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RESEARCH ARTICLE

Conspiracy! Or, when bad things happen to good litigants in person[1]

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Abstract
This paper considers the relationship between litigants in person (LiPs) and conspiracy theories and seeks to answer two questions: how, and why, do some LiPs come to be conspiracy theorists? The majority of LiPs, of course, do not become conspiracy-minded. There is also no evidence that LiPs are more likely than anyone else in legal proceedings to be conspiracists, only, perhaps, that it is more obvious when they are. But there continue to be individuals who have conspiracist explanations for difficulties or failures they experience throughout legal proceedings. And while it is widely held that some LiPs hold eccentric beliefs about the law, there has been little attempt to understand how and why LiPs may come to acquire or articulate these beliefs. This is presumably because it has not been considered important to interrogate the views of people already often assumed to be 'difficult' or eccentric. This paper contends, however, that trying to understand how and why these conspiracist beliefs are acquired matters very much. This is because conspiracy theories can give us a critical insight into how negative experiences of litigation can result in a loss of faith or trust in legal institutions.

Keywords: civil justice; legal profession; litigants in person; socio-legal studies

Introduction

This paper considers the relationship between litigants in person (LiPs) and conspiracy theories and seeks to answer two questions: how, and why, do some LiPs become conspiracy theorists? The majority of LiPs, of course, do not become conspiracy theorists. There is also no evidence that LiPs are more likely than anyone else in legal proceedings to *be* conspiracy theorists, only, perhaps, that it is more obvious when they are.[2] But there continue to be individuals who use conspiracy theories to explain the difficulties or failures they experience throughout legal proceedings. And while it is widely held that some LiPs hold eccentric beliefs about the law, there has been little attempt to understand how and why LiPs may come to acquire or articulate these beliefs. This is presumably because it has not been considered important to interrogate the views of people already often assumed to be 'difficult'. This paper contends, however, that trying to understand how and why these beliefs are acquired matters very much. This is because conspiracy theories can give

[1]This paper's title is influenced by Dieter Groh. See D Groh, 'The temptation of conspiracy theory, or: why do bad things happen to good people? Part 1: preliminary draft of a theory of conspiracy theories' in CF Graumann and S Moscovici (eds) *Changing Conceptions of Conspiracy* (New York: Springer, 1987).

[2]LiPs in this study who did express belief in conspiracy theories sometimes expressed them in the courtroom itself. Represented individuals who hold similar beliefs would presumably be prevented by their legal representative from doing the same.

us insight into how negative experiences of litigation can result in a loss of faith or trust in legal institutions.[3]

I advance this argument through three key claims: first, that legal professionals and legal scholars tend to pathologise both those who believe in conspiracy theories and LiPs in an unhelpful way, by focusing on their individual competence or psychology. Whilst there is no direct research on LiPs and conspiracy theories, work that has touched on litigants and repeat litigation shares a traditional conception of LiPs as difficult, litigious or paranoid individuals.[4] Consequently, the presumption in such cases has been that these are pathological individuals who happen to be involved in legal proceedings; their experience as litigants is less, or not, relevant. I argue instead that this is symptomatic of how laypersons are treated in the civil justice system and demonstrates how we can fail to take seriously LiP claims about their experiences.

Secondly, I argue that examining how and when belief in conspiracy theories arises can provide insight into the legal consciousness of LiPs and how this is affected by repeated, negative experiences of litigation.[5] Far from confirming litigant paranoia, this paper contends that these behaviours and beliefs are affected, reproduced and at times created by contact with legal proceedings. So, while the malign authority that conspiracy theorists may invoke to explain their experiences is fictive, what leads to these beliefs – a perception of deliberately unfair treatment – is rooted in genuine and systemic experiences of exclusion, and these exclusions happen to all LiPs to differing extents in the civil justice system.

Finally, this paper argues that too often we make a distinction between 'worthy' and 'unworthy' LiPs, whereby we bracket off those we perceive as problematic actors, such as those who express conspiracy theories, from those individuals we implicitly frame as non-problematic, and therefore having a right to pursue or defend actions. I suggest instead that such a distinction is unhelpful and unsustainable. Belief in conspiracy theories is best understood as existing along a continuum rather than being a binary. Doing this allows us to move away from thinking in terms of 'us and them', and instead consider that how individuals perceive their treatment by legal actors and the courts may play a constitutive role in their faith in these institutions. What tips LiPs into believing in conspiracy theories? And what can this tell us about how we tend to characterise LiPs? Ultimately, I argue that the development of belief in conspiracy theories on the part of some LiPs can best be understood as at least partly the result of a crisis of faith that arises when idealised litigant perceptions of law give way to the mundane and distressing reality of legal proceedings. As I conclude, if some LiPs are 'crazy', we ought to consider the possibility that going to law has made them this way.

1. The study

The findings in this paper are based on the oral history 'life story' interviewing of 15 LiPs in the civil courts.[6] Oral history is distinct as a form of historiographic practice in the primacy of the interview as

[3]Halliday and Morgan define legal consciousness as 'the background assumptions about legality which structure and inform everyday thoughts and actions': S Halliday and B Morgan 'I fought the law and the law won? Legal consciousness and the critical imagination' (2013) 66 Current Legal Problems 1.

[4]See I Freckelton 'Querulent paranoia and the vexatious complainant' (1988) 11 International Journal of Law and Psychiatry 127; N Bedford and M Taylor 'Model no more: querulent behaviour, vexatious litigants and the Vexatious Proceedings Act 2005 (QLD)' (2014) 24 Journal of Judicial Administration 46.

[5]My main reason for drawing on legal consciousness as a framework in this piece is because, as Dave Cowan, notes, 'the primary concern of legal consciousness scholarship is the study of society, rather than the study of law per se'. As such legal consciousness is not a 'law-first' approach. Its utility for a socio-legal study is, as he goes on to note, is that: 'the focus above all, then, is on subjective experiences [that] can offer insights which may resonate with the interests of "law-first" scholarship'. This is the argument I offer here: the subjective, non 'law-first' orientation of this research demonstrates the value of legal consciousness in illuminating sociolegal research. By following Ewick and Silbey in having an 'empirical gaze' cast wider than the legal events in litigants' lives allows us a better understanding of 'ordinary people's perceptions of law in everyday life'. See D Cowan 'Legal consciousness: some observations' (2010) 67 Modern Law Review 928–230; see also P Ewick and S Silbey *The Common Place of Law* (Chicago: University of Chicago Press, 1998).

[6]All the LiPs in the study had acted in the County Courts; however, many had experience of other courts as well.

the method of gathering data. This is where oral history can be distinguished from autobiography because, as Michael Frisch points out, oral history depends on the interrelationship of interviewer and interviewee: it constitutes a 'shared authority'.[7] Oral history interviewing, then, relies on the importance of what interviewees *say*, and is also predicated on the relationship between interviewer and interviewee. Oral history life stories provide a unilateral perspective as a means to, in Moorhead's words, 'engage directly with the litigant's social world'.[8]

The basic structure of the interview questions in this study is shaped by my choice of a 'life stories' approach. The format of these interviews was essentially biographical, where interviewees' experiences as LiPs formed only one part of the account they gave. Clifford Geertz commented '[w]hatever it is the law is after it is not the whole story', and so these interviews are a means to try to find out, for LiPs, what the 'whole story' might be.[9]

Two major research gaps generated the impetus for this study: first, there is a lack of in-depth interviewing with individuals who have acted as LiPs, to discover what going to law is like for them in more detail. Secondly, almost all LiP studies conducted until fairly recently have focused on the impact LiPs have on the courts and only secondarily, if at all, consider the impact going to law might have on the LiP.[10] This study is therefore in keeping with a small body of more recent scholarship that has focused primarily on LiP perspectives.[11]

The shortest interview in this study was just under three hours in length in one session, and the longest interview was between nine and ten hours over two sessions, with the average length of the interviews being around five to six hours in duration, over two to three sessions, although up to four in some cases.[12] To find interviewees, I set up a website, a Facebook account and a Twitter feed called *Litigant Stories*, calling for interviews for the study and explaining the project. The interviewees in this study come from a variety of places in England and Wales, from Southampton to Yorkshire to Bristol to Grantham and beyond, with only four out of 15 being based in London. The ages of participants span from 27 to 83. In addition, I was able to capture a wide variety of legal categories, with the interviewees going to the court in relation to issues including housing and possession proceedings, family matters, small claims, non-money claims, negligence claims, bankruptcy claims and more.

This paper arose because while conducting these interviews, close to half of the interviewees, approximately seven individuals, expressed what I considered to be conspiracist ideas.[13] As such, this was an unexpected and significant finding that demanded investigation.

It is important to note that this is a small sample overall, in keeping with an oral history methodology. Oral history interviewing is about depth, sensibility and a situated perspective. The rich detail evinced through these interviews evidences its utility. However, a criticism frequently levelled at

[7]M Frisch *A Shared Authority: Essays on the Craft and Meaning of Oral and Public History* (Albany: State University of New York Press, 1990).

