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Reflections of an Access to Justice Chair

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REFLECTIONS OF AN ACCESS TO JUSTICE CHAIR

The Honorable Kermit V. Lipez

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REFLECTIONS OF AN ACCESS TO JUSTICE CHAIR

*The Honorable Kermit V. Lipez**

I. INTRODUCTION

From January 2001 to January 2008, I had the privilege of serving as the Chair of Maine's Justice Action Group. In the legal services world, the Justice Action Group is known as an "Access to Justice" entity. Most states have such entities.¹ Although the missions of these entities may vary somewhat from state to state, they share the same general goals—to increase the resources available to the organizations providing free or reduced fee legal services to low income, disadvantaged, and elderly citizens, and to maximize the use of these resources through coordinated efforts. In Maine, the Justice Action Group, or JAG as we affectionately call it, has no formal legal status. Instead, it is a group of individuals drawn from organizations important to the access to justice enterprise, and from the three branches of state government.²

I did not become the Chair of JAG through a democratic process. Instead, the incomparable Judge Frank Coffin,³ who sadly passed away last December at the age of 90, asked me to succeed him. Along with former Maine Chief Justice Daniel Wathen,⁴ Judge Coffin had created JAG in 1995 in response to a crisis in the legal services world in the wake of the mid-term congressional elections of 1994. House Speaker Newt Gingrich's Contract with America had promised deep cuts in federal funding for legal services programs and statutory restrictions on the

* Judge, United States Court of Appeals for the First Circuit. I want to express my gratitude to my law clerk, Julia Simon-Kerr, for her invaluable research assistance in the preparation of this Article and to my secretary, Anita Germani, for her exceptional skills in decoding my dictation and deciphering my handwriting. I also want to thank Justice Howard Dana, Janis Cohen, Sally Sutton, and my wife, Nancy Ziegler, for their perceptive suggestions for improving the Article and for their help with getting the facts right. If there are still mistakes, they are my responsibility.

1. As of 2005, whether through official Access to Justice entities, state bar committees, state funding entities, formal statewide commissions, or informal structures, every state in the nation had some kind of access to justice initiative underway. *See* ACCESS TO JUSTICE SUPPORT PROJECT, ACCESS TO JUSTICE PARTNERSHIPS STATE BY STATE (2005).

2. The membership of JAG includes individuals who serve on the boards of Pine Tree Legal Assistance, Legal Services for the Elderly, the Volunteer Lawyers Project, Maine Equal Justice Project/Partners, the Immigrant Legal Advocacy Project, the Maine Bar Foundation, the Maine State Bar Association, the Maine Civil Legal Services Fund Commission and the Maine Trial Lawyers Association. The Dean of the University of Maine School of Law serves on JAG because the Cumberland Legal Aid Clinic is a law school clinic. In addition, members of the Legislature, the state and federal judiciaries, and the executive branch of state government participate actively in JAG's work.

3. Judge Coffin served on the U.S. Court of Appeals for the First Circuit from 1965 until his retirement in 2006. For eleven of those years, from 1972 to 1983, he served as Chief Judge. Throughout his distinguished career in the three branches of our federal government, Judge Coffin was an inspiring model of public service and a lifelong champion of access to justice causes.

4. Chief Justice Wathen was appointed an Associate Justice of the Maine Supreme Judicial Court in 1981. In 1992, he was appointed Chief Justice of the Maine Supreme Judicial Court, a position he held until his resignation in 2001.

law reform work that the legal services providers could do.⁵ To deal with this crisis, Chief Justice Wathen convened a Fall Forum on the Future of Legal Services, a conference of public officials, leaders of the bar, and legal services attorneys. The Chief Justice asked Judge Coffin to play a leading role in the conference and its aftermath, which included the establishment of JAG.

Although most of the individuals in need of free legal services deal with state law issues, Judge Coffin believed that the federal and state judiciaries shared an obligation to address access to justice issues. Hence JAG began as a federal-state partnership. To preserve that model, Judge Coffin asked me to succeed him as Chair of JAG and Justice Howard Dana of the Maine Supreme Judicial Court to serve as the Vice-Chair.⁶

I am grateful to Judge Coffin for that invitation. During my seven years as Chair of JAG, I had the pleasure of working with dozens of talented, dedicated individuals who devoted countless hours to the access to justice cause. I write this Article in part as a tribute to them—the executive directors and board members of the legal services providers, the executive directors and board members of the Maine Bar Foundation and the Maine State Bar Association, the University of Maine Law School faculty members, and the judges and lawyers who served so ably on committees and task forces grappling with access to justice issues. Although I cannot begin to name all of the individuals involved in these efforts, they deserve some memorialization of work that was important to the evolution of legal services programs in Maine.

The people of Maine, both within the legal community and without, also should know more about JAG and its work. During my years as Chair of JAG, I encountered many blank stares whenever I described some activity of JAG. Except for insiders in the legal services community, most people have never heard of JAG, or if they have heard of it, they do not know what it does. With this Article, I hope to lift that veil of mystery about JAG and increase the public's understanding of the important work that it does.

I have also chosen to focus on issues and events that may have some instructional value for those involved in access to justice issues in other states. I realize that the legal culture varies from state to state. Yet there is surely enough commonality to access to justice issues throughout the country that our efforts to address those issues in Maine may have some relevance elsewhere. That at least is my faith in writing this Article.

Its structure is simple. I first write about issues that I describe as “internal.” These are issues relating to the organization of JAG itself, its relationship to other

5. These cuts and restrictions became a reality in 1996. See William P. Quigley, *The Demise of Law Reform and the Triumph of Legal Aid: Congress and the Legal Services Corporation from the 1960's to the 1990's*, 17 ST. LOUIS U. PUB. L. REV. 241, 260-61 (1998); Howard H. Dana, Jr., *Legal Aid and Legal Services: An Overview*, 18 ME. B. J. 6, 7 (2003).

6. Justice Dana served on the Maine Supreme Judicial Court from 1993 to 2007. He is a major figure nationally and in Maine in the legal services community. He served two stints on the Board of the Legal Services Corporation, in 1981 and 1990. More recently, he was Chair of the American Bar Association's Task Force on Access to Civil Justice. I greatly enjoyed working with Justice Dana when we were together on the Maine Supreme Judicial Court. I was delighted to be working with Justice Dana again on JAG. He was a wise guide and mentor throughout our collaboration on JAG.

entities important to the provision of legal services in Maine, and the sources of funding for its work. Superficially trivial, these issues exposed differing philosophies about what it means to be a legal services provider, and concerns about the independence of JAG itself. Those philosophies and concerns were far from trivial.

I next write about “external” issues. The importance of these issues is self-evident. They relate to the core mission of JAG—increasing financial resources for the work of the providers from the private bar and the state and responding to a crisis involving the denial of access to justice to a disadvantaged population.

I then write about an “internal/external” issue. I refer here to a debate within JAG with large external implications—whether JAG’s planning role within the legal services community in Maine was a modest coordination role among the providers, sometimes grounded in a specific crisis, or a more ambitious visionary role requiring JAG to take the lead in devising a blueprint for the provision of legal services in Maine for years to come. I describe why and how JAG chose the visionary role.

Finally, I offer some concluding thoughts about the issues and events that I have described. These conclusions are already discernible in the descriptions. But sometimes there is value in the distillation and repetition. That is another faith in writing this Article.

II. INTERNAL

There are moving parts in any organization. How these parts relate to one another can affect the larger mission of the organization. JAG was no exception to this principle. We were in business to enhance the ability of the legal services providers and the private bar to provide free legal assistance to the low-income and elderly citizens of Maine and other disadvantaged groups. But it was always understood that JAG, while supportive of the work of the providers, had to maintain its independence from them. Dedicated though they were, the providers were not immune to the complacency or protective instincts that can affect any organization. JAG had to be alert to performance issues in the work of the providers, or to the possibility that other organizations not yet within the JAG circle might be able to play an important role in the provision of legal services in Maine.

This concern for JAG’s independence from the providers was reflected in two organizational details. Although a member of the board of each of the principal providers served on JAG, they were not there as the representatives or voices of the providers in JAG’s discussions. That would be too parochial a perspective. Their role on JAG was to advance the mission of JAG generally (enhancing the provision of legal services in Maine), even if a specific initiative might be contrary to the interests of their organization.

Frankly, this notion that the board members of the legal services providers serving on JAG were not there as representatives of the providers always struck me as a bit unrealistic. But that distinction—serving on JAG as members of their boards, not as their representatives—was the prevailing understanding.

The second organizational detail involved proximity. During my early years as JAG Chair, the executive directors of the legal services providers were not even

in the room when JAG held its meetings. Although there was no formal bar to their presence, there was a concern that their presence might inhibit an open and candid discussion of their work. To provide the necessary communications between JAG and the providers, we relied on the Advisory Committee of Providers (ACP), whose Chair, a member of JAG by virtue of that position, would meet with the executive directors of the providers between meetings of JAG⁷ and report to JAG on those meetings.⁸ As I shall explain, a seat on the ACP was a valuable commodity. It accorded status to a provider and opened up the possibilities of new funding sources for any organization admitted to the ACP.

