Civil Gideon as a Human Right: Is the U.S. Going to Join Step with the Rest of the Developed World?

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CIVIL GIDEON AS A HUMAN RIGHT: IS THE U.S. GOING TO JOIN STEP WITH THE REST OF THE DEVELOPED WORLD

by RAVEN LIDMAN*

INTRODUCTION

On August 7, 2006 the American Bar Association House of Delegate at their annual convention voted unanimously in favor of a Civil Gideon. The resolution reads:

RESOLVED, That the American Bar Association urges federal, state, and territorial governments to provide legal counsel as a matter of right at public expense to low income persons in those categories of adversarial proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health or child custody, as determined by each jurisdiction.¹

ABA President Michael Greco made this the hallmark of his administration and succeeded in one year.² As he said after the vote, “This is historic, in the realm of an extraordinarily meaningful action by the ABA, expressing the principle that every poor American, like every wealthy American, should have access to a lawyer to protect the fundamental needs of human existence.”³

This vote affirms the aspirations of many lawyers that the promise of Gideon v. Wainwright⁴ would apply in the civil courts as well. It particularly affirms the ceaseless efforts of Justice Earl Johnson⁵ to establish a right to a publicly provided

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¹ Clinical Professor of Law, Seattle University School of Law; J.D., Seattle University School of Law, 1987; B.A., Cornell University, 1977.


³ Michael S. Greco, then President-Elect, American Bar Association, Speech at Fellows of the Alabama law Foundation Annual Dinner, Montgomery Alabama (Jan. 28, 2005) (“I believe that the time has come for us to recognize, finally, that a poor person whether facing either a serious criminal or civil matter, must have access to counsel if that person is to receive justice.”).


⁵ 372 U.S. 335 (1963) (requiring publicly paid lawyers for low income criminal defendants).

⁶ Justice Earl Johnson, Associate Justice of the California Court of Appeals, is one of the few who has passionately supported his arguments for a Civil Gideon by exploring the status of the right to free civil counsel for indigents under other legal systems. EARL JOHNSON ET AL., TOWARD EQUAL JUSTICE: A COMPARATIVE STUDY OF LEGAL AID IN MODERN SOCIETIES (1975) [hereinafter TOWARD EQUAL JUSTICE]; Earl Johnson, Thrown to the Lions: A Plea for a Constitutional Right to Counsel for Low-
attorney in civil matters; a right which has an ancient lineage within the English legal system and is accepted in over fifty countries in the world.6

In 1963, the U. S. Supreme Court declared that indigent criminal defendants had the right to free counsel.7 This right, grounded in the 6th Amendment and applied to the states via the 14th Amendment, was required by notions of fundamental fairness, and to guarantee a fair trial.8 Many legal advocates for the poor hoped that parallel insights into and concerns about fundamental fairness for low-income civil litigants would lead to an extension of Gideon v. Wainwright.9

However, in 1981 the U.S. Supreme Court in Lassiter v. Department of Social Services of Durham County, N.C. left unfulfilled aspirations that it would declare a federal constitutional right to counsel in civil matters.10 A divided court, employing a pinched reading of due process analysis and prior precedents, determined there was a presumption against the right to counsel unless the loss of physical liberty was at stake.11 The case involved the termination of parental rights, a situation hardly less serious than a one-day jail stint, and one considered to be a fundamental liberty interest.12

The 40th anniversary of Gideon has been a catalyst for a resurgence of interest in a Civil Gideon. Numerous articles have been published.13 At least five recent

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6. See the chart at end of this article distilling the scope of the right to civil counsel in 49 European states, Canada, and 8 other countries.

7. Gideon, 372 U.S. at 344 ("[A]ny person hailed into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.").

8. Id. at 339-40.

9. Johnson, Toward Equal Justice, supra note 1; A Plea, supra note 1; Beyond Payne, supra note 1; Luther M. Swygert, Should Indigent Civil Litigants in the Federal Courts Have a Right to Appointed Counsel, 39 Wash. & Lee L. Rev. 1267 (1982) (The author was Senior Judge at the United States Court of Appeals for the Seventh Circuit. This was probably one of the last articles written before Lassiter was decided.).

10. See Lassiter v. Dept’ of Soc. Serv. of Durham County, N.C., 452 U.S. 18 (1981) (holding that “[t]he Constitution does not require the appointment of counsel for indigent parents in every parental status termination proceedings” and “[t]he decision whether due process calls for the appointment of counsel is to be answered in the first instance by the trial court, subject to appellate review”).

11. Id. at 25.

12. Id. at 20-21.

state cases have raised the issue explicitly.14 And now the ABA has gone on the record in support of a civil right to counsel where basic needs are at stake.

This article will discuss the scope of services and rationale for such a right currently provided in the 49 European member countries in the Council of Europe (COE), Australia, Canada, India, New Zealand, Hong Kong, Japan, Zambia, South Africa, and Brazil.15 Frequent reference will be made to a chart in the appendix, which condenses extensive information about programs in each of these countries.

Our general conclusion regarding the foreign programs is that the right to a free lawyer in civil matters is a robust concept. Multiple rationales, such as, rule of law, preservation of other human rights, due process, foundational for democracy, peaceful dispute resolution, access to justice, equal protection, confidence in the judicial process, and social policy goals of poverty eradication, all lead to a similar result, publicly provided lawyers for indigents in civil matters.


15. Much of the information on the foreign law systems was compiled by my research assistants, Manal Boulos and Denise Fowley. Additionally, about 70 partners, associates, paralegals and interns at 11 law firms provided pro bono assistance by collecting information for a survey on approximately 80 countries. The data from the survey, including, scope, delivery systems and financing are on file with the author.
The scope of the legal services is quite comprehensive with respect to representation of individuals in most areas of substantive civil law. Lawyers are provided for litigation at the trial and appellate level. A sizeable majority extend coverage to representation at administrative hearings. It appears that law reform activities such as advocacy for changes in statutes and rules, representation of low-income community groups, class actions, and community development are not part of many programs.

With respect to the cases, the statutes almost all provide some type of merits test, varying from merely stating a claim to likelihood of success. There is also often mention of a cost/benefit type of analysis. With respect to client eligibility most countries have some kind of sliding needs scale, making the services more widely available and lessening the burden on the middle class.

