TRIBUTARIES OF JUSTICE: THE SEARCH FOR FULL ACCESS

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I. INTRODUCTION

Comparing our efforts with those in other countries, the sad truth is that despite public rhetoric so elaborately laced with "equal justice under the law" and "liberty and justice for all," we lag behind in providing legal services to the indigent.[1] California Justice Earl Johnson, Jr., who has examined the financial commitment of various jurisdictions to provide access to legal representation, has concluded that "[w]hen it comes to the legal entitlement to free counsel for indigent civil litigants, the United States is in a distinct minority among the industrial democracies of the world."[2]

Justice Johnson believes that we will achieve access to justice only if we think of the road to access as a multi-lane highway, not as a single-lane road.[3] The access problem has traditionally been ad-

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1. See infra Appendix 1 (showing per capita government spending for legal services). The United States spends approximately 12% percent of what England and Wales spend on civil indigent legal services.

2. Earl Johnson, Jr., The Right to Counsel in Civil Cases: An International Perspective, 19 LOY. L.A. L. REV. 341, 345 (1985); see also ACCESS TO JUSTICE WORKING GROUP, ST. BAR OF CAL., AND JUSTICE FOR ALL: FULFILLING THE PROMISE OF ACCESS TO CIVIL JUSTICE IN CALIFORNIA 6 (1996) [hereinafter AND JUSTICE FOR ALL]. Justice Johnson was the chair of the Access to Justice Working Group.

3. See ACCESS TO JUSTICE SUBCOMM., AMERICAN BAR ASSOCIATION CONSORTIUM ON LEGAL SERVICES AND THE PUBLIC, EQUAL JUSTICE IN THIS CENTURY: WHAT AMERICA CAN DO TO MAKE ACCESS TO JUSTICE A REALITY FOR THE COMMON CITIZEN BEFORE THE END OF THE TWENTIETH CENTURY 2 (1993) [hereinafter EQUAL JUSTICE IN THIS CENTURY]. Justice Johnson was the chair of the Access to Justice Subcommittee.

dressed through individual solutions—pro bono services, alternative dispute resolution, funding for legal services, and so forth. Yet, successful access is more likely to be achieved through a combination of these efforts.[4]

Florida Supreme Court Justice Ben F. Overton has recognized the importance of bringing many elements together to improve access to justice. In an opinion reviewing recommendations to improve access to justice, which included a pro bono plan, Justice Overton recognized the many other programs that can contribute to access:

> [F]or this justice system to maintain credibility, we realize that it must be available and affordable to all segments of society. . . . This Court and The Florida Bar have regularly adopted programs to improve the accessibility of our judicial system. These include simplified proceedings in small claims court, probate, and dissolution of marriage matters; the development of simplified forms for a litigant's pro se use; the establishment of citizen dispute settlement centers; and the recent implementation of mediation and arbitration programs designed to resolve disputes in an efficient and economical manner.[5]

Justice Overton stressed the need for providing legal services to the poor: "[T]he obligation to represent the 'defenseless and oppressed' is critical to our judicial system if it is to work properly for all segments of our society."[6] The court declared its duty to assure access to justice:

> The lawyers of this state have recognized that they have a debt of service to the poor in the oath each took upon becoming a member of the legal profession and an officer of the courts. This important commitment assures a justice system for all. We acknowledge our responsibility to provide the necessary leadership to accomplish that goal.[7]

The court also recognized the lawyer's sworn duty to respond to legal needs: "[E]very lawyer of this state who is a member of The Florida Bar has an obligation to represent the poor when called upon by the courts and . . . has agreed to that commitment when admitted to practice law in this state."[8]

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4. See id.

5. In re Amendments to Rules Regulating The Florida Bar—1-3.1(a) and Rules of Judicial Administration—2.065 (Legal Aid), 573 So. 2d 800, 806 (Fla. 1990). This opinion eventually led to a unique comprehensive access to justice plan calling for a greater awareness of the demand for legal services and for innovative solutions to satisfy that demand.

6. Id. at 804.

7. Id. at 806-07.

8. Id. at 806.

In a later opinion, the Florida Supreme Court adopted a comprehensive access to justice plan, the Florida pro bono plan, in substantially the same form in which it was submitted.[9] The court modified the plan to address several concerns.[10] Of great significance, the court narrowed the definition of "legal services to the poor," which governed the pro bono reporting element of the plan:

> Florida lawyers should strive to render (1) pro bono legal services to the poor or (2) to the extent possible, other pro bono service activities that directly relate to the legal needs of the poor. It is also our intention that the definition include legal services not only to indigent individuals but also to the "working poor."[11]

The Florida pro bono plan is interesting in part because it is built on the middle ground between the poles of mandatory pro bono service and purely voluntary pro bono service.[12] The plan provides minimum standards for annual pro bono contributions, encouraging lawyers to contribute at least twenty hours of direct legal service to the poor or, alternatively, a payment of $350 to legal services providers.[13] Although the plan does not mandate the performance of these minimums, it does require lawyers to report their annual pro bono service or payments made in lieu of service.[14]

The Florida Pro Bono Plan places an expectation on Florida attorneys that they will provide direct legal services to the poor, not just "good works."[15] However, even if fully backed by the courts, a comprehensive pro bono plan will not meet all the needs of the poor.[16]

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9. See In re Amendments to Rules Regulating The Florida Bar—1-3.1 and Rules of Judicial Administration—2.065 (Legal Aid), 630 So. 2d 501 (Fla. 1993).

10. For example, the court held that some government lawyers are prohibited from participating in the Florida Pro Bono Plan. See id. at 504. Further, the court simplified the reporting statement requirements. See id. at 505. Finally, the court held that lawyers licensed to practice in Florida, but who reside and practice out of state, are not excluded from their responsibility to provide legal services. See id. They can fulfill their obligation in the state in which they practice or reside. See id.

11. Id. at 503.

12. When Texas proposed a mandatory pro bono program the debate was very heated, with supporters rallying behind either a purely voluntary or a mandatory pro bono program. See Charles Herring, Jr., Isn't it Time for Mandatory Pro Bono? Plan Would Help Bar's Image—and Meet the Needs of the Poor, TEX. LAW., Aug. 13, 1990, at 18; Michael J. Mazzone, Mandatory Pro Bono: Slavery in Disguise, TEX. LAW., Oct. 22, 1990, at 22; Charles Herring, Jr., A Response to the Pro Bono Critics, TEX. LAW., Sept. 24, 1990, at 2.

13. See R. REGULATING FLA. BAR 4-6.1(b).

14. See id.

15. See id. (requiring that members of the Florida Bar render pro bono legal services and other pro bono service activities that relate directly to the legal needs of the poor).

16. See In re Amendments to Rules Regulating the Florida Bar—1-3.1(a) and Rules of Judicial Administration—2.065 (Legal Aid), 598 So. 2d 41, 54 (Fla. 1992).

