REPORT OF THE STANDING COMMITTEE ON
LEGAL AID AND INDIGENT DEFENDANTS

RECOMMENDATION*

Resolved, That the American Bar Association urges state and local bar associations to cooperate with state and local Legal Services Corporation grantees and other agencies providing civil legal services to indigent persons to the end that those services may also be provided by members of the bar generally in such ways and to such degree as may be agreed upon by those agencies and the organized bar in the areas served by them.

Resolved Further, That the Legal Services Corporation is urged to consult with the American Bar Association, state and local bar associations in developing and implementing plans and procedures for involving private attorneys in providing and supporting civil legal services for indigent persons.

Resolved Finally, That a locally developed plan for the inclusion of the private bar in the rendition of or support for legal services to indigent persons agreed to by a state or local Legal Services Corporation grantee or other agency providing legal services to indigent persons in the area to be served and by a bar association or associations representing a majority of lawyers in such area should be considered as prima facie complying with all requirements for the substantial involvement of private lawyers in providing legal services to the poor.

REPORT

At the 1980 Annual Meeting, the House of Delegates passed a resolution recommending that Congress amend the Legal Services Corporation Act to mandate the opportunity for the substantial involvement of private lawyers in providing legal services to the poor. In 1981, the board of directors of the Legal Services Corporation, without waiting for Congress to amend the Act but after broad consultation, passed a resolution requiring its grantees to insure that a substantial amount of funds would be allocated to provide legal assistance to eligible clients by private attorneys. That resolution was implemented through a December 1981 Instruction to Grantees outlining a variety of ways in which private attorneys could be involved in providing such assistance and through conditions placed on 1982 grants setting 10 percent of a recipient’s annualized grant award as a guideline or benchmark for allocation to private bar involvement.

The Legal Services Corporation board resolution required local legal service programs to work with bar associations to involve private attorneys in meeting the legal needs of the poor. Since then the Corporation has continued to monitor and enforce its private bar involvement requirements.

While supporting the Corporation action, this Association has not adopted a formal policy statement encouraging state and local

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*The recommendation was approved. See page 307.
bars to work with the Corporation grantees to utilize this mandated, private bar funding in an effective and economical manner. It is past time that we did so. As early as 1937 and on at least two (2) occasions since we have urged state and local entities to assist in providing adequate criminal defense services. We should do no less on the civil side.

It is both appropriate and important that state and local bars join with their counterpart agencies to structure the methods and terms by and under which the private bar will participate in this fundamental professional responsibility. The needs of the poor for legal services differ widely from place to place. The legal problems of the rural poor are not the same as in urban metropolitan areas. The ability and disposition of the bar to participate will similarly vary from place to place.

The thrust of the first Resolved clause is to facilitate local decision making as to the system or method by which civil legal services will be furnished to indigent persons. Local Corporation grantees have had substantial autonomy in designing local delivery systems. Now that the law requires that a majority of members of local grantee governing boards be named by the organized bar it is important that state and local bars respond to and work with local Corporations grantees in fashioning such delivery systems.

Although local programs have customarily been allowed to work out their own delivery structures, the Legal Services Corporation retains significant ability to mold local delivery systems through grant conditions, instruction, guidelines and regulations. It has recently amended the 1981 Instruction by increasing the private bar involvement allocation from 10 percent to 12½ percent, changing it from a flexible benchmark or guideline to a requirement and incorporating new and unfamiliar provisions affecting those receiving and using such funds, including bar associations. A number of bar associations, including this Association, sought the opportunity to comment on the amended Instruction in detail, suggesting the need to measure the changes against the experience under the prior 10 percent guideline. The amended Instruction was promulgated in late November to be effective January 1, 1984, without what some associations consider an adequate opportunity for the requested consultation. Particularly in the area of the involvement of private attorneys in the delivery of legal services to the poor, the Corporation should consult with and give due regard to the views of the American Bar Association and state and local bar associations as representatives of the private bar. That is the position set forth in the second Resolved clause.

In its August 1980 resolution, this Association adopted as a standard the "substantial involvement" of private lawyers in providing legal services to the poor. The approach taken by the Corporation in its resolution and instruction has been to seek private bar involvement through an allocation of a "substantial amount" of its grantees' funds for that purpose. The objectives are the same with one emphasizing the end and the other the means.

In keeping with the principle that systems for providing legal services should be developed locally through the joint efforts of local programs and local bars to meet local conditions, it follows that any plan so devised and agreed upon should be considered as meeting the requirements of "substantial involvement." Thus the third Resolved clause seeks to offer guidance to bar associations and Corporation grantees in meeting the common objective.

F. WM. MCCALPIN
Chairman