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**International Legal Aid Group**

**Earl Johnson, Jr**  
Comparative Commitment  
to Equal Justice:  
Some New Statistical  
Indicators

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**COMPARATIVE COMMITMENT TO EQUAL JUSTICE:  
Some New Statistical Indicators**

by Earl Johnson, Jr<sup>1</sup>.

In past years, this author and others have attempted to compare government investments in legal aid among selected nations, principally western industrial democracies.<sup>2</sup> Government legal aid investment, on a per capita basis, was viewed as a suitable proxy for relative societal commitment to the universal goal of equal access to justice for citizens of all economic classes. While accepting the per capita investment statistic as a useful comparative measure and certainly the easiest to find and calculate, this paper suggests some more refined, or at least different, indicators may offer a more well-rounded and sophisticated comparison of national commitments to equal justice. Should other legal aid scholars find value in any of these new indicators, the paper also represents an invitation for them to find this statistical data for their own jurisdictions and supply it to the author or some other central place so it can be combined to produce international comparisons available to all.

The comparative indicators discussed in this paper include the following:

1. Government legal aid investments proportionate to population, e.g., per capita.
2. Government legal aid investments proportionate to national income.
3. Government legal aid investments proportionate to total gross income of nation's legal profession.

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<sup>2</sup> Blankenburg, *Comparing Legal Aid Schemes in Europe*, *CIVIL JUSTICE QUARTERLY* 106 (1992); Blankenburg, *Lawyers Lobby and the Welfare State: The Political Economy of Legal Aid, in How Much Justice Can We Afford?: Conference Papers, Second International Conference on Legal Aid, Edinburgh, Scotland* 26, 1-28 (1997); Johnson, *The Right to Counsel in Civil Cases: An International Perspective*, 19 *LOYOLA OF LOS ANGELES LAW REVIEW* 341(1985); Johnson, *Toward Equal Justice: Where The United States Stands Two Decades Later*, 5 *MARYLAND JOURNAL OF CONTEMPORARY LEGAL ISSUES* 199 (1994); Johnson, *Equal Access to Justice: Comparing Access to Justice in the United States and Other Industrial Democracies*, 24 *FORDHAM INTERNATIONAL LAW JOURNAL* 83 (2000).

4. Government legal aid investments proportionate to government investments in the nation's judicial system.

In each case, this paper seeks to explain the particular indicator and what it may add to our analysis of comparative national commitments to equal justice.. The paper also suggests the limitations of each – and where and how a given indicator may offer the most value. At this point, however, as to the third of the four indicators, the author has been able to accumulate relevant data from only two countries – England and the United States – and as to the fourth, only those two nations and Quebec province, Canada. Since England and the United States are at opposite ends of the “per capita legal aid investment” spectrum, one might anticipate there also would be a vast gulf between the two countries on these new measures of commitment to equal justice. As you will see, on that score the figures don't lie – nor do they surprise. Other nations, it is reasonable to suggest, would introduce both nuance and, in some cases surprising comparisons, to the mix. Thus, this paper also is an open invitation to scholars from other nations to compile local data as to indicators 3 and 4. This would allow them to make their own comparisons and, if they share the information with others, enrich the data base for all those wishing to figure out where they stand in relation to other countries.

## **I. Per Capita Legal Aid Investments – The Traditional Indicator**

We begin with the most recent iteration of the traditional “per capita” measure of comparative legal aid investment the author has been able to compile. For most nations, the data is from 1999 or FY 1999, although for the Netherlands it is 1998, Germany 1996 and France 1994.

**Table 1-COMPARATIVE PER CAPITA CIVIL LEGAL AID INVESTMENTS [in US**

**\$]**

**[Nations ranked by their government's per capita investment in civil legal services—lowest to highest]**

NATION (or political subdivision of nation, e.g., province, state)	THIS NATION'S TOTAL GOVT INVESTMENT IN CIVIL LEGAL SERVICES (in U.S. DOLLARS) [In U.S. includes Federal, State, local govts, & IOLTA expenditures]	GOVT'S PER CAPITA CIVIL LEGAL SERVICES INVESTMENT (in U.S. DOLLARS)	TOTAL U.S. GOVERNMENTAL INVESTMENT IN CIVIL LEGAL SERVICES IF U.S. INVESTED AS MUCH PER CAPITA AS THIS NATION DOES ON CIVIL LEGAL SERVICES	TOTAL ENGLISH GOVERNMENTAL INVESTMENT IN CIVIL LEGAL SERVICES IF ENGLAND ONLY SPENT AS MUCH PER CAPITA AS THIS NATION DOES ON THESE SERVICES
UNITED STATES (FY 1998)	\$600 million [pop=281million]	\$2.14	\$0.6 BILLION [e.g., \$600million]	\$113 million
FRANCE (1994)	\$270 million [pop=59 million]	\$4.50	\$1.27 BILLION	\$238 million
GERMANY (1996)	\$390 million [pop=80million]	\$4.86	\$1.37 BILLION	\$258 million
NEW SOUTH WALES (Aust)	\$31 Million [pop=6 million]	\$5.12	\$1.44 BILLION	\$271 million
ONTARIO (Can)	\$82 Million [pop=11.5million]	\$7.06	\$1.96 BILLION	\$374 million
QUEBEC (Can)	\$52 Million [pop=7.3 million]	\$7.07	\$1.98 BILLION	\$375 million
NEW ZEALAND (FY 1998-99)	\$27 Million [pop=3.8 million]	\$7.10	\$2.10 BILLION	\$376 million
BRITISH COLUMBIA (Can)	\$32 Million [pop=4 million]	\$7.80	\$2.19 BILLION	\$413 million
NETHERLANDS (1998)	\$150 Million [pop=15.5million]	\$9.70	\$2.72 BILLION	\$514 million
ENGLAND (1999)	\$1.35 BILLION [pop=53 million]	\$26.00	\$7.3 BILLION	\$1.35 BILLION