[8]R Moorhead 'The passive arbiter' (2007) 16(3) Social and Legal Studies 405, 417.

[9]C Geertz *Local Knowledge: Further Essays in Interpretive Anthropology* (London, Basic Books, 1983) p 171.

[10]R Moorhead and M Sefton *Litigants in Person: Unrepresented Litigants in First Instance Proceedings* Department of Constitutional Affairs Research Series 2/05 (London: Department of Constitutional Affairs, 2005) ii; H Genn and Y Genn *The Effectiveness of Representation at Tribunals*, Report to the Lord Chancellor (London: LCD, 1989); L Trinder et al *Litigants in Person in Private Family Law Cases* (London: Ministry of Justice Analytical Series, 2014).

[11]Notable recent exceptions include G McKeever et al *Litigants in Person in Northern Ireland: Barriers to Legal Participation – Final Report* (Belfast: Ulster University, 2018); T Tkacukova and R Lee *A Study of Litigants in Person in Birmingham Civil Justice Centre* (Birmingham: CEPLER, 2017); J Mant *Litigants in Person and the Family Justice System* (Oxford: Hart Publishing, 2022).

[12]It is important to note, of course, that this only denotes recording times.

[13]This vagueness with numbers is deliberate. As I will argue below, when discussing the idea of a continuum of conspiracy, it is difficult to define when one becomes or stops being a conspiracy theorist: this depends on knowing, for example, that the conspiracy theory is, indeed, a conspiracy theory to begin with. But as Joseph Uscinski points out, there is no reliable method to distinguish between things that are 'totally out there' from 'ideas experts have yet to endorse as true': this is discussed in more detail below. See J Uscinski *Conspiracy Theories: A Primer* (Maryland: Rowman and Littlefield, 2020) p 38.

qualitative research is the generalisability of the findings. As Jennifer Mason notes: 'qualitative research should … produce explanations which are generalisable in some way, or which have a wider resonance'.[14] And this is also the claim of this paper: that this research not only shines a light onto the specific nature of individual experiences but also considers how these insights can assist our understanding of LiPs more generally. The difficulty arises, then, as to how one can do so in the context of a small group of interviewees. For Pertti Alasuutari, the term generalisable carries overtones of quantitative research. As he states:

> generalization is … a word … that should be reserved for surveys only. What can be analyzed instead is how the researcher demonstrates that the analysis relates to things beyond the material at hand …. extrapolation better captures the typical procedure in qualitative research.[15]

This paper keeps both Alasuutari and Mason's guidance in mind. I am not claiming to capture a representative sample, but instead arguing throughout that the findings in this paper can be 'extrapolated' to consider wider resonances.[16]

2. The conspiracies

Talia, fighting a possession claim on her property, has long suspected that to win their case against her, her freeholder and the bank who hold her mortgage have resorted to faking court documentation: 'when I looked at this order I'd been served I didn't notice straightaway that it was fake and then I had a closer look … when the police get back to me I'll be able to prove to them that this is what has happened'.

For Talia, this forgery is attributable to the lengths to which her opposition will go. Talia's belief that there are counterfeited court documents in circulation used to trick LiPs is shared by other interviewees, some of whom believe something even more elaborate and sinister. For example, Georgina not only believes documents issued by the courts are fake, she believes the courts themselves are fake:

> we've got shadow banks contracting with shadow courts who are contracting with privately hired judges. Shadow means privately hired, paid for, commercial courts, administrative courts, they're not using due process, they're ignoring the law, they're even ignoring their own CPR rules and it's a dire state of affairs. They're not fit for purpose, it's a rigged game, there's no level playing field and woe betide anybody who goes in there.

Russell also believes that courts produce fake documents. Unlike Georgina, though, he does not refer to fake courts. Instead, for Russell, the courts are real enough, but the decisions in these courts are made by influential, shadowy figures; namely, it is a Masonic conspiracy.[17] Russell describes how this Masonic influence manifests in court:

> [a] Freemason, if he is in difficulties, say in a court, and you see it in a court, they go up like that, I just don't know what to do your Honour, so he's saying (finger signals) I'm a widow's son, see that's a fraud, you see, passing themselves off as something they're not. Yeah, they do all sorts of other tricks like you know, turn their head away and that means it stinks, this case stinks.

For Russell, a Mason need only 'signal' to communicate his desired outcome and other Masons will accommodate him, thus disadvantaging others (including LiPs) in the courtroom. This suggests a

[14] J Mason *Qualitative Researching* (London: SAGE Publications, 1996) p 6.

[15] P Alasuutari *Researching Culture: Qualitative Method and Cultural Studies* (London: Sage, 1995) pp 156–157.

[16] See also A Bryman *Quantity and Quality in Social Research* (London: Routledge, 1988) p 90.

[17] Interestingly, two of the LiPs interviewed for the project themselves identified as Freemasons. Needless to say, neither expressed a belief in Masonic conspiracy theory.

wide-reaching and elaborate conspiracy of all Masons against other non-Masons, in keeping with general conspiracist beliefs about Freemasons.[18]

Georgina also believes in this wide-ranging Masonic conspiracy, noting it is one of the 'cults' infiltrating the justice system:

> there's a lot of Machivalean [*sic*] cults like Freemasonry for example, I know that a lot of the things they do, they swear allegiance to each other even above their own families and to me that's highly dangerous… they're in the same lodge, for example members of the police force, members of the legal profession, even judges. I've seen judges shaking like a leaf in terror, probably because they've been threatened if they go against the agenda.

For Georgina the conspiracy of Masons is so strong that even individual judges are unable to act freely.[19] Charles and Anna, too, cite the perceived influence of the Masons on the courts. As Charles expresses it:

> It was very, very, very distressing because they had a barrister supplied by the Solicitor's Indemnity Fund and even though I think I held my own very well, well obviously I did because I won the case, I did very, very well considering that I was a complete amateur but I think because of the Masons and all that sort of stuff, Masonic lodges and all these people knowing each other, it would be very embarrassing for a solicitor, the thing is if I had won, it would have been in the press, and it would have been very embarrassing for them and they didn't want that so that's how they cover up to keep litigants in person down to make sure that you don't rock the boat.[20]

While Charles's claim is vague, citing Masonic 'influence', Anna is quite explicit about the control Masons have over the courts, illustrated by their ability to 'choose' to 'reward' a fellow Mason to illustrate [falsely] that sometimes ordinary litigants can succeed:

> Yeah, there's the odd case where suddenly somebody is selected, probably a Freemason, to win a landmark case, yeah? Like that actress who got, similar to an MRSA claim, can't remember what her name was but she got *huge* compensation for something very similar to me. Is it Leslie Ash? All over the papers. I thought oh yeah, she's probably a Freemason.

The Masonic conspiracy mentioned by interviewees is also coupled with a strong anti-semitic element, where there is alleged to be a 'Jewish' influence on the courts. Anna says, for example:

> Shipman's obviously a Jewish Freemason scandal, but certainly there are a number of Jewish people involved in both my scandals. The medical one in particular, so I thought, because of the Jewish influence that I needed a decent Jewish judge to stand up for what is right because you know, because I'm aware that there are some thoroughly decent Jewish people who have got great family values but I'm also aware from personal experience and what my mother has told

[18]I will go into more detail about Masonic conspiracy theories below, however it is worth mentioning here that Freemason conspiracy theories were prominent enough in the UK in the 1980s to lead to a parliamentary enquiry. See Home Affairs Select Committee *Freemasonry in the Police and Judiciary*, Third Report from the Home Affairs Committee (London: House of Commons, 1996–97) p 192.

[19]When asked to provide a percentage of judges they believed to be Masons, neither Paul nor Georgina was able to put a figure on it, however, Russell estimated that it affected almost *all* judges. Basing his estimate on a percentage of Masons in a small area, he suggested: 'Take that number and extrapolate over all the judges in the UK. And you find out that virtually 100% of judges are Freemasons.'

[20]In addition, Paul also mentions the Masons when referring to the earliest dispute he remembers his family being involved in.

> me that there are others who will do anything for money, and so I thought this is an opportunity for him to stand up for the decent ones, yeah?

