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WISCONSIN JUDICARE
a preliminary appraisal

Samuel J. Brakel

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Introduction

This report presents data on the operations of Judicare gathered during five weeks of field work (in June-July 1971) in the "Judicare area" of northern Wisconsin (see Map 1). This field experience is only a small part of the American Bar Foundation's total Judicare study which began in January 1971 and will continue until 1973. Compelling reasons exist, however, for laying out some of the facts uncovered and tentative conclusions reached during the early part of the study.

The primary reason for an interim report is that questions about the merits of the Judicare model for delivering legal services to poor people continue to attract considerable attention in academic and political circles; that the product of this preoccupation increasingly takes the form of concrete proposals and decisions either to fund new Judicare experiments or to terminate or modify old ones;[1] and that much of this debate is taking place with little or no reference to the facts on which the proponents or opponents of Judicare might rest their respective cases or the uncommitted might form judgments.[2] This report does not pretend to fill the factual void that has hindered informed

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1. For example, four Judicare experiments have recently been terminated after a few years of operation. For details see Appendix A. For a while rumors persisted that the Wisconsin Judicare program would also be phased out, but since it has undergone certain modifications designed to "purify the experiment," its existence now appears more secure.

2. Despite the number of Judicare experiences in this country and abroad, the evaluative literature is scarce, and most of it is quite sketchy and limited. For further discussion see Appendix A.

debate on the Judicare issue; some issues remain unexplored. On other issues the data gathered are incomplete and further evidence is needed. Yet the findings, conclusions, and thoughts offered here can be expressed with a measure of confidence and should aid further discussions and decisions about and experimentation with Judicare.

We are also interested in publicizing the fact that this study is in process and that we welcome constructive criticism helpful to the further conduct of the study. Judicare is more complex than it appears on the surface;[3] assistance in the form of thoughtful commentary on this report would be invaluable in studying it. We also hope that decisionmakers will defer ultimate judgments until they have an adequate objective basis for making them.

Conceptually, Judicare is simply one approach to the problem of delivering legal services in civil matters free of charge to people who cannot afford to pay for the services themselves. In the context of today's government-inspired and -financed efforts in the legal services area, the primary distinguishing feature of the Judicare method is delivery of the service through the use of private attorneys freely chosen by clients.[4] It is thus in marked

3. One lawyer on the Wisconsin Judicare Board, when told of the projected length of the ABF study, asked, "How in the hell can you spend more than a couple of weeks on Judicare?" That this feeling is shared in many quarters is shown, e.g., by earlier Judicare evaluations (see n. 2 supra and Appendix A). But this attitude may be disappearing. Some members of the legal services establishment are beginning to recognize the complexity of the issues involved in evaluating legal services programs and are exhibiting doubts about the validity of instant evaluations while simultaneously stressing the need for further experimentation.

4. Also characteristic of Wisconsin Judicare is the fact that private attorneys rendering Judicare services are compensated (by the government via the program) at rates well below the minimum fee schedule of the state bar. Furthermore, responsibility for eligibility determinations under Judicare is ordinarily relegated to nonlegal agencies and officials authorized to issue Judicare cards that prospective clients then present to the lawyers. Judicare—like the OEO staff

contrast to the prevailing Office of Economic Opportunity approach (often labeled "traditional" because of its resemblance to earlier private legal aid programs), which came into being in 1965 as part of the federal War on Poverty. Under the latter free legal services to the poor are rendered through neighborhood or regional offices staffed by full-time salaried "poverty" lawyers. While nontraditional against that background, Judicare in its use of private lawyers operating from their private offices is analogous to some traditional noncentralized forms of civil legal aid and lawyer referral concepts, and to some of the methods of providing free legal services to indigent criminal defendants (e.g., assigned counsel). The target population (those who "cannot afford to pay for the services themselves") under Judicare, as under the other systems for delivery of legal services to the poor, is roughly defined by the standard federal criteria of "poverty" and "eligibility" for diverse purposes. The main Judicare experience in this country has been Wisconsin's, operating since 1966 and covering 28 mostly rural and sparsely settled counties with a total population of 600,000. Since it covers the largest area with the largest total and the largest eligible population, and has been in operation the longest, the Wisconsin program is the primary focus of this study.

Wisconsin Judicare works as follows: Normally, the person seeking legal service applies for eligibility certification at the local Community Action Program (CAP) office

attorney programs—in addition to not covering criminal matters (though some misdemeanor and quasi-criminal work is handled by individual attorneys or offices) also excludes service in fee-generating cases, income tax matters, and patent and copyright cases. Finally, there are minor variations among the various Judicare programs funded by OEO as to the precise mode of application for service, the level of the eligibility standard, and the attorney's fees, but these are inconsequential both conceptually and practically. The HEW Judicare programs, however, are different—they are primarily aimed at providing services to welfare recipients only and contemplate the delivery of social services by social service personnel along with legal services.

or at the county welfare agency. In some instances, however, application may take place in or near the applicant's home (or even at a hospital, a home for the aged, or on the reservation). Also, application in some situations is made at the initiative of personnel authorized to certify for eligibility rather than at the "applicant's" initiative. Personnel authorized to certify eligibility may include, in addition to CAP and welfare officials, such persons as ministers, nurses, reservation "coordinators," and the like.

Each person adjudged financially eligible receives a wallet-sized card, presentation of which enables him to obtain free legal service from a private attorney—at the attorney's office. The cardholder can select any attorney from his county or from adjoining counties.

Northern Wisconsin attorneys may refuse to serve any specific cardholder or even to participate in the program at all. But most of the 400 or so practicing attorneys in the area do participate.

After an initial conference with the cardholder, the attorney submits a notice of retainer to the central administrative office. This notice permits the office to check on the client's eligibility and whether the matter on which the attorney is giving counsel is covered by the program.

After the attorney completes his work, he sends a request for final payment to the central office. In this request, he outlines the services rendered and the time spent on the case. Payment is made pursuant to a fee schedule which among other stipulations provides that payment for an initial conference only shall be $5 and that no attorney shall receive more than $300 per case or more than $5,000 per year from the program, except in exceptional circumstances.

The program is funded by the federal Office of Economic Opportunity (OEO). Originally the grantee of the funds was the State Bar of Wisconsin, but the Bar has since withdrawn from the program, which now operates as an independent corporation. The program is governed by a separate board of some thirty members made up of attorneys practicing in the area, community action personnel, and persons eligible for the program's services. The attorneys constitute a clear majority on the board. The director of the program and his staff carry on the administrative aspects of the program, but they are also involved in substantive legal work on behalf of the eligible population. The central office was formerly located in Madison, but it has recently moved to Wausau.

A final evaluation of Judicare must consider two basic aspects: its "effectiveness" and its economics. In this interim report we consider only the problem of effectiveness, and even that consideration is not complete.

Effectiveness is a catch-all term for a virtually endless list of issues and questions, but two fundamental and separable elements can be discerned: Who within the eligible group are (and are not) provided service? What is the quality of the service provided? What accounts for each is an integral part of the "descriptive" answer to these questions.

The abstract goal of existing legal services programs is to meet all the legal needs of the target population (the financially eligible) with maximum efficiency (greatest impact, lowest cost) and high quality. This level of effectiveness can never be attained in the real world. A basic element in this evaluation is to explore the extent to which the Judicare performance falls short of that goal and why. It is important to recognize that how the performance measures up against alternative systems or against specific

expectations is a vastly different matter.

One crucial question, thus, is what the legal needs of the population are. This is an extremely complex question, which can be answered only by rough approximation and with a measure of speculation. What services are actually provided? What does the eligible population believe its problems to be? What are the lawyers' perceptions? What legal problems have actually been experienced? What hypothetical problems are perceived as legal? Eventually some picture of legal need, however incomplete, can be developed.

The next area of inquiry is why certain legal problems or groups of problems, or the problems of certain people or groups of people, are not resolved through the resources provided by the program. How many of the eligibles use the service? How many times have they used it and for what problems or portion of their problems? How many of the eligibles have never used the service? Why? This "why" leads to an examination of the characteristics and attitudes of the poor, as well as of the attitudes and actions of those involved in delivering the program's services. The larger questions are: Who is responsible or what factors account for inadequate use or even nonuse of the service? Are those factors peculiar to the Judicare method? How can the obstacles to maximum utilization and "effectiveness" be overcome? On the specific level, the questions must focus on how eligibles become or are made aware of the existence of the program; where the poor live in relation to the intake offices and the lawyers; whether the poor are psychologically reluctant to bring their problems to such agencies or professionals despite physical accessibility; to what extent and by what criteria the intake officials and lawyers limit the intake; how the coverage limitations of the program operate, or are interpreted, to restrict use.

Then there is the question of legal strategy. The level of effectiveness of the program (since it is never fully effective) is in part a function of a sort of non-economic efficiency. The question is not only what kinds and how many legal problems are brought and handled under the program, or even how they are recognized, but once brought how they are resolved. In what forum, to what effect, in whose interest? In short, how adequate is the representation provided under the program in terms of having impact? What accounts for any inadequacy and how can it be ameliorated? Is it inherent in the Judicare approach? In the professional style of private lawyers? Or are some private lawyers efficient, aggressive, and independent and others less so? And what are the incentives to the former group under the program and what is the educability of the latter group?

Distinct from the question who is provided service or "affected" is the question of quality of service. Quality is the more subjective aspect of effectiveness of performance, especially when viewed as separable from efficiency. Client satisfaction is one element to be considered in assessing quality. The main problem is to identify and evaluate the factors involved in satisfaction. What is the significance of client satisfaction when the case is "won"? When it is pending? When it is lost? Settled? When the lawyer is "rude," "nice," or "indifferent"? Other measurements of quality are equally difficult. What do Judicare lawyers in fact do? How much time do they spend on Judicare cases? On what types of cases? When and at what rate do they "win" Judicare cases? Do they take only "winnable" cases? How is quality affected by lawyers' attitudes? By community attitudes? By the Judicare fee levels? By the level of support provided by the Madison central office? Assessing quality is a very complex task. Also, while its

relevance may be clear, it is uncertain what weight should be attached to a question as ambiguous as "quality" as against other aspects of performance.

This report seeks to deal with the issues raised in the foregoing paragraphs. It is not a final and definitive treatment. It presents empirical data with only minimal indication of the academic, political, or historical context. No objective criteria are offered here against which to measure performance, nor agreed-upon perspectives from which to view the issues. No one else has formulated such criteria, and we have not tried to formulate any. There is no explicit attempt here to compare the Judicare performance with legal services delivered by other methods to economically similar groups of people or with services for the nonpoor,[5] though one cannot always avoid implicit comparisons with theoretical models or actual experience. Ultimately, nothing exists in a vacuum or can be understood without at least some intuitive, implicit, or even subconscious frame of reference. Also, there is no effort here to evaluate Judicare as against the claims of its proponents or the criticisms of its detractors (see Appendix B).[6] The intent in this report is basically to let the

5. There exists considerable sentiment to the effect that without an explicit comparative framework, statements about Judicare are meaningless. This feeling was expressed to the author in terms of the old joke: Question: "How is your wife?" Answer: "Compared to whom?" But the real thrust of the joke is not that explicit comparisons are essential, but rather that they are often superfluous and misleading. Noncomparative statements about Judicare can in fact be quite intelligible. Noncomparative research is the norm in most areas. Nothing in the legal service (or Judicare) field *compels* explicit comparisons. In any case, comparison to what? To service to the poor *prior* to Judicare? To service to the nonpoor? To service to the poor under a staffed office approach? To abstract models of service to the poor? Any one explicit comparison raises the question why not comparison with the others. Further, are any of these comparisons feasible, either conceptually or in terms of the time and costs involved in undertaking them?

6. While some of the arguments listed in Appendix B are worth examining, one cannot formulate a study or write a report in terms of all of them.

reader judge the comparative, political, and academic relevance of what is presented. To do anything more explicit or systematic at this stage of the study and data-gathering appears unwarranted.

Finally, the economics of Judicare service are not considered in this report. In a world of scarce resources this is a large omission, but one that will be remedied in later phases of the study. It is often said that ultimate decisions on the shape of legal services to the poor will be made on the basis of cost; that is, that money is at the heart of most "issues" surrounding legal services. The implication is that cost questions take precedence over questions of impact, quality, and general effectiveness, or else that no discussion of effectiveness (or even of legal services) is meaningful absent a discussion of costs. This implication, however, is false. While economics and effectiveness are related and perhaps inseparable for some analytic or concrete purposes, the attempt to separate them is not a futile exercise. To illustrate: obviously, the most economical service is *no* service. Equally obviously, *no* service has both economic and noneconomic costs. That recognition emphasizes the fact that the noncost aspects of any service provided are crucial considerations.

METHODOLOGY

Many issues involved in evaluating Judicare (or any alternative legal service system) are for practical purposes not susceptible of empirical investigation. Much of the public controversy about the effectiveness of Judicare concerns matters that are very difficult to measure, or else it boils down to assertions of political preference and of social and economic priorities. Nevertheless, empirical study of those aspects more readily open to such study can make significant contributions to the debate because many "facts" that are accessible have been ignored or distorted

to disguise the underlying political assumptions and emotions that have determined and are determining the shape of legal services to the poor.[7]

The primary method of this empirical inquiry was the use of personal interviews conducted by a field team of three people.[8] Secondary were basic background research into the existing literature and the collection and examination of program statistics.

The field work took place in five areas of northern Wisconsin: Ashland County, Forest County, St. Croix County, the city of Superior in Douglas County, and Red Cliff Indian Reservation in Bayfield County. The first three counties were selected for their diversity in terms of population, economy, and available legal resources. We felt that a thorough inquiry into each of these counties would provide a reasonable basis for inferences about the 28-county Judicare area—each could be said to represent a group of similarly situated counties, as Table 1 demonstrates.

The city of Superior and the Red Cliff Reservation were selected after the field team had begun the job in Wisconsin. Superior, with a population of 33,000, offered an opportunity (while field team location and energies were favorable) to take a quick look at Judicare in a semiurban

7. To illustrate: It would be very difficult (at least as part of a general study of Judicare) to investigate empirically whether it is more "advantageous" *to the poor* for a program to spend 50 percent or 10 percent or 0 percent of its resources on "law reform." There is no choice in the context of this study but to deal in abstractions and assumptions on that question. But it *is* feasible to investigate empirically the assumption that private lawyers (i.e., Judicare) will produce no, or only negligible, "law reform." Likewise, it *is* feasible to inquire empirically into the truth or falsity of the assumption that private lawyers as a rule are unsympathetic toward the poor and are incompetent in "poverty law."

8. The team consisted of the author of this report and two very able undergraduate students, Cynthia Stowell and Richard Gordon.

TABLE 1 DEMOGRAPHIC CHARACTERISTICS OF COUNTIES STUDIED

	TOTAL POPULATION	FAMILIES WITH INCOMES BELOW $3,000		NO. OF LAWYERS	NO. OF FAMILIES WITH INCOMES BELOW $3,000 PER LAWYER
		No.	Percent		
Ashland County	17,375	1,177	27.4	9	131
Forest County	7,542	640	34.0	2	320
St. Croix County	29,164	1,828	25.8	19	96
Entire Judicare Area	*574,968*	*42,580*	*30.2*	*391*	*109*

Note: The basic population and income figures in this table are from the 1960 census. The remaining figures were provided by Judicare program statistics.

There is an element of imprecision in all the quantitative information presented, not only here but throughout this report. Given the limitations of the numerical information available, this is unavoidable. But for present purposes, rough quantitative indications will suffice. We used 1960 census figures because the 1970 figures were not yet available in detail. Use of the 1960 statistics is not inappropriate in any case, since the Judicare program began in 1966 in all but two counties that were added to the program in 1968.

Population and economic conditions have fluctuated unevenly in the Judicare area over the past decade. A few counties have prospered and have had an influx of permanent residents; some previously depressed counties have been favored by tourism (development of ski resorts and summer recreation areas). Other counties have continued the downward population and economic trend that characterized them in decades preceding the 1960s. Most recently, the depression of the early 1970s has offset gains made in some areas and has hastened the decline in others: industrial plants and lumber mills have been closed and unemployment has risen. It is impossible to pinpoint the timing of these various developments in relation to the existence of the Judicare program (let alone their relevance to the goals of the program).

Another problem with quantification is that figures on the number of people eligible for Judicare are unavailable: we have statistics on families with incomes below the standard $3,000 poverty line, but that is only roughly analogous to Judicare eligibility.

Finally, record-keeping in the program is less than adequate. Vital information is often unavailable or hard to come by; statistics provided often lack consistency and reliability. The number of lawyers said to be practicing in the Judicare area is a case in point. The total number is usually given at about 500, but the sum of the numbers of lawyers in individual counties is only 391. Even at that, our field experience was that there were fewer lawyers in each of the counties we visited than the county-by-county figures showed. The tendency to inflate the numbers is only partially explained by failure to account for lawyers who have died or moved.

setting. Red Cliff Reservation, the residence of 400 Indians of the Chippewa tribe, was selected to complement a special focus on Indian problems already implicit in the study from the existence of concentrations of Indian populations in Ashland and Forest counties. Ashland County is the location of the Bad River Indian Reservation, residence of a "band" of 600-700 Chippewas. In Forest County are the Mole Lake Indian Reservation (about 200-250 Chippewas) and the more scattered Potawatomi Indians. St. Croix County has no significant Indian population.[9]

The numbers and categories of respondents interviewed formally by questionnaires are shown in Table 2. We also

TABLE 2 RESPONDENTS INTERVIEWED, BY CATEGORY AND LOCATION

		ELIGIBLE PERSONS			WELFARE	CAP
	LAWYERS	Total	Users	Nonusers[a]	OFFICIALS	OFFICIALS
Ashland County	7	28	9	19 (3)	1	2
Forest County	1[b]	15	4	11 (2)	1	-[c]
St. Croix County	10	20	11	9 (1)	1	-[d]
Superior	10	11	9	2 (0)	1	2
Red Cliff Reservation	-[e]	8	4	4 (4)	-	-
TOTAL	28	82[f]	37	45 (10)	4	4

[a]Figures in parentheses are the number of nonusers holding Judicare cards.

[b]Forest County had only 1 lawyer besides the district attorney. The latter refused to be interviewed.

[c]CAP offices were closed for reasons not given.

[d]There is no CAP office in St. Croix County.

[e]There are no lawyers on the reservation.

[f]Of the total 82 eligible persons interviewed, 20 were Indians, 9 of whom were users (6 of the 11 nonusers had Judicare cards).

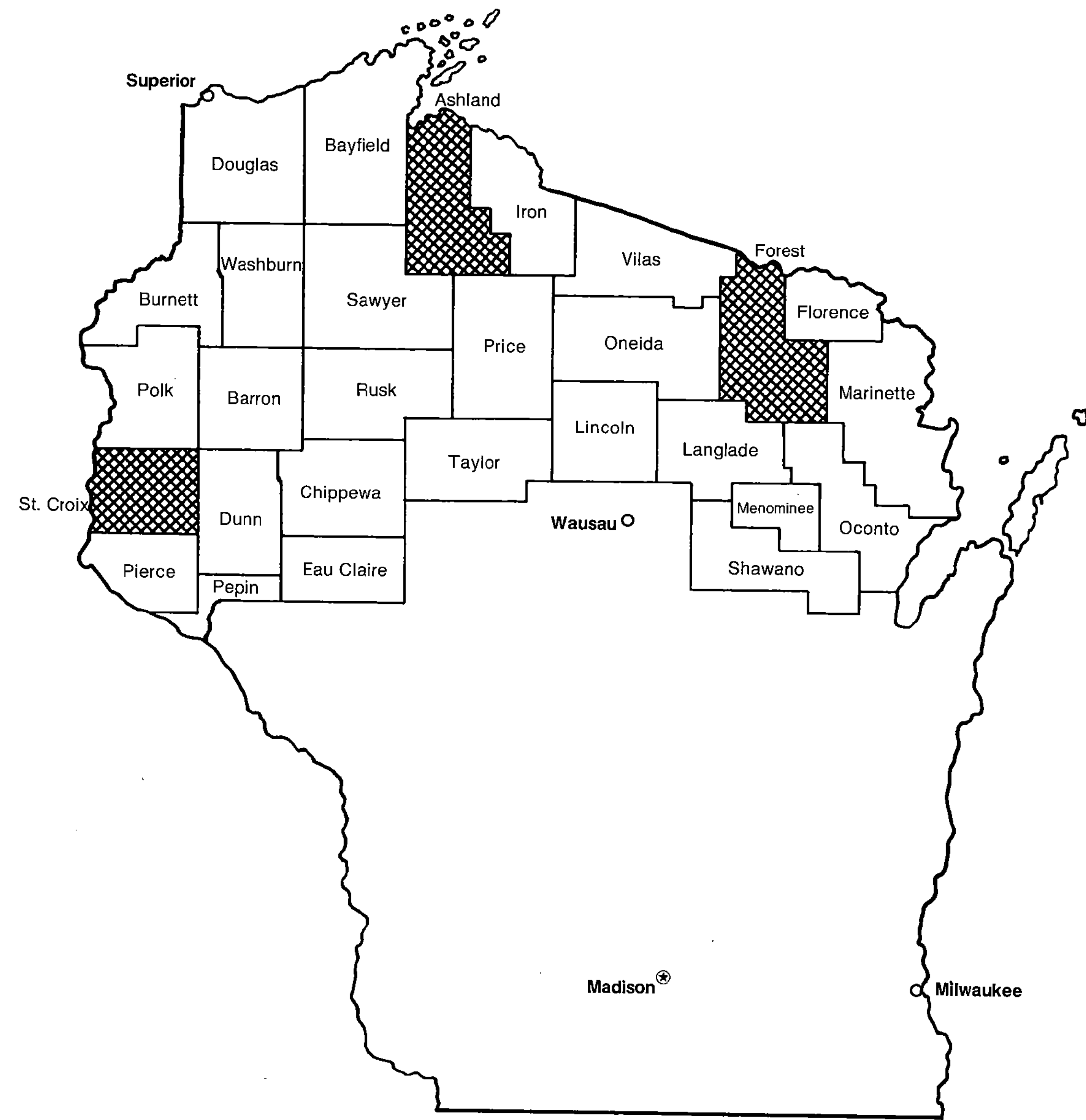
9. Indians in Wisconsin constitute a significant—and as usual, an economically depressed, culturally deprived, and socially discriminated-against—minority. The 1970 census counts about 19,000 Indians

talked more informally and usually more briefly with a variety of persons, including an additional 25 eligible persons, 2 judges, a number of leaders of the Indian communities, and several more officials of such social service agencies as welfare, CAP, and CEP (Community Employment Program). We also spoke at length with 2 attorneys in Oneida County, adjacent to Forest County. In addition, contacts existed with the Director of Wisconsin Judicare, members of his staff in Madison, and representatives on the Judicare Board. The information obtained in this less formal manner is, wherever appropriate, integrated with or used to supplement data derived from the questionnaires. The reasons for avoiding the use of structured interviews were varied and include considerations of time, physical circumstance, personality, official capacity, and the like.