I like Justice Johnson's analogy that we have multiple lanes of a highway to lead us to the goal of access to justice. When I spoke in Seattle at the launching of a campaign by Washington lawyers to raise money for legal services in the spring of 1991, I used another analogy that described these lanes as tributaries feeding a mighty river. After my speech, James Noe, a very thoughtful state court judge, came forward and said that the analogy of the river is better and reminded me of the passage from the Book of Amos: "But let justice roll down like waters, and righteousness like an ever-flowing stream."[17]

If we are to achieve access for all of our citizens we need to have a plan, and we need to know where we are today. In this paper I use Florida as a model because it has comprehensive and local pro bono plans in place and because there has been a recent assessment of the legal needs of Florida's poor. As of 1995, there were 2.3 million Floridians in poverty,[18] and most do not have access to the civil justice system. A study commissioned by the Florida Bar Foundation indicates that eighty-one percent of the legal needs of Florida's poor are not being met.[19] To compound the problem, the number of Floridians living in poverty is increasing.[20]

Although the number of citizens living in poverty has increased, many of the resources for indigent legal services have declined. For example, support from federal sources and from the interest on lawyer trust account programs have diminished. Now that the pro bono reporting requirement is in place, it is possible to conduct an assessment to better determine the status of achieving access to justice for all of Florida's citizens. Full access to the civil justice system can be achieved through free-flowing tributaries of resources that enable the impoverished to secure legal representation. An examination of current and potential tributaries indicates which are providing, or might provide, full access to the legal system.

II. TRIBUTARY ONE: FEDERALLY FUNDED LEGAL SERVICES

The program that is the most efficient in providing legal services to the poor is the federally funded Legal Services Corporation (LSC). The LSC disperses federal funding to legal services offices nationwide, which are staffed by committed and well-supervised full-time

17. Amos 5:24 (Revised Standard).

18. See LEGAL SERV. CORP., NUMBER OF POOR AND POVERTY RATE, BY STATE 1 (1997) [hereinafter POOR AND POVERTY RATE] (on file with FLA. ST. U. L. REV., Tallahassee, Fla.).

19. See THE FLA. BAR FOUND., LEGAL NEEDS AMONG LOW-AND MODERATE-INCOME HOUSEHOLDS IN FLORIDA 54 (1995) (finding that only 19% of low income legal needs were represented by lawyers).

20. See POOR AND POVERTY RATE, supra note 18, at 1 (illustrating there are approximately 700,000 more Florida residents in poverty in 1995 from 1989).

lawyers, paralegals, and clerical help.[21] While these legal services offices receive funding from various sources, most are supported primarily by federal dollars.[22] Despite their critics,[23] these programs are serving a large client base at a minimum cost. For example, in fiscal year 1995, legal services agencies closed approximately 1.7 million cases,[24] and operated on a federal appropriation of $400 million.[25] In fiscal year 1995, Florida legal services agencies closed 120,960 cases,[26] and operated on a federal appropriation of approximately $17.4 million.[27]

Sadly, after the Republican Party regained control of Congress in 1995,[28] funding for legal services fell to its present level of only $283 million for all national programs.[29] This funding level, in real dollars, is twelve percent below what it was in fiscal year 1981, when Ronald Reagan took office.[30] Unfortunately, as funding decreased, the number of poverty-level citizens increased. The number of Floridians living in poverty jumped 36% from 1981 to 1995.[31]

It is essential that federal appropriations be restored to their 1981 level of $321 million,[32] and then increased to the previously planned level of providing two federally funded legal services lawyers for every 10,000 individuals living in poverty.[33] To do this nationally would require, in present-day dollars, approximately $410 million,[34] with Florida receiving approximately $25 to $30 million of

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21. See EQUAL JUSTICE IN THIS CENTURY, supra note 3, at 3.

22. See id.

23. See, e.g., RICHARD A. POSNER, OVERCOMING LAW 53-54 (1995) (stating that, in his opinion, federally funded legal services are merely a method of advancing the interests of the legal services cartel). Notably, legal services lawyers often forego lucrative law firm job offers to earn starting salaries of $16,000 to $20,000 as they serve the interests of poor citizens.

24. See LEGAL SERV. CORP., LEGAL SERVICES CORPORATION FACTS 1996 11 (1997).

25. See id. at 1.

26. See THE FLA. BAR FOUND., IOTA LEGAL ASSISTANCE FOR THE POOR ANNOTATED REPORT ii (1995) [hereinafter FLORIDA IOTA REPORT].

27. See id. at viii.

28. See Dan Blaz, A Historic Republican Triumph: GOP Captures Congress; Party Controls Both Houses For First Time Since 50's, THE WASH. POST, Nov. 9, 1994, at A1.

29. See LEGAL SERV. CORP., LEGAL SERVICES CORPORATION APPROPRIATION HISTORY 2 (1997) [hereinafter APPROPRIATION HISTORY].

30. See id. at 1. In 1991, the Board of the Legal Services Corporation voted to ask for an increase of 50% funding, to the level of $525 million, simply to return the program to the level that existed a decade ago. Interview with Kent Spuhler, Executive Director, Florida Legal Services, Inc., in Tallahassee, Fla. (Dec. 22, 1997).

31. See POOR AND POVERTY RATE, supra note 18, at 1.

32. See APPROPRIATION HISTORY, supra note 29, at 1.

33. This contrasts with 25 lawyers for every 10,000 people in the general population. See EQUAL JUSTICE IN THIS CENTURY, supra note 3, at 4.

34. In 1997, there were 36.5 million people living in poverty. See LEATHA LAMISON-WHITE, U.S. BUREAU OF THE CENSUS, CURRENT POPULATION REPORTS, SERIES P60-198, POVERTY IN THE UNITED STATES: 1996 v (1997). Assuming approximately $40,000 per lawyer for salary and benefits, the total costs for legal services lawyers would be $292 million. Further, assuming an overhead of 40% to pay for office staff, facilities, equipment, and the

this sum.[35] Unfortunately, federal funding has never reached this level and is actually declining.[36] Moreover, there has been little commitment in recent years to the legal problems of the poor in either the legislative or executive branches.[37]

III. TRIBUTARY TWO: INTEREST ON LAWYERS TRUST ACCOUNTS

One of the most remarkable innovations in legal services is the Interest on Trust Accounts (IOTA) program. Originated by Florida Supreme Court Justice Arthur J. England during his service on the court,[38] the program is based on Justice England's observation of a similar program in British Columbia.[39] Justice England realized that interest on small or short-term trust accounts created by lawyers from client payments was a source of profit for banks because lawyers were ethically prohibited from receiving any benefit.[40] Justice England successfully urged that, where the interest earned from those accounts could not be efficiently transferred to the client, it should be used to fund public service projects, particularly legal services to the poor.[41]

Today, forty-nine states have some form of an IOTA program in place, which is a major source of funding for legal services.[42] Florida took a further step in 1989 by making the IOTA program mandatory,[43] which substantially increased IOTA's contribution to Florida's legal services programs.[44] In 1995, the Florida IOTA program raised an estimated $11.2 million.[45] The results nationwide have been stunning; from the early 1980s until the end of 1995, IOTA programs

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like, the minimum federal funding to achieve two lawyers for every 10,000 individuals living in poverty is $410 million.

35. Again, assuming 2.3 million indigent persons in Florida and approximately $40,000 per lawyer for salary and benefits, the total costs for legal services lawyers would be $18.4 million. With an overhead of 40%, the minimum federal funding for Florida should be approximately $25.8 million. More realistic overhead costs place the total figure in the vicinity of $29 million.

36. See APPROPRIATION HISTORY, supra note 29, at 1-2 (illustrating that federal funding has declined from a high of $400 million in 1995).

37. See EQUAL JUSTICE IN THIS CENTURY, supra note 3, at 4.

38. See Arthur J. England & Russell E. Carlisle, History of Interest on Trust Accounts Program, FLA. B.J., Feb. 1982, at 101, 102.

