JUDICARE

Public Funds, Private Lawyers, and Poor People

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Background

INTRODUCTION

Oversimplification of what poverty is and underestimation of its complexity have often laid the basis for an undue optimism as to what can be done about it. In the context of the effort to provide legal services to poor people, especially as that effort assumed the proportions of a national program in 1964 and as the program has evolved since that date, the disparities between perception and reality have been critical.[1] Over the years it has become commonplace, for example, to hear legal-services officials and proponents, politicians, and simple bystanders speak about "changing the condition of the poor through law," or even "eradicating the [very] causes of poverty."[2]

Not only has the unreality of these goals made inevitable a degree and sense of failure, but it has also meant that the quest to achieve these goals must involve unrealistic means. The theory has been that the job of "eradicating poverty" could not be left to

1. The Economic Opportunity Act (P.L. 88-452, Aug. 20, 1964), 42 U.S.C. §§2701, 2809(a)(3) (1970), provides the basis for the national Office of Economic Opportunity (OEO) legal-services effort.

2. Writings most often referred to in support of legal-services programs in their present form and with the current rhetorical emphasis are: Edgar S. Cahn and Jean C. Cahn, "The War on Poverty: A Civilian Perspective," 73 *Yale L.J.* 1317 (1964); and Jerome E. Carlin, Jan Howard, and Sheldon L. Messinger, "Civil Justice and the Poor: Issues for Sociological Research," 1 *Law & Soc'y Rev.* 9 (1966). While one might take issue with many of the insights offered in these seminal articles, another problem is that they do not even stand for the propositions or implications seen in them by proponents of the OEO legal-services program as presently constituted and oriented.

the average existing lawyer; instead a corps of idealistic professional poverty-law experts was necessary, working out of neighborhood or regional offices and using novel legal strategy.[3] The private bar, often deeply mistrusted or at least thought to be inefficient and insufficiently committed to the "cause," would be left to play an incidental and usually negligible role.

The increasingly recognized reality is, however, that the legal-services program as presently oriented—that is, delivery of services by a corps of full-time salaried "poverty lawyers" staffing special neighborhood or regional "poverty-law" offices—is meeting neither its own goals and standards nor even the expectations of those who did not share the institutional optimism. While the national program has done much good and received due recognition, it has come under heavy fire from all parts of the ideological spectrum. It has been faulted on the one side for having grandiose goals and for attempting to attain them; on the other, for failure to attain them. It has been accused of wasting public funds on some areas of service and of being "too efficient" in others, forgoing quality of service in favor of speed and economy.

The price of this reckoning with reality is high. For not only may the legal-services program be forced to moderate some of its more spectacular goals, tone down some of its less credible rhetoric, or change some of its less effective methods, but also the danger now is that there will be, if not a total demise, at least a drastic curtailment—an emasculation—of efforts to provide legal services to the poor.[4]

A basic premise of this report is that a strong national legal-services program is worth saving—in fact, that it is essential. We

3. Involved in this proposition are various assumptions of questionable validity about such matters as the nature of the poor, the nature of the law, and the nature of lawyers. Do the poor have special common needs? If so, are lawyers—of any type—equipped to deal with them? Do the poor care to be perceived as a group with special common needs to be handled by special "poverty" attorneys? Is "poverty law" a functional classification? Is "poverty lawyer" a functional concept? Are the motivations of idealistic professional poverty lawyers any less dysfunctional to the cause of eradicating poverty or of simply serving the poor than the motivations of the average private lawyer? Is an idealistic professional poverty lawyer a contradiction in terms? This report responds to these questions, in part.

4. E.g., proposed legislation concerning creation of a national legal-services corporation to supplant the existing OEO program creates "strictures" on the effort to provide legal services to the poor that severely undermine its effectiveness. The Legal Services Corporation Bill (H.R. 7824) as passed by the House of Representatives in June 1973 includes, among others, prohibitions on providing

will seek to trace and explain some of the frustrations and shortcomings of past efforts and point the way to an approach that in at least many contexts is more straightforward, more realistic (if more pedestrian), and less likely to fall by the weight of its own goals and means.[5] As the title indicates, the approach this report urges is essentially the Judicare model, that is, with the private bar playing the dominant role in the delivery of legal services to poor people and professional poverty lawyers assuming an ancillary and specialized role. In short, this report concludes that the Judicare experience supports arguments for a reversal of the respective roles of the private and public legal sectors in the quest for a realistic solution to the genuine problem of helping poor people use the legal system.

JUDICARE IN PERSPECTIVE: HISTORY AND ANALOGY

The history that shaped legal services to the poor into its present form—that is, with the staffed-office approach dominant—has been marked by a series of inapposite precedents and analogies, and "majority view" speeches, resolutions, and studies that were unable to break out of standardly accepted, but unproven and unexamined, assumptions. The selective application of a series of rhetorical evaluative standards also came to characterize the course of legal-services developments.[6] An examination of this history and some speculation about why it took that course will help put into perspective the abstract issues and empirical questions with which this report deals.

legal assistance in school desegregation cases, abortion cases, Selective Service cases, and cases of desertion from the Armed Forces. A recent editorial in the *American Bar Association Journal* stated that these limitations "would impair professional responsibility . . . [and] . . . run counter to the general principle that the poor should have the same right to resort to the courts as the well-to-do and also raise problems of professional ethics." Opinion and Comment, "The State of Legal Services," 59 *A.B.A.J.* 522–23 (1973).

5. The data and analysis are conclusive about the advantages of Judicare in rural settings. They are suggestive of the same conclusions for other—i.e., urban—contexts.

6. A typical "internal" OEO evaluation of a legal-services program—whether staffed-office or Judicare model—would read: "adequate, but limited to the provision of individual legal services . . . little sustained [or insufficient or no] involvement in the remaining four National Legal Services areas of emphasis—law reform, economic development, community education, or group representation." Without any indication of the needs in these "areas of emphasis," without any mention of the strategic or substantive propriety of the involvement as related to the specific needs or problems of the population served or the resources availa-

Early Legal Aid

Free legal services to poor people[7] began in the private law office, probably growing in part from a sense of obligation and in part from a recognition of the reality that fees were sometimes simply not collectible.[8] This informal and ad hoc response began to transform itself in the early part of the twentieth century in this country into more systematic plans such as bar-sponsored volunteer committees and Legal Aid societies.[9] The bar-committee model consists of a central office, often located at the courthouse, where eligibility for free service is determined and clients are then referred to individual volunteer lawyers serving on a rotating basis. The Legal Aid society, on the other hand, typically consists of a separate association employing full-time, salaried lawyers to serve the poor. During the last 30 years the Legal Aid society model has predominated.[10]

The prevalence of the Legal Aid society model at the time of the emerging national commitment to providing legal services for the poor thus gives one explanation for the federal agency preference for the approach that employs full-time, salaried poverty lawyers in neighborhood offices: the Office of Economic Opportunity (OEO) simply began its task by adopting the prevalent

ble, without any specific or explanatory information of any kind, one could only guess at the meaning of these "evaluations." More disturbing, however, the outgrowth of these evaluations was a general criticism of Judicare *as a model* for failure to perform adequately in these areas, while virtually every staffed-office program had also been shown to fail—*but only individually, not as a model.*

7. That legal services to the poor should be entirely free of cost to the poor is not beyond debate. The OEO programs have operated on the assumption that they should be. It is charged, however, that this results in "unmeritorious" or "specious" claims, and that the remedy is to make the poor pay at least enough to make them feel that they "have a stake in the matter." Empirically, there is little evidence that the poor abuse the available free service. At least a partial explanation is that there are nonfinancial inhibitions to unmeritorious use—psychological inhibitions, the fact that legal-services lawyers can refuse to take cases, etc.

8. There is a good deal of rhetoric, self-serving or critical, about the obligation of the profession to serve all who are in need. See Barlow F. Christensen, *Lawyers for People of Moderate Means* (Chicago: American Bar Foundation, 1970); and F. Raymond Marks, with Kirk Leswing and Barbara A. Fortinsky, *The Lawyer, the Public, and Professional Responsibility* (Chicago: American Bar Foundation, 1972).

9. See John D. Robb, "Alternate Legal Assistance Plans," 14 *Cath. Lawyer* 127, at 128 (1968), citing Emery A. Brownell, *Legal Aid in the United States: A Study of the Availability of Lawyers' Services for Persons Unable to Pay Fees* 7, 11–12, 26 (Rochester, N.Y.: Lawyers Co-operative Publishing Co., 1951).

10. *Id.*

model. No doubt other reasons and motivations played a part too: a plausible but untested assumption that the staffed-office method would be most efficient certainly was a factor. In addition, the movement came at a time when many persons seeking reform had an unduly optimistic view of the probable success of direct federal intervention where local resources had proved to be deficient—amounting to a perception of imperative need for such intervention. That perception too must have figured heavily. This posture of implicit faith in Washington as the place to solve all problems is also accompanied by a deep cynicism about private lawyers (especially rural lawyers), who are often viewed as incompetent and reactionary bigots out to rob the poor, thus providing the justification for creation of a new order of professional problem solvers, pure of motive, without prejudice, and free from the pull of personal ambition or other human weaknesses.

Other than its predominant presence there was little in the evolution or the level of performance of the Legal Aid society model that argued for its adoption as the national model for government-financed legal services to the poor. On the contrary, it can be argued that the societies were necessitated precisely by the lack of a firm and unified financial or philosophical commitment to serve the poor and that once such a commitment was made (by the Employment Opportunity Act of 1964), the Legal Aid society model in effect became obsolete. Also, while Legal Aid did provide worthwhile services to some, few could ignore its serious quantitative and qualitative shortcomings,[11] and its automatic perpetuation is the kind of mystery for which there is no simple explanation. In short, it is difficult to find either historically valid or comprehensible reasons for the national program's overwhelming commitment to the staffed-office model.

Analogous Experiences

Analogous experiences with delivery of other services to the poor provided no better basis for favoring the staffed-office approach for civil legal services. Several studies of the public defender system have been made, but none presents any evidence, let alone persuasive support, for the proposition that the public defender system is preferable to methods using private attorneys for deliv-

11. See very generally Brownell, *supra* note 9, and 1961 Supp.; and Murray L. Schwartz, "Changing Patterns of Legal Services," in Geoffrey C. Hazard, Jr., ed., *Law in a Changing America* 109 (Englewood Cliffs, N.J.: Prentice-Hall, 1968).

ering legal help in criminal cases.[12] Experiences with medical-services programs for the poor and the aged have brought the problem of cost to public attention and created public alarm, and inferences have been drawn that services of any type are delivered uneconomically when delivered by the private sector. There are serious problems with that reasoning, however: in the first place it is debatable whether analogies between medical and legal services can safely be drawn; moreover, it appears doubtful that the cost problems of the Medicare-Medicaid programs are attributable to inherent or even latent properties of private-sector participation (more likely, it was the lack of cost controls that resulted, and were destined to result under any circumstances, in spiraling costs).[13]

Judicare Presently

However tortured the history and analogies that led to the dominance of the staffed-office approach, it is an incontrovertible fact. In 1972 there were some 300 legal-services programs of the staffed-office variety drawing federal funds—at least 1 such program in each of the 50 states and in the District of Columbia—but there were only 2 Judicare programs, 1 in Wisconsin covering a 28-county area and 1 in Montana covering 5 counties.[14] The staffed offices in 1972 drew roughly $60 million in federal financial support (from OEO and the Departments of Health, Education, and Welfare, and Housing and Urban Development—with over 90 percent coming from OEO), while the 2 Judicare programs received about $300,000 combined.[15] Other, less tangible indications of the national commitment to the staffed-office approach over the Judicare model have also persisted.[16]

12. See Dallin H. Oaks, *The Criminal Justice Act in the Federal District Courts* (Washington, D.C.: Government Printing Office, U.S. Senate Judiciary, 1969); Dallin H. Oaks and Warren Lehman, *A Criminal Justice System and the Indigent: A Study of Chicago and Cook County* (Chicago: Univ. of Chicago Press, 1968); Roger W. Benjamin and Theodore B. Pedeliski, "The Minnesota Public Defender System and the Criminal Process," 4 *Law & Soc'y Rev.* 279 (1969).

13. See generally William J. Curran, *Financing Health Care* (New York: Practising Law Institute, 1970).

14. Five other Judicare experiments were operative between 1966 and 1972, but have been terminated: one in Delaware, two in Connecticut, and one each in California and New York. Samuel J. Brakel, *Wisconsin Judicare: A Preliminary Appraisal*, app. A at 113 (Chicago: American Bar Foundation, 1972). Two other small Judicare experiments have become operative recently in Camden County, N.J., and in parts of Maryland. In addition, a temporary Judicare program was in effect in Wilkes-Barre, Pa., to provide legal help to people victimized by the devastating flood that hit that part of the country in 1972. West Virginia has just had a statewide Judicare plan approved. And finally, some $2.5 million is presently being toyed with in California for the purpose of further experimentation with Judicare and hybrid legal-services models.

15. These figures are mostly from National Legal Aid and Defender Association, *1971 Statistics of Legal Assistance Work* (Chicago: the Association, n.d.); but see also Robb, *supra* note 9, at 129.

16. Prof. Harry Stumpf, e.g., in a report supporting the staffed-office approach, quotes "a Washington official" responding to a question about OEO's strong stand against funding Judicare during the first year of operations: "I think that was very early in the game and consequently it wasn't sugar coated. . . . We don't always make public pronouncements that strongly about Judicare. Now, because we have a few [Judicare programs] the party line is that we want to wait and see what the results are. . . . But initially, we had to do everything we could not to have [Judicare] proliferate" (Stumpf, "Study of OEO Legal Services Programs, Bay Area, California" 348 [unpublished manuscript, 1968]). There is evidence that today the attitudes of "Washington officials" on legal services are becoming the reverse of what they were when Stumpf was reporting. For some ill-considered commentary on that possibility see Mark Arnold, "The Knockdown, Drag-out Battle over Legal Service," 3 *Juris Doctor* 4 (No. 4, 1973); and "Making Peace with Poverty: Legal Services under Fire," 1973 *Legal Services Rep.* (No. 3). The problem is not so much that "Washington officials" (or commentators) have preferences, but that since they have no facts on which to base them, their preferences are emotional prejudices.

An Intuitive Perspective

The final observation in this introductory chapter—one that marks the perspective from which this report is written—can be stated in evidentiary terms, though it has crucial substantive implications. The burden of proof should be on those who advocate the intuitively astounding position that a very substantial portion of this country's population (the poor) should receive legal services by way of a system that virtually precludes participation of the existing private bar. There are many dimensions to this intuitive reaction, including questions about volume of legal need, manpower resources, quality of service, expertise, specialization, and so forth—in sum, the problems that will be dealt with concretely in this report. One proposition is to be made clear at the outset, however: the proponents of the staffed-office model have not met this burden of proof, or even recognized its existence, in framing their arguments or presenting their explanations of the present order. More seriously, the performance of the staffed office has practically and empirically not met this burden, nor can it.

Chapter 2

The Study: Substantive Issues, Geographical Setting, and Methodology

The Judicare proposition is simple enough conceptually, and its distinctiveness from the prevailing staffed-office approach is clear. The issue is determining the most effective means of delivering civil legal services to the poor. Judicare seeks to accomplish this by using private attorneys already practicing where the poor clients live. The clients select the attorneys of their choice and go to the attorneys' private offices for service. The attorneys, if they accept and complete the cases, are compensated by the government via the program's administration on a per-case basis. Judicare activity is usually only a small fraction of each attorney's total practice. By contrast, under the staffed-office approach, legal services to the poor are delivered by salaried attorneys (often not native to the locality) working full time on the problems of poor clients out of strategically located special poverty-law offices.

SUBSTANTIVE ISSUES

How should a study and comparison of the operations of these two models proceed? What are the central issues or problems? What advantages do the differences in structure imply, and which are in fact realized? Are these advantages at all clear or consistent? By what criteria does one measure the performance of the programs or of the models? Are there conceptual and practical bases for comparison? The range of rhetorical questions that can be asked reveals the complexity of the task of studying the programs.

Abstractly, ideally, the goal of any legal-services program is to

meet fully the legal needs of the target population with maximum efficiency and optimum quality. The reality is that no program ever comes close to attaining that goal. Why and to what extent the programs fall short can be said to be one fundamental aspect, if not criterion, of their evaluation. The attempt to discern which shortcomings are inherent in, or peculiar to, one model and not another introduces the comparative dimension.

The complexity of the evaluative task stems in part from the fact that countless measures of performance have been discerned and used, but no agreement as to the meaning, weight, or relevance of these measures has been reached or can be expected. For example, the number of cases handled by a certain program relative to the eligible population is usually accepted as one measure of performance. But there is no agreement, and should be no agreement, on the significance of these bare numbers or ratios. Only when these figures are analyzed against other considerations —such as the legal needs of the target population, the types of cases handled, and the quality of service—do they attain some measure of meaning. Recognition of the interrelatedness of various aspects of performance is thus a step in the right direction. At the same time, however, this recognition brings to light the full complexity of the total evaluative problem and leads to a sense of despair on the part of the evaluator. For example, counting numbers of cases handled forces an examination of the legal needs of the population served. But what is legal need? Whose perception or definition is relevant? And beyond that, what quality of service do various needs and problems merit? The same quality? How important is quality? What *is* service quality?

One could seek to avoid these complexities by deciding to use only the evaluative criteria expressly offered (or perhaps even those implied) by the proponents of the various legal-services models and programs. Not only is this a cop-out, however, but it also will not work. The models and programs have come into existence through a filtering process—involving many diverse minds and diverse levels of interest in, or commitment to, legal-services problems—as a result of which goals, means, and advantages have become obscure and scrambled.[1] The evaluative standards that are expressed in, or can be inferred from, the results of this process are consequently not very helpful.

Beyond these theoretical difficulties there are also the practical

1. See Samuel J. Brakel, *Wisconsin Judicare: A Preliminary Appraisal*, app. B at 115 (Chicago: American Bar Foundation, 1972).

problems of accuracy, reliability, and comparability of data recorded and kept by the programs. Many apparent differences are only differences in form, in labeling and classifying, or even in counting. In short, extreme caution is the proper practical and theoretical posture for the evaluator.

The observations made in the above paragraphs were made with reference to the noneconomic aspects of performance, but they are just as applicable to the economic issues. The additional difficulty in evaluating costs is that cost must ultimately be related to the entire complex range of other issues. What quantity, type, and quality of legal services are rendered for what dollar amount? Is this optimum efficiency? How much is society willing to pay? How much waste, how much uncertainty in terms of objective, rationale, and performance, can society be expected to accept? There are no definitive answers. One problem is that there is no more agreement about efficiency than there is (and in part *because* there is not) agreement about legal need, service quality, etc. Also, the programs actually in existence have not been funded on an open-end basis, but instead have often run on budgets much too small, so that in practice the question of economics has been twisted beyond retrieval. The funders of the programs have a priori determined the economics of the programs, thus affecting the noneconomic aspects of performance before the latter could serve as any kind of guide to reasoned economic decisions.

The foregoing paragraphs are intended to create awareness of the limitations inherent in this job. This report does not offer a systematic approach to studying the delivery of legal services. No objective or agreed-upon evaluative criteria are formulated or presented; such an attempt would be fruitless.[2] The programs and their proponents by their own confusion of objectives make such an effort virtually impossible. Moreover, we want to avoid the kind of controversy that would probably result if we did try to present any set criteria and would thereby obscure those conclusions and observations we were able to make. Instead the study and its presentation in this report constitute essentially an operational approach; that is, in discussing the various issues we simply do our best to take the problems of significance, weight, or relevance into account as they present themselves. Many of the problems with this presentation are obviated by the fact that we are comparing models, giving at least a comparative meaning to

2. *Cf.* the Office of Economic Opportunity (OEO) evaluation criteria, chap. 1 *supra*, note 7.

the discussion. More positively, there is virtue in presenting facts and arguments in a way that permits the reader to frame the context and judge the significance for himself. As such, a good deal of the semblance of order and system in this report is merely a function of the fact that some organization is always attainable: it does not imply that either the author or the reader was, is, or should be totally constricted thereby—precluded from alternative inferences, interpretations, or value judgments.

GEOGRAPHICAL AND PROGRAM FOCUS OF THE STUDY

The data for this study were gathered in the summers of 1971 and 1972 in the Judicare areas of Wisconsin and Montana and in the Upper Peninsula of Michigan, which is served by a staffed-office program. The salient characteristics of the areas and programs are detailed below.[3]

Judicare operates in the 28 northernmost counties of Wisconsin, a predominantly rural, sparsely populated, and economically disadvantaged area with a population of around 615,000, about 20 percent of whom have incomes below or near enough to the "poverty level" to be eligible for the program's services.[4] The area has a significant Indian population in relation to the total poor population. About 8,000 Indians (probably at least 50 percent of whom are eligible for the program) live in nine distinct reservations or concentrations throughout the Judicare area, and another 10,000 to 11,000 live outside the area (about 4,000 in Milwaukee and about 3,000 in and around Green Bay and the Oneida Reservation) and make frequent visits to the northern counties from which they originated. The central Judicare office provides service to Indians outside, as well as inside, the Judicare area.

The only towns in the area of significant population (about 32,000 and 45,000, respectively) are Superior and Eau Claire; these towns have almost an urban flavor. The remainder of northern Wisconsin can be fairly characterized as small town and rural. About 400 lawyers practice in the area, many on their own and most others in small firms of 2 to 5.

In Montana, Judicare exists only in 5 counties in the west-to-northwest corner of the state. (The other counties in the state are served by staffed-office legal services and "circuit-rider" lawyers.)

3. See also the maps in app. A *infra*.
4. The derivation of the population figures is given in the note for table 2.1.

While this area—like Wisonsin's Judicare area—is on the whole rural, sparsely populated, and economically undeveloped (the 5 counties range from around 10 percent to more than 25 percent of its families below or near the poverty level), compared to some other portions of Montana it is a promising and economically prosperous part of the state, whereas the 28 Judicare counties in Wisconsin constitute a definite "poverty area" in that state. Missoula (population about 30,000), the third largest town in Montana behind Billings and Great Falls (about 60,000 each), lies in the middle of the Judicare area. But it and the 2 counties that surround it (Missoula and Mineral counties) are not under the Judicare plan; they operate with a staffed-office program. The largest town in the Judicare area proper is Kalispell (Flathead County) with a population of 10,500. The Judicare counties also include a numerically significant Indian population living in relative poverty on the splintered Flathead Reservation not far in physical distance, but far in sociological terms, from Flathead Lake, a developing tourist area. About 50 lawyers practice in the 5 Judicare counties. As in Wisconsin, many are sole practitioners; the others are in small firms. The natural beauty of the area is overwhelming, especially to one whose frame of reference for beauty is watching the brown tundras on Chicago's South Side turn mildly green in spring.

Judicare in Wisconsin and Montana works as follows: normally, the person seeking legal service applies for eligibility certification[5] at the local Community Action Program (CAP) office or at the county welfare agency.[6] In some instances application may take place in or near the applicant's home or even at a hospital, at a home for the aged, or on an Indian reservation. Also, application in some situations (particularly in Wisconsin) is made at the initiative of personnel authorized to certify 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, the presentation of which enables him to obtain free legal service from a private attorney—at the attorney's office. Judi-

5. For eligibility criteria see app. B *infra*.
6. There is some evidence that local offices in at least one of the Montana counties depend on the lawyers' assessment of eligibility before certifying. This, however, is not the rule.

care relies on the natural distribution of private lawyers in the area for the delivery of legal services. The cardholder may select any attorney from his county or from adjoining counties.

Attorneys in the Judicare areas may refuse to serve any specific cardholder or even to participate in the program at all. But most of the 400 practicing attorneys in the Wisconsin area and most of the 50 in the Montana area do participate, although the extent of involvement is very uneven.

Judicare covers only civil matters, though some misdemeanor and quasi-criminal work prior to arraignment is done under the programs when no other representation is available. Also excluded from coverage are fee-generating cases, income tax matters, and patent and copyright problems. These restrictions on substantive coverage result from policy decisions made on the national level and extend to all legal-services programs regardless of type.

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 on whether the matter on which the attorney is giving counsel is covered by the program. When the attorney completes a case, he sends a request for final payment to the central office. Payment is made pursuant to a fee schedule stipulating flat rates in some instances and hourly rates for other work. Typically, the rates were originally set at about 80 percent of the state bar minimum fee schedule, but by now they amount to barely 50 or 60 percent. Initial conferences are reimbursed at $5, and no attorney may receive more than $300 per Judicare case or more than $5,000 per year from the program, except in exceptional circumstances where a waiver may be requested and granted (see appendix C for the full Wisconsin Judicare fee schedule).

The Wisconsin program—in operation since June 1966 and therefore the longest in duration as well as the largest in area and population covered—is funded by the 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 board of about 30 members made up of attorneys practicing in the area, community action personnel, and some persons eligible for the program's services. The director of the program and his staff carry on its administrative aspects, 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.

Montana Judicare is run from Helena, the state capital, by the Montana Legal Services Association, which also administers the staffed-office and circuit-rider efforts in other portions of the state. OEO is the funder of Judicare in three counties (Ravalli, Lake, and Sanders), where the program began in 1967. The other two Judicare counties (Lincoln and Flathead) were added in 1969 and are funded by the Department of Health, Education, and Welfare (HEW). The source of funding apparently has no operational consequences.

The staffed-office program of Upper Michigan, operational since 1967, extends to all 15 counties of the Upper Peninsula (UP). The total population of the area is about 305,000 with about 20 percent having incomes below or very near the poverty level (i.e., eligible for the legal-services program). There are three small Indian concentrations, but compared to Wisconsin, the Upper Michigan Indians are few in number and low in political visibility. In other respects, however—demographically, economically, and culturally—northern Wisconsin and the Upper Peninsula of Michigan are quite similar. Presumably the legal problems and needs of the areas are comparable as well; some evidence to substantiate this presumption is presented later. The Montana Judicare counties also have many features in common with the Wisconsin and Michigan areas.

Six regional offices, strategically located among the 15 counties and each serving 2 or 3 counties, comprise the UP program. The Sault Ste. Marie office not only provides legal services but also functions as the central administrative office. The other five offices are at Marquette, Houghton, Bessemer, Iron Mountain, and Escanaba. Generally small town and rural in character, the Upper Peninsula's largest town is Marquette, with 22,000 people. Sault Ste. Marie and Escanaba have a population of about 15,000 each.

Manning the regional offices are seven staff attorneys, one for each office except one which has two.[7] Handling the cases of poor clients under the program is a full-time occupation for the staff lawyers, for which they are paid a regular salary. To be more accessible to clients in outlying areas the UP staff attorneys used to "ride the circuit," but travel within the regions on the part of the attorneys has since been restricted by a policy decision. Now service emanates primarily from the regional offices, though one or even two days per week may still be spent in temporary offices

7. The number of staff attorneys has fluctuated between six and eight during the course of the Upper Peninsula (UP) program operations.

away from the regional offices. In addition to the seven regular staff attorneys, the UP program has for the past two years also had a special "law-reform" attorney. Also, the administrator (director) of the program in Sault Ste. Marie is an attorney who devotes at least a small portion of his time to legal work.

There is no separate application or card-issuing system under the staffed-office program. Prospective clients go directly to the regional office nearest to their place of residence and are checked for financial eligibility there, usually by one of the secretaries. Limitations on the types of substantive legal problems covered are similar to those restricting Judicare services except that the UP program—contrary to national policy—has under various arrangements with local county governments been significantly involved in misdemeanor representation.

The UP staffed-office program is funded by OEO. In duration and function it is a typical staffed-office operation. In fact, earlier evaluations depict the program as well run and successful. The Judicare programs of Wisconsin and Montana are the only such programs that have been in existence long enough to be susceptible of evaluation. There is ample basis for meaningful comparison of the programs.

METHODOLOGY

It must be stressed at the outset that many of the issues involved in studying legal-services programs or models are for practical purposes not susceptible of empirical investigation. Much of the controversy about the effectiveness of one model or another concerns matters that are very difficult to measure, and views tend to boil down to assertions of political preference and of social and economic priorities. This is especially true of a number of basic socioeconomic issues such as: Who should finance the efforts, to what amounts, and by what methods? Which governments—federal, state, or local—or agencies or economic strata of the population should bear the financial burden and in what proportions? Should the poor themselves share some of the burden and why? Sometimes the existence of these questions is not even recognized, or else they are ignored or assumed to be beyond controversy, and only modular preferences and rhetoric remain. In a report as comprehensive as this one is intended to be, we will enter the discussion of these issues, but briefly and toward the end of the report.

More significant contributions to the legal-services debate can be made by the empirical study of those aspects most readily open to such study. Many facts are accessible and have been ignored or distorted in the past only to disguise the underlying political assumptions and emotions that have thus far determined the shape of legal services to the poor.[8] In view of this, the primary sources of data for this report are personal interviews conducted in the field with participants in the programs (clients, potential clients, lawyers, and card issuers). Because, as indicated above, the range of relevant issues is far greater than can be covered in a manageable empirical study, we cannot rely solely on this first-hand information and must resort at times to supplementary data. This secondary information includes existing literature—nonempirical writings and some empirical material of limited reliability that is often also difficult to obtain—, program statistics, bar proposals and resolutions on the issues, and verbal theories and speculations.

Perhaps the biggest gap in the data—first-hand as well as secondary—stems from the fact that Judicare experiments of any validity and duration have been conducted only in predominantly rural areas. Thus the most speculative conclusions are those on the feasibility of this particular legal-services approach in large urban complexes.

The field work, designed to gather the primary data and conducted in the summers of 1971 and 1972 by the author and two assistants,[9] took the following forms for the following reasons. In Wisconsin, we first selected 3 counties to be representative of the total 28-county area. Ashland County, Forest County, and St. Croix County are quite diverse in terms of population, economy, and available legal resources; but this diversity is representative in that each selected county is typical of a group of similar counties (see tables 2.1 and 2.2). This permits inferences about the total Judicare area.

