

# The London Advocate

The newsletter of the London Criminal Courts Solicitors' Association

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# Editorial

By the time this reaches you, I hope you will have enjoyed a couple of Bank Holiday weekends, an improvement in the weather and recovered from a surfeit of chocolate and the overdose of literary quotations squeezed into the last edition of The Advocate!

But an editorial would not be complete without one cultural reference: this edition's quote comes from Woody Allen who once said, "Life doesn't imitate art; it imitates bad television". The articles in this issue rather challenge this assertion. I can't be the only solicitor who watched Silk in a slightly masochistic manner. Could Martha really win a trial by making a speech to the jury about a completely different case? Why did she say that a defence solicitor's advice to make no comment during an interview for murder was because it halved the time of the interview and this was a relevant consideration in times of fixed fees? Peter Moffat, writer of the programme, former barrister and supporter of the Save Legal Aid campaign, gives some answers in this edition's interview.

My other recent viewing was the excellent BBC2 series Line of Duty, a drama about a unit investigating police corruption. As it was broadcast, current affairs

amply demonstrated that truth can be stranger than fiction. The news that undercover officers had spied on the family of Stephen Lawrence during the original murder investigation is so reprehensible that it necessitated Theresa May's announcement of a public inquiry. Jocelyn Cockburn and Natalie Sedacca write an excellent article about the need for checks and balances to be made on the state and how the ability to challenge the actions of those in authority will be eroded by the recent changes to funding.

This edition also carries a report on a workshop hosted by the University of Warwick in conjunction with Monash University, Australia, to examine the implication of the cuts to legal aid. It is apparent from information provided by Australian colleagues that cuts there have already had dire consequences.

So perhaps Woody Allen is wrong: life does not imitate bad television. If it did, Australia would have no need for concern about its legal aid budget. After all, it's never featured as a concern in Neighbours or Home and Away.

– Mel Stooks  
TV Edwards

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# LCCSA Notices and News

More news on the website: [www.lccsa.org.uk](http://www.lccsa.org.uk).

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## JOINING WITH PROBATION

On Monday 31 March and Tuesday 1 April, LCCSA members joined other lawyers to unite with probation officers to protest about the government's policies originally outlined in Transforming Legal Aid and Transforming Rehabilitation.

Government plans to outsource 70% of the work currently done by probation officers are similar to the legal aid cuts in that the policies are being carried out in the face of total opposition from the professionals involved.

On April Fool's Day (Grayling's birthday), lawyers and probation staff, along with other members of the Justice Alliance, congregated in Old Palace Yard, opposite the Houses of Parliament. During a rally which was addressed by members of both professions, the crowd sang a bespoke version of "Happy Birthday" to the Lord Chancellor:

Happy birthday to you,  
You want justice for the few,  
No more justice for the many,  
Only justice for you.

On the previous day, at Conway Hall, LCCSA members attended a training session.

Among the topics discussed were plans to bring an action to judicially review the Ministry of Justice's final package of reforms to the legal aid system announced on 27 February. Plans were discussed for a walkout from the Crown Court and for a general work to rule.

## ANNUAL DINNER 2014

The association's next annual dinner, sponsored by Frenkels Forensics, chartered accountants, will take place on Friday 4 July at the Waldorf Astoria, the Aldwych. The speaker will be Patrick Gibbs QC.

## EUROPEAN CONFERENCE

The 2014 conference will be held in Alicante, from 26 to 28 September. The speaker will be Professor David Ormerod.

## AGM

The association's 2014 annual general meeting will be held on Monday 10 November, at Kettner's, 29 Romilly Street, Soho, London W1D 5HP.



*Two former presidents of the LCCSA, Richard Almond and Robert Roscoe, join the rally outside Parliament on 1 April*

## COMMITTEE MEETINGS

The next three meetings will be held on 12 May, 9 June and 14 July.

The venue is the offices of Kingsley Napley and meetings start at 6.30pm. All members are welcome to attend.

## CONSULTATIONS

As ever, the arrival of Spring coincides with an upsurge in consultations to which the LCCSA is expected to respond. By the time this edition of The Advocate hits your post-tray, the association will have submitted responses to a number of consultations, including the CPS consultation on interim guidance on the public interest in prosecuting non-recent cases where a nominal penalty is the likely outcome. It will also have responded to the Home Office paper on changes to PACE codes to accommodate the requirement for certain information to be conveyed to a detained person (to ensure compliance with EU Directive 2013/12).

While many consultations issued by government departments now have a compressed timetable for responding, those published by the Sentencing Council still allow responders an ample 12 weeks. The next step in the Council's programme to update the sentencing guidelines concerns theft and related offences, including handling stolen goods and going

equipped to steal. The closing date for this is 26 June and the LCCSA's sentencing sub-committee will welcome contributions from members with an interest in this area of practice.

