Wisconsin Judicare
JOSEPH F. PRELOZNIK

INTRODUCTION

When Congress enacted the Economic Opportunity Act of 1964 authorizing establishment of the Office of Economic Opportunity (OEO), it declared, "The United States can achieve its full economic and social opportunity as a nation only if every individual has the opportunity to contribute to the full extent of his capabilities and to participate in the working of our society."

The Legal Services Program was made part of the OEO as a means for reaching the objectives declared by Congress. For, as the first Director of the Legal Services Program, E. Clinton Bamberger, Jr., wrote, "Lawyers are of singular importance in aiding this effort. Neither equal opportunity nor equal justice can be achieved for this nation's poor . . . unless they are represented by counselors and advocates."

The effort to provide legal services to the poor through the OEO was given impetus during the 1965 midwinter meeting of the American Bar Association. At this meeting a resolution was adopted in which cooperation with the OEO was affirmed. The resolution provided that cooperation should be given "... in the development and implementation of programs for expanding availability of legal services to indigents . . ." The resolution further stated that "... such programs [were] to utilize to the maximum extent deemed feasible the experience and facilities of the organized Bar . . . in accordance with ethical standards of the legal profession . . .".

During the following summer, the Department of Justice and the OEO called the National Conference on Law and Poverty "... to acquaint representatives of all segments of the legal profession with the role of lawyers in the War on Poverty . . .". At this conference, attended by two representatives of the State Bar of Wisconsin, Sargent Shriver, director of OEO, encouraged the conferees "... not to follow the old ways, but to explore together new ways, adven-

---

6 Director, Wisconsin Judicare.
1 Bamberger, First Annual Report on OEO Legal Services Program, 5.
2 Id.
4 National Conference on Law and Poverty, June, 1965, V.
turesome ways of bringing the benefits of the law of equality before the law and justice to the poor of the Nation."  

When the delegates of the State Bar returned to Wisconsin, they began formulating plans for a comprehensive program of legal assistance in Wisconsin. Prior to Judicare, Wisconsin lacked a co-ordinated legal aid program. Philip S. Habermann, executive director of the State Bar of Wisconsin, addressing the Advocate Forum in Philadelphia in December of 1966 stated:

For all practical purposes, we had no effective organized legal aid outside of Milwaukee and Madison. This is frankly not practicable in the rural areas, in the traditional manner. Yet we had a highly organized and capable bar dispersed throughout the state.

As plans were already underway for an OEO neighborhood law office legal services program in Milwaukee, the State Bar proposal excluded Milwaukee county. The proposal memorandum submitted for consideration to the Board of Governors of the State Bar said in part:

The proposed project is completely new and original in Wisconsin. This would carefully preserve the traditional lawyer-client relationship and allow much prompter services with practically no overhead. We contemplate lawyers being reimbursed out of the fund provided by the federal government on the basis of 80 percent of the regular Bar fee schedule charges for like services.  

It was the opinion of the State Bar that the 20 percent reduction was merited as constituting the legal profession's contribution to a deserving program. The program was named "Judicare" in the proposal to symbolize the program's dedication to the distribution and administration of justice through care for indigents in need of legal assistance.  

---

5 Representatives from the State Bar of Wisconsin were Donald C. O'Melia, president-elect, and Philip S. Habermann, executive director.
6 National Conference, supra, note 4, at XVI.
7 Memorandum on War on Poverty Legal Project; A Proposal for "JUDICARE," written September 27, 1965 to Board of Governors, State Bar of Wisconsin by Philip S. Habermann.
8 The program was named Judicare by Philip S. Habermann, executive director of the State Bar of Wisconsin. Mr. Habermann derived the name from the words judicature and Medicare. Similarities between the program and Medicare were noted: 1) A free choice of attorney, and 2) Preservation of the attorney-client relationship.
The first proposal was submitted to OEO in Washington during November of 1965. Following several conferences and many revisions, the application was approved on April 25, 1966.\footnote{The proposal was approved by Sargent Shriver on April 25, 1966 and on May 31, 1966 by Wisconsin Governor Warren P. Knowles.} The final grant limited the program to 26 counties,\footnote{Wisconsin Judicare, as originally approved by OEO, covered 28 northern Wisconsin counties. On December 22, 1966, OEO approved the expansion of the program to state correctional institutions under the program. On June 1, 1967, legal services of attorneys in Shawano county were made available to persons in Menominee county. Services of the Shawano county attorneys were added because Menominee and Shawano counties were part of the same judicial system. On February 20, 1968 OEO approved expansion of the program to Eau Claire county. This county was added because part of the city of Eau Claire was in a Judicare county and part was not, producing considerable confusion. All of the expansions of the program were made without any request for additional money.} embracing 43 percent of the state's area while containing only 12.6 percent of its population.\footnote{The largest city in the area is Superior with a population of 33,563, followed by five other cities having a population between nine and thirteen thousand.} The Judicare counties extend across the northern part of Wisconsin like an inverted half moon from the Mississippi River to Lake Michigan's Green Bay.\footnote{The 26 Judicare counties are: Ashland, Barron, Bayfield, Burnett, Chippewa, Douglas, Dunn, Florence, Forest, Iron, Langlade, Lincoln, Marinette, Menominee, Oconto, Oneida, Pepin, Pierce, Polk, Price, Rusk, St. Croix, Sawyer, Taylor, Vilas and Washburn.}

Although this area contains many of the most sparsely populated counties in the state and is generally conceded to be distressed economically, this has not always been true. After opening to settlement in the middle of the 19th century, economic opportunities, particularly in logging and mining, drew a heavy influx of immigrants to the area. Following the turn of the century, the population grew rapidly, reaching its peak around 1940.