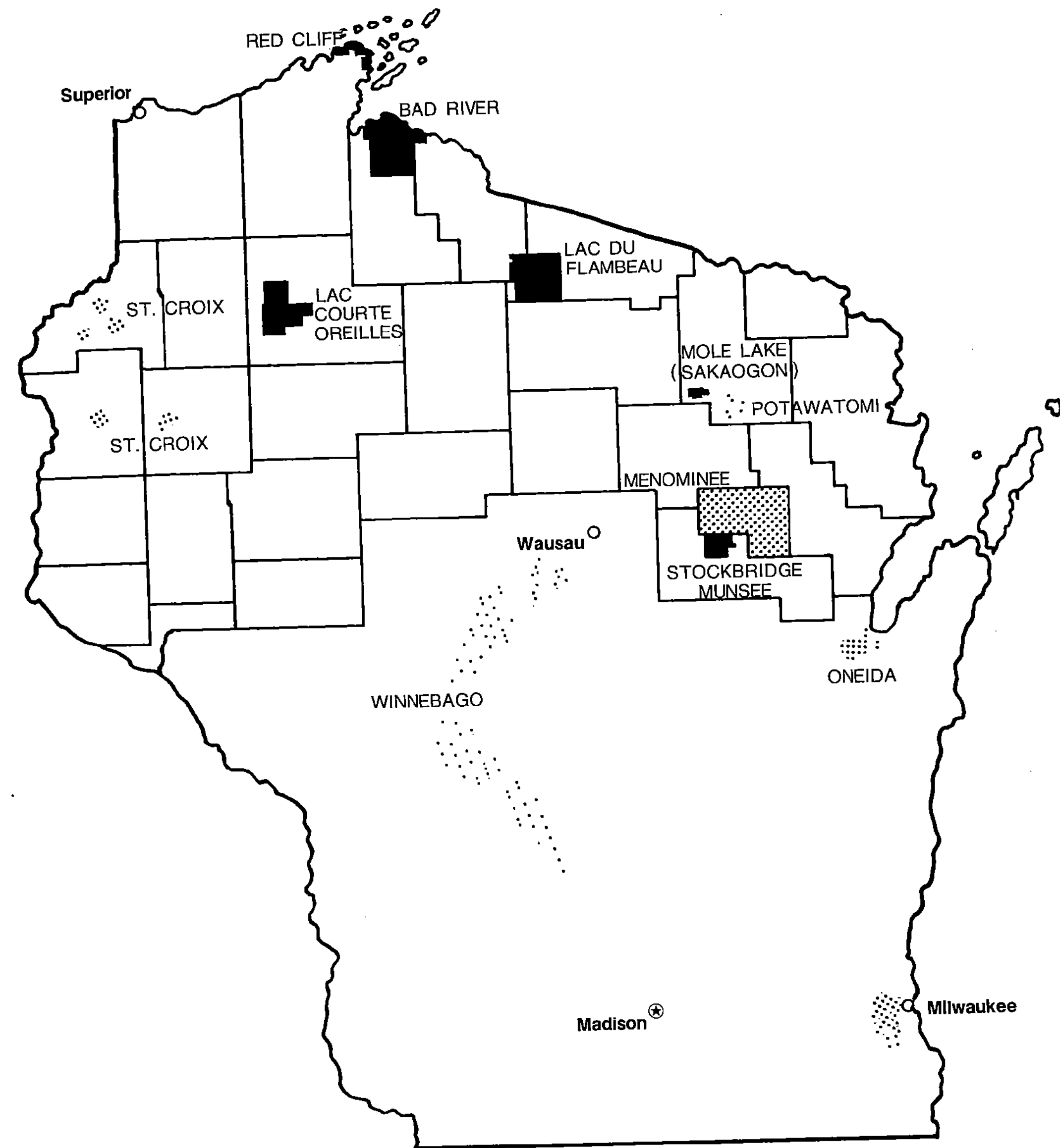
ORGANIZATION OF THE REPORT

The organization of the report follows the lines the Judicare "process" takes from the client's point of view: becoming aware of the program; applying for the Judicare card; going to a lawyer; the nature of the legal problem, and the outcome of the case; and evaluation of the service received. The issues and questions related to each of these stages of the process will be discussed. The report will end with a statement of some broad conclusions.

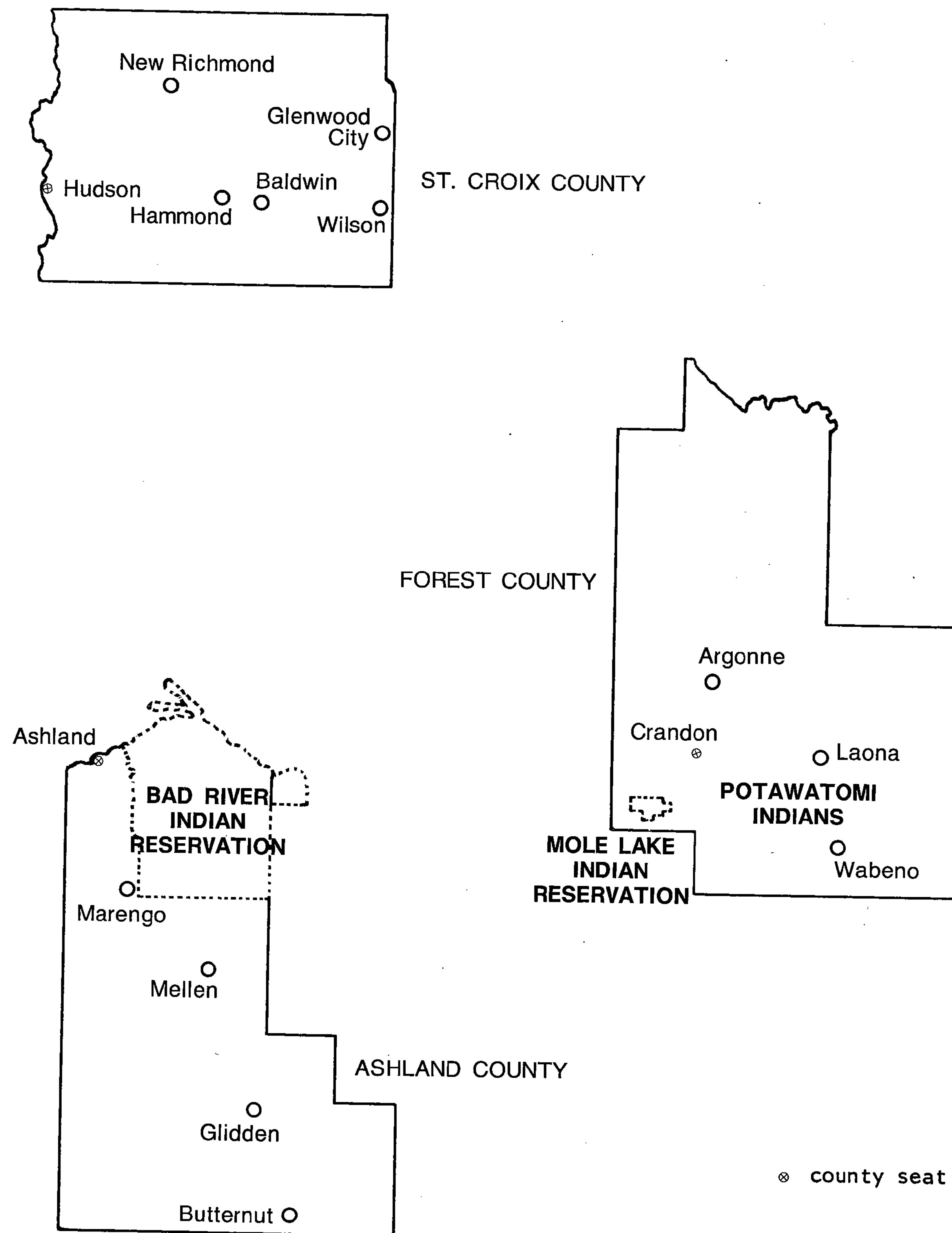
in the state of Wisconsin. A little over 8,000 live in various reservations or concentrations in the Judicare area. Indians residing outside the Judicare area are concentrated primarily in and around Milwaukee (close to 4,000, many of whom consider their residence in the city only temporary) and near Green Bay (close to 3,000, many on the Oneida Reservation). The Madison Judicare office provides service to Indians outside of, as well as in, the Judicare area. See Map 2 for the location of Wisconsin's Indians.



Map 1. Wisconsin Judicare Area. Crosshatched counties and the city of Superior are reported on in detail in this report



Map 2. Indian reservations *(solid)* and concentrations *(dotted)* in Wisconsin



Map 3. Wisconsin counties studied

Awareness of Judicare Among Eligible Persons

The level of awareness about a program is in itself a partial measure of its effectiveness. Utilization of the program is to some extent a function of the knowledge eligible persons possess about it. In fact, even evaluation of the service by actual users of it is likely to be colored by how and what the users were told about the program, judgment being in no small measure a function of expectations, whether justifiable or not. Thus the question of awareness helps put into perspective other factors that determine program effectiveness.

Therefore, in our eligible persons questionnaires we asked the poor about their knowledge of the Judicare program, and when and how they obtained it. Similarly our interviews with welfare and CAP officials focused in part on agency policy and practices regarding communication of the availability and functions of Judicare to the eligible population. Even our lawyer questionnaires touched on the question of awareness among the poor, and though the lawyers' answers were often more revealing of lawyer attitudes than of objective fact, that information does help round out the picture of awareness, particularly when added to other related data, such as available statistics on program utilization, physical location of Judicare users and deliverers, publication efforts by various community agencies and officials, and so forth.

Hard quantitative statements about awareness would not now be warranted.[10] Our results are at present limited to

10. Only random sampling of a significant portion of the eligible population would yield this kind of quantifiable data. While we can make statements about Judicare users and eligible nonusers separately,

"indications," data which can be examined qualitatively for content lending itself to inference and speculation about the quantitative level of awareness. Our tentative conclusion is that Wisconsin Judicare has done an adequate job of making itself known. Awareness of its existence among the eligible population in the Judicare area of northern Wisconsin appears to be fairly widespread. Knowledge of its actual functions and application procedures often seems deficient, but there is little evidence that this is a fatal shortcoming. First, it is unreasonable to expect the poor to have an accurate knowledge of the technicalities of Judicare coverage and entrance procedures. More important, however, insufficient knowledge of the program's functions and procedures does not appear to inhibit use of services seriously. What follows is an exposition of the bases for these conclusions on awareness. The discussion is important because, in our view, it presents more than a mere statement about the performance of an individual program in northern Wisconsin; it has relevance also for the Judicare approach generally in pointing up characteristics probably inherent in the concept.

A. GENERAL IMPRESSIONS AND SPECIFIC SKETCHES

Our firsthand impression, gained from our varied searches for and contacts with poor people in the Judicare area, is among the primary factors leading to the conclusion that awareness of the program is widespread. Though we did at times encounter eligible persons who had not heard of Judicare, many had. A number of examples may underscore the legitimacy of our conclusion and give an indication of the surprise we felt in encountering people, some even in the most isolated and outlying areas, who knew

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we cannot lump their responses together and make quantitative inferences about the total eligible population. (See Appendix A for a description of the method used in reaching eligible persons.)

of Judicare (as well as the surprise the respondents felt in encountering Judicare evaluators).

Eligible person A is a man about 50, never married, unemployed, and on relief. He lives near the tiny town of Marengo some 10-12 miles from Ashland, the county seat of Ashland County, in a small run-down farmhouse on a dirt road a couple of miles from the main highway. But he has heard about Judicare because "the attorney in Ashland used to handle things for my father and brother." They told him Judicare was "connected with people on welfare," so he got a Judicare card and went to "the attorney" to have the question of title to his land settled. "It's mine now," he added.

Eligible person B is an elderly woman living near Nelma, Forest County, a town of 17 people on the Michigan border. She had heard of Judicare from a friend in Crandon, the county seat of Forest County, 30 miles south, but had not used Judicare services: "no need for it." People in such little ghost towns generally looked to Iron River, Michigan, for necessary services. Legal services were not perceived as necessary.

Eligible person C is a woman with a husband and three young children. The family lives about 6 miles outside of a small community in St. Croix County, some 35 to 40 miles from the county seat, Hudson. The parents, in their early 30s, have used Judicare for a bankruptcy declaration. The lawyer on the case was from a town 10 miles away. A "CAP worker" from Menomonie (in neighboring Dunn County) had come by their home and issued a Judicare card on the spot.

Eligible person D is a male patient at the county mental hospital outside New Richmond, St. Croix County. He has a history of alcoholism. He has heard about Judicare from a "counselor here at the Home." The Judicare card was issued at the hospital and the patient has used it for a bankruptcy case. The lawyer was from New Richmond. It

turned out that five other patients at the hospital had Judicare cards, which is significant since mental patients generally constitute a badly neglected minority.[11]

These few sketches are representative of frequent experiences of the field team. But they are only hints. The responses of eligible persons, lawyers, and welfare-CAP officials to questions about awareness serve to substantiate, explain, and qualify the impressionistic evidence presented so far. Beyond that, certain facts, such as the wide distribution of offices and personnel connected with Judicare, lend support to the verbal data.

B. WAYS OF FINDING OUT ABOUT JUDICARE

Poor people in Wisconsin's Judicare area find out about Judicare in many ways; this diversity, to some extent peculiar to the Judicare approach, is one of its strengths. Of the 82 eligible people formally interviewed, 65 had heard of Judicare.[12] Fifteen had heard from friends or relatives; 14 from CAP officials; 11 from welfare officials; 8 from lawyers; 5 by way of the news media; 2 by way of CEP; and 10 had learned about Judicare from other sources, such as hospital personnel or ministers. A similar diversity of responses was obtained from the 25 eligible persons informally spoken to, most of whom were aware of the existence of Judicare.

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11. The hospital superintendent was displeased with this state of affairs. Patients, in his view, are troublesome enough without an awareness of legal rights and services. Even worse, Judicare once challenged a hospitalization decision and won—"we had to release the patient on some meaningless technicality."

12. We reemphasize that we cannot conclude from these returns that 80 percent of the eligible population in northern Wisconsin is aware of the existence of Judicare. But figures on how people had become aware of Judicare are meaningful, in that they provide an indication of the wide range of agencies and individuals who are instrumental in "spreading the word" about Judicare.

It would seem fair to say that this diversity, which facilitates and hastens the spread of knowledge about Judicare, is in part a function of the Judicare set-up which formally involves various agencies and individuals in the system, whether as card-issuers or as deliverers of the service itself. No person in the Judicare area can be far removed, either physically or otherwise, from one of several types of official participants in the program.[13] The task of informing the poor about Judicare is further simplified by the fact that the various Judicare card-issuing agencies are also primarily "poverty" agencies and thus already in official contact with many Judicare eligibles. And finally, informal communications among the poor themselves have a multiplier effect on these advantages.

The above discussion of awareness fails to deal with some peculiarities which are a function of differences in life styles among the poor and variations in role perception and action among the lawyers and card-issuing agencies. To these we now turn.

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13. E.g., in Ashland County, service resources are concentrated in Ashland, the county seat, located in the northern tip of the county. The welfare, CAP, and CEP offices and all but one of the lawyers are there. Two-thirds of the population of the county also resides in the county seat. However, there is a second CAP office in Butternut in the southernmost part of the county which is quite active with Judicare and responsible for the seemingly significant level of awareness about the program on the part of the poor in the more isolated portions of the county. There is also a lawyer in Mellen, a centrally located town in Ashland County, who does a good deal of Judicare work for people in the central and southern part of the county. In St. Croix County, the primary advantage in the process of program dissemination appears to lie in the dispersal of the lawyers: attorneys participating in Judicare are located in Hudson (the county seat), and in New Richmond, Baldwin, and Glenwood City—from the westernmost to easternmost part of the county. The presence of a central CAP office in Menomonie in neighboring Dunn County has also proved to be a significant factor in reaching the poor (see "examples" of awareness at p.19). Forest County is much less favored, with both welfare and CAP offices located only in the county seat, Crandon, where in addition the only two practicing lawyers in the county have their offices. However, Judicare awareness and services do seep into Forest County through neighboring counties.

1. The Indian Poor

Awareness of Judicare on Indian reservations we visited was substantial. Reservation society is close-knit, and the Indians are generally concentrated in a single settlement occupying only a small portion of the reservation. The people may be isolated from white society but not from each other. They know one another intimately, are often related by family, share a common culture and common problems, and their lives are punctuated by periodic council meetings where culture, problems, and solutions become concrete and public facts. Moreover (and of specific relevance to Judicare), Indian reservations have CAP coordinators whose functions include Judicare "coordination." Though the coordinators do not always perform this aspect of their function with the greatest diligence—there is a good deal of cynicism about the value of Judicare among some Indian "leaders"—other formal and informal communications in fact help to offset the neglect of some of the coordinators.

The facts are the following: On Bad River Reservation (Ashland County) and on Red Cliff Reservation (Bayfield County) we rarely found individuals who had *not* heard about the Judicare program. An indication of the high level of awareness came from the reservation chairmen, who estimated that as many as 40 percent of the Indian families actually had Judicare cards.[14] On Mole Lake Reservation in Forest County, people appeared to be slightly less informed of the availability of Judicare. Estimates as to the

14. The population of Bad River Reservation is about 600-700, or about 120 families. Of these, 50 families were estimated to have Judicare cards. Red Cliff Reservation has about 400 people—about 70 families, of which 30 were said to have cards. Our interview experience further revealed that a significant proportion of Indians on these reservations knew of Judicare, but did not have cards for lack of perceived need of Judicare services. And of course some families are simply not eligible.

number of cardholders could not be obtained, but the fact that at least one prominent member of the tribe, the Youth Coordinator, had not heard of Judicare appears significant. At the same time, however, many of the Mole Lake Reservation Indians we talked to, both formally and informally, were aware of the program. The reservation's CAP coordinator, though generally dissatisfied with Judicare, was vocal in her dissatisfaction, and the chairman was a firm proponent of the program so that information concerning Judicare must have been easy to come by.

It is likely that awareness of Judicare among the more dispersed groups of Indians, such as the St. Croix Indians in Barnett, Polk, and Barron counties, is at a less satisfactory level.[15] The channels of communication—chairmen, coordinators, council meetings, the reservation schoolhouse (center of all varieties of Indian activity)—would be less immediate and accessible to Indians living on Indian lands with less-defined boundaries or in more dispersed homes or settlements. Contact with (and dependence on) the various service agencies and leaders of the tribe would diminish in such a setting. In this phase of the study our only experience with such a situation was our interviews with the Potawatomi Indians of Forest County. Though very sketchy, the evidence suggests that awareness of Judicare among these more scattered Indians is indeed less,

15. An earlier "evaluation" reported, for example, that out of about 400-450 Indians in Barnett and Polk counties "only about a dozen" had Judicare cards. This certainly lags behind the performance we found on the more structured reservations. Some misleading implications of that earlier finding should be pointed out, however: 400-450 Indians probably means about 100 Indian families. Assuming that somewhere in the neighborhood of 60 percent of these families were eligible for Judicare, the number of potential cardholders would be around 60. One dozen cards issued out of 60 eligibles is 20 percent, certainly not a good performance. But among people as isolated and unorganized as the St. Croix Indians, this is not the dismal failure implied by the "evaluators."

though how much less is difficult to determine.[16] Word about Judicare has reached some Potawatomis, but informal communication apparently fails to fill the awareness gap adequately, and we encountered a few people who had never heard of Judicare—a rarity on the other reservations.

2. The City (Superior)

The field study gave brief coverage to the city of Superior, with a population of about 33,000, in order to assess the feasibility of Judicare in a semiurban context. Our tentative conclusion is that, as far as awareness is concerned, the Judicare approach does not suffer in its operations in a densely settled area. It was uncommonly simple in Superior haphazardly to find poor people who knew about and had used Judicare. While Superior has no greater proportion of eligible persons than the average county in northern Wisconsin, it has more than twice as many cardholders relative to population.

The factors responsible for the high level of awareness and use of Judicare in Superior are several. Though urban society is generally perceived to be more impersonal than rural society, this presumed impersonality is offset in Superior, as it probably is also in other urban settings, by the fact that people of similar socioeconomic standing are concentrated in relatively defined areas. Superior's poor population is largely confined to the eastern section of town, which includes two public housing projects and where life is anything but isolated. It was a common

16. Our field team spent about two-thirds of a day in "Potawatomi Indian country," obtaining 4 formal interviews. Two respondents had not heard of Judicare, and 2 had, including 1 cardholder (expired). Of 2 more Potawatomi Indians informally spoken to, 1 had heard, the other had not. There are very few Potawatomis; certainly fewer than 100, and probably significantly fewer.

experience for us when we were in Superior to contact one poor person who could name several friends or neighbors who had used or were planning to use Judicare. Two other factors also promoted awareness of Judicare in Superior. The town has a significant number of law offices relative to population which are (at least physically) easily accessible to the poor. Also there is a CAP office, located in the poverty area, which is quite active in informing the poor about the availability of Judicare.