Another upcoming consultation is from the CPS and concerns the new casework quality standards.

Many defence lawyers may wish to comment on how the theory does not translate into practice.

## TRAINING

Information on all LCCSA training events can be found on the LCCSA website: [www.lccsa.org.uk](http://www.lccsa.org.uk)

# President's Report

How quickly times change. My last piece spoke of unity. Barristers were joining with solicitors in their campaign against all cuts to legal aid and the imposition of a two-tier duty solicitor contract. Members of the Bar were being particularly effective in carrying out a No Returns policy, which was beginning to clog up proceedings in several Crown Courts.

On 27 March, it was announced that the MoJ had been in discussions with the Criminal Bar Association: a deal had been done and the No Returns action was brought to an end.

The damage to unity is not only between solicitors and barristers, but also within the Bar itself, as many barristers remain fully supportive of solicitors because, for them, the argument is about access to justice and the rule of law.

The decision of the CBA, Bar Council and circuit leaders to do a deal is disappointing. It does not, in fact, secure the future of the Bar; Grayling has been aided in his divide-and-rule tactics.

## 31 March and 1 April

But we soldier on. We joined with probation officers on 31 March and 1 April as a further indication that solicitors will not take this attack on them lying down. I spoke on BBC Radio London at breakfast time, was given a grilling on LBC at drive time and did a live piece for BBC News 24 with Ian Lawrence of the National Association of Probation Officers at the demo at Westminster magistrates' court. The sun shone on the rally in Old Palace Yard and the march to the MoJ, where Grayling's birthday present, a book, was opened: it was *The Book Thief*.

## Crown Court action

On 31 March, at a meeting at Conway Hall, it was agreed that (while being, of course, a matter for each individual) solicitors would not act in Crown Court matters as from 7 April.

To bring the Crown Courts to a halt is a huge task. Not everyone is keen to do it but, around the country, this has attracted media interest.

In Hull, solicitors have stood firm on the protocol. An 81-year-old man was arrested for the attempted



*The panel at Conway Hall on 31 March. From L to R: Andrew Keogh, Ray Shaw, Nicola Hill, Paul Harris, Jonathan Black, Julian Hayes (partially obscured), Robin Murray (CLSA)*

murder of his wife. There had been an incident with a knife. His false teeth, glasses and hearing aid were taken from him by the police. He was charged and appeared in court in custody on a Saturday where he was represented by the duty solicitor. There was no bail application for a number of reasons. He was remanded in custody to the Crown Court until 16 April and was told he would not be represented, the judge would set a timetable and he would be entitled to ask for bail.

When he appeared, the proverbial hit the fan. The judge summoned the police station solicitors to a meeting and Hull solicitors went mob-handed in support. Eventually, the solicitor represented the 81-year-old pro bono in order to honour the protocol. The press will run with this case now until conclusion and the judge said he had received tweets from three MPs, one of whom was going to talk to Grayling.

This is what life will be like for our clients very soon. The Hull solicitors got the point across. I appreciate that this is easier to do in a close-knit legal community but I am at a loss as to what more needs to happen before solicitors in London stand up and fight together to save themselves.

## Judicial review

A pre-action letter was sent to the MoJ on 7 April on behalf of the LCCSA and CLSA. There are three grounds of challenge: firstly, the second consultation was so unfair, by virtue of the non-disclosure of the KPMG report, that it was unlawful. Secondly, the failure to give adequate reasons for the rejection of a key finding in the Otterburn report was unlawful. Finally, there was an unlawful failure to comply with the public sector equality duty – with regard to the impact on BME (black and minority ethnic) solicitors.

The MoJ was asked to withdraw the decisions announced in their response and to provide various documents. It was given until 6 May to respond. Members will be updated on progress.

The JR challenge is costly. We have already raised an incredible amount and many thanks to those who have donated. If you have not done so – and why on earth not? – please contribute to the fund via the LCCSA website, £250 per firm and £25 a member (if you can afford more, please give it). This seems a reasonable sum to protect your future.

## Invitation to the Lord Chancellor

I wrote to Grayling and renewed my invitation to him to meet with representatives from the LCCSA and CLSA leadership. As mentioned above, he has held

small-scale meetings with CBA leaders in recent weeks, following other similar meetings during the consultation period. It is not acceptable that he has not had the courtesy to meet in the same way with the leaders of the equivalent solicitors' organisations.

I received a response from Dr Elizabeth Gibby (not Grayling) at the MoJ, giving various reasons why a meeting need not take place. Needless to say, I will continue to write.

