

LEGAL ACTION GROUP: 25 YEARS

LAG'S early days: some reflections



Michael Ann Mullen

Cyril Glasser, a founder member of LAG, does a 'friendly stocktake' of LAG's success over the last 25 years. In doing so, he examines the extent of LAG's direct influence on legal services policy, the changes in the legal services scene and how the group has matched up to the early intentions of its founders.

legal services for the mass of the population. But it has been much less successful in helping to mould the kind of political changes in the legal services field that it has felt are needed.

Recognition of this failure led the group, early on, to a change of direction from its original role. Initially, LAG saw itself as closely involved in assisting in policy making by the government and the Law Society but, subsequently, it moved towards a more critical attitude not only on the nuts and bolts of the delivery of legal services but also on wider issues of the administration of justice and civil liberties.

An organisation which has succeeded so well in bringing together lawyers, social and advice workers and academics to discuss common interests has had to face the fact that perhaps a majority of its subscribers and readers of *Legal Action* use LAG's services not because of the views expressed by the group (always an important point of reference for media comment) but because of the articles on law and practice and the information about welfare law.

As LAG begins its second 25 years its future seems assured, and it is a tribute to say that it is difficult to imagine the legal services world without it. But nobody associated with the group doubts that the next

The fact that LAG has reached its Silver Jubilee is plainly a matter for some pride and self-congratulation. LAG's unique combination of campaigning, publication and conferences, as well as the dissemination of information through its monthly magazine, gives it a special position in the legal services world. Yet I believe that a friendly stocktaking results in a somewhat mixed verdict. Few would doubt that LAG has had considerable success in its educational role and has played an important part in the debate about our coherent strategy for

few years are likely to produce new problems and concerns, especially during the period of acute economic stringency.

Setting the scene

The origins of LAG are to be found in the development of the legal services movement of the mid-1960s, using ideas first imported from the USA and the Office for Economic Opportunity (OEO) programme, in which the development of law centres played such a distinctive part. In this country, attention focused on the rediscovery of poverty amidst comparative affluence and there was a call for stronger legal rights for the poor. The statutory legal aid scheme had been administered by the Law Society since its introduction, in a truncated form, in 1950, with little interference from the Lord Chancellor's Department except in respect of financial eligibility criteria. The scheme was dominated by divorce and personal injuries litigation. The advice scheme was all but a dead letter. Few solicitors practised in poor areas. To outsiders, the Law Society seemed smug and complacent and too concerned with acting as a trade union for those working for clients well placed to pay for the services provided, although successive legal aid secretaries of the society did have an important influence in trying to initiate substantial changes in its attitudes.

The arrival of the Labour government in 1964, with Gerald Gardiner as Lord Chancellor, seemed to herald radical changes in the administration of justice. Michael Zander, combining an academic career with

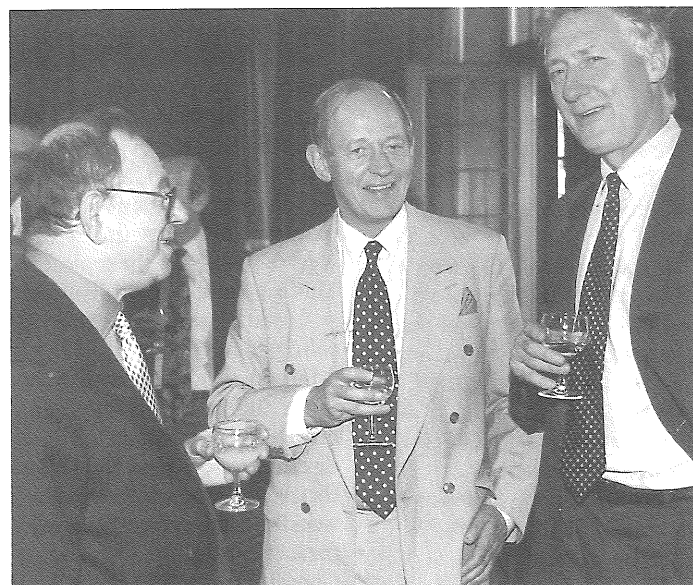
a job as legal correspondent of the *Guardian*, began a series of campaigns designed to encourage the legal profession to modernise its attitudes towards the consumers of potential legal services. A seminal book, *Lawyers and the Courts* by Abel-Smith and Stevens, which took an irreverent look at the history of lawyers and the courts over the previous 150 years, was widely read, as were its conclusions that the legal profession was reactionary and largely unconcerned with the provision of legal services for the poor.

