

BAR ASSOCIATION OF SAN FRANCISCO

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MANUAL OF MODEL POLICIES AND PROGRAMS TO ACHIEVE  
EQUALITY OF OPPORTUNITY IN THE LEGAL PROFESSION

August 1994

## ACKNOWLEDGEMENTS

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# INTRODUCTION

The Bar Association of San Francisco historically has served as a national leader in efforts by the organized bar to achieve equal opportunity in the legal profession for women, racial and ethnic minorities, gay men and lesbians, and lawyers with disabilities.

The Association's programs in the diversity area have been developed under the auspices of the BASF Equality Committee, a standing committee chaired by the President-Elect of the Association. The balance of the Committee is comprised of the co-chairs of each of four substantive committees devoted, respectively, to the equal advancement of four constituencies historically underrepresented in the legal profession: the Committee on Minority Employment; the Women's Issues Committee; the Committee on Gay and Lesbian Issues; and the Committee on Disability Rights.

The enclosed Manual and 1993 Interim Report are intended to provide leaders of the bar and legal academia with concrete examples of efforts which have met with a measure of success in San Francisco and which might serve as blueprints for similar efforts in other legal communities and institutions.

The Manual contains a cross-section of model policies and programs adopted by the Board of Directors of the Bar Association of San Francisco over the past five years and subsequently disseminated for adoption, endorsement or participation, as appropriate, by the Association's 350 sponsoring law firms, corporate law departments and law schools. As reflected in the Table of Contents, the Manual addresses a wide spectrum of issues and problems facing women, racial and ethnic minorities, gay men and lesbians, and attorneys with disabilities. Also included is the Mission Statement of the California Minority Counsel Program, a statewide program modeled on its ABA progenitor, which is housed at BASF and of which the Association has served as a founder and continuing primary sponsor.

The 1993 Interim Report accompanying the Manual summarizes the results of an interim study of the relative success of the 98 San Francisco employers who in 1989-90 adopted the BASF Goals and Timetables for Minority Hiring and Advancement.

In Fall 1994, BASF will offer for sale to bar associations a comprehensive compendium of specific practical materials outlining MCLE programs, symposia for managing partners and general counsel, policy statements for boards of directors, legislative initiatives, articles and videotapes addressing a wide variety of diversity issues. Included will be our recently completed videotape and accompanying Report and Recommendations addressing accommodation of lawyers with disabilities, as well as our award-winning videotape on retention of minority attorneys, "A Firm Commitment." As Raymond C. Marshall, BASF's first African American President in its 122 year history, stated in his incoming speech, with respect to race:

"The problem is not a minority attorney problem. To the contrary, the legal profession is dominated by white attorneys and they have a special responsibility to see that bias within the profession is eliminated. Among other things, this will require that as leaders of our law firms and legal departments, white attorneys affirmatively recruit minorities, provide a hospitable working environment for minorities and appreciate that differences in style and approach between minorities and whites does not mean a lessening of quality or standards."

Professor and author Cornel West may have best summed it up when he wrote in his recent book, *Race Matters*:

"We simply cannot enter the Twenty-First Century at each others throats, even as we acknowledge the weighty forces of racism, patriarchy, economic inequality, and homophobia on our necks. We are at a crucial crossroads in the history of this nation – and we either hang together by combating these forces that divide and degrade us or we hang separately. None of us alone can save the nation or world. But each of us can make a positive difference if we commit ourselves to do so."

# BAR ASSOCIATION OF SAN FRANCISCO

## CELEBRATION OF DIVERSITY

**May 20, 1994**

On May 20, 1994, the Bar Association of San Francisco hosted a huge gala event which brought together an extraordinarily diverse group of almost 1,000 attendees in celebration of our community's efforts to achieve diversity in legal employment.

The Celebration was a magnificent party, but also served as a focus for establishment of a \$150,000 Fund for Diversity in support of the Association's current and future initiatives to combat barriers facing women, racial and ethnic minorities, gay men and lesbians, and lawyers with disabilities in the legal profession.

As the attached copy of the Celebration announcement demonstrates, the entire legal community stepped forward to bestow the true breadth and depth of its diversity and support upon both the event itself and the Fund it created. It was a historic moment for the Bar Association of San Francisco, and one which we hope can serve as a model for other legal communities in their efforts to achieve true equality of opportunity in our profession.

The Bar Association of San Francisco and its Equality Committees, The Recorder and Mead Data Central present a

# CELEBRATION OF DIVERSITY

FRIDAY • MAY 20 • 1994

6.30 P.M. - 12.00 MIDNIGHT

THE FORUM AT YERBA BUENA GARDENS • THIRD AND MISSION STREETS • SAN FRANCISCO  
BUFFET SUPPER • DANCING • CASINO • MUSIC BY LLOYD GREGORY & FRIENDS • BLACK TIE OPTIONAL

GRAND PRIZE: SIX DAYS, FIVE NIGHTS IN JAMAICA INCLUDING AIRFARE  
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Through the generous contributions of:

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SAN FRANCISCO LA RAZA LAWYERS ASSOCIATION  
SAN FRANCISCO TRIAL LAWYERS ASSOCIATION  
SAN FRANCISCO WOMEN LAWYERS ALLIANCE  
KAYE, WASHINGTON  
WASHBURN, BRISCOE & McCARTHY  
WOMEN DEFENDERS



# **BASF INSTALLATION SPEECH**

**Raymond C. Marshall**

**December 17, 1993**

**Sheraton Palace Hotel**

## **I. Introduction**

Thank you, Karen. For the past year, there has been considerable speculation over whether I would or would not sing today. Let me put an end to this guessing game by noting the obvious: I know Karen Kadushin. I have worked closely with Karen Kadushin and she is a friend of mine. When it comes to singing, I am no Karen Kadushin.

But like Karen, and those who have preceded us, I am proud and honored to have been elected to serve as President of BASF. There are many who have worked hard, and given of themselves, to make this happen. Some are here today and deserve special mention.

There are my partners at McCutchen, Doyle, Brown and Enersen. McCutchen has a long tradition of service and dedication to BASF, perhaps best evidenced by the fact that in its 121-year history, I am the seventh McCutchen attorney to head the Association.

There are my parents. My father, who was released from the hospital only two days ago, and my mother, have traveled a great distance from Great Falls, Montana to be with me today. I am especially happy therefore to be able to thank them publicly for all their years of love, support and encouragement. Raised in Little Rock, Arkansas, my father was 17 and my mother 15 when they married. With limited educational and employment opportunities available in a segregated south, my father served 28 years in the Air Force during which time my mother worked in a variety of jobs outside the house. Together, they instilled in me a sense of pride, family and a profound belief that through hard work and perseverance, anything, and everything, is possible.

Last, but certainly not in the least, there are my wife, Piper, and my son, Kyle. When I met Piper at Harvard Law School 17 years ago, it was readily apparent that she would always be smarter, better looking and have more style than I have. What I did not know then, but appreciate now, however, is that she would also become my best friend, closest confidant and strongest supporter. As to Kyle, nothing I could say would do justice to my feelings for him. So let me say simply that he is the joy of my life, and the best son any father could hope to have.

## **II. The Work of BASF**

Over the next year, it is my intention that BASF maintain its tradition of dynamic leadership and activism on the issues that confront the Bar and our broader community. This will include BASF's leadership role in the delivery of pro bono legal services, its support of meaningful gun control and its promotion of programs and legislation to bring equity in the delivery of medical services, including, of course, the breast cancer epidemic.

Through the work of BASF's Equal Access Committee, I will look to initiate, promote and participate in community-based forums to encourage discussion of solutions to the nation's drug crisis, our failing criminal justice system, the status of our public schools and proposed changes to our country's immigration policies.

And, finally, with an appreciation that ultimately, we are, and should be, a service organization to our members, it will be important this year to: conduct another Judicial Evaluation Poll of the Superior and Municipal Courts, promote the use of Alternative Dispute Resolution, including use of BASF's Mediation and Arbitration Program and, through our Sections and Committees, continue to offer a wide range of quality, and affordable programs to satisfy our MCLE requirements.

### **III. Eliminating Bias in the Profession**

Overlaying all programs, projects and activities of BASF, however, will be my unwavering commitment to fight bias in our legal community, and to provide all of our Association's attorneys — including attorneys of color, women, gays, lesbians and attorneys with disabilities — with real, meaningful and equal opportunities not only to participate in, but to help lead in, the work of our Association. And it is to this subject that I address the substance of my remarks today.

In April 1988, this Bar Association established as its highest priority "the achievement of equal hiring, retention, promotion and working conditions for minority lawyers in the San Francisco legal community." It did so in response to a survey of white and racial and ethnic minority attorneys within the San Francisco Bar, which found that minority attorneys experienced less favorable hiring, work and promotion experiences than their white counterparts. The survey, conducted by the University of California, Berkeley, also found that the experiences of minority attorneys were attributable not to class rank, law school reputation or other objective criteria of performance, but to their status as racial and ethnic minorities.