## The summer

It is clear we all need something to look forward to. Please join us on 4 July for our annual dinner at a stunning new venue, the Waldorf; and don't put away those flip-flops too early: the annual conference is in Alicante from 26-28 September for some CPD points and last-minute sun.

Our arguments are reaching the public. Legal aid and the demise of defence costs orders are very much in the news, following the acquittals of Bill Roache and Nigel Evans. Our Crown Court action also attracts press interest. The JR proceedings are putting pressure on the government. It is far from over. Let's keep fighting.

– Nicola Hill  
Kingsley Napley

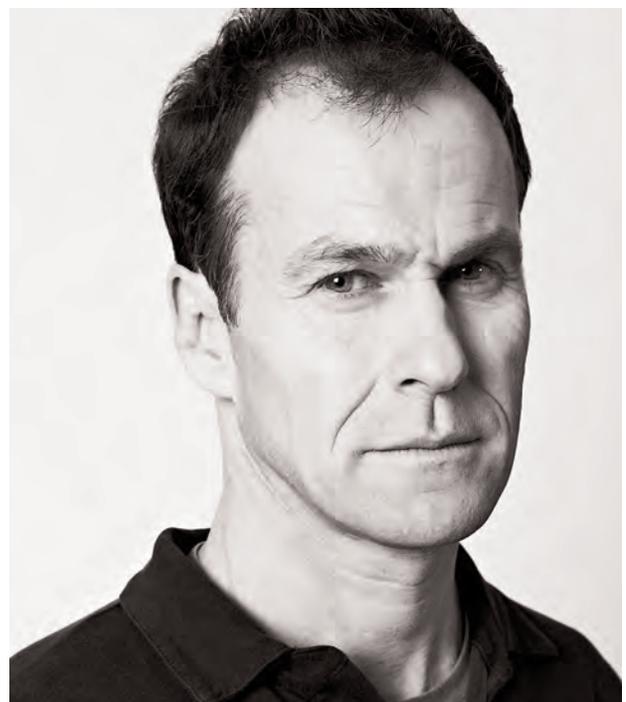
# Interview with Peter Moffat

**Q: When you were at the Bar, which chambers were you in and what sort of work did you do?**

**A:** I did Crime. I was in Rock Tansey's set (25 Bedford Row) in the late 1980s and early 1990s. Those were the good old days at the Bar. I was a pupil with seven other pupils and two of us were taken on as tenants. I remember going to the magistrates' court to do four or five remands in a morning and getting paid £30 a pop. I was aged around 28 and so you were quite flush as a single person, even living in London. It's stunning really, to think of the change that has taken place in 25 years. The atmosphere I knew was reflected in North Square (the series first appearing in 2000), with clerks pulling out wedges of cash from their pockets, paying for all the drinks.

**Q: You have said that one of the reasons for writing North Square and Silk was that "it was healthy for members of the public to know about a profession". Do you feel that the public is, generally, ignorant about the legal profession?**

**A:** There is massive ignorance about the legal professions. Occasionally, I think I've added to that with some of my inaccuracies, though, overall, I think I've done more good than bad. When there is a big



TV writer of *Silk* and *North Square*, Peter Moffat.  
Photographer James Rees [www.jamesrees.co.uk](http://www.jamesrees.co.uk)

trial and you read any newspaper to try and work out what the hell is going on, you can get no idea. This is true even of serious newspapers like The Guardian or The Times. The coverage is just wrong and uninformed and doesn't have to be.

**Q: Do you think that the government felt that the "fat-cats" myth would enable them to get away with the suggested cuts?**

**A:** I think that ignorance helps the government to do what it is now doing but I think the strongest single thing that makes it possible is that everyone thinks that "it's not going to be me who needs a lawyer". There is a clear distinction in their minds between law and the justice system and, for example, the National Health Service. I think it's very difficult to shift people's minds so that they believe it can happen to them.

That's why I wrote *Criminal Justice*. Ben Whishaw's character is Everyman, every mother's son, and the point of the drama was to take one man through the system. Actually, *Criminal Justice* would be a bit different now, even though I wrote it only five or six years ago. I think that, at every stage, you would have different things to say. I'm quite interested in the privatisation of everything, with Serco and G4S and so on, and there would be more about that if I was writing it now. And would the duty solicitor even be there? If two-thirds of duty solicitors are coming off the scheme, well, in *Criminal Justice*, it was a big part of the story that his solicitor was a shuffling old guy with eczema on his feet but now you would be lucky even to get him.

**Q: In the final episode of *Silk*, your leading character, Martha Costello QC, just disappears. Was her disappearance symbolic and, if so, what did it symbolise?**

**A:** Martha's disappearance at the end of *Silk* represents a number of things. She walks away. Slightly earlier, the character played by Phil Davies says that, in an adversarial system, there are competing narratives, the best story wins and that truth is the casualty. Martha is so passionate and of such integrity that, when somebody as powerful as him, who has to be speaking the truth because it's the last thing he'll do, is telling her that it's all just a game, then she has to walk away.

