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# Justice for America's Poor in the Year 2020: Some Possibilities Based on Experiences Here and Abroad

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# JUSTICE FOR AMERICA'S POOR IN THE YEAR 2020: SOME POSSIBILITIES BASED ON EXPERIENCES HERE AND ABROAD

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Several years ago, in an attempt to capture the essence of the rationale for civil legal aid, I observed in an unpublished speech: "At root, equal justice is simply the notion that law and the courts should be fair, even if life isn't." But another way of phrasing that core principle appears more appropriate in a symposium largely devoted to litigation between well-heeled adversaries or, if not, where the prospect of a substantial contingent fee allows less well-off parties to behave as if they were. In that context, it might be better to make the point that "access to law and the courts should not depend entirely on the free market, even in a free market economy." Unless and until it is proven the rich are always right in their disputes with the poor, the law and the courts are not fair so long as litigants' chances to successfully resolve their disputes in those forums depend on having enough money or the right kind of a case to hire a lawyer.

Sadly, although the United States has made considerable progress—in fits and starts—over the past forty years, we are still a long way from providing our lower income population the "equal justice under law" we so boldly advertise on our Supreme Court building, the "justice for all" we promise in our pledge of allegiance, or the "due process" and "equal protection of the laws" our Constitution tells the nation's citizens they are guaranteed. Given our public rhetoric, it is a small wonder that recent public opinion polls found between seven in ten and eight in ten Americans believed poor people already have a constitutional right to counsel in civil cases.[1] And not surprisingly, many poor people are shocked when told "no, sorry, the courts don't

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1. Two 1991 surveys, one by the California State Bar and the other by the American Association of Trial Lawyers, revealed that sixty-nine percent of California's citizenry and seventy-nine percent of a national sample believed poor persons who are defendants in civil cases have a right to free counsel just as they do in criminal cases. *See* State Bar of Cal., *Bar Survey Reveals Widespread Legal Illiteracy*, CAL. LAW., June 1991, at 68, 69.

appoint counsel in civil cases." Several professors have told me that many law students express surprise to learn there is no such right.

The absence of a right to counsel in civil cases has allowed the United States to lag behind many other industrial democracies in its commitment to the goal of equal justice. Thus, we have much to learn from their far more ambitious endeavors to reach that goal. At the same time, American ingenuity has devised some novel approaches and techniques that suggest we may be able to arrive at this destination in a way that is not only effective but also cost-effective. This Article attempts to sketch some ingredients that might shape an ever larger and most essential part of the justice system as early as 2020.

## I. THE CURRENT STATUS OF JUSTICE FOR THE POOR IN THE UNITED STATES

Before looking to the future, it is necessary to examine the present. The United States started from so far behind that progress in the past four decades can appear remarkable, indeed dramatic. Until 1965, the federal and state governments failed to accept any obligation to provide legal representation for the poor in civil cases, thus leaving legal aid entirely dependent on private charity. As a result, the combined budgets of all legal aid societies in the country totaled less than $5.4 million in that year (about thirty million dollars in 2008 dollars).[2]

The next year, 1966, ushered in the Office of Economic Opportunity (OEO) Legal Services Program, a creation of the nation's short-lived "War on Poverty"—a "war" that turned out to be a mere "skirmish."[3] Yet, in the next three years that program managed to raise the nation's annual investment in civil legal aid to more than forty-five million dollars (over $200 million in 2008 dollars).[4] In 1975, the Legal Services Corporation (LSC) supplanted the OEO program and in its first five years increased the federal investment another five fold, to $321 million.[5] While in the next three decades the LSC budget was jolted twice by huge reductions and has never approached its early peak in real, inflation-adjusted dollars, many state governments and

2. NAT'L LEGAL AID & DEFENDER ASS'N, 1966 SUMMARY OF CONFERENCE PROCEEDINGS 46 (1966). Calculation made using consumer price index (CPI) inflation calculator. *See* Inflation Calculator, http://data.bls.gov/cgi-bin/cpicalc.pl (last visited Mar. 17, 2009).

3. *See* EARL JOHNSON, JR., JUSTICE AND REFORM: THE FORMATIVE YEARS OF THE AMERICAN LEGAL SERVICES PROGRAM 39–70 (1978).

4. *Id.* at 188.

5. Alan W. Houseman, *Civil Aid in the United States: An Update and Overview*, *in* INTERNATIONAL LEGAL AID GROUP CONFERENCE—LEGAL AID: A NEW BEGINNING? CONFERENCE PHOTOGRAPHS, REPORTS, AND PAPERS, at 125, 136 (June 2007) [hereinafter LEGAL AID: A NEW BEGINNING?].

other public funding sources—principally Interest on Lawyers Trust Accounts (IOLTA)[6]—have stepped in to help fill the gap, as has the private sector in some jurisdictions. Thus, by 2008, federal, state, and local governments supplemented by IOLTA are devoting a combined total of over $750 million to civil legal aid with private foundations, charitable donors, and court-awarded fees—adding another nearly $250 million.[7] This sounds like a significant sum, but how does it stack up in comparison to need and other relevant measures?

To provide a frame of reference, first consider the size of the population unable to afford to hire counsel. It is not a small number: about fifty million Americans are considered financially eligible for services from lawyers funded by the federal LSC[8] under its very tough standard—125% of the poverty level, roughly $25,000 annual income for a family of four.[9] That is one in every six Americans. But in some states, programs supported with non-federal funds find the federal standard unrealistic and consider those up to 200% of poverty as financially eligible.[10] Applying that more generous and probably more realistic test of who cannot afford counsel in most cases in most courts, ninety million Americans—almost a third of the nation's population—are in need of government-funded legal counsel.[11]

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6. IOLTA, What is IOLTA?, http://www.iolta.org/grants (last visited Mar. 17, 2009). These programs make use of the interest earned on trust accounts maintained by lawyers for client funds that are too small or held for such a short period of time that the interest cannot be economically allocated to the individual clients. *Id.* In the past, the banks paid no interest on such pooled accounts and had free use of those funds. IOLTA programs require the banks to pay interest on the accounts and to send the interest payments to a central fund for the use of legal services for the poor, and in some states also for other improvements in the justice system. *Id.* Based on a program that had existed in British Columbia, Canada for a number of years, an IOLTA program started in Florida in 1980, and over the years programs spread across the country. At this point, all fifty states and the District of Columbia have some form of IOLTA, either through legislation or court order. American Bar Association, Directory of IOLTA Programs, http://www.abanet.org/legalservices/iolta/ioltdir.html (last visited Mar. 17, 2009).

7. Houseman, *supra* note 5, at 135.

8. As of 2005, the Bureau of the Census reported 49,327,000 people were below 125% of the poverty level. U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2008, at 458 tbl.689 (2008), *available at* http://www.census.gov/compendia/statab/2008/2008edition.html.

9. Legal Services Corp., What is the LSC?, http://www.lsc.gov/pdfs/WhatisLSC.pdf (last visited Mar. 17, 2009); Houseman, *supra* note 5, at 129 (reflecting the Legal Service Corporation's 2007 poverty guidelines were set at 125% of the poverty level which equaled an annual income of $12,763 for a single individual and $25,813 for a family of four).

10. *See* 45 C.F.R. § 1611 (2009).

11. As of 2006, the Census Bureau reported 91,091,199 people in the United States had income below 200% of the poverty level, while 51,375,624 were below 125%. U.S. CENSUS BUREAU, POVERTY STATUS IN THE PAST 12 MONTHS (2006), *available at* http://factfinder.census.gov/servlet/STTable?-geo_id=01000US&-qr_name=ACS_2006_EST_G00_S1701&-ds_name=ACS_2006_EST_G00_.

For those fifty or ninety million people, there are approximately 6500 civil legal aid lawyers in the entire country—funded by a combination of federal and state governments,[12] IOLTA,[13] private foundations, and charitable donations (mainly from lawyers). That is only one lawyer for every 6861 eligible people,[14] or one for every 13,000, depending on where the line is drawn. In contrast, there is approximately one lawyer for every 525 people in the rest of the population.[15]

Those 6500 civil legal aid lawyers represent less than .65% of the nation's lawyers.[16] Yet they are expected to serve as much as one third of the nation's population. Moreover, the combined budgets of all the programs employing these lawyers is less than one half of a percent of what the country spends on lawyers.[17] Indeed, there are two corporate law firms—Skadden, Arps, Slate, Meagher, & Flom LLP and Latham & Watkins LLP—*each* of which received over two billion dollars in legal fees during 2007 from its comparative handful of wealthy clients.[18] This is twice as much as all the legal aid programs in the country presently receive from all sources to purportedly meet the legal needs of fifty million, or as many as ninety million, people.

To see how things could have been better, turn back to 1981, the high point for the LSC's appropriation from Congress. That year LSC had a budget of $321 million—in 1981 dollars, of course.[19] If that budget had merely stayed even with inflation, today the LSC would have an appropriation of over $730 million instead of its current $340 million.[20] To put it another way, in 1981 dollars, the LSC budget has

12. LEGAL SERVICES CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA 15 (2005), *available at* http://www.lsc.gov/justicegap.pdf.

13. See *supra* note 6 for a description of IOLTA programs.

14. LEGAL SERVICES CORP., *supra* note 12, at 15.

15. *Id.*

16. *See* AM. BAR ASS'N., LAWYER DEMOGRAPHICS (2008), *available at* http://www.abanet.org/marketresearch/Lawyer_Demographics_2008.pdf (noting that in 2008 there were 1,162,124 licensed lawyers in the United States).

