

# JUSTICE - ILAG

## LEGAL AID NEWSLETTER

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R. Smith

### Welcome

Two interesting and contrasting articles this month:

Sir John Hansen reports on the changes being made to legal aid in New Zealand. A number of these, such as the absorption of the stand-alone legal aid administrator, the Legal Services Agency, into its sponsoring ministry are being followed elsewhere. That raises the issue of whether other jurisdictions will follow New Zealand's move towards the replacement of private practitioners with public defenders. It may be that the legal aid world is ready for another round in the long-running debate on delivery systems, perhaps upgraded to take account of the middle way presented by contracts with private practitioners that effectively make them the equivalent of small public defender operations.

Ian Morrison follows with positive news on how Bangladesh is beginning to progress its own legal aid reforms in a very different context – and rather positively.

As ever, articles on developments around the world are welcomed. Send to me at [rsmith@justice.org.uk](mailto:rsmith@justice.org.uk)

*Roger Smith*

### CHANGES TO LEGAL AID IN NEW ZEALAND

Following a change of Government in late 2008 the new Minister of Justice, the Honourable Simon Power, announced a fundamental review of the New Zealand legal aid system. The review was conducted by Dame Margaret Bazley, who had a very distinguished career in the New Zealand public service. While no doubt the initial focus was on the ever-increasing legal aid spend, there was also a consideration of the whole system and the quality of legal aid services provided.

Dame Margaret issued her final report in November 2009. It was damning in its condemnation of the level of legal services given by a significant proportion of providers. That report may be found at <http://www.justice.govt.nz/policy/justice-system-improvements/publications/global-publications/t/transforming-the-legal-aid-system/> Essentially, the report identified unacceptable behaviour on the part of a significant number of providers. There was condemnation of the widespread abuse of the preferred lawyer system, the duty solicitor system in the criminal courts, the unnecessary inflation of hearing time in all courts, and unnecessary applications in the civil and family courts.

As a consequence, Dame Margaret set out a list of recommendations and changes that would significantly alter the legal aid landscape in New Zealand. The Government largely accepted those recommendations, including the reform of the system and its management.

As with other countries, the legal aid system is recognised as an essential part of our justice system, supporting access to justice for all. The package of reforms accepted by the Government will create a fairer system that is more efficient and delivers better quality services. Those changes focus on improving quality of service and advice for legal aid recipients and gaining greater value for money for the taxpayer. The fundamental changes have been encompassed in a new Legal Services Act, which may be found at [http://www.legislation.govt.nz/act/public/2011/0004/latest/whole.html?search=ts\\_act\\_Legal+Services\\_resel&p=1#d1m3142726](http://www.legislation.govt.nz/act/public/2011/0004/latest/whole.html?search=ts_act_Legal+Services_resel&p=1#d1m3142726)

Since 2000, legal aid has been administered by a Crown entity, the Legal Services Agency. The Minister's immediate reaction to Dame Margaret's report was to ascertain whether the existing board felt they were able to implement the recommended changes. All but two very recently appointed members, Ross Tanner and Jane Huria, tendered their resignation. I was appointed as the new chair, and a director with significant commercial background, John Spencer, was also appointed.

One of Dame Margaret's primary recommendations was the bringing of the Legal Services Agency into the Ministry of Justice, with an independent statutory officer responsible for the grant of legal aid and the overseeing of the public defence service. Notwithstanding that, the new board and management has worked tirelessly since December 2009 to improve access, improve quality, to stamp out the behaviour identified by Dame Margaret, increase audits and to endeavour to ensure the budget was controlled and money spent wisely.

The other fundamental changes recommended by Dame Margaret included: the introduction of a new accreditation and performance management system for legal aid providers; the expansion of the public defence service to other urban centres; introduction of changes to improve the duty solicitor scheme; streamlining processes for assessing applications for low-cost criminal cases in the summary jurisdiction; more intense management of high-cost cases; developing national standards for community law centres; making changes to case assignment processes for some criminal cases; and introducing changes to improve the grant and administration of legal aid.