From my own experience of the Bar, I think the adversarial system works: I had no verdicts I didn't agree with, really. Even though there are many things wrong with it, the adversarial system is the best we've got. But it is probably true that I left the viewers thinking that it does not work.

And also Martha's disappearance is to do with the disappearance of that kind of barrister. In the final moments, she is looking across the road at her clerk Billy, who represents the old way of doing things. Behind him is Middle Temple Lane. Billy is crumbling, literally and otherwise, and it's untenable for her. As Maxine Peake

(who plays Martha) has pointed out, if that character was starting out now, aged 22, coming down from the north without family money, there would be no chance for her to have a career at the Bar.

**Q: When you spoke on BBC Breakfast about how government policy will mean, not only the demise of the working class barrister but also of the high street solicitor, the interviewer changed the subject. Is anyone listening?**

**A:** I was in Costa on Kentish Town High Street the other day when I heard two women talking to the barista there who wants to be a barrister and is doing some law training. The women said, "Don't do it, stop it now, there's nothing in it for you." He was quite shocked.

At the demo on 7 March, two first-year Law students came up to us and they told us that it's part of the culture at their university, from all the teaching staff and any visitors who come to talk to them, to tell them all not to go into practice. The thing they said to me was "There is no point in being martyred". This was two lovely bright 20-year-olds, with lots to say, who are being turned away.

**Q: At present, the lawyers' dispute with the government is subject to a rift between solicitors and the Bar, who, until this point, have been united in the fight. What is at the heart of the mistrust between the two professions?**

**A:** What a really tough question! It might be that obvious human stuff which might go something like: "I do all the work and you put on all the gear and get on stage. That's not fair."

Solicitors don't feature hugely in my programmes because they are about barristers and, in 60 minutes, telling the whole story of a trial, if you have a character in it which, on the whole, is not a protagonist, it's just easiest to put them in the background. And, in legal drama, there are a number of things you have to do to make it dramatic, one of which is that, effectively, it's as if nobody has ever read a witness statement. It is crucial to a drama that it feels as though the witness is telling their story live for the first time. So another reason why solicitors are not a big feature is because preparing witness statements is what they do.

**Q: Some of LCCSA's members were concerned about the scene where Martha suggests that a solicitor has advised the client to say "no comment" because the solicitor is only being paid a fixed fee and wants to keep the interview short.**

**A:** My intention with that bit was to say "The fixed fee is terrible." I did not mean to say "Solicitors are lazy". I was trying to say "The bastards aren't paying them properly." I'm sorry. Damn!

**Q: Solicitors are staging a Crown Court walk-out, following the success of the Bar's No Returns policy and there is likely to be a Judicial Review application with regard to the MoJ's latest policy announcement. Would you support them in that?**

**A:** My reaction to that is: hurray! What has got to happen is for the Crown Court to seize up. Then it's a real story. Serco will bring prisoners and it will be a nightmare scenario. So far, this has not really been enough in the news. It has been reported but it's tended to be somewhere like on page seven, hasn't it? This might bring it to the front page.

**Q: A possible outcome of the current disarray is a massive increase in solicitors with higher rights working in the Crown Courts. What would be lost?**

**A:** The Bar, like any other profession, is made up of lots of brilliant people, a few terrible people, and lots in between. The brilliant people are second to nobody in their management of masses of facts and the whole business of understanding what a case is all about and their ability to come out of that with flair and panache and character. It can be an extraordinary thing to see. The Bar goes on about the importance of expertise and specialisation and I think that some of the time it's really true. If that expertise goes, then, in those cases that really matter, defendants are going to be represented by people with inadequate skills and that can't be right.

**Q: Your dramas reflect current public suspicions about police. How can one get the message across that it is the law and lawyers which keep the state in check?**

**A:** My own professional experience dates from the 1980s when, in a left-leaning set of chambers, what was talked about was Stoke Newington police station, Brixton, Tottenham, the poll tax and the miners' strike. On the face of it and, according to record and inquiry, the police have got worse since then. In fact, they have been called institutionally racist. Like the idea that lawyers are not fat cats, the idea that policemen can be corrupt and dishonest is still tough for Joe Public to get hold of. Even though the Macpherson Report and stories about undercover



*Peter with Maxine Peake at the demo on 7 March*

police officers make the front page news, the general view is that they're OK.

**Q: What do you believe is wasting money in the criminal justice system?**

**A:** One example is the unbelievably generous contract the government hands out to run security at the Old Bailey.

I think the main problem is delay. Now, every barrister and every judge I've ever known gets to court on time. It's in their DNA and I'm amazed that anybody else is late to court, but, repeatedly, they are.