In the COE, there is extensive protection of foreigners. It is unremarkable that a low-income Italian would have rights to legal assistance in Sweden for a landlord-tenant lawsuit. But it is not only lawful residents within and from other COE member countries who have access to a free lawyer; immigrants from outside of Europe also have access to free lawyers when dealing with immigration issues, particularly asylum.

Twenty-three countries from the former Soviet Union have been admitted to the COE since 1990. All but four have some type of program for free lawyers, but do not yet afford the full range of civil representation provided by the other members. In the COE countries with older programs, as well as Canada, Australia, and New Zealand, public funding, however it is calculated, (budgeted amount per poor person, per capita, or as a percentage of gross national product, etc.) far exceeds the spending in the U.S.

The article will briefly explore the kinds of arguments which can be raised in domestic courts regarding foreign and international law. On the whole, such authority is merely persuasive. However, informing the court of the extent of such a right to free civil representation for indigents may encourage judges and legislatures to be more receptive.

It is appropriate that after twenty-five years, Lassiter be reexamined. In 1981, 33 states provided a right to counsel in termination of parental rights cases, and

16. Johnson, International Perspective, supra note 1; Infra the chart at the end of this article.
17. Id.
23. See Council of Europe, infra note 56 (providing replies to questionnaire on legal aid — how to benefit from it). It is beyond the scope of this article to explore the costs or structures of the programs.
since then the number has increased to 40. State courts and legislatures may provide the best opportunity to put the ABA resolution into practice. But there are some signs that the U.S. Supreme Court is itself aware of the status of certain important rights under International and foreign law. Between 2002 and 2005, the Supreme Court reversed at least three cases decided in the 1980s after Lassiter. Each reversal has favored more expansive individual rights. For example in 2006 in \textit{Roper v. Simmons}, the Supreme Court prohibited the death penalty for minors. In \textit{Lawrence v. Texas}, the Court decriminalized private consensual homosexual sex. In \textit{Adkins v. Virginia}, the Supreme Court barred the execution of mentally ill defendants.

I. THE RIGHT TO A CIVIL ATTORNEY IN INTERNATIONAL AND FOREIGN LAW

A. AT LEAST 49 COUNTRIES IN EUROPE ARE REQUIRED TO PROVIDE FREE CIVIL LAWYERS TO INDIGENTS

1. Reclaiming our own history: England has had a statute providing a right to a free civil lawyer for indigents for more than 500 years

England has a more than five-century tradition of providing free lawyers for indigent people in at least some civil matters. The statute provided, in pertinent part:

\[\text{T}he \text{ justices} \ldots \text{shall assign to the same poor person or persons, Counsel learned by their discretions which shall give their Counsels nothing taking for the same, and in likewise the same Justices shall appoint attorney and attorneys for the same poor person and persons and all other officers requisite and necessary to be had for the speed of the said suits to be had and made which shall do their duties without any rewards for their Counsels, help and business in the same.}\]

28. \textit{An Act to Admit Such Persons as Are Poor to Sue in Forma Paupis}, 11 \textit{Hen. 7}, c. 12 (1494), \textit{reprinted in 2 Statutes of the Realm 578 (1993)} (spelling modernized) (emphasis added). There are indications from the Ninth Century onward that the English courts provided free publicly paid counsel on a sporadic basis. See Swygert, \textit{supra} note 5, at 1270; John MacArthur Maguire, \textit{Poverty and Civil Litigation}, 36 \textit{Harv. L. Rev.} 361, 365-66 (1923) (finding to “acce[pt] the maxim under Henry III (1216-1272) that the poor need not pay for their writs” and that “common law court had inherent power to entertain gratuitously the plains of the needy”).
One rationale for the original statute was to inspire confidence in the King’s courts and to encourage people to use them.\textsuperscript{29} The passage of the statute was, essentially, the move away from the religious courts to a development of a secular judicial branch of government.

Since then the right has been expanded to include civil defendants, non-litigation transactions, and advice.\textsuperscript{30} The statutory system has been modified over the years, but the English legal aid system has continuously provided indigent parties with a right to counsel in civil cases.\textsuperscript{31}

The history is not widely known. Many US states at their formation adopted constitutional or statutory provisions preserving their residents’ rights under English Common Law.\textsuperscript{32} Three of seven Maryland Supreme Court justices found that history was determinative in concluding that a Maryland petitioner was entitled to free civil counsel in a family law matter.\textsuperscript{33} The appellant advanced a right to court-appointed civil counsel founded in part on the incorporation of English rights into Maryland law at statehood.\textsuperscript{34} Article 5 of the Maryland Declaration of Rights guarantees to Maryland’s inhabitants the rights provided by the body of English statutory and common law as it existed on July 4, 1776.\textsuperscript{35} One of the rights the colonists brought with them was the guarantee of free civil counsel for indigent parties expressed in the Tudor statute 11 Hen. and its common law equivalents.\textsuperscript{36}

2. Since 1979, all members of the Council of Europe must provide free civil lawyers as a human right

The year 1979 was a watershed. The European Court of Human Rights declared that ensuring a fair hearing in civil matters member states could be required to provide publicly paid counsel for low-income litigants.\textsuperscript{37} All members

\textsuperscript{29} J.H. Baker, \textit{An Introduction To English Legal History} 134 (2d ed. 1979); Swygert, \textit{ supra} note 5, at 1271; Maguire, \textit{ supra} note 3.


\textsuperscript{32} See, e.g., James W. Ely, Jr., \textit{The Oxymoron Reconsidered: Myth and Reality in the Origins of Substantive Due Process,} 16 \textit{CONST. COMMENT.} 315, 322 (Summer 1999) (“The colonists in the seventeenth century looked to Magna Carta as a protection of their liberties.”).

\textsuperscript{33} Frase, 379 Md. at 102, 840 A.2d 114 (The appellant prevailed on the underlying claim. The majority did not reach the Civil Gideon issue).

\textsuperscript{34} \textit{Id.}

\textsuperscript{35} “That the colonists carried with them the rights of Englishmen, when they crossed the Atlantic, is one of the axioms of our constitutional history.” Bernard C. Steiner, \textit{The Adoption of English Law in Maryland,} 8 \textit{Yale L.J.} 353, 353 (1899). \textit{See also Maryland v. Buchanan,} 5 H. & J. 317, 355 (1821) (stating “[t]hat our ancestors did bring with them the laws of the mother country, so far at least as they were applicable to their situation, and the condition of an infant colony, cannot be seriously questioned”).