To address this problem, the Association established, and approximately 100 employers, including the City's most prominent law firms, corporations and government agencies, adopted a voluntary goal that by 1995, at least 15% of their associate-level attorneys, and at least 5% of their partner-level attorneys, be minority. It was the further goal of the Association and signator employers that by the year 2000, these numbers would increase to at least 25% for associates and 10% for partners.

Although the jury is still out, BASF's interim report monitoring the progress toward these goals is revealing. The findings of the report, which will be released this Monday, are mixed. On the one hand, it demonstrates clear and substantial improvement by a number of legal employers in their efforts to diversify their attorney workforce. Indeed, some employers, including many of the City's largest law firms, can take pride in that they have already achieved, or are well within reach of achieving, the 1995 goals for both associate and partner-level attorneys.

On the other hand, the interim report reveals that for many employers, progress has not only been slow, but that absent constant, visible and affirmative commitment on the part of all of us, the prognosis for long-term improvement is dim. Again, the interim report supports BASF's warning, delivered two years ago, that "although all would agree that equal treatment of minority lawyers should be a hallmark of the workplace, the experience of minorities in the legal profession has long belied widely-held assumptions of a color-blind meritocracy, and demonstrates that effective integration has not been and will not be an automatic process."

After more than five years of good faith efforts and only tenuous progress, the question remains—what can we do to help eradicate racial barriers faced by minority attorneys? There is no simple answer. Good people, with good intentions, can, and will disagree on how best to integrate our profession. In trying to formulate future remedies to address this problem, however, we must be honest with ourselves and confront the reality of racial discrimination in this country and in this City. It is a reality which many of you may be uncomfortable discussing; a reality which some of you may not want to believe, but a reality which I hope each of you will not ignore.

Racism is real. As noted by Andrew Hacker in his book, *Two Nations, Black and White, Separate, Hostile, Unequal*, the evil of racism “goes beyond prejudice and discrimination and even transcends bigotry, largely because it arises from outlooks and assumptions of which we are largely unaware.” Thus, we are disappointed, but not surprised, to learn that a University of Chicago survey of racial attitudes reveals that, in 1993 three out of four whites believe that Blacks and Hispanics are more likely to be lazy, less intelligent, less patriotic and more prone to violence.

Within the legal profession, racism manifests itself in the most insidious way—presuming the level of competence based on racial stereotyping and the color of one’s skin. Indeed, surveys conducted by BASF, the ABA and the local bar associations of the City of New York, Atlanta and Detroit, all report the same or similar findings about the experiences of minority attorneys. Among these findings include the disturbing facts that:

- The competence of the minority lawyer is doubted until it is proven; and yet, once demonstrated, must be constantly re-demonstrated.
- The minority lawyer is expected to produce more, perform better and work harder in order to be considered the equal of his or her white peer. Yet, often, the minority attorney who does produce as much, perform as well, work as hard or harder than the white peer is not given the same recognition, not considered the equal of, and not advanced at the same rate and to the same level as his or her white peer.

Racism is institutional. Attitudes, patterns of behavior and cultural norms have created barriers which prevent minorities from becoming full participants in the City’s law firms and legal departments. These barriers include the disparity between minority and white attorneys in the areas of work assignments, mentoring, access and marketing to clients, the opportunity to work with and for more senior and influential partner-level attorneys, the opportunity to serve on key committees and be appointed to positions of leadership, and the constant, oppressive and almost debilitating pressure to “fit in,” so as to make white attorneys comfortable with the minority attorney’s status as a racial or ethnic minority. The result is that for the most part, the work experience of minority attorneys — associates, counsels and partners alike — is fundamentally different than that of their white counterparts. Again, this is demonstrated by a number of findings by BASF, including that:

- One negative performance review, or a “slow start” by minority lawyers is too frequently the kiss of professional death, and seems to establish a permanent impediment to advancement, whereas their white counterparts are frequently given more chances to succeed.

- Minorities are regarded as representative of their entire race when they fail, but are considered the exception when they succeed.
- Younger minority attorneys have few role models in their workplace and too often face arbitrary ceilings on promotions and professional opportunities.
- Minority attorneys are often excluded from informal networks of communication, both within and outside the workplace, and do not receive the specific feedback from supervisors necessary to succeed in the workplace.
- As a result of many of these experiences, minority attorneys disproportionately experience isolation and loneliness within their workplace.

Racism is a fact of daily life for most minority attorneys. It is a hurt we learn as children and a burden we bear as adults. It is manifest in the papers we read, the television we watch, the movies we see and the news we hear. Thus, for example, regardless of your status as an attorney in San Francisco, if you are black and male, you may be angry, but you are not surprised, when an empty taxi cab drives past you and stops to pick up a white passenger, or when you are asked to show multiple forms of identification to cash a check and white customers before and after you are asked to show none, or when shopping in a department store, salespeople ignore you as if you were invisible, or at the other extreme, monitor and follow your every action as if you suffer from a public case of kleptomania.

Contrary to the mantra preached by Shelby Steele, Thomas Sowell, Clarence Thomas and others, minority attorneys are not preoccupied with some invented notion of “victimization,” nor do they believe that they should be judged by different standards than white attorneys. What they do desire, however, is that whites recognize, as Cornell West points out in his book by the same title, that “race matters” and that whites benefit economically, educationally, politically, socially, emotionally, psychologically, medically, and in every other respect you can think of, merely by being members of their race.

White and minority attorneys must talk to each other — openly, honestly and candidly — about the issue of race and the role race plays in our professional and personal lives. For if we did, we might better understand, and come to grips with the observation made by Vernon Jordan at the 1992 D.C. Bar Convention, that while “none of our society’s institutions reflect the diversity of our population . . . the legal profession is among the worst offenders” and that “it is hard to find a more segregated group than the partners of America’s law firms.”

The problem is not a minority attorney problem. To the contrary, the legal profession is dominated by white attorneys and they have a special responsibility to see that bias within the profession is eliminated. Among other things, this will require that as leaders of our law firms and legal departments, white attorneys affirmatively recruit minorities, provide a hospitable working environment for minorities and appreciate that differences in style and approach between minorities and whites does not mean a lessening of quality or standards.

Intellectual lip service to the concept of diversity is not enough. Commitment must be demonstrated by action. Employers ask minorities to take them at their word when they say that they believe in racial integration, equal opportunity and health and prosperity for all. At the same time, however, minorities

fairly ask whether employers are prepared to make the hard decisions, or take the difficult steps, necessary to create a work environment hospitable to minority attorneys. For example, only a handful of the approximately 100 law firms, corporations and government agencies that have signed on to BASF's goals and timetables evaluate and compensate their managers on the basis of their success in achieving and managing a diverse workforce, and even fewer are prepared to terminate an otherwise valued manager for a demonstrated pattern and practice of racial discrimination.

We must demonstrate the strength of our conviction. And we must do so now, or risk losing what progress has been made. Commitment to diversity must be long-term and it must be sustained, through good times and bad times alike. The issue is simply too important, and the stakes too high, to allow this recession, or anything else, to be used as an excuse to prevent us from doing what we can to end bias in the profession.

The last two years have been difficult for all of us, but particularly so for minority attorneys. As in other professions, economic hard times have forced minority attorneys to feel the pain of being the "last hired" and the "first fired." Moreover, this phenomenon risks being played out not only at the associate level, but for minority partners as well. For example, as has been documented in other legal markets across the country, we have started to see in the Bay Area the departures of the first generation of minority partners, who, while expected to meet the same standards of client billings as their white partners, do not believe they are accorded the same opportunities or level of support as their white partners to develop or maintain business relationships with their firm's existing or potential clients.

Still, we must recognize that while the task at hand remains largely unfinished, there have been identifiable successes in our struggle to achieve diversity. Moreover, it is a struggle, in one fashion or another, to which the overwhelming majority of you have committed. And it is because of this commitment that despite the substantial "down-sizing" of most of our largest law firms, the ranks of both minority associates and minority partners in these firms continue to grow.

#### **IV. Conclusion**

So, it is in appreciation and acknowledgment of your efforts to date, and what we as a Bar Association will be asking of you in the future, that I invite you to join us on May 20th of next year to celebrate the national role that BASF has undertaken to achieve diversity within the legal profession. The celebration will be sponsored by all four of BASF's Equality Committees and, I am pleased to announce, will be held at the newly-built Yerba Buena Center for the Arts. It will be a special evening, allowing all of us to express publicly our unity and continued support for equal opportunity within the profession and, of course, raise money for BASF's ongoing work to achieve this goal.

In closing, let me ask you to reflect on the message of the late Justice Thurgood Marshall, delivered on the 200th anniversary celebration of the U.S. Constitution. Stated simply: there still remain "hopes not realized and promises not fulfilled." But this can change. By working together, we can move forward and meet our commitment to provide equal opportunities for all of our City's attorneys. And in so doing, perhaps we can do our part to still prevent this country becoming two societies, one white, one not, "separate and unequal." I thank you for coming today and, in adjourning, wish each of you an enjoyable holiday and a happy new year.