With the decline of the lumber and mining industries, the area has become one of decreasing commercial activity in relation to the rest of the state. Although agriculture is now a predominant feature in the living pattern of the people in this area, the number of persons employed in farming has declined dramatically. Between 1940 and 1960 the total farm population dropped 55 percent, with the sharpest decline in farm laborers.\footnote{4 University of Wisconsin, Madison Department of Rural Sociology, 6.}

Based on 1959 income figures, the median income for the area is approximately $3,000 per family. Thirty percent of the families...
live on less than $3,000 annually and 17 percent of this group, or 21,462 families, live on less than $2,000 annually.¹⁴

**LEGAL ASSISTANCE UNDER JUDICARE**

On July 15, 1966 forty-five days after Judicare was funded, the first application for legal assistance was processed in Iron County, Wisconsin. Eligibility under the program was based on a means test adopted by the Judicare board.¹⁵

Applications for eligibility certification are made to the Community Action Program representative designated in each county, or the county welfare director. Each person certified for the program receives a wallet-size card.¹⁶ With the card, the applicant may obtain legal services in his county or an adjoining Judicare county. The Judicare board at its first meeting recognized that "... the denial of a Judicare card by a welfare agency or a CAP representative may serve to be a severe hardship on the applicant without a process of appeal..." and consequently adopted an appeal procedure by resolution.¹⁷

Under the Judicare program, the individual receives legal services in the traditional attorney-client pattern. There are 365 attorneys available to provide legal services in the 26 Judicare counties.¹⁸ Criminal cases, legal matters for which assistance is already available, and all matters capable of generating their own fees are excluded under the program.¹⁹

After an initial conference with a client, the attorney is required to submit a notice of retainer to the Judicare office within seven

¹⁴ 1 U.S. CENSUS OF POPULATION § 51 (1960).

¹⁵ Under the Judicare eligibility criteria, a single person who earns annually less than $2,080 qualifies for benefits. A family of four may annually earn up to $4,160; a family of seven may earn up to $6,030. For persons living on a farm, the preceding figures are reduced by 30 percent to adjust for lower food costs and rent, or no rent at all.

¹⁶ The card is of double value to the attorney. Presentation of an active card to him is authorization for him to provide services for the cardholder. In addition, the reverse of the card contains a place for the attorney's signature and date of the initial conference. From this information an attorney can identify clients who are "shopping" for legal services.

¹⁷ Resolution III, Judicare Board.

¹⁸ Within the Judicare area there are 365 attorneys serving 494,622 persons, or one attorney for every 1,355 persons. Another 57 attorneys from Eau Claire county must be added to reflect the February, 1968 expansion.

¹⁹ As a result of a 1967 amendment to the Economic Opportunity Act, OEO notified all Legal Services Programs, including Wisconsin Judicare, that after March 1, 1968 legal assistance could no longer be given in misde-meanor offenses.
days. The notice permits Judicare to check the client's eligibility and notify the attorney if the matter on which he is giving counsel is not covered by Judicare.\textsuperscript{20} The attorney is paid $5.00 for the initial conference, even if no further action is taken.\textsuperscript{21} When the attorney renders services beyond the initial conference, the $5.00 fee is deducted from his final payment. Under the program, provision is made for reimbursement for costs incidental to litigation.\textsuperscript{22}

Once the attorney has completed work, he submits a request for final payment to the Judicare office. In his request he outlines in detail the services rendered and the time spent on the case. During the first year of the program, the attorney was paid on the basis of $16.00 per hour or 80 percent of the then existing minimum bar fee schedule, whichever was less. It soon became apparent that this arrangement had two serious defects:

1. The experienced and efficient attorney paid on an hourly basis received less compensation than the inexperienced attorney who required more time to complete a case.

2. The minimum bar fee schedule was not intended as a guide for maximum fees, and consequently was silent in many areas covered by the program.

As a result, the Judicare board revised the payment method under the program. Attorneys' fees are now computed on the basis of $16.00 per hour for office time, $20.00 per hour for court time; or, in certain cases, a flat fee is paid.\textsuperscript{23}

As originally requested by OEO, the Judicare board\textsuperscript{24} retained the per case and per year maximums in the payment revision. Under the program no one attorney may receive more than $300.00 per case, nor may he receive more than $3,000 in any one year from

\textsuperscript{20} When a notice of retainer is received, a reserve fund equal to the estimated cost of the legal service to be provided is set aside.

\textsuperscript{21} Surveys conducted by Judicare office reveal that many conferences are held for which the attorneys do not bill.

\textsuperscript{22} "In addition to legal fees, Judicare will pay for necessary expenses incident to litigation. However, all costs other than filing fees and service fees must receive prior approval by the Judicare office." Schedule of Attorney's Fees and Costs in Judicare Matters, Part I, § D.

\textsuperscript{23} Resolution VI, Judicare Board.

\textsuperscript{24} The Judicare Board of 34 is made up of: attorneys who are presidents of the 13 local bar associations in the Judicare area; four attorneys are members of the State Bar Board of Governors; two members of the State Bar Legal Aid Committee; one representative of each of the CAP organizations in the Judicare area; seven representatives of groups and residents of the area served; and the Judicare Director and Counsel.
the program. Exceptions to these requirements have always been possible, subject to prior approval from the Judicare office and upon a showing of good cause. Exceptions are considered on a case by case basis.\textsuperscript{25}

Final bills are submitted on completion of work. The bills are processed and paid semi-monthly. Any bills which do not comply with the established fee schedule are adjusted by the Judicare office. The attorney may appeal to the Judicare board if his request for payment is fully or partially denied.\textsuperscript{26}

The cost of administering the service portion of the program is approximately 5 percent of the total budget. Legal assistance could be expanded to many more counties with little or no change in the administrative cost.