8. 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."

9. The assistants were Cynthia Stowell (A.B., Sociology, Boston University, 1973) and Richard Gordon (A.B., Anthropology, University of Chicago, 1972; New York University Law School).

Once in the field, we decided to extend the investigation to the town of Superior (Douglas County) for a brief look at Judicare in a semiurban setting and to Red Cliff Reservation (Bayfield County) to continue a special focus on Indian problems already implicit in the study from the existence of Indian populations in Ashland and Forest counties. Red Cliff Reservation is the residence of about 400 Indians of the Chippewa tribe. In Ashland

Table 2.1 Demographic Characteristics of Wisconsin Counties Studied[a]

	Total Population	Total No. of Families	*Eligible Families* No.	Percent of Total	No. of Lawyers	No. of Eligible Families per Lawyer
Ashland Co.	16,743	4,059	828	20.4	9	92
Forest Co.	7,691	1,921	533	27.8	2	267
St. Croix Co.	34,354	8,306	855	10.3	19	45
Entire Judicare area .	613,628	152,213	27,094	17.8	391	69

[a]The population and income figures are from the 1970 census. The number of eligible families here (and in all such tables for Wisconsin, Montana, and Michigan) is the census figure given for families with "income less than 125 percent of poverty level." The reasons for taking the 125 percent figure are that (a) the program cutoff lines for eligibility are slightly higher than the standard 100 percent poverty level, though not 25 percent higher (see app. B *infra*); but (b) the programs studied began in 1966–67 when the income level of the populations was substantially lower than presently, and there were more eligibles than even the 1970 125 percent criterion shows; and (c) the census excludes program eligibles such as students, prisoners, and armed services personnel. If anything, therefore, the 125 percent criterion results in a conservative count of the population that is and has been eligible for the duration of the programs.

Table 2.2 Demographic Characteristics of All Wisconsin Judicare Counties[a]

Population:	No. of Counties
Below 10,000[b]	7
10,000–30,000[c]	14
Over 30,000[d]	7
Percent of families eligible:	
Below 15 percent[d]	5
15–25 percent[c]	16
Over 25 percent[b]	7
Eligible families per lawyer:	
Below 50[d]	4
50–200[c]	21
Over 200[b]	3

[a]See note to table 2.1.
[b]E.g., Forest County.
[c]E.g., Ashland County.
[d]E.g., St. Croix County.

County is the Bad River Reservation, residence of a "band" of 600 to 700 Chippewas. And in Forest County are the Mole Lake Reservation (about 200 to 250 Chippewas) and the more scattered and even smaller band of Forest County Potawatomies. St. Croix County has no significant Indian population.

The following summer the field team returned to Wisconsin for a two-week study of the Menominee Indian situation. The Menominee problems have become politically very explosive and are also very sensitive from a "human" point of view, and we felt that the situation would be a critical (if perhaps an atypically critical) test of the Judicare performance. The investigation took us into Shawano and Langlade counties, where the lawyers who serve the Menominees are located, as well as into Menominee County itself.

In Montana the field work took place in three of the five Judicare counties. The programs of Ravalli and Lake counties are OEO sponsored. Flathead County's program, the other selected for study, is HEW sponsored. The field team spent time on the Flathead Indian "Reservation," which is mainly in Lake County but also partly in Sanders County. Thus the study fairly well covered the Montana Judicare area (see table 2.3).

The investigation of the Upper Michigan staffed-office program extended to all 15 counties of the Upper Peninsula. Most of the field team's time was spent in the six towns where the regional offices are located because most of the cases originate there, but we also paid significant attention to the outlying areas. We visited each of the three Indian concentrations on the Upper Peninsula—Bay Mills (Chippewa County), Potawatomi (Menominee County), and L'Anse (Baraga County).

To assure comparability, the same interviewers and essentially the same interview instruments were used throughout the study and for each program—Wisconsin, Montana, and Michigan.[10] The numbers and categories of respondents formally interviewed by questionnaire are shown in table 2.4.

In Upper Michigan the only respondents we interviewed formally by questionnaire were actual clients of the program; we interviewed 85 such clients. Since there are only seven staff attorneys, we informally interviewed them and also the administrator-

10. Other than a few minor organizational and semantic changes, the only difference between the Judicare and staffed-office client interviews was that the latter contained no questions regarding the card-application process since that process is confined to the Judicare model.

attorney. We also spoke to some of the UP judges about the program and to some local private attorneys. In addition we informally interviewed a number of Indians on the UP reservations, speaking to the chairman, some "common folks," and on one occasion a (white) private tribal lawyer.

In Montana and Wisconsin we also spoke informally to many individuals in addition to those formally interviewed. We talked to at least 25 to 30 more eligibles, several judges, social-service officials, and a number of Indian leaders. The informal interviews provide impressions that are used in this report to substantiate or qualify the more rigorous data derived from the questionnaires.

Table 2.3 Demographic Characteristics of Montana Judicare Counties[a]

	Total Population	Total No. of Families	*Eligible Families* No.	Percent of Total	No. of Lawyers	No. of Eligible Families per Lawyer
Ravalli Co.	14,392	3,795	869	22.9	8	109
Lake Co.	14,445	3,668	962	26.0	10	96
Flathead Co.	39,460	10,020	1,524	15.2	24	64
Sanders Co.	7,093	1,832	323	18.0	3	108
Lincoln Co.	18,134	4,596	454	9.8	11	41
Entire Judicare area	93,524	23,911	4,132	17.2	56	74

[a]See note to table 2.1.

Table 2.4 Respondents Interviewed, by Category and Judicare Area Location

				Eligible Persons		
	Lawyers	Welfare Officials	CAP Officials	Total	Clients	Non-clients[a]
Wisconsin:						
Ashland Co.	7	1	2	28	9	19 (3)
Forest Co.	1	1	0	15	4	11 (2)
St. Croix Co.	10	1	0	20	11	9 (1)
Superior	10	1	2	11	9	2 (0)
Red Cliff Res.	0	0	0	8	4	4 (4)
Menominee Co.	0	2	1	21	12	9 (7)
Shawano Co.	6	0	0	0	0	0
Langlade Co.	5	0	0	0	0	0
Total	39	6	5	103	49	54 (17)
Montana:						
Ravalli Co.	4	2	1	17	9	8 (0)
Lake Co.	5	1	1	17	15	2 (0)
Flathead Co.	9	1	0	6	3	3 (0)
Total	18	4	2	40	27	13 (0)
Total Judicare system interviews	57	10	7	143	76	67 (17)

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

As for the rigor of the questionnaire data, some qualifications are in order. First of all, as can be seen from the tables, the samples are not large.[11] Second, some of the samples are not randomly selected in the technical sense. There are no problems with the lawyer samples, since we interviewed almost every sole practitioner and at least one member of almost every small firm in the counties selected for study.[12] The eligible persons interviewed, however, represent a much smaller portion of the total relevant population, and the process of selection was not entirely scientific.

In Upper Michigan the clients interviewed came from what began as a statistically random sample from the Peninsula's total 15-county area. Initially, every thirty-fifth client card was drawn from the program's 7,000-client intake over the past two and a half years. Letters were written to these 200 clients announcing our intention to conduct interviews on the subject of service received under the program. Stamped, addressed cards were enclosed in the letters, which clients could check and return if they did not want to be interviewed. Eighteen clients did so. Another 40 clients were dropped from the sample because they had moved and were not locatable.

This left 142 clients. Interviews were conducted with 85 of these, the remainder dropping out because they refused to be interviewed (7), had never heard of the program (5), could not be located because they had moved permanently (12), were away for the summer (10), or simply could not be found at home during any of the several visits made by the interviewers (20). This left out of the sample some of the more mobile, the less communicative, the drifters, those who keep odd hours, those with bad memories, and so forth. But this is hardly a homogeneous group, and while the limitations thus created on technical statistical significance are obvious, there is no reason to suspect that those we missed would have radically different views from the views of those we interviewed on the specific issues contained in the questionnaire.

In Wisconsin and Montana the field team had to use a very difficult and tedious process in locating and interviewing those eligible for Judicare. Because the program directors would not give the names and addresses of the clients to the researchers—on

11. Largeness of course isn't everything. The political Gallup Polls, from which reliable inferences about the total U.S. voting population are drawn, employ samples of about 1,500. Randomness is a much more crucial attribute in avoiding bias in statistical samples.

12. See Brakel, *supra* note 1, at 118, n. 52.

grounds of "confidentiality"[13]—every other conceivable method to find the poor was used. The variety of methods used reduces the possibility of significant bias in the sample eventually obtained. A major difficulty was that the poor in the rural areas of Wisconsin and Montana are quite scattered, the only concentrations of poverty being on the Indian reservations and in some parts of the larger towns. Poor people and clients were eventually found by talking to local lawyers, welfare and Community Action Program (CAP) personnel, other social-service officials, ministers, gas-station attendants, bartenders, reservation chairmen, owners of low-rent housing, chamber of commerce personnel, etc., and by simply driving through the areas looking for poorly kept homes, public-housing projects, and trailer courts and then checking eligibility for and use of the Judicare program. Then followed the interview. Some of the same shortcomings as in the Michigan sample resulted. Some of the more reticent, some of the more mobile, etc., were missed. But again, there is little basis for believing that this affected the findings in any significant way.

In sum, we formally interviewed 143 eligibles in the Judicare areas, including 93 with Judicare cards and 76 who had actually received legal service under the program, and 57 Judicare lawyers. We also formally interviewed 85 client respondents from the staffed program in Upper Michigan and informally interviewed the staff lawyers. In addition there were interviews—both formal and informal—with other eligibles, judges, welfare and CAP people, program administrators, and so forth. The significance and reliability of the responses of those interviewed are reinforced by the fact that similar response patterns appear in subsamples from the various counties and programs studied. In the presentation of the data throughout this report we will point out this cumulative effect, which offsets doubts about reliability that might be caused by the lack of size and of scientific purity of the samples. The insights of the various groups of program participants are absolutely essential[14] to an understanding and fair evaluation of the operations of the programs. This information is (and must be) the core information from which all other inferences and speculations

13. See *id.* at 119–21, for a discussion of the confidentiality issues.

14. Despite all the rhetoric on "involving the poor," few take this phrase seriously. The views of poor clients are all too frequently dismissed as uninformed and irrelevant or even detrimental to the clients' own interests. Even the views of participant lawyers (Judicare or staffed office)—those confronted with the practical problems and decisions concerning the delivery of legal services—appear rarely to be sought or heeded.

about legal services flow. Prior studies or statements on legal services for the poor have little credibility largely because this central data base has been lacking—has usually not even been sought!

Chapter 3

Steps Prior to Use: Reaching the Poor

To serve the poor a program must reach the poor. In some situations it may, to make itself known, have to seek out the poor. There are obstacles to achieving these objectives. How well these obstacles are overcome by a particular legal-services program is a test of an important aspect of its total performance. It also provides an explanation of, and a perspective on, other aspects of performance.

In our questionnaires we asked the poor about their knowledge of the legal-services program in their area, about when and how they obtained that knowledge, and about the process of application for eligibility and certification. In short, we sought to obtain a picture of the steps and/or obstacles prior to actual use of, or receipt of legal service from, the programs. In addition to the evidence provided by the responses of the poor, complementary information was elicited from welfare and Community Action Program (CAP) personnel and from the lawyers who play various roles in, and thus have first-hand knowledge of, the certification process. Finally, to the verbal data obtained through the questionnaires we can add some concrete facts such as the physical location of the users in relation to that of the deliverers of the services.

The Judicare model appears to be especially well designed to reach the poor in rural areas. The reasons or evidence for this assertion, together with an indication of shortcomings, possible improvements, and some limited comparisons, are the subject of this chapter. Included also is a discussion of the Judicare card system, for which there is no equivalent under the staffed-office model.

LEVELS OF AWARENESS AND EXPLANATIONS

The data do not permit hard quantitative statements about the precise percentage of the eligible population that is aware of the program's existence and the percentage that is not. All the evidence put together, however, suggests that awareness of Judicare in Wisconsin is widespread, that awareness is somewhat less in Montana, and that the staffed-office program in Upper Michigan is also well known among the poor in that area. The details that lead to these broad assessments may be more interesting than the assessments themselves.

General Impressions

In Wisconsin, while we did meet eligible people who had not heard of Judicare, we were surprised to find so many who had, even in the most isolated and outlying areas. A roughly similar impression was obtained of the level of awareness of the staffed-office program in Upper Michigan. In Montana, the level of awareness of Judicare appeared to be slightly lower, especially in those counties where Judicare had been operational only since 1969. One problem in assessing awareness was that in Upper Michigan it was not always clear whether the respondents really knew of the program or only understood the meaning of the term "Upper Peninsula Legal Services" when the interviewers mentioned it. A follow-up question to "Have you ever heard of . . . ?" was how the respondents themselves would describe the program. The answers to this latter question revealed some obvious instances of ignorance or mistaken identity, typified by one respondent who confused legal services with welfare services and said "That's where your check comes from every two weeks." Moreover, several other respondents who described the Upper Peninsula (UP) program reasonably correctly gave the impression that this was only because the name of the program was self-explanatory and that their first encounter with it was through the interviewer. No such difficulties were inherent in the Judicare awareness responses, the term Judicare not being self-explanatory.

Ways of Becoming Aware

How the poor found out about the programs is revealing. Table 3.1 indicates the diversity of sources. The most striking aspect of this breakdown is the predominance of the welfare-CAP response from the Judicare areas, especially in Wisconsin. By contrast, poor

Table 3.1 Source of Awareness of Legal-Services Programs

	Wisconsin Judicare					
Heard from:	Ashland, Forest, St. Croix Cos.; Superior, Red Cliff Res.	Menominee Co.	Total	*Montana Judicare* (Ravalli, Lake, Flathead Cos.)	Judicare Total[a]	Upper Michigan Staffed-Office Program (all 15 counties)
Welfare or CAP ..	27	15	42	14	56	19
Friends or relatives	15	3	18	11	29	24
Lawyers	8	1	9	5	14	7
News media	5	0	5	1	6	4
Court	2	0	2	0	2	9
Others[b]	8	1	9	1	10	22
Total	65	20	85	32	117	85

[a]The Judicare totals include all those interviewed who knew of the program, including "aware" nonusers as well as users.

[b]"Others" includes ministers, hospital personnel, police, phonebook, and responses like "just knew," "always knew," "saw sign," etc.

people in Upper Michigan found out about their program mainly through friends, relatives, and "others." The reason for this contrast is the formal involvement of the welfare and CAP agencies in the Judicare system as eligibility certifiers and card issuers. This appears to be a salutary aspect of the Judicare model in that it facilitates and hastens the spread of knowledge about and probably use of the program, since these agencies are poverty agencies by primary function and thus are already in contact with many of the poor. The staffed-office model, on the other hand, must depend on less formal and hence more sporadic help with publicity from welfare and CAP agencies.

The involvement of the bar in Judicare is probably also an advantage in terms of promoting public awareness, though this is not strongly brought out in the data presented in table 3.1. Of course both models—Judicare and staffed office—also depend heavily on informal communication among the poor themselves and between the poor and various other people. The overall diversity in communication sources is apparent and similar in both legal-services models. It seems fairly certain, however, that because the Judicare structure more fully exploits the various communication channels that are common to both models—in that no person in the Judicare areas can be far away (either physically or otherwise) from one of the official participants in the program—the poor find out more easily and earlier about Judicare than about a staffed-office program. The fact that only 2 of the 117 eligibles (76 clients) found out about Judicare through a court—the last stage in the processing of a legal problem—compared to 9 of 85 staffed-office clients seems to indicate early awareness.

Location and Characteristics of Resources and Eligible People

Some evidence other than the responses of the poor people we interviewed bears out the same point about public awareness. For example, the relevant physical situation in the three representative counties studied in Wisconsin is as follows. 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 (Community Employment Program) offices and all but one of the lawyers are located there. Two-thirds of the population of the county also resides in the county seat. But a second CAP office, in Butternut (in the southernmost part of the county), is quite active with Judicare and is responsible for the significant level of awareness about the program on the part of the poor in the 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), New Richmond, Baldwin, and Glenwood City—from the westernmost to the easternmost part of the county. The presence of a central CAP office in neighboring Dunn County has also proved to be a significant factor in reaching the poor. Forest County is much less favored, with both welfare and CAP offices only at 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 from neighboring counties.

On the Wisconsin Indian reservations the level of awareness of Judicare appears to be exceptionally high, in part because of the physical and social closeness among the reservation Indians and the presence of hordes of social-service personnel (often Indians themselves) such as CAP coordinators, whose job, at least in theory, includes "Judicare coordination."[1] On Bad River Reservation (Ashland County) and on Red Cliff Reservation (Bayfield County) we rarely found individuals who did not know of Judicare. As many as 40 percent of the Indian families on these reservations (where perhaps 50 to 60 percent are eligible) were estimated to have had Judicare cards at one time or another. In Menominee County as well—the "terminated"[2] reservation—almost all the Indians knew about Judicare, with an estimated 200 or more cards issued for a total eligible population of 240 families. Forest County Indians (Mole Lake Reservation and especially the scattered Potawatomies) appeared to be somewhat less aware of the program. We have no data on the other northern Wisconsin Indian groups.

1. One positive aspect of the dependency syndrome that afflicts many Indians on the reservations is that expensive and time-consuming efforts to publicize the availability of new programs or benefits are not needed.

2. Termination has various facets that may or may not obtain in individual cases, but ultimately it means the severance of the Indians' special relationship with, the end of their status as wards of, the federal government and the attainment of full citizenship including full assumption of national and state rights, prerogatives, and obligations. In 1961, eight years after Congress announced termination to be the official policy for the Indian tribes of the United States and seven years after the specific Menominee Termination Act was signed into law, the Menominee Reservation was in effect terminated and became Menominee County of Wisconsin.

In the city of Superior, the poor also seemed to be well informed about Judicare. In fact, the number of cardholders and cases per eligible person in Superior is higher than it is for any of the 28 counties with the possible exception of Menominee County. The explanation apparently lies in the easy accessibility of a good supply of lawyers, an energetic CAP office, and the physical and social proximity among the poor in Superior, who appear to lead far less isolated lives than some of the (white) rural poor.

Rather than detail the Montana Judicare situation, we can simply say that it is essentially similar to Wisconsin's. That awareness lags in some Montana counties is attributable in part to less energetic involvement on the part of welfare, CAP, and lawyers than in Wisconsin, which in turn may be partially explained by the more recent inception of the program. The Montana results in table 3.1 lend some substantiation to these assertions.

That the Upper Michigan program has done as well as it has is to the credit of the director and staff. The resources for promoting awareness and use of the program are less formidable than those that are or can be mobilized under the Judicare model. The only concrete data from the UP are the responses of the clients (table 3.1) and the numbers and distribution of cases, to be presented later. On the whole it appears that the level of awareness of the program in Upper Michigan is lower and comes later among the Indian population and among the "most rural" white poor than among similar groups in Wisconsin. On the other hand, the level of knowledge of the program in the towns, especially the larger towns, on the UP is quite high and appears to match the Wisconsin performance easily. Awareness (and "acceptance") of the Upper Michigan program also seems to be substantial among the UP college students. We did not have enough contact with students in Wisconsin to make an assessment in that regard for Judicare.

The Role of Lawyers

The part played by lawyers in the program publicity process has several facets. Judicare has an advantage in that the many lawyers distributed throughout the target areas are official participants in the program. On the other hand, the charge has been made that private lawyers, on the basis of traditional interpretations of the

"solicitation" prohibition,[3] are reluctant to take part in spreading awareness of the program among potential clients. The facts are that a few Judicare lawyers do feel inhibited on the ethical grounds referred to above; for many, however, indifference is the reason for not vigorously advertising the program (there are few law offices where Judicare signs are conspicuously posted, and not many lawyers have participated in seminars or given speeches concerning the program except in the first year of the program's operation). But there are some lawyers who have been active in promoting the program all along.

Lawyers in staffed-office programs are thought to be more vigorous and to feel less restrained on this issue. This seems to hold for the UP lawyers. On the other hand, the staffed-office lawyer in Missoula, Montana—fearful of the reaction of both the private bar and the courts—did very little publicizing. Finally, staffed-office lawyers in a given target area are few and far between; for 2 or 3 staff attorneys to have the same impact as the equivalent 30 private lawyers, the staff attorneys would have to spend a proportionately much larger amount of their time publicizing their program.

For promoting awareness of the program, the formal involvement of welfare and CAP agencies and other card issuers, and of the lawyers, is thus a particular asset of the Judicare system. It has been argued, however, that in terms of certification itself and consequent actual program use there are serious disadvantages to the welfare and CAP involvement. We turn to this issue now.

THE JUDICARE CARD SYSTEM

There are several arguments against the card system and the involvement of certifying agencies such as welfare and CAP. One obvious reservation concerns the fact that the person seeking legal service has to go through an extra preliminary step before obtaining help. Not only may this be annoying, but it may also in some instances prevent use of the program. The latter consequence would be especially likely if additional reservations existed regarding the character of agencies such as welfare and CAP. A common view is that their personnel are often unsympathetic,

3. See ABA Canons of Professional Ethics Nos. 27, 28; ABA Code of Professional Responsibility No. 2, indicating the elusiveness of the concept of lawyers' "solicitation."

ungenerous, and even punitive toward the poor and that this attitude results in restrictive interpretations on Judicare eligibility and interference with the lawyer-client relationship. Finally, it is said that a stigma is attached to the agencies, which inhibits some of the poor from applying for Judicare eligibility.

The discussion below meets these arguments with facts that negate their validity, temper their significance, or offset their validity with countervailing positive consequences.

Cards for Future Use

Of the 66 cardholders we interviewed in Wisconsin, 45 responded that they had applied because of an immediate legal need, but 21 stated that they had obtained their card for future use.[4] The phenomenon of obtaining Judicare cards for future use is a peculiar and salutary feature of the Judicare model. It is also indicative of factors that counter the arguments against the card-issuing system.

The immediate advantage to an eligible person of obtaining a card for future use is that when a legal problem does arise there will be no uncertainty and delay in connection with eligibility determination. A more subtle benefit is the psychological one. Several respondents volunteered that just having a Judicare card made them feel "more secure," "more confident" in their day-to-day dealings because it meant "not having to let things be when they go wrong."[5] This psychological benefit of the card system would by itself offset some purported disadvantages of the system, but there are other benefits as well.

The obtaining of Judicare cards for future use also suggests that some effective outreach is performed by welfare and CAP, in that participation in the program is not confined to those among the poor who are motivated (made aggressive or even desperate) by virtue of an existing and immediate legal need. Somewhat sketchy evidence derived from a series of attitudinal questions asked of the poor in the interviews and discussed in an earlier report[6] appears to substantiate on a slightly different level the

4. Montana Judicare operates without this possibility. This negates much of the justification for having a card system.

5. More specific illustrations of this point are a Wisconsin respondent stating that when her husband died she felt she would need a card and got one; and a Montana woman claiming she obtained her Judicare card "to scare my husband, not to use it."

6. See Samuel J. Brakel, *Wisconsin Judicare: A Preliminary Appraisal* 33–40 (Chicago: American Bar Foundation, 1972). The analysis needed to arrive at really reliable and meaningful conclusions on these issues would be too complex for the present limited sample. This study will therefore include no further inquiry or discussion in this area.

notion that more than self-selection is involved. The high percentage of cardholders on the Indian reservations and the general distribution of cards within the Wisconsin counties (which will be presented in tables 3.2 and 3.3) also underscore the significance of the Judicare outreach effort.

Actions and Attitudes of and toward Card Issuers

More direct data than that presented above exist to refute the arguments against the Judicare card system. The purported problems of interference in the lawyer-client relationship and the possibility of stigma associated with welfare and CAP seem in fact to be virtually nonexistent. Both the poor and the agency officials we interviewed were queried at length on the question of interference —under what circumstances a card would not be issued, or going to any lawyer or a specific lawyer would or would not be recommended—but very little evidence that indicated interference could be found. As for stigma, we specifically (and in a leading way) asked the respondents with Judicare cards whether they had any reservations about going to welfare or CAP agencies. Of 93 cardholders interviewed in both Wisconsin and Montana, only 22 agreed that they had some reservations. Of these 22, 16 also said that they had reservations about asking for free services generally, the inference being that it was not the agencies but the element of charity that caused some discomfort. The very few respondents who did express deep-seated reservations appeared to direct these at a few unpopular personalities in one or two local welfare departments. Options for obtaining cards elsewhere muted the seriousness of these few problems, and several of the disgruntled added that they "didn't mind CAP." Typically the cardholders responded to the question whether they had reservations about welfare or CAP with, "They're there to help"; "Don't care to, but it's necessary"; or "If you need it. . . ." One Montana respondent answered emphatically: "Hell no, I'm proud, but not that proud!"

Very few of the poor saw distance or transportation as an obstacle to obtaining a card; thus the "extra step" in the Judicare process was not perceived as too cumbersome from that perspective either. Finally, reservations about welfarism and any attendant stigma that the poor might feel does not extend to the

actual provision of legal service under the Judicare system. By contrast, that is a problem of some seriousness under the staffed-office model, as later sections of this report will bring out.

Improvements

The foregoing discussion is not intended to suggest that no improvements in the Judicare application and certification system are possible. On the contrary, while the process has several advantages that tend to outweigh actual and potential difficulties as well as to give Judicare a general advantage over different legal-service models, several suggestions for strengthening the process are appropriate here.

While welfare and CAP agencies have partially succeeded in promoting awareness and use of Judicare among the poor, including the "hard-core" poor, much more could be done.[7] For instance, all persons in contact with, or on the rolls of, these agencies could automatically be told of the availability of Judicare or even be issued Judicare cards on an automatic basis. Also, welfare and CAP could play more active roles in helping to define legal rights and problems among the poor. Presently, perhaps too much is being left to the initiative of the poor themselves, some of whom could use a measure of encouragement.

Similar comments apply to the lawyers. More could be done to promote awareness and use than the occasional speech now made or the Judicare sign sporadically displayed. Perhaps the lawyers should be given authority to issue Judicare cards in classes of clear-cut cases. This would eliminate the "extra step" where it serves no purpose—where an immediate and covered legal problem is the basis for the lawyer contact. So long as other options (welfare and CAP) for obtaining Judicare cards remain open, making the lawyers an additional, limited source for eligibility certification appears to improve the process.

Other publicity efforts could also be improved or expanded and additional certification methods explored.[8] Typically, and not

7. Early in the Wisconsin program a series of intensive publicity efforts ("Judicare alerts") took place under which Community Action Program (CAP) officials and poor people recruited by CAP went from door to door to announce the availability of Judicare services. In more recent years, however, there has been very little of this type of activity.

8. Eligibility certification via the Internal Revenue Service has been suggested. As for publicity, there were no references to Judicare services in the local telephone guides. Since there are no local Judicare offices, but only individual lawyers doing Judicare work out of their own offices, and welfare and CAP offices where eligibility is determined, any reference would entail a fairly lengthy explanation. There is also the problem that while "Judicare" is a catchy term, it is not self-explanatory and references to it should be listed under "legal services," which might create new confusion.

without justification, the Judicare administrators have responded to the above and similar suggestions with the retort that they would serve only to further overextend and underfund their programs.[9] To the extent that these are genuine concerns, if not inevitable consequences, we can say that the suggestions are at least worthy of consideration in the event of more relaxed budgetary circumstances. No doubt the legal-services programs, Judicare or others, will always remain underfunded in the judgments of some. By the same token, the overextension-underfunding response to any or all suggestions will never be entirely satisfactory.

Distribution of Judicare Cards

We present here some tables indicating the distribution of Judicare cards among the poor within some of the counties studied and among them. Limited inferences can be drawn from these statistics. A good deal of the discussion on card distribution is deferred until later sections on caseload distribution. The caseload distribution is a critical factor in evaluating the performance of a single program or model as well as a variable that permits meaningful comparison between Judicare and staffed-office operations. The staffed-office model functions without a card-issuing system, so that comparison on that ground is precluded.

Table 3.2 shows that cards seem to be fairly adequately distributed within the counties. This contradicts a common assumption that Judicare awareness and applications are largely confined to those poor people living in or near the county seat where the welfare and CAP offices are located. The figures instead tend to support our conclusion that outreach of some effectiveness to remote and isolated parts (and poor people) of rural counties occurs by virtue of the card system. The data also suggest that the uneven distribution of cards among the counties—as shown in table 3.3—is probably not so much a function of any unevenness

9. All legal-services programs, regardless of model, are underfunded—in the estimation of their directors. It is a fact, though, that Wisconsin Judicare is funded at a level—in terms of dollars per eligible family—far below staffed-office programs in comparable rural areas. See Samuel J. Brakel, "The Trouble with Judicare Evaluations," 58 *A.B.A.J.* 704 (1972), for a table and brief discussion on the funding levels of four rural legal-services programs. See also chap. 8 *infra* on cost of service.

Table 3.2 Distribution of Cardholders within Three Wisconsin Counties (based on issuance in 1970–71)[a]

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

[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.

Table 3.3 Judicare Cards Issued in Wisconsin Areas Studied from Beginning of Program (June 1966–October 1971)

Area[a]	No. of Cards Issued	No. of Eligible Families	No. of Eligible Families per Card
Ashland Co.	458	828	1.81
Superior	1,160	1,127[b]	0.98[b]
Forest Co.	158	533	3.37
St. Croix Co.	244	855	3.50
Menominee Co.	about 225	240	1.07
Entire Judicare area .	12,506	27,094	2.17

[a]We do not have figures on the number of cards issued under the Montana Judicare program. But since Judicare cards in Montana are not issued unless there is a present legal problem, the number of cards should be close to the caseload totals that will be tabulated in later sections of this report.