# **GOALS AND TIMETABLES FOR MINORITY HIRING AND ADVANCEMENT**

July 11, 1994

Dear Managing Partner/General Counsel:

We are writing to ask your office to adopt the Minority Hiring and Advancement Goals unanimously approved by the Board of Directors of the Bar Association of San Francisco on June 14, 1989. We would also like to request that you provide information regarding your office's recruiting experience this fall, and have enclosed a suggested form to facilitate your data collection.

## **GOALS AND TIMETABLES**

The Board of Directors adopted as voluntary goals for San Francisco legal employers with respect to minorities, defined to be Asians/Pacific Islanders, Blacks, Hispanics/Latinos and Native Americans:

Associate Employment: By 1995 at least 15% and by the year 2000 at least 25% of all associates (and equivalent counsel positions in corporate or governmental legal departments) shall be minority attorneys;

Advancement to Partnership: By 1995 at least 5%, and by the year 2000 at least 10% of partners and corporate/governmental senior counsel shall be minority attorneys.

Seven major San Francisco law firms that heard of the goals through the media have adopted them. By this letter, we seek your office's commitment to use your best efforts to achieve these goals. We ask that you signify this pledge by signing and returning to us the attached form, to the attention of Bar Association Executive Director, Drucilla Ramey.

## **MONITORING OF EMPLOYERS' EXPERIENCE RELATIVE TO THE GOALS AND TIMETABLES**

The Association is seeking to monitor the experience and yield of San Francisco legal employers in relation to their minority recruitment efforts this fall and in subsequent years. We are specifically requesting that you provide information, by February 1, 1990, regarding your office's fall 1989 recruiting experience. The data you provide will be submitted directly to an independent research service, who will tabulate and analyze it. Employers submitting information will be categorized by size but will not be identified to anyone, including Association staff.

As reflected in the attached data grid form, in order to learn from your recruiting experience we need to know:

(1) How you made contact with minority law students, e.g., through on-campus interviews, write-in, receptions, job fairs; (2) How many minority students you interviewed both on and off-campus, and of those, how many received call-backs, how many then received offers, and how many ultimately accepted your offers; (3) Ideally, we would like to know the race/ethnicity of all those whom you considered, as well

as the total number of non-minority students interviewed, called back, offered positions and hired.

It is our understanding that most employers keep recruitment statistics internally but that not all include race/ethnicity in their statistics. It will be useful and necessary, then, to ask your interviewers to record race/ethnicity on their note-taking forms.

You may have questions regarding how to track this information, and how to categorize it. BASF computer manager Karen Hobin will serve as our primary data organization resource person and will field these questions, in consultation with members of the Committee on Minority Employment who are experts in this area.

## **HISTORY AND BACKGROUND OF GOALS**

By this letter and the accompanying materials, we would like the opportunity to explain to you some of the background that caused the Association's Board of Directors to adopt the above goals and to seek to track their implementation by San Francisco employers.

In 1988 the Association commissioned the University of California to perform a comprehensive survey on the subject of minority hiring and advancement in the San Francisco legal community. The purpose of the survey was to furnish a description and analysis of the hiring, work, retention and promotion experiences of white and minority attorneys, respectively. The primary objective was to determine if differential patterns exist for the two groups and, if so, to identify the mechanisms which produce these differences.

The survey established some disturbing realities. Among other things, the results demonstrated that minorities are much more likely than whites to be asked inappropriate and offensive questions during their hiring interviews, that minorities earn significantly less than white attorneys at similar points in their career, and that minorities are twice as likely as whites to be passed over or denied promotion. Minorities were generally revealed to have experienced less favorable hiring, work and promotion experiences than their white counterparts, differences which were not attributable to class rank, law school reputation or other objective determinants. Thus, the survey report concluded that ethnic minorities, as a class, encounter both objective and subjective disadvantages within the City's legal community.

As you may know, only nine percent of the attorneys practicing in San Francisco firms are minority attorneys and only two percent of the partners in the City's firms are minority members. Yet by the year 2000, over half the citizens in California will be members of a described minority. Many firm leaders believe that they should position their firms to be ready to reflect these dramatic demographic changes. The Bar Association wants to assure an equal opportunity to all firms to be part of this important program.

To assist in this process, a special Association committee was formed in April of 1988 for the purpose of exploring ways to solve the difficulties established in the Survey. The committee has held a number of meetings with representatives from all segments of the profession, including managing partners, general counsel, hiring partners, recruitment coordinators, law school professors and placement personnel, legal headhunters, people in the continuing education field, judges, bar leaders and interested lawyers and law students throughout the City.

The thirty-member committee stands ready to offer specific assistance to any interested employer. In this regard, we have collected information and are producing special programs to facilitate the process of hiring

and creating a favorable environment within law offices for minority attorneys. A few weeks ago, for example, an all-morning meeting was held with hiring partners and recruitment coordinators, attended by 140 people; this fall we will present a program specifically designed for managing partners and general counsel, addressing how legal employers can create and maintain a favorable workplace environment for their minority lawyers. A seminar was also held earlier this summer to assist minority law firms in Marketing and business development.

To assist law firms and corporate law departments further in recruiting minority law students BASF is sponsoring a meeting and reception at Hastings College of the Law on September 13. At this event legal employers will have the opportunity to meet and talk with minority law students from all Bay Area law schools. Please see the enclosed forms for further information on this event.

This effort to achieve equal employment opportunity in the San Francisco legal community is a vital program whose time has come. There is a growing group of impressive minority attorneys who should be included in the full benefits of the legal profession. We hope your office will be part of this program.

Very Truly Yours,

Peter Keane  
President  
Bar Association of San Francisco

James J. Brosnahan  
Co-Chair  
Committee on Minority Employment  
Bar Association of San Francisco

Raymond C. Marshall  
Co-Chair  
Committee on Minority Employment  
Bar Association of San Francisco

cc:      Hiring Partner  
          Recruiting Coordinator

## **RECRUITMENT AND RETENTION OF MINORITY ATTORNEYS**

### **GOALS AND TIMETABLES**

Please indicate your firm's/law department's commitment to the Goals and Timetables on Minority Employment established by the Bar Association of San Francisco by completing this form or notifying by letter.

On behalf of my firm/law department, I pledge that we will use our best efforts to meet the goals and timetables contained in the Bar Association's June 14, 1989 Resolution, as follows:

- (1) By December 31, 1995, at least 15% of the associates/corporate counsel equivalent positions and at least 5% of its partners/corporate counsel senior positions shall be minority attorneys; and,
- (2) By December 31, 2000, minorities shall comprise at least 25% of the employer's associates/corporate counsel equivalent positions and at least 10% of its partners/corporate counsel senior positions.

Name \_\_\_\_\_

Title \_\_\_\_\_

Firm/Law Department \_\_\_\_\_

## **MEMORANDUM**

From: The Bar Association of San Francisco

Re: Goals and Timetables for Minority Hiring and Advancement

The goals require:

- (1) By December 31, 1995, minorities shall comprise at least 15% of the employer's associates and at least 5% of its partners;
- (2) By December 31, 2000, minorities shall comprise at least 25% of the employer's associates and at least 10% of its partners.

### **EMPLOYERS WHO HAVE ADOPTED THE ABOVE GOALS AS OF 07/08/94**

Angell, Brunner & Angell	Cullum & Sena
Arnelle & Hastie	Dinkelpiel, Donovan & Reder
AT&T Communications of California	Erickson, Beasley & Hewitt
Baker & McKenzie	Farella, Braun & Martel
Bancroft & McAlister	Feldman, Waldman & Kline
Berman & Glenn	First Nationwide Bank
Beveridge & Diamond	Flehr, Hohbach, Test, Albritton & Herbert
David Michael Bigeleisen, APC	Fleischmann & Fleischmannn
Broad, Schulz, Larson & Wineberg	Folger & Levin
Brobeck, Phleger & Harrison	Furth, Fahrner & Mason
Bronson, Bronson & McKinnon	Goldberg, Stinnett & Macdonald
Buffington & Konigsberg	Goldfarb & Lipman
Bushnell, Caplan & Fielding	Gordon & Rees
Carroll, Burdick & McDonough	Graham & James
Cassidy & Verges	Gutierrez & Associates
Cooley, Godward, Castro, Huddleson & Tatum	Hancock, Rothert & Bunshoft
Cooper, White & Cooper	Hanson, Bridgett, Marcus, Vlahos & Rudy
Crosby, Heafey, Roach & May	Hedani & Choy
Crymes, Hardie & Heer	Heller, Ehrman, White & McAuliffe