SOURCES OF LEGAL AID EXPENDITURE DATA: AUSTRALIA-Legal Aid Commission of New South Wales, *Annual Report '99, Financial Overview, Program Expenditure Chart*. CANADA-Legal Aid in Canada: Resource and Caseload Data Tables, 1998-99, Table 5-Legal Aid Expenditures by Object (Statistics Canada-Catalogue No. 85F0028, Ottawa, 2000) Source: *Legal Aid Survey, Canadian Centre for Justice Statistics*. ENGLAND-Lord Chancellor's Department, Judicial Statistics – England and Wales for the Year 1999 (CM4786, July 2000). Table 10.7-*Legal Aid Expenditures: Receipts and Payments, 1999*. FRANCE-Projected figures for 1994 reported in National Resource Center for Consumers of Legal Services, *France Beefs Up On Legal Aid*, Legal Plan Letter, Jan. 15, 1993; GERMANY-Gerhard Danneman, *Access to Justice: an Anglo-German Comparison*, 2 European Public Law 271 (1996) Table 5. NETHERLANDS-Peter van den Biggelaar, *Legal Aid in the Netherlands*, in "Legal Aid in the New Millennium" (papers Presented at the International Legal Aid Conference, University of British Columbia 16-19 June 1999) p. 74. (Statistics for 1998). NEW ZEALAND-Legal Aid Board, Annual Report for Year Ending June 30, 1999, p. 33. Appendix 1-*Overview of legal aid costs and recoveries*. UNITED STATES-Legal Services Corporation, *Annual Report-1999*.

The per capita investment figure provides a convenient, easily derived measure for comparing different countries at an instant in time. It obviously corrects for the variable of different national populations. And it works fairly well when comparing nations of nearly equal prosperity (or poverty), that is, those with nearly identical per capita national incomes.

Shortly, however, we will learn the per capita investment indicator sometimes can be misleading even when comparing western industrial democracies. Furthermore, even nations with

identical, or nearly identical, per capita GNPs may have legal cultures that differ dramatically in ways that affect the meaning of per capita or even per GNP investment figures. Some countries have large legal professions in relation to population and to the publicly funded judiciary. Others have large, well-funded judiciaries, again proportionate to the population and compared to the size of the legal profession. The former tend to expect the parties and their lawyers to bear primary responsibility for investigating the facts, locating the legal rules, and presenting the case to a passive publicly-funded decision-maker. Other jurisdictions allocate most of these responsibilities to the publicly funded judiciary rather than the privately-financed parties. In a jurisdiction that places most of the burden on the parties, one would anticipate higher per capita legal aid investments because the lawyers representing poor people would have more tasks to perform. Conversely, in jurisdictions that already expect the publicly-funded judges to do more of the work, one would expect lower per capita legal aid investments since the lawyers representing the poor would have less responsibility and could spend less time on each case.

To put it another way, the public investment in the fair resolution of cases involving poor people may be divided differently depending on whether the dispute resolution system a given nation uses is “lawyer-intensive” or “judge-intensive.” The commitment to equal justice may be the same and both the process and the outcome may be equally fair. But in the “lawyer-intensive” jurisdiction more of the public investment would be reflected in legal aid expenditures while in the “judge-intensive” jurisdiction a higher percentage of the public investment would go to the courts.

For these reasons, the per capita legal aid investment indicator may prove somewhat misleading when comparing “lawyer-intensive” jurisdictions with “judge-intensive” ones. Misleading, at least, as an indicator of comparative commitment to equal justice for poor people. For example, to the extent Germany and France use an inquisitorial model and this model truly expects more of its publicly-funded judges and less of its privately-funded lawyers, the substantial differences between their per capita legal aid investments and those in England (and most common law countries except the U.S.) may not represent a substantially lesser commitment to equal justice. If one were to add in the higher per capita investment in the judges and the work they do to develop the case for the party represented by legal aid (without regard for what they do to develop the case for the other side) in those countries, one might find the *total* public investment in support of equal justice for all was much closer to England’s than the per capita legal aid investment indicator might suggest. Thus, the configuration of a nation’s legal system and its components, and especially how it allocates the dispute resolution tasks between parties and the judiciary can alter the meaning of per capita and even per GNP investment figures.

## **II. Government Legal Aid Investments Proportionate to National Gross Domestic Product**

The next table is based on the same legal aid investment figures for the same years as those presented in the per capita comparisons found in Table 1 above. Ideally this new table would reflect legal aid expenditures as a percentage of each nation's gross domestic product. Those percentages would be so low, however – even in England or the Netherlands – that the author was concerned the comparisons would be confusing. It seemed expecting readers to compare indicators expressed in tenths of a percent and hundredths of a percent and even thousandths would not be productive. Thus, rightly or wrongly, Table 2 below expresses legal aid investments as a dollar amount per \$10,000 of that nation's gross domestic product. That way the figures for each country were on the same scale and large enough to be readily comprehensible.

