BE IT RESOLVED, That the American Bar Association strongly urges 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.

BE IT FURTHER RESOLVED, That the American Bar Association strongly urges the President and the Executive Branch to be supportive of the purpose for which the Legal Services Corporation was founded, to insure equal justice under law for all through a strong and independent legal services program.

BE IT FURTHER RESOLVED, That the American Bar Association strongly urges the President of the United States in nominating and the Senate of the United States in confirming members of the board of directors of the Legal Services Corporation to require that:

1. All persons considered for nomination be free of all conflict, or the appearance of such conflict, with the existence and function of the Corporation or the representation of poor persons in legal matters so that they may act and may be perceived to act with objectivity and fairness;

2. All nominees support and demonstrate a high order of commitment to the continued existence and the effective operation of the Legal Services Corporation;

3. The persons so designated are committed to the freedom of the Legal Services Corporation, its operation and its grantees from political control;

4. Potential board members provide assurance that they understand and are fully committed to the role of legal services attorneys and support the underlying principle of the Legal Services Corporation Act that it is in the national interest that the poor have full access under law to comprehensive and effective legal services; and

5. The Board of Directors as finally constituted is adequately representative of the organized bar, legal education, legal services attorneys, the clients to be served and organizations involved in the development of legal assistance for the poor.

BE IT FURTHER RESOLVED, That the American Bar Association strongly urges
Congress to pass a reauthorization bill for the Legal Services Corporation which faithfully adheres to the original Act's mandate of providing "high quality legal assistance to those who would be otherwise unable to obtain adequate legal counsel" while insuring that the program remains "free from the influence of or use by it of political pressures" and that program attorneys "have full freedom to protect the best interests of their clients in keeping with the canons of ethics and the high standards of legal services."

REPORT

The American Bar Association of Governors adopted a resolution providing:

"That the American Bar Association supports, in principle, the creation of a federally-funded..."
non-profit corporation to admin-
ister monies which will be used
to fund programs which will pro-
vide a broad range of legal ser-
vices to persons unable to afford
the services of an attorney, the
charter of which shall contain as-
surances that the independence
of lawyers involved in the Legal
Services Program to represent
clients in a manner consistent
with the professional mandates
shall be maintained..." 96 ABA
Reports 558-9.

This support was affirmed dur-
ing the long and difficult legisla-
tive battle to authorize creation
of the Corporation. At the 1973
Midyear Meeting the House of Deleg-
ates adopted a resolution urging
the Congress to enact a legal ser-
vices corporation to maintain full
and adequate legal services for the
poor and calling upon government
at all levels and lawyers to take
every step necessary to ensure that
legal services remain free from po-
litical pressures in the cause of re-
presenting clients. 98 ABA Reports
153. That support was most recent-
lly reaffirmed in April 1981
in a res-
olution which, after noting the
Association's support of the cre-
ation of the Legal Services Corpo-
rion "in order to ensure that Legal
Services programs provide effec-
tive representation free from polit-
ical pressures and in accordance
with the ethical standards of the
legal profession," affirmed support
of the Corporation strongly urging
its continuance with adequate fund-
ing. 106 ABA Reports 612.

The basis and the rationale for
ABA support are found in the Con-
gressional findings and declarations
contained in Section 1001 of the
Legal Services Corporation Act, 42
U.S.C. 2996, where the Congress
enunciated the need to provide
equal access to the system of jus-
tice in our nation through high
quality legal assistance to those
who would be otherwise unable to
afford adequate legal counsel.
These and related purposes of the
legislation are expanded upon in
Senate Report No. 93-495 which
notes at page 9 that the basic
themes of the legislation are equal
access to the justice system, con-
tinuation of the existing vital OEO
Legal Services Program with a
declaration that for the legal ser-
vices program to serve the poor
with adequate strength "it must be
free from political pressures" and
that legal services lawyers must
have full freedom to protect the
best interests of their clients in
keeping with their professional re-
sponsibilities.