Angell, Brunner & Angell  
Arnelle & Hastie  
AT&T Communications of California  
Baker & McKenzie  
Bancroft & McAlister  
Berman & Glenn  
Beveridge & Diamond  
David-Michael Bigeleisen, APC  
Broad, Schulz, Larson & Wineberg  
Brobeck, Phleger & Harrison  
Bronson, Bronson & McKinnon  
Buffington & Konigsberg  
Bushnell, Caplan & Fielding  
Carroll, Burdick & McDonough  
Cassidy & Verges  
Cooley, Godward, Castro, Huddleson & Tatum  
Cooper, White & Cooper  
Crosby, Heafey, Roach & May  
Crymes, Hardie & Heer  
Cullum & Sena  
Dinkelspiel, Donovan & Reder  
Erickson, Beasley & Hewitt  
Farella, Braun & Martel  
Feldman, Waldman & Kline  
First Nationwide Bank  
Flehr, Hohbach, Test, Albritton & Herbert  
Fleischmann & Fleischmannn  
Folger & Levin  
Furth, Fahrner & Mason  
Goldberg, Stinnett & Macdonald  
Goldfarb & Lipman  
Gordon & Rees  
Graham & James  
Gutierrez & Associates  
Hancock, Rothert & Bunshoft  
Hanson, Bridgett, Marcus, Vlahos & Rudy  
Hedani & Choy  
Heller, Ehrman, White & McAuliffe  
Anne Hiaring, Esq.  
Law Offices Marc Van Der Hout  
Howard, Rice, Nemirovski, Canady, Robertson & Falk  
Law Offices of Helen Y. H. Hui  
Jackson, Tufts, Cole & Black  
Jeffrey & Heinemann  
Jonas & Matthews  
Jordan, Keeler & Seligman  
Kadushin\*Fancher\*Wickland  
Knox & Cincotta  
Lagarias & Masson  
Landels, Ripley & Diamond  
Leland, Parachini, Steinberg, Flinn, Matzger & Melnick  
Lew & Fong, APC  
Lilienthal & Fowler  
Lillick & Charles  
Littler, Mendelsohn, Fastiff & Tichy  
Long & Levit  
Majestic, Parsons, Siebert & Hsue  
McCutchens, Doyle, Brown & Enersen  
McGee, Lafayette, Willis & Greene  
McKesson Corporation  
McTernan, Stender & Walsh  
Minami, Lew, Tamaki & Lee  
Morrison & Foerster  
Murphy, Weir & Butler  
Nichols, Doi, Rapaport & Chan  
Niesar Pahl Cecchini & Gosselin  
Nossaman, Guthner, Knox & Elliott

Oracle Corporation	Severson & Werson
Orrick, Herrington & Sutcliffe	Shartsis, Friese & Ginsburg
PG&E	Shute, Mihaly & Weinberger
Pacific Telesis Group	Silk, Adler & Colvin
Pettit & Martin	Steefel, Levitt & Weiss
Pillsbury, Madison & Sutro	Stein Lubin & Lerner
The Recorder	Steinhart & Falconer
Remcho, Johansen & Purcell	Tandem Computers Incorporated
Rogers, Joseph, O'Donnell & Quinn	Tarkington, O'Connor & O'Neill
Rosen, Bien, & Asaro	Thelen, Marrin, Johnson & Bridges
Rosenblum, Parish & Isaacs	Townsend and Townsend
Rothschild & Goldin	Transamerica Corporation
Rouda, Feder & Tietjen	Law Offices of Chandler Visher
Saperstein, Mayeda, Larkin & Goldstein	Wells Fargo Bank
Sawamura, Chin & Nishimi	Willdorf & Stevens
Sedgwick, Detert, Moran & Arnold	

## **GROUPS THAT HAVE DEVELOPED HIRING/PROMOTION GOALS FOR MINORITY LAWYERS**

### **Association of the Bar of the City of New York**

Adopted September 1991

Signatories: 137 firms, 42 corporations

### **Bar Association of San Francisco**

Adopted June 1989

Signatories: 84 firms, 5 corporations

### **Boston Law Firm Group**

Adopted 1987

Signatories: 21 firms

### **Chicago Bar Association**

Adopted March 1993

Signatories: 28 firms, 17 corporations and 6 government agencies

### **Cleveland Minority Partners' Group**

Adopted January 1993

Signatories: None yet

### **Colorado Law Firm Group**

Adopted April 1993

Signatories: 23 firms

### **Connecticut Law Firm Group**

Adopted January 1991

Signatories: 15 firms

### **District of Columbia Bar**

Adopted March 1993

Signatories: 84 firms, 18 corporations

### **Hispanic Bar Association (Houston, Tex.)**

Adopted May 1992

Signatories: 26 firms, 6 corporations

### **Los Angeles County Bar Association**

Adopted September 1989

Signatories: 39 firms

### **New Jersey Law Firm Group**

Adopted June 1990

Signatories: 28 firms, 3 government agencies

### **Philadelphia Bar Association**

Adopted March 1993

Signatories: 44 firms, 18 corporations

### **State Bar of Arizona**

Adopted May 1992

Signatories: 36 firms, 10 corporations and government agencies

# **BAY AREA MINORITY SUMMER CLERKSHIP PROGRAM**

## **PURPOSE OF PROGRAM**

There has been a historic under-representation of minority lawyers working at large law firms. BASF has acknowledged this by adopting and having law firms sign on to goals for minority hiring and retention. Insofar as law firms traditionally emphasize summer clerkship programs in recruiting attorneys, limited minority law student participation in law firm clerkship programs contributes to this under-representation. While the reasons for the lack of minority representation are complex, opportunities for minorities will tend to remain restricted if traditional means and criteria for selection of summer clerks are continued.

This program is not designed to create job opportunities in large firms for the minority law students who participate. Its purpose is to serve as a means for exposing minority law students to large firms and vice versa. The object is to establish a vehicle through which participation of minority students in law firm clerkship programs is increased with long-term goal of opening avenues for increased minority hiring.

The specific purposes are:

- (1) To expose minority law students to the work, requirements and culture of majority law firms.
- (2) To help students develop skills, confidence, resume credentials and professional contacts for the future.
- (3) To encourage students to consider majority law firms in their career planning.
- (4) To introduce majority law firms to talented students who might not have been selected for the firms' summer programs under traditional criteria and to demonstrate that these students, as well as other students with similar qualifications, can successfully meet the demands of law practice.

The premise of the program is that the level of minority involvement in majority law firms, as both associates and partners, is not reflective of the number of talented, capable, and hard-working minority lawyers. The level of minority involvement in majority law firms has not substantially increased in recent years, despite the efforts of law schools to seek out qualified minority candidates for admission.

## **PROGRAM PARTICIPANTS**

**Sponsors:** SCCBA, BASF, ACBA

**Students:** Santa Clara, Stanford, Boalt Hall, University of San Francisco, Golden Gate, and Hastings minority law students as defined by the National Association for Law Placement, i.e., American Indians, Asians, Pacific Islanders, African Americans, Mexican Americans, Puerto Ricans, and Other Hispanics. Although this is a targeted program, students of all ethnicities will be eligible to participate.

Only students who will have completed their first year by the program summer are eligible. The rationale for this is that the first year summer is an ideal time to acquaint students with law practice and the legal community; to offer them training; and to give them a sense of their strengths and weaknesses in a supportive environment so that they may shape appropriate career plans. Traditionally, the second summer is geared toward screening and recruiting for permanent employment, which is not the intent of this program.

Students must be in good academic standing as defined by their respective law school.

**Employers:** Participating employers shall be law firms and corporate legal departments in the Bay Area who agree to hire, train and supervise at least one summer clerk. Employers may participate on a full or part time basis. In subsequent years, the program may be expanded to any other interested legal employer who is able to offer a structured summer law clerk experience.

## OPERATION OF PROGRAM

**Application:** Applications will be made available at each school. Students will submit applications to a central site. Students will not have a voice as to the firm or geographic location of employment. Each student may, however, state a preference of geographic location and an area of law of particular interest on the application. The application form will be developed by the first Clerkship Committee and modified as necessary. The application form will require each applicant to provide a statement of why he or she is applying, qualifications, and other information. Letters of recommendation and similar material will not be prohibited.

**Salary:** Standard clerk salary shall be paid by each firm, which of course may vary from firm to firm.

**Monitoring:** At each law firm one partner and one associate should be assigned responsibility for the successful implementation of the program. Those individuals will be the contact people for the Minority Clerkship committee with respect to all matters arising in the course of the summer.

The minority summer clerks will be expected to participate in the firms' summer program in the same manner as other first and second year summer clerks. The Clerkship Committee, however, will attempt to maintain contact with each of the firms during the program to monitor the progress of the student and ensure that the purposes of the program are being effectuated.

**Offers:** Participating employers will have no obligation to make offers of second summer or associate employment to the clerks employed under this program. Participating clerks will be advised not to expect such offers and that this is not a hiring or recruiting program. Employers, however, shall not be prohibited from extending offers of further employment to any clerks. Rationale: The program is a long-term investment of the sponsoring bars. Removing the offer aspect from this program will emphasize the educational intent of the program and should increase the "comfort level" for employers who are taking students solely on the Selection Committee's recommendations.

This restriction serves several additional purposes: first, the law firms should be more receptive to the program if the students come with "no strings attached." Second, it will encourage the student to widen his or her search and base of experience during a second clerkship summer elsewhere. Third, there will be no

stigma associated with a student not receiving an offer after his or her first summer. For the same reasons, and consistent with current practice at most firms, offers of permanent employment may not be made until following second year.

