AMERICAN BAR ASSOCIATION
COMMISSION ON CORRECTIONAL FACILITIES AND SERVICES
and
the Commission on the Mentally Disabled

RECOMMENDATIONS

The Commission on Correctional Facilities and Services, joined by the Commission on the Mentally Disabled, recommends adoption of the following resolution:

RESOLVED, that the American Bar Association calls on the Legal Services Corporation to assure that civil legal services are made available no less to the poor in institutions than to other poor people. To meet this objective, the civil legal needs of confined juveniles, prisoners, and the mentally disabled should be ascertained and appropriate funds allocated, and further

RESOLVED, that the Commission on Correctional Facilities and Services and the Commission on the Mentally Disabled, or such other Section or Committee as the President may designate, is authorized to present these views to the Legal Services Corporation and to counsel or assist the Corporation in identifying the civil legal needs of the poor in institutions.

REPORT

In 1970, the Census found that 2.1 million persons were inmates of prisons, mental hospitals, juvenile facilities and similar institutions. Because of the temporary nature of residency in such places -- especially jails and juvenile detention institutions -- an even greater number of individuals pass through their doors each year. To a large extent, unfortunately, their civil legal needs are unassessed and unaddressed.

Almost uniformly, the institutionalized population is poor. Indeed, in most regards the concept of the means test to check
eligibility for free legal services is superfluous for involuntarily confined persons. 1/ But they face an even more substantial obstacle to securing legal aid: the poor in institutions lack mobility. In most cases, they cannot go to the community's usual provider of free legal services for necessary assistance. The community must come to them, if they are to be served.

In a series of decisions the Supreme Court has clearly held that conviction does not extinguish one's right of access to the courts, and that the confining authority must not administratively impede that access unreasonably. Thus, prison inmates must be permitted to assist one another on habeas corpus petitions and other substantial claims for relief when there is not another available and adequate source of legal assistance. 2/ Juveniles and inmates of mental hospitals have similar if not greater rights.

In the prison area, the burden of making adequate legal aid available has largely fallen on two entities -- the Law Enforcement Assistance Administration and the regular budget of the particular correctional agency. There has been some funding of prison legal services through local Office of Economic Opportunity legal services programs and at least one instance of Social Security and Rehabilitative Services Administration (HEW) funding. These appear to be unstable sources of funds for a service which must be continuous. Grants are typically for a short term and, at least as regards LEAA, largely demonstration funds intended to cease after a few years of developing a concept. Correctional agency funding means one party potentially controls the other's access to legal services, a clearly untenable arrangement.

No brighter picture may be painted respecting the mentally disabled. Few programs are known to provide any representation to these persons. What services are available are minimal. A real danger exists that inadequately funded programs will never reach those needing their services since the mentally disabled may not know of their legal rights, or may not be able even to express a desire for assistance.

In a survey of 42 correctional services units for juveniles, the National Assessment of Juvenile Corrections found that two thirds of the responding youth had not even been talked to by staff about their legal rights. It was also the feeling of only 35 percent of the respondents that staff would help them contact a lawyer. 3/

1. The current official guidelines hold that a single individual with an income below $2590 is poor; for a family of four the figure is $5050. The nation's estimated poverty population in 1973. In 44 states, inmates can make no more than $1 per day from prison jobs. Lenihan, The Financial Resources of Released Prisoners 9 (1974).


A variety of organizations have recognized the legitimate needs of the institutionalized poor for civil legal services. That is not at issue. Legal services funding stands at a crossroads. The Legal Services Corporation is mandated to assure that the legal aid needs of the poor are addressed.

It is possible, however, that in taking up the reins of management of the legal services program, the needs of groups not now provided for will not be adequately included in planning and funding decisions. Enormously difficult decisions have to be made.

It would be an appropriate act of statesmanship and leadership for the American Bar Association, with its long record of support for legal services programs, and its extensive work in the areas of corrections, the mentally disabled and juveniles, to call upon the Legal Services Corporation to recognize and meet the needs of these groups.

Our commissions have submitted this joint report to facilitate consideration by the Association of problems which have arisen in our separate fields of endeavor. Based on the available data and literature, we believe that juveniles face similar problems in securing legal assistance. Correspondence with the Commission on Juvenile Justice Standards indicates this is the case. Nevertheless, pending further development and release of its standards, the Commission on Juvenile Justice Standards felt it inappropriate to take any formal position in this matter.


6. Under the Legal Services Corporation Act, the Legal Services Corporation is prohibited from funding assistance relating to "criminal proceedings or to provide legal assistance in civil actions to persons who have been convicted of a criminal charge where the civil action arises out of alleged acts or failures to act and the action is brought against an officer of the court or against a law enforcement official for the purpose of challenging the validity of the criminal conviction ...." Thus, it appears to be well within the Corporation's charter to provide funds for the ordinary civil problems of the incarcerated poor (domestic relations, landlord-tenant, etc.) and problems arising out of the conditions of confinement where the validity of a conviction is not at issue.
In view of their interest in this report, copies have been furnished to the Criminal Justice Section, the Family Law Section, the Individual Rights and Responsibilities Section, the Young Lawyers Section, the Commission on Juvenile Justice Standards, the Standing Committee on Legal Aid and Indigent Defendants, and the Consortium on Legal Services and the Public.

Respectfully submitted,

Jerome J. Shestack, Chairman
Commission on the Mentally Disabled

Robert B. McKay, Chairman
Commission on Correctional Facilities and Services

August, 1975