C. LIMITATIONS ON AWARENESS: VIEWS AND ACTIONS OF LAWYERS AND CARD ISSUERS

Although there is significant awareness of Judicare among the poor, there is also evidence that suggests that—as one official phrased it—"there is room for improvement; more could be done."

Our questionnaires asked the lawyers and welfare and CAP officials if they felt the poor were sufficiently aware of Judicare. We then asked what they felt their own role to be, or what the agency's policies were, in promoting awareness. Most respondents felt that awareness was sufficient. But a significant minority thought the level was inadequate. As to role or policy in promoting awareness, the respondents showed considerable uncertainty and confusion. A closer look at the responses will bring the shortcomings into focus.

1. Lawyers' Views of Awareness and Role

Of the 28 lawyers interviewed, 15 thought that the poor were sufficiently aware of Judicare, 10 said awareness was insufficient, and 3 did not know. In Ashland County the count was 5 sufficient to 2 insufficient. In Superior it was 6 to 4. In Forest County, the only "active" lawyer felt that the poor were sufficiently aware. And in St. Croix

County, 3 lawyers thought awareness to be sufficient, 4 insufficient, and 3 did not know. It is questionable whether inferences about objective facts can be drawn from these responses, especially of course where there was only one respondent in a county. The total evidence suggests that lawyers in Ashland County and Superior had better grounds for judging awareness to be sufficient than those in Forest and St. Croix counties.

Those lawyers who felt that there was low awareness generally cited insufficient publicity, particularly in the last few years, as the reason. They held the central office responsible for this deficiency, ignoring the fact that they themselves were in a position to promote the program. Few of the lawyers in northern Wisconsin recognized any obligation beyond informing those individuals who actually came to the law office. Very few lawyers participated in outreach work, and no law office displayed notification of the availability of the Judicare program or its participation in it.

Mostly, those lawyers who saw awareness as sufficient simply made a different assessment of similar facts. They seemed to feel that publicity, no matter whose responsibility it is, tends to become redundant and reach a point of diminishing returns after a while. "You can never reach everyone," said one lawyer. The experience, common to every lawyer in the Judicare area, of having eligible clients come in who were not aware of Judicare, was viewed as inevitable and unimportant so long as it did not occur too frequently.[17] Telling such clients about Judicare was

17. There was no indication from lawyers that this happened very often. It is common for eligible persons to come to a lawyer without a Judicare card, but this appears to be more often a function of lack of knowledge of application procedures than a total unawareness of the existence of Judicare.

viewed as part of the process of publicizing, and to some extent rightly so. However, this assessment often also included the less defensible assumption, made explicitly by some lawyers and implicitly by others, that poor people with truly pressing problems would always find their way to a lawyer and thus to Judicare. In short, some of the lawyers felt that publicity was redundant under any circumstances. This view of legal demand ignores the fact that the anticipated cost of service inhibits demand by the poor (and for that matter, the nonpoor as well), and it adheres to the fallacy that problems not perceived as "truly pressing" or "immediate" can indeed and invariably do wait.

2. *Welfare and CAP Views and Policies*

The responses of welfare and CAP officials also bear out that steps might still be taken to improve the level of awareness of Judicare among the eligible. As to whether the level of awareness was sufficient or insufficient, answers varied. And again, as with the lawyers' responses, the statements of welfare and CAP officials are at best only suggestive of what the factual situation might be.

In Ashland County, the welfare director emphatically stated that awareness was more than sufficient, implying, in fact, that there was too much of it, that it exceeded the ethic of modesty according to which poor people should be decently grateful for the bounties bestowed on them rather than expect them as natural rights. The director also said that it was the practice of his office to tell all welfare recipients of the availability of Judicare. CAP officials in Ashland County were more hesitant. They felt that the level of awareness was "getting better," but that more publicity was needed, particularly on radio and television and in local newspapers. CAP's view of its role in spreading awareness was also more uncertain. Officials

stated that they "pretty much" told all poor people who came to the office about Judicare, but there was no clear policy that all would automatically and invariably be told. On the other hand, CAP in Ashland County was active in outreach, having participated in "Judicare alerts," where workers went around the county and knocked on doors to inform people of the program and issue Judicare cards. Ashland County welfare was involved in no outreach efforts; other limitations on its Judicare performance will be discussed later.

In Superior both CAP and welfare officials felt that there was sufficient awareness about Judicare among the eligible population. The welfare director claimed that all welfare recipients were told about Judicare, but members of his staff contradicted this. Welfare plays but a minor role in Superior; most card issuing and outreach work are left to CAP. CAP appeared to be quite heavily involved in Judicare outreach work, although paradoxically official responses as to whether CAP told all poor people with whom it came in contact about the availability of Judicare ranged from "not sure" to "not automatically."

The director of welfare in Forest County was "not certain" whether poor people were sufficiently aware, but suspected—and with more reason than in Ashland County or Superior—that they were "probably not." Moreover, it was neither the practice nor policy for welfare workers in Forest County to tell all welfare recipients of the availability of Judicare. The program was to be mentioned "only if the recipient raised the point."

The response from St. Croix County was similar. As to sufficiency of awareness, the welfare director thought there was "room for improvement," but it was "not our [agency's] policy" to tell all clients about Judicare. He expressed explicitly what had been only implicit in the responses of agency officials elsewhere: that there exists an aura of uncertainty and confusion about welfare and CAP's role

regarding Judicare. The agencies are charged with issuing Judicare cards to individuals who request them, but have no clear responsibility beyond that. It may well be appropriate for the Judicare central office to clarify to these agencies their role in informing poor people of the Judicare program. Similar steps might be taken with regard to the lawyers who, though generally convinced of the need for and value of Judicare to the poor, seem equally uncertain about the practical limits to which this conviction should be pressed.

3. *The Madison Response*

The central Judicare office responds to suggestions for improving awareness of Judicare among the poor by pointing to the special efforts made in the past to spread information about Judicare—the "Judicare alerts" in the earlier stages of the program. It also responds, not without justification, that present awareness is not inadequate. But further efforts toward promoting even greater awareness are met with the rejoinder that the program cannot afford it: in the Judicare director's view, budgeting priorities preclude expenditures on such efforts; moreover, there exists a fear that greater awareness would swamp the program with more cases, and in the administration's view the program is already overextended and underbudgeted.[18]

D. THE DETAILS OF AWARENESS

As indicated earlier, the poor have no awareness about the details of the functions and application procedures of

18. Some support for the Madison view is the fact that Wisconsin Judicare is indeed funded at a level—in terms of dollars per eligible family—well below the staff attorney programs in comparable rural areas. See Brakel, "The Trouble with Judicare Evaluations," 58 *ABA J.* 704 (1972), for a table and discussion on the funding levels of four rural legal services programs.

Judicare. Many eligible persons, though they were aware of Judicare, did not know that Judicare excludes coverage of criminal and fee-generating matters. This they find out only when the card-issuing agency, or more frequently the lawyer, tells them. The resulting frustration, disappointment, and confusion are particularly visible among Indians, who often need representation in criminal matters stemming from instances of "harassment" by game wardens and the local police. The upshot is a negative attitude on the part of many Indians about the Judicare program as such, or frequently about individual lawyers. The program's coverage limitations are construed as evidence of racial prejudice, fiscal dishonesty, or a general lack of concern for the legal needs of the poor.

Lack of knowledge of the application procedures is also common. A relatively high proportion of eligible people do not find out that they have to obtain Judicare cards from welfare or CAP until they enter the lawyer's office. A few lawyers estimated that nearly half of their Judicare clients had to be referred at the time of their initial visit to the nearest welfare or CAP office before their case could proceed. Most lawyers had this experience much less often, but the responses of eligible persons themselves indicate that the incidence is significant, though not precisely measurable at this point.

Though the deficiency in precise knowledge of the specifics of Judicare presents grounds for annoyance and disappointment about the program to some of the poor and may color their overall evaluation of the program, it is not a serious flaw in Wisconsin Judicare. Invariably, those individuals aware of the existence of Judicare knew generally that it was "free" and "for the poor." Knowledge of these crucial points shapes utilization of the service. Misconceptions about coverage were mainly in the direction

of overestimating the range of services available.[19] Missing a first step in the application process was remediable. We found no evidence that these misconceptions inhibited use of the program, nor could an inference to that effect easily be made. Moreover it is difficult to devise methods of communicating to the eligible community the finer technicalities of Judicare. Efforts to promote a more general awareness of the program would seem to be more productive, and while Wisconsin Judicare, partly by design and partly by happenstance, has performed reasonably well in that respect, more could be done.

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19. The only instances to the opposite effect concerned the vacillating criteria for Judicare-covered divorce. From time to time, because of limited funds, Wisconsin Judicare has limited divorce intake to those cases where there is a showing of likely "grievous bodily harm" to the party seeking the divorce. These so-called "extenuating circumstances" intake criteria have been in force off and on. Therefore, some poor people came to believe that Judicare did not cover divorce at any time under any circumstances. Two respondents in Superior even concluded therefrom that the Judicare program had ceased altogether. The effects of this situation on awareness, however, is only incidental to a much more serious problem. There is considerable argument over responsibility for inadequate funding, but it is clear that a drastic and unreasonable restriction on divorce intake in a program which focuses heavily on the delivery of individual services is distressing. Quantitatively, the restrictions have periodically halved the number of divorces handled under Judicare. Since the "grievous bodily harm" criterion is no doubt open to a variety of interpretations, there are also more subtle, nonquantifiable effects. For example, some lawyers, already negatively disposed toward poor clients seeking free divorces, may take the restriction as a license for refusing all divorce cases. Administrative complications are likely to inhibit lawyers who would and could stretch the criterion to a point where their divorce intake would be essentially unaltered. For the Judicare client, the divorce restrictions produce uncertainty at best and inability to resolve major personal problems at worst. The uncertainty in the Wisconsin Judicare divorce policy is of course not an inherent weakness of the Judicare approach but rather the result of inadequate funding plus decisions on priorities about which reasonable men may differ.

Application for Judicare Cards

The basic question to be discussed in this section is whether the card-issuing system, which is an integral part of Judicare (at least in Wisconsin), is sensible and workable. To answer this a determination of who applied for cards is one fundamental step: Are eligible persons who apply for Judicare cards different from those who do not? What motivates applicants? What are the circumstances, inducements, or inhibitions surrounding application? How many apply? Where do the applicants live? Some answers were obtained by asking eligible persons and other information came from an analysis of the practices and policies of the card-issuing agencies (welfare and CAP). In addition, the practices of lawyers, who are a major source of referral to these agencies, had a bearing on each of these questions.

A. CHARACTERISTICS OF JUDICARE APPLICANTS

One inquiry leading to measurement of the program's effectiveness is to ascertain who among the technically eligible are provided service, who are not, and why. Traditionally the problem has been phrased, and legal services programs specifically criticized, in terms of failure to reach the "hard-core poor." This phraseology connotes not just economic poverty, but poverty in terms of awareness, orientation, and attitude—lack of knowledge of service resources, lack of perception that a problem exists (let alone a solution), lack of aggressiveness, lack of self-confidence, fear of lawyers, and so forth. In sum, a service delivery system is deficient if it reaches only

those who are already favored in these respects and fails to reach those who are lacking in those attributes and thus in even greater need of the service offered.[20]

Our eligible persons questionnaires attempted to explore this area in a variety of ways. One series of hypothetical questions sought to test the respondent's problem perception and resource orientation.[21] Also included were questions on attitudes toward the legal system, the courts, and lawyers. Finally, there were queries, both general and specific, about legal problems perceived and legal services used apart from any Judicare experience. A general problem with this line of inquiry is one of causality: To what extent can any significant differences between Judicare applicants and nonapplicants on these measures be attributed to the Judicare experience itself? More specific difficulties with the approach also existed, resulting in part from the exploratory nature of this phase of the study. That will become clear in the following paragraphs.[22]

20. There is an element of paternalism in this sort of exposition that ignores the right and reasonableness of personal decisions to choose to be unaware, unaggressive, unavailing of services offered, etc. However, though the posture of noninvolvement may be a matter of choice for some of the poor, for many others it is not a matter of choice but an inevitable and undesired by-product of economic poverty.

21. The questions were based on standard batteries of this type used in several other studies. For example: "If you had a car accident and you were unable to collect your insurance for it . . . (a) What would you do? (b) Would you go to someone or somewhere for help or advice? (c) Where would you go? or whom would you go to?" To be effective, the hypothetical questions must cover problems that are clearly open to legal help and resolution as well as those where, at least in the first instance, nonlegal aid and resolution are usually considered more appropriate. Our questions included the following situations: wages not paid; car accident insurance; defective goods bought on credit; overwhelming debts; housing problem (defective plumbing); real estate transaction; government benefit problem (social security welfare); suspension of child from school; teen-age child arrested for drunk driving; race discrimination problem.

22. One purpose of this whole general line of inquiry is to show how the analysis might proceed in later phases of the study when better data are available. Here we present only some indications, despite the problems of causality and inadequate data. Moreover, we are comparing only card applicants and nonapplicants, though a similar analysis might be equally appropriate for users versus nonusers, cardholding nonusers versus users, eligible persons aware of Judicare versus those not aware, and so forth. But these other potentially profitable comparisons will not be attempted in this report.

1. *Legal Perceptions and Resource Orientation*

A thorough analysis of the responses relating to problem perception and resource orientation would be unfruitful at this time. The present data are too incomplete and sketchy, and the type of analysis required too complex. A superficial look at the data, however, reveals no obvious patterns or significant differences between the responses of Judicare applicants and nonapplicants.[23] Some nonapplicants, who had heard of Judicare, revealed themselves to be much more resourceful in identifying the nature of problems and ways of dealing with them than some Judicare applicants. For about the same number of respondents the reverse was true, and often responses from applicants and nonapplicants were much alike. More complete returns and deeper analysis could well negate these observations. For the moment, however, the data appear to indicate that the Judicare application process is not confined to and does not favor the more "advantaged" segments of the eligible population. A look at other data tends to confirm and explain this conclusion.

23. Preliminary indications from the Meriden, Conn., comparative project (where a choice between Judicare and staff attorney is offered) reveal that nonusers are quite different from users. Though their evidence is admittedly still "very sketchy," the Meriden evaluators feel that it indicates that nonusers are "far less able to cope with reality," "far less capable sociologically or psychologically to face their problems and seek legal resolution than the users." (Letter from George F. Cole, one of the Meriden evaluators, to the ABF.) Perhaps such findings are to some extent inevitable and tautological. This report does not purport to assess the final meaning or importance of these findings. We do believe, however, that it is relevant and important to inquire into and collect data in these areas.

2. *Attitudes toward Lawyers and the Legal System*

All 82 eligible persons interviewed were questioned about their attitudes toward lawyers. About 20 percent of the respondents agreed with the statement, "Lawyers are more interested in making money than in helping people," about 30 percent disagreed, and roughly 50 percent replied, "it depends." To "Lawyers do a good job for you only if you pay them well," 25 percent agreed, 25 percent disagreed, and about 50 percent said, "it depends." To "Lawyers don't understand the problems of the average person," less than 10 percent agreed, a full 50 percent disagreed, and some 40 percent said "it depends." And only slightly more than 5 percent agreed with "Lawyers don't care about the problems of the average person," while roughly 50 percent disagreed, and 45 percent stated, "it depends."

These figures reveal a relatively positive attitude toward lawyers among the rural poor. But for purposes of this section it is more important to note that there were no significant differences in responses between Judicare cardholders and noncardholders. In short, attitude toward lawyers does not appear to be a significant factor in determining who will seek out the services of Judicare and who will not.

Nor was there any difference between the two groups in their attitudes toward the legal system and the courts. In both groups, over 55 percent of the respondents felt that the legal system and the courts favored the rich, about 23 percent felt that the system was fair to everyone regardless of economic status, and about 22 percent said they did not know. Expectably, no respondent agreed with the suggestion that the system favored poor persons. In fact, the poor were considerably more negative about the courts and the legal system than they were about lawyers. Several respondents who held positive attitudes about lawyers

explained their reservations about the system by saying "you always can get a good lawyer when you're rich."

We asked users whether their experiences with Judicare had influenced their opinions regarding lawyers, the courts, and the legal system. Most commonly they indicated that they had always felt as they did and that the Judicare experience had not affected their attitude. A good proportion of respondents, however, stated that Judicare was their only legal experience or contact with lawyers and courts, implying that Judicare must have influenced their views. Yet there were no clear indications to that effect: Not one respondent stated that his experience with Judicare had been either so positive or so negative as to determine or alter his opinions about lawyers and the legal system.

3. *Legal Experiences Outside of Judicare*

Exactly half of the 82 eligible respondents interviewed had had legal experience apart from Judicare. Of the 45 Judicare cardholders, 22 had used non-Judicare legal services, 23 had not. Among those not holding cards the breakdown was 19 to 18. Thus again, there is no indication that poor people with legal experience (and whatever that may mean in terms of personality, social situation, orientation, etc.) found their way to Judicare more readily than those without these experiences and characteristics.

4. *Concrete Legal Problems Had or Perceived*

The only obvious difference between Judicare participants and nonparticipants lay in the incidence of their concrete legal problems. Whether this reflects actual events or a difference in legal perception is difficult to determine, but cardholders had (or recognized that they had) more concrete problems—by a factor of 50 percent—than noncardholders. In a battery of 17 questions respondents were

asked whether they had ever had a specific legal problem in connection with any of the following standard legal issues: car accident, criminal arrest, race discrimination, suspension of child from school, government benefits, insurance, personal injury in course of employment, relations with landlord, buying house or land, garnishment, collection of wages, defective goods bought, credit, bankruptcy, inheritance, divorce or separation, and adoption or child custody. Judicare cardholders averaged 4.7 problems, noncardholders 3.2. While this difference is statistically significant, its meaning is difficult to assess. If cardholders do *in fact* have a greater incidence of legal problems, due to life style perhaps, this sheds no light on the Judicare performance, since people with more legal problems are more likely to seek legal services. If the differential is attributable to perception of legal problems, however, then it reflects adversely on Judicare: the program to some degree is falling short in educating the poor, in seeking out the less perceptive, in giving service to those who need the service most.[24] We cannot now say which is the case. Here as elsewhere, the possible effect of the Judicare experience itself remains unresolved.

To sum up, we found no obvious differences regarding resource orientation and perception of the nature of hypothetical problems; none existed in respect to attitude toward lawyers, the courts, and the legal system generally; and the use of legal services outside Judicare was similar. But a statistically significant disparity was found in the incidence of concrete legal problems, though the qualitative significance of this disparity is obscure.

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24. The assumption that the differential is attributable to perception carries with it the implication that perception as to actual legal problems operates differently from perception as to hypothetical problems where we found, tentatively, no differences between the two groups.

There is a fundamental question of the relevance of this whole attitude-orientation line of inquiry. How significant for the overall evaluation of a program's performance are these sociological findings concerning the differences between participants and nonparticipants? How reliable or meaningful is this type of information? How is it to be interpreted? Clearly, in a service program some margin of disproportion should be expected to the effect of providing service to the more aware and aggressive, especially if some of the uninformed and unaggressive are so by choice. Also, even if we can identify and interpret the sociological data, do we understand interrelationships enough to recommend remedial action? Against these doubts, however, stand several concrete perceptions resulting from the field experience: that a service program, especially one designed for the poor, cannot afford to rely exclusively on the initiative of its target population; that a percentage of potential clients are indeed involuntarily helpless; that such potential clients do need prompting to become actual clients; that outreach is essential in bringing some clients and problems into the program. In short, the field experience convinces us that the *inquiry* into the sociological and psychological differences between participants and nonparticipants is an essential and valid part of the process of evaluating the program.

Our overall finding was at least a relative absence of an expected relationship: eligible persons with "positive" orientation, attitude, and perception characteristics did not appear to be disproportionately represented in the program.[25] While the evidence for this "finding" is sketchy

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25. Also, other variables—unaccounted for presently in our data gathering and analysis—may serve to dilute or overshadow the factors we have considered. For example, in terms of the incidence of concrete legal problems had or perceived, age would be quite significant. Similarly, any attitudinal differences between cardholders and noncardholders may have been coincidentally obscured in a small sample by objective factors such as race or residence in relation to the location of service resources.

and inconclusive, it is supported by some "external" facts which also counter the expected relationship. That is, there are certain essential features of the Judicare concept and some specific facets of the Wisconsin program which help overcome client self-selection, and these will be discussed next.

B. PERFORMANCE OF AND ATTITUDES TOWARD CARD-ISSUING AGENCIES

The involvement of existing "poverty" agencies in the card-issuing process is one such factor. These agencies already have significant contact with the poor, including the "hard-core poor," a fact which probably gives Judicare a significant advantage over legal services systems that operate without any such formal liaison. Absent the card-issuing agencies, awareness of and access into the system would depend on the initiative of the poor, except for the influence of impersonal advertisement and publicity or by the more haphazard or sporadic efforts of agencies whose assistance is sought *ad hoc*. When agencies already dealing with poverty groups take on the function of applying criteria for entrance into the legal services program, the performance of the task of influencing or reinforcing motivation to seek service is significantly aided. The fact that several agencies are instrumental in this process increases the advantage and serves to offset any drawbacks in such "third-party involvement."[26]

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26. In some circles much is made of the "third-party involvement" issue. Criticisms to the effect that card-issuing agencies interfere with the lawyer-client relationship, inhibit utilization by certain eligible persons for certain problems, violate legal ethics, etc., are frequently made without factual foundation and in disregard of the benefits inherent in the involvement. The issue, if not basically false, is certainly less than sincerely raised as a narrow and absolute issue of ethics by those who have no commitment (perhaps rightfully) to such absolutes. Criticisms of individual practices or policies of individual agencies would be proper, provided they are based on facts and considered in the light of offsetting benefits.