39. See id.

40. See id. at 101.

41. See id. at 102-03.

42. See EQUAL JUSTICE IN THIS CENTURY, supra note 3, at 4. Indiana, the final state, has adopted the IOTA program, but the program is not yet operational.

43. See Matter of Interest on Trust Accounts, 538 So. 2d 448, 453 (Fla. 1989).

44. See FLORIDA IOTA REPORT, supra note 26, at vii (illustrating that IOTA's contribution as a percentage of Florida's total legal services funding rose from 10% in 1989 to 31% in 1993).

45. See id. at viii. This figure includes $10.2 million for general support of major programs and $1 million for special purpose grants. See id. at i.

around the country have raised $945.4 million.[46] Moreover, as more states move toward mandatory IOTA programs, the annual revenues produced by these programs will increase significantly. In fiscal year 1995 alone, IOTA programs yielded nearly $89 million nationwide.[47]

Appendix 2 of this Article demonstrates the long-term picture of the IOTA program in Florida. Beginning in 1989 when the IOTA program became mandatory, an enormous growth in contributions ensued.[48] This growth was followed by a drop in contributions, which mostly resulted from declining interest rates.[49]

In short, by moving from voluntary participation to mandatory participation, IOTA programs have produced significant new revenues for legal services for the poor.

IV. TRIBUTARY THREE: STATE FUNDING THROUGH A FILING FEE SURCHARGE

In 1992, the Florida Supreme Court approved a comprehensive pro bono plan, stating that there is a state constitutional right of access to the legal system and that the Legislature must play a role in providing such access.[50] The Court noted that "funding will eventu-

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46. See id.

47. See id. Ironically, the yield per state could decline with better technology since the program is dependent on the fact that administrative costs are too great to allow the client to gain the benefit of small amounts of interest. When technology reduces the administrative costs, lawyers have an ethical obligation to ensure that the interest on the clients' money is received by the clients. Of course, any decline in the interest rate hurts the IOTA program, and the interest yield has been on the decline. See also EQUAL JUSTICE IN THIS CENTURY, supra note 3, at 4; FLORIDA IOTA REPORT, supra note 26, at vii.

48. See infra Appendix 2.

49. See FLORIDA IOTA REPORT, supra note 26, at vii. With the decline in interest rates, it is particularly important to find ways to increase IOTA revenues. One way to increase IOTA revenue is to reform the process through which banks distribute money to IOTA programs. The Florida Bar Foundation has initiated such reform. On April 24, 1997, the Florida Supreme Court granted the petition of The Florida Bar Foundation seeking to amend Rule 5-1.1(e) of the Rules Regulating The Florida Bar (IOTA rule). See Amendments to Rules Regulating The Fla. Bar—Rule 5-1.1(e)—IOTA, 692 So. 2d 181, 181 (Fla. 1997). The purpose of the amendment is to increase revenue produced by the IOTA program. See id. at 181. The amendment authorizes the voluntary use of sweep accounts for normal or short-term trust funds as defined under the current IOTA rule. See id. A sweep account is a cash management product that electronically sweeps surplus funds out of a traditional checking account on a daily basis after all deposits, checks, and charges against the account are cleared. The surplus funds are placed into a higher yield investment, then electronically swept back into the traditional account before the start of the next business day. See id. at n.1. The amendment also stipulates the use of daily bank repurchase agreements as a higher-yield investment vehicle, limiting their use "to those financial institutions that carry the two highest levels of capitalization ratings from the Federal Deposit Insurance Corporation." Id.

50. See Amendments to Rules Regulating The Fla. Bar—1-3.1(a) and Rules of Judicial Administration—2.065 (Legal Aid), 598 So. 2d 44, 44 (Fla. 1992). Article I, section 21 of the Florida Constitution requires that "[t]he courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." FLA. CONST. art. I, § 21.

ally have to be provided to address a significant portion of the needs identified . . . and particularly legal representation that is now mandated by the Constitution."[51] Other than the obvious idea of simply funding legal services at a higher level than that currently provided by federal funds, there are several proposals for how the Legislature can provide greater access to the legal system.

The first proposal contemplates assessing a surcharge on filing fees, which, in Florida, vary from county to county.[52] Several counties have implemented this proposal, producing revenues of $4 million in 1995, nearly nine percent of all funds received for civil legal services programs.[53] There is plenty of room for growth in this source by expanding the number of counties that levy legal aid surcharges. Only thirty-four of sixty-seven counties in Florida now participate.[54] If each county levied a ten dollar surcharge for every filing, it would yield more than $16 million per year.[55]

Second, the Florida Legislature could consider assessing a surcharge on appellate filing fees. Collected funds could be distributed, with preference given to counties that bear a disproportionate burden due to a large poverty population and a small tax base.[56] Assuming a ten dollar surcharge on appellate filing fees, this plan would produce approximately $228,850 in additional revenue.[57]

V. TRIBUTARY FOUR: A CIVIL GIDEON FUND FROM A SERVICE TAX ON FOR-PROFIT LEGAL SERVICES

To achieve full access to justice, the state must make a significant contribution. Some court opinions hint that access to legal representation in civil cases might be a constitutional entitlement.[58] The state could provide its share through a sales tax on for-profit legal services, with a portion of the revenue being used to support legal serv-

51. Amendments to Rules Regulating The Fla. Bar—1-3.1(a), 598 So. 2d at 44.

52. See THE FLA. BAR FOUND., THE REPORT OF THE FLORIDA JOINT COMMISSION ON THE DELIVERY OF LEGAL SERVICES TO THE INDIGENT (1991); see also Amendments to Rules Regulating The Fla. Bar—1-3.1(a), 598 So. 2d at 45.

53. See FLORIDA IOTA REPORT, supra note 26, at viii.

54. See THE FLA. BAR FOUND., FILING FEE ADD-ON INQUIRY 2-3 (1998) (on file with FLA. ST. U. L. REV., Tallahassee, Fla.).

55. In 1997, there were 1,602,965 county and circuit court filings. See Letter from Sybil Brown, Court Statistics Consultant, to Stephen Morse, Assistant to Talbot D'Alemberte, Jan. 12, 1998 2 (on file with FLA. ST. U. L. REV., Tallahassee, Fla.) [hereinafter S. Brown Letter].

56. Inequities in public education are addressed in the same manner by providing extra state funding for the communities with greater poverty populations and limited local tax resources.

57. The number of appellate filings for 1997 was 22,823. See S. Brown Letter, supra note 55, at 2.

58. See In re Amendments to Rules Regulating The Florida Bar—1-3.1(a) and Rules of Judicial Administration—2.065 (Legal Aid), 598 So. 2d 41, 43 (Fla. 1992) (noting that "the right to counsel is no longer limited to criminal cases").

ices to the poor. Such a proposal has already been offered which estimates that a one percent sales tax would raise $20 million each year for a proposed state Civil Gideon Fund.[59]

Florida relies heavily on a state sales tax levied on consumer purchases.[60] This tax does not extend to most services, including for-profit legal services.[61] In a society that is increasingly service-based, a goods-only sales and use tax will be more regressive than a tax that includes services. A just sales and use tax system requires that services be included. The proceeds from such a tax on for-profit legal services could fund legal services to the poor.[62]

The fourth tributary, then, could be a service tax on legal fees. Revenue raised would be earmarked for a Florida Civil Gideon Fund that would provide funding for legal services programs for the poor. A tax on legal fees could become the mainstay of legal services in Florida; for example, a one percent tax would yield nearly $37 million per year.[63] Such a tax would be a tremendous boost toward providing legal services for Florida's poor.