There was another critical player in this mix of organizations—the Maine Bar Foundation (the Foundation). Established in 1983, the Foundation distributes IOLTA funds⁹ to organizations and projects in Maine that provide civil legal services to poor and disadvantaged populations.¹⁰ There is almost always an uneasy relationship between a grantor organization and grantee entities dependent on the largesse of the grantor. That uneasiness was present in the relationship between the Foundation and the providers, who secured substantial funding from the Foundation.

Because of this tension, the providers saw JAG as a potential advocate if they

7. The Chair of the ACP also served on the Executive Committee of JAG with Justice Dana and myself. The providers relied on the ACP Chair to be an advocate for them and to convey their ambitions for JAG's work and their concerns about JAG's performance to the Executive Committee. At the same time, JAG relied on the Chair of the ACP to have some perspective on the ambitions of the providers and how those ambitions related to JAG's mission to improve the delivery of free legal services in Maine generally. This task—preserving the trust and confidence of the providers while also maintaining some independence from them—was a difficult one. It required great communications and diplomatic skills. Fortunately, in the person of Janis Cohen and her successor, Carter Friend, we had ACP Chairs with those skills. They were indispensable players in the success of JAG.

8. Three or four years into my tenure as JAG Chair, we changed course and invited the executive directors of the providers to attend JAG meetings as observers. Although they could answer questions that might arise at the meetings, their spokesperson at JAG meetings continued to be the Chair of the ACP. We also instituted a practice whereby at each meeting, on a rotating basis, an executive director would provide a summary of the most important work of each provider since the prior JAG meeting. These reports were a highlight of JAG meetings and a reminder of why we were doing this work. In hindsight, I think keeping the executive directors of the providers out of the JAG meeting room was an excess of caution. Their presence did not inhibit our discussion of their work.

9. IOLTA stands for "Interest on Lawyer Trust Accounts." As the website of the Maine Bar Foundation explains,

Attorneys routinely receive client funds to be held in trust for future use. If the amount is large or the funds are to be held for a long period of time, the attorney must place these monies at interest for the benefit of the client. However, in the case of amounts that are small or are to be held for a short time, it is impractical to establish separate interest bearing accounts for individual clients. Participating in the IOLTA program allows attorneys to place these funds at interest, with that interest paid to the Maine Bar Foundation and dedicated to support civil legal aid for low income and disadvantaged people, law related education and administration of justice projects.

Available at Maine Bar Foundation, *Questions & Answers for Attorneys*, <http://www.mbf.org/iolta.htm> (last visited Apr. 25, 2010).

10. The overall mission of the Maine Bar Foundation is "[t]o facilitate the due administration of justice by promoting the provision of legal services to the poor, supporting legal and law-related education and engaging in activities intended to enhance the legal profession's ability to serve the public throughout the State of Maine." ME. BAR FOUNDATION, ANNUAL REPORT (2008).

were ever unhappy with their treatment by the Foundation. Although the President of the Foundation was a member of JAG, the providers still felt that JAG was a forum in which any grievances about their relationship with the Foundation could be aired.

During my seven years as Chair of JAG, this scenario was nothing more than a hypothetical. I do not recall any such grievances ever being aired. Perhaps it is just as well. As I shall explain, there was reason to question JAG's independence from the Foundation.

A. Expanding the Membership of the Advisory Committee of Providers

During my first year as Chair of JAG, there was much internal debate about whether the membership of the ACP should be expanded and, if so, what standards should apply to organizations that might seek membership on the committee. Justice Dana and I thought the ACP membership was too limited. This position was fraught with financial implications. The members of the ACP were core providers of legal services in Maine: the Cumberland Legal Aid Clinic, Immigrant Legal Advocacy Project (ILAP), Legal Services for the Elderly, Maine Equal Justice Project/Partners, Pine Tree Legal Assistance, and the Volunteer Lawyers Project. They all received annual grants¹¹ from the Foundation according to a formula proposed by the providers and adopted by the Foundation's Board of Directors.¹²

There was a similar funding phenomenon at the Maine Civil Legal Services Fund Commission ("the Commission"), which administers the Maine Civil Legal Services Fund. The Fund was established by the Legislature in 1991, following the 1990 report of the Maine Commission on Legal Needs.¹³ Although unfunded and dormant at its inception, the Fund finally became operational in 1997 through surcharges on court filing fees and civil infractions.¹⁴ Initially, because of statutory

11. ILAP, the newest of the core providers, first became an annual grantee of the Foundation in 2001. Prior to that, it received three years of discretionary grants from the Foundation while it established a track record and the need for its services. Telephone Interview with Beth Stickney, Executive Director of ILAP (Feb. 9, 2010) [hereinafter Stickney Interview].

12. In addition to these annual grants, the Foundation makes discretionary grants for one year to law-related public service programs, with a preference for programs providing direct legal assistance that are innovative and responsive to unmet legal needs. These discretionary grants may be renewed for a second year. Historically, the annual grants represent 80 to 85 percent of the funds awarded each year by the Foundation. E-mail from Calien Lewis, Executive Director, Me. Bar Found. to Author, (Jan. 25, 2010) (on file with author); Memorandum from Calien Lewis to JAG re: Provider Understanding, (Jul. 9, 2001) (on file with author).

13. The Maine Commission on Legal Needs was chaired by Senator Edmund S. Muskie. The Commission was charged by the Maine Bar Foundation with studying the legal needs of Maine residents. It released its findings in a 1990 report. The report contained a series of recommendations for improving access to justice for low-income people and laid the groundwork for the formation of JAG later in the decade. The "Muskie Commission Report" is a critical document in the history of legal services in Maine. ROBERT ECHOLS, EXAMPLES OF STATE ACCESS TO JUSTICE COMMISSIONS: CREATION, STRUCTURE AND ACCOMPLISHMENTS 16, <http://www.nlada.org/DMS/Documents/1219773831.77/Examples%20of%20ATJ%20MIE%202008.pdf> (last visited Mar. 22, 2010).

14. The University of Maine School of Law, Four Decades of Civil Legal Aid in Maine: Past Accomplishments and Present Day Challenges, Conference Materials from Expanding Justice in Maine 4 (2009), <http://mainelaw.maine.edu/news/conferences/justice/FourDecadesCivil.pdf> (last visited Apr.

restrictions, the Commission only provided funding to core providers, noted above.¹⁵ The core providers agreed among themselves on an allocation of Commission funds. The Commission then adopted that allocation.¹⁶ Given this pattern of funding from the Foundation and the Commission, any increase in the number of ACP members might increase competition for annual grant money from these two large funding sources. There was, understandably, a reluctance among the core providers to see the circle of core providers expanded.

Concerned about the direction of this debate within the Executive Committee of JAG,¹⁷ the ACP submitted a report to the Committee detailing the group's "most recent thinking by members on the subject of inclusion in the ACP."¹⁸ Its principal recommendation for JAG membership relied on an American Bar Association (ABA) pro bono definition, which referred to organizations "founded primarily to render free or reduced fee civil legal services to persons of limited means or those who cannot otherwise afford legal counsel."¹⁹ The ACP also recommended that "'alternative means' [other than membership on the ACP] be developed to obtain periodic or specific input on legal service and delivery issues from a wider network of interested parties."²⁰

Both Justice Dana and I were concerned about the narrowness of this definition, keyed as it was to organizations "founded primarily" to render free or reduced fee civil legal services to persons of limited means. Such a definition would exclude from ACP membership organizations that were not founded primarily to provide such legal services, but whose mix of activities included the provision of such services. For example, the ACP recommendation would make organizations such as the Maine Civil Liberties Union, the Maine Disability Rights Center, the Maine Mediation Coalition, PenquisCAP, YorkCAP, the Maine Center on Deafness, and domestic violence groups ineligible for ACP membership. Therefore, the ACP proposal had the effect of limiting ACP membership to those organizations already on the ACP and probably limiting competition for grant funds from the Foundation and the Commission.

The recommendation of the ACP, and the guarded reaction of Justice Dana and myself to it, provoked a spirited debate in the legal services community. Not

25, 2010). Currently, the Commission receives a percentage of court filing fees and a surcharge on civil infractions. *See infra*.

15. Although ILAP was an annual grantee of the Foundation starting in 2001, it did not begin to receive Commission funding until 2006. Stickney Interview, *supra* note 11.

16. However, with the broadening of the eligibility standard for Commission funding in 2005, *see infra*, the allocation process of the Commission is no longer based on a negotiated recommendation from the providers. Instead, the Commission evaluates the fund applications of the providers and makes the allocation decisions. Memorandum from Janis Cohen, Chair, Me. Civil Legal Servs. Fund Comm'n, to author (Feb. 7, 2010) (on file with author).

