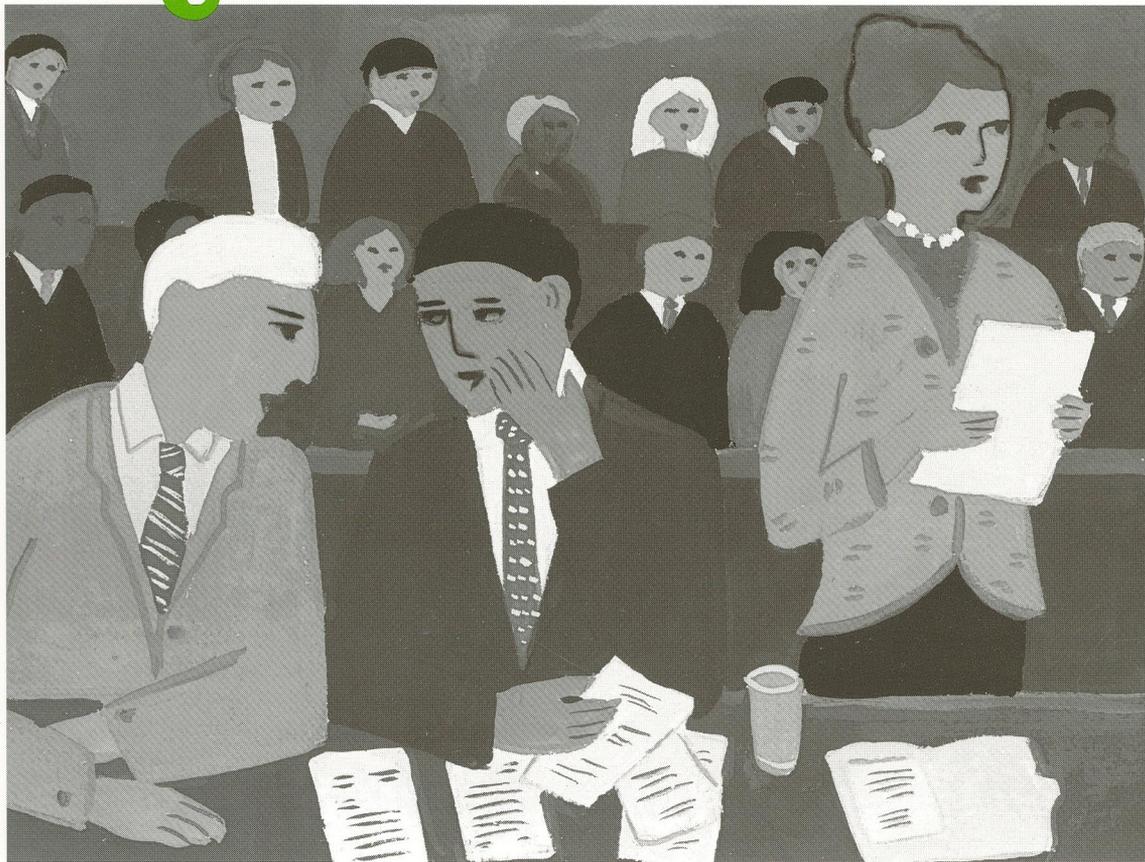


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INSIDE:

- Right to Counsel in Civil Cases
- The Scholarship
- A Model Statute
- Overcoming the Supreme Court's *Lassiter* Ruling
- Advocacy in
Maryland
Ohio
Washington
Wisconsin
Canada
- Disparate Impact of
Lack of Counsel
- Judges on Impact of
Unrepresented Litigants
- Existing Right-to-Counsel Statutes
- The Defender Experience
- International Human Rights Law

A RIGHT TO A LAWYER? MOMENTUM GROWS



Sargent Shriver National Center on Poverty Law



Civil Gideon: A Human Right Elsewhere in the World

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Most lawyers acknowledge that representation by counsel in civil court is advisable, if not essential. Still, many U.S. lawyers question whether a widespread right to a free civil attorney for indigents is feasible. Very few U.S. lawyers, legislators, or judges realize that the right to a publicly provided attorney in civil matters has an ancient lineage within the English legal system and is broadly accepted elsewhere in the world.¹ In this article I discuss the prevalence, rationale for, and the scope of the right provided in many European countries.²