17. In 2005, $221.6 billion was spent on the services of lawyers in the United States. U.S. CENSUS BUREAU, PROFESSIONAL, SCIENTIFIC, AND TECHNICAL SERVICES: REVENUE AND OPERATING EXPENSES BY TYPE AND KIND OF BUSINESS pt. 1 tbl.19 (2002), *available at* http://www.census.gov/prod/2007pubs/08abstract/services.pdf. This represented an increase of forty-one billion dollars in the previous three years over the $180 billion spent on those services in 2002. *Id.* Thus, the roughly one billion dollars currently spent on civil legal aid is roughly .5% of the total amount American society spends on lawyers.

18. *Behind the Numbers: Noteworthy Trends and Newsmaking Firms in this Year's Am Law 100*, AM. LAW., May 2008, at 136, 138. The largest 100 law firms in the U.S. earned sixty-four billion dollars in 2007. *Id.* at 137.

19. Houseman, *supra* note 5, at 136.

20. Calculation made using CPI inflation calculator. *See* Inflation Calculator, http://data.bls.gov/cgi-bin/cpicalc.pl (last visited Mar. 17, 2009).

retreated from $321 million in 1981 to $121 million in 2008.[21] And, if the LSC budget had kept pace with the overall federal budget—that is, if it were the same percentage of the government's 2008 budget as it was of the 1981 budget—its appropriation would be over $1.45 billion.[22]

But perhaps most significantly, if the LSC budget today were as large a percentage of the nation's legal resources as it was in 1981, this year's LSC appropriation would be in the range of $2.8 billion. In 1981, the LSC budget was nearly 1.4% of the nation's total expenditures on lawyers—then twenty-three billion dollars[23]—while in 2008, the LSC budget is barely .16% of the over $200 billion spent on lawyers in 2005.[24] Only because in recent years the LSC funding has been augmented by IOLTA, state government funding, and foundation and charitable donations does the combined funding reach even .5% of the nation's expenditure on legal services. LSC funding remains woefully inadequate, but the total is better than if federal funding remained the sole source of support of civil legal aid in this nation. Yet given this tiny share of the nation's legal resources, it is a small wonder that so few lower income people can get a lawyer when they need one.

But wait, one might say. Maybe it is just inevitable. Poor people simply are never destined to get a decent share of *any* nation's legal resources. The rest of the population and its elected representatives simply will refuse to devote significant public funds to supply lawyers for those unable to afford their own. Perhaps an examination of the experience in some other countries can tell us whether this reluctance to pay the price for equal justice is indeed inevitable. What we find is that most other common law countries spend from three to ten times as much of their gross national product on civil legal aid as we do in

21. Calculation made using CPI inflation calculator. *Id.*

22. In 1981, federal outlays totaled slightly over $678 billion and the LSC budget was $321 million. OFFICE OF MGMT. & BUDGET, HISTORICAL TABLES: BUDGET FOR THE UNITED STATES GOVERNMENT: FISCAL YEAR 2009, at 22, http://www.gpoaccess.gov/usbudget/fy09.pdf (last visited Mar. 17, 2009). The proposed federal outlays in the 2009 fiscal year budget total slightly over $3.1 trillion dollars—over 4.5 times the 1981 federal expenditure. *Id.* If the LSC budget were to have increased as much as the rest of the federal budget has, it would reach $1.46 billion in 2009, instead of lagging behind at only a few million more than it was in 1981. *Id.*

23. U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES: 1982–83, at 800 (1982).

24. *See* U.S. CENSUS BUREAU, *supra* note 17, pt. 1 tbl.19. In that year, American society as a whole spent $221.8 billion on legal services, a $41 billion increase in the previous three years. *Id.* The 1.4% of total legal resources the 1981 LSC budget represented would amount to at least $2.8 billion if applied to the more than $200 billion in legal resources then available in the U.S. *See id.*

the United States. England, with a population slightly more than one-sixth that of the United States,[25] actually spends more on civil legal aid out of its national budget than the United States does from all public and private sources.[26] If the United States was as generous as England, our nation's civil legal aid budget would be over nine billion dollars.

There are several European nations willing to devote a much larger percentage of their GDP to civil legal aid than the United States. As reflected by the chart in the Appendix, Germany, Finland, and Ireland each provided over three times as much in public funding for civil legal aid as the United States, Canada about four times as much, New Zealand five times as much, Scotland seven times as much, the Netherlands about ten times as much, and England twelve times as much. Six thousand miles east, Hong Kong devotes over six times as much of its GDP to civil legal aid as does the United States. Hong Kong, now a part of communist China, is willing to spend six times more on securing equal justice for its lower income residents than the United States, whose citizens think of it as the home of "justice for all." Based on the experience in these comparable industrial nations, it is difficult to assume America's current reluctance to adequately fund civil legal aid somehow represents an inevitable or inherent political limit on funding for this purpose.

## II. Some Possible Lessons from Other Industrial Democracies about the Provision of Legal Aid as a Matter of Right

In attempting to devise a "rights-based" legal aid system in the United States, this Part examines the experiences of countries that have been on that path for decades, and in some instances more than a century.[27] After describing the history of these Nations,[28] the inquiry will turn to the several models currently in place in various industrial democracies.[29]

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25. Earl Johnson, *Key Features of Fifteen National Legal Aid Programs*, *in* International Legal Aid Group Conference: Legal Aid in The Global Era, Conference Reports and Papers, at 157, 163 (June 2005) [hereinafter Legal Aid in the Global Era]. England and Wales, with a population of fifty-three million people, expended $1.21 billion on civil legal aid exclusive of representation in immigration cases with another $400 million spent on the latter. *Id.* at 161, 163.

26. In 2004, the year England and Wales spent $1.21 billion, America's public spending was approximately $800 million and its private spending was about $200 million (when the nation's population was 295 million). *Id.* at 160.

27. *See infra* notes 27–98 and accompanying text.

28. *See infra* notes 30–53 and accompanying text.

29. *See infra* notes 54–81 and accompanying text.

### A. *The Historical Pattern in "Rights-Based" Legal Aid Systems*

Why the dramatic difference between the United States and so many other industrial democracies? In part, the difference may be because of our history—a product of our isolation from Europe, or at least European influences, during some important developments in that part of the world. In any event, the upshot is that most of these countries ended up with a rights-based civil legal aid system, while the U.S. System evolved as what might be called a "fixed limited resource" system. That is, the United States finances a fixed number of lawyers who serve as many financially eligible clients as they can, with the rest, the vast majority, unfortunately left to fend on their own. And, so far at least, it has been a *very limited* fixed resource—a few thousand lawyers serving millions of lower income people who need their help. As a result, the vast majority of that unfortunate population gets no chance for justice in our courts. In most other common law countries and many other European countries, on the other hand, financially eligible people have a legally enforceable right to counsel in civil cases—at least where lawyers and the expertise they possess are important to a fair chance for a favorable outcome in those cases.

The historical pattern in Europe, which the United States happened to miss, occurred in the 1800s and in some countries in the early 1900s. The exception is England, where this pattern started much earlier, in 1495 during the reign of King Henry VII.[30] Before the 1800s, these same countries had gone through a charitable era—when similar to the system in the United States, the church, a sympathetic noble, or a city would provide a lawyer or two to some poor people.[31] Starting with France in 1851, however, the European legislatures began enacting laws giving poor people a statutory right to counsel in civil cases.[32] Italy enacted such laws in 1865,[33] and Germany did the same in 1877.[34] By early in the twentieth century, most of the continent had followed suit.[35]

The creation of a statutory right to counsel for poor people was only the first stage. For decades, these European nations implemented this

30. An Act to Admit Such Persons as Are Poor to Sue in Forma Paupis, 1495, 11 Hen. 7, c. 12, *reprinted in* 2 STATUTES OF THE REALM (William S. Hein & Co., 1993).

31. MAURO CAPPELLETTI, JAMES GORDLEY & EARL JOHNSON, JR., TOWARD EQUAL JUSTICE: A COMPARATIVE STUDY OF LEGAL AID IN MODERN SOCIETIES (Dott. A. Giuffre ed., 1975).

32. *Id.* at 39–46.

33. *Id.* at 19.

34. *Id.*

35. Earl Johnson, Jr., *The Right to Counsel in Civil Cases: An International Perspective*, 19 LOY. L.A. L. REV. 341 (1985) (summarizing these developments).

right by appointing lawyers who were expected to provide the representation without any compensation.[36] It frequently was called "an obligatory and gratuitous duty,"[37] but could also be viewed as a form of in-kind tax on lawyer's monopoly over representing people—those who could pay their fees—in court.[38]

In a second stage of development, however, most of these other countries begin paying the lawyers appointed to represent indigent litigants in civil cases. Sweden, for example, enacted legislation in 1919 authorizing government payment of fees to lawyers representing indigent civil litigants in 1919.[39] Germany did so in 1923,[40] England in 1949,[41] and France in 1972.[42]

The final step that solidified the rights-based approach across Europe started with an impoverished Irish woman who sought a judicial separation from her husband. The plaintiff, a Mrs. Airey, could not afford a lawyer, and when she asked the trial court to appoint one to help her, the court denied her request on grounds that there was no right to counsel in civil cases under Irish law.[43] This is essentially the same answer to the same question that American judges utter many times a day across this country. When Mrs. Airey appealed to the Irish Supreme Court, she again was denied relief, which is what led her to the court of last resort in Europe—the European Court on Human Rights.[44]

The controlling document in Mrs. Airey's case was the European Convention for the Protection of Human Rights and Fundamental

36. CAPPELLETTI ET AL., *supra* note 31, at 18–19.

37. *Id.* at 19.