In calculating the dollar value of legal aid investments the author used the currency conversion figures for the year of the legal aid investment. (Thus, since the most recent legal aid investment figure available for Germany was 1996 the author used the Deutchmark-Dollar exchange rate for 1996 to put a dollar value on that nation's legal aid investment.) Then to add further dimension to the comparisons the last two columns of Table 2 report what each nation's per GNP legal aid investment level would mean if it applied in the least generously-funded (U.S.) and most generously-funded (England) countries. Table 3 applies the per capita and per GNP legal aid investment figures for all nations– side-by-side – to the U.S. and England in order to highlight the differences between the two indicators of comparative commitment to equal justice.

**Table 2-COMPARATIVE PER GNP CIVIL LEGAL AID INVESTMENTS [in US\$]**

[Nations ranked by relative share of GNP invested in publicly-funded civil legal services—lowest to highest]

NATION (or political subdivision of nation, e.g., province, state)	THIS NATION'S TOTAL GOVT INVESTMENT IN CIVIL LEGAL SERVICES (in U.S. DOLLARS) [In U.S. includes Federal, State, local govts, & IOLTA expenditures]	GOVT'S CIVIL LEGAL SERVICES INVESTMENT PER \$10,000 of GNP (in U.S. DOLLARS)	TOTAL U.S. GOVERNMENTAL INVESTMENT IN CIVIL LEGAL SERVICES IF U.S. INVESTED AS MUCH OF ITS GNP AS THIS NATION DOES ON CIVIL LEGAL SERVICES	TOTAL ENGLISH GOVERNMENTAL INVESTMENT IN CIVIL LEGAL SERVICES IF ENGLAND ONLY SPENT AS MUCH OF ITS GNP AS THIS NATION DOES ON THESE SERVICES
UNITED STATES (FY 1998)	\$600 million [pop=270 million]	\$0.70 [= 70 cents]	\$0.6 BILLION [e.g., \$600million]	\$80 million
GERMANY (1996)	\$390 million [pop=80million]	\$1.90	\$1.6 BILLION	\$200 million
FRANCE (1994)	\$270 million [pop=59 million]	\$1.90	\$1.6 BILLION	\$200 million
NEW SOUTH WALES (Aust) (FY 1998-99)	\$31 Million [pop=6 million]	\$2.75	\$2.3 BILLION	\$320 million
QUEBEC(Can) (FY 1998-99)	\$52 Million [pop=7.3 million]	\$3.50	\$3.0 BILLION	\$400 million
ONTARIO(Can) (FY 1998-99)	\$82 Million [pop=11.5million]	\$3.60	\$3.0 BILLION	\$400 million
BRITISH COLUMBIA(Can) (FY 1998-99)	\$32 Million [pop=4 million]	\$4.00	\$3.34 BILLION	\$465 million
NETHERLANDS (1998)	\$150 Million [pop=15.5million]	\$4.20	\$3.5 BILLION	\$480 million
NEW ZEALAND (FY 1998-99)	\$27 Million [pop=3.8 million]	\$5.10	\$4.25 BILLION	\$560 million
ENGLAND (1999)	\$2 BILLION \$1.35 BILLION [pop=53 million]	Gross= \$17.00 Net = \$12.00	\$14.2 BILLION \$10.1 BILLION	\$2.0 BILLION \$1.35 BILLION

SOURCES OF LEGAL AID EXPENDITURE DATA: AUSTRALIA-Legal Aid Commission of New South Wales, *Annual Report '99, Financial Overview, Program Expenditure Chart*. CANADA-Legal Aid in Canada: Resource and Caseload Data Tables, 1998-99, Table 5-Legal Aid Expenditures by Object (Statistics Canada-Catalogue No. 85F0028, Ottawa, 2000) Source: *Legal Aid Survey, Canadian Centre for Justice Statistics*. ENGLAND-Lord Chancellor's Department, Judicial Statistics – England and Wales for the Year 1999 (CM4786, July 2000). Table 10.7-Legal Aid Expenditures: Receipts and Payments, 1999. FRANCE-Projected figures for 1994 reported in National Resource Center for Consumers of Legal Services, *France Beefs Up On Legal Aid*, Legal Plan Letter, Jan. 15, 1993; GERMANY-Gerhard Danneman, *Access to Justice: an Anglo-German Comparison*, 2 European Public Law 271 (1996) Table 5. NETHERLANDS-Peter van den Biggelaar, *Legal Aid in the Netherlands*, in *“Legal Aid in the New Millennium”* (papers Presented at the International Legal Aid Conference, University of British Columbia 16-19 June 1999) p. 74. (Statistics for 1998). NEW ZEALAND-Legal Aid Board, Annual Report for Year Ending June 30, 1999, p. 33. Appendix 1-Overview of legal aid costs and recoveries. UNITED STATES-Legal Services Corporation, *Annual Report-1999*. SOURCES OF GNP AND PER CAPITA GNP DATA: World Bank, 2000 World Development Indicators and World Development Indicators database. EXCHANGE RATES: Chart uses exchange rates in effect in year of legal aid expenditure, e.g., 1996 exchange rate for Germany and 1999 exchange rate for England, etc. .

NOTE: An online version of this chart [updated periodically] can be found at <http://www.equaljusticeupdate.org>.