**Q: You have said that you wanted to create a strong female central character in primetime TV and Maxine Peake's role follows that of Helen McCrory in North Square. Why did you feel the urgency to create these characters?**

**A:** The thing about Martha is that she is just great, not in a woman way, but just great. She is not obviously defined by her personal relationships, she doesn't have a drink problem or difficulties juggling home and work life, she is simply fantastic. I confess that I'm an over-writer. I do it less now but I have a tendency to like all my characters to be smart and to say really clever things all the time. They all do it, including the women!

## Stephen Lawrence: the Lessons

The conviction of Gary Dobson and David Norris for the murder of Stephen Lawrence, in January 2012, marked the high point in the Lawrence case. My client Neville Lawrence stated with emotion that at last he had achieved "some justice" and thanked the police for their efforts in bringing some of the perpetrators to justice. On the other hand, the publication of the Ellison

Review into police corruption and undercover policing on 6 March 2014 marks a further low point in the saga.

### **Inquiry after inquiry**

I was with Mr Lawrence when he read the Ellison findings and heard the Home Secretary's announcement of another public inquiry into the

Metropolitan Police. This time, his tears were for the injustice of it. Two decades after his son's death, he was still having to deal with new evidence of police misconduct in relation to his family. He already knew from the Macpherson Inquiry in the late 1990s that institutional racism had infected the first police investigation into the death but now he had to contend with knowing that, whilst the perpetrators had roamed free, he and his family were spied on. He also discovered that the police knowingly withheld evidence of corruption from Macpherson such that the Inquiry's findings on this issue could no longer be relied upon. Finally, the Ellison report reinforced Mr Lawrence's view that neither the police nor the Independent Police Complaints Commission could be relied upon to uncover police wrongdoing, both having recently conducted reviews which were criticised by Ellison. As he faces the prospect of yet another public inquiry, Mr Lawrence's confidence in the police has again been destroyed.

The Home Secretary's statement in the House of Commons could leave no one in any doubt as to how important these issues are. She said "[the] totality of what the report shows is deeply troubling". She described the findings as "profoundly shocking" and of "grave concern" and of "the utmost seriousness". She did look shocked, but it is not at all clear that all the right lessons will be learned.

On 22 April 2014, it will be 21 years since Stephen's death and yet the Lawrence family's struggle for justice has no end in sight. But, for every single high profile victim, there are hundreds of lesser known victims of mistreatment by the police and other detaining authorities. Many of these also have to fight to get to the truth and this is often, or perhaps usually, only possible because of legal aid and a supply of committed, publicly spirited lawyers who will take on complex and risky work for low pay. Such lawyers act not only as advocates in court but also to gather evidence which can involve a battle for disclosure from a reluctant defendant. In circumstances where alternative mechanisms, such as the complaints system, are not fit for purpose, these cases usually provide the only way to highlight and remedy state wrongs.

### Holding the State to account

At the same time as Theresa May is raising public concerns about police accountability, it is notable that her colleague Chris Grayling is systematically dismantling the apparatus which allows individuals to hold the State to account for wrongdoing. Taking a multi-pronged approach, he is restricting access to justice in a number of ways, mostly by cutting off the funding which makes such cases possible. Under rules about to be brought into force, lawyers in judicial review cases will only be paid if the court grants permission to proceed to a full hearing. Therefore, lawyers will have to carry out large amounts of work

at risk of no payment at all. Judicial review cases are inherently risky in any event and legal aid lawyers who are already stretched will feel less able to take on difficult cases.

Changes to the merits assessment have also, as of January 2014, removed all funding from "borderline" civil cases, despite the fact that these were previously only funded if they were in the public interest. This change seems to be directed at putting out of scope those very cases that test the law and the exercise of State authority – cases like the "Snatch Land Rover" case. Last summer, I represented families of soldiers killed in poorly armoured vehicles in the Iraq conflict. This became a test case defining the legal obligations owed by the Ministry of Defence to our own soldiers in combat. The Legal Aid Agency conceded that it was a case of "wider public interest" and funded it, although the merits were classed as "borderline" given the uncertainty of the legal issues. There was no alternative source of funding and therefore, under the new rules, the case could not have been run. Of course, the Ministry of Defence would welcome the removal of funding for such cases – and this cannot be characterised as an unintended consequence of these changes.