These matters are all identified in the new Act, and as well, under the regulations to the Act there will be a focus on more efficiently delivering legal aid by considering fixed fees, bulk funding and other mechanisms. The changes will affect legally aided persons, legal aid providers and those working within the system. Legally aided persons will benefit by improvements made to the overall design of the legal aid system and the accreditation process. Legal aid providers should spend less time dealing with administrative matters and there will be greater opportunities for professional development.

Perhaps the most significant change is the establishment of a quality framework for legal aid providers. That framework will set benchmarks that competent providers should already be meeting. Unfortunately, many providers were not.

Under the new legislation, any lawyer wishing to be a legal aid provider will need to apply for approval. The system includes entry criteria that will lead to a review of recent files, but will also take into account a professional development plan for the lawyer, covering continuing legal education and, importantly, mentoring. There will be selection committees put in place to consider applications that will measure such applications against the entry criteria. Those selection committees will also be responsible for the renewal of contracts and the movement of lawyers from junior through to senior categories. In criminal law, the present categories 1 to 4 (reflecting the seriousness of offending) will be replaced to mirror some other work being carried out in the criminal justice sector. Certainly, in the category dealing with serious crime, there will be sub-categories to ensure that only lawyers with experience in a given area are provided to persons needing legal aid services. A classic example is the need for a level of specialisation when dealing with serious crime. At the present time,

the only categorisation of civil and family lawyers is between primary providers and secondary providers. The new system will recognise the need to differentiate between junior, intermediate and senior lawyers.

As part of the system there will be ongoing monitoring and auditing, not limited to financials. This system will look closely at the quality of service provided and the commitment to ongoing training and mentoring. There will be in place a review authority that will essentially hear appeals from those who are refused approval into the new system, or whose approval has been given on conditions.

The system in New Zealand has operated on the basis that if lawyers are approved by the Law Society as providers within a certain category, they will be granted a contract by the Legal Services Agency. It is apparent that there are far more legal aid providers than the system requires. It is likely in the future that the Government, through the Ministry of Justice, will contract with the numbers needed, not with everybody who wishes to be a provider. That is likely to lead to a significant decrease in the number of legal aid providers.

The second central plank of the reforms was the expansion of the public defender system. In May 2004 the public defence service in New Zealand began as a programme in the Auckland and Manukau courts. By agreement, and under pressure from the Law Society, they were assigned one in three legal aid cases after the preferred lawyer cases had been removed.

This was one of the most significant and innovatively laid developments in New Zealand, and championed the Legal Aid Services Agency. Despite criticism from the private bar, independent studies showed that the public defence service generated greater client satisfaction, had a guilty plea rate equivalent to the private profession, but delivered services 16 per cent cheaper. As well, there was widespread praise for the service from Judges in all courts and from court administrators. In particular it was noted that the quality and preparation public defence lawyers demonstrated was an improvement on much of the private bar, and there was admiration for the high quality mentoring and training opportunities given to staff within the service.

As a consequence, the current board has completed the rollout of the public defence service to all courts in the Auckland region. The Wellington public defence office has been opened, and Hamilton will open in July of this year. Plans were well advanced for expansion into Christchurch, but have been suspended because of the catastrophic earthquake of the 22<sup>nd</sup> of February. As well, the Minister has recently announced that the service will expand into Dunedin, Napier/Hastings and Tauranga. They will also take half of all legal aid assignments – a significant increase over the existing 33.3 per cent. While there will be challenges in recruiting competent lawyers, the early indications are that this expansion will further enhance the service to criminal clients and the public defence service itself.

I mentioned earlier the abuse of the preferred lawyer system noted by Dame Margaret Bazley. There was rorting of the duty solicitor system so that people were named as preferred lawyer, and other lawyers went to unscrupulous lengths to obtain inordinate amounts of work. Lawyers were frequently taking on more work than they could competently deal with, and the situation was exacerbated as many lawyers (referred to by Dame Margaret as “car boot lawyers”) were providing a very poor level of service.

As a consequence, following discussions and agreement with the Law Society, it was decided that a strict rotational policy would apply to all lower-end criminal cases in what we describe as category 1 and 2. That covers 92 per cent of all criminal cases with an average legal aid cost of \$700. While there have been difficulties with the introduction of this system, it has worked and it has managed to remove many of the questionable practices that had grown up over the last ten years.

