

A History of the Justice Action Group: October 1995 - May 2000

*The Honorable Frank M. Coffin, Senior U.S. Circuit Judge,
United States Court of Appeals for the First Circuit¹*

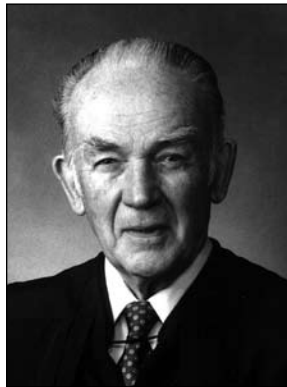
This paper was written to help prepare Justice Action Group (JAG) members and others involved in current efforts to widen access to justice for fruitful discussions concerning the future. It is a review of the five years of operations of JAG, the Legal Services Response Team (LSRT), and various task forces.

We begin with the observation that we are not reporting the work of any one organization or public institution, but rather the efforts of a wide variety of groups, including branches of government, major professional organizations, long-standing committees, transitory task forces, *ad hoc* problem-solving groups, law firms, and an array of special purpose volunteer associations.

The network of initiative and coordination has been described by many as unique. It has no written charter or rules, no budget, no permanent staff, no rigid lines of authority, no legal status. (Staff help has been made available by the Maine Bar Foundation through its executive director, Calien Lewis, who has prepared agendas, kept minutes, and performed other valuable services.)

Despite its informal nature, it enjoys the whole-hearted support of the judiciary, both state and federal,

Judge Coffin first became a member of the MSBA in 1947. After practicing solo in Lewiston and then with Verrill & Dana in Portland, he served in the Congress and in the executive branch as Deputy Administrator of the Agency for International Development. He became a U.S. Circuit Judge with the First Circuit in 1965 and served as Chief Judge from 1972-1983.



Since taking senior status in 1989, he has made a large place in his agenda for efforts to increase legal assistance to the needy. Working closely with Chief Justice Wathen in a partnership they both have treasured, he has served during the past few years as chair of the Justice Action Group, Maine's vehicle for coordinating legal assistance efforts.

the major organizations of the legal profession (the Maine Bar Foundation (MBF) and the Maine State Bar Association (MSBA)) and the professional providers of legal services to those in need (Pine Tree Legal Assistance (Pine Tree), Legal Services for the Elderly (LSE), Cumberland Legal

Aid Clinic (Clinic), Maine Equal Justice Partners and Project (MEJP), and Volunteer Lawyers Project (VLP)).

BEFORE 1995

In order that we not forget the foundations on which we build, we begin with a nod to earlier history. Before 1967, all legal assistance to the indigent was left to the *pro bono* efforts of individual lawyers. Pine Tree Legal Assistance came into existence then, funded by a grant from the Office of Economic Opportunity. In 1971, the Cumberland County Legal Aid Clinic came on the scene, followed by LSE in 1974, and the VLP in 1983. Federal funding allowed considerable expansion of services; Pine Tree, for example, reached its apex in the early 1980's. Beginning in the mid-80's, however, funding steadily diminished.

A growing recognition of the magnitude of need for legal assistance led to the establishment in the late 1980's of the Maine Commission on Legal Needs. Giving active leadership to this Commission was Senator Edmund Muskie's last major public service. Its report, now a decade old, sounded somber notes. A fifth of our people lived near the poverty level. Only 23 percent of the 85,000 households experiencing legal problems were receiving legal help. Most dramatically, even if more lawyers took additional VLP-assigned cases,

¹With the assistance of Calien Lewis, executive director of the Maine Bar Foundation, and Rebekah Smith, law clerk.

there would remain a need for no fewer than the equivalent of 232 full-time professionals.

A parallel report was made in 1993 by the Commission on the Future of Maine's Courts, recommending expansion of alternative dispute resolution and creation of court teams to look into the simplification of forms and new approaches to the handling of family law problems.

1995

Ironically, despite the need for further funding assistance identified in the Muskie report, the summer of 1995 saw the threatened, and then the actual, slashing of the budget of the national Legal Services Corporation by the Congress. Pine Tree's budget was cut by more than \$1 million, forcing it to cut its legal staff from thirty attorneys statewide to the equivalent of under seven attorneys. LSE lost a third of its financing. The Clinic lost the help of its supervisory personnel, and VLP's budget was cut by a third. Maine's funding of legal help for those in need was substantially lower than in Rhode Island and reached only one-third of the level attained in Massachusetts, Connecticut, and Vermont. On top of the budget cuts were statutory prohibitions against using federal monies for class actions, non-citizens, policy advocacy or lobbying, fee-generating cases, or to assist prisoners in civil matters.