[b]Unless it is assumed that cards are sometimes issued to ineligibles or that the program statistics are inflated, the most tenable explanation for the existence of more cards than eligibles is that the 1970 census estimates of the number of eligibles understate the actual number of eligibles between 1966 and 1971. (*Cf.* tables 2.1 [and its note] and 2.2. Also, some families involved in divorce proceedings may have two cards.)

in welfare and CAP performance among the counties as it is a function of other critical factors. (What these other factors are, and why they are critical, is the subject of the next chapters.)

The salient aspect of table 3.3 is the marked disparity in distribution of cards among the counties. This unevenness is not explained by operational differences among the various county card-issuing agencies. The attitudes, role perceptions, and actions of these agencies are fairly uniform throughout the areas we studied. Some of the disparity is probably attributable to the physical distribution of the poor. For example, the urban-like concentration of poor people in Ashland (Ashland County) and Superior, where most Judicare resources are located, appears to be a partial explanation of the high level of Judicare activity. The physical concentration of poor people in these areas probably has sociological consequences that have a bearing on the incidence of cardholding. By comparison to Ashland and Superior, the poor in Forest and St. Croix counties appear to be more isolated physically and sociologically. The high level of cardholding in Menominee County is no doubt in part a function of the heavy concentration of poor people combined with the minority-dependency orientation peculiar to Indians in contemporary American society.

But these are at most only partial explanations for the disparities. They ignore another very important variable—the attitudes and practices of the lawyers. Not entirely separable in the real world from the factors listed above—to the extent that location, numbers, and attitudinal characteristics of lawyers are a part of the total sociological and physical circumstances that affect the poor in each area—this crucial variable can profitably be separated for analytical purposes and forms a major portion of the discussion that follows in the chapters ahead.

Chapter 4

Clients' Choice of Lawyers

Choice has an independent qualitative significance in the sense that one might say it is good for clients to be able to choose their lawyers or in the sense that clients might say they like the idea of choice. But choice is essentially also an element of access, an integral part of what motivations are operating and who is motivated to seek or inhibited from seeking legal service. In short, whether the clients can choose and what they have to choose from determine in part the qualitative and quantitative picture of access.

Under the Judicare model, clients may select the private lawyers of their choice. The staffed-office model does not afford the clients a choice of lawyers. In the abstract this has commonly been argued to be one of the major advantages of Judicare. Our initial reaction was to suspect that practical limitations on choice would mute the theoretical attractiveness of this feature of Judicare. The data uncover some of these practical limitations. Nonetheless the data also lead to the conclusion that choice is in fact meaningfully exercised by the Judicare clients and that this represents a crucial advantage with ramifications beyond the narrow issue of whether choice as such is or is not "appreciated" by clients.

The most direct evidence on the meaning of choice comes from the responses of Judicare clients to our question, "How did you pick [your] particular lawyer?" These responses are tabulated in table 4.1.

Significant among these results is the overwhelming proportion of clients who chose their Judicare lawyer on some personal basis: personal knowledge of the lawyer, referral by a friend or relative, or personal knowledge of the lawyer's reputation. In rural

areas, thus (and perhaps more so than commonly anticipated in urban areas as well), the poor rarely do, and rarely are forced to, rely on impersonal referrals or on random, blind selection. Knowledge of the lawyer personally is the single most common basis for the choice made; this includes 10 clients who selected the same lawyer they had used in days prior to Judicare. Referral by friends or relatives is the next most common basis, the personal nature of which is illustrated by the inclusion of five "family lawyers" in the responses. Particularly noteworthy in terms of the breakdown by area is the fact that all of the 12 Menominee Indian respondents made their lawyer selection on the basis of the first three "personal" categories; 11 from the first two. And this from people often thought to be in some ways isolated from white society, especially white lawyers!

Table 4.1 How Judicare Clients Picked Lawyer

	Wisconsin		*Montana*	
	Ashland, Forest, St. Croix Cos.; Superior, Red Cliff Res.	Menominee Co.	(Ravalli, Lake, Flathead Cos.)	Total
Knew lawyer personally (includes 10 clients who had used same lawyer before Judicare)	14	6	5	25
Referred by friend or relative (includes 5 clients who designated lawyer as "family lawyer")	7	5	10	22
Knew lawyer by reputation	7	1	6	14
Referred by Welfare–CAP	2	0	2	4
Referred by other lawyer	2	0	2	4
Other personal or agency referral	2	0	0	2
"Randomly" (includes phonebook, physical proximity, etc.)	6	0	2	8
Total	40	12	27	79

Of course the personal basis for choice does not guarantee "wise" choice, objectively or even subjectively. It is always possible (though not likely) that the "better" lawyers are not known or not picked, or even that the client may be disappointed with the service received from a lawyer he or she knew personally. Against those possibilities, however, the following factors should be weighed. First, there exists little basis upon which to objectively evaluate lawyers, and therefore we should be reluctant to second-guess subjective preferences. Second, the psychological

importance of the mere opportunity to choose, especially on "personal" grounds, should not be underestimated.

THE LIMITS OF CHOICE AND ACCESS: THE PARADOX OF SIGNIFICANCE

We now turn to the practical limitations on choice—physical and psychological factors inhibiting access to a lawyer and actual and potential restrictions on choice imposed by the lawyers themselves and by referral agencies. The paradox is that restrictions on access to and choice of lawyers under some circumstances serve to emphasize the significance (perhaps the "objective" significance) of choice of lawyer provided under the Judicare model.

Physical Limitations

In circles opposed to the Judicare concept, it has been fashionable to dismiss the entire issue of choice of lawyer on the ground that there are not enough lawyers in rural areas to choose from.[1] As a generalization about the Judicare areas of Wisconsin and Montana, this is simply not factual. There are about 16 lawyers per county in northern Wisconsin and about 11 per county in the relevant Montana area. In terms of number of lawyers compared to population, there is approximately 1 lawyer for every 70 poor families in Wisconsin Judicare territory and about the same ratio in the Montana area. Add to this that in rural areas people tend to know one another, and it becomes difficult to conclude that choice and access are not meaningful issues per se or are somehow less meaningful in rural than in urban settings.

Nonetheless in certain individual counties the problem of lack of lawyers is real. In northern Wisconsin there are five counties with three or fewer lawyers, including Forest County and Menominee County among the areas we studied. In Montana, Sanders County (not specifically covered in our study) has only three lawyers. No doubt choice and access are limited in these areas. This is reflected to an extent in the total caseload relative to eligible population. The impact of limited access in individual counties is muted, however, by the fact that Judicare clients can and do select

1. E.g., Leonard H. Goodman and Jacques Feuillan, *Alternative Approaches to the Provision of Legal Services for the Rural Poor: Judicare and the Decentralized Staff Program* 10 (Washington, D.C.: Bureau of Social Science Research, Inc., 1972). Such cavalier dismissal of important issues in the introductory pages does little to bolster confidence in the adequacy of the report.

lawyers from neighboring counties. Furthermore, compared to the staffed-office programs where clients have *no* choice and must travel to the town or county where the regional office is located (or where the staff attorney may visit once a week), which means similarly reduced access to legal services for many potential clients,[2] the lack of lawyers in some counties under Judicare can hardly be construed as a fatal flaw or even a flaw peculiar to the concept. The legal demands of the poor in the least favored Judicare counties of Wisconsin or Montana could in theory be met with the help of more administrative involvement than is customary under Judicare. On the other hand, no amount of administrative involvement is likely to solve the problem of meeting legal demands for large areas with very low lawyer populations, and the feasibility of "pure" Judicare proposals for such areas is suspect.

Only 4 of the 76 clients we interviewed in Wisconsin and Montana felt that their lawyer lived too far away or that transportation there was difficult. Of the 67 eligible persons interviewed who had not used Judicare, none cited distance or transportation problems as a reason for nonuse. Of the 85 Upper Michigan clients interviewed only 6 cited travel problems. (We did not interview nonclients of the staffed-office program.) Three conclusions flow from this response pattern. First, difficulties of distance and transportation are very subjective; several clients traveled 30 to 40 miles to see a lawyer but did not consider this a problem. On the other hand, one of the few clients who did have difficulties lived only a few blocks from his (Judicare) lawyer, but the client's bad health made any distance a problem. Second, it may well be that the respondents, especially nonusers, were consciously or subconsciously reluctant to admit that travel was a significant, much less a determinative, obstacle to use; we believe the questionnaire failed to an extent in this area. Finally and most important, other variables predominate in determining the distribution of legal services and overshadow in significance the distance-transportation variable on the issues of access to and choice of lawyers.

Psychological Factors

A significant portion of the Indians—especially the more vocal and politically oriented—exhibit, at least verbally, a strong mis-

2. The issue of caseload distribution under the various programs will be discussed fully in the next chapter.

trust of white society, particularly white society nearest to concentrations of Indian populations. Many Indians, though not necessarily negative about white lawyers in general, say that they are doubtful of getting fair treatment from lawyers in the neighboring town or in the county surrounding Indian lands. As a result, Indians often go to Judicare attorneys practicing in areas far removed from their reservation. Of the nine Wisconsin Indians formally interviewed (outside Menominee County), 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 own throat professionally. Five other Wisconsin Indians, spoken to less formally, had done the same thing. In Menominee County, where there are no lawyers, most Indian clients went to nearby Shawano in neighboring Shawano County for Judicare services. However, in view of considerable friction on a variety of issues between the Menominees and Shawano County residents and officials, many other Menominee clients chose to go to Antigo in Langlade County.

Choice and access thus limited by psychological and sociological factors provide the most dramatic and "objectively" meaningful illustrations of the exercise of choice. One Indian tribal official summed up the Judicare performance accordingly: "Judicare works as long as you can get a disinterested lawyer." With some extra effort, Indians can.

Still, the psychology of distrust is a serious problem. For some it produces the inconvenience of having to go far out of one's way, but other less enterprising individuals may be inhibited altogether from seeking a lawyer. That all the Indians interviewed who had not gone outside their area of residence for a Judicare lawyer were completely satisfied with the representation obtained is encouraging, but it does not denigrate the problem. A more important recognition is that the problem is not one peculiar to Judicare: Indians apparently mistrusted staffed-office ("government") lawyers no less than private Judicare lawyers.[3] Also, while

3. There is a good deal of overlapping as to which political elements of the Indian population distrust what form of service. Most of the politically "radical" Indians are as distrustful of "government" benevolence (the staffed-office model) as they are of private benevolence (Judicare). But there are some differences too. Many of the more "conservative" Indians—who are usually not negative about Judicare lawyers—do have the conservative's mistrust of government personnel. See the section on client evaluation of service, chap. 7 *infra*, for more data on this point.

the psychology of distrust is most conspicuous among the Indians, it is not confined to them, but is found on a lesser scale among the white poor as well. Finally, however, it appears that misgivings about lawyers are on the whole not so serious or prevalent as to have significant operative consequences.

For the great majority of Judicare clients—white and Indian—choosing and going to see a lawyer remains a relatively uninhibited matter, which contradicts prevailing assumptions about widespread timidity and hesitancy among the poor. Data from our questionnaires show that only 14 of the 76 Judicare clients interviewed responded affirmatively to the statement that they might "not feel comfortable about going to a lawyer generally." While some clients may have been hesitant about admitting discomfort, many stated quite positively and voluntarily that they had no reservations at all. Data presented elsewhere[4] on general attitudes toward lawyers among the poor in rural northern Wisconsin substantiate the finding that there is less of a problem than has often been supposed.[5] In sum, as we have stated above, access to and choice of a Judicare lawyer, while difficult and dramatic under some circumstances, is generally simple and workable.

In this respect the staffed-office model offers no advantages. Only 12 of the 85 Upper Michigan clients interviewed agreed with the statement that they "don't feel comfortable about going to places like Legal Services offices"—not much different from the response pattern of the Judicare clients on Judicare service. However, staffed-office clients are faced with additional discomforts that are not encountered by Judicare clients at the point of obtaining legal service. To some extent the responses detailed below indicating these psychological obstacles overlap, but there is also a cumulative aspect for the individual staffed-office client as well as for staffed-office clients as a group. Thus in addition to 12 responses indicating discomfort with "Legal Services offices," 14 respondents expressed hesitance about asking for free services generally, and 20 indicated discomfort about going to a lawyer, with some making express reference to a staff lawyer. Thus the psychological climate at the point of service appears, if anything,

4. Samuel J. Brakel, *Wisconsin Judicare: A Preliminary Appraisal* 36–37 (Chicago: American Bar Foundation, 1972).

5. It is fashionable among those concerned with the problems of delivery of legal services to focus heavily on a variety of possible psychological obstacles hindering use of lawyers, while ignoring or at least minimizing the obvious fact that the biggest inhibition to use for the poor (and many nonpoor people as well) is the cost or anticipated cost of seeing a lawyer.

less favorable for staffed-office clients than for Judicare clients. This does not even take into account certain specific complaints such as the lack of privacy in staffed offices noted by several clients. Nor does it deal with the fact and psychological effects of lack of choice, an issue we dealt with earlier and will explore further in the section in chapter 7 *infra* on client evaluations of service received.

Restrictions on Choice and Access Imposed by Lawyers

Having discussed what we have called physical and psychological inhibitions affecting clients, we now turn to the policies and practices of lawyers that may serve to limit access to legal services. Other personnel also are in a position to affect access—welfare or Community Action Program (CAP) officials under Judicare and the secretaries in staffed offices who determine financial eligibility. We found no evidence, however, that their operations functioned to restrict choice or access beyond the fact that they reflected the policies of the lawyers or the program. The policies of the program are a mixture of national policy and local administrative decisions. To the extent that the lawyers pass these on to the clients, they are discussed as lawyers' practices.

Both Judicare lawyers and staffed-office lawyers can of course control client access and choice by refusing to accept cases. The consequence of refusal under Judicare would be that the client could elect to try another lawyer. Whether he does, and whether he will find a lawyer who will accept his case, depends on a variety of circumstances. In the abstract, however, the refusal of a Judicare client by a lawyer does not eliminate client choice and access; he can go with his problem to other lawyers of his choice as long as his determination holds out. Under the staffed-office model, however, refusal of a case is essentially final: choice is never an issue, and access to the program is foreclosed until circumstances or program policies that dictated refusal are altered (which would involve really long-range propositions).

In our interviews we asked the Judicare lawyers if they had ever refused the case of a Judicare client, and if so, for what reason. Of the 57 lawyers interviewed in Wisconsin and Montana, 36 had refused the case of at least one Judicare client for reasons other than that the particular problem brought was not covered by Judicare. Nineteen lawyers said that they had never turned away a Judicare client, and 2 lawyers were not sure. The reasons for refusal varied, with conflict of interest—a ground for refusal given

by 16 lawyers—predominating. Most responses listed one reason, but a few lawyers indicated several possible grounds. Ten said they were "too busy with other aspects of practice," and 9 said they had refused a Judicare client because the problem brought was "unmeritorious."[6] Seven reasoned that the client's problem "was not truly a legal one," but this indicated that the lawyers had listened and perhaps even dispensed advice or made a referral, rather than given an outright refusal. Six lawyers refused because "the client could not win," and 4 said they had turned down a Judicare case because the maximum fee designated by the program was too low. But the elaborations to these latter responses hinted at a decision akin to that described by other lawyers as "too busy," rather than a cost evaluation of a specific problem. Finally, 3 lawyers stated they had refused Judicare clients because their practice simply did not include handling certain types of cases—bankruptcies (2 lawyers) or divorces (the remaining 1).[7]

Most lawyers were quite specific, giving only one or two situations for refusing Judicare clients, but some simply summed up their policy toward Judicare clients with "I'll refuse them for the same reasons as any other [paying] client." A few lawyers discriminated between valid reasons and reasons whose ethical or professional propriety they thought was questionable. Generally, a lawyer who refused a Judicare case would refer the client to another lawyer, though under some circumstances—for example, when the case was "unmeritorious"—no further effort was made to help the client.

The quantitative aspects of refusal are as significant as the qualitative reasons. If most lawyers turn down significant numbers of Judicare clients, then choice and access are in essence severely restricted. Precise quantification is difficult because the lawyers do not keep track and could give only rough estimates,

6. What is judged to be an "unmeritorious" case by lawyers is a complex issue. No doubt there are instances where the label "unmeritorious" is used because the client is viewed as personally or politically obnoxious or because the case is deemed too controversial. This problem can occur under the staffed-office model as well as under Judicare. We found little evidence, however, that this happened frequently in either Upper Michigan or Wisconsin and Montana. And of course under Judicare the client can (in theory at least) test one lawyer's judgment as to the merits of his case by going to another lawyer.

7. Refusals for lack of expertise ought to be distinguished from those motivated by unwillingness or resulting from program coverage restrictions. Concerning the latter, Wisconsin Judicare has from time to time restricted divorce intake on grounds of insufficient funds. For more on that subject, see the section on types of cases, chap. 6 *infra*.

but the client interviews help. The picture that emerges is one of relatively insignificant refusal rates in Wisconsin, but of a somewhat bigger problem in Montana.

The most common quantitative assessment from lawyers who had refused Judicare clients was that since the inception of the Judicare program they had turned down only one case or only a few cases for one or several of the reasons given above. However, a few of the lawyers held or had recently held positions that 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 of refusals were still relatively small. However, two or three other lawyers who deviated from the norm of none or only a few refusals were among the most heavily involved in Judicare in terms of philosophical commitment to the program and total number of Judicare cases handled. 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. Other than four fee-related responses referred to earlier, none of the lawyers interviewed admitted that the Judicare fee schedule caused them to restrict their Judicare intake, but several voiced displeasure with what they viewed as the inadequacy of the Judicare fees and a few coupled this with the "threat" that they would have to start cutting down on Judicare cases if the fees did not go up.

Data from the Judicare client interviews reveal the following on the rate of refusal: in answer to the question whether the first lawyer they went to took their case, the Wisconsin clients indicated that of the 52 cases (49 clients, 3 with 2 problems), 46 cases were accepted by the first lawyer contacted. Of the 6 cases refused, 3 were rejected on grounds that they were not covered by Judicare. One other refusal grew out of the fact that the client was from a different county than the lawyer, who "explained" 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. Another instance of refusal concerned a client who wanted a divorce. The first lawyer 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 case to the client's satisfaction. A more innocuous instance of refusal dealt with a Menominee Indian client who was referred by the first lawyer contacted to the lawyer's brother and partner in the same firm.

In Montana, 25 of 27 clients were accepted by their first lawyer, and only 2 were refused service. No referrals were made in the latter 2 instances. Because Judicare cards are not issued for future use in Montana, there is some confusion on the question of who is the first Judicare lawyer contacted. This may be an explanation for the high rate of first acceptances indicated by the Montana clients, a few of whom had related, in a different portion of the questionnaire, stories of being "bounced around" by the lawyers prior to their cases being taken as Judicare cases.

Despite the hint of a problem in both the lawyer and client responses on the issue, the limitations on access and choice under Judicare are not serious in quantitative terms. Also, the staffed-office model does not avoid the problem but, if anything, presents a more serious version of it.

Since a first refusal under the staffed-office model is final because there is no other recourse under the program, and since we interviewed only clients of the Upper Michigan program, we have no direct data comparable to the Judicare data on the limits of access. Other evidence exists, however. For example, even among those officially listed as "clients" in the Upper Peninsula Legal Services files there were many—as high as 20 percent—who in effect had been turned down by the program. They had been told by the staff lawyers either that they were financially ineligible or that the program did not cover their type of problem—or else they had been given vaguer reasons for the refusal of assistance. However, the very appearance of the names of these clients in the files plus the fact that many of the grounds for refusal were of doubtful substance hints at the probability that informal and flexible limitations on access were operative—that is, that the staff lawyers did not (or could not) take all eligible clients who came to the office. Other evidence supports this conclusion.

An earlier (1970) evaluation of the Upper Michigan program reported that there was no explicit policy of case limitation but

that occasionally, if swamped, individual offices would "put off" divorces. More generally, the Upper Michigan program, like others of its model, is particularly susceptible to the conflict-of-interest problem. Staff lawyers can represent only one side in domestic controversies. Conflicts of interest arise in other legal disputes as well, and unlike Judicare, the staffed-office model offers no program alternative for the unrepresented side. An examination of OEO (Office of Economic Opportunity) evaluations of eight Lower Michigan staffed programs reveals that intake restrictions of various types, volume, and rationale—formal and informal, planned and ad hoc—appear to be a salient characteristic of the staffed-office model.[8] In fact, the Upper Michigan performance looks good by comparison. But it is clear that staffed-office clients, financially eligible and with "covered" problems, are no less likely to be met with a refusal than are Judicare clients.

CONCLUSIONS ABOUT CHOICE AND ACCESS

A final perspective on the significance of choice in the total picture of access to lawyers can be gleaned from pieces of data that can be categorized as the Judicare clients' own evaluations of the programs.

Near the end of the interview the clients were asked what they thought to be the "good" points and "bad" points about the program that served them. Unlike the lawyers, who almost invariably singled out freedom of choice as a (or even *the*) salient and salutary aspect of Judicare, the clients rarely mentioned this aspect of Judicare spontaneously. Only 5 of the 76 clients interviewed referred specifically to free choice of lawyers as among the "good" points of the program. There were a few indirect references on the order of "Now I can go to *my* lawyer when I need him." But the vast majority of clients saw as central the fact that Judicare is "free" and "for the poor"; "when you need help, it's there" was another typical response. That the poor themselves do not emphasize choice spontaneously does not negate its significance, however. Having never had experience with a program that precludes

8. The evaluations were of the following staffed-office programs in Lower Michigan: Macomb County, Wayne County, Oakland County, Muskegon-Oceana counties, the Greater Lansing area, Calhoun County, the Bay City-Midland area, and Genesee County. While these reports and especially their conclusions are of limited utility, they do serve to point out some major problems and the traditional Office of Economic Opportunity perception of them.

choice, the Wisconsin and Montana clients probably assume it as part of any legal-services system. Also, it makes more sense 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.

By the same token, in response to the general question about "good" and "bad" points only two Upper Michigan clients specifically criticized the staffed-office model for its *lack* of choice of lawyer. However, a large number of responses implied such criticism. The following range of statements is illustrative: "The attorney here is no good—they ought to put in somebody who really cares." "It's difficult to catch him [the staff lawyer] in." "Don't like this [staff] lawyer—too condescending." "[The staff lawyer has] more cases than private lawyers"; "too busy"; "overloaded"; "too slow." "[The program is] nice for when you can't afford a *regular* lawyer" or ". . . your *own* lawyer."

In contrast to the lack of spontaneous reference to choice as a feature of access, once it was pointed out as a feature (in the very last question of the interview) it took on enormous importance for the clients, apparently causing unarticulated feelings and judgments to fall into place. The details of this phenomenon are discussed later in the section on client evaluation of service in chapter 7 *infra*.

The questions asked of Judicare clients about whether they would use Judicare again if needed and whether they would choose the same lawyer also shed light on the significance of choice. Not one of the 76 Judicare clients said he would not use Judicare again. As for going back to the same lawyer, 59 said they would, 10 said they would not, and the remaining 7 were ambivalent. Nine clients had actually used Judicare more than once, and of these 5 had gone back to their first lawyer. Of the 4 who used a different one, 2 did so because they had moved, 1 because she did not like her first lawyer, and the other because she was "embarrassed to go back for a second divorce" and besides, she knew another lawyer who "understands my problems better."

While quantitatively these responses show that the clients were on the whole satisfied with their choices of lawyers, it is more revealing to look at the elaborations. The following sample of reasons for going back or not going back to the same lawyer illustrates that Judicare clients appreciate the meaning and importance of choice: "Yes, did a good job for me." "Like a doctor, you get attached to him." "Yes, I *always* go to this lawyer." "I think so . . . he's a familiar figure and knew my dad." "It all depends . . .

some lawyers are good for some things, and others good for other things." "I don't know—depends on my problem." "Maybe I'd pick somebody else with different expertise if it's a different problem." "No, this one is too slow." "No, he's too old . . . I'd pick a younger lawyer." "Definitely not . . . I would find another attorney . . . and investigate him thoroughly."

By comparison, five of the Upper Michigan staffed-office clients said they would not use the program again. Probably this is a function of lack of choice—the fact that there is no alternative to the initial unsatisfactory experience. Ironically, however, because of high turnover among staff lawyers, the clients would in fact stand a good chance of facing a different lawyer if they went back one or two years later.

Finally, the phenomenon we will discuss in the next chapter —the uneven distribution of Judicare cases among the Wisconsin and Montana lawyers—has an implication for the issue of choice to the extent that it reveals that clients choose their lawyers according to shared and probably sound standards.

Chapter 5

Types of Lawyers and Number and Distribution of Cases

The private practicing bar is immensely diverse. This high degree of diversity holds true even for such relatively small and defined geographical areas as rural Wisconsin and Montana. Other than being predominantly general practitioners, as opposed to specialists of various sorts, private lawyers in northern Wisconsin and western Montana (and particularly in the former area) come in all shapes and sizes. The importance of this fact—which we will demonstrate in concrete and less casual terms in the pages ahead—is that it negates most of the fundamental arguments against Judicare and also the implied or expressed arguments favoring staffed offices that are based on certain stereotypes of the private bar, especially the bar in rural regions. The reality is that stereotypical dichotomies between private lawyers and staff lawyers on such issues as competence, expertise, commitment, motivation, and so forth are factually incorrect.[1]

A number of important inferences about the lawyers and the programs can be drawn from an examination of the number (and types) of cases handled and their distribution. Data on lawyers' attitudes toward poor clients and lawyers' views of the function of lawyers and of legal-services programs for the poor explain, complement, or qualify the hard figures. What emerges is a picture of the relationship, and sometimes the tension, between actions and attitudes, between hard facts and soft data.

1. For some quick sketches of rural lawyers see Samuel J. Brakel, *Wisconsin Judicare: A Preliminary Appraisal* 65–66 (Chicago: American Bar Foundation, 1972).

VOLUME OF CASES HANDLED

Since no precise figures on caseloads but only rough estimates from the lawyers themselves are available on Montana, we will not present a table but will refer in discussion to the distribution per law office or lawyer in that state. Some clarification of the total number of cases tabulated (see tables 5.1, 5.2, and 5.3) under each program is in order. The fundamental point to be made in this regard is that *no valid inferences* can be drawn about the effectiveness of a program, let alone about the efficacy of a model, from bare figures on volume. There are simply too many other fundamental questions—the volume of legal need, the strategy of legal service, the priorities in case types, the quality of service, the funds available—that must be answered first. And many of these cannot be answered with much unanimity. In addition, the problem of lack of comparability stands in the way of attempts to draw comprehensible conclusions from volume statistics. In short, responsible research demands that we proceed with the limitations of interpretation and comparison firmly in mind.

The totals on volume for Wisconsin Judicare, as recorded by the central office, show that in five years and a few months since the inception of the program, 1 in every 2.17 eligible families had been served by the program. This calculation ignores the fact that some clients are multiple users, and thus that the number of families served at least once is actually lower. But on the other hand, a significant number of cases are never recorded. In Ashland County, for example, there is a lawyer who has handled the problems of "about 100" Judicare clients but has never billed the program for any of these, meaning none are recorded. A more common phenomenon is the Judicare lawyer who bills for most of his cases, except some or all of the "initial conferences," where advice was all that was needed. The latter cases are not billed and hence not recorded because the time involved in billing is not worth the $5 retainer paid by the program to the lawyers for initial conferences for advice only. Interviews with the Wisconsin lawyers reveal that about 10 to 15 percent of the total Judicare caseload (about 40 percent of the initial conferences) goes unrecorded for that reason.

The inquiry in Montana revealed a similar pattern, and some off-the-cuff responses hinted that the phenomenon may be even more pronounced than the formal interviews show. Apparently there are numerous but undetermined numbers of "Judicare" walk-ins in private lawyers' offices that are not even recognized as

Table 5.1 **Volume of Judicare Cases for Each Wisconsin Area Studied (June 1966–October 1971)**

	No. of Cases	No. of Eligible Families	No. of Eligible Families per Case Handled
Ashland Co.	467	828	1.77
Superior	1,316	1,127[a]	0.86
Forest Co.	69	533	7.73
St. Croix Co.	258	855	3.31
Langlade Co.[b]	497	1,101	2.22
Shawano Co.[b,c] ...	550	1,511	2.75
Entire Wisconsin Judicare area	about 12,500	27,094	2.17

[a]As with the number of cards, the ratio of cases handled to the number of eligible people leads one to suspect that the number of eligibles is understated.

[b]A heavy proportion of cases in Langlade and Shawano counties—especially the latter—are from the neighboring Menominee County Indian population.

[c]Judicare in Shawano County has been operative only since 1968 (as contrasted with the 1966 inception for the other Wisconsin counties). This must be noted in assessing the meaning of the 2.75 ratio.

Table 5.2 **Volume of Judicare Cases for Each Montana Judicare County ("intake" statistics for 3 quarters in 1971–72)[a]**

		Eligible Families		Projected (5-year)
	No. of Cases	No.	No. per Case Handled	Case/Eligible Family Ratio[b]
Ravalli Co.	52	869	16.71	2.51
Lake Co.	48	962	20.04	3.00
Flathead Co.	60	1,524	25.40	3.81
Sanders Co.	15	323	21.53	3.23
Lincoln Co.	55	454	8.25	1.25
Entire Montana Judicare area ..	230	4,132	17.97	2.70

[a]The figures cover March–May and June–August 1971 and April–June 1972. These are the only figures we have readily available. Since three of the counties have been in Judicare operation two years longer than the remaining two, presenting figures for the entire operational duration would not have been very helpful. The representativeness of the statistics for the three quarters presented is confirmed by the fact that the relative order of distribution among the counties holds for each quarter.