The board and senior management has put in place a far more robust complaints procedure and greatly enhanced the underperforming existing audit process. This has led to a number of high-profile legal aid providers either having their contracts cancelled or withdrawing voluntarily from those contracts. A number of

practices identified in the audits have been referred for disciplinary procedures to the Law Society and to the police because of prima facie evidence of criminal behaviour.

One of the major issues confronting the new board was that the relationships with key stakeholders were in a very poor state. To that end, the board and new senior management have spent considerable time improving the relationship with the judiciary, the profession and our monitoring ministry, the Ministry of Justice.

The Legal Services Agency is also responsible for the funding and monitoring of community law centres in New Zealand. A lot of work has been done with those centres to improve the standard of service they provide, to agree a uniform contract and to put in place a national body representing all community law centres. This was yet another area where there needed to be an improvement of relations. While there is not complete agreement with all stakeholders, it is fair to say that the Agency now has an excellent relationship with all of those stakeholders which one will trust will continue in the future with the Ministry of Justice, who become responsible from the 1<sup>st</sup> of July.

There are many challenges ahead, but also many exciting opportunities, particularly in the area of improved services by providers for clients. That is, after all, the most important improvement that can be made provided it recognises the financial constraints of this decade.

*Sir John Hansen*

## **Legal Aid, Development and Bangladesh: Signs of Progress**

In the May-June 2010 Newsletter, I contributed a short article on the development of government legal aid services in Bangladesh and the work being done by the CIDA-Bangladesh Legal Reform Project (BLRP), a bilateral technical assistance project funded by the Canadian International Development Agency. At the time I noted that while there were encouraging signs of a renewed commitment to legal aid on the part of the government of Bangladesh, the advances were fragile and the program still faced huge challenges. While this caution still applies, the reform momentum has continued and even accelerated, in sharp contrast to the bleak reports on legal aid programs in much of the “developed” world. Indeed, the program has developed further and faster than anyone could have predicted even three years ago.

The newly established National Legal Aid Services Organization (NLASO) has moved surprisingly fast on a number of fronts. The financial eligibility ceiling for applicants has been raised twice since 2009 to levels which are realistic in the Bangladesh context (to include incomes up to about \$60 per month). Lawyers’ fees (Bangladesh is a *judicare* system), which had eroded more than 40% due to inflation from their original level – already too low – were raised and more services and expenses included. The percentage of the Legal Aid Fund actually disbursed has risen (although it has not yet reached 100%). The NLASO has slowly started to monitor and get regular reports from District Legal Aid Committees, which in the past were for all practical purposes unsupervised. New file management systems created by BLRP in its pilot Districts (described in my previous article) have been approved for use in all Districts. Local legal aid committees have been established for sub-District level administrative units (called *Upazilas*) and additional funds released for local awareness programming. By far the most important development, though, has been the decision to create legal aid offices and assign full-time staff in all 64 Districts. As of December 2010, one lower level staff person has been assigned to Legal Aid in all Districts and all the new staff persons have gone through an initial training program provided by BLRP. This is just an interim step, though – the real news is that a proposal to assign permanently three staff persons to each District office, including a judicial officer-level Coordinator, has been approved by all

relevant ministries and is awaiting final sign-off from the Prime Minister's Office. The proposal is based on the model developed by BLRP and proven workable in pilot Districts. The NLASO is expected to have its first-ever strategic plan in place before BLRP ends in March 2012. After ignoring the NLASO for years, other bilateral and multilateral donor agencies are starting to show interest in the government program.

The opium-dream-like nature of this picture – a legal aid program with more money than it can spend, broader eligibility, huge staff increases, higher payments to lawyers – must of course be tempered by recognition of the extremely low baseline against which the changes must be measured. Nevertheless, the possibility that Bangladesh will soon have some form of national government-funded legal aid system, however modest by the standards of developed economies, remains alive.

*Ian Morrison*

## News

These reports are largely compiled from news articles on the internet on the basis of a simple search under the words 'legal aid'. Readers must, just as buyers, beware of authenticity. The links worked at the time of writing but some will fail after a period of time.

