

JUSTICE-ILAG
Legal Aid Newsletter
September and October 2009

Opening note

The next edition will be sent out at the beginning of January 2010. So – though it seems disgracefully early to say so - Happy Christmas and New Year to all our readers.

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1. Theme of the Issue

There is something about Scotland. It seems to be the only country in the world to be able to reduce its legal aid expenditure without Draconian cuts. Harassed administrators elsewhere should clearly hasten to Edinburgh to see what they can learn. Otherwise, the news digest shows a pretty uniform picture of unease and tension over pressures on funding.

Contained in this issue is an article written for an English publication that summarises some lessons from global developments. Though necessarily parochial in its perspective, it might provide an accessible way of approaching the major themes. Any comment would be welcome.

Roger

2. Contributions

The Law and Justice Foundation of New South Wales, formerly the Law Foundation, has a creditable past history of funding innovative research and provision. With a more restricted budget than previously, its director, Geoff Mulherin, summarises its current research programme in the field of legal services.

Law and Justice Foundation of New South Wales

Summary

The Law Foundation of New South Wales was created 42 years ago, establishing a 'law foundation' model that has been followed in other jurisdictions in Australia, Canada and perhaps elsewhere. The Foundation has sought to enhance access to justice through research, improving community understanding of the legal system and other practical initiatives to overcome barriers to justice. The Foundation's initiatives have included increasing access to the law through free online access to legislation and judgements, the development of understandable legal information for the community and the establishment of a community legal information network throughout the public library system across NSW.

Transformed on a number of occasions, the *Law and Justice* Foundation is now an independent statutory body mandated to contribute to the development of a fair and equitable justice system that meets the legal needs of the community, and to improve access to justice, especially for disadvantaged people. While the Foundation continues to conduct and support a range of community legal information and education and other practical programs, our research is the largest component of our work.

Research

The Foundation uses applied empirical methodologies to examine the legal system and its impact on the community, and especially on disadvantaged people. The bulk of our present work is conducted as part of a broad 'access to justice and legal needs' (A2JLN) research program of projects.

A2JLN Program

The A2JLN program's main purpose is to provide a rigorous and sustained assessment of the legal and access to justice needs of the community, especially disadvantaged people, to assist government, community and other organisations develop policy and plan service delivery.

Our research in this program follows three general streams:

- ♦ The collection and analysis of legal assistance and inquiry data from the major not-for-profit (NFP) legal service providers to examine *expressed* legal need. This is being achieved through our 'Data Digest Online' project.

- ◆ The conduct of large legal needs surveys to get a representative picture of both *expressed* and *latent* legal need.
- ◆ Targeted research to examine the legal needs of particularly vulnerable groups.

Data Digest Online (DDO)

Currently in its *Beta*-phase prior to selected release late this year, the DDO brings together, harmonises and makes accessible through a user-friendly interactive web-based tool, more than one million records of legal matters relating to inquiries made to the major NFP legal service providers in NSW. In particular, the DDO allows users to analyse and spatially display the relationships between legal matters, demographic characteristics, and a range of other relevant data, such as indicators of socio-economic disadvantage. (It should be noted that the DDO uses data owned by the NFP agencies, and is a tool largely for their use. It has associated risks concerning confidentiality, privacy and misinterpretation, and will not be publicly available, although reports and articles etc will be published by the Foundation.)

National Legal Needs Survey

Following the publication of *Justice Made to Measure (2006)* reporting the results of our legal needs survey in selected disadvantaged areas in NSW, the Legal Aid Commissions in all Australian states and territories have supported the Foundation to expand a planned NSW-wide survey into a national survey of legal needs. The fieldwork for this survey (over 20,000 interviews) has been completed and data cleaning prior to analysis is continuing. It is planned that larger, individual state/territory reports will be published before we move on to more focused, follow-on analysis of more difficult groups/issues made possible by the size of the sample.

Targeted Research

Having published reports into the legal needs of older people, homeless people, people with a mental illness and, most recently, prisoners, our current project in this stream explores the access to law reform processes and participation needs of both the community generally and disadvantaged people in particular using case studies in law reform. Publication of this report is expected in the first half 2010.