**Table 3-What U.S. or England Would Have to Invest To Match Other Countries Per Capita and Per GNP Investments in Government-Funded Civil Legal Aid**

NATION (or political subdivision of nation, e.g., province, state)	TOTAL U.S. GOVERNMENTAL INVESTMENT IN CIVIL LEGAL SERVICES IF U.S. INVESTED AS MUCH PER CAPITA AS THIS NATION DOES ON CIVIL LEGAL SERVICES	TOTAL U.S. GOVERNMENTAL INVESTMENT IN CIVIL LEGAL SERVICES IF U.S. INVESTED AS MUCH OF ITS GNP AS THIS NATION DOES ON CIVIL LEGAL SERVICES	TOTAL ENGLISH GOVERNMENTAL INVESTMENT IN CIVIL LEGAL SERVICES IF ENGLAND ONLY SPENT AS MUCH PER CAPITA AS THIS NATION DOES ON THESE SERVICES	TOTAL ENGLISH GOVERNMENTAL INVESTMENT IN CIVIL LEGAL SERVICES IF ENGLAND ONLY SPENT AS MUCH OF ITS GNP AS THIS NATION DOES ON THESE SERVICES
UNITED STATES (FY 1998)	\$0.6 BILLION [e.g., \$600million]	\$0.6 BILLION [e.g., \$600million]	\$113 million	\$80 million
GERMANY (1996)	\$1.27 BILLION	\$1.6 BILLION	\$238 million	\$200 million
FRANCE (1994)	\$1.37 BILLION	\$1.6 BILLION	\$258 million	\$200 million
NEW SOUTH WALES (Aust) (FY 1998-99)	\$1.44 BILLION	\$2.3 BILLION	\$271 million	\$320 million
QUEBEC (Can) (FY 1998-99)	\$1.96 BILLION	\$3.0 BILLION	\$374 million	\$400 million
ONTARIO (Can) (FY 1998-99)	\$1.98 BILLION	\$3.0 BILLION	\$375 million	\$400 million
BRITISH COLUMBIA(Can) (FY 1998-99)	\$2.10 BILLION	\$3.34 BILLION	\$376 million	\$465 million
NETHERLANDS (1998)	\$2.72 BILLION	\$3.5 BILLION	\$514 million	\$480 million
NEW ZEALAND (FY 1998-99)	\$2.19 BILLION	\$4.25 BILLION	\$413 million	\$560 million
ENGLAND (1999)	\$7.3 BILLION	\$10.1 BILLION	\$1.35 BILLION	\$1.35 BILLION

With a couple of exceptions, the per GNP figures for the 10 industrial democracies portrayed in these charts reflect only modest differences from the per capita investment figures for those same countries. The Northern European countries, in particular, are close enough in per capita GNP that there are only marginal relative differences between their per capita legal aid investments and their per GNP legal services investment figures. Moreover, there is only one difference in the overall rankings – as New Zealand and the Netherlands exchange places as to which is second to England in the generosity of the funding for its legal aid program. The Netherlands is second on the per capita scale and New Zealand third. But on the per GNP scale, New Zealand moves up to second and the Netherlands is third.

**Table 4-COMPARING PER CAPITA vs PER GNP INVESTMENTS  
IN CIVIL LEGAL SERVICES**

[Rankings in parentheses]		
NATION (or political subdivision of nation, e.g., province, state)	GOVT'S <b>PER CAPITA</b> CIVIL LEGAL SERVICES INVESTMENT (in U.S. DOLLARS)	GOVT'S CIVIL LEGAL SERVICES INVESTMENT <b>PER \$10,000</b> <b>of GNP</b> (in U.S DOLLARS)
UNITED STATES (FY 1998)	\$2.25 (10)	\$0.70 (10) [= 70 cents]
GERMANY (1996)	\$4.86 (9)	\$1.90 (9)
FRANCE (1994)	\$4.50 (9)	\$1.90(9)
NEW SOUTH WALES (Aust)	\$5.12 (7)	\$2.75 (7)
QUEBEC (Can)	\$7.07 (5)	\$3.50 (6)
ONTARIO (Can)	\$7.06 (6)	\$3.60 (5)
BRITISH COLUMBIA (Can)	\$7.80 (4)	\$4.00 (4)
NETHERLANDS (1998)	\$9.70 (2)	\$4.20(3)
NEW ZEALAND (FY 1998-99)	\$7.10 (3)	\$5.10(2)
ENGLAND (1999)	\$26.00 (1)	Net = 12.00(1)

New Zealand, in fact, is a nation on the above list that illustrates the value of the per GNP investment figure when seeking to measure the relative commitment to equal justice of countries of substantially different levels of prosperity. While New Zealand is still very much in the same league as the other nations compared above, in terms of raw GNP, New Zealand's per capita GNP is less than half that of the United States and several other nations on this list. Not only does it move up from third on the per capita list to second on the per GNP list, but New Zealand's per capita figure is 3 times the U.S. per capita figure, but over 7 times its per GNP figure. Moreover, it is only a little over one-fourth of England's per capita figure, but nearly one-half of its GNP figure.

Admittedly, the differences between per capita and per GNP investment figures remain rather modest, even in the case of New Zealand. But imagine if one were attempting to assess the commitment to equal justice of a developing country with a per capita income one-tenth that of the United States, or one-twentieth, or one-fiftieth. Consider how little such a nation would have to invest on a *per capita* basis in order to match the U.S. on the per GNP scale. This phenomenon is illustrated in Table 4 below.

**Table 5-Per Capita Civil Legal Aid Investments in Developing Countries**

### Required to Match U.S. Per GNP Investments

NATION	Per Capita GNP	Civil Legal Aid Investment per \$1000 GNP	Per Capita Civil Legal Aid Investment required to match U.S. per GNP investment
U.S.	\$30,000	\$0.07 (= 7 cents)	\$2.20
	\$3,000	UNKNOWN	\$0.21 (21 cents)
	\$1,500	UNKNOWN	\$0.11 (11 cents)
	\$600	UNKNOWN	\$0.04 (4 cents)

As can be seen, a country with a per capita GNP of \$3,000 a year would match the U.S. on the per GNP scale if it invested as little as 21 cents per capita on its civil legal aid program. A country like with a per capita GNP of \$1,500 could match the U.S. with an 11 cent per capita legal aid investment. And, countries with per capita GNPs of \$600 a year could do so with per capita investments of only 4 cents in civil legal aid. It is not unreasonable to expect some developing countries already match the United States on this scale, especially since a small country could probably do so by hiring a single legal aid lawyer. On the other hand, the comparable figures if a developing nation were compared with England would be \$3.57 per capita for the country with a GNP of \$3000 per capita, \$1.78 for the country with a GNP of \$1500 per capita and \$.68 for a country with per capita GNP of \$600.