**Judicare Staff**

The Judicare staff consists of an attorney-director, an administrative assistant, two attorneys, a bookkeeper, and one and one-half secretaries along with one or two part-time law students.\textsuperscript{27} The office is located in Madison, Wisconsin, the state capital. Madison provides quick access to the University of Wisconsin Law School and its library, the Supreme Court and its library, the legislature, and the offices of the State Bar of Wisconsin.

**The Judicare Board**

Although the State Bar of Wisconsin is the grantee of the funds allocated by OEO to the program, the program is governed by a board of 34 members. The members represent attorneys practicing in the area served by the program, community action agencies, and persons who qualify for legal services under the program. As representatives of the local community, the board conveys the needs of the community to the Judicare staff. The board is a policy making group responsible for establishing the program’s operating guidelines.

In addition to policy making duties, the board is available to

\textsuperscript{25} If prior approval is received from the Judicare office or Board, the $300 and $3,000 limits may be waived. The $3,000 limitation will be waived if enforcement would produce a hardship on the low income persons.\textsuperscript{26} Since the Board has been established, no office administrative decision has been appealed.\textsuperscript{27} An attorney-deputy director, joined the Judicare staff on March 18, 1968. He is primarily responsible for supervising appellate and research matters.
protect clients and attorneys from arbitrary administrative decisions by providing appeal procedures.

The full Judicare board meets monthly, or as often as necessary. The board created an executive committee to act on its behalf between meetings on matters of urgency, subject to the board's approval at its next regular meeting.

**JUDICARE IN THE CORRECTIONAL INSTITUTIONS**

Soon after Judicare began operation, numerous requests were received for civil legal assistance from inmates in the state correctional institutions. In addition, the office received many referrals from the governor, the Wisconsin Attorney General, the Division of Corrections, and other groups and agencies hopeful that Judicare could provide inmates with legal assistance in civil matters.

The inmate's letters followed a general pattern: "I'm being sued." "My parental rights are being terminated." "A foreclosure proceeding has been started." "I have no money. I need an attorney to protect my interests."

After a brief study by the Judicare office, it was concluded:

(1) A definite need for legal aid assistance in civil matters existed in the state correctional institutions,

(2) Legal assistance would undoubtedly aid in the overall rehabilitation of inmates, and

(3) This service could be given by using the existing office staff and funds.

Upon recommendation of the director, the Judicare board approved a request for extension of legal services to the correctional institutions. On December 22, 1966, OEO gave its approval to this expansion.

After making necessary arrangements for processing applications and familiarizing institution social workers with the scope of legal

---

26 Wisconsin correctional institutions consist of three maximum security adult institutions, eight adult forestry-conservation camps, and four juvenile institutions. As of January 31, 1968, the population of these institutions was 3,502. Information obtained March 13, 1968, from Maurice Hubble, Department of Corrections.

29 Sanger Powers, director of the Wisconsin Division of Corrections, stated, December, 1966, that "There is no doubt in my mind that a legal service program such as Judicare will aid the rehabilitation efforts of our present system." Letter to the Judicare office.
assistance available under Judicare, a program was established for a staff attorney to visit the state correctional institutions on a regular schedule. In formulating the program, every effort was made to preserve the Judicare concept of maintaining the traditional attorney-client relationship.

Requests for Judicare services are processed by institution social workers using the normal Judicare eligibility criteria. Judicare staff counsel visits each institution on a regular basis, interviewing each inmate requesting services. If legal assistance is needed, the inmate may select an attorney of his choice. The inmate may choose an attorney from his home county, or from the county in which the legal problem will be resolved. Since the inmate is not at liberty to visit his attorney, the Judicare office contacts the selected attorney. If the attorney agrees to represent the inmate, he is provided with information designed to familiarize him with Judicare.

Once the attorney accepts the inmate as a client, he represents him in the same manner as any other paying client. The Judicare office will provide assistance to the attorney through scheduled visits to the institutions. However, the attorney is not required to

---

30 A meeting was held in Fond du Lac, Wisconsin, January 19, for arrangement of final preparations for the correctional assistance project. Present, in addition to members of the Judicare staff, were the Director of the Division of Corrections, the Chief of the Institutional Services, social service directors, workers from each correctional institution, and parole and probation officers. Each social service director was given a packet containing: Judicare applications, a booklet explaining the means test, a visitation schedule of the Judicare counsel, brochures on Judicare, and an explanatory sheet for distribution to eligible Judicare inmates. At the end of the meeting, machinery for the program was set in motion. The first visit to an institution was made on January 27, 1967.

31 Information about Wisconsin Judicare services is contained with informational materials given all persons entering the correctional reception centers. At the inmate's request, a social worker at the institution will issue a Judicare identification number to the qualifying inmate. The inmate continues under the program during his term in the state correctional institutions. His eligibility terminates at the time of his release. However, it may be renewed should he again enter an institution as an indigent.

Requests to see a Judicare attorney are made by the inmate to an institution's social service department. These requests are sent to the Judicare office on a request for initial conference form. The form gives a brief background of the inmate and the nature of his problem.

However, if the inmate feels that for some reason he cannot bring his problem to the attention of a social worker, he may contact Judicare directly. Such correspondence is treated by the institutions as privileged attorney-client mail.

32 The packet contains an introductory letter explaining Judicare's role, a copy of the Attorney's Fees and Costs in Judicare Matters schedule, final billing forms, and a copy of the institutional interview form completed by the staff attorney.
avail himself of these services. The program pays for one visit by the attorney to his client at the institution. Arrangements have been made between the Judicare office and the Division of Corrections to transport the inmate to court for necessary appearances.

Upon completion of the case, the attorney bills Judicare in the same manner as any other attorney representing a client under the program. The bill is processed and paid under the same procedure and schedule used in regular Judicare cases.