'What Works'

Evaluative research examining legal system processes and reforms has been a focus of the Foundation's research program over many years. Although the Foundation has worked primarily on the A2JLN program in the last few years, we have also contributed to evaluative research with external partner researchers on a number of projects, such as the evaluation of the fairness and process of the mental health tribunals in NSW, Victoria and the ACT.

'What Works' Systematic Reviews

Our research effort is also trialling and adapting appropriate methodologies to systematically review available evaluations of programs and reforms that have been aimed at meeting particular legal needs. As there appears to be few reliable empirical evaluations of programs targeting some of the most significant areas of need, our intent is to develop a methodological model that allows policy makers and service providers to get the most out of the available quantitative and qualitative data. Our first such systematic review – *Outreach legal services to people with complex needs: what works?* - will be published later this year.

Just Search!

The Foundation's website contains a powerful search tool that enables rapid searches on specific topics across the full-texts of all recent Foundation reports, as well as identifying other key reports and plain language community legal information and education material relevant to the search topic.

3. News: Summaries and Links

These reports are largely compiled from news reports 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.

Australia Claim that Australia spends \$17 per aboriginal client as compared with \$760 for others: <http://www.abc.net.au/news/stories/2009/09/01/2672802.htm?site=darwin>; Review chair attacks 'car boot' sole practitioners milking legal aid: http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10594632; Queensland Law Society tells government to reduce reliance on client account income to fund legal aid:

<http://www.theaustralian.news.com.au/business/story/0,28124,26022894-17044,00.html>;

Aboriginal legal services in 'reluctant and embarrassing' direct advertising to the public for funding: <http://www.independentweekly.com.au/news/local/news/general/aboriginal-legal-aid-calls-for-public-funds/1633180.aspx>; Australian Capital Territory (Canberra) reports rationing of legal aid applicants: <http://www.canberratimes.com.au/news/local/news/general/legal-aid-for-needy-cut-back/1645716.aspx>; Sydney terror trial requires special funding for defence and costs \$9m: <http://www.theaustralian.news.com.au/story/0,25197,26220745-5006784,00.html>; total cost was \$30m;

Canada: Striking lawyers win increased legal aid funding and interest in bulk funding practitioners:

<http://www.google.com/hostednews/canadianpress/article/ALeqM5jDWDDmxKG7dFagGzHM6szh7jP7QQ>; Boycott continues, says lawyers:

<http://www.thestar.com/news/ontario/article/692534> and

<http://www.cbc.ca/canada/toronto/story/2009/09/09/ont-lawyers-legal-aid-boycott523.html>;

Boycott extends as Ottawa joins in on 'guns and gangs' boycott: <http://www.stcatharinesstandard.ca/ArticleDisplay.aspx?e=1736826>; legal aid lawyer applies for removal from murder case on grounds of low remuneration; http://www.570news.com/news/local/more.jsp?content=20090914_134043_9376; legal expenses insurance picks up:

<http://www.nationalpost.com/opinion/columnists/story.html?id=fe247c23-e74c-459e-abcc-6715ec12814c> and gets increasing publicity:

<http://www.thestar.com/news/gta/article/706635--firm-to-offer-up-to-100-000-legal-coverage-for-500>; No more money, says Attorney-General

<http://www.thestar.com/news/ontario/article/697265>; Judge tells legal aid lawyer to stay on the case and refuses to allow him to leave in protest at legal aid rates: <http://news.therecord.com/News/Local/article/601315>; Concern at lessening independence of

Legal Aid Ontario in relation to ministry:

<http://www.theglobeandmail.com/news/national/officials-slam-political-meddling-at-legal-aid-ontario/article1300800/>; Law Society walks a delicate line in congratulating AG for extra

funding, promising to work with the government and acknowledging criticism: <http://www.marketwire.com/press-release/Law-Society-Of-Upper-Canada-1050252.html>; five working groups established to explore reform of legal aid:

<http://www.news.ontario.ca/mag/en/2009/10/ontario-moves-forward-on-legal-aid-transformation.html>; Controversy rages over alleged strike-breaking 'bonus payments' for

lawyers to accept legal aid cases:

<http://www.theglobeandmail.com/news/national/ontario/ontario-agency-trying-to-break-legal-aid-boycott-lawyers-say/article1346495/>.