[b]The projected Montana ratio is given to provide comparability with the Wisconsin program. This projection should not be taken too strictly. It does not accurately account for the probable lag in intake that accompanies inception of the program. However, the Wisconsin statistics cover over five years, yielding totals that offset any overestimation of the Montana client population.

Table 5.3 Volume of Judicare Cases Handled per Law Office[a] since Inception of Wisconsin Program

	No. of Law Offices Handling:					Total No. of Law Offices
	100 or More Cases	50–99 Cases	25–49 Cases	10–24 Cases	0–9 Cases	
Ashland Co. . .	3	1	1	0	2	7
Superior	5	3	3	4	4	19
Forest Co.	0	1	0	1	0	2
St. Croix Co. . .	0	1	3	4	4	12
Langlade Co. .	2	0	2	0	2	6
Shawano Co. .	2	1	2	2	3	10

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

initial conference or advice-only cases by the lawyers, but could be so recognized by some recording standards. It is the nature of the Judicare system, a function of its involvement of private lawyers with disparate habits and policies, for underrecording to be a persistent fact. By contrast, the tendency of the staffed-office approach, including (and perhaps especially) the Upper Michigan program, appears to be precisely the opposite. We will discuss that trend later.

Let us for the moment simply accept at face value the 1:2.17-in-five-years ratio for Wisconsin Judicare. Is this insufficient, adequate, or what? Ignoring the complications of case type, strategy, quality, and funding, can we say on the simplest level whether this volume comes close to meeting the legal needs of the typical poor family in Wisconsin? An obvious first question is what the number of ("meritorious"?) legal problems of such a family is over a five-year period. We run into a problem there that is more than definitional. We asked that question, in somewhat different fashion, in the interviews with the poor[2] and found that almost all had a variety of problems where lawyers were not resorted to, even though use of a lawyer would by most definitions not have been inappropriate. We found this to be the case not only in Wisconsin but also in Montana and Upper Michigan. And this nonuse appeared to be quite unrelated to the physical and psychological obstacles we had tried to explore in earlier parts of the interview. One conclusion is that our questionnaires were inadequate. That is undoubtedly true. A more significant observation, however, might be that the phenomenon is so intractable as to defy exploration beyond the unsatisfactory suggestion that it appears to be analogous to the fact that people do not go to medical doctors, not even "free" ones, with every headache or runny nose. This is so even though some doctors, especially preventive-medicine-oriented ones or those in financially precarious situations, could make a good case for the idea that people should consult them with those problems. But some things simply "aren't worth the bother," and this reality—the fact that legal-service demand is extremely elastic and legal-service need entirely definitional—is only one small example of the difficulty of making objective inferences about volume of use.

Some light can be shed on the matter by comparisons. If the Montana Judicare statistics on volume of cases for three quarters are adjusted to reflect a hypothetical five-year operation, compa-

2. For an elaboration of the questions and the responses see *id.* at 37–40.

rable to Wisconsin Judicare, the ratio of cases handled per eligible family becomes 1:2.70, compared to Wisconsin's 1:2.17. The projection of course ignores the lag in intake that of necessity accompanies the beginning phases of any program, when awareness of the services among the target population goes from zero to low to "normal" levels. Whatever the impact of this factor or any other practical intrusions that tend to upset theoretical projections, the differences in volume between Wisconsin and Montana Judicare are too small to warrant anything but the most reckless and general inferences about performance.

By contrast, the Upper Michigan staffed-office figures on volume present at first glance a picture different enough from Wisconsin and Montana Judicare to permit some speculation. An analysis reveals, however, that the differences are ones of form rather than of substance. From its inception in the fall of 1966 through the end of 1971—a period of slightly more than five years, comparable to the Wisconsin period of operation—the Upper Michigan program recorded 14,237 cases for an eligible population of roughly 14,400, a ratio of one case for every eligible family—more than twice the ratio of the Judicare programs of Wisconsin and Montana. However, a closer look at the recording system of Upper Michigan compared to that under Judicare reveals the dubiousness of the conclusion that the Michigan program has in fact reached a larger proportion of its eligible families, or even the same families more often, than did the Judicare programs.

One striking aspect of the Upper Peninsula (UP) statistics on volume is that the caseload in the last two and a half years is almost double that of the first two and a half. A new director and new administrative and recording procedures are the main reasons behind this increase in volume, as the new director himself freely admits. Presently almost every walk-in at the UP offices is recorded as a case. Other evidence of this policy is the fact that about 20 percent of the clients on our random interview list had been told they could not be served. Another bit of evidence is the fact that much of the increase in the latter years is taken up by the increase in referrals only or initial conferences for advice only. There is nothing inherently wrong with a program that dispenses advice or referrals in a large proportion—63 percent of its cases (16 percent referrals and 47 percent advice only) over the last two years at UPLS (Upper Peninsula Legal Services). Advice only can be appropriate, effective, and even dispositive in many instances. Nor is there anything wrong with a program that records all walk-ins as cases. The relevant point is that the UP recording system

makes volume comparisons with Judicare programs, where advice-only cases are often not recorded and mere walk-ins are probably never recorded, a very doubtful undertaking.

Another obstacle to comparison is that UPLS volume statistics appear to have a very high multiple-use factor. It was observed that one client was recorded to have brought 12 different cases. The prevalence of this phenomenon is confirmed by our general field impressions, which convinced us that by no stretch of the imagination had every eligible family used, or been in contact with, the program. Many families did not even know about it. Again, it should be stressed that this recording practice may be legitimate enough, perhaps helpful, for internal or operational purposes. But it is a practice drastically at variance with the Judicare recording system, and hence it defeats efforts at interprogram, intermodel comparison.

Perhaps a comparison of cases *litigated* would be of some value on the assumption that that category cannot be manipulated and hence is comparable at least on a simple quantitative level. We find that the Upper Michigan program litigates some 444 cases per year (about 330 per year in the first two and a half years of operation; about 550 per year over the latter two and a half). Wisconsin Judicare by comparison has litigated some 841 cases per year (about 670 on the average per year, but with a very high 1,200 in 1969). Taking into account the differences in total eligible population, the conclusion is that volume of litigated cases is quite similar for Upper Michigan and for Wisconsin. And the inference seems justified that total case volume (i.e., all categories), if adjusted for differences in recording, is at least not dissimilar enough to warrant broad conclusions about program "effectiveness," particularly when it is recalled that volume assumes most of its significance only in the context of demand, strategy, quality, and cost.

DISTRIBUTION OF JUDICARE CASES HANDLED: THE IMPACT OF THE LAWYERS

The inquiry into distribution (as opposed to total volume) is more productive. It tells us a great deal more about the strengths and weaknesses of the programs. It also reveals much about those who handle the cases—the lawyers. And the distribution data are better suited for comparisons among areas and programs.

Tables 5.1, 5.2, and 5.3 show that there is significant disparity

under the Judicare programs in the number of cases handled by individual lawyers and in the number of cases handled in the various Judicare counties. Forest County and St. Croix County lag very significantly behind the volume ratio of the other counties studied and also far behind the total area's average. While Superior and Ashland, Langlade, and Shawano counties have respectively four, three, two, and two "heavily involved" lawyers (100 or more Judicare cases since the inception of the program), Forest and St. Croix counties each have only one "moderately involved" lawyer (50 to 99 cases). One two-partner firm in Superior does more Judicare work than all 12 law offices in St. Croix County; and two of the most active lawyers in Ashland, Shawano, and Langlade counties each come close to matching the total Judicare effort in St. Croix County, while far exceeding the Forest County volume. (Langlade and Shawano counties, it should be recalled, draw much Judicare work from lawyerless Menominee County with some 240 eligible and "Judicare-aware" Indian families. On the other hand, Shawano County has been within the Judicare program two years less than the other counties.)

The disparities in distribution of service are less pronounced among the five Judicare counties in Montana, with only Lincoln County (not specifically studied) standing out as significantly higher in Judicare activity than the rest, and with Flathead County on the low side. While we have no official program statistics on the distribution of the cases among the individual lawyers, our interviews show that there are significant disparities in that respect, though somewhat less than in Wisconsin. More significantly, while St. Croix and Forest counties in Wisconsin were without "heavily involved" lawyers, each of the three counties studied in Montana (Ravalli, Lake, and Flathead) had at least one lawyer very active in Judicare. (We have no data in this respect on Lincoln and Sanders counties.)

The distribution of Judicare cases among lawyers and among counties is significant at various levels. One important point is that the unequal distribution of 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.

Another observation is that the fact that a small percentage of lawyers handle a large portion of the Judicare caseload does not

reflect adversely on the Judicare concept. In fact, it can be viewed as evidence that the clients exercise choice intelligently.

But there is a more problematic aspect to the distribution. There are a few counties where Judicare activity is unusually low, where there is not even one "heavily involved" lawyer. St. Croix and Forest counties are the examples encountered in Wisconsin. A close look in these counties at the possible variables explaining the level of Judicare activity—especially the attitudes of the lawyers—and a comparison with the other counties will take us close to the essence of the Judicare concept in operation.

Though it is difficult to separate cause and effect, the data, the circumstantial evidence, and the "logic" of legal-service supply and demand all point to the conclusion that the level of Judicare activity is strongly related to the philosophical "involvement" and "commitment" of the lawyers to the program. In essence there is an equation between involvement in terms of the number of cases a lawyer handles and his philosophical involvement with or commitment to the concept of systematic provision of sound legal service to the poor. This is not a mere tautology, but a very far-reaching notion that lawyers are not merely responsible for the supply of legal service but also greatly influence the demand for it. There is no one clear and irrefutable body of evidence or data on this, but the information available suggests that the high level of Judicare activity in areas such as Superior and Ashland County is a function of lawyers stimulating demand, whereas the low level of activity in St. Croix and Forest counties results from most lawyers merely attempting to meet demand. In some situations there may even be subtle suppression of demands for legal service perceived by the poor themselves.

A recent study[3] of legal-services programs attempted to demonstrate that the level of Judicare activity was directly and exclusively related to the economic status of the counties—that is, the richer a county, the higher the level of Judicare activity; the poorer a county, the lower the level of activity. While an exercise of grouping certain counties provides some substantiation for this point, the analysis on the whole appears less than helpful. First of all, there are too many exceptions to the rule among the areas we studied: Langlade and Shawano—poor counties with relatively

3. Leonard H. Goodman and Jacques Feuillan, *Alternative Approaches to the Provision of Legal Services for the Rural Poor: Judicare and the Decentralized Staff Program* (Washington, D.C.: Bureau of Social Science Research, Inc., 1972). See also a portion of their report as published in 58 *A.B.A.J.* 476 (1972) under the title "The Trouble with Judicare," and the response thereto: Samuel J. Brakel, "The Trouble with Judicare Evaluations," 58 *A.B.A.J.* 704 (1972).

high Judicare activity—and St. Croix County—fairly affluent with very low Judicare activity. Second, the point is exaggerated even where it seems to apply because of failure to consider crossover among contiguous counties: thus, Forest County's caseload is considerably higher than the administrative records show because of Judicare services delivered by Oneida County lawyers, and of course the Menominee-Langlade-Shawano county situation is a most extreme version of the crossover phenomenon. Third and most significantly, the analysis fails to recognize the more specific variables that go beyond gross economic status. These are that poorer counties are generally populated by more isolated poor people surrounded by fewer than average social and political resources and fewer, though often economically marginal and hence not charity-oriented, lawyers. But a few of the richer counties also have a predominance of lawyers with a low commitment to poverty programs (of which they see Judicare as one), and here we come much closer to what causes the differences in Judicare activity.

The poor people in St. Croix County seem to be more dispersed than in many other counties that have at least some "poverty pockets"—an Indian reservation or a section of a larger town. Forest County is sparsely populated, and the poor in the northern portion of the county are especially isolated. These facts have some impact in terms of Judicare activity. But the crucial variable is the lawyers.

In our interviews we spent a great deal of time attempting to understand the attitudes of the lawyers toward Judicare and poor clients. One of our questions was what the lawyers conceived to be the essential function of Judicare, giving a series of choices ranging from individual services only to gradually more ambitious goals, all the way to "eradication of the causes of poverty." Another question asked the lawyers what they conceived to be their roles in helping poor clients perceive and define legal problems. Also asked was whether the lawyers thought poor people had special legal problems distinct from those of other segments of society, and if so, what these were. We then queried them on their educational and outreach efforts and whether they thought the poor were presently aware of or used Judicare sufficiently. And finally we asked the lawyers about possible shortcomings of Judicare and what recommendations for improvement they would make.

The pattern emerging from the responses to this list of questions is a high correlation between a large Judicare caseload handled by a lawyer and the expression of broad views about the functions of Judicare, the role of the lawyer in the program, and the legal needs of the poor. By contrast, lawyers handling only a few Judicare cases on the whole had much narrower views on these issues. Thus, one of the most "active" lawyers in the Wisconsin counties we studied saw the functions of Judicare and Judicare lawyers to include "social change" and "law reform," 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 routine legal services. This same lawyer perceived the problems of poor people to be peculiar in the sense that the poor had a higher than average 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. That this was more than empty rhetoric to this lawyer was shown by the fact that he was personally actively involved in community education and in group action and impact cases on behalf of the poor.

On the other hand, virtually all the marginally involved lawyers interviewed displayed a very limited conception of the role of Judicare and of lawyers within it. 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.

While one may differ as to the propriety or sensibility of the broad view versus the narrow view, the significant and incontrovertible fact is the relationship between attitude and Judicare caseload. The grouping of attitudes among lawyers by counties is also significant and illuminating.

In Wisconsin, among the counties studied, Forest County with only two lawyers did not have one resident lawyer strongly committed to Judicare and its broader goals, but only a "visiting" lawyer with a limited philosophic commitment to the program. In St. Croix County, the vast majority of the lawyers were lukewarm in their views on Judicare and some were outright negative. There

was only one strongly committed lawyer and in addition one whose "sympathies" were with the poor but whose geographical isolation precluded their concrete expression. Forest and St. Croix counties are the "problem" counties. Their experience illustrates that for Judicare to operate successfully, a "committed" bar is desirable, and the presence of at least one or two strongly committed lawyers per rural county (depending on the size and distribution of the poverty population) is essential.

Superior, Wisconsin, has several lawyers with clear dedication to the Judicare program and to poor clients. Ashland County has at least two such lawyers. In Langlade County there are two lawyers with much sympathy for Judicare goals and clients—one has an especially activist and incisive view of how the legal system can be made to benefit the poor. And Shawano County has two committed lawyers, including one of the most active—in terms of numbers of Judicare cases handled—in all of northern Wisconsin, plus another very resourceful and aggressive figure. In counties with lawyers of this type, the Judicare concept undeniably "works."

The three counties studied in Montana presented a slightly less diversified picture. Ravalli and Flathead counties each had one or two lawyers who on the basis of the attitude responses could be classified as moderately committed to the Judicare program and its clientele. Only Lake County, with three very dedicated and "progressive" lawyers located in Polson, appeared to be especially favored. This differentiation is not reflected in the official caseload totals among the counties; it could well be, however, that the recording problems that afflict Montana Judicare as much as, if not more than, Wisconsin Judicare obscure actual differences. The unofficial totals, derived from our interviews, do show a differentiation that conforms to the expected attitude-caseload relationship, with Lake County having a significantly higher volume than the other two counties.

LAWYERS AND CASE DISTRIBUTION UNDER THE STAFFED-OFFICE MODEL

The unevenness of case distribution that characterizes Judicare is not avoided under the staffed-office approach, though the patterns and causes are different.

First, within a program such as Upper Michigan's there are variations in distribution among the various offices, stemming

from the personalities, policies, and work habits of the particular lawyer staffing the office and from the characteristics—geographical and sociological—of the poor people living in the counties served by that office. Another study computed these differences and found that the office with the largest case volume in proportion to eligible population did 33 percent more work than the least active office did.[4] This disparity is not very important or revealing.

However, cases are distributed unevenly within the areas served by each one of the offices as well. Thus while the Marquette office in Upper Michigan is the most active office with about a 33 percent edge over the least active (Houghton) office, within the two-county area served by the Marquette office, Alger County receives 15 percent less service than the average level of service for that office. Keweenaw County within the Houghton office region and Ontanagon County within the Bessemer (Gogebic County) office region, with 50 and 10 percent less than average service respectively, reflect a similar situation. And Menominee County, particularly the town of Menominee, located in the southern tip of the county in the southern tip of the Upper Peninsula—served alternately by the Iron Mountain (Dickinson County) office and the Escanaba (Delta County) office—has never been satisfactorily reached.[5]

Comparable patterns are found in those areas of Montana served by the staffed-office model. The information in table 5.4 gives the intake figures for three quarters of fiscal 1971–72 from staffed offices surrounding the Montana Judicare counties. Similar patterns obtain for other parts of Montana and, presumably, for staffed programs in other regions of the country as well.

Impressionistic evidence, supported by statements on the part of the Upper Michigan program director, suggests that beyond the unevenness among offices, and among counties within office

4. Goodman and Feuillan, *supra* note 3.

5. The evidence is somewhat sketchy and the percentages have only a rough accuracy. The evidence is based on a quick count of 783 client cards in the Upper Peninsula (UP) files—454 from the Marquette office, 202 from the Bessemer office, and 127 from the Houghton office. While not scientifically "random," the count is susceptible of the inferences made here. We started at a random place in the files and simply counted consecutively until we thought we had a sufficient number to have some picture of the distribution of cases. We also counted some 200 cards each from the Iron Mountain and Escanaba offices, but did not analyze them in detail because the significance of the count was obscured by changes in geographical area covered by the offices during the period under consideration. It was immediately apparent, however, that there were comparatively few cases from Menominee County under either office.

areas, there is additional disparity within counties, with most service going to the poor living in the larger towns to the comparative exclusion of those living in smaller towns and strictly rural areas. Examples of this phenomenon in Upper Michigan are the Indian population concentrations, where the level of service appears to be quite low. On the positive side, however, it should be pointed out that the field team in Upper Michigan—as in Wisconsin—was at times surprised to find poor people in very isolated areas who had obtained service. In Montana one of the more telling illustrations of the inability of the staffed-office approach to overcome the problems of isolation is the Cut Bank office. Not only does a disproportionate volume of service go to Glacier County, in which the town of Cut Bank is located (see table 5.4), but we were told by a private lawyer on the Blackfeet Reservation—the lawyer is part Indian himself and the only resi-

Table 5.4 Volume of Cases for Montana Staffed-Office Counties ("intake" statistics for 3 quarters in 1971–72: March–May and June–August 1971 and April–June 1972)[a]

	No. of Cases	No. of Eligible Families	No. of Eligible Families per Case Handled
Missoula Office:			
Missoula Co.[b]	503	1,830	3.64
Mineral Co.	21	109	5.19
Helena Office:			
Lewis & Clark Co.[b]	300	819	2.73
Broadwater Co. ...	6	176	29.33
Jefferson Co.	10	137	13.70
Great Falls Office:			
Cascade Co.[b]	497	2,683	5.40
Chouteau Co.	3	182	60.67
Cut Bank Office:			
Glacier Co.[b]	344	736	2.14
Toole Co.	27	238	8.82
Pondera Co.	24	351	14.63
Teton Co.	13	254	19.54

[a]These are the only figures readily available (see table 5.2, note *a*, *supra*). Since the five-year projections for the counties where the staffed offices are located would lead to unbelievable ratios, we refrain from projecting in this table. The credibility of the figures presented is of course low. Our only reason for presenting the table is to show the enormous disparities in volume of service among counties. The great divergence leads one to question the accuracy and reliability of the figures, but at the same time they undoubtedly have some basis in fact.

[b]Counties where staffed office is located.

dent attorney on this large reservation—that most of the service in Glacier County goes to the population of Cut Bank, whereas the countless and desperate problems of the Indians on the reservation (which in area forms 90 percent of Glacier County) are largely neglected.

The above account delineates a serious but nearly inevitable problem. That it has not been overcome in Upper Michigan and Montana is not altogether a conceptual weakness of the staffed-office model. The Judicare model—as evidenced by the operations in Wisconsin and in the five Judicare counties in Montana—struggles with the same problem. The difference is that the distribution and character of many private lawyers in many instances obscure—often mute, but sometimes aggravate—the disparities in service between "accessible" and isolated areas, whereas under the staffed-office programs the relationship between volume of service and accessibility is untouched except by the far fewer differences among lawyers from office to office and by whatever traveling from the office the staff lawyers do to make themselves more accessible.

Chapter 6

Types of Cases, Types of Lawyers, and Lines of Strategy

The difficulties in assessing the significance of the types of cases handled by a legal-services program are quite similar to those that plagued the interpretation of the volume of cases. We do not know enough about, and there is no general agreement on, contextual factors such as need for service, quality of service, and cost.

Another, less negative parallel with the volume and distribution discussion is the relationship between lawyers' attitudes and the types of cases they handle, which is similar to the relationship between the lawyers' attitudes and their case volumes. However, the meaning of types of cases is more complex and obscure than that of volume of cases, which at least has an obvious, simple significance. The discussion of the relationship, therefore, varies materially from the discussion of the parallel relationship in the previous chapter.

The examination of types of cases handled and their significance will fall into two major divisions: (1) case types as usually recorded and classified by the program administrations—consumer and employment, housing, family, etc.; and (2) case types according to "impact" (which are not so recorded)—services to individuals versus cases consciously intended to have an effect beyond the immediate parties to the dispute or beyond routine enforcement of existing laws (thus, group or class actions, recognition of new legal rights and causes of action, law reform through litigation on the appellate level, and so forth).[1]

1. *Cf.* the five standard Office of Economic Opportunity (OEO) areas of emphasis and our comments on them, chap. 1 *supra*, note 6.

In view of the difficulties in interpreting the intrinsic significance of types of cases handled, the comparative and distributive aspects of the analysis—as in the case of volume—assume a large importance.

CASE TYPES AS RECORDED: INTERPROGRAM COMPARISON

We can profitably begin this section by presenting table 6.1. While the percentages in table 6.1 are not very meaningful per se, they do serve to dispel some popular assumptions and misconceptions.

Some preliminary points about "meaning" should be made first. To begin, the figures upon which the percentages are based

Table 6.1 1971 Intake by Type of Case (355 legal-services programs reporting)[a]

	Percent of Cases				
	Employment	Administrative	Housing	Family	Miscellaneous
Wisconsin Judicare . .	22.1	8.8	12.0	35.2	21.9
Upper Michigan staffed office	10.4	9.6	5.4	39.2	35.4
All legal-services programs	15.9	11.2	14.4	36.6	21.9

[a]The basic figures are taken from National Legal Aid and Defender Association, *1971 Statistics of Legal Assistance Work in the United States and Canada* (Chicago: the Association, n.d.). However, the UP's OEO (MIS) reports had to be used to correct inaccuracies in the Upper Michigan statistics. Montana Judicare statistics by case type were not available.

are far from precise. In both Wisconsin and Upper Michigan we found considerable variance among statistics kept by various departments for various purposes. A telling illustration of the lack of accuracy can be found in the 1971 National Legal Aid and Defender Association (NLADA) statistics on the Upper Michigan program, where in one table the total intake figure given is 14 percent higher than the sum of cases categorized.

Another problem is the deficient classification scheme. Within the five major categories, excessively high percentages—35 percent in Upper Michigan—fall into the "miscellaneous" group. We learn little about the types of services rendered from this categorization, especially when it turns out that upon examination of more detailed statistics we find that equally high percentages of cases within the miscellaneous group (and within each of the five

major categories) are classified in the subcategory "other." Apart from this, the classification scheme is quite open to inconsistent interpretation and even manipulation from program to program.

Finally, even if we could overcome these "procedural" difficulties, there remain the substantive contextual problems of need, quality, strategy, and cost. Is 40 percent family problems too high? What is a "better" allocation of program resources? What percentage of family problems handled for the poor are, or should be, divorces and separations (sometimes viewed as "luxuries") as opposed to adoptions, child support and custody, or other problems more unanimously adjudged "meritorious"? Is one divorce as "worthwhile" or "unworthwhile" as any other? What is the importance of one welfare case versus ten bankruptcies versus ten other welfare cases? In sum, the bare percentages of case types tell us very little. Still a brief analysis of them follows.

The preponderance of domestic problems is the salient feature of all legal-services programs for the poor. The 35 percent figure given for Wisconsin Judicare is somewhat lower than the average for earlier years of the program's operation when the percentage of family cases was closer to 45 percent. The decline is due to a central-office policy restriction on divorce cases that has been in effect off and on since the middle of 1969 for budgetary reasons.[2] While we have no official figures on the proportion of divorces and separations within the total of family cases, our own analysis of the statistics in three selected Wisconsin counties shows them to take up between 60 percent and 75 percent of the "family" cases. It would be a fair assumption that this pattern holds for the remaining Wisconsin Judicare counties and probably for the other legal-services programs as well. Whatever else one may be tempted to conclude from these figures, they clearly demonstrate the validity of one Wisconsin attorney's assessment that "domestic tensions dominate the lives of poor people."

2. The restriction operated by allowing divorce under Judicare only in cases where there was a showing of likely "grievous bodily harm" to the party seeking the divorce. Undoubtedly a serious weakness of Wisconsin Judicare, the divorce limitation is of course not an inherent deficiency of the Judicare model but rather the result of inadequate funding of the Wisconsin program, plus resulting priority decisions that may or may not have been the best under the circumstances. By and large the private attorneys have strongly opposed the central-office divorce restriction, with the result that the restriction has been lifted whenever money becomes available again. Also, it appears that some private lawyers have interpreted the restriction rather liberally while it was in effect. These are positive aspects of the decentralization of decision-making power that characterizes the Judicare model. They served to mitigate, but not overcome, the Wisconsin program divorce problem.

About the percentages of consumer and employment, administrative, and housing cases, only a few general comments seem fruitful. The charge often directed at the Judicare model—that the private lawyers handle only divorces and bankruptcies for the poor—is decisively negated by the facts. The Wisconsin percentages show no less variety in case types than those for the average legal-services program, and in fact compare favorably to the relative lack of variety (e.g., the low housing and consumer and employment percentages) found under the Upper Michigan program.[3] Another criticism leveled at Judicare has been that the involvement of the welfare agencies in the card-issuing process prevents the challenge of welfare decisions. The Wisconsin figures —some 9 percent administrative cases (35 percent of which are specifically welfare problems according to our own three-county analysis) as measured against the Upper Michigan and all program percentages—disprove that charge as well.

One general problem with miscellaneous cases—determining what they are—has already been mentioned. Some details, which may be of interest if not of evaluative or comparative relevance, can be supplied. The high percentage of Upper Michigan miscellaneous cases appears to result from the fact that the staff lawyers do a good deal of misdemeanor work. While misdemeanors are technically outside the coverage of the "civil" legal aid programs, except in circumstances where no other representation is available and prior to arraignment, the efforts on the part of the Upper Michigan program to be permitted to make exceptions to the national policy restriction[4] appear to be salutary in view of the need for representation in this area (often not met by the very methods cited as preempting the involvement of the civil programs) and the adverse feeling generated among the poor against programs forced to resort to coverage technicalities in explaining refusal to serve. The Wisconsin Judicare program handles a few isolated

3. Given the limitations in significance of the percentages generally, this should not be construed as a criticism of the Upper Peninsula (UP) program. The only relevance is a limited, comparative one.

4. The UP program policy on handling misdemeanors has evolved in response to pressures of caseload and funding. At first, intake of misdemeanor cases was relatively unrestricted; then attempts to check on availability of alternative representation and referral grew; and lately the staff attorneys have been instructed to provide service in misdemeanors for poor clients only to the extent that private attorneys do—by court appointment, on rotation, and paid by the county. The very last chapter in this evolution is the Upper Michigan program director's attempt to get funding for, and effect some combination between, civil legal services and public defender services. A similar attempt—which failed—was made by the then Wisconsin Judicare director several years ago.

misdemeanors plus analogous municipal ordinance violations in the larger towns, but far fewer than the Upper Michigan program, and this compliance with the coverage limitations has been the source of a measure of negative sentiment (especially among Indian nonclients) concerning Judicare. As a final note on the miscellaneous cases, when we looked in more detail at the data for three Wisconsin Judicare counties (Forest, Ashland, and St. Croix), we found that ten commitment problems were included under "miscellaneous." Little facts of that order sometimes tell a great deal about the effectiveness of a program. The mentally disabled poor have no spokesmen at all, nor are their problems particularly attractive—aesthetically, intellectually, or legally—to lawyers. Ten cases is therefore ten more than one might hope for.

Some comparisons can be made in types of cases handled (as recorded) among the Judicare counties,[5] but the significance of such an analysis is best understood in relation to, and hence saved for brief reference in, the discussion of the impact of the cases.

"IMPACT" CASES

The discussion on impact divides itself roughly into two levels. The first is the more specific level where we examine the empirical facts to see what kind of impact work is done, by whom, and to what extent. In the background of this part of the discussion is the widely held assumption that private (i.e., Judicare) lawyers will not handle impact cases because they are reluctant to "rock the boat," especially when the monetary compensation is inadequate; whereas staffed-office lawyers are prone to handle impact cases because they are philosophically oriented that way, are urged to engage in this work as a matter of policy, and are free from the monetary, social, and professional constraints that are said to inhibit the private lawyers. In this context we can lump together a variety of strategic ends and means—"controversial" cases, complex cases (perhaps requiring backup-center assistance), law reform through litigation or through legislative action, economic development, "organizing" of the poor, and so forth. We can then simply check what has been done in this regard under Wisconsin and Montana Judicare and under the staffed program in Upper Michigan (and some of those on the Lower Peninsula). We go on

5. See Samuel J. Brakel, *Wisconsin Judicare: A Preliminary Appraisal* 80–84 (Chicago: American Bar Foundation, 1972), where some of this is done.

from there to look at the distribution of impact cases among lawyers, counties, or offices to see what factors are or are not conducive to the production of impact work. And we conclude with some comment on the relative adaptability of Judicare versus the staffed-office model as regards this type of work.