\textsuperscript{36} \textit{Id.}

of the COE were required to provide free civil lawyers in some circumstances as a matter of international human rights law.\textsuperscript{38}

One of the primary purposes of the COE, founded in 1949, is the defense of human rights, parliamentary democracy and the rule of law.\textsuperscript{39} Forty-nine countries are members of the COE.\textsuperscript{40} As such, they are signatories to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention).\textsuperscript{41} Article 6 para. 1 (Art. 6(1)) of the European Convention reads, in part, as follows: "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."\textsuperscript{42}

The European Court of Human Rights (hereinafter "ECtHR") is the body which interprets the European Convention.\textsuperscript{43} In 1979, in \textit{Airey v. Ireland}, the ECtHR determined that the right to a fair hearing, under Art 6(1), required effective access to the court.\textsuperscript{44} The court interpreted effective access to mean representation by an attorney, or a proceeding simple enough that a lay person could handle it without a lawyer.\textsuperscript{45} The court stated:

\begin{quote}
The Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective . . . . This is particularly so of the right of access to the courts in view of the prominent place held in a democratic society by the right to a fair trial.\textsuperscript{46}
\end{quote}

\textsuperscript{38} \textit{Id.}

\textsuperscript{39} Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realization of the aim of the Council as specified in Chapter I. Statute of the Council of Europe (ETS 1) Chapter II, Article 3, 1949. \textit{See also} COE home page, \url{http://www.coe.int/T/en/Com/about_coe} (last visited Oct. 20, 2006).

\textsuperscript{40} Council of Europe, \url{http://www.coe.int/T/en/Com/About_Coe/Member_states/default.asp} (last visited Oct. 20, 2006) (lists 46 member states with dates of ratification). The United Kingdom comprised of four countries, England, North Ireland, Scotland, and Wales, is considered one member; hence the difference between 46 member states and 49 countries in the COE.

\textsuperscript{41} Convention for the Protection of Human Rights and Fundamental Freedoms, art. 6, T 1, Nov. 4, 1950, 213 U.N.T.S. 222, 228.

\textsuperscript{42} \textit{Id.} (emphasis added). It is to be noted that there is an explicit language in art. 6 \textsuperscript{3} (c), requiring free lawyers in criminal cases.

\textsuperscript{43} Convention for the Protection of Human Rights and Fundamental Freedoms, Sec. 2, art. 19, Nov. 4, 1950, 213 U.N.T.S. 222, 228. (The Court was established to "[t]o ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto, there shall be set up a European Court of Human Rights . . . . It shall function on a permanent basis.".)

\textsuperscript{44} \textit{Airey v. Ireland}, 2 Eur.H.R.Rep. 305, ¶ 14 (1979-80). In \textit{Airey}, the plaintiff, Mrs. Airey, was seeking a separation from her husband but was unable to do so because she could not afford an attorney. \textit{Id.} at ¶ 24. One of her arguments was that the government violated her right under Art. 6(1) since her right of access to the court was effectively denied and she could not get a fair hearing without an attorney. \textit{Id.} at ¶ 13. Ireland argued that it did not violate Art 6(1) because it did not affirmatively bar or place an obstacle in the way of the plaintiff's access to the court, and because the plaintiff could have proceeded without the assistance of lawyer. \textit{Id.} at ¶ 24. [Ireland had signed the treaty with an explicit reservation against providing broader free legal aid. Reservation contained in the instrument of ratification.].

\textsuperscript{45} \textit{Id.} at ¶¶ 24 -25.

\textsuperscript{46} \textit{Id.}
Each country was still free to choose the means of achieving the right to a fair hearing.\textsuperscript{47} For example, it might simplify the judicial procedures.\textsuperscript{48} It was only when the assistance of a lawyer was indispensable for effective access to the courts that the government was under a legal obligation to guarantee this right of counsel.\textsuperscript{49}

This article will discuss salient ECtHR post-Airey cases in Section III, infra. In general, the cases have set broad parameters protecting the right of access to the courts in a meaningful manner for low-income and vulnerable individuals.\textsuperscript{50} For example, the court in Airey did not create any test for which kinds of cases would require free counsel; there was no list of factors such as loss of liberty, parental rights to children, life necessities, etc.\textsuperscript{51}

The post-Airey jurisprudence of the ECtHR on Article 6(1) has been reasonably sparse. One hypothesis is that the court was reflecting the views of many of its member countries. In 1979, two-thirds of the member countries at that time already had requirements, some dating back centuries, to provide the poor with free civil lawyers: Austria-1781; Belgium-1994; Denmark-1969; England-1495; France-1851; Germany-1877; Iceland-1976; Italy-1865; Norway-1915 (perhaps as early as the 1600's); Portugal-1899; Spain-1835; Sweden-1919; Switzerland-1937; The Netherlands-1957.\textsuperscript{52} States which were not members at the time, but which had a right prior to 1979 include Monaco-1932; Poland-1964; Slovak Republic-1963; Russia-1917; Ukraine-1978. In most of the countries the right is provided by statute. Italy, Spain, Portugal and the Netherlands had constitutional provisions explicitly providing a right to free civil counsel for the poor.\textsuperscript{53}

Very few appellate judicial opinions explicated the basis for the right. In 1937, Switzerland's Supreme Court grounded such a right in an "equal protection"

