CRIMINAL JUSTICE REFORM IN THE UNITED STATES, THE UNITED KINGDOM AND IRELAND
PRE-TRIAL DETENTION AND POST-CONVICTION ACCESS TO LEGAL REPRESENTATION

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ABSTRACT

Paulina Lopez: Criminal Justice Reform In the United States, the United Kingdom and Ireland
Pre-Trial Detention and Post-Conviction Access to Legal Representation
(Under the direction of Donald Searing)

There is a serious problem in the US, UK, and Ireland with both lengthy pre-trial detention, which is often used to persuade guilty pleas, and access to legal aid while incarcerated, which is a barrier for justice in cases with new and or untested exonerating evidence. Societal pressures contribute to a legislative and law-enforcement culture that values convictions over justice, and results in systemic corruption. While this is partially a political culture problem, it can certainly be ameliorated with targeted legislation. The hypothesis is that differences in these countries' laws contribute to lengthy pre-trial detention and limit inmates' access to legal aid. This research compares the relative situations of the three countries using quantitative data, considers literature regarding the effect of caseload pressure on these outcomes, compares the relevant legislation and implementation thereof, and draws out conclusions and recommendations, all with the aim of suggesting potential improvements.

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THE SIGNIFICANCE OF THESE ISSUES

Introduction

Criminal Justice reform in the United States has been a highly politicized concern, many aspects of which have been the subject of heated debate. In the US, judges and prosecutors are elected, campaigning on their high "success" rates as being tough on crime. Ireland also suffers from these political problems, as elected officials refuse to pass legislation acknowledging international human rights laws. The media has highlighted a multitude of cases illustrating egregious dysfunctionality in the system, largely due to lack of resources, negligence, or blatant disregard for due process and rights. Many of these systemic issues center around two key issue areas: pre-trial (and lengthy trial) detention and wrongful conviction. The United States, the United Kingdom and Ireland will be used in this comparative policy analysis. The United Kingdom and Ireland share similar historical and cultural roots in their systems, including the use of Barristers and Solicitors rather than one attorney for both the client and the court. However, it is the differences in their legislation and implementation that make them excellent comparative case studies. The United Kingdom has progressive bail laws which allow for time spent on house arrest and other limiting circumstances to be counted towards one's sentence. However, at the same time, it has passed legislative amendments to reduce access to legal aid while incarcerated. Ireland is an exemplary case study of what not to do. As the following data and analyses will show, Ireland maintains regressive laws and customs which make it next to

impossible for someone to seek legal representation while incarcerated or to redress any malpractice.

A striking example of systemic failures in pre-trial detention and trial lengths in the U.S. is the case of Kalief Browder, who was detained in Riker's Island for three years on suspicion of stealing a backpack (Gonnerman, 2014). While his trial was continually postponed, he suffered enduring physical punishments and pressure to plead guilty in order to be released, only to have the case finally be dismissed due to the lack of evidence against him (Gonnerman, 2014). It is difficult to measure detention resulting from continual postponement of trials, but pre-trial detention and trial lengths can be measured separately, providing an adequate picture of the situation. Wrongful conviction cases are also plentiful, with some data available. A recent example of such a case is that of Luis Vargas, who was convicted in 1999 of three rapes, based on victim's identification of a tattoo, which DNA testing has now shown to be the work of a "serial rapist" with a similar tattoo, who was active in the area at the time; Vargas was finally exonerated on the 23rd of November 2015, after serving sixteen years in prison (California Innocence Project, 2015; Associated Press, 2015). Wrongful convictions, unfortunately, are also difficult to measure, as they are only identified by exoneration; thus, the majority of such cases, which are still unresolved, are not included in any such exoneration figures. However, one can use the existing figures to make an estimate. A 2008 study, using data for the percentage of prisoners who were sentenced to death and then found innocent or exonerated in the 70's and 80's, estimated that even if only one percent of the "1.57 million prisoners" in custody at the end of 2012 were innocent, 15,700 innocent people would be incarcerated (Batts, 2014, p.3). Still, there is no way to arrive at exact figures. Additionally, the factors which may contribute to wrongful convictions, such as lack of resources for DNA testing or deliberate withholding of

evidence are not easily measured or confirmed. However, the rights, resources, and procedures for incarcerated persons seeking legal representation, or exoneration, as well as the factors which contribute to long pre-trial detention times, can be examined. In fact, these subjects have been studied, albeit sporadically and in limited cases, for decades.

The connection between plea bargaining and pretrial detention, to which this thesis has previously alluded, is that the later induces a strain on the defendant which catalyzes the former. A 1978 study on plea bargaining found "that plea bargaining is 'inevitable'" in lower-level courts (Wheeler & Wheeler, 1980, p.322). Supporting this retroactively, a 1975 study found "that judges were biased," assigning more cases to attorneys "who were disinclined to go to trial" and who charged "low fees" (Wheeler & Wheeler, 1980, p.322). How does this circle back to pretrial detention? In light of the studies mentioned above, Wheeler analyzed data from courts in Houston, Texas, and found "that pretrial detention was the most important predictor of prison disposition," being correlated more strongly than any other factor considered, including whether or not the defendant had any prior "conviction[s]" (Wheeler & Wheeler, 1980, p.330). The findings suggested that "bail decision[s]" effectively pre-sort defendants into two groups: those who will receive "probation," and those who will be "imprison[ed]" (Wheeler & Wheeler, 1980, p.330). This may be due to the fact that bail amounts and conditions are informed by the seriousness of the charge, locating the defendant on a criminality scale (Wheeler & Wheeler, 1980, p.330) independent of guilt or innocence. Such conditions discriminate against those who cannot afford to post bail (Wheeler & Wheeler, 1980, p.331). Wheeler concluded that, based on these results, any "policy" which aims to decrease "pretrial detention" would improve the "fairness" of case outcomes (Wheeler & Wheeler, 1980, p.330). The Wheelers specifically recommended a stronger "advocacy system" consisting of having a "legal defense" ready from

arrest, which is comprised of "independently assigned" council (Wheeler & Wheeler, 1980, p.330). They also advised being wary of reforms that only make the system more efficient without addressing its problems (Wheeler & Wheeler, 1980, p.332). In order to consider and evaluate reform measures, it is important to identify and support with evidence the factors that contribute to the problem.

This thesis will examine data and literature with regards to pre-trial detainment, judicial caseload, and legal budgets. It will compare the US, UK and Ireland in these issue areas. Quantitative data will be analyzed in conjunction with relevant legislation and existing studies detailing the requirements for and procedures surrounding the setting of bail, and limitations on access to legal representation while incarcerated (i.e. post-conviction). My goal is to identify which factors may be contributing to the problem, and identify changes which may ameliorate the situation. It is expected that there is a correlation between the budget for courts and legal aid and the two systemic failures of justice. That is to say, I expect that the countries with proportionally smaller judicial system budgets will have more problematic policies. A lack of funding leads to higher caseloads, which presumably delays trials. The funding data will be compared with the pre-trial detention information. As for the lack of recourse or barriers for recourse for the incarcerated is concerned, it is presumed that this may also be exacerbated by small budgets for forensic works, as well as, in some cases, by lack of legislation to provide such testing. The US has enacted legislation to remedy this budgetary problem, and appears to be exonerating more people based on DNA evidence than are the UK and Ireland, thereby supporting this hypothesis. The second hypothesis is that, given the vastly different patterns of detention and post-conviction access in our three countries, there will be notable differences in the legislation which structures the situations. At least some of these differences in legislation

should be related to the different outcomes in terms of the two issues of interest. This thesis will begin with a consideration of the literature, followed by a review of the available data, which supports the conclusions drawn from the literature. We will conclude with an analysis of the legislation which affects and is affected by the budgets in the data.

Existing Literature

Since the 1920's, there has been a scholarly debate over the extent to which pressure from high caseloads affects the handling of criminal cases (Nardulli, 1979, p.89). In fact, the earliest study of the subject, entitled "the Cleveland Crime Survey," found that having overburdened prosecutors led to many dismissals, higher rates of guilty verdicts, and occasional wrongful convictions; the report ended by proposing an increase in justice system resources (Nardulli, 1979, p.89). Studies in the 1950's had the same findings, with the additional observation that the drastic differences between plea and trial sentences, designed to encourage people to plead guilty to avoid the risks and uncertainty of a trial, contributed to "many substantive injustices" (Nardulli, 1979, p.89). Other studies found the rise of this tactic to be an industry response to increases in caseloads, some going as far as to extend this to a new hypothesis as caseloads grow, plea bargain deal provisions would increase in kind (Nardulli, 1979, p.90). In addition to making plea bargaining the default procedure, "caseload pressure" was also found to contribute to increasing "delays", treating defendants "inconsistent[ly]", and "mishandl[ing]" cases (Nardulli, 1979, p.90). These are not, by any means, new problems. Other studies on plea bargaining from this decade found that judges assign more cases to attorneys who will steer the defendant towards a plea bargain (Wheeler & Wheeler, 1980, p.322),

presumably to cut costs and increase efficiency. Those studies also touched on the effect of bail (and by extension, pre-trial detention) on the likelihood of a prison sentence. But what are some of the factors which play into these decisions?

Scholars study how different factors affect "courtroom operations" by modeling the processes which occur behind the scenes, in which "dispositional strategy," the manner in which cases are processed or disposed, is a key element (Nardulli, 1979, p.90). The nature of these models is an identification of which actions and "inputs" produce which "outputs" (Nardulli, 1979, p.90). Traditionally, large caseloads were thought to play a key role in the "pervasive 'dysfunctioning'" of the justice system (Nardulli, 1979, p.89). The essence of this model is that formal processes directly, and caseload pressures confoundingly, contribute to the dispositional strategy, which results in the "criminal court outputs" (Nardulli, 1979, p.91). The presumption is that if caseload pressures were removed from the equation, the outputs would directly follow from the procedures exactly as intended (Nardulli, 1979, p.90). Of course, this is an over-simplification of the matter, as the rules and procedures of due process and the pressures of heavy caseloads are not the only two factors that affect the dispositional strategy and outcome of a court system. This is where the "legal man assumption" comes into play; the above input-output model of a court system implicitly assumes that those who pursue careers in law are inclined to follow all procedures ethically (Nardulli, 1979, p.90). Less blindly optimistic, another implied assumption is that most courtrooms are struggling under massive caseloads that preclude the actors from following normal procedures, which they would do otherwise (Nardulli, 1979, p.90-91). However, in reality, the legal man does not always default to procedure. The perfect illustration of this occurred in North Carolina in 2012.

