

International Legal Aid Group

Newsletter & Information Resource for Academics, Researchers & Policymakers

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It's A New Year

Back into your inboxes after a period of some unevenness comes the ILAG Newsletter. This should arrive with more regularity this year. Indeed, this edition will be followed fairly immediately, by a special edition covering research undertaken by Alan Paterson and myself, focusing on the digital delivery of legal services. As a warm up for the report of this research, we have coverage of the Florida conference of the Legal Services Corporation on technological innovation. We also have a couple of articles on UK developments - one indicating unrest among the high judiciary in relation to the cuts to the justice budget and the other, a short report of an independent commission on legal advice in what the English would call 'social welfare' and North Americans the more graphic 'poverty' law.

May your year have started, and continue, well. May legal aid flourish in your jurisdiction and justice multiply.

Home Thoughts from Jacksonville

Roger Smith

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Americans can sometimes seem a little driven to a decadent European. No surprise then that the Legal Services Corporation conference earlier this month on the use of technology offered the opportunity of working more than twelve hours a day. Sessions began at 8.30. Evenings were filled with affinity group dinners (small gatherings of those with a common interests) and a reception. Even lunch provided little respite: the speeches and presentations just flowed on. The result, however, of two and a half days of intense discussion in Jacksonville, Florida was a

pretty thorough covering of the ground. So, what lessons might we take from the cradle of the information revolution?

Leadership and the Legal Services Corporation

One factor, which was very evident, particularly when compared with England and Wales, was the evident benefit of leadership by the Legal Services Corporation (LSC). This was primarily a conference for those involved in its Technology Initiative Grants (TIG) programme. The TIG is exactly the kind of initiative, which a legal aid funder should run. For several years, the LSC has put aside a reasonable annual sum; now well over \$2 million, to encourage initiatives using new technology. Grants are awarded on a competitive basis within pre-agreed parameters. The result is that there is now a rich history of projects, both analytical and experimental. For example, while English ministers have launched into an un-researched commitment to telephone hotlines, the LSC produced still definitive analysis on

how telephones could best be used over a decade ago.

LSC leadership meant that its President, former commercial lawyer Jim Sandman, was on hand to rally the troops and to perform the basic but important leadership task of just thanking everyone for their commitment. Mr Sandman also announced a rather shrewd strategy for the LSC for which it appears to have bipartisan backing, no mean feat in the polarised world of US politics. This is expounded in the *Report of the The Summit on the Use of Technology to Expand Access to Justice* published in December 2013 and available at:

http://www.lsc.gov/sites/lsc.gov/files/LSC_Tech%20Summit%20Report_2013.pdf.

The report addresses the goal of providing some form of 'effective assistance' to all those with 'essential civil needs'. It announces five strategies towards achieving this: statewide legal portals, document assembly initiatives, the use of mobile, business process analysis and expert systems.

The exact and practical meaning of all this is not entirely clear, particularly to an outsider. However, everyone seemed assured that it did not mean simply spreading services more thinly but was about extending the LSC's commitment to those eligible for its services but for whom, hitherto, it has had no resources. Mr Sandman's announcement that Congress had all but approved an overall 6.5 per cent budget got a rousing cheer. There were additional funds for the TIG programme and a whole new fund to cover the development of pro bono.

Platforms

The big technology issue of the conference was the impact of smartphones. These are increasing access to the net but reducing what you can see on a page. There is a rush to get websites mobile-compatible and to work out the consequences. There was some speculation that you might begin to need two websites - one for mobile users and one for tablets and others. You certainly needed to

make sure, if you only had one, that it was mobile friendly.

Recognition of the impact of mobile was perhaps something to be expected. Use of smartphones is rocketing around the world and Britain has a very similar distribution to the UK. They are becoming the way in which young people are accessing the net. A less predictable observation from the field was the advantage that some programmes were reporting with the old technology of texting (communicating through SMS). Projects were discovering that significant numbers of clients preferred this simple and often (for them) free means of communication to more sophisticated alternatives. Consumer usage of different platforms was not proving predictable. For example, projects were finding low take up on QR technology and its heavily promoted square barcodes. These were just too cumbersome and needed pre-loading of an app. Potential clients were just not bothering.

Court Self-Representation

Historically low levels of LSC funding for legal aid has led, in the States, to the growth of a movement within the courts to assist DIY litigants. California has led the way in this area, providing a model that countries like the UK may now begin to follow. Judges all round the world get fed up with the time that litigants in person can take up and are looking for digital means of assistance. Already, we have seen in England and Wales the Royal Courts of Justice Citizens Advice Bureau developing its CourtNav programme on the net. Some courts in North America are, however, way ahead. One of the most interesting presentations was jointly from California and British Columbia. They have co-operated across country borders on what looked like a brilliant programme to help those, including children, going through divorce. The Justice Education Society of BC has created Changeville, a virtual town in which all sorts of resources were available to be explored by kids disturbed by the separation of their parents. California stripped the Canadian flags out of the visuals but has deployed

basically the same programme with minimal adaption - a very sensible sharing of resources.