In 1963 the U.S. Supreme Court declared that indigent criminal defendants had the right to free counsel.³ This right, grounded in the Sixth Amendment and applied to the states via the Fourteenth Amendment, derives from notions of fundamental fairness and guarantees of a fair trial. Many advocates within the legal services community hoped that parallel insights into and concerns about fundamental fairness for low-income civil litigants would lead to an extension of *Gideon v. Wainwright*.⁴

However, in 1981 the U.S. Supreme Court in *Lassiter v. Department of Social Services of Durham County, North Carolina* put an end to aspirations that it would declare a federal constitutional right to counsel in civil matters.⁵ A divided Court, employing a pinched reading of due process analysis and prior precedents, determined that there was a presumption against the right to counsel unless the loss of physical liberty was

¹Canada, Australia, New Zealand, Zambia, Brazil, and South Africa have statutes or a constitutional provision providing for a free civil counsel for the indigent. In this article I focus on Europe. One notable exception to the unaware American legal community is Justice Earl Johnson Jr., associate justice of the California Court of Appeals, 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. The term "civil Gideon" refers to the right to counsel in civil cases. EARL JOHNSON JR. ET AL., *TOWARD EQUAL JUSTICE: A COMPARATIVE STUDY OF LEGAL AID IN MODERN SOCIETIES* (1975); *id.*, *Thrown to the Lions: A Plea for a Constitutional Right to Counsel for Low-Income Civil Litigants*, BAR LEADER (Sept.-Oct. 1976); Earl Johnson Jr. & Elizabeth Schwartz, *Beyond Payne: The Case for a Constitutional Right to Representation in Civil Cases for Indigent California Litigants*, 11 *LOYOLA OF LOS ANGELES LAW REVIEW* 249 (1978); Earl Johnson Jr., *The Right to Counsel in Civil Cases: An International Perspective*, 19 *LOYOLA OF LOS ANGELES LAW REVIEW* 341 (1985); *id.*, *Toward Equal Justice: Where the United States Stands Two Decades Later*, 5 *MARYLAND JOURNAL OF CONTEMPORARY LEGAL ISSUES* 199 (1994); *id.*, *Equal Access to Justice: Comparing Access to Justice in the United States and Other Industrialized Democracies*, 24 *FORDHAM INTERNATIONAL LAW JOURNAL* S83 (2000); *id.*, *Will Gideon's Trumpet Sound a New Melody? The Globalization of Constitutional Values and Its Implications for a Right to Equal Justice in Civil Cases*, 2 *SEATTLE JOURNAL FOR SOCIAL JUSTICE* 201 (2003).

²My research assistants, Manal Boulos and Denise Fowley, compiled much of the information on the foreign law systems. About seventy partners, associates, and interns at eleven law firms assisted pro bono by collecting information for a survey on approximately eighty countries. I have on file the survey results, which we are analyzing as this article goes to press.

³*Gideon v. Wainwright*, 372 U.S. 335 (1963) (requiring publicly paid lawyers for low-income criminal defendants).

⁴TOWARD 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 *WASHINGTON AND LEE LAW REVIEW* 1267 (1982) (Swygert was senior judge at the U.S. Court of Appeals for the Seventh Circuit; this was probably one of the last articles written before the *Lassiter* decision).

⁵*Lassiter v. Department of Social Services of Durham County, N.C.*, 452 U.S. 18 (1981).

at stake. More recently between 2002 and 2005, the Supreme Court reversed at least three cases decided in the 1980s. Each reversal has favored more expansive individual constitutional rights. Furthermore, in each case the Court took note of international and foreign law. For example in *Roper v. Simmons*, the Court, overruling *Stanford v. Kentucky*, prohibited the death penalty for minors.⁶ In *Lawrence v. Texas* the Court, overturning *Bowers v. Hardwick*, decriminalized private consensual homosexual sex.⁷ In *Adkins v. Virginia* the Court, overruling *Penry v. Lynaugh*, barred the execution of mentally ill defendants.⁸ In view of these reversals, considering a frontal challenge to *Lassiter* may be reasonable at this time.

The fortieth anniversary of *Gideon* stimulated a resurgence of an interest in a civil Gideon. Numerous articles have been

published.⁹ At least two recent state cases have raised the issue explicitly.¹⁰ The current president of the American Bar Association has made the development of a civil Gideon one of the cornerstones of his administration.¹¹

I. Comparative and International Law on the Right to Counsel in Civil Cases

England has a five-century tradition of providing free lawyers for indigent people in at least some civil matters. This tradition originated in 1495, when Parliament passed the Henry VII statute, which originally covered indigent plaintiffs only.¹²

One rationale for the original statute was to inspire confidence in the King's courts and to encourage people to use them.¹³ The passage of the statute was

⁶*Roper v. Simmons*, 543 U.S. 551, 574 (2005) (Clearinghouse No. 55,786), overruling *Stanford v. Kentucky*, 492 U.S. 361 (1989).

