to DSS care because the adoptive parents couldn't meet their needs." Linda Medeiros, Esq. March 16 in Lawrence.

[22] "[I]t is fair to argue that foster children who do not make a successful transition to adult life will end up costing much more in welfare, food stamps, homeless shelters, and incarceration. I thank the Commission for the opportunity to speak on what I feel is a very important subject." Hon. Michael Edgerton. March 16 in Lawrence.

against revocation of his or her liberty.[23] The Commission questions this practice because in parallel circumstances an adult has a constitutional right to a lawyer.

Rights of Juveniles in Detention. The Commission heard that in many instances juveniles who are arrested have not been given access to a bail commissioner in the same way an adult would. The result, we are told, is that youths are being held in circumstances in which they should be entitled to bail. The misunderstanding of the police may result from the requirement (G.L.c. 119, s. 67) that, when a youth is arrested, a probation officer must be called to express an advisory opinion on whether to detain the youth.[24] The fact is, however, that consultation with a probation officer is not a substitute for the determination of a bail commissioner. Moreover, we were told that children

---

[23] "They have a right to hear the evidence against them, and the evidence against them must be material and relevant to the allegation against them. Okay, a lot of legal phrases that the kids don't have any understanding of.

"But who presents that evidence? The case worker, their DYS case worker who takes the role of prosecutor and in fact primary witness against the kid. And the child if. . . he's representing himself is told that he can cross-examine this adverse witness. He's also told that he can examine or dispute any documentary evidence that's entered against him. He can produce his own documentary evidence. And he can in fact. . . present his own witnesses. Let me point out that the likelihood that this kid could present witnesses is meaningless because in fact they've been locked up. They can't call out to community.

"I think it doesn't take much for all of us to recognize that in general, the skills that would be required to advocate for one's self are well beyond the capacities of most of the juveniles committed to the Department of Youth Services. . . The average kid in DYS custody is between the ages of fourteen and sixteen. And over seventy-five percent of the kids in the custody of the DYS have reading skills, comprehension skills, and writing skills that are significantly below grade level. There is no way they can do this." Barbara Kaban, Esq., Deputy Director of the Children's Law Center. March 16 in Lawrence.

[24] "[W]hat we have found when we've interviewed some probation officers [is] that in fact there are no rules that guide them. There are no written policies around this issue. And it seems to be a very cursory review that occurs over the phone. A police officer calls, gives them some facts, and they make this decision. And once that decision is made, too many of the police departments are not going further." Barbara Kaban, Esq., Deputy Director of the Children's Law Center. March 16 in Lawrence.

under fourteen were being detained, contrary to law. Here, we have examples of barriers that can be removed simply by adherence to existing requirements, and, more helpfully so, if there were guidelines promulgated for probation officers in deciding on a recommendation on bail.

Elder Care – Guardianships

Elder care was a topic of one panel during the Commission's Boston hearing. The panel dealt separately with (a) guardianships for elderly and incapacitated persons and (b) problems for elderly and other low-income debtors in the courts. The latter subject focused on operations of small claims proceedings, and we treat it separately under that subject. Here, we discuss the difficulties disclosed in the appointment of guardians for elderly persons (and others) who are or are claimed to be under a disability.

The fundamental problem is that the interests of a person for whom a guardian is sought are not adequately protected in the system. Although section 5 of S.J.C. Rule 3:10 requires the appointment of counsel for a proposed ward without regard to the proposed ward's financial status (subject to later review), the Commission was told that normally counsel is not appointed.[25] The absence of safeguards in the appointment of a guardian for an allegedly incompetent

[25] "And that rule is honored, so far as I can tell, virtually only in the breach. . . Having counsel for these proposed wards not only serves the ward. . . but it helps the court do its job and serves the ends of justice." John Ford, Esq., Administrator of the Elder Law Project at Neighborhood Legal Services in Lynn and President of the Massachusetts Guardianship Association. April 4 in Boston.

person is troublesome. It further appears that a guardian can be appointed without notice to the ward.[26]

Two suggested solutions that would go a long way toward curing the problems are (a) Article 5 of the proposed Massachusetts version of the Uniform Probate Code and (b) a bill proposing a public guardian commission.[27] Each of these concepts has been adopted in many jurisdictions. Attention also needs to be given to the competence of persons who are appointed guardians and their adherence to their obligations.

