RECOMMENDATION

RESOLVED, That the American Bar Association opposes attempts to diminish justice for poor people by reducing federal, state and local funding for legal services programs.

FURTHER RESOLVED, That the American Bar Association calls upon bar associations and lawyers to exert strong leadership and advocacy to preserve existing funding for legal services, prevent the diversion of funds for other purposes and preclude limits on the purposes for which funds may be used.

FURTHER RESOLVED, That the American Bar Association urges bar associations and lawyers to undertake vigorous leadership and aggressive advocacy to identify, pursue and implement creative initiatives that will result in new funding mechanisms for legal services providers.
FURTHER RESOLVED, That the American Bar Association supports the enactment of legislation, policies or procedures that result in greater access to justice and provide new or expanded funding sources for legal services, such as general legislative appropriations, reasonable filing fee surcharges with revenue to be provided to civil legal services to the poor, and creative means to expand the income base of state Interest on Lawyers' Trust Accounts (IOLTA) programs.

FURTHER RESOLVED, That the American Bar Association urges bar associations and bar-related entities, providers of legal services and legal services funding sources to work together to diversify both the number and types of revenue sources for legal services providers, including increasing lawyers' personal financial support of legal services programs in their communities through individual donations and law firm contributions, in addition to funds provided by the Legal Services Corporation, in order to stabilize the funding base and help to meet the legal needs of families and individuals in poverty.
The American Bar Association has a longstanding history of support for adequate funding of legal services to the poor. One of the Association's primary goals is "promoting meaningful access to legal representation and the American system of justice for all persons regardless of their economic or social condition." The Association has long recognized that to ensure access to justice, adequate resources must be available to provide legal services to those unable to afford representation.

The Association's basic policy supporting the extension of legal services to low-income persons was adopted at the 1965 Midyear Meeting:

"Now, Therefore, Be It Resolved, That the American Bar Association reaffirms its deep concern with the problem of providing legal services to all who need them and particularly to indigents and to persons of low income who, without guidance or assistance, have difficulty in obtaining access to competent legal services at reasonable cost; and authorizes the officers and appropriate Sections and Committees of the Association, including such additional special committee (if any) as the Board of Governors may establish in cooperation with state and local bar associations and the National Legal Aid and Defender Association, to improve existing methods and to develop more effective methods for meeting the public need for adequate legal services; and

Further Resolved, That the American Bar Association through its officers and appropriate committees, shall cooperate with the Office of Economic Opportunity and other appropriate groups in the development and implementation of programs for expanding availability of legal services to indigents and persons of low income, such programs to utilize to the maximum extent deemed feasible the experience and facilities of the organized bar, such as legal aid, legal defender, and lawyer referral, and such legal services to be performed by lawyers in accordance with ethical standards of the legal profession...."

In April 1971, the Board of Governors approved a resolution supporting the creation of the Legal Services Corporation to provide federal funding for legal services to the poor:

"...the American Bar Association supports, in principle, the creation of a federally-funded non-profit corporation to administer monies which will be used to fund programs which will provide a broad range of legal services to persons unable to afford the services of an attorney...."

Since that time, the American Bar Association has been a stalwart champion of federal
funding for legal services. In 1981, when attempts were made to dissolve the Legal Services Corporation, the ABA rallied support from members across the country and in April 1981 the Board of Governors adopted a resolution stating that "the American Bar Association reaffirms its support of the Legal Services Corporation and strongly urges its continuation with adequate funding."

In February 1989 the House of Delegates adopted a resolution supporting reauthorization of the LSC and "...strongly urging the President, the Executive Branch, the Legal Services Corporation Board of Directors and Congress, to support substantially increased funding of the Corporation so that there are adequate resources for a high quality legal services program...."

Despite the advocacy of the bar and Herculean efforts by the legal services community, federal funding has never been adequate to meet the legal needs of low-income Americans. Since an initial 25 percent funding reduction in 1982, federal funding for the Legal Services Corporation increased modestly until this year. However, the real dollars—adjusted for inflation—that LSC distributes to local programs today are far fewer than in 1982. Shrinking real resources over the past decade have taken their toll on legal services providers and their ability to assist individuals and families who need legal assistance.

In addition, the growing poverty population continues to hamper legal services programs' efforts to meet the needs of individuals and families seeking legal assistance in civil matters. The poverty population in the United States increased 15.4 percent during the 1980s, and an estimated 37 million Americans now live below the poverty line. Several million more meet the government's standard of 125 percent of the poverty for eligibility for legal services. For a family of four, that is an annual income of $18,500 or less. Legal services programs are able to meet only a fraction of the demand for services from this population.

