

WISCONSIN'S JOURNEY TO JUST SOLUTIONS

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Chief Justice Earl Warren once said "It is the spirit and not the form of the law that keeps justice alive."¹ Similarly, it is through the American public's respect, trust, and access to the justice system that we continue to keep our democracy alive.

In that spirit, let me extend my admiration to John Skilton, Justice Shirley Abrahamson and all of the others who have worked so hard in developing the State Bar of Wisconsin Commission on the Delivery of Legal Services Report.

I was asked to put your report in some context with what the American Bar Association has been doing, and with what we have seen happening nationally with our justice system. To do that let me first take you back a few years.

In the late 1980s and the early 1990s, there was a growing sense in the United States that the nation was changing and our justice system was not adapting to the needs of modern America. When Americans were turning to the justice system, what did they find? They found a system overburdened, under-funded, compartmentalized—a system all too often incapable of responding to complex societal issues. Issues it was receiving through the failures of other social institutions.

Examples of this were widespread:²

- 1) Many states have had to temporarily suspend or shut down civil trials because the caseload had become so overwhelming;
- 2) In Chicago, the court schedule was showing an eight-year backlog of civil cases;
- 3) In New York, some judges could only spend 17 minutes per case;
- 4) Drug offenses flooded our courts. Many judges found it necessary to release violent offenders from prison early to make

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1. FORTUNE MAGAZINE, November 1955 (need cite).

2. See generally *ABA Blueprint for Improving the Civil Justice System*, 1992 A.B.A. WORKING GROUP ON CIVIL JUST. SYS. PROPOSALS; *State of Criminal Justice, An Annual Report*, 1994 A.B.A. CRIME JUST. SEC.

room for nonviolent offenders of drug laws carrying mandatory minimum sentences;

5) Our country incarcerated more of its citizens in jails and prisons than most countries around the world.

Although a myriad of societal factors contributed to the crisis in our justice system, the bottom-line appeared to be that our system of justice was slowly, but surely, grinding to a standstill.

Columnist George Will pondered this issue in a Newsweek commentary. Said Will, "As traditional sources of social norms—families, schools, churches—weaken, law seeps into the vacuum."³

I believe Will makes a valid point. Forty years ago, neighbors settled disputes over the fence. Families with conflicts turned first to a minister for guidance and counseling. Parents sought assistance from trusted teachers if their child showed signs of trouble.

Despite our concerns, we also needed to put this all in perspective. In 1906, one of America's greatest intellects, Roscoe Pound, spoke to the ABA saying, "Dissatisfaction with the administration of justice is as old as law."⁴

"But," he added, "we must not be deceived . . . into overlooking and underrating the real and serious dissatisfaction with courts and lack of respect for law which exists in the United States today."⁵

But just as Pound's generation was able to deal with its problems with the justice system, we have been finding innovation and renewal today. The Wisconsin Bar report highlighting greater community involvement ties in with the recent work of the American Bar Association and Wisconsin's sister bars. In its report, the Wisconsin Bar builds upon its past efforts and ABA's multi-year theme of "Justice for All—All for Justice."⁶

As the State Bar of Wisconsin moves forward in implementing the recommendations of its recent report, hopefully there are lessons it can continue to draw from the ABA's Just Solutions Conference,⁷ other activities of the ABA, and from the many innovative projects of sister

3. For an elaboration on the quote in the context of the Just Solutions Conference, see R. William Ide III, *Rebuilding the Public's Trust: Working Toward an Improved Justice System and Renewed Respect for Lawyers*, ABA J. Sept. 1993, at 8.

4. Roscoe Pound, *The Causes of Popular Dissatisfactions with the Administration of Justice*, in REPORTS OF THE AMERICAN BAR ASSOCIATION 395 (1906).

5. *Id.*

6. See *Just Solutions, Seeking Innovation and Change in the American Justice System*, 1994 A.B.A. 11 [hereinafter *Just Solutions Report*].

7. *Id.*

bar associations around the country.