## **SELECTION**

**Criteria:** Selection will be based on indicia of effective communication skills, leadership, integrity, resourcefulness, and other characteristics which indicate potential for success within the law firm environment. Grades will not be overemphasized and life experience will be a factor. Commitment to service of minority communities will receive strong consideration.

**Clerkship Committee:** Each sponsor will appoint two persons to the Clerkship Committee. Each person appointed shall serve on the committee for two years, except that each sponsor shall designate one of its initial representatives to serve for only one year.

The committee will make the selections and assignments. The committee will review all applications and determine in its sole discretion whether to conduct interviews. The committee shall make assignments of clerks to employers with its decisions on assignments being final. Each bar shall make its appointments to the committee with the goal of having the Clerkship Committee be broadly representative of the ethnic composition of the participating schools.

Students will be selected without regard to their school, provided, that at least one student from each of the participating schools shall be chosen each summer.

## **ADMINISTRATION**

Each sponsor shall appoint its representative to the Clerkship Committee in the fall of each year.

Each sponsor shall recruit employers from within its county in the late spring and summer of each year.

Each law school shall publicize the program amongst its first year students and make applications available in November of each year.

Applications will be accepted from mid-January to early-February of each year. The Clerkship Committee will meet as necessary and complete its task by mid-March of each year.

The Clerkship Committee shall inform each student, law firm and law school placement official of the selection.

A kick-off reception shall be held prior to commencement of the summer programs.

The Clerkship Committee shall work with the career service representatives for appropriate orientation.

Following the summer, evaluations of the program will be conducted among students, employers, and other concerned parties.

July 8, 1994

Mary Jo Shartsis, Esq.  
Shartsis, Friese & Ginsberg  
One Maritime Plaza, Eighteenth Floor  
San Francisco, CA 94111-3404

Dear Mary Jo:

I want to thank you for discussing with me today over lunch the possibility of Shartsis, Friese & Ginsberg's participation in the Bay Area Minority Summer Clerkship Program. I'm delighted that you're interested in the program and excited at the possible prospect of the firm becoming involved.

As we discussed, the Program is co-sponsored by BASF and the Santa Clara and Alameda County Bars, in partnership with Stanford, Hastings, Boalt Hall, USF, GGU and Santa Clara Law School. Under the Program, participating law firms take a minority first year law student as a summer clerk. The student is treated as a fully participating member of the firm's regular summer staff, although specific arrangements differ depending on whether or not a firm ordinarily maintains a summer clerk program, and, if so, whether the firm ordinarily hires other first year students (We had all variants last year). No promise of a second summer or of associate employment is made to the student, although such offers are not precluded.

I've attached a full description of the Program. The gist of it is that a Selection Committee, consisting of representatives of each of the three bar associations, reviews and interviews applicants who have already been recruited and pre-screened by the law schools. Participating employers are referred the names of three students, whom they may interview on February 23, 1994 at Hastings. Each firm's evaluations and preferences will be taken into consideration by the Selection Committee, and given particularly strong consideration in the case of more specialized firms like, Shartsis, but, consistent with the goals of the Program, the final assignments are made by the Committee.

The participation of Shartsis, Friese & Ginsberg would help us to open the door to a whole new group of participating firms, the vast majority of which have historically experienced serious difficulties in attracting and retaining minority attorneys. I've attached the Press Release copy of our Interim Study on the Goals and Timetables (in which your firm participated), which underscores the importance of programs like this in helping to achieve true integration in the legal community.

For your information, current participants include Latham & Watkins; Long & Levit; and Cooper, White & Cooper, as well as a host of the larger firms, including Pillsbury; Heller; McCutchen; Pettit; Mo-Fo; Brobeck; Wilson, Sonsini; and Crosby. Several prestigious small firms have indicated that they are likely to join, and I will be able to give you their names in the next few days. Needless to say, we make every effort to showcase the firms in the Program and to call participating firms to the attention of other minority law students and law graduates.

Thank you again for taking the time to consider this request.

Warmest regards,

Drucilla Stender Ramey  
attach.

# **THE CALIFORNIA MINORITY COUNSEL PROGRAM**

**SPONSORED BY**

**THE BAR ASSOCIATION OF SAN FRANCISCO  
THE LOS ANGELES COUNTY BAR ASSOCIATION  
THE ORANGE COUNTY BAR ASSOCIATION  
THE SAN DIEGO COUNTY BAR ASSOCIATION  
THE STATE BAR OF CALIFORNIA**

**AND**

**THE AMERICAN CORPORATE COUNSEL ASSOCIATION  
(SAN FRANCISCO/BAY AREA; SOUTHERN CALIFORNIA)**

## **GENERAL BACKGROUND**

By the turn of the century ethnic minorities will constitute half of California's population, work force and consumer markets, according to a survey conducted by the Center for Continuing Study of the California Economy. As California heads toward a non-white majority, minority attorneys continue to be seriously under-represented at every level of the legal profession.

Inspired by the American Bar Association's Minority Counsel Demonstration Program, Judge Benjamin Aranda, a member of the ABA's Commission on Opportunities for Minorities in the Profession, worked with representatives of major California corporations, bar associations and law firms to establish a similar program in California. In 1989, Wells Fargo Bank, First Interstate Bank, Chevron Corporation and Pacific Telesis Group united to become the initial corporate participants in the California Minority Counsel Program (CMCP). The founders of the CMCP formed a Steering Committee and obtained a funding grant from the Wells Fargo Foundation, with the Bar Association of San Francisco providing the administrative staff.

Today, the CMCP is a unique partnership of 55 corporations, 90 majority law firms and 180 minority owned law firms. The CMCP works to increase the ability of corporations to identify and utilize minority attorneys with skills matching their outside counsel needs. The Program is now co-sponsored by the Bar Association of San Francisco, by the Los Angeles, Orange and San Diego County Bar Associations and by the State Bar of California, and is currently self-funded through annual contributions by its members.

The success of the Program demonstrates that cooperative efforts are indeed effective and can lead to positive change in our profession and in society at large.

Our ultimate goal is a profession in which race and ethnic background are simply no longer issues affecting opportunities for advancement in the law. We believe that the California Minority Counsel Program is an effective vehicle for reaching this goal.

## **PROGRAM MISSION**

To increase opportunities for minority attorneys in the assignment of corporate legal work by implementing a partnership among corporate counsel, majority-owned law firms and minority-owned law firms.

## **PROGRAM DESCRIPTION**

This Program is founded upon a shared commitment among corporations (through their corporate counsel), majority-owned law firms and minority-owned law firms. The success of the program will be measured not only by the amount, value, and significance of corporate legal work assigned to minority attorneys participating in the Program, but also the new career opportunities created for and by minority attorneys.

### **A. Length of Program**

The Program will be officially evaluated annually. It is anticipated that there will be an ongoing commitment by all sponsors and participants to effectuate the principles of the Program.

### **B. Program Definitions**

For purposes of the Program, minority attorneys are defined to be Black, Hispanic, Native American, or Asian/Pacific Islander attorneys. A minority-owned law firm is one composed of two or more lawyers in which at least 51 percent of the ownership interest is controlled by minority attorneys.

## **PROGRAM PARTICIPATION**

### **A. Corporate Participants**

Each participant will be asked to agree in principle to the following:

1. To make a request of all law firms which serve the corporation as outside counsel, encouraging each firm to:
  - (i) Increase the recruitment, hiring, retention and advancement to partnership of minorities within the firm;
  - (ii) Have minority lawyers within the firm capable of providing the required services included among those who represent the corporation; and,
  - (iii) Maintain and expand existing joint ventures or other formal associations with minority-owned law firms, and enter into joint ventures or other formal associations with minority-owned law firms with which the firm does not currently maintain such a relationship, on legal matters of the corporate client calling for such a relationship.
2. To endeavor periodically to assess the performance of outside counsel in utilizing minority attorneys, based on the corporate participant's own business dealings with outside counsel.

3. To endeavor to establish on-going business relationships with additional minority-owned law firms beyond those the corporation currently employs as outside counsel.
4. To increase the recruitment, hiring, and advancement of minorities within the corporation's law department, consistent with the affirmative action policy of the corporation.

**B. Majority-Owned Law Firms**

Each majority-owned law firm agrees to endeavor, in appropriate circumstances, to:

1. Increase the recruitment, hiring, retention and advancement to partnership of minorities within the firm.
2. Have minority lawyers within the firm capable of providing the required services included among those who represent corporate clients.
3. Maintain and expand existing joint ventures or other formal associations with minority-owned law firms, and retain and otherwise enter into joint ventures or other formal associations with minority-owned law firms with which the firm does not currently have such a relationship, on legal matters of the law firm clientele calling for such a relationship.
4. Request all law firms which serve as associate counsel, co-counsel or local counsel to the firm to adopt in principle these goals.
5. Refer conflict situations to minority-owned law firms.
6. Take such additional steps as are practicable to foster and enhance relations between the majority firm and minority-owned law firms, including but not limited to providing educational and training opportunities in furtherance of the objectives of the Program.
7. Participate in an on-going evaluation of the program on an agreed-upon basis.