Occasionally the initial conference held by the staff attorney discloses no legal problem, or a problem in an area not serviced by Judicare. The staff attorney, however, will see that an inmate's criminal problems are brought to the attention of the State Appellate Public Defender's office, and problems regarding visits by the inmate's children, or requests for a clemency hearing, will be forwarded to a private social welfare agency, such as the Wisconsin Correctional Service. If the client's problem involves legal action in another state, the staff attorney will make arrangements for assistance with a legal aid office in the appropriate state.

Judicare also participates in the pre-release program of the Division of Corrections. Each month a staff attorney speaks to inmates scheduled to be paroled to aid in preparing them for their return to the community. Most of the counselling contributed by Judicare concerns daily financial problems faced by an individual, such as support payments, accumulated bills, and garnishments. In addition, the participating staff attorney describes the various legal assistance programs presently available to the inmate on his return to the community.

LEGISLATIVE REFORM

In its role of providing legal assistance, Judicare is interested in laws affecting problems of the poor. During the past 20 months, the Judicare office has explored several areas of the law to determine where changes may be required. The Judicare program proposed and supported several changes in the law based on the experience of private Judicare attorneys and staff legal researchers.

33 At the institution the staff attorney may assist the Judicare attorney by obtaining statements, signatures on documents, notarize pleadings and other documents, and arrange for necessary medical tests.
34 See note 23.
35 The Judicare Director is a lobbyist registered with the Wisconsin Secretary of State.
In 1967, Judicare was instrumental in the passage of an expansion of *in forma pauperis* codification in Wisconsin. The legislation was drafted by a staff attorney and introduced in the State Assembly at the request of Judicare.\(^{36}\) As enacted, the legislation permits a poor person to begin an action without paying service or filing fees.\(^{37}\) Where a portion of available money was formerly used to pay costs, as under Judicare, the effect of the legislation will be to make possible a proportional increase in representation.

Consumer protection is of particular interest to Judicare as it is a matter of great significance to the low income consumer.\(^{38}\) Early last year, the Judicare office researched various aspects of usury and consumer fraud practices victimizing Wisconsin's poor. This study resulted in Judicare supporting six separate consumer protection bills then before the state legislature:

1. To create an advisory committee appointed by the Governor to keep his office informed on matters affecting consumers and to recommend legislation.

2. To provide the public with protection against fraudulent advertising.

3. To require a cooling-off period before house to house contracts become effective.

4. To regulate home improvement installment contracts.

5. To enumerate what constitutes an unfair trade practice and create a consumer protection act authorizing the Attorney General or the District Attorney to prosecute violations.

6. To require that interest rates of retail installment sales agreements and revolving credit agreements be disclosed.\(^{39}\)

---

\(^{36}\) The sponsors of Assembly Bill 202 in the State Senate (Senators Lurigian, Risser, Cirilli, and Schreiber) and in the State Assembly (N.C. Anderson, G. K. Anderson, Huber, and Belting) were obtained through the efforts of the Judicare office.


\(^{38}\) The fact with which the Consumer Affairs Office had to deal was summed up in the report of the four regional conferences held during the first year of operation: "Those with the fewest dollars to spend have the least ability for spending those dollars wisely." THE PRESIDENT'S COMMITTEE ON CONSUMER INTERESTS, 1967, 0-258-971.

\(^{39}\) Senate Bills 158-163 (1967) introduced by the Wisconsin Attorney General Bronson La Follette.
The Judicare office also appeared before the Wisconsin Department of Agriculture in support of administrative rules designed to protect the consumer from high pressure sales tactics and over pricing being used in deceptive and misleading freezer meat and food service plans. More recently, a member of the staff appeared before the Department to oppose an effort by the industry to repeal the recently adopted regulations.

Judicare has also taken a position on the proposed changes to the Wisconsin Children's Code. In the interim between the 1965 and 1967 legislative sessions, a study committee reviewed the Children's Code. The committee's recommended changes were introduced in the Wisconsin legislature as Assembly Bill 2 during January of 1967. Although many changes carried out the mandate of the subsequent Gault decision, Judicare opposed the new code because it:

1. Deleted the right of a juvenile to a trial by jury,
2. Accepted the incarceration of juveniles in adult penal institutions,
3. Continued and codified the use of administrative proceedings to transfer juveniles from a juvenile institution to an adult penal institution,
4. Limited judicial review of this administrative decision to the Wisconsin Supreme Court, the highest Wisconsin appellate court. This review would determine only if the administrative body had acted arbitrarily.
5. Provided that the committing court would have continuing jurisdiction over the child, but that only the Department of Health and Social Services could seek a modification of the committing court's order.

**Judicial Reform**

As stated earlier, authorization can be given under Judicare to appeal cases that will affect low income persons as a group. As

---

40 Judicare appeared at the January 12, 1968, public hearing to consider proposals contained in the petition of National Discount of Madison, Inc., for amendment of Wis. Adm. Code sections Ag 109.03(4) (a), (b) and (c).
41 *In re Gault* 387 U.S. 1, (1967).
42 Judicare appeared before legislative counsel on December 5, 1967, in opposition to Assembly Bill 2, the proposed juvenile code. Assembly Bill 2 has been referred to the committee on judiciary.
43 See note 26.
of this date, several matters have been appealed and others are in the process of being appealed.

**Juvenile Cases**

One of the first appeals arose from the *Gault* decision. Learning of the decision, several juveniles sought assistance in obtaining counsel. Interviews between the inmates and Judicare staff attorneys revealed that 90 percent of the juveniles contacted were in an adult penal institution as a result of an administrative transfer, and had not been represented by an attorney at any stage of their case.