Georgina, too, makes claims about 'money Jews', and Russell also makes multiple anti-semitic references to Zionism, and the 'world citizenry' of the Jews.[21] As Bernard Levin points out: 'Freemasonry hysteria … is paralleled to the same principles as those of anti-semitism, and indeed it has often been to a very considerable extent a stalking-horse for the more ancient vileness'.[22]

Claims in this study about Freemasons heavily overlap with anti-semitic traditions, including assertions about control over the judiciary, banking and other areas.[23] For the purposes of this paper, therefore, I am largely combining Freemason and anti-semitic conspiracy since Masonic conspiracy draws heavily on older anti-semitic conspiracies, even if it is not always explicitly anti-semitic in itself (although it frequently is).[24]

Finally, a common theme emerging across these interviewees which could be termed conspiracy theory, or verging on conspiracy theory, is the accusation of 'corruption' in the courts. As Georgina puts it: 'I'm actually pretty angry with the whole justice system in Britain I think it stinks, I can't bear the corruption.' Charles says: 'I've got no confidence in the system, I think they're totally corrupt'.[25]

So, what are we to make of these conspiracy theories? Offensive, yes. Anti-semitic, very. 'Crazy': well, *yes*. It is hard to argue that LiPs who come to court and express these kinds of beliefs should not be considered potentially vexatious. It is also hard to imagine how engagement with these ideas does not risk suggesting a sympathy unpalatable in the face of the nature of these beliefs. But in this research I set out to think about how LiPs understood their own experiences, to find a way of approaching these accounts that might be useful. What can we *do* with these stories?

3. Conspiracists as pathological

Conspiracy theory has been an object of academic attention for a relatively short period of time, with the earliest research being in the discipline of psychology in the 1960s and the vast majority emerging within the last twenty years, symptomatic of what Butter and Knight argue is evidence that conspiracy theory was (no irony intended) a 'fringe' concern.[26] Today conspiracy theory has gone mainstream, and research in the area is flourishing, with conspiracy theories routinely deployed by world leaders and where the internet has enabled their dissemination in public discourse, all of which has been vastly accelerated by COVID.[27] Butter and Knight argue that two clear approaches to understanding conspiracy theories have emerged in academia. The first, dominant approach is rooted in psychology

[21]Russell says: 'And of course the Jews believe in the bible that, that they are citizens of the world, the world is theirs, that is what they're striving for'. Georgina says: 'I'm not in any way sexist or racist. David Icke talks a lot about Zionists. It's a particular breed of Jews who are the money changers. They are the ones in the central banking system.'

[22]B Levin *The Times*, 30 November 1976.

[23]For an overview of some of the clichéd orthodoxies of anti-semitism, see F Felsenstein *Anti-Semitic Stereotypes: A Paradigm of Otherness in English Popular Culture, 1660–1830* (Baltimore: Johns Hopkins University Press, 1995).

[24]It is important to note that while Charles mentions the Masons, he at no times says anything anti-semitic at all, nor is there any indication he holds any such prejudices. As I will consider in more detail later, some of the more conspiracy theory-associated ideas he holds are much less developed than the other interviewees routinely drawn on in this paper who do routinely express anti-semitic beliefs both connected to, and separate from, Masonic conspiracy theories.

[25]This claim of corruption is more ambiguous as a conspiracy theory. It was expressed by ten out of fifteen interviewees, including a number of whom I have not classified as conspiracy theorists in this study, as vague or occasional claims of corruption were the only signs of this kind of thinking and arguably fell outside the point of being an active conspiracy theorist. For discussion on the difficulties in defining conspiracy theories see above n 13 and text below.

[26]R Hofstadter *The Paranoid Style in American Politics and Other Essays* (Cambridge, MA: Harvard University Press, 1964); M Butter and P Knight 'Bridging the great divide: conspiracy theory research for the 21st century' (2015) 62 Diogenes 17.

[27]K Anderson 'How America lost its mind' (*Atlantic Monthly*, September 2017); P Rosenberg 'Conspiracy theory's big comeback: deep paranoia runs free in the age of Donald Trump' (*Salon*, 1 January 2017).

and thinks about conspiracist ideation as a pathology. In this way of thinking, conspiracy theories are signs of conspiracist ideation and, concomitantly, a conspiracist mentality.[28]

The focus in psychology studies of conspiracy theory is trained on the individual and seeks to explain that individual's maladjustment – why such a person might be prone to fringe or delusional ideas. While there is no literature on conspiracy theory and LiPs (indeed, there is almost no literature focused on conspiracy theories and the law at all), there *is* a body of law-and-psychology literature that attempts to explain 'obsessive' LiPs.[29] Such literature supports Butter and Knight's claim that identifying pathology is the most common approach to understanding unusual beliefs.[30] These kinds of analyses focus on obsessive litigation as an identifying pathological behaviour, often termed 'querulousness'. Mullen and Lester argue that querulousness can best be understood as: 'a constellation of behaviours and attitudes, which may, or may not, arise secondary to a major mental disorder, such as schizophrenia, and may, or may not, be characterised by delusional phenomena'.[31]

This focus on the pathology of individuals pursuing multiple complaints is also evidenced in the work of Sourdin and Wallace, where mental health and behavioural issues prevent some LiPs from being 'rational, logical or helpful'.[32] This is in keeping with the association Mullen and Lester make between querulousness and underlying psychopathology.[33] While this paper does not dispute the possibility of individuals acting as LiPs who may suffer from mental health problems, I argue that there is slippage between the 'difficult' and the pathological. Sourdin and Wallace suggest that longer court time equates to behavioural issues. In Mullen and Lester's conception, too, those who are persistent complainants without success are automatically displayers of pathological behaviour.[34] This association between pathology and difficulty suggests that any disruption or difficulty, or extension of the legal proceedings is attributable *to that difficult individual.* These individuals therefore pose a problem and need to be separated from those litigants who are legitimate complainers. Such litigants are also often characterised as dangerous.[35]

There is no doubt that LiPs misunderstand, and LiPs make errors. But we are too quick to pathologise LiPs. And we do damage to our own understanding of LiPs by making these kinds of assumptions, for three reasons. First, the move to pathologise supports a false distinction being made between worthy and unworthy litigants. Mullen and Lester, for example, argue that querulousness is found in:

> three broad types, unusually persistent complainants, vexatious litigants, and those who in pursuit of idiosyncratic quests harass the powerful and prominent with petitions and pleas. Excluded

[28]See Butter and Knight, above n 26.

[29]The slippage in terminology that I have earlier argued causes confusion arises again here, with work in this area shifting between 'obsessive', 'vexatious', 'difficult', and 'querulent' litigants, who are usually self-represented but not always explicitly defined as such. See I Freckelton *Vexatious Litigants: A Report on Consultation with Court and VCAT Staff* (Melbourne: Victorian Parliament, 2015) p 22. There has been a recent interest in 'pseudolaw' and its use in courts that looks at the relationship between conspiracy theories and the law: see S Young et al 'The growth of pseudolaw and sovereign citizens in Aotearoa New Zealand courts' (2023) New Zealand Law Journal 1 (printed online prepublication).

[30]See for example P Mullen and G Lester 'Vexatious litigants and unusually persistent complainants and petitioners: from querulous paranoia to querulous behaviour' (2006) 24 Behavioural Science and the Law 333; Freckleton, above n 4.

[31]Mullen and Lester, above n 30, at 334.

[32]T Sourdin and N Wallace 'The dilemmas posted by self-represented litigants – the dark side' *Access to Justice Working Paper 32* (2014) p 1, available at https://ssrn.com/abstract=2713561.

[33]Other similar pieces of work include RL Goldstein 'Paranoids in the legal system: the litigious paranoid and the paranoid criminal' (1995) 18 The Psychiatric Clinics of North America 3003: G Lester et al 'Unusually persistent complainants' (2004) 184 British Journal of Psychiatry 352.

[34]Hazel Genn argues that there are two 'types' of LiPs: those who are 'one-shotters', and those who are serial, querulous or vexatious litigants: see H Genn 'Do-it-yourself law: access to justice and the challenge of self-representation' (2013) 32 Civil Justice Quarterly 411. This division is echoed by Sourdin and Wallace, above n 32, and R Moorhead and M Sefton *Litigants in Person: Unrepresented Litigants in First Instance Proceedings* (London: Department for Constitutional Affairs, 2005). The notion of 'one-shotters' comes from M Galanter 'Why the "haves" come out ahead: speculations on the limit of legal change' (1973) 9 Law & Society Review 95.

[35]Mullen and Lester, above n 30, at 345.

> from this category are social reformers and campaigners who use litigation and complaint to advance agendas of potential public interest, even if they are pursuing unpopular causes in a disruptive manner.[36]

Fundamental to Mullen and Lester's theory is a distinction that can be made between legitimate and pathological litigants predicated on whether their obsessive litigation has 'potential public interest'. But how are we to know this, if such 'social reform' is often only vindicated in hindsight?

Secondly, by assuming LiPs and conspiracy theorists are pathological, we assume that what they are saying is untrue.[37] While we can be confident that there is no Masonic plot, there is a danger in dismissing all conspiracy theory claims.[38] Labelling someone a conspiracy theorist turns the question into one of credibility. By displacing attention from what someone is saying to the competence of the individual, we ignore any possible validity to their claims.[39] Concentration on individual competence – or, more accurately when it comes to LiPs, incompetence – is very much in keeping with LiPs in the literature. LiPs are often poor performers, and poor communicators, and this is focused on at the expense of the substance of what they might be trying to communicate. But someone can be a 'querulent' individual and still have a valid complaint.[40] Finally, this line of thinking assumes that conspiracy theories about the law will arise from pathological individuals bringing such ideas with them to the legal arena. But what if it is the other way round?

