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Interview with

***Howard Dana***

Conducted by Don Saunders

August 6, 2002

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Oral History Collection  
Interview with Howard Dana (**HD**)  
By Don Saunders (**DS**)  
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**Don Saunders:** Hello, my name is Don Saunders. I'm the director of Civil Legal Services for the National Legal Aid and Defender Association. Today is August 6, 2002. We are at the National Equal Justice Library at American Law School. Today, it is my great privilege and pleasure to capture the oral history of Justice Howard Dana. Justice Dana has been involved in the delivery of legal services at both the state and federal level for many years. He has been a member of the Supreme Court of Maine since 1993. Prior to that, he was a partner in Verrill and Dana for twenty years in Portland, Maine, which is and remains his home. Howard has also been a leader of the American Bar Association, having served on the standing committee for legal aid of indigent defendants, as well as the ABA IOLTA commission. Howard.

**Howard Dana:** Don.

**DS:** Good afternoon.

**HD:** Good afternoon to you, sir.

**DS:** Why don't we begin by sharing a few of your experiences in your early legal career. What was it that led you to have such a commitment and passion for legal aid for the poor?

**HD:** Well, in law school, I participated in the Legal Aid Clinic. And as a young lawyer, in Maine at least, it was expected that you would give certain amount of your time to people who couldn't afford your services. So, in the sixties, I worked at the Cumberland Legal Aid Clinic, and whoever came in on my shift was my client. And I found that to be satisfying and important work. I remember in 1977 or '78, Pine Tree had a lawsuit that they were taking to the United States Supreme Court, and they --

**DS:** -- which is the legal aid program in Maine --

**HD:** Right -- and they asked my law firm for some help, and I assisted them in Thiboutot versus Maine and that was -- I guess that's my involvement. It was not -

**DS:** All the way to the Supreme Court.

**HD:** Right; I would not say that it was a major focus of mine prior to 1982.

**DS:** Well, let's talk a bit about the major part of your life that this program became. Obviously, when you were first appointed as a recess member of the Legal Services Corporation Board by President Reagan in January of 1982, you were coming in at a period in the history of the Legal Services Corporation that

had been reflected as a tremendous roller coaster ride, where you had the biggest period of expansion during the Carter years. There was great optimism in the field. And then, obviously, President Reagan came in with an agenda that did not support the continuation of legal services -- the Legal Services Corporation. The president had a long history in California of conflict with the program there, tried to veto the appropriation. So he brought that perspective to Washington with him. You were one of the first appointees to that board, along with a number of other very interesting people, many of whom opposed the concept. What are your recollections of those very tumultuous years where you played such a key role in preserving the continuation of LSC?

**HD:** What's interesting -- in Maine, there are so few people that everybody has to wear multiple hats, and one of my hats was as an active Republican politician. And in, I think it was in 1968, I'm jumping around, but in 1968, I was in a lawsuit and spent maybe two years on and off in California. And during one of those visits, I remember having dinner with the former chief justice of the state of Maine, Robert B. Williamson, Sr. His son was a partner in the law firm where I worked. And he was out in California as the head of a commission that had been appointed by President Nixon to investigate the allegations that Ed Meese and Ronald Reagan had made about California Rural Legal Assistance. And we had dinner with him, and I followed the result of that exercise, which was that this

commission headed by my former chief justice had found that not one of the 132 charges that had been brought carried any water.

So CRLA was refunded, and, as I've said before, we would hear from Ed Meese again. Notwithstanding my differences with Ed Meese on this issue, I was a Reagan delegate in Kansas City in 1976 and chaired the president's campaign in Maine in 1980 and when he got elected, I know the legal services community panicked. And we're looking around all over the country for people who might have a chance of getting appointed and who would be supportive of legal services. And so, two of my friends, Hugh Calkins and Gerry Petruccelli, by name, took me to lunch and suggested that I throw my hat in. And that fit into my plans because, although I had, as a state chairman, probably a claim to a full-time job in Washington if I wanted it, I didn't, and so this was an opportunity to stay involved. I knew that the president, misguided though he was, was trying to zero fund it, and no one was sure that he wasn't going to be successful during 1981. But I indicated that if, in fact, the president wasn't successful in defunding it, that I would be interested in serving on an ongoing board. And I think it was New Year's Eve of 1981 that several of us were hard at work in the White House actually, generating our own appointments because of a suspicion that it was important for us to get in to office in 1981 for some reason.