17. At this time, as noted, the JAG Executive Committee consisted of Justice Dana, Janis Cohen, and myself. *See supra* note 7.

18. Memorandum from ACP to the JAG Executive Comm., ACP Membership, (Jan. 11, 2002) (on file with author) [hereinafter ACP Membership Memo].

19. STANDARDS FOR PROGRAMS PROVIDING CIVIL PRO BONO LEGAL SERVS. TO PERSONS OF LTD. MEANS, Introduction, ix (1996) [hereinafter ABA Pro Bono Standards]. The ACP memorandum also included a "functional" approach to ACP membership, which might have permitted membership for entities with some prior experience in legal aid work. *See* ACP Membership Memo, *supra* note 18.

20. ACP Membership Memo, *supra* note 18.

surprisingly, and appropriately, the Executive Committee of the Foundation entered the debate and forcefully expressed its opposition to any expanded standard for membership on the ACP. Its opposition reflected two concerns: (1) organizations focusing on civil liberties, domestic violence, special education and similar issues would bring to the table controversial positions that might compromise private and public support for legal services programs in Maine; and (2) too much competition in a world of limited resources for funding for legal services programs might be counterproductive. The Foundation was particularly concerned about duplicative administrative costs. The Foundation emphasized, however, that collaboration with such organizations was worthwhile. It just felt that there were better ways of assuring this collaboration, such as by creating special task forces that included these organizations and by inviting these organizations to JAG meetings when they might be able to contribute to the discussion of particular issues.²¹

In the face of this strong and reasoned opposition from the Foundation, Justice Dana and I blinked. Whether we might have been successful at a JAG meeting in securing approval of an expanded standard for membership on the ACP was beside the point. That effort would have created hard feelings that might have compromised JAG's relationship with the Foundation. There were no clear answers in the debate. A prudent retreat on our part seemed to be in everyone's interest. Hence the outcome of the debate was the adoption by JAG of standards for membership on the ACP that were much in line with the position of the providers and the Foundation.²²

21. Memorandum from the MBF Executive Comm. to JAG (Mar. 28, 2002) (on file with author).

22. The final standards for membership in the ACP were as follows:

An organization may be eligible for membership on the Advisory Committee of Providers if:

1. Its primary purpose is providing free or reduced fee civil legal services to persons of limited means or to those who are otherwise disadvantaged in obtaining legal counsel; and
2. It has engaged in this legal work for at least three years at the time it seeks membership.
3. These standards do not apply to Legal Services for the Elderly which serves the elderly without means testing, the University of Maine School of Law (Cumberland Legal Aid Clinic) which has as its primary purpose the education of lawyers, the Maine State Bar Association and the Maine Bar Foundation which serve on the ACP for purposes of communication and consultation with the legal profession and resource support.

Membership on the ACP requires the following commitments from an organization:

- To work with other members of the group to ensure that services are coordinated effectively, minimizing duplication and promoting efficiency and quality;
- To coordinate fund raising activities with other members of the group to ensure to the extent possible that the most appropriate providers are applying for funding from any particular source and to compete respectfully with one another for scarce funds.
- To participate in the work of the group on a regular basis including attending meetings, accepting responsibility for a share of the work, and sharing of data and other information necessary to improve access to justice.

The inclusion of new members on the ACP does not imply any judgment by JAG that the new member should or should not receive funding from the Maine Bar Foundation, the Maine Civil Legal Services Fund or any other funding entities.

Memorandum from JAG Executive Committee to JAG Members, Standards for Membership on the Advisory Committee of Providers (July 15, 2002) (on file with author).

I was only mildly disappointed by this outcome. The debate had been thoughtful. It heightened an awareness of the need to find other ways to include important voices in the work of JAG and in the legal services community generally. That awareness would prove particularly important in subsequent initiatives of JAG.²³

B. Relationship of JAG to the Maine Bar Foundation

There was some irony in the abandonment by Justice Dana and myself of our effort to expand membership on the ACP in the face of opposition from the providers and the Foundation. As I have mentioned, the providers saw JAG as a possible ally in dealing with the Foundation if they ever felt aggrieved by its actions. In this instance, the Foundation had protected the providers from JAG.

This instance also highlighted a hard reality for JAG. Both in appearance and in reality, our independence from the Foundation was suspect. Throughout my tenure as Chair, we received essential funding from the Foundation, in varying amounts, to help fund our major expense—the salary of our Executive Coordinator. The funding of that position was a chronic headache. We could accomplish little without our one staff position.²⁴ It would be disingenuous to claim that these realities did not affect, in some measure, my willingness to yield to the Foundation on the ACP eligibility issue.

I wish to emphasize that there was never any hint of retaliation from the Foundation during the debate over ACP eligibility, or at any time, if JAG acted contrary to its wishes. I also acknowledge that the Foundation, having given money to JAG to help fund JAG's only staff position, had an obligation to exercise some oversight over the use of that money. Indeed, the Foundation sensibly believed that it should maximize the use of its funding for direct legal services. Any Foundation money used to support the work of JAG's coordinator was a diversion of money from direct legal services. Hence the Foundation wanted to be sure that any money spent on the administrative expenses of JAG did not duplicate its own work. But how could the Foundation evaluate the issue without undermining JAG's independence?

That was not an easy problem to solve. During my first few years as Chair of JAG, I was aware of the Foundation's ongoing concern that, despite its membership on JAG, the Foundation was not sufficiently apprised of JAG's activities. Also, the Foundation felt that JAG's activities occasionally put demands on its personnel that were burdensome.²⁵ Finally, in late 2004, JAG and the

23. See *infra* Part IV., INTERNAL AND EXTERNAL (discussing JAG's planning initiative).

24. We received money from various sources to help fund the Executive Coordinator position. During my first two years as JAG Chair, we were fortunate to receive annual grants of \$15,000 from the Levine Family Foundation because of its great respect for Judge Coffin. We also secured some funding from the Maine State Bar Association and, at different times, in varying amounts, from the state Judicial Branch, the Maine Trial Lawyers Association, and other foundations. However, it is almost impossible to secure foundation money to help meet an ongoing administrative cost. Despite these difficulties, JAG continues to have the services of a part-time Executive Coordinator.

25. Since JAG had no formal organizational status, the Maine Bar Foundation served as the fiscal agent for the receipt of funds to be devoted to the work of JAG, and JAG's Executive Coordinator was designated as a part time employee of the Bar Foundation. There was an agreement in place between

Foundation took some steps to address these concerns.

First, a member of the JAG Executive Committee would attend Foundation Board meetings. Second, the President of the Foundation would become a member of the Executive Committee of JAG. Finally, a new operational agreement was entered into on January 1, 2005, between JAG and the Foundation that gave the Foundation some additional oversight over JAG's budget generally while preserving the independence of JAG on operational details. The agreement specified that the Foundation's board of directors, in conjunction with JAG, would approve the total amount of the JAG budget but JAG, through its Executive Committee, would approve, manage, and direct the expenditure of funds within that total amount. If JAG required the support of any additional staff resources of the Foundation to support its work, the use of those additional resources had to be approved by the Foundation's Board of Directors and the JAG Executive Committee.²⁶

In my view, these initiatives improved the relationship between JAG and the Foundation during my last few years as Chair of JAG. Indeed, having the President of the Foundation serve on the Executive Committee of JAG was particularly important to the improved relationship. But it remains a fair question whether the original notion of the providers—that JAG could be their ally in disagreements with the Foundation—was sound. The hard fact remained that the providers and JAG had a similar status—we were all grantees of the Foundation. In a crunch, that was not a recipe for independence for any of us.

III. EXTERNAL

A. Funding for the Legal Services Providers

JAG was born out of an acute crisis in federal funding for the legal services providers. To varying degrees, there is a chronic crisis in funding for the providers, who always need more money to meet unmet legal needs. If JAG ever lost its focus on that hard reality because of internal issues, the providers were right there to restore it. For example, on March 12, 2003, Nan Heald, the Executive Director of Pine Tree Legal Assistance, sent an e-mail to JAG's Executive Coordinator with a blunt message:

JAG has set many great accomplishments in motion, and I realize that fund raising for legal aid may not seem of interest to everyone involved in JAG. On the other

JAG and the Bar Foundation that memorialized this relationship. The agreement specified that the Foundation agreed to assist JAG by providing an employee to "coordinate the work of JAG, its task forces and advisory committees (the 'coordinator'). The coordinator will report to and be supervised by the Chair of the Justice Action Group." (Agreement on file with author).

26. There is now in place a letter of understanding between JAG and the Foundation, dated April 24, 2008, which supersedes the operational agreement of January 1, 2005. In that letter, the Foundation pledges its continuing financial support of JAG. The agreement specifies that JAG's Executive Coordinator will "be selected by the Executive Director of the Foundation upon recommendation of the JAG Executive Committee." The agreement further specifies that the Coordinator "will, under the direction of the Executive Director and in consultation with the JAG Executive Committee, provide staff support for all JAG activities" The letter also spells out in greater detail the employment relationship between the Executive Coordinator of JAG and the Foundation.

hand, I think the growing crisis is exactly why the Executive Committee [of JAG] needs to speak so forcefully and clearly on the importance of this effort and to use its “bully pulpit” to persuade our friends to set aside other tasks and join with us in this effort now.²⁷

JAG heeded the message and, using its “bully pulpit,” set about to raise significant new money from the private and public sectors.