38. Not many readers will remember when, in the United States, the statutory and constitutional right to counsel in *criminal* cases that existed in some states and the federal courts depended on appointing private lawyers to represent the defendants without receiving any compensation from the government for those services. This was still the practice in most federal courts as late as the early 1960s when I was a prosecutor in those courts and faced uncompensated appointed counsel across the courtroom when the defendants were indigent. At that time, there was a constitutional right to counsel in federal criminal prosecutions under *Johnson v. Zerbst*, 304 U.S. 458 (1938), but it was not until enactment of the Criminal Justice Act in 1964 that lawyers appointed to represent defendants in those cases were entitled to payment for their services. *See* 18 U.S.C. § 3006A (1994); *see also* U.S. Courts, History of the Defender Services for the U.S. Federal Courts, http://www.uscourts.gov/defenderservices/history.html (last visited Mar. 17, 2009).

39. CAPPELLETTI ET AL., *supra* note 31, at 563.

40. *Id.* at 48.

41. *Id.* at 53–54.

42. *Id.* at 423–37.

43. Airey v. Ireland, 2 Eur. H.R. Rep. (ser. A) 305 (Eur. Ct. H.R. 1979).

44. *Id.*

Freedoms.[45] The European Convention does not contain any explicit language saying poor people have a right to counsel in civil cases. It only guarantees a "fair and public hearing" in such cases[46]—just as the U.S. Constitution only guarantees American poor people "due process" and "equal protection of the laws."[47] The relevant language is found in article 6, paragraph 1 of the Convention: "In the determination of his *civil rights and obligations* or of any criminal charge against him, everyone is entitled to *a fair* and public *hearing* within a reasonable time . . . ."[48]

Nor could the counsel for Mrs. Airey argue Irish law raised any special impediments to litigants who lacked the assistance of a lawyer. Those litigants enjoyed just as much access to the courts—in the sense of the physical ability to enter the courtroom and personally present a case to the judge as would the wealthiest person or corporation who was accompanied by the best lawyer in the realm. So by that definition of access to justice, Mrs. Airey was the equal of anyone else in Ireland.

Nonetheless, the European court ruled in favor of Mrs. Airey and found the Irish government had violated article 6, paragraph 1 of the European Convention on Human Rights and Fundamental Freedoms by failing to provide her free counsel in this civil case.[49] As the European Court explained:

> The [Irish] Government contend that the applicant does enjoy access to the [Irish] High Court, since she is free to go before that court without the assistance of a lawyer.
>
> The Court does not regard this possibility, of itself, as conclusive of the matter. The Convention is intended to guarantee not rights that are theoretical or illusory but rights that are *practical and effective.* This is particularly so of the right of access to the courts in view of the *prominent place held in a democratic society by the right to a fair trial.* It must therefore be ascertained whether Mrs. Airey's appearance before the High Court without the assistance of a lawyer would be effective, in the sense of whether she would be able to present her case properly and satisfactorily
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> . . . .

45. CAPPELLETTI ET AL., *supra* note 31, at 657–60 (describing the background and basic procedures of the Convention and its enforcement). The member states of the Council of Europe signed this document in Rome on November 4, 1950, and it became effective on September 3, 1953, when the tenth instrument of ratification was deposited. *Id.*; *see* European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 222 (emphasis added) [hereinafter European Convention].

46. European Convention, *supra* note 45, art. 6(1).

47. U.S. CONST. amend. XIV.

48. European Convention, *supra* note 45, art. 6(1) (emphasis added).

49. Airey, 2 Eur. H.R. Rep. (ser. A) at 314–18.

> The court concludes . . . that the possibility to appear in person before the High Court does not provide the applicant with an *effective* right of access.
>
> . . . .
>
> . . . There has accordingly been a breach of Article 6(1).[50]

The European court's decision in *Airey v. Ireland* provided a happy ending to Mrs. Airey, who got her lawyer and her judicial separation. It also proved a boon to Ireland's other poor people, because the following year Ireland established a legal aid system for the first time. This system is a comprehensive nationwide network of local offices staffed with salaried lawyers and funded at three times the level proportionally as is the U.S. system.[51] Notably, Mrs. Airey was represented before the European court by Mary Robinson,[52] who was elected as the first female president of Ireland in 1990 and left that position in 1997 to serve as the United Nation's Human Rights Commissioner.[53] But most significantly, the *Airey* decision created a constitutional foundation beneath the statutory rights most European countries already had adopted—a foundation reaching some forty-one countries (with a combined population over 400 million) which are signatories to the European Convention.

Although the rights-based approach is firmly ensconced in Europe—in many countries for a very long time—sophisticated issues and refined approaches have surfaced in recent years that can help guide the United States should it seek to fulfill its promise of justice under the law as a matter of right.

### *B. The Variety of "Mixed Systems" Delivering Legal Services*

It is true that several European countries, mostly in southern Europe, Italy among them, remain at the first stage—appointing lawyers expected to serve the indigent as their obligatory and gratuitous duty and without payment from the government.[54] But many European and common law nations have moved on not only to a second stage but in recent years have arrived at a third stage, where they use sala-

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50. *Id.* (emphasis added).

51. *See National Report—Ireland*, *in* LEGAL AID IN THE GLOBAL ERA, *supra* note 25, at 85–88. In recent years, Ireland has taken steps to supplement the salaried staff offices with some private bar resources, particularly where an office is overwhelmed with people seeking assistance and thus waiting times become unacceptably long. *Id.* at 85.

52. Chris Thompson, *The Twenty-Third Annual Meeting, 1994*, PSYCHIATRIC BULL., Dec. 1994, at 783, 785–86, *available at* http://pb.rcpsych.org/cgi/reprint/18/12/783.pdf (inducting Mary Robinson as an Honorary Fellow).

53. Biography.com, Mary Robinson Biography, http://www.biography.com/search/article.do?id=9460920 (last visited Mar. 17, 2009).

54. CAPPELLETTI ET AL., *supra* note 31, at 33–39.

ried staff attorneys to provide much of the representation for lower income litigants in civil cases. Their delivery systems have come to embrace elements of the predominant system used in the United States, the salaried lawyer specializing in the legal problems of poor people. However, in nearly all of these countries, as explained below, a substantial amount of the responsibility for representing the poor remains with the private bar, an approach commonly referred to as "judicare" in our country.

The legal aid programs that use both salaried lawyers and judicare are called "mixed" delivery systems, and they are becoming more common in Europe and the common law countries. But different countries tend to mix the two basic approaches in different ways. There are at least three basic types: the "client option" mixed system,[55] the "subject matter" mixed system,[56] and the "function-based" mixed system.[57]

### *1. Client Option Mixed System*

Quebec province is the oldest and nearly the only example of a pure client option mixed system. Created in 1972, the Quebec program combines a large province-wide network of offices staffed by salaried lawyers with a judicare program.[58] Although all applicants enter the system by going to one of the salaried offices where their eligibility is determined, they have the option of requesting representation by either one of the office's salaried lawyers or by a private lawyer chosen from a roster of private lawyers interested in participating in the program.[59] Those private lawyers, in turn, are compensated by the government for the services they furnish to the clients who chose them.[60] Statistics reveal that clients are quite discriminating in making those choices. They tend to choose salaried lawyers when they have cases involving government benefits, housing, and consumer issues, but they elect to go to private lawyers more often in family law and criminal cases—the latter being the common grist of the private bar in the province.[61] As of the 2007–2008 fiscal year, sixty-six percent of the

55. *See infra* notes 58–62 and accompanying text.

56. *See infra* notes 63–67 and accompanying text.

57. *See infra* notes 68–81 and accompanying text.

58. Robert M. Cooper, *Report on the Quebec Legal Aid System*, *in* CAPPELLETTI ET AL., *supra* note 31, at 614, 614–17.

59. *Id.* at 617.

60. CAPPELLETTI ET AL., *supra* note 31, at 584–628 (describing the Quebec program in some detail).

61. Cooper, *supra* note 58, at 617.

Quebec Legal Aid budget was expended on representation by salaried staff and thirty-four percent on representation by private attorneys.[62]

### 2. *Subject Matter Mixed System*

The subject matter mixed system is exemplified by another Canadian province, Ontario. That program started in the mid-1960s as a pure judicare system.[63] In the 1970s, however, the Ontario legislature created a province-wide network of "legal clinics" staffed by salaried lawyers.[64] Unlike Quebec, these lawyers were charged with handling only "poverty law" cases—government benefits, housing, consumer law, and the like.[65] Family law and criminal law remained the exclusive province of the private bar.[66] Thus, clients who have poverty law problems are expected to take those problems to a "legal clinic," where salaried lawyers will provide the representation. When they have family law or criminal cases, Ontario residents can only look to compensated private counsel to handle the problem. In recent times the mix has become more complex, with a few experimental pilot programs using salaried public defenders in some criminal courts and salaried lawyers in some family courts.[67] But the basic pattern remains the same: a split between salaried staff and compensated private counsel based on the subject matter of the client's problem.

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62. CANADIAN CENTRE FOR JUSTICE STATISTICS, LEGAL AID IN CANADA: RESOURCES AND CASELOAD STATISTICS—2007–2008, at 37 tbl.9.1 (2009), *available at* http://www.statcan.gc.ca/pub/85f0015x/85f0015x2008000-eng.pdf.