Cayman Islands

Controversy over creation of legal aid office: <http://www.caycompass.com/cgi-bin/CFPnews.cgi?ID=10386226>; salaried lawyers looked to for costs savings: <http://www.caycompass.com/cgi-bin/CFPnews.cgi?ID=10386484>;

England and Wales: Law Society attacks 'deeply flawed' proposals to cut criminal legal aid costs: <http://www.lawgazette.co.uk/news/chancery-lane-attacks-039deeply-flawed039-moj-legal-aid-proposals>; pilot best value tendering start put back to March 2010 at earliest: <http://timesonline.typepad.com/law/2009/09/legal-aid-tendering-plans-delayed.html>; Law Society council members earn higher than legal aid rates by busking: <http://timesonline.typepad.com/law/2009/09/lawyers-earn-more-from-busking-than-legal-aid-.html>; Criticism of proposals to cut back legal aid in public law cases: <http://www.guardian.co.uk/commentisfree/libertycentral/2009/sep/30/legal-aid-cuts>; Legal aid is the subject of first judgement of newly created Supreme Court: <http://www.thejc.com/news/uk-news/20650/jfs-supreme-court-grants-legal-aid>; Government announces legal aid review that might split civil and criminal budgets : <http://business.timesonline.co.uk/tol/business/law/article6873076.ece>; Lawyers threaten legal action on cuts: <http://www.guardian.co.uk/society/2009/oct/18/lawyers-action-legal-aid>; Protest at family law cuts: <http://business.timesonline.co.uk/tol/business/law/article6885502.ece>; Minister on defensive as Lord Chief Justice weighs in on cuts to civil legal aid: <http://www.telegraph.co.uk/news/newstoppers/politics/lawandorder/6444148/Lord-Chief-Justice-warns-of-mayhem-over-lack-of-legal-aid-for-civil-courts.html>; National Audit Office says lawyers are making significant numbers of unjustified claims which are not being spotted by the Legal Services Commission: <http://news.bbc.co.uk/1/hi/uk/8332982.stm>; Gates Foundation gives \$3m to help legal aid in Washington State: http://seattletimes.nwsourc.com/html/thebusinessofgiving/2010162178_community_grants.html;

Ireland:

Supreme Court requires legal aid to provide barrister and solicitor in a case where demanded by fair trial requirements and overrules previous restriction to murder cases only: <http://www.irishtimes.com/newspaper/breaking/2009/1023/breaking54.htm>; Defendant's

means test to be triggered if prosecution object to free legal aid:
<http://www.irishtimes.com/newspaper/ireland/2009/1029/1224257603688.html>;

Israel:

Bar backs mandatory pro bono legislation:

<http://www.jpost.com/servlet/Satellite?cid=1255204782245&pagename=JPost%2FJPArticle%2FShowFull>;

Indonesia:

Donor-funded Legal Aid Centre for the Press gets publicity:

<http://www.thejakartapost.com/news/2009/09/29/hendrayana-speaking-out-media.html>;

Ireland:

Political attack on legal aid: <http://breakingnews.iol.ie/news/ireland/fine-gael-calls-for-review-of-legal-aid-427761.html>; Demand up by 18 per cent in civil cases: <http://www.irishtimes.com/newspaper/ireland/2009/0929/1224255443972.html>; legislation proposed to make cuts and savings: <http://www.independent.ie/national-news/ahern-plans-clampdown-on-legal-aid-1924032.html>; Department of Finance blames judges: <http://www.sbpost.ie/news/ireland/judges-blamed-for-rising-legal-aid-bills-45236.html>;

Jersey:

£3m cost of major drugs trial sparks legal aid review:

<http://www.thisisjersey.com/2009/10/21/3m-cost-may-lead-to-legal-aid-review/>;

New Zealand: Government wants to guarantee access to justice and cap legal aid costs, interest expressed in bulk contracting:

<http://www.radionz.co.nz/news/stories/2009/09/01/1245c7064548>; Minister issues review: <http://www.thenewlawyer.com.au/article/NZ-needs-legal-aid-review-Justice-Minister/497275.aspx>;

Northern Ireland:

Criminal legal aid lawyers threaten boycott:

<http://www.belfasttelegraph.co.uk/opinion/viewpoint/legal-aid-compromise-is-essential-14524222.html>; cuts promised: http://news.bbc.co.uk/1/hi/northern_ireland/8319449.stm;

Pakistan:

Minister pledges more legal aid for women and minors in custody:

http://www.dailytimes.com.pk/default.asp?page=2009%5C09%5C26%5Cstory_26-9-2009_pg12_5;

Scotland:

Legal aid bill falls by £5m despite rise in civil:

<http://www.google.com/hostednews/ukpress/article/ALeqM5guJVVSxKiVsCxHyavOW4EAJpD-bq>;

South Africa:

Two fraud defendants apply to Constitutional Court to raise legal aid rates on ground that they will not get a fair trial otherwise:

<http://www.businessday.co.za/articles/Content.aspx?id=83072>; Legal aid director, perhaps predictably, disagrees:

http://www.witness.co.za/index.php?showcontent&global%5B_id%5D=29123;

United States:

Demand for legal aid soars in economic downturn, eg in Nevada:

<http://www.lasvegassun.com/news/2009/sep/18/economy-boosts-demand-legal-aid/>; Right wing sting operation catches out advice organisation advising 'pimp' and a 'prostitute' on tax – "It's a general warning to everybody," said Peter Sabonis, chief counsel for Maryland Legal Aid" and underlines need for well trained frontline services:

<http://www.baltimoresun.com/news/maryland/bal-md.nonprofits18sep18,0,1351289.story>;

Legal Services Commission headlines a million refused legal aid due to insufficient provision in report http://www.nytimes.com/2009/09/30/us/30legal.html?_r=1; Iowa Supreme Court calls for 50 hours a year pro bono assistance from lawyers:

<http://www.kcrg.com/news/local/64788147.html>; 'deferred associates of large commercial firms being diverted into temporary legal aid jobs:

http://www.google.com/hostednews/ap/article/ALeqM5g2HjR8DdVL3iRm_bqKfqWyqbNY4AD9BGNJCG0; recession cuts pro bono hours of lawyers in Nevada:

<http://www.lasvegassun.com/news/2009/oct/23/hammered-recession-lawyers-cut-pro-bono-work/>;

Civil right to counsel update contains coverage of ILAG Wellington conference:

<http://www.civilrighttocounsel.org/pdfs/CRC%20Update%20no.4%20June%202009.pdf>;

Zimbabwe

Legal aid directorate under threat of collapse for lack of funds:
<http://allafrica.com/stories/200910260955.html>;

4. Reports and Publications

England and Wales:

International Comparison of Publicly Funded Legal Services and Justice Systems, Roger Bowles and Amanda Parry, University of York, Ministry of Justice Research Series 14/09, published October 09, available at www.justice.gov.uk/publications/research.htm. This is a comparison of spending in England and Wales with France, Netherlands, Germany, Sweden, Australia, New Zealand and Canada.

United States:

Documenting the Justice Gap in America Legal Services Commission, September 2009, updated version, available at http://www.lsc.gov/pdfs/documenting_the_justice_gap_in_america_2009.pdf. For every eligible person receiving civil legal aid another is turned down because of shortage of resources.

5. Copy of article written by Roger Smith for English magazine on English perspective on international developments

The 1970s provide the golden age of publicly funded legal services– at least in common law countries like Canada, United Kingdom, Australia, New Zealand and the United States. There was an increasing interest in, and commitment to, meeting the legal needs of the poor, even if funding was at levels considerably less than at present. Alas, however, times are now very different and legal aid is in relative decline in all these countries. Only in countries which have come later to the realisation of the need for such legal assistance is legal aid in resurgence – in the case of Eastern Europe, often under pressure from the demands of the European Convention on Human Rights.