**C. Minority-Owned Law Firms**

Each minority-owned law firm endeavors to:

1. Enter into joint ventures or other formal associations with majority-owned law firms as well as minority-owned law firms.
2. Take such additional steps as are practicable to foster and enhance relations between the minority-owned firm and majority-owned law firms, including but not limited to providing educational and training opportunities in furtherance of the objective of the Program.
3. Participate in an ongoing evaluation of the program on an agreed-upon basis.

## **PROGRAM ADMINISTRATION**

### **A. Steering Committee**

The Steering Committee shall be comprised of members as follows: one (1) from the Bar Association of San Francisco; one (1) from the Los Angeles County Bar Association; one (1) from the Orange County Bar Association; one (1) from the San Diego County Bar Association; six (6) minority law firm representatives and six (6) majority law firm representatives representing both Northern California and Southern California; and, twelve (12) corporate representatives, including six (6) from Northern California and six (6) from Southern California. Representatives from the American Bar Association and the State Bar of California shall serve as liaisons to the Steering Committee. Other members may be added to the Steering Committee as appropriate.

### **B. Chair(s)**

The Steering Committee shall select an appropriate Chair and Chair-Elect to facilitate and coordinate all matters relating to the Program. The Chair(s) shall act as liaison to the Steering Committee and shall otherwise perform necessary functions to assure the development and effective evaluation of the Program. The Steering Committee may also designate committees and sub-committees to carry out the purpose of the Program as it deems appropriate.

It is anticipated that additional corporations, majority-owned firms and minority-owned firms will express an interest in joining the Program. The Chair(s) will coordinate receipt and acceptance of applications from eligible participants to the Program.

### **C. Executive Committee**

RESOLVED, as of December 14, 1992, the California Minority Counsel Program shall have, as one of its standing committees, an Executive Committee which shall operate within the following guidelines:

1. Name:

The name of thus committee shall be the "Executive Committee."

2. Membership and Term of Office:

Membership on the Executive Committee shall be for a term of one calendar year, subject to reappointment to a second one year term for the incoming Chair, or otherwise at the option of the Steering Committee. There shall be a minimum of four members of the Executive

Committee as follows:

- (i) The Chair of the Steering Committee
- (ii) The chairs of the corporate subcommittee, minority-owned law firm subcommittee, and majority-owned law firm subcommittee, respectively, one of whom shall be the Chair-Elect

3. Authority of Executive Committee

The Executive Committee shall be authorized to perform the following functions:

- (a) To implement decisions made by the Steering Committee and not assigned to one of the other committees of the Steering Committee.
- (b) To act on matters that would otherwise require a decision by the Steering Committee in situations where it is impractical to (i) delay the matter until a regularly scheduled Steering Committee meeting, or (ii) to hold a special meeting of the Steering Committee.

4. Meetings of the Executive Committee

The Executive Committee shall meet or confer by conference call every month, or more often at the discretion of the Steering Committee or Chair.

**D. Sponsorship and Support**

This Program is sponsored by The Bar Association of San Francisco, the Los Angeles County Bar Association, the Orange County Bar Association, the San Diego County Bar Association and the American Corporate Counsel Association (San Francisco/Bay Area and Southern California Chapters). It is supported by the American Bar Association and the State Bar of California and by numerous national, statewide and local bar associations, including but not limited to the National Bar Association, the Hispanic National Bar Association, the Asian Pacific Bar Association of California, the California Association of Black Lawyers, the Asian American Bar Association of the Greater Bay Area, the Black Women Lawyers of Northern California, the Charles Houston Bar Association, the John M. Langston Bar Association, the Black Women Lawyers of Los Angeles, the Mexican American Bar Association, the American Indian Bar Association, the Southern California Chinese Lawyers Association, the Japanese American Bar Association of Southern California, the San Diego La Raza Lawyers Association, the Earl B. Gilliam Bar Association and the Pan Asian Lawyers of San Diego.

Revised: February 5, 1993

# **CALIFORNIA MINORITY COUNSEL PROGRAM**

## **1994 PROJECTS**

The California Minority Counsel Program has initiated a number of projects in 1994, designed to extend and strengthen CMCP's service to its participants.

### **BUDDY SYSTEM**

The "Buddy System" links each CMCP participant to a member of the Steering Committee. Under the Buddy System, the Steering Committee will share information directly with participants about CMCP projects and efforts, and CMCP participants will be able to express their concerns, insights and ideas about the Program.

### **ROUNDTABLE SERIES**

The "Roundtable Series" increases interaction between minority attorneys and in-house counsel. Each roundtable discussion takes place at a corporation's headquarters and addresses a particular practice area. The format includes: (1) a corporate panel presentation focused on each in-house counsel's concerns and preferences in retaining outside counsel; (2) a substantive legal update by a panel of minority attorneys; and (3) an open discussion of a legal hypothetical. Roundtable discussions are open to all CMCP members.

The First Roundtable featured products liability and was hosted by Teledyne Corporation. It included corporate representatives from Teledyne, Toyota and Hyundai.

The Second Roundtable, hosted by Chevron Corporation, concerned environmental law. Corporations attending included Chevron, Clorox, City Attorney's Office of San Francisco, Hewlett Packard, Pacific Bell, Pacific Gas & Electric, and Wells Fargo Bank.

The Third Roundtable, taking place in Newport Beach and hosted by The Irvine Corporation, addressed the advantages and disadvantages of alternative dispute resolution. Among the attendees were sixty minority attorneys, and corporate representatives from The Irvine Company, Taco Bell Corporation, Catellus Development Corporation, Allergan Corporation, Toshiba America Information System, Family Restaurants, Inc., and The Baldwin Company.

### **CMCP MEMBER NEWSLETTER**

The CMCP Member Newsletter, published quarterly, and mailed directly to participants, contains information on CMCP activities, as well as articles of interest to CMCP members.

The CMCP will also provide information about the Program monthly in the Daily Journal for Northern California. CMCP members will receive complimentary copies of the Daily Journal on print dates.

## **ON-LINE DIRECTORY**

We have taken our Directory of Participants on-line with American Lawyer's new Lexis Counsel Connect service. Each CMCP participant will be featured on this bulletin board service as well as in our hardcopy Directory. The computerized version of the Directory will also allow each participant to present significantly more information about the firm's or corporation's expertise and members.

## **EVALUATION REPORT**

The CMCP undertakes an annual evaluation of the Program, which summarizes information about work performed for CMCP corporate participants by participating law firms (i.e., work given to minority firms or to minority attorneys at majority firms). CMCP uses the evaluation to determine our members' successes and concerns. The results are published in the Annual Evaluation Report and distributed at the Annual Conference.

## **ANNUAL CONFERENCE**

The CMCP Annual Conference includes scheduled interviews between law firms and corporate representatives, panel discussions, breakout and plenary sessions, an annual corporate award, receptions and social activities. The Conference is designed to maximize interaction between minority attorneys and corporate representatives. The 1994 CMCP Annual Conference is scheduled for October 20 and 21, 1994 in San Francisco, at Pacific Telesis. This year's Annual Conference will be kicked off by an awards dinner Thursday night, with the substantive program running all day Friday. The Conference will conclude with a reception on Friday night.

# **LETTER TO SPONSORS ENCLOSING MODEL PART TIME POLICY & SIGN-UP FORM**

July 8, 1994

Dear Managing Partner/General Counsel:

In August, 1989, the Board of Directors of the Bar Association of San Francisco directed the Committee on Women to focus its efforts on formulation of a model policy for provision of part-time and other alternative work schedules for attorneys wishing to accommodate childrearing responsibilities. The Committee conducted an exhaustive study of this issue, culminating in the Board's unanimous approval, on September 26, 1990, of the attached Model Policy on Alternative Work Schedules for Attorneys.

By this letter we seek your office's adoption of a written policy that incorporates the substance of the Model Policy.

The Association believes it is appropriate that San Francisco law offices take this essential step to overcome a major barrier to full participation of women in the legal profession. The Board also believes that adoption of the Model Policy is a necessary response to rapidly evolving changes in the economics and demographics of the legal profession.

The focus of the Model Policy is to afford partners and associates in good standing the benefit of a written presumption that requests for a flexible or reduced employment schedule related to childrearing will be reasonably accommodated. These arrangements will be subject to periodic review, with compensation to be calculated on a *pro rata* basis, and benefits to be provided in full or on a *pro rata* basis. The policy contemplates that part-time associates will continue on the partnership track, albeit, in some instances, over a longer period of time than part-time associates are eligible for advancement to partner while working part-time.

Several major San Francisco law firms have already adopted the substance of the policy, including Morrison & Foerster; Pillsbury, Madison & Sutro; Brobeck, Phleger & Harrison; Cooley, Godward, Castro, Huddleson & Tatum; Shartsis, Friese & Ginsberg; and Minami, Lew, Tamaki & Lee.