The second level, the more general and theoretical, is also the policy and political level—a recurrent and greatly overworked theme among legal-services planners and evaluators. One might want to separate, in the context of this level of discussion, the various legal-services strategies so as to examine the desirability and feasibility of each. One would have to consider, if not answer, some very difficult questions about what strategy ultimately benefits which groups and at what cost in alternative services to the same or different groups. The types of cases handled or not handled will have to be related to the legal needs of the populations served. Ultimately, one will have to deal with the broad issues of whether the poor have peculiar problems and needs different from the rest of society; whether social justice is a practicable goal for a legal-services program to tackle; whether it should be sought through the courts, the legislature, or some other forum. And finally one might want to think about the impact of limited resources—a reality that will be with us for some time to come—on the desirability of attemping to do some big things by new means at the risk of neglecting small things or doing everything deficiently.

Actual Impact Cases Handled by Private Judicare Lawyers

To arrive at the factual picture, we asked the Judicare lawyers in our interviews if they had ever been involved in "controversial" Judicare cases, cases with broad and significant impact, law reform, group or class actions, or appeal of Judicare cases. We also asked them if they had ever turned down Judicare matters of these types. And finally, we asked them if they handled such cases in their non-Judicare practice. In Upper Michigan we interviewed the staff lawyers informally on these matters. The data from the interviews are supplemented with what little relevant information is kept and (somewhat self-servingly) published by the programs and with other pertinent information we encountered in other evaluations.

Wisconsin yielded the following picture. In Ashland County three of seven lawyers had done some impact work under Judicare. The cases cited included representation of Indians (some on

referral from the central office in Madison) on hunting and fishing rights and the formation of a wild-rice cooperative, "a couple" of welfare cases subsequently referred to Madison for appeal, a mortgage case with law-reform potential that would be appealed if lost, and one or two other cases of sufficient significance or complexity to warrant backup help from Madison.

In Superior, four of the ten lawyers (or law firms) cited involvement in impact matters under Judicare. Listed were several welfare matters, "local police stuff," several referrals from Madison concerning domestic matters (one involving a prisoner), an Internal Revenue Service case involving a group of Indians, and some other problems—ordinarily categorized as routine (misdemeanor, Social Security) but with unanticipated complexities—on which the help of the Madison office was solicited.

Langlade County had two of five lawyers who could point to impact cases. Included were "a food-stamp hearing," a Social Security problem of unspecified importance, and several Indian representation matters—school board, juvenile, criminal, and school expulsion. All but one of the five lawyers had served a substantial number of Indian Judicare clients (Menominees), a fact that may be viewed as nonroutine against the background of "prejudice on the part of the local authorities"—as one local lawyer expressed it.

A similar, but even more pronounced, situation obtained for Shawano County, with each of the six lawyers stating that the majority of his Judicare clients were Menominee Indians. Aside from controversiality caused by community prejudice, the overwhelming portion of that service to Indian clients was routine. Three lawyers, however, cited other impact matters, including an appeal of an estate case, the organization of an Indian employment cooperative, and a few unspecified matters. The involvement of private Langlade and Shawano county attorneys in Indian problems—including impact matters—has a special dimension that we will discuss a little later.

In St. Croix County, only one law firm was involved in Judicare cases that went beyond the routine—some welfare questions and commitment cases. Our interviews in Forest County revealed no impact work there.

Montana Judicare lawyers also exhibited some involvement in impact work, contrary to the prevailing view that they abstain from it. The distribution of impact work among the lawyers and counties in Montana is similar to that in Wisconsin. In Ravalli and Flathead counties only a minimal number of impact matters were handled. Instances cited included the local implementation of

Shapiro v. Thompson[6] in the welfare area and juvenile problems at a correctional camp. In addition, one lawyer thought vaguely that some impact had been made on the divorce law, and another recognized the need for reform in the consumer credit area but had "not been able to get it off the ground."

Lake County, however, produced a far more active picture. Four of the five lawyers (or law firms) interviewed cited involvement in impact matters under Judicare. Reference was made to anything from representation of "unpopular" clients to Veterans Administration hearings, "federal consistency" in Social Security administration (including legislative activity), zoning reform, formation of a "People against Poverty" corporation, revision of criminal procedure rules in a tribal court (Flathead Indians), and a dispute on state taxation of Indians. One lawyer also indicated that he had begun a case on civil jurisdiction over Indians but had found out that the case was already being litigated in the state courts, so the issue had "died" for him, as he put it.

The evidence thus negates the notion that private lawyers stay away from impact cases under Judicare. Still, there is not a great deal of impact work in the Wisconsin and Montana Judicare areas, especially in some counties. There are several reasons.

Reasons for the Level of Impact Work in Judicare Areas

The primary reason for the relatively low level of Judicare impact work is that for the lawyers, particularly lawyers in rural areas, there simply is not a great deal of opportunity for impact work. Lack of opportunity is a fact that has several components. Its most obvious aspect is reflected in the lawyers' responses to the questions whether they ever turned down impact Judicare cases and what the level of impact work was in their non-Judicare practice. The standard answers—often exhibiting some offense—were that lawyers existed to serve clients, poor or otherwise; that as such it was unthinkable to refuse cases merely because they were controversial or time consuming; but that local clients, especially poor Judicare clients, simply brought in mostly routine matters. Another point, not usually recognized by the lawyers themselves, is that most Judicare cases are "won" or satisfactorily resolved on the lower and personal levels of the legal process—in the court of first instance, at the local agency level, or often through direct settlement with the opposing party. The success of Judicare lawyers at

6. 394 U.S. 618 (1969).

this level obviates the need for appeals or more formal or group actions; it precludes—at least from a traditional perspective of the legal process—the opportunity to get into the larger dimensions of poor people's problems. In short, it limits the need for impact work.

Some of this may be self-serving lawyers' rhetoric, and a few lawyer respondents hinted at the possibility that a complex, time-consuming case under Judicare (at Judicare fees) might not be welcome. On the other hand, there is little evidence to disprove that most lawyers did indeed believe in and practice the professional service rhetoric. More significantly, all lawyers were accurate in stating that Judicare clients rarely brought big cases.

Some recent thinking on the role of lawyers vis-à-vis the poor has it, however, that lawyers have an obligation to "seek out" the big cases, the fundamental problems. We will discuss this role conception in more detail later, but note for now that it is not shared by the vast majority of private lawyers in the Judicare areas of Wisconsin and Montana. While activities such as fully exploring the dimensions of a problem brought by a specific client or even making a speech regarding the availability of legal services before a client group were deemed legitimate and were engaged in, activities going beyond that, such as operating from a check list of typical "poverty problems" or "rights" and suggesting their applicability to the Judicare client at hand or to organized groups of potential clients, were almost unanimously condemned as "solicitation" and "creation" of problems.

Despite virtual unanimity among the lawyers on the above issues, there remain significant differences among individual lawyers and among counties that have a bearing on the level of impact work done. The relationship is analogous to the one linking volume to types of lawyers. The following important equation—which is the essence of Judicare in operation and of predictions regarding its workability in proposed jurisdictions—holds true as a general matter: *Lawyers who are "committed" to the Judicare program, as evidenced by their broad view of their role as lawyers vis-à-vis poor clients, handle substantial numbers of Judicare cases and are involved in at least some impact work on behalf of Judicare clients. The presence and distribution of lawyers of this type in a given geographical area or jurisdiction determine the success of a Judicare program at both the personal service and impact levels.* In the three Montana counties studied, Judicare operates fairly adequately in two counties and with better than adequate success in Lake County. In Wisconsin, Judicare operates adequately in at least four of the six

counties studied but gives less than adequate service in St. Croix and Forest counties, where the volume of cases handled, the level of impact work engaged in, and the lawyers' expressed dedication to the program are all lower than average.[7]

The final dimension to "lack of opportunity" as a determinant of the level of impact work done by the private attorneys is the practices and policies of the central office of the Judicare programs. We do not have much information on this aspect of the Montana Judicare program, but under Wisconsin Judicare it has been the expressed policy of the central office (at least while it was still in Madison) to take impact matters out of the hands of the private lawyers. The reasons offered for this policy were that a central office is better equipped to handle impact cases and handle them more economically and that the private lawyers simply will not generate, or even touch, some types of impact work. The Madison office sought to effect this policy by not encouraging—perhaps even discouraging—the lawyers about pursuing impact cases; by having the central office take initiative in the area of appeal, group action, and lobbying; and by refusing requests for waiver of fee limitations when lawyers might have wanted to tackle the big cases.

The practical effectiveness of this central-office policy, however, is uncertain. While the Madison office over the years has annually come up with impressive-looking arrays of law-reform cases—as "good" as any staffed-office program—this is no proof that the private lawyers would or could not have produced a similar effort had the central office not discouraged it or that the private lawyers (or that aspect of the Judicare model) are to be criticized for not producing more law-reform cases than they did.

The classic illustration of the alleged need for the central-office policy (of the need for impact work, the unwillingness of the private Judicare lawyers to engage in it, and thus the deficiency of the "pure" Judicare model) is the Menominee Indian situation. The facts, however, do not support this allegation about the private bar. First, the private lawyers in neighboring Shawano and Langlade counties have handled a very large number of "routine" problems for Menominee Indians—a controversial activity for local

7. The pattern holds true for recorded case types as well. In St. Croix and Forest counties the relative number of divorces and bankruptcy cases was far higher, and the number of less conventional problems handled—such as administrative and miscellaneous cases—far lower than in the other counties. The lawyers' capacity and willingness to influence the level and nature of client perceptions of legal need are determinative factors in producing the pattern.

people prejudiced against Indians as well as for outsiders prejudiced in believing that private lawyers are too prejudiced to serve Indian clients. Second, the lawyers have in addition engaged in some impact work on behalf of the Indians, such as school cases, some criminal matters, and the formation of an employment cooperative. Third, while there are other and "larger" legal issues affecting the Menominees, it is far from clear what the proper role of the private lawyers or any other officials or agencies should be. These larger issues are primarily the ramifications of termination of the Menominees' reservation status—including the validity of a Voting Trust, shareholders' control, application of state conservation laws, control over the lumber industry, sale of Indian lands for "development," and even the issue of return to reservation status—about which there is great disagreement among the Indians themselves.

Generally, the Judicare central office and Indian organizations of primarily urban, "outsider," and "activist" character such as DRUMS (Determination of Rights and Unity for Menominee Shareholders), NARF (Native American Rights Fund), and WILS (Wisconsin Indian Legal Services) have aligned themselves on one side of these issues, but they are opposed on these issues and bitterly resented by many reservation Menominees whose aims, interests, and life styles are quite alien to the activists.[8] The private lawyers have mainly stayed away from these disputes, though they appear to share the resentment toward the role played by the central office and the activist Indian groups. The point is, it hardly took central-office policy to keep the private laywers out of the activist camp. Moreover, who can say that the private lawyers were "wrong" in not becoming involved? That the central office was "right" in involving itself? That it is involved on the "right" side of the issues? Or at what cost in credibility and confidence; in other services forgone; in time and funds?

These latter questions we can only raise, not answer. We now

8. The parallel with Wounded Knee II is inescapable. The American Indians, urban and reservation, at Pine Ridge or in Menominee County, Chicago or San Francisco, have innumerable problems that require the most serious efforts and commitment toward resolution. But that recognition hardly justifies the methods employed by AIM (American Indian Movement) and similar groups at Wounded Knee, and even less condemns the resentment of many local Pine Ridge Reservation Indians against being pawns in the conflict. For the DRUMS (Determination of Rights and Unity for Menominee Shareholders) view on the Menominee issues, see Deborah Shames, coord. ed., *Freedom with Reservation: The Menominee Struggle to Save their Land and People* (Madison, Wis.: National Committee to Save the Menominee People and Forests, 1972).

turn to a discussion (on the specific level) of the facts concerning impact work under the staffed-office model.

Impact Work under the Staffed-Office Model

While private lawyers under Judicare were found to be involved in impact matters to a larger extent than commonly supposed, some constraints seemed to be operative that limited this involvement to less than what was theoretically possible. We may not be certain about the wisdom or inevitability of these constraints. There are constraints on staffed-office lawyers, too; some similar to, and others different from, those inhibiting the private lawyers. For example, despite legal-services rhetoric and congressional mandates on the importance of impact work, estimates of the percentage of time spent on this type of activity by staffed-office programs range from 4 to 0.5 percent, with the remainder of the staff time going to routine legal service.[9] But the contexts in which these constraints operate are radically different: while under Judicare the lawyers were at the least passively discouraged by the central office from handling impact cases, the staffed-office lawyers operate in an environment and from an institutional orientation that puts a premium on impact work. This at least is the ostensible situation. Privately, the director of the Upper Michigan program and a few of the staff lawyers were far less enthusiastic about the impact-case approach and the emphasis on it as an evaluative criterion.

The primary constraint on staff lawyers' capacity to handle impact work is the simple fact that the staff lawyers are swamped with routine cases. Secondary factors are lack of expertise, lack of continuity, disagreement with the institutionally placed priority on impact work, and centralization of impact work in one of the regional or neighborhood offices to the exclusion of the program's other offices. A look at specific data from Upper Michigan, evaluations of staffed offices in Lower Michigan, and some impressions of Montana staffed offices will clarify this set of constraints.

A summary of our interviews with the staff lawyers in three of the six regional Upper Michigan offices helps identify the operative factors. The staff lawyer in office A was just out of law school, as were the attorneys in two of the other five offices. While young, he conveyed an impression of relative competence and confidence. A sense of frustration on his part was apparent, however. In response to the query on impact cases he said that there was "not much of it here [at this office]." Most such work is handled by the special law-reform attorney in Marquette, he explained. The one big case he himself was handling presently—"the case I'm losing all my sleep over"—involved a dispute with an unspecified company over a "very small piece of land." The rest of his time was taken up by routine matters—"mostly divorces." He felt divorces were not worth much time ("the secretaries do a lot—fill out all the forms . . ."). Besides he "couldn't afford to get into the details—you'd get swamped." In fact the specter of being swamped resulted in other workload restrictions as well: the office handled no probate matters and no more misdemeanors "unless court-appointed and we get paid for it by the county."[10] The staff lawyer was about to transfer to a different UP office. This would constitute the third change in staff lawyer for office A in two years.

In office B, much the same situation existed. The lawyer there was a somewhat older man than the typical staff attorney. He is native to the area where the office is located, an extremely likable person, and well thought of by the clients. He is quick to point out that he has no time for impact work because of the abundance of routine cases and time spent traveling to serve clients in remote parts of his region (he travels more than the other staff lawyers). He approves of the creation of a special law-reform office in Marquette because that is the only way, in his view, for the program to get around to impact matters.

The Marquette office, then, is where the impact work takes place. While there always was, and still is, a regular staff lawyer in Marquette handling routine cases, the law-reform specialist position was not created until the program had been in existence for three years and after it had been adversely criticized by OEO (Office of Economic Opportunity) evaluators for not producing sufficient law reform—whatever that may have meant. The Marquette law-reform attorney impressed us as a competent and personable individual. He said he was involved in the following impact cases: requirement of notice prior to termination of public

9. The 4 percent figure is from a press release by Sargent Shriver, former director of OEO, to the *Wall Street Journal* during, and as part of, the presidential election campaign on October 25, 1972. The 0.5 percent estimate is from Theodore Tetzlaff, former acting OEO Legal Services director, as cited in Mark Arnold, "The Knockdown, Drag-out Battle over Legal Service," 3 *Juris Doctor* 4, at 8 (No. 4, 1973).

10. The staff lawyer's statement on misdemeanors reflected the current general UP program policy. See note 4 *supra*.

utility services; legality of compulsory work requirements for welfare recipients; an Indian hunting and fishing rights case; and a case involving the adoption of Indian children by white out-of-state parents. Annual program reports cite other impact activities fairly comparable in scope to those produced by the Wisconsin Judicare central office and many other legal-services programs.

Some specific facts about the Upper Michigan law-reform effort, however, stand out as revealing of the place of law-reform efforts under the staffed-office model and the limitations of law-reform efforts generally.

First, we have noted that the regular staff attorneys are scarcely involved in impact work—no more than private attorneys as a group under Judicare and probably less. Inundation with routine matters is the primary cause. But there are others: an unfortunate cycle where cause and effect are blurred appears to characterize most staffed offices with varying precision. An overload of routine cases means staff boredom, staff turnover, loss of continuity, loss of expertise, impaired ability to handle nonroutine (and routine) cases, impaired ability to attract qualified new staff, and so forth. The list could equally well be read in reverse order.[11] Also, at some point it includes unhappy clients, but that will be discussed in a later section.[12] The sum of it is, however, that the myth of staffed-office adaptability and special capacity for impact work explodes in practice.

Instead, impact work under the staffed-office approach—perhaps more so than under Judicare—becomes a function relegated mostly to the central office and/or "specialist" attorney. Growing out of practical realities, including the importance of rendering service in routine cases, this arrangement can hardly be faulted

11. The evaluations of the Lower Michigan staffed-office programs in conjunction with the Upper Michigan data—more so than the Upper Michigan data by itself—brought home the full seriousness of this cycle. Problems of staff morale and turnover and resulting service deficiencies cropped up again and again. In Upper Michigan staff turnover was very high, with all except one of the six offices having undergone one or several personnel changes in the last two years. There are no complete national statistics on the turnover problem among staff attorneys, but a survey made by the Legal Services Training Program provided some data on the percentage of OEO Legal Services Program staff attorneys who had graduated in particular law-school classes. The sample consisted of 1,165 staff attorneys. The percentages reveal that 52 percent of the respondents had been out of law school two years or less. Assuming the most favorable fact—that all respondents went into legal services upon graduation, a factual improbability, this means that 52 percent of the staff attorneys have two years or less experience as legal-services attorneys. The data make a joke out of the staffed-office proponents' arguments about the "expertise" in, and "commitment" to, poverty law of staffed-office attorneys.

per se. However, some concrete difficulties at the Marquette office indicate that we are dealing with a root problem of the staffed-office model—overburdening—that affects the law-reform office and effort as well as the regular offices and routine services.

The Marquette office impact effort turns out to be limited by the fact that a selection of causes to be pursued is centrally made and only remotely related to more dispersed and more client-oriented perceptions of need, such as might be found, for example, among dispersed and client-oriented private Judicare lawyers and a central administration working with them. Illustratively, the Marquette office has determined that it cannot afford to get involved in the common problems of state university students, state prisoners, and air base personnel—all within the immediate geo-

Percent of Sample	Year Graduated	Percent of Sample	Year Graduated
14.25	1971	5.32	1966
17.00	1970	2.66	1965
20.34	1969	2.83	1964
11.85	1968	16.82	Prior to 1963
7.55	1967	1.37	No response

Source: "Legal Services Training Program," 5 *Clearinghouse Rev.* 592 (1972).

12. We discuss the clients' views at length in the section on quality of service, chap. 7 *infra*, but it might be useful to quote here the perception of someone with experience on the deliverer's side in legal services for the poor:

> No matter how many hours a day the [legal service] offices remain open, no matter what systems are used to streamline intake and processing, the offices cannot handle the floods of people that come to them for legal help. In many instances the attorneys do try to handle every case, do seek to squeeze the last case into the last ten minutes of an overburdened day.
>
> For this effort we pay an enormous price. The process exhausts the attorneys and exhausts the staff and very, very quickly there develops the same self-protective formality, the same need for categories, the same dehumanization which has been so often criticized in welfare and other agencies working with the poor. In the same manner, the quality of the legal work steadily declines as issue after issue is ignored in the name of a quick compromise and in the face of the growing caseload. Those of us who have worked in such offices know how few depositions are taken, interrogatories filed, appeals sought or equitable remedies utilized in the thousands of cases now being handled. It is no answer that these are simple cases. They are simple, by and large, because they are superficially handled. Of course many problems can be resolved by negotiation or even a phone call. But in how many cases could the client's interests be far more adequately protected if there were time to investigate the facts or research the issues involved? The National Legal Aid and Defender Association has stated that an attorney can handle as many as nine hundred cases per year. No attorney can handle such a caseload without doing far less than what needs to be done. Nor is it consistent with the obligation of fidelity owed to the individual client to ask the attorney to do so.

Address by Gary Bellow, "The Extension of Legal Services to the Poor—New Approaches to the Bar's Responsibility," Harvard Sesquicentennial Celebration (Sept. 23, 1967), quoted in Carol R. Silver, "The Imminent Failure of Legal Services for the Poor: Why and How to Limit Caseload," 46 *J. Urban Law* 217, at 226 (1969).

graphical vicinity of the office. Similarly, but for different reasons (physical remoteness being a primary one), the Marquette office cannot even think about becoming involved in, about making an impact on, the numerous problems—common and individual—of the L'Anse and Potawatomi Indian populations on the Upper Peninsula.[13] Neither have the regular offices been able to become involved in these problems. Thus we find under the staffed-office model an "artificial" and relatively complete exclusion of problem types and client groups not found to be or likely to be duplicated under the more decentralized Judicare system.

A similar pattern was observed under the Montana staffed-office programs. One of the more pronounced illustrations of the lack of capacity and resources to be involved in impact work where the need was clear was the Cut Bank office performance on the Blackfeet Reservation. The private attorney on the reservation —himself part Indian—cited numerous problems that he said were almost untouched by the program: jurisdictional questions regarding taxation and law enforcement authority, land and housing problems, consumer fraud, veterans' rights, railroad retirement benefit cases, industrial accident claims, and so forth. The inability of the staffed-office program to make a dent in these areas is a problem of model and particularly unfortunate when one speculates how integration of the resident private attorney's services—under a Judicare arrangement—would improve the situation. The problem with the staffed-office approach regarding impact work is that—unlike Judicare—it fails to utilize the perceptions and services of people (clients and lawyers) closest to the problems. Success in impact work is not a matter of counting "big" cases done by a remote central office; rather, it is a matter of selectively supplementing routine services when those bringing and involved in delivering routine services determine the substantive and strategic need for the impact case.[14]

13. Some of the problems cited by Indian respondents as virtually untouched by the Upper Michigan program were housing and land (divisions and sales), school problems (discrimination generally, and specifically in the application of dress codes), and criminal or quasi-criminal problems (police and game warden "prejudice" and/or "harassment," jurisdictional issues, and hunting and fishing rights). Specifically, the L'Anse and Potawatomi Indians we spoke to were rather uncomplimentary about the UP legal-services program. The L'Anse group had its own resident private lawyer to handle its legal affairs and problems. On the other hand, the chairman of the Bay Mills band near Sault Ste. Marie spoke positively of the program and the director, who operates out of that regional office.

14. The role of the central office should be limited to supervision of the local efforts with interference—taking initiative or prohibiting local action—only in exceptional circumstances, i.e., when shortage of resources necessitates central allocation or when local perceptions and explanations of specific action or inaction are clearly unsatisfactory.

Prevailing Theories about Impact Work

Having examined the question of impact cases on the specific level—the actual overall performance of programs in this regard and the distribution of impact work among lawyers, counties, and offices—we now move to a more general consideration of this issue. As indicated before, the national program—citing congressional mandate[15]—has placed a very heavy rhetorical emphasis on law reform (and some other related impact work) as a goal for the national program and as a test of individual program performance. Thus, there has over the years been a great deal of blanket criticism—directed especially at Judicare programs but also at many staffed-office programs—to the effect that the programs have produced "insufficient" law reform. For reasons spelled out below, this criticism has in most instances, and especially as regards Judicare, been unjustified and misdirected—at least in part because no justification for, or direction in, the rhetorical emphasis on law reform has ever surfaced.

The first problem, one that is central and extends beyond its obvious dimension, is the problem of definition or identification. In looking for impact work or law reform, its advocates have focused exclusively on easily observable achievements on the order of cases litigated in appellate courts and/or as announced in official *Poverty Reporter*s or *Clearinghouse Review*s. Though this has led to ignorance of important impact work in programs of all models, it has been particularly disadvantageous to Judicare, where the impact work done by private lawyers as a rule escapes official attention.

But the problem goes even further. The focus on the self-reported and observable has also been a counting process. In other words, 20 law-reform cases are twice as good as 10 such cases in the *Poverty Reporter*. But the actual impact—on the poor, or on the administrators of the laws or rules—of the impact cases is never considered. Rarely is even its first-level success examined—whether the case was won or winnable in court or whether the proposal was passed or passable in a legislature—let alone its

15. See U.S. Senate Report No. 563, Sept. 12, 1967, Economic Opportunity Amendments of 1967. At p. 40 the report states that "the legal services program can scarcely keep up with the volume of cases in the communities where it is active, not to speak of places waiting for funds to start the program. *The committee concludes, therefore, that more attention should be given to test cases and law reform*" (italics supplied). The conclusion reached by the committee is a blatant non sequitur.

practical effect once won or passed. Nor is the "law-reform count" related to the legal needs of the poor in the area—either absolutely or relatively. No assessment of the cost—in terms of money, staff time, or other services—is made. No defensible priority decisions concerning basic program emphasis can be made in this vacuum. The question whether the expenditure of a certain amount of energy and resources is worthwhile to the poor appears never to be asked. Most fundamentally, the law-reform emphasis has resulted in the evolution of law reform to an unassailable, semisacred end from its real essence, which is simply a means, a strategy, one of several tools available toward the real end of providing accessible and adequate legal service to poor people—a strategy to be assessed on a case-by-case basis.

In the background of this undue emphasis on counting law-reform cases have been some basic assumptions about the poor and the law that are untested, if not outright false. One is that poor people have legal problems peculiar to them as a class. This assumption actually consists of a set of intertwined and often confused and confusing precepts of varying cogency ranging from the view that there exists essentially a dual system of law—one for (or rather against) the poor and one for the nonpoor—to the notion that the law discriminates against the poor. Another notion is simply that the law affects the poor more drastically because they have no resources to fall back on once "affected"; another is the view that the law's function is affirmatively to alleviate poverty—that it must accomplish social reform on the order of redistributing wealth and alleviating poverty. The final assumption is that legal-services programs, despite (or perhaps because of) limited funds and personnel, exist to eradicate these "peculiarities" in law and society.

For a variety of views concerning these assumptions, one can turn to the literature.[16] The point made here is that they are only assumptions—not always persuasive or well sorted out at that—upon which it is impossible to predicate a policy of emphasis on law reform. The reality of lack of funding and of staff resources does not make the case for the law-reform approach any stronger.

16. Some of the more pertinent American Bar Foundation publications are F. Raymond Marks, Jr., *The Legal Needs of the Poor: A Critical Analysis* (Chicago: American Bar Foundation, 1971); Staff of the Duke Law Journal, *The Legal Problems of the Rural Poor* (Chicago: American Bar Foundation, 1969; reprinted from 1969 *Duke L.J.* 495); Geoffrey C. Hazard, Jr., *Law Reforming in the Anti-Poverty Effort* (Chicago: American Bar Foundation, 1970; reprinted from 37 *U. Chi. L. Rev.* 242 [1970]); Hazard, *Legal Problems Peculiar to the Poor* (Chicago: American Bar Foundation, 1971; reprinted from 26 *J. Soc. Issues* 47 [No. 3, 1970]); and Hazard, *Social Justice through Civil Justice* (Chicago: American Bar Foundation, 1969; reprinted from 36 *U. Chi. L. Rev.* 699 [1969]). Others are Edgar S. Cahn and Jean C. Cahn, "The War on Poverty: A Civilian Perspective," 73 *Yale L.J.* 1317 (1964); Jerome E. Carlin, Jan Howard, and Sheldon L. Messinger, "Civil Justice and the Poor: Issues for Sociological Research," 1 *Law & Soc'y Rev.* 9 (1966); Jacobus tenBroek, "California's Dual System of Family Law: Its Origin, Development, and Present Status," 16 *Stan. L. Rev.* 257, 900 (1964), and his "The Disabled and the Law of Welfare," 54 *Calif. L. Rev.* 809 (1966).

In fact, this reality may well suggest a more conservative approach (concerned with conservation of resources)—the remedying of problems clearly perceived and defined, that is, the delivery of sound individual services. The empirical fact that, contrary to the rhetoric, the typical legal-services program—staffed-office as well as Judicare—spends nowhere near the time on reform activities that the reformers advocate is a strong practical argument in favor of the restrained approach.

The sum of it, then, is that there are too many practical, pragmatic doubts about the efficacy of the theorist's law-reform emphasis. It is not a moral problem. Some have labeled the impact-case orientation as "Marxist" (because it represents the poor as a special class), or "political," or "untraditional," or as "doing violence" to our legal system, or as "abusive" of the legal system (on the assumption that the legal system is not a proper vehicle for social reform), or as abusive of government funds (because they are used to challenge government behavior). This is only name calling and is as much off base as dogmatic advocacy of the impact approach as a panacea. Our point is that the crucial questions about the untraditional—the reformist—approach have not been answered or even asked by the reformers. Is it expedient *in this instance?* Are the poor benefited? Do the poor want it? Is it economically optimal? Does it "work"?

The empirical data we focused on earlier answer the theoretical questions in part. Some valuable impact work has been done in Wisconsin, Montana, and Michigan, and some that needs to be done has been neglected in all three areas. And some may have been misdirected.[17] The basic conclusion that can be drawn at this point is the comparative one that Judicare in its use of private lawyers from the local communities assures the decentralization of decisions on whether and where to pursue reform, bringing it

17. One possible instance of misdirected impact activity under the Upper Michigan program concerned a school suspension case that the parents of the

closer to the needs and problems as perceived by the clients and the lawyers in the community; while on the other hand, the staff-attorney approach appears to foster centralization and remoteness with respect to these decisions that are of doubtful merit. Other than that, there is no support for the myth that Judicare stifles impact work, that the staffed-office model promotes it, or that either institutional stifling or promotion of "law reform"—given the unanswered questions about it—is "good" or "bad."

suspended child were ready to settle and drop but that continued to be avidly pursued for the sake of principle by the UP central office. The parents and other people in the local community came to resent the program's role in the controversy. This illustrates another dubious aspect of staffed-office model centralization. Of course the Wisconsin Judicare central-office role in Menominee County —also controversial though perhaps on a more significant level—shows that centralization can be a problem under the Judicare model as well. The problem is often tempered, however, by the power and influence of private lawyers under Judicare.