The per GNP legal aid investment statistic also is more useful than the per capita figure when comparing a single nation's commitment over time as opposed to comparing it with other countries. It not only corrects for inflation, but also for economic growth.

For a dramatic illustration of the point, we turn to the United States. In 1981 the budget of the Legal Services Corporation, the federal government's primary funding source for civil legal services was \$321 million. In 2001, 20 years later, the budget is \$330 million. (It has been as low as \$241 million in between) On a per capita basis, and only because of population growth, the LSC budget has declined modestly from \$1.40 per person in 1981 to \$1.18 in 2001. But looking at the LSC budget in proportion to the nation's GNP, the drop is drastic. \$1.50 per \$10,000 of GNP in 1981 versus 35 cents per \$10,000 GNP in 2001.

Shortly after the LSC budget reached its apex in real terms conservative administrations came into power. They tried to eliminate the program and succeeded in trimming the LSC appropriations. Since then, those involved in civil legal services in the United States have been

scrambling to assemble an amalgam of substitute funding sources to replace the lost income from the federal government. At this point they have been resourceful enough to generate funding from a combination of other sources that nearly matches the \$330 million coming from LSC. As a result the combined civil legal aid investment in the U.S. approximates \$2.15 per capita, some 70 percent higher than the per capita figure for 1981. But it is an entirely different story if one compares this combined investment statistic using the per GNP rather than per capita indicator. The combined figure in 2001 – 70 cents per \$10,000 in GNP – is substantially less than the LSC budget alone - \$1.50 per \$10,000 GNP – in 1981.

The bottom line – the U.S. national financial commitment to equal access to justice is much lower in 2001 than it was 20 years ago.

Depending on inflation rates, other nations may have very different lessons to learn from employing a per GNP versus a per capita indicator of financial commitment to equal justice. For example, some that experienced a major expansion in their total expenditures on legal aid may also find they had an even more dramatic expansion in the inflation rate and/or the rate of economic growth. If so, the per GNP legal aid investment statistic may reflect a more modest growth in legal aid than would appear on the face of the upsurge in total or per capita legal aid investments. One could even imagine an extreme situation where what politicians look at as an out-of-control increase in legal aid expenditures in reality only kept pace with inflation and economic growth to the point that legal aid remains stable as a share of the nation's GNP. To the extent it is true, or partially true, such a finding might tend to neutralize political criticism of the expansion of legal aid expenditures in a given country.

### **III. Government Civil Legal Services Investments Proportionate to Total Societal Expenditures on Lawyers.**

In all the countries included in this paper, the legal profession receives most of its income from private clients – whether individuals or organizations – rather than government-funded legal aid. This private funding may come in the form of fee-for-service payments, pre-paid legal services, contingent fees, conditional fees, or some other form of compensation. But the source is the client and not the government.

The gross income of the legal profession in a given country provides a rough gauge of the number and importance of the dispute resolution tasks that society has assigned to disputants and their lawyers, in contrast to the publicly-funded courts or other dispute resolution organs. Furthermore, it is evidence of how much private citizens and entities who can afford to purchase legal services find those services important to their own lives. For those reasons, and others, one

would expect there to be a rough correlation, at least, between legal aid expenditures in a given country and the gross income of the legal profession in that country. Those who can afford to pay are a certain percentage of the population and are willing to pay a certain amount of money for the legal representation they find they need given the structure of that society and its legal system. Is it not reasonable to expect the portion of the population who can't afford to pay would require government-funded legal aid in an amount that corresponded somewhat to the total gross income lawyers receive from those who could afford their fees.

Depending on the relative size of their legal professions and the relative prosperity of those professions, the gross income of the legal services “industry” can differ greatly between countries, even those of equal populations and GNPs. As mentioned earlier, some legal systems assign most of the dispute resolution tasks to the disputants and their lawyers, thus are “lawyer intensive” and tend to have large legal professions per capita. Others assign more of those responsibilities to the publicly funded judicial system. These “judge intensive” systems tend to have smaller legal professions per capita. Cultural factors likewise can influence the size of and gross income of the legal profession in different countries of equivalent size and prosperity. Some countries place less reliance on courts, lawyers, or other formal dispute resolution facilities and resolve more of their conflicts and problems through negotiation, informal mediation, and accommodation. Since a higher percentage of problems are resolved – for poor people as well as the rest of the population – through these mechanisms (which often are free) there is a lesser need for legal aid just as there is a lesser need for lawyers among the rest of the population.

For these reasons, a case could be made that the most accurate indicator of relative commitment to equal justice is “civil legal aid investments per gross legal profession income” rather than “legal aid investment per capita” or “legal aid investment per GNP.” The latter two indicators may distort the rankings of nations that structure their social and economic relations or their dispute resolution machinery in ways that reduce substantially the need for lawyers. Japan may provide the most extreme example. A population of 120 million, the world's second largest economy and nearly highest per capita income, but a legal profession of under 15,000. With a very modest legal aid budget of only a few million dollars, it would rank at or near the bottom among industrial democracies on either the per capita or per GNP scales. On the “per gross legal profession income” scale, however, it probably would fare quite well.