4. Conspiracy theory as productive

One way of taking the above questions seriously involves moving away from psychology and towards literature that posits conspiracy theories as collective and social processes.[41] Butter and Knight note:

> What makes conspiracy theories a distinctive way of explaining the world is not to be found solely in the psychology of individual believers, but in the shared structural elements of the conspiracy theories themselves. Researchers therefore need to investigate the cultural work conspiracy theories perform in different places and times, and the social relations that conspiracism both enables and curtails.[42]

In other words, excavation of these structural conditions may offer a way in to understanding how these beliefs are produced and reproduced. This does not exclude the possibility of pathology, but it also does not reduce a holder of conspiracy theories to a mere pathology. And this approach presents a unique opportunity to do something different: instead of assuming that these individuals are pathological, that their pathology explains their beliefs, and that this therefore invalidates anything they say, what might we find out by looking at the conditions under which such ideas emerge? What *work* are these conspiracy theories doing?

In the broadest sense, the work conspiracy theory *does* is provide an explanation of a negative experience or a failure. Those who believe in conspiracy theories simply use a different explanation for why failure takes place; or rather, because they have a desire *for* a unified explanation of why this takes place.[43] But conspiracy theories also provide simple explanations for experiences that do

[36]Mullen and Lester, n 30 above, at 334.

[37]As Michael J Wood points out: 'it assumes that they are deluded and what they believe in cannot be so': MJ Wood 'Some dare call it conspiracy: labelling something a conspiracy theory does not reduce belief in it' (2016) 37 Political Psychology 695.

[38]Butter and Knight, above n 26, at 17–18.

[39]As Wood goes on to note: 'Calling something a conspiracy theory (or someone a conspiracy theorist) is seen as an act of rhetorical violence, a way of dismissing reasonable suspicion as irrational paranoia': above n 37, at 695.

[40]This is, of course, not entirely the case. See Sourdin and Wallace, above n 32, at 10; Genn, above n 34 above, 444.

[41]As Butter and Knight express it: 'The starting point would need to be the recognition that no matter what psychological traits are involved, conspiracy theories are essentially social constructs': above n 26, at 26.

[42]ibid, at 26.

[43]D Aaronovitch *Voodoo Histories: How Conspiracy Theory Has Shaped Modern History* (London: Vintage Books, 2009) p 5.

not have obvious explanations, and provide reassurance.[44] This is underlined in this study, with interviewees using conspiracy theories to provide an explanation for *why* they are having such bad experiences. But the conspiracy theories that such interviewees select also *correspond* to these experiences of LiP exclusion and are indelibly linked to them.

In the next section, I turn to consider how specific conspiracy theories evidenced by interviewees are connected to their experience as LiPs. The impetus for conspiracy theory explanation in this study is linked to exclusion: the kind of exclusion that is experienced by all LiPs. This is not to say that what the interviewees assert is true. It is, however, to take seriously the idea that LiPs *themselves* consider it to be true, and to consider the consequences of these beliefs.

5. Freemasonry

The most common conspiracy theory expressed by interviewees is Freemasonry. But why? What work does this conspiracy theory do and under what conditions does it arise?[45] Masonic conspiracy theory has changed very little since its emergence in the eighteenth century, continuing to revolve around the idea of an influential secret society working in their own interests and against a (variously described) greater good. In this respect it is in some ways, alongside anti-semitism, the *Ur*-conspiracy. Fundamentally linked *to* anti-semitic ideas, the conspiracy has been historically deployed by the Church, governments such as the Nazi regime, in the middle East, and beyond to attribute responsibility for political failures or unrest to a Masonic or Jewish influence, and to target or persecute minorities.

In this study, interviewees clearly shared 'classic' conspiracist ideas about the Masons: including the belief that Masons (or Jews) were controlling things behind the scenes, that they had infiltrated the legal profession, and that such a 'secret society' had the power to decide which litigant would be successful. LiPs identify the legal profession in general, or many people within the legal profession, as being part of a secret society. But why?

(a) Freemasonry as 'elitism'

An obvious place to begin is with the difference in educational and socio-economic background between many LiPs and members of the legal profession. The legal profession is far from diverse, and parts of it, like the senior Bar, and judges, tend to be dominated by those from a relatively small pool of privately educated individuals.[46] As Michael Blackwell has also noted, family 'connections' play a role in supporting an ability to succeed.[47] These factors facilitate a gap between legal professionals and 'ordinary' individuals that can stoke resentment.[48] As Charles expresses it:

> the legal system in this country, because all of these blokes go to Oxford and Cambridge and those sort of big colleges and unis, they probably go, they, well they, sort of the way they live and that sort of thing, I think they all kind of know each other and, uh, the actual legal institution is designed to just, generate money and rip off the general public because they don't do anything.

[44]Groh, above n 1, p 3.

[45]See D Pipes *Conspiracy: How the Paranoid Style Flourishes and Where It Comes From* (New York: Simon and Schuster, 1999).

[46]N Lieven *Increasing Judicial Diversity* (London: Justice, 2017).

[47]M Blackwell 'Old boys' networks, family connections and the English legal profession' (2012) 3 Public Law 426.

[48]This is, following Bourdieu's sociological theory, endemic to the relative autonomy of any field and the association of that field within the wider field of power. See P Bourdieu *The Field of Cultural Production: Essays on Art and Literature* (New York: Columbia University Press, 1993) pp 162–164. It is also reflective of aspects of the 'professional project' as outlined by MS Larson *The Rise of Professionalism: A Sociological Analysis* (Berkeley: University of California Press, 1977).

This perceived elitism is aggravated by conceptions around relative wealth of legal professionals. Within the legal profession, income, and job stability vary radically.[49] However, public perception has tended to view legal professionals as wealthy.[50] In addition, in this study, there was a perception that legal professionals were more interested in financial gain than in justice for their client. As Paul says:

> Their [solicitors] job is to have money, they want income, their job is not to do your legal work. It's not to solve problems, so, why give somebody a load of money? And then of course they sued me because I, um, I wouldn't pay them, the, the, some of the money, I said well you haven't done what I asked you to do.

Georgina says:

> solicitors seem to me to be working to a hidden agenda, they get bought off. There's a whole hiearcheal [sic] pecking order with solicitors and you know they are literally ending up, what's the word I'm looking for, taking advantage of what they perceived to be vulnerable people so that they can make a lot of money.

These factors open up a significant chasm between the perceived wealth and status of legal professionals versus the 'ordinary' layperson.[51]

(b) Freemasonry as procedural bias

It was also common for LiPs in this study to complain of unfair treatment by a represented opposition, believing they were taken advantage of, and commenting on what they perceived to be the violation of equality of arms. For example, interviewees claimed solicitors would fail to disclose information they were required to provide before a hearing, only to hand the LiP a large folder full of documents outside the courtroom, or to provide them only on the day of the hearing.[52] Other situations LiPs related were ones where the judge would instruct the opposition to undertake certain tasks, such as the writing up of his instructions, and the solicitors would fail to provide any information confirming these arrangements.[53]

Eleanor tells the story of something like this happening to her, but she makes a complaint and the judge listens to her:

> I'd served everything of mine on time and the barrister tried to serve something on me literally the moment that the hearing took place which I, as I pointed out to the judge and he agreed with me, I'd not had, I was not a qualified solicitor or barrister and I had not had time to read it therefore he was postponing the hearing to give me time to read it, digest it and respond to it and the barrister needed to not do this again because he would not take very kindly to [it].

We cannot, of course, know to what extent any of these claims are true. It is important to note, for example, that almost all the LiPs in this study only became LiPs after negative experiences with their professional representation. In this respect, LiPs in this study already lacked trust in solicitors, which would probably make them more likely to find fault with legal professional behaviour, a form of confirmation bias.[54] There is also a significant difference between a busy represented

[49]For information on solicitor pay see The Law Society *Private Practice Solicitors Salaries 2015* PC Holder Survey (London: Law Society, 2015).

[50]M Galanter 'The faces of mistrust: the image of lawyers in public opinion, jokes and political discourse' (1998) 66 University of Cincinnati Law Review 805.

[51]It is notable that the three most virulent Masonic conspirators in this study were all involved in disputes with their banks, allowing them to draw on classic anti-semitic mythology around the control of finance by 'Jewish Masons'.

[52]This kind of incident was narrated by Marie, Eleanor and Russell.

[53]This was noted by Charles and Russell.