\textsuperscript{47} Id.
\textsuperscript{48} Id.
\textsuperscript{49} Id.
\textsuperscript{50} A more detailed description of these cases can be found in Michael J. Beloff & Murray Hunt, The Green Paper On Legal Aid And International Human Rights Law, 1996 EUR. HUM. RTS. L. REV. 1, 5-17, and Francis G. Jacobs, The Right of Access to a Court in European Law, 10 INTERIGHTS BULL. 53, 55 (1996).
\textsuperscript{51} See Airey, at §25. This is to be distinguished from the Lassiter test (loss of liberty), or state courts' rationales which have expanded the right to Parental Termination Proceedings (loss of parental rights). Some United States authors recognize the limits of United States jurisprudence in this area and argue for a context-based right. See Andrew Scherer, The Importance of Collaborating to Secure a Civil Right to Counsel, (unpublished paper presented at Partners in Justice: A Colloquium on Developing Collaborations Among Courts, Law School Clinical Programs and the Practicing Bar, May 9, 2005). See also Russell Engler, Towards a Context-Based Civil Gideon Through Access to Justice Initiatives, 40 Clearinghouse Rev. 3-4 (July-Aug. 2006); Kleiman, supra note 14 (Evictions); Bindra & Ben-Cohen, supra note 14 (Civil defendants); Abel & Reise, supra note 14; and Eleanor Acer, et al., No Deportation Without Representation: The Right to Appointed Counsel in the Immigration Context, IMMIGRATION BRIEFINGS, 1 (Oct. 2005) (Immigration matters).
\textsuperscript{52} The dates signify the earliest date the right to a free civil lawyer is mentioned in the law of that country. These dates are mostly taken from Johnson, International Perspective, supra note 1, at 342-49. But also from other sources that are mentioned in, infra, note 56.
\textsuperscript{53} Lua Kamdnl Yuille, No One's Perfect (Not Even Close): Reevaluating Access To Justice In United States and Western Europe, 42 COLUM. J. TRANSNAT'L L. 863 (2004).
It stated: "All citizens whether poor or rich should have access to the court." In 1973, the German Constitutional Court based such a right on an access to justice rationale.

II. SCOPE OF THE RIGHT TO PUBLICLY PROVIDED CIVIL COUNSEL: PATTERNS THAT ARISE REGARDING THE STANDARDS

A. Initial Observations On Comparing Legal Systems

The COE member states include 3 major legal traditions — common law,
civil code law, and Soviet law. They each have lawyers, judges, and courts. However, these commonly used terms, while capturing certain similarities, also obscure significant differences. The unitary role of lawyer in the United States is divided into solicitor and barrister in the British system and into lawyer and notary in the civil code tradition. The constitutional role of the judiciary as the final arbiter of what is the law is much more circumscribed in the civil code tradition. Case law itself is only one source of authority, and civil code courts themselves look as often to scholarly works as to judicial opinions.

One consequence of this is that in the civil law systems, the courts are not viewed as a primary venue for law reform. They provide a forum to resolve individual disputes. Public interest litigation challenging government practices is less common. Class actions are rare, although there are procedural options for some collective parties. The Chart in Appendix A includes only comments on class actions when they are specifically mentioned. A corollary to a more circumscribed role of the courts is that law reform advocacy primarily occurs before the legislative and executive rule-making bodies. These are not contested hearings requiring lawyers. The Chart notes explicit provisions for such advocacy.

This article does not address a comparison of the overall costs of the programs. There are clearly countries in the chart, which have a right that is scarcely applied. The former Soviet states comprise the vast majority of these countries. The first to join COE was Hungary in November 1990. Four of

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58. Soviet law essentially built a totalitarian superstructure on the civil law tradition. See Johnson, International Perspective, supra note 1, at 344.


61. Infra the chart at the end of this article (specifically Ireland).

62. See infra Norway portion of the chart at the end of this article.

63. For example, Romania appears to provide representation in Administrative Hearing, but authors indicate that in practice this is not operational. See Council of Europe, supra note 56.

64. Infra the chart at the end of this article (distilling the former Soviet states stance on legal aid).

65. Id.
them, Albania, Bosnia/Herzegovina, Georgia, and Moldova, do not appear at this point to have any program for civil legal assistance. However, those who have looked at the costs of the existing programs indicate that many spend substantially more than the US.

B. Expansive Coverage of Substantive Areas of Law

In approximately two-thirds of the COE countries, the right to counsel covers a wide spectrum of civil matters. These include family law, housing, consumer and debt cases, personal injury claims, public benefits, employment and labor law. Where countries indicate social security coverage, this term often refers to a variety of social programs from welfare to pensions.

Approximately fifteen countries use language suggesting coverage of all civil disputes. Some limit the scope by identifying specific exclusions, rather than listing extensive inclusions. Typical exclusions are “assigned claims” and “small claims.” These are so common that they are not included in the chart. Other frequently mentioned exclusions are matters involving the running of a business or profession and defamation.

As pointed out above, the ECtHR has not spelled out the substantive scope of Article 6(1). In general, it has held the convention “does not in itself guarantee any particular content for the ‘rights and obligations’ in the substantive law of the Contracting States.” However, the ECtHR has not always been able to disentangle procedural barriers from lack of a domestic substantive right, nor private law rights from public law rights. For example, various countries have doctrines of sovereign immunity. But in 2000, the ECtHR held that immunity for certain police functions is a violation of access to the courts, thereby permitting a person to sue whom the police had not protected.

66. Id. (noting whether nations have programs for civil legal assistance).
67. John Flood & Avis White, Report on Costs of Legal Aid in Other Countries, page 5 (2004) (On file with the author and can be accessed at http://johnflood.com) (comparing per capita expenditures on civil legal services in the 1990’s: US-$2.25; Germany-$4.86; France-$4.50; Quebec-$7.07; Ontario-$7.06; British Columbia-$7.80; Netherlands-$9.70 New Zealand-$7.10; and England-$39.00); Key Features of Fifteen National Legal Aid Program, (2005) (On file with the author) (providing a summary of reports submitted to International Legal Aid Group conference.- comparing expenditure per $10,000 GDP: US-$8.80; Canada-$2.80; Finland-$2.35; Germany-$2.25; Hong Kong-$3.30; Ireland-$2.35; Netherlands-$6.90; New Zealand-$3.25; North Ireland-$7.00; and Scotland-$6.30). See also Johnson, Equal Access to Justice: Comparing Access to Justice in the United States and Other Industrialized Democracies, supra note 1.
68. See Johnson, International Perspective, supra note 1.
69. Infra the chart at the end of this article.
70. Id.
72. Id. at 463.
In 1993, the COE adopted a recommendation to facilitate effective access to the courts for the very poor, encouraging member states to extend “legal aid or any other form of assistance to all judicial instances (civil, criminal, commercial, administrative, social, etc.) and to all proceedings, contentious or non-contentious, irrespective of the capacity in which the persons concerned act.” The language does not require specific substantive coverage, but it implies coverage for all fact-finding hearings regardless of the label as administrative, civil, or commercial.