VI. TRIBUTARY FIVE: DISTRIBUTION OF PUNITIVE DAMAGE AND RESIDUE OF CLASS ACTION AWARDS TO A CIVIL GIDEON FUND

It has been proposed that a substantial portion of all punitive damage awards be placed in a Civil Gideon Fund[64] and that un-

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59. See Keith Beyler & Ronald Spears, Funding Access to Civil Justice 34 (May 14, 1992) (unpublished manuscript presented at the Illinois State Bar Association's Allerton House Conference) (on file with author). A Civil Gideon Fund is a fund designed to help meet the legal needs of the poor.

60. See, e.g., Vicki L. Weber, Florida's Fleeting Sales Tax on Services, 15 FLA. ST. U. L. REV. 613, 614 (1987); Jackie Hallifax, Proposal to Lift Income-Tax Ban Defeated, SUN SENT., Jan. 28, 1998, at B6; Ban on Income Tax Won't Budge Once Again, ORLANDO SENT., Jan. 28, 1998, at D1.

61. See Weber, supra note 60, at 614.

62. Appropriate exceptions would be necessary, such as exempting legal fees for criminal defense.

63. See BUREAU OF ECON. AND BUS. RES., UNIV. OF FLA., 1994 FLORIDA STATISTICAL ABSTRACT 513 (1994) (noting that Florida legal services has generated $3.698 billion in fees).

64. See Beyler & Spears, supra note 59, at 35.

> To ensure a proper apportionment between the private and public wrongs, the jury should apportion the punitive damages as part of its verdict, just as the jury now distributes compensatory damages between economic and non-economic loss. Specifically, the General Assembly should amend section 2-1109 on itemized verdicts to add the following sentence:
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> "In all cases where punitive damages are assessed by the jury, the verdict shall be itemized so as to reflect the monetary distribution between the amount necessary to punish the defendant for the private wrong done to the plaintiff personally and the amount necessary to punish the defendant for any harm or threatened harm to the public.";
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> Then, in order to redirect the money to the Illinois Civil Gideon Fund, the General Assembly should replace the second paragraph of section 2-1207 on punitive damages with the following paragraph:

claimed class action awards "that cannot be distributed to class members on a cost-effective basis" also be placed in the fund.[65] Notably, at one time, Florida had legislation that designated the state as the recipient of a portion of punitive damages awards,[66] but the funds were not for the benefit of access to justice programs. The statute expired and there is no evidence that the Legislature is considering reenacting it.

Dedicating a substantial portion of punitive damage and unclaimed class action awards to a Civil Gideon Fund would undoubtedly increase access to justice. It is difficult, though, to tell exactly how much revenue these measures could raise.

VII. TRIBUTARY SIX: A FEE-SHIFTING STATUTE FOR THE POOR WHO MUST CHALLENGE GOVERNMENT AGENCIES TO ESTABLISH ENTITLEMENT

This proposal is drawn from an analysis demonstrating that approximately one-third of the unmet legal needs of the poor in Illinois involve various government entitlement programs.[67] Specifically,

> about 14% involve legal problems with food stamps, AFDC, General Assistance, SSD/SSI, IRAP or Energy Assistance, Veterans benefits, AABD, circuit breaker, and other tax relief and benefit programs. Another 11% involve legal problems in gaining access to physician services and other medical assistance. About 5% involve legal problems with public schools. The final 2% involve legal problems with government-supported housing.[68]

To pay for this litigation, the study recommends an entitlements fee-shifting act: "When a person establishes that an administering agency has wrongfully or erroneously denied them an entitlement

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> "In cases where punitive damages are assessed, the amount assessed as necessary to punish the defendant for any harm or threatened harm to the public shall be deemed public property. The trial court shall award twenty percent of this amount to the plaintiff as compensation for vindicating the public's rights, and this award to the plaintiff shall be subject to any contingent fee contract with the plaintiff's attorney. The trial court shall direct payment of the other eighty percent to the Illinois Civil Gideon Fund. The trial court shall give notice to the Illinois Civil Gideon Fund of any punitive damage award in which it may have an interest and shall permit the Illinois Civil Gideon Fund to intervene when necessary to protect its interest in the punitive damage award."

Id.

65. Id. at 36.

66. See FLA. STAT. § 768.73(2)(b) (1993), repealed by Act effective July 1, 1995, ch. 92-85, § 3, 1992 Fla. Laws 822. Sixty-five percent of the award was payable to the claimant. See id. If the cause of action was based on personal injury, the remaining 35% went to the Public Medical Assistance Trust Fund; otherwise, the remaining 35% went to the state's General Revenue Fund. See id.

67. See Beyler & Spears, supra note 59, at 31 (analyzing Illinois' legal needs in 1989).

68. Id.

benefit, the administering agency shall pay the person's litigation expenses, including reasonable attorney's fees."[69]

The virtues of this fee-shifting proposal are that it would fund the real cost of a fair and equitable entitlement program, and it would provide a disincentive for the arbitrary administration of these programs.

VIII. TRIBUTARY SEVEN: A COMPREHENSIVE LAWYER PRO BONO PLAN

The "tributaries" described up to this point all involve measures to raise funds, most of which would ideally be spent in support of legal services offices—the most efficient delivery system for providing legal services to the poor. These tributaries feed into a stream which, historically, begins with individual-lawyer-provided legal services through pro bono activity. Data now available demonstrate that this remains a vital component of any plan for legal access, particularly if there is a comprehensive pro bono plan requiring reporting by lawyers along the lines of the Florida pro bono plan.[70]

The Florida pro bono plan, adopted in 1993, begins with a statement of expectation by the Florida Supreme Court that each lawyer contribute at least twenty hours each year to direct legal services for the poor.[71] There is a buy-out provision, set at $350 each year, for those who, by choice or inability, do not provide direct service.[72] No compulsion exists other than the requirement that lawyers report each year their service, their contribution to a legal services provider, or, alternatively, the fact that they neither provided service nor contributed.[73] Judges and government lawyers, however, may defer the reporting requirement.[74]

Any attempt to value the Florida pro bono plan's long-term contribution to legal services for the poor necessarily involves some speculation. However, we now have preliminary data from the first

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69. Id. at 32.

70. See THE FLA. BAR & THE FLA. BAR FOUND., THE STANDING COMMITTEE ON PRO BONO SERVICES' REPORT TO THE SUPREME COURT OF FLORIDA App. H (1996) [hereinafter 1996 FLORIDA PRO BONO SERVICES' REPORT].

71. See In re Amendments to Rules Regulating The Fla. Bar—1-3.1(a), 598 So. 2d 41, 44 (Fla. 1992).

72. See id.

73. See id. at 42, 44. A federal magistrate and a federal judge have rejected the claim that mandatory reporting is a violation of an attorney's rights. See Thomas Rowe Schwarz v. Honorable Stephen H. Grimes, No. 94-40422-WS (N.D. Fla. Dec. 15, 1995); aff'd sub nom Thomas Rowe Schwarz v. Honorable Gerald Kogan, No. 94-40422-WS (N.D. Fla. Aug. 9, 1996).