Often the abstract objections voiced are contradictory. On the one hand they criticize social service professionals for involving themselves in identifying legal problems and legal resources—an area from which they are admonished to stay away for lack of expertise. On

1. *Reputation and Location of Offices: Potential Physical and Psychological Obstacles to Application*

Of the 47 Judicare cardholders we interviewed, 29 had obtained cards from welfare offices, 14 from CAP, and 4 from CEP. These agencies have differing reputations, practices, and policies in the various counties. However, in no single county or area was there general criticism of all available options for getting Judicare cards.

In Ashland County the poor expressed many reservations about the local welfare department. Its director was felt to be tight-fisted on welfare matters, minimalistic in his promotion and delivery of available services, and punitive and prejudiced against the poor. This feeling was especially strong among Indians, some of whom had had long, running battles with the director. Some Ashland County Indians said that they would never set foot in the welfare office no matter how compelling the need (a claim contradicted by the welfare director, who implied that he had trouble keeping them out). But Indians in Ashland County were not conspicuously lacking in Judicare cards, the reason being that they went to CAP or CEP in the county seat or received cards from the CAP coordinator on the reservation, who estimated that about 40 percent of the Indian families on Bad River Reservation were cardholders. For poor whites who felt the same way about the welfare department, similar alternatives for obtaining Judicare cards were open. In Forest and St. Croix counties, no dislike or distrust of welfare officials was expressed. This was important, because alternatives for obtaining Judicare cards in these counties were not readily available. CAP offices were listed for St. Croix County but did not exist. However, some cards were issued in St. Croix by Dunn County CAP, especially for people in areas remote from the welfare office in Hudson. In Forest County a CAP office existed, but it was inexplicably closed during the

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the other hand, there is rhetoric to the effect that eligibility for legal services involves more than financial qualification and that social service people are remiss in their duties when they fail to inquire into the *legal* aspects of the potential client's predicament.

days of our visit and reputedly not very active with Judicare. An Indian CAP coordinator was assigned to Mole Lake Reservation in Forest County but was neglectful of the duties relating to Judicare. In Superior the welfare office played a negligible role in Judicare, but CAP was very active and most eligible persons received cards through it. On Red Cliff Reservation in Bayfield County, where about 40 percent of the families had cards, options were realistically open: Of the eight Red Cliff Reservation Indians we interviewed, half had obtained cards at the welfare office in the county seat and the other half from CAP on the reservation, a breakdown which was said to correspond to the overall pattern.

People who had applied for cards were asked about the possible inhibiting effect of having to go to a "poverty" agency for a card. Responses were mixed: 16 out of 47 agreed with the statement that they "did not feel comfortable about going to places like welfare or CAP." Of these 16 "uncomfortable" applicants, however, 12 also indicated agreement with the statement that they "didn't like the idea of asking for free benefits or services [generally]." In other words, reservations were rarely directed specifically at the agencies. Few responses were given with great conviction, most seeming to be more in the nature of voicing the notion that it is only proper to be somewhat proud and hence hesitant about admitting one's lack of self-sufficiency.[27] The isolated respondents with deep-seated reservations directed them toward specific personalities (in the Ashland County welfare department) and volunteered to make clear that they "didn't mind CAP." Of course, all card-holding respondents had in fact disregarded any reservations they might have had about poverty agencies and services.

27. It may be in any case less difficult to have to apply at a "poverty office" than to have to accept *legal service* at a poverty office. The Judicare approach precludes the latter possibility.

Nonapplicants were not asked the same questions as applicants, nor did they volunteer any of the above factors as their reason for not applying. Eligible persons who had not applied for a Judicare card either had not heard of the program or else stated that they had no need for the program's services, indicating anything from lack of perception of legal need to a desire for independence and isolation. A few Indian respondents added that Judicare could not be of much help to them anyway.

Getting to the card-issuing agencies posed few physical problems for eligible persons. Of the 47 applicants, only 4 said that Welfare or CAP was "too far" from where they lived or worked and/or that they had difficulty getting transportation there. Nonapplicants never gave distance or transportation problems as reasons for not applying for a Judicare card. In part, this is a reflection of the fairly adequate distribution of card-issuing agencies throughout the area. However, it also indicates that people in rural northern Wisconsin take the 50-mile round trips sometimes required rather lightly.

In sum, the use of welfare and CAP offices appears to be a sensible and workable aspect of Judicare. Neither psychological nor physical factors appear to depress application to any significant degree. In fact, some of the card-issuing agencies overcome these factors by way of outreach to physically and psychologically isolated poor people. Reservations about card-issuing agencies are usually directed toward specific personalities in an agency, and the variety of alternatives serves to blunt the potential negative consequences of such situations.

Welfare and CAP appear to place no unwarranted restrictions on card issuance for those poor who apply. The agencies estimated that less than 5 percent of the applicants are rejected, all because their income exceeds the program's specifications; the agencies disavowed any practice or

policy of limiting card issuance on any grounds other than financial, and we found no evidence from eligible persons that any nonfinancial restrictions were operative. Welfare and CAP issue pamphlets to applicants describing the substantive limits of Judicare coverage, and in fact Ashland County welfare officials made it a practice to discourage applicants from going to a lawyer when they knew that the problem at hand fell outside the scope of the program. However, they issued cards to such applicants nonetheless.

2. *Shortcomings and the Madison Response to Them*

To be sure, the functions of welfare and CAP could be expanded and performance improved. As mentioned in the discussion of awareness, Judicare cards could be issued as a matter of policy to all eligibles in contact with the agencies. At present this is not done. Welfare especially appears to leave it all up to the initiative of the poor. Also, while there are efforts to acquaint the poor with Judicare availability generally, neither welfare nor CAP specifically stimulates demand for cards nor takes much initiative in exploring potential legal needs and problems with the poor. The responsibility for these deficiencies can be assigned variously. Welfare and CAP should be able themselves to formulate adequately their roles in the Judicare process. The central office in Madison also has the capacity to explicate the need for greater agency initiative. Madison's response to such suggestions, however, is to place the blame on the federal office in Washington, which has (in Madison's opinion) consistently underfunded the Wisconsin Judicare program.[28] Overextension is a distinct

28. The Washington office has responded that the Madison administration has overextended itself by getting involved in less-than-pure Judicare programs—such as prisoner representation, law reform, and Indian representation. In short, the Washington view is that Wisconsin Judicare's financial problems are of its own making. In turn Madison

possibility if all eligible persons were to be told automatically about the program or cards were invariably to be issued to all of them.

C. THE LAWYER'S ROLE

The lawyer's role in the card-issuing process is confined to referring to welfare or CAP eligible people who come to the law office without a Judicare card. All direct indications are that the lawyers perform this function without hesitation and rather frequently. However, there is indirect evidence that some lawyers or groups of lawyers are far less anxious than others to make automatic referrals or to encourage Judicare use at all. This we explore later.

It has been suggested that lawyers be given authority to issue cards on the spot. This would increase the number of options for obtaining cards and would save significant numbers of poor people needless trips. Neither lawyers themselves nor other spokesmen are unanimously convinced that lawyers would want to or should have a part in the card-issuing business. However, if the lawyer's task in this area were limited to a quick determination of eligibility in certain classes of clear-cut cases, and if the welfare and CAP alternatives remained open to card applicants, many of the objections to involving the lawyers would disappear.

D. UNUSED JUDICARE CARDS

Applicants' reasons for applying for a Judicare card reflect a peculiar feature of the Judicare system. Though most eligible persons apply because of an immediate legal problem, a significant proportion obtain cards because they

wonders whether it would have survived the criticisms of insufficiency of representation that Washington would have made if the special programs had not been undertaken. For some specifics on the funding situation see note 18, supra.

feel (or are told) that having a card might be useful in the future. Specifically, responses to our questionnaires showed that 35 of the 47 applicants got cards for immediate need, and 12 for future use. The rough accuracy of this quantitative breakdown is confirmed by estimates by welfare and CAP officials. In fact, some of these officials thought they perceived a trend toward increased applications for future use, now that the more pressing problems had been taken care of in the first few years of the life of Wisconsin Judicare.

The phenomenon of poor people obtaining Judicare cards for future use appears to be a salutary aspect of Judicare. The most obvious advantage is of course that when a legal problem does arise (or is perceived), there will be no uncertainty or delay in connection with eligibility determinations. A more subtle benefit is the psychological one. A number of cardholders volunteered that they felt "more secure," "more confident" in their day-to-day dealings because having a card meant "not having to let things be when they go wrong." Welfare and CAP officials almost unanimously pointed to this psychological advantage of Judicare cards,[29] as did many lawyers. Negative evidence of this perceived advantage was also supplied—for example, the mental hospital director complaining about patients already being troublesome enough without being further agitated by having Judicare cards; a clerk in a county courthouse explaining to an interviewer that Indians are already too demanding without the luxury of easily available free legal aid. Though difficult to document in objective fashion,[30] this psychological factor is not to be dismissed

29. Much to its disadvantage—in our opinion—Montana Judicare operates on a system that seeks to avoid giving cards to persons without an immediate legal need (see Appendix A).

30. There are of course also individuals for whom having a card means nothing. A few respondents, for example, stated that they had never had any use for their card and had let it expire.

lightly. One avowed purpose of any comprehensive legal services system for the poor is to alleviate the psychological and sociological isolation of its clientele; if the simple process of issuing a card can do this to some extent by making the poor feel more confident and less exploitable, then that is itself a significant accomplishment.

E. *DISTRIBUTION OF JUDICARE CARDS*

There is a marked unevenness in the distribution of Judicare cards per eligible family in the various areas we studied (Table 3).

TABLE 3 JUDICARE CARDS ISSUED FROM BEGINNING OF PROGRAM (June 1966 to October 1971)

Area	No. of Cards Issued	No. of Eligible Families	No. of Eligible Families Per Card
Ashland County	458	1,177	2.57
Superior	1,160	about 1,500	1.29
Forest County	158	640	4.05
St. Croix County	244	1,828	7.50
Entire Judicare Area	*12,506*	*42,580*	*3.40*

The average distribution is about one cardholder for every 3.4 eligible families. Superior greatly exceeds that average, and Ashland County is a good deal better than average. But Forest County and especially St. Croix County have rates far below the average. The reasons for this disparity are many and complex. Significant among them, no doubt, is the total socioeconomic situation of the poor in the various areas, though we do not presently have data to support this assumption in concrete and specific terms. There is little evidence that the policies and practices of the card-issuing agencies account in a significant way for the differentials. We do believe, however, that the attitudes and practices of the lawyers play an important role in determining the level

of use of the Judicare program, including application for cards, and we will present data on this point in the following portions of the report.

But first, to conclude this section on card application, we will touch on the distribution of Judicare cards within the counties. In view of the fact that the service resources (lawyers, welfare and CAP offices) are largely concentrated in the respective county seats, it has often been presumed that Judicare cards are issued primarily to those poor living near the county seat, to the disproportionate exclusion of those who live in more remote parts of the county. The figures in Table 4 (see also Map 3 for

TABLE 4 DISTRIBUTION OF CARDHOLDERS WITHIN COUNTIES[a] (Based on Issuance in 1970-71)

County and Town	Percent of Cards Issued in County, by Post Office Address of Cardholder	Population of Town
ASHLAND COUNTY:		
Ashland[b]	52	9,615
Marengo	13	256
Glidden	13	728
Mellen	7	1,168
Butternut	15	453
FOREST COUNTY:		
Crandon[b]	57	1,582
Argonne	14	390
Laona	11	1,395
Wabeno	18	1,144
ST. CROIX COUNTY:		
Hudson[b]	20	5,049
Baldwin	7	1,399
New Richmond	50	3,707
Hammond	3	768
Wilson	10	130
Glenwood City	10	822

[a]The figures in this table are rough; more precise data are not available. Many cardholders' addresses are post office addresses; they may not live in the towns. Also, the town populations do not include all persons living in a county, and we do not know the percentage of eligible persons in each town.

[b]County seat.

the location of towns) fail to support this assumption. The fact is that, with the possible exception of Forest County, Judicare cards are quite adequately distributed within the counties. This fact speaks well for the Wisconsin program.

Going to the Lawyer

This portion of the report deals in essence with the number of cases brought under Judicare. In the next section we will focus on types of cases.

The number of cases handled depends on a variety of factors, including client perceptions about lawyers and legal problems, and the lawyers' own attitudes. The attitudes and characteristics of lawyers and clients also have a bearing, more remote but more crucial perhaps, on problems which might have been, but were not, brought or handled. Even the practices and policies of the card-issuing agencies are potentially relevant.

The total picture of "access" to the Judicare lawyer involves a variety of issues. Number of cases handled is a central component measuring the level of access in conventional terms and providing an indirect indication of the factors which promote or inhibit access. The "freedom to choose" lawyers (which clients are supposed to have under Judicare) while it has independent significance in that it has been considered a qualitatively desirable aspect of the Judicare model, is also an integral part of the quantitative aspects of access. What the client has to choose from, assuming he does choose, is of course another crucial element of access, and an examination of the policies and practices of the lawyers occupies a significant part of this section. The interaction of the major groups of program participants—clients and lawyers—and its implications for the locus of control over the level of service must furthermore be understood in terms of factors peculiar to the program. For example, the fact that the service is free to the client may influence demand. The fact that

lawyers do not get paid very much for the service they provide has an impact on supply, but so does the fact that the lawyers now do get paid something for services they often rendered free by default in days prior to Judicare. In short, the question of demand and supply of legal services involves countless subquestions which can be treated in greater or lesser detail. We will deal with many, though not all, of the questions. One important area we will largely avoid, for practical reasons of insufficient data and excessive complexity, is a comparison between Judicare clients and eligible nonclients in terms of resource orientation, problem perception, and related characteristics. Some aspects of this issue were dealt with earlier, in the section on card application.

A. CHOICE OF LAWYER

How does the Judicare client pick his lawyer? Or, as some might prefer to phrase it, does the Judicare client pick his lawyer? The issue of free choice has enormous political importance. "Free choice of client's own lawyer" is one of the prime propaganda slogans of Judicare proponents, who reason that by giving poor clients this choice Judicare puts the poor on an equal footing with the nonpoor who have always chosen their own lawyers, and it is thus a fine program.[31]

Our conclusion from the data gathered so far is that for many of the poor there *is* a real choice of lawyers, that they often exercise it meaningfully, and that this is an important facet of the Judicare performance.

31. At the other extreme are those who would dismiss choice as irrelevant, or, as in one "evaluation" of Wisconsin Judicare, simply assume that there is no choice in rural Wisconsin because of the limited number of lawyers. Relevance aside, the fact that there are on the average 16 lawyers per county in the Wisconsin Judicare area negates at least some of the more glib dismissals of the question of choice.

The most direct data come from responses to our question, "How did you pick this particular lawyer?" Of the 37 individuals who had used a Judicare lawyer, slightly more than a third (14) responded that they knew the lawyer personally; 7 had been told about the lawyer by a friend or relative; 7 knew the lawyer by reputation, but not personally; 2 were referred by Welfare and 2 by other lawyers; 1 was told about the lawyer by a hospital worker (the client was a patient); 1 picked the lawyer because the latter was the district attorney; 1 client picked a lawyer whose office was conveniently close to where the client worked; and 5 clients looked up their lawyer in the telephone book.[32] Only for the 5 who used the phone book can "choice" be said to have been meaningless.[33] In all other cases, choice was "meaningfully" exercised, though it may be difficult to say how wisely. Choosing a lawyer because his law office is conveniently close may objectively be viewed as a not very wise use of the client's options. For that matter, none of the criteria used in selecting lawyers can be said per se to guarantee satisfactory representation. Both objectively and subjectively speaking, the client can make the "wrong" choice whether he bases it on personal acquaintance, referral, reputation, or mere convenience, though the predominance of the first 3 reasons would appear to impart a measure of objective validity to the selection process. Moreover, the subjective and psychological importance of the mere opportunity to choose must not be underestimated,

32. There are 40 responses because 3 clients had used Judicare twice for two different problems.

33. It could be argued that clients might prefer the freedom of looking in a telephone book to a system which precludes this option. However, this may be carrying the psychological benefit point a bit too far. Such minimal exercise of the option to choose should be weighed against the possible advantages of appropriate "limitations" on choice such as meaningful advice or carefully considered assignment of lawyers according to expertise, competence, and so forth.

regardless of how wisely or unwisely the opportunity is thought to be exercised. Further, in certain special situations to be discussed below, the exercise of choice is incontrovertibly "meaningful" in an objective sense.

1. *The Limits of Choice: Indians*

The special situations mentioned above refer to conditions under which choice is so limited that the exercise of choice becomes particularly (and paradoxically) meaningful. The most telling illustrations are found among Indian clients.[34] Many Indians, especially the more vocal and politically oriented, have a strong mistrust of white society, particularly that part of white society that is nearest to concentrations of Indian populations. In terms of Judicare, the situation is that many Indians, though not negative about white lawyers generally, are doubtful of getting fair treatment from lawyers in the neighboring town or in the county surrounding Indian lands. As a result, Indians go to Judicare attorneys practicing in areas well removed from the reservation. Of the nine Indian users formally interviewed, five had gone outside the county of their residence in quest of an attorney who, as they generally expressed it, was "not identified with the established power structure" and could do the job without cutting his

34. One general reaction to an earlier draft of this report was, "Why so much emphasis on Indians?" One reason is that while Indians constitute only a small percentage of the total northern Wisconsin population, their proportion among the group of eligible people is much more significant (at least 10 percent, probably about 15 percent). Second, it is proper to devote "disproportionate" attention to minority groups because their problems go too easily unheard despite the fact that they are often most desperate. Third, the problems confronting Wisconsin Indians with regard to Judicare are quite likely representative of those to be faced in other areas with Indian populations, or even in areas with other racial minorities (rural blacks or Chicanos). Finally, the problems of racial minorities are often accentuated versions of problems of that larger minority—the poor.

own professional throat. At least three other Indians spoken to less formally stated that they too had gone outside the immediate county for Judicare services, and one respondent knew two Indian friends who had done the same. One Indian leader in Forest County, who himself had not used Judicare, said that he would never go to either of the two Forest County lawyers, but added that he knew several lawyers in neighboring Oneida County to whom he would not hesitate to go, and in fact he would attempt to solicit the help of one of them to handle Indian business generally. Another tribal official stated, "Judicare works as long as you can get a disinterested lawyer." With some effort Indians can.

The Indians' distrust of immediately neighboring lawyers is of course a serious problem of Judicare, regardless of the fact that it is ultimately obviated by the actions of some Indians and no matter how well it illustrates the importance of "choice." Not only is it an inconvenience for some clients to have to go far out of their way, but other less enterprising individuals may be inhibited altogether from seeking a lawyer. Of interest, though it does not negate the general mistrust, is that all of the four Indians who had *not* gone outside their area of residence for a lawyer were completely satisfied with the representation obtained.

2. *"Free" Choice: White Clients*

Among the white poor, limitations on choice are relatively nonexistent, except as caused by the limited number of lawyers in some areas of northern Wisconsin (e.g., Forest County). In these areas, poor whites usually take what is available, though some do cross county lines when they live closer to a neighboring county lawyer than to lawyers in the home county, or from personal preference.

Choice, however, is not nearly so dramatically exercised as among Indians.

For the great majority of clients, going to the lawyer appears to be relatively easy. Only 3 of 37 clients felt that their lawyer lived too far away and that transportation there was difficult.[35] As to less tangible inhibitions about going to lawyers, 7 of 37 responded affirmatively to the statement that they might "not feel comfortable about going to a lawyer generally"; most clients, however, stated quite positively that they had no reservations at all. That picking the lawyer of their preference is a relatively uninhibited matter for most clients is a positive attribute of Judicare. Moreover, it demonstrates that the exercise of "choice," while dramatic under some circumstances, is generally simple and workable, but not thereby less "meaningful."

Freedom of choice can be vitiated, however, by factors other than lack of client initiative and perception. The practices and policies of card-issuing agencies and of the lawyers themselves can significantly restrict client options. In view of this possibility, we questioned the agencies and lawyers as well as the clients on this issue.

3. *Welfare and CAP Role*

Clients were asked, "When you applied for your Judicare card at welfare or CAP, did the people at the office ask you or tell you anything about which lawyers you could go to with your card?" Of the 47 cardholders, 43 replied in the negative, often adding something to the effect that the agency made explicit that "you could choose any lawyer you

35. Problems of distance and transportation are quite subjective. Several clients traveled 30-40 miles for a lawyer, but did not think this was too far. On the other hand, 1 of the 3 clients who did have problems in this regard lived only a few blocks away from his lawyer, but the client's "disabled leg and ailing heart" made any distance a problem.

wanted." Two clients could not remember whether the agency had said anything in this regard. The remaining 2 clients, at their own request, had lawyers specializing in divorce actions recommended to them by welfare workers. The responses of welfare and CAP personnel themselves confirm the fact that choice is not tampered with: being quite sensitive on the issue, agency officials took pains to explain that they are "not supposed to interfere with the client's selection." In fact, the agencies may be overdoing it for fear of criticism. It is not unreasonable to suppose that more than 2 out of 47 cardholders—for instance, the 5 clients who found their lawyers via the phone book—would have been helped by some knowledgeable advice.