Small Claims

Last summer the Boston Globe published a series of four articles concerning the operation of small claims proceedings in the Commonwealth. Those articles were highly critical of certain practices that operated unfairly to the interests of debtors. Following the publication of these articles, Greater Boston Legal Services (GBLS) arranged for a student program at Northeastern School of Law, known as Law Office 12, to study small claims practices, to propose

[26] "I can think of no other procedure in the civil context where an individual can lose as much of their liberty as in a guardian process, without even prior notice or an opportunity to be heard. . . In fact one court staffer who we work with has said that the gaps are so large that he thinks it might be possible to get a guardianship on any of us on any particular day in a probate court." Wynn Gerhard, Esq., Managing Attorney of the Elder Law Unit at Greater Boston Legal Services. April 4 in Boston.

[27] "The Public Guardianship Bill would ensure that people requiring guardians receive appropriate intervention by an appropriate guardian. . . . Safeguards would also be put in place. . . to ensure that only people needing guardians would receive one." Sandy Hovey, Director of the Elder Protective Services, a state-mandated program for elders who have been abused or neglected, at ETHOS. ETHOS is a private non-profit organization that holds a state contract to provide services. April 4 at Boston.

solutions to problems, and to bring up-to-date GBLS's consumer handbook for elderly pro se debtors.

In-court observations raised various concerns. The conduct of lawyers for creditors in dealing with debtors in small claims proceedings may need supervision.[28] On occasion, clear and audible explanations at the opening of sessions were not given. Attention to language barriers is needed, as well as careful advice to debtors regarding exempt assets and income.

Law Office 12 has completed its study and has set forth its conclusions and recommendations in an April 4, 2007 report (with an extensive appendix) entitled "Difficulties Facing Elderly Debtors." Members of Law Office 12 testified at the Commission's Boston hearing. All the recommendations deserve careful attention. The Commission particularly questions (a) the failure to continue the practice of using certified mail notifying a debtor of a hearing date, (b) the absence of greater regulation of collection agencies, and (c) the failure to send detailed instructions to debtors.

Consideration should be given to the regulation of debt collectors through licensing based on an examination, by requiring greater transparency in debt collection, and by barring harassing telephone calls. Law Office 12 proposed several legislative improvements which are set forth in its report.

[28] "'Come on up and see if I can help you.' This sounds like a perfectly innocuous statement, but this is actually what we heard being said by a lawyer for a debt collection guy greeting people who were entering the small claims court session. . . You don't realize that he is in fact the lawyer for the plaintiff's side. . . And it was actually very common." Katherine Fang, first year student at Northeastern Law School. April 4 at Boston.

The District Court formed a working group charged with considering reforms in the small claims system. Representatives of Law Office 12 met with the District Court Working Group to present Law Office 12's findings and recommendations. At this writing, the District Court working group's conclusions are not available.

Preventative Action

The Commission would be remiss if it failed to emphasize the high desirability of measures taken to assist low-income people to avoid the crises that led them to court. Preventive education and other assistance should be encouraged. Social service agencies can do much to help. Early intervention to resolve problems would save time, money, and anguish. The Metropolitan Boston Housing Partnership operates a program designed to strengthen homeless prevention.[29] Mediation of landlord/tenant conflicts has avoided eviction proceedings. The Commission intends to investigate how alternative dispute resolution practices are operating in the Commonwealth.

[29] "The primary recommendation thus far is to develop early warning systems in order to connect households to available resources when necessary and prevent costly eviction. Integral to this process is a broad based education campaign particularly for subsidized tenants regarding their rights and responsibilities." Julie Kehoe, Executive Director, Metropolitan Boston Housing Partnership. April 4 in Boston.