74. See In re Amendments to Rules Regulating The Fla. Bar—1-3.1(a), 598 So. 2d at 44.

four years of the Florida pro bono plan.[75] Using an average rate of $150 per hour for Florida Bar members, the value of the donated time rose from approximately $84,202,800 in fiscal 1995[76] to $126,345,600 in fiscal 1997.[77] Although the percentage of non-deferred reporting lawyers who contributed either services or money fell between 1995[78] and 1997,[79] the consistent rise in total hours and dollars contributed over that period suggests that the percentage decline is probably due to more accurate reporting than to less participation in the plan.[80]

While we do not know the level of pro bono activity that existed before the implementation of the program, lawyers and judges who work closely with legal service providers have observed a great increase, both in contributions and in lawyers offering to provide direct legal services to the poor. For example, Lucy Brown, Circuit Judge and Chair of the Fifteenth Judicial Circuit, stated, "We have found that the number of attorneys providing services and making contributions to the legal aid organizations has increased and a significant number of attorneys have come forward to join the effort especially motivated by the reporting requirement."[81]

Despite its announced success, this approach was not without controversy. At the outset, the Florida Supreme Court was divided—two justices, Barkett and Kogan, preferred a rule mandating pro bono service.[82] Justice Kogan wrote:

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75. In 1994, Florida Bar members provided 806,874 hours of pro bono service and $1,518,781 to legal services organizations. See letter from Kent Spuhler, Executive Director, Florida Legal Services, Inc., to Talbot D'Alemberte, President, Florida State University 4 (Jan. 3, 1997) [hereinafter Spuhler Letter] (on file with FLA. ST. U. L. REV., Tallahassee, Fla.). In 1995, the number of hours of service and dollars contributed dropped slightly to 561,352 and $876,837 respectively. See id. at 3. In 1996, the numbers rebounded to 804,994 hours of service and $1,238,262 contributed. See id. at 2. Finally, in 1997, the number of hours of service and dollars contributed increased again to 842,304 hours and $1,427,263, which surpassed 1994's total hours of service and almost surpassed 1994's total dollar contributions. See letter from Barbara Brown, Assistant to Kent Spuhler, to Stephen Morse, Assistant to Talbot D'Alemberte 2 (Jan. 12, 1998) [hereinafter B. Brown Letter] [on file with FLA. ST. U. L. REV., Tallahassee, Fla.).

76. See Spuhler Letter, supra note 75, at 3.

77. See B. Brown Letter, supra note 75, at 2.

78. See Spuhler Letter, supra note 75, at 3 (illustrating that approximately 68% of non-deferred reporting attorneys contributed).

79. See B. Brown Letter, supra note 75, at 2 (illustrating that approximately 52% of non-deferred reporting attorneys contributed).

80. See 1996 FLORIDA PRO BONO SERVICES' REPORT, supra note 70, at 3 (attributing the drop in hours of service and dollars contributed after 1994 to more accurate reporting rather than less pro bono service).

81. Response to the Reply Brief of the Florida Bar at 4-5, Amendments to Rule 4-6.1 of the Rules Regulating the Florida Bar—Pro Bono Public Service, 696 So. 2d 734 (Fla. 1997) (No. 88-646).

82. See Amendments to Rules Regulating The Fla. Bar—1-3.1(a), 598 So. 2d 41, 55 (Fla. 1992) (Kogan, J., concurring in part, dissenting in part).

> I agree with the majority opinion that there must be a reporting requirement even for voluntary pro bono services rendered by lawyers. I dissent, however, from the majority's failure to institute mandatory pro bono. The record before us today demonstrates compelling reasons why such a requirement now must be created and enforced.[83]

Two other justices, McDonald and Grimes, favored a rule without the reporting requirement.[84] Justice McDonald stated, "[W]e can request, exhort, and even pique one's consciousness, but we should not dictate involuntary participation . . . . [I]f lawyers want to use their talents in a selfish and miserly manner, I believe they have that right."[85]

The controversy has been particularly evident within the ranks of Bar leadership. The Florida Bar Board of Governors did not favor the mandatory reporting mandate when it was proposed,[86] and even after the success of the rule had been documented, the Board voted to return to the Florida Supreme Court with a petition to revise the rule and eliminate mandatory reporting.[87] On May 22, 1997, the Florida Supreme Court denied the Bar's petition.[88] The Bar and its allies argued that the mandatory rule does not serve the public interest; that mandatory reporting infringes on state and federal constitutional rights; that the rule, as adopted, violates the separation of powers principle because it is a legislative undertaking; and that the Florida Supreme Court should not function as a bully pulpit for encouraging charitable activity.[89]

Although the court upheld the mandatory reporting rule, the plan remains controversial. Justice Grimes, now standing alone in dissent, continued to favor a rule without the reporting requirement.[90] Two justices, Harding and Wells, concurred in the result but dissented in part, calling for the court to provide the Bar with guidelines for imposing disciplinary measures on lawyers who fail to report.[91] Both justices felt that the mandatory reporting rule was

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83. Id.

84. See id. at 54 (McDonald, J., concurring in part, dissenting in part).

85. Id.

86. See Gary Blankenship, Bar Asks Court for Voluntary Reporting, FLA. B. NEWS, June 1, 1996, at 3.

87. See id. at 1. The Board was deadlocked on this issue with each side receiving 21 votes. See id. The motion passed only after the president of the Bar voted in favor of the petition, thus breaking the tie. See id.

88. See Amendments to Rule 4-6.1 of the Rules Regulating the Florida Bar—Pro Bono Public Service, 696 So. 2d 734, 734 (Fla. 1997).

89. See id. at 734-35.

90. See id. at 738 (Grimes, J., dissenting).

91. See id. at 736-38 (Harding, Wells, JJ., concurring in part and dissenting in part). The Bar had not requested this action from the court and had not submitted any proposal to the court, but it had argued that difficulties in enforcement were a reason to displace the reporting rule. See id. at 738.

proper, but that upholding the rule without imposing disciplinary sanctions on non-reporting lawyers would transform it into "a mere charade which regulates only those who by their good faith and loyalty to the law choose to comply."[92]

The number of lawyers complying with the reporting requirement has consistently increased as lawyers have become more aware of and more comfortable with it.[93] However, it seems evident that if the Bar's leadership were to promote the plan, rather than oppose it, even more lawyers would comply. For instance, the Bar could mail letters to the lawyers who fail to report, letting them know of the tremendous impact of pro bono service, reminding them of the reporting requirement, and encouraging them to participate. Additionally, the Bar could provide lawyers with a list of available pro bono opportunities. The Bar leadership might point out to its members the extraordinary contributions of Florida lawyers to the cause of justice. Many lawyers fail to report out of forgetfulness or clerical error, and a friendly reminder from the Bar should greatly increase compliance with the requirement. As more lawyers report their pro bono service, the number of lawyers actually providing pro bono services to the poor should rise correspondingly.

Other testaments to the success of the Florida plan are the reports received from the nineteen circuit committees and legal services providers in Florida. Many reported that pro bono participation and contributions increased dramatically after the implementation of the plan.[94] The following is a typical response:

> The experience of the Fifteenth Judicial Circuit has been one of increasing momentum since the mandatory reporting requirement, in terms of the reaffirmation of our legal community to the provision of equal justice to every person in our community, regardless of individual wealth.[95]

In short, as the Standing Committee's 1995 Report concluded, the Florida Plan has overwhelmingly advanced low income residents' access to justice:

> The adoption of the new Public Service Rule, Rule 4-6, Rules Regulating The Florida Bar, has brought about unprecedented focus and attention on and expansion of pro bono legal assistance to the poor. As lawyers have been presented with the real and prior-

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92. Id. at 737 (Wells, J., concurring in part and dissenting in part).