The Canadian province of Ontario is currently suffering a dispute strikingly similar to the Bar's recent boycott of very high cost cases in England and Wales. Senior Toronto lawyers have been refusing to take serious 'guns and gangs' cases because they derided their remuneration as too low. The protest has spread to Ottawa and to other towns in Ontario, such as Thunder Bay. Typical of the anger of practitioners was that expressed by

Mark Ertel, president of the Defence Counsel Association of Ottawa: 'I'm personally boycotting, and I think most experienced lawyers are not taking these [legal aid] certificates ... [Taking these cases] is like charity work. Running your office, you're losing money. Ninety-eight dollars an hour isn't enough to turn on the lights.' Fees range between \$77 (£44) and \$98 (£56) an hour up to a cap for each case. As a result, Mr Ertel told the *Ottawa Citizen*: 'You actually end up working for \$30 or \$40 an hour. It happens all the time.'¹ The boycott got influential support from judges and prosecutors, at least one of the latter expressing embarrassment that resources were so unbalanced that the prosecution could afford to pay expert witnesses at double the rate available to the defence. The action had some effect and the government was shamed into some degree of action. It announced an increase in funding of \$150m (around £86m) over four years.² It remains to be seen whether this will be enough to dampen opposition. The government promised better 'big case management', a shift to block fees, 'more rigorous quality management' and more funding for legal clinics in the same package. So, the money was spread around and linked to initiatives that will further reduce costs.

Canadian unrest followed a similar dispute among lawyers in Australia, particularly the Victorian capital, Melbourne. Around 200 attended a rally outside Melbourne's county court in November 2008 to demonstrate against the failure of the Commonwealth government to provide sufficient cash to meet the costs of those areas of law for which it is responsible. The commonwealth/state split in federal Australia provides fertile ground for disputes on burden-sharing but opens up the possibility of obtaining support of the one against the other. In this case, state officials and politicians were happy to join protest against federal parsimony. The Victorian Premier, John Brumby supported the protest, saying that 'You've only got to look at the figures. What used to be a 60/40 arrangement is now a 40/60 arrangement ... We're now doing the lion's share of the funding, and what the Federal Government needs to do is to increase their funding to at least come up to match the funding that is being provided by our Government.'³ As in Ontario, there has been an attempt to buy off the dispute. The federal government stumped up an additional one-off \$20m (£11m) funding and Mr Brumby's government added another \$25m (£13m). Lawyers were not impressed, however, and Victorian Bar chairman John Digby QC proclaimed the addition funds 'very disappointing ... As a one-off band aid measure, it does nothing to stabilise the long-term operation of the legal aid system.' Clearly, the struggle continues in Victoria – as elsewhere.

¹ <http://www.ottawacitizen.com/Area+defence+lawyers+poised+join+legal+boycott/1924274/story.html>

² 8 September 2009

³ <http://www.abc.net.au/news/stories/2008/11/27/2430919.htm?site=melbourne>

An irony of the current situation is that - just at the moment when legal aid spending is begin capped, cut or, in the weasel words of our government, 'refocused' - research is burgeoning into the need for access to justice. Professor Hazel Genn started a global movement with her seminal *Paths to Justice* survey in 1999.⁴ She herself followed this study of England and Wales with one of Scotland which she undertook jointly with Professor Alan Paterson. Her methodology – of identifying 'justiciable problems' and surveying for their incidence – has since been followed by researchers in a number of other countries, including the Netherlands and Canada. Her approach has been developed by the Legal Services Research Centre of our own Legal Services Commission. It has undertaken a number of longitudinal studies which have proved the intuitive observation that problems come in 'clusters', around an event such as divorce or disability. There has been, perhaps for obvious political reasons, no comparable research effort into the implications of the cuts and restrictions to criminal legal aid.

One of the reasons why legal aid in Victoria is currently hit so badly is that a disproportionately large percentage of the funding comes from neither Commonwealth nor State government but from what we would call interest on solicitors' client accounts or, in the American formulation, interest on lawyers' trust accounts or IOLTA. Nationally, IOLTA funds amount to 17 per cent of overall spending. In Victoria, the percentage is 30.⁵ IOLTA funds around the world have taken a double whammy in the recession: fewer commercial and conveyancing transactions are generally lower sums of money and interest rates have declined sharply.