While Japan may represent the extreme example, many other nations – including some of the large European democracies – have relatively small legal professions at least on a per capita basis and certainly in relation to most common law countries. Their legal aid investments, too, undoubtedly would rank higher on a “per gross legal profession income” scale than they do on

either a “per capita” or “per GNP” scale. Moreover, a good argument could be made that this indicator would represent a fairer proxy for those nations’ commitment to equal justice for their lower income citizens. The legal aid investments may be lower in absolute terms, but those investments would give poor people the same or a larger share of the nation’s total legal resources.

At the same time, this indicator has its own limitations – especially when a nation’s legal profession is unusually small in relation to population or GNP. The near absence of a legal profession, or a shortage of lawyers may itself be an indication a nation’s government or ruling class is oppressive or at least attempts to discourage access to justice by anyone – even those who could afford a lawyer if they existed in any significant numbers. In other countries, the absence or shortage of a legal profession may have a more benign explanation yet still cause this indicator to give a false reading. Some nations, for historical or cultural reasons, may place too much confidence in informal mechanisms of dispute resolution. These forums may function without lawyers and with little or no cost, but operate poorly or unfairly – that is, the results may be inaccurate or consistently skewed in favor of the members of certain economic classes, ethnic groups, social organizations, etc. This too is unequal justice.

But for the industrial democracies, such as the ten jurisdictions included in this paper, the “per gross lawyer income” indicator is quite informative – in some respects superior to the per capita and per GNP figures. Unfortunately, at this point I lack raw data about gross legal profession income from any country – with the exception of the United States and England. Thus, it is not possible to compare the other nations covered in this paper using this indicator. It probably is safe to say, however, the U.S. and England would be at the opposite ends of that spectrum just as they are on the per capita and per GNP spectrums

**Table 6-Civil Legal Aid Investment As Percentage of Total Societal Expenditures on Lawyers**

	<b>Total Societal Expenditures on Legal Services [in U.S. \$]</b>	<b>Total Government Investment on Civil Legal Aid [in U.S. \$]</b>	<b>Legal Aid as Percent of Total Expenditures on Lawyers</b>	<b>U.S. Legal Aid Investment if U.S. spent same percent of total legal services expenditures on legal aid as England does</b>	<b>English Legal Aid Investment if England spent same percent of total legal services expenditures on legal aid as U.S. does</b>
<b>England</b>	\$12 BILLION	\$1.35 BILLION	12 percent		\$48 Million
<b>United States</b>	\$150 BILLION	\$600 million	0.4 Percent	\$18 BILLION	

At this point, government-paid legal aid fees represent more than 12 percent of the total gross income earned by English solicitors – virtually all of it for advice and representation in civil cases.<sup>3</sup> (Over half of barristers’ income also comes from government-paid legal aid fees, but much of this is for criminal cases.) To place this statistic in context, twelve percent of the annual earnings of American lawyers would exceed 18 billion dollars at the present time. (In 2000, estimated gross revenues of U.S. law firms totaled \$150 billion<sup>4</sup>, and have been on a steep upward incline for two decades.<sup>5</sup>) Thus if the U.S. were to devote as large a percentage of its total societal expenditures on lawyers as England does to government-paid legal civil legal services for lower income people, the U.S. governments would be spending a combined amount in excess of **18 billion dollars** a year on those services.

Legal aid’s share of total societal expenditures on the services of lawyers also can prove revealing when comparing legal aid investments over time within a single country. Once again, for lack of data about other nations, the United States serves as the example.

In 1981, the Legal Services Corporation budget was \$321 million and the total societal expenditures on lawyer services in the U.S. were \$24 BILLION. So that year the LSC budget alone represented **1.3 percent of total expenditures on lawyer services** in the U.S. In the year 2000, the LSC budget was \$330 million and total expenditures on lawyer services was \$150 BILLION. So in those two decades, while the LSC budget increased by \$9 million the LSC budget fell to **only 2-tenths of a percent of total expenditures on lawyer services**. Even adding IOLTA, other federal, state and local government investments the combined government investment of some \$600 million a year now represents only about **a half a percent** of total expenditures on lawyers services.

In the state of California (which with a population of 34 million is larger than Canada and two-thirds the population of England) total expenditures on lawyers in 2000 amounted to \$22 BILLION and the state’s combined governmental investment (LSC funds, state and other federal funding and counting IOLTA as government funding) was \$78 million. So government-funded civil legal services represented about **3-tenths of a percent of total expenditures on lawyer services** in this state.

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<sup>3</sup> Mike Hope, *Expenditure on Legal Services*, Lord Chancellor’s Department, Research Secretariat (<http://www.open.gov.uk/research/1997/1997es.htm>).

<sup>4</sup> *STATISTICAL ABSTRACT OF THE UNITED STATES-2000*, Table No. 1301.(Source: U.S. Census Bureau, Current Business Report, *Service Annual Survey for 1999*.)

<sup>5</sup> In 1990, law firm gross receipts were \$97.6 billion. Five years later in 1995, that figure had grown to \$116 billion, a year later in 1996 to 124.7 billion, and the year after that, 1997, to \$133.5 billion (Ibid.). At this pace, it is estimated receipts exceed \$150 billion in 2000, while the LSC budget lags at \$330 million and total government expenditures on civil legal services for the poor linger in the \$600 million range.