With respect to exclusions, defamation is nearly universal. The ECtHR had sustained that domestic policy of exclusion, concluding that injury to reputation is not so fundamental as to require human rights protection. However, in 2005 the European Court found in favor of right to counsel for defamation defendants who were engaged in the longest legal trial in English history, Steel and Morris v. United Kingdom. The case has come to be known as “McLibel,” because the plaintiff, McDonald Corporation, brought suit against two individuals. Here the court looked beyond the label of defamation to the fairness of the underlying procedure. The court determined that the case was factually, legally, and procedurally complex, and that lack of a lawyer familiar with the case throughout made the procedure unfair. The court stated:

[F]inally, the disparity between the respective levels of legal assistance enjoyed by the applicants and McDonalds (see paragraph 16 above) was of such a degree that it could not have failed, in this exceptionally demanding case, to have given rise to unfairness, despite the best efforts of the judges at first instance and on appeal.

The impact of this opinion has yet to be felt. It may provide the basis for free civil counsel when the opposing party is represented to reduce unfairness where there is inequality of arms.

C. Types of Legal Services

Litigation and advice are universally available. However, only fifteen countries include mediation in their available services. This may be due to mediation recently being adopted in some countries, and in others, it may not be a procedure typically involving lawyers. A largely overlapping group of fifteen countries provides lawyers for transactional matters. This may reflect the fact

76. Recommendation No. R (93) 1, adopted by the Committee of Ministers of the council of Europe (Jan. 8, 1993).
79. Id.
80. Id. at 404.
81. Id. at 430.
82. Infra the chart at the end of this article, which addresses which nations provide mediation.
84. Infra the chart at the end of this article, addressing which nations provide transactional aid.
that most of the European countries are based on the civil code systems. In those
systems, notary publics play a much wider role than they do in the United States.
As such, they are often the professionals consulted with respect to transactions.\textsuperscript{85}

Enforcement of judgments is widely provided. It may be considered as a
necessary adjunct to litigation.

Free legal advice is included in the programs of every country. By and large,
the advice can cover substantive law areas not included for litigation.\textsuperscript{86} Many
programs support paralegals in the advice stage. Some countries make free legal
advice available to all without regard to financial eligibility.\textsuperscript{87}

\textbf{D. The Fora}

In all countries with the right, lawyers are provided for the original fact-
finding hearings in the courts. Almost all provide free counsel for appeals.
However, eligibility usually must be re-determined at each stage. Two-thirds of the
countries extend coverage to hearings in the administrative tribunals.\textsuperscript{88}

\textbf{E. Merits Tests}

Most of the countries discussed here have some standard for determining if the
case has merit. This test does not involve a mini-hearing on the merits; rather it is a
determination made by the body that will appoint the free counsel.\textsuperscript{89} A common
standard is similar to a prima facie showing and does not involve the weighing of
evidence regarding each claim.\textsuperscript{90} However, an equal number of states have some
requirement in which the applicant must demonstrate that they are likely to
succeed.\textsuperscript{91}

The continuing viability of the "likelihood of success" test may be in question.
In \textit{Aerts v. Belgium}, the ECtHR reversed a determination by Belgium that the claim
was not "well-founded."\textsuperscript{92} The court held:

\begin{quote}
[I]n civil cases Belgian law requires representation by counsel
before the Court of Cassation. It was not for the Legal Aid Board
to assess the proposed appeal's prospects of success; it was for
the Court of Cassation to determine the issue. By refusing the
application on the ground that the appeal did not at that time
appear to be well-founded, the Legal Aid Board impaired the
\end{quote}

\textsuperscript{85.} I have found very little mention of funding for notaries.
\textsuperscript{86.} \textit{Infra} the chart at this end of the article.
\textsuperscript{87.} \textit{Id.}
\textsuperscript{88.} \textit{Id.}
\textsuperscript{89.} \textit{Id.}
\textsuperscript{90.} \textit{Id.}
\textsuperscript{91.} \textit{Id.}
Legal Services Delivery Models, Eleventh Annual Philip D. Reed Memorial Issue, \textit{Partnerships Across
Pascal Dorneau-Josette, Secretary of the European Court of Human Rights on potential impact of \textit{Aerts}
on numerous French cases which are rejected by legal aid body for lack of merit).
very essence of Mr. Aerts's right to a tribunal. There has accordingly been a breach of Article 6 § 1.93

F. Need

In all instances where it exists, the right to a free lawyer arose in response to the financial needs of the applicants. Most countries provide the services completely for free if the person has very modest income and resources.94 It is also not uncommon to have a sliding scale or a tiered system.95 If their income exceeds the limit for a free lawyer, the applicants must contribute something toward the fees of counsel or the costs of the case. Very rarely, there is a minimum contribution. In general, however, this has been rejected as a barrier to the poorest. Generally it is individuals who are eligible for free legal services.96 Yet, six countries also cover non-profit and charitable organizations if they are low-income.97 (In the chart these are indicated by NGO.) Also, at least two countries include private corporations/companies.98

Costs of litigation such as for court filings, witnesses, expert expenses, service of process, and discovery are often treated differently from lawyer fees.99 Not all countries waive costs for those entitled to free lawyers. Most systems have some mechanism to ameliorate these expenses for low-income applicants.100

A more significant barrier for many litigants, low-income or otherwise, is that about half of the countries have what is called “loser pay.”101 That means that prevailing parties will be awarded judgment on the substance and all of their lawyer fees and other costs. Not all “loser pay” countries impose the full burden on low-income losers. Some provide that if the litigant is publicly funded then the winner’s cost will also be paid publicly. Others leave it up to the discretion of the court.102

Two other factors affecting fees and costs are worth noting. Contingency fee arrangements are uncommon in Europe and are only now being tried out in some countries.103 In a very few countries, such as Germany, litigation expense insurance (LEI) is widely available.104 This is taken into consideration when services are sought.105

94. Infra the chart at end of this article. In some countries such as the Netherlands the financial standard is high enough that it applies to approximately 40 percent of the population.
95. Council of Europe, supra note 56.
96. Id.
97. These include Estonia, Greece, Italy, Poland, Slovenia, and Spain.
98. Infra the chart at end of this article.
99. Council of Europe, supra note 56.
100. Id.
101. Id.
102. Id.
103. Id.
104. Id.; see also infra the chart at end of this article.
105. Council of Europe, supra note 56. Sweden, the country with reputedly the most extensive program, has been looking into LEI as a cost cutting measure. And a few other countries, notably in the UK, are investigating the possibilities, although most do not have insurers willing to offer LEI.
Financial need may not be the sole determinant for a right to a free lawyer. For example, in France, Finland, Greece, Poland, and Belgium, the aged, disabled, veterans and people on social security are automatically eligible for free counsel. Aliens seeking asylum are often provided free attorneys. In some countries such as France, Denmark, and Iceland, financial eligibility is waived if the issue is of significant public interest.