In a North Carolina criminal case, the preliminary field test was positive for blood while the more accurate lab test later produced a negative result, but only the preliminary test was admitted as evidence, a "serologist claimed that lab procedure did not require" her to report "negative confirmatory tests" (Giannelli, 2012 p.1). Instead, the procedure was to report positive results "even if more specific tests" contradict them (Giannelli, 2012 p.1). It was claims such as this which brought into question all lab reports "from 1987-2003" with potential withholding or misrepresentation of crucial information for the defense (Giannelli, 2012 p.1). This was due to policies which forgo "objectivity" and clarity of reporting guidelines, in favor of too much individual discretion, and a "lack of transparency…and oversight" (Giannelli, 2012 p.1). The misreporting happened in the aforementioned way, ignoring a negative "confirmatory" test, as well as claiming no more tests were done when they actually were done and were "negative or inconclusive" (Giannelli, 2012 p.1). The investigation revealed a "prosecutorial bias," as the aforementioned disparities in reporting only hid exculpatory evidence (negative results), whereas positive results "were always included in final laboratory reports" (Giannelli, 2012 p.2). The general consensus was that the crime labs had a deep-rooted "pro-police bias" which undermined "true scientific investigation methods" in favor of convictions (Giannelli, 2012 p.2-3). If the police and prosecutorial culture encourages the hiding and falsification of evidence, then one of the logical steps is to separate the crime labs from the state, so that they aren't directly connected to the police or the prosecution. Luckily, this scandal was large enough that the North Carolina legislature had to respond with reforms, which will be discussed in the final section.

The aforementioned analytical model of courtroom procedures holds that when caseloads exceed resources "speed and compromise begin to displace due process values" in court

operations and disposition of cases (Nardulli, 1979, p.91). This model holds caseload pressures to be the cause of "the observed dysfunctioning in criminal courts" (Nardulli, 1979, p.91). This idea, coupled with the legal man assumption, leads to the conclusion that increasing resources, thus alleviating caseload pressure, would solve the system's problems (Nardulli, 1979, p.91). It is this train of thought that traditionally structured reforms and recommendations (Nardulli, 1979, p.91). The factors which influence a "sentencing decision;" as per the rules "of due process," should be "the seriousness of the case, the defendant's penological needs, and his conduct since his arrest" (Nardulli, 1979, p.91). Caseload pressure, however, introduces additional factors that may even override those on which the decision should procedurally be based; such factors include "guilty plea," the type of trial (judge or jury), and how well the defendant adhered to "informal courtroom norms" (Nardulli, 1979, p.91). As alluded to earlier, the theory holds that as caseload pressure increases, the importance of these new factors increases with it, and so would increase the sentencing gap between plea bargains and trials (Nardulli, 1979, p.91). One would expect to find, therefore, a positive correlation between caseload pressure and guilty pleas and a negative correlation between caseload pressure and guilty plea sentences. This exacerbates the tendency of "prosecutors and judges" to pressure defendants to plead guilty in order to alleviate the caseload pressure, for there would not otherwise be enough resources to bring all cases to trial (Narduli, 1979, p.94).

This perhaps too straight-forward model was the classical school of thought. In 1975, Malcolm Feeley published an empirical study suggesting that reducing caseload pressure alone does not result in a higher proportion of cases going to trial (as opposed to plea bargaining) (Nardulli, 1979, p.91-92). Specifically, Feeley found no difference in "trial rates…release statistics, bail structure, and sentencing structure" between "low-volume" and "high-volume"

courts (Nardulli, 1979, p. 92). However, he did find a significantly more guilty pleas for lesser charges "in the high-volume court," which was even higher when the original charges were felonies (Nardulli, 1979, p. 92). Of the cases that went to trial, both the low and high volume courts spent the same average amount of time hearing each trial (Nardulli, 1979, p.92). It is also important to note that, although Feeley did control for "manpower," he examined the outputs without controlling for different inputs (Nardulli, 1979, p.93). This increases uncertainty about the degree of influence which caseload pressure has on the observed differences in outcomes. Overall, these findings indicate that, although caseload pressure does have some impact on procedural trends (offering lesser charges in exchange for guilty pleas), it is not in itself a sufficient explanation for dysfunction in the system.

A comparative analysis of the other factors considered in this thesis leads to the preliminary conclusion that budget shortfalls are the most important factor contributing to dysfunction in the legal system. However, the existing literature and historical studies strongly suggest that money alone does not solve the problem. Hence, the primary focus of this research is to identify differences in the statutes themselves, which may affect the output of these justice systems. However, before analyzing the laws themselves, the pressures and strains which drive these measures, primarily the budgets and caseloads, must be considered.

DATA

Data for the UK and Ireland comes from the CEPEJ Report on European Judicial Systems 2014 report, which is based on 2012 figures from 45 countries (European Commission for the Efficiency of Justice, 2014, p.5-7). Throughout the report, the UK statistics are often divided into three sections: England and Wales, Northern Ireland, and Scotland; Since Northern Ireland and Scotland have different judicial systems, the England and Wales totals will be used as representative of the UK considered here. Additionally, as it is a European report, the figures are in Euros. As this CEPEJ report covers only the two European countries to be studied, the US data will come from US domestic sources and UN sources. In its budgetary analysis, the CEPEJ subdivides the "judicial system" into three sections which are "court budget" (salaries and operational expenses), "legal aid," and "prosecution services" (European Commission for the Efficiency of Justice, 2014, p.19). This budget for the "judicial system" is part of a larger overall "justice system" budget which also includes "prison," "forensic[s]," and "probation," among other things, depending on the country (European Commission for the Efficiency of Justice, 2014, p.19). United Nations data tables used for the U.S. data will be described in more detail when they appear in the following section. It is important to note, however, that while the European Commission does not include U.S. data, some of the U.N. data tables do not include both the U.K. and Ireland. The different statistics available, and the different presentations of data, impede the direct comparison of these figures. However, the data can be compared

amongst those countries for which it is provided by the same source and against international averages where applicable.

Additionally, with regards to the U.S., although the U.N. data tables show data for the nation as a whole, when we turn to the analysis of legislation later in the thesis we will need to narrow the focus to the state level, because state laws vary a great deal. North Carolina and New York were chosen as exemplars of a more reformist state and a more non-reformist state, notwithstanding that both states have a mix of reformist and non-reformist tendencies in their political culture. Overall, New York has taken more reformist measures, albeit in response to widespread systemic failures. Interestingly enough, North Carolina has a vast database of statewide detailed statistics, going back many years, whereas New York has only the current fiscal budget and one year of caseload statistics for New York City available. The biggest asset which the North Carolina data provides is the ages of pending cases and resolved cases. These data are presented in the next section, after the E.U. and U.N. data. This caseload and budget data, although not comparable to the other nations, provides support and context for the legislation discussion which follows it.

Comparative Budget Data and Caseload Statistics

This section will begin by examining the available budget statistics for the countries in question, to identify any striking differences in funding that may be contributing to systemic pressures.

TABLE 1 - UK AND IRELAND 2012 OVERALL COURT BUDGET DATA

	Total Justice System Budget (in Euros)[1]	Justice System Budget as % of National Budget[2]	% of Justice Budget allocated to Court System[3]	Annual Court Budget per Inhabitant (in Euros)[4]	Annual Court Budget as % of GDP per capita[5]
Ireland	2 346 727 000	3.4	9.8	23.3	0.07
UK England and Wales	10 582 637 899	1.8	51.6	42.2	0.14

1 (European Commission for the Efficiency of Justice, 2014, p.21-22)

2 (European Commission for the Efficiency of Justice, 2014, p.24)

3 (European Commission for the Efficiency of Justice, 2014, p.25)

4 (European Commission for the Efficiency of Justice, 2014, p.30)

5 (European Commission for the Efficiency of Justice, 2014, p.31)

The first statistic to consider is the overall budget for the justice system as a whole. It is important to note that different countries include different things in their definition of the Justice System; for the UK and Ireland, the most important difference to note is that Ireland included prosecution in these budget figures while the UK did not (European Commission for the Efficiency of Justice, 2014, p.22). At first glance, this appears to mean that the Irish justice system is even more under-funded compared to the UK than the numbers suggest. However, the overall percentage of the national budget is nearly the same. The percentage of the Justice System budget allocated to the court system is a much still telling comparison. Although the UK and Ireland allocate about the same percentage of their national budgets to the justice system, of that percentage, the UK allocates, on average, a third to the courts, while Ireland provides less than 10%. To clarify further the meaning of these figures, per capita or per inhabitant figures serve to control for population differences and needs.

In both the court budget per inhabitant and as a percent of GDP per capita, Ireland budgeted half as much as the UK. These numbers leave no doubt that Ireland falls short of its neighbors in terms of courtroom spending. As the later analysis of laws and procedures will show, Ireland is also the worst offender at failing to meet the rights of its defendants and inmates. However, budgetary differences, although they certainly impact what can be accomplished with the given resources, are not sufficient to explain the vast systemic differences in practices and outcomes observed in later sections. The information, particularly about Ireland, will illustrate that there is a larger political culture problem at play.

One final statistical comparison to make is between the prosecution budgets in these countries versus their budgets for legal aid.

TABLE 2 - ANNUAL PUBLIC PROSECUTION BUDGET IN EUROS PER INHABITANT IN 2012

	2012 Public Prosecution Budget (in Euros per Inhabitant)
Ireland	8.8
UK England and Wales	12.8

Data from: (European Commission for the Efficiency of Justice, 2014, p.42)

TABLE 3 - LEGAL AID BUDGET DIVIDED BY CASE IN 2012 IN EUROS

	2012 Legal Aid Budget (in Euros by case)
Ireland	1,373
Germany	434
Italy	803

Data from: (European Commission for the Efficiency of Justice, 2014, p.76)

For this statistic, the UK did not provide per case data, but it does specify that in the UK, minus Scotland, for which data was not available, 4,411 cases which were brought to trial were awarded legal aid (European Commission for the Efficiency of Justice, 2014, p.76). This number could be used along with the budget figures to arrive at an approximate per-case calculation; however, such method would assume that all of the money budgeted for legal aid was used. Rather than make such an assumption, here, in the table, are the figures for two other European countries, to provide a bit of comparison.