63. *See* Legal Aid Ontario, About Legal Aid Ontario: Historical Overview, http://www.legalaid.on.ca/en/about/Historical.asp (last visited Mar. 17, 2009) [hereinafter Legal Aid Ontario Historical Overview]. Legal Aid Ontario, the independent public corporation that administers both criminal and civil legal aid in that province, reports approximately 4000 private lawyers participate in the "judicare" component of the mixed system. *See* Press Release, Attorney General Announces Tariff Increase For Legal Aid and Lawyers (July 18, 2007), http://www.legalaid.on.ca/en/news/july18-2007a.asp. Some private attorneys also serve as "duty counsel," staffing courtrooms and providing advice and limited assistance to people who show up without counsel. Legal Aid Ontario, About Legal Aid Ontario, http://www.legalaid.on/ca/en/about (last visited Mar. 17, 2009).

64. Legal Aid Ontario Historical Overview, *supra* note 63. There now are eighty of these community-based legal clinics in Ontario—sixty-seven in geographic areas around the province and the rest specializing in certain subject areas or vulnerable populations. MARY COLLINS, RICHARD FERRIS & MICHELLE LERERY, BUILDING THE BEST TEAMS: NAMING AND NURTURING THE "FIRE IN THE BELLY" IN LEGAL CLINIC SUPPORT (Sept. 2004), *available at* http://www.aclco.org/f/FINALFireintheBellySept2004CROVERSION2withpic.pdf.

65. *See* Legal Aid Ontario Historical Overview, *supra* note 63.

66. *See* Legal Aid Ontario, About Legal Aid Ontario, http://www.legalaid.on.ca/en/about (last visited Mar. 17, 2009). Private attorneys also represent clients before certain administrative tribunals and immigration and refuge boards.

67. Lynn Iding, *Expanding the Mix: Introducing Staff Services—a Work in Progress*, *in* LEGAL AID IN THE GLOBAL ERA, *supra* note 25, at 303, 303–12.

### 3. *Function-Based Mixed System*

The Netherlands recently changed its legal aid program to what is best characterized as a function-based mixed system.[68] That country established an array of neighborhood "law counters" staffed with salaried lawyers and supervised paralegals.[69] People who believe their problems have a legal dimension can come to one of these "law counters" where the staff will diagnose the applicant's problem, or often, set of problems. The staff then will try to resolve the problem short of litigation, including sending letters, making telephone calls, drafting legal documents, and the like. But if litigation is necessary or becomes necessary later in the process, the client will be referred to a private lawyer who will be compensated by the government for the representation he or she provides. There is thus a functional divide. Salaried staff provide all the legal advice and representation short of litigation, while compensated private lawyers handle all the litigation, but *only* the litigation services that lower income people require. This new system is only three years old, and it is not yet clear the limited functions assigned to the "law counters" will prove professionally satisfying to enough Dutch lawyers to keep those offices adequately staffed.

To give an idea of how complex the mix between salaried lawyers and judicare can become, consider the legal aid program in Finland, which uses a mix of mixed systems.[70] Finland has established a nation-wide network of legal aid offices staffed by salaried lawyers.[71] However a person in need of legal aid enters the system, a legal aid office must determine their eligibility for government-funded services.[72] Similar to the "law counters" in the Netherlands, those offices diagnosis the problem and are the exclusive source of advice and representation short of litigation in the absence of exceptional circumstances.[73] There is a functional divide, just as in the Netherlands. Unlike the Netherlands, when Finnish residents have problems requiring litigation, the case is not automatically referred out to a compensated private counsel. Instead, similar to Quebec, clients are given an option. They can ask a salaried attorney to represent them in court,

68. *See* Peter J.M. van den Biggelaar, *The Legal Services Counter: Lessons Learned, The Netherlands*, *in* LEGAL AID: A NEW BEGINNING?, *supra* note 5, at 283.

69. *Id.* at 290.

70. *Legal Aid in Finland*, *in* LEGAL AID: A NEW BEGINNING?, *supra* note 5, at 47.

71. *Id.*

72. *Id.*

73. *Id.* These exceptional circumstances might involve a conflict with office staff, the office might be too busy, or the staff might lack the special knowledge required for a particular legal problem.

or they can choose to have a private lawyer take over at the litigation stage. Clients elect private counsel in over seventy percent of court cases, but in a substantial percentage they pick a salaried lawyer to handle their litigation.[74] Thus, Finland is a mix of the function-based and client option mixed systems.

There remain at least a few jurisdictions—notably England,[75] France,[76] and Germany[77]—that continue to rely primarily on compensated private counsel to implement their statutory rights to counsel in civil cases. And a few—Ireland[78] and some Brazilian states[79]—rely almost entirely on a cadre of salaried lawyers to carry the entire load of satisfying a right to counsel in civil cases. This is comparable to the approach used in many American jurisdictions in criminal cases—a right to counsel implemented through a cadre of salaried public defenders. Furthermore, a few "fixed resource" systems like the United States deploy salaried lawyers in offices around the country to handle as many cases as they can—among them South Africa,[80] and most recently communist China.[81] Some type of mixed system, however, appears to be the wave of the future in rights-based civil legal aid systems.

### C. *Some Approaches to Cost Containment in the Judicare Component of Rights-Based Systems*

Whether a country uses a pure judicare system or incorporates it as a major element in a mixed system, there arises a perceived or real issue of cost containment and a problem of achieving a proper balance

74. Salaried staff counsel represented in over 12,000 court cases and private lawyers represented in nearly 32,000 court cases. *Id.* at 50, 54.

75. Carolyn Regan, *Legal Services Commission: England and Wales: National Report*, *in* LEGAL AIDE: A NEW BEGINNING?, *supra* note 5, at 37.

76. CAPPELLETTI ET AL., *supra* note 31, at 398–437.

77. Matthias Killian, *German Legal Aid by the Scruff of its Neck—or Just in a Bad Quarter of an Hour?: The Development of German Legal Aid Since the Turn of the Century*, *in* LEGAL AID IN THE GLOBAL ERA, *supra* note 25, at 59.

78. *National Report—Ireland*, *supra* note 51, at 85.

79. *National Report: Brazil*, *in* LEGAL AID: A NEW BEGINNING?, *supra* note 5, at 23.

80. Vidhu Vedalankar, *South Africa National Report: Legal Aid in South Africa*, *in* LEGAL AID IN THE GLOBAL ERA, *supra* note 25, at 127–35; *see also Quality Management Programme, Legal Aid Board—South Africa*, *in* LEGAL AID: A NEW BEGINNING?, *supra* note 25, at 109. This staff program succeeded a pure judicare program and it is planned that a small portion of the legal aid budget (about ten percent) will continue to be devoted to that form of delivery. Vedalankar, *supra*, at 131.

81. Francis Regan, *Is Effective Legal Aid in Developing Societies Possible? The Case of the People's Republic of China*, *in* LEGAL AID IN THE GLOBAL ERA, *supra* note 25, at 199, 199–211. In 1997 China started a legal aid program for the first time—which by 2004 already had grown to 3000 offices staffed by 5000 lawyers—that was supplemented by a substantial mandatory pro bono commitment required of all 130,000 private lawyers in the country. *Id.*

of incentives. Lawyers unconstrained by a client's ability or willingness to pay have an economic incentive to bill more hours to a given case than the government feels is sufficient or appropriate when it is paying that bill. The extra time devoted to the case might produce a better result for the indigent client, but the added time appears to be a questionable investment when the extra cost of that time is taken into account.[82] Furthermore, it only takes the discovery of a few "profiteers" who are milking the system to nearly force government policymakers to impose serious restraints.

One approach to the cost-containment problem is to substitute a fixed resource in the form of a set number of salaried lawyers who are expected to serve every eligible person who seeks legal assistance. This is the system adopted in many American jurisdictions that employ salaried public defenders to implement the right to counsel in criminal cases.[83] The experience in England illustrates another approach to the cost-containment issue. Although sticking with a judicare model, England has pursued a series of so-called reforms, or at least changes, over the past twenty years that have turned it from a "fee-for-service" system into a "managed legal services" system—similar to the health industry's managed care system in the United States.

These changes began with a voluntary "franchising" approach instituted in 1994. By complying with certain administrative standards, solicitors' offices could be designated as franchised legal aid providers.[84] In 1999, Parliament then enacted a further reform—the Access to Justice Act.[85] The legal aid administration issued contracts to specific law firms and other providers who agreed to terms governing their fees,

82. The increased gross benefits achieved for the client because of the extra time billed to the government might be exceeded by the cost of that additional time. For a client paying the legal bills, as well as enjoying the benefits the lawyer's time investment produces, the goal is maximum *net* benefits (gain minus cost) not maximum *gross* benefits—a preference the lawyer must always keep in mind. A government might also reasonably view this as a proper target when it is paying the bills, although it is not clear that most governments would be this discriminating in their concerns about appropriate levels of funding for civil legal aid.

83. The use of a "fixed resource" to satisfy a guaranteed right to counsel can result in serious problems if the size of the fixed resource is inadequate to the task, that is if there are not enough salaried lawyers to properly handle the number of clients who are entitled to their services. In the past year, several public defender programs in the United States have filed lawsuits seeking to justify a refusal to take on caseloads that make it impossible to provide adequate representation to all the defendants legally entitled to their services under existing statutes and rules. Erik Eckholm, *Citing Workload, Public Lawyers Reject New Cases*, N.Y. TIMES, Nov. 8, 2008, at 1.

84. *See generally* LEGAL AID BOARD, FRANCHISING SPECIFICATION (1995).