In what now appears to have been one of Maine's finest hours, Chief Justice Wathen, in conjunction with MBF and MSBA, convened the Fall Forum on the Future of Legal Services on October 11, 1995. Careful planning of agenda, the organization of deliberations, and follow-up devices was led by Joanne D'Arcangelo, then MBF's executive director. Some sixty-five people deeply concerned over what was happening attended—judges, lawyers, providers, even some lawmakers and the Governor. Chief Justice Wathen framed the challenge

in his opening remarks:

We are here today to do what folks in Maine are good at: We have a problem and together we are going to solve it the best way that we can within our means. Our problem can be simply stated: Do the drastic changes in federal funding for legal services mean that Maine has to ration justice and abandon its goal of providing equal justice for its most vulnerable citizens?

After learning more about the challenges posed by the Congressional action, the participants were divided into four groups. Each group discussed changes needed to increase access to justice and reported to the entire assemblage. At the end of the meeting, each participant was urged to sign up as a worker in one of the areas that had been discussed. This list constituted the basis for task forces soon to be organized under the rubric of JAG.

Before the end of October, the Justice Action Group had been convened by the Chief Justice to give policy guidance in a new structure. Judge Frank Coffin was named chair. The judiciary was also represented by Justice Howard Dana, the legal assistance providers by members of their boards of directors, the legislature by Senator Sharon Treat, and the legal profession by representatives of MBF and MSBA. The LSRT, composed of directors of the providers, representatives of MBF and MSBA, a member of the private bar, and two non-affiliated co-chairs, provided a knowledgeable operational link between JAG and the task forces. The latter were seven in number: *Bar Rule Changes*, to facilitate the rendering of pro bono services and assistance to self-represented litigants; *Court and Administrative Reform*, soon to merge with Bar Rule Changes; *New Structures*, to devise entities to carry on work that Pine Tree, LSE, and VLP could no longer do; *Pro Bono*, to expand

services of lawyers and students; *Coordination of Service Delivery within Resources*, to explore coordinated intake possibilities; *Private Fundraising*; and *Legislation*. The list of task forces has been fluid since then, some being disbanded, some being replaced, and others being created to address new tasks. (As new task forces come into existence, we shall underline our first reference to them.)

As 1995 ended, the New Structures Task Force was the first to get off the ground, recommending creation of the Maine Equal Justice Project to engage in legislative and administrative advocacy and the Maine Equal Justice Partners to launch and coordinate a "virtual law firm" to engage in class action/impact litigation by enlisting members of the private bar to counsel cases. JAG endorsed this recommendation at its December meeting.

1996

The Equal Justice Project was the first of the Equal Justice twins to come up to speed, mainly through working cooperatively with state agencies and accomplishing solid results, such as ensuring more effective procedures for funneling child support directly to families, devising formulas governing heating assistance, and developing rules relating to managed care. The Equal Justice Partners enlisted several private lawyers to work on important matters, but did not begin to realize its potential until later, mainly because of the complexity of the task and the scarcity of personnel to work on it.

The Fundraising Task Force wrestled with the issue of devising a centralized United Fund-like approach to maximize the resources available to the providers. But the consensus was that each provider had its own avenues and that conversion to a centralized scheme did not promise to produce as much as is realized at present.

Early in the year, an intense but un-

successful effort was made to persuade the Governor to include \$250,000 as an emergency appropriation for legal services.

A second Fall Forum was held to give visibility to and increase coordination among volunteer groups. An active participant was the Dirigo Committee, a citizens' committee organized by the Chief Justice and Judge Coffin to administer The Dirigo Project, funded by a grant from the Governance Institute to improve access to and understanding of the court system. Dirigo had been looking at ways to stimulate, train, and coordinate volunteers. One result of the Forum was the assembly of a list, now widely available, of all organizations giving support to pro se litigants. Another was the creation of three new task forces.

The first was *Information and Technology*; the second, *Justice System Volunteers*, to work with Dirigo; and the third, succeeding Fund Raising, was *Resource Sharing*, taking a different approach to increasing resources, that of seeing if pooling investment in phone services, libraries, computers, etc., would make funds go farther.

At the end of the year, Joanne D'Arcangelo, the MBF director, sounded an alert that there had been a forty percent slide in IOLTA funds (clients' monies that accumulate interest while held in trust) and that many banks had applied a very low interest rate to their IOLTA accounts. The banks responded in a most understanding and cooperative manner, applying increased interest rates to trust funds on deposit, thereby producing a dramatic and sorely needed increase in MBF funding. Interest on IOLTA accounts now generates something on the order of \$1 million annually.