⁷*Lawrence v. Texas*, 539 U.S. 558, 578 (2003), overturning *Bowers v. Hardwick*, 478 U.S. 186 (1986).

⁸*Adkins v. Virginia*, 536 U.S. 304, 318 (2002), overruling *Penry v. Lynaugh* 492 U.S. 302 (1989)

⁹Laura Abel & Risa E. Kaufman, *Preserving Aliens' and Migrant Workers' Access to Civil Legal Services: Constitutional and Policy Considerations*, 5 UNIVERSITY OF PENNSYLVANIA JOURNAL OF CONSTITUTIONAL LAW 491 (2003); Simran Bindra, *Public Civil Defenders: A Right to Counsel for Indigent Civil Defendants*, 10 GEORGETOWN JOURNAL OF POVERTY LAW AND POLICY (2003); Lisa Brodoff et al., *The ADA: One Avenue to Appointed Counsel Before a Full Civil Gideon*, 2 SEATTLE JOURNAL FOR SOCIAL JUSTICE 609 (2004); James A. Bamberger, *Confirming the Constitutional Right of Meaningful Access to the Courts in Non-Criminal Cases in Washington State*, 4 SEATTLE JOURNAL FOR SOCIAL JUSTICE 383 (2005); Robert B. Kershaw, *Access to Justice in Maryland—a Visionary's Model*, 37 MARYLAND BAR JOURNAL 50 (May–June 2004); Rachel Kleinman, Comment, *Housing Gideon: The Right to Counsel in Eviction Cases*, 31 FORDHAM URBAN LAW JOURNAL 1507 (2004); Deborah Perluss, *Washington's Constitutional Right to Counsel in Civil Cases: Access to Justice v. Fundamental Interest*, 2 SEATTLE JOURNAL FOR SOCIAL JUSTICE 571 (2004); Joan Grace Ritchey, Note, *Limits on Justice: The United States' Failure to Recognize a Right to Counsel in Civil Litigation*, 79 WASHINGTON UNIVERSITY LAW QUARTERLY 317 (2001); Richard Zorza, *Some Reflections on Long-Term Lessons and Implications of the Access to Justice Technology Bill of Rights Process*, 79 WASHINGTON LAW REVIEW 389 (2004); Mary Helen McNeal, *Toward a "Civil Gideon" Under the Montana Constitution: Parental Rights as the Starting Point*, 66 MONTANA LAW REVIEW 81 (2005); Bruce A. Boyer, *Justice, Access to the Courts, and the Right to Free Counsel for Indigent Parents: The Continuing Scourge of Lassiter v. Department of Social Services of Durham*, 36 LOYOLA UNIVERSITY OF CHICAGO LAW REVIEW 363 (2005).

¹⁰*Frase v. Barnhart*, 840 A.2d 114 (Md. 2003) (Clearinghouse No. 55,347), *In re Custody of Halls*, 126 Wash. App. 599 (2005) (Clearinghouse No. 55,807). See also other articles in this special issue of CLEARINGHOUSE REVIEW.

¹¹Michael 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."). President Greco has continued throughout his term to speak out on the need for Civil Gideon. Other signs of interest: Two years in a row, the National Legal Aid and Defender Association and the national Access to Justice/ABA conferences have had Civil Gideon panels; the Washington Access to Justice conference of June 2005 had a panel, and the June 2006 conference will have a plenary on civil right to counsel.

¹²The statute provided, in pertinent part: "[T]he Justices ... 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." An Act to Admit Such Persons as Are Poor to Sue in Forma Pauperis, 11 Hen. 7, c. 12 (1494), 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, *supra* note 4, at 1270; John MacArthur Maguire, *Poverty and Civil Litigation*, 36 HARVARD LAW REVIEW 365 (1923).

¹³J.H. BAKER, AN INTRODUCTION TO ENGLISH LEGAL HISTORY 134 (2d ed. 1979); Swygert, *supra* note 4 at 1271; Maguire, *supra* note 12.

essentially the move away from the religious courts to a development of a secular judicial branch of government.