Another deeply concerning aspect of the proposed cuts is the "residence test". Although currently subject to a judicial review challenge, if this provision is implemented as the government intends, it will mean that legal aid is not available for most civil cases unless the claimant is "lawfully resident" in the UK and has been continuously resident for at least a year. This would make those in our Immigration Removal Centres peculiarly vulnerable to mistreatment and failures in care. Similarly, the removal of funding for prisoners to challenge their conditions risks lowering standards of care and is likely to be counter-productive to the aim of rehabilitating offenders. Given the increasing number of private providers in the immigration detention and prison systems, the likelihood of falling standards is real – as corners are cut to increase profitability. If we, as a society, believe that it is important to recognise human rights for "everyone" and not just the "haves", then we must provide a mechanism for those less fortunate than ourselves to uphold their rights.

We did have a mechanism: legal aid lawyers are accustomed to representing vulnerable clients, those living with disabilities, poverty, low education and language barriers; but it is being dismantled. The government claims to be shocked by the outcome of the Ellison review and keen to learn lessons from the police failures it revealed, but, by undermining access to justice and the ability of the individual to hold the State to account, they will achieve, less, not more accountability.

– Jocelyn Cockburn and Natalie Sedacca  
Hodge Jones & Allen

# Universities Look at the Cuts

*An academic workshop on: what does it mean to be a criminal legal aid lawyer in the 21st century?*

On 19 March, the University of Warwick, in conjunction with Monash University (Victoria, Australia), hosted a workshop with academics, practitioners and civil society actors to discuss the impact of legal aid funding cuts in relation to the changing face of the legal profession; the lawyer/client relationship; and the broader social consequences. This provided an opportunity to draw from first-hand experiences and expertise to examine how the cuts may shape the future of the English legal system. A second workshop examining these issues in the Australian context will be held at Monash University in July.



*The Warwick and Monash University Access to Justice research team (L to R): Ass/Prof Bronwyn Naylor; Prof Jackie Hodgson; Prof Jude McCulloch; Dr Asher Flynn; Ass/Prof James Harrison; Emeritus Prof Arie Freiberg; and Ms Natalie Bryom*

## Legal aid crisis crossing borders

Academics from Australia's Monash University – Dr Asher Flynn, Professor Arie Freiberg, Professor Jude McCulloch and Ass/Professor Bronwyn Naylor – attended the workshop to reflect on the situation in the Australian State of Victoria, where funding cuts to social and welfare services, underpinned by a government rhetoric of austerity, have increased demand for legal need, while simultaneously increasing the extent of unmet legal need. In this setting, Victorian criminal courts are working with minimum levels of legal aid resources, and, mirroring England, this has brought into sharp focus concerns of legality, due process and the ability for vulnerable individuals to access justice.

Across both jurisdictions, government justifications for cutting funding have revolved primarily around saving money; yet it is highly unlikely the cuts will deliver significant savings, as they fail to consider the broader implications, like higher levels of incarceration, fewer quality lawyers working in legal aid and the resources/costs involved as unrepresented defendants attempt to navigate the complex legal system.

Workshop attendees discussed such impacts and what opportunities or best practice models might be drawn upon to respond. It was recognised that in negotiating the cuts, lawyers have been forced to reconcile legal ethics, morality and financial constraints in determining when and how they can assist the most people with decreasing resources. This was highlighted in the changing face of the legal profession and the lawyer/client relationship sessions,

which illuminated the problematic shift for criminal legal aid lawyers in how they must respond to, and represent, their clients.

## The conveyor belt system

The sessions were framed around the question: what does it mean to be a legal aid lawyer in the 21st century? Academics and practitioners alike responded to this, identifying the shift the cuts would force towards a conveyor belt mentality: a process that each client/case would be compelled to fit within. In this context, the lawyer/client relationship was seen as becoming less about the individual and more about a “process” of representation. It was argued the cuts would strip discretion from lawyers to advise clients in a manner reflective of due process, to respond instead in an institutionalised manner, dictated by structure, managerial direction and money. In this way, it was predicted that lawyers may not always be able to act in the defendant's best interests; a fixed fee, for example, was seen to encourage opportunities for “non-caring”, on the basis that lawyers are literally not able to afford (in monetary or time measures) to fully comprehend or consider each client's individual needs.

Another concern is the decreasing expertise that may permeate the criminal law profession. Academics discussed the trend in students making career decisions based on paying bills, not necessarily the most satisfying or rewarding legal work. Thus there were concerns that the existing expertise in criminal law would not be

replaced as readily as in areas like commercial law, where government cuts had less impact.

On entirely pragmatic grounds, it was questioned whether the government had given sufficient thought to the increase in police and court costs/resources that would be wasted through a minimalistic model of legal representation. To date, there has been little government recognition of the economic benefits of lawyers within the legal system; this is a major flaw. It is well recognised, for example, that “problematic” clients can dramatically slow the legal process. In the past, this has been mitigated by the involvement of lawyers who can advise clients, and assist in managing them through the process more efficiently. By essentially removing the lawyer/client relationship and the capacity to take into account individual client needs, defendants will be less able and willing to disclose information to their lawyer. In turn, they will be less susceptible to being “managed” by their lawyer. Aside from this increasing the resources/costs in other areas of the legal system, it will also lead to individuals feeling less satisfied, and less like they have received justice – an outcome research consistently shows reduces legitimacy and confidence in the law, leading to lower levels of co-operation and an erosion of trust in all layers of the legal system.