The ABA's 1993-1994 Just Solutions Initiative⁸ was about advocating community-wide participation in solving local justice system problems, and taking the best local models to find national solutions.⁹ Nearly 1,300 people—the majority of whom were not lawyers—participated in a series of conferences and activities culminating in the May 1994 Just Solutions Conference.¹⁰

We had two main thrusts with Just Solutions. The first was to focus on the profession itself. We were renewing our vision of why we decided to become lawyers in the first place. Throughout the Wisconsin Bar report there is a focus on pro bono, public service, and how lawyers can better serve clients in Wisconsin. The Wisconsin report supports the first vision we had with Just Solutions. The second goal of Just Solutions was even more important. To turn our attention to the basic problems of our justice system and our communities and see what we as lawyers, working with other members of their community, could do about those problems.¹¹

Just Solutions convinced me there are answers to the problems we face. They are responses driven by community leaders, business leaders, lawyers, and religious leaders working together. We see examples of this innovation in communities, large and small. Areas of successful community participation range from court administration to fighting drug abuse and domestic violence.¹²

The unified family court embodies this approach. The breakdown of the family is the biggest source of problems for our justice system. Unified family courts recognize that abuse, neglect, adoption, child and spousal support, child custody, divorce, domestic violence, juvenile delinquency, and noncriminal behavior by youths are all family-related problems.

Unified family courts bring all the potential players together—the family, law enforcement, social services—to help rebuild families before

8. *Id.*

9. *Just Solutions, A Program Guide to Innovative Justice System Improvements*, 1994 A.B.A. viii [hereinafter *Just Solutions Program Guide*].

10. ABA Summit on the Profession (November 1993); ABA Summit on Civil Justice (December 1993); ABA Summit on Criminal Justice (January 1994); ABA Summit on Racial and Ethnic Bias (March 1994); Just Solutions Conference (May 1994).

11. See generally *Just Solutions Program Guide*, *supra* note 10, at 69-80.

12. See *id.*

problems are completely out of control.¹³ Many of the Wisconsin bar recommendations dealing with families head toward this goal of community-wide involvement.

The Wisconsin report recommends that the Wisconsin Supreme Court create a Task Force on Family Law in the Courts.¹⁴ Family Law is an area in which many people have their only experience with the legal system. Consequences of lack of available and affordable legal representation in this area affect people's lives at their most basic level of survival and can be catastrophic.

Overall, the Wisconsin Bar Report draws a compelling picture of the need to improve how legal services are delivered in the state. This is especially necessary because of, as the report highlights, the profound impact legal service funding cuts have been having in Wisconsin.¹⁵

It is a situation that Wisconsin is not facing alone. The funding cuts have had an impact on programs across the country. As the Wisconsin report points out, the American Bar Association has aggressively pursued funding for the Legal Services Corporation (LSC).¹⁶ The ABA has continuously stressed that the LSC is essential in helping respond to the basic legal problems that poor Americans are facing. The ABA has pledged to continue to do everything it can to make sure Congress meets its legal service responsibilities.

In dealing with the crisis in legal services, the Wisconsin report suggests a number of ways of reconciling the drop in federal funding with the increasing demand for legal services.

One of the major obstacles to legal access addressed in the report is cost. The report recommends a campaign to provide free half-hour consultations to prospective clients and offer alternate legal fee arrangements such as value billing, a flat fee, blended rates and a combination of contingent fees and hourly rates as alternatives to the standard hourly rate billing system.¹⁷ Another report suggestion for cost reduction is the "unbundling" of legal services and lawyer assistance

13. STEPHEN P. JOHNSON, *JUST SOLUTIONS: SEEKING INNOVATION AND CHANGE IN THE AMERICAN JUSTICE SYSTEM* (1994).

14. *See generally America's Children at Risk: A National Agenda for Legal Action*, 1993 A.B.A.

15. *Commission on the Delivery of Legal Services, Final Report and Recommendations*, 1996 STATE BAR OF WISCONSIN 5-8 [hereinafter *Commission on the Delivery of Legal Services*].

16. *Id.*

17. *Id.* at 27 (Recommendation No. 1).

in self-representation,¹⁸ in essence “job sharing” with the client. An additional cost-saving suggestion is that the Wisconsin Supreme Court establish a standing Pro Se Forms Committee.¹⁹ All of these actions are positive steps aimed at reducing fees and allowing clients more involvement in their own legal matters.

The report also calls for expansion of the roles of nonlawyer representatives in the legal process and other recommendations that can help in providing legal services more economically.²⁰ Much of the report reaffirms a commitment to pro bono representation and programs²¹ and provides further guidance on how to complement efforts on behalf of legal services.