These numbers seem counter-intuitive. While Ireland was near the bottom of the list, well below average on budget allotments as measured in the statistics above, especially with regards to its courts, it bizarrely seems to spend more than average on legal aid for each case. When coupled with qualitative data on Ireland's systemic failures, this is puzzling. Perhaps the inherent difficulties in the Irish judicial system make it more expensive to attempt to defend a client. Even so, this does not discount the effect of the smaller, overall budget on the system.

The US data is aggregated from both international and domestic sources; the data available are different and in different formats than the previous report, and thus, exact comparisons cannot readily be made on this level. One data source is a study on Pretrial Detention and Misconduct between 1995 and 2010 (Cohen, 2013 p.1). Major findings include that pretrial detention increased by 184% in this time, largely due to a 664% surge in "immigration caseloads," and that only around 5% of those released on bail during this time violated their bail in any way (Cohen, 2013 p.1). The data tables also show that, over time, as the number of defendants in district courts increased over time, so did the percent of those cases

which were detained pretrial (Cohen, 2013 p.1). The percentage of defendants which are detained pretrial also varies according to the type of offense; the data in the Bureau of Justice Statistics report includes figures to control for this disparity.

While overall, in 2010, 80% of defendants in district courts were detained while awaiting trial, the detention rate of the violent charges was 87%, property charges was 41%, drug charges were detained at a rate of 84%, public-order offences at 50% weapons charges at 86% and immigration charges at 88% (Cohen, 2013, p.1-3). It is logical that the violent offences, and the offence which usually involves capture and deportation, have the highest rates of pretrial detention. As for the effect of criminal history on the likelihood of pretrial detention, in 2010, people with no prior arrests had a pretrial detention rate of 64%, which rose nine points to 73% for those with one arrest, to 79% for those with 2 to 4 arrests, to 85% for those with 5 or more arrests (Cohen, 2013, p.6). This gradual increase is in line with what one would expect, although the detention rate for those with no prior arrests, the starting point, seems quite high. A similar pattern was observed for increasing numbers of convictions, but with a slightly larger jump of eleven points from the group with no convictions at 67% to the group with one conviction at 78%, followed by 2 to 4 convictions at 82%, and 5 or more at 87% (Cohen, 2013, p.6). The rates also differed in terms of the types of criminal records; with those who have prior misdemeanor convictions detained only 75% of the time, as opposed to those with prior felony convictions at an average of 85% (Cohen, 2013, p.6). The report further divides felonies into three categories, nonviolent offenses, which were detained 79% of the time, drug offenses, which were detained 86% of the time, and violent offenses, which were detained 89% of the time (Cohen, 2013, p.6). There was also an observable difference in pretrial detention rates between those who have

appeared in court and those who have not, with the former being detained at a rate of 75% and the latter at 82% and 86% for one appearance or more respectively (Cohen, 2013, p.6).

Are such high rates of pretrial detention really necessary? Given how long it can take for a case to be heard and to be completed, it would be prudent, both for the defendant's sake and for the budget's sake to release as many defendants on bond as possible. How can one assess the necessity for pretrial detention? One place to look would be the recidivism rate of those released on bond. Of 35,564 defendants released on bail in 2010, only 17% had any kind of violation; 15% were simply "technical violations," and only 1% "failed to appear" (Cohen, 2013, p.8). Additionally, only 2% were rearrested for felony offences and also only 2% were rearrested for misdemeanors (Cohen, 2013, p.8). This shows that, overall, the rate of bail violation, recidivism, and failure to appear is incredibly low. However, this cannot, unfortunately, provide an accurate picture of what recidivism and violation rates would be for a larger sample size, as the people chosen to be released on bond, which are, given the high pretrial detention rates, a select few, are the ones which the judges had deemed to be the least likely to commit these infractions. This diminishes the value of the low violation rates, as the sample is a hand-picked selection of precisely those individuals who are most cooperative.

An international source of additional statistics for the U.S. is the United Nations Office on Drugs and Crime; this database offers the average number of prosecutors per 100,000 people between 2011and 2013 for many countries; although both the US and UK are on this list, Ireland is not ("Administration of Justice (2011-2013)", 2013). However, given how tiny its budget for prosecution was in comparison to the UK, it is safe to presume the Irish number is less than that of the U.K. During these years, the U.S. had an average of 1.7 prosecutors per 100,000 inhabitants, whereas the U.K. Northern Ireland had 10.1 and the U.K. Scotland had 9.9

("Administration of Justice (2011-2013)", 2013), resulting in an overall U.K average of 10 prosecutors per 100,000 inhabitants. This means that, controlling for population differences, the U.K. has nearly 6 times as many prosecutors as the U.S. It stands to reason that having more resources facilitates efficiency. Another statistic available from the United nations is the total number of persons held in pretrial detention in various countries; all three of the nations in question are on this list ("Statistics on Criminal Justice", 2013); only the three most recent are included here. As before, the UK is divided into nations in this data, so the England and Wales group is again used as representative.

TABLE 4 – PRE-TRIAL DETENTION DATA

	Total number of people in pre-trial detention			Number of people in pre-trial detention per 100,000 population		
Country	2011	2012	2013	2011	2012	2013
USA	445,800	451,200	453,200	141.6	142.1	141.6
UK England and Wales	8,299	7,671	7,743	14.8	13.6	13.6
Ireland	606	498	N/A	13.4	10.9	N/A

Data from: ("Statistics on Criminal Justice", 2013).

Although one would expect larger numbers from the US due to the population difference, even when controlled for population the difference in the proportion of Americans in pretrial detention is astounding. Despite what one may be inclined to believe given the outright refusal to acknowledge prisoners' rights in Ireland, it actually has the lowest rates of pretrial detention of these three nations. The United States, on the other hand, has over ten times the proportion of its population in pretrial detention, and six times that of the UK. This highlights the key confounding factor in these numbers. It is common knowledge that the United States is a world

leader in the percentage of its population which is behind bars. That being said, it is perhaps no surprise that it also has a much higher proportion of its population in pretrial detention.

The United Nations Office on Drugs and Crime also has statistics on the average duration of prison sentences in various countries; however, the United States is not included in this particular database ("Special data Collection on Persons held in Prisons (2010-2012)", 2013). The information is still of interest for the other two cases, as it allows for a comparison of the semi-raw figures above to the prison population as a whole. In Ireland, 12% of the prison population has yet to be sentenced, whereas 88% are serving their sentences; in the UK, for England and Wales, 9% are awaiting sentencing, while 87% are already sentenced, and for the UK Northern Ireland, 28% are awaiting sentencing while 72% have been sentenced ("Special data Collection on Persons held in Prisons (2010-2012)", 2013). The UK average, calculated from those numbers, is 18.5% awaiting trial and 79.5% already sentenced. This makes Ireland seem slightly more efficient in terms of clearing cases; however, as the next sections will illustrate, this semblance of efficiency does not necessarily coincide with accuracy or justice.

Since the US laws will be looked at by state, it makes sense to include statistics for our two exemplar states, North Carolina and New York. The North Carolina Court System provides extensive data on caseloads and case duration on its website. For the purposes of this analysis, the duration of the cases will be compared, over time, for the statewide totals only. As statewide totals are provided only for each separate level of court, those will be listed here and added together to calculate the true state totals, highlighted in blue. The aim for including this data is to attain a numerical representation of the expediency of justice in the state, which is related to pre-trial detention; it also provides some practical context for the discourse on caseload pressures. (The data will only cover "disposed" and "pending" cases to assess their "age;" as newly filed

cases have, as yet, no “age”.) The case ages are separated into 9 increments in the data. For the sake of integrity, those 9 increments are retained in these tables. Since the data for the thousands of individual cases is not available, the exact median for the total rows cannot be calculated; thus, to approximate it, the average of the court medians is used, rounded to the nearest whole day. Percentages for each case age category have also been calculated to make the data more meaningful and easier to digest and compare. These are rounded to the nearest tenth. Calculated figures are shaded in blue. All North Carolina caseload and budget data is presented for the fiscal years of 2011-2012, 2012-2013, 2013-2014, and 2014-2015.

TABLE 5 – NORTH CAROLINA STATEWIDE CASELOAD AND CASE AGES – FISCAL YEAR 2011-2012

North Carolina Caseload Figures – Fiscal Year 2011-2012												
Court	Case Status	Total Cases	0-30 Days	31-60 Days	61-90 Days	91-120 Days	121-180 Days	181-365 Days	366-545 Days	546-730 Days	731+ Days	Median Days
CVD	Disposed	198,437	56,919	37,298	26,938	14,050	23,616	19,649	7,571	3,691	8,705	64
CVD	Pending	95,400	13,809	10,566	7,869	6,371	6,842	11,362	7,897	5,476	25,208	212
CVM	Disposed	227,925	202,306	14,049	2,783	6,245	908	1,433	108	49	44	14
CVM	Pending	14,264	11,145	1,012	618	144	133	363	216	114	519	10
CVS	Disposed	25,939	2,501	2,486	1,875	1,709	3,176	6,797	3,582	1,726	2,087	214
CVS	Pending	18,970	1,881	1,658	1,355	1,394	2,244	4,933	2,425	1,078	2,002	212
E	Disposed	68,149	36,537	838	899	2,348	3,764	6,663	5,912	2,484	8,704	0
E	Pending	66,321	2,432	2,307	2,278	2,304	4,079	8,788	6,415	3,951	33,767	760
SP	Disposed	67,462	8,890	6,055	5,859	7,490	10,487	14,784	6,440	3,399	4,058	148
SP	Pending	65,546	5,384	4,468	3,570	3,460	5,974	8,164	5,805	5,053	23,668	416
Total	Disposed	587,912	307,153	60,726	38,354	31,842	41,951	49,326	23,613	11,349	23,598	88
Total	Pending	260,501	34,651	20,011	15,690	13,673	19,272	33,610	22,758	15,672	85,164	322
%	Disposed	100	52.2	10.3	6.5	5.4	7.1	8.4	4.0	1.9	4.0	
%	Pending	100	13.3	7.7	6.0	5.2	7.4	12.9	8.7	6.0	32.7	

Data (except totals and percentages) from: ("Caseload Activity Reports – Fiscal Year 2011…", 2012).