93. See Response to the Reply Brief of the Florida Bar, Amendments to Rule 4-6.1 of the Rules Regulating the Florida Bar—Pro Bono Public Service at 4-5, 696 So. 2d 734 (Fla. 1997) (No. 88-646).

94. See 1996 FLORIDA PRO BONO SERVICES' REPORT, supra note 70, at Apps. I-L (reprinting letters received by the Standing Committee on Pro Bono Services).

95. Id. at App. J (reprinting a letter from the Honorable Lucy Brown, Chair of the Fifteenth Judicial Circuit Pro Bono Committee).

> ity needs in their communities, they have responded. As opportunities for service have been created for lawyers with a wide variety of professional expertise, they have come forward to participate. Even as the required reporting continues to generate debate within the Bar, individual attorneys overwhelmingly responded to the need for accurate information on the lawyers' efforts to address the access needs of the poor and produced over $121,000,000 worth of reported pro bono service in only its first year. The vision of what can be accomplished through the Voluntary Pro bono Attorney Plan is true. With continued commitment and creativity, especially through the circuit committees, the lawyers of Florida can move even closer to a reality of equal access through the fulfillment of a lawyer's pro bono public service responsibility.[96]

The voluntary local bar programs, which require pro bono service as a condition of membership, are useful sources for predicting lawyers' responses to pro bono service. In Tallahassee and Orlando, a lawyer may practice law without joining the local bar association, but membership in the local bar has been conditioned on participation in legal aid cases.[97] The Orange County Bar Association has a buy-out feature similar to the Florida plan,[98] and can be used as a reliable indicator to estimate the likely long-term impact of the Florida plan. In Orlando, approximately one-half of the lawyers who are members of the voluntary Orange County Bar Association[99] accept one or more cases each year, and approximately one-half choose to pay the buy-out fee.[100]

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96. See THE FLA. BAR & FLA. BAR FOUND., THE STANDING COMM. ON PRO BONO SERVICES' REPORT TO THE SUPREME COURT OF FLORIDA 13-14 (1995) [hereinafter 1995 FLORIDA PRO BONO SERVICES' REPORT].

97. See By-Laws of the Tallahassee Bar Ass'n, Inc., art. III, § 2 (1991), stating in pertinent part:

> No natural person shall be eligible for election to regular membership unless he or she . . . agrees to participate in the legal aid program operated by the Legal Aid Foundation, Inc., or alternative forms of legal aid service approved by the Board of Directors, and who agrees to abide by the By-Laws of this association.

It is important to note that while the By-Laws of the Tallahassee Bar Association do provide for certain exceptions to this requirement, such as judges and judicial clerks, they do not provide a buy-out provision. See id.

98. See By-Laws of Orange County Bar Ass'n, Inc., art. II, § 4(B) (1991) (providing that "[t]he Executive Council, by majority vote of all members, may terminate the membership of any member of this Association for . . . [u]njustified failure of refusal to accept Legal Aid Referral cases").

99. According to the Florida Bar Association, as of January 1998, 3444 attorneys were practicing in Orange County. See THE FLORIDA BAR, CUSTOMER FILE LISTING: MIGS BY COUNTY 3 (Jan. 1998) (on file with FLA. ST. U. L. REV., Tallahassee, Fla.). Approximately 73% (2500) were members of the Orange County Bar Association. See letter from Kimberly Dormois, Administrative Assistant, Orange County Bar Association, to Stephen Morse, Assistant to Talbot D'Alemberte 1 (Jan. 28, 1998) (on file with FLA. ST. U. L. REV., Tallahassee, Fla.).

100. In 1996, 929 members of the Orange County Bar Association paid the buy-out option, whereas 916 attorneys accepted legal aid cases. See LEGAL AID SOCIETY OF THE

Using the Orange County Bar figures, we can venture a guess at the level of participation in the coming years of the Florida plan. Assuming strong leadership from judges and state and local bars, there is every reason to believe that participation in the Florida pro bono plan can be increased to a level of eighty to ninety percent of the in-state Florida lawyers. I make this estimate assuming that lawyers and judges are sincerely interested in achieving access to justice, and that the requirement of annual public disclosure will help remind lawyers of their obligations. Further, the open nature of this information will help to provide public pressure for lawyers to live up to their oaths. Finally, judges and bar leaders who take this quest for equal justice seriously can use the annual disclosures to influence those lawyers who do not initially participate.

I envision judges and bar associations using the lists of non-participating lawyers as a roll call for service, urging those lawyers to provide direct services or to contribute to pro bono service. Over time, this process could presumably build to the level of commitment evident in the Tallahassee Bar and the Orange County (Orlando) Bar. Indeed, the peer pressure of the Florida Pro Bono Plan is similar to that in these local bar associations. In Tallahassee and Orlando, the legal community is generally aware of which lawyers are or are not members of the local bar association, and those lawyers who do belong are known to support legal aid programs. Again, this experience helps with my estimates. In Orlando, about eighty-five percent of the lawyers in private practice belong to the Orange County Bar Association and are therefore providing services or resources on the scale of those that the Florida Supreme Court expects under the Florida Pro Bono Plan.

At least two other state bar associations, those of Hawaii and Texas, compile statistics on the pro bono services provided by their lawyers. Unlike Florida, the reporting requirement in both of these states is entirely voluntary.[101] Both states have an aspirational goal of fifty hours per year per lawyer, and both collect information through a questionnaire included in the annual dues statement.[102] Hawaii includes a list of available pro bono opportunities.[103] In 1995, approximately ten percent of Hawaii's lawyers completed the volun-

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ORANGE COUNTY BAR ASSN., 1996 ANNUAL REPORT OF THE PRO BONO PROGRAM 3 (1996). Three hundred and nine members chose to participate in pro bono related activities such as the Homeless Advocacy Project, Telephone Screening, Citizen Dispute Settlement or the Community Education Project. See id.

101. See HAWAII STATE BAR ASS'N, 1997 ATTORNEY REGISTRATION STATEMENT 3 (1997) [hereinafter 1997 HAWAII BAR REPORT]; Telephone Interview with Julie Oliver, Executive Director, Texas Lawyers Care-Pro Bono and Legal Services Support Project of the State Bar of Texas (June 4, 1997) [hereinafter Oliver Interview].