III. RAISING ISSUES OF INTERNATIONAL AND FOREIGN LAW IN STATE AND FEDERAL COURTS IN THE UNITED STATES

International law is comprised of treaties and customary international law. Over one hundred years ago, the United States Supreme Court acknowledged that it had a duty to enforce established rules of international law. In his majority opinion, Justice Grey wrote: "International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction as often as questions of right depending upon it are duly presented for their determination." The Supremacy Clause of the US Constitution states that:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, and Thing in the Constitution or Laws of any State to the contrary notwithstanding.

Thus both federal and state courts have a responsibility to interpret and follow treaties.

The United States is not bound by the Airey decision since it is not a signatory to the European Convention. The United States is a signatory to the International Covenant on Civil and Political Rights (ICCPR) and The Universal Declaration on Human Rights (UDHR). Both have provisions very similar to Article 6(1) of

106. Social security is often the term applied to what we would refer to as welfare, food stamps, Medicaid or other needs-based programs.
107. For example, see Belgium, Greece, Hungary, Ireland, Norway, and Spain, infra in the chart at the end of this article.
108. See infra the chart at end of this article.
110. Id.
111. US CONST. art. VI, § 2.
112. See JORDAN J. PAUST, INTERNATIONAL LAW AS LAW OF THE UNITED STATES: TRENDS AND PROSPECTS (Carolina Academic Press 1996) (Exploring various types of incorporations of international law into U.S. domestic legal processes, and the trends in use and prospects, as well as means of resolving unavoidable clashes between types of international law and domestic law.).
However, the United Nations Human Rights Committee which interprets each of these treaties has not required the provision of free civil counsel to indigents.116

The U.S. is a member of the Organization of American States (OAS) the Charter of which contains an explicit to free civil counsel:

The Member States, convinced that man can only achieve the full realization of his aspirations within a just social order, along with economic development and true peace, agree to dedicate every effort to the application of the following principles and mechanisms . . . . Adequate provision for all persons to have due legal aid in order to secure their rights.117

Likewise, the appropriate bodies to interpret the Charter, The InterAmerican Commission of Human Rights and the InterAmerican Court of Human Rights have not extended the right to counsel to most civil cases.118 But in an advisory opinion the InterAmerican Court did require civil counsel for migrant workers to be able to assert workplace rights.119

In Paquette, Justice Gray also wrote:

For this purpose, where there is no treaty, and no controlling executive or legislative act or juridical decision, resort must be had to the customs and usages of civilized nations; and, as evidence of these, to the works of jurists and commentators, who by years of labor, research and experience, have made themselves peculiarly well acquainted with the subjects of which they treat.120


115. Id. Article 10 of the UDHR states, "[e]veryone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him." (emphasis added). ICCPR Art. 14 (1) states: "In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent independent and impartial tribunal established by law." (emphasis added).

116. Id.


118. The International Center for Criminal Law Reform and Criminal Justice Policy, The Responsibility of States to Provide Legal Aid (Mar., 1999), http://www.icclr.law.ubc.ca/Publications/Reports/beijing.pdf (argues that "[t]his reference to legal aid in securing rights covers both civil and criminal law matters as it relates to effective recourse to ensure all human rights").

119. InterAmerican Court of Human Rights, Advisory Opinion OC-18/03 (September 17, 2003) ¶ 107, 108, 121.

120. The Paquette Habana, 175 U.S. 677, 700 (1900).
Customary international law, in addition to treaties, makes up the majority of international law rules. There are two components to customary international law: 1) it results from a general and consistent practice of states, and 2) it is followed by them from a sense of legal obligation:

The requirement of international consensus is of paramount importance, for it is that consensus which evinces the willingness of nations to be bound by the particular legal principle. Violations of current customary international law, are characterized by universal consensus in the international community as to their binding status and their content. That is, they are universal, definable, and obligatory international norms.

Modern scholars are divided as to the status of customary international law in federal courts. Some argue that customary international law has the status of federal common law. Other commentators argue that customary international law is not federal common law because it “is not a rule of decision for any courts without statutory authorization but that it can be part of the common law of the states to the extent that individual states choose to incorporate it.”

The debate regarding customary international law and the existence of federal common law was given new life in the recent case of Sosa v. Machain. That case dealt with the Alien Torts Statute (ATS). The court determined that “the ATS was meant to underwrite litigation of a narrow set of common law actions derived from the law of nations.” But required “any claim based on the present-day law of nations to rest on a norm of international character accepted by the

127. Sosa, 542 U.S. at 721.
civilized world and defined with the specificity comparable to the features of the 18th century paradigms we have recognized.\textsuperscript{128}

It is unlikely that arguments made to domestic courts will succeed under international law. Without definitive rulings by international bodies responsible for treaty interpretation and without near universal adoption of a right to free civil counsel under customary international law, United States courts will probably find that the right is not required by international law.

Still, foreign law, whether it drives from international instruments, or from independent adoption by particular countries can have persuasive power.\textsuperscript{129} Our federal law is full of instances where courts have overruled past decisions based on an “evolution of fundamental principles.”\textsuperscript{130} One such example is Gideon itself. It is a long-standing principle of our Supreme Court to interpret fundamental rights based on contemporary standards of the time.\textsuperscript{131} For example, recently the United States Supreme Court revisited the issue of whether the execution of a mentally retarded criminal was prohibited by the Eighth Amendment of the Federal Constitution, despite having already decided the issue in a previous case.\textsuperscript{132} In its analysis, the Court looked at the number of states that recently prohibited the execution of retarded persons.\textsuperscript{133} It held that in light of “evolving standards of decency,” the Constitution placed a “substantive restriction on the State’s power to take the life of a retarded person.”\textsuperscript{134}

What constitutes contemporary community standards and norms can also be ascertained from international and comparative law. This point has been amply demonstrated by three very recent Supreme Court decisions: Roper v. Simmons\textsuperscript{135} (holding that the death penalty for offenders under the age of eighteen violated the Eighth Amendment), Lawrence v. Texas\textsuperscript{136} (holding that a statute which made criminal certain sexual conduct by homosexuals violates the Due Process Clause), and Grutter v. Bollinger\textsuperscript{137} (holding that the law school’s consideration of race and ethnicity in its admissions decisions was lawful because law school had a compelling interest in attaining a diverse student body and admissions program was narrowly tailored and thus did not violate the Equal Protection Clause).

