

## 6<sup>th</sup> Annual SOLON 'Experiencing the Law' Conference

### *Accessing Justice*

22 February 2012, Institute of Advanced Legal Studies

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The Sixth Annual Experiencing the Law Conference focused on the highly topical theme of access to justice thrown into the spotlight by the Coalition Government's controversial Review of Legal Aid and proposal to cut a further £350 million from the £2 billion combined criminal and civil legal aid budget. The conference took place as the Government was suffering continual defeats in the House of Lords to the Legal Aid and Sentencing Bill 2011 and as numbers of Citizen's Advice Bureau across the country were being closed because of the withdrawal of state support. After 32 reviews and consultations on the subject in the last 10 years a report commissioned by the Law Society, *Unintended Consequences: the Cost of the Government's Legal Aid Reforms*, concluded that it is unlikely the predicted savings will be realised or that the reforms proposed will make a significant reduction to the fiscal deficit.<sup>2</sup> Thus there was plenty for speakers and participants to discuss and address.

[The Bill has now become Act despite being defeated 14 times in the Lords and passing on the narrowest of margins with the Government given the benefit of the doubt on an equal vote. The provisions take effect from April 2013 ed.].

The conference opened with a lively and entertaining plenary session from Professor Avrom Sherr, Director of the Institute of Advanced Legal Studies, who summarised the current concerns regarding the proposed reforms to legal aid. He used a word cloud to illustrate some interesting comparisons between the opposition dialogue and that of the Government; with the former emphasising concepts such as 'immigration', 'representation' and 'quality' and the latter 'legal', 'costs' and 'aid'. He then went on to outline some of the current established alternatives through Operational Dispute Resolution, eg Conditional Fee Arrangements, Alternative Business Structures, mediation and arbitration etc., but also some less familiar initiatives such as e-advice and online resources including an increasingly popular online divorce facility which avoids any domestic face-to-face conflict and simply

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<sup>2</sup> D. Cookson (2011)

<http://www.kcl.ac.uk/content/1/c6/08/81/08/UnintendedConsequencesFinalReport.pdf> accessed 20 February 2012

deals with the practical distributions of matrimonial assets ignoring all legal aspects. Sherr acknowledged that in this difficult period of legal and economic change there were few easy answers and that the likelihood is that in a few years the issue of public funding will turn full circle and the state will be compelled to be more supportive. Let's hope that such a resolution is not too many years down the line.

Richard Monkhouse, the Deputy Chair of the Magistrates' Association with 15 years' experience at Old Trafford Magistrates, also hinted at the future in terms of facilitating legal access to the criminal courts. 650 years after the first Justice of the Peace was appointed, he asserted that in terms of improving access recently the magistracy had arguably moved faster in embracing change than any other part of the criminal justice system. In an unusual pilot to celebrate the anniversary and engage more with the community, Manchester magistrates had paired up with offenders they had sentenced to understand the experience from their perspective and to help improve sentencing practice across the courts. Their findings will be published in due course. Demographically he confirmed that the magistracy is more reflective and representative of the local community than district and crown court judges and there is sympathy to consider extending eligibility to those with a criminal conviction. Closer links with the community are also being made through the new approach with Problem Solving Courts but there are still ongoing concerns regarding non-judicial disposals and police recording of No Further Actions. Finally, I was particularly interested to hear Monkhouse's comment that community newspapers no longer report in the summary courts so the local populace are unaware of the true crime incidence and perceive local crime through their understandings of national trends – this is something that Judith Rowbotham and I have been researching from a historical perspective and confirms our view that the public are unfortunately poorly educated about the raft of practical initiatives that the magistrates' courts are trialling or have introduced.<sup>3</sup>

Judith Rowbotham then picked up on this historical perspective, contrasting the Victorian citizenry's confidence in the operation of the summary justice system, largely supported by politicians and legal professionals, compared to modern public concerns about its efficacy. She emphasised the importance of media reportage from the magistrates' court as an effective means of educating the public about criminal justice responses in their area and making the courts, and the criminal law, more accessible. As a relatively true and accurate record this practice started to disappear from the 1920s/30s and while crime reporters still attended courts well into the late twentieth century increasingly only selective and

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<sup>3</sup> J. Rowbotham, K. Stevenson and S. Pegg, *Crime News In Modern Britain: Press Reporting and Responsibility 1820-2010* (Palgrave 2013).

'interesting' cases were printed. Rowbotham also traced the historical development of those charitable agencies and bodies that from the mid-nineteenth century on financially sponsored and paid for the legal costs of prosecutions of which there were over 1,000 by 1942 and which prepared the ground for the Legal Aid and Assistance Act 1949. In this two-hander session, Tom Smith then highlighted the shift in the role of the defence lawyer in the criminal court now the Criminal Procedure Rules 2010 have become more formalised. He emphasised that a lawyer's duty now lies more heavily towards the court than his client suggesting a reducible shift in accessibility and representation. Smith offered his model of the 'zealous advocate' to theorise the ethical dilemmas and conflicts that such a shift presents suggesting three resulting natural tensions: partisanship v procedural justice, confidentiality v truth seeking and detachment v morality evidence by a research study he conducted with a group of criminal defence professionals.<sup>4</sup>

A lively Round Table Panel picked up on a comment Avrom Sherr made that 'clinical legal education is best' and engaged a number of students from City University in the audience to debate the advantages and disadvantages of the expanding number of student university law clinics. The discussion concluded that while such opportunities provided students with useful work experience and provided legal advice to those who would not otherwise receive any, they should not be used, or perceived, as filling the justice gap created by the diminution in legal aid.

To round off a fascinating and thought provoking day Vikram Sachdeva from 39 Essex Chambers represented the claimant in a particularly tragic recent case that he took on pro bono that highlights the potential problem of access to justice in the context of right to life cases. The Court of Protection were asked in the case of *W v M* [2012] EWHC 2443 to issue a declaration where the claimant and family sought legal confirmation that artificial nutrition and hydration be withdrawn from his partner who was in a permanent minimally conscious state having emerged from a coma with extensive and irreparable brain damage. Despite her expressions that she would wish to die if this proved to be the outcome the court decided that in her particular case, it was in her best interests that medical treatment continue. The official solicitor thought this too. The NHS Trust also refused to be involved leaving the family with no-one to represent them or pay for their legal expenses in what required very specialist expert medical evidence over an important legal issue about the jurisdiction of the court to make such decisions. The court expressed concern about the lack

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<sup>4</sup> See also T. Smith 'Zealous Advocates: The Historical Foundations of the Adversarial Criminal Defence Lawyer' *Law, Crime and History* 2(1) (2012) 1-21

of public funding for such a complex case which without Sachdeva's intervention, the family would have been unable to access any legal representation.