102. See 1997 HAWAII BAR REPORT, supra note 101; Oliver Interview, supra note 101.

103. See 1997 HAWAII BAR REPORT, supra note 101.

tary pro bono reporting form, reporting an average of 129.7 hours of pro bono service.[104] Texas received reports from 38.3% of its lawyers for the period of June 1995 through May 1996. These lawyers reported an average of 39.5 hours of pro bono service.[105]

New York may become the next state to require mandatory pro bono reporting. In New York, a Pro Bono Review Committee appointed by then Chief Judge Wachtler conducted a survey of attorneys' provision of pro bono service for the years 1990 through 1992. The Committee concluded that the rate of participation by attorneys was fairly constant, with modest growth.[106] Forty-eight percent of the attorneys provided direct services and forty-six percent provided at least some financial support for legal services organizations.[107] After reviewing the arguments for and against the pro bono reporting requirement, the Committee on Pro Bono and Legal Services recommended to the Chief Judge of the New York Court of Appeals that a rule requiring reporting of pro bono be adopted for New York lawyers.[108]

In Florida, lawyer pro bono efforts are the largest part of the solution to Florida's access to justice problem.[109] However, lawyers' pro bono efforts alone will not provide sufficient resources to solve the access problem. It should be apparent that the American approach to access relies greatly on the public service instincts of lawyers and the institutional support given by bar associations and courts. The radical difference between the American support to legal services and that of other countries cannot be explained entirely by the American use of pro bono, but this is at least a factor. It is true that lawyers, lawyer organizations, and courts in this country place far more emphasis on lawyer pro bono than lawyers and their institutions in other countries.

The importance of this "tributary" lies not just in its direct contributions of services and money, but also in its potential to restore a culture of service to the bar, and to empower lawyers to argue for the development of all the other "tributaries." Attention to lawyer pro bono is extremely important. The integrity and the public spirit with

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104. See Press Release from the Hawaii State Bar Ass'n, Ellen Godbey Carson, Pres. (Feb. 20, 1996) (reporting that Hawaii's attorneys provided over $5,000,000 in legal services to the poor) (on file with author).

105. See STATE BAR OF TEX., PRO BONO REPORTING: JUNE 1995 THROUGH MAY 1996 1 (1996).

106. See The Comm. on Pro Bono and Legal Serv., Proposal to the Chief Judge Judith Kaye for an Attorney Pro Bono Requirement, in 52 THE RECORD OF THE ASSOCIATION OF THE BAR OF NEW YORK 367, 368-69 (1997).

107. See id. at 369.

108. See id. at 367.

109. See infra Appendix 3. However, some of the reported pro bono efforts by lawyers licensed in Florida may actually be performed in other states.

which lawyers approach pro bono will be observed by others, and the zeal of the bar will determine whether lawyers continue to be the connecting link of American society that Alexis de Tocqueville described in his early book, Democracy in America: "Lawyers belong to the people by birth and interest and to the aristocracy by habit and taste; they may be looked upon as the connecting link between the two great classes of society."[110]

IX. TRIBUTARY EIGHT: THE LOCAL PLANS FOR ACCESS TO JUSTICE

One of the most important features of the Florida Supreme Court plan is the idea that each community should develop its own plan to achieve access to justice. It envisions a system in which bar leaders, legal service providers, social agencies, and others are called together by the chief judge of each circuit to share information on the legal needs of the poor and to develop a local plan for access to justice. The plans should be community specific. For example, where the local population has a large number of elderly residents living in poverty, the plan will be different from another community that has a different population.

One way to think about the local committee is to extend the analogy of the stream of justice—the local committee is like a water management commission attempting to assure the quantity and quality of the water supply. The local plans should look at other sources of funds (United Way, local foundations, and the like), and should help develop significant collateral programs that can help achieve access. These include pro se training, simplified legal forms, programs for specialized non-lawyer help (such as court clerks, legal specialists), and alternative dispute resolution methods, including dispute resolution centers.

The following reports from several judicial circuits illustrate successful activities that have blossomed as a result of the Florida Pro Bono Plan:

> The Fourth Judicial Circuit's plan included a substantial expansion of volunteer lawyer involvement in local schools through peer mediation mentoring and a micro-society school-based court program. These programs assist in establishing non-violent dispute resolution systems within schools and educate students on legal rights and dispute resolution techniques.

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110. I ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 276 (Phillips Bradley ed. & Harry Reeve trans., 1945) (1835).

> The Fifth Judicial Circuit's plan included the development of a family law training program with substantial judicial participation to expand pro bono service in this critical need area.
> The Twelfth Judicial Circuit's plan included a project to recruit attorneys in the more populous Sarasota and Manatee Counties to serve the legal needs of the poor in rural DeSoto County.
> The Fifteenth Judicial Circuit plan provided for the recruitment of large law firms to adopt projects such as the Juvenile Advocacy Project. In this project, . . . lawyers represent children at risk to obtain needed services to help prevent their deeper involvement in the juvenile justice system.
> The Social Security representation mentoring program in the Fourth Judicial Circuit whereby attorneys without expertise in Social Security law are provided training and paired with experienced paralegals in the local legal aid program.
> The earned income tax credit assistance project in the Ninth Circuit provides the working poor with assistance in completing tax returns so they can obtain the tax credits to which they are entitled.
> The Wills on Wheels program in the Eleventh Circuit reaches out to the shut-in elderly and provides them with assistance in preparing wills.
> The advice and counsel clinic for non-English speaking clients in the Seventeenth Circuit provides Spanish speaking attorneys to staff regular advice and counsel clinics in the Spanish speaking community.[111]

As these responses illustrate, the Florida pro bono plan has already generated a number of local community programs, and there is every reason to believe that these programs will continue to develop in other communities throughout Florida.

X. CONCLUSION

Florida's Justice Overton and California's Justice Johnson have both suggested that we seek access to justice by combining many approaches. The exercise of identifying the tributaries that add to access can give us renewed faith that, by working on all of the elements of the system, full access is, indeed, possible. If substantial parts of this tributary plan can be implemented, there is a real

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111. 1995 FLORIDA PRO BONO SERVICES' REPORT, supra note 96, at 7-8. There has also been significant activity in the federal courts. For example, the United States District Court for the Southern District of Florida created the Volunteer Lawyers' Project for the Southern District of Florida, a pro bono program that finds legal counsel for indigent litigants with meritorious claims. See Response in Opposition to the Florida Bar's Petition at 8, Amendment to Rule 4-6.1 of the Rules Regulating the Florida Bar—Pro Bono Public Service, 696 So. 2d 734 (Fla. 1996) (No. 88-646). Through this program more than 700 attorneys have agreed to accept cases. See id

chance that Florida could make access to justice for poor people a reality even if federal authorities do not increase support.

With the implementation of the Florida comprehensive pro bono plan, we can perceive the larger picture of legal services delivery and understand the role that lawyer pro bono plays in the provision of legal services to the poor. Based on the information reported by Florida lawyers, it appears that the contributions by lawyer pro bono activities are the most important single resource in our system.

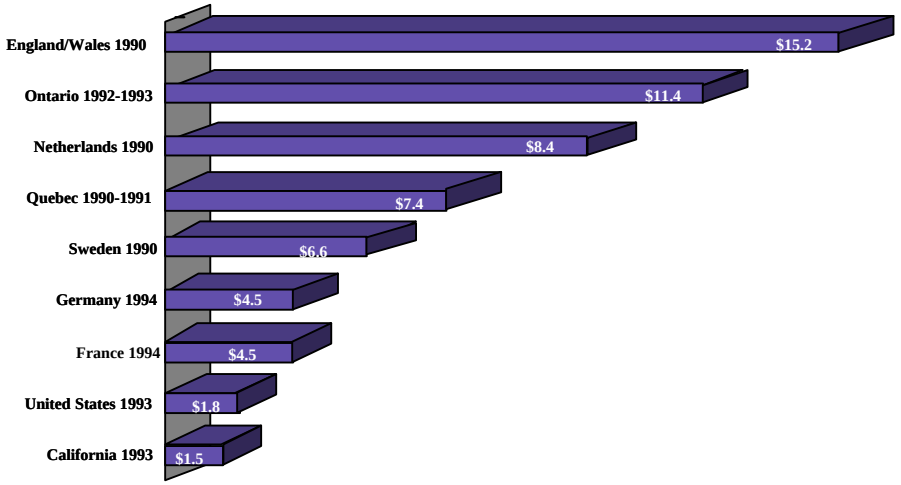
Armed with the knowledge that we now have, and equipped with local legal services committees that can assess the needs of specific communities, it is possible to construct plans for full delivery of legal services to the poor. As the "tributary" exercise demonstrates, there is a large range of alternatives that can help provide legal services to everyone in need. The analysis of these various streams leads me to the conclusion that those who care about the provision of legal services to all people should next consider building a model program in their communities.