Since then, the right has expanded to include civil defendants, nonlitigation transactions, and advice.¹⁴ England has modified its statutory system over the years, but the English legal aid system has continuously provided indigent parties with a right to counsel in civil cases.¹⁵

On the continent, 1979 was a watershed year. The European Court of Human Rights declared it a human right for the poor to have access to courts through the availability of free counsel. But even before then, twelve continental European countries had requirements to provide the poor with free civil lawyers.¹⁶ Most provided them by statute. Italy, Spain, Portugal, and Holland have constitutional provisions explicitly providing a right to free civil counsel for the poor.¹⁷ Very few appellate judicial opinions explicated the right. In 1937 Switzerland's Supreme Court grounded such a right in an "equal protection" analysis. It stated, "All citizens whether poor or rich should have access to the court."¹⁸ In 1973 the German Constitutional Court

based such a right on a type of due process analysis.¹⁹ Both decisions stressed the need for the poor to have access to the courts.

After 1979 the Council of Europe required all of its members to provide free civil lawyers as a matter of international human rights law. Forty-six countries are members of the Council of Europe.²⁰ As such they are signatories to the Convention for the Protection of Human Rights and Fundamental Freedoms, often referred to as the European Convention of Human Rights (or European Convention).²¹ Article 6, paragraph 1, of the European Convention, a binding treaty, reads in part: "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."²²

In 1979, in *Airey v. Ireland*, the European Court on Human Rights determined that the right to a fair hearing, under Article 6(1), required effective access to the court.²³ The court interpreted effective access to mean representation by an

¹⁴See, e.g., *Wait v. Farthing*, 84 Eng. Rep. 237, 237 (K.B. 1668); 1 George William Sanders, *Orders of the High Court of Chancery* 122, 243, 296 (London, A. Maxwell & Son 1845).

¹⁵The statute was repealed by the Statute Law Revision and Civil Procedure Act, 46 & 47 Vict. c. 49 (1883). The act replaced 11 Hen. 7, c. 12 with a system of legal aid, administered by the rules of court, providing for the appointment of counsel. See SETON POLLOCK, *LEGAL AID—THE FIRST 25 YEARS* 12 (1975). A new system of legal assistance was created by statute in 1929. John Mahoney, *Green Forms and Legal Aid Offices: A History of Publicly Funded Legal Services in Britain and the United States*, 17 SAINT LOUIS UNIVERSITY PUBLIC LAW REVIEW 223, 226 (1998).

¹⁶*International Perspective*, *supra* note 1 at 19. (The dates signify the earliest date that the right to a free civil lawyer is mentioned in the law of that country: Austria—1781, Spain—1835, France—1851, Italy—1865, Germany—1877, Portugal—1899, Belgium—no date included, Norway—1915, Sweden—1919, Switzerland—1937, Holland—1957, Denmark—1969).

¹⁷Lua Kamál Yuille, Note, *No One's Perfect (Not Even Close): Reevaluating Access to Justice in United States and Western Europe*, 42 COLUMBIA JOURNAL OF TRANSNATIONAL LAW 863 (2004).

¹⁸Francis William O'Brien, *Why Not Appointed Counsel in Civil Cases? The Swiss Approach*, 28 OHIO STATE LAW JOURNAL, 1, 5 (citing judgment of October 8, Arrêts du Tribunal Fédéral[ATF] 63, 1, 209 (Swits.)).

¹⁹Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] June 17, 1953, 26 Entscheidungen des Bundesverfassungsgerichts [BverfGE] 2, 336 (F.R.G.).

²⁰Council of Europe, www.coe.int/T/E/Com/About_Coe/Member_states/default.asp (last viewed May 28, 2006) (lists forty-six member states with dates of ratification).

²¹Convention for the Protection of Human Rights and Fundamental Freedoms, art. 6, para. 1, Nov. 4, 1950, 213 U.N.T.S. 222, 228.

²²*Id.* (emphasis added).