In response to the ever-growing need, the bar has assisted legal services programs to secure funding from sources other than the federal government. When federal funding for legal services was dramatically reduced in the early 1980s, legal services programs across the country desperately searched for additional sources of revenue. The creation of Interest on Lawyers' Trust Accounts (IOLTA) programs by the bar was one of the creative ideas that emerged from this crisis. Through IOLTA, lawyers have helped to make millions of dollars in interest income available to legal services for the poor that would not otherwise exist. State bars endorsed the IOLTA concept and provided the political support to convince state supreme courts, legislatures and the banking community to establish IOLTA programs. In many states, the effort to establish IOLTA was hard-won, and lawyers expended significant personal political capital to ensure its
Funding from IOLTA provided a steady and increasing source of income for legal services providers until the early 1990s. The decline in interest rates and subsequent decline in IOLTA funds, however, have resulted in dramatic reductions in funds available for legal services. IOLTA income declined from $151 million in 1991 (its peak year) to $94 million in 1993—a 38 percent decrease. This sudden decrease in a seemingly stable source of revenue made it clear that legal services programs must diversify their funding base in order to increase income and stabilize their overall effort to respond to client needs.

In addition to support for IOLTA, the bar has made significant financial contributions to legal services through contributed pro bono services and donations by law firms and individual lawyers. Approximately 900 private bar involvement programs exist nationwide. Fundraising initiatives organized by bar associations range from efforts to educate foundations about the legal services funding crisis in order to secure short-term funds until more stable sources can be found, to successful efforts to supplement revenue by increasing civil filing fees, to creating fellowship-type programs that provide legal services offices with attorneys.

All of the determined efforts by the bar and legal services programs to obtain private and state government funding have not been able to offset the almost 52 percent decline in federal funding since 1981, adjusted for the increased cost of services and a growing client population.

Additional LSC funding reductions currently being debated in Congress make it clear that legal services programs must further diversify their funding base to survive and that steps to broaden support for legal services must be taken now. Fundraising experts repeatedly make the point that non-profit organizations cannot be dependent on one or two sources of income. Such a situation creates vulnerability, a vulnerability that can undermine the mission and ability of the non-profit. A diverse funding base will make programs better able to provide high-quality legal assistance to those who would otherwise be unable to obtain adequate legal counsel, as well as ensure that legal services programs are less susceptible to political attacks.

State and local bar associations have a special obligation to assist in these efforts. Lawyers are the guardians of the legal system, and while the federal government must do its part in supporting equal access to justice, it is vital that lawyers step forward when this funding source is threatened or fails to provide adequate resources to meet the legal needs of the poor. If lawyers and bar associations do not respond, access to justice will become a phrase applicable only to those who can afford to pay for a lawyer.
Lawyers are a powerful but, in many instances, untapped resource for raising funds for legal services programs. Attorneys are familiar with the needs of these programs and their clients and are effective advocates in the fundraising arena. As a group, lawyers have the contacts and resources necessary to mobilize local support for legal services providers.

Many bar associations have discovered that their fundraising efforts provide substantial income for local legal services offices and their clients. The variety of successful projects in urban and rural areas and in both large and small bars demonstrates the potential lawyers have to raise millions of dollars to support justice for poor people.

The need to expand and diversify the funding base for legal services is obvious. The time is ripe for the bar to exert more direct leadership in support of efforts to improve the availability of funds for legal services. In light of the current funding crisis, the time to act is now. Through their influence, leadership, creativity and commitment to access to justice, lawyers can and should play a pivotal role in creating a stable funding environment for legal services providers.

Accordingly, this resolution calls upon bar associations and lawyers to exert leadership and advocacy to preserve existing funding for legal services and to prevent the diversion of funds for other purposes. In addition, it calls upon bar associations and lawyers to undertake efforts to prevent limits on the purposes for which funds may be used, a provision consistent with existing Association policy. The resolution urges bar associations and lawyers to exert leadership in identifying and developing new or expanded funding sources for legal services providers. We recommend that bar associations, IOLTA programs, bar foundations and private lawyers adopt fundraising on behalf of legal services providers as a priority to ensure that access to justice is not a hollow phrase but rather the embodiment of the noblest ideals of the legal profession.