Inevitably, these developments brought together a number of practitioners and academics who believed that the lawyers' traditional role as agents for the rich and well-to-do should be changed, and subsidised legal services with a salaried component exclusively concerned with the legal needs of ordinary people should be developed. The most important initial fruit of this collaboration was the publication of a pamphlet by the Society of Labour Lawyers urging the introduction of a number of law centres, *Justice for All*. A practical result of this fervour was the establishment of Britain's first full-time law centre in North Kensington in July 1970.

Law Society reaction

In the face of complaints of indifference, the society responded, at first, by condemning law centres and then by publishing proposals which envisaged a limited number of centres under its control, the establishment of a salaried liaison service and the introduction of an advice and assistance scheme. The ensuing debate was effectively refereed by an increasingly influential Legal Aid Advisory Committee encouraged by a Lord Chancellor's Department which, for financial and administrative reasons, was beginning to take a growing interest in policy making. The Legal Advice and Assistance Act 1972 which resulted from these discussions seemed to endorse the society's views on the future of legal services. But the real facts were rather different. Although the new scheme was useful, it was badly constructed and tried too hard to place the provision of the new services

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Jean Dyer, Andrew Phillips and Jenny Levin

within the tightly constructed 1949 Act, which itself badly needed revision. For financial reasons, only one advisory liaison officer was appointed, who worked part-time in Railton Road, Brixton, for a comparatively short period and then was transferred to Chancery Lane to do rather different work on a national basis. The appointee, Simon Hillyard, was to play an important part in the developments which were to follow. No law centres were ever set up under the Act – there was never any strong pressure to do so as locally based and separately funded initiatives with their own management structures emerged.

Establishing LAG

Dissatisfaction with the apparent failure of the society to encourage a more active approach to legal services and the role of non-lawyers made it clear that some sort of co-ordination was needed for the burgeoning movement. The Nuffield Foundation had funded a Legal Advice Research Unit, headed by Pauline Morris and Susan Marsden, the latter a barrister-journalist, formerly with the National Consumer Council, who was the author of a much praised and influential pamphlet on the difficulties of pursuing small claims in the county court.

They were responsible for convening a small meeting, which I chaired, and which discussed possible co-operation in the legal services field. I had been especially impressed by an OEO initiated publication, the *Clearing House Review*, which brought new case-law and legislation to the attention of welfare law practitioners. There was some support at the meeting for greater co-ordination of effort, but the initiative for something more concrete came from Simon Hillyard. Shortly afterwards, he approached me, Andrew Phillips, a practising solicitor who had an interest in developing legal education in schools, and Richard White, a solicitor turned academic who specialised in legal services research at Birmingham University. He suggested that we should meet the society's newly appointed secretary for public relations, Gerald Sanctuary, who was keen to encourage a Young Solicitors' Legal Aid Group. This meeting, which has sometimes

given rise to the erroneous suggestion that the society played an important role in the establishment of LAG, led Andrew, Richard and me to decide that something more independent was needed with a wider membership than practising solicitors. With the help of Simon, we drafted and signed a letter to the legal press proposing the setting up of a new group and inviting comments. Andrew agreed to be co-ordinator for the response which proved to be very extensive, and came from all parts of the country from practitioners, articulated clerks, advice workers and academics. In November 1971, a crowded meeting of about 80 people who had replied to our letter was held at Andrew's office and enthusiastically agreed to the formation of a new group to act as a catalyst, to raise money to launch an information service and to monitor legal services around the country. An ad hoc committee was appointed and within a few days the title Legal Action Group was being used – although nobody is now certain who actually suggested it.