1997

The most immediately effective achievement was the result of a decision, sparked by providers and endorsed by the Chief Justice, to seek

increases in many civil filing fees, with the understanding that they would be allocated to the Maine Civil Legal Services Fund, and then distributed by a three-person commission to the providers. The Fund had been established on paper in 1991 as a result of the Muskie Legal Needs Commission report, but was never funded. With the passage of L.D. 1003, the system began to function as intended, eventually supplying approximately \$900,000 a year to the Fund.

An event of corresponding importance, initiated by the state court system, was legislation creating a Family Division in the district courts to achieve a more effective channeling and handling of divorce and child custody cases under the supervision of case management officers.

Task Force activities included a *Coordinated Intake* working group (succeeding the earlier Coordination of Service Delivery within Resources Task Force), which began the job of assessing problems of client access and means of simplifying them; the Resource Sharing Task Force, which looked at ways to lessen the expenses of the providers through coordinated purchases and also undertook an effort centered on the reduction of telephone costs; and the Pro Bono Task Force, which began to work with large firms in Portland to address the difficulty of supplying pro bono assistance in family law matters.

Dirigo, with whom the Justice Volunteers Task Force worked, received a grant from the Libra Foundation enabling the Judiciary to hire, as a pilot program, a Coordinator of Volunteers. The Task Force then disbanded, although some of the members continued to participate as members of a court-appointed Advisory Committee to assist the Coordinator.

Still another program was undertaken by the University of Maine School of Law at the initiative of attorney William Kayatta, co-chair of LSRT, to allow third-year law students to work forty hours a week,

split between a Portland law firm and Pine Tree, under the supervision of an adjunct faculty supervisor funded by the private firms.

The year ended with JAG invoking an *Impact Litigation Working Group* to address the difficulties encountered by Equal Justice Partners in implementing the Virtual Law Firm concept. As of the end of the year, cases had been assigned to three private attorneys.

1998

On May 1, 1998, the work of many months with the larger Portland law firms on the part of Bill Harwood, co-chair of the Pro Bono Task Force, Justice Dana, and Judge Coffin resulted in the announcement of two Coffin Fellowships in Family Law by the twelve largest law firms in Cumberland County. They had agreed, in recognition of their obligation to give pro bono service in the family law field, to fund for an initial three year period two full-time family law practitioners. Pine Tree had agreed to house them and make available some support services. An oversight committee was established under the leadership of MBF.

The Impact Litigation Working Group worked quickly and well on the virtual law firm project at the Equal Justice Partners. It analyzed the stages of work involved in developing impact litigation, identified and defined roles of participants in the several stages, proposed written protocols and procedures, and suggested staff needs. The JAG approved the Group's report and, with funds provided by the Civil Legal Services Fund and MBF, Equal Justice Partners hired an experienced Litigation Director and an office manager.

The Coordinated Intake Task Force engaged in a wide-ranging program of meeting with focus groups, gathering information about users' problems in gaining access to appropriate legal assistance. Resource Shar-

ing continued to explore telephone rebate possibilities and developed a comprehensive plan for the coordinated use of technology.

In November, under the aegis of the Law School, MSBA and MBF, a conference took place in Augusta. The two subjects were assistance to pro se litigants and the ethical problems encountered in the multidiscipline practice of law (e.g., accountants and lawyers). The first subject stimulated discussions of the necessity for MSBA to consider the need to make assistance available to unrepresented litigants, ranging from the provision of help by non-lawyers in filling out forms to the giving of limited lawyer service and the need for changes in applicable legal standards, with recognition of the strictures concerning the unauthorized practice of law. MSBA indicated that it would appoint working groups to deal with unbundling and the multi-disciplinary practice of law.

1999

Following up on the November 1998 conference, JAG asked LSRT to identify areas of need that might be addressed by changes in Bar Rules, so that MSBA could consider the steps that should be taken. After considering identified gaps in the fields of family law, landlord-tenant, small claims, and other areas, LSRT presented to JAG a useful matrix, identifying three types of service meriting separate attention to rules and/or law changes. They are: Form Completion—assisting a person in filling out a standard form; Brief Services—simple, single shot advice identifying a right or remedy and pointing a person in a self-help direction he/she might take; Courthouse Representation—receiving client and file at courthouse for same day representation on eviction, disclosure, etc.

A significant boost to making progress in the areas of unbundling and pro se representation was the designa-

tion of a delegation of five persons (The "Scottsdale Five": Judge Joseph Field, Liz Scheffee, Peggy McGehee, Wendy Rau, and Nan Heald) to attend the National Pro Se Litigants Conference in Arizona. This paved the way for JAG and MSBA action in 2000 on this front.