A great many other law firms, corporate law departments and other legal employers across the city have begun the process of formulating or revisiting written flexible work policies for their lawyers. The Association stands ready to provide technical assistance that may be of help in these efforts, including resource materials, seminars, workshops, and consultant referrals.

The Association expects to make available to law students and practicing attorneys who may be considering lateral career changes, information regarding those law firms and other legal employers who have adopted the substance of the Model Policy. BASF works closely with law school placement offices on a number of programs involving minority outreach; beginning this December, the inclusion of the names of firms and other employers who have adopted the Model Policy will also be highlighted. As with other programs in which San Francisco employers have been proven leaders, we will showcase those that have adopted the Model Policy in the Association's Newsletter and magazine.

We hope that your office will adopt and implement an alternative work schedule policy which incorporates the substance of the Model Policy. We ask that you inform us of your action in this regard by signing and returning to us the attached form, to the attention of Bar Association Executive Director Drucilla Ramey.

Very truly yours,

President      Co-Chair, Committee on Women

Co-Chair, Committee on Women

# **MODEL POLICY ON ALTERNATIVE WORK SCHEDULES FOR ATTORNEYS**

## **BAR ASSOCIATION OF SAN FRANCISCO COMMITTEE ON EQUALITY**

### **1. Purpose:**

The firm\* recognizes that an attorney should be permitted to work a flexible or reduced work schedule for reasons related to child-rearing. The firm believes that the availability of alternative scheduling opportunities for child-rearing purposes is necessary to promote the full participation in the firm of attorneys with significant responsibility for the care of natural, adopted or foster children. Additionally, the firm believes that the availability of such alternative scheduling opportunities will benefit both the firm and its clients by facilitating the recruitment of new attorneys and the retention of experienced attorneys.

### **2. Statement of Professional Responsibility:**

The firm expects that an attorney working an alternative work schedule, just as an attorney working a regular full-time work schedule, will be flexible in his or her hours so as to provide quality and timely services to clients consistent with the area of practice and level of responsibility of the attorney involved. The firm and the attorney working an alternative work schedule recognize that a high standard of professionalism and client loyalty must be maintained.

### **3. Alternative Work Schedules:**

Numerous creative and flexible work schedules can be developed to meet the varied requirements of different practice settings and different parenting situations. Attorneys and their supervisors should feel free to create the most mutually advantageous arrangement possible. It is important to both the attorneys and the firm that attorneys on alternative work schedules perform work commensurate with their experience and skills. Arrangements that promote the competent and efficient performance of the appropriate level of work are encouraged.

The following are among the alternative work schedules that will be considered:

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\*“Firm” has been used for ease of reference. However, this policy is intended for use by all legal employers, including law firm, corporate legal departments, government agencies, law schools and non-profit organizations.

- a. **Flextime:** An attorney continues to work a full-time schedule, but has some flexibility to choose when such attorney fulfills his or her work obligations.
- b. **Part Time:** An attorney works a reduced schedule.
- c. **Job Sharing.** Two part-time attorneys share one full-time position.
- d. **Flexiplace:** An attorney has the option to work at home, in a branch office or in another off-site work setting. The attorney will be linked to the office by telephone and/or by computers, facsimile machines and voice mail.

Where it is feasible, the firm welcomes proposals for sharing of offices, secretaries, workload, and other applicable arrangements.

**4. Eligibility:**

Any attorney with the firm may apply for an alternative work schedule for child-rearing purposes. Requests for alternative work schedules for reasons other than child-rearing and requests for alternative work schedules by attorney applicants for employment will be considered on a case-by-case basis.

**5. Application process:**

An attorney requesting an alternative work schedule should submit a proposal to the firm as much in advance as possible. The firm shall respond to the request promptly.

**6. Criteria for acceptance:**

A presumption exists that requests for alternative scheduling arrangements related to child-rearing will be granted if the attorney is in good standing with the firm and if the request can be reasonably accommodated by the practice group or groups which will be directly affected.

**7. Compensation:**

- a. **Salary:** The compensation of associate attorneys on a reduced schedule shall be determined as follows:
  - i. An associate attorney shall be paid a salary on a pro rata basis based on the number of billable and non-billable hours to be worked compared to the number of billable and non-billable hours that the associate would be expected to work if working full time at the firm.

ii. If an associate attorney on a reduced schedule in fact works substantially more or less than the proportional number of hours expected, or substantially more or less than the proportional number of hours actually worked by full time associate attorneys in the firm, then the salary paid to the reduced schedule attorney shall be adjusted accordingly.

- b. **Benefits:** The firm will provide health insurance coverage to all attorneys on an alternative work schedule. The attorney may be required to contribute to the cost of such coverage on a pro rata basis. All other benefits (including vacation and sick leave) will be provided on a prorated basis.

Compensation of partners on a reduced work schedule will be determined based upon similar principles.

**8. Effect on partnership:**

Working an alternative work schedule shall not affect eligibility of an associate attorney to be considered for partnership. However, a reduction in the amount, duration and quality of experience as a result of less than full-time practice may extend the time to partnership.

**9. Evaluation:**

Each alternative work schedule arrangement will be reviewed and evaluated by the firm and the attorney at least annually. At this time consideration may be given, if necessary, to compensation or work schedule adjustments required by an economic analysis of the alternative work schedule arrangement for the period under review.

**BAR ASSOCIATION OF SAN FRANCISCO  
MODEL POLICY ON ALTERNATIVE WORK SCHEDULES FOR ATTORNEYS**

Please indicate your firm's/law department's adoption of the substance of the Model Policy on Alternative Work Schedules for Attorneys established by the Bar Association of San Francisco, by completion of this form or notification by letter.

My firm/law department has adopted a written policy which incorporates the substance of the BASF Model Policy on Alternative Work Schedules for Attorneys.

Name \_\_\_\_\_

Title \_\_\_\_\_

Firm/Law Department\_\_\_\_\_

Please return this form to Drucilia Stender Ramey, Executive Director and General Counsel, Bar Association of San Francisco, 685 Market Street, San Francisco, CA 94105.

# **BASF TECHNICAL ASSISTANCE ON ALTERNATIVE WORK SCHEDULES AVAILABLE TO LEGAL EMPLOYERS, ATTORNEYS AND LAW STUDENTS**

## **I. Resources And Materials**

- A. Memorandum and Model Policy
  - BASF Board Resolution Adopting Policy
  - Economic Analysis
- B. Sample policies of San Francisco law firms adopting Model Policy
- C. Bibliography of articles on alternative work schedules
- D. Summary of interviews with part-time attorneys

## **II. Workshops And Presentations**

- A. Conference of Local Bar Associations (November 3, 1990), focusing on lawyer parents.
- B. For the legal community in general: Panel discussion on "How to Make Alternative Work Schedules Work."
- C. For Managing Partners, Legal Administrators and Human Resource Professionals:
  - Half-day training program on how to implement an alternative work schedules (AWS) policy. To include program administration and nuts and bolts of AWS, including schedules, work allocation, compensation and benefits, communication, profitability; partnership track issues and utilization of contract attorneys to fill gaps; special issues relating to implementation in small firms.
- D. For Small Firms in Particular: Training program on special issues relating to implementation in small firms.

E. For Attorneys Working or Wanting to Work on an Alternative Work Schedule:

Workshop on “How to Effectively Work Part Time”, including how to prepare a proposal within the parameters of the firm’s policy; how to ensure that the tasks and responsibilities of the job get accomplished; how to communicate with firm members and clients to allay fears; and how to be flexible about schedules to ensure fairness to employer and employee.

**III. Referrals For On-Site Consultation**

- A. Referrals to benefits experts, legal consultants and others with experience in e.g. financial analysis of alternative work schedules; needs assessment; benefits for part-time professionals; work restructuring and review and integration of existing policies.
- B. Referrals to workshop and presentation leaders on alternative work schedules for law firm retreats and management meetings.
- C. Referrals to experts for development of resource materials for managers and supervisors on implementing part time and other alternative scheduling arrangements. Included would be, e.g., sample evaluation forms and hiring guidelines for part-time employees.
- D. Referrals to experts for development of resource materials for attorneys wanting to work an alternative schedule, to include information on how to prepare a proposal within the confines of a firm policy and negotiate the details of the arrangement.

**IV. Continuing Services To Be Provided By The Subcommittee**

- A. Peer consultation (at no charge) to employers and employees.
- B. A newsletter or column in the San Francisco Attorney Magazine on alternative work schedules in law, featuring, e.g., Model Policy, successful arrangements and interviews with part-time attorneys.

# **MODEL SEXUAL HARASSMENT POLICY, GUIDELINES & SAMPLE POLICY**

## **MEMORANDUM**

To: Board of Directors

From Joan Graff and Jamie Studley, Co-Chairs, Ad Hoc Committee on Sexual Harassment

Date: April 16, 1992

Re: Proposed Model Policy Guidelines and Sample Policy on Sexual Harassment in Employment

## **INTRODUCTION**

On December 13, 1992, at the request of then-President Elect James M. Self, the Board of Directors passed a Resolution authorizing formation of an ad hoc committee to study and recommend for Board adoption and dissemination a model policy on sexual harassment in employment.