The Congress early recognized
that a competent, dedicated, highly
motivated and representative Board
of Directors was critical to the ef-
efective functioning of the Corpora-
tion to meet its high objectives.
Although the terms of the Act as
initially enacted specified only that
a majority of the 11 member Board
had to be members of the bar and
that political party membership
would be relevant for the sole pur-
pose of insuring that no one party
-dominated the Board, the Senate
Report more directly addressed the
qualifications of Board members.
It stated its expectation that in ex-
ercising its advice and consent
function, the Senate would wish to
review nominations to the Board to
determine:

1. That it was adequately repre-
sentative of the organized bar,
legal education, legal services
attorneys, the client commu-
nity and organizations in-
volved in the development of
legal assistance for the poor;
2. That the persons selected are committed to the maintenance of the Corporation's freedom from political control; and
3. That there was an assurance that the Board members understood and were fully committed to the role of legal assistance attorneys and support the underlying principle of the legislation that it is in the national interest that the poor have full access under law to comprehensive and effective legal services. *Id.* at 10.

Recognizing on its own part the absolute necessity of a Board committed to the objectives of the Act, the ABA has regularly spoken out and played a role in the selection of members of the Board of Directors of the Legal Services Corporation. After the initial passage of the Legal Services Corporation Act in July 1974, the then President of the Association forwarded to the President of the United States the names of a number of lawyers qualified to serve on that Board. When "preliminary" nominations were made public at the end of that year, ABA President Fellers expressed his keen disappointment noting that "... the list included persons who are reported to have opposed establishment of the independent national corporation, and others who have been either not involved or not committed to the federally funded program of legal services to the poor." In part, as a result of this opposition, there were changes in the list of names actually submitted for confirmation the following year and even as to that list, two nominees voluntarily withdrew after encountering opposition of the bar and others and one was defeated for confirmation. Representatives of the ABA testified before the Senate Committee on Labor and Human Resources with respect to these and subsequent nominations. On several subsequent occasions the ABA has submitted questions to be propounded to nominees during the confirmation process.

During the past seven years, there has been widespread activity by the bar with respect to the selection of members of the Board of the Corporation. Many were opposed for largely the same reasons given by President Fellers in his reaction to the initial, preliminary list of suggested nominees. At one point, 35 members of the Senate wrote to the President suggesting that he withdraw the names of two nominees opposed by the bar. The result was the withdrawal of the entire slate of nominees. Although nominees have regularly been asked whether they support the continued existence and effective functioning of the Corporation, we have recently witnessed the spectacle of the Chairman of the Board urging that the Corporation be dissolved and liquidated and that indigent clients be represented by non-lawyers. The President of this Association thereupon called for his resignation for an obvious breach of his fiduciary obligations and his repudiation of his sworn statement to the Senate Committee.

At present, the terms of all 11 members of the Board of Directors of the Corporation have expired. Some nominations were submitted to the Senate last year but those nominations lapsed upon the adjournment of the One Hundredth Congress. Members of the Board confirmed in June 1985 continue to occupy their positions by virtue of the holdover provisions of the Act. It is obvious that the new national
administration will shortly nominate new Directors of the Corporation and it is important that this Association have a firm basis for taking a position with respect to those nominations.

Up to this time, ABA views have been expressed within the general parameters of ABA policy relating to the Corporation generally rather than upon an express policy with respect to the qualifications of members of the Board of the Corporation. It is the purpose of this Recommendation both to recognize the prior general policies on which such actions have been based and to supply a specific policy basis for future ABA involvement in the identification, nomination and confirmation of members of the Board of the Corporation.

The Recommendation proposes five general criteria for evaluating nominees to the Board of the Corporation. Each of those has a basis in the statute and in experience.

**Freedom from Conflict.** Conflicts may be professional or ideological. It should be obvious that no person ought to be considered for nomination to the Board of the Corporation if that person by virtue of his or her experience or affiliation is opposed to the purposes for which the Corporation was created. Similarly, considerations should not be given to a person who in practice regularly represents persons or entities adverse to clients of grantees of the Corporation.

In commenting on the first preliminary list of proposed nominees, President Fellers noted that some appeared to have opposed the establishment of the Corporation or to have lacked commitment to the concept of providing civil legal services to the poor. An early nominee of the Reagan administration was an individual identified with opposition to a legal services organization in California. He was not confirmed. Another appointee was an assistant state attorney general whose office was called upon to represent agencies in litigation adverse to poor persons. Others have been identified with private organizations who regularly oppose legal services programs and their clients.