Esther F. Lardent, Chair
Consortium on Legal Services and the Public
August 1995
This resolution urges bar associations and lawyers to actively support efforts to increase funding for legal services providers. Bar associations and lawyers are encouraged to exert strong leadership to preserve existing funding for legal services, prevent the diversion of funds for other purposes and preclude limits on the purposes for which funds may be used. Bar associations also are encouraged to undertake aggressive advocacy to identify, pursue and implement creative initiatives that will result in new funding mechanisms for legal services providers. Bar associations and bar-related entities, providers of legal services and legal services funding sources are urged to work together to diversify both the number and types of revenue sources for legal services providers. Individual lawyers are encouraged to increase their personal financial support for legal services.

2. Approval by Submitting Entity

The Consortium on Legal Services and the Public approved the resolution by mail ballot on May 26, 1995.

3. Has this or a similar recommendation been submitted to the House or Board previously?

Neither this resolution nor a similar one has been submitted previously to the House of Delegates or the Board of Governors.

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

One of the America Bar Association's primary goals is "promoting meaningful access to legal representation and the American system of justice for all persons regardless of their economic or social condition." The Association's basic policy supporting the extension of legal services to low-income persons was adopted at the 1965 Midyear Meeting.
The ABA has historically provided leadership in efforts to obtain financial support for legal services and pro bono programs. Direct action, however, has largely been limited to participation by private attorneys in pro bono activities and contributions by individual attorneys to legal services fundraising efforts. This resolution would broaden and expand the ABA's and state and local bar associations' commitment to providing financial support to legal services providers.

5. What urgency exists which requires action at this meeting of the House?

Funding to provide legal representation to poor people in civil matters has never been adequate. Legal services providers have always had to turn away individuals and families with pressing legal needs simply because there are not enough resources. However, several factors have combined to produce a crisis situation for legal services providers: (1) the decline in interest rates over the past several years and a subsequent decline of 39 percent in Interest on Lawyers' Trust Accounts (IOLTA) funds from 1991 to 1993; (2) a nearly 52 percent decline in federal funding for legal services since 1981, adjusted for the increased cost of services and a growth in the poverty population and client base; and (3) further reductions in federal funding for legal services currently being considered by Congress. These factors make it clear that additional sources of funding must be secured. It is imperative that lawyers and bar associations take action now to ensure that legal services programs are able to survive.

6. Status of Legislation

Not applicable.

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

At this time it is difficult to determine if there will be costs to the ABA associated with this resolution. Much will depend upon the strategy developed by the ABA to encourage bar associations and lawyers to make fundraising for legal services providers a priority. Currently, the effort is being supported by a foundation grant, and it is anticipated that if the adopted strategy requires additional funding, it will be sought from foundations and other sources.

8. Disclosure of Interest (If applicable)

None.
9. Referrals

On May 24, 1995, the resolution was referred to the following entities with a request for co-sponsorship:

- Standing Committee on Legal Aid and Indigent Defendants (approved co-sponsorship)
- South Carolina Bar Association
- Boston Bar Association
- Bar Association of Metropolitan St. Louis (approved co-sponsorship)
- Multnomah (Oregon) Bar Association
- Pennsylvania Bar Association (approved co-sponsorship)
- State Bar of California
- The Florida Bar
- New York State Bar Association
- Washington State Bar Association
- Houston Bar Association
- Ohio State Bar Association
- Illinois State Bar Association
- State Bar of South Dakota (approved co-sponsorship)
- State Bar of Texas
- The Chicago Bar Association
- State Bar of Georgia (approved co-sponsorship)
- Tennessee Bar Association (approved co-sponsorship)
- Oregon State Bar
- Hawaii State Bar Association
- National Asian Pacific American Bar Association

On June 2, 1995, the resolution was referred to all ABA Sections.

On June 6, 1995, the resolution was referred to the following entities with a request for co-sponsorship:

- Member-entities of the Consortium on Legal Services and the Public:
  - Standing Committee on the Delivery of Legal Services
  - Standing Committee on Group and Prepaid Legal Services
  - Standing Committee on Lawyer Referral and Information Services
  - Standing Committee on Lawyers' Public Services Responsibility
  - Standing Committee on Legal Assistance for Military Personnel
  - Standing Committee on Legal Assistants
  - Standing Committee on Specialization
Concurrently with the submission of this report to the ABA Policy Administration Office for calendaring on the House of Delegates agenda, it is being referred to all ABA committees.

10. Contact Person (Prior to the meeting)

Alice Hughey, Staff Director, Consortium on Legal Services and the Public, (312) 988-5748.

11. Contact Person (Who will present the report to the House)

Esther Lardent, Chair, Consortium on Legal Services and the Public, (202) 942-5319.

12. Contact Person Regarding Amendments to This Recommendation. (Are there any known proposed amendments at this time? If so, please provide the name, address, telephone, fax and ABA/net number of the person to contact below.)

There are no known amendments at this time.