[54]See P Leman 'The born conspiracy' (2007) 195 New Scientist 2612.

opposition being late in providing some information, and the deliberate withholding of information in an act of 'gamesmanship'. What we can know, however, is that if there *are* instances where LiPs do not receive information they are meant to receive, LiPs have disproportionately greater difficulties in redressing errors or obtaining assistance. So should a LiP receive case materials late, they would not necessarily find sympathy from the judge in delaying a hearing.[55] The LiP also may not be believed. Recent case decisions also suggest that LiPs will not be given any 'excessive indulgence' when it comes to timelines; that is, they are expected to conform to the same timelines afforded to legal representatives.[56] These experiences of powerlessness are endemic to being a LiP. Such experiences are also illustrative of a lack of 'procedural justice', in particular in the terms outlined by Zimerman and Tyler, voice, trust and neutrality.[57] In summary, life is made much harder for LiPs in these situations.

We also cannot exclude the possibility that there is a degree of unregulated gamesmanship on the part of legal representatives.[58] Perhaps a legal representative is simply capable of assimilating information far faster than a LiP and therefore is giving the LiP the same amount of time they would give another legal representative. But neither possibility excludes the reality that a legal representative may be less inclined to rush to fulfil an obligation towards a LiP since they may speculate that a LiP will be less likely to be believed should they make a complaint. Ultimately, such scenarios undermine LiP trust in the profession. Such a situation exposes the comparative powerlessness of LiPs compared with the legal profession and may stoke the perception that legal representatives are deliberately acting against them.

(c) Freemasons as 'mixing clubs'

The next experience of exclusion that provides fertile ground for Masonic conspiracy theory is the perceived exclusion of LiPs from conversations. Interviewees commented on multiple experiences of conversations taking place without them between other actors in the case, including, at times, the judge:

> Peter: In a criminal court you have the defence and the prosecution and they don't mix. These were like, it was like a club…
>
> K: Mixing club?
>
> Peter: Well they seemed to be, I said club, you know, they're all in there, sort of like pals around the table and um, you don't know what's being said, so they're talking about you and you don't even know what, what they're saying

Talia describes a similar experience:

> On 22 June the hearing was at two o clock and I turned up at about twenty past one and found the Deputy District Judge talking to the advocate for the other side in the entrance hall and I'm going to complain to the MOJ [Ministry of Justice] about this. So the hearing lasted about three minutes and it was clear that the DDJ already knew what the other side wanted.

Similar experiences are narrated by Martin, Marie and others.[59] This perception seems to be key to the allegations of corruption. Charles, for example, says, when describing his distrust of the outcome of his

[55] *Barton v Wright Hassall LLP* [2018] UKSC 12.

[56] *Tinkler & Another v Elliott* [2012] EWCA Civ 1289; *Bendore Bankas Snoras (in bankruptcy) v Yampolskaya* [2015] EWHC 2136 (QB).

[57] N Zimerman and T Tyler 'Between access to counsel and access to justice: a psychological perspective' (2010) 37 Forham Urban Law Journal 473.

[58] See P Moro 'Rhetoric and fair play: the cultural background of legal ethics' (2017) 14 US-China Law Review 72; B Henschen 'Judging in a mismatch: the ethical challenges of pro se litigation' (2017) Public Integrity 1.

[59] Martin notes, when describing the behaviour of two solicitors involved in his case: 'they got very friendly with each other, obviously, things were happening'.

case against his solicitors: 'they, um, maybe give each other a telephone call, obviously I don't know but there was definitely a lot of corruption involved'. Peter, too, notes:

> You hear people talk about corruption and it is, it's not just about money, it's about like the corrupt behaviour of like almost, well don't mention that… we'll just say this. Things have been decided and agreed without you even being there. You don't even know.

All the interviewees narrating these experiences mentioned that they felt disadvantaged by lack of access, excluded from crucial discussions concerning the case and many shared fears that key decisions were taking place in their absence. Of course, these 'meetings' may well be because these individuals work together, know each other socially, or are attempting to facilitate the progress of the case without any malignant intentions.[60] But it is not difficult to see why LiPs would interpret this behaviour distrustfully. Once again, such an exclusion emphasises LiP powerlessness. An obvious linkage is to the work of Zimmerman and Tyler's on 'neutrality' as a requirement for procedural justice: the idea that legal professionals are excluding LiPs from access to important discussions, or the belief that authorities are colluding with the other side are consistent with factors undermining trust in this neutrality. Zimmerman and Tyler note that neutrality is about decisions being open and transparently made; discussions behind closed doors clearly undermine this.[61]

On returning to our framework of legal consciousness, we may consider here that such conspiracy theories also tell us a great deal about the malevolent presence legal institutions and actors occupy in the minds of these litigants. In *The Common Place of Law* Ewick and Silbey sketch out three schemas of consciousness about the law and the one that seems most relevant here is their category of 'before the law'. As they describe it, such a consciousness sees legal institutions as fixed and separated from other parts of society and independently existing, sometimes majestic, sometimes idealised, but always imposing and remote: indeed, here these litigants stress the *gap* between their 'every day' life and the 'fixed' institutions that reproduce these inequalities that they interpret into Masonic conspiracy theories.[62]

In addition, though, while the meetings the litigants mention may indeed be entirely banal, or well-intentioned, there is a slippery slope here to genuine unfairness. Such familiarity and ease between legal professional and judge reflect an environment where a legal professional is more likely to be believed than a LiP. Indeed, because of the deep-rooted pejorative attitudes towards LiPs, and the linking between repeated litigation and 'querulous' behaviour, it is perfectly likely that a LiP *is* less likely to be believed, or that their word will not be believed over a represented opponent.[63] The worrying implication here is that if LiPs are worried that they are treated differently, and more distrustfully, than legal representatives, than perhaps they should be, because they probably are. After all, as George Bernard Shaw observed, tongue-in-cheek or not: 'All professions are conspiracies against the laity'.[64]

6. Corruption

The second dominant conspiracy theory in this study is about a generalised 'corruption' in the courts, manifesting in '"fake" documentation' and, at an extreme, 'fake courts'. So what kind of work does this conspiracy theory do? This kind of thinking seems to be linked to believing that legal representatives are 'breaking the rules' through, for example, trying to pass off forged documents as real, or through 'cheating' the system. This conspiracy theory is interesting because the emphasis here is on how the

[60]See Lucy Welsh's recent work on the 'workgroup mentality' in magistrates' courts: L Welsh *Access to Justice in Magistrates' Courts* (Oxford: Hart Publishing, 2022).

[61]Zimerman and Tyler, above n 57, at 487.

[62]See P Ewick and S Silbey *The Common Place of Law* (Chicago: University of Chicago Press, 1998).

[63]This bias towards LiPs is supported by Quintanilla et al's study which found that pro se litigants were less likely to be believed and more likely to have lower settlements awarded to them. See V Quintanilla et al 'The signalling effect of pro se status' (2017) 42 Law & Social Inquiry 1109.

[64]GB Shaw *The Doctor's Dilemma* (Auckland: The Floating Press, 2011) p 39.

legal profession brings the courts into disrepute. Those who hold such attitudes hold high expectations about the courts, only to have them disappointed. As Eleanor expresses it: 'Basically, you are sold a myth that the British judicial system is the finest in the world, that it is fair, just, reasonable and concerned with finding out the truth. That is a load of fucking bollocks, pardon the French'. Georgina observes that she believed very strongly prior to embarking upon legal proceedings, that every individual was 'equal before the law' before going on to note that:

> as far as I am concerned it is all just words because they know very well there's no way in the rea-, reality of the set up that you can get a, a fair hearing in British courts across the board unless your, you get lucky. I think the courts in Britain are run like a lottery.

These beliefs are echoed by Martin, who says: 'Well I knew I had a case, and I knew I was right. And I knew I'd been turned over and maybe naïve, I actually believe in British justice [laugh] so I thought if only I can get it together correctly and right, with the ability to show it, I will win.'[65]

These idealistic expectations are in keeping with laypersons' beliefs about legality as understood in a 'remote sense', as noted by Ewick and Silbey in *The Common Place of Law* though here such beliefs are far less malevolent than they are in the context of Freemason conspiracy theory. As they observe, this story told about law is:

> removed and distant from the personal lives of ordinary people. In this story, law is majestic, operating by known and fixed rules in carefully delimited spheres. The law exists in time and places that put it outside of, rather than in, the midst of everyday life.[66]

In this respect, rather than thinking about this conspiracy theory in terms of *trust,* it may be more useful to think about the notion of 'faith'.

(a) Corruption as debasing the law

It is at this point again that the 'legal consciousness' movement can be helpful understanding how laypersons may understand and form high (and low) expectations about legal proceedings. As Austin and Sarat observed: 'law matters less, or differently, than those who study only legal doctrine would have us believe'. [67] What we need to know to understand LiPs is not what we think such people *should* think about legal proceedings, but what they *do* think. And this is something we really do not know much about. This is a serious omission because such an understanding tells us about 'the background assumptions about legality which structure and inform everyday thoughts and actions'.[68]

It is these background assumptions being brought in by LiPs that are critical in understanding how contact with legal proceedings leads to disappointment. And here being a layperson, and one that does *not* have routine contact with the courts, leads to very different expectation. As this study suggests, those who have minimal or no experience of legal proceedings are far more likely to entertain idealistic notions of courts and legal proceedings that are akin to a kind of faith. Such individuals also formulate ideas of justice that were arguably not related to the kinds of justice that may or may not be possible as an outcome of legal proceedings.[69] They are not the stuff of legal doctrine, but popular imagination.

