BE IT RESOLVED, That the American Bar Association urges that welfare programs be funded at a level required to meet the need for the basic essentials of life.

BE IT FURTHER RESOLVED, That reductions should not occur unless justified by careful study and analysis with full regard for their short and long term impact on individuals and budgets, and their compliance with state and federal constitutions.

BE IT FURTHER RESOLVED, That the American Bar Association opposes linking public assistance for needy persons to requirements which infringes on the right to privacy and on other individual freedoms, such as the right to travel.
REPORT

Introduction

While people may argue over when the current recession began and if or when it has run its course, no one is denying that a recession occurred. Nor are its students arguing that the poor and homeless did not feel its grip more forcefully than any other group. We entered the recession with a record number of poor people. "The official poverty rate, which counts the number of people whose income falls short of some minimum level, did not come down as the economy rose. While poverty shrank by a quarter in those... Kennedy-Johnson years, it was actually higher at the end of the Reagan boom than in 1979." 1/ That number increased during the recession with a concomitant expansion in the number of requests for government assistance.

"The number of unemployed has risen by 1.9 million since June 1990," reported The New York Times in December 1991, and "[t]he number of Americans without any health insurance rose last year by 1.3 million, bringing the total to... the highest since the creation of Medicare and Medicaid in 1965.... 1/ Health benefits were not the only assistance Americans asked of their governments. "The number of Americans receiving food stamps continues to grow sharply... and more than half the children who eat school lunches receive them free or at reduced prices. ...(A)most one in 10 Americans now depend on the Government to put food on the table. ...(P)overty and hunger are no longer just problems of the inner city or the hollows of Appalachia and instead have now spread out into middle class suburbs."1/ Who suffers most when poverty expands at this rate? "841,000 children were pushed into poverty last year... more than 13 million American children were living in poverty...." 4/

Response of Government

In spite of these tragic figures, and because of budget crunches and deficits found by state and national government, some lawmakers have reacted to the recession and its intensified poverty by cutting welfare budgets and raising eligibility thresholds. Now fewer people are able to receive the income supports they need. For example:

*Benefits in Aid to Families with Dependant Children (AFDC) were reduced more sharply in 1991 than in any year since 1981, 5/ and in the past 20 years have undergone a 43 percent cut in inflation-adjusted dollars. 6/

*Cuts in state cash assistance programs will affect nearly one-half million people. 7/

*Twelve states cut special needs/emergency cash programs designed to avert homelessness. 8/

*Twenty-seven state supplements to federal Supplemental Security Income programs (SSI) for poor elderly, blind or disabled people cut or froze benefits at FY 1991 levels
causing the purchasing power of recipients income to decline.2/

*Most states raised taxes, but did so regressively so that poor workers pay a greater share of income than nonpoor.10/

The effect of these austerity measures, particularly on poor children, are short-sighted and will reverberate in the years ahead. Those in our communities who receive little or no health care and education, who grow up hungry and ill-housed, will not become productive, tax-paying citizens and may become disaffected with and alienated by a society that continues to isolate them in extreme poverty.

Aid to Families with Dependent Children

Of all the welfare programs, perhaps the most significant is Aid to Families with Dependent Children (AFDC). AFDC, a federal-state income support program, serves very low income families. Its primary beneficiary is young children. AFDC provides income supplements to families and also ensures automatic medical coverage for children in the form of Medicaid. In the past decade, AFDC benefits have reached a dwindling number. In 1973, benefits were provided to 83.6% of every 100 poor children; by 1987, benefits reached only 59.8% of every 100 poor youngsters.11/ Yet, in response to growing poverty, 40 states made further inroads into the program last year, freezing or significantly cutting benefits.12/

AFDC benefits were far too low at the recession's start. Many families were forced into homelessness even while receiving benefits because AFDC income was insufficient to support them. For example, 61 percent of the women with children in homeless shelters in the Twin Cities of Minnesota in 1988 received AFDC, as did 64 percent of the women with children in Atlanta's homeless shelters.13/ Most were in shelters because they could not afford housing. In Atlanta, where the fair market rental cost for a modest two-bedroom apartment was $504, the maximum monthly AFDC grant in Georgia for a family of three was $263.14/

AFDC benefits have eroded so dramatically over the past two decades that the national average value of AFDC benefits and food stamps combined is now down to about the same level, after adjustment for inflation, as AFDC benefits alone in 1960, before the food stamp program was created.15/

More than 2/3 of all AFDC recipients are children. Thirty-five percent of AFDC families include a child under the age of three.16/ Generally, recipients are women who need financial assistance during the infancy and toddler stages of their children's lives. They are mothers who stay home with their
children because the salaries they might earn if employed are not high enough to pay for child care costs. The vast majority of AFDC cases are open for less than two years and less than 10 percent of the recipient families include four or more children. Over 70 percent of the families have but one or two youngsters. Nearly 40 percent of the women whose families received AFDC were enrolled in work and training programs, while nearly 15 percent of all adult female recipients and more than 22 percent of all male were either employed or in school while receiving aid.17/

Many states not only cut or froze AFDC income levels, they added more stringent requirements, some of which place heavy psychological and physical burdens on already fragile families and relationships. Rarely do these requirements bear any relation to the stated aims of the programs - to assist families, primarily children, who are experiencing the stresses of poverty.