The country whose legal aid has been hit most by plummeting IOLTA income is the United States of America. In 2008, IOLTA generated \$370m (£229m). Some estimates made at the beginning of 2009 halved that figure for this year.⁶ The importance of a loss of the magnitude projected can be seen by comparison with the size of the total federal budget for civil legal services. For the financial year 2009, the federal Legal Services Corporation received \$390m or £241m. Thus, government expenditure on legal aid in the US, for all its greater population, is less than a quarter of that in England and Wales. Other funds are, therefore, really important to sustaining US provision.

The relative poverty of civil legal services in the US reflects the hostility of Presidents from Regan to the two Bushes. Oddly enough, the Legal Services Corporation (LSC) was actually established by the Republican President Nixon who was extremely supportive: 'For many of our citizens ... legal services have reaffirmed faith in our government of laws ... we

⁴ Published by Hart Publishing

⁵ <http://www.theaustralian.news.com.au/business/story/0,28124,25445017-17044,00.html>

⁶ <http://philanthropy.com/news/index.php?id=6412>

must make [the programme] immune to political pressures and a permanent part of our justice system'. Ronald Regan was, however, hostile. He had tangled with LSC legal programmes when he was Governor of California and he continued bear a grudge when he got to the White House. He began cutting the budget and hedging LSC funding with mandatory restrictions in relation to the cases that could be handled by agencies receiving federal funds. For example, they were restricted in acting for illegal immigrants. The Bushes continued this approach and the LSC was only kept alive by vigorous support in Congress in years when the president recommended a zero budget.

President Obama has been kind to the Commission, getting an increase in funds through Congress and beginning the process of cutting back the funding restrictions. These have been so severe that in many of the better funded states, like Massachusetts, services were split between those funded by the LSC and very limited in the cases that they could take and those funded by IOLTA and other unrestricted funds which had a much wider brief. President Obama has also been much better at celebrating legal aid birthdays. He issued a press release praising the 'great work' of the LSC on its 35th birthday. Alas, both Gordon Brown and David Cameron remained silent on the 60th birthday of legal aid in England and Wales. Celebration was delegated to Lord Bach, Jack Straw's junior minister. Praise got no higher.

The result is that civil legal aid in the US is being cut back, with Massachusetts typical (if not rather better off than other states). The *Boston Globe* reported: Greater Boston Legal Services, the region's largest legal assistance agency for the poor, reduced its staff from 135 to 124 employees this year and is preparing to lay off at least 10 more in the fall. South Coastal Counties Legal Services Inc. is planning to lay off five lawyers. And the Legal Assistance Corporation of Central Massachusetts has reduced its staff from 42 to 31, cut benefits, and closed its offices on alternating Fridays.⁷

Criminal legal services, which are separately funded, are scarcely less better off. In New York, funding for public defenders comes through the judiciary. As a result, campaigners were able to get legislation to limit the number of cases being undertaken by publicly funded lawyers. The *New York Times* reported: Under the law, New York State's chief administrative judge would be required to establish new caseload standards for public defenders by April 1, 2010. The judiciary would then have four years to phase in the limits and ensure proper funding. Despite the state's grim economic condition, the judiciary's budget for the current fiscal year remained stable at \$2.57 billion.⁸

⁷ http://www.boston.com/news/local/massachusetts/articles/2009/08/06/cuts_in_legal_aid_hit_poorest/

⁸ http://www.nytimes.com/2009/04/06/nyregion/06defenders.html?_r=3

Both the American Bar Association and the National Legal Aid and Defenders Association have traditionally used recommendations as to maximum caseloads in order to prevent the underfunding of defence provision. Traditionally, this is not something that has appealed to legal aid practitioners in the UK because they have been paid per case but, as funding shifts to a block basis, this may be something which will have more appeal – particularly for junior staff who will argue that they are being overburdened and underpaid. New York’s Legal Aid Society expects a shortfall of \$11m for the year from July 2009-10 although its 435 salaried lawyers handled a caseload of 227,000 in 2008-9, an increase of around 10 per cent over the previous three years. The society has sought to mobilise the traditional commitment of private law firms in the US to pro bono services and has established nine ‘externships’, private practice lawyers who will work for the society from their own offices.⁹