[65]Martin's attitude links to earlier comments made by interviewees about the concern that solicitors were drawing out the job to make more money.

[66]P Ewick and S Silbey *The Common Place of Law* (Chicago: University of Chicago Press, 1998).

[67]BG Garth and A Sarat 'Introduction' in BG Garth and A Sarat (eds) *How Does Law Matter* (Northwestern University Press: Illinois, 1988) p 1.

[68]Halliday and Morgan, above n 3, at 2.

[69]P Bourdieu 'The force of law: towards a sociology of the juridical field' (1987) 38 Hastings Law Journal 805, 830.

Indeed, the interviewees in this study are arguably even *more* positive towards the legal system prior to commencing their claim than members of the public identified in Genn's *Paths to Justice*.[70]

But the difficulty arises when these interviewees experience the courts and realise that the law does not merely operate 'by known and fixed rules'. In this study, many LiPs recounted attempting to obtain legal information and acquire it themselves, whether through university libraries, online or elsewhere. A source of anger for interviewees was when this hard-won knowledge was overlooked or disregarded by the judge. For example, Talia spent many months learning the Civil Procedure Rules, only to find that, according to her, the judges did not necessarily stick *to* those rules during the proceedings:

> I didn't expect some judges not to, uh, implement the Civil Procedure Rules which are rules, I mean they're, they're laid down in law, um, I really didn't expect them, um, not to implement at all or only to implement the ones that favoured the over-mighty claimant. If, if a litigant in person as I'm finding just makes, you know, fails to comply with something or other, the other side will exploit it to the nth degree but the, certainly in my case, the other side has completely ignored timescales in a way that prejudices my rights in law, and no one has pulled them up at all!

This experience of Talia's was shared by other interviewees, including Peter and Georgina. This raises the inevitable, if unanswerable, question of whether this is because LiPs do not understand the rules, rather than said rules not being followed. Whilst the former might be likely, the LiPs in this study certainly believed it to be the latter and we should be cautious in assuming that this is not possible.

(b) Corruption as breaking the rules

This feeling that judges were 'breaking the rules' returns us to the gap between what legal skills *are* and how they are perceived by LiPs. LiPs attempt to acquire legal skills, and through repeated practice, to improve. However, they are not always able to understand what legal skills are, instead tending towards a potential empty mimicry. Reflecting on legal consciousness, David Engel suggests:

> lack of legal competence prevents poor people from effectively asserting and enforcing their rights; but, at the same time, those who attempt to use the civil justice system find that it minimizes, diverts or rejects their claims because of their lower social status.[71]

Whilst we need to be cautious about the emphasis Engel places here on poverty, the wider point resonates with the distinction being made at all levels between lay and law in reference to competence. Repeat experience does not improve performance because of the inconsistency in the way in which LiPs are treated. LiPs acquire more and more information but this does not necessarily improve their outcomes.[72] As such, alternate explanations seem to be necessary to explain this failure, either through 'corruption' or 'fakery'.

Paul, for example, says:

> So you had to, you know, set things up correctly and then you have to present the case in such a way the best you can so that there is no loophole for the judge to, to find against you unless there's cheating. So of course what I have observed as a litigant in person is dishonest lawyers, dishonest barristers, dishonest judges, dishonest senior judges, corruption at, even at a very high level.

[70] See H Genn *Paths to Justice: What People do and Think about Going to Law* (London: Bloomsbury, 1999) p 249.

[71] D Engel 'How does law matter in the constitution of legal consciousness?' in Garth and Sarat (eds), above n 67, p 122.

[72] This raises an interesting question in relation to Marc Galanter's argument about repeat players and one-shotters. Here we have numerous 'repeat players' who do not seem to have any more success the more often they return to court: see above n 34.

In addition to corruption being the product of being excluded from conversations, corruption was also used quite widely by interviewees to signify their disbelief that a case they so strongly believed in was unsuccessful.[73] But it is not always clear what interviewees mean by the term corruption. I asked Martin to be more specific:

> K: So what does corrupt mean?
>
> Martin: It means that because it's a bank you are fighting or because it's a huge organisation you are fighting, the law goes with it.
>
> K: Is that because of the bank's official clout or are you thinking more of the money?
>
> Martin: All of it, um, I mean, you know I don't say it … But you can see it from a litigants in person point of view right now, I mean this is almost the perfect example for you … no matter how hard you try, to say that the courts are trying very hard, you get a decision like this which goes against you and you think, oh that's corrupt.

As Martin makes clear, the 'corruption' allegations seem to spring from a combination of factors: the fear that they are being excluded from conversations; the relative powerlessness of the LiP; their failure despite considerable effort at a disproportionate cost to them; and the lack of an explanation that they understand as to why this is happening.

(c) Corruption as denying LiP expertise

Similarly, the allure of the 'fake' documentation and courts claim seems to be that first, like all conspiracy theories, it explains why LiPs fail. But this conspiracy theory also allows LiPs to preserve intact the belief that *they know the law better than those who would abuse it*. Take Talia's explanation of false templates: to entertain a conspiracy theory about an unstamped letter from the court suggests a strong belief in the 'perfection' of the courts, rather than an acceptance that individuals can make errors. Interviewees holding these beliefs do not seem to accept that courts may make mistakes. Talia says:

> It's going to make me really unpopular but I believe as I've said to them, the rule of law it's the most precious asset any civilised society can have and as a statutory authority they should be upholding the law, not breaking it for commercial gain.

It is also, of course, indicative of conspiracy theory where an individual tends to allocate meaning to what might be accidental or random incidents as well as again returning to the theme of distrust of solicitors who LiPs feel may be extending proceedings for financial gain.

But the other feature to note is the degree to which such a conspiracy theory allows LiPs to retain a belief in their own hard-won 'expertise': that, after significant efforts, they know the law, and how the law is supposed to be. This manifests not only in these kinds of conspiracy theories about 'faking', but also in the ways in which repeat LiPs counterchallenge legal authority. These LiPs attempt to assert their legal knowledge, arguing that it is the courts that are not observing the law, and that their knowledge, or their moral claim, is superior. This can be seen, for example, in the case of Paul who entered a courtroom and asked the judge 'under what system of law' the court proceedings would be held. As he explains, he was trying to ascertain that the burden of proof would be on the claimant, but he expressed it in the way he did to signal to the judge the knowledge he possessed about the ways in which he believed the courts did not always uphold decisions according to law.[74] Talia, too, repeatedly

[73]Charles: 'You've won the case but you've basically lost because £90,000 was what I was supposed to pay the solicitors and I get £10 compensation for all that I've been through. So he was corrupt, I could see he was corrupt.'

[74]This is the so-called *Freemen of the Land* movement. For an example of a judge giving this kind of argument very short shrift, see this Queensland example, https://archive.sclqld.org.au/qjudgment/2020/QCA20-252.pdf. See also H Hobbs et al

tried to hold the court to 'order' by pointing out what she perceived to be the ignoring of basic procedure.[75] Georgina took her counterchallenge even further in our interview, rejecting law and parliament's role, saying instead that 'divine' justice outweighed them: 'I realise now of course that I've got a very, very strong sense of divine justice, you know, that essentially we're under no laws except God's law'.

Conspiracy theories around corruption, 'fake' courts and legal professionals 'breaking the law' seem to reflect most strongly the issue of LiPs being unable to obtain quality information, and not having clear guidance as to what their role is. Legal information is largely kept out of their reach, and LiPs do not fully understand the complex nature of legal skills. This means that acquiring any information takes a significant amount of effort. But without the understanding of legal skills, this information does not necessarily assist them. As this study has shown, repeated behaviour does not improve LiP performance. But for LiPs, they have acquired expertise. This expertise is being denied or disavowed (in their eyes) by the courts. They are routinely failing and they do not know why. They know the law (they believe). So the courts, and people within those courts, must be letting them down. It is not difficult to see here how this experience may lead to a belief in conspiracy theories.

As Tom Tyler notes, whilst legitimate institutions and rules enhance compliance, institutions and rules perceived to be illegitimate are likely to breed a lack of compliance.[76] And this is precisely what this study shows: the more LiPs are excluded, the less likely they are to have faith in legal proceedings. But this is not just a consequence of not 'winning', it is about the process. LiPs enter into legal proceedings with an idealised conception of what the law is, and this faith is undermined in a way that is traumatic and impactful. It is this loss of faith, and breakdown of trust, that fosters belief in conspiracy theories

But more than this, the degree to which LiPs feel, or are, excluded from participation in civil justice raises a moral question of whether they *ought* to feel bound to the rules. As we can see from the references to 'divine justice', for some LiPs their experiences of exclusion suggests that the 'system' as it is fails to uphold morality or right wrongs. In such a context, should they feel bound to obey, or does it make more sense to them to hold to a higher alternate form of justice that the courts fail to live up to?