The many other activities taking place in 1999 may be roughly and briefly summarized as follows:

TASK FORCES:

- **Information and Technology Task Force.** Filed its final report, geared to recommendations for the judicial branch, but also identifying the volunteer organizations that would benefit from a hi-tech network.
- **Resource Sharing Task Force.** Continued to monitor the acquisition of computer hardware and software. It took over the Information and Technology Task Force and organized a Technology Subcommittee, which doubled as a resource for the new Information and Technology Coordinator, Chuck Henegar, who was charged with updating the providers' technology plan, conducting joint training, and reviewing case management software. The Task Force shared information about garnering better phone rates with all providers, gave attention to centralized training programs, and procured grants from MBF and LSC for interactive court forms universally available through Pine Tree's website. As the year ended, it reported that integrated case management software had been identified that would allow the harmonizing of data bases, time keeping, word processing, and document production among the providers. It had settled upon "Practice Manager" software and was

developing grant applications to support a statewide system. MBF provided an initial grant to support the acquisition of "Practice Manager."

- **Coordinated Access Task Force.** After two years of working with focus groups and surveying problems of access encountered by clients, this Task Force produced a definitive and seminal report in which it reviewed centralized intake efforts made in other states and recommended a Seamless Web Access System, in which only one telephone call would suffice to place a client in communication with an appropriate source of legal help. JAG accepted this recommendation. The Task Force then directed its efforts to monitor the initiation of the system, which began its experience with client call transfers late in the year.
- **Administrative Law Task Force.** Under Allan Toubman's leadership, this task force was formed to pursue the goal of easing access for citizens dealing with proceedings in the administrative agencies.

PROVIDERS.

- Pine Tree, LSE, and the Clinic all were enabled to expand and increase their services with funds (\$857,209) from the Civil Legal Services Fund. Eastern and Southern Maine each saw an additional attorney from both Pine Tree and LSE. Central Maine saw increased staff in both Pine Tree and LSE. In Western Maine, Pine Tree offices in Lewiston were reopened. The Clinic was able to provide service in several additional counties. And additional services were made possible, such as Pine Tree's work with migrant workers

and native Americans, its client education web site (50,000 hits a month, two and one half times the traffic in 1997), LSE's third hotline, both Pine Tree's and LSE's legal education coordinators, and the Clinic's work with Maine Medical Center in forensic child psychiatry.

- Equal Justice Partners finalized its Case Acceptance Criteria, Protocols with other providers, and appointed its Legal Panel. The process of additional case development was underway.
- The Maine Bar Foundation announced grants to a ten county mediation program, an elder abuse pilot, a prison project on health and youth problems, assistance to immigrants, and a York Community Action Courthouse Assistance Program.

OTHER ACTIONS:

- A Third Coffin Fellow was funded in part by middle-sized Portland law firms and MBF. Missionary work to expand the reach of the program began with lawyers' meetings in Sagadahoc, York, and Androscoggin counties. Contributions are being received from all three.
- The Judiciary issued a brochure advertising Maine Volunteers for Justice, asking for volunteers to assist the court system, for example, by helping court personnel, CASA, and unrepresented litigants.
- LSE distributed a current and helpful survey of pro bono organizations.

2000

At the start of this year, the members of JAG are: Judge Frank Coffin, Justice Howard Dana, Dean

Colleen Khoury, MSBA President Mark Lavoie, Roger Putnam, Barbara Raimondi, Eric Samp, Charles Soltan, Allan Toubman, Senator Sharon Treat, Chief Justice Daniel Wathen, and Legal Services Response Team co-chairs Kathryn Monahan Ainsworth and William J. Kayatta, Jr. As of January, the task forces were: Resource Sharing, Coordinated Access, and Administrative Law.

The year began with a February report to JAG by Liz Scheffee on the thinking of "The Scottsdale Five," following the National Pro Se Litigants Conference. She has agreed to pursue the objective of authorizing discrete legal services for capped fees ("unbundling"). At the April JAG meeting, Judge Field and Justice Dana carried forward the thinking, suggesting that if proposals were forthcoming from the Court's Professional Responsibility Committee and the Civil Rules Committee, the summer MSBA session on June 24 would be a good forum for Bar input. The JAG approved the formation of the *Self Represented Litigant Task Force*. The charge of the Task Force is to improve Bar involvement in and the justice system's response to self-represented litigants and to improve the dissemination of information about laws, legal services, and government and administrative agency procedures to the public in general and self-represented litigants in particular.