1. Private

In truth, JAG never really lost its focus on the need to raise new money for the providers. Nan Heald’s March e-mail had been sent on the eve of a May 2003 Resource Development Planning Retreat, which JAG had already been organizing for some months. Nan was sensibly reminding JAG and everyone involved in that retreat of the need to emerge from it with concrete plans for action, lest any momentum generated by that retreat be wasted.

There was no wasted momentum. Meredith McBurney, Director of the ABA’s Project to Expand Resources for Legal Services, reported at the retreat on her study of the separate fund raising campaigns of Maine’s legal services providers. Although her study revealed that a fairly high percentage of the bar contributed money to the work of the providers, and that there was not much overlap of donors among them, the amount given per donor was low. To improve that performance, she recommended a change from direct mail to individual, personal solicitations, the use of one to one meetings between peers to make requests for major gifts, and an investment in staff to carry out any future fundraising campaigns.²⁸

The larger question generated by McBurney’s report was whether these improved techniques should continue to be pursued by the providers separately through their own campaigns, or whether the providers should give up their individual campaigns and instead cooperate on one campaign that would benefit all of them. Recognizing the political sensitivity of such a proposal, McBurney did not explicitly recommend such a joint campaign. But the implication of her report was unmistakable.

To explore that implication, JAG established, in the wake of the retreat, a so-called “Big Plan Committee” under the leadership of Mary Schendel, a former president of the Maine State Bar Association and the Foundation, and a gifted organizer. With Mary devising the structural framework for the discussions, and Valerie Stanfill²⁹ facilitating the actual negotiations, the providers sorted through a host of difficult issues over a period of five months. They then signed a joint fundraising agreement that explicitly confirmed the implication of McBurney’s report:

It is now in the best interests of the Providers and Maine attorneys to have a joint fundraising campaign to support the provision of legal services in Maine in which a comprehensive and coordinated effort to solicit funds is made to each Maine

27. Email from Nan Heald, Executive Director, Pine Tree Legal Assistance, to Jennifer Lechner, Executive Coordinator, JAG (Mar. 12, 2003) (on file with author).

28. RES. DEV. PLANNING RETREAT REPORT (Jun. 19, 2003) (on file with author).

29. At the time of the negotiations, Valerie Stanfill was an instructor in the University of Maine School of Law’s Cumberland Legal Aid Clinic. She is now a State of Maine District Court Judge.

attorney, instead of multiple separate requests. This joint fundraising campaign is intended to supplement and not replace or be viewed as a substitute for funding from other sources (including federal, State or IOLTA funding).³⁰

The agreement applied to the calendar years 2004, 2005, and 2006. Certain fundraising activities of the providers were excluded from this agreement, such as appeals to non-lawyers and special fund raising events (the annual Muskie Access to Justice Dinner, which already benefits all of the core providers, being a prime example). Importantly, the agreement also included a formula, much negotiated, for the allocation of proceeds among the providers.

This Campaign for Justice, as it was soon called, continues to this day.³¹ Through it, more than one third of the lawyers in Maine's legal community now contribute to the efforts of the legal services providers. One hundred and thirty contributors made gifts of \$1,000 or more in 2009. The Campaign is one of JAG's notable successes, providing five times more private bar money for the providers than their earlier separate campaigns.³²

2. Public

a. The Dilemma

The success of the Campaign for Justice had a direct relationship to another recommendation made by Meredith McBurney at the Resource Development Planning Retreat—the need for a campaign to win more general fund appropriations from the Maine Legislature for the work of the providers “as soon as politically feasible.”³³ That caveat was always the problem. It never seemed politically feasible to ask the Legislature for new money for anything.

Also, many legislators believed that the legal community had a special responsibility to address the legal needs of Maine's low-income population, both through the pro bono work of lawyers and their financial contributions to the work of the providers.³⁴ Although they would not reject the proposition that the public

30. The agreement was entered into by representatives of Pine Tree Legal Assistance, Legal Services for the Elderly, ILAP, the Maine Equal Justice Project/Partners, the Volunteer Lawyers Project Advisory Committee, and the University of Maine School of Law.

31. The subsequent agreements among the providers continue to cover three year periods. The allocation formulas are subject to renegotiation.

32. In 2004, the Campaign raised over \$268,000. The Campaign raised \$324,000 in 2005, an increase of 29 percent over the previous year. In 2006, the Campaign raised \$382,000 for an increase of 18 percent. The Campaign raised \$400,000 in both 2007 and 2008, an amount that was approximately five times what had been raised by the six provider organizations prior to the creation of the Campaign in 2004. In 2009, the Campaign raised over \$355,000. CAMPAIGN FOR JUSTICE SUPPORTING LEGAL AID IN ME., ANNUAL REPORTS 2004, 2005, 2006, 2007, 2008, 2009.

33. RES. DEV. PLANNING RETREAT REPORT, *supra* note 28.

34. This attitude of the legislators is reflected in the Maine Rules of Professional Conduct. In those rules, the Maine Supreme Judicial Court sets forth two “aspirational goals” for lawyers: “[e]very lawyer has a professional responsibility to provide legal services to those unable to pay,” and they should “voluntarily . . . contribute financial support to organizations that provide legal services to persons of limited means.” ME. R. PROF. CONDUCT 6.1 (2008). The Maine rule is modeled on the American Bar Association's Model Rule 6.1, which urges bar associations to “make the expansion of pro bono legal services a critical priority for the bar.” ABA Standing Committee on Pro Bono & Public Services, Mission and Activities, *available at* <http://www.abanet.org/legalservices/probono/committeefinfo.html#>

generally shared that responsibility, they wanted to be sure that Maine's legal community was maximizing its efforts to address the legal services needs before the Legislature committed more public money to the cause. Hence a successful private bar campaign, such as the Campaign for Justice, was always seen as an indispensable prelude to any future approach to the Legislature for increased general fund appropriations.

With the success of the Campaign for Justice in 2004, its first year, that piece was now in place. But "political feasibility" was still an issue as JAG considered a possible initiative for the legislative session beginning in January 2005. The budgetary climate was still unfavorable. There were legitimate concerns within JAG that any approach to the Legislature for new money would be perceived as politically insensitive and damaging to JAG's long-term credibility with the Legislature.

There were others within JAG who felt that we would probably never find the "right" time to ask the Legislature for new money for the legal services providers. In their view, we had to start somewhere. Even if we failed to win legislative support for an initiative (the likely outcome), we would still have educated some legislators about the importance of the legal services programs. Over time, that educational exercise might pay dividends.

Ultimately, this latter view prevailed, in part because it reflected an approach to the Legislature that JAG had been taking for some time. As early as November 2002, after the fall election, we held an Access to Justice conference in Augusta for the purpose of educating new legislators and the new Governor, John Baldacci, about the history of the legal services programs in Maine, the work that the providers do, and the extent of the unmet need for their work.³⁵ We had no proposal for new funding before the Legislature that year. We just saw value in creating good will with the Governor and legislators that would help us with future requests. For the same reason, I had made some "informational" appearances before the Judiciary Committee of the Legislature, simply to tell them about JAG's work without requesting anything.

Also, through many one-on-one conversations that the providers and our own Executive Coordinator had with legislators over the years, we realized that many legislators often heard from constituents who, desperately in need of legal assistance, wanted advice on where to turn. These legislators understood that they would be helping their constituents if they supported expanded legal services programs. The days seemed long past when legislators reflexively viewed legal services providers as troublemakers who existed primarily to sue the state or threaten entrenched interests.³⁶

cteinfo (last visited Apr. 25, 2010). The ABA rule differs from the Maine rule in that it explicitly states that "[a] lawyer should aspire to render at least (50) hours of pro bono public legal services per year." *Id.*

35. This conference was the first large initiative of our first Executive Coordinator, Jennifer Lechner, who did a superb job with the conference and all of her work with JAG.

36. In 1996, in the culmination of a movement begun the previous year to retrench the federal support and funding for legal services, Congress passed legislation limiting the ability of legal services programs to lobby or file class action lawsuits. That legislation, although hostile to the legal services providers, may have contributed unwittingly to improved attitudes in state legislatures towards the

In short, whatever the budgetary problems in Augusta (and they were considerable), we thought the benefit of going forward with a legislative proposal for the 2005 session outweighed the risks. Now we just needed an idea.

b. The Proposal

The ACP, which had always wanted JAG to go forward with a legislative proposal, was ready. The ACP proposal had three parts: (1) increased support from the General Fund in the amount of \$400,000;³⁷ (2) an increased surcharge on civil fines, penalties and forfeitures (from \$5 to \$10); and (3) replacing the fixed amount presently collected from judicial filing fees with a percentage charge against those fees, which would increase over time. All of these funds would be deposited in the Maine Civil Legal Services Fund, which already drew its funding from the surcharges and filing fees.