To put it another way, if the combined government investment in legal services for the poor represented as large a share of the nation's expenditures on lawyers in 2000 as the LSC budget alone represented in 1981, the combined **national legal services budget would have been nearly \$2 BILLION** in 2000 – instead of \$600 million -- and **in California the combined government investment would have been \$285 million** instead of \$78 million.

This is yet further evidence of how much ground legal aid has lost the last two decades in the United States. Not that a 1.3 percent share of the nation's lawyer services was even arguably enough to handle the legal problems of roughly 20 percent of the nation's population. (America's poor currently have a 13 percent share of the nation's health services. That is, 13 percent of total societal expenditures on health care consist of government-funded health care programs for the poor.<sup>6</sup>) Somewhere between 1.3 percent and 13 percent of total legal resources probably would represent a fair share for legal aid. But a half a percent is woefully inadequate, by anyone's reckoning. Small wonder that in the U.S., most jurisdictions report anywhere from 30 to 85 percent of litigants appear without counsel in family law, landlord-tenant, and many other categories of cases.<sup>7</sup>

#### **IV. Comparing England and Quebec with the United States and California – Government-funded Civil Legal Services as a percentage of government expenditures on the courts.**

The final indicator is based on the assumption there should be some rough correspondence between the size of the court system and the need for subsidized access to those courts by those too

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<sup>6</sup> *STATISTICAL ABSTRACT OF THE UNITED STATES -2000*, Tables 149 and 162.

<sup>7</sup> The California Judicial Council reports that in FY 1998 one or both parties were unrepresented in 52 percent of family law cases heard in that state's courts. In child support proceedings, both sides lacked representation in 63 percent of the cases and at least one side lacked representation in 84 percent. *Judicial Council of California Fact Sheet* (November 1999). Meantime a 1990 study of the Phoenix, Arizona domestic relations court revealed at least one of the parties lacked counsel in over 88 percent of divorce cases and in 52 percent of the cases both parties were self-represented. (Sales, Beck, and Haan, *Self-Representation in Divorce Cases* (Chicago, IL: American Bar Association (1993). Some jurisdictions, however, report lower – yet still substantial levels of unrepresented parties – suggesting it is primarily poor people not middle class litigants who are going without lawyers in family cases. A 1991-92 study of 13 urban court systems reported neither side was represented in 18 percent of all domestic relations cases while only the wife was represented in 36 percent of the cases, and only the husband in 17 percent of the cases. Goerdt,, *Divorce Courts: Case Management, Case Characteristics, and the Pace of Litigation in 16 Urban Jurisdictions* (Williamsburg, VA: National Center for State Courts, 992)) 48.

In contrast, in tort cases where lawyers are available to poor people, as well as others, because of the contingent fee system a study revealed only 3 percent of litigants had to appear without lawyers. (Most if not all of these probably were people whose prospects for success or injuries were so minimal they could not attract a contingent fee lawyer to take their cases.) Smith, DeFrances, Langan, and Goerdt, "Tort Cases in Large Counties," *Bureau of Justice Statistics--Special Report* (April 1995) 2..

poor to pay the cost of admission. If there are few courts to access, ordinarily there will be less litigation and fewer litigants – rich or poor – needing to access those courts. Consequently, the legal aid budget presumably could be lower in absolute terms, irrespective of that nation’s population or gross national product. To put it another way, it seems reasonable to expect the amount a society spends on its courts to bear some relation to what it spends on guaranteeing access to those courts for all its citizens.

What is the proper ratio between government expenditures on the courts and government expenditures on access to those courts? That is a normative question – and once again influenced, in part, by the allocation of dispute resolution responsibilities between the courts and the parties. As discussed more fully in the section on the “per GNP” indicator, in a nation that allocates most of those responsibilities to the courts themselves, one would anticipate a lower legal aid to judicial budget ratio. That is, the court system itself would be absorbing more of the access costs and thus the legal aid budget could be less and still produce the same result.

Table 7 below; however, presents no such issue. All four jurisdictions included are “lawyer dependent” in the sense they employ a pure “adversarial” model and expect the private litigants and their lawyers to do most of the dispute resolution work and deliver a packaged presentation to passive and neutral judges (or juries). So presumably they should have similar legal aid to court budget ratios. The table includes both the United States and California because no national judicial expenditure statistics presently exist for the U.S. The Federal courts have a single source of funding and a single budget. On the other hand, the state and local court systems, responsible for deciding over 90 percent of cases in the U.S., are funded by a combination of state, county, and municipal governments. Some states compile consolidated budget figures for all courts in their jurisdictions, but most do not. Just recently, however, California unified its court system throughout the state and the state government assumed responsibility for funding all courts. Thus, California has a single judicial budget and it is possible to report accurate court expenditures for the nation’s largest state. The U.S. figure, on the other hand, is no better than an educated guess – but a very conservative one, at that.