The Quality of Services

Although the Commission has focused on the quantity, not the quality, of services available to people of low income (and others), we are mindful that the quality of services may also need improvement in some instances. The training and experience of appointed lawyers is no doubt inadequate in particular situations. We are concerned that social service agencies may not be giving the right advice to their clients. Obviously, poor quality legal representation can have a materially adverse effect on a client. In many areas, well-trained lawyers are needed. We have already mentioned, for example, the need for more qualified lawyers to assist immigrants in resolving their legal concerns.

There are excellent educational programs available in the Commonwealth. Perhaps the appointment of counsel to represent low-income persons in civil matters should be limited to those who have successfully completed programs presented by bar associations, the Committee for Public Council Services, Massachusetts Continuing Legal Education, and others. To achieve this assistance may require that tuition be waived.

Certainly the level of compensation paid to appointed counsel has a major influence on the number of lawyers who are willing to be appointed. Some decline to serve because they cannot afford to do so. Many lawyers who gained experience early in their careers working for a legal services organization leave because of the low salaries. Clearly higher salaries are a desirable goal. Substantial encouragement for new members of the bar to work in legal service

entities could come from tuition remission programs in law schools. The Commission intends to pursue this topic.

Rural Areas

The Commission did not spend as much time as it might have on the problems of people in rural areas. We did hear from one panel on the subject, and we received occasional comments in other circumstances. The problems are apparent. Many solutions are not.

People of low income living in rural areas who need legal assistance are confronted with the unavailability of those services in their communities, the lack of public transportation to locations where help may be available,[30] and often a lack of understanding that legal assistance is available if they can gain access to it.[31]

---

[30] "I'm embarrassed to say that in Norfolk County where I think we do a tremendous job providing services for people that find their way to the courthouse [Norfolk Probate Court], it's very difficult to get to. Almost impossible if you don't drive a car. We were placed out in a beautiful new building out in Canton in an industrial park. . . .but there is no public transportation. The closest T-station is the commuter train three miles away and there aren't even sidewalks that go all the way up . . . [W]e're probably the worst as far as accessibility in the State at this point, but that's always something that needs to be kept in mind when we talk about accessibility, can people get there?" Richard P. Schmidt, Assistant Judicial Case Manager in the Norfolk County Probate and Family Court. April 4 in Boston.

[31] "What I'm finding is that although Gloucester is a moderately populated area, because of sheer geography and location, many residents are unable to access a variety of necessary services beyond the island and city limits. The majority of the clients that I come in contact with on a daily basis are completely unaware that there are legal services free of charge that could possibly assist them with housing, family law, benefit disputes, and other civil legal issues.

In some instances, access to better services may be obtained by more court sessions in various locations and by revised procedures, such as where papers may be filed.[32] Of course, the availability of satellite legal services and local court sessions would help solve part of the problem, as would extensive training of lay advocates in the various unserved areas.

In many instances, including during the panel discussion of legal assistance in rural areas, the Commission was told that low-income people needing legal assistance did not know that help might be available. That is no doubt true. It is equally true, however, that legal services organizations cannot meet the needs of all those who do come to their attention. Thus the urge to advertise the availability of services must be tempered. This is an unfortunate dilemma.

"Even if more of my clients knew that these services existed, their ability to access them is limited. There are few options for public transportation that would allow them to get to Lynn or Lawrence without having to make a whole day of it, and this is assuming that they can even afford the transportation to get them there.

"When clients walk into my office, most of them are feeling hopeless and desperate if they know that the only way they are able to get in touch with legal services is to somehow find a way out of town, over the bridge, and at least thirty minutes away. Most of them will just give up. It's not worth it to them to add another daunting task on top of the situation that they are already finding themselves in." Maggie Meffen, social service advocate at Action, Inc. in Gloucester. November 2 in Lawrence.