85. Access to Justice Act, 1999, c. 22 (Eng.).

record-keeping, and other administrative practices, as well as their adherence to practices calculated to improve quality.[86]

In more recent years, the English government has proposed still further changes—setting fixed fees for different types of cases and instituting a quality mark lawyers must satisfy if they are to remain eligible to contract for legal aid work.[87] Relief is granted from the average price the firm promised when it can demonstrate a case legitimately requires substantially more time to achieve a satisfactory result.[88] To evaluate whether a lawyer meets the quality mark, "the legal aid commission employs the services of experienced lawyers who function as peer reviewers," examining closed case files of legal aid clients and rating the performance of the lawyers involved.[89] These peer reviews intrude on lawyer-client confidentiality in ways that would raise serious ethical questions in most American jurisdictions.

This latest round of "reforms" has raised a storm of protest among lawyers and law firms earning a good percentage of their income from handling legal aid cases. This should be no surprise given the size of England's civil legal aid budget, which is proportionally more than ten times that in the U.S.[90] Indeed, about twelve percent of the income earned by private solicitors in England comes from the government for their work on legal aid cases.[91] And for firms that serve individuals rather than corporations, legal aid payments undoubtedly re-

86. Law Centre (NI), Experience of Legal Aid Reform (Part One), http://www.lawcentreni.org/Publications/Frontline/Frontline%2052/f52_legal_aid_pt1.htm (last visited Mar. 17, 2009).

87. These changes are described in UK DEP'T FOR CONST. AFF., LEGAL AID REFORM: THE WAY AHEAD (2006), *available at* http://www.lawcentreni.org/Publications/Frontline/Frontline%2052/f52_legal_aid_pt1.htm.

88. As originally proposed, the cost of the case to the law firm would have to exceed the set fee by four times before the firm could "escape" from the fee schedule and begin billing the government on an hourly fee basis. *Id.* at 516. "However, in response to the many concerns raised on this issue, [the government] will reduce the escape to three times the fee levels." *Id.*; *see also* Regan, *supra* note 75; Alan Paterson & Avrom Sherr, *Peer Review and Quality Assurance: The Emergence of Peer Review in the Legal Profession*, *in* LEGAL AID: A NEW BEGINNING?, *supra* note 5, at 361.

89. *See* Paterson & Sherr, *supra* note 88, at 361. The peer reviewers assign grades on a five level scale—Excellence, Competence Plus, Threshold Competence, Inadequate Performance, and Non-Performance. Alan Paterson, Peer Review and Quality Assurance, fig 1, *available at* http://www.law.ucla.edu/docs/paterson__alan_-_peer_review.pdf (last visited Mar. 17, 2009).

90. *See* Appendix (reflecting that England spent about twelve times more of its gross domestic product in government expenditures on civil legal aid as did the United States in 2004).

91. Mike Hope, *Expenditure on Legal Services*, UK DEP'T FOR CONST. AFF. (1997), http://www.dca.gov/uk/research/1997/997esfr.htm.

present significantly more than twelve percent of their income, because corporate firms seldom if ever handle legal aid cases.[92]

What disturbs this substantial segment of the English legal profession even more is the ultimate plan to put legal aid contracts out to bid, what the Legal Aid Commission calls "best value competition."[93] Relying largely on the quality mark and peer reviews to maintain some level of quality, the independent commission administering the program would sign contracts with lawyers and firms offering the best price while demonstrating the capacity to handle a fixed number of cases of a certain type.[94] While this best value competition system is several years in the future, it is apparent that the government is intent on squeezing out the last drop of "excess" profit lawyers may have been earning out of their legal aid cases.

The parallels between the history of legal aid in England and government-funded health care in the United States are striking. Both started with a straight fee-for-service approach.[95] The professionals supplying the service essentially determined how much time to spend handling the client or patient's problem and thus, how much they earned from the case. That approach proved to be a very expensive proposition.[96] As a consequence, governments in both nations moved to some form of managed services, whether it was to encourage HMOs to pay fixed fees for specific services rather than bill by the hour or to closely monitor and require advance approval of every new

92. DVD: 1999 Oral History of Professor Michael Zander, Law Faculty at the London School of Economics (on file with the National Equal Justice Library Oral History Collection at Georgetown University Law Center's Law Library).

93. UK DEP'T FOR CONSTITUTIONAL AFFAIRS, *supra* note 87, at 3–9.

94. *Id.*

95. For a description of the English Legal Aid system in its first quarter century, see generally SETON POLLOCK, LEGAL AID: THE FIRST 25 YEARS (1975). *See also* CAPPELLETTI ET AL., *supra* note 31, at 53–55. For health care in the United States, see JEROME P. KASSIRER, ON THE TAKE: HOW MEDICINE'S COMPLICITY WITH BIG BUSINESS CAN ENDANGER YOUR HEALTH 132 (2005).

96. *See* KASSIRER, *supra* note 95, at 135. In explaining why health care in the United States moved in the direction of "managed care," a former editor of the *New England Journal of Medicine* summarized the types of over-investments which the fee for service approach encouraged:

> In the fee-for-service mode, some doctors performed lucrative procedures on patients who didn't really need them. . . . Some performed unnecessary surgery. Some sold drugs and alternative medicine potions directly to patients. Some brought patients back for office visits more often than medically necessary. Some worked the system to get the hightest possible return from drugs that they bought at wholesale and sold at retail.

*Id.*

investment of time and resources the professional proposed to devote to solving the client's or patient's problem.[97]

### D. *Some Lessons that Might be Drawn from Abroad*

Thus, American lawyers can draw several lessons from foreign countries and their experiences with civil legal aid provided on a grander scale than we currently do in the United States. From England's experience with a pure judicare system, we can see it may offer the private profession a new source of revenues, but in the long run that higher income may come at considerable cost in terms of independence and lawyer-client confidentiality.

From the many other countries that instead have chosen to deliver civil legal aid through a mixed system of salaried and compensated private attorneys, it is apparent that there are many ways to mix the delivery systems. Moreover, in so doing, it perhaps is possible to create a more cost-effective way of delivering legal services to those unable to afford to hire their own lawyer—more cost-effective in the dual sense of being both less costly and more effective. There do not appear to be any cross-country comparative empirical studies conclusively proving that mixed systems indeed are more cost-effective than the remaining pure judicare programs—or the several salaried programs. As we have seen, there has been a move in the direction of the mixed delivery systems, including in nations that started with the pure judicare approach. Moreover, there also have been some studies in the U.S. demonstrating that straight salaried programs tend to be less expensive and, in many ways, more effective in handling typical poverty law cases.[98]

## III. Recent American Approaches

There appears to be little doubt that the United States has much to learn from other countries about the willingness to invest enough to guarantee their citizens equality before the law and some alternative approaches to making that guarantee a reality. If there is an upside to our failure to adopt a rights-based system thus far, it is that it has

97. For the English legal aid system's move away from paying fees for hours of service rendered and toward "managed legal services," see *supra* notes 84–94 and accompanying text. For an overview of the reasons to move toward managed care in the U.S. health care system and also a description of the basic elements of that managed care, see Kassirer, *supra* note 95, at 132–33.

98. *See, e.g.*, Leonard H. Goodman & Jacques Feuillan, Alternative Approaches to the Provision of Legal Services for the Rural Poor: Judicare and the Decentralized Staff Program (1972); George F. Cole & Howard L. Greenberger, *Staff Attorneys vs. Judicare: A Cost Analysis*, 50 J. Urb. L. 705 (1973).

compelled the legal aid organizations and, in some jurisdictions, the courts to innovate. The scarcity of resources has forced these elements of the justice system to attempt to develop tools that will allow them to deliver some level of justice to as many low income people as they can with what they have available. Properly mixed with a much larger quantity of lawyer resources, these innovations offer the prospect of a cost-effective system for implementing a right to equal justice for lower income people in this country.

### *A. Aggregate Remedies for Common Claims*

Ironically, legal aid organizations—at least those funded by the federal government—are barred from using some of the most helpful tools because of restrictions Congress imposed in the mid-1990s. The OEO Legal Services Program was less than two years old before it became obvious to the program's management and to many lawyers in the field that the substantial expansion made possible by the infusion of federal funding was woefully inadequate to provide representation to more than a tiny fraction of the individuals living in poverty.[99] Consequently, early on, legal services lawyers made occasional use of legal tools that had long been available to the legal profession. These tools included test cases, class actions, and legislative advocacy—legal tools that could benefit large numbers of poor people in addition to those lawyers were personally representing.[100] Although only a modest percentage of legal services resources were devoted to these approaches, the tools proved too successful,[101] resulting in victories that

99. JOHNSON, *supra* note 3, at 126–34. It also is possible to draw an analogy to healthcare and the importance of public health measures—such as inoculation campaigns—to the cost-effective improvement of a population's health:

> [When legal resources are inadequate] it makes sense to try the rough equivalent of a "public health" approach. A class action or a favorable legislative change is like a mass inoculation program against a disease that infects thousands every year because it can improve the lives of thousands at a comparatively minimal cost. . . . In essence, the absence of a legally enforceable right to counsel and the resultant shortage of resources . . . makes it most sensible to emphasize measures like appellate litigation, class actions, and legislative advocacy.

Earl Johnson, Jr., *Equal Access to Justice: Comparing Access to Justice in the United States and Other Industrial Democracies*, 24 FORDHAM INT'L L.J. S83, S99–S100 (2000).