The US, however, provides occasional glimpses of light. There is still room for innovation. California, in particular, is home to a number of lawyers exploring the extent to which cases can be ‘unbundled’ ie broken into their constituent parts, for some – but not all – of which a lawyer can provide assistance. The *Los Angeles Times* reported on the delightfully named ‘LegalGrind’, a café with something extra:

Fortunately for the newly downgraded, the access-to-justice movement has advanced in recent years from Skid Row to Main Street. At storefront law offices like Santa Monica’s LegalGrind, a cafe-legal clearinghouse, those facing court dates to deal with divorce, custody matters, driving offenses and debt can find out for \$45 how best to tackle their problems without plunking down a \$5,000 retainer and \$400 an hour for a lawyer. Bar associations in California and a dozen other states, meanwhile, have whittled away at the ethics rules and industry mind-set that used to discourage attorneys from taking clients on a “limited scope” basis. This involves representing them on specific aspects without taking responsibility - and charging fees - for the client’s full range of legal problems.¹⁰

And there continue to be experiments with the provision of legal advice through the internet and with court-based ‘self help’ centres. These are popular in California where the Los Angeles Superior Court opened a 12th centre in Pasadena in March. The centre is located in the former court library; is open five days a week; and provides a range of resources including workshops and clinics on a variety of civil matters, including family law. The Pasadena facility was funded by the court, the Judicial Council of California, the Administrative Office of the Courts and through grants from the State Bar to Neighborhood

⁹ <http://www.law.com/jsp/law/careercenter/lawArticleCareerCenter.jsp?id=1202427029408>

¹⁰ <http://articles.latimes.com/2009/mar/10/local/me-legal-aid10>

Legal Services and to Bet Tzedek Legal Services. It will be staffed by court employees, legal aid partners and Justice Corps student interns, court officials said. Services will also be available in Spanish, Mandarin, Cantonese.¹¹

Otherwise, innovation and development is to be found much more in jurisdictions which have historically little legal aid provision. South Africa is expanding its provision of salaried justice centres. Jamaica has set up an education drive to explain to police officers why they should welcome legal representation of suspects during interviews and not seek to evade it.

We are seeking to sensitise the Jamaica Constabulary Force that every citizen is entitled to the service of an attorney at the point of questioning and if that person is arrested and charged,' the [Legal Aid Council] executive director, attorney Hugh Faulkner, said. Faulkner reminded the handful of sub-officers from the various stations within the St Andrew North Police Division, who gathered at the Grant's Pen Police post for the meeting, that the rights of citizens must be respected and that there is always the presumption of innocence in relation to detained persons.¹²

Rwanda has hosted a mid-African conference to encourage legal aid. Ghana has recently opened a legal services programme for remand prisoners. And, in the Philippines, the Supreme Court has stepped in to increase legal aid provision by requiring all practising lawyers to undertake 60 mandatory pro bono hours. This has understandably been somewhat controversial among the legal profession but the court has battled on with its plan, albeit that the start date has been put back to January 2010. China has a characteristically chequered position. On the one hand, the authorities have closed down the offices of the Open Constitution Initiative which provided representation in a number of high profile cases, including the tainted milk scandal, and have arrested, though now released, its director. On the other hand, 100 lawyers, many of them party members, have been dispatched to rural areas in order to provide much-needed services. The head of the programme was quoted as saying, somewhat improbably: 'Lawyers are a group with a strong sense of social responsibility. Besides, they have earned enough money, and don't have to worry about giving up one or two year's income'. Clearly, a cultural difference from the rest of the world, there.