[32] "Many times I also found that clients that I work with in Marlborough Court, they did not file the papers in Cambridge Court. Why not? Because to file these papers they would have had to go to Cambridge and many people, they don't have directions, they don't know how to get there, there is no public transportation and once they get there, the court is big, it's confusing, there are no signs, there is no one available to explain to them, they don't know where to go. There are no signs in English, there are no signs in Portuguese, there are no signs in Spanish and there is no one sitting there that can explain." Reni Coletti, Victim/Witness Advocate in the Middlesex County District Attorney's Office. April 4 in Boston.

The Commission has concluded that low-income people in isolated areas have available, and receive, less legal service assistance than similar people in more concentrated population centers. We have also concluded that social service agencies should reach out to local bar associations for help.

.

Administrative Agencies

The Commission devoted relatively little attention to the operation of administrative agencies. These agencies are the primary concern of the executive department. Many of the Commission's observations are likely to be relevant to administrative proceedings. We have already noted a specific matter in the DSS and in the DYS. We heard that applicants seeking unemployment payments who appeal to the Division of Unemployment Assistance have greater success when they are represented by counsel, but that in that situation (unlike the case in Michigan) counsel is not provided. We also heard of substantial delays in the making of probable cause determinations on complaints filed with the Massachusetts Commission Against Discrimination, and that complainants with legal counsel were more likely to obtain probable cause findings than those without counsel.

Implementing Access to Justice

There are many ways to deal with the recommendations and concerns of the Commission. Some subjects are in the control of the judicial branch. Some

require legislative action. Implementation of the Commission's recommendations and analysis of its concerns will require a coordinated effort within the judicial branch. Committees and Commissions appointed by the Supreme Judicial Court and the Trial Court can help, but such groups lack funds, authority, and the capacity to do the job fully and well.

It has been proposed that a position be created in the Trial Court Department for a coordinator of access to justice efforts. The Commission endorses the concept. To show the judiciary's commitment to access to justice and to enhance the authority of the coordinator in dealing with people within the judiciary, the installation of a judge in the position would have merit. The process would only work well if the Trial Court Chief Justices were fully in support of the effort and if the coordinator works tactfully with the various portions of the judiciary involved in any particular project.

Conclusion

The Commission wishes to make clear its purpose in conducting open hearings. The Commission sought to identify barriers to justice and ways to surmount them and not to assess the administration of justice in the Commonwealth. Our process was unavoidably seeking to identify difficulties. Moreover, circumstances presented to the Commission may not have been representative of the Commonwealth as a whole. In some instances we are confident they were not. Nor did the Commission usually have the views of the

judiciary. Certainly, in many instances, the judiciary's explanation of a given situation would involve a discussion of the effects of limited funding.

We are aware that many of the Commission's concerns are being addressed by others. The range of topics considered was wide. Some were directly concerned with activities in the courthouse; others were more peripheral. In some instances, we have noted a problem (usually in a peripheral area) but have made no recommendation concerning it. In Appendix C we summarize our recommendations and do so by category: recommended judicial action (assuming adequate funding); recommended legislative action; and other recommendations.

The Commission has identified subjects advanced during the hearing (and otherwise) to which it will now turn its attention. If the Justices wish the Commission to pursue any particular subject, the Commission will attempt to do so. We welcome the Justices' instructions on the appropriate distribution of this report.