**DS:** How correct that was in your case. What of those early days of the board, that first Reagan board. What do you remember about the deliberations, the style, the personalities of those people?

**HD:** Well, my recollection is that on several levels everybody was at the outset very pleasant, and they were serious, and we all had, to a person, we all had stereotypes that were alive and well in our heads. And we made some stupid mistakes based on those stereotypes, but what impressed me almost from the beginning was the genuine generosity of the corporation employees, the management wanting to help us. They knew, I think, instinctively that they were not going to be long-timers and that we would want to bring in our own president. And so Dan Bradley said, "I'm gone the second you want me to be, but in the meantime, this is where the men's room is, and what other questions can I answer?" And he was a genuine gentleman and very helpful, as were Clint Lyons and Bucky Askew and others. They and the board, my first board, gradually became in some cases downright supporters of the existing program. And we were impressed with it, impressed with what they were doing, felt that it was worthwhile. That was not universally shared, by a long shot. And the evolution, my evolution, and other people's evolutions took awhile, and in some cases probably never happened.

**DS:** Were you pressured in any particular way, either by the White House or the leadership of the board?

**HD:** Not at all. I never got a call from the White House. We were not only unconfirmed; we were a recessed board, and we were subject to Senate confirmation, and any effort to pressure us would be -- we could be questioned on that. So I think they were very careful not to do that. So I never got any calls.

**DS:** You were a recessed board, and I believe, if my memory is correct, you were sued. I think the lawsuit is LSC or Bill McCalpin vs. Dana, if I'm not mistaken. What's your memory of that?

**HD:** That was soon after we were appointed. There was a serious question as to whether or not the president had the right to recess people when there was no vacancy and people who had terms that were holding over. So, all of the people who we replaced were of the view that they were the legal board and, obviously, in this country that's the makings of a lawsuit, and so they filed one. I think, as I recall, I think we had counsel and then the Justice Department weighed in in our favor. We had our own counsel as a board and that just sort of went along. We had not much to do with it. It was a nice legal issue, which I gather we prevailed upon. We ultimately prevailed; although, also my recollection is that as soon as our term was up, we prevailed at the trial level, and then the DC Circuit mooted out its opinion or something like that.

**DS:** Mm-hmm. In those early days of the Reagan administration, the battle for the future of LSC was not only fought with the board, but it was also fought in

the Congress. There were efforts from the administration and certainly some of your fellow board members to eliminate funding. What do you recall about those days?

**HD:** I have no recollection of any member of our board trying to eliminate funding. They may have been trying to do that, but I was not aware of that. I think that the effort of some members on our board was to sort of, from their optic to rein in this runaway program of social activists and create more regulations and use the corporation as a way to harness inappropriate conduct. But the effort in Congress was pretty aggressive. My recollection is that the Republican leadership in the house had endeavored to eliminate the corporation the prior year. And my assumption was that that battle had been fought and had been won by the Corporation, and so it would continue. Then there was an effort to block grant programs to the state and let the states worry about it. But that was tied to a clear indication that the Reagan administration was not going to fund it after a year or two. And so it was seen by Congress as just another way of eliminating the program. Probably the notion of block grants did not get a fair shake. It might have if it had been presented as a way of continuing the program, it might have had a better, might have fared better in Congress than it did. But it was clearly, I think, when tied with the declining almost zero funding in the subsequent year, it was seen as just another way of eliminating the program.