4. *Restrictions on Choice Imposed by Lawyers*

Lawyers can of course control client choice by refusing to accept cases, though this would be a secondary limitation since the client still picks the lawyer who refuses him. Of the 28 lawyers we interviewed, 16 had refused the case of at least 1 Judicare client for reasons other than that the particular problem brought was not covered by Judicare. Eleven lawyers said that they had never turned away a Judicare client, and 1 lawyer was not sure. The reasons for refusing Judicare cases vary. Ten lawyers cited conflict of interest; 8 said that they sometimes refused a case because in their opinion the problem was "unmeritorious," an example of the meaning of this term being "a client who comes for a divorce for the third time in less than a year."[36]

36. The question what constitutes an "unmeritorious" case is important and complex. Whether the above example deserves the label "unmeritorious" is not beyond dispute. Moreover, there are bound to be instances which are clearly unwarranted: most likely there are lawyers who sometimes use the label "unmeritorious" because a client is politically or personally obnoxious to them or because the case is too controversial. We have little evidence, from either clients or lawyers, that much of this occurs in Wisconsin. But the problem is an inevitable aspect of the Judicare approach. It is not an entirely negative aspect

Seven lawyers said that they sometimes had to refuse Judicare clients because they were too busy with other aspects of their practice. The assessment that the problem brought was nonlegal was cited as a reason for refusal by 6 lawyers. Five said that the weakness of the client's case ("could not win") sometimes led to refusing the case. And 4 lawyers stated that they refused Judicare cases because the Judicare fees were too low, though—since they did take Judicare cases and cases of various types—by this they meant that it was economically unsound for them to spend more than a certain proportion of their time on Judicare work generally. Some lawyers were quite discriminating in stating reasons for refusal, acknowledging the validity of some but questioning the ethical propriety of others. Other lawyers simply summed up their policy toward Judicare clients as follows: "I'll refuse them for the same reasons as any other [paying] client." Generally, the lawyers who refused Judicare cases said they would refer the client to another lawyer, depending on the reason for refusal: e.g., if the case was "meritorious" but the lawyer was too busy, the client would be referred; but if in the lawyer's opinion the case was not meritorious, no effort would be made to help the client find another lawyer.

The quantitative aspects of refusal, for present purposes at least, are more significant than the qualitative ones. If most lawyers turn down significant numbers of Judicare clients, choice is in essence severely restricted. Quantification is difficult, however, because lawyers themselves do not keep track and can give only the roughest of estimates. The most common quantitative assessment from

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either; not only may the judgment of the individual attorney about the merits of a problem often be valid, but when this judgment is less valid, the client has the option of going to a different lawyer and thus the advantage of not being stuck with unsympathetic counsel. Only when the lawyers in a given area are both unanimous and unanimously wrong in their assessments of the merits of a case does the Judicare client suffer, but even then no more than a client who can pay.

lawyers who admitted to refusing Judicare clients was that they had turned down "a few cases" for one or several of the reasons given above since the inception of the Judicare program. However, a few lawyers in the Judicare area held or had recently held positions which caused clear conflicts of interest and dictated refusal of larger percentages of Judicare cases. Thus one lawyer who was a district attorney said that he was obligated to turn down 90 percent of the Judicare clients who came to him. Two other lawyers, one currently and the other formerly a Family Court Commissioner, said they had to turn away all Judicare clients with domestic problems during their tenure in that position. However, the potential client community appeared to be enough aware of such conflicts for these lawyers to have comparatively few Judicare clients coming in. In other words, though the percentages of refusals were higher for lawyers occupying conflict-producing positions, the numbers were relatively small. Two other lawyers who deviated from the standard of none or only a few refusals were among the most heavily involved in Judicare in terms of philosophical commitment and total number of Judicare cases. The very commitment of these lawyers caused them to feel the economic pinch and caseload pressures of Judicare most severely and as a result, while they handled large numbers of Judicare cases, they were forced to turn away significant percentages and numbers as well.

While the lawyer responses thus suggest that choice is to some extent limited by the intake policies of lawyers, the actual extent is difficult to gauge because of the quantitative imprecision of the responses. Data from the clients, however, shed light on the matter. Clients were asked if the first lawyer they went to took their case. Of the total 40 cases (37 clients, 3 with 2 problems), 35 cases were accepted by the first lawyer contacted. Of the 5 not taken, 3 were rejected on grounds that they were not covered

under Judicare—2 divorces and 1 drunken driving situation. Of the other 2 refusals, 1 was an employment problem brought by an Ashland County client to an out-of-county lawyer who told the client that he could not take the case as there was no provision for travel time under Judicare. The case was then dropped by the client. The other concerned a divorce action in Forest County. The client's first lawyer said that he would not take the case because he was "fed up with Judicare—too many quickie divorces." A second lawyer took the case but was unable to finish it because of pressures of other business. The client was then referred to a third lawyer who completed the action to the client's satisfaction. These latter 2 instances of refusal reflect unfavorably on the Judicare performance, in addition to demonstrating the (less justifiable) limits on choice. The evidence collected so far, however, suggest that these occurrences are relatively uncommon.

5. *Client Views and Actions on Choice*

Another portion of the data which has a bearing on the issue of choice derives from our question whether clients would go back to the same lawyer if they used Judicare again. Of the 37 clients, 26 said they would go back to the same lawyer, 5 said they would not, and the remaining 6 were ambivalent. The content of the responses, however, is more significant than their quantitative breakdown. Some of the typical answers as to why they would or would not go back illustrate that clients recognized the significance of the opportunity to choose: "Yes, did a good job for me." "I think so—familiar figure—knew my dad." "All depends—some lawyers good for some things, others good for other things—but I think I would." "Don't know—depends on my problem." "Would not go back to my first lawyer [divorce case], but would go back to my present welfare case lawyer." "Yes, but maybe pick somebody else with different expertise

if it's a different problem than bankruptcy." "Don't know—was in a hurry and didn't investigate this one—might try another one." "No—not after the way he acted at my hearing—he didn't speak up enough." "Definitely not—would find another attorney—investigate him thoroughly."

Of those three clients who had used Judicare twice, none picked the same lawyer for their second case, but only one switched because she did not like her first Judicare lawyer. The others chose a different lawyer because they had since moved to a different part of northern Wisconsin.

6. *Views on the Significance of Choice*

Finally, the spontaneous responses of clients, lawyers, and welfare and CAP officials to an open-ended question of what they thought about the Judicare program generally indicate the meaning of choice. The lawyers themselves are most eager to point to freedom of choice as a salient and salutary aspect of Judicare. Welfare and CAP officials also recognize choice as an essential feature, but with less frequency and conviction than the lawyers. Persons eligible for Judicare—those who can take or have taken advantage of free choice—are least likely to volunteer the opinion that choice is central. Only 3 of the total of 82 eligible persons interviewed mentioned this feature of Judicare spontaneously. The remaining respondents saw as the central aspect of Judicare the availability of lawyers to the poor at no cost, and made no spontaneous reference to the element of choice. That the poor themselves do not emphasize the fact of choice does not negate its significance, of course. Rather, it probably reflects the fact that they assume it as part and parcel of any legal services system; the poor in northern Wisconsin have had no experience with systems which preclude choice. It may also indicate that the poor have a better sense of proportion and are less concerned with the political attractions. It makes more sense after all to

hear the poor typically describe Judicare as "free lawyers if you need one but can't afford one" than to find them stressing the fact that they can freely choose these lawyers.

B. FACTORS INFLUENCING USE OF LAWYERS

As discussed in a previous section, the attitudes of the poor toward lawyers in the areas under study were on the whole favorable, especially as compared to their much more negative attitudes toward "the courts and the legal system." The evidence thus suggests the general conclusion that no drastic inhibitions operate in this respect to depress use of the Judicare program by the poor. The fact that Judicare renders its services through private lawyers who are usually far removed from the poor in economic and social standing does not appear to intimidate the poor. More specific evidence discussed under the rubric of choice supports this conclusion. Except for those portions of the Indian population who frame their reservations about using Judicare in terms of mistrust, most eligibles appear to be relatively uninhibited about going to a lawyer.

In fact some feeling existed among the lawyers in northern Wisconsin that the poor overuse or abuse the program. This is a minority viewpoint, however. Fewer than 10 percent of the lawyers interviewed responded affirmatively to our question whether the availability of free legal services under Judicare created artificial and unnecessary demands for legal service on the part of the poor. Only one of the eight welfare and CAP officials interviewed shared this viewpoint. Most of the respondents replied in the negative, sometimes adding that one could always find isolated instances of abuse, but that it certainly was "not a real problem."[37] The lawyers who saw excessive use

37. One lawyer said, "You see that [i.e., excessive demand] happening in the area of free medical care—everybody suddenly wants to have his teeth fixed, or the kids have to have their tonsils out—but you

of the program were on the whole rather negative about the Judicare program. They felt that too many of the poor lacked the proper inhibitions or restraints, that under Judicare things were too easy, that the poor had "no stake" in the matters brought, and so forth. The divorce area was characteristically singled out as an area of frequent abuse. Several of these lawyers further stated that they felt Judicare to be redundant since private legal aid as it existed prior to Judicare was doing the job well enough.

The charge of excessive use is difficult to take seriously. It provides back-handed confirmation, however, of the accuracy of our own conclusion that on the whole the level of use is reasonably adequate.

There are shortcomings, however, in the area of use—inhibitions which though not specifically expressed can be inferred from the data available. These inferences flow from an examination of who the Judicare lawyers are (their characteristics) and what they do (the number of Judicare cases they handle). Discussion of these aspects follows.

1. *Types of Lawyers in Northern Wisconsin*

"Country lawyers," like the rural poor, are a diverse group—which may be their most salient characteristic. While rural northern Wisconsin lacks certain types of lawyers found in the large metropolitan areas, it has other types of lawyers not found in the cities so that its diversity is as great as among city lawyers. The following group of lawyers represent well the varied mix.

Lawyer A is an older man, on the brink of retirement, whose practice has been largely confined to probate matters. He has handled only two Judicare cases since the beginning of Judicare in 1966. One of the few lawyers who labels

can't manipulate legal problems like you can medical problems." A debatable statement perhaps, but indicative of the general point of view.

himself a "nonparticipant" in Judicare, he admits to not knowing much about the program and not having any opinions on its merits. His lack of involvement in Judicare, attributable to his specialization in an area of the law not immediately relevant to the poor, is well known among the eligible population. Judicare clients simply do not go to his office.

Lawyer B likes to describe himself as the "local radical." Though he, like virtually all attorneys in northern Wisconsin, is a product of a Wisconsin law school and a Wisconsin upbringing, he considers himself to be special. At the beginning of the interview he proudly proclaimed that he is the "biggest Judicare lawyer in the area." As a measure of his flamboyance and controversiality he cited that in his non-Judicare practice he has handled marijuana cases and flag desecration charges and that he has been before the Wisconsin Supreme Court 12 times. Moreover, he is an active member of the ACLU. He is a "public-spirited" individual, having handled the large total of 157 Judicare cases since the program began. He has taken on such significant Judicare matters as disputes with the local and state welfare departments and setting up an Indian rice cooperative. He gives the appearance of an energetic and competent individual with perhaps a somewhat exaggerated notion of his stylistic and philosophical distinctiveness. Like most lawyers in the area, he feels that the low level of Judicare fees generates much resentment and may ultimately destroy the program.

Lawyer C is an aberration, an anachronism. He is an old-guard New Deal Democrat, provincial and no longer a "liberal" by present-day standards. He describes himself as legally less competent and economically less affluent than the average local lawyer, but he appears to have a high measure of empathy for the poor client. Unlike the other lawyers described, who practice in significant towns,

this lawyer's office is in a small community 25 miles from the county seat. By his own description he is a "hometown boy" and "small-town eccentric." Though he handles a relatively high volume of cases for people eligible for Judicare (about 100, he estimated), he is technically not a Judicare "participant," for he signs Judicare cards but refuses to bill the program for services rendered. This refusal to participate officially appears to stem from a philosophical opposition to "newfangled" and "redundant" government programs. (We were told that he opposed on similar grounds the building with federal support of a recreational park in his town). The way he explains it is that Judicare "doesn't change my relationship to my clients" and "money doesn't mean a thing to me." Apparently this translates into his applying his own criteria in determining eligibility for free service; some clients he bills, usually modest amounts, others not, regardless of Judicare eligibility standards. He handles mostly small cases—divorces, bankruptcies, some wills, some land problems, a couple of welfare cases—admitting that he is not really qualified to take on more ambitious legal matters. Other lawyers smile at the mention of his name—"a real character." Some clients speak of him reverently; others think he "does as well as he can." One client who was eligible for Judicare was incensed at having to pay him a fee.

The fourth lawyer, D, most closely approximates that elusive figure, the "typical" lawyer in the Judicare area. He has handled 68 Judicare cases since the start of the program—about 12 cases per year. A heavy preponderance of his cases are domestic matters, the remaining problems being, by his own description, "pretty run-of-the-mill, individual private scraps, employer-employee, and so forth." His non-Judicare practice is not much more exciting. Controversial cases, to this lawyer, are cases involving "unpopular defendants," insurance cases, criminal matters, etc.,

where the defendant's unpopularity is imputed to the lawyer by association ("you get painted with the same brush"). Other non-Judicare cases mentioned in this context were a dispute involving the validity of a local referendum on a school bond issue and several appearances before the Wisconsin Supreme Court, including a case which led to a change in the rules of evidence on the admissibility of medical treatises ("law reform"). Lawyer D comes across as benevolently conservative in social and political outlook. He feels Judicare is a necessary and "workable" program that now meets adequately the legal needs of the poor. Representation in divorce matters, in his opinion, is justifiably a large preoccupation of Judicare: "Domestic tensions dominate the lives of people," is his not easily refuted explanation. He criticizes the central office in Madison for spending too much of its resources on travel and Indian fishing rights cases, which has resulted in cutting back on services for day-to-day problems (e.g., the divorce limitation). He does concede that Indians may have special legal problems that need special attention, but he feels that the balance has been struck wrongly. Besides, he adds, even Indians have "run-of-the-mill" problems which must not be neglected in favor of special tribal concerns. He has represented several Indian clients in individual private matters. Overall, the impression this lawyer gives is one of basic competence and thoughtfulness.

The four lawyers just described illustrate the diversity of views and personalities found among lawyers throughout northern Wisconsin. Especially in Ashland County and Superior there was a good mix. Superior lawyers perhaps differed slightly from those in Ashland County in that they appeared to be generally more aware of current social and political issues, an awareness reflected perhaps more in rhetoric than in action. Also, Superior lawyers appeared more cognizant of the political sensitivity of the Judicare

issue and the impact of Wisconsin's performance on the future shape of legal services. On the whole, these lawyers seemed competent and did a high volume of Judicare work. In short, the city probably offered a more impressive than average record of Judicare operations.

In St. Croix County, the lawyers seemed on the whole more conservative than those encountered in Ashland County and Superior and less committed to the idea of Judicare, as evidenced by their attitudes toward the program and its clients as well as by the comparatively low volume of Judicare cases they handled, volume being only in part a function of client needs. There were a few exceptions. One lawyer with a fairly sizable Judicare caseload and a diversity of cases contrasted sharply with the other St. Croix County lawyers, who handled almost exclusively divorces and bankruptcies. Another lawyer, located in a small town in an outlying part of the county, was atypical by virtue of his social and political attitudes which were quite remote from the conservatism prevalent among most other lawyers in the county. He also expressed a degree of commitment to the Judicare program and its clientele that distinguished him. His geographical isolation, however, precluded the possibility of his doing much for Judicare: the demand for legal services, and for Judicare specifically (only 2 Judicare cases per year), was simply too low in that part of the county.

Forest County has only 2 attorneys. One is the local district attorney, who appeared to be deeply mistrusted by the poor in the area and especially by the Indians. He handles about 4 Judicare cases per year—mostly housing and probate matters. The other attorney actually comes from neighboring Oneida County but has an office in Crandon, the county seat of Forest County where he spends 2 working days per week. He estimates handling about 15 to 20 Judicare cases a year from Forest County, a large preponderance of

which are domestic matters, but the records indicate that 10 to 12 cases per year is more accurate. He is relatively conservative in social and political outlook and thinks that Judicare makes the poor too demanding: "It's free, so they always want to go ahead with the action [especially in regard to divorces]." However, this lawyer presents an attitude of reasonable sympathy with poor clients, and simply likes to express what he considers the hard-nosed, no-nonsense facts with some humor and overstatement. Aside from these two lawyers, eligible poor persons in Forest County have available to them and utilize Judicare attorneys from neighboring counties.

2. *Volume of Cases*

It is our view that the relative numbers of cases handled by particular lawyers, and by lawyers in particular areas, reflect the fact that to a significant degree the lawyers affect the quantity and type of legal services asked for by clients. This is not so obvious an assertion as one might think. It is reasonable to assume that the supply of services is controlled by the suppliers, though very little concrete evidence exists for a direct limitation of the supply. That the suppliers influence demand is a more tenuous assumption and the evidence for it is even more subtle. In short, we have little direct data to support the notion that lawyers do more than merely supply services to meet legal demands shaped entirely by the needs, perceptions, and personalities of the clients. But the lawyers' role is bound to be a larger one, as an analysis of the distribution of cases indirectly indicates. Tables 5 and 6 present data on case distribution.

In interpreting these figures, a number of factors must be kept in mind. First, a fairly significant percentage of cases handled goes unrecorded because the lawyers do not bill

TABLE 5 VOLUME OF JUDICARE CASES HANDLED PER LAW OFFICE[a] SINCE INCEPTION OF JUDICARE PROGRAM, BY LOCATION (June 1966 to October 1971)

Location	No. of Law Offices	Location	No. of Law Offices
ASHLAND COUNTY		FOREST COUNTY	
Law Offices Handling:		Law Offices Handling:	
100 or more cases	3	100 or more cases	0
50-99 cases	1	50-99 cases	1
25-49 cases	1	25-49 cases	0
10-24 cases	0	10-24 cases	1
0-9 cases	2	0-9 cases	0
SUPERIOR		ST. CROIX COUNTY	
Law Offices Handling:		Law Offices Handling:	
100 or more cases	5	100 or more cases	0
50-99 cases	3	50-99 cases	1
25-49 cases	3	25-49 cases	3
10-24 cases	4	10-24 cases	4
0-9 cases	4	0-9 cases	4

[a]Often the "law office" is a sole practitioner or else the one partner in the small firm who handles the bulk of the Judicare work.

TABLE 6 VOLUME OF JUDICARE CASES PER AREA STUDIED (June 1966 to October 1971)

	No. of Cases	No. of Eligible Families	No. of Eligible Families Per Case Handled
Ashland County	467	1,177	2.52
Superior	1,316	about 1,500	1.14
Forest County	69	640	9.27
St. Croix County	258	1,828	7.09
Entire Judicare Area	*about 12,500*	*42,580*	*3.41*

the program for them; though not precisely determinable, the figure is between 10 and 15 percent. These are largely cases in which only consultation and advice are given; many attorneys stated that they rarely or never billed in such instances because the $5 allowed for merely giving advice hardly made it worth the effort. On the other hand, several

attorneys said that they always billed ("for statistical purposes"), and one lawyer argued, "I want to get my five bucks—I'm donating enough [to Judicare] as it is." Some unrecorded cases do go beyond the advice and consultation stages, as in the case of the one attorney who handled "about 100 Judicare cases" but never billed the program for any of them. Table 6 does not include these unrecorded cases.

A second problem with the figures is the lack of consistency among the sources providing them. For example, the number 12,500 for the entire Judicare area is an estimate based on figures ranging from 10,925 to 14,583 derived from diverse sources. Only partial explanations exist for the discrepancies. That is, the 14,583 figure includes cases from the prisoner and law reform subcomponents of Wisconsin Judicare, but these cases do not account for the 3,658 difference from the lower figure. Statistics on the individual counties and areas show some discrepancies as well: The volume of cases for Ashland County has been given as 442, rather than 467; for Superior, as high as 1,414; for St. Croix County, 294. The figure for Forest County is part estimate, part documented, because 1 Forest County lawyer practices part-time in another county and the records do not separate the caseloads. The Judicare office in Madison came up with a total of 39 cases for Forest County, but this fails to account for about half of the Judicare work done by the part-time attorney who by his own estimate, supported by information from other sources, handled about 50 Forest County clients.

a. The Significance of the Quantitative Distribution.—The unequal distribution of Judicare cases among the lawyers is a central and inescapable aspect of Judicare. It is to a large extent self-perpetuating and uncontrollable in a system where clients are free to choose and lawyers are free

to reject. One lawyer establishes a reputation of competence, sympathy, and hospitality toward Judicare clients; another lawyer conveys the opposite impression. After that, the disparities in intake are likely to grow more pronounced and the trend can be reversed only through decisive action on the part of the lawyer.

That a small percentage of lawyers handles a very large portion of the Judicare caseload does not reflect adversely on the program. In fact, it can be viewed as evidence that clients take optimum advantage of the program, making choices according to standards that are probably sound and at least are shared. There is, nevertheless, a detrimental aspect to the caseload distribution, and that is the relative absence, in certain counties or areas, of lawyers who are really active in Judicare.

It is difficult to separate cause and effect and contributing factors, but the low level of Judicare activity in Forest and St. Croix counties, as contrasted with Superior and Ashland County, demands exploration.[38] While Ashland County and Superior have respectively 3 and 5 "heavily involved" lawyers who have handled 100 or more Judicare cases since the beginning of the program, Forest and St. Croix counties each have only 1 "moderately involved" lawyer (50-99 Judicare cases). One 2-partner firm in Superior does more Judicare work than all 12 law offices in St. Croix County, and 2 of the more active lawyers in Ashland County each come close to matching the total Judicare effort in St. Croix County, even though the eligible population of St. Croix County is greater than that of either Ashland County or Superior. The demand for Judicare services is no doubt determined by the totality of social and economic

38. Since some clients have used Judicare more than once, we cannot determine precisely the percentage of eligibles who have received service. However, as multiple use occurs in each area, we can make rough comparisons among the various areas.

conditions, including the perception, awareness, and orientations of the eligible population, the performance of welfare and CAP agencies in "educating" the poor, the physical availability and accessibility of the lawyers. However, except for Forest County, which is uniquely short on legal and other resources, the areas studied and the poor who live in them do not differ enough to account for the variation in Judicare activity. Thus it seems likely that the lawyers play a significant role in determining the level of Judicare activity.

The more concrete characteristics of the lawyers, such as age, race, sex, schooling, income, and length and type of practice reveal few differentials (race, sex, schooling) or, alternatively, no patterns (neither age, income, nor length of practice shows any discernible relationship to Judicare activity; type of practice presents only an obvious explanation of why some lawyers are inactive). The factors causing the Judicare caseload to be distributed as it is among areas and among the lawyers in one area appear to be the more subtle ones of lawyers' attitudes: their commitment, dedication, and sympathy with the program's aims and its clientele.[39]

3. *Attitude and Caseload*

If every county in northern Wisconsin had at least one or two lawyers strongly "committed" to Wisconsin Judicare, it would come much closer to being an unmitigated success.