The Judicare program was unable to assist inmates by petitioning the court for a writ of habeas corpus, even though the writ is a quasi civil remedy. The remedy was specifically excluded from the services provided by the program in the correctional institutions. Staff attorneys, therefore, prepared petitions requesting the court to appoint private counsel to assist the juvenile in pursuing his post-commitment remedy. The staff attorneys also prepared supporting affidavits to advise the court of the inmate's indigency. The affidavit further stated that the inmate had not been notified of, or provided with, counsel at his commitment hearing. The petitions and affidavits were presented to the court by staff counsel.  

On the basis of writs prepared by court appointed counsel, a test case was set for oral argument before the Circuit Court for Brown County, Wisconsin. Attorneys for petitioner, including Judicare counsel acting as amicus curiae, argued that commitments of the juveniles should have been vacated and that the juveniles should have been released from custody. This would have placed the burden of commencing further proceedings against the juveniles on the State.

The attorney general’s office conceded the error and agreed that the commitments should have been vacated, but insisted that the court should then remand the juvenile inmate to the committing jurisdiction for further proceedings. The court, after hearing arguments, ordered the commitments vacated and the juveniles released from custody. As a result, the attorney general’s office

---

44 Judicare staff attorneys met with Judges Gleason and Rohr, Circuit Court Judges in Brown County, in October, 1967, to determine the most efficient procedures to be used in processing a petition for counsel.

45 State *ex rel.* Valentine DeLeon v. Michel Skaff; State *ex rel.* Forrest Dahlberg v. Michel Skaff; State *ex rel.* Dennis Leith v. Michel Skaff; State *ex rel.* Jeffrey Dobratz v. Michel Skaff, Brown County Circuit Court, Wisconsin, August 24, 1967.
sought a temporary writ of prohibition from the Wisconsin Supreme Court, staying the order of the Circuit Court for Brown County pending appeal. In response, Judicare filed a brief amicus curiae opposing the granting of the writ of prohibition. The brief stated that:

(1) The writ would affect a whole class and not just those juveniles having representation, and

(2) By limiting the remedy under the writ of prohibition, the writ of habeas corpus was suspended because juveniles could not obtain complete release from an illegal detention.

On September 18, 1967, the Supreme Court granted the temporary writ of prohibition pending appeal.\(^46\) Judicare viewed the granting of this writ as negating effective remedy in the Wisconsin courts. Permission was requested from and granted by OEO to begin test cases in the Wisconsin federal district courts on behalf of the juveniles.

While several petitions for writs of habeas corpus were pending in both Wisconsin's Eastern and Western Federal District Courts, the Wisconsin Supreme Court, on appeal, reversed the decision of the Brown County Circuit Court.\(^47\) In its opinion, the Supreme Court carefully spelled out the procedure to be followed on remand of juveniles to the committing jurisdictions.\(^48\) Consequently, the pending federal cases were dismissed and the petitions for appointment of counsel were processed in state courts.

Through March 1, 1968, Judicare staff counsel have met individually with 298 juveniles incarcerated in five state institutions. Each interview has included an analysis of the particular juvenile's case and his available post commitment remedies. As a result of these interviews, Judicare staff counsel have filed affidavits and

\(^{46}\) September 8, 1967, Order of the Wisconsin Supreme Court: "FURTHER ORDERED that the respondents be and they are hereby restrained until the further order of this Court from discharging the petitioners in the cases of... and all other habeas corpus petitions presenting like issues. This order shall not, however, restrain the respondents from remanding the said petitioners to the juvenile court where the original proceedings were commenced for further proceedings consistent with law.

\(^{47}\) The temporary writ of prohibition granted earlier suspending habeas corpus release for juveniles confined in Wisconsin penal institutions was vacated at this time.

\(^{48}\) State ex rel. La Follette v. Circuit Court for Brown County 37 Wis. 2d. 329,_______N.W. 2d.______.
petitions for appointment on behalf of 159 juveniles. Of these, 141 were filed on behalf of juveniles at the Wisconsin State Reformatory, Green Bay, Wisconsin. To date, 134 attorneys were appointed to represent juveniles at the reformatory, and 82 juveniles have been remanded to their committing jurisdictions. As of March 1, 1968, only 12\(^{49}\) of these 82 juveniles have been recommitted to the institutions.\(^{50}\)

**PUBLIC LAW 280 AND INDIAN LANDS**

Another appellate matter involves most of the 10,000 reservation Indians living in the Judicare area. Numerous individual Indians have received legal assistance under the Judicare program. To keep Judicare abreast of the problems of reservation Indians, a member of the staff attends the monthly meetings of the Great Lakes Inter-Tribal Council.\(^{51}\)

At one of these meetings, members of the Council told of being arrested for hunting, fishing, or trapping on their reservation lands,

\(^{49}\) Records available at the Wisconsin State Reformatory show that of these 82; 13 have been recommitted, 17 have been discharged and the remaining 52 are unaccounted for. Available information indicates that this unaccounted for group consists primarily of individuals who were merely released by their committing jurisdictions without any judicial determination on their petitions of delinquency and hence no final orders are entered.

Since staff counsel interviewed 298 juveniles but only filed 162 petitions and affidavits, this left 136 cases in which no action was taken. This group contains generally the following people:

a) Juveniles originally incarcerated in or subsequently transferred to the Wisconsin Correctional Institution, Fox Lake, Wisconsin, where a direct referral arrangement was worked out at the request of the circuit court judge;

b) Juveniles who were paroled or whose sentences expired during the period of the Supreme Courts moratorium;

c) Juveniles who preferred to take parole rather than face the uncertainty of remand;

d) Juveniles who had been represented by counsel at the original commitment proceedings and the commitment met basically the requirements of Gault.