Early developments

A period of intense activity followed. Andrew Phillips, who was to become first chair of the group, corresponded with a large number of people and organisations on our behalf and proved himself very skilful not only in handling an often squabbling committee with his indifference to the ideological disputes which racked the rest of us, but also in deftly negotiating a grant from the Nuffield Foundation and premises at the Lodge. The obvious choice of director for the group was Susan Marsden, who was unhappy at the Research Unit and clearly relished a change to something of an organising and journalistic nature. Nobody associated with the early days of LAG has any doubt that the combination of the smooth-suited and talking Andrew, and the professionalism of Susan was principally responsible for the foundation of LAG's success. Indeed, the organisation owes both of them a great deal, for without their energy and administrative ability LAG would have foundered at an early stage. The group was formally constituted as a charity limited by guarantee and we were in business.

By this time the task of recruiting mem-

bers and staff had begun. Clive Morrick became assistant director and Jean Dyer was appointed office manager and worked tirelessly. The idea of an information service was replaced by the suggestion that we should publish a regular bulletin of news and comment. Even as experienced a legal journalist as Tom Harper doubted whether such a journal could be successful but by the end of 1972 six issues had appeared, at first a slim, duplicated sheet and then a printed *Bulletin*. A first annual general meeting attracted over 100 people who had a vigorous debate on the future course of the group which had already attracted a membership of some 320, the bulk being practitioners. By June 1973, the first LAG courses on welfare law were attracting large audiences. Area convenors were being appointed to stimulate local activity. The *Bulletin* was carrying many features which are familiar today – a mixture of editorial comment, news, information and LAG affairs in a 'soft' section, and articles on legal developments in case-law and legislation in a 'hard' section dealing with specific areas of poverty law such as housing, social security and employment. An article by Jean Dyer in the June 1973 *Bulletin*, about a friend who had enormous difficulty in finding a solicitor, was the first which attracted wide attention outside the group's membership and the story was repeated many times in subsequent *Bulletins* and at legal services conferences.

At the same time, the LAG committee became very active. A number of us had given evidence to the advisory committee and had represented LAG at the advisory committee conference, chaired by Sir George Haynes, which was to become such an important forum in policy discussion and decision making. An additional factor was the appointment, as secretary of the advisory committee, of Derek Oulton, a dynamic civil servant and co-author of the standard work on the legal aid scheme, who was to be responsible for drafting a much quoted part of the *23rd Legal Aid Report* dealing with the inadequacies of legal services arrangements. He quickly became a friend and goad of the group and encouraged it in a number of ways.

Early achievements

In retrospect, 1974 represented the high point of LAG's direct influence at that time. Its membership had risen above 1,200. It had largely supplanted the Law Society as the originator of new ideas. The new government was encouraging and funding some law centres, albeit on a comparatively small scale. The group's vice-chair, Peter Urquhart, became a member of the advisory committee. Richard White, a committee member, was appointed to the Lord Chancellor's Department with a brief to draft a report on legal services needs. I was appointed as special consultant to the advisory committee to look at the statutory scheme and its finances. In March, the group was calling for priorities in legal services to be formulated and criticising the expenditure on undefended divorce. By

the end of 1974, LAG had produced its most important policy document to date, calling for the establishment of a Legal Services Commission to supplant the society as manager of the legal aid scheme and to co-ordinate all legal services activities. If the document had substantial analytical flaws and dealt with a situation, then past, where control of policy still rested with the society, it seemed to capture the aggressive mood which infected those involved in the subject.