The Wisconsin bar’s recommendations for greater pro bono activities by lawyers, greater use of paralegals, experimentation with greater pro se representation, making the system more user-friendly, development of various pilot projects, and seeking new alternative sources of funding for legal services are all laudatory and noteworthy. Development of such efforts must continue to be a central focus in tandem with adequate federal funding of legal services programs.

The Wisconsin report concludes that community involvement is essential to the success of this effort in quoting Alexis de Tocqueville: “At the core is the belief that free and effective societies exist in direct proportion to their degree of citizen participation and influence.”²²

Over the next several years America will have a clearer vision of where this citizen-participation is heading. Through such citizen-participation, we are beginning to witness changes in the justice system which better reflects the needs of the community. Some problems not belonging in the justice system may be moved to community initiatives outside the justice system. Building on the earlier work of ABA’s work with multi-door courthouses and other alternative dispute resolution efforts, communities are recognizing that litigation should be the last resort and not an answer to every potential legal problem.

Multi-door courthouses, community policing, community anti-drug coalitions, Computerized Quik Courts—just solutions continue to come from our communities. By participating in and leading community

18. *Id.* at 29 (Recommendation No. 2).

19. *Id.* at 32 (Recommendation No. 4).

20. *See, e.g., id.* at 35 (Recommendation No. 6) (recommending that the State Bar support the use of lay advocates).

21. *Id.* at 103 (A Coalition for Justice).

22. *Id.* at 103.

efforts we, as lawyers, are also deriving a very important practical benefit. We gain a knowledge that helps us be better lawyers.

The ABA is doing what it can to assist this growing effort through our Coalition for Justice and many other activities. We see exciting things happening across the country from New York to Hawaii where community leaders and bar leaders are rolling up their sleeves and getting the job done.

This innovation and change continues to grow. In July, 1996, the ABA published a Summary of State and Local Justice Initiatives, noting 400 activities of various bar associations, and focusing on 59 "justice initiatives" drawing on community-wide base of support.²³ These efforts were tracked by the ABA's Office of Justice Initiatives in Chicago which continues to act as clearinghouse and resource on such information: Dozens of justice commissions, futures commissions, and citizens' conferences have focused on ways to improve the justice system.²⁴

Following the Oklahoma City federal building bombing, *Newsweek Magazine* did a cover story with a series of articles highlighting Americans who are solving the problems of their communities. The story called them "American Heroes" and stated,

Today's problems are depressing and overwhelming. We all know that. Individual efforts to reverse the tide often feel like a thousand points of light in a million points of darkness. But the real news in America is not all the despair and degradation. That's old. What's fresher is a gradual, quiet entwining of the spirit of entrepreneurship and the spirit of citizenship . . . individuals pushing aside their grief, their anger, their longstanding differences to pull together in common cause.²⁵

It is people like John Skilton and Shirley Abrahamson in communities across America that are bringing the innovations which will rejuvenate our justice system for the 21st century.

Looking back on my journey as ABA president and the time since,

23. Summary of State and Local Justice Initiatives, American Bar Association Ad Hoc Committee on state Justice Initiatives, July 1996.

24. See, e.g., Grassroots Task Force Citizens' Conference, November 1996 (Hawaii); Iowa Futures Commission, July 1996; Louisiana Tour, Conference, scheduled March 1997; Maryland Futures Commission, September 1996; Michigan Commission on Judicial Selection, September 1996; Nebraska, Community Task Force Conference, scheduled January 1997; New Mexico, Survey; North Carolina Futures Commission, December, 1996; Ohio Futures Commission, Citizens' Conference, September 1996; Pennsylvania: Judicial Selection, August 1996 (excerpted from ABA Update on Justice Initiatives, October, 1996, OJI Director Jack Sweeney, 312/988-6121, fax 312/988-6100, E-mail sweeneyj@staff.abanet.org).

25. John Alter, *What Works*, NEWSWEEK MAGAZINE, May 29, 1995, at 18.

I see there is great hope for our profession, and our justice system. We are drawing upon our rich traditions in facing the future. And there is a role for each of us.

As Helen Keller once said: "I am only one: But still I am one. I cannot do everything, but still I can do something. I will not refuse to do the something I can do."

We see that commitment happening across America today, one lawyer, one family, one community at a time.