Chapter 7

Quality of Service

Evaluating quality—viewed separately here from the aspects of efficiency and impact of service, which are qualitative aspects by some definitions—requires consideration of several factors. The difficulty is that while some factors are unambiguous and objective by nature, their weight or relevance in the evaluative picture is unclear. At the same time other factors, the significance of which as determinants of quality seems clearer, are more ambiguous and subjective.

The best, or rather the most relevant, determinant of quality, in our view, is the client's evaluation of service received.[1] The client by definition is the intended beneficiary of a service program and hence his views must weigh very heavily, no matter what the doubts about the "objective validity" of his assessments. As it turns out, there is far less reason than is commonly and conveniently supposed to doubt the objective validity and sensibility of client evaluations. An interview that gives the clients a chance to respond both generally and in detail on the issue—focusing on specific components of service (without biasing suggestions) as well as permitting broad open-end evaluation—in many instances elicits sophisticated and reliable assessments of quality. Another factor of some relevance to quality that we will consider independently, though briefly, is the outcome of cases.

1. Much of the material in this chapter was initially published in Samuel J. Brakel, "Free Legal Services for the Poor: Staffed Office vs. Judicare: The Clients' Evaluation," 1973 *Wis. L. Rev.* 523, reprinted as Research Contributions of the American Bar Foundation, 1973, No. 3.

One possible method of assessing quality that we do not use is evaluation of case records by a panel of outside attorneys—a frequently proposed approach. Our view, based in part on two attempts with this method[2] made by other students of legal services, is that it is unproductive. Reflection as well as experience casts considerable doubt on the supposition that lawyers make "better," more informed, or more relevant judgments about the work of other lawyers than, for instance, the clients do. Review panel members suffer from having to make assessments of experiences that did not personally concern or involve them on the basis of information that often turns out to be irretrievable or uninterpretable. Case records typically include only facts selected for a purpose unrelated to evaluation of the quality of work performed. The bulk of information relevant to quality is not recorded, and what is recorded and can be said to have even an incidental bearing on quality is of uncertain weight. For example, we cannot expect agreement even among lawyers about the qualitative significance of such items as the number or types of motions filed or the time spent in specific types of cases. Add to this the disparities in work habits and personalities among the lawyers delivering service, between them and those judging it, and among clients, and the differences in the total circumstances surrounding individual cases, and it becomes clear how little help the panel lawyer's expertise as a lawyer is in judging the quality of work performed by his colleagues.

THE CLIENT'S EVALUATION

Because the significance of the client's views on quality is most clear in the comparative context, we will compare the responses of the Wisconsin and Montana Judicare clients and nonclients interviewed with those of the Upper Michigan staffed-office clients. Comparability is assured by the fact that—as in the instance of case-type statistics kept by the various programs—the clients we interviewed had brought a very similar range of case types. The

2. Douglas E. Rosenthal, Robert A. Kagan, and Debra Quatrone, *Volunteer Attorneys and Legal Services for the Poor: New York's CLO Program* 75–83 (New York: Russell Sage Foundation, 1971); and Margaret A. Hofeller, *An Evaluation of the Office for Legal Services, Nassau County* (Hempstead, N.Y.: American Institute for Scientific Communications, Inc., 1970). The latter suggests that attempts of this type tend to bog down in methodology at the expense of discussing the substantive issues.

cases are broken down in the following fashion: the Judicare clients had brought 43 family problems, 11 consumer and employment matters, 6 administrative cases, 5 housing and land problems, 7 criminal problems, and 8 "miscellaneous" matters; while the staffed-office clients' cases consisted of 38 family, 9 consumer, 6 administrative, 14 housing and land, 7 criminal, and 16 miscellaneous. Under all three programs there was a mix of pending and closed cases, cases won and lost (mostly won), full-fledged court cases and simple advice (and even a number of refusals to handle, particularly under the Michigan program).[3]

To determine evaluation of the service received and to discern preference among clients and eligible nonclients for one program over another, the responses to three main questions will be detailed and compared. Comparing the responses of Judicare clients with those of staffed-office clients to the same questions avoids the issue of the "absolute" validity of client evaluations. The comparative relevance of the responses would not be impaired even if the suggestion were accepted that poor people are not capable of making intelligent assessments of their needs. Moreover, a close analysis of the responses—consideration of their objective sensibility or consistency or lack of it—gives a feeling for the absolute meaning of the evaluations as well. Cumulatively, as well as individually, the responses to the main questions demonstrate that clients and nonclients clearly favor the Judicare model over the staffed-office approach.

Satisfaction with Program Experience

The first relevant question was: "Generally, how did you feel about this experience with [the program that served you]?"[4] Table 7.1 gives the numerical results. The translation from the actual responses to the open-end question "how did you feel" to the "satisfied" or "not satisfied" tabulation in the table is a process worth brief description. Those clients who were "satisfied" sometimes used that very word, but more often they responded with "liked it—it really helped," "O.K.," "wonderful thing," "good

3. If there was any difference of possible consequence for the comparison, it was that staffed-office clients on the average had briefer contact per case with their lawyer than did the Judicare clients.

4. This was not question (1) in the interview sequence, but question (13) in the staffed-office interview and question (20) in the Judicare interview; the latter was slightly longer because of a series of questions on application for the Judicare card.

job," "pleased," and the like. Similarly clients whose responses were tabulated as "not satisfied" occasionally said just that, but more frequently they expressed themselves in terms of specific complaints like "didn't help . . . [the lawyer] didn't know anything," or "terrible—didn't do a thing for me," or even "If we had paid, he [the lawyer] would have done more." Only the responses to the main question appear in table 7.1; hints or even explicit statements of dissatisfaction expressed in response to other portions of the interview are not tabulated here but are discussed later.

While the figures show that most clients were satisfied with the staffed-office performance, the satisfaction rate under the Judicare programs is considerably higher. An examination of reasons given for *dis*satisfaction and a look at the responses to some subquestions to the "general" assessment of experience question shed light on the significance and validity of the data in the table.

Table 7.1 Client Satisfaction with Program Experience[a]

	Satisfied	Not Satisfied	No Answer or Don't Know[b]	Total
Wisconsin Judicare:				
Ashland, Forest, St. Croix cos.; Superior, Red Cliff Res.	34	2	4	40
Menominee Co.[c] ..	11	0	1	12
Total	45	2	5	52
Montana Judicare:				
Ravalli, Lake, Flathead cos. ...	23	2	2	27
Judicare total	68	4	7	79
Upper Michigan staffed-office program:				
All 15 counties of UP	57	16	14	87

[a]In the Judicare portions of the table there are three, and in the staffed office portion two, more responses than respondents interviewed. These discrepancies represent clients with more than one program experience who gave diverging responses about those experiences and appear more than once in the table.

[b]The response of "no answer" or "don't know" usually means that the client's contact with the program was so slight as to preclude him from giving an evaluation. This was especially common among the Upper Michigan respondents, at least eight of whom had no program experience to speak of despite their appearance in the program files.

[c]The data from Menominee County is separately tabulated because all the respondents are Menominee Indians interviewed separately from the other Wisconsin clients as part of a distinct focus on the Indian situation.

Judicare clients. The interviews with Wisconsin Judicare clients revealed only two who were not satisfied with the service they had received. One was dissatisfied because the lawyer had made repeated inquiries into the client's financial eligibility and had generally treated the client "shamefully." The other unhappy Wisconsin client was dissatisfied because he had to pay the lawyer a fee despite eligibility for free service. Both clients volunteered that they did not think anything was wrong with Judicare as such and that only their specific experience had been unfortunate. A third Wisconsin client also had a complaint against Judicare that he stated as part of his response to the main question, but it was that the program did not cover criminal matters (drunk driving in this instance). Since this same client had had an earlier satisfactory Judicare experience on a debtor-creditor problem and looked favorably on the program generally, the noncoverage complaint is listed as "no answer" in table 7.1.

In Menominee County, Wisconsin, 11 of the 12 clients interviewed (all Indians) were entirely satisfied with their Judicare experience. Only 1 client had misgivings about the lawyer's handling of the case (a probate case) because the client's "relatives were not contacted about the court date." This client summed up the Judicare experience as "all right," but since she appeared to be talking about the program generally rather than her specific case, about which she had some complaint, the response is classified as "no answer."

Of the 27 Judicare clients interviewed in Montana, 23 were unequivocally satisfied and only 2 were dissatisfied, 1 only marginally so. The clearly negative client complained that the lawyer "kept stalling" in a pending divorce case. She also felt disadvantaged by virtue of her status as a nonpaying Judicare client, and though she would use Judicare again if confronted with a problem, she would pick a different lawyer. The other client whose assessment was classified as "not satisfied" in the table at first responded to the main question with "all right if you have no money," but subsequent complaints about the lawyer being "too slow" and "not much help," coupled with statements that she hoped she would not have to use Judicare again and that she certainly would pick a different lawyer, led to the negative tabulation.

Staffed-office client satisfaction compared. A look at the responses to some subsidiary questions that were asked in the interviews with both Judicare clients and staffed-office clients serves to

confirm and explain the results of the primary general-satisfaction question. Some reference to data from these subsidiary questions has already been made in discussing the Judicare results, but an understanding of the Upper Michigan client responses—not nearly as favorable as the Judicare results—requires a more detailed exposition. The subsidiary questions that followed the main question were:

(a) Were you satisfied with the outcome of your case?
(b) Were you satisfied with the way the lawyer handled your case?
(c) Do you think the lawyer investigated your case thoroughly?
(d) Do you feel the lawyer was sympathetic toward you and your problem?
(e) Do you think the lawyer spent enough time on your case?
(f) What, if anything, do you think the lawyer should have done that he didn't do?
(g) Do you think that you, as a [program] client, were treated any differently than a paying client?
(h) Would you use [the program] again if you had another legal problem?

The responses to these questions give a fuller picture of the objective meaning of the response to the general-satisfaction question. The client is given a chance to detail his feelings about his experience with the program, to justify and put into perspective his general evaluation of the experience. The responses give the evaluator a chance to assess the portion of satisfaction or dissatisfaction attributable to the client's reticence, timidity, desire for consistency, lack of discrimination, negativism, positivism, or other characteristics. The responses to two other major questions —program experience compared to nonprogram experience and hypothetical comparison between Judicare and staffed-office programs—also shed light on the satisfaction issue, but these are the subject of later, separate discussion and tabulation.

Of the 16 dissatisfied Upper Michigan staffed-office clients, 7 felt that they had been treated worse than a paying client [question (g)] and 5 of those also said that they would not use the program again [question (h)]. By contrast, not one Judicare client stated that he would not use the Judicare program again, and the only respondent who said he felt disadvantaged by virtue of being a Judicare client was the one whose drunk-driving case had been rejected because of the program's coverage limitations (not the kind of reason the question was intended to yield). Whether or not the dissatisfied staffed-office clients had objectively valid grounds for believing that they were treated worse than paying clients is not relevant for comparative purposes. Neither is it important to know whether they really would not use the program again or whether they only said so. What is significant is the strong sense of dissatisfaction that these responses imply, and the fact that such responses were not encountered in interviews with Judicare clients.

Other than the inference that staff attorneys perform less competently than private attorneys (for which there is no direct evidence), some other speculative reasons come to mind for the significantly higher rate of dissatisfaction under the staffed-office than under the Judicare approach. One may be that clients often view staff lawyers as something less than "real lawyers," perhaps because of the youthfulness of most staff attorneys,[5] the appearance of the office, or the nature of its clientele, while private lawyers are "real" lawyers whose legal competence is seen as guaranteed. Again and again staffed-office clients made oblique or explicit reference to the fact that they did not perceive staff lawyers as bona fide lawyers.

Another factor may be the availability of choice of lawyer under Judicare and its absence under the staffed-office method. For that reason, Judicare clients may be less likely to find fault with the program on the basis of one unsatisfactory experience, and this may be reflected in their later evaluation of that specific experience. The knowledge that he can always pick (or could have picked) another lawyer and the resulting tendency not to impute a specific complaint about a lawyer to the program as a whole could have a softening effect on the Judicare client's evaluation. By contrast, any specific shortcoming in a client's experience with a staff lawyer is likely to be automatically imputed to the program and thus magnified. The staff program may thus have to contend with an image problem and be subjected to harsher judgments on concrete performance because of facts (and prejudgments on the basis of these facts) that are not strictly a part of the program's concrete performance.

Whatever the merits of these speculations, they change neither the findings nor their significance. For however the clients arrived at their assessment, the assessment stands.

The responses to subquestion (b)—on satisfaction specifically

5. See note 11 to chap. 6 *supra* for the table on year of law school graduation of staff attorneys. The Upper Michigan program attorneys conform closely to the general phenomenon.

with the handling of the case—illuminate the question of lawyer competence and its relation to satisfaction with the total experience. By focusing on one of the more precise and crucial aspects of performance, subquestion (b) helps separate the preconceived and general from the actual and specific in the client's evaluation. The fact that the comparative satisfaction pattern between Judicare clients and staffed-office clients persists for subquestion (b) confirms the rough quantitative validity of the answers to the primary question while at the same time lending a measure of qualitative validity to the general evaluations. The responses of "handling" substantiate both on a dependent (as a facet of the total experience) and independent level the significance of the general experience responses, as table 7.2 demonstrates.

The responses of Judicare clients here show somewhat greater discrimination, that is, slightly more dissatisfaction with the handling of the case specifically than with the total experience. Of the 7 dissatisfied with "handling," 3 were dissatisfied with the total experience and 4 were satisfied. The 1 other client dissatisfied with the total experience could give no evaluation of handling. Among the staffed-office clients, the number dissatisfied remains at 16, but far fewer clients were able to express themselves on handling because their experiences were so limited. Five staffed-office clients dissatisfied with the total experience gave no opinion on handling, but their place was taken by 5 other clients satisfied with the total experience but specifically dissatisfied with handling of the case. Eleven clients were dissatisfied on both counts. Since only 48 staffed-office clients indicated satisfaction with the handling, the comparative picture with Judicare clients remains approximately the same as that presented in table 7.1.

Table 7.2 Client Satisfaction with Handling of Case

	Satisfied	Not Satisfied	No Answer or Don't Know	Total[a]
Judicare total	65	7	8	80
Upper Michigan staffed-office program (all 15 counties of UP)	48	16	26	90

[a]There are a few more responses in this table than in table 7.1 because in answering the handling question the clients separated their various program experiences more frequently than in response to the primary general question.

Responses to the other subquestions are less susceptible of individual analysis and comparison between Judicare and staffed-office experience. Reservations expressed in response to several of the subquestions (a), (c), (d), (e), or (f) usually did coincide with dissatisfaction with the total experience. But minor reservations on one or sometimes even two of the subissues did not necessarily mean dissatisfaction with the whole. Even the correlation between assessment on outcome [question (a)] and evaluation of the total experience was tenuous. Under both Judicare and the staffed-office program an overwhelming number of clients felt that the outcome of the case was favorable to them. But some clients who were satisfied as to outcome were dissatisfied with the total experience, and some who did not like the result were favorably impressed with the total experience. Among the 4 dissatisfied Judicare clients, not one was dissatisfied with the outcome specifically: 3 of the cases had been completed in a manner at least neutral to the client's interest, and the fourth case was pending at the time of the interview. Of the 16 dissatisfied staffed-office clients, 6 were dissatisfied with the outcome of their case. In the other 10 cases, the result was either satisfactory to the client, neutral, or the question not applicable because there was no real outcome to the case (e.g., advice only). One dissatisfied staffed-office client who said that he had "won" the title in a property dispute "explained" that this was "only because of the judge and definitely not because of the [legal-services] lawyer."

Of the unhappy staffed-office clients there were 4 who had less than a clear-cut experience with the program. Instead they had been told after a conference with the legal-services attorney that they could not be helped. This is not an uncommon experience in the Upper Michigan program: of the 85 clients selected from the program's files, 15 had not been helped because of financial ineligibility, substantive noncoverage, or some vaguer reason. The majority of these were categorized as "no answer" on the general-satisfaction questions. However, the responses of 7 of the 15 clients (3 satisfied in addition to the 4 unsatisfied) were open to more useful categorization because their contact with the program was more than perfunctory and the reason they were not helped was not based on clear financial ineligibility or substantive noncoverage. For example, 1 unsatisfied client wanted to begin divorce proceedings and institute action to keep her husband away from her child. She was told by the legal-services attorney that nothing could be done for her because of a residency obstacle. The

client then went to a private lawyer who began to handle her problems immediately.[6]

Of the 12 other dissatisfied clients, 2 had received only advice. The remaining 10 had had full service, the majority going through court. Five had brought family problems, 2 housing or land cases, 2 miscellaneous matters, and 1 a juvenile criminal case.

In concluding this section, it should be pointed out that under both kinds of programs there was disenchantment on the part of clients with having to pay fees of various sorts despite eligibility for free service. In most cases the fees were minor court costs, usually filing fees, and the clients did not let this unexpected charge color their overall evaluation of their experience with the program. This does suggest, however, that the programs would enhance client confidence by reducing these financial burdens and uncertainties. The cost would be small.

Program Experience Compared to Nonprogram Experience

The second seminal question was: "How would you compare [your nonprogram legal experience (if any)] to your experience with [the program]?" Table 7.3 gives a numerical exposition of the responses to this question.

This was not a very productive question because relatively few clients were in a position to express clear opinions. Many had had no comparative experience at all; for others it was far in the past, and they could remember little or had other valid reasons for not being able to express a preference. Many simply felt that the

6. The other cases where contact with the office was significant and the reasons for nonhelp obscure were the following: A woman seeking a quit-claim deed waited at the office for two hours while the staff lawyer chatted with a friend. When finally given an audience she was told that nothing could be done until her father-in-law, who was old and sickly and apparently an essential party to the action sought, came to the office. The father-in-law reportedly could not come to the office because of his infirmities and the staff lawyer refused to go see him. The second case involved a traffic accident. The client had been advised by the magistrate to file a counterclaim. The staff attorney said that the case could not be handled because the program did not cover traffic matters, but clearly the problem went beyond a traffic infraction. Also the possible refusal of the case on grounds that it was fee generating would not apply where the client is in the position of a defendant filing a counterclaim. The third case concerned a claim for back wages. Despite the apparent propriety of bringing such a problem to the program the client was told that the case could not be handled. The precise accuracy of the client versions is not at issue here. Rather, the client accounts of their experience with the staffed office are significant enough and the reasons for nonhelp dubious enough to be counted as "program experiences" for purposes of tabulation and evaluation.

Table 7.3 Clients' Nonprogram Experience Compared to Program Experience

	Prefer Program Experience	Prefer Nonprogram Experience	No Preference	No Comparative Experience	Total
Wisconsin Judicare:					
Ashland, Forest, St. Croix cos.; Superior; Red Cliff Res.	6	2	2	19	29[a]
Menominee Co.	2	1	1	7	11
Total	8	3	3	26	40
Montana Judicare:					
Ravalli, Lake, Flathead cos.	5	1	1	13	20
Judicare total	13	4	4	39	60
Upper Michigan staffed-office program:					
All 15 counties of UP	9	9	4	40	62[b]

[a]The total here matches the number of clients interviewed because the respondents, in answering this question, did not differentiate among their various program experiences.
[b]Here again there was no differentiation among program experiences. Also, the question was not asked or not answered in two instances.

experiences had been roughly the same. Despite this, an examination of the details of the responses will delineate the meaning of this table and will help to show that the consistency with the pattern of more favorable client evaluations under Judicare than under the staffed-office approach is not coincidence.

Judicare clients. Among the Judicare clients who stated a preference, 13 liked their Judicare experience better than their non-Judicare experience. Four preferred the non-Judicare to the Judicare experience. Of these 4 who preferred the non-Judicare experience, 2 were among the 4 clients who had been generally dissatisfied with Judicare. One who preferred the non-Judicare to the Judicare experience had used the same lawyer in both instances. Of the 2 otherwise satisfied clients, one stated—perceptively—that she had better memories of her non-Judicare experience because it was an adoption case, whereas her Judicare experience was an unpleasant divorce, which colored her comparative evaluation. The other client, though also sufficiently satisfied with her Judicare experience, was a Menominee Indian whose non-Judicare legal experience had been with a team of lawyers organized specifically for the purpose of promoting American Indian rights. The client felt psychologically more comfortable with lawyers from that organization, seeing them as "more sympathetic, even though Judicare was probably just as good." None of the Judicare clients had had experience with a staffed-office program.

Among those who preferred Judicare to their non-Judicare experience, two or three implied that this was because they did not have to pay. The other ten clients gave reasons bearing on the merits of the service they received.[7]

Staffed-office clients. In Upper Michigan nine clients preferred their staffed-office program experience to their nonprogram experience, and nine others thought their program experience was

7. Responses were on the order of "did a good job" or "got everything I wanted," leaving the implication that handling and outcome with the nonprogram lawyers had been less than satisfactory. While not explicit, the responses to earlier questions suggest that financial factors were in the background of evaluations on the merits of service. At least two of the ten clients had said earlier—to use the exact words of one—that "Judicare was probably better because at least under Judicare they [the lawyers] are sure they'll collect." Similar underlying reasons coloring program versus nonprogram evaluations were found in interviews with the staffed-office clients.

worse than their other legal experience. These returns are again less favorable than under Judicare. The preference responses coincide rather closely with the general-satisfaction responses. Of the nine staffed-office clients who felt that their nonprogram experience had been better than their experience with the program, eight had been dissatisfied with the latter. The ninth client had been fairly well satisfied with the program but her experience with a private lawyer on an identical case (divorce) had been better because "Legal Services [the staffed office] doesn't fight as hard."

The nine clients who preferred their staffed-office experience gave a variety of reasons. Three clearly related their preference to the fact that they had to pay the nonprogram lawyers. A fourth was somewhat less certain: "Legal Services was nicer, more comfortable, *maybe* because there was no money involved." The remaining preferences centered mainly on personality. One client felt that the private lawyer in her nonprogram experience had been "grouchy and not honest." Another thought that the district attorney to whom she had gone with a child-support problem had been "kind of nasty." Still another client simply "liked the Legal Services lawyer better." And the last two clients, from the same town, said that the private lawyers and judges were "a clique . . . and all crooks." One added that the town lawyers would "do nothing for you unless you're Italian [like them]." The irony of the reasons for program preference given by these last two clients is the fact that the regional staff attorney in the town is a former private attorney from that town whose father is still a private practitioner in the same town. Both are "Italian" like the rest of the local bar.

Like the quantitative significance, the qualitative significance of the responses on comparative experiences is unclear. While few clients had concrete comparative experiences, the proportion of those who indicated a clear preference between program and nonprogram experience was even smaller, and the reasons for preference offered by those who did express themselves on this issue often seemed less than compelling. Nonetheless, there is a measure of significance in the data; it revealed that clients obtaining free service under the programs on the whole felt that the service they received was at least equal to what they received as paying clients from private lawyers. This finding speaks well for the legal-services programs of both kinds. It is also noteworthy that the responses of the Judicare clients were again more favorable to the

Judicare program than were those of the staffed-office clients to the staffed-office program. This pattern growing out of the first two primary questions is dramatically reinforced by the results of the third, discussed below.

Comparative Preferences between Staffed Office and Judicare

The third primary question as posed to staffed-office clients was: "Under Legal Services [here in Upper Michigan] you go to a government lawyer. Under a different system, which is operating for instance in Wisconsin, you can get free legal service from a private lawyer of your choice. Which [system] do you think you would prefer?"[8] As posed to Judicare clients the question was exactly the reverse.

In the Judicare areas of Montana and one of those in Wisconsin we asked this question of both clients and eligible non-

8. It was difficult to phrase this question so as to preclude the possibility of bias. The wording is intended to be as factual and neutral as possible while still brief and comprehensible enough to elicit reliable answers. The characterization of staff lawyers as "government" lawyers reflects the clients' own way of dichotomizing the professional world: "goverment" is simply the opposite of "private"; anyone connected with public service in an institutional setting, whether welfare or legal, or state, local, or federal is "government personnel" to clients. Also, clients by definition know about their own legal-services program and may have a general notion of the structure of the alternative, so that it is unlikely that whatever bias may flow from the use of a certain term would greatly influence responses. Moreover, any prejudgments associated with the term "government" probably cut in diverse directions: to some clients it may suggest the benevolent and the positive, to others the opposite. Finally, an examination of the content of the responses—the reasons for preference—does much to dispel any suspicion that the responses reflect a bias introduced by the question.

The phrase "private lawyer of your choice" might be challenged as emotive. It is doubtful, however, whether a more casual or elaborate wording ("any lawyer you would like to have . . ."?) is less open to challenge. But the reference to choice cannot be eliminated because it is a central, distinctive feature of Judicare. There are of course limitations on choice—such as the number and quality of lawyers within reasonable distance of any given client—that can never be conveyed in a single question. The Judicare clients, having exercised choice, probably consider these realities in responding. The staffed-office clients are less likely to be fully aware of them, though even total unawareness would not invalidate their response but would mean only that they are responding on a different level. The responses reveal that the clients have both preconceptions and perceptions of reality that often tend to cancel out, e.g., some Judicare clients indicated that knowing the lawyer is wonderful, while other Judicare and staffed-office clients said that knowing the lawyers is to know that they are all "crooks" seeking only their own monetary and other interests.

clients.[9] In Upper Michigan we interviewed only clients of the staffed-office program. The returns are given in table 7.4

It would be reasonable to expect clients to express preference for the system with which they have had experience rather than for a hypothetical alternative system, especially when the concrete experiences have been favorable. The very strong preference among Judicare clients for Judicare (26) over the staffed office (2) is thus not necessarily startling (11 gave no preference). However, eligible nonclients show an equally strong preference for Judicare (14 preferred Judicare, 1 preferred the staffed office, and 7 gave no preference), though some of the explanation may lie in the fact that the eligible nonclients interviewed lived in the Judicare areas and that "preference" in part reflects familiarity with, or at least visibility of, the Judicare program. Startling, though, is the finding that a high proportion of staffed-office clients in Upper Michigan also prefer Judicare (29 preferred Judicare, 23 preferred the staffed office, and 31 gave no preference), notwithstanding their concrete (and still mostly positive) experiences with the staffed-office approach and despite the potential effects of familiarity and visibility. The possibility that some of the Judicare preference among staffed-office clients in Upper Michigan reflects familiarity with the Judicare concept is remote. Judicare is no more known among the poor in that area than the staffed-office program is among poor people in the Judicare areas of Wisconsin and Montana.

The data thus demonstrate an overwhelming "hypothetical" or "abstract" preference for Judicare[10]—"abstract" because it is not based on actual comparative experiences with both models of service. An examination of the reasons given for preference, however, lends substance to this skeletal tabulation and gives some notion of the objective meaning of preferences stated. Also, the preference responses will be related to the earlier evaluation of concrete experience so as to further elucidate the reasons for hypo-

9. The question was asked only of the Menominee County clients in Wisconsin. The other Wisconsin clients had been interviewed a year earlier, before the comparative part of the study began; there was then no reason to ask such a question.

10. See totals of preferences in table 7.4, which are clearly in favor of the Judicare model. There were of course a significantly higher number of respondents from the staffed-office area (for whom that program would be familiar and for whom this familiarity might have had an effect on comparative preference) than from the Judicare areas. A weighting of the figures would produce even more striking results.

Table 7.4 Preferences for Type of Legal Service Expressed by Clients and Eligible Nonclients of Staffed-Office Program and Judicare[a]

	Prefer Staffed Office	Prefer Judicare	No Preferences or No Answer	Total
Judicare:				
Wisconsin (Menominee Co.):				
Clients	0	9	3	12
Eligible nonclients	0	6	3	9
Montana (Ravalli, Lake, Flathead cos.):				
Clients	2	17	8	27
Eligible nonclients	1	8	4	13
Total clients	2	26	11	39
Total eligible nonclients	1	14	7	22
Total	*3*	*40*	*18*	*61*
Staffed-office program:				
Upper Michigan clients[b]	*23*	*29*	*31*	*83*[c]
Combined Judicare and staffed office	26	69	49	144

[a]Judicare clients and nonclients had not experienced staffed-office programs, and staffed-office clients had not experienced Judicare.
[b]From all 15 counties of UP.
[c]Question not asked or answered in two interviews.

thetical preference: it is predictable to find dissatisfied clients expressing preference for an alternative program, but it is more surprising and interesting to see clients who were satisfied with the service they experienced nonetheless expressing preference for an alternative system.[11]

Judicare clients and eligibles. Among the Menominee Indians interviewed in Wisconsin—both clients and eligible nonclients—none preferred the staffed-office over the Judicare approach. We might recall here—as discussed earlier—that the Wisconsin Indians are frequently distrustful of private lawyers in nearby towns; this makes more surprising their high preference for Judicare. One possible explanation is that the Indian clients interviewed had almost uniformly had satisfactory experiences with the Judicare program (see table 7.1). However, Judicare preference was also marked among the eligible nonclients interviewed (6 preferred Judicare, none the staffed office, and 3 gave no preference). Another reason thus may be that the Indians are as distrustful of government efforts in their behalf as they are of private service. (There is some impressionistic evidence to support that supposition too.)[12]

The reasons for preference given by the respondents are the best source for discerning predominant rationales. Of the nine Menominee Indian clients who preferred Judicare to the staffed-office model, one said it was because she once had an experience with a county government lawyer that compared unfavorably to the experience with her Judicare lawyer. Another said that she had never had experience with a government lawyer, but only with Judicare, and that experience was a good one. Two other clients could give no reason for their preference for Judicare, but one may infer that the rationale was similar to that given by the previous client (good experience plus familiarity). The other four Menominees preferred Judicare because of the choice of lawyers possible under this program. That this is not empty talk suggested

11. If it be argued that clients responding in this fashion suffer from the "grass is greener . . ." syndrome, it becomes difficult to explain why only staffed-office clients and virtually no Judicare clients are victims of such a delusion.