100. JOHNSON, *supra* note 3, at 171–72, 193–94, 261–65.

101. A political scientist wrote a book about the cases lawyers funded by the OEO Legal Services Program took to the United States Supreme Court from 1966 through 1974. SUSAN E. LAWRENCE, THE POOR IN COURT: THE LEGAL SERVICES PROGRAM AND SUPREME COURT DECISION MAKING (1990). As this book documents, during that period legal services lawyers argued 118 cases in the nation's high court, winning sixty-two percent of those cases. *Id.* at 150. The legal services cases given plenary consideration represented "[seven] percent of all written opinions the Supreme Court produced during those years." *Id.* at 9. Typical of these cases was *Shapiro v. Thompson*, which not only declared welfare residency rules unconstitutional but in-

alienated politically powerful interest groups and politicians.[102] After a thirty year legislative battle, the politically powerful interest groups finally won in 1995. Congress amended the Legal Services Corporation Act to prohibit LSC-funded programs from bringing class actions or legislative advocacy to magnify the number of poor people they could help with their limited resources.[103]

Because the federal legislation obviously cannot reach programs funded solely with non-federal funds, these tools remain available in some states which have local programs funded entirely with private funds or unrestricted state government grants. But because of the so-called "all funds" clause in the LSC legislation, any legal services agency that receives even a single dollar from LSC is prohibited from using any other funds it may receive from public or private bodies to file a class action or advocate for legislation.[104] Restoration of the ability to deploy these important legal tools would certainly enhance the cost-effectiveness of the legal services delivery system. In the meantime, other approaches have evolved that in some important categories of cases could ease the financial burden of implementing the right while still providing fair and equal justice to lower income people.

troduced the fundamental interest doctrine to equal protection analysis. 394 U.S. 618, 632–33 (1969). But the U.S. Supreme Court litigation was only the tip of the iceberg, as legal services lawyers have won thousands of appeals in state and lower federal courts (along with losing many, too) and advocated successfully for legislative reforms helpful to poor people in many state legislatures and even before Congress. *See, e.g.*, JOHNSON, *supra* note 3, at 189–90.

102. The history of this long struggle and its outcome is recounted in John Kilwein, *The Decline of the Legal Services Corporation: It's "Ideological, Stupid!," in* THE TRANSFORMATION OF LEGAL AID: COMPARATIVE AND HISTORICAL STUDIES 41 (Francis Regan et al. eds., 1999). A different viewpoint is provided by a lawyer and legislative advocate who served as the American Bar Association's chief advocate in the Association's campaign to save the Legal Services Corporation when the newly elected Republican congressional leadership sought to phase out LSC in the mid-1990s. Mauricio Vivero, *From "Renegade" Agency to Institution of Justice: The Transformation of Legal Services Corporation*, 29 FORDHAM URB. L.J. 1323 (2002). The LSC survived but had to accept the restrictions described in note 125.

103. These restrictions include prohibitions against filing of class actions, advocacy in the legislative or administrative rule-making process, representation of undocumented aliens or litigants in abortion rights cases, or the receipt of court-awarded fees. Houseman, *supra* note 5, at 131–32. The same 1995 amendments de-funded all of the national and state "back-up" centers that provided expertise to front-line legal services lawyers, particularly those involved in appellant litigation or legislative issues. *Id.*; Alan W. Houseman, *Restrictions by Funders and the Ethical Practice of Law*, 67 FORDHAM L. REV. 2187, 2189–90 (1999).

104. "The 1996 restrictions prohibited LSC grantees from using funds available from non-LSC sources to undertake those activities that are restricted with the use of LSC funds." Houseman, *supra* note 5, at 131–32.

### B. Self-Help Assistance to Unrepresented Litigants

The most recent and perhaps most important of these developments involves fundamental changes in how we adjudicate disputes in family law courts, which decide millions of cases involving poor people every year. These changes have not yet affected the litigation process in the cases and courtrooms that have been the focus of this symposium. But gazing ahead a dozen years to 2020, it is difficult to ignore what is already happening in these family law courts—courts that often have larger caseloads than the regular civil courts—and what is beginning to happen in landlord-tenant courts and elsewhere in the judicial system. Of significance to the future of justice for the poor, nationwide these forums not only hear millions of cases a year involving lower income people, but family courts are one of the few venues where both sides are generally from the same economic strata and thus less often pit an unrepresented party against a lawyer in the courtroom.

The fundamental changes that have been introduced represent no less than a shift from the adversary model of deciding cases to the inquisitorial model. This means replacing a model that places the primary responsibility for finding the facts and the governing legal principles on the private parties in favor of a model which asks the judge to do most of that work. That is, this approach expects the judge to take an active role in asking most of the questions, not just evaluating the answers witnesses give to questions the parties or their lawyers ask. Also, this approach leaves it to the judge to figure out the law that controls the outcome, without lawyers bringing the applicable statutes and cases to the judge's attention.

My home state of California was not the first to start down this road, though in recent years it probably has gone further than most other jurisdictions. Beginning at least a decade ago, poor people and those somewhat above that line started flooding California's family law courts, appearing without lawyers and asking the courts to give them justice as pro pers. In eighty percent of the hundreds of thousands of cases the family courts in California are expected to decide each year, either one or both parties are unrepresented by counsel.[105] It is possible this dramatic statistic only means the courts have

105. In a study conducted in California courts, the following statistics and statistical estimates emerged: "In family law, petitioners were pro per at the time of filing an average of 67 percent. In the large counties (with more than 50 judicial positions) that average was 72 percent. . . . In dissolution, at the time of disposition the average pro per rate was 80 percent." JUDICIAL COUNCIL OF CALIFORNIA, TASK FORCE ON SELF-REPRESENTED LITIGANTS, STATEWIDE ACTION PLAN FOR SERVING SELF-REPRESENTED LITIGANTS 11 (2004), http://www.courtinfo.ca.gov/programs/cfcc/pdffiles/Full_Report_comment_chart.pdf.

just begun quantifying a phenomenon that had long been true. But whatever the reason, there is no doubt the vast majority of litigants appearing in California's family law courts—and in family law courts around the country—lack lawyers and are proceeding on a pro per basis.[106] And, despite Nolo Press, forms preparation services, and the Internet, the vast majority of unrepresented litigants were appearing with defective pleadings, with no notion of what evidence they had to find and present, and with no idea of how to conduct themselves in the courtroom.[107]

This left the judges and the judicial system with only a couple of choices. One alternative was to let the unrepresented parties stumble along, trying to guess what each side was trying to present, and make a call between them that carried a great risk of being the wrong one. This would occur in far too many cases, resulting in injustice rather than justice. The other course, and the one the California court system elected to follow, was to provide assistance to self-represented litigants. Through a combination of group classes and one-on-one assistance, the court's self-help programs seek to allow unrepresented litigants to produce decent written pleadings, give them an idea of what evidence they have to collect and present to the judge, and provide some preview of how the judge will expect them to behave when they enter the courtroom.[108]

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106. *See* Madelyn Herman, *Pro Se Statistics*, NATIONAL CENTER FOR STATE COURTS (June 2006), *available at* http://www.nacmnet.org/PastConferences/2006Annual/04Greacen_ProSeStatisticsSummary.pdf (reporting that pro pers represented from seventy to ninety percent of litigants in family courts, landlord-tenant cases, and the like).

107. See also *infra* note 112 for a description several retired trial judges in Washington state provided about some of the problems unrepresented litigants face when appearing in court. These comments appeared in a brief those judges filed in a case heard by the Washington Supreme Court.

108. JUDICIAL COUNCIL OF CALIFORNIA, *supra* note 105. In 2004, a task force of the California Judicial Council issued a report containing a series of recommendations calculated to create "operational systems that work well for the timely, cost-effective and fair management of cases involving self-represented litigants and in improving access to justice for the public." *Id.* at 4. The recommendations included a description of the characteristics of a proper self-help center:

> A court-based, attorney-supervised, staffed self-help center is the optimum approach for both litigants and the court. Written instructional materials, resource guides, computer programs and Web sites, videos, and other materials should support self-help center staff. Without available staff assistance, these resources alone should not be considered a self-help center. . . .
>
> Personal assistance by self-help center staff has been successfully provided through individual face-to-face assistance, workshops, teleconferencing, or telephone help lines. Services may be provided at court locations or in mobile vans, law libraries, jails, or other community locations.

*Id.* at 12–13.

This kind of "quickie" legal education can only go so far. It rarely can turn even a college-educated litigant—to say nothing of the typical lower income individual—into someone capable of constructing and presenting a persuasive case consistent with the rules of evidence and focused on the issues critical to making the correct decision. Those critical factual issues, in turn, are defined by the law—the legal principles governing this particular dispute, which lawyers, not pro se litigants, are trained to know or identify through research. Yet this is what the adversarial system counts on from the opposing litigants.

Those fostering the self-help assistance programs within the judicial system quickly recognized the essential need for active judges if their approach was to work. The Administrative Office of the Courts in California has developed a handbook for judges when presiding over family law cases in which unrepresented litigants appear.[109] Additionally, the New York County Bar Association recently drafted a set of "best practices" addressed to judges sitting in New York's housing courts, which was endorsed by the ABA House of Delegates in August 2008.[110] Both publications define what is essentially an active—what some would define as an inquisitorial—role for the judge in the hearing and resolution of cases in those courts.[111]

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109. JUDICIAL COUNCIL OF CALIFORNIA, ADMINISTRATIVE OFFICE OF THE COURTS, HANDLING CASES INVOLVING SELF-REPRESENTED LITIGANTS: A BENCHGUIDE FOR JUDICIAL OFFICERS (Jan. 2007), *available at* www.courtinfo.ca.gov/reference/4_24legalsvcs.htm; *see also* RICHARD ZORZA, THE SELF-HELP FRIENDLY COURT: DESIGNED FROM THE GROUND UP TO WORK FOR PEOPLE WITHOUT LAWYERS (2002).

110. AM. BAR ASS'N, BEST PRACTICES FOR JUDGES IN THE SETTLEMENT AND TRIAL OF CASES INVOLVING UNREPRESENTED LITIGANTS (Aug. 2008), *available at* http://www.abanet.org/leadership/2008/annual/adopted/TenA.doc.