**DS:** As a leader of the American Bar, how important were the ABA's efforts around that time and other advocacy group?

**HD:** It was essential. I think the ABA's, one of its finest hours has been starting in 1981 to persuade in some cases a very slim majority in Congress, that preserving the opportunity for justice was an important American value. And the ABA was critical of us as a board, scolded us when we needed it and sometimes when we didn't. But all throughout this process, the ABA has been, and several other opportunities later on, has been, I think, essential to holding onto what we have and making it better.

**DS:** Switching back to the board, as I recall William Harvey from Indiana, was that the chair of that first recessed board as was Bill Olson, who wrote the transition report for the administration. At least his position was to eliminate the corporation, even though the transition team didn't come out to that way. They appointed you to the search committee for the first president of that board. There was some dispute between, I think, you and Mr. Harvey over a particular candidate, Don Bogard, another Indianan. Tell us a bit about those conversations.

**HD:** Actually, I was appointed fairly early in the game. Fairly early in the year, I would say maybe in March. And I had been involved in searches for college presidents and others and had my own view as to how it should be done. And we had a committee. The search committee was composed of the whole board. I think

there were ten of us on the search committee out of an eleven person board. And we had some meetings, which Mr. Harvey did not attend. And he was very unhappy with the direction of the effort. But ultimately, we worked that out and went through a process that, and all of this is, I think it is off the record and protected information, so I think what I should say is that, in the final analysis, after rejecting some candidates that were in the news at the time, the board coalesced around Don Bogard, who actually became the president almost simultaneously with the end of our terms.

**DS:** As I recall, the controversy from at least the perspective of the grantees was that Mr. Bogard had been general counsel of Stokely-Van Camp, a large vegetable retailer very dependent upon migrant farm labor and very attached to the growers. And that was one of the very first indications of the Farm Bureau's ability to try to influence policy at LSC. And I guess it goes back to the early days. We always struggled with the issue of our representation of migrant workers.

**HD:** Yeah. I don't know. My problem with Don was I just thought he was ill-equipped, really, to lead a national organization and provide the kind of leadership that the corporation needed. I don't know whether his prior experience gave him an edge on substantive issues. Sometimes people who have been in a lawsuit can represent. Lawyers are famous for changing sides on issues when the client changes, and I have no reason to, didn't at the time, have any reason to

believe that Don Bogard was masquerading as anybody other than himself. My concern with him is that I thought he wasn't going to be a strong leader for the corporation, would not provide the passion that was necessary to bring the entity together.

**DS:** Are there any other issues or debates or memories you have about that very brief year when you were first a member of the LSC board?

**HD:** In the early part of the year, I became really quite disillusioned with William Harvey as a leader. And a majority of the board was equally disillusioned, and we said as a group, we'd sit around and say, "We have got to get rid of this guy." And with no enthusiasm, I was prevailed upon to take his place as chairman of the board. We were going to remove him and elect me. And he got wind of that. And, at his insistence we put off a meeting. Between that moment and the next meeting, Congress went into recess, and Josephine Worthy was replaced by someone loyal to the chairman, and so my six votes turned into five. That's my memory. And Bill Harvey could be a genuinely a nice person, but every so often he would become an entirely different person. And he had an agenda, which I was not privy to, but it was not my agenda. I would say we did not get along. Almost everybody else on the board, although we disagreed, I got along with.

**DS:** Well, that year flew by. You were not recess-appointed to the next board, nor were Mr. Harvey or Mr. Olson. Why weren't you reappointed?