These ideas, of how LiPs might feel bound to follow rules in a system that excludes them, partially resonates with the ideas outlined by Marc Hertogh in his book on legal consciousness, *Nobody's Law*.[77] Hertogh argues that legal alienation, turning away from legal systems, is the 'characteristic legal consciousness of contemporary society'. Hertogh rejects the idea of the pervasiveness of law infusing everyday life. It is certainly true that LiPs do feel alienated by the legal systems, and this has consequences for their perceived legitimacy. However, rather than turning away, the interviewees in this study come back again and again to law. As Simon Halliday pointed out in a critique of Hertogh's work: 'If state law is nobody's law, ordinary people expect little of it'.[78]

In this study, LiPs expect so much, despite feeling continually let down. In this sense, rather than this being indicative of alienation, it reflects more of a tension between dependence and disappointment, as noted by Halliday. Such a tension was pinpointed by Sally Engle Merry in her study of the lower courts in the US in the 1980s and 1990s.[79] Those litigants whose claims were deemed unworthy

'The internationalisation of pseudolaw: the growth of sovereign citizen arguments in Australia and Aotearoa New Zealand' (2024) 47 UNSW Law Journal 309.

[75]Talia: 'The judge on the 26th October not reading my bundle and then making a judgment against me, I mean that, that is wrong at every level. That is wrong in law, it's wrong in, you know, European law, to pass a judgment against me without having heard my case, I mean she'll say that she heard me because it says in the transcript you know, Talia X was there in person, but she hadn't read the bundle.'

[76]T Tyler *Why People Obey the Law* (Princeton: Princeton University Press, 2006) p 29.

[77]M Hertogh *Nobody's Law: Legal Consciousness and Legal Alienation in Everyday Life* (London: Palgrave McMillan: 2018).

[78]S Halliday 'After hegemony: legal consciousness and legal alienation in everyday life' (2019) 28 Social and Legal Studies 871.

[79]SE Merry *Getting Justice and Getting Even: Legal Consciousness Among Working Class Americans* (Chicago: University of Chicago Press, 1990).

by the court were considered to have 'garbage' or 'junk' claims, but this experience of feeling unwanted failed to dent their usage of the courts. Merry suggested this was partially because 'their recourse to court is rooted in such deep seated cultural traditions of American society as individual, equality, faith in the law and search for freedom'. In other words, for LiPs the law still feels *theirs*. As she goes on to say:

> I suspect, however, that court use is a slippery slope which tends to alienate others, leading to an isolation which furthers dependence on the court for future problems. But only a longitudinal study could shed some light on the interaction between social networks and court use over time.[80]

This study is such a longitudinal one, and does indeed suggest that Merry was correct. LiPs return again and again to court, and the more this alienates the people around them, the more likely it is that their litigation, and their obsession with and dependence on law, becomes the prime focus of their lives.

On reflecting on the above, many of the problems that LiPs experience that lead to belief in conspiracy theories are connected to their experiences of exclusion.[81] Ultimately, these processes of exclusion are emblematic of LiPs' lack of established role. These are significant factors in undermining LiP faith in the fairness of proceedings. Believing firmly in the rightness of their case, any decisions that go against LiPs are perceived as undermining their faith in justice. While this may be due to overblown expectations and, at times, delusions as to the merits of their case, it is also due to the lack of fairness LiPs routinely experience. This caused all LiPs in this study to become more negative about the possibility of accessing justice. And for some individuals in this study, their failure could only be explained in terms of a conspiracy theory.

So why does it matter if some LiPs turn to conspiracy theories? First, of course, it matters because it matters to them. LiP experiences of the courts are negative and damaging. Returning to legal consciousness, as Dave Cowan notes: 'Clearly what is not [framed as] valid is often what is important to the applicant – their emotions'.[82] Litigants' experiences of litigation are foundational in the development of this legal consciousness and this suppression of emotion, agency or the feeling of being listened to results in significant distrust of the legal profession. It matters because LiPs who espouse these ideas can potentially cause difficulties for others. But the instinctive turn to pathology only reinforces certain LiPs as a monolithic 'problem' to be dealt with and we dismiss their complaints out of hand.

7. Belief in conspiracy theory as a continuum

In this study, I have largely been talking about the seven individuals who clearly believe in conspiracy theories, whilst the other eight individuals do not. But why do some LiPs come to be conspiracy theorists, and others not, if they share these similar experiences of exclusion? Perhaps it is because conspiracy theorists are more willing to entertain certain kinds of explanations that others reject. For example, Eleanor, *not* a conspiracy theorist, clearly identifies her solicitor's withholding information from her but is explicit that this is a product of 'gamesmanship', echoing Ewick and Silbey's summary of seeing the law as 'tactical':

> if the other party's a litigant in person, go for it. If they're not, think long and hard. Purely and simply, because you will not get a fair shake in the courts if you are a litigant in person and your opposing side is not, they've got representation, you will get screwed because it's, as I say, unfortunately, not about the law in those circumstances, it's about who's got the most toys and who

[80] Ibid, p 142.

[81] This is not a uniform position. Many LiPs in this study would talk about varying experiences, however, the sources of unhappiness and unfairness were largely shared and attributable to this not understanding 'the rules of the game'.

[82] D Cowan 'Legal consciousness: some observations' (2004) 67 Modern Law Review 957.

> can do the best performance and who's better at winning the game. Because that's one thing I've learned through all of this is the law is a game.

The willingness to turn to conspiracy theory may well be rooted in personality, education, pathology, or a host of other explanations beyond the scope of this project.[83]

There is also research demonstrating a strong association between belief in conspiracy theories and 'non-normative behaviours'.[84] An example of this non-normative behaviour would be, for example, those who, during COVID doubted the virus's existence and consequently refused to participate in physical distancing, breaking that particular social norm. Non-normative behaviour may also manifest in other actions, such as willingness to break the law, or to not vote.[85] This association would seem attractive in the context of thinking about LiPs, given that they themselves break a kind of social norm by appearing without representation. Lotte Pummerer suggests that:

> Non-normative behavior of people believing in conspiracy theories is a natural consequence of a different social reality that is associated with the belief in conspiracy theories. This social reality is characterized by a tendency for distinction and distrust in social relationships, a different perception of descriptive norms, a questioning of the injunctive norms regarding specific behaviors, lower trust in institutions and traditional authorities, as well as alternative norms among people believing in conspiracy theories.[86]

In this light, we might assume, therefore, that LiPs who tended to believe in conspiracy theories would have evidence of this kind of institutional distrust, in keeping with a different kind of 'social reality'.[87]

However I am reluctant to assume that deviation from social norms came *first*, for two reasons. First, the interviews in this study encompassed extensive discussions on interviewees' lives, and interviewees were asked extensively about attitudes to authority, experiences with police, and other related questions. There was no obvious lack of norm adherence between those who entertained conspiracy theorists in this study from those who did not. My other concern about the association between non-normative behaviour and belief in conspiracy theories comes from how we determine what is 'non-normative behaviour'. Participation in public protest may draw such a label and be more reflective of a repressive political environment than some kind of instinctive or reactive pathology of that individual. Joseph Uscinski suggests that an 'I know it when I see it' approach to defining conspiracy theories will 'result in the castigation of particular ideas based on one's biased and subjective perceptions and other prior beliefs, identities and worldviews'.[88] I would suggest, similarly, that what are considered social norms are also susceptible to an 'I know it when I see it' standard.

As such, while the association between non-normative behaviour and belief in conspiracy theories is clearly important, its application here is perhaps limited. Conspiracy theory scholars in psychology tend to emphasise a need to focus 'a greater emphasis on believers rather than on specific beliefs'. However, I would argue in this study that there is virtue in doing the opposite: focusing on the individual believer, rather than the belief, too easily leads us back to pathologising an individual, and takes us away from the explanatory power such beliefs may have with regard to how specific experiences with litigation can lead to developing conspiracy theories. [89]

[83]J Uscinski et al 'Cause and effect: on the antecedents and consequences of conspiracy theory beliefs' (2022) 47 Current Opinion in Psychology 2.

[84]L Pummerer 'Conspiracy belief and norm adherence' (PhD thesis, Fakultät der Eberhard Karls Universität Tübingen, 2022).

[85]Ibid, pp 1–2.

[86]L Pummerer 'Belief in conspiracy theories and non-normative behavior' (2022) 47 Current Opinion in Psychology 101394.

[87]This would also be in keeping with the literature on so-called 'querulous' litigants.