12. One might recall in this context the occupation by Indians of the Bureau of Indian Affairs building in Washington, D.C., or the recent events at Wounded Knee. On a less dramatic scale, the interviewers of this study were time and again made aware that many Indians who never left the reservation to protest were equally suspicious of institutionalized benevolence and professional do-gooders.

by program propaganda or by the preference question itself is demonstrated by the elaborations: "I knew this lawyer—can't talk to a strange lawyer." "Liked this one [lawyer]—I was glad I could pick him." "Knew the lawyer I used—I'm glad that I could go to him."

The six eligible nonclients interviewed in Menominee County who stated a preference for Judicare (the other three had no preference) gave the following reasons: two explicitly said that they mistrusted the government; two other nonclients gave no reason; and two based their preference for Judicare on the possibility of choice of lawyer. One phrased it this way: "I wouldn't want to go to some stranger." The other said: "I would like to go to someone I knew well and who knew me well—this affects the case."

In Montana, only two of the Judicare clients interviewed preferred the staffed-office model. This included one of the two clients dissatisfied with the actual Judicare experience (see table 7.1).[13] Though at one point in the interview this client volunteered that the Judicare *concept* was all right, her response to the preference question was, "Anything would be better than these dingbats" (referring to the private lawyers in town). The other client who preferred the staffed-office model was satisfied with the concrete Judicare experience but felt that under the staffed-office approach the lawyer(s) "would not be so dependent on the fee they get."

One eligible nonclient in Montana also preferred the staffed office, because he felt that private lawyers would not do as good a job as they were able to unless substantial amounts of money were involved.

All other persons interviewed in Montana—clients and eligible nonclients—preferred Judicare to the staffed office (25) or had no preference (12). All 17 clients in the group had had a satisfactory experience with Judicare. The 8 nonclients preferring Judicare have no such experience to influence their response. Their reasons for preferring Judicare submit to the categorization shown below.

	Clients	Non-clients	Total
Choice of lawyer	4	4	8
Judicare more "personal," more "comfortable"	4	1	5
Better service (categorically stated as a reason)	3	0	3
Status quo (like it "the way it is," good experience with Judicare)	2	1	3
No reason	4	2	6
Total	17	8	25

13. The other dissatisfied Montana Judicare client had no preference.

Two of the more quotable elaborations were: "Government lawyers are doing it [providing service to the poor] because it's their job; a private lawyer helps you more than the ones given to you." The other: "[Under Judicare] you see the same lawyer all the time; you get to know him; it's easier to discuss your problems."[14]

Staffed-office clients. As noted, even a high proportion of staffed-office clients in Upper Michigan preferred Judicare, but probably due to the number of favorable experiences with the staffed program the margin of preference for Judicare was small: 23 preferred the staffed-office approach; 29 preferred Judicare; and the remaining 31 had no preference.

In part, preference for the alternative—Judicare—among Upper Michigan clients stems from dissatisfaction with their own program. But this is by no means a complete explanation. Of the 29 who preferred Judicare, 10 were dissatisfied with their staffed-office experience.[15] But 16 had been satisfied with that experience and yet stated a preference for Judicare; the remaining 3 Michigan clients preferring Judicare were those with "incomplete" staffed-office experiences and "no answers" on satisfaction.

The reasons for Judicare preference given by the staffed-office clients are broken down according to whether they were or were not satisfied with their staffed-office experience. Ten dissatisfied clients gave the following reasons:

Choice of lawyer	4
Staffed-office experience compares unfavorably to private lawyer experience	2
Judicare "more personal"	1
Distrust government	1
No reason	1

The response of one of the ten clients was too elaborate for categorization. She said she preferred Judicare because "I like the idea of being able to choose . . . you don't feel the poverty stigma . . . can be familiar with the lawyer's reputation . . . [and] a private attorney would be more interested [in the case of a poor

14. As discussed earlier, the rate of turnover among lawyers in staffed-office programs is quite high. There are some hints in the data that the turnover rate affects clients' satisfaction. Several clients told us that their cases had been handled by two successive staff attorneys; one client complained that a third attorney was now working on her case. By contrast, private lawyers in rural areas are a far less mobile group. Most private lawyers in Wisconsin and Montana have practiced in their present locations since shortly after graduation from law school.

15. Six of the 16 dissatisfied staffed-office clients (see table 7.1) stated no preference, though a few left the question open to only one inference. One very

person] because of his diversified practice." This is an astonishing list of insights for someone who is a user of, rather than a student of (or apologist for), legal services. In the background of all ten responses was of course the feeling that the experience with the staffed office was unsatisfactory.

Those 16 staffed-office clients who were satisfied with their concrete experience but nonetheless said they preferred the Judicare model reasoned along the following lines:

Choice of lawyer	6
Judicare more "personal," "more confidence" in local practitioners	4
Judicare provides "faster" service	2
Staffed-office experience compares unfavorably to private lawyer experience	2
No reason	2

As among the other clients, the attractiveness of having a choice of lawyer appears to be a dominant factor in the above reasons for Judicare preference. It may well be in the background even of those reasons where it was not made explicit and is not categorized as such. As before, it should be stressed that this is more than a superficial rationale. Said one satisfied staffed-office client: "I'd prefer [Judicare] because if you already had or knew a private attorney. . . ." Another put it this way: "I was only lucky I liked this particular [staff] lawyer; it's better to have choice." In sum, among the rural poor (if not among the poor generally) there is a pronounced tendency to favor local and existing private resources. One staffed-office client made the following analogy in explaining preference for Judicare: "You have more confidence in a [private] attorney—it's like a doctor."[16]

Choice is thus central not only here where a large proportion of clients give it as a ground for preferring Judicare, but also—as discussed earlier—as a likely factor in the high rate of satisfaction with Judicare services. It is more than a slogan; it is a reality to Judicare clients in Wisconsin and Montana who have exercised it effectively, a tempering element for those Judicare clients who have not used it effectively, and an abstract attraction to staffed-office clients who do not have choice.

The 23 clients who stated that they preferred the staffed-office approach were all satisfied (or at least not dissatisfied) with their staffed-office experience.[17] This fact is the predominant basis for their preference as the outline for 21 clients shows:

Status quo (good experience with staffed office, "keep it the way it is")	9
Unfavorable opinion of private lawyers (often related to money)	5
Staffed-office lawyers have more "sympathy" for poor	4
No reason	3

The reasons given by two other clients were unique. One was the view that the staffed-office program was "cheaper" than Judicare: "You don't have to pay all those private lawyers"—a laudable concern for public funds on the part of the client.[18] The other client who preferred the staffed-office approach based the preference on her view, not further explained, that staff lawyers "know more about the case."

Two responses falling into the category of "more sympathy for the poor" are also worth quoting in full. One client thought that staff attorneys had "more psychological aspects [*sic*] toward the poor" than private lawyers. The other gave as her reason for preferring the staffed-office model to Judicare the fact that she was "scared of lawyers." One interesting aspect of this response is that it reiterates the view of staff lawyers as something less than (or at least different from) "regular lawyers," but in this instance the view worked in favor of the staff model.

Finally, there was a client who preferred the staffed office because he felt that since staff lawyers "*choose* to work with poor people, they will treat them better" than private attorneys. It may be recalled at this juncture that several other clients who stated a preference for Judicare saw the institutional characteristics of the staffed office to cut in an exactly opposite direction. They felt that the staffed-office model was deficient precisely because its lawyers were only doing their job, whereas a private lawyer would help and help more because he wanted to and because the diversity of

negative client, for example, responded to the preference question with: "What do you think?" Another more positive client, though not satisfied with the staffed-office experience, nonetheless felt that he got "as much satisfaction as from a 'real lawyer,'" and hence expressed no preference.

16. Here again is the point about clients not viewing staff attorneys as bona fide attorneys. The word "private" had to be supplied to the quotation.

17. The reasons for Judicare preference given by the three remaining staffed-office clients (who gave a "no answer" on the satisfaction question) are: that Judicare was preferable because "you have the opportunity to evaluate the lawyer and his reputation in the community," that "private lawyers get down to the basic problems easier," and that private lawyers are "more willing to take big cases" than staff lawyers.

18. Convincing evidence that Judicare is indeed more expensive than the staffed-office approach has never been presented, though many "experts"—like this client—present this assumption as fact. See the following chapter for a discussion of the comparative costs of the programs.

his practice enabled him to maintain a more genuine interest in the poor client. The interesting aspect of these contrasting views is that the clients here are duplicating the debate as it "rages" in academic and political circles concerned with legal services for the poor. The same arguments on institutionalized versus privately rendered services emerge. Undoubtedly there are valid points to be made on both sides. The significant fact, however, is that the clients have framed and have addressed themselves to these issues with no less cogency than any legal-services "scholars" or "experts," and that as a group the clients have expressed a pronounced preference for the model that uses existing, private, local resources—that is, the Judicare model.

The temptation to dismiss as irrelevant or insignificant findings that are inconsistent with preconceived notions is difficult to resist. It would be tempting, for example, to counter the findings on client preference with the charge that expressions of client preference at best reveal client prejudices and thus are meaningless or even detrimental to the clients' own interests. Such paternalism, however, is neither theoretically nor factually supportable. First, even prejudices must be considered when they are operative motivations. Second, whatever portion of client responses one is tempted to categorize as mere prejudice cannot be confined to one side of the issue: the rural poor, as an a priori matter, mistrust the private "profit" orientation as well as the "altruistic" institutional (governmental) orientation. Finally, a careful examination of the clients' responses fails to reveal any lack of insight and reasonableness, let alone enough to excuse paternalistic dismissal of the clients' views. Indeed, the responses reveal on the whole a discrimination and cogency that demand that they be taken seriously.

OUTCOME OF CASES

The cases brought by the clients interviewed generally resulted in outcomes that were favorable or at least neutral to the clients. This was true of both Judicare and staffed-office cases, though with the latter there was a considerably higher proportion of cases with no decisive outcome and consequently no client opinion about outcome.

The program statistics on court cases duplicate this picture of highly favorable outcomes with cases "won" or "settled" outdoing cases "lost" by at least nine to one under both models. Several conclusions can be drawn from this.

First, as a sidelight, the correlation between client descriptions of outcomes and program statistics shows that client perceptions about their legal-services experiences are accurate. Clients are not merely gulled by lawyers into believing that they won when in fact they did not. It is reasonable to infer that clients also are able to make adequate judgments about other aspects of the legal-services experience (or even about their predicament as legal-services clients or as poor people). This reasserts confidence in the view—central in this study—that the clients have a lot to say and are a major source of information and evaluative data on the issues involved.

Second, and more crucial, the client and program confirmations of the high "win rate" among legal-services cases give rise to speculation on the reasons for this dispositional success. Perhaps the first reaction (of any reasonable skeptic) would be the suggestion that legal-services programs accept only "winnable" cases. There is, however, very little evidence under either the Judicare or staffed-office model that this occurs. Whatever operative restrictions exist on intake under the various programs, none have much to do with whether the cases brought are winnable or not. A more to-the-point reaction, then, is to conclude that the high legal-services win rate demonstrates the tremendous significance of expert representation in individual problems presented by the poor. This in turn is a concrete argument in favor of program emphasis on case-by-case representation as opposed to an overdone impact and law-reform approach. The crucial factor for poor people (and probably any other class of people) in successfully pressing claims or defending themselves against the claims of others is the simple fact of having a lawyer.[19] It is not so much the shape of the law as the fact of being represented that makes the difference. Existing law is "unequal" to the poor not so much in substance as in the sense that the poor have it applied against them or fail to have it applied in their favor for lack of representation. Laws reformed are not "equal" for the poor until there are lawyers to implement them against the inertia or active opposition of administrative or enforcement officials or systems. This perception argues for a strong emphasis on individual case-by-case service.

19. There is an implication in this fact that legal business is an esoteric business, perhaps needlessly esoteric and perpetuated as such by those (i.e., lawyers) who stand to gain from this esoterica. The thrust of reform favoring the common man or poor person has usually been in the direction of creating more, or embroidering upon existing, esoterica—fashioning new substantive rules and procedures or reinterpreting old ones to *help lawyers* help the common man. Rarely has the focus been on changing legal procedures and personnel so as to enable the common man to help himself.

A heavy preponderance of legal-services clients are in the position of plaintiff rather than defendant. This negates the common perception of the poor as passive users of legal services. Another perception—that the poor are "conservative" users in terms of the types of problems brought—is not undermined, however.[20] Conservative use is an inescapable feature among a population that has long been denied—for lack of funds—even conservative service. The central problems of the poor, as perceived by the poor, are conservative problems. No program should deviate far from this perception at the present time, precisely because it is the client's perception and because no other perception is more valid, more responsive, or more responsible. Conceivably, soundly delivered individual conservative services can eventually produce the impact, alter the immediate needs and perception of needs, and create the psychological climate among the poor that would promote less conservative demand. The case-by-case win rates of the legal-services programs may well represent the first steps in that direction. A reordering of service priorities from the individual and conservative to the more group oriented and radical, however, is currently premature, and if ever appropriate should spring from the perceptions of the poor as tempered by those of the deliverers of service rather than—as some would have it—from the untempered perceptions of remote "centralizers" who see themselves as spokesmen for clients and deliverers.

20. E.g., F. Raymond Marks, *The Legal Needs of the Poor: A Critical Analysis* (Chicago: American Bar Foundation, 1971).

Chapter 8

Comparative Cost of Service

As with the discussion of other issues, the discussion of economics is hampered because the legal-services programs are jurisdictionally and temporally limited. There is much lack of comparability in objectives behind and methods of keeping records; there is also little agreement on the noncost "worth" of the various items of service. Some difficulties are peculiar, or apply with particular force, to the discussion of economics: for example, the lack of an urban Judicare experience is especially unfortunate in view of the commonly held assumption that economies of scale are particularly apparent in an urban context and a peculiar property of the urban staffed-office experience. (It is generally ignored that much the same principle—i.e., efficiencies resulting from increased volume—would apply to an urban private [Judicare] lawyer or firm.) Another special problem with economics is the generally accepted fact—especially when the experiences are seen as experimental—that the programs have been severely underfunded with the result that there is a built-in cost bias with various overt and hidden cost consequences.

A great deal of misinformation about the comparative costs of service—mostly in the direction of attempts to show that Judicare is far more costly than the staffed-office approach, but some to the opposite effect—has appeared over the years. At the core—methodologically—of these various misleading efforts has been the cost-per-case analysis. This method of evaluating program costs has been employed in various ways and with various results, sometimes lumping all cases together, at other times selecting among "comparable" cases and dividing by the number of cases to obtain an "average" cost per case.

The difficulties with this method are manifold and are so endemic to the method as to appear inherent in it: for one, comparability among the cases for which cost is compared is invariably illusory, whether there is a lumping of all cases or whether a selection of some rationality is attempted. The actual differences among cases, complicated by differences in recording and classification, have proved insurmountable obstacles to meaningful analysis. Thus we have had analyses that have in essence compared the costs of complex, fully litigated cases to the costs of a piece of simple advice; or we have had analyses of "comparable" divorces and bankruptcy cases that upon closer examination contained disparities on the order of 7½ hours difference in time spent by the lawyer per average case.[1] Small wonder that conclusions have ranged anywhere from assertions that Judicare was seven times as expensive as the staffed-office approach all the way to the "finding" (less typical, though equally unconvincing) that Judicare was cheaper. More fundamentally, however, the problem with the cost-per-case analysis has been that it has considered only one or a few of many aspects of total program cost. Thus, even the more "accurate" or "fairer" conclusions on cost per case are of tenuous validity because of their failure to include many of the less conspicuous, but nonetheless relevant, cost factors.[2]

The point is that an intelligible cost comparison must focus on the "whole picture," on "hidden" costs and savings peculiar to the program, as well as on obvious (recorded) cost factors. It will not do simply to count cases and divide; nor can we simply look at attorney salaries or fees and ignore costs of travel, rental of space, cost of supplies, or expenditures for nonprofessional help largely absorbed by the individual private lawyers and not charged to the program under Judicare, but charged in full to the program under the staffed-office model.

Our approach will be to begin by reproducing the budgets of Wisconsin Judicare and of the Upper Michigan staffed program

1. Leonard H. Goodman and Jacques Feuillan, *Alternative Approaches to the Provision of Legal Services for the Rural Poor: Judicare and the Decentralized Staff Program* 141–43 (Washington, D.C.: Bureau of Social Science Research, Inc., 1972). As a result these authors found Judicare costs to be "very much higher" (up to seven and a half times higher) than staffed-office costs.

2. If all cost factors and all comparability problems are taken into account, presumably one could arrive at a comprehensible cost-per-case figure. The fact remains, however, that the cost-per-case method is hardly conducive to such treatment.

and to do the analysis step by step from that vantage point (see table 8.1).

The first and most obvious fact that deserves notice is that Wisconsin Judicare, though covering a physical area and serving an eligible population about twice as large as the Upper Michigan staffed-office program, operates on a budget that is only 18 percent higher than Upper Michigan's. If Wisconsin Judicare were funded at the level of the Upper Peninsula (UP) program, its total budget would amount to $600,000 instead of the actual $355,000. This is not an isolated anomaly either, for the same disparity shows up when the Wisconsin Judicare budget is compared to the

Table 8.1 Budgets for Upper Michigan and Wisconsin Legal-Services Programs

	Upper Michigan Staffed-Office Program		Wisconsin Judicare	
Total eligible population	14,375 (15-county area)		27,094 (28-county area)	
Total annual budget	$299,534		$355,670	
Personnel costs:				
Annual salaries for 7 staff attorneys (8,575 man-hours)	110,500		Total annual fees to private attorneys (8,479 man-hours)	153,271
Director's salary	17,000		Director and 2 supporting professionals	42,600
	$127,500			$195,871
Nonprofessional staff salaries	56,900			26,700
Fringe benefits	15,934			7,112
Total personnel cost	*$200,334*			*$229,683*
Nonpersonnel costs:				
Travel	12,720			9,800
Space rental	8,000			5,658
Consumable supplies	4,000			1,800
Other (purchase and rental of equipment, books; telephone; etc.)	14,500			17,729
Total nonpersonnel cost	*$39,220*			*$34,987*
Total personnel and nonpersonnel cost	*$239,554*			*$264,670*
Miscellaneous costs:				
Consultants, contract services, and in-kind contributions	62,500		Includes $44,000 welfare and CAP in-kind contributions	91,000
	$302,054			$355,670
Less felony appointment reimbursements	−2,520			
Program total	*$299,534*			*$355,670*

budgets of several other rural staffed-office programs (see table 8.2).[3]

Before we attempt to explore possible reasons for the disparity in funding levels for Judicare and staffed-office programs, it seems appropriate to point out that the disparity demonstrates at least that the funders either did not share the common assumptions that the Judicare model is far more costly than the staffed-office approach, or if they did, they deliberately grossly underfunded the Wisconsin program.

An after-the-fact justification for the funding disparity—one that would still not explain the a priori decision of the funders—is the suggestion that the Upper Michigan staffed-office program, or staffed programs generally, simply "do" a lot more than (Wisconsin) Judicare and therefore get more money. In response to this

Table 8.2 Funding of Legal-Services Programs

	Wisconsin Judicare	Upper Peninsula Legal Services (Upper Michigan)	Pine Tree Legal Assistance (Maine)	Colorado Rural Legal Assistance
Total annual funding ...	$240,181 to $289,792	$222,712	$440,052	$274,816
No. of eligible families .	29,537	14,547	39,547	14,726

Source: Leonard H. Goodman and Jacques Feuillan, *Alternative Approaches to the Provision of Legal Services for the Rural Poor: Judicare and the Decentralized Staff Program* (Washington, D.C.: Bureau of Social Science Research, Inc., 1972). Information on funding of Wisconsin, at 130; on funding of other programs, at 142; on number of eligible families, at 44.

suggestion an item-by-item examination of work done and funds expended is appropriate. We might first examine the possibility that the Upper Michigan program handles more cases than Wisconsin Judicare, or more complex and time-consuming cases; or simply spends more time on comparable cases; or devotes more resources to items such as community education, legislative lobbying, or economic development.

As discussed in the previous chapters, it is very difficult to compare the volume of cases handled under the programs because of the differences in recording and classification. The program records indicate that the Upper Michigan program handles a con-

3. The figures compiled in table 8.2 were used to refute Goodman and Feuillan's conclusions about comparative costs in Samuel J. Brakel, "The Trouble with Judicare Evaluations," 58 *A.B.A.J.* 704 (1972).

siderably greater number of cases per eligible family than does Wisconsin Judicare, but the Upper Michigan system of recording all contacts as cases regardless of actual service given or even eligibility for it renders this disparity largely, if not totally, illusory. As for the possibility that the UP staff lawyers handle more impact cases; spend more time on cases; and do more in the way of community education, legislative lobbying, or economic development, there is not the slightest evidence that this is so. If anything, indications are that Wisconsin Judicare—when the efforts of both the private lawyers and the central office are considered together—does more. But the quantitative evidence in these areas is sketchy and not very meaningful for any purposes. To analyze the economics of the programs, we need firmer data and more relevant criteria. The details of the budgets provide this to an extent.

Annually, the private attorneys in Wisconsin average 8,479 hours of Judicare work. This figure is derived from official Office of Economic Opportunity (OEO) accounting (MIS) reports for 1969–72 as double-checked by the Wisconsin Judicare bookkeeper. Before 1969 the records often gave figures twice as high; but these included man-hours put in by the central-office staff and may in other ways have been lacking in significance and reliability. For the 8,479 hours of work the Wisconsin program pays $153,000.

The Upper Michigan staff attorneys are calculated to do 8,575 hours of work annually, a theoretical figure arrived at by assuming that the staff attorneys worked 35 hours per week for 50 weeks during the year (12,250 man-hours) and taking 70 percent of that to yield 8,575 "chargeable" or "effective" man-hours. The 70 percent is a standard computation.[4] Figures actually reported by the Upper Michigan program range between 15,000 and 17,000 man-hours annually, but—like the pre-1969 Wisconsin figures—these include work hours put in by the director and nonprofessional staff (most of which in Upper Michigan—unlike Wisconsin—are spent on administration). Also, the program statistics are not empirical and have no special significance or reliability: the same figure is reported for each quarter during the first three years of the program, then jumps several thousand hours and remains at that level each quarter for the next two years. Conceiv-

4. See Howard L. Greenberger and George F. Cole, *Final Report: Connecticut State Welfare Department Legal Services Demonstration, Meriden, Connecticut* (New York: Institute of Judicial Administration, 1972).

ably one might want to argue that the Wisconsin man-hour figure should be reduced to 70 percent of its reported level. However, hours actually turned in by private lawyers are likely to approximate "effective," "chargeable" hours in fact. The general phenomenon of underreporting and underrecording that characterizes private lawyer activity under Judicare is another argument against applying the 70 percent theory to the Wisconsin figures: one would not suspect that the attorneys understate the time spent on cases actually reported, but much Judicare activity is never reported at all. For the 8,575 hours annually the UP program spends some $121,000 ($110,500 in salaries plus about $11,000 in fringe benefits).

In terms of lawyer services, then, the Upper Michigan program is somewhat cheaper than Wisconsin Judicare, and quite likely this is characteristic of the models rather than just the two programs specifically compared here. Staff attorneys simply are not paid very much: about $14 per "effective" work hour and only about $10 per hour if a full 35-hour week per attorney is the measure.[5] By contrast, private attorneys are paid about $18 per hour for Judicare work as evidenced by the $153,000 expenditure on lawyer fees for 8,500 hours of lawyer work, as well as by the abstract Judicare fee schedule reproduced in appendix C.

The above discussion of costs tells nothing about comparative efficiency and quality. We discussed quality in chapter 7. Efficiency is difficult to determine, given the incomparability of the volume statistics of the programs. Intuitively, one could argue that staff lawyers are more "efficient" than private (Judicare) lawyers to the extent that there can be some mass processing in special "poverty-law" offices, even in rural ones. On the other hand, private lawyers have an advantage in terms of "efficiency" by virtue of their typically lengthy experience as lawyers in the communities served. This efficiency factor is not to be minimized. Although discussions of lawyers' work do not always recognize it, the fact is that much lawyering—urban and rural—is essentially a matter of negotiation: a phone call here, a visit there, to the welfare official, district attorney, opposing party or lawyer, and so

5. The very idea that in contemporary American society one can obtain many good lawyers to work for $12,000 to $16,000 per year strains credibility. On the other hand, it is quite feasible to expect many good lawyers (*especially*, perhaps, good lawyers) to "donate" 5 to 10 percent of their time at rates somewhat below the standard minimum fees. The legal profession in this country traditionally has done and expects to do a portion of its work at reduced fees or for no fee.

forth.[6] "Experience," knowing people, is a tremendous efficiency advantage (not to mention an advantage in effectiveness) in negotiation. By contrast, staffed-office attorneys—usually recently out of law school, inexperienced, and often not native to the locality—are at a considerable disadvantage in this regard. Also, private lawyers spend far less time traveling than staff lawyers. And finally, time spent on office management is substantial for staff lawyers, whereas under Judicare this item is spread out over services to all clients (90 percent non-Judicare) in each private lawyer's office.

Professional personnel costs in addition to the fees or salaries of the "front-line" lawyers are the salaries of the program director and supporting professional staff. Under Wisconsin Judicare there are a director and two assisting attorneys at a cost of $45,000 (including fringe benefits) for 3,675 "effective" hours annually. Only the director's salary—about $18,000 for 1,225 hours annually—remains to be counted for the Upper Michigan program. In sum then, the professional personnel costs annually are $139,000 for the UP program and $198,000 for Wisconsin Judicare. This is for 9,800 professional man-hours in the UP and 12,154 in Wisconsin.

Professional personnel costs, then, are slightly lower under the staffed-office model than under Judicare. However, the savings under the Judicare model in other areas easily offset the staffed-office advantage. These savings result from the fact that costs incidental to the cost of professional service are borne and absorbed by, and spread among, the many private lawyers doing Judicare work, and to a limited extent are reflected in the Judicare fees (i.e., professional costs), whereas they must be paid for separately by a program of the staffed-office model.

The cost of nonprofessional staff (primarily secretaries) is one such item. Including fringe benefits, nonprofessional costs for Upper Michigan are $61,000—twice the figure for Wisconsin Judicare ($30,000). Other nonpersonnel items such as travel and the cost of office space are also much higher for the staffed-office

6. *Cf.* Jerome E. Carlin, *Lawyers on Their Own: A Study of Individual Practitioners in Chicago*, esp. chap. 2 at 41–116 (New Brunswick, N.J.: Rutgers Univ. Press, 1962); Martin Mayer, *The Lawyers* 29, 36–42 (New York: Harper & Row, 1967) (the lawyer as "negotiator"); Joel F. Handler, *The Lawyer and His Community: The Practicing Bar in a Middle-Sized City* 16–18, 153 (Madison: Univ. of Wisconsin Press, 1967), citing an unpublished dissertation about lawyering in (rural) Clinton, Illinois. See also Arthur L. Wood, *Criminal Lawyer* (New Haven, Conn.: College and University Press, 1967).

model (see the Judicare budget in table 8.1). It is also particularly relevant to recall at this juncture that the Upper Michigan program serves a geographical area and eligible population only half the size of the Wisconsin program. This renders the comparative figures all the more disparate.

The budget items for consultants, contracts, and in-kind services are obscure in derivation and significance. Under both programs an overwhelming portion of the sum allocated for these items are in-kind local contributions to match the federal share. In view of the nature and purpose of these items, one suspects their budgeting is to some extent a labor of imagination. The $44,000 contributed by local welfare and CAP agencies to the Judicare program in Wisconsin, however, has substance and a measure of accuracy. The items affect the total cost picture in the direction of offsetting to an extent the nonprofessional personnel and nonpersonnel savings of the Judicare model. But they do not alter the total picture or the fundamental conclusion, which is—at its most conservative—that *there is no persuasive economic argument against the Judicare approach compared with the staffed-office model in rural areas*. In fact, a staffed-office model funded at the level of the UP program but serving an area and population of the size and type now covered by Wisconsin Judicare would command a budget of $600,000. For that kind of money, it would appear that one could remedy most of Wisconsin Judicare's operational problems and run a full-capacity Judicare program.

As a postscript to this chapter on cost, and in support of the validity of its conclusions, we turn briefly to a comparative cost analysis that recently issued from the Meriden legal-services experiment in Connecticut.[7] The cost conclusions offered by the Meriden report were (1) that cost per case under Judicare was about the same as the cost per case in the staffed office; but (2) that if intake had not been artifically limited and the staffed-office attorneys had handled a continuous flow of cases, the staffed-office cost per case would have been only one-third of the Judicare cost. To demonstrate how tenuous the second conclusion is we reproduce the relative expenditures of the two models that operated simultaneously in Meriden for three years (table 8.3). This exposition of the expenditures serves only to point out the dubiousness of the conclusions about costs arrived at by the Meriden reporters. It does not deal with the problems of their derivation—

7. See Greenberger and Cole, *supra* note 4.

Table 8.3 Cost Comparisons of Meriden Programs

	Staffed Office		*Judicare*	
	Cost	Recorded Man-Hours	Cost	Recorded (and chargeable) Man-Hours
Personnel costs (annual salaries for 2 staff attorneys for 3 years)	$99,590	2,631[a]		
Total fees to private attorneys			$56,544	5,228
Nonpersonnel costs (administrative, litigation, and "other" costs)	37,433		26,204	
Total	$137,023[b]		$82,748	

	Staffed Office	*Judicare*
	Theoretical Chargeable Man-Hours	
Total fees to private attorneys	7,114	5,228

[a]This figure is unaccountably low. It seems to show that staff attorneys are better at recording cases than at recording hours.