### A two-tiered system of justice

A tangible fear exists among English practitioners and academics that legal aid cuts are creating a two-tiered system of justice: one for the haves; one for the have-nots. In this system, those who can afford representation will receive justice; those who can't,

won't. While we cannot predict the full impact of the cuts, we know this. The cuts have the potential to impact on due process. They have the potential to negatively change the relationship between lawyers and their clients, and they have the potential to fundamentally change the operation, values and safeguards of the English legal system – once regarded as a model of procedural and substantive justice.

From here, it is vital that a new narrative around the law is created and the dominant view that legal advice is unnecessary, and that legal aid cuts are unavoidable, is discounted. Public understanding and debate concerning the fundamental importance of procedural safeguards and due process must be reinvigorated. How people need, use and understand the law is integral to ensuring that any funding cuts avoid radically re-shaping legal values. Academics, practitioners and activists must continue to work together to rebuild belief in the value of law; in the value of accessing and understanding law; and in the value of the quality of law. If we publicly illuminate the importance of meeting legal need, we might be able to redress some of the consequences of ill-considered, quick-fix cuts, which can irreversibly damage the rule of law as we know it.

A report from the workshop and more information on the Monash/Warwick project and workshops can be found at:

<http://www2.warwick.ac.uk/fac/soc/law/research/centres/accesstojustice/>

– Dr Asher Flynn, lecturer in Criminology within the School of Social Sciences at Monash University

## Book Review

### In Love's Shawl – poems by Greg Powell

Centaur Press

*Christopher Stoakes is a former lawyer. His Selected Poems 1970-2010 is available from Amazon.*

In Love's Shawl is Greg Powell's first collection of poetry. Poetry is like golf. The most you can hope for in a round is two or three good shots. In a collection by a poet who's new to you, if you can find a few you like, you're doing well.

The key is musicality: poetry is music and a poet with a tin ear is going to be clunky. Thom Gunn had a tin ear. He struggled to avoid writing in iambic pentameters so took to syllabics (seven syllables to a line). Syllables have got damn-all to do with stress, with music. So can Greg Powell swing a club?

In the real world, Powell has far more important

things to do than write poetry, like run a law firm (Powell Spencer & Partners), act for the family of a Guantanamo detainee, be president of the LCCSA, campaign against the accursed legal aid cuts and regularly champion the criminal law on radio and TV. Yet in between all of that he's found time to write this:

Love does not have / The smooth roundness / Of  
this stone taken from the pebble / Beach where  
we walked / Or its weight / So similar to your  
hand in mine

And this (on a train):

I had not appreciated the vanity of nature / Until  
I saw on the other side of the window / Clouds  
posing as the muscles of beasts

In terms of language, Powell has a touch of the pyrotechnics, like an early Craig Raine or Paul Farley:

Listening to the bat / Squeak of the rundown /  
Smoke detector

The brilliant light has gone / Replaced by a colour  
which if there were / Ghosts they would choose  
to wear

The disposable plastic bags in the tree / Look like  
birds, in some cases asleep, / In others obviously  
dead, thrown with / Killing force onto the forked  
branches

So Powell is a poet, no question. But what does he  
write about? You want poetry to be about the big  
stuff, the things that move us. Philip Larkin was asked  
to chair a poetry competition. "Where are the love  
poems and the poems about nature?" he asked. "Oh,  
we got rid of all of those," his fellow judges said.

Powell's best poetry is his love poetry. In this, the  
poet he most resembles is Brian Patten and you can't  
get much better than that.

Is this the way of it / Moments of love that in the  
/ Remembering are so little of / What was  
possible

So should Powell have chucked in the law and  
become a full-time poet instead? In a sense he has:

We are always what once / We may have been, /  
Dreaming as often in the day / As the night of  
our / Other glimpsed lives.

– Christopher Stoakes

## Letter to The Advocate

### Justice: Unplugged

I have nothing against the good people of Uxbridge.  
They seem charming, and their lunches are tasty. Nor do  
I resent travelling halfway to Reading on the  
Metropolitan line for a client who was arrested in zone 2.

My bonhomie begins to wear thin, though, once I  
enter the court building. Only custody matters can be  
heard until lunch, I am told. My client is awaiting  
sentence and, despite his rather cavalier attitude to  
court appearances, he remains on bail. As a reward,  
we must wait behind custody matters. It feels as  
though we are co-defendants in a foreign land,  
hopelessly drifting towards our fate.