EXISTING TASK FORCES:

- Coordinated Intake reported that there is now capability to receive client intake calls in six foreign languages.
- Administrative Law is surveying recurring problems of communication with individuals in administrative proceedings.

PROVIDERS:

- VLP reports a significant decline in lawyer participation in cases.

In 1997, thirty-eight percent of the eligible callers were given help, but only twenty-two percent received representation in 1999. Data evaluation indicated that the institution of the Coffin Fellows program did not exacerbate this trend.

- MBF announced its decision to investigate the development of a long-range planned giving campaign.
- The JAG approved a resolution endorsing an application for a LSC grant to Pine Tree to create a system-wide case management system as well as a website accessible at over 400 public access terminals.

REFLECTIONS

As we look back, we acknowledge that this has been a remarkably effective response to crisis. Our experience has been characterized by the willingness of busy people to give their time and talent, the ingenious and resourceful responses of provider leaders, a splendid, turf-free spirit of cooperation among providers, the sympathetic help of key legislators, and the steady support and leadership of the JAG itself.

While the services of Pine Tree, LSE, and the Clinic have experienced a welcome comeback, the level of service does not reflect any substantial improvement over the status quo in 1990, when the Muskie Commission reported the magnitude of the unmet legal needs of Maine citizens. A 1998 evaluation indicated that the findings of the Muskie Commission held true. Moreover, if we are to take a cue from VLP's report of an increasing number of eligible callers for whom no reference to legal help is made, the needs have probably increased in the past decade.

It is a source of pride—but also perhaps not a formula—for the future—that what has been accom-

plished has been done without any permanent full or part time staff; without any central research capability; without any systematic outreach to the media, the public, the legislature, private business, or foundations; and without an ongoing planning process. We have deliberately tried not to overwork our network or overdraw our account with the legislature.

Our accomplishments are the following:

- The imaginative and prompt creation of the Equal Justice Project and Equal Justice Partners. The Impact Litigation Working Group provided essential and effective service in activating the “Virtual Law Firm,” which has represented children receiving Medicaid waiting for access to mental health coverage, unemployed workers seeking training, disabled parents receiving welfare benefits who have been sanctioned for not participating in mandatory work requirements, and welfare recipients whose child care subsidies were terminated without due process, among others.
- The Civil Litigation Filing Fee legislation in 1998 proved a Godsend. This was a major achievement that more than cancelled out our earlier failure to obtain a small emergency appropriation.
- The timely and perceptive call on banks to increase their interest rates on IOLTA to MBF has also been a major source of new revenue. The current approximately \$1 million fund is, however, subject to fluctuations in interest rates and future judicial rulings as to the constitutionality of IOLTA programs.

- The Coffin Fellows program has contributed needed help in family law in one area of the state.
- Impressive work has already begun to produce results in easing client intake telephone procedures, working toward a cost-saving case management system, a system-wide website, and, in general, multiple uses of the new technology.
- Because of Maine Civil Legal Services Fund payments, Pine Tree, LSE, and the Clinic have been able to enter new areas of service or reenter old ones: prison impact on health and youth and forensic youth psychiatry. In addition, the Immigrant Legal Advocacy Project has been independently created to serve those seeking asylum and other undocumented immigrants with IOLTA funds from the MBF.
- The new Administrative Law Task Force enters a field of significant scope—easing the access of citizens to agency adjudication processes.

Our frustrations include the following:

- Fundraising. No scheme has yet been found to devise new financial resources for legal assistance, although MBF has undertaken to be a “clearing house” of providers’ individual efforts and planned giving may offer new MBF support.
- Legislation. There has been no sustained effort to interest legislators in substantially increasing appropriations for legal assistance. On the federal front, there has been close cooperation with peers in other states in keeping a Congressional watch. National appropriations for the Legal Services Corporation rose

by some three percent in 1999 for the first time in several years.

- *Pro Bono*. The vast field of *pro bono* has not been systematically analyzed to identify the many kinds of contributions being made and the remaining gaps and opportunities. The decline in VLP lawyer participants indicates an urgent need.
- Volunteer Coordination. Although, through Dirigo, a Volunteer Coordinator was made available for two years to the Judiciary, our hope that the legislature would see the immense cost-benefit ratio and fund a regular position has so far come to nought.
- Self-represented Litigants. Perhaps as important as anything else is a solution to the problems involved in helping unrepresented litigations with information, with simple legal advice at the courthouse, and with limited lawyer representation—both at the courthouse and for limited fees. Several years have passed, without action, but the new initiative resulting in the undertaking of the new Self Represented Litigant Task Force augurs well.