Respectfully submitted,

THE MASSACHUSETTS ACCESS TO JUSTICE COMMISSION

APPENDIX A

MASSACHUSETTS
ACCESS TO JUSTICE COMMISSION

MEMBERS

Hon. Peter W. Agnes, Jr.
Wayland, MA 01778

Maxa S. Berid, Esq.
Lowell, MA 01852

Jacquelynne J. Bowman, Esq.
Boston, MA 02114

Hon. Dina E. Fein
Springfield, MA 01103

Robert B. Foster, Esq.
Boston, MA 02111

Marla Gale
Florence, MA 01062

P. Keyeburn Hollister, Esq.
Pittsfield, MA 01201

Bettina M. Holton, Esq.
Brockton, MA 02301

Young Soo Jo, Esq.
Worcester, MA 01608-1584

Nancy King, Esq.
Framingham, MA 01702

Robert W. Lavoie, Esq.
Andover, MA 01810

David W. Rosenberg, Esq.
Boston, MA 02108

Eileen Ryan
Gloucester, MA 01930

Richard Soden, Esq.
Boston, MA 02109

Leonard Spinner
New Bedford, MA 02740

Paula Toland
Swansea, MA 02777

James T. Van Buren, Esq.
Fitchburg, MA 01420

Treana Walker
Lincoln, MA 01773

Hon. Herbert P. Wilkins
Newton, MA 02459

Jamie R. Williamson
Holyoke, MA 01040

Toni G. Wolfman, Esq.
Waltham, MA 02452

Consultant
Antone G. Singsen III, Esq.
Watertown, MA 02472

APPENDIX B

PANELISTS AT COMMISSION HEARINGS

Central and West Regional Hearing
Hampden County Hall of Justice
Springfield, MA
May 12, 2006

Court Personnel Panel:
Hon. David Sacks, Hampden County Probate and Family Court
Robert G. Fields, Clerk-Magistrate, Western Division, Housing Court
Richard Morrissey, Asst. Clerk-Magistrate, Springfield District Court
Vincent Penna, Asst. Chief Probation Officer, Hampden County Juvenile Court

Housing Panel:
John Fisher, HAP, Inc., Springfield
William Miller, Executive Director, Friends of the Homeless, Springfield
Leida Cartagena, Director of Outreach and Development, Vocational Opportunities Council
Anna Engley, Paralegal, Massachusetts Fair Housing Center

Domestic Violence / Health Panel:
Araceli Rivera, NEON, Springfield
Thu Pham, Project Coordinator, Vietnamese Health Project, Springfield
Carmen Nieves, Womenshelter/Companeras, Holyoke
Sabriyah Abdul Rauf, Deputy Director, Caring House Center, Springfield

Bar Panel:
Gordon Shaw, Managing Attorney, Massachusetts Justice Project, Holyoke
Geraldine McCafferty, Staff Attorney, Western Massachusetts Legal Services, Springfield
Suzanne Garrow, Heisler, Feldman, McCormick & Garrow, Springfield
Archer Battista, President, Hampden County Bar Association, Holyoke
Mark Mason, then President-elect, Massachusetts Bar Association, Springfield

Southeast Regional Hearing
New Bedford Superior Court
New Bedford, MA
November 2, 2006

Immigration Panels:

Ondine Galvez-Sniffen, Immigration Law, Education, and Advocacy Project (ILEAP), Catholic Social Services, Fall River
Pascal Mendy, Client, Brockton
Euclides Semedo, Associacao Caboverdiana de Brockton (Cape Verdean Association of Brockton)
Irene Scharf, Dean for Clinical Programs, Southern New England School of Law, North Dartmouth
Corinn Williams, Community Economic Development Corporation, New Bedford
Judith Martinez, Immigrant Center, Hyannis
Bennett Jaffee, Immigration Law Project, South Coastal Counties Legal Services, Brockton

Domestic Violence Panels:

Pamela McLeod-Lima, Executive Director, Greater New Bedford Women's Center
Tammy Mello, Director of Community-Based Services, Brockton Family and Community Resources
Cathie Phillips, Legal Advocate, Women's Center at SSTAR, Fall River
Barbara Noonan, Safe Plan Director, Independence House, Hyannis
Jenny Ventura, Program Director, WomansPlace, Brockton
Lisa Abrams, former Program Director, Safe Harbor, Hyannis, and Our Sister's Place, Fall River

Education Panels:

Antoinette Saunders, Education Advocate, Sandwich
Jeana Lockhart, Client, New Bedford
Phillip Kassel, Advocacy Director, South Coastal Counties Legal Services, Brockton
Kathleen Boundy, Co-Director, Center for Law and Education, Boston
Hon. Louis D. Coffin, Associate Justice, Barnstable/Plymouth Juvenile Court, Falmouth
Michael Turner, Attorney, Wareham
Lynn G. Turner, Attorney, Wareham
Gail M. Van Buren, Principal, Dighton-Rehoboth Regional High School

Health, Elder, Guardianship Panel:

Drae Perkins, Executive Director, Treatment on Demand, New Bedford
Marlene Pollock, Coalition Against Poverty, New Bedford
Susan Mandra Thompson, Family Service Association of Greater Fall River

Bar Associations

Denise Squillante, Vice President, Massachusetts Bar Association, Fall River
Charles Phillips, Plymouth County Bar Association, Whitman

Marshall Johnson, Plymouth District Court Bar Association, Plymouth
Michael Stevens, President, Barnstable County Probate Court Bar Association and
First Assistant Register, Barnstable County Probate and Family Court
Miriam Babin, President, Bristol County Bar Association and
Assistant Register, Bristol County Probate and Family Court, New Bedford

Northeast Regional Hearing
Fenton Judicial Center
Lawrence, MA
March 16, 2007

Youth Aging Out of the Foster Care System:
Hon. Michael Edgerton, Essex County Juvenile Court
Linda Medeiros, Salem
Eliza Wagner, Speak Out Team, Massachusetts Family for Kids

Post Dispositional Advocacy in DYS:
Barbara Kaban, Deputy Director, Children's Law Center of Massachusetts, Lynn
Jeron Reddick, youth in DYS custody
Rev. Claire Sullivan, Director, Straight Ahead Ministries

Right to Bail / Pre-Arraignment / Pretrial Detention of Juveniles:
Barbara Kaban, Deputy Director, Children's Law Center of Massachusetts, Lynn
Prak Sokhan, Client
Melanie Chea, Case Worker, Cambodian Youth Re-entry Project, Lynn
Hon. Jay D. Blitzman, Middlesex County Juvenile Court (written submission)

Certain Consumer Cases:
Isabel Frias, Client
Ezra Glenn, Director of Community Development, Lawrence
Juan Bonilla, Counselor, Lawrence Community Works

Issues in the Delivery of Legal Services in Rural Areas
Maggie Meffen, Advocate, Action, Inc., Gloucester
Eileen Ryan, Access to Justice Commission Member, Gloucester
Katia Mejia, Advocate, Action, Inc., Gloucester
Rep. James Eldridge, 37th Middlesex District, Acton

Community Group Work
Marc Potvin, Director, Community Counseling, Neighborhood Legal Services, Lynn
Samnang Mam, Director, Cambodian Outreach Project, Merrimack Valley North Shore Legal Services, Lowell
Molyka Tieng, Lowell Community Health Center
Merrimack Valley Project (written submission)

Eastern Regional Hearing
Adams Courthouse
Boston, MA
April 4, 2007

Opening Remarks
Hon. Margaret H. Marshall, Chief Justice, Supreme Judicial Court

Housing Panel:
Hon. Jeffrey M. Winik, First Justice, Boston Housing Court
Stefanie Balandis, Greater Boston Legal Services
Samuel B. Moskowitz, Davis, Malm & D'Agostine
Ann Anderson, Mass Housing ADA Housing and Services
Cheryl Lawrence, Tenant Organizer, City Life/Vida Urbana
Julia Kehoe, Executive Director, Metropolitan Boston Housing Partnership

Elder Issues Panel:
James Bair, Connor Boyle, Katherine Fang, and Christina Gilbert, Northeastern University School of Law
Wynn Gerhard, Greater Boston Legal Services
Sandy Hovey, Supervisor of Elder Protective Services, ETHOS
John Ford, Neighborhood Legal Services, Lynn
Betsey Crimmins, Greater Boston Legal Services

Labor and Employment Panel:
Monica Halas, Greater Boston Legal Services
Elena Letono, Executive Director, Centro Presente, Cambridge
Kenneth Owens, Esq., Director of Hearings, Division of Unemployment Assistance
Nancy S. Shilepsky, Shilepsky O'Connell Casey Hartley Michon Yelen