\(^{50}\) A “temporary” dormitory at the state prison at Waupun, opened more than 15 years ago to house an overflow of prisoners, will be closed this spring. This will be one of the benefits of a smaller than anticipated prisoner population in Wisconsin, Sanger B. Powers, administrator of the state corrections division, told the board of health and social services Wednesday. Powers attributed the prisoner decline to high employment, the Vietnam war and a United States supreme court decision giving juveniles accused of delinquency the right to attorneys. About 125 juvenile prisoners at the reformatory have obtained release because of the decision, Powers said. The Milwaukee Journal, March 28, 1968.

\(^{51}\) An OEO financed corporation composed of ten tribes in Wisconsin, Winnebagoes, St. Croix, Bad River, Sokaogons (Mole Lake), Oneida, Stockbridge Mussee, Red Cliff, Lac Courte Oreilles, Forest County Fotowatomies and Lac du Flambeau.

Public Law 280\textsuperscript{52}, passed in 1953, gave the state the right to exercise jurisdiction over criminal offenses on Indian lands. Wisconsin Attorney General George Thompson ruled in a 1964 formal opinion that Public Law 280 also gave the state authority to enforce conservation laws on Indian lands.\textsuperscript{53} He was succeeded in 1965 by Attorney General Bronson C. La Follette who disagreed with the former attorney general's opinion and so advised the Wisconsin Conservation Department by memorandum.\textsuperscript{54} Because the memorandum lacked the force of a formal opinion, the department continued to enforce state conservation laws on Indian lands.

Subsequently, the Great Lakes Inter-Tribal Council requested Wisconsin Judicare and the State Bar of Wisconsin to ask the Attorney General for a formal opinion on Public Law 280 and its application to their hunting, fishing, and trapping rights.\textsuperscript{55} On January 23, 1967, a formal opinion was issued reaffirming the earlier informal opinion.\textsuperscript{56} Following the attorney general's formal opinion, the affected Indian tribes wrote their own conservation laws with the assistance of Judicare counsel.

For a time there was a brief moratorium on arrests for state conservation law violations on reservation lands. More recently, the Wisconsin Conservation Department has resumed arrests for state game law violations in localities where the District Attorney and the courts were amenable to prosecutions.

At the December 9, 1967 Great Lakes Inter-Tribal Council meeting, a resolution was passed authorizing Judicare to seek relief through a federal court declaratory judgment and injunction proceeding. Subsequently, eight of the ten member tribes adopted affirmative resolutions requesting this declaratory relief. Filing of the matter in court is imminent.

\textsuperscript{52} 18 U.S.C. § 1162 (1953).
\textsuperscript{53} 53 OAG 222, issued on December 30, 1964.
\textsuperscript{54} Letter to L. P. Voigt, director State Conservation Department, March 23, 1966.
\textsuperscript{55} Letter to Attorney General Bronson La Follette, September 15, 1966.
\textsuperscript{56} Wisconsin Opinion of Attorney General, 1967.
Administrative Appeals

Judicare is also processing several appeals of administrative decisions. One such appeal presently before the Wisconsin Supreme Court involves the Wisconsin Department of Health and Social Services. In this case, the Judicare client was denied AFDC payments because she refused remunerative employment. The client maintains that her children and her elderly, incapacitated mother require her attention at home. Her position is supported by the testimony of a close friend and her minister.

The department concedes the family may require a baby sitter and a nurse while the client is at work. The department, however, insists that the client must enter the labor market at this time as her age will make it more difficult at a later date. In addition, the department also shows concern over the affect unemployment will have on the client's future social security benefits and plans for retirement.

After conferring with the attorney that represented the client before the Wisconsin Department of Health and Social Services, it was decided to appeal the department's decision for the following reasons:

(1) To establish a right to court review (The Wisconsin attorney general's office takes the position that an appeal from a welfare department decision is discretionary with the court. As the present case is the first welfare appeal in the Wisconsin Supreme Court, the question is unanswered.)

(2) To establish that, if judicial review is a matter of right, the standard for review is more broad than under a writ of certiorari.

(3) To define the basis on which the welfare department may deny AFDC payments to a mother.

Research for the Attorney

In addition to doing research to determine the need for change, projects are also undertaken to assist Judicare attorneys. This permits the local attorney to benefit from previous work on a specific subject and to avoid costly duplication of efforts. A monthly JUDICARE

NEWSLETTER, mailed to each attorney in the Judicare area, outlines the topics currently under consideration by the research staff.

Detailed memoranda of the research have been mimeographed and are available to an individual on request. Assistance is also offered in the preparation of briefs. As the files on research and briefs continue to grow, the help to the private attorney will also grow.

Seminars for the Attorney

The Judicare office also sponsors and conducts seminars for attorneys and other interested persons. The first seminars were held in the summer of 1966 at four conveniently located communities in the Judicare area. The purpose of these seminars was to inform attorneys and community leaders of the services available under Wisconsin Judicare.

A second series of seminars, held in October, 1966, was specifically directed to the legal profession. Again, the seminars were held in four Judicare communities. The purpose of the seminars was to inform private attorneys of the latest developments in those areas of the law most frequently encountered by persons of low income. Speakers were prominent attorneys who are recognized specialists on their lecture subjects. All speakers donated their time and were reimbursed only for expenses.

Preparations are under way for a third series of seminars designed to update the attorneys in the Judicare area.

Publications

Each month a JUDICARE NEWSLETTER is mailed to over 600 persons. In addition to summarizing current Judicare projects, the NEWSLETTER keeps readers informed of current events affecting the Judicare program, developments in the OEO Legal Services Program, and announces future Judicare board meetings.

Community Education

Authorities have commented on the importance of basic legal

---

56 Jeffries, James J. (Consumer Law); Hogan, Mitchell W. (Welfare Law); Mentkowski, Charles W. (Juvenile Law); Shellow, James (Commercial Law); McBain, Wallace A. (Property Law).