\begin{itemize}
\item \textsuperscript{128} Id. at 725.
\item \textsuperscript{129} Hans Linde, Comments, Symposium On International Human Rights Law In State Courts, 18 INT’L LAW. 77, 78 (1984) (explaining that “[i]t is potentially a powerful argument to say to a court that a right which is guaranteed by an American constitutional provision, state or federal, surely does not fall short of a standard adopted by other civilized nations”). Justice Linde of the Oregon Supreme Court wrote the opinion in the case of Sterling v. Cupp, 625 P.2d 123 (Or. 1981) (holding that cross-gender prison searches in correctional facilities violated the Oregon Constitution. Throughout the opinion, Judge Linde makes reference to the United Nations Charter, the UDHR, the ICCPR and other international instruments. Id. at passim.).
\item \textsuperscript{131} See, e.g., Weems v. United States, 217 U.S. 349 (1910) (holding that what is considered cruel and unusual is to be interpreted by contemporary standards of what constitutes cruel and unusual).
\item \textsuperscript{132} Atkins v. Virginia, 536 U.S. 304 (2002).
\item \textsuperscript{133} Id. at 314-17.
\item \textsuperscript{134} Id. at 321.
\item \textsuperscript{135} 543 U.S. 551 (2005).
\item \textsuperscript{136} 539 U.S. 558 (2003).
\item \textsuperscript{137} 539 U.S. 306 (2003).
\end{itemize}
In *Roper*, the majority spent considerable time addressing the state of the law throughout the world regarding execution of juveniles.\(^\text{138}\) Although the court was clear that even near unanimous rejection of execution of juveniles elsewhere is not controlling on the court's interpretation of the Eighth Amendment, it took note that its opinions on this issue had "referred to the laws of other countries and to international authorities as instructive."\(^\text{139}\) Justice O'Connor wrote a separate dissent primarily to reject Justice Scalia's dissent in which he argued that foreign and international law had no place in U.S. jurisprudence.\(^\text{140}\) Thus, six justices of the court opened the door to arguments bolstered by comparative and international law.

In *Lawrence*, the court based its decision to overrule the relatively recently decided case of *Bowers v. Hardwick*,\(^\text{141}\) which had held that there is no fundamental right to engage in sodomy by homosexuals, by concluding that the real fundamental right involved is one of privacy.\(^\text{142}\) In its opinion, the Supreme Court cites decisions by the European Court of Human Rights\(^\text{143}\) and the law of other nations,\(^\text{144}\) all of which protect the right of homosexual adults to engage in intimate consensual conduct, in order to demonstrate the widespread adoption of such a right.

In *Grutter*, Justice Ginsburg's concurring opinion noted that the Court's observations that race-conscious programs must end once their goal is achieved, "accords with the international understanding of the office of affirmative action."\(^\text{145}\) Justice Ginsburg, along with Justice Breyer, thought it was important that our law was in accord with international law.\(^\text{146}\)

**CONCLUSION**

Elsewhere in the world countries have developed, as a matter of their own domestic law, a right to a free civil lawyer for low-income persons. Council of Europe members are bound by decisions of the European Court on Human Rights, which the European Convention requires them to develop as a matter of

\(^{138}\) *Roper*, 543 U.S. at 574-76.
\(^{139}\) *Id*. at 575.
\(^{140}\) *Id*. at 587-608.
\(^{141}\) 478 U.S. 186 (1986).
\(^{142}\) *Lawrence*, 539 U.S. 558.
\(^{144}\) *Id*. at 576-77.
\(^{145}\) *Grutter*, 539 U.S. at 344 (Ginsburg, J, concurring) (citing the The International Convention on the Elimination of All Forms of Racial Discrimination, ratified by the United States in 1994); see also State Dept., Treaties in Force 422-423 (June 1996), for it's endorsement of "special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms." Annex to G.A. Res. 2106, 20 U.N. GAOR Res. Supp. (No. 14) 47, U.N. Doc. A/6014, Art. 2(2) (1965). But such measures, the Convention instructs, "shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved." *Id*.
\(^{146}\) *Id*. 

international human rights law. In the United States, policy makers, advocates, legislators and judges need to become educated about this progress. Not only have these countries put in place the right, but they have also fully articulated standards with respect to the range of the substantive cases, types of legal services, the various fora, and standards of indigence.

Recent United States Supreme Court jurisprudence has looked to foreign and international law in cases in which the Court has extended constitutional protections. In this global age ideas as well as goods and people cross borders. This country, founded on the rule of law and the centrality of resolution of disputes through the courts, has much to learn from the old world.
APPENDIX A:

Country Specific Information On The Scope Of The Right to Free Lawyers for Low-Income People In Civil Matters  All of the dates referenced can be found in Johnson, *International Perspective, supra* note 1, or in the text of supra note 57.

**KEY**

**Country**
LP – Loser Pay

**Basis of Right**
C - Constitution
J - Judicial Opinion
O - Executive order
S - Statute

**Lawyer Services**
A - Advice
L - Litigation
M - Mediation
T - Transactions

**Scope of right**
All - All civil and Administrative
All Civil - All civil, no Administrative
Broad - Most civil with listed exclusions, see Fora if administrative matters are included.

**Types of Fora**
TC - Trial Court
AH - Administrative Hearings
App - Appeals

**Merits Tests**
C/B - Cost/benefits, often phrased as a reasonable person with resources would pay a lawyer to pursue
Reasonable Basis - Reasonable grounds for taking, defending, continuing

**Need**
Yes - Means there is an income standard for eligibility
SS – Sliding Scale
NGO – Non-Governmental Organizations: includes non-profits, charitable organizations.