**Table 7-Civil Legal Aid Investment Proportionate to Government Expenditures on Courts**

<b>NATION</b>	<b>Total Court Budget</b>	<b>Total Legal Aid Budget</b>	<b>Legal Aid Budget as Percent of Court Budget</b>	<b>This Nation’s Legal Aid Budget if the Ratio of Legal Aid to Judicial Budgets Were the SAME AS ENGLAND</b>	<b>This Nation’s Legal Aid Budget if the Ratio of Legal Aid to Judicial Budgets Were the SAME AS THE U.S.</b>
ENGLAND	\$882 Million	\$1.35 BILLION	154 %	\$1.35 BILLION	\$27.0 Million

QUEBEC	\$85 Million	\$52 Million	60%	\$140 Million	\$1.6 Million
CALIFORNIA	\$2.3 BILLION	\$78 Million	3%	\$3.5 BILLION	\$78 Million
U.S. (Estimate)	\$18 BILLION	\$600 Million	3%	\$23.0 BILLION	\$600 Million

**Note: The author does not have full confidence the “Total Court Budget” figure for England reported on Table 7 actually includes all governmental expenditures on the courts in that country. This is the official statistic the Lord Chancellor’s Department reported for “Court Services” in its annual report. It is not altogether clear, however, whether this figure includes the salaries paid to judges and justices. And perhaps other governmental units fund some courts or parts of some courts. Accordingly, it is possible the ratio between legal aid expenditures and judicial expenditures is not quite so dramatic as it appears. Nonetheless, this figure does represent the bulk of government expenditures on the courts and the legal aid-court expenditure ratio probably is at least in the general range reflected on this table.**

As Table 7 reveals, if the U.S. maintained the same ratio as England between public expenditures on the courts and expenditures on services required to effectively access those courts, the U.S. would be spending over *23 billion* dollars a year on civil legal services for lower income Americans. That is, in 1999 the English government spent 535 million pounds (\$882 million) on its court system<sup>8</sup> and 820 million pounds (\$1.35 billion) on civil legal services for lower income people seeking to access that court system.<sup>9</sup>

Where does the United States stand? Accurate national expenditure figures are hard to come by for America’s complex array of federal, state, county, and municipal courts. So I use the nation’s largest state, California, as representative. In this state, with a population two-thirds the size of England, combined federal and state expenditures on civil legal services were \$ 78,000,000 in 2000. Meantime, California’s judicial budget, now funded almost entirely by the state government, is \$ 2.3 billion.

Thus, to the extent California is representative of U.S. jurisdictions, governments in this nation are spending **3 percent** as much on civil legal services as they are on their court systems. Meanwhile, England is spending **154 percent** as much on these services so essential to equal access as it does on its courts. Thus, to match England on this measure, U.S. governments would have to invest over **23 billion dollars** a year on civil legal services for the poor. Meanwhile, if California

<sup>8</sup> Lord High Chancellor, *The Court Service Annual Report 1998-1999* (London: The Stationery Office, 1999) p. 40.

<sup>9</sup> Lord Chancellor’s Department, *Judicial Statistics – England and Wales for the Year 1999* (CM4786, July 2000). Table 10.7-*Legal Aid Expenditures: Receipts and Payments, 1999*. This is the *net* governmental expenditure on civil legal services exclusive of private funds such as required contributions from clients and parties who lose to legally-aided clients. The gross expenditure on civil legal services for lower income Englishmen is 1.275 billion pounds (2 billion dollars).

were to match England on this measure, governments would be spending a combined total of **\$3.5 billion** on civil legal services for lower income people in that single state.

While England, once again, is far ahead of any other country in its financial commitment to equal access to justice, it appears probable other countries also may maintain a very different ratio between legal aid funding and court funding than does the U.S. or its largest state. Thus far, I have only been able to obtain reliable statistics about court funding from one other jurisdiction – Quebec Province, Canada. However, it seems highly unlikely Quebec’s ratio of legal aid investment to court expenditures is out-of-line with other Canadian provinces. Nor is there reason to expect Australia or New Zealand would be that much different from Canada on this indicator. But without firm figures this remains conjecture.

In any event, as Table 7 reflects, in Quebec the civil legal services budget is over **sixty percent** the size of its judicial budget, compared once again to that 3 percent figure in the U.S. If the U.S. spent 60 percent as much on civil legal services as it does on the courts, combined government expenditures on those services would exceed **9 billion dollars**. Similarly, if the ratio of civil legal services expenditures to court expenditures were the same in California as it is in Quebec, that state would be spending **\$1.4 billion** on civil legal services instead of \$78 million.

## **V. Comparative Indicators – the Next Step**

The thesis of this paper is that there is more than one statistical measure of a nation’s commitment to equal justice for its lower income citizens. While it is possible to argue over which of the four discussed here is the best single indicator, I submit they all tell us something and together form a more fully rounded and more accurate picture.

A fifth indicator – investment per person eligible for legal aid -- might complete that picture. Unfortunately, I lack the data to produce this indicator. Further, for many nations the calculations are further complicated by the fact the legal aid programs offer partial subsidies on a sliding scale well up into the middle classes. A “per eligible person” indicator would have to account for this phenomenon – probably by changing it to a “per fully-subsidized equivalent” produced by multiplying the number of eligible persons at each subsidy level by the percentage of their subsidy. So poor persons who are fully subsidized would be counted as a full person, while those only entitled to a half subsidy would count as half-persons, and those entitled only to 25 percent would count as quarter-persons, etc. Whether this kind of refined population data is available seems doubtful. Hence it may never be possible to produce this indicator for any country

which offers partial legal aid subsidies to economic classes not deemed to require legal aid that is entirely free.

For two of the four indicators discussed in this paper, however, the data is available from all ten of these jurisdictions and probably from most other industrial democracies as well. As for the third and fourth – “per gross lawyer income” and “per total judicial budget” – I suspect the data exists but I have not been able to find it yet. It is for this reason I make a request of those attending the Melbourne Conference – and extend an offer in return. If you locate this data for your own jurisdiction and send it to me, I am authorized to offer the services of the National Equal Justice Library and its website – <http://www.equaljusticeupdate.org> -- to make any necessary calculations and to post this information on comparative tables posted on that website. Thus, you almost instantly will know how your jurisdiction stacks up with others as to that particular indicator. The more jurisdictions that furnish this data the more complete and more useful the comparative charts will be.