This was a smart proposal. Given the state's budgetary problems, the Legislature would almost certainly be hostile to any request for general fund money. But a legislature willing to offer some support for increased funding for the legal services providers might be amenable to the surcharge and filing fee proposals. Now cast in a bill entitled "An Act to Provide Support for Legal Services for Low-Income Mainers," the proposal contained the seeds of its own compromise.³⁸

c. The Governor

This smart proposal was not entirely an accident. Kurt Adams, the Governor's legal counsel at the time, was a strong supporter of legal services programs. Knowing of this inclination, Justice Dana and I met with him as part of the process of deciding whether to go forward with a JAG proposal for the 2005 legislative session. Kurt told us frankly that the Governor's financial priorities were the preservation of as much funding as possible for Medicaid and education. Funding for legal services programs was not among his priorities. However, if a dedicated revenue stream could be found for the legal services programs, the Governor might not be opposed to it. Justice Dana and I communicated that information to our Executive Coordinator, Sally Sutton,³⁹ who in turn shared it with the ACP.

providers. See OMNIBUS CONSOLIDATED RESCISSIONS AND APPROPRIATIONS ACT OF 1996, Pub. L. No. 104-134, § 504(a)(7), 110 Stat. 1321-53 (1996). The prohibition was implemented by the Legal Services Corporation via an amendment to its regulations. 45 C.F.R. § 1617.1 (2007).

37. At the time of this proposal, the only General Fund support for legal services programs in Maine was an appropriation for Pine Tree Legal Assistance in varying amounts ranging from approximately \$100,000 to a high of \$300,000. These appropriations had begun in 1983. Although not a General Fund appropriation, Legal Services for the Elderly received state funds for the support of its work through the Bureau of Elder and Adult Services of the Department of Human Services.

38. JAG needed lobbyists to shepherd our proposal through the legislative labyrinth. We were fortunate to secure the volunteer services of Dan Riley, a skilled lobbyist with the Portland firm of Bernstein, Shur, Sawyer & Nelson, and Rich Thompson, also a lawyer and former state legislator from Naples, who was equally skilled. Dan focused on the Republicans, and Rich focused on the Democrats.

39. Sally had now replaced Jennifer Lechner as our Executive Coordinator. From her years as Executive Director of the Maine Civil Liberties Union, Sally was also skillful at navigating the legislative labyrinth, and she, Dan Riley, and Rich Thompson made a formidable legislative team.

Together, they came up with the dedicated revenue idea which was incorporated in the final bill.

Justice Dana and I then asked to meet with the Governor himself. Although we had no hope that he would support the general fund request for money for the providers, we wanted to assure, as far as possible, that he would not oppose the surcharge and filing fees proposals. His opposition to that initiative would have doomed our efforts.

With the benefit of Kurt Adams's careful preparation, the meeting with the Governor went well. Predictably, he stated his opposition to any general fund appropriations for legal services programs. Although he would not include in his own legislative program the surcharge and filing fees proposals, he would remain open-minded about them. Realistically, we felt that commitment was the most we could expect from the Governor, and we now felt reasonably confident that we could win the necessary legislative support for our bill.

d. The Legislative Hearing

When I appeared before the Legislature on February 3, 2005, in support of JAG's bill, I focused first on the Campaign for Justice initiative and its success in dramatically increasing the support from the legal services community for the work of the legal services providers. Drawing on the wisdom of the Resource Development Planning Retreat, I then explicitly drew the link between the success of this initiative and our approach to the Legislature for more funding for the work of the providers:

The success that I have described is important for two reasons. First, the new money itself is obviously critical to the work of the providers. But secondly, and perhaps as importantly, the success sends a signal to the Legislature that the private bar recognizes that it is a privilege to practice law in this state, and with that privilege comes a special responsibility of lawyers, through their pro bono work, and their financial support, to increase access to justice in Maine for those who cannot afford to pay for legal services.

As a practical matter, however, there is only so much that the private bar can do to enhance access to justice. As a matter of policy and principle, there is a public responsibility shared by all of us to increase access to justice for those who cannot afford legal services. Indeed, it is a good investment of public money. As the legal problems of the poor spiral out of control – whether it's a housing problem, a medical problem, or a credit problem, there can be increased demands on governmental services which are extremely costly. Also, *pro se* parties make tremendous demands on the legal system. It is simply a myth that *pro se* parties can do an adequate job of representing themselves in the court system.

Hence, the Campaign for Justice has a phase II which involves an appeal to the Legislature for increased public funding to support the work of the legal services providers.

I closed my remarks by emphasizing that “[t]here has to be a private/public partnership to make access to justice a reality in Maine.”

On the whole, the hearing went well.⁴⁰ Although there was no enthusiasm for the general fund request, there was no evident hostility from the committee for the surcharge and filing fee proposals, with one notable exception. The notable exception was Representative Michael Dunn, a House member from Penobscot County, who had listened intently to the unexpected testimony of the Directing Attorney of the PenquisCAP Law Project.⁴¹ She complained that the requirements for eligibility for grants from the Commission had the effect of excluding organizations like PenquisCAP for consideration. That was because the governing statute made funding available only “to non-profit organizations whose missions are to provide free civil legal services.” It thereby excluded “non-traditional providers such as CAP agencies or domestic violence projects” whose more general mission to assist in preventing, reducing, or eliminating poverty in the lives of individuals and families might include some free legal services work.⁴²

This complaint mirrored the earlier debate within JAG, lost by Justice Dana and myself, about the appropriateness of expanding the ACP to include organizations whose work included the provision of free civil legal services to low-income or otherwise disadvantaged populations, but not as a primary mission. We had recognized at the time of that debate that PenquisCAP specifically, and other organizations like it, might be eligible for increased funding from the Foundation and from the Commission if the standard for eligibility for such funding was no longer based on the ABA pro bono standard—organizations “founded primarily to render free or reduced fee civil legal services to persons of limited means or those who cannot otherwise afford legal counsel.”⁴³ PenquisCAP was not an organization whose primary mission was the provision of such legal services. Instead, it was an organization whose mission included the provision of some free civil legal services to low-income individuals.⁴⁴

Hearing this complaint from the PenquisCAP spokesperson, Representative Dunn said he was not happy that PenquisCAP and organizations like it were not eligible for funding from the Commission. He could not support the bill unless those eligibility standards were changed.

e. Success

I admired the adroit way in which PenquisCAP had gone public with this eligibility issue. The core providers wanted the increased funding that JAG’s legislative proposal would provide. PenquisCAP recognized that the providers might not get this increased funding if they did not agree to an expanded definition of eligibility for Commission funds, even though such agreement meant that they

40. We also had a press conference about JAG’s bill on the same day as the public hearing, orchestrated by the Maine State Bar Association. That press conference added to the favorable coverage of the bill.

41. At the time of the public hearing, PenquisCAP carried out its programs in Penobscot and Piscataquis Counties.

42. An Act to Provide Support for Legal Services for Low-Income Mainers, L.D. 715, Before the Judiciary Committee, 122d Leg., 1st Sess. (Me. 2005) (statement of Tamar Perfit Mathieu, Directing Attorney of the PenquisCAP Law Project) [hereinafter Mathieu Statement].

43. ABA Pro Bono Standards, *supra* note 19.

44. Mathieu Statement, *supra* note 42.

would now have to compete for those funds with organizations whose mission was not primarily the provision of free legal services.

Frankly, with the eligibility issue now so public, the standard for receiving Commission funds would probably have been broadened even if the providers had objected. Sensibly, they did not. JAG registered its support for an amended version of the Act and an altered eligibility standard for Commission funding.⁴⁵ The amended bill, without any general fund money, passed in both houses by a wide margin and was signed into law by the Governor on June 9, 2005.⁴⁶ As hoped, the initiative has significantly increased Commission⁴⁷ funding for the work of the core legal services providers.⁴⁸ In 2005, before the new law took effect, the Commission distributed \$952,738.44. In 2006, after the law took effect, the Commission distributed \$1,487,862.07. For 2009, the Commission distributed \$1,846,848.27. Also, the twelve organizations receiving funds that year include such non-traditionally funded organizations as the Maine Center on Deafness, the York County CAP Access to Law Project, and, of course, the PenquisCAP Law Project.⁴⁹

B. Responding to a Crisis

As I have noted, JAG was born in a crisis in the mid-1990s, caused by a dramatic reduction in congressional funding for legal services programs, and statutory restrictions on the kind of work that legal services programs receiving federal funds could perform. To a considerable extent, that behavioral model—JAG responding to a crisis—remained the dominant one through JAG’s early years. The providers would identify a problem, bring it to JAG’s attention, and ask for JAG’s assistance in solving it. JAG was largely a reactive body. Since there were always so many problems to react to, JAG was never idle.