There is an obvious conflict between one who opposes the Corporation or representation of poor people and who attempts to serve as a director of the Corporation created by Congress to provide access to justice for poor persons through high quality legal services funded by the Corporation. Even if such individuals were capable of rising above their professional or political identification or their ideological commitments, they project an appearance of conflict which diserves the Corporation which they would be called upon to guide as directors. There are enough qualified people in this country free of such entanglements to serve on the Board and guide the fortunes of the Corporation with distinction without resorting to persons who have real or apparent conflicts.

**Support of the Corporation.** In the absence of recent experience, it would have appeared superfluous to insist that directors support the corporation which they direct. Directors of any corporation have a fiduciary obligation to support that entity and act in its best interests. That is no less true of a not-for-profit corporation which has no shareholders but which exists for and is committed to the service of the poor of this country.

Unfortunately, recent experience demonstrates that it is not enough
to elicit a simple statement of support. At least one director who pledged that support subsequently repudiated it and advocated dissolution of the Corporation. The President and the Senate should require sworn assurance of support and a binding pledge to resign if that support fails.

**Freedom from Political Control.**

In Section 1001 of the Legal Services Corporation Act, 42 U.S.C. 2996, the Congress found and declared that

"(5) To preserve its strength, the legal services program must be kept free from the influence of or use by it of political pressures . . . ."

In explaining the background and purpose of this provision, Senate Committee Report No. 93-495 quoted the January 1971 report of the President's Commission on Executive Reorganization which stated:

"In our view, this program should be placed in an organizational setting which will permit it to continue serving the legal needs of the poor while avoiding the inevitable political embarrassment that the program may occasionally generate . . . ." Senate Report at page 3.

In 1973, President Richard M. Nixon, reaffirming his support for an independent program, called for

". . . a legal services program which gives the poor the help they need, which is free and independent of political pressures and which includes safeguards to ensure that it operates in a reasonable manner." Senate Report at page 4.

The President's statement echoed the resolution adopted by the House of Delegates earlier that year. When it reaffirmed its support of the Legal Services Corporation in April 1981, the Board of Governors noted that:

"The American Bar Association supported the creation of the Legal Services Corporation in order to ensure that legal services programs provide effective representation free from political pressures and in accordance with the ethical standards of the legal profession . . . ." 106 ABA Reports 612.

The Legal Services Corporation was created as a Congressionally chartered, not-for-profit corporation to remove the Legal Services Program of the Office of Economic Opportunity from the executive branch of the federal government thereby insulating it from political pressure. That objective can be achieved and guaranteed only if the directors of the Corporation themselves are free from political domination and control. Just as the ABA has insisted on the professional independence of the lawyer who serves the indigent client, so it has insisted and should insist on the political independence of the directors who guide the Corporation.

**Support for Access to Justice.**

The framers of the Constitution decreed that the establishment of justice was a prime purpose of our government. It is now well recognized that there is no justice if access to it depends on the ability to pay for it. The historic concept of legal aid and the modern creation of the Legal Services Corporation recognize and implement the principle that unless the poor have full
mitted to practice does not by itself guarantee that they shall be representative of the organized bar, as the 1977 amendment contemplates. The organized bar regularly examines, comments on and operates within the justice system. It does so through its leadership and through committees and similar activities. Perforce, representatives of the organized bar are in tune with the broader interests and perspectives of the entire profession. Thus, it is important that not just lawyers but representatives of the organized bar be included on the Board of the Corporation.

Although there is much in the representation of poor persons which is common to the practice of law generally, nonetheless it is increasingly recognized that so-called poverty law is a specialty or species of law practice which has attributes and requirements of its own. It is obviously for that reason that the Congress has required that the Board should include “attorneys providing legal assistance to eligible clients.” This requirement is not fulfilled by a lawyer who has represented a poor person on infrequent occasion as a matter of personal or professional obligation or as a favor to a paying client. The spirit of this requirement is only met by the appointment of one or more attorneys who have regularly represented poor persons.

The Legal Services Corporation is an important, essential element in the justice system of the United States. It will only fulfill its role if its activities are guided by a Board of Directors composed of persons who are competent, dedicated and qualified, who understand the role of the Corporation in the justice system and who will support it. The Association has long expressed a generic view that only such persons be nominated and confirmed on the Board of Directors. This Report is submitted in support of a Recommendation which establishes a firm policy base for the Association to consider and comment upon persons who may be chosen for this important post.

Respectfully submitted,

JOANNE M. GARVEY
Chairperson

February, 1989