The percentages bring to light a surprising fact about case lengths in North Carolina. One would expect disposed cases to have higher ages, as they have already been through the process, and for the pending cases to have smaller ages, as they still have a ways to go before their resolution. However, as the percentages show, 52.2% of the cases which were disposed in this fiscal year were 30 days old or less, whereas most of the pending cases, 32.7%, were in the highest age range of 731+ days, which is two years or more. This means that, while most of the pending cases have been pending or continued for two years or more, the majority of new cases which

come in are heard and disposed within 30 days or less. One of the factors which came to mind in identifying areas to study and compare for this research was the procedures for creating dockets, with the goal of suggesting policy changes to ensure older cases are heard first. However, this had to be eliminated because there was no information available for the case study nations on docket creation procedures. Still, this data here shows that newer cases are being disposed of quickly, while older cases are left pending. Was this a temporary anomaly, or a consistent trend? The data for the rest of the fiscal years considered sheds some light on this.

TABLE 6 – NORTH CAROLINA STATEWIDE CASELOAD AND CASE AGES – FISCAL YEAR 2012-2013

North Carolina Caseload Figures – Fiscal Year 2012-2013												
Court	Case Status	Total Cases	0-30 Days	31-60 Days	61-90 Days	91-120 Days	121-180 Days	181-365 Days	366-545 Days	546-730 Days	731+ Days	Median Days
CVD	Disposed	188,237	53,519	34,870	25,089	14,048	23,734	19,760	6,568	3,397	7,252	65
CVD	Pending	92,137	11,838	9,825	6,880	5,124	6,920	11,526	7,850	4,856	27,318	258
CVM	Disposed	219,970	197,096	12,843	2,281	5,703	714	1,129	84	54	66	14
CVM	Pending	13,433	10,169	1,036	640	126	162	285	149	141	725	11
CVS	Disposed	24,002	2,363	2,196	1,707	1,613	2,845	6,398	3,586	1,595	1,699	216
CVS	Pending	16,712	1,574	1,493	1,433	1,125	1,974	3,889	2,054	1,199	1,971	209
E	Disposed	69,088	38,133	937	878	2,347	3,625	6,623	5,772	2,459	8,314	0
E	Pending	68,115	2,370	2,395	2,748	2,206	4,662	8,876	6,431	4,202	34,225	738
SP	Disposed	65,239	8,654	5,710	5,708	6,906	10,637	14,458	4,506	2,682	5,978	150
SP	Pending	67,409	4,686	4,200	4,669	3,111	5,615	11,285	5,628	3,397	24,818	368
Total	Disposed	566,536	299,765	56,556	35,663	30,617	41,555	48,368	20,516	10,187	23,309	89
Total	Pending	257,806	30,637	18,949	16,370	11,692	19,333	35,861	22,112	13,795	89,057	317
%	Disposed	100	52.9	10.0	6.3	5.4	7.3	8.5	3.6	1.8	4.1	
%	Pending	100	11.9	7.4	6.3	4.5	7.5	13.9	8.6	5.4	34.5	

Data (except totals and percentages) from: ("Caseload Activity Reports – Fiscal Year 2012…", 2013).

TABLE 7 – NORTH CAROLINA STATEWIDE CASELOAD AND CASE AGES – FISCAL YEAR 2013-2014

North Carolina Caseload Figures – Fiscal Year 2013-2014												
Court	Case Status	Total Cases	0-30 Days	31-60 Days	61-90 Days	91-120 Days	121-180 Days	181-365 Days	366-545 Days	546-730 Days	731+ Days	Med-ian Days
CVD	Disposed	183,863	51,510	35,621	24,365	12,497	21,011	17,819	6,623	3,515	10,902	64
CVD	Pending	88,883	13,018	10,814	7,091	5,781	5,803	10,504	6,986	4,749	24,137	216
CVM	Disposed	219,502	196,600	12,978	2,092	5,991	623	1,072	70	28	48	13
CVM	Pending	14,714	11,219	1,126	607	124	132	229	193	141	943	11
CVS	Disposed	20,424	1,979	1,666	1,481	1,340	2,485	5,686	2,884	1,390	1,513	220
CVS	Pending	15,222	1,382	1,223	1,243	1,067	1,721	3,700	1,871	893	2,122	222
E	Disposed	68,426	37,347	967	953	2,315	3,738	6,883	5,960	2,393	7,870	0
E	Pending	71,016	2,411	2,555	2,602	2,518	4,163	9,374	6,969	4,298	36,126	757
SP	Disposed	65,024	8,241	5,486	5,476	6,164	9,456	15,089	6,107	2,792	6,213	163
SP	Pending	53,791	3,533	3,132	2,713	2,275	3,479	6,359	4,332	3,471	24,497	607
Total	Disposed	557,239	295,677	56,718	34,367	28,307	37,313	46,549	21,644	10,118	26,546	92
Total	Pending	243,626	31,563	18,850	14,256	11,765	15,298	30,166	20,351	13,552	87,825	363
%	Disposed	100	53.1	10.2	6.2	5.1	6.7	8.4	3.4	1.8	4.8	
%	Pending	100	13.0	7.7	5.6	4.8	6.3	12.4	8.4	5.6	36.0	

Data (except totals and percentages) from: ("Caseload Activity Reports – Fiscal Year 2013…", 2014).

TABLE 8 – NORTH CAROLINA STATEWIDE CASELOAD AND CASE AGES – FISCAL YEAR 2014-2015

North Carolina Caseload Figures – Fiscal Year 2014-2015												
Court	Case Status	Total Cases	0-30 Days	31-60 Days	61-90 Days	91-120 Days	121-180 Days	181-365 Days	366-545 Days	546-730 Days	731+ Days	Median Days
CVD	Disposed	183,630	51,281	36,630	25,104	12,784	22,899	17,893	5,752	2,928	8,359	63
CVD	Pending	91,897	13,689	9,851	7,400	6,032	5,978	11,549	6,828	4,710	25,860	222
CVM	Disposed	213,218	189,535	13,772	2,059	6,148	573	936	95	52	48	13
CVM	Pending	14,395	10,687	1,017	601	154	130	307	192	141	1,166	12
CVS	Disposed	17,956	1,951	1,438	1,217	1,165	2,193	5,010	2,563	1,181	1,238	218
CVS	Pending	14,752	1,323	1,166	1,171	1,077	1,558	3,442	1,727	964	2,324	228
E	Disposed	74,221	39,077	990	980	2,524	3,925	6,994	6,307	2,784	10,640	0
E	Pending	70,847	2,566	2,448	2,785	2,915	4,263	9,393	6,810	4,396	35,271	722
SP	Disposed	48,638	7,845	5,004	4,577	5,297	7,152	9,269	3,400	1,749	4,345	132
SP	Pending	50,527	3,377	2,627	2,627	2,153	3,139	5,647	3,167	2,379	25,411	741
Total	Disposed	537,663	289,689	57,834	33,937	27,918	36,742	40,102	18,117	8,694	24,630	85
Total	Pending	242,418	31,642	17,109	14,584	12,331	15,068	30,338	18,724	12,590	90,032	385
%	Disposed	100	53.9	10.8	6.3	5.2	6.8	7.5	3.4	1.6	4.6	
%	Pending	100	13.1	7.1	6.0	5.1	6.2	12.5	7.7	5.2	37.1	

Data (except totals and percentages) from: ("Caseload Activity Reports – Fiscal Year 2014…", 2015).

The data for the other fiscal years shows that, if anything, the observed trend has been getting stronger each year, resulting in ever more polarized case ages. One potential explanation for the high number of cases processed in 30 days or less is plea bargaining. If this is the case, then the increased polarization of the figures may be indicative of an increase in plea bargaining. In the same data sets used for the figures above, one of the sub-categories for "disposed" cases is "Final Judgement No Trial;" these are the cases which were resolved with a plea bargain, or in case of civil trials, settled outside of

court (as dismissals are listed separately). Ideally, it would be informative to compare the length of time before the plea bargain ("age" of case in the data) with the outcome; however, the outcomes are not included in the data. What can be calculated from the data, however, is the percentage of disposed cases that were settled without a trial. These are calculated in the table below.

TABLE 9 – NORTH CAROLINA "FINAL JUDGEMENT NO TRIAL" CASE TOTALS AND PERCENTAGES

"Final Judgement No Trial" Case Totals and Percentages				
Court	2011-2012[1]	2012-2013[2]	2013-2014[3]	2014-2015[4]
CVD	46,081	43,352	43,967	42,612
CVM	142	244	432	412
CVS	3,398	3,131	2,775	2,486
E	6	13	9	7
SP	118	134	115	92
Total Pleas	49,745	46,874	47,298	45,609
Total Disposed*	587,912	566,536	557,239	537,663
% of disposed cases which are pleas	8.5	8.3	8.5	8.5

*Calculated in the previous tables

1 ("Caseload Activity Reports – Fiscal Year 2011…", 2012).

2 ("Caseload Activity Reports – Fiscal Year 2012…", 2013).

3 ("Caseload Activity Reports – Fiscal Year 2013…", 2014).

4 ("Caseload Activity Reports – Fiscal Year 2014…", 2015).

Since there was no key provided for the court abbreviations, one can only speculate as to which courts they are. Although it wasn't apparent from the figures for the ages of the cases, the large number of cases settled out of court seems to support the notion that the three categories beginning with "cv" are Civil – District Court, Civil – Magistrate, and Civil – Superior Court. If

this is the case, then these are most likely settlements and are irrelevant to this research. This is not a certainty, so they were reported in this table as presented in the data; however, given this possibility, the data for "Final Judgement No Trial" are presented again below, without the first three courts (the total disposed is also presented below minus those three courts for accuracy of the percentage calculation).