A crisis that arose in October 2002 is a good example. The demographics of Maine had been changing dramatically over the previous decade because of the influx of immigrants from many countries. It was no longer a rarity for someone with little or no English skills to become involved in state court proceedings that were utterly baffling because of the language barrier. There could be no pretense of due process unless such an individual had the benefit of a qualified interpreter.

In late October there were embarrassing stories in the Maine newspapers about

45. As a result of PenquisCAP’s statement, the Act was amended so that money could be disbursed “to legal services providers to support the provision of free civil legal services to low-income *or needy* people or the needy elderly.” The eligibility requirement was changed so that “[n]onprofit organizations whose missions *include the provision of* free legal services and who have at least one year of experience providing free civil legal services” would be able to receive funds. Comm. Amend. A to L.D. 715, No. H-582 (122d Legis. 2005). The committee stated that “[t]his amendment expands the number of legal services providers that are eligible to receive funding from the Civil Legal Services Fund to include nonprofit organizations whose missions include the provision of free legal services, including the provision of civil legal services to needy people.” *Id.*

46. P.L. 2005, ch. 361, § 1 (effective Sept. 17, 2005).

47. Janis Cohen, formerly Chair of the ACP, now serves as Chair of the Commission.

48. *See generally* ME. CIVIL LEGAL SERVS. FUND COMM’N REPORT TO THE JOINT STANDING COMM. ON THE JUDICIARY, 124th Leg., 1st Reg. Sess. (2009).

49. This project, which serves Penobscot, Piscataquis, and Knox Counties, provides legal assistance for low-income individuals with domestic violence, sexual abuse, and stalking issues.

the unavailability of interpreters in the Lewiston, Biddeford, and Portland District Courts to help women with limited English skills seeking Protection from Abuse Orders. A national organization, the National LEP⁵⁰ Advocacy Task Force, had conducted “testing” in those courts to determine if women with limited English skills could participate meaningfully in court proceedings.

The results were alarming. In Lewiston and Biddeford, when a Task Force member requested a Somali interpreter for a woman seeking a Protection from Abuse Order, the clerk said they could not get an interpreter. “When we asked them to use the telephone interpreting service, the clerk told us they do not have a telephone interpreting service and that she could not help this woman.”⁵¹

In Lewiston, when the clerk was confronted with a woman who only spoke Spanish, she “started calling to the employees behind her—as well as the general public that waited in the lobby—‘Anyone here speak Spanish? This woman needs someone who speaks Spanish.’ The clerk made no attempt to call Language Line.”⁵² The report noted that the tester, even in a testing capacity, was humiliated by the non-professional conduct of this clerk.

In the Portland courts there was:

no signage anywhere notifying deaf or hard-of-hearing individuals of their right to qualified language assistance and other assistance devices. The Portland courts also have no signage anywhere notifying limited English proficient individuals of their right to qualified language assistance. The employees with whom I spoke had no awareness of the existence of these signs. They also did not know of any arrangement with a telephone interpreting service.⁵³

The report of the Task Force ended with an ominous warning: “In all three cases, the Maine court system denied LEP women services. In the case of Protection from Abuse Orders, the denials of services could result in serious injury or even death.”

In the wake of these stories, Nan Heald, Executive Director of Pine Tree Legal Assistance, urged JAG to respond promptly: “With full respect for the many issues on the court’s plate, I believe that JAG should be asked to make the issue of language access in the courts a priority.”⁵⁴ There was no disagreement with the sense of urgency. Within days of that request, Justice Dana had discussed the interpreter problem with Chief Justice Leigh Saufley who, characteristically, acknowledged the problem, agreed that it required urgent attention, and thought

50. Limited English Proficiency or “LEP” is a term “used to refer to any person who is unable or has a limited ability to communicate in English. It applies to foreign language speakers whose primary language is a language other than English and who cannot adequately participate in a court proceeding as a result of this language barrier. It also includes deaf or hard of hearing individuals whose primary language is American Sign Language, as well as those whose native language is English but who are unable to hear adequately for court purposes.” A REPORT TO THE JUSTICE ACTION GROUP ON ACCESS TO ME. COURTS FOR INDIVIDUALS WITH LIMITED ENGLISH PROFICIENCY 1, n.2, (January 2005), available at <http://www.mbf.org/LEP%20Final%20Report%201-05.PDF> (last visited Mar. 22, 2010).

51. REPORT OF THE NAT’L LEP ADVOCACY TASK FORCE ON LEP ACCESS IN ME. COURTS (2002) (on file with author).

52. *Id.* Language Line was an interpreter service supposedly available to assist people with language issues in the state courts.

53. *Id.*

54. *Id.*

that JAG's involvement in trying to address the problem could be helpful to the cash-strapped judiciary.

By mid-December, JAG had established a committee to address the interpreter problem under the able leadership of Beth Stickney, Executive Director of ILAP. In late June 2003 the Committee presented an interim report to JAG describing its activities to date, identifying a number of low-cost, easily achievable steps to improve access to Maine's courts for LEP individuals.⁵⁵ For example, the interim report recommended, among other things, adopting a one-page protocol for court clerks that details procedures to follow when servicing LEP individuals, creating "I speak [write-in which language]" cards for persons identified as needing interpreter assistance, improving existing signage by laminating and securely affixing signs in all courthouses, and using existing training videos to help train court staff regarding how to communicate effectively through interpreters.⁵⁶ Importantly, remedial steps such as these were taken before the submission of a final report.

In January 2005 the committee submitted its completed report to JAG, describing the past practices in Maine courts regarding language access, how the change in Maine's LEP population required urgent attention to the language barriers in Maine courts, and the legal consequences of failing to break down those barriers. The report then offered a wide variety of short- and long-term recommendations, some requiring minimal funding, others requiring more substantial funding.

Although the final report of the committee was formally submitted to JAG, the recipient of the report who mattered was Chief Justice Saufley. She accepted the report appreciatively on behalf of the Judiciary and immediately established another committee within the Judiciary to begin the implementation of the committee's recommendations. At subsequent JAG meetings there were encouraging reports from the Judiciary on the implementation. In a little over two years, we had moved from a public embarrassment about the lack of interpreters in the state court system to a comprehensive report paving the way for lasting improvements in those services and a strong commitment by the Judiciary to avoid future problems.⁵⁷

55. LEP COMM., INTERIM REPORT TO THE JUSTICE ACTION GROUP ON LIMITED ENGLISH PROFICIENCY (2003) (on file with author).

56. *Id.*

57. In March 2003, subsequent to the appearance of the embarrassing stories in the Maine newspapers in late October 2002, the Civil Rights Division of the United States Department of Justice received a complaint alleging that the Maine judiciary failed to provide interpreters and other language access services to LEP individuals. That complaint triggered an investigation by the Department of Justice culminating in an onsite visit to Maine by departmental personnel from August 7 to 11, 2006. During that visit, they observed judicial proceedings, and met with members of the Judicial Branch and community organizations representing LEP individuals. In September 2008, the Department of Justice and the State of Maine Judicial Branch entered a "Memorandum of Understanding," memorializing the steps that the Judicial Branch had already undertaken "to ensure meaningful access to the courts" and committing the Judicial Branch to the implementation of an Administrative Order of the Judiciary (JB-06-03) specifying the means of providing meaningful access to all LEP parties and witnesses. The Memorandum of Understanding noted the work of the Limited English Proficiency Task Force and the recommendations it made to the Judiciary for the development of a limited English proficiency program in Maine. The work of the Task Force was critical to the ability of the Judicial Branch to work cooperatively with the Department of Justice during its investigation, and to the eventual signing of the

By any measure, the thoughtful and comprehensive response to the crisis in the provision of interpreter services in Maine courts was a success story for JAG and the Judiciary. It also demonstrated that JAG's informal structure was ideal for a quick response to a crisis. With all of the relevant organizations already working with JAG, it had been easy to assemble a committee of the important players. Also, the informality of JAG's structure gave it a nimbleness that a more formally structured entity might not have had. Going forward, however, I was mistaken to embrace this reactive model as still the best model for JAG's work.

IV. INTERNAL AND EXTERNAL

Shortly after becoming Chair of JAG in 2001, I met with the executive directors of the providers to determine what they wanted from JAG. One recurring theme, emphasized in particular by Nan Heald of Pine Tree Legal Assistance, was a desire for JAG to assume responsibility for "planning" for the provision of legal services in Maine. This was visionary planning on a grand scale. The providers wanted JAG to assume responsibility for a process that would produce a planning document that would identify long-term goals for the provision of legal services in Maine, identify strategies for meeting them, and allocate responsibilities for getting it done.

I was skeptical about this ambition. I had worked with other organizations on such planning efforts. The planning documents always seemed outmoded before they were done. Also, these planning efforts were labor intensive and contentious. Done properly, even for a single organization, they required an enormous investment of time by staff, paid consultants, volunteers, or some combination thereof. JAG was not a single organization. It involved many organizations, devoted to supporting the work of still other organizations. JAG had one part-time Executive Coordinator, with no resources to supplement her work.