Overall it has not been the most positive few months and although I long for the day when the majority of new articles reported in this newsletter are encouraging, that day has not yet come. In England and Wales the *Legal Aid, Sentencing and Punishment of Offenders Bill* has been strongly criticised and described as a devastating attack on access to justice. The legislation, and the reforms it introduces, certainly raises concerns. For example, the changes will have a real impact on women, children and persons with a disability. The whole situation was made worse by the allegations made against Justice Minister Jonathan Djanogly. In Scotland too, there are concerns following the Government publishing a three year plan for legal aid. The implications of the case of *Cadder* also continue and it is worth reading "[Access to Justice in an Age of Austerity - The Carloway Review](#)". New Zealand, Ireland, Canada and the United States all find themselves in periods of uncertainty. This looks set to continue for the foreseeable future for these and many other jurisdictions. On a positive note, there have been some useful and interesting reports released over the past few months that are definitely worth looking at: "[Access Across America](#)" by Rebecca Sandefur; "[Access to Justice Review Northern Ireland – The Report](#)"; and "[Needs Evaluation Survey for South Pacific Lawyer Associations](#)" by the South Pacific Lawyers Association.

*Paul Ferrie*

This section is compiled by **Paul Ferrie** of the *University of Strathclyde*. If you would like to suggest news articles for inclusion in this newsletter or have any comments please contact Paul by emailing [paul.s.ferrie@strath.ac.uk](mailto:paul.s.ferrie@strath.ac.uk)

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### Australia:

**Justice out of reach for millions of women** – News.com (Australia) – 07/07/11 [[Read more](#)]

**Pro bono can't cover cutbacks in legal aid** – The Australian – 07/10/11 [[Read more](#)]

**Legal learning offered for NSW migrants** – ABC News – 19/10/11 [\[Read more\]](#)

**Government considers community legal services hub** – ABC News – 19/10/11 [\[Read more\]](#)

**The cost of legal aid for boat people almost doubled to more than \$17 million last year** – Herald Sun – 19/10/11 [\[Read more\]](#)

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#### **Canada:**

**Lawyers to protest legal aid shortfalls** – Edmonton Journal – 13/10/11 [\[Read more\]](#)

**B.C. is still failing women, legal group says** – The Vancouver Sun – 19/10/11 [\[Read more\]](#)

**Ontario legal aid plan to relax qualifying rule** – The Star – 27/10/11 [\[Read more\]](#)

**A proposal for improving access to justice** – The Lawyers Weekly – 28/10/11 [\[Read more\]](#)

**Lawyers plan rallies over cuts in legal aid** - Times Colonist – 29/10/11 [\[Read more\]](#)

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#### **England & Wales:**

**Solicitors voice concerns over reduction in LSC helpline hours** – Law Society Gazette – 02/09/11 [\[Read more\]](#)

**The upcoming Legal Aid bill will hurt victims of corporate abuses** – Liberal Conspiracy – 03/09/11 [\[Read more\]](#)

**Legal Aid bill 'could leave thousands of children at risk'** – Community Care – 06/09/11 [\[Read more\]](#)

**The Legal Aid bill is social engineering by other means** – Liberal Conspiracy – 11/09/11 [\[Read more\]](#)

**Lord Justice Jackson: legal aid should remain for clinical negligence** – UK Human Rights Blog – 12/09/11 [\[Read more\]](#)

**Legal aid cuts storing up social problems for tomorrow** – Just Rights – 13/09/11 [\[Read more\]](#)

**Children hit hardest by legal aid reform, says study** – The Independent – 19/09/11 [\[Read more\]](#)

**Legal aid cuts: the end of universal access to justice?** – Lexis Web – 20/09/11 [\[Read more\]](#)

**Charity attacks plan to cut legal aid for victims of NHS neglect** – The Independent – 22/09/11 [\[Read more\]](#)

**Legal aid bill 'contravenes UN convention'** – Law Society Gazette – 22/09/11 [\[Read more\]](#)

**Plan to scrap medical negligence legal aid opposed** – BBC News – 22/09/11 [\[Read more\]](#)



**Attorney General: cuts to legal aid will force people to represent themselves in court** – The Telegraph – 27/09/11 [\[Read more\]](#)