So to a passing Brit the big lessons of the conference were three (other than hoping that delegates to domestic UK conferences could

be as welcoming to foreigners as were the LSC attendees): the benefit of national leadership; the value of a technology strategy; and the value of the international interchange of ideas manifest in the BC/Californian projects.

The Low Commission

The independent commission established by a lobbying group but with sufficient independence to give credibility, is a well-worn lobbying tool that has been used in many jurisdictions. The cuts to legal advice in England and Wales caused the Legal Action Group to follow this route with the establishment of just such a commission under Lord Low, a cross-bench i.e. non party, peer in the House of Lords, the UK's unelected second chamber.

The commission's report is a rather well written analysis of the impact of the cuts and a restrained argument for more public legal education, a basic advice network using a 'one stop national helpline and website', a small amount of additional money to be distributed by the Big Lottery Fund, national and local planning strategies, 'polluter pays' principles to apply in benefit cases lost by the relevant government department and more efficient courts and tribunals.

The report is available at: <http://www.lowcommission.org.uk>.

Access to Justice: A View From The Bench

Lorna Stevens, Trainee Solicitor, Shepherd & Wedderburn

Senior judges in England and Wales are increasingly indicating their concern at the impact of cuts on aspects of the justice system. The Tom Sargant Memorial Lecture by Lord Neuberger, President of the Supreme Court, amounts to a broadside from the UK's most senior judge. The original can be read at:

<http://www.supremecourt.gov.uk/docs/speech-131015.pdf>.

Legal aid has rarely been discussed in the UK media as much as it has in recent months. Many of those involved in the justice system, ranging from law students and interested parties up to judges and senior barristers/advocates have voiced many criticisms of the proposed changes to legal aid. The initial proposals were more radical than the current ones – the government completed a partial U-turn in September of this year – however, there are still significant causes for concern. For ease, the main changes, as they currently stand, are:

- Withdrawal of legal aid from prisoners (which could include those on remand);
- Cutting fees to legal aid lawyers by 17.5% (and up to 30% in the most serious criminal cases);
- Introduction of a financial eligibility threshold test; and

- The "residence test", that would see only those "lawfully resident" for a continuous period of 12 months eligible for legal aid, including children.

Lord Neuberger stated that the impact of reducing legal aid could and would have far-reaching and adverse consequences on many people. Such a move, marketed as a cost-cutting measure for the government, could actually end up being costlier for the court system.

The difficulty with reducing the cost legal aid is that it will be those who need it the most who will actually end up being the most deprived. The changes mean that it will become increasingly difficult to get legal aid and to obtain legal representation. In stressing the seriousness of this situation he indicated that there would be equally adverse consequences if the government had chosen to either make the application criteria for legal aid stricter or if they had reduced the types of claim which were eligible for legal aid.

For the individual who cannot obtain legal aid when they have a potential claim, Lord Neuberger outlined two possible consequences. The first one is quite straightforward: the individual will not pursue their claim. Therefore, justice will not be served and the rule of law is not adhered to. The alternative is just as concerning, albeit in a different manner. This second consequence is that the individual pursues the claim anyway but the lack of aid means that it will run in a less efficient manner – more time will be taken up dealing with it, which will lead to higher costs in the long run. As and when this occurs, the impact extends beyond the individual who cannot get legal aid for their claim: court clerks will be adversely impacted, judges will have more to do but no more time in which to get it done and, lastly, other litigants will also be negatively affected - it will take longer for their disputes to be resolved as a direct result of this.

In addition to providing an analysis of the situation regarding legal aid, Lord Neuberger also used his speech to indicate that there are

a number of different tenets to access to justice. He suggested that it has eight different aspects:

“First, a competent and impartial judiciary; secondly, accessible courts; thirdly, properly administered courts; fourthly, a competent and honest legal profession; fifthly, an effective procedure for getting a case before the court; sixthly, an effective legal process; seventhly effective execution; eighthly, affordable justice.”

He used these fundamental principles as a basis for considering the recent proposals made by the government about judicial review. The proposals would result in there being reduced opportunities to initiate a judicial review of a government’s decision.