Domestic Relations Panel:
Honorable Edward M. Ginsburg, Senior Partners for Justice
Patricia Tellis-Warren, Senior Attorney, Greater Boston Legal Services
Richard P. Schmidt, Assistant Judicial Case Manager, Norfolk County Probate and Family Court
Megan Christopher, South Middlesex Legal Services, Framingham
René Coletti, Victim Witness Advocate, Middlesex District Attorney's Office

APPENDIX C

A. RECOMMENDATIONS TO THE JUDICIARY

General

1. The Justices of the Supreme Judicial Court should take steps to have counsel available for people of low-income in the most critical circumstances in which counsel is not now provided: court hearings in eviction proceedings; civil contempt proceedings where incarceration is a possibility; proceedings in the Department of Youth Services to revoke the conditional release of a juvenile; and in civil actions that involve the same issues that exist in a criminal action in which counsel has been appointed.

2. The Commission strongly urges the Justices of the Supreme Judicial Court to redefine the unauthorized practice of the law to permit trained nonlawyers to speak in the courtroom in certain civil matters on behalf of low-income people. We leave to the Justices the questions of how those advocates should be trained and identified, what character of proceeding should have lay advocates, what ethical rules would apply to such advocates, whether the authorization should exist only when the other side has counsel, and the litigants' income levels at which such services would be permissible. The Commission recommends that the lay-advocacy program extend at least to in-court eviction proceedings and domestic violence hearings (G. L. c. 209A).

3. Lawyers should be allowed and encouraged to help low-income people prepare petitions and the like without having to disclose their involvement.

4. The Judiciary must continue to encourage lawyers to act pro bono for low-income persons and to encourage lawyers' financial assistance for legal service efforts.

5. The "unbundling" concept should be expanded. It provides a clear means for a lawyer to help a person in particular circumstances.

6. The Judiciary must make a strong effort to provide meaningful assistance in courthouses to people who need guidance in how to deal with a problem. There are excellent examples referred to in the Report, such as the family law coordinators in the Probate & Family Court, coordinators in all courts that hear eviction petitions, and the availability of trained personnel at the front desk.

7. Steps must be taken to assure court personnel that in giving guidance to persons they are not practicing law or being partial. The importance of helping people is paramount as against the concern that personnel may go too far in advising a person in need.

8. The Judiciary must continue and expand the availability of written guidance to self-represented people.

9. All instructions for self-represented people must be in simple, readable language, not just in English but at least in the most generally used foreign languages.

10. Uniform forms for state-wide use are essential, and those forms should be available on the internet.

11. The Office of the Commissioner of Probation should establish explicit guidelines for probation officers responsible for detention determinations for juveniles.

12. There should be a coordinator of access to justice activities in the Trial Court to deal with matters that involve the provision of services and the execution of initiatives designed to eliminate obstacles to justice.

Interpreters

Interpreter services must be continued and strengthened. The Commission acknowledges that the failure to furnish needed interpreter services is rare, but, when there is a failure, it can be harmful to the individual and the system. We recommend that the Trial Court study the causes for the failure to meet needed interpreter services with the view of curing systematic defects, such as the receipt of late requests.

Domestic Violence

1. In domestic violence cases, steps should be taken in the courthouse to protect the alleged victim from threats and intimidation: a court officer should stand between the parties; the parties should be physically separated before the hearing, and the alleged victim should be allowed to leave the courthouse before the alleged abuser does.

2. Judges, including judges in the District and Boston Municipal Courts, should enter support orders, where appropriate, in G.L. c. 209A (domestic violence) cases.

3. In a domestic violence matter, qualified lay advocates should be allowed to act on behalf of an unrepresented party.

4. The entire subject of the relationship between the District and Boston Municipal Courts and the Probate and Family Court in the handling of G.L. c. 209A cases should be studied to see how the processes and coordination can be improved.