Given this reality, I thought that the providers planning ambition for JAG was unrealistic. I favored a more modest version of JAG's planning responsibilities, whereby JAG would "coordinate" the planning among the providers. The providers had the resources to plan their own activities. To the extent that there was duplication or unhealthy competition, JAG provided a forum for working out such problems. That more modest planning responsibility seemed far more consistent with JAG's limited resources.

Moreover, JAG had enough to do responding to the immediate crises that kept coming our way. Enhancing the resources of the providers was already a full-time job for JAG. If we needed more to do, there would always be another crisis, like the lack of interpreters in the courts. After some debate, JAG opted for the more modest version of our planning responsibility. We would coordinate the planning. We would not do the planning ourselves.

Then some staff of the Legal Services Corporation came to town in September 2004 and ignited the planning debate anew. They were there to conduct a "state justice community planning evaluation report" of the work of Pine Tree Legal Assistance. In that report, the Corporation applauded JAG's work, citing such

Memorandum of Understanding. Memorandum of Understanding Between the United States of America and the State of Maine Judicial Branch, D.O.J. no. 171-34-8 (Sept. 2008) (on file with author).

initiatives as the Campaign for Justice and the establishment of the Limited English Proficiency Task Force. But the Corporation then observed that “the leaders of the state justice community must now determine how they can sustain this energy, expand and continue to move forward.”⁵⁸ The Corporation had a specific initiative in mind—what they cleverly called a “20/20 blueprint,” a document that would describe the goals for the delivery of legal services in Maine for the next fifteen years as well as the tasks required to accomplish these goals and a time line for their implementation. The Corporation further suggested that this blueprint should assign responsibility for accomplishing these tasks to the appropriate individuals, organizations and institutions.

There was a striking, perhaps not coincidental, resemblance between this proposal and the planning initiative that the providers, and Nan Heald in particular, had urged JAG to undertake when I first became Chair of JAG. But the reservations that had led me to reject that initiative were no longer relevant. Given the stature of the Corporation in the legal services world, JAG could not sensibly ignore the Corporation’s challenge. We decided to go forward with the 20/20 planning initiative largely because the Legal Services Corporation said we should do it.

Still, the limited resources for such an effort that I had always worried about were a problem. Our talented Executive Coordinator, Sally Sutton, worked for JAG only twenty hours a week. She was game for the challenge but she could not suddenly become the full time planner for Maine’s legal services community. We needed to supplement Sally’s work with a planning initiative chairperson who, despite the volunteer status, would do a lot of the actual work of the initiative, including much of the drafting of the final report.

We got lucky. Colleen Khoury had recently completed her term as Dean of the University of Maine School of Law, and she had not yet returned to teaching. She was a strong supporter of the legal services programs. By her own account she was obsessive about organizational details. I knew from other work that we had done together on the Maine Commission on Gender Bias in the Courts that Colleen was a gifted writer who could complete large projects without the necessary resources. She would be the perfect Chair for a large, unwieldy, impoverished planning initiative.

When I asked Colleen to lunch, she sensed that I was up to no good. I had actually rehearsed my sales pitch, figuring that I had a hard case to make. I was not optimistic about success. There was no minimizing the magnitude of the task that I was asking Colleen to assume. She heard me out, said she had anticipated a request of this kind, and said “sure,” she would do it. No hesitation. No grand pronouncements. Just “sure.” I was thrilled and grateful. With Sally and Colleen working together, we now had a shot at making this big project work.

Drawing on the Resource Development Planning Retreat model that had led to the creation of the Campaign for Justice, we began our planning initiative with a retreat held in March 2006 at the Maple Hill Farm in Hallowell for approximately

58. LEGAL SERVS. CORP., EVALUATION OF THE MAINE STATE JUSTICE COMMUNITY, Appendix A at *1 (2004), available at <http://www.mbf.org/Evaluation%20Appendix%20A.pdf> (HTML version available through GoogleDocs, last visited Mar. 22, 2010).

100 lawyers, judges, consumer advocates, social service providers, and other stakeholders. We told them that they were there to begin the process of developing a vision for the delivery of legal assistance programs in Maine, and to generate ideas about goals and strategies to implement the vision.

I remember that day at the Maple Hill Farm well because of a barely controlled chaos, which did nothing to allay my misgivings about the value of the planning process. Indeed, I remember the moment when my skepticism was particularly intense. In typical retreat fashion, the assembly was broken into seven small groups, supported by a facilitator and a reporter. Each group reflected a broad area of concern, such as expanding resources for legal services, sustaining and promoting leadership in the legal services community, or assisting self-represented litigants. The group members were asked to suggest ideas to address the area of concern, with the usual reassurance that no idea was too outlandish. The ideas were duly noted on large sheets of paper by the reporter. After lunch, these sheets were taped to the four walls in the large assembly room. All of the attendees were then given a supply of multicolored dots, told to walk around the room, examine the sheets, and affix dots to those ideas that seemed most worthy. Dutifully, the participants began to walk around the room in any direction and order they chose, bumping into each other along the way, waiting impatiently to affix their dots to the most popular ideas, lingering to study some proposals that were not self evident and, generally, having a good time with this grade school exercise. This might be fun, I thought, and it might be good for the spirit of conference participants, but what could be its possible value? I soon found out.

The dots were duly recorded. For example, a loan forgiveness program to put lawyers in rural areas was a big winner with twenty dots. The creation of an institute to train lay advocates who could help resolve issues before they became legal problems was another big winner with twenty-six dots. These tallies were done for every idea on those large sheets of paper. Those ideas were then assigned for further study to the seven working groups formed after the retreat.⁵⁹ Participants in the retreat made up the majority of the members of these working groups. Work group chairs and vice-chairs were appointed. Employees of the providers provided crucial staff support for the work groups, which began meeting in late spring 2006 under Colleen and Sally's leadership.

These meetings continued throughout 2006 and most of 2007. Along the way there was ongoing input from the ACP, an interim report submitted to JAG and other interested parties for comment in January 2007, and a presentation by Colleen about the planning process at the Maine State Bar Association meeting in June 2007. Throughout the process, important stakeholders were identified and given an opportunity to comment on specific proposals, in the hope that this participation would enhance their commitment to the recommendations of the report.

Writing furiously throughout the late summer and early fall, Colleen and Sally aimed to have the planning report completed by October 2007, in time to present

59. These seven working groups were essentially the seven discussion groups established at the retreat. They addressed the following subjects: reducing the need for crisis intervention, ensuring a consumer friendly system, assisting self-represented litigants, utilizing lawyers to enhance access to justice, expanding the resources, sustaining and ensuring quality, and sustaining and promoting leadership for justice.

the report to the Board of the Legal Services Corporation, which happened to be meeting in Portland that month. Since the planning process had begun at the urging of the Corporation, there would be a nice symmetry in ending the process with a presentation to the Board itself.

With the release on October 10, 2007, of *Justice for All: A Report of the Justice Action Group*, Colleen and Sally met that deadline. I, in turn, had the privilege of presenting that report to the Corporation on October 26, 2007, at its Portland meeting. In doing so, I acknowledged to the Corporation my initial skepticism about the value of this planning initiative. I also confessed my error:

As I look at this report, and as I think of the process that led to its creation, I realize how misguided I was to be so skeptical about this planning effort. To be sure, many of the proposals in the report will be familiar to those who work in the legal services community. However, by engaging the energy of individuals who have become stakeholders in the recommendations of the planning report and their implementation, the planning process has created momentum for change. And then there is the substance of the report. A great deal of hard thinking has now been done about the choices that should be made for the more effective delivery of legal services in Maine, and there is much information available to justify and guide those decisions.⁶⁰

In fact, there were more than fifty strategies identified in the report, grouped within eight broad Recommendations.⁶¹ Some of these strategies were identified as priority strategies. All of the strategies were organized in a timetable for implementation, stretching out to 2018, and the responsibility for implementation of each strategy was allocated to specific entities, such as the providers, the Maine State Bar Association, assorted task forces (some not yet created), and, in many instances, the state Judiciary. The report lived up to its billing as “a roadmap that can be used by JAG and its partners over the next decade in their efforts to expand and enhance access to Maine’s civil justice system for all Mainers.”⁶²

Of course, this ambitious plan was not self-executing. Some entity had to assume responsibility for making it happen. That was JAG. At a meeting of JAG on October 10, we adopted a resolution supporting the so-called “big five” priority strategies of the report.⁶³ In addition, JAG endorsed the principles underlying the

60. Remarks of Judge Kermit Lipez to the Board of the Legal Servs. Corp. on Maine’s Statewide Planning Initiative (Oct. 26, 2007) (on file with author).