TABLE 10 – NORTH CAROLINA "FINAL JUDGEMENT NO TRIAL" E AND SP ONLY

"Final Judgement No Trial" Case Totals and Percentages – E and SP only				
Court	2011-2012[1]	2012-2013[2]	2013-2014[3]	2014-2015[4]
E	6	13	9	7
SP	118	134	115	92
Total Pleas	124	147	124	99
Total Disposed E &SP only	135,611	134,327	133,450	122,859
% of disposed cases which are pleas	0.1	0.1	0.1	0.1

1 ("Caseload Activity Reports – Fiscal Year 2011…", 2012).

2 ("Caseload Activity Reports – Fiscal Year 2012…", 2013).

3 ("Caseload Activity Reports – Fiscal Year 2013…", 2014).

4 ("Caseload Activity Reports – Fiscal Year 2014…", 2015).

While the complete statistics in the previous table show that only 8.5% of cases are settled without trial, if the CV ones are indeed civil suits, then that leaves only 0.1% of criminal cases to plea bargaining. This does not mean that pleas and settlements are not the cause behind the polarized data, as the largest number of cases resolved in 30 days or less, in the previous tables, was in the CV courts. It may be worth noting that there is also no indication what "E" stands for, but given the fact that, despite a similar variety of case ages to the other courts, its

median age is always reported as zero, one is inclined to believe it is a special circumstance; it may just mean that, given that the largest category for the group was 0 to 30 days, 0 was the most common duration. However, not knowing whether "E" is criminal or civil, the strange reporting of the median age does not affect the inclusion of it in cases settled out of court. It may also do to consider that "SP" might stand for Superior Court (Which raises the question of why, in thousands of records, there was no statewide data for District Court). Either way, this data on case ages must be considered in conjunction with budgetary data to see if there are any noticeable correlations.

For this table, the "certified budget" is used for comparison rather than the "expenditures" fund amount, as the former is what is actually allotted for use and shows the yearly changes, whereas the fund total is around $460 million for all of the years listed, with an average percent change of +0.435% ("North Carolina Courts Statistical…", 2015, p.3). The fiscal years studied were chosen to match those examined in the caseload statistics, however, it is interesting to note that, in the four fiscal years preceding those detailed below, the "expenditures" fund saw a 13.81 percent surge, followed by modest raises, and then a 6.63 percent drop to the $460 million +/- 8 million mark at which it has so far stabilized ("North Carolina Courts Statistical…", 2012, p.3). As previously stated, although the amount in the fund has not varied much in the years studied, the amount of such which was actually approved for spending by the General Assembly has. Those figures, along with key sub figures which were considered for the other nations, are in the table below. North Carolina's court budget report does not show data per capita, nor per case, but simply in whole dollar amounts. Additionally, these figures do not include spending for Defense, only for Prosecution.

TABLE 11 – NORTH CAROLINA COURTS BUDGET

North Carolina Courts Budget					
Fiscal Year	Certified Budget	Percent Change from Previous Year	Percent of total State Agencies Budget	District Attorney Offices Spending	DA Percent of Certified Budget
2011-2012[1]	$438,920,048	-2.53	2.23	$89,756,274	20.45
2012-2013[2]	$432,806,800	-1.39	2.14	$91,851,614	21.22
2013-2014[3]	$456,926,252	5.57	2.21	$93,884,897	20.55
2014-2015[4]	$463,893,072	1.52	2.20	$95,911,111	20.68
Average	$448,136,543	0.79	2.19	$92,850,974	20.72*

*if calculated from the Average row, this figure rounds up to 20.72, but if calculated from its column, which are already rounded figures, it rounds up to 20.73. The 20.72 was used so that no figure involves more than one rounding.

1 ("North Carolina Courts Statistical…", 2012, p.3-4).

2 ("North Carolina Courts Statistical…", 2013, p.3-4).

3 ("North Carolina Courts Statistical…", 2014, p.3-4).

4 ("North Carolina Courts Statistical…", 2015, p.3-4).

This budget table highlights a few key facts. Although the court system budget has seen a marginal increase of less than 1% per year on average, its percentage of the total state budget has been fairly constant, meaning that the slight increase in funding is a result of increased funding for the state overall. Since there was no data included for the budget for defense council, the proportions cannot be compared. However, it is notable that, even in years when the overall court system budget was reduced, the budget for District Attorneys' offices has been on a steady rise of $2 million per year, although these increases have also coincided with a relative constant percentage of the total courts budget.

New York, unfortunately, does not have a statewide caseload statistics database available. The only caseload statistics it provides are for New York City from 2011, along with the number of judges employed, from which caseload per judge can be calculated.

TABLE 12 – NEW YORK CITY CRIMINAL COURT CASELOAD STATISTICS 2011

New York City Criminal Court Caseload Statistics 2011				Judges = 107
	On-line Arrests	Summonses	Total	Caseload per Judge*
Filings	357,842	528,618	886,460	8,285
Dispositions	355,614	331,847	687,461	6,425
Total Cases	713,456	860,465	1,573,921	14,710

*rounded to nearest whole number

Data from: ("New York City Criminal Court…", 2012).

Consider the implications of this data. This means that each judge in New York City presided over the conclusion of 6,425 cases in 2011. Although not every day is a working day, if you were to divide this by 365 days, that would amount to 17.6 cases heard per judge, per day. Which, assuming an 8-hour workday in court, would leave only 27.27 minutes per case. It is clear that the sheer volume of cases renders trying all of them practically impossible. It is worse when you consider the fact that more new cases are filed each year than are completed.

How does North Carolina compare in this regard? Although the caseload statistics database did not include caseloads per judge, a fact sheet released by the North Carolina Court System from fiscal year 2014-2015 does list the number of cases and number of judges for District and Superior court, from which this can be calculated.

TABLE 13 – NORTH CAROLINA CASELOADS PER JUDGE

	Cases filed	Cases disposed	Total cases	Number of Judges	Cases filed per judge	Cases disposed per judge	Overall caseload per judge
District Court	2,407,195	2,588,957	4,996,152	270	8,916	9,589	18,504
Superior Court	262,825	296,219	559,044	112	2,347	2,645	4,991
Total	2,670,020	2,885,176	5,555,196	382	6,990	7,553	14,542
					Rounded to nearest whole number; total row calculated from case and judge totals, not added or averaged from the rows above		

Data from: ("Judicial Branch Fact Sheet," 2015, p.2).

Based upon these numbers, North Carolina judges have an even larger average caseload than those in New York City. Thus, it is no wonder that plea bargaining is a default tactic for clearing the cases; this is, of course, the explanation for how each judge can dispose of 6 to 9 thousand cases annually. It stands to reason that this high caseload is a major contributor to the lengthy pre-trial detentions in the city, which were alluded to in the introduction. It would be very interesting to see case age statistics for New York like those provided for North Carolina, even if only for New York City. However, these are currently not available.

In keeping with its limited availability of data, New York only has the court system budget for the upcoming fiscal year available; at least, it is statewide and thus comparable to the North Carolina figures. The budget document also includes the 2015-2016 figures for comparison. Interestingly, unlike North Carolina, this data includes legal aid, but does not specify the allocation for prosecution. It does, however, include funding for grievances against attorney malpractice. The fact that this is a budget allocation specified in the report may be a reflection of the scope of the problem. Although many cases of prosecutorial misconduct go unchallenged, the report does provide figures on the number of "Attorney Discipline" cases which came before New York's appeals courts in 2014; there were a total of 14,327 new cases

and 12,891 disposed cases ("Fiscal Year 2016-2017 Budget," 2016, p.137). Although this is a reflection of the underlying cultural problems, it is still a positive, reformist, sign that such matters are considered important enough to be duly addressed in the budget.

TABLE 14 – NEW YORK STATE COURT SYSTEM BUDGET DATA

New York State Court System Budget					
Fiscal Year	Total[1]	Indigent Legal Services[1]	ILS Percent of total	Attorney Discipline Program[2]	ADP Percent of total
2015-2016	$2,084,272,038	$25,000,000	1.2		
2016-2017	$2,132,526,345	$25,000,000	1.2	$14,900,000	0.7

1 ("Fiscal Year 2016…", 2016, p.15).

2 ("Fiscal Year 2016…", 2016, p.156).

Although this budget information is far from comprehensive, it does include a key figure. The Indigent legal services budget has a flat allowance of only 1.2 percent of the court system budget. Of course, administrative costs are a large proportion of any court system's budget, however, that generally leaves behind more than 1.2 percent each for defense and prosecution. If North Carolina is of any comparison, it consistently budgets between 20 and 21 percent of its court system funding for the District attorneys' offices. It would stand to reason that the Indigent Legal services office would receive something in the same range of funding. Although neither state provided funding data for both sides of the aisle, that which they did provide speaks volumes for a legal system whose culture values conviction rates approximately 20 times more than providing for a fair and level playing field. Low budget allocations put a serious strain on a

system that is already drowning in backlogs. As the preceding literature discourse suggests, this strain exacerbates the situation for all of the factors studied. Bearing these systemic constraints in mind, the legislation and practices of the three countries will be compared to identify differences which may help or hinder due process in the target areas.

ANALYSIS OF LEGISLATION AND PRACTICE

In this section, relevant legislation will be examined and compared to identify differences which may be affecting the outcomes of the system. For the US laws, the idea was to pick a reformist state and a non-reformist state to enhance the comparative analysis. However, in reality, they are not so clearly distinguished. The two states were chosen for the ways in which they stand out in terms of the results of their systems. Although one leans more towards reform, it could be argued that it has a longer way to go from its starting point, whereas the other, while having a better starting position, is not so actively seeking to reform, nor is it even addressing some of the issues at hand. New York is an excellent state to examine if only for the infamy of Riker's Island, as noted in the introduction. However, it is actually the reformist example, as it has also implemented legal reforms in recent years to address its short-comings. North Carolina is our non-reformist example, since the only reform efforts are federal, and that there does not seem to be legislation in this state which mentions and inmate's right to legal representation while incarcerated. The subsections for North Carolina, the UK, New York, and Ireland are presented in that order so that, rather than discuss the US at length all at once, it is easier to draw more side by side comparisons between the states and the other two countries. The laws examined for these two US states, the UK, and Ireland will be those pertaining to bail (for pretrial detention) and those pertaining to access to legal representation while incarcerated (where such legislation exists).