39. An earlier evaluation tried hard to make the point that the differences in amount of service among the various Judicare counties correspond to the demographic and economic character of the counties—that is, the poorer and more rural a county, the less service it gets. Despite overstatement, defective statistics, and incomplete analysis, there is an element of truth in the point; in fact, it is almost a truism which does little to aid the analysis. Poorer, more rural counties are by definition deficient in social services, including legal services. But the theory appears to break down in the case of St. Croix County, which though rather wealthy and heavily populated as compared to the "average" county, ranks quite low in terms of Judicare performance.

But not every county does: St. Croix County has only a couple of lawyers who approach that designation and Forest County has only a part-time one. There must be other counties in the Judicare area where a lawyer committed to the Judicare program and its clientele is difficult to find. The fact that clients can, and at times do, cross county lines in search of a lawyer does not suffice to overcome depressed supply (and consequently depressed demand) in the less favored counties.

Our equation of "committedness" with heavy Judicare caseload is based on lawyers' responses to the attitudinal questions we asked in our lawyer questionnaires. One query asked what lawyers conceived to be the essential functions of Judicare, giving a series of choices ranging from individual services only (the minimal aim of a legal services program for the poor) to "eradication of the causes of poverty" (the most ambitious and far-reaching, if not far-fetched and unachievable, of objectives). Another asked lawyers what they conceived to be their role in helping poor clients perceive and define legal problems. The lawyers were also asked if they thought poor people had special legal problems distinct from other segments of society, and if so, what they were; they were asked about possible shortcomings of Judicare and what recommendations for program improvement they would make; and they were queried on their educational and outreach efforts to the eligible community, on their views on whether the eligible community used Judicare enough (or insufficiently or excessively), and on whether the poor were sufficiently aware of the program.

Those lawyers who handled large Judicare caseloads exhibited a much broader view of the functions of Judicare, their role as Judicare lawyers, and the legal needs of the poor than the lawyers who handled relatively few Judicare cases. In particular, the most "active" lawyer in one county (157 Judicare cases) saw the functions of Judicare

and Judicare lawyers to include law reform and social change, education of the poor and the community, improving the general plight of poor people and attacking the root causes of poverty, in addition to providing individual services. This lawyer perceived the problems of poor people to be peculiar in the sense that the poor had a higher incidence of legal problems—especially domestic and consumer matters—and that the poor by virtue of their socioeconomic situation "made major decisions without proper consultation." The lawyer was also convinced that the poor were insufficiently aware of Judicare and utilized it insufficiently. To improve the existing Judicare operation he recommended (1) regional offices for publicity, and (2) regional lawyers for class actions and law reform. Even if one were inclined to view this as empty but fashionable rhetoric, the significant observation is that we found a duplication or approximation of these viewpoints among most other "heavily involved" Judicare lawyers. By contrast, much narrower views were expressed by virtually all the marginally involved lawyers. In St. Croix County all but one of the lawyers interviewed displayed a very limited conception of the role of Judicare and lawyers. Judicare was characterized as a program for providing individual services: Anything beyond that was "empire building," a "waste of funds," or "inappropriate." The question on the problems of the poor was often glibly answered, "Yeah, they don't have any money." Judicare was generally felt to be performing adequately, and recommendations centered on "cutting down on the administrative costs—too much being spent on travel and Indian fishing rights, etc."

In sum, there is a relationship between lawyers' attitudes and their Judicare caseloads which goes beyond the circular observation that the lawyers who are committed to the program are more involved in it than those who are unenthusiastic about it. It is not simply that we have

defined attitude in terms of caseload; the two coincide independently. More significantly, the relationship between attitude and caseload is cumulative: in areas where both "committed" and "indifferent" lawyers practice, the client population gravitates toward the former. It is as if the more involved lawyers "seek out" Judicare clients, though no overt or explicit evidence makes this proposition anything more than a figure of speech. Moreover, the conclusion seems inescapable that regional differences in volume of cases are related to the kind of lawyer that predominates in a particular region. Specifically, we feel that the low level of Judicare activity in St. Croix County to some extent reflects the fact that the lawyers in that county are less hospitable and sympathetic toward the poor and are less cognizant of any obligations under the Judicare program. Again, we should stress that there may be other explanations having to do with the characteristics of the poor and the performance of other agencies. The "evidence" is sketchy, but there is also a measure of logic to the assertion that the professional outlook and reputation of the lawyers can either minimize or activate perceived needs and demands for legal services on the part of the poor. In Ashland County and Superior there are lawyers who activate demand. In Forest and St. Croix counties, however, lawyers on the whole merely attempt to meet demand. There may even be, in some places, a "climate" of subtle suppression of needs perceived by the poor themselves.

Types of Cases Brought and Handled

It is difficult to pinpoint what bearing the type of cases brought and handled has in evaluating the performance of a legal services program. To be sure, there are no hard and fast criteria for evaluation in other areas either, such as volume of service, quality of service, or even awareness of the availability of service, and arguments over their weight, relevance or measurability will produce no definitive answers. But the issue of types of cases as reflecting performance surpasses all others in intractability. First of all, the issue must be framed against the subjective and relative backdrop of "legal need." What is legal need? Is it what is perceived or what is acted upon? When can it be said to be perceived, and whose perception, definition, or action with reference to legal need is relevant: the client's? the potential client's? the lawyer's? the program director's? the "evaluator's"? the "expert's"? If one can decide which aspect of legal need is relevant and whether it is measurable, one can then begin to explore the question of legal strategy. Is this legal need met in the most effective and efficient way? Are the cases handled in a manner which maximizes impact and maintains quality? Only when examined for these various perspectives do the data on types of cases become meaningful.

A. *DIFFICULTIES IN DETERMINING LEGAL NEED*

An example of the complexity of the total problem is provided by the complexity of one of its more mundane and straightforward aspects. In our questionnaires one attempt to get a measure of the effectiveness of Judicare was by asking eligible persons (clients as well as nonclients)

whether they had ever had a problem with which they thought a lawyer might help but about which they did not go to a lawyer, and whether this had occurred since Judicare had been in operation. Only 30 percent had had such a problem, and only half of those while Judicare was operative. Among the 30 percent affirmative responses, representative reasons given for not going to a lawyer were the following: "Didn't think it would help." "Before Judicare—didn't have any money." "Lawyers cost too much." "Just small things—didn't want to bother." "Drunk driving—couldn't get a lawyer before court date." "Family problems—didn't want the hassle." One could speculate at length about the implications of this response pattern for the Judicare performance. However, the results obtained from a different portion of the questionnaire point to the relative futility of such speculation. This time we asked the eligibles if they ever had any of a set of concrete legal problems (listed on p. 38 above), whether they had had this problem within the Judicare period, and what they had done about it. In marked contrast to the more general question discussed above, the responses to this set of questions reveal a very high incidence of clearly legal problems which were left unsolved or were solved without the help of a lawyer. The problems occurred both before and during Judicare, many were current or recurring, some were clearly covered by Judicare, others may have fallen outside its scope. Both those aware and unaware of Judicare, both clients and nonclients, exhibited a high incidence of legal problems on which no lawyer was consulted. It would require an individualized examination of each problem recorded to arrive at the implications of this situation for the Judicare performance. Suffice it to point out, for present purposes, the hopeless obscurity of the issue of "legal need" even if examined only from the eligible person's point of view: some problems are never perceived as legal, others only when they are suggested to

be legal; some are judged not to warrant legal help; others are perceived to require expert assistance, but for various reasons such assistance is not sought.

B. CASE TYPES AS RECORDED

Obviously, the lawyers' perceptions of legal needs also have a bearing on the types of cases eventually handled under Judicare. It is impossible, however, to determine to what extent the lawyers influence the nature of the services rendered. Apart from their prerogative of not handling certain problems of certain clients, lawyers are able in various other ways to shape the problem perceptions and service demands of the clients. As the best available approach, we will examine the data on types of cases handled (see Table 7) and engage in some deductive reasoning from that vantage point.

Before briefly analyzing these figures, a few preliminary remarks are due. First of all, the totals presented in Table 7 do not quite match those presented on volume in Table 6. We used a different set of statistics for case types than for volume, and statistics on case types were not available for the last 6 months of the period under study. Further, the reader will observe that Table 7 contains only verbal estimates for Forest County, because the records did not distinguish the residence of the clientele of the Forest County attorney whose primary base of operation is in a neighboring county.

Also noted should be the fact that we have specified bankruptcies, welfare cases, and divorces-separations in the consumer-employment, administrative, and family problem categories, respectively. Bankruptcies and divorces-separations are often singled out, wrongly in our opinion, as reflecting adversely on a program's performance when such cases occur with high frequency ("All these programs do is run a divorce mill and handle bankruptcies"). We have

TABLE 7 TYPES OF PROBLEMS HANDLED BY JUDICARE, BY AREA (June 1966 to May 1971)

Type of Problem	Ashland County	Superior	Forest County	St. Croix County	Entire Judicare Area
Consumer & Employment (includes sales contracts, wage claims, garnishments, bankruptcies, "other")	54 (includes 6 bankruptcies)	164 (includes 46 bankruptcies)	"Fair number"	42 (includes 14 bankruptcies)	1,684
Administrative (includes state and local welfare, social security, workmen's compensation, "other")	38 (includes 13 welfare cases)	56 (includes 23 welfare cases)	"Very few"	10 (includes 1 welfare case)	475
Housing (includes landlord-tenant, housing code, public housing, "other")	34	92	"Some"	20	703
Family (includes divorce and separation, adoption, guardianship, custody, nonsupport, paternity, "other")	231 (includes 139 divorces-separations	561 (includes 429 divorces-separations	"Large majority"	111 (includes 70 divorces-separations	4,180
Miscellaneous (includes torts, juvenile, misdemeanors, school cases, commitment procedures, "other")	69	115	"Very few"	21	2,333

singled out the welfare cases in view of the charge often made that the involvement of welfare offices in the card-issuing process inhibits the bringing of actions against welfare. Those who want to argue that there should be more or less of some types of cases than of others should at least have these facts available to them.

Another preliminary point to be made concerns the "miscellaneous problems" category, in which the vast majority of cases fall in the "other" subcategory, rather than in the

more recognizable and meaningful subclasses of torts, juvenile cases, misdemeanors, school cases, or "commitment" cases. In short, we do not know with what kinds of cases we are dealing in the miscellaneous group. In view of the fact that it is a substantial group of cases, this is especially unfortunate.

Finally, the same point applies in effect to the total classification scheme. In all the major categories too many cases must be classified as "other." But more significantly, even the more precise classifications are of limited value. One divorce problem may be totally unlike the next; the impact of one welfare case may be more substantial than that of 10 prior welfare cases. Quantification by case type tells nothing about the quality of the service, the time spent, the controversiality of the dispute, the pressures on attorney or client, the potential for or actuality of law reform, or whatever. We will attempt to deal with these latter issues to some extent later on, after a brief analysis of the limited "hard" facts.

The most striking aspect of Table 7 is the high incidence of domestic problems handled. A significant majority of them are divorces and separations, though a substantial number consist of adoption, guardianship, nonsupport, and similar problems. Domestic cases account for slightly less than 50 percent of the caseload in the entire Judicare area and slightly more than 50 percent in each area we studied, including Forest County; in these areas divorces and separations constitute between 30 and 40 percent of the caseload. Those who feel that divorces and separations are "unmeritorious" cases, or that a program handling a high proportion of such cases is somehow "misdirected," might well keep the following points in mind: First, it is difficult to defend the position that certain legal needs as perceived by poor clients[40] are not legitimate, when they would be for the more

40. Although the type of caseload handled by a legal services program depends also on the perceptions of the lawyers delivering the

affluent, without resorting to rather far-reaching paternalism. Second, the fact that a high percentage of domestic cases is common to all legal services programs for the poor[41] not only demonstrates that this phenomenon cannot be ascribed to the peculiarities of one approach or another (Judicare, staffed office, or others), but also, more significantly, supports the notion expressed by several Wisconsin lawyers and shared by us that domestic problems are among the most pressing problems poor people have (especially the rural poor perhaps, because their other problems are less frequent or at any rate less defined, observable, or politicized) and cannot lightly be neglected or left to nonlegal resolution. Third, those who view divorces and separations as undeserved "luxuries" should at least not lump them together with domestic problems related to child support and custody, which can hardly be so regarded.

Consumer and employment problems make up the next largest category of cases, ranging from about 13 to 20 percent of the total caseload in the study areas and 18 percent in the entire Judicare area. "Miscellaneous" problems constitute an equally large portion of the caseload but little understanding of this category is possible absent a breakdown into further classes. One point about the miscellaneous category is that in Superior, as we were told by one of the lawyers there, a significant (though imprecise) number of cases are quasi-criminal municipal ordinance violations.

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service, the attack has never been framed in terms of showing that the lawyers have somehow perverted the nature of client demand.

41. E.g., the caseload of the "regular offices" of the Legal Aid Bureau of Chicago in 1965 showed 42 percent of the caseload to be "family problems" (W. Avery, "Legal Aid and the Poverty War," 47 *Chicago Bar Record* 421, 422 (1966)). Statistics on other legal services programs show similarly high domestic caseloads. While the figures are often imprecise because of classification and other difficulties and do not lend themselves to meaningful comparisons between programs, they do substantiate with sufficient reliability the prominence of family problems in legal services programs for the poor generally.

Misdemeanors and other criminal matters are generally viewed as outside the scope of Judicare coverage by the northern Wisconsin lawyers, including those in Superior, but apparently ordinance violations, though analogous to misdemeanors as defined in the state statutes, are deemed to fall within the coverage.[42] Another point about the miscellaneous problems in the areas studied is that they include as many as 10 commitment cases. In view of the disadvantaged position of most commitment prospects, any representation whatever that Judicare provides should count as heavily favorable in an evaluation of overall performance.

Housing problems are next in frequency, constituting roughly 10 percent of the cases in each area studied. With the exception of Superior, where a substantial proportion of the housing cases are landlord-tenant problems, the vast majority of these are "land" cases listed under the subcategory of "other" which means primarily—according to the lawyers' responses—questions of title, probate, and the like. This situation of course reflects the fact that most of northern Wisconsin is rural with even its poor population owning homes (often shacks) and bits of property rather than renting. There are virtually no public housing cases or housing code problems in any of the areas—even Superior and Ashland County each list only two of the former.

Administrative problems, though handled less frequently than other types of cases, actually constitute (except in St. Croix County) a significant block of cases, especially considering the relatively low potential for such problems in nonurban areas. Administrative problems presuppose contact with formal administrative bodies, a situation likely to arise less frequently than those in the other categories.

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42. Although the lawyers virtually unanimously say that they cannot take misdemeanors under Judicare, misdemeanors may technically be handled under Judicare in situations where no other representation is provided. One does find a few isolated cases designated "misdemeanor" on the Judicare records.

Specifically, only 12 percent of the Judicare cardholders (about 50 families) in Ashland County are welfare recipients; in Superior 38 percent (about 400 families) are. While these figures do not tell us the number of people who have ever come in contact with the welfare agency, they do support the interpretation that the level of welfare problems handled under Judicare in Ashland County and Superior—13 and 23 cases, respectively—is not grossly inadequate. In St. Croix County, only 1 welfare case was handled and the total of administrative problems is low generally. There is some indication that the welfare department in St. Croix County poses fewer problems for the poor than the departments in Ashland County and Superior, but this is unlikely to account entirely for the differential. This differential, like the quantitative differential discussed earlier, is in our view attributable in some measure to the fact that St. Croix County lawyers are far less inclined to encourage controversial claims. It is impossible to prove this point from our data, but the circumstantial evidence suggests it.

C. IMPACT OF JUDICARE CASES

Aside from their numerical frequency, do Judicare cases have any impact beyond their effect on the parties directly involved? We will look at the cases in terms of the problem of legal strategy; their potential for, or actual role in, "law reform"; their controversiality in the context of community legal and social values; their susceptibility to the group representation approach or to appeal to a higher court, and the like. The answers to this inquiry are not statistically recorded or recordable, but our lawyer questionnaires focused on these issues and the responses provide an outline of the picture.

Inquiry into the impact of cases is often artificial and politically motivated; questions are framed without regard to the specific context of need, and the results have

no relevance beyond the political one. Yet there are reasonable ways of examining the issue of impact, as well as an obligation to attempt to present the "facts" before interpreting them.

1. *Lawyers' Actions*

We asked the lawyers if they had ever been involved in "controversial" Judicare cases or had ever taken Judicare cases with broad and significant impact which could be described as "law reform" cases. We also asked if they had ever turned down such Judicare cases. We asked the same questions regarding the lawyers' private non-Judicare practice. We then asked them whether they had ever instituted a class action in a Judicare case, and, finally, whether they had ever appealed a Judicare case.

In Ashland County 1 lawyer had been involved in an Indian hunting rights case, had represented 2 additional Indians referred by the central office in Madison, and had used Madison research resources in handling these cases. This lawyer had also taken several welfare cases, including "a couple" which he subsequently referred to the Judicare central office for appeal. Another lawyer in Ashland County had had a welfare case that in his estimate was controversial and productive of law reform. He had also taken "a few" Indian cases on referral from Madison, and was involved in the establishment of a rice cooperative for Indians on Bad River Reservation. A third attorney in Ashland County cited a mortgage case, which he would appeal through the central office if lost below, as the only nonroutine Judicare case he had ever handled. The remaining 4 lawyers in Ashland County had taken only routine cases for Judicare clients.

In Superior 4 of the 10 lawyers or firms cited Judicare matters that were more than routine. One lawyer described a welfare case as "controversial" but added that it could probably not be viewed as a "law reform" case. A second

Superior lawyer pointed to "several controversial welfare cases, involving serious welfare principles." This lawyer had also been involved under Judicare in giving advice on the interpretation of Internal Revenue Service rules to a group of Indians in the "process of forming a corporation" (no further details were given). And in addition, he had taken several domestic cases on referral from Madison because the clients had difficulty getting representation owing to the fluctuating divorce policies of the central office. Another lawyer cited "local police stuff," a social security case, and a foster care problem as nonroutine matters handled under Judicare. This lawyer had also asked advice and assistance from Madison on a misdemeanor case that was out of the ordinary by virtue of its complexity. The fourth lawyer cited the case of a prisoner referred by Madison, whose problem concerned adoption and involved dealings with the local welfare department. No Judicare cases from Superior had been appealed, according to the lawyers interviewed.

In Forest County our interviews revealed only individual service matters handled for Judicare clients.

In St. Croix County, none of the lawyers we interviewed cited any impact cases handled under Judicare (though 1 saw fit to mention that he had taken on 2 child custody cases involving 11 and 13 children, respectively). One uninterviewed lawyer in St. Croix County has reportedly been involved in several significant impact matters. (One is an action against the state welfare department regarding assistance grants to residents of the county nursing home.) The same attorney has also taken "commitment cases" which in the eyes of the community and the hospital administration were quite controversial.

Some personal value judgments are involved in the above exposition of controversial and law reform cases. A fair number of lawyers responded to the questions along the following lines: "Domestic cases are always controversial"; "No, except bankruptcies which are pretty controversial"; or (humorously?), "Yes, controversial as between the litigants." In describing the level of impact cases, we have ignored a few other curious responses on what might be considered a law reform case.

The paucity of impact cases does not appear to be a reflection on the Judicare program since the lawyers handle few such matters in their non-Judicare practice. Most of the lawyers gave themselves credit for having handled some controversial and/or law reform non-Judicare cases, but little of what was so designated qualified as such in our opinion. Typical responses were: "Yes, criminal matters"; "I've taken several cases before the [state] supreme court"; "Divorces are always controversial"; "Yes, criminal—murder, drugs, etc."; "Personal injury—all my cases are controversial." Those lawyers who gave the more meaningful and detailed examples of impact cases in private practice were generally those who had also handled at least a few such matters under Judicare. For example, the most active and influential Judicare lawyer in one county had taken drug and flag-desecration cases involving primarily college students. Other lawyers of this type were able to cite matters such as reform in the rules of evidence (admissibility of medical treatises), "Indian law reform," controversies involving the police and fire commission, a bond issue referendum, and election cases.

The question whether the lawyers had ever turned down controversial or law reform Judicare cases met with a unanimous negative. Several lawyers appeared to be offended by this inquiry and standard responses were, "If it's a case, it's a case—as a lawyer I'm not bothered by such things," or "No, but there simply isn't much like that coming in—mostly routine, private matters." One lawyer stated that he would not handle law reform or appeals under

Judicare "because you can't collect much for it," but this appeared to be an abstract response rather than a reference to concrete events.

Group representation and appeals are rare under Judicare. The reasons are similar to those that explain the low level of law reform activity of private attorneys. The opportunity does not appear to present itself often, because clients rarely bring problems open to such resolution or because lawyers resolve most Judicare cases on the lower judicial, administrative, or informal personal levels. Moreover, the policy of the Madison central office is to take group, reform, and appeal matters out of the hands of private attorneys in most instances. Madison feels this to be more economical and that it is better equipped than most private attorneys to handle "impact" cases. The policy is effectuated by not encouraging attorneys to pursue such cases themselves, by taking the initiative in the areas of reform, appeal, and group action, and by generally refusing requests for waiver of fee limitations.

