

REPORT WITH RECOMMENDATION  
AMERICAN BAR ASSOCIATION  
STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENDANTS  
REPORT TO THE HOUSE OF DELEGATES  
RECOMMENDATION

The Standing Committee on Legal Aid and Indigent Defendants recommends adoption of the following resolution:

RESOLVED, That the American Bar Association supports in principle the establishment of an independent federally funded Center for Defense Services for the purpose of assisting and strengthening state and local governments in carrying out their constitutional obligations to provide effective assistance of counsel for the defense of poor persons in state and local criminal proceedings.

## REPORT

This recommendation is based on the need to implement the Sixth Amendment to the Constitution of the United States. This Amendment provides that:

In all criminal prosecutions, the accused shall enjoy the right to . . . have the Assistance of Counsel for his defense.

In 1932, the Supreme Court in Powell v. Alabama, 287 U.S. 45 (1932), first recognized the constitutional right of an accused, not financially capable of retaining counsel, to have counsel appointed by the court. In 1963, in Gideon v. Wainwright, 372 U.S. 335 (1963), the Supreme Court held that the states were required to provide counsel for indigent defendants in all serious (felony) cases. Justice Black, in writing for the Court, stated:

. . . in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.

In 1972, in Argersinger v. Hamlin, 407 U.S. 25 (1972), the Court logically extended this reasoning holding that indigent defendants are entitled, under the Sixth Amendment, to court-appointed counsel in all cases where imprisonment is a possibility.

### Association Policy

The American Bar Association's commitment to the meaningful provision of legal services to the indigent is a long standing one going back to the early 1920's when the Standing Committee was established, first chaired by Reginald Heber Smith. The Committee was mandated to maintain a continuing study of the administration of justice as it affects the poorer citizen.

As early as 1937, the House of Delegates adopted a resolution approving in principle "the establishment in each locality of a system, best adapted to local conditions, as will be adequate and effective to assure competent counsel for needy persons accused of crime."

At the 1965 ABA Annual Meeting, under the leadership of John Cumiskey of Michigan, the Standing Committee introduced a resolution before the House favoring legislation establishing the Legal Services Program of the Office of Economic Opportunity. The resolution passed without a single dissenting vote.

In February, 1968, the House of Delegates approved the American Bar Association Standards Relating to Providing Defense Services, which states in Standard 1.1:

The objective of the bar should be to ensure the provision of competent counsel to all persons who need representation in criminal proceedings and to educate the public to the importance of this objective.<sup>1</sup>

The House of Delegates also passed a resolution stating:

. . . (T)his Association urges the state and local bar associations and committees to take more vigorous steps to upgrade the quality and to broaden the scope of the representation of defendants in criminal proceedings who are financially unable to employ counsel. . . .

In 1973, after the Supreme Court ruling in Argersinger v. Hamlin, the House of Delegates passed a resolution calling for "federal, state and local governments to take immediate steps to insure the provision of sufficient funds for the

assistance of counsel to persons accused of crimes and who are unable to afford legal representation."

In 1975, the President of the American Bar Association, James D. Fellers of Oklahoma, once again called for Association action seeking the improvement of defense services for the poor.

Since the above 1973 resolution, the Standing Committee on Legal Aid and Indigent Defendants has been studying how best to implement and insure the provision of adequate defense services to the poor. The study was initiated under the leadership of F. William McCalpin of Missouri, and continued under the direction of Llewelyn G. Pritchard of Washington, both past Chairmen of the Standing Committee.

The study by the Standing Committee revealed all too clearly that despite the mandates of the United States Supreme Court, the efforts of this Association, and of many defender associations, our adversary system of criminal justice simply does not function effectively for the majority of poor defendants. It is estimated that 70 million citizens of this country do not have an income sufficient to be able to retain their own attorney should they be accused of criminal violation.<sup>2</sup> National statistics further reveal that the majority of all persons who pass through our criminal courts each year require the appointment of counsel.<sup>3</sup> In many metropolitan areas, 80 to 90 percent of those accused are financially unable to employ counsel.<sup>4</sup> The quality of justice in the bulk of the cases processed by our criminal justice system is therefore dependent upon the adequacy of publicly-provided defense systems.

The primary responsibility for providing defense services has traditionally fallen upon local governments. However, local governments are the least capable fiscally to allocate sufficient financial resources for adequate provision of counsel. Many state and local governments simply lack the resources. In some cases there is the feeling that it is unfair to place upon the local government the entire burden of meeting the Supreme Court's mandate. Too often lack of political or community support has resulted in only token funding of public defender programs. Whatever the causes, state and local governments cannot solve the problem alone.