North Carolina

First, let's examine the North Carolina laws pertaining to Bail and Pretrial release. The law begins by establishing the general guidelines. Defendants who were involuntarily committed either before or after the crime do not have a right to pretrial release and are simply sent back their respective institutions (Criminal Procedure Act: Bail, 2013). As they are not incarcerated while awaiting trial, for the purposes of this thesis, this counts as release. In all other "noncapital" cases, a judge must set "conditions of pretrial release;" defendants in capital trials can also be released by a judge, although there are more restrictions on their terms of release (Criminal Procedure Act: Bail, 2013).

The Criminal Procedure Act also lists conditions which, when satisfied, result in "a rebuttable presumption" that the only way to make sure the defendant will be present for his or her trial is to keep him or her detained; in other words, the statute lists situations in which a defendant, by default, will not be released on bail (Criminal Procedure Act: Bail, 2013). The conditions which trigger this guilty-until-proven-innocent perspective are as follows: If the offense involved Drug trafficking, Gangs, or Illegal firearms; occurred while the defendant was out on bail for a different case; or the defendant has been convicted of a similar offense, or, in the case of the firearms, completed a sentence for a similar offense within the past five years (Criminal Procedure Act: Bail, 2013). Although these conditions contribute to a flight or safety risk, a judge can still decide to release such defendants on bond if he or she is a low flight risk and is not an "unreasonable risk" to society; however if the offense occurred while the defendant was already on pretrial release for another crime, then a secured bond of "at least double" the most recent bond amount is required, or a minimum $1,000 bond if there was none for the previous offense (Criminal Procedure Act: Bail, 2013).

The law also outlines the requirements for and "conditions of pretrial release" (Criminal Procedure Act: Bail, 2013). At least one of the five listed conditions is required to be part of a defendant's release; these conditions are: a written promise to appear; an unsecured bond; in the custody of a specified individual or "organization"; a bond secured by either cash or another "solvent" asset; or house arrest with electronic monitoring (Criminal Procedure Act: Bail, 2013). The first three conditions are the default conditions for pretrial release; the last two are to be used only if the judge determines that the unsecured options to be insufficient insurance of the defendant's return for trial (Criminal Procedure Act: Bail, 2013). A secured bond is required for those released on house arrest, and optional for those released into another's custody (Criminal Procedure Act: Bail, 2013). A judge can also impose restrictions on various aspects of a defendant's life and actions during pre-trial release. These can include whereabouts and associations of the defendant as well as on "alcohol consumption" (Criminal Procedure Act: Bail, 2013).

According to the statute, the factors which a judge must consider in order to determine the conditions for release are as follows: the type of charge and its specific "circumstances"; the available "evidence"; and factors which could contribute to or detract from flight risk, such as connections to "family", job, "financial" means, and his or her "character, and mental condition"; intoxication to the extent that the defendant is dangerous to himself or others; how long the defendant has lived in his or her current residence; his or her criminal record; if the defendant has historically been a flight risk or failed to appear; and any additional relevant information (Criminal Procedure Act: Bail, 2013). A Magistrate or Clerk of Court can amend pretrial release conditions before the defendant's trial begins, and a judge can change the terms at any time provided there is "good cause" (Criminal Procedure Act: Bail, 2013). A defendant can

also be spontaneously detained for up to twenty-four hours for testing purposes if there is reasonable suspicion that he or she may have AIDS or Hepatitis B and was involved in an "nonsexual" incident which may have exposed someone to a disease (Criminal Procedure Act: Bail, 2013). No existing North Carolina statutes were found in this research to explicitly address the right to legal representation for the incarcerated after sentencing; however, the state legislature recently addressed this issue by acting in a way which acknowledges the lack of such a legal guarantee.

In 2013, the North Carolina state senate's budget, "SB 402," sought to defund the "North Carolina Prisoner Legal Services (NCPLS)" (Doran, 2013), a non-profit contracted through "the Office of Indigent Services" (North Carolina Prisoner Legal Services, 2015) of the "Department of Corrections…to provide legal services" for the incarcerated (Doran, 2013). Although the constitution does not specifically state that prisoners have the "right to counsel," the sixth amendment, which outlines the right to counsel for "all criminal prosecutions" and direct appeals thereof, provides a basis on which to argue to intended or implied right to legal aid while in the system (Doran, 2013). There are also several Supreme Court cases which have set a precedent for this right of prisoners to have "access to the courts" (Doran, 2013). Although the North Carolina Institute for Constitutional Law names several, such as Ryland V. Shapiro, an in-depth description of the relevant case law is beyond the scope of this analysis. Suffice it to say that the North Carolina Prisoner Legal Services themselves cite "Bounds V. Smith" as the basis for this right (2015). The idea that prisoners have a constitutional right to legal services also stems from the "First Amendment right 'to petition the Government for redress of grievances" (Doran, 2013). This particular budget cut did not pass in 2013 (North Carolina Prisoner Legal Services, 2015). Prisoners in North Carolina still have access to these legal services, but it is held together

by a vague constitutional thread, with no protection, and in fact, with threats on the state level. The United Kingdom, on the other hand, has passed reform legislation which expand the rights of the accused, to a certain extent.

United Kingdom

The Legal Aid, Sentencing and Punishment of Offenders Act of 2012 made several changes to the Criminal Justice Act of 2003. Ideally, it may be enlightening to compare the 2003 act procedures with the new ones, to determine if this was a change in the right or the wrong direction in terms of prisoners' rights; however, due to the limited scope of this project and the variety of evidence to examine, this analysis will only use the current situation, the 2012 act's provisions, and compare them to the other nations in question, with the focus on future progress.

Section 13 of the Legal Aid, Sentencing and Punishment of Offenders Act of 2012 provides starting "advice and assistance" for those in police "custody" (Legal Aid, Sentencing and Punishment of Offenders Act 2012, 2012). Section 15 states that legal assistance is available to those who are under criminal investigations, those who are already in court, and those who have been on trial (Legal Aid, Sentencing and Punishment of Offenders Act 2012, 2012). These two provisions seem to contradict each other on whether those in police custody have the right to legal assistance or not. Section 16 further confuses this issue by saying that those who qualify for representation also have access to such for "bail proceedings" with regards to that case, including "preliminary or incidental" hearings (Legal Aid, Sentencing and Punishment of Offenders Act 2012, 2012). However, section 16 also states that regulations can be made to

establish “exceptions for proceedings” occurring more than a specified length of time before or after the main trial (Legal Aid, Sentencing and Punishment of Offenders Act 2012, 2012).

According to section 17 of the act, in determining whether someone is eligible for legal aid, in addition to “financial resources,” one must consider the risk to the individual’s “liberty,” “livelihood,” or “reputation” posed by a conviction, the potential for a defining case law, the individual’s ability to represent his or herself, and whether there will be other witnesses to question (Legal Aid, Sentencing and Punishment of Offenders Act 2012, 2012). According to sections 18 and 19 of the act, these determinations can be made by a director or by the court (Legal Aid, Sentencing and Punishment of Offenders Act 2012, 2012). Section 20 of the act states that a preliminary assessment of a suspect’s eligibility for legal aid can be made during an initial investigation, preceding the criminal charges (Legal Aid, Sentencing and Punishment of Offenders Act 2012, 2012).

Section 108 of the Legal Aid, Sentencing and Punishment of Offenders Act of 2012 serves as an amendment of the Criminal Justice Act of 2003; completely replacing the procedures for counting time in custody or pretrial detention “towards time served” (Legal Aid, Sentencing and Punishment of Offenders Act 2012, 2012). The new act states that the days that a defendant was in custody count towards the reduction of his or her sentence, with a few stipulations (Legal Aid, Sentencing and Punishment of Offenders Act 2012, 2012). If the offender was in custody for more than one offense, each day counts only once, towards one offense; additionally, a day cannot count towards the twenty-eight days “before automatic release” (Legal Aid, Sentencing and Punishment of Offenders Act 2012, 2012). To define automatic release, the law refers the reader to section 255 of the Criminal Justice Act of 2003 which explains that automatic release occurs twenty-eight days after one “return[s] to prison,” “if

the Secretary of State" deems him or her to be a low risk (Criminal Justice Act of 2003, 2003). According to section 255B, this process can be initiated at any time after the prisoner's return to prison (Criminal Justice Act of 2003, 2003). This seems to clarify that the 28 day exception for counting time served applies only to prisoners who have been deemed suitable for, and scheduled for, automatic release.

In a more positive measure, Section 109 allows for a portion of the time which one was out on bail to also count towards the reduction of one's sentence; the formula for calculating this portion was also amended from the 2003 act to the 2012 act (Legal Aid, Sentencing and Punishment of Offenders Act 2012, 2012). The new method of calculation is as follows: add up all of the days when the offender was under the bail restrictions, including the first day even if it is a partial day, but excluding the last day if the end of it was already spent in custody (as this would already count in the previous section), then subtract any days on which the only restrictions were a curfew or none at all, then subtract the number of days (if any) where the defendant violated the terms of bail, divide the remaining days by 2, and "round up to the nearest whole number" if necessary (Legal Aid, Sentencing and Punishment of Offenders Act 2012, 2012). Like the pretrial detention days, a day of bail restrictions counts only once towards one sentence and cannot count as one of the last 28 days of a sentence (Legal Aid, Sentencing and Punishment of Offenders Act 2012, 2012). The Legal Aid, Sentencing and Punishment of Offenders Act of 2012 also, in Schedule (appendix) 11, contained amendments to the Bail Act of 1976; the majority of these were simply clarifications of terminology, such as changing "'a child or young person'" to "a person under the age of seventeen"(Legal Aid, Sentencing and Punishment of Offenders Act 2012, 2012).