[88]Uscinski, above n 13, p 52.

[89]Ibid, p 44.

Finally, considering the degree to which attraction to conspiracy theory is the result of predisposition or psychology becomes even more complicated when we reflect on what it means to be a conspiracy theorist. While in this paper I have highlighted 'obvious' conspiracy theorists from 'non-believers', the distinction is much more blurred. Some interviewees were clearly conspiracy theorists, such as Georgina, Anna and Russell, and others were clearly *not*, such as Eleanor and Trevor. But others trod a much less clear line somewhere in between.[90] This manifested in interviewees generally avoiding any recourse to conspiracy theory-fuelled explanations, *except at certain moments*. Charles, for example, began to see conspiracy theories in the way he felt the legal profession was treating him, alluding periodically to the Masons, but he was by no means as developed in his outlook as Georgina or Anna. Marie, too, occasionally made statements connected to a belief that the local authority and solicitors conspired together, but otherwise made no claims to any kind of influence, whether Masonic or otherwise.[91] Martin is perhaps the most instructive example of this continuum, whereby he would at times talk of feeling that certain judges were 'corrupt' before catching himself and commenting on how easy it was to start to become a conspiracy theorist. In this respect, belief in conspiracy theories might best be understood as existing along a continuum, instead of being reserved for only the most 'extreme' LiPs.[92]

And if conspiracy theory is connected to repeated negative experiences, this suggests that all LiPs run the risk of becoming more inclined to conspiracy theories because of their experiences; so, any division between the 'worthy' and the 'unworthy' litigants is a false one.[93]

In addition, all of those in this study who entertained the more extremist conspiracy theories are individuals who, in the absence of formal legal advice, are part of informal networks of advice. In these advice exchanges, group members email or post to one another with suggestions, arguments and claims ranging across a whole series of issues. The arguments are not based on any kind of proof, only on opinion, and yet they are frequently taken up as fact by participating members.[94] These advice networks, which operate privately, are clearly of critical importance in shaping some of these more extreme beliefs. Research consistently shows that a believer in one conspiracy theory is more likely to believe in another.[95] However, while such private exchanges may be argued to be beyond the reach of legal influence, it is important to note that these networks of informal advice flourish because quality advice is so difficult to access for LiPs.[96] In other words, in the absence of formal and accessible legal advice, many LiPs turn to the internet. Most interviewees in this study did and while some were able to see the poor or questionable quality of the information provided and steer clear, others embraced it and were clearly influenced by it.[97]

[90]Eleanor is certain that her solicitor agreed a plea deal behind her back with the prosecution. This illustrates the very blurry line between conspiracy, exclusion and unfair treatment. Did this happen behind her back? Perhaps. If so, Eleanor is not conspiracist to think so, but one might equally argue that this did not happen and therefore she is attributing malign (if not conspiracist) motives to her solicitor.

[91]Groh, above n 1, p 11.

[92]J van Prooijena and R Imhoffa 'The psychological study of conspiracy theories: strengths and limitations' (2022) 48 Current Opinions in Psychology 3.

[93]This is supported by Oliver and Wood's research suggesting that 'conspiracist' beliefs are observable in the population in general: JE Oliver and T Wood 'Conspiracy theories and the paranoid style(s) of mass opinion' (2014) 58 American Journal of Political Science 952.

[94]One such exchange involved the identifying of a 'sympathetic' judge to take up their cause of 'exposing' the influence of Freemasons. Anna suggested Lord Neuberger, only to receive a flurry of emails accusing Lord Neuberger of being part of the 'cover up' and a Mason himself.

[95]See T Goertzel 'Belief in conspiracy theories' (1994) 15 Political Psychology 731; V Swami et al 'Conspiracist ideation in Britain and Austria' (2011) 102 British Journal of Psychology 443; K Drinkwater et al 'Reality testing, conspiracy theory and paranormal beliefs' (2012) 76 The Journal of Parapsychology 57.

[96]See also T Tkacukova 'Changing landscape of advice provision: online forums and social media run by McKenzie friends' (2020) 4 Child and Family Law Quarterly 397.

[97]Charles and Talia, for example, thought that many of the groups they encountered on the internet were unreliable, or 'crazy'.

So if a LiP is unable to access reliable formal advice, they may turn to these networks.[98] And such exchanges can frequently share bad information back and forth which can perpetuate conspiracy theories.[99] It is notable that when LiPs in this study talk about developing conspiracy theory beliefs, they often speak in the language of revelation where something now obvious was revealed to them, and more often than not, this has come from someone explaining 'what really happened' to them.[100] The role of informal advice networks is also important because the other commonality amongst conspiracy theorists in this study is the desire to 'help' others see what they have seen. All the interviewees in this study who explicitly entertained conspiracy theories have subsequently sought to help other LiPs with their experiences, thus potentially perpetuating this kind of misinformation for future LiPs. It was notable that the most conspiracy theory minded LiPs in this study were the most active in attempting to assist other LiPs, through setting up websites, helping other LiPs with their casefiles, and through working as McKenzie Friends. Anna says: 'basically um we are people who are victims of corrupt courts and corrupt solicitors and we are educating people what to avoid. We're, we're sharing our experiences so that others don't suffer like we do.'[101]

Conclusion

In concluding, I want to make clear that I am not arguing that all LiPs are conspiracy theorists. Most are not and may never become so. I am, though, arguing that there are important findings to draw from this study: first, there is a connection between the real experiences of exclusion that LiPs face and entertaining beliefs in conspiracy theories. The experiences individuals have as LiPs can help to create, reproduce and aggravate such ideas. This is because belief in conspiracy theories is not undifferentiated, but may better be understood in this study as a continuum, with some LiPs completely embracing conspiracy theories, others using them at times to explain certain points in their experiences, and others rejecting these ideas altogether.[102] This means that there is a real possibility that some LiPs may slip from disappointed expectations into these subtler forms of conspiracy theory belief. The more LiPs lack access to good quality information, advice or even just basic assistance and sympathy, the more likely they are to find alternative explanations through informal advice networks, and the greater the risk that LiPs may interpret their negative experiences as being symptomatic of something more malevolent. This means a future of more conspiracy theory-motivated LiPs acting in a 'difficult' way for the courts. In this respect, such a finding suggests a clear impact on the courts. However, more importantly for this study, it evidences a real problem for LiPs.

This paper, then, ends up where the study first started: since the Legal Aid, Sentencing and Punishment of Offenders Act 2012, and arguably earlier, the legal profession has feared the effect of more LiPs, focusing on their perceived pathology and the impact this 'querulous behaviour' will have on the courts. Perhaps ironically, or perhaps inevitably, the research in this paper suggests that the legal profession is somewhat responsible for creating them in the first place. Going to law is disproportionately more difficult for LiPs and at its worst, put simply, it can make LiPs 'crazy'. In addition, recent policy shifts and austerity measures that have resulted in a decline in access to legal advice, basic assistance or even simple face-to-face contact, are aggravating this situation

[98] As Genn notes, many litigants will start to come to courts armed with 'bad' advice from informal networks. Genn, above n 34, 418–419.

[99] Groh, above n 1, p 3. As Anna put it: 'They don't like [McKenzie Friends] because basically we are people who are victims of corrupt courts and corrupt solicitors and we're educating people what to avoid'.

[100] For example, Georgina talks about wishing she had been 'more awake' eight years before when the alleged fraud was first taking place. Martin similarly 'discovers' what has happened to him through meeting someone who experienced something similar. Marie learns, through her contact with McKenzie Friends, that lawyers within the local authority cannot be trusted.

[101] See N Dagnall et al 'Conspiracy theory and cognitive style: a worldview' (2015) 6 Frontiers in Psychology 206.

[102] Both Martin and Charles are quite clear about their desire to avoid entertaining conspiracist ideas but are also both at times clearly tempted by conspiracist explanations.

considerably, creating a perfect storm of advice deserts, lack of human contact, and a proliferation of online networking between LiPs.

However, I want to end on a slightly more optimistic note. Although some individuals may have personalities that predispose them to fall into beliefs in conspiracy thinking no matter what we do, there will be others who would not do so unless they had some or all of the experiences described in this paper. Forestalling the assumption that serial litigants are inevitably suffering from 'querulous behaviour' syndrome not only stops internalising responsibility in the LiP, but can also offer a better way forward for everyone. As such, we need to focus more clearly, again, on how we treat *all* LiPs in the civil justice system. This involves confronting the idea that LiP difficulties are systemic, and requires us to address the role and purpose of LiPs in a more coherent and systematic way. This also involves moving away from the persistent but problematic distinction made between 'worthy' and 'unworthy' LiPs. Most importantly this suggests we need to think far more seriously about the degree to which litigation is the breeding ground for the dissatisfaction that can give rise to conspiracy theory. Perhaps then, there is a possibility that some of the more negative experiences told in these pages might be avoided.

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