59 51 A.B.A.J. 460; NATIONAL CONFERENCE ON LAW AND POVERTY 9, (1965).
education for persons of low income. Last year an OEO publication summed up the problem:

When a middle class person is faced with a legal problem, he can cope with it because he understands the law and has easy access to a lawyer. The poor man usually cannot cope with the problem. Such difficulties can throw his life into a turmoil with long term consequences. He doesn't know the law has a remedy for him.  

Realizing the importance of an informed public, efforts have been made to educate all concerned on what legal assistance can do for them. The Judicare office has accepted every opportunity to speak about the program.

During the first months, representatives of the office met with such groups as the Conference on Elderly Citizens, the Milwaukee Legal Aid Society, the Marquette Law School Community Action Agency, the Dane County Judges, the State Bar, the Department of Agriculture, the Governor's Commission on Human Rights, and the Department of Public Welfare since renamed the Department of Health and Social Services. At these meetings, Judicare services were described and brochures distributed.

The meetings with the community action agencies and the Department of Health and Social Services, arrangements were made for the enrollment of Judicare applicants. The Department of Agriculture also agreed to have county agents distribute literature to farmers in the state and to write radio releases on Judicare. One result of this Department of Agriculture support is that Judicare now represents a number of farmers in the OEO Livestock Management and Marketing Cooperative—a farm organization in 13 of the Judicare counties.

In addition, much assistance has been received from the Law School and the Department of Agriculture Journalism at the University of Wisconsin, Madison. The Agricultural Journalism Department gave assistance in editing brochures, writing press releases, and mimeographing informational bulletins. Help was received from various members of the University Law School in arranging conferences and planning administrative forms.

---

61 Letter Judicare administrative assistant on February 19, 1968, by Paul Schink, General Manager LM&M.
Judicare received attention in both the national and state press. In addition, the Director was interviewed on the statewide University educational radio station and on a Madison Sunday news television program.

In March, 1967, Wisconsin Judicare organized a community education program covering the entire Judicare area. As the stated objective of the educational project was to alert the poor to the existence of the Judicare program, the project was named "Judicare Alert."

To realize the goal of reaching the maximum number of individuals with Judicare information, it was decided to employ an individual contact campaign. To achieve maximum community acceptance of the information to be distributed, local "Judicare Alert workers" were hired from among those eligible to receive Judicare assistance in each county in the Judicare area.

A one week training session for the workers was planned with the cooperation of the state OEO directory, the University of Wisconsin Center for Action on Poverty, and representatives of the CAA in the Judicare area. This training session was held in Wausau, Wisconsin—a city in the center of the state and easily accessible to persons in northern Wisconsin. The purpose of the training program was stated in its proposal:

We hope and believe the trainees will return to their communities knowledgeable about Judicare, having sufficient information to spot the existence of a legal problem and able to reach and notify the poor living in northern Wisconsin of the services available under Wisconsin Judicare. Authorities in areas of the law and social problems facing persons of low income volunteered to present topics and lead discussions. Among the speakers were the state director of OEO, the State Public Defender, the Deputy Attorney General, an assistant attorney general, professors from the University of Wisconsin Law School and the School of Social Work, a legislative advisor and assistants from the OEO Center for Action on Poverty, and practicing Wisconsin

---

63 Judicare Progress Report, December, 1966, Appendix 3. The Judicare Alert was funded by a separate grant of $36,202 by OEO. After the Alert was over, $2,739.69 of this was returned by Judicare to OEO.
attorneys. Topics discussed covered effects of law income on families, property, probate, and landlord-tenant problems, rights of criminal defendants and juvenile offenders, a 10-point buying guide for consumers, understanding causes of low income, domestic relations problems, welfare law and the citizen's right to welfare services, Judicare assistance, and completion of Judicare interview materials.

Each worker trainee was given a folder which contained information on other OEO programs (VISTA, Job Corps, Headstart, etc.), a brief description of the Wisconsin Homestead Tax Relief Act and tax planning information supplied by the Governor's Commission on Ageing, a Workmen's Compensation brochure supplied by the Wisconsin Industrial Commission. Also, each trainee was given a wallet folder containing a supply of Judicare applications, Judicare cards, and interview forms.

When in the field, the Judicare Alert workers were very well received. After completion of the project, two of the workers summed up the feelings of the group:

We have gotten very good reception. There [were] a few, well, they don't seem to understand Judicare, and some of them think it is only for people over 65. . .they didn't read the brochures that we get.

We met in Washburn county seat, and our welfare director was very cooperative. . .I had some very fine experience up among the Indians, and I was surprised when I got up there to find that there were several Judicare cards issued up there.

Judicare Alert workers contacted over 9,600 persons in the 26 counties. As a result, applications for legal assistance increased by 163 percent the month following the Alert.

JUDICARE AND WEST VIRGINIA

Some of the conclusions reached by studies submitted at this conference revealed an attempt to perpetuate certain myths about Judicare. It is unfortunate that people who hold themselves out as scholars are content to evaluate and compare the Judicare program on the basis of a brief letter, a phone call to the Deputy Director, and two pamphlets distributed in large quantities to publicize the program.64 It is all the more regrettable when this article is cited

64 M. CORSI, JOURNAL OF URBAN LAW, 483-502.
as an authority on the subject. Experience in Wisconsin has shown that the following generalizations about Judicare are simply myths:

* Clients cannot find private attorneys.
* Clients are reluctant to use private attorneys and have no confidence in them.
* Private attorneys lack sufficient expertise to handle the clients' problems.
* Private attorneys do not serve Judicare clients promptly and courteously.
* The work of private attorneys cannot be successfully coordinated.
* Private attorneys are unwilling to represent the poor client.
* The poor client is unable to make an effective choice of counsel.
* Private attorneys do not spend sufficient time with the poor.
* The program is too costly.
* The program is not effective in helping the poor through law reform.
* The program cannot familiarize the poor with the services it provides.
* The program spawns a higher rate of divorce than OEO Neighborhood Legal Aid offices.