**No Need**
Advice - Advice free to all
Public Interest - If matter of public interest
Prin. - Principle
Ess. - Essential to Applicant

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<th>Merits Tests</th>
<th>Need</th>
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<td>Reasonable Basis</td>
<td>SS - Sliding Scale</td>
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<td>Broad</td>
<td>Most civil with listed exclusions, see Fora if administrative matters are included.</td>
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<th>Fora</th>
<th>Merits Test</th>
<th>Client Qualifications</th>
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<td>C 1993</td>
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<td>Armenia</td>
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<td>LP - Yes</td>
<td>S. 2004</td>
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<td>TC, AH App</td>
<td>Case by case</td>
<td>Case by case</td>
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<td>A, L</td>
<td>TC, App</td>
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<td>A, L</td>
<td>TC, AH App</td>
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<td>Yes SS</td>
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<tr>
<td>LP - No</td>
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<td>All</td>
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<td></td>
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<td>Yes</td>
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<td>A, L</td>
<td>Human rights, family</td>
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<td>Fair chance of winning</td>
<td>TC</td>
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<td></td>
<td>Yes</td>
<td>Possibility of winning is clearly unlikely</td>
<td>TC, AH</td>
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<td>Estate, Emp'1, L/LT, Social Security, Consumer, Wages, Family</td>
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<td>Victims of DV Complexity &amp; sexual offense</td>
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<td>TC, AH App</td>
<td>Balance of probabilities</td>
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<td>Disability, Unemployed, Refugees, Ethnic minorities</td>
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<td>Defamation, Land disputes, Conveyance, Class actions, Election petitions, Test cases.</td>
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<td>Norway</td>
<td>S 1980 CL 1600's (Earl Johnson 1915)</td>
<td>All inc'g rule-making or legislative advocacy</td>
<td>Matters of business or professions, Real estate, Property damage, Consumer</td>
<td>A, L, M, N, T</td>
<td>TC, AH</td>
<td>Likelihood of success. C/B</td>
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<td>Poland</td>
<td>S 1964</td>
<td>All, incl'g enforcem't</td>
<td>None listed</td>
<td>L</td>
<td>TC, AH App,</td>
<td>Facts merit legal aid</td>
<td>Yes, SS NGO</td>
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<td>Portugal</td>
<td>1899 Johnson</td>
<td>Broad</td>
<td>Def.</td>
<td>A, L, M, N, T</td>
<td>TC, AH App,</td>
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<td>Yes SS Corps</td>
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<td>Romania</td>
<td>S 1917</td>
<td>Check list</td>
<td>Bus.</td>
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<td>TC, AH App</td>
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<td>2000</td>
<td>Broad</td>
<td>A, L, M, N, T</td>
<td>TC, AH App</td>
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<td>Con, 1990/02</td>
<td>All civil</td>
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<td>S 1963</td>
<td>All + enforce</td>
<td>None</td>
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<td>A, L,</td>
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<td>Not manifestly unrea’sible, Importance of claim</td>
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<td>Spain</td>
<td>S 1885 (1835 oldest Johnson)</td>
<td>All Incl’g enforcem’t</td>
<td>A, L, T</td>
<td>TC, AH App.</td>
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<td>Yes SS NGO</td>
<td>If other party repre-sented</td>
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<td>Sweden</td>
<td>1919 Capalitti</td>
<td>Broad</td>
<td>Defamation Most family</td>
<td>A, L, M, T</td>
<td>TC, AH App</td>
<td>YES SS LEI</td>
<td>Minors</td>
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<td>J 1937</td>
<td>All Civil</td>
<td>None</td>
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<td>TC, App</td>
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<td>Turkey</td>
<td>S 2001</td>
<td>All</td>
<td>L</td>
<td>TC, AH App.</td>
<td>Likely to prevail</td>
<td>Yes</td>
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<td>C 1978</td>
<td>Broad</td>
<td>Def., bus. Small claims</td>
<td>A, L</td>
<td>TC, AH App</td>
<td>No</td>
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<td>LP - Yes</td>
<td>1495</td>
<td>Broad (AH only for Imm. and Emp’t)</td>
<td>Def., PI, Bus., Wills, Boundary disputes</td>
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<td>Yes SS, Import to applicant, Unable to proceed w/o funding</td>
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<td>Broad (Only Land tribunals)</td>
<td>Defamation, Elections</td>
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<td>TC, App</td>
<td>Reasonable grounds, Minors</td>
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<td>A, L</td>
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<td>Australia</td>
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<td>Broad</td>
<td>Def, Bus, landlord, disputes wills, estates</td>
<td>TC, AH App</td>
<td>Reasonable prospect of success, C/B</td>
<td>No Need, Yes SS, Family Age, disability, veterans</td>
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<td>LP-Yes</td>
<td>1977</td>
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<td>A, L, M</td>
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<td>Reasonable grounds, substantial legal question</td>
<td>Yes SS</td>
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<td>Hong Kong</td>
<td>Family, L/T, emp't, estates, commercial, property, PL, debts, bankruptcy</td>
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<td>TC, AH App</td>
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<td>Women, children, caste or tribe members, human trafficking, disaster victims, disability</td>
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<td>India</td>
<td>C1976</td>
<td>Broad</td>
<td>Def, elections, proceedings against state</td>
<td>TC, AH App</td>
<td>Yes, but may require later reimbursement</td>
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<td>Leg.2000</td>
<td>Broad</td>
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<tr>
<td>New Zealand</td>
<td>S 1969, S 2000</td>
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<td>All family</td>
<td>Divorce wills, education, immigration,</td>
<td>A, L</td>
<td>TC, AH App</td>
<td>Pfc, likelihood of success C/B</td>
<td>Yes SS, minors, mental disability</td>
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<td></td>
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<td>Includes class actions</td>
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<td>S. Africa</td>
<td>Leg. 1969</td>
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<td>Family, labor, landless</td>
<td>Def., bus, liquidation of corp, estate</td>
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<td>TC, AH App</td>
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<td>S 1987</td>
<td>Some family law, income security</td>
<td>Claim for lump sum of money damages,</td>
<td>A,L</td>
<td>TC, AH App</td>
<td>Likelihood of success, C/B</td>
<td>Yes SS</td>
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<td>New Brunswick LP-No</td>
<td>S 1971</td>
<td>Family law</td>
<td>Property, administrative matters, most other civil aid</td>
<td>T, App</td>
<td>Reasonable in the circumstances</td>
<td>Yes SS</td>
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<td>1997</td>
<td>Broad</td>
<td>Will, simple divorce</td>
<td>T</td>
<td>Urgency, C/B</td>
<td>Presumed eligibility for all, SS</td>
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<td>S 1989</td>
<td>Immigration</td>
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<td>Urgency</td>
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<td>Nunavut</td>
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<td>S 1972</td>
<td>Family, Soc Sec, Unempl’t Workers comp</td>
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