Did anything of importance result from this activity? Richard's report has never been published, but it is known that his study identified a number of areas badly in need of law centres and called for the establishment of legal services committees of a type subsequently created in Greater Manchester. The restrictions on legal aid, announced in 1977, were designed to create savings which would be large enough to fund not only considerable increases in the eligibility limits, then at an all-time low, but also to reduce legal aid contributions and finance law centres. The Legal Aid Act 1979 did enable these changes to be effected, though some for a short period only. The money for law centres was never provided nor was legal aid extended generally to tribunals, as many had urged. There was a large growth in the number of criminal legal aid orders granted and many duty solicitors schemes were set up around the country. But the shape of things did not change materially and many criticised the actual terms of the new arrangements for divorce as unsatisfactory. It is at least arguable that more substantial changes might have come if the impetus for change had been maintained. But, by 1977, a new element had entered the situation and the £1m earmarked for law centres had been lost for ever.

The Royal Commission

This new factor was the appointment of a Royal Commission on Legal Services (the Benson Commission) in 1976, set up after an energetic and opportunistic campaign led by Jack Ashley and LAG committee member Michael Zander. I argued that, although a limited inquiry might be useful, the campaign for a royal commission was somewhat misguided and would probably lead to an inadequate report, however good the membership. But LAG felt obliged to join in the campaign, and its letters to the Prime Minister on the subject suggested weakly that the establishment of the commission need not hold up continuing reforms. As, perhaps, a vindication of the group's position, Susan was appointed a member of the commission, but she was never able to muster enough support to write a powerful minority report.

In the event, much of the evidence presented to the commission, including LAG's, was uninspiring, and the group never had much influence on its thinking. When the commission's report emerged in October 1979, after one of the worst organised and most badly researched inquiries of modern times, LAG led the criticism with which it was greeted by

the great majority of reformers. The report was rapidly ignored, in large part, by the government and the profession. Although it made a number of useful recommendations and used some of the formal rhetoric of LAG's approach, these concealed a poorly based objective to shore up the status quo and the economic position of the profession.

Since the royal commission reported, there have been very considerable changes in the legal services scene. Legal aid has become one of the fastest growing heads of expenditure paid for out of public funds, involving as it does several billion pounds gross. A significant section of the profession now relies, in whole or in great part, on the income it provides. The Legal Aid Board supplanted the society as administrator of legal aid in the late 1980s but, although it has tightened up on administration and research, it has never provided the leadership and planning which a Legal Services Commission might have given. In part, this has been because the government department concerned has not, in recent years, managed to provide clear policy objectives.

LAG has been fortunate in having a group of outstanding directors over the last 25 years. Susan Marsden provided the professionalism and energy which assured the early success of the group, Ole Hansen developed its campaigning style, while his co-director Jenny Levin raised the information and education side to a very impressive level. Roger Smith, director for the last 11 years, has concentrated on work concerning the integration between legal services and the justice system generally while continuing his predecessor's work on the education side. This has been most marked in the production of *Legal Action* and the publication of a vast range of books on welfare law subjects. Now LAG is poised to go into electronic publishing, offering new types of services for its subscribers.

How then has LAG matched up to the early intentions of its founders? On the information side, the group has surpassed our wildest expectations. LAG has succeeded in helping

to develop a wider legal services framework than was possible 25 years ago; it has seen control of legal aid pass from the society, although not necessarily in a satisfactory way; the government has become a vital player and determinant in the field; value for money has become all important and this has led to an increasing concentration of resources in the hands of those who do the work in bulk; there is now widespread acceptance that non-legal agencies have a large and vital job to do in the field; and we appreciate more fully that the civil and criminal systems need reform in an integrated way in order to ensure that legal aid funds are spent wisely.

There are clearly troubled times ahead for the sector. Current reviews of legal aid and civil procedure may herald large-scale changes such as franchising, public defenders, special arrangements for multi-party cases, different remuneration arrangements and increasing use of non-lawyers. The enthusiasm of 25 years ago may have waned in the face of new economic difficulties and cuts in services, yet the same needs remain. Effective access to legal services for the mass of the population remains paramount in a more complex world where rights and responsibilities are being increasingly codified. As with other areas of public consumption, such as health and education, legal services badly need clear aims and organisation. LAG's campaigning aims may not have been realised, but the group's independence, professionalism and experience ideally suit it to have an important part in the continuing debate.

Susan Marsden and Ole Hansen