Accomplishments of Wisconsin Judicare

The Judicare area is a part of the regular Wisconsin court system, consisting of a supreme court, circuit courts, county courts, municipal justices of the peace, and constitutional justices of the peace. Under the Court Reorganization Act of 1962, special statutory courts were abolished and the county court was re-established with uniform jurisdiction and procedure throughout the state. The Office of Court Administrator was also created under this act to assist the Chief Justice of the Supreme Court in re-assigning court work to alleviate congestion. As a result, Wisconsin has a court system with little or no congestion and consequently little or no delay.

In addition to an uncongested court system, there are 365 attorneys available to the Judicare client, or one attorney for every 1,355 persons in the 26 counties. These attorneys are represented by

66 25 LEGAL AID BRIEFCASE, 12.
12 county bar associations which have given the Judicare program full cooperation.

From the beginning of the Judicare program in June of 1966, through February of this year, 4,245 persons have applied for legal assistance under the program. During this same period, 1,805 cases have been completed by 317 attorneys. Of the 1,805 completed cases 54 percent involved litigation and 86 percent were resolved to the Judicare attorneys spend an average "to the satisfaction of the clients" of 5.3 hours on each of the completed cases and there is evidence that the attorneys are not billing the program for all the time they spend with their clients.68

The types of problems handled under the Judicare program are similar to those which are found in any legal services program.69 The Volume that Milwaukee Legal Aid, Inc. handles in the domestic relations area is within 2 percent of the volume handled by the Judicare program. The Judicare program could artificially exclude divorce or bankruptcy from its program by making demands that cannot be met by the client. Philadelphia Legal Services (OBO), for example, requires the client to personally pay $215 in costs before an action for divorce will be initiated. In New York, where a high percentage of divorce actions would require notice by publication, the client must pay $400 in publication fees before an action will be started.70

Cost of Judicare

The cost of providing legal assistance to an area of 24,000 square miles with a population of one-half million persons has been approximately 50c per capita. This figure could be reduced to 30c per capita if the program were administered on a state wide basis.

If one neighborhood law office was established in each of the 26

67 In many of the cases such as bankruptcy, support, custody, divorce, it is unreasonable to define the case as a win or loss and conclusion must be related with objective sought by client.


69 25 Legal Aid Briefcase, 95. While it has been suggested that certain selected neighborhood law offices have a combined average case load of less than 30 percent dealing with domestic relations, this conveniently ignores the figure of 42 percent given in the 1965 report by the NLDA. Statistics available in a study prepared by Emery A. Brownell also show that domestic relation cases make up 74 percent of the cases in Dallas, 65 percent in San Rafael, 75 percent in Salt Lake City, 63 percent in Miami, 52 percent in Milwaukee, and 75 percent in Honolulu.

70 In New York State if service cannot be obtained personally, service of process is accomplished by publication which requires four inserts in two different newspapers. The cost of publication is $300-$400 per case. The cost cannot be waived, but must be paid by the client.
counties in the Judicare area at a minimal cost of $20,00071 such a program would cost twice as much as Judicare, or $1.00 per person, and still not provide all the features found in the Judicare program.

Providing legal assistance to the poor cannot be accomplished adequately for less money. Further reductions in cost, either through Judicare or neighborhood law offices, may be made only by:

(1) Limiting the scope of services offered by the program, and/or

(2) Reducing the quality of the legal assistance rendered.

The inherent weakness in limiting the scope of services to reduce cost is that it takes from the poor the right to establish their own priority as to need. While it may be necessary where money is not available, it certainly is not "maximum feasible participation of the poor."72

Reducing the quality of legal assistance to give the appearance of lower cost is even more harmful to the poor, as they are led to believe that they are being adequately represented by counsel. In Milwaukee, a volume of 1,000 cases each month is handled by a staff of nine attorneys.73 In a recent issue of Briefcase, the Milwaukee neighborhood attorneys interviewed testified that, because of heavy case loads, they lack the time to generalize their experiences into permanent legal reforms. The neighborhood attorneys also observed that they might lack perspective because of their close proximity to their work and thus be blind to internal reforms that could be useful to the attainment of their ultimate goal.74 To overcome these difficulties, Milwaukee has obtained the volunatry services of several of the largest law firms located in downtown Milwaukee.75

Another practice found in Milwaukee is to pay an attorney $50 per day to represent all of the juveniles appearing that day in juvenile court. The volume each day is restricted by the court to 16 uncontested cases or eight contested cases. On the basis of an

71 The $20,000 figure is based on an estimate of the following expenses: $10,000 attorney; $4,500 secretary; $1,200 rent; $4,300 heat, electricity, telephone, office furniture and equipment, library acquisition, and library upkeep.
74 LEGAL AID BRIEFCASE, December, 1967, 85.
75 Id.
eight hour day, the attorney spends one-half hour with his client on uncontested matters and one hour on contested matters. The cost of providing counsel in an uncontested matter is $3.12 per case, and is $6.25 per case in contested matters.

**CONCLUSION**

Whether West Virginia decides to adopt a Judicare program is an internal decision for its attorneys and citizens. Hopefully, this decision will produce the best method to improve justice for all persons regardless of income. To accomplish this, however, it is important that preconceived notions be set aside. No one concept has all of the ingredients to dispel injustice; nor does any one person or group have exclusive jurisdiction over the concern for the sufferings of the poor. As Professor Marvin E. Frankel aptly stated "...any effort to limit our approach to traditional legal aid amounts to a declaration of war not on poverty but on competition."

---

76 51 A.B.A. J. 460.