Lord Neuberger stated that the primary function of the courts has to be the protection of citizens in the face of any abuse of power by the Executive. He went on to state that with “the ever-increasing power of Government, which now commands almost half the country’s GDP, this function of calling the executive to account could not more important”. Whilst Lord Neuberger was in no way insinuating impropriety on the part of the Executive, he was keen to affirm that the more power a government has then the larger the opportunity for an abuse to take place. It is a fundamental aspect of the rule of law (another topic which was covered in the speech), if not the fundamental aspect, that, in the event of an abuse of power, affected parties - in front of an impartial and independent tribunal, can seek redress. Moreover, any judge hearing such a matter must have the freedom to adjudicate on it fairly and openly.

As with legal aid, Lord Neuberger also expressed skepticism that the reforms in this area would result in money being saved. If the time limits for judicial review were to be reduced, the President indicated that it might lead “to rushed applications and many more requests for extensions of time”. In turn, these would actually result in more time, money and

effort being spent than would have been spent in the first place.

The concern with this is that, in order to save a small and relatively insignificant amount of money relative to the overall costs of running the justice system in the UK, a large number of legitimate and potentially serious actions for judicial review will be jeopardised. Such a turn of events would go right to the heart of our justice system, as Lord Neuberger stated. The rule of law is the lynchpin of our judicial system and one fundamental tenet of it is having the opportunity to bring those in power to account, as and when necessary.

What is particularly telling about Lord Neuberger's speech is not how or why he used his speech as an opportunity to elucidate concerns shared by many practitioners and academics, but that he felt

compelled to state them in the first place. The Judiciary has long been cautious about criticising proposed reforms of our justice system, a trait that stems from another fundamental principle of our justice system: the separation of powers. It is essential for the Judiciary to be independent from the other branches of government – not least for reasons acknowledged in the speech and touched upon earlier: the courts, and the Judiciary, provide a forum for fair and objective redress.

For the highest judge in the land to address these proposals so publicly must indicate how strongly he feels on the issue. It follows that the government should consider the implications of the reforms discussed above before there is a further erosion not only of access to justice, but also of the rule of law.

News

The news items shown below are largely compiled from articles on the internet, found on the basis of a simple search for terms such as 'legal aid', 'access to justice' and 'pro bono'. Therefore, readers must, just as buyers, beware of authenticity. The links worked at the time of writing but some will obviously fail after a period of time.

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If you would like to suggest or write an article for inclusion in this newsletter or the ILAG website, please contact Paul by emailing paul.s.ferrie@strath.ac.uk. Paul can also be contacted via Twitter (@psferrie) – and LinkedIn (<http://goo.gl/I9cmNd>).

Australia:

[Abbott Government Strips Environmental Legal Centres Of Federal Funding – The Sydney Morning Herald](#)

[Australian Government Cuts Billions Of Dollars From Social Programs - The Sydney Morning Herald](#)

[ALS Chief Says Federal Funding Cuts Will Affect Frontline Legal Services – ABC](#)

[Environmental Legal Aid Cuts An 'Act Of Barbarism' – ABC](#)

[Warren Mundine Defends Cut To Indigenous Legal Aid – SBS](#)

[AHRC Concerned About Cuts To Indigenous Legal Aid Services – The Morning Bulletin](#)

[Aboriginal Family Violence Service Alarmed At Cuts - SBS](#)

Canada:

[B.C. Law Society Adopts Change To Make Legal Services More Affordable – The Globe And Mail](#)

[B.C. Struggling To Contain Costs Of Large Trials – The Vancouver Sun](#)

[Eligibility Thresholds For Free Legal Aid Increase By 15.3% As Of January 1, 2014 - Newswire](#)

[John McCamus: Ensuring Equal Justice For All – National Post](#)

[LAO Seeks 'Better Way' On Mental-Health Matters – Law Times](#)

[Law Society Act Changes Passed – Law Times](#)

[Law Students Can Help Solve Canada's Access-To-Justice Crisis – The Star](#)

[Lawyers Are Too Expensive For Most Canadians. Give More Work To Paralegals – The Globe And Mail](#)

[Legal Aid Ontario Working To Close The Gap For Clients With Mental Illnesses – Inside Toronto](#)

[Mergers Planned As Clinics Reach Reform Deal With LAO – Law Times](#)

[Ontario Lawyers Plead For Legal Aid Help – The Global Legal Post](#)

[Public Input Integral For Real Equal Justice – Law Times](#)

[Victory For Access To Justice In Supreme Court Of Canada "Market Timing" Decision – PR Newswire](#)

China:

[Improving Access To Justice In China – British Council](#)

[The Rise Of The Internet And Its Impact On The Openness Of The Justice System In Mainland China: Improvements And Limitations – Journal Of Open Access To Law](#)

England & Wales:

[Bar Council Responds To Legal Aid Consultation: MoJ Is Putting Cuts Before Justice – The Bar Council](#)