111. The report supporting New York's proposal to the ABA explains the rationale for the "Best Practices" and the fundamental change in judicial process they seek to implement.

> Until state and municipal legislatures enact a civil right to counsel and provide appropriations to finance it, court systems should develop mechanisms for promoting the fair, equitable and consistent treatment of unrepresented litigants. . . . To provide a resource for the New York City Housing Courts, where 90 percent of the tenants appear without an attorney and the same percent of landlords are represented by counsel, the New York County Lawyers' Association's (NYCLA) Task Force on the Housing Court studied the problem, reviewed court procedures and directives from the administrative judge, surveyed Housing Court judges to obtain their views about unrepresented litigants' experiences, and produced a report. . . . These [Best Practices][Protocols] provide for an active role for judges, both in approving settlements and conducting trials, so that unrepresented litigants will understand their rights, the court procedures and the results of the proceedings.

*Id.* at 2. For an article describing the New York protocols and the rationale, see Ann B. Lesk, *Best Practices for Judges in the Settlement and Trial of Cases Involving Unrepresented Litigants in Housing Court* (Aug. 2008), *available at* http://www.nycla.org/siteFiles/Publications/Publications1166_1.pdf.

For those cases, and when the competing parties and other circumstances are right, there is good reason to expect these proceedings to produce just results. To the extent these courts and these processes can succeed in doing so, they reduce the need for government to provide lawyers to the litigants and thus contribute to the cost-effectiveness of the entire justice system. Nonetheless, it is important to recognize some limitations to this approach. Once one of the parties has a lawyer and the other does not, it is difficult, if not impossible, for a judge to make the sides equal. To expect the lawyer on one side to do the questioning of witnesses and otherwise present the client's case, while the judge is doing the same for the unrepresented party, is unlikely to produce either the reality or appearance of impartiality. Yet, if the judge fails to assume that responsibility, the contest will be so unequal it will lack either the reality or appearance of equal justice.[112] Even when both sides are unrepresented, often there will be situations when one or both parties are incapable of even the modest levels of participation the inquisitorial approach requires because of a lack of English language facility, mental capacity, or otherwise. There also will be many cases where the law to be ascertained and the facts to be uncovered are simply too complex for the judge to unearth without the assistance of counsel on both sides—in other words, without a true adversary proceeding.

### *C. Lay Advocates in Administrative Proceedings*

At a midpoint in cost between full representation by a lawyer and some self-help assistance lies another innovation that holds promise for contributing to a cost-effective right to equal justice: using lay advocates instead of lawyers in administrative hearings. This practice developed relatively early in the history of the federally funded legal service program when it became apparent lay persons could be trained to properly represent welfare recipients in welfare fair hear-

112. A dozen retired state trial judges from Washington state recently explained their collective experience:

> Without assistance from attorneys, *pro se* litigants frequently fail to present critical facts and legal authorities that judges need to make correct rulings. *Pro se* litigants also frequently fail to object to inadmissible testimony or documents and to correct erroneous legal arguments. This makes it difficult for judges to fulfill the purpose of our judicial system—to make correct and just rulings.

Brief of Amicus Curiae of Retired Washington Judges in Support of Appellant at 12, King v. King, 174 P.3d 659 (Wash. 2007), *available at* http://www.courts.wa.gov/content/Briefs/A08/799784%20retired%20judges%20amicus.pdf.

ings.[113] The procedures in these forums were quite informal and the substantive law, even when relatively complex, was usually self-contained in a set of regulations or manuals. Once lay advocates became educated about that body of law and had access to advice from a supervising lawyer, it appeared they could provide quality representation to welfare recipients. A study confirms this expectation has proved true for these and other administrative proceedings.[114] This is especially significant because many cases involving lower income Americans—unemployment insurance appeals, welfare fair hearings, disability eligibility determinations, and the like—are decided in administrative forums rather than the courts.

As was true of self-help assistance, however, substituting lay advocates for lawyers in the representation of the poor also requires that the forum hearing the case adhere to some principles. If poor persons have lay advocates at their side, the agency defending the adverse action it took likewise should be represented by a lay advocate, not a lawyer. Balanced advocacy is essential to fairness and more likely to produce a correct result. It also is less expensive for the government than paying a lawyer's salary for the agency's side of the case.

Whether this lay advocate model could be transferred beyond the administrative arena to the courts is an open question and a problematic proposition, especially given the monopoly the legal profession enjoys over representation in the judicial system. To give that monopoly to non-lawyer advocates in certain cases in the regular courts neither appears feasible nor wise. Nor is the option of guaranteeing lower income litigants access to only lay advocates to face full-fledged lawyers in judicial proceedings. With so many disputes involving poor people being decided in non-judicial forums an increased role for lay advocates in those forums offers the prospect of an effective but overall less costly system for giving lower income Americans a right to equal justice.

### *D. Technological Advances Applied to Delivery of Justice*

A third development that holds promise for reducing the cost—while maintaining the quality of justice lower income people enjoy in a rights-based system of civil legal aid—is more sophisticated applica-

113. This early use of lay advocates by legal services programs to represent clients in administrative hearings is discussed in CAPPELLETTI ET AL., *supra* note 31, at 149–50, and notes 31–34 and accompanying text.

114. HERBERT M. KRITZER, LEGAL ADVOCACY: LAWYERS AND NONLAWYERS AT WORK (1998). This study concluded lay advocates could achieve equivalent results as full-fledged lawyers in certain administrative hearings.

tions of technology to the delivery of justice to government-funded clients. The past few years have seen the growth of telephone hotlines offering legal advice and referrals at far lower cost than those services could be delivered in person and to populations often far removed from the legal services offices.[115] By comparison, this is an obvious utilization of long-existing technology on a wide scale.

Newer technologies have tended to be deployed on a pilot or experimental basis with varying degrees of success. Among them are computerized kiosks that coach unrepresented litigants through a series of questions and spill out a court pleading[116]—a complaint, an answer, or an order. In a court with e-filing, it is technologically feasible to file this pleading by pressing a button and feeding it to the clerk's office over the Internet.[117] Otherwise the pleading can be printed out and filed in person.[118] The kiosk also can show a video to litigants, explaining what evidence they should bring to court and how they should present their cases to the judge.[119] These same computer programs can be set up to operate over the Internet rather than at a kiosk, thus offering even easier access, at least for more sophisticated pro se litigants who have access to a computer either at home, a library, or other convenient location.[120] In effect, however, this is only a computerized system for providing self-help assistance to pro per litigants. It helps in those situations where this level of assistance is enough to give the litigant truly effective access to justice, and is subject to all the limitations and conditions described in the discussion of self-help assistance.[121]

The web also has facilitated wide distribution of legal information, court forms, process recommendations, and sources of legal help aimed primarily at lower income people. Three years ago, for instance, the California judicial system opened a comprehensive website with hundreds of pages of information—now in Spanish, as well as

115. "[H]otlines are now being used in over 148 programs in 49 states, Puerto Rico, and the District of Columbia." Alan W. Houseman, Center for Law and Social Policy, *The Future of Legal Aid in the United States*, at 9 (Nov. 2005), *available at* http://www.clasp.org/publications/future_legal_aid.pdf; *see also* AARP Foundation, Legal Hotlines, http://www.legalhotlines.org (last visited Mar. 17, 2009).

116. Ronald W. Staudt, *Technology for Justice Customers: Bridging the Digital Divide Facing Self-Represented Litigants*, 5 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 71, 74, 83 (2005).

117. *Id.* at 80.

118. *Id.*

119. *Id.* at 79–83.

120. *See id.* at 80, 83.

121. *See supra* notes 105–112 and accompanying text.

English—that receives thousands of hits every month.[122] This may be the largest, but not the first or the only of these state-wide legal information websites. In fact, the majority of states now have a legal information website[123] after the outgrowth of an initiative the LSC started in 2001—the Technology Initiative Grants.[124] Once again, however, these websites are helpful primarily to pro se litigants and not the many lower income litigants who require assistance or representation that goes beyond self-help guidance, whether that guidance comes in person or over the Internet.

Technology can offer opportunities to lower the cost of delivering full-fledged legal representation, as well. When time and distance are involved, teleconferencing allows lawyers to meet with clients or witnesses located far from the legal aid center without losing hours of travel time. Computerized "banks" of briefs, pleadings, and the like can avoid the cost of reinventing the wheel, especially in handling repetitive issues or routine cases. But technological advances over the next dozen years, both the predictable and the unpredictable, could dwarf these and other present applications in their effect on the judicial process and the cost of full representation by lawyers. Merely as an example, by 2020 the convergence of ever-improving voice recognition and language translation software might allow the simultaneous translation of testimony from non-English-speaking witnesses, or allow non-English-speaking clients to comprehend what is happening in the courtroom, all without the expense of interpreters. Artificial intelligence might finally reach the stage where the time required to research the law and produce legal documents and arguments tailor-made to the precise issues of the particular case, is shortened dramatically.

On the other hand, the possibility that technology may one day dramatically reduce the government's cost for providing full-fledged legal representation to lower income Americans should not be allowed to delay their realization of a right to equal justice. Even were that cost reduction a certainty, it would not justify a denial of justice to millions of the nation's citizens for years, decades, or conceivably generations while waiting for technological breakthroughs to occur. The fact that it is far less than a certainty these cost savings will materialize, or be as

122. *See, e.g.*, California Courts: The Judicial Branch of California, http://www.courtinfo.ca.gov (last visited Mar. 17, 2009). The California court system's main webpage includes a link to a self-help website and is an integral part of that system's overall site. In 2003, this website experienced more than 1.6 million "hits." JUDICIAL COUNCIL OF CALIFORNIA, *supra* note 105, at 11.