Learnfare

Learnfare is an AFDC requirement that ties a family's grant to a child's daily attendance at school. In fact, Learnfare penalizes an otherwise eligible family by denying benefits if the child misses school. Not surprisingly, a multi-year evaluation of Wisconsin's Learnfare program, released in January 1992, found that Learnfare failed to reach its desired objectives: It did not improve academic performance, nor did it increase graduation rates among participants.18/

The Learnfare approach is flawed. Instead of offering incentives to children, it sanctions them for problems that are often completely beyond their control. Public policy should favor initiatives that produce the highest possible attendance and graduation rates for low-income students. For example, the ABA recently adopted a policy supporting mandatory literacy programs to reduce illiteracy among criminal offenders.19/ But even that policy - aimed at incarcerated offenders - made clear that the learning requirement was tied to incentives to encourage prisoners. (Programs are to offer "appropriate incentives to encourage and reward offenders' participation."鲣)

Welfare programs should certainly be no more punitive than ones designed for those who have transgressed the law. Learnfare and its progeny should be a way of honoring good attendance and academic performance rather than heaping failure upon failure by further punishing children who do not excel in school.

Family Cap Proposals

In several states around the country, legislation has been introduced that would cap a family's AFDC benefits at a particular point in time, and deny increases after that even though more children are born into the family. Generally, the proposed cap is reached at two children. Underlying these proposals is the assumption that a responsible woman will not have a child while
eligible for AFDC. It also permits lawmakers to meet budgetary constraints by withdrawing money from impoverished parents through imposition of an arbitrary and damaging cap, while blaming the family for its increased poverty.20/

A cap on grants to poor families when a baby is born is not simply a freeze. It actually means each person in the family has less. Currently, grants rise only by small amounts to accommodate a new birth. In New Jersey, for example, the grant increase for another child is only $768 a year ($64/month).21/ More to the point, however, are the conclusions of numerous studies showing that families receiving welfare are small, and do not grow to increase AFDC grants. In reality, seven out of ten recipients have one or two children, and women who receive welfare benefits have children for the same reasons others do. They want to have a child.

Restrictions on Travel

Several states have considered limiting benefits for recently arrived poor families to the levels provided in the state of origin for the first year of their residence. This policy is arrived at regardless of the fact that benefit levels are tailored to the cost of living in the jurisdiction, and that no benefits in any state in the nation are sufficiently generous to lift a family above the poverty line. Such proposals are based on the assumption that states with high benefit levels attract poor people from other areas where AFDC incomes are lower. Studies disprove that poor people move only for increased benefits. Of the ten states with the largest increases in AFDC caseloads between July 1989 and November 1991, most had lower than average benefit levels in 1989.22/ Specifically:

* The Maryland Department of Human Resources found that in 1990 only 8.5 percent of its applicants for AFDC had moved to Maryland within the prior year, and only about one-half of these migrants had been welfare recipients in their former states.23/

* The California Department of Social Services reported that only 4.4 percent of AFDC recipients in April 1990 had moved to California within the prior year, and of these about one-half received benefits in their former state.24/

* Washington State Institute for Public Policy data show that only about 13 percent of AFDC recipients in March 1988 had begun receiving assistance within 12 months of moving into the state. Of these, 30 percent came from states with higher amounts, and 50 percent from states with lower.25/

* Vermont has the highest benefits of any contiguous
state. Yet 16 out of 17 recipients were longtime residents or previous residents who had returned.26/

Poor people relocate for the same reasons other people do. They want to be near family and friends; they want to be near job opportunities; they want a better life. Restrictions on travel punish people for these aspirations. They also place a special burden on newly-arrived poor people that they do not pose on indigenous poor arguably in violation of Article IV, Sec. 2, cl. 1 of the Constitution.