[CBA Rolls Out Strategy To Improve Access To Justice – Legal Feeds](#)

[Coalition Cuts All Government Funding To Environmental Legal Aid Centres – The Guardian](#)

[Committee Says Proposed Legal Aid Cuts May Breach Human Rights – The Guardian](#)

[Crime Firms' "Bad Treatment" Of Clients Will Only Get Worse With Cuts, Study Predicts – Legal Futures](#)

[Cuts To Criminal Legal Aid Will Turn Defendants Into Products – The Conversation](#)

[Further Legal Aid Restrictions Endanger Access To Justice, Say MPs](#) – The Guardian

[Legal Aid Changes Need To Be Re-Considered Says Human Rights Committee](#) – The Economic Voice

[Legal Aid Cuts Criticised By Treasury Counsel And Bar Council](#) – BBC News

[Legal Aid Is In Transformation, Says Minister Vara](#) – The Lawyer

[Non-Means Tested Legal Aid Restored For Patients Detained Under Mental Capacity Act 2005](#) – Family Law Week

[Terror Suspects Receive More Than £3million In Legal Aid In UK Over Five Years](#) – The Mirror

["Uneasy Relationship" Between Pro Bono Activities & Access To Justice](#) – New Law Journal

Egypt:

[In Egypt, Selective Justice Is No Justice](#) – All Africa

Fiji:

[Demand For Legal Aid Lawyers](#) – The Fiji Times

[Legal Aid To Open Offices](#) – The Fiji Times

[Right To Access Free Legal Aid](#) – Fiji Sun

Ghana:

[Democratic Governance And Access To Justice Gets \\$45m Star-Ghana Grant](#) - Spyghana

India:

[Legal-Aid Clinic For Children, Women Open In Cuttack](#) – DNA India

Indonesia:

[Legal Empowerment Through Clinical Legal Education In Indonesia](#) - Namati

Italy:

[Italian Legal Services For Many But Not 'For All'](#) – Lexology

Liberia:

[Judge Concedes Judicial Sluggishness](#) – All Africa

Malawi:

[Justice For The Rich, Prison For The Poor – All Africa](#)

Namibia:

[Justice System Depends On Its Parts – All Africa](#)

New Zealand:

[Few Repay Debts Following Legal Aid – Manawatu Standard](#)

[Region Owed \\$1m For Legal Aid – Taranaki Daily News](#)

Northern Ireland:

[Legal Aid Cut Clears First Hurdle – Belfast Telegraph](#)

[Northern Ireland £90m Legal Aid Gravy Train Not Sustainable, Says MLA – Belfast Telegraph](#)

[Society Warns Over Legal Aid Cuts – Belfast Telegraph](#)

[Spiralling Legal Aid Costs Make Northern Ireland System Most Expensive In World - Belfast Telegraph](#)

[Tyrone Firms Paid £3.3m In Legal Aid – Ulster Herald](#)

Papua New Guinea:

[PNG People To Get Free Legal Aid From Local Law Students – Radio Australia](#)

Rwanda:

[150 Receive Free Legal Aid During Country Wide Awareness Campaign On Legal Aid – All Africa](#)

[Over 6,000 Cases Tried During Free Legal Aid Week – Rwanda News Agency](#)

[We Must Promote Human Rights For All – All Africa](#)

Scotland:

[Slab's 2012-2013 Annual Report Published – Scottish Legal Aid Board](#)

[A Positive Move For Scots Law – Herald Scotland](#)

[A Better Way To Deliver Justice For All – The Scotsman](#)

[Legal Aid Reforms Not Fair On Anyone – The Scotsman](#)

[Scots Legal Sector Still Strong And Vibrant – The Scotsman](#)

[Slab's Second Monitoring Report On The Availability And Accessibility Of Legal Services Published – Scottish Legal Aid Board](#)

South Africa:

2014 Signals Further Upheaval For Judiciary - IOL

Tanzania:

Legal Facility To Invest In Paralegal Education, Advice – All Africa

Residents Call For Mobile Legal Aid – Daily News

Women’s Ngo Offers Free Legal Aid In Rombo – Daily News

United States Of America:

Free Legal Aid Clinic Expanding – Cortez Journal

Lawmakers Look To Increase Legal Aid To Juveniles – My San Antonio

Legal Aid Cut In Ohio – Marietta Times

Need-Blind Justice – New York Times

NY Judge Sets Trial On Legal Aid For The Poor – The Wall Street Journal

Zambia:

New Kabwe Court To Speed Up Dispensing Of Justice – All Africa

For more information about the work of the *International Legal Aid Group*, please visit our website which can be found at <http://ilagnet.org/>. Please note however, that in the coming weeks, a new website will be launched. More information will be made available in due course.