**[Laughter]**

**HD:** I was too liberal according to Larry Speaks, and actually, I think our whole board was not reappointed.

**DS:** Right.

**HD:** The --

**DS:** Did you try?

**HD:** Yes. We actually had, I'm happy to say, a majority of the United States Senate had written the president a letter indicating that they were prepared to confirm six of us, but not Harvey and Olson. And the president, or I assume it was Ed Meese, said you have, no, you have to take them all or none, and I forget who called his bluff, but as soon as they were about to take up our nominations, the nominations were pulled, which annoyed me I must say. I probably put in a thousand billable hours that year, and I had been educated by the field and thought I knew the job. So I went back to Maine, happy to do that. As a consolation prize, the State Bar made me chairman of the Legal Aid Committee. And for several years, we had some success in creating a Volunteer Lawyers Project. We got an ABA grant to get us going. We formed the Maine Bar Foundation. I say "we" because really, a lot of people in Maine did that.

**DS:** It's the IOLTA?

**HD:** Persuaded the court the second time around to adopt IOLTA. And I felt that I was sort of in the Republican dog house at the time, so I spent much of the eighties refurbishing my Republican credentials and was the finance chairman for Governor McKernan and was active in promoting various candidacies. Ed Meese, when time came around, vetoed my nomination as the chairman of the reelection campaign for the president, which I was prepared to do.

**DS:** Over legal services?

**HD:** Yes. Even though I've indicated a willingness to chair the campaign, I was advised he indicated that that was not going to be, and that was in fact the case. But time passed, and somebody in the ABA put me on the IOLTA commission in the late eighties. And then when then-Vice President Bush became President Bush, he nominated me to, I think, three more recess appointments on the board.

**DS:** One of your goals in life is to be confirmed to something? [**Laughter**]

**HD:** Right. I had to wait. I haven't been confirmed to anything yet in this town. In '93, well, that's, I'm getting ahead of myself, but...

**DS:** Let's go back a moment to that period when you were so actively involved in promoting legal services in Maine. One of the controversial early

maneuvers of the Reagan board, controversial to the Legal Services Community, was the implementation of the PAI regulation, first appropriating ten percent of the budget to private attorney involvement, subsequently raised to 12.5 percent. I know you have been a long time proponent, supporter of that. How did that work when you were in Maine trying to get the volunteer lawyers going and other [inaudible]?

**HD:** What had happened was that in Maine, there had been a volunteer lawyers program, and Pine Tree had used its ten percent money. And I think we got some more credit for that than we deserved. I think that actually came out of a congressional directive that preceded our board. I think it was the prior board, was responding to a congressional urging to involve the private bar in legal services. And my own feeling is that when the war on poverty kind of swept through, it threw out all of the various pro bono efforts of private lawyers, and they were sort of on the sidelines. And I think Congress, even before Ronald Reagan took office, was concerned about that and wanted to reactivate the private bar in this undertaking, and so insisted that ten percent of the field program's monies be used to activate the private bar. When the president cut everything by twenty-five percent in 1983, Pine Tree's, my state's legal services program, reaction was to eliminate the Volunteer Lawyers Program. Why they did that, I don't know because they had a requirement to spend ten percent of their money on private bar

involvement. And so we created the Maine Volunteer Lawyer's Project, under the Maine Bar Foundation, and contributed some private monies and grants and bar association monies, but ultimately, Pine Tree ran it for us. That, I think, has worked very well. It has brought the lawyers back to their responsibilities. Pro bono is alive and well in this country. And most lawyers, I think if they don't give of their time, they'll feel guilty about not doing so. That is, I think in part, a function of the fact that the legal services program is providing some of the staff support for these private bar programs.

**DS:** The other thing going on, while you were doing so much work for the ABA and for Maine during those seven years were among the most tumultuous time for legal services in this country, at least the federal component of it. The stories are way too many and interesting to go into much detail here. But you came back to the Bush board as a recess appointee at a time where there had been seven or eight years of very harsh monitoring visits. The relationship between the corporation and its grantees was at best fearful, antagonistic, difficult. Toward the end of the last Reagan board, its confirmed chairman was Clark Durant. Mike Wallace was a key player. They were doing things such as hiring law firms to establish that the LSC was unconstitutional. They were hiring lobbyists to reduce the LSC budget, very unusual Washington bureaucracy kind of things. Your board came in at a very difficult time. What did you do to reestablish credibility? I know

the beginning of the Bush board; again, you're in a minority of people who probably supported the program at least to the fullest extent. Maybe I'm giving my own perception. What were the early days of the Bush board like?