²³*Airey v. Ireland*, 2 Eur. H.R. Rep. 305 (1979–1980). In *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. *Airey* ¶ 24. One of her arguments was that the government violated her right under Article 6(1) in that the government effectively denied her right of access to the court since she could not get a fair hearing without an attorney. *Id.* ¶ 24. Ireland argued that it did not violate Article 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. (Ireland had signed the treaty with an explicit reservation against providing broader free legal aid—reservation contained in the instrument of ratification.)

attorney, or a proceeding simple enough that a layperson could handle it without a lawyer.²⁴ The court stated that “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.”²⁵

Each state was still free to choose the means of achieving the right to a fair hearing. For example, it might simplify the judicial procedures.²⁶ Only when the assistance of a lawyer was indispensable for effective access to the courts was the government under a legal obligation to guarantee this right of counsel.²⁷

II. Scope of the Right to State-Provided Counsel

The right to a free civil attorney is not without limits. Each country with such a right has developed eligibility standards that guarantee and circumscribe it.²⁸

While the standards for eligibility and the scope of the services differ from country to country, certain patterns are evident.²⁹ A means test and a merits test are common.

In most of the Council of Europe countries, the right to counsel covers a wide range of civil matters. These include family law, housing, consumer and debt cases, public assistance and welfare, and labor law. The legal systems are more likely to exclude specifically certain substantive areas of law than to list the areas that the right to a free attorney covers. Typical exclusions are matters involving the running of a business, assigned claims, sometimes election and tax cases, and defamation.

Since *Airey*, the European Court on Human Rights has clarified and expanded the scope of the right.³⁰ Typically many countries have not required counsel for defamation proceedings; they have not seen the nature of the injury to reputation as fundamental.³¹ However,

²⁴*Id.* ¶¶ 24–25.

²⁵*Id.*

²⁶*Id.*

²⁷*Id.*

²⁸Not all members of the Council of Europe have developed an adequate program. Armenia has a drastically limited program providing free services for death or injury of the breadwinner and for alimony. For some countries, such as Cyprus and most of the former members of the Soviet Union, compliance with *Airey* is in its infancy.

²⁹This footnote contains a range of resources to be consulted for more details on particular countries. Articles and books cited in this article are not included. Council of Europe, Legal Aid—How to Benefit from It, www.coe.int/t/e/legal_affairs/legal_cooperation/operation_of_justice/access_to_justice_and_legal_aid/List%20of%20replies.asp#TopOfPage (last visited May 27, 2006) (replies to questionnaire from thirty-six countries: Austria, Azerbaijan, Belgium, Bulgaria, Czech Republic, Cyprus, Denmark, Estonia, Finland, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Sweden, Macedonia, Turkey, and United Kingdom (England, Wales, Northern Ireland, and Scotland)); European Union, Legal Assistance, Legal Aid, <http://europa.eu.int/youreurope/nav/en/citizens/factsheets/se/enforcingrights/legalassistanceaid/en.html> (last visited May 27, 2006) (contains fact sheets for all twenty-six member countries); European Commission, European Justice Network, Legal Aid—General Information, http://ec.europa.eu/civiljustice/legal_aid/legal_aid_gen_en.htm (last visited May 27, 2006) (contains information on twenty-six member countries); Public Interest Law Initiative, Background materials—2nd European Forum on Access to Justice, <http://www.pili.org/2005r/2005r/index.php?option=content&task=view&id=176> (last visited May 27, 2006) (includes New Developments in Legal Aid in Central and Eastern Europe and updates since the first Forum on Access to Justice held in December 2002; compiled by Open Society Justice Initiative and Public Interest Law Initiative, Second Forum on Access to Justice, 2005); International Legal Aid Group, National Reports, <http://www.ptools.com/clientside/show/ILAG/pages/nationalreports.html> (last visited May 27, 2006) (reports presented at Killarney Conference, 2005, covering Belgium, Canada, Finland, the Netherlands, New Zealand, Australia, Germany, Ireland, Hong Kong, Scotland, South Africa, United States, Brazil); International Legal Aid Group, Conference Papers, www.ptools.com/clientside/show/ILAG/pages/papers.html (last visited May 28, 2006) (papers presented at Killarney Conference, 2005, covering Germany, England, South Africa, Wales, Australia, Scotland, the Netherlands, Canada, United States, New Zealand, Turkey); International Legal Aid Group, Conference Papers 2003, www.ilagnet.org/papers.htm (papers and reports presented at Harvard Conference, 2003, covering Scotland, Ireland, Germany, Sweden, Canada, England, Wales, the Netherlands, Belgium, Finland, Norway, New Zealand, North Ireland and South Africa).

³⁰Michael J. Beloff & Murray Hunt, *The Green Paper On Legal Aid And International Human Rights Law*, 1996 EUROPEAN HUMAN RIGHTS LAW REVIEW 1, 5–17.