5. The judicial department should continue to provide programs for judges on the nature and handling of domestic violence cases. Attention should be given to identifying particular judges for whom such a program would be most beneficial.

6. Children who are old enough to have some sense of what is being said should not be in the courtroom during a G.L. c. 209A hearing.

7. The Commission deplores the absence of child care facilities in the courthouses of the Commonwealth. The lack of such facilities is particularly unfortunate when a G. L. c. 209A proceeding is being held.

Eviction Proceedings

1. All courts that deal with evictions should endeavor to duplicate the various best practices that the Housing Court follows in the handling of eviction proceedings.

2. The Housing Court's geographic jurisdiction should be extended state-wide.

3. In landlord-tenant matters, the use of unsupervised negotiations in the courthouse between a landlord's attorney or a landlord and an unrepresented

tenant should be discouraged in favor of the use of neutrals (mediators) when one side is represented by counsel and the other not.

4. A judge or a clerk should explain at the opening of court the processes and the resources available to assist litigants in landlord – tenant matters.

5. It is appropriate in eviction proceedings for the judge to inquire affirmatively into the facts and equities.

6. As to cases in which at least one party is unrepresented, in which a settlement agreement is reached without the involvement of a court-affiliated mediator, the agreement should go before a judge for a colloquy with the parties.

7. In an eviction hearing before a judge, as we have said, qualified lay advocates should be allowed to act on behalf of a low-income tenant or landlord.

Juveniles

The commendable “aging out” pilot program in the Juvenile Court for youths approaching the age at which they leave the protection of the Department of Social Services should be expanded state-wide.

Guardians

Attention should be given to the failure to follow requirements of law in the appointment of guardians for persons alleged to be under a disability and thereafter. The Judiciary should press for remedial legislation in this area.

Small Claims

The concerns expressed concerning various practices in the handling of small claims must be addressed.

B. RECOMMENDATIONS TO THE LEGISLATURE

1. Additional funding is sorely needed, as the Commission's Report plainly demonstrates.

2. The Legislature should explicitly provide for the furnishing of a lawyer in the most critical circumstances in which counsel is not provided.

3. Legislation should clearly state that a lawyer must be provided to a youth in the custody of the Department of Youth Services when that Department seeks to revoke the youth's conditional grant of liberty.

4. The level of compensation of lawyers appointed to represent low-income persons must be watched carefully so that the number of lawyers available to serve is adequate.

5. Strong financial support for interpreter services in the judiciary must be continued.

6. Adoption of Article 5 of the proposed Uniform Probate Code and adoption of a public guardian commission law would do much to rectify the unsatisfactory conditions that exist in the appointment of guardians for persons under a disability.

C. OTHER RECOMMENDATIONS

1. Continued effort is needed from bar associations (and the courts) to increase the number of lawyers who will give their time freely to the representation of persons of low income.

2. Critical rights are at stake in many administrative arenas. Lack of access to legal advocates places many low-income people at greater risk of losing these rights. We recommend further exploration of the impact of lack of access to legal advocates in administrative hearings.

3. Education of non-English speaking people is important. English language classes must be expanded. Education on the rights of people in this country would help immigrants and others to understand the role of government and particularly the courts.

4. Police, sheriffs' departments, and detention facility staff must ensure that youths who have been arrested have access to bail commissioners and must cease detaining children under fourteen.

5. The police departments of the Commonwealth should be aware of and act on the availability of judges to enter orders in domestic violence situations on weekends.

6. Attention must be given to the need for the police and others to have an understanding of cultural differences of people who have come from other countries.

7. A lawyer should be provided to a youth in the custody of the Department of Youth Services when that Department seeks to revoke that youth's conditional grant of liberty.

8. Legal service agencies should see whether their services might be beneficial to more persons of low-income if those agencies were to embrace "unbundling."

9. There must be continuing attention to unlawful and unethical practices by brokers, lending institutions, and others, particularly as to low-income people who do not understand English.