**HD:** Well, George Wittgraff was the chair, and I think he wanted to succeed, and he wanted to run the board appropriately and see the corporation run properly. He was, as all of us were, sort of outraged at some of the then Board president's conduct. Terry Weir was running it sort of without regard to our policy direction. We made a couple of policy suggestions and said, "Don't do this without checking with us," and he went ahead and did that sort of thing. He was soon history, and George worked hard at learning the program and becoming a believer. He, I think, evolved probably quicker than I did. He became a genuine supporter of the program. Not an uncritical supporter but a supporter. But the board was fractured on lots of issues, and it was a struggle. On balance, I think we were able to -- again, I give a lot of credit to George -- we were able to get appropriations up and try to do a good job.

**DS:** During the tenure of that board you had after Mr. Weir, as I recall you had two subsequent presidents David Martin and Jack O'Hara. What was your experience with their leadership?

**HD:** My feeling was that David was, I thought he was ineffectual as a leader. He did not inspire anyone particularly. I think Jack came in, and I think he

did a pretty good job. He was honest, is honest, wanted to follow the statute. Sort of a lawyer's lawyer. I think he tried hard with some success. I don't know how much longer after I left the board he was president actually. I forget how long he was president in fact. But I remember telling him once that he was the -- in my view, he was the best president of the Legal Services Corporation since Clint Lyons. Clint had been president for a time in late I think '82.

**DS:** What were some of the battles you remember, some of the issues you remember struggling with when you were on that board?

**HD:** Well, one of the battles was trying to get the appropriation. Put the corporation on record as asking for more money than the president was willing to give us. And that was a struggle. But it was clearly our responsibility, as I saw it, to ask for what the corporation needed and what the field needed. And we were struggling in an inflationary period with static funding. And so we actually got the board to ask for what many people in Congress, I thought, thought was an unrealistic number. But I thought that was important to do that. Our battles were, I think, in my recollections, they involved personnel issues. A lot of the staff had been hired during the eighties, and of the 150 members of the staff, six had prior legal service experience. And as a consequence, there was very much of a "we/they" attitude between the corporation and the field, and that didn't seem to be very healthy, though there was concern about that. Much of that I can't go into.

**DS:** Right. There was also around this time, for the first time in fifteen or so years, an effort to reauthorize the LSC, and the fairly well-known effort, led by Congressman McCollum, Staggers, and Stenholm to further restrict grantees and LSC, was taking place. Did that play out at the board level at all?

**HD:** It did. Yes, I think some members of the board actually voted for that. And I'm not sure whether the board ever -- board may have actually gone on record as supporting some variant of that legislation, which I thought was as close to the kiss of death to any chance of being confirmed, but I'm not positive about that. It may be that we, for the finish, did not support it. I didn't. I remember I didn't support it, but, I may have lost some battles on that issue. I unrealistically had some expectation of someday being confirmed. When I resigned, I think I was in my fourth recess term. But that was not to be, and part of it, I think, had to do with our board's reaction to legislation that was very ill-advised in my view, in most people's view.

**DS:** You reflected earlier about the importance of George Wittgraff's leadership. Is there anything else you would like to share with us about your time serving with George?

**HD:** Well, I've served on several boards, and I include my court as one. And the leader has to be a good leader of an institution like a board or a court, has to keep everybody generally moving in the same direction. And George was an

excellent leader in that regard. He would vote with you or against you, but he would never let you completely fly off into the ether. He worked very hard at keeping the board, if possible, agreeable while we were in disagreement. And that actually was very liberating for me because I was able to be the advocate and fight for what I thought was the right thing to do. And I think George agreed with me, but he was the leader and was the center and was a centrist, and was trying to put together coalitions, which produced half a loaf when I was shooting for the whole loaf, but I understood what he was doing, and I think he understood what I was doing. I know he did. He's a good friend, and he deserves all of the support that the -- all of the thanks, really, that the legal services community can give him. He's a fine fella.