The legal services movement may inadvertently work against itself when it paints the picture of extraordinary, unmet needs which may make the task of providing access seem out of reach. When we hear that eighty percent of the legal needs of the poor are not being handled, making up this shortfall seems daunting. Yet a fairly modest commitment of public resources, combined with an effective pro bono program and innovative administration of the justice system, could put full access to justice within the realm of reality.

We know that lawyers have a special responsibility for justice, and we know that support for comprehensive pro bono programs can raise the waters, quicken the flow, and quench the thirst of poor Americans for justice. I hope that lawyers will be stirred by this vision of justice, and will see the possibility that justice can be an "ever-flowing stream."

Appendix 1

Per Capita Government Investment
in Civil Legal Services
(U.S. Dollars)

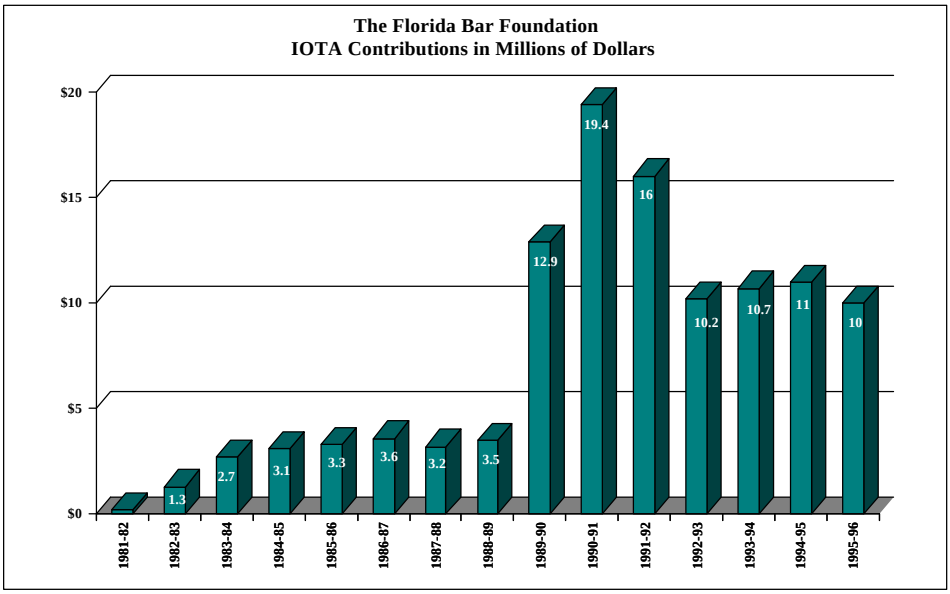


ACCESS TO JUSTICE WORKING GROUP, STATE BAR OF CAL., AND JUSTICE FOR ALL: FULFILLING THE PROMISE OF ACCESS TO CIVIL JUSTICE IN CALIFORNIA 6 (1996). Former American Bar Association President W. Reece Smith remarked that the chart may be misleading in some respects:

> [T]he comparison of expenditures for legal aid and legal services between the United Kingdom and the United States is a bit misleading because UK expenditures apply to members of that population who are well above the poverty level. The UK program is simply different from our governmentally-funded program and applies to persons of moderate means as well as to a poverty population.

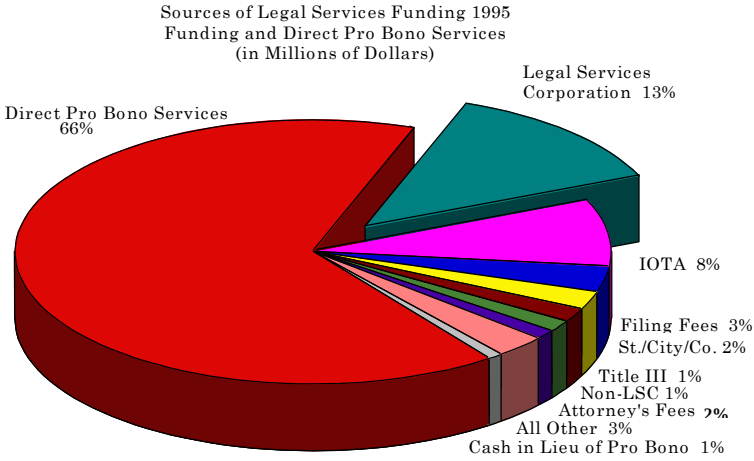
Letter from W. Reece Smith, American Bar Association President, to Talbot D'Alemberte, President, Florida State University 1 (Feb. 5, 1997). Further, the numbers compiled by Justice Johnson are for government expenditures only, and do not take into account the contributions of bar associations, foundations, the United Way, or other private contributors.

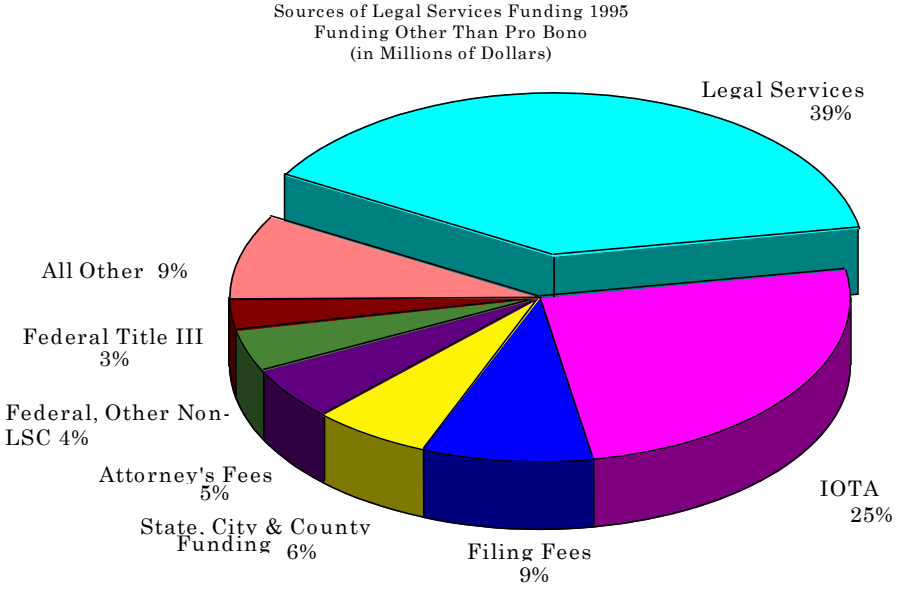
Appendix 2



SOURCE: FLORIDA BAR FOUNDATION (1996).

Appendix 3





SOURCE: FLORIDA BAR FOUNDATION (1996).