In comparison to the American versions, the British Bail Act of 1976 is very thorough and specific in its delineation of the circumstances, terms and procedures surrounding every conceivable aspect of the bail process (Bail Act 1976, 1976). It states that, in general, a person who is released on bail can either be released on his or her own recognizance, on unsecured bond, or secured bond, with the requirements that he or she "does not commit" a crime, does not "obstruct…justice" in any case, is available for questioning, and meets with an attorney (Bail Act 1976, 1976). In "murder" trials, a defendant must be mentally evaluated by two physicians before being eligible for release (Bail Act 1976, 1976). This is strikingly different from the American laws, which generally prohibit the release of such defendants, but leave it open to the discretion of the judge. This is somewhat of a confounding variable to this analysis, because, this provision is more likely to extend the length of a defendant's pretrial detention, however, this safeguard arguably produces a more protective result for society. Though it may be a positive measure, it would have a negative effect in terms of the numbers in question. This just goes to highlight how different situations necessitate different regulations. Such a regulation makes sense as a precaution for murder trials, but that does not detract from the overall problem, of some defendants waiting years to be tried and found innocent. There are many more factors at play in the legislation than can be directly attributed or applied to the problems at hand. While some of the identified differences are more clearly beneficial to the reduction of pretrial detention, others come with more baggage. Examining the intricacies of all such provisions is a subject which necessitates further study.

New York

The New York law regarding bail is far simpler, and shorter than its counterparts. In a mere two pages, the New York Criminal Procedure Law simply states that the factors to consider in the decision whether or not to grant bail are the defendant's "character," mental stability; job and finances; family relationships; length of time lived in current "community"; and "criminal record;" as well as his juvenile record and any history of flight risk (Application for recognizance or bail…, 2013). Whether or not the defendant owns or has used a gun is also on the list (Application for recognizance or bail…, 2013). Additional factors to consider include whether the crime was committed against a member of the defendant's household, whether he or she violated a restraining order, the available evidence, the potential sentence for the charge, and, in cases of appeal, the likelihood that the judgement would be reversed (Application for recognizance or bail…, 2013). The statute detailing these factors to consider referred back to statute 530.10 as containing the definitions for situations which allow bail; however, statute 530.10 simply states that a trial in a court, with a judge, is the venue in which bail comes into question (Order of Recognizance or Bail; in General, n.d.). Thus, the stipulations listed above are the only ones officially in the New York law. This is surprising given the detail in the North Carolina law, and the even greater detail in its European counterparts. Perhaps having only a list of factors as a guideline explains the pretrial detention crisis on Riker's Island.

Although we have examined the laws for both of the example states, there is a federal law pertaining to bail as well, for defendants awaiting a trial for a federal offense. The U.S. federal law pertaining to bail states that a person can be released on his or her own recognizance, unsecured bond, or simply detained (Release or detention of a defendant pending trial, 2008). Other than adding the word "federal" to stipulations such as the defendant cannot commit a

crime while out on bail, and a few added lines about collecting DNA evidence, the U.S. law is not materially different from those previously detailed. It is more in-depth than the state laws, containing procedural requirements for a variety of specific circumstances, but not as extensive as the European laws. Rather than re-iterate the principles established in the two states' laws, it is more important to now examine the reform efforts conducted in the reform example state of New York in the next section; but first, Ireland's laws and practices must be examined as well.

Ireland

Of the countries and states in this analysis, Ireland has the direst need of reform, and the least likelihood of passing it any time soon. As there is not much material difference between the bail laws, the Irish part of this analysis will focus on the access to legal representation for the incarcerated, as this is where the country excels at denying rights. There are many barriers to legal aid for the incarcerated in Ireland; a University of Cincinnati Law Review article, Langwallner, about the Irish Innocence Project organization details the hurdles with which Irish law prevents it from assisting them.

Ireland, although much more fraught with systemic barriers to exoneration, has an Innocence Project organization, which has been operating since 2009 (Langwallner, 2013, p.1293). The presence of the organization, however, does not mean that Irish inmates have reasonable access to legal aid. There are a multitude of aspects of Irish criminal law which directly bar organizations such as the Innocence Project from providing legal assistance, not the least of which are preventing them from accessing the trial records and evidence (which the police are not even required to keep after the trial is over), communicating with the defendant

directly, getting the original attorney to cooperate, and crucially, from requesting a retesting of DNA evidence (Langwallner, 2013, p.1297-1298 & 1311). The organization had to meet with the Minister of Justice and get permission from the bar association to allow its attorneys to enter the prisons to speak to clients; however, the attorney who speaks to the client cannot be the same one who represents him or her in court (Langwallner, 2013, p.1299). In addition to actual legal barriers, there are also variables at the level of individual officials in the system; despite having express permission to meet with clients in prisons, the organization has faced difficulties with individual officers not letting them enter the prisons (Langwallner, 2013, p.1300).

Some legislation directly prohibits these actions, while other legislation sets the threshold of proof to make a case so high that it is nearly impossible to get DNA evidence tested without having something as strong as DNA evidence to support the claim of a "miscarriage of justice" (Langwallner, 2013, p.1300). The laws preventing prisoners from seeking legal aid in Ireland, primarily in the "Criminal Procedure Act" are extensive (Langwallner, 2013, p.1300). According to the Irish Criminal Procedure Act, in order to file a miscarriage of justice, there must be new evidence already available; it is then up to the court to either uphold or overturn the conviction, or order a new trial (Langwallner, 2013, p.1301). Even if there is new evidence in the defendant's favor, his or her conviction may still be upheld if the court does not think that there was a "miscarriage of justice;" such a decision can, however, be taken to the supreme court (Langwallner, 2013, p.1302-1303). To prove that there has been a miscarriage of justice requires factual innocence, but can also apply if the evidence was not "credible," procedures were not followed, or the defense counsel was inadequate (Langwallner, 2013, p.1304-1305). To address that last point, however, Irish case law has yet to set a guideline for measuring the effectiveness of legal counsel (Langwallner, 2013, p.1329). In 2003, the European Convention on Human

Rights was incorporated into Irish law, but it was established as below the national constitution, meaning the Irish constitutional law, which imposes some of the aforementioned restrictions, supersedes the Human Rights laws; the Irish government also stipulated that the convention was not retroactive, and would thus not apply to the trials of those who are already convicted (Langwallner, 2013, p.1306).

In addition to having no legal basis requiring the preservation of evidence after a trial ends, Ireland has no DNA database, and its legislature had just rejected a bill to establish one, which was the "Criminal Justice (Forensic Evidence and DNA Database System) bill" (Langwallner, 2013, p.1311). Although it sought to create a database, it did not include a provision for keeping the evidence from crime scenes, despite the scholarly reports on which the bill was based having recommended exactly that for the purpose of proving miscarriages of justice (Langwallner, 2013, p.1311). As previously mentioned, there is no express right in U.S. laws for post-conviction legal representation or evidence testing, but it is viewed as being an implicit element of due process (Langwallner, 2013, p.1312).

Irish case law, rather than expanding rights as it does in the US and UK, has hindered defendants' ability to plea their cases, by requiring them to answer incriminating questions which are "admissible" in court (Langwallner, 2013, p.1314). Case law has also weakened the right to an attorney, establishing that they are not required to be present for police questioning, and that it is perfectly constitutional for questioning to continue while waiting for the attorney (Langwallner, 2013, p.1316). Irish case law has rendered inadmissible any evidence gathered through "a deliberate breach of constitutional right[s]," such as a marathon interrogation with no sleep (Langwallner, 2013, p.1317-1318). However, while these techniques are now unconstitutional, there is also no law or case law which adequately addresses the issue of

wrongful convictions resulting from "false confessions" (Langwallner, 2013, p.1329). The right to an interpreter for those who do not speak the language is also unclear; case law has ruled that it exists, but has simultaneously declared that, despite not having met this right, this was not a violation in the case in question (Langwallner, 2013, p.1320). It is not a very strong right if not meeting it is not a violation.

So as not to conclude this section on such a sour note, the Irish Penal Reform Trust, an NGO (Non-Governmental Organization) researching and advocating for criminal justice reform in Ireland, reported recently on "barriers to accessing justice," and made recommendations for both the legislative side and the practice side of the issue (Irish Penal Reform Trust, 2012, p.1). It opened with this heartening declaration: "The right of access to the courts and to have grievances and complaints by prisoners dealt with effectively, transparently and efficiently are essential elements in the creation of a legitimate and fair prison regime" (Irish Penal Reform Trust, 2012 p.1). The IRPT has recommended an "ombudsman"-like independent authority for prisoners to launch complaints, as "there is [currently] no independent" agency available to hear inmates' grievances and enforce changes, and the system which is currently in place does not meet "international human rights standards" (Irish Penal Reform Trust, 2012 p.1). There should also be protections against negative consequences of filing a complaint (Irish Penal Reform Trust, 2012 p.1).

The 2010 Irish High Court case "Mulligan V Governor of Portlaoise Prison & Anor" reaffirmed the courts' stance that the prisoner has to prove that the authorities had malicious intent in order to claim a breach of human rights (Irish Penal Reform Trust, 2012 p.1). This is a preventative burden of proof, as rights violations are more likely to be a result of budget shortages or lack of recourse for the "conditions" in question (Irish Penal Reform Trust, 2012

p.1). Although this standard of proof remains in place, there have, however, been individual cases which acknowledged that there was a breach of rights without proof of malice, such as "Kinsella v. Governor of Mountjoy Prison" (Irish Penal Reform Trust, 2012 p.1).