It was undoubtedly the object of the clause in question [Privileges and Immunities] to place the citizens of each State upon the same footing with citizens of other States, so far as the advantages resulting from citizenship in those States are concerned.27/

The right to settle in the state of one's choice is an essential activity under the Privileges and Immunities Clause of the Constitution.28/ The express purpose of discriminating against newcomers is constitutionally impermissible, and cannot be justified by budget constraints. "The conservation of the taxpayer's purse is simply not a sufficient state interest to sustain a durational requirement which, in effect, severely penalizes exercise of the right to freely migrate and settle in another state."21/

General Assistance

Other programs of great importance to very poor people have also been slashed by many state governments. "Of the 30 state general assistance programs, intended primarily for poor single people and childless couples, 14 were cut, affecting nearly a half-million people, or about a third of all recipients."30/ General assistance (GA) is the program of last resort for poor people who fall through the holes of the federally-funded safety net. It helps single individuals and childless couples who are not elderly, including individuals who are disabled for less than a year or who are waiting for a determination of eligibility for social security/disability programs.

Proponents of cuts in GA commonly argue that recipients who are dropped will find employment. Facts do not bear out this position, however. A 1985 study of general assistance (GA) cuts in Pennsylvania found that a majority of those who lost benefits did not find jobs within a year. Of the 113 people in the study sample, only 42 found work within a year after losing benefits. Most of those who did get work, did not remain employed over the long term. Only three worked during the entire year, and only 17 were employed for six months or longer. Most recipients, according to the study had few marketable skills. Forty-two could work only at unskilled day labor or service jobs; an additional 14 percent had clerical skills. Individuals who lost benefits because less
employable over time. Many became homeless, the effect of which is to increase the chaos in their lives and erode chances of finding a job. Further, the longer former recipients remained homeless, the more their physical appearance and mental well-being deteriorated, and the less employable they became.31/

General assistance plays a crucial role in preventing or ending homelessness. The Urban Institute found that the extent of homelessness is directly related to the existence of GA benefits. Cities experiencing the most homelessness are those in which no GA program exists whereas the least amount of homelessness exists in cities where the GA benefits are available to "able-bodied" individuals as well as disabled.32/ Thus, general assistance, with payments averaging about $215 a month per recipient or 39 percent of the poverty line, plays a critical role in preventing homelessness among single adults, the largest segment of the homeless community.

Alternative Measures

Opponents of welfare programs urge steps which will make recipients "independent" of "government handouts," which will turn around "generations of welfare dependency." While education and employment are the ultimate goals, of course, reality is often more complicated. Many AFDC families face barriers that make it difficult if not impossible to get or keep a job.

*In many states, half or more than half of AFDC parents lack a high school diploma. Even among recipients who have completed high school, there are difficulties obtaining employment.33/ Minimum wages are not high enough to house, clothe and feed a family, or even an individual in most cities.

*So long as a family receives AFDC, it is eligible for Medicaid. A family loses AFDC when the parent joins the work force.34/ In that case, it is usually left with no health care coverage at all which, given normal childhood illnesses much less situations involving an unusually sickly child, means that giving up welfare and going to work is irresponsible parenting.

*A great portion of AFDC families have very young children. Without child care, it is impossible for a parent to work.

Most AFDC parents would rather be working. However it is difficult for such adults to obtain and maintain employment unless the barriers preventing their involvement in the work force are eliminated. Programs which expand and improve education and training would produce skilled employable adults. Policies that ensure that every eligible family gets transitional medical and child care services when leaving AFDC would also do much to
increase incentives to employment as well as provide healthy childhoods for many of the nation's children who now do without.

Raising minimum wages to levels tailored to meet basic needs would also do much to alleviate poverty and increase respect for work. Congress recently reported that poverty did not increase in the past year because poor people worked less. In fact, "the poorest fifth of Americans worked 4.6 percent more in 1989 than in the previous decade, but, because of sinking wages and government benefits, their incomes in that same period fell by 4.1 percent."35/ Minimum wages have never bought so little. Annual wages of a full-time minimum wage earner in the 1960s and 1970s exceeded the poverty line for a family of three. Currently, the same worker will garner 78 percent of the estimated poverty line, leaving the family short by $2,400. For minimum wages to equal the three-person poverty line, they would have to be raised to $5.40/hour.36/

Child support enforcement programs are based on the premise that all absent parents should contribute a portion of their income to support their children, the portion varying with the number of children they fathered or bore. Payment could be collected by employers, like Social Security taxes. Failure to pay would be an offense comparable to tax evasion. Enacting a program of this nature would do much to relieve governments of support burdens without punishing custodial parents and children. Studies show that most absent parents have enough income to help support their children.37/ Even if the absent parent's salary could not move the children from welfare eligibility status, it could lessen some of the government's financial burden.