[b]Meriden reporters subtracted from this total $8,376 for "equipment and library returned," yielding a total of $128,646. In anything other than a short-term experimental program, however, such costs are not "returnable." But the inclusion or exclusion of the $8,736 from the total cost scarcely changes the overall picture.

noncost problems such as the tenability of the continuous-case-flow assumption, whether staff attorneys could in fact handle such a flow, what they in fact did given no continuous case flow, what impact this had on the types and number of cases they handled, or what the impact of a larger caseload would have been on the Judicare attorneys.[8] The reader is invited to do his own analysis and draw his own conclusions on the basis of these figures.

8. The staffed-office and Judicare portions of the Meriden program handled an equal number of *clients*, but the staffed office recorded three times as many *cases*. This fact is of itself strong evidence that, as in Wisconsin and Upper Michigan, the difference lies in recording techniques rather than in substance. Alternatively, there may be some substantive difference (though certainly not a threefold one) because—as the Meriden evaluators contend—the Meriden staff lawyers did not have enough to do and thus spent "excessive" time on individual clients. One fact is clear, however: the Meriden evaluators cannot eat their cake and have it too. One cannot take the number of staffed-office cases seriously (recording the same number of clients but three times the cases) and at the same time postulate a continuous case-flow situation that would bring in three times the number of clients. Beyond all that, to arrive at a comprehensible picture of program costs, we cannot look just at volume of cases or cost per case derived from it but must examine time input. The Greenberger-Cole report (*supra* note 4) itself does not give the total cost for the Judicare component, but this was furnished later by Cole upon request. The report also does not separate personnel and nonpersonnel costs for the staffed-office component, so we calculated this ourselves by estimating that the staff attorneys—as in Upper Michigan—would be paid at a rate of about $14 per "chargeable" man-hour or about $16,000 including fringe benefits per year.

Chapter 9

Conclusions

Notwithstanding the reality of various psychological obstacles, money remains a major barrier to the use of lawyers by the poor. In fact, actual or anticipated cost is also a serious obstacle for many nonpoor people. The removal of this financial obstacle is thus one obvious prerequisite to the provision of legal services to the poor. In the case of the poor, removal involves a full or almost full assumption of the cost burden by society.[1] The mode or manner of assumption of cost is open to a variety of proposed answers. For example, federal, state, and local governments can play various roles and assume the financial and administrative burdens in varying proportions; taxes can be collected and then spent on legal services; or tax advantages can be given to participants in the programs. Also, subsidies—direct or indirect—can go to consumers or suppliers, actual participants or groups of potential participants. Finally, various roles and portions of the burden can be assigned to labor unions; national, state, or local bar associations; bureaucracies of varying size and jurisdiction; social-service agencies; and a host of other public or private entities.

That the poor are "entitled" to subsidized (free or nearly free) legal services is difficult to question unless one is also willing at this date to question the entitlement of the poor to all other wel-

1. Removal of the obstacle for the nonpoor—the near-poor or those of moderate economic means—requires less drastic reallocation of the cost burden. Placing part of the burden on differently situated socioeconomic groups may be judged to be desirable or necessary, but spreading the cost among the similarly situated through insurance-like schemes also appears to be a tenable solution.

fare benefits.[2] That the poor need legal services is likewise essentially beyond dispute. The poor need legal services as much as most of us, as simple reflection as well as experience reveal. Beyond that, one can talk about legal-service entitlement and need in more grandiose or urgent terms: one might appeal to fundamental justice or fairness on the one hand, or raise the specter of class alienation and violence on the other.

But, we reemphasize, it is the lack of money that alone or with other factors has separated the poor from lawyers. The removal of this obstacle is a sine qua non to making legal service available to the poor. All else is secondary. Secondary does not mean unimportant; it does mean, however, that without resolution of the money problem, no other change can produce the necessary effect. Beyond that, adequate reasons based on empirical fact need to be advanced for other change. Specifically, as we urged in the introductory pages, the burden should be on those proposing or defending exclusion of the existing bar and the creation of a new, specialized group of public servants—staffed-office attorneys. We said earlier, before the presentation of data and analysis, that staffed-office proponents had not perceived this burden and that staffed-office performance had not met it. We referred to the problems of oversimplification, overoptimism, and the resulting unreality of goals and means that made it inevitable that performance would fall short of expectations. We talked briefly about some dubious historical and analogical interpretations and about misassumptions concerning the legal needs of the poor, the psychology of the poor, and the propriety, effectiveness, quality, and cost of the staffed-office response thereto.

Now, after presentation of the data and analysis, we hope that the meaning and validity of these introductory statements have been supplied and made clear. A brief recapitulation of the specific points may nonetheless be useful to reaffirm the general point that the simpler Judicare system is more responsive to the problems of delivering legal services to the poor than the conceptually and operationally convoluted staffed-office approach.

REACHING THE POOR

Judicare, through its use of existing lawyers distributed throughout the counties and local communities and its use of social-service agencies as eligibility certifiers, is well designed to

2. See Charles A. Reich, "The New Property," 73 *Yale L.J.* 733 (1964), for a radical statement of entitlement to welfare benefits. It can be argued that this notion is philosophically unpersuasive or that the Reich statement is only an exercise in semantics. One cannot very well, however, argue with the fact that this country now operates on a commitment to social welfare principles that certainly includes making legal services available to poor people.

reach the poor. Poor people under Judicare are likely to become aware of the services available earlier and more easily (and at less expense of attorney time) than under the staffed-office model. Disadvantages of involving social-service agencies in eligibility determination are minimal and are offset by concrete and psychological advantages of Judicare card distribution.

TYPES OF LAWYERS

The choice of lawyer that clients have under Judicare is a very significant advantage over the choiceless staffed-office model. Judicare clients in many instances exercise choice intelligently and effectively. Private lawyers—even in comparatively small and homogeneous areas such as rural northern Wisconsin or western Montana—are a very diverse group in terms of legal competence or philosophic attitude. These characteristics, which constitute the reputations of private lawyers—especially in rural areas—are well known among the target population. This enables clients to make meaningful choices. Private lawyers in the Judicare areas studied were on the whole geographically well distributed, though a few counties had problems in this respect. The presence of only a few lawyers in a given county meant limited choice and access for clients. More significantly, it increased the likelihood that no lawyer with adequate commitment to serving the poor could be found. The attitudinal commitment of the bar to the Judicare program is one of the crucial elements in the performance of the Judicare system. Such commitment translates directly into the volume (and the type and probably the quality) of service provided and influences the total shape of—including client demand for—legal services. In a few counties, even some with a substantial number of lawyers, adequate commitment is lacking and the Judicare performance suffers.

The staffed office, however, is hardly preferable in this respect. Since there is no other program recourse for clients under the staffed-office model, any flaw in staff-attorney attitude or practice—even if only subjectively valid—is essentially fatal from the individual client's standpoint. That being the case, the facts of staff attorneys' inexperience and the pressures of caseload, time, and money caused by the typically massive geographical and substantive problem areas to be covered by one or two staff attorneys

assume a special seriousness. Staffed-office statistics that show very large volumes of cases handled and balanced geographical distribution of clients bringing cases are largely illusory. Such statistics do little more than reflect insufficient analysis or differences in form, that is, recording practices, rather than disparities in substantive accomplishment between staffed-office and Judicare programs.

TYPES OF CASES

Judicare has often been criticized for failing to provide an adequate range of legal services to poor clients. Our examination of the performance of both the private lawyers and the central office shows that Judicare in fact compares favorably in this respect to the staffed-office model. A high proportion of domestic-relations cases appears to characterize all legal-services programs for the poor, regardless of model or location. Beyond that, the private attorneys under Judicare as a group are involved in as diverse a range of services—whether measured by impact or by the standard case categories—as are the group of regular staffed-office attorneys we studied. High turnover and consequent lack of experience among staffed-office attorneys negate any advantages of expertise, commitment, and so forth sought through staffed-office specialization on poor people's problems.

Under both models, much of the *obvious* impact work (by definition perhaps) is left to the central office. Centralization has an undesirable facet to the extent that it means remoteness from local perceptions of local problems and resolutions. The staffed-office model is more susceptible of the criticism of central remoteness than the Judicare model, which has the local private attorneys distributed throughout the communities as a buffer against overcentralization. Neither model (Judicare or staffed office) comes close in practice to living up to the more extreme rhetorical demands for impact work. The concrete experience of attempting to meet the legal needs of actual and individual clients does much to undermine the validity of the substantive, strategic, or evaluative emphasis on law reform and its rhetorical relatives.[3]

3. Jerome E. Carlin, Jan Howard, and Sheldon L. Messinger, "Civil Justice and the Poor: Issues for Sociological Research," *1 Law & Soc'y Rev.* 9, at 25 (1966), make a point about legal-service priorities and lawyer expertise by illustrating it with the following: "similarly it is more important to repeal a poll tax than a fishing tax." It is only an illustration and our taking issue with it is only illustrative; nonetheless the principle is significant. The point we make is that repeal of a fishing tax can be considerably more important *to the client* (or group of clients)—e.g., Wisconsin Indians or Indians in many other jurisdictions—than repeal of a poll tax. The problem is that so many law-reform advocates do not know and do not care to know about clients' needs or preferences. They deal with abstract issues, abstract strategies, and abstract clients. What real clients see to be real problems is irrelevant to them. A poll-tax case is a constitutional case, hence worth 10 fishing cases, 1,000 divorces and bankruptcies, etc. The irony of the Carlin, Howard, and Messinger writings or the Cahn and Cahn article (Edgar S. Cahn and Jean C. Cahn, "The War on Poverty: A Civilian Perspective," 73 *Yale L.J.* 1317 [1964]) is that their perspective is more like a war perspective, a paternalistic assessment of priorities made for, not by, the poor. In addition, the presumed justification for this perspective—that the priorities be chosen systematically, intelligently, by people with "experience," "expertise," and "insight"—has in fact been absent. The legal-services planners and the staffed-office central and regional attorneys have rarely been systematic, experienced, or expert.

QUALITY OF SERVICE

Poor clients themselves exhibit a pronounced preference for Judicare over the staffed office. They are more satisfied as a group with Judicare experiences than with staffed-office service and in addition show a strong nonempirical preference for Judicare when asked which of the two models they favor. Choice of lawyer plays a large part in the Judicare preference, but the clients' favorable attitudes toward and experiences with local private lawyers are also crucial factors. The clients' views on these issues are important not only because clients are the central participants, the beneficiaries, in legal services, but also because their views are often objectively persuasive and cogent. The quality of Judicare services and the propriety of the emphasis on individual, local problem perceptions and responses are also supported by the high rate of favorable outcomes of individual clients' cases.

COST OF SERVICE

There is no credible evidence that Judicare is more costly than the staffed-office model. Specifically, Wisconsin Judicare operates on a budget that is considerably lower in terms of dollars per eligible family than the budgets of comparable rural staffed-office programs. An item-by-item examination of the Wisconsin Judicare and Upper Michigan staffed-office budgets shows that while Judicare professional services are somewhat more costly than staffed-office professional services, this cost is more than offset by Judicare savings in the areas of nonprofessional service and manage-

ment (space and equipment rental, travel, and various miscellaneous items), the costs of which are typically absorbed in large part by private lawyers under Judicare but fully charged against the staffed-office programs.

FINAL COMMENTS

Throughout the course of this study we have often been struck with how obvious the case for Judicare really is. The case for the staffed-office model was essentially one of objection to the obvious, though this was not perceived by the staffed-office proponents themselves. As it turned out the objections to the obvious were projections about the deficiencies of the nonobvious: that is, most of the criticisms of the Judicare model applied as much, and sometimes more, to the staffed-office model. This was true whether one judged by reasonable and realistic standards and expectations or whether the more grandiose and unrealistic criteria (the institutional Office of Economic Opportunity standards) were applied.

We are convinced, then, that the Judicare method for delivering legal services to poor people is a sound method and should be the basis for the national attempt to help the poor use legal resources. The central office, the staffed office, the staff attorney—these should function to *supplement* Judicare, fill in the gaps, supervise, coordinate, and in exceptional circumstances perhaps intervene in (by prohibiting or activating) local Judicare problem resolution. The role of the central offices and staff should vary with the performance of the *primary* Judicare component: perhaps in some areas no office would be warranted or necessary and a staff attorney would ride circuit, whereas in other geographic or demographic regions, offices manned by several staff attorneys would be desirable. Similarly, the functional scope and activism of central offices will vary. The fundamental change from the prevailing situation is that the staffed central offices would be no more than ancillary to the central role played by private lawyers under the Judicare system.

Implementation of this reversal would involve details beyond the scope of this report. Some staffed offices can be eliminated, others reduced in staff, some relocated, others left on location. Funds will have to be drastically reallocated. Far fewer staff attorneys per area will be needed than is now the case, and those who

remain will do entirely different work. They will no longer be dealing with massive caseloads of routine problems, nor will they be dabbling in self-generated law reform (even if few ever did). Instead their roles will be largely administrative, supervisory, with perhaps an occasional foray into impact work where local conditions dictate it. This, incidentally, does not downgrade the staff lawyer's role from what it now is.

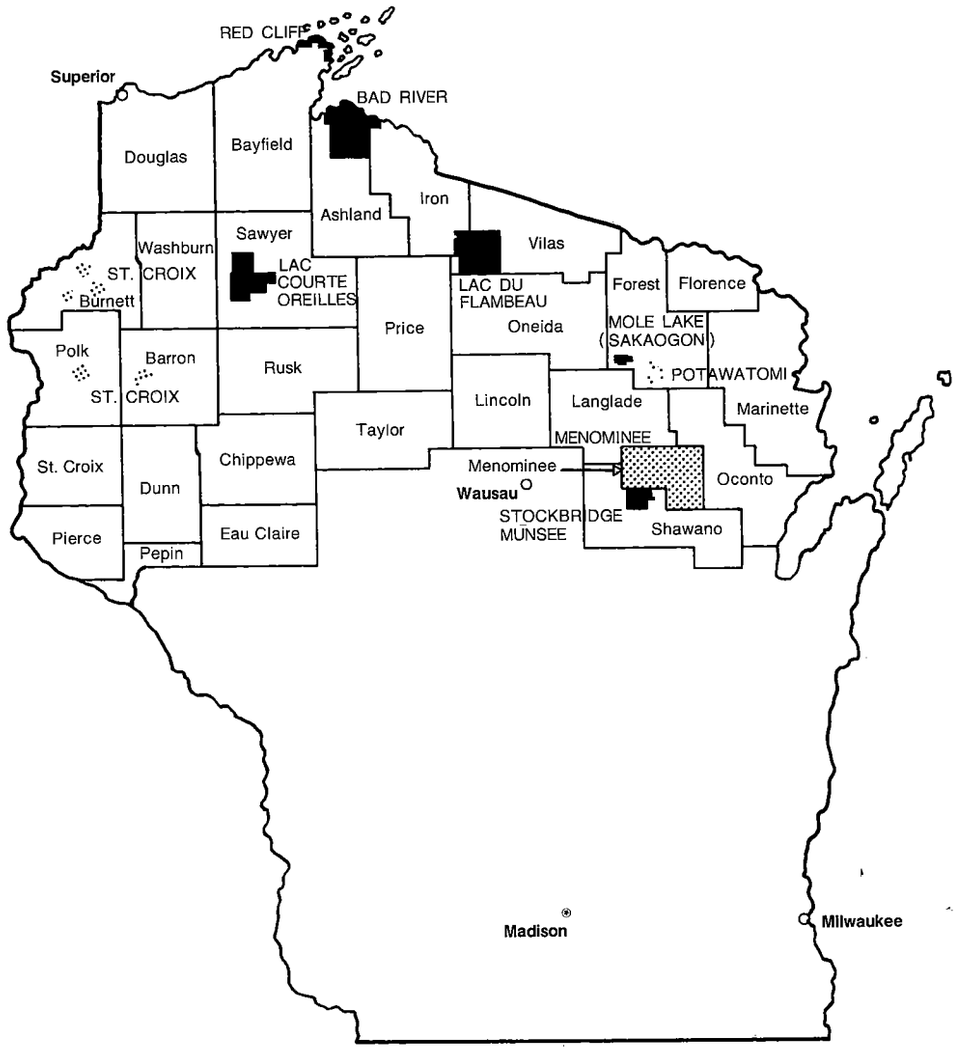
Today, continued experimentation with Judicare—especially in California—provides the opportunity for supplying the detailed data needed for successful implementation of the fundamental reversal advocated here from a national commitment to the staffed-office model to a commitment to Judicare as the prototype, the basis for the national effort to deliver legal services to the poor. This opportunity should not be lost because of politics or thoughtlessness. Details on Judicare in the large urban centers—where nonempirical doubts about the feasibility of Judicare are strongest and empirical data the thinnest—are especially crucial.[4] Note, however, that we said "details." That Judicare should be operative in the big cities is for us beyond question. The involvement of private urban lawyers, especially minority lawyers, is in our view essential to the success of legal services in the urban areas.[5] Only a question of degree remains: how large, where, and how active should the supplemental staffed offices be in urban as contrasted with rural regions? But again, it seems both unquestionable and imperative that the Judicare model be implemented on a large economic and geographic scale.

4. Judicare appears to work quite well in places such as Superior and Eau Claire, urban areas by northern Wisconsin standards. But the relevance of these experiences to the problem of assessing the feasibility of Judicare in large metropolitan complexes is remote.

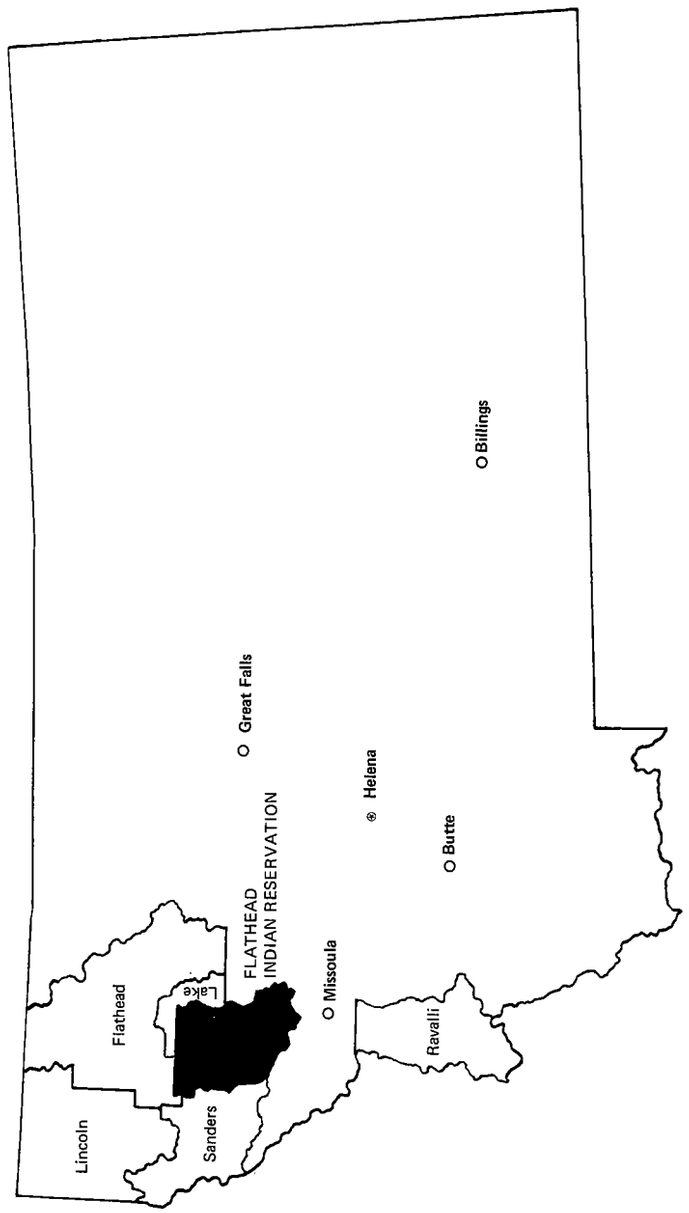
5. See Leroy D. Clark, "The Minority Lawyer: Link to the Ghetto," 55 *A.B.A.J.* 61 (1969).

Appendix A

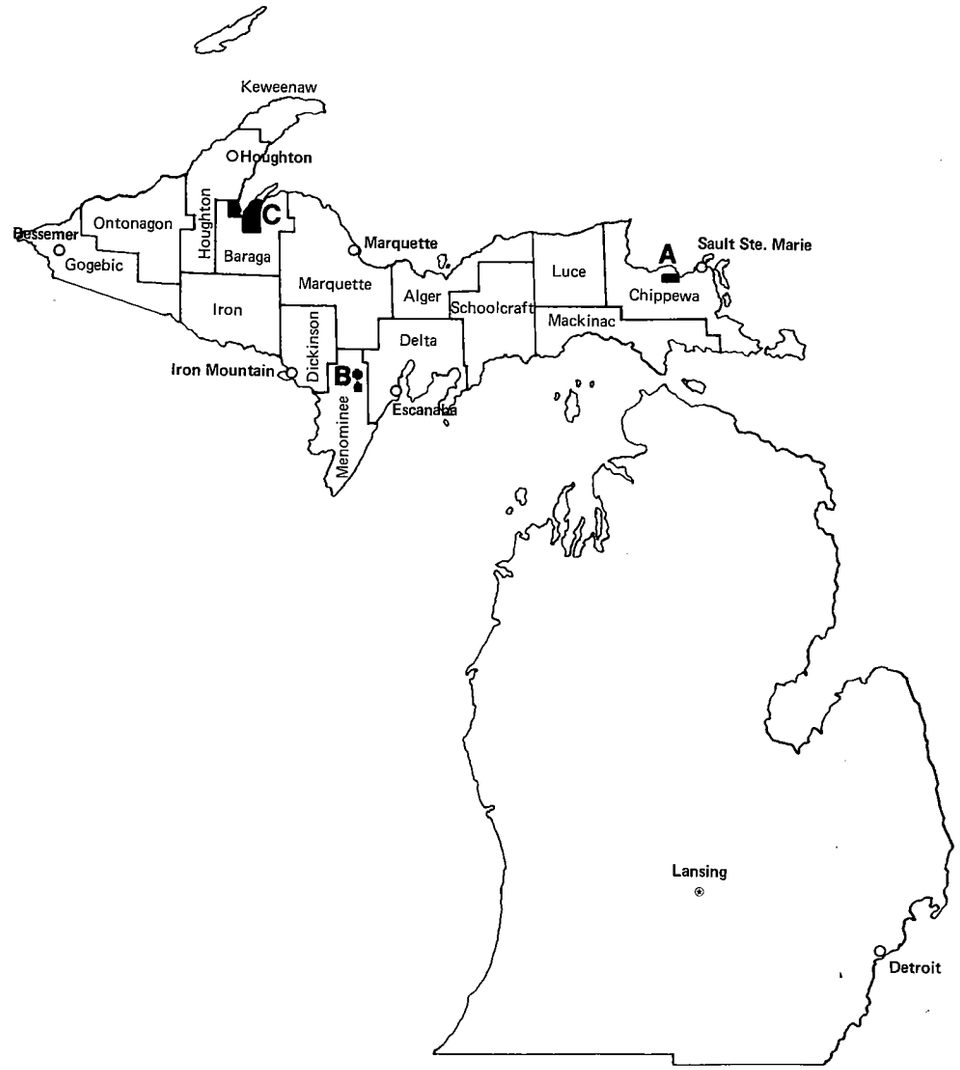
Maps of Areas Covered, by Legal-Services Plans Studied in This Report



MAP I. Wisconsin Judicare area. Indian reservations *(solid)* and concentrations *(dotted)*.



MAP 2. Montana Judicare area. Indian reservation *(solid)*.



A. Bay Mills Indian Reservation
B. Potawatomi Indian Reservation
C. L'Anse Indian Reservation

MAP 3. Michigan's Upper Peninsula Legal Services area. Indian reservations *(solid)*.

Appendix B

Eligibility Criteria for Judicare in Wisconsin

Eligibility Criteria for Judicare in Wisconsin

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

Family Size	*Nonfarm Income*			*Farm Income*		
	Annual	Monthly	Weekly	Annual	Monthly	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

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]."[1]

Roughly the same standards are applied under the Montana Judicare and Upper Michigan staffed-office programs.

The definition of "poverty level" used by the Bureau of the Census in 1970 is as follows:

Family Size	Annual Nonfarm Income	Annual Farm Income
1 ..	$1,840	$1,569
2 ..	2,383	2,012
3 ..	2,924	2,480
4 ..	3,743	3,195
5 ..	4,415	3,769
6 ..	4,958	4,244
7 ..	6,101	5,182

[1]This information is taken from Wisconsin Judicare CAP Form 7, app. C, sec. VI, Welfare Directories and Resources (Community Resources), Revised 1-2-69, pp. 1–5.

Appendix C

Wisconsin Judicare Fee Schedule

Wisconsin Judicare Fee Schedule*

ATTORNEY'S FEES AND COSTS IN JUDICARE MATTERS

The following schedule has been approved by the Executive Committee and the Judicare Board as modified by the Executive Committee on February 9, 1968.

I. GENERAL RULES GOVERNING FEES AND COSTS

A. Fees per Hour—Office Work and Court Appearances

All work not specifically provided for below shall be paid at the rate of $16 per hour for office work, and $20 per hour for court appearances. However, work paid for at the hourly rate may not exceed 80 percent of the applicable fee set in the current State Bar Association minimum Fee Schedule, unless it is 1) specifically provided for in the Judicare fee schedule, or 2) authorized in advance by the Judicare office.

1. Divorce, Legal Separation, and Annulment

Default involving no alimony, support money or property division	$160
Default involving alimony, support money or property division	180
With additional appearances before the family court commissioner the fee shall be	200

*The U.S. Department of Justice and the Board of Governors of the American Bar Association have gone on record in opposition to minimum fee schedules, and recently many states have abolished such schedules. Presumably this change would not alter *Judicare* fee schedules, but only change the basis on which they are computed.

Contested Divorce	240
Guardian ad litem (uncontested)	25
Guardian ad litem (contested)	35
Reconciliation, or dismissed for technical reasons . . . paid hourly to the stated maximum	125

2. Bankruptcy

Petition in voluntary and involuntary bankruptcy actions, including preliminary work for one individual	160
Petition in voluntary and involuntary bankruptcy actions, including preliminary work, for both husband and wife	240

3. Probate

Termination of joint tenancy	100
Termination of life estate	80
Summary probate procedure	100

The summary probate procedure is to be used only in cases where the decedent is a Menominee Indian and whose assets are limited to stocks and bonds of Menominee Enterprises, Inc.

4. Real Estate Transactions

COVERAGE—Judicare will pay the attorney his legal fees pursuant to the aforementioned hourly rates, and the cost of recording the legal document.

EXCLUSIONS—Judicare will not pay for the cost of continuing an abstract, revenue stamps, or satisfaction of liens.

PREPARATION OF DOCUMENTS—80% of the minimum bar fee.

FORECLOSURE—The judgment and sale of foreclosed real estate shall constitute two separate transactions. Attorneys will be paid as follows:

a) Legal fees in defending or taking judgment of foreclosure shall be at the rate of $16 per hour, with a minimum of $25. The maximum is $75, unless prior approval is received from the Judicare office.

b) The fee for conducting a sale of foreclosed real estate shall be at the rate of $16 per hour. The maximum is $75, unless prior approval is received from the Judicare office.

5. Criminal Proceedings

Attorneys may represent clients involved in traffic violations only if there is a significant reason to do so, and prior approval is obtained from the Judicare office.

B. Travel Time and Expenses

As a general rule, participating attorneys may not bill Judicare for legal services for time spent in travel. However, the Judicare Director is authorized to waive this policy in unusual situations where the facts justify reimubrsement.

Attorneys will be paid 7 cents per mile, after the first thirty (30) miles, for travel incurred in the representation of a Judicare client.

Exception: Attorneys representing correctional institution inmates will be reimbursed from the first mile for one trip to and from a visit to the client.

C. Fee Limitations

1. MAXIMUM $300 FEE PER CASE—The maximum fee for work performed on any one case is $300, unless prior approval is received from the Judicare office or the Judicare Board. The $300 limit may only be waived upon a showing of good cause, and only on a case-by-case basis.

2. MAXIMUM $3,000 FEE PER ATTORNEY PER YEAR—No one attorney can be paid more than $3,000 in Judicare fees in a single 12-month period. However, this rule may also be waived by either the Judicare Director or the Judicare Board in situations where there is a shortage of attorneys available in a given area, and the immediate needs of Judicare clients would not be served if the waiver were not granted. [Now $5,000].

D. Costs

In addition to legal fees, Judicare will pay for necessary expenses incident to litigation. However, all costs other than filing fees and service fees must receive prior approval by the Judicare office.

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F. Initial Conference Fee and Final Payment

After an attorney has concluded a preliminary conference with a Judicare client, he must submit an Initial Conference form to the Judicare office within seven days. Failure to do may result in a loss of fees for any additional services rendered in this matter. A $5.00 fee will be paid for this conference regardless of any future action taken. For attorneys who represent inmates of the state correctional institutions no initial conference fees are paid as the first conference with the inmate is handled by a Judicare staff attorney.

To aid Judicare in keeping an accurate running account of current legal fees and costs, attorneys are requested to make an initial estimate of costs and then submit a single billing upon completion of the work. Billing information is to be submitted to the Judicare office by the standard form Request for Final Payment of Legal Services Form.