During the gargantuan tube journey, my phone  
battery died. So I glance around for a plug and am  
confronted by this (pictured). A plug which serves no  
purpose other than to taunt power-needy members of  
the public. I ask the court clerk about it and he shrugs.  
Another lawyer makes the age-old joke about abstraction  
of electricity. Three weeks later, I have just thought of a  
good comeback about it being non-chargeable.

I ask if the court has free WiFi, and I swear they  
almost tannoyed the court psychiatrist. I want to say,  
"What about digitalisation?" but am worried about  
being sectioned.

I manage to get my hearing adjourned until 2pm, and  
then leave court to search the alleyways of Uxbridge for  
a spot to do some real work. In McDonald's, I discover  
I am allowed free WiFi, provided I "log on" which  
means telling McDonald's plc all of my personal contact  
details. But I got some work done, and so this story  
ends well – especially for McDonald's.

The next day, as duty at Westminster Mags, again I  
am waiting. This time it is Serco who have lost three  
prison inmates. Have they checked inside the prison, I  
wonder? I ask the court office staff about free WiFi.  
They refer me to a security guard on the ground floor,  
who is clearly the Svengali of all things web-related. I



ask the guard about free WiFi. "Free?" he says, as if I  
have requested a slug salad. But when he sees the  
earnest look on my face he softens, and looks at me  
kindly. And I can see he is thinking:

"Ah, another poor lawyer who believes in unicorns,  
leprechauns and digitalisation of the court system".

There is a serious point to all this. The aimless  
waiting around at courts must end. It is financial  
suicide not to be doing other work. It is 2014.  
Everyone on earth works with access to the web, and  
mobile phones. Everyone, it seems, except Abu  
Qatada and Uxbridge magistrates' court. Courts must  
facilitate free online access for all court users. Until  
they do, it is not a place of work and so we have no  
business waiting there indefinitely due to the  
negligent delays caused by others.

– Ali Parker  
Saunders Law

# Fishbone Problem Solving Tool

I don't know what it means either – but if you work backstage at Camberwell, your job may depend on it. The MoJ imposes a bureaucracy on the Courts that is as bad as the one we suffer.

The following information was divulged to me after several pints by a reliable source. I know they are reliable because they are hanging up by their thumbs somewhere as you read this; the least I can do is honour their memory.

Through slogan-covered corridors, staff are herded in for their Team Information Briefing, after an early morning sing-song. The MoJ flag is raised and saluted and the consciousness-raising begins. Miscreants are paraded in shame to be ritually peppered with a shower of staples from cowering colleagues. They are disciplined for failing to parrot such fluff as Keep Calm and Rely on Your Team, when they discovered that said team have been moved to Croydon, that no-one told them and that they are all being given a Formal Warning for being late.

Welcome to the Continuous Improvement Hub, situated in the court library. No longer a scene of quiet research and study, where dozing DJs would be gently shaken awake to shuffle off to do justice when the legal adviser noticed it was 11am, it is now plastered with more placards than a Socialist Workers Party meeting. The said “fishbone tool” vies with coloured block-graphs and meaningless slogans from “10 Steps to Effortless Management” and “Take a Break”. You can't see the books for wall-to-wall wallyisms on a whiteboard.

When a District Judge or a highly trained Justice steps from the court room to their chambers, they are forced to gaze on a sequence of eye-level laminates by luminaries such as Divine Bradley (winner of the Golden Brick Award 2007) and Michael Jordan, the basketball player. His advice that “Talent wins games but teamwork and intelligence wins championships” is doubtless essential for chucking a ball in a basket but less helpful in determining guilt or innocence.

Treated as 10-year-olds without their games kit, our DJs and Justices troop that trail of tears leading to The Wall. They then have to read:



## “STAKEHOLDERS

- Improved joint working evidenced by
- 1/ Maturity Assessment scores
  - 2/ Satisfaction survey
  - 3/ Feedback – AEM and Spring meetings, court user groups
  - 4/ Improved overall performance and end to end process.”

ALS/Capita's interpreter must have been late, as usual.

Below, the placard screams: “WHO ARE OUR CUSTOMERS?”, next to a picture of a policeman waving a truncheon, a man shaking some prison bars and a gaggle of barristers in wigs. It is a primary school run by North Koreans.

So what? Is it no different from British Gas or any town hall? Wrong: it's a system of justice for trying fellow citizens, not a re-education camp for errant form-fillers. Why does the MoJ think they have to be constantly reminded of this guff? Aren't the judiciary and the executive supposed to be separate?

– Bruce Reid



Save Legal Aid