**DS:** Well, in October of '93, finally, there was confirmed **[laughter]** a board, the Clinton board, in fairly rapid time compared to some of the old struggles, and that was also a big year for you. You went on to the court. I know you didn't leave this arena. How was your position on the Supreme Court coexisted with your passion for legal services and pro bono?

**HD:** Well, it was in March, I think, of '93, that I went on the court and had to resign. I could make a case that I could continue to do both, but it almost didn't pass the straight face test, so I had to resign from the corporation. Judges can, in fact, lobby and advocate for the justice system. And I view legal services as part of

the justice system. And improving the justice system includes improving access to justice for all people. So judges are and have been serious advocates for legal services. And so the then president of the ABA asked me to go on SCLAID, Standing Committee on Legal Aid. And I did that for three years, I think from '94 to '97. And it was during that period that Newt Gingrich took over the, in his contract with America, took over the House. And then, I think that the ABA really, again, came to the fore, and in an emergency basis, funded an employee right here in the Washington office to spearhead a grass roots effort of the organized bar to deal with, or really to educate, as many of the new and some of the old Republican congressmen. And the ABA was successful in doing that. And so we, for many years, had probably fifty to sixty-five Republicans in the House who would break with leadership and voted for legal services. And I think that that ABA effort was instrumental in bringing that about. No question that Julie Clark and Don Saunders and the organized legal services or the unorganized [Saunders laughs] legal services community helped, but the ABA was, I think, provided some much needed support. And I was happily involved in that effort. And most recently have agreed to come back to the ABA as the representative of the lawyers of Maine, New Hampshire, and Vermont, and Rhode Island on the board of governors.

**DS:** The current administration has really been pushing very hard for the creation of what they call state justice communities across the country, and I'm

sure, having been so involved in Maine over the years, you followed that closely and been involved in it. Have you seen an improvement? Have you seen an impact of that back home?

**HD:** When you say the current administration --

**DS:** The LSC.

**HD:** The LSC. Yes.

**DS:** That their state planning [inaudible] --

**HD:** Well, we actually did that in Maine even before the -- soon as the Gingrich success -- our chief justice called a summit conference in Maine, and we created something called the Justice Action Group, led by Frank Coffin of the first circuit and the chief justice and myself. And that's been the planning arm in Maine, and I think that's been replicated in other places, but it's been terrific in Maine.

**DS:** We sit here in Washington in August. Who knows, there could be another recess board appointed at any moment. I take it you won't be on that one?

**HD:** I won't.

**DS:** From where you sit now with all the experience you've had. I think critically being a critical player and ensuring this remained a bipartisan program, which I think is essential. We are in another period of transition. Where do you see

legal services for the poor in this country going? What are our challenges? What do you predict for the future?

**HD:** First of all, I'm very encouraged with this particular administration. I don't believe that legal services has anything to fear from the Bush Administration. I think, as a result of the attacks of the last few years, we arguably may have a stronger legal services effort now with multiple funding sources and multiple entities providing service. The safety net has plenty of holes in it -- which need to be filled -- but I'm optimistic about the future. I think if IOLTA survives five to four in the United States Supreme Court. If it doesn't, that's going to be a problem. But I think we have a pluralistic funding source for legal services that's stronger in some places than others, but I'm optimistic that we will get additional state funding, additional federal funding, in time and hopefully if we can hold onto IOLTA, that will be a base on which to build.

**DS:** Are there any thoughts or memories or ideas that occur to you that we haven't talked about?

**HD:** Well, late afternoon on a Tuesday in August in Washington, I can't think of a thing.

**DS:** Well, thank you, Howard.

**HD:** My pleasure.