#### National Center for Defense Services

In an effort to alleviate the failure to make meaningful the right to counsel in this area, the Standing Committee on Legal Aid and Indigent Defendants proposes the creation of a federally-funded Center for Defense Services.<sup>5</sup> The Center would implement a coordinated and comprehensive program to strengthen the provision of public defense representation in the criminal justice system and to eliminate the gross inadequacies of present systems for providing these constitutionally-required services.

The Center would be organized as a not-for-profit corporation, analogous to the Corporation for Public Broadcasting. It would be governed by a Board of Governors appointed by the President, with the advice and consent of the Senate, and would receive funds directly from Congress.

Funds would be administered by the Center through a matching grant-in-aid system to state and local governments for the specific purpose of providing and strengthening effective defense services. A major feature of the program would involve incentives to local governments to improve and augment their current efforts in the defense area through public defender or assigned private counsel program.

If adequately funded by the Congress, the Center could have far-reaching impact in eliminating excessive caseloads of public defenders, providing adequate training and support services for both public defenders and assigned counsel, and in facilitating representation as well as ensuring that quality defense services are available in all cases where counsel is constitutionally required.<sup>6</sup>

President S. Shepherd Tate has made the criminal justice system, and in particular, the fulfillment of the Sixth Amendment guarantee of right to counsel for all accused, a principal focus of his program. He has studied the Standing Committee's report and has given it his strong endorsement.

In an address to the Annual Meeting of the District of Columbia Bar on June 14, 1978, entitled "Access to Justice -- Defense Services for the Poor", President Tate expressed the injustices experienced by people under the present criminal justice systems:

In studying the (Standing Committee's) proposal, however, I learned that a majority of all persons who pass through our criminal courts each year require the appointment of counsel because of their indigency. I learned that the resources devoted to the provision of counsel are so grossly inadequate that, frequently, overburdened, underpaid and inadequately trained lawyers provide little more than token representation. In sum, I learned that all too many of our citizens are not being provided their Sixth Amendment right to effective assistance of counsel simply because they are poor.

Not only the defendant -- who, we must remember, is presumed innocent -- suffers because of the present situation. Society in general is harmed by the court congestion and delay which result from excessive case loads, the late entry of counsel into proceedings, appellate court dockets swamped with appeals and post conviction petitions alleging ineffective representation, expensive re-trials to correct errors made by inadequately trained defense attorneys, and continuing recidivism resulting from a failure to devise constructive rehabilitation programs as alternatives to imprisonment.

To remedy this situation, the Legal Aid Committee's proposal recommends a mechanism by which the federal government would financially supplement state and local programs for providing defense counsel to those who are too poor to pay a lawyer. These desperately needed funds would be channeled to state and local programs through an independent not-for-profit corporation, the proposed Center for Defense Services. State and local governments could then use these funds in their public defender or assigned private counsel programs. In effect, a partnership of federal, state and local efforts would be formed, with each sector bearing an appropriate share of the overall responsibility.

Mr. Tate went on to review the extensive contributions of the ABA in the criminal justice field, and said that the National Defense Center proposal "is a capstone to our extensive efforts in the criminal justice field." In the conclusion of his address he said:

To make the right to counsel a reality we need a National Center for Defense Services.

Respectfully submitted,

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February, 1979

END NOTES

1. The Second Edition Tentative Draft of the ABA Standards Relating to Providing Defense Services, being presented to the House of Delegates in February, 1979, restates the objective of the standards in broader terms that avoid the possible inference that it is solely the duty of the bar to assure satisfactory delivery of defense services. "The objective in providing counsel should be to assure that quality legal representation is afforded to all persons eligible for counsel pursuant to this chapter. The bar should educate the public to the importance of this objective." Standard 5-1.1.
2. American Bar Association Conference on Legal Needs.
3. See: *The Other Face of Justice*, supra note 14, 82-83.
4. *Id.* at 112.
5. The Standing Committee has developed a discussion proposal which details the need in this area and discusses various aspects of the proposal studied and researched by the Standing Committee. Members of the House may obtain copies of the Discussion Report from the Committee. Copies are also available through the Office of the Secretary of the Association. The proposal was developed through financial assistance given by the Edna McConnell Clark Foundation and the ABA Fund for Public Education.
6. There is no attempt here to seek endorsement of the details of the proposal which obviously would have to be worked out in detail with the legislative and executive branches of the federal government. This report is directed to the principles involved.