However, the area of the world with the most coherent expansion of legal services is central and Eastern Europe. In countries like Moldova, Ukraine, Georgia and Bulgaria, legal aid laws are being drafted and money obtained for legal aid. The immediate stimulus is the

¹¹ <http://www.metnews.com/articles/2009/help031209.htm>

¹² <http://www.jamaicaobserver.com/news/html/20081223T200000->

0500_144065_OBS_POLICE_SENSITISED_ON_SUSPECTS_RIGHT_TO_LEGAL_REPRESENTATION.asp

need to comply with the obligations of the European Convention on Human Rights – in this case, article 6. The more long-term reason is the positioning of these states in relation to membership of the European Union which effectively requires compliance with the Convention. Georgia provides a good example. Although ravaged by the unsatisfactory legacy of its war with Russia, Georgia has established what looks like rather a good criminal legal aid system. Its former head reports:

In July this Year, the Legal Aid Service (LAS) celebrates its second anniversary. The Service coordinates the legal aid system of the country as an autonomous agency under the Ministry of Corrections and Legal Assistance. It was established in July 2007 upon adoption of the new law on legal aid. According to the law, legal advice on any legal matters is accessible for everyone despite of the social status of the person, while legal representation is provided for indigent persons on criminal cases only. In Georgia, with its population of 4 million, legal aid is provided through a mixed scheme of Legal Aid Delivery – full time, salaried lawyers in 12 Legal Aid Offices throughout the country and about 120 contracted private lawyers who are paid per case according to complexity of the case. In 2008, legal aid lawyers defended interests of clients on up to 11,000 criminal cases and more than 4,000 legal consultations were rendered. The Service operates through 12 regional offices with up to 120 contracted lawyers and covers almost the whole country. More info about developments within the Georgian legal aid system can be obtained on www.legalaid.ge¹³

Bulgaria has just increased its legal aid budget by a third. Moldova has just passed a new legal aid law.

An issue which lies just under the surface in almost all countries where lawyers act for those accused of heinous crimes is an identification of the lawyer with the client. This tends to be less prevalent in countries where there is a divided legal profession, which operates institutionally to insulate counsel from the client, and those where there is a long tradition of legal aid. However, both India and Germany provide examples of the problem. After the Mumbai terrorist outrage, the photo that went around the world showed Mohammed Ajmal Amir, also known as Kasab holding a gun. His right to representation caused a storm because the local lawyers in the Mumbai refused to act for him. The chief justice and other legal luminaries weighed in to emphasise his constitutional right to representation. He enflamed the situation further by requesting assistance with legal aid from Pakistan. This was particularly embarrassing for Pakistan because, at the time, it was denying that he was their national. A number of Indian lawyers appointed to act for him refused. One, who accepted, was removed by the court after it transpired that she was also acting for one of the victims of

¹³ Rusudan Tabatadze, *JUSTICE-ILAG Legal Aid Newsletter*, May-June 2009

the attack and had a conflict of interest. A similar issue arose over the case of Josef Fitzl, the Austrian father who imprisoned and raped his daughter. Fritzl's lawyer, Rudolph Mayer, received death threats. The *Austrian Times* reported Mr Mayer's commendable cool:

'Lawyers who refuse to defend certain acts contradict my view of professional ethics'. One caller said I should be hung from a lamp post next to Fritzl. Another letter suggested locking me in a cell next to him. But I don't need personal security. If someone wants to kill me, they'll manage anyway. And I can look after myself. I have been a member of a boxing club in Vienna for 30 years.'

It is perhaps worth remembering that, for lawyers, legal aid is not just a source of income: it pitches them at the centre of criminal justice system, playing an important role for clients, sometimes in difficult circumstances. It is not always clear that politicians in countries that have developed relatively good legal aid schemes over the past decades quite appreciate the importance of their role.

6. And Finally

This newsletter has been compiled by Roger Smith of JUSTICE. If you would like to be taken off the circulation list; add someone or contribute some content: contact rsmith@justice.org.uk.

ILAG was established in 1992 as a way of bringing together academics, administrators and others interested in the development of legal aid. ILAG is constructing a website at www.ilagnet.org. JUSTICE is a UK-based human rights and law reform organisation dedicated to advancing human rights, access to justice and the rule of law. Its website is www.justice.org.uk.