61. Those recommendations were: (1) intervene “upstream” to solve problems before they become legal crises; (2) expand and improve the use of technology to enhance access to justice for self-represented litigants and clients of legal aid providers, and to assist court personnel, social service providers, pro bono attorneys and others to provide legal assistance to low-income persons; (3) ensure meaningful assistance to individuals who do not have the services of a legal professional; (4) increase the number of individuals who have the assistance of a legal professional; (5) expand resources to reduce the unmet need for legal assistance; (6) sustain and ensure the quality of Maine’s civil justice system; (7) sustain and expand leadership for justice; (8) ensure continued focus on evaluation and implementation of the planning recommendations. *See generally* JUSTICE FOR ALL: A REPORT OF THE JUSTICE ACTION GROUP’S STATEWIDE ACCESS TO JUSTICE PLANNING INITIATIVE (2007).

62. *Id.* at 10.

63. These strategies were the following: (1) increased state appropriations for legal services programs; (2) the speedy implementation of recently adopted IOLTA rule changes that make participation in the Maine’s IOLTA program comprehensive and ensure compatibility in interest rates

many other recommendations in the report and committed itself to working with the relevant institutions and organizations on implementation. Most importantly, JAG resolved to request that all institutions and organizations identified in the report as responsible for the implementation of any recommendation either commit to the implementation of the recommendation or explain why such implementation was not desirable or feasible. We also started to discuss the formation of a high level implementation committee that would be responsible for overseeing and monitoring the implementation of the recommendations set forth in the report.

With the grand planning report now in place, JAG's course was set for the next decade. JAG had entered a new phase of its brief history. And it was time for me to go.

V. CONCLUSION

When the *Justice for All* report was presented to JAG at our meeting of October 10, 2007, I was nearing the end of my seventh year as Chair of JAG.⁶⁴ As I left that JAG meeting, a JAG member asked me in polite conversation how long I was going to continue this JAG work. There was no implication that I had done it long enough, but there was an awareness that I had been doing it for a long time. At a judicial conference the next day, a friend from a nearby state expressed wonderment that I was still Chair of JAG.

These chance conversations, and the substance of the planning report itself, convinced me that I should step down as Chair of JAG in January 2008. There were other projects that I wanted to pursue. Every organization benefits from the infusion of new leadership. Although there is no magic number for when that infusion becomes desirable, seven years seemed about right (perhaps because that happened to be the term of a state judicial appointment). Most importantly, the state Judiciary had been assigned the responsibility for the implementation of many of the strategies in the planning report.

To be sure, the federal-state judicial partnership established by Judge Coffin and Chief Justice Wathen at the birth of JAG, and continued by Justice Dana and myself, remained important. That partnership emphasized the obligation of all participants in the legal system to address access to justice issues. It was critical to the mobilization of resources both material and human. Judges from both systems could be helpful in getting the attention of legislators, the media, lawyers, and other players important to the legal services effort.

However, with state law issues predominant among those individuals requiring free legal assistance, the state courts were most immediately affected by the lack of legal assistance to help resolve those issues in and out of court. Moreover, between Judge Coffin and myself, the Chair of JAG during the twelve years of its existence

on IOLTA accounts; (3) the creation of a division of self-represented litigant services within the judicial branch to improve delivery of civil justice to self-represented litigants and to establish and oversee a courthouse assistance program; (4) the creation of a legal aid technology resource center to support the maintenance and development of client oriented technology for legal aid providers and pro bono attorneys; (5) the establishment of a commission to study the adoption in Maine of a civil right to counsel in adversarial proceedings in which basic human needs are at stake.

64. Justice Dana had stepped down as Vice-Chair of JAG earlier in 2007, when he retired from the Maine Supreme Judicial Court.

had been a federal judge. Under these circumstances, I thought it was time for the Chair of JAG to be a member of the Maine Supreme Judicial Court. The Vice-Chair of JAG, Justice Jon Levy, was well suited by temperament and talent to assume the leadership of JAG. Hence I made the decision to step down, with a profound sense of gratitude for the opportunity to work for seven years with so many remarkable and dedicated people.

What did I learn from this experience as Chair of JAG? Some of the lessons are implicit or apparent from what I have already written. Any observations that I venture may already be obsolete because of the evolution of JAG in the two-plus years that I have been gone. Others may be just plain wrong. There are many excuses for avoiding any concluding thoughts. But I will risk some nonetheless.

1. Without minimizing the indispensable work done by the core legal services providers, there must always be room for new players, not devoted primarily to the provision of free legal services, to supplement the work of the core providers in creative and valuable ways. To be sure, in the resource poor world of legal services, there must be sensitivity to unhealthy competition among providers and the unwise duplication of services and administrative costs. Those perils are avoidable through the oversight of an entity like JAG or the major grantor entities themselves—the Foundation and the Commission. Those perils should not be used as an excuse to circumscribe the circle of legal services providers too tightly.

2. If judges are going to be involved in the leadership of JAG and similar entities, they should not be put in the awkward, perhaps inappropriate, position of asking any organization for money. Even if other members of JAG made the explicit pitches, I always felt uncomfortable when JAG was soliciting funds from the Foundation, the Maine State Bar Association, and other organizations in order to survive as an effective organization. These organizations did not treat JAG badly. The discomfort was simply endemic to the solicitation experience.

Moreover, such solicitations inescapably, though subtly, compromise the independence of an access to justice entity like JAG. In my view, in an ideal world, JAG would have a secure funding base for its administrative support in the budget of the state Judiciary.⁶⁵ Although that funding would necessarily come with some strings attached, those strings would not be too worrisome because there is such compatibility between the interests of the Judiciary and the interests of the legal services community.

If JAG received its funding from the Judiciary, JAG's informal structure might have to be altered. I realize that there could be losses from such a change. The looseness of JAG's structure has, on the whole, been a strength. But that informality should not be so romanticized that it becomes an obstacle to sensible change. If the tradeoff for funding from the Judiciary was more formality in the structure and operation of JAG, that might not be a bad tradeoff.

3. During the constant discussions about funding for JAG and the implications of diverting Foundation money from direct legal services to administrative expenses, there were occasional suggestions that JAG should rely entirely on the

65. Given the unrelenting pressure on the state Judiciary to trim its budget, I realize that the reference in the same sentence to "a secure funding base" for JAG and "the budget of the state Judiciary" may seem naive. I did say in an *ideal* world.

work of volunteers. Absent a Chair who would be willing, on a volunteer basis, to make JAG a full-time job, that sole reliance on volunteerism would make JAG ineffectual. JAG got lucky when a gifted volunteer like Colleen Khoury was willing to take on the planning initiative, but sustaining the organization day-to-day requires a paid administrator. Indeed, gifted as Colleen was as Chair of the planning initiative, she could not have pulled it off without the support of Sally Sutton, JAG's paid Executive Coordinator.

4. Skillful fundraising is an art, perhaps even a science. Until the legal providers came together in the Campaign for Justice, their separate efforts to raise money for their organizations were notably unsuccessful.⁶⁶ With their united approach, they were able to hire an individual with development and fundraising experience to support the many lawyer volunteers who did the personal solicitations. Volunteerism has its charm, but also its limitations. Both the Campaign for Justice and JAG itself confirm that, even in the non-profit world, you often have to spend money to make money.

5. Government will often be an unreliable partner in the constant effort to provide adequate funds for the work of the legal services providers. This phenomenon does not reflect ill will by governors or legislators towards the work of the providers. To the contrary, I think that chief executives and legislators increasingly understand that, collectively, legal aid lawyers perform a valuable public service by helping to resolve disputes before they become private calamities or public burdens. However, in the fierce competition for limited appropriations at the state level, the legal services programs will often come up short.

That reality should not induce a defeatist attitude in the legal services community about approaching the Legislature for money in hard times. Legislators are there to make the hard choices among competing goods. There is no value, reward, or gratitude in taking a competing good off the table to make the lives of legislators easier. The specifics may vary from year to year (a fee, a surcharge, or a general fund request), but JAG and its allies should be a constant, unapologetic presence in Augusta asking for more money for the work of the providers.

6. An access to justice entity such as JAG can make important contributions to the work of providers by reacting to crises as they arise. Long term, however, the reactive model must give way to the visionary model of planning, even though plans will always be superseded to some extent by unanticipated events. The planning process itself invests stakeholders in specific programs deemed important to the success of the providers. It is an opportunity to think through systematically how scarce resources should be used and how new players can be added to the mix of legal services providers and supporters. With the assignment of specific responsibilities to organizations important to the legal services effort, there is enhanced accountability and performance.

7. Since administrative support for an access to justice entity like JAG diverts money from direct legal services, that entity, to justify its existence, must add value to the legal services enterprise by raising new money for the work of the providers,

66. The annual and highly successful Muskie Access to Justice Dinner is an exception to this characterization. Also, it is a collaborative effort among the core providers and, in that sense, it was a harbinger of the success of the Campaign for Justice.

hastening solutions to crises in the legal services community, or contributing to the more efficient use of existing resources. By these measures, JAG was worth the investment.

8. If you ever receive an invitation to chair JAG or a similar access to justice entity, accept immediately. You will never do more rewarding work.