**Death 'inevitable' if legal aid cuts go ahead** – Law Society Gazette – 29/09/11 [\[Read more\]](#)

**Insurance companies told they were 'pushing open door' over legal aid bill** – The Guardian – 10/10/11 [\[Read more\]](#)

**Legal aid cuts aren't just unfair. They will cost more than they save** – False Economy – 10/10/11 [\[Read more\]](#)

**The end is nigh for the unpopular legal aid body, so why aren't we celebrating?** – The Guardian – 14/10/11 [\[Read more\]](#)

**Law Society calls for delay to legal aid overhaul amid Djanogly allegations** – Legal Week – 18/10/11 [\[Read more\]](#)

**Legal aid cuts restrict access to justice, say Supreme Court justices (VIDEO)** – The Guardian – 25/10/11 [\[Read more\]](#)

**The costs of legal aid cuts** – Lawyer Watch – 25/10/11 [\[Read more\]](#)

**Legal aid cuts will cause courts logjam, warn top judges** – The Guardian – 25/10/11 [\[Read more\]](#)

**Legal aid: the new poor law** – The Guardian – 26/10/11 [\[Read more\]](#)

**Country experiencing sustained attack on access to justice** – ePolitix – 27/09/11 [\[Read more\]](#)

**Labour blasts legal aid fees cut** – UK Press Association – 27/10/11 [\[Read more\]](#)

**Legal aid lawyers overpaid by £50m** – The Telegraph – 27/10/11 [\[Read more\]](#)

**Analysis: human rights claims to lose out if legal aid reform goes through** – The Bureau of Investigative Journalism – 28/10/11 [\[Read more\]](#)

**Lib Dem MPs rebel against proposals to cut legal aid funding** – The Guardian – 28/10/11 [\[Read more\]](#)

**The UK's scandalous legal aid bill is a threat to global human rights** – The Guardian – 28/10/11 [\[Read more\]](#)

**Chris Bryant: access to justice should be a right for all. So what are we doing putting it at risk?** – The Independent – 29/10/11 [\[Read more\]](#)

**Abused women will suffer from legal aid cuts charity claims** – The Guardian – 31/10/11 [\[Read more\]](#)

**Women victims of domestic violence to lose out in legal aid reforms** – The Guardian – 30/10/11 [\[Read more\]](#)

**Thousands will 'suffer in silence' with plans to cut legal aid to domestic violence victims, claims MP** – Mail Online – 31/10/11 [\[Read more\]](#)

**Warning over legal aid cuts for disabled people** – BBC News – 31/10/11 [\[Read more\]](#)

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**Ghana:**

**Legal aid scheme calls for support** – Ghana Web – 14/09/11 [\[Read more\]](#)

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**India:**

**Legal aid clinics effective in helping poor: Chief Justice** – Kashmir Dispatch – 14/10/11 [\[Read more\]](#)

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**Malawi:**

**3 Irish lawyers join legal aid to unclog justice system** – The Maravi Post – 27/10/11 [\[Read more\]](#)

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**Malaysia:**

**Bar Council: No chance of legal aid abuses here** – The Sun Daily – 13/10/11 [\[Read more\]](#)

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**New Zealand:**

**Change means uncertain times for lawyers** – Otago Daily Times – 12/10/11 [\[Read more\]](#)

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**Northern Ireland:**

**Legal aid recovery plans unveiled** – Belfast Telegraph – 13/09/11 [\[Read more\]](#)

**Justice Minister David Ford has today published for consultation the Access to Justice Report** – Northern Ireland Executive – 13/09/11 [\[Read more\]](#)