As explained in Langwallner, Ireland does not have legal aid for prisoners as the UK does; in fact, they are not even required to provide such for "parole hearings" (Irish Penal Reform Trust, 2012 p.2). Cost issues may be a major contributing factor for Ireland's comparatively under-developed "prison law jurisprudence" (Irish Penal Reform Trust, 2012 p.2). Additionally, "the lack of legal aid for prisoners" for cases relating to their conditions in prison, along with the lack of a complaints system, could allow a court to rule that inmates in Ireland have no recourse against human rights violations (Irish Penal Reform Trust, 2012 p.2). To ameliorate these problems, the Irish government could provide basic legal aid to litigate breaches of human rights (Irish Penal Reform Trust, 2012 p.2). The IPRT suggests that such a system should include the coverage of one visit by counsel after conviction and sentencing, to help ensure that the prisoners are not mistreated and know their rights while incarcerated (Irish Penal Reform Trust, 2012 p.2). Many Irish prisons also restrict the times of day during which inmates can make phone calls; these hours are often when lawyers are in court (Irish Penal Reform Trust, 2012 p.2). Additionally, prison authorities are opening and reading communications between prisoners and solicitors, which is illegal, but complaints are not often investigated or heeded (Irish Penal Reform Trust, 2012 p.2). Moreover, the high possibility of "costs being awarded against an NGO" deters them from representing prisoners in human rights trials (Irish Penal Reform Trust, 2012 p.2). IPRT suggests that the Irish government could remedy this by passing a law to make it easier for an NGO to initiate court proceedings for prisoners, as well as to allow them to form class action suits, which would ultimately save time and money (Irish

Penal Reform Trust, 2012 p.2). However, of utmost importance is that the prisoners have access to information "about their rights," or else Ireland is violating "article 3" of the "European Court of Human Rights" (Irish Penal Reform Trust, 2012 p.3). A proper reform to address this would require prison authorities to make prisoners "fully aware" of their rights, providing the information with concessions for those with learning and/or physical disabilities (Irish Penal Reform Trust, 2012 p.3). Although the Irish government rejected a bill to even keep a DNA database, there are multiple NGOs working to improve the system.

CONCLUSIONS AND OUTLOOK FOR REFORMS

As previously discussed, to believe that simply increasing budgets would solve the problem is to fall prey to the legal man assumption. While it certainly wouldn't hurt, and has been shown to help in some cases, increased funding cannot solve the problems alone. As the reference to the legal man assumption implies, increased budgets must be combined with serious changes in the culture of the legal system to value justice over convictions, clearing rates, and other factors. Similarly, changing the motivations of the actors would also not be enough, by itself, to fix the system. Even with the best intentions in place, a lack of resources could still prevent them being realized. Ireland, having both the smallest court budget and the most regressive laws clearly needs change from both directions. Change, however, has thus far been impeded by its regressive political culture. Political culture, in and of itself, cannot stand alone as an explanation for "social conduct," but "an informed political observer" can use knowledge of a particular political culture to infer "the likely and the unlikely consequences of political actions" (Welch, 2013, p.1). Ireland's political culture is opposed to admitting mistakes or providing assistance in any form to the incarcerated, and officers have been known to hinder perfectly legal assistance requests of inmates. Knowing this, one can infer that, even if the proposed Irish reforms pass the second time around, it will be a long time before the implementation catches up.

There is room for improvement in all three of the countries in both pre-trial detention time and legal representation for the convicted. All of the factors considered were shown to

contribute to these shortcomings in varying degrees. Overall, Ireland, having the worst track record, has the most deeply-rooted problem, not only in the implementation of its laws, but also in the laws themselves, which are structured to meet human rights standards only technically. Ireland's low budget allocations certainly do not help matters, but that takes a backseat to what the country's law enforcement and legal arms are actually doing with the resources they have, which is limiting recourse for any "miscarriage of justice". The United Kingdom, on the other hand, spends twice as much per capita on its judicial system than Ireland, and has more progressive bail laws, surpassing the U.S. on most legislative fronts. However, these are also the areas in which it can improve, in terms of the direction it is heading. The conclusions for the individual countries below expand upon this point. The U.S. is squarely in the middle. In terms of bail legislation, it is neither progressive nor repressive, but simply straight forward. In terms of budgets, however, there is plenty of room for improvement within its court systems. Although neither New York nor North Carolina was bold enough to make both its prosecution and defense budgets available for side by side comparison, they each happened to choose the opposite one to display. All else being equal, with North Carolina being surprisingly worse in terms of caseloads, and New York being the one to take steps to relieve that pressure, it is important to note that this alone is not enough. It seems likely that the District Attorney's budget is as much as twenty times that of the Indigent Defense budget. Until these numbers are balanced out enough for the states to be comfortable reporting both figures, the public defenders offices will continue to experience the strain of caseload pressures, even if the courtrooms do not. That would merely put the defendants at a further disadvantage. This is why any reform efforts must be well rounded, tackling the issues from different angles, in order to succeed.

In examining all of the evidence presented, it seems clear that a combination of both a change in budgeting and a change in the social-cultural atmosphere of the legal and law enforcement professions would be necessary in order to address the problems of extensive pretrial detention and aggressive pressure for guilty pleas, factors which interact to increase the risk of imprisoning innocents. Although reform laws can be passed, if the culture of implementation does not change along with them, some of the effect may be negated. The literature and the data suggest that resource scarcity may serve as an enabler for the culture of measuring success by convictions. Although there is no way to be certain how many people have been wrongfully convicted as a result of these short-comings, the other side of the coin is access to legal representation while incarcerated. Although there are not specific laws outlining the right to legal aid for prisoners, it is generally accepted as an implied right as part of due process that: if there is a new hearing with new evidence in a sentenced case, this falls under the provisions for counsel for criminal legal proceedings. Of the three nations examined, only Ireland has laws and practices which work to expressly prevent prisoners from receiving legal aid.

As mentioned in the previous section, although North Carolina is not our example of a reform state, and its legislature did attempt to pass a bill denying prisoners legal representation, at least this reform did not pass. The previous section also already mentioned Ireland's attempt to reform minimally, by adding a DNA database to their justice system; however, even this did not pass. Given the minimal budgets recorded in the data at the beginning of this thesis, it is possible that Ireland's failure to pass this reform was, at least in part, motivated by a desire to keep justice costs down, or by a simple lack of funds. Given the general attitude towards prisoner's rights however, as conveyed through the Irish courts' rulings, it unfortunately seems

more likely that they did not want to legislate an opportunity to be held accountable for miscarriages of Justice.

It is more important to consider the reforms which did pass, in New York. No law was cited for the right of prisoners to legal representation in New York, because there is no statute which directly addresses this. There are a variety of non-profit organizations attempting to fill this need, like the one North Carolina has on contract with the Department of Corrections. Attention turns then to the one place where New York has instituted reforms: caseload pressures. As previously discussed in the literature, caseload pressure has be traditionally thought of as a major contributor to the dysfunctions of the legal system, not the least of which is lengthy pretrial detention. According to the New York State Office of Indigent Legal Services, in response to many academic reports, including one from the American Bar Association, the state of New York imposed limits on the caseloads of "indigent legal service lawyers" ("Upstate Quality Improvement…", 2013). This was the first time any such measure was ever implemented in the state; it began with the passage of the state budget in 2009, which added in the cap, but only in New York City (Eligon, 2009). This was a major improvement, as the "Legal Aid Soceity," the largest of the legal non-profits, was, at any given time, handling 103 cases simultaneously, which did not allow the attorneys adequate time for each case (Eligon, 2009). Prior to the caseload caps, an attorney for the indigent in New York City could be handling up to 115 cases at once, making up to "10 court appearances a day" (Eligon, 2009). Although the change was not accompanied by an increased budget (Eligon, 2009), thankfully, the experimental measure helped in the city, enabling it to be expanded to upstate New York in 2013 ("Upstate Quality Improvement…", 2013). The expansion to a statewide measure was spurred on by "the New York Civil Liberties Union on behalf of indigent criminal defendants in

Hurrell-Harring et al V State of New York in 2010 ("Upstate Quality Improvement…", 2013). This time, the measure came with a 4 million dollar allocation for "local initiatives" to alleviate "excessive caseloads in upstate public defender offices" and to create "quality control" for indigent legal services ("Upstate Quality Improvement…", 2013). While North Carolina law is concerned with meeting minimum requirements for representation, New York is setting standards for ensuring that representation is adequate to the case at hand. In addition to the initial 4 million dollars, the Office of Indigent Legal Services designated 12 million dollars in grants to help meet the caseload caps in 45 counties over the course of three years ("Upstate Quality Improvement…", 2013). The measures, collectively, seem to be working. A study released in 2015 by the state courts found that indigent defendants have benefited from the caseload caps (Stashenko, 2015).

As for reforms in the United States overall, the many successful cases of exoneration through DNA evidence, in the early 2000's, achieved by the Innocence Project in the US contributed to the passing of two key pieces of reform legislation: the "Advancing Justice Through DNA Technology Act" and the "Justice for All Act" (Hardy, 2009). These acts provided approximately 1 billion dollars in funding for DNA testing for exonerations and another billion for the processing of DNA evidence backlogs nationwide and prevent future backlogs by training more "personnel" (Hardy, 2009). They also set higher compensation rates for the wrongfully imprisoned (Hardy, 2009).

Conversely, the UK reforms are worded ambiguously and have been the subject of much controversy due to the budgetary cuts and restriction of legal aid for the imprisoned, making this 2012 reform a step backwards (Bowcott, 2015). However, it is still possible to block some of the damage. The budget cuts to prisoners' legal aid, adopted in the 2012 Legal Aid, Sentencing and

Punishment of Offenders Act, have been found by the British Court of Appeals to be "illegal" (Bowcott, 2015). The main argument was that this would prevent prisoners from "effectively challeng[ing] the conditions under which they are held," and have an especially profound impact on the mentally challenged (Bowcott, 2015). The 2012 Act sought to remove legal aid for parole, discipline, discrimination, and other cases (Bowcott, 2015). A more in-depth hearing over this matter in the appeals court is set for spring of 2016 (Bowcott, 2015).

Although North Carolina has not made any reforms with regards to pretrial detention or legal representation for the incarcerated, it is "the only state that has an agency specifically dedicated to reviewing innocence claims" (Giannelli, 2012 p.1). Also, when, in 2012, a major forensics lab scandal was exposed in North Carolina where technicians, who were working with law enforcement, altered, misplaced, or failed to report exonerating evidence in hundreds of cases, the state was forced to respond with quick reforms. One such reform was to open the accreditation of labs to any accrediting agency, so that there is no longer a monopoly on the approval of forensics labs (Giannelli, 2012 p.4). The other three reforms are all essentially things that happen on paper, and may or may not have a real impact on whether such misconduct continues in the future. The crime labs now serve the "public and the criminal justice system" rather than the "prosecuting officers of the state;" misrepresenting evidence in a legal disclosure is now specifically a crime; and "a Forensic Science Advisory Board" was established (Giannelli, 2012 p.4). Although these reforms are more of a bandaid, and do not address the heart of the problems which led to these actions, at least they are a step in the right direction.

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