³¹*Munro v. the United Kingdom*, App. No. 10594/83, 52 Eur. Comm’n H.R. Dec. & Rep. 158 (1987).

in 2005 the European Court on Human Rights found in favor of right to counsel for defamation defendants who were engaged in the longest trial in English history.³² The case has come to be known as “McLibel” because the plaintiff, McDonald Corporation, brought the 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 ... 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.³³

All countries with the right to counsel in civil cases provide lawyers for the original fact-finding hearings. That typically extends to hearings in both the courts and the administrative tribunals, although some countries appear to exclude administrative hearings. Most countries provide free counsel for appeals. However, eligibility usually must be redetermined at each stage.

The scope of the possible legal services is broad. Many countries provide advice about legal matters without requiring current or pending litigation. Some pro-

vide lawyers for negotiations and mediation or other alternative dispute resolution. However, few provide lawyers for transactional matters.³⁴

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 applicant has very modest income and resources.³⁵ A sliding scale is not uncommon. If their income exceeds the limit for a free lawyer, the applicants must contribute something toward the costs of counsel or the case. In some countries, such as Germany, litigation insurance is widely available. This is taken into consideration when applicants seek such services.³⁶

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.³⁷ Aliens seeking asylum often receive free attorney services.³⁸ Some countries such as France, Denmark, and Iceland waive financial eligibility if the issue is of significant public interest.

All of the countries discussed here have some standard for determining if the case has merit. This test does not involve a minihearing on the merits; rather it is a determination that the body appointing the free counsel makes. A common standard is similar to a *prima facie* showing and does not involve the weighing of evidence regarding each claim.

³²*Steel and Morris v. United Kingdom*, 41X Eur. Ct. H.R. 22 (2005).

³³*Id.* ¶ 69.

³⁴Many of the European countries are based on the Roman/French civil code system. In those systems, notary publics play a much wider role than they do in the United States. They are often the professionals consulted with respect to transactions. I have found very little information regarding the funding of notary publics. No country seems to provide free lawyers for legislative advocacy or representation in rule-making matters.

³⁵In some countries such as the Netherlands the financial standard is high enough that it applies to approximately 40 percent of the population.

³⁶To explore the cost-shifting features of many countries' legal systems is beyond the scope of this article. These cost-shifting procedures require the loser to pay the costs and fees of the prevailing party and undoubtedly have a significant impact on some people's use of the legal system.

³⁷Social security is often the term applied to what we would refer to as welfare, food stamps, Medicaid, or other needs-based programs.

³⁸See, e.g., Belgium, Greece, Hungary, Ireland, Norway, and Spain.

However, an equal number of states have some requirement in which applicants must demonstrate that they are likely to succeed.

The continuing viability of the “likelihood of success” test may be in question. In *Aerts v. Belgium* the European Court on Human Rights reversed a determination by Belgium that the claim was not “well-founded.”³⁹ The court held:

[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 very essence of Mr. Aerts’s right to a tribunal. There has accordingly been a breach of Article 6 § 1.⁴⁰

■ ■ ■

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. The European Court on Human Rights’ decisions that the European Convention requires Council of Europe member states to develop such a program as matter of international human rights law are binding on member states. In the United States, policymakers, advocates, legislators, and judges need to become educated about this progress. Not only have these countries put in place the right, but also they have fully articulated standards with respect to the range of the substantive cases, types of legal services, the various fora, and standards of indigence.

To discuss the kinds of arguments to make under international, federal, or state law to encourage or require the adoption of a similar right in the United States is beyond the scope of this article. Recent U.S. Supreme Court jurisprudence has looked to foreign and international law in cases in which the Court has extended constitutional protections.⁴¹ 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.

³⁹*Aerts v. Belgium*, 29 Eur. Ct. H.R. 50 (2000). See also *Symposium, An Overview of Civil Legal Services Delivery Models, Eleventh Annual Philip D. Reed Memorial Issue, Partnerships Across Borders: A Global Forum on Access to Justice*, 24 FORDHAM INTERNATIONAL LAW JOURNAL 5225 (2000) (comments by Pascal Dorneau-Josette, secretary of the European Court of Human Rights on potential impact of *Aerts* on numerous French cases which legal aid body rejects for lack of merit).

⁴⁰*Aerts v. Belgium*, 29 Eur. Ct. H.R. 50, para. 60 (2000).

⁴¹See, e.g. *Roper*, 543 U.S. at 574; *Lawrence*, 539 U.S. 558 at 578; *Adkins*, 536 U.S. at 318.