One reason AFDC caseloads have increased during the recession is the failure of the unemployment compensation system to protect against unemployment, as it has in the past. In 1990, only 37 percent of the unemployed workers received compensation benefits compared with 50 percent in 1980.38/ States often screen out low wage earners through monetary qualification rules for unemployment insurance benefits. In principle, these rules are designed to show that a worker has a sufficient nexus with the work force by requiring the employee to earn a requisite amount before becoming eligible for unemployment compensation. In reality, however, low-income earners must work a longer period of time than high wage earners to become qualified for unemployment compensation. For example, if the base period earnings requirement is $3,000, a high wage worker will satisfy the requirement more quickly than a low wage worker.39/ Strengthening unemployment protection for low wage workers will shield state and federal welfare budgets against financial strains during periods of high unemployment.

Conclusion

In 1986, the ABA adopted policy on homelessness supporting, among other things, legislation that would "adopt public policies
and programs that will contribute to the ability of homeless people to become productive citizens.40/ In its report to the House of Delegates six years ago, proponents of that recommendation noted

That homelessness is a nationwide problem is uncontested. A coordinate governmental response on the federal, state and local levels is both appropriate and urgently needed. The causes leading to this massive displacement and the needs resulting from it are multifaceted. The inadequacy of state and local governments' response has been documented. Each of these facts underscores the need for uniform, comprehensive, and coordinated governmental programs to address the effects and causes of the crisis.41/

This recommendation and report bring the aspirations and goals of that resolution into the 1990s, where the need for assistance for the poor and homeless continues unabated.

The Association also has long been concerned about children. It has adopted policy supporting enactment of legislation providing for quality child care 42/ and implementation of statutory and programmatic resources to meet the health and welfare needs of children.43/ The current recommendation strengthens the Association's existing policy on children and families, linking them to current problems that affect children disproportionately. It illustrates the ABA's continuing concern about the health and well being of the nation's children.

Respectfully submitted,

Paul L. Friedman
Commission on Homelessness and Poverty

August, 1992
Endnotes

5. The States and the Poor, Center on Budget and Policy Priorities, Center for the Study of the States, p. 2 (December 1991).
7. The States and the Poor, op. cit.
8. Id.
9. Id.
10. Id.
14. Id.
15. The States and the Poor, at 15 (emphasis in original).
17. Id.


21. Id.

22. "Recent Increases in State AFDC Caseloads Are Not Due to Migrants from Other States," Id.

23. Id.

24. Id.

25. Id.


33. Id.


36. "Improving Child Support Enforcement Can Relieve Budgetary Pressures on AFDC and Help Poor Children," *id.*, ("In fact, several studies find average income for noncustodial fathers to be in the $25-30,000 a year range.")


38. *id.*


41. 109 *Reports of the American Bar Association* 1105, 1107 (1983) ("Childcare has thus become an essential part of the family support system, especially for poor families who wish to become self sufficient.").

41. 109 *Reports of the American Bar Association* 467, 468 (1984) ("Addressing the reality in America that children are not only too frequently abused and abducted but are also often without many of the basic necessities of life, such as adequate food, shelter and medical care.").
1. **Summary of Recommendation(s).**

Urges that welfare programs be funded at a level required to meet basic needs, resolves that cuts in funding levels should not occur unless justified by careful study and analysis with full regard for their long and short term impact on individuals and budgets, and their compliance with state and federal constitutions, and opposes linking public assistance to requirements which infringe on the right to privacy and on other individual freedoms, such as the right to travel.

2. **Approval by Submitting Entity.**

- May 7, 1992 Commission on Homelessness and Poverty

3. **Previous Submission to the House or Relevant Association Position.**

Related ABA policies include support for quality child care (1983), implementation of statutory and programmatic resources to meet the health and welfare needs of children (1984), and support for public policies and programs that will contribute to the ability of homeless people to become productive citizens (1986).

4. **Need for Action at This Meeting.**

ABA has no policy enabling it to comment on proposed legislation or participate in dialogue on ways to effect improvements in state and federal programs providing very poor people with assistance.

5. **Status of Legislation.** (If applicable.)

- N/A

6. **Cost to the Association.** (Both direct and indirect costs.)

- N/A

7. **Disclosure of Interest.** (If applicable.)

8. **Referrals.**

- Commission on Mental and Physical Disability Law
- Consortium on Legal Services and the Public
- National Legal Aid and Defender Association
- Section of Family Law
- Section of Individual Rights and Responsibilities
Section of Government and Public Sector Lawyers
Section of Litigation
Section of Urban, State and Local Government Law
Standing Committee on Lawyers' Public Service Responsibility
Standing Committee on Legal Aid and Indigent Defendants
Young Lawyers Division
Bar Association of the City of New York
Los Angeles County Bar Association
State Bar of Michigan
The Mississippi Bar
New Jersey State Bar Association
Bar Association of San Francisco
State Bar of Wisconsin

9. **Contact Person.** (Prior to Meeting.)
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10. **Contact Person.** (Who will present the report to the House.)
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