The significance of the central office policy in reducing the level of impact matters handled by private attorneys is difficult to gauge. No doubt those factors mentioned above—low client demand and lawyer success at lower levels—play a significant role. It is also conceivable, though none would admit to this and it would be very difficult to document, that lawyers choose to stay away from impact cases, perhaps because of the low fees and Madison's illiberal policy toward waiver or because of unwillingness to create controversy in the community on which the lawyer is socially, economically, and professionally dependent. The evidence on whether these motives are operative is conflicting. The lawyers themselves say they are not, and a few are able to cite concrete cases that so demonstrate. Some elements among the eligible population, Indians in particular, claim that the motives are operative,

but they are generally unable to back their suspicions up with concrete instances. The director of Wisconsin Judicare himself shares the view that impact cases are avoided by the lawyers and sees this as further justification for Madison's policy of handling impact matters itself; he believes that on the whole such cases are not going to be generated spontaneously, or worse, that they will be avoided. The director cites as grounds for his view the Menominee Indian situation,[43] which he says would never have been taken on by local attorneys. Since our study has not yet reached Menominee Indian territory, we have no first-hand information on the point. The director's view—close to "an admission against interest"—is not to be taken lightly, though it may be that he has stretched the point too far in order to vindicate his general policy of handling impact cases in Madison. The only "evidence" emerging from our study that may be interpreted to support his view is the disparity in number of impact cases among the areas we studied. Ashland County had a fair number, Superior some but not many, Forest County, none, and St. Croix County a few, but all handled by one attorney. Here again the explanation for the disparity must lie with the lawyers, for other differences among the areas are too minimal to explain it satisfactorily. This situation also demonstrates that the Madison policy regarding impact cases is not totally controlling. Perhaps Madison now does little more than discourage the handling of impact

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43. The Menominee tribe was "terminated" in 1961, the end result of this action being the creation of Menominee County with no social resources (education, law enforcement, etc.) and two-thirds of its population below the poverty line. Naturally, problems legal and other abound in Menominee County. Not the least of these is the problem of an unrepresentative Voting Trust formed (under circumstances that gravely question its legitimacy) at the time of the termination. The usual problems of Indian hunting and fishing rights as well as various other manifestations of race discrimination also exist. The Madison Judicare office has taken the initiative and become deeply involved in this area.

matters by private lawyers and could do little more in the opposite direction than provide encouragement, the consequences of which would be difficult to assess.[44]

2. *Relevance of Impact Cases Inquiry*

We are now in a position to discuss the relevance of the impact cases question. Impact cases are commonly understood to be cases with an intended effect beyond the immediate parties to the dispute and/or going beyond routine enforcement of existing laws: i.e., group or class actions, recognition of new causes of action, "law reform" through litigation on the appellate level, and so forth. In this preliminary report, we will pose more questions than we will answer. Also we will not cite the existing literature.[45] The discussion is largely negative; its main thrust is that there is now insufficient evidence to reach firm conclusions on the effectiveness of various legal strategies advocated for or followed by legal services programs.

44. Washington, long disenchanted with Madison for handling impact cases ("that's not true Judicare") has recently initiated an attempt to "purify the experiment." Money for law reform, prisoner reform, and Indian law reform will be taken away from Madison, and its role will be limited to encouraging lawyers to handle impact cases while Madison tends to administrative details only. The purification scheme will ostensibly provide the basis for a "real" test of Judicare. Presumably, if the private lawyers fall short of duplicating the mobilized efforts of the Madison office, this will be construed by some of the "purifiers" as proof that Judicare is a misguided approach. Some of our reservations about that conclusion are discussed in the text below. For now, we question the wisdom of defunding what appear to be valuable components of the Wisconsin program, whether conceptually "pure" or not. The needs and expectations of the client population are real even in experimental situations—especially experimental situations which have lasted for five years.

45. There is on the one hand literature which unequivocally views the "law reform" approach as the most effective and economical way of delivering legal services to the poor (this view seems to prevail within the OEO legal services establishment, and is in fact part of the Congressional charge to the OEO legal services programs). On the other hand there is literature which questions the "law reform" strategy on grounds

First, the number of impact cases growing out of a legal services program must be related to the need for them. One cannot discuss the strategic or substantive propriety of legal services efforts absent an exposition of what legal needs and problems exist. This elementary observation is not obvious to everyone. There have been many cries of "no law reform" or "too little law reform" in criticism of Judicare, but none of the critics has ventured to state which needs exist for law reform or where they are. No one has attempted to state what sort of "impact cases" are relevant, appropriate, or vitally necessary for the poor in northern Wisconsin. Obviously, the need for landlord-tenant law reform is not desperate in the rural counties. On the other hand, selected problems in the areas of welfare rights, Indian land, hunting and fishing rights, juvenile rights, or prisoner rights may be susceptible to the impact-oriented approach. Clearly not all these probable needs are being met, or met with maximum effectiveness, by the private Wisconsin lawyers or by Madison. But it is doubtful whether any program, whatever its basic method, has met the needs with maximum effectiveness. It is doubtful whether any program has even made systematic efforts to identify legal need and to formulate a strategy in relation to it.

But the problem with the "impact" question goes deeper. Some other pertinent questions are: is the "reformist" approach most appropriate to an urban setting, suitable for problems of heavy caseload and universal needs among similarly situated urban poor, but less relevant, effective, or efficient in the rural setting where the poor are dispersed geographically and are more diverse and isolated in terms of their legal problems and overall socioeconomic condition?

that the basic problems of the poor are not legal but socioeconomic, and do not lend themselves to legal resolution. It often also includes an expression of doubt about the implementation potential of law reform efforts and, by implication, the relevance of the impact cases inquiry as a test of a program's performance.

Could any other legal service approach than Judicare produce more "reform" and "impact," and if so, at what cost to other aspects of legal service? A preoccupation with impact presupposes a de-emphasis on individual matters, given limits on funds and personnel resources. But how are priorities to be set? Who should set them? Are the poor themselves to be consulted or are the decisions to be left to the wisdom of legal services experts? Is there any evidence from prior legal services experience that impact and individual service can be successfully, efficiently, and economically combined? Or is the experience to the contrary, arguing for a separation of the two, thus making inquiry into the level of law reform, appeals, and the like in a program such as Wisconsin's largely misdirected and irrelevant?

Assessing priorities in this area is extremely complex. Even the most conspicuous law reform achievements have uncertain practical effects upon the presumed beneficiaries. In even the most notable "impact" cases it is difficult to say whether the costs in time and money which could have gone toward other aspects of legal service were justified. What is the impact of impact cases? How do we measure it? Has any law reform in recent years come close to satisfying the grandiose claims of spokesmen for the war on poverty, or really ameliorated the "plight of the poor"? More modestly, what has been the specific impact of law reform in specific areas? Perhaps the psyches of poverty lawyers have benefited, but have the poor? Is the reformed law "better," less ambiguous? Has it been implemented? Were there lawyers to implement it, or were the priorities chosen so as to preclude satisfactory implementation? What has been done to overcome the inertia or active resistance of those entrusted with the administration of the "reformed" laws? In short, how can one decide that individual, case-by-case, routine service efforts should take second place to impact matters, the costs of which have not been assessed and the benefits of which cannot be assumed?

We do not wish to deny the possibility that impact efforts have value. Undoubtedly there have been law reform efforts which have been extremely successful and valuable both absolutely and from a cost-benefit point of view. But there are many unanswered questions and the value of impact litigation is not self-evident. We are not yet in a position to draw conclusions about Wisconsin Judicare's performance in impact cases. Nor are any other studies in such a position. So far, the level of impact litigation has not been related to the strategic or substantive need for it. No convincing demonstration has been forthcoming that it is feasible to join impact efforts and individual legal service in one program. No assessment of priorities has been more than intuitive. No objectively reasoned explanation for allocation of resources has surfaced. No attempt has been made to inquire systematically into the impact of law reform and like efforts on the administration and implementation of the laws reformed. The effect of legal change on either those who administer the law or those whose situation is sought to be bettered remains unexplored. Thus statements of "no law reform" or "too little impact material" are meaningless, except to reveal the biases of those making the statements.

Quality of Service

Evaluating the quality of legal services provided to clients requires consideration of a host of factors. Some of these factors are objective, but of uncertain weight or relevance. Other factors, while their significance as determinants of quality seems clearer, are more subjective. The main factors we will consider are the outcomes of the cases, how the result was reached, and the client's evaluation of the Judicare experience. More important than the independent significance of each factor is their interrelation. The analysis, though as thorough as possible at this point, is not exhaustive; other factors may be relevant which we have either failed to recognize or on which we have collected no adequate data.[46]

A. *DESCRIPTION OF CASES AND OUTCOMES OF CASES OF JUDICARE CLIENTS INTERVIEWED*

First, a brief description of the types of cases brought by the users we interviewed is in order. Among the 40 cases brought by 37 clients, there were 10 divorce cases; 4 separations; 1 guardianship problem; 1 nonsupport case; 1 child custody case; 1 parental neglect case brought by the welfare department against a Judicare client; 1 paternity action against a Judicare client; 6 bankruptcy cases; 2 welfare problems; 1 social security matter, 3 consumer-creditor problems; 2 insurance problems; 3 criminal matters; 1 landlord-tenant problem; 2 "miscellaneous" problems ("trying to

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46. For a look at how others have wrestled with the problem of evaluating quality of service, see Rosenthal et al., infra n. 55, at 53-98. The study describes the efforts of the Russell Sage Foundation itself as well as similar attempts by other studies to devise a method for arriving at the elusive concept of quality.

get a death certificate straightened out" and "get a 'friend' out of the house—he was getting mean"); and lastly, 1 client refused to reveal the nature of the problem.

The status of the cases was as follows: 9 were still pending at the time of the interview; 11 were "resolved," dropped or settled upon advice by the lawyer to the client or subsequent to a phone call by the client's lawyer to the opposing party; 19 were closed by more formal resolution in court or before an administrative agency; and 1 criminal problem—drunk driving—was never handled by a Judicare attorney.

In only 2 of the total 31 closed cases was the outcome unfavorable to the Judicare client: the social security case was lost in court, and in the drunk driving case the client, being unable to obtain representation, wound up paying a fine. All other closed cases were resolved either in favor of the Judicare client or neutrally. Four divorce-separation cases were dropped by clients after conferring with their Judicare lawyers. In 3 other cases, the lawyer's advice to clients to simply ignore the claims of the opposing parties resolved the problem. Two of the criminal matters were dropped by the district attorney after calls from the Judicare client's lawyer; the paternity action was dropped after the client's lawyer conferred with the plaintiff and the district attorney. The "unspecified" case was also settled, and the remaining cases were "won" or otherwise disposed of in a manner favorable to the Judicare clients.

B. *HIGH WIN RATE AMONG JUDICARE CASES*

The extremely high rate of favorable dispositions of the Judicare cases in our sample is not an aberration but holds for the whole program as well. Some random figures are illustrative: In the first quarter of 1969, 315 cases were resolved—228 won, 79 settled, and 8 lost; in the second

quarter, 378 cases were resolved—278 won, 81 settled, and 19 lost. Several points can be made about this high win rate. First, the statistics (which confirm the field experience) seem to demonstrate that clients describe the outcomes of their cases reasonably accurately. That is, clients are not gulled by the lawyers into believing that they "won"—at least no more than the record-keepers are deluded. There may be some manipulation of the won-lost-settled classification, but it is doubtful that it is significant. Second, the high win rate might come about because the lawyers take only "winnable" Judicare cases. However, there is little evidence that this occurs to a significant degree, at least no more so than in non-Judicare cases. A third observation regarding the win rate is that relatively few of the Judicare clients are defendants. In only 7 of our sample of 40 cases was the Judicare client clearly in the position of defendant; in the other cases the clients were formal plaintiffs or petitioners or simply those who took the initiative in seeking legal resolution or advice. The program statistics demonstrate a similar high proportion of plaintiffs or plaintiff-like persons among Judicare clients. Aside from the fact that this may demonstrate something significant about the nature of Judicare use (upon which we will not dwell at this point—at least a part of it is because Judicare clients are often judgment proof), this might suggest that where clients are the moving party they are likely—especially in rural areas—to be up against unrepresented or incompetent opposition. However, Judicare defendants appear to be no worse off. Of the 7 Judicare defendant cases, 1—the parental neglect case—was won in court; another—the drunk driving case—was not handled under Judicare; a third—the landlord-tenant problem—was still pending; the creditor problem was "settled" to the Judicare client's satisfaction after a call by the client's

attorney; and the 2 other criminal matters as well as the paternity suit were dropped following informal action by the Judicare attorneys.

We do not have the data to investigate the high win rate in Judicare more thoroughly. A final tentative suggestion in the area, meriting much more attention in later phases of the study, is that the high win rate phenomenon appears to provide substantial support for the approach to legal services which places a heavy emphasis on individual, case-by-case representation. Indications are strong that a crucial factor for poor people in successfully pressing claims or defending against claims by others is the simple fact of having a lawyer. It is not so much the shape of the law—which is so easily vitiated by lack of adherence, implementation, or enforcement—as the fact of being represented which results in victories for the poor. One can say that the victories are small. But many little victories can be of great impact, not just in terms of the individual problems resolved, but in creating a psychological climate which gives poor people reason to feel that their needs and complaints are heeded. It is not necessary to dismiss the "impact" approach as inherently misdirected, uneconomical, or unproductive to justify the point that an overemphasis on impact at the expense of individual services is undesirable, and that the offhand dismissal of effectively delivered individual services as inherently insignificant is a serious mistake.

C. CLIENT EVALUATIONS OF SERVICE

We now move to the question of client satisfaction. We cannot simply record the clients' evaluation of the service but must in effect evaluate their evaluation. The high win rate in Judicare cases does not guarantee a high satisfaction rate with the service; clients are more discriminating than that, so long as the "evaluator" gives them

a chance to be. Our questionnaires allowed the clients this chance. The questions on satisfaction are broken down into discrete elements on specific aspects of the service received. Moreover, despite the high win rate, the cases present a good mix that permits a relative view of satisfaction: there are pending cases and resolved cases; there are divorce cases, criminal matters, welfare problems—the entire range of types of problems and variations in complexity and manner of resolution. Finally a special look at aberrational situations (a lost case) or responses can be particularly revealing.

1. *Responses to General Questions*

We focus first on the clients' responses to two general questions: "Generally, how did you feel about this experience with Judicare?" and "Would you use Judicare again if you had another legal problem?" The answers to these questions were very positive. Of the 37 users, 33 indicated a favorable evaluation of their Judicare experience. Typical comments were: "The program works"; "Great for when you have no money"; "Good thing"; "It helped *me*"; "Would have been lost without it"; "Very happy about it, very fair"; "Pretty good—but he [the lawyer] hasn't looked into it [the (pending) case] too much yet"; and "Good program if you get a disinterested lawyer" (from an Indian client who *did* have an impartial lawyer). Only 4 clients felt that their experience with Judicare had been less than favorable. One, the Indian client with the drunk driving charge for which he could not obtain Judicare representation, said, "I tried all over, but when you got a case they [the lawyers] don't want to touch, they stick together." This does not constitute an evaluation of service actually obtained, however, and the same Indian client had had another Judicare experience—a creditor problem—about which he was quite positive. Another of the negative responses came from a client who had

to pay $100 for a bankruptcy despite possession of a Judicare card;[47] even so, displeasure was limited to that fact alone, and she added that the lawyer had been sympathetic to her problem and handled the case well, and that she would probably have had to pay more but for Judicare. A third client based his negative assessment also on financial dissatisfaction. His lawyer had made him sign a contract agreeing to a contingent fee arrangement; later on the lawyer had said that maybe the case could be covered by Judicare. Otherwise, however, the client felt that Judicare was a good program and that he would use it again if he were unfortunate enough to have another problem. Finally, a fourth client objected to the fact that her lawyer had made lengthy inquiries concerning her eligibility (a question technically outside the concern of Judicare lawyers), and said that she had received "shameful treatment" from the lawyer. Nevertheless, this client went to great lengths to point out that she thought Judicare was an indispensable program for poor people and that she would go back to Judicare "if forced into it" (i.e., by another legal problem), though she would make sure to get a different lawyer.

To the second general question, whether clients would use Judicare again if another problem arose, all but two said that they would. Of those two, one gave a nonresponsive answer; the other explained that as far as he was concerned, there was nothing wrong with the program, that he was satisfied with his one Judicare experience, but that he did not

47. This case was handled by the lawyer who as a matter of principle refuses to bill the program. This lawyer takes Judicare clients, signs Judicare cards and then bills the client rather than the program if he feels the client can afford it. In general, it appears that whatever reservations clients have about Judicare service are related to financial complaints growing out of the uncertainties shared by lawyers and clients alike about issues of coverage of certain types of cases, eligibility, and the timing of the application for Judicare coverage. When lawyers project these uncertainties on clients, confidence in the program diminishes.

need it any more. In our view, these responses are another strong indication of the high level of client satisfaction with Judicare.

It might still be that the level of satisfaction is due in part to the fact that clients are uncritical, because they do not know what to expect, have no basis for comparison, or simply because the service is free. Such doubts about client evaluations can never be dispelled entirely, but a look at some of the responses to more specific questions about satisfaction, particularly among clients who have had comparative experiences, will go a long way in that direction.

2. *More Specific Evaluations*

In addition to the general questions discussed above, we queried the clients on particular issues. We asked:

a) Were you satisfied with the outcome of the case?
b) Were you satisfied with the way the lawyer handled your case?
c) Do you think the lawyer investigated your case thoroughly?
d) Did you feel the lawyer was sympathetic toward you and your problem?
e) Did he understand what your real problem was?
f) Do you think the lawer spent enough time on your case?
g) How many times did you visit with your lawyer, or he with you, during the course of the case?
h) What, if anything, do you think the lawyer should have done that he didn't do?
i) Do you think that you as a Judicare client got as good service as any paying client?
j) What would you have done with this problem if there had been no Judicare?
k) If you used Judicare again, would you go back to the same lawyer?

The responses to these questions, while overall still favorable to Judicare, demonstrate that clients possess a

sense of discrimination and understanding which negates the notion that they do not know what they want or what they are getting. Only a brief exposition of some of the responses will be given here.

Question (a)—satisfaction with outcome—yielded a virtually unanimous positive response from clients whose cases were closed. The one client who lost her social security claim in court had reservations, but added that she later got what she asked for through informal channels (we have no clues to this mystery). Other clients whose cases were still pending indicated that this prevented them from commenting on outcome.

Questions (b) and (c)—on the lawyer's handling and thorough investigation of the case—yielded a mixed set of answers. The majority of the clients felt that an adequate job was done, a few were laudatory, a few more were mildly critical (see responses to question (j) below), and a good number said that they really did not know, but they assumed the lawyer had done his job because the outcome was favorable.

To question (d)—on lawyer sympathy—responses were generally to the effect that the lawyer was reasonably sympathetic or at least neutral, though as mentioned earlier, one client said that she had been treated "shamefully." An Indian client saw fit to volunteer that "that lawyer sure was a nice fellow," and a second Indian client said that the lawyer was "businesslike—but I like it that way—frank and honest."

Question (e)—on the lawyer's understanding of the "real" problem—was not very productive. Most clients said in effect that "that's his job," "he wouldn't have taken the case if he didn't," or "I guess so." The only decidedly negative response came from an Indian who claimed that "they [the lawyers] never understand what you're talking about—you got to repeat things over and over—and they still don't."

On whether the lawyers spent enough time (question (f)) and how many visits took place (g), the responses were quite varied. Most clients thought that the lawyers spent enough time, though several implied that there was really no way for them to evaluate this. One said, "It took him 3 years." The correctness of the predominant views that lawyers had spent sufficient time on the cases was fairly well confirmed by the number of visits made. Many Judicare clients had had extensive contact with their lawyers during the course of their cases, with estimates of 6, 8, or even 10 visits being common. One client claimed that she saw her lawyer "20—no, probably closer to 40 times, if you include some phone calls." Of course, in several instances (where only advice and consultation was provided) only 1 or 2 visits constituted the extent of contact, but on the whole the evidence is strong—and is supported by the statements of the lawyers themselves—that Judicare cases get lengthy attention, even such "routine" matters as bankruptcies and domestic cases. The charge may be made that this elaborate investment in service cases is uneconomical and unnecessary. Such an assertion, however, is debatable. It is certain that economies in the handling of routine cases are difficult to make in rural areas, where the caseload does not lend itself to mass processing or mass production; and the notion that routine matters deserve less than the best service available ignores the fact that the routine problem is likely to be the most central and compelling problem in the client's life, the handling and outcome of which will have a significant bearing on his evaluation of "the system" and his relationship to it.

On question (h)—what the lawyer should have done, but did not—5 respondents felt that the lawyer failed in some respects. "He should have taken the case," said the Indian faced with the drunk driving charge. The client who felt "shamefully" treated said that the lawyer "should have been

more interested in my [personal] welfare." The client who lost her social security claim felt that her lawyer "should have spoken up more at the hearing—he didn't try hard enough." Two clients otherwise satisfied with their Judicare experience also had criticisms. One stated that the lawyer was too difficult to reach and had even failed to show up at a hearing; the other, involved in a divorce matter, felt that the lawyer "should have contacted my husband." The remaining clients were positive, their typical responses being "Nothing"; "Did everything he could"; "I'm satisfied."

Question (i)—asking for a hypothetical comparison with a paying client—yielded the following: 28 of 37 users stated unequivocally that they felt they had received at least the same quality service as a paying client. Some of the additional comments showed sound insights; 1 client said that Judicare service was "probably better—at least with Judicare they're sure they'll collect." Even some of those clients who had expressed reservations on other questions did not base them on their status as Judicare clients but felt they would have done no better had they been paying. Four clients said they did not know how to compare the quality of service they had obtained. Four other clients considered themselves paying clients and the question therefore irrelevant—one was the client who had paid for the bankruptcy case, the other was the client who had signed an agreement to the contingent fee arrangement (even though he had not paid as yet and was not certain whether the lawyer would follow through to collect on the "agreement"); and the other two had begun as paying clients, but their cases had dragged on while their financial situation deteriorated and they had become Judicare clients somewhere in the course of the lengthy proceedings. Only the Indian client who could not obtain Judicare representation for his drunk driving problem felt that he had been disadvantaged by virtue of his

Judicare status. This client's second Judicare experience, on a creditor problem, had been handled on his satisfaction, however—in his opinion, on a par with service provided to paying clients.