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**Republic of Ireland:**

**Barristers face costs, equity and access issues** – Irish Times – 21/09/11 [\[Read more\]](#)

**Surge in demand for civil legal aid services** – Irish Times – 07/10/11 [\[Read more\]](#)

**Surge in applicants for legal aid** – The Journal.ie – 07/10/11 [\[Read more\]](#)

**Legal Services Bill unveiled** – Irish Times – 12/10/11 [\[Read more\]](#)

**Lack of legal aid resources impairs forensic defence, warns lawyer** – The Journal.ie – 20/10/11 [\[Read more\]](#)



**Cut-price legal aid could cost practice of justice dearly** – Irish Times – 31/10/11 [\[Read more\]](#)

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**Scotland:**

**Police station duty scheme could discriminate, says GBA** – Journal Online – 05/09/11 [\[Read more\]](#)

**Vice President sets out access to justice objectives** – Journal Online – 15/09/11 [\[Read more\]](#)

**Access to justice in an age of austerity the Carloway review on the effect of Cadder** – Glasgow Bar Association – 16/09/11 [\[Read more\]](#)

**SLAB annual report shows 7% rise in funding** – Journal Online – 16/09/11 [\[Read more\]](#)

**Justice spending up but legal aid down in Swinney review** – Journal Online – 21/09/11 [\[Read more\]](#)

**Justice Committee to focus on courts and legal aid budgets** – Journal Online – 21/09/11 [\[Read more\]](#)

**Legal aid contracting "may fail to deliver savings": Society** – Journal Online – 05/10/11 [\[Read more\]](#)

**Ministers publish three year plan for legal aid** – Journal Online – 05/10/11 [\[Read more\]](#)

**Cadder subject to limits, Supreme Court rules** – Journal Online – 06/10/11 [\[Read more\]](#)

**Plan for student lawyers to plug legal aid cash gap** – Scotsman – 11/10/11 [\[Read more\]](#)

**Lawyers claim doing legal aid work pays less than benefits** – Scotsman – 26/10/11 [\[Read more\]](#)

**Society restates concerns over legal aid contracting** – Journal Online – 26/10/11 [\[Read more\]](#)

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**Sierra Leone:**

**Action Aid discusses access to justice with rural women** – Awareness Times – 25/10/11 [\[Read more\]](#)

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**South Africa:**

**Plans to bring justice to rural poor** – The New Age – 12/10/11 [\[Read more\]](#)

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**South Pacific:**

**Study reports access to justice gaps in many South Pacific nations** – Access to Justice Blog - 27/10/11 [\[Read more\]](#)

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**Uganda:**

**Death sentence - inmates to get free legal services** – 15/10/11 [\[Read more\]](#)

**Ex-IDPs to get free legal services** – All Africa – 31/10/11 [\[Read more\]](#)

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**United States:**

**Senate appropriations subcommittee proposes 2% cut to LSC funding** – LSC – 14/08/11 [\[Read more\]](#)

**LSC Board recommends \$470 million budget request for 2013** – LSC – 28/09/11 [\[Read more\]](#)

**Legal aid centre breaks ground on expanded facility** - 8 News Now – 10/10/11 [\[Read more\]](#)

**Legal-aid charities, trying to address declining funding and rising demand, try to help each other out by merging** – Chicago Tribune – 14/10/11 [\[Read more\]](#)

**Self-help centre expands free legal services state-wide** – The Baltimore Sun – 17/10/11 [\[Read more\]](#)

**Pro Bono Initiative grants available for legal assistance projects** – State Bar of Wisconsin – 19/10/11 [\[Read more\]](#)

**Federal funding for pro bono legal work likely to be cut** – Nooga – 20/10/11 [\[Read more\]](#)

**ABA urges Joint Select Committee on deficit reduction to maintain adequate funding for civil legal services and the federal courts** – ABA Now – 21/10/11 [\[Read more\]](#)

**Clients are up, funding is down for free legal aid** – City Biz List – 24/10/11 [\[Read more\]](#)

**Access to legal aid depends a lot on where you live, report says** – E! Science News – 26/10/11 [\[Read more\]](#)

**State budget cuts clog criminal justice system** – The Wall Street Journal – 26/10/11 [\[Read more\]](#)

**LSC Awards \$3.6 Million in Technology Grants** – LSC – 31/10/11 [\[Read more\]](#)

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## **Final Note**

This newsletter has been compiled by **Roger Smith** of **JUSTICE** in London, UK. If you would like to be taken off the circulation list, add someone to it or contribute content, please contact Roger by emailing [rsmith@justice.org.uk](mailto:rsmith@justice.org.uk).