123. These websites can be located by accessing the LawHelp.org website, http://www.lawhelp.org (last visited Mar. 17, 2009).

124. *See* Staudt, *supra* note 116, at 72–76.

significant as optimistic techies might hope, merely adds a further reason to move ahead vigorously to guarantee justice as a matter of right. At the same time, legal services providers should be encouraged to continue experimenting with applications of existing and emerging technologies and adopting those that prove successful to increase efficiencies and improve results in their delivery of justice to lower income clients.

### *E. The Essential Missing Element—An Accurate Triage System for Matching Problem with Solution*

In the medical context, the term "triage" can easily conjure the image of a mass accident scene, with a few harried doctors choosing who they will spend time trying to save, among scores or hundreds of injured people. The barely injured and the dead and dying go to the end of the queue while the doctors' energies are focused on those seriously hurt but deemed salvageable. In the justice system, for decades legal service providers have been employing triage—consciously or unconsciously, systematically or haphazardly—to choose which applicants are to be served and which left to fend for themselves. In other words, who gets justice and who suffers injustice. The easiest triage principle to apply is "first come, first served," which also means "next come, not served." But few legal services providers use that technique. Most have identified a set of high priority subject areas: housing, income maintenance, domestic violence, consumer problems, and the like.[125] In the main, these providers accept as many people as possible who appear with problems falling within the chosen subject areas and turn away virtually everyone who brings other problems to the program.

However, this is not the type of triage referred to in this Section. It is not the choice between those to be served and those to be left out in the cold, those to live and those to die in the medical context, or those to get justice and those destined to suffer injustice in the legal context. Rather what is meant by "triage" here is the process of deciding what level of service is to be provided. It is the matching of an applicant and his or problem to the type of service—self-help assistance, a lay advocate, limited or full representation by a lawyer—required to provide that person a fair and equal opportunity for a just result.

125. LSC regulations indeed *require* legal service providers funded by the Corporation to establish a set of priority subject areas to guide their allocation of legal resources among potential clients. 45 C.F.R. § 1620 (2007) ("Priorities in the Use of Resources"). This priority-setting process is to include non-LSC funded services as well as services funded by LSC. *Id.*

Designing an effective triage system to accomplish this critical task will not be an easy proposition. It cannot be done by relying on gross or rigid categories. For instance, it would commit thousands of people to suffer injustice if a triage system diverted all family law cases to the self-help assistance track. Even if family law cases are sent to self-help assistance when both parties are unrepresented, there would be a substantial subset in which legal counsel was needed for a truly fair hearing—if the case turned on complex facts or legal rules, or one or both of the litigants were unsophisticated or lacked sufficient English language skills, or there was a power imbalance between the spouses.

Thus, the selection criteria must be fairly detailed and precise, but presumably also allow some flexibility and some measure of subjective judgment, if they are to properly match the problem with the solution. While it may be possible to devise an initial set of criteria based on a prior assumptions and the experience of lawyers and self-help providers, that initial set should be subject to modification based on evaluations of the various tracks and how accurately the triage system in place is tracking picking the correct tracks for the clients' problems. These assessments would have to take account not only of the criteria established, but how well the professionals making the choices were implementing those criteria.

## IV. Looking Toward 2020

And so, the years between now and 2020 are apt to bring vast changes to the justice system's treatment of lower income litigants. How long can the judiciary continue to convince itself that our constitutional guarantees of "due process" and "equal protection of the laws" are not violated—indeed mocked—when we still deny free counsel to most of our lower income litigants? If judges face reality and the true meaning of that language and the essential importance of effective access to justice in a democracy, what will be the consequences for our justice system? Independent of judicial action, how long can our governments continue to think that a half percent of the nation's legal resources are sufficient to adequately represent twenty percent or more of the nation's citizens? If the government recognizes the absurdity of that proposition, and begins appropriating larger sums for this vital purpose, will the result be changes in the form as well as size of the current delivery system for civil legal aid and in the justice system itself?

These questions, and others, linger on the horizon. With the exception of self-help assistance and its implications for the judicial process and our use of lay advocates in administrative hearings, several other

countries are further along than the United States in confronting these issues. Their experiences have suggested some of the pitfalls, as well as the potential, along that road. The real question is whether the United States will be willing to venture into that territory—where equal access to justice is a matter of right, not of mere charity or good luck.

Almost ninety years ago, Reginald Heber Smith, the father of legal aid in this country, issued this challenge to the American legal profession at the ABA's 1920 conference:

> If we will take command of the moral forces which are now stirring throughout the nation, we shall find public opinion ready to fight staunchly at our side. Let us assume that leadership by declaring here and now that henceforth within the field of law the mighty power of the organized American Bar stands pledged to champion the rights of the poor, the weak, and the defenseless.[126]

As if making a belated response to Smith's long-ago challenge, at its 2006 annual conference, the ABA House of Delegates unanimously passed a resolution urging federal, state, and local governments to provide lawyers "as a matter of right" in cases where "basic human needs are at stake."[127] If the mighty American Bar indeed "assumes that leadership," marshals its resources behind this ambitious resolution, and enlists some support elsewhere in society, perhaps our nation will finally move boldly and not timidly in the direction of making "equal justice for all" a reality instead of merely a motto.

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126. Reginald Heber Smith, *The Relation Between Legal Aid Work and the Administration of Justice*, *in* FORTY-THIRD CONFERENCE ANNUAL REPORT 217, 226 (Am. Bar Ass'n, 1920).

127. American Bar Association Task Force on Access to Civil Justice, *ABA Resolution on Right to Counsel*, 15 TEMP. POL. & CIV. RTS. L. REV. 508, 518 (2006). The full resolution reads:

> RESOLVED: That the American Bar Association urges federal, state, and territorial governments to provide legal counsel as a matter of right at public expense to low income persons in those categories of adversarial proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health or child custody, as determined by each jurisdiction.

*Id.* The resolution was accompanied by a lengthy report justifying and defining the scope of the right to counsel the resolution proposed, including discussion of circumstances where counsel would not be necessary. *Id.*

## APPENDIX[128]

### COMPARISONS WITH OTHER COUNTRIES AND THEIR INVESTMENTS IN EQUAL JUSTICE

The chart below is based on expenditure data included in reports prepared by the administrators of the legal aid programs in these nations (or in some cases academic experts from those countries). The reports were submitted at the 2005 International Legal Aid Group conference held in Killarney, Ireland.[129] The eleven countries compared on this chart ranged in population from under 2 million to over 295 million and from $23,000 to $40,000 in per capita Gross Domestic Product (GDP) at that time.[130]

In order to make valid comparisons among countries of varying degrees of wealth and their relative commitment to providing equal justice to the poor, the chart reflects how much the U.S. invests in legal aid for people involved in civil problems (i.e, non-criminal cases) for each $10,000 of its GDP compared to how much these other nations invest in those same services per $10,000 of their GDPs.[131] The chart then calculates how much the United States would have to invest if it were to match the "per $10,000 GDP" investment of the other countries.[132] As of 2004, the combined public investment in civil legal aid in the United States was approximately $800 million.[133] Not included in the figures for any nation, including the United States, are funds coming from private sources—court-awarded fees, client contributions, foundation grants, charitable donations, and the like.

As reflected in the chart, the United States would have to increase its public investment several fold to match these other countries in the share of GDP they are willing to devote to civil legal aid. To match the least generous of these comparable industrial democracies, Germany, the governments in the U.S. would have to spend $2.85 billion. At the other extreme, to match England would require either $9.6 billion or $12.8 billion, depending on whether we count England's expenditures on legal aid in immigration cases. To reach the *average* GDP share for these ten foreign countries would require $5.36 billion.

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128. Much of the following relies on Johnson, *supra* note 25.

129. *See id.* at 161–71 (including chart summarizing the information from these national reports).

130. *Id.*

131. *Id.*

132. *See id.*

133. *Id.* at 170. This figure included $340 million from the federal government's Legal Services Corporation, $130 million in IOLTA funding, and the rest from civil filing fees, state government appropriations, and targeted grants from federal, state, and local governments.

COMPARISON OF NATIONAL INVESTMENT OF LEGAL AID[134]

| NATION | Public Civil Legal Aid Investment | Public Civil Legal Aid Investment per $10,000 GDP | U.S. Public Civil Legal Aid Investment Required to Match This Nation's Investment per $10,000 GDP |
|---|---|---|---|
| UNITED STATES | $800 million | $0.65 | $800 million |
| GERMANY | $520 million | $2.25 | $2.85 billion |
| IRELAND | $26.9 million | $2.35 | $2.9 billion |
| FINLAND | $35.6 million | $2.35 | $2.9 billion |
| CANADA | $287 million | $2.80 | $3.4 billion |
| NEW ZEALAND | $30 million | $3.25 | $4.0 billion |
| HONG KONG | $67 million | $4.07 | $5.1 billion |
| SCOTLAND | $33.5 million | $4.90 | $6.0 billion |
| NETHERLANDS | $300 million | $6.90 | $8.5 billion |
| NORTHERN IRELAND | $27 million | $7.00 | $8.56 billion |
| ENGLAND | $1.24 billion (excluding immigration cases) $1.61 billion (including immigration cases) | $7.90 (excluding immigration cases) $10.50 (including immigration cases) | $9.6 billion $12.8 billion |
| TEN-NATION AVERAGE | | $4.38 | $5.36 billion |

134. Johnson, *supra* note 25, at 161–71.