The general thrust of responses to question (j)—what the client would have done if there had been no Judicare—was that the problems would have been left unresolved and the clients desperate. Some typical answers were: I"d have still been paying"; "I don't know what I'd have done"; "I'd have had to live with it"; "Wait and let the chips fall"; "Would have got drunk"; "Cry, I guess"; and other responses of varying drama or flippancy. A number of clients, however, would have taken action. One Indian respondent, whose son had been charged with pulling a knife, said that he would have gone to a lawyer regardless and tried to pay for it himself. A client in an insurance case also stated he would have gone to a lawyer: "she [a relative] was too badly hurt." A third client also "would have tried to get a lawyer—but I don't know how I'd have paid for it." And one client said, "I would have pleaded for myself."

As discussed earlier,[48] responses to question (k)—whether the client would go back to the same lawyer if he used Judicare again—show that clients have an adequate sense of discrimination in evaluating the lawyers' performance. Most clients would go back to the same lawyer but 11 respondents either would not or were not sure. Of these 11, at least half had had positive experiences with their first Judicare lawyer, but they nonetheless felt that a different problem might be more adequately handled by a lawyer with different expertise, or that they should generally investigate more thoroughly before choosing a lawyer, and so forth.

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48. Supra p. 60.

3. Non-Judicare Experiences Compared

Of the 37 Judicare clients interviewed, 18 had used lawyers in a non-Judicare setting (16 prior to their Judicare experience, and 2 subsequently—they had since become ineligible for Judicare), and for many the experiences had been far in the past and were not well recollected. All non-Judicare experiences appeared to have been with private lawyers—none was with any contemporary staff attorney system—but several clients were uncertain on whether they had paid or whether the experience had been with a form of private legal aid. To the question, "How would you compare this experience with your Judicare experience?" 6 respondents stated that their Judicare experience was more satisfactory, only 1 of these specifically because he did not have to pay under Judicare. Five considered the 2 types of experience to have been roughly the same. Five others said that they could not really say, and 2 clients were more satisfied with their non-Judicare experience. (One of these 2 volunteered that her non-Judicare case—an adoption—involved a different level of emotional experiences from her Judicare case—a divorce—and that this probably colored her view. This perceptive response goes a long way toward negating the assumption that it is not worth talking to poor clients to determine how they should be provided services.)

4. Indians

Before concluding this section, we should reemphasize the point made earlier in this report that, despite the negative attitude of many among the Indian population toward local lawyers, there was essentially unanimous satisfaction with Judicare among those 9 Indians we interviewed who had actually used the service. The only Indian user who expressed serious reservations was the one whose criminal problem lawyers had refused to handled under Judicare, but

this same client had had a second satisfactory Judicare experience. It should also be added that Judicare use was not confined to those Indians who generally exhibited a charitable attitude toward white society: 2 of the satisfied Indian clients were among the most aggressive and vocal critics of the white man's role in Indian affairs (one had had a physical confrontation with the local welfare director).[49] The Indian poor may have to go to more trouble to

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49. The Indian communities are far from homogeneous politically. In terms of basic political outlook, the Indian populations of northern Wisconsin can be roughly divided into two groups. On the one hand are those whose outspoken conviction is that the plight of today's Indians is wholly attributable to contemporary white society which regards the Indian with open prejudice or, more subtly but equally perniciously, seeks to appease and emasculate him with heavy doses of bureaucratic paternalism. This viewpoint is especially prevalent among the younger Indians, but—perhaps more surprisingly—it is also shared by many of the older Indians who are in official positions of tribal leadership or have established themselves as unofficial "spokesmen" in tribal affairs. The attitude of this group toward Judicare is generally negative, especially toward the private aspects of the program. Local lawyers are seen not only as sharing the white community's prejudice toward the Indian but also, more significantly, as being part of the economic power structure that prevents any measure of economic (and hence social, moral or legal) independence. On the other hand there are the "common folks" among the Indians, who are less outspoken, less likely to be critical of the white establishment generally or Judicare lawyers specifically. Characteristic of the outlook of this group was a statement by one Indian that "the Indians themselves are also to blame—a lot of them ask too much." A common view is that the Indian tribal leadership, rather than the white man, is at fault in perpetuating hardship on the reservations. Instances were related of how the Indian leaders always managed to grab the best jobs or select for themselves the best items from charity or government goods prior to general distribution. There were complaints about autocratic tribal rule, decisions made without participation of the people, council meetings that were empty and staged affairs because decisions had already been made a priori and in an authoritarian manner; in short, the Indian leadership was seen as perpetuating its own power and hence perpetuating Indian misery generally. This fundamental division in outlook is of course not rigid: There is some mixing and diluting of the extreme views and a crossing of lines among those most likely to adhere to the respective outlooks (some common people speak the rhetoric of the young and the "leaders" or "spokesmen"; some leaders espouse the views of the common people). More significantly, there is probably a great deal of validity in both viewpoints, meaning that the "correct" assessment of the Indian situation is not some middle-ground view, but more likely and unfortunately a combination of some of the extremes.

get satisfaction from the Judicare system, but perhaps by virtue of that fact their satisfaction becomes more significant. Ideally, of course, the Indian poor should have no special problems obtaining adequate legal services, but that is a goal not easily achieved by any legal services approach. Judicare in Wisconsin can at any rate hardly be viewed as a failure in providing legal services to Indians. While Judicare's reputation in the area of individual services is low among many Indians, actual experiences with the service are often positive. Moreover, the impact efforts relating to the larger and specifically "Indian" problems are generally highly regarded by the Indian population at large. Even those Indians who are distrustful of the "typical" Judicare attorney speak with appreciation of the Madison office, the Judicare director, and the private lawyers who in conjunction with Madison have handled the Indian rights cases.

Conclusions

The data we have gathered and examined are incomplete; this report is tentative and only preliminary to further study. Hence it is inappropriate here to draw firm conclusions on specific and detailed issues. Nor is this the time to make specific recommendations (such as the removal of the director or transfer of the Madison central office to the northern Wisconsin hinterlands—two questionable suggestions, since enacted, from earlier evaluations. Our purpose in this preliminary report has been to give a general impression of what we found about Judicare in Wisconsin. Paradoxically, the effort to make the overview intelligible has necessitated close examination of many detailed issues. At times we have made conclusionary statements and engaged in speculations and explanations that may belie the tentative posture of this effort. We have had to do this so as not to be misunderstood in our discussion of the findings.

If any conclusion emerges spontaneously from this report it is that Wisconsin Judicare appears to be a viable and valuable program.[50] This is not to say that it has no shortcomings—it has many—but that basically the program

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50. This "conclusion," not coincidentally, coincides with the overall impression that grew on us in the course of the field work. It was an impression formed prior to analysis of the data. In that sense it can be said that we were "biased" in our analysis and presentation of the findings. This, however, is an inevitable aspect of first-hand research; no study exists that is totally devoid of a bias of that order. We tried our utmost to be objective, to avoid being influenced by our "impressions." It is the reader's prerogative to point out where he feels we have failed in that attempt and have let our bias color the presentation, emphasis, selection, or analysis of the data. The reader may also choose to put a different interpretation on the data presented in this report. At the risk of impairing credibility by seeming to admit to brainwashing, it may be added that at the inception of the study the author's biases were, if anything, negative toward Judicare.

"works." Significant numbers among the poor in northern Wisconsin have personally benefited from the program and most of those to whom we talked expressed gratitude (not necessarily that they *should* be grateful) and often newfound confidence resulting from the availability of the services. Those who would characterize Wisconsin Judicare as a failure or dismiss the Judicare approach as misguided are ignoring significant accomplishments. Perhaps they are adversely influenced by the personalities or politics of "friends" of Judicare. But to be so influenced is to be a captive of one's own politics and personality.

Whatever one's predispositions in the area of legal services systems, an awareness of the limits and potential abuses of each system is essential. As for abuses, legal services programs should reflect neither overinfatuation with individual, routine, noncontroversial services nor unwarranted aversion to efforts to provide adequate service for the mundane legal problems of the poor. No program should be a tool for preserving the status quo, but neither should it through overambition be substantively and strategically irrelevant to the status quo.

As for the limits of systems, it may be that no monolithic approach to legal services will be very satisfactory. The best way to provide effective legal services to the poor probably is neither in "pure" Judicare, "pure" staffed office, "pure" service, or "pure" reform, but in a combination of approaches. We do not necessarily mean hybrid approaches or a combination of the "best" features of each approach, but more likely separate and distinct approaches working in conjunction in a given area so far as each has relevance to that area. The latter qualification is especially important: individualized assessment of a given area's needs, problems, and resources is central in determining the merits in that area of each approach. For example, while the evidence demonstrates that Judicare makes

sense in northern Wisconsin, there are probably areas (states, counties, or cities) where Judicare would be far less feasible and productive. Also, it would appear that the effectiveness of the Wisconsin program is enhanced by the existence of subcomponents which do not fit strictly within the confines of the "pure" Judicare concept. The greatest fallacy in the prevailing arguments over the shape of legal services may well be the unyielding espousal of one approach over another, the view that the (politically) preferred approach precludes accommodation to any other approach and must be touted as the best for all areas and situations.

Appendix A

Judicare Programs in the United States and Evaluations

Four Judicare experiments have recently been ended after a few years of operation. The Georgetown, Delaware, project ended in 1969. The Judicare components of the New Haven, Connecticut, legal services program and the Judicare experiment in Fremont, California, were discontinued in 1970. The Mineola, New York, project was terminated in April 1971.

Other Judicare projects continue in operation in 5 counties in Montana and in Meriden, Connecticut; the Meridan experiment is scheduled to end in 1972. At the same time, $2.5 million has recently gone to California "for planning a comprehensive experimental program for the delivery of legal services to low-income citizens in California," which should involve considerable experimentation with arrangements of the Judicare type.

Meanwhile, state and local bar associations throughout the United States continue to issue proposals for, or to endorse, Judicare. Quite recently (September 1971) Maryland initiated a Judicare program projected to cover the state's 23 counties, excluding the city of Baltimore. As of October 21, 1971, the Maryland "Judicare Plan" was reported to be operating in 9 counties. Also, on December 21, 1971, the Camden Regional Legal Services office informed the American Bar Foundation that "a small Judicare program" had been initiated in Camden County, New Jersey.

In the United States, most of the existing Judicare literature consists of "internal" studies sponsored by the governmental agencies supporting the programs: Office of Economic Opportunity (OEO)—Wisconsin, Montana (3 counties), Fremont, and New Haven; Department of Health, Education, and

Welfare (HEW)—Delaware, Montana (2 counties), Mineola and Meriden. Much of this literature is "confidential," non-public information. At least one of the public "evaluations" appears to be a rather uncritical self-report.

The basic substantive weaknesses of previous evaluations derive from the fact that too little time and money has been made available for them. Evaluators have made only brief field trips permitting only haphazard contact with "spokesmen" for groups of program participants. Rarely have the ordinary clients, the ordinary potential clients, or the ordinary lawyers been interviewed. Nor has there been a systematic attempt to talk to numerically significant groups of such persons.

Outside this country the main Judicare-type experiences have been in England (since 1949) and Ontario, Canada (since 1966), but the literature from these programs suffers from most of the same defects as the U.S. materials. Reportedly, limited forms of Judicare also exist in Scotland, Hong Kong, West Germany, and Belgium, but little information is available on these experiences. Moreover, it is not clear how relevant the foreign experiences are to the American setting.

Appendix B

Judicare—Pro and Con

Some of the propaganda on both sides of the Judicare issue is simply too absurd to be taken seriously, some is too self-evident. Some abstract arguments, pro or con, are worth meeting, but this is done in the context of the "neutral" inquiry described in the text. A few of the supposed merits or disadvantages of Judicare have been said to be the following:

a) That Judicare involves the private bar and that this is good because you can't serve the entire poor population of the U.S. with government lawyers.

   That this is bad because the private bar does not understand, is unsympathetic to, the plight of the poor.

   That this is good because the private bar does not wallow in "understanding" and "sympathy" for the poor.

b) That Judicare counters the creeping socialism exemplified by the government attorney approach and that this is good because creeping socialism is bad.

   That this is bad because socialism is good.

   That Judicare is more creepingly socialistic than the government attorney approach.

c) That Judicare makes good sense in rural areas with widely dispersed populations.

   That Judicare makes no sense in rural areas because widely dispersed populations can't be served by even more widely dispersed lawyers.

d) That Judicare permits free choice of a lawyer and that this is good because poor people are entitled to the same freedom of choice as nonpoor people.

   That this is bad because poor people are not entitled to the luxury of free choice.

   That nonpoor people don't have any free choice.

That choice for poor people under Judicare is a choice of evils because private lawyers are unsympathetic and incompetent in "poverty law."

That there is no choice under Judicare in rural areas because there are too few lawyers.

That poor people are too dumb to exercise choice intelligently.

e) That Judicare saves money.

That Judicare is too costly and results in private lawyers profiting from public funds.

Appendix C

Methodology

The field team undertook personal interviews with lawyers, persons eligible for Judicare[51] (nonusers as well as users), and welfare and Community Action Program (CAP) officials (who determine client eligibility and issue Judicare cards) by means of prepared questionnaires. Since our objective on this field trip was to learn as much as we could in a relatively limited period, we dispensed with some of the rigors usually thought to be applicable. That is, the interview instruments were used with some discretionary relaxation: Questions were rephrased when respondents failed to understand; interviewers probed further into an issue when that seemed appropriate; and at times portions of the questionnaire were omitted in order to be sure of obtaining more essential information that otherwise might have been lost because the respondent's cooperation began to fail. Despite these violations of survey research norms, the returns are sufficiently reliable and complete to justify the use to which they are put in this report. In fact, some of the informality gives us greater confidence in our findings than might have been the case if we had adhered to stricter

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51. The eligibility criteria for Wisconsin Judicare services are given in the following "Schedule of Net Income," which indicates "maximum income allowable":

Family Size	Annual Income	Monthly Income	Weekly Income	FARM INCOME Annual	FARM INCOME Monthly	FARM INCOME Weekly
1	$2,080	$173	$ 40	$1,770	$147	$34
2	2,860	238	55	2,430	202	47
3	3,540	295	68	3,010	250	58
4	4,160	347	80	3,540	295	68
5	4,785	399	92	4,070	339	78
6	5,410	451	104	4,600	383	88
7	6,035	503	116	5,130	428	99

rules. This was not a large, impersonal operation with the object of eventually making broadly applicable yet precise quantitative inferences from responses of a sample population, but rather an operation of a small field team aware of the minor modifications made in the questioning process and with a purpose in doing so. Interviews took from 20 minutes to 2 hours, averaging about an hour each.

We tried to reach all the lawyers—or at least one lawyer per firm—in each of the areas selected for study. We also sought to interview at least one official—preferably the director—in each county welfare and CAP agency. These objectives were almost fully accomplished. Cooperation on the part of the lawyers and welfare-CAP officials was, with few exceptions, well beyond our most optimistic expectations.[52] The only significant gaps in our lawyer returns are two Superior lawyers who were vacationing at the time, a St. Croix County lawyer who was "not interested" in Judicare and who would submit to only a few informal questions,

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Furthermore, "Judicare cards may be issued to any individual receiving welfare assistance, *except those who qualify only for medical assistance under Title 19 and the food stamp program*, provided that their equity in their homestead and in other real estate and personal property does not exceed the limitations noted in the Judicare eligibility criteria [$10,000]."

52. The task of interviewing lawyers was considerably more manageable than anticipated. First, attorneys gave freely of their time—usually during office hours, sometimes after hours—and lacked the defensiveness we anticipated about being queried on Judicare. Second, the number of lawyers to be interviewed was smaller than we had thought. The city of Superior, for instance, lists about 40 lawyers, but only 28 are in active practice, the remaining members of the bar being retired or semiretired, or occupying judicial or other special interest positions. The typical "active" attorney in Superior, moreover, practices in a firm of about 3 partners. But the bulk of Judicare cases is usually handled by one specific member of a firm. Allocation of Judicare work is often a natural process, growing out of the interests, expertise, or reputation of that partner, though a few firms appear to allocate Judicare cases to the youngest partner. Our policy was to limit ourselves to one interview per firm: Usually we spoke to the partner who handled the Judicare work, though on occasion circumstances dictated an

another St. Croix County lawyer (active the Judicare) who said he would fill out and send in the questionnaire but never did so, and the District Attorney of Forest County who said he was too busy, but about whom we obtained enough information to arrive at some picture of his role in Forest County Judicare affairs.

Our aims in interviewing persons eligible for Judicare were more modest. We knew that discovering who and where they were would be a problem. At this stage of the study we did not want to commit the resources required for large-scale, systematic selection of eligible persons. Nor were we able to reach Judicare clients—our most essential respondents—in the most simple and obvious way, because the Director of Wisconsin Judicare, backed in his decision by several precedents to the same effect and by the viewpoints of many American Bar Association experts and others, felt compelled to refuse us the names and addresses of clients.[53] However, other avenues for reaching poor people became apparent—some during the course of our field work—which enabled us to contact 110 eligible persons and administer the questionnaire to 82 of them, including 47 persons with Judicare cards, of whom 37 had actually used the service.

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interview with the senior partner acting as spokesman for his firm's approach to Judicare. Thus, by doing 10 lawyer interviews in Superior we in essence covered the Judicare practices and policies of 23 attorneys. Our only omissions were 1 single practitioner and a 3-man firm—both quite active in Judicare—plus 8 "marginally involved" lawyers who together had handled a total of only 52 Judicare cases; we omitted them primarily because the nature of their practice precluded more significant involvement in the program.

It should be stressed that we did not avoid interviews with lawyers or firms who were by choice (as opposed to occupational conflict) nonparticipants in the Judicare program. It might also be noted that, with one or two exceptions, individual lawyers and firms hesitated to label themselves "nonparticipants," though several offices take on so little Judicare that for all practical purposes they are such.

53. Whatever the merits of this position, it puts serious obstacles in the way of comprehensive, objective, and disinterested research. For more on the merits, see text ahead and infra n. 56.

To reach as many eligible persons as possible in the time available and to avoid obvious biases in the eventual sample, we used a variety of methods in the search, some of which were more fruitful than others. Two county welfare agencies furnished lists of some 20 cardholders each. A few attorneys also aided our research by providing names of one or two of their clients. We checked county court records for cases involving paupers' affidavits, often an indication that the party was served by Judicare. Eligible persons contacted would occasionally refer us to friends or relatives also eligible. The list of sources from which we attempted to elicit help in locating eligible persons ran long and included bartenders, gas station attendants, "community leaders," a doctor, a minister, an owner of low-rent housing, and various state and community service agencies other than CAP and welfare. The difficulty in northern Wisconsin is that, with the exception of Indian reservations (where the majority of residents are eligible) and some scattered poverty pockets in the larger towns, there are few if any concentrations of poor people. Hence, as a last resort, we spent one or two days simply driving through each of the preselected counties, stopping at isolated, run-down farm houses, trailer courts, dilapidated homes in small towns, low-income neighborhoods and public housing projects in the larger towns—knocking on doors, checking for financial eligibility, and requesting interviews.

Despite the relative success of this approach, it would be unsuitable for any purposes other than our limited inquiry. In larger, more ambitious, and more structured inquiries, such an approach would be self-defeating. Costs and staff frustrations would multiply in accordance with demands of volume and research design. But a study that seeks to identify the advantages or shortcomings of a legal services delivery system must elicit the views of a significant number

of those who have experienced the service.[54] Random sampling of the poverty populations would ultimately yield a proportion of users of the service, but costs would become prohibitive and the effort would likely stop short of attaining an adequate sample. In our opinion, at least the names and addresses of clients could and should be made available—under appropriate assurances of confidentiality—and have in some instances been made available[55] to those engaged in important and objective research. The threat that divulging such minimal information poses to "privilege," "confidentiality," or "personal privacy" has been overstated, and the result in fact is to exhibit more concern for the sensitivities of those delivering the service than for those receiving it.[56]

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54. The idea that clients are essential respondents in a study of a service system is far from universally accepted. A feeling seems to prevail, unfortunately even among some "experts" in the legal services field, that clients (especially poor clients) are too uninformed, inarticulate, shortsighted, gullible, and undiscriminating to make any judgments about the service they are obtaining. A more than incidental benefit of studies such as this one, which have sought the views of (poor) clients, is the demonstration that this assessment has little justification. The "startling" fact is that poor people turn out to be like most people; some are articulate, discriminating, and aware, and some are not. What is more, it may even be worthwhile, if not obligatory, to listen to the less articulate and the less aware.

55. Three instances are the ongoing Meriden evaluation (Judicare vs. staffed, neighborhood, office), the Mineola (Judicare) evaluation (see Appendix A), and a recent study of Community Law Offices by the Russell Sage Foundation (Rosenthal, Kagan, & Quatrone, *Volunteer Attorneys and Legal Services for the Poor: New York's CLO Program*, 1971).

56. Concern for the privacy and sensitivities of clients is not misplaced, but a sincere and legitimate concern for the rights of clients is not necessarily incompatible or irreconcilable with the aims of research. At the least, a balance can be struck and necessary protections accorded. For example, as in the Meriden evaluation, clients can be told when applying for the service that they will be participating in a demonstration project and that their cooperation may be sought in an eventual study. Even when such steps are not taken at the outset, ways remain of minimizing the threat to clients' rights. It may, e.g., be appropriate to examine and exert some control over research agency methods and objectives in determining whether or what information concerning clients should be made available. A basic principle is that

client cooperation should be voluntary rather than coerced. There seems to be little substance to the paternalistic view that the mere revelation of name and address leaves the client at the mercy of program evaluators, unable to protect his confidences and sensitivities, and forever after distrustful of the program itself. Indeed, on December 10, 1971, the American Bar Associations's Standing Committee on Ethics and Professional Responsibility issued an opinion (Informal Opinion No. 1188) that disclosure of the names and addresses of Judicare clients by agencies or officials who do not stand in the position of counsel for the clients (i.e., the welfare and CAP agencies, the Madison Judicare administration) presents *NO* violation of law or ethics.

Cf. NLRB v. Getman, 404 U.S. 1204 (1971), Getman v. NLRB, 450 F. 2d 670 (D.C. Cir. 1971), to the effect that information bearing on the identity of participants in labor elections cannot arbitrarily be withheld from persons or agencies involved in objective research.

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