Joan Graff, Executive Director of the Legal Aid Society of San Francisco, and Jamie Studley, former Executive Director of the National Association for Law Placement, were appointed to co-chair the Committee. Representatives of California Women Lawyers, been's Bench, the San Francisco Women Lawyers Alliance, and legal secretaries' and legal assistants' associations were invited to join the Committee, and its formation, mandate and meeting times were announced and publicized in BASF publications. The resulting Committee included a cross-section of lawyers specializing in the representation of management in labor matters, labor lawyers, sex discrimination and employment discrimination litigators, and other interested persons. BASF President James Seff served as an active member of the Committee.

The Committee had the benefit of a carefully considered set of Policy Guidelines drafted by California Women Lawyers which, with various modifications, was adopted by the Committee and is attached as Attachment A. The Committee also determined that it would be helpful to provide employers with a Sample Policy to serve as a vehicle for development or modification of their own policies. Building on the recent work of the American Bar Association's Commission on Women in the Profession, entitled "Lawyers and Balanced Lives: A Guide to Drafting and Implementing Workplace Policies for Lawyers," a subcommittee chaired by Mark Schickmen, developed a Sample Policy which, with certain modifications, was adopted by the Committee. (Attachment B)

## **COMMITTEE RECOMMENDATIONS**

The Committee recommends that the Board adopt the enclosed Proposed Resolution (Attachment C), which (1) endorses the Policy Guidelines and Sample Policy; (2) mandates their distribution to the local and national legal community and to all BASF Sponsor Firms and Corporations, together with appropriate supporting materials; (3) authorizes an accompanying cover letter to Sponsors urging the adoption, in substance, of the Policy Guidelines and requesting their completion and return to the Association of a form

signifying their adoption of a sexual harassment policy which incorporates the substance of the Guidelines (Attachments D and E); (4) offers small, mid-sized and large employers the technical assistance of the Committee in developing, amending and implementing sexual harassment policies; and, (5) authorizes periodic notice to legal employers, attorneys, law students, non-attorney legal employees, law placement offices and search firms, and the national law student community, of the names of employers which have adopted the substance of the Model Guidelines.

## THE PROBLEM OF SEXUAL HARASSMENT IN THE LEGAL WORKPLACE

Sexual harassment is a pervasive, severe, and debilitating phenomenon which increasingly has emerged as a matter of national concern. Studies of employees in Fortune 500 companies, government agencies and academia consistently demonstrate that a significant percentage of women and a small percentage of men have experienced some form of sexual harassment, and that the costs to both employees and employers are high. Yet there simultaneously exists a disturbing lack of understanding on the part of employers about the nature, extent and disastrous effects of sexual harassment.

Not surprisingly, recent studies have demonstrated that the legal profession is far from immune from either the depth of the problem or the inadequacy of the response. A comprehensive 1990

ABA Young Lawyers Division survey on attorney dissatisfaction, for example, revealed by 85% of female lawyers and 78% of male lawyers had experienced or observed at least one form of sexual harassment during the previous two years. Almost half of the women lawyers—46%—had experienced or observed several different forms of sexual harassment during this period, while, interestingly, 68% of the male lawyers had observed more than one form of sexual harassment during this same time period.

A 1989 National Law Journal/West Publishing Company survey had earlier confirmed the prevalence of sexual harassment in the legal profession, revealing that 60% of the women partners and associates in the 250 largest firms in the nation reported experiencing sexual harassment at some point in their career. Here in California, nearly half of the women lawyers surveyed by the State Bar Committee on Women in the Law in 1989 reported experiencing sexual harassment at their present or previous job.

The costs of sexual harassment in the legal profession are high, particularly when measured against the fact that women now constitute well over 40% of the associates in large urban law firms. The costs to legal employers can be measured in terms of lost productivity and employee loyalty; injury to reputation; and the expenses entailed by employee turnover and retraining; as well as by the price of litigation and damages paid to successful complainants. Employees, of course, pay a much higher price, suffering major physical, economic, psychological, emotional and social consequences.

## THE NEED FOR ADOPTION AND IMPLEMENTATION OF MODEL GUIDELINES

The Bar Association of San Francisco has long been a leader in efforts to eliminate barriers to the full and equal participation of women in the legal profession. BASF has historically acknowledged the special role that lawyers and the Association play in the eradication of sexual harassment and other forms of gender-based discrimination, in our own profession and in the greater community.

An increasing number of legal employers have adopted policies defining and prohibiting sexual harassment and setting forth procedures for filing and responding to complaints. The Association's adoption and dissemination of the proposed Policy

Guidelines and Sample Policy will assist these and other employers in formulating, revising and enforcing policies that ensure that both women and men understand what constitutes sexual harassment, that procedures are available and are actually used for reporting, investigating and remedying incidents of harassment, and the two greatest barriers to the reporting of sexual harassment will be overcome: fear of reprisal and fear of loss of privacy

The Committee intends to provide technical assistance to any requesting employer and to continue the work of a subcommittee that is currently studying ways in which the Association can best assist victims of sexual harassment in the San Francisco legal community.

## **SEXUAL HARASSMENT POLICY GUIDELINES**

As members of the legal community, we are committed to ensuring that women and men have a work place free from sexual harassment and therefore recognize the need for all employers, including "legal employers," to have and enforce a sexual harassment policy. To assist in educating the legal profession, the judiciary, and society at large on the issue of sexual harassment, and to enhance the working environment for all persons, these guidelines are offered.

Sexual harassment policies should not only be written but need to be implemented in a form that will prevent sexual harassment from occurring in the work place, educate employers and employees regarding their responsibilities and rights, improve morale, enhance professionalism, increase productivity, encourage victims of harassment to come forward and ensure that management takes prompt and effective corrective action to eradicate sexual harassment. Each employer will need to devise its own policy to meet its needs, size, condition, and other requirements.

## **DEFINITION OF SEXUAL HARASSMENT**

Sexual harassment is illegal sex discrimination and includes any unwelcome advances, requests for sexual favors and any other verbal, visual, or physical conduct of a sexual nature which meets any one of the following three criteria:

1. Submission to such conduct is made either explicitly or implicitly a term condition or condition of the individual's employment;
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
3. Conduct which has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

In determining whether one of the above criteria is met, the standard to be applied is that of the reasonable victim of the same gender as the victim. For example, the perspective of a “reasonable female victim” should be applied when the victim is a woman.

It is no defense to a claim of sexual harassment that the alleged harasser did not intend to harass.

## **OBJECTIVES OF SEXUAL HARASSMENT POLICIES**

An effective sexual harassment policy is one that:

1. focuses on prevention;
2. provides procedures for implementation, including a comprehensive educational and training program for all employees, including top management;
3. encourages victims of sexual harassment to report the behavior by guaranteeing them protection against retaliation;
4. ensures a commitment on the part of management to take prompt and effective disciplinary action against anyone who violates the policy; and
5. includes multiple access points to the grievance process.

## **CRITERIA FOR AN EFFECTIVE SEXUAL HARASSMENT POLICY**

Sexual harassment policies should generally include the following essential elements:

1. A written sexual harassment policy statement, widely and effectively disseminated, that includes:
  - a. an unequivocal statement that the employer will not tolerate, condone or allow sexual harassment by any owner, employee, manager, supervisor, co-worker, client, customer, independent contractor, opposing counsel, court personnel or other non-employees who conduct business with the employer;
  - b. a statement that any management employee who believes sexual harassment may be occurring is required to report the conduct to the appropriate human resources or other management employee;
  - c. a definition of sexual harassment that includes specific examples of prohibited behavior, whether or not directed specifically to any individual. For example:

Verbal: sexual innuendoes, suggestive or insulting comments or sounds, jokes teasing of a sexual nature, sexual propositions or threats, continuing to express personal interest after being informed the interest is unwelcome.

Visual: sexually suggestive objects, pictures, or letters; leering, whistling, or obscene gestures;

Physical: unwanted physical contact, including touching, pinching, brushing the body, impeding or blocking movement, sexual intercourse or assault.

2. Procedures for implementation, including an educational and training program on the company's sexual harassment policies on an ongoing regular basis for all levels of employees.
3. A complaint procedure that includes the following:
  - a. the option of reporting any perceived sexual harassment to the employee's supervisor, other management person, or human resources representative;
  - b. measures to ensure reasonable confidentiality about the charge;
  - c. measures to ensure protection for the complainant or other participants in the complaint investigation from retaliation;
  - d. informing the complainant of her/his legal rights when a complaint of sexual harassment is made;
  - e. a prompt, thorough, and impartial investigation of the complaint;
  - f. informing the complainant of the results of the investigation and, if harassment is found, of the remedial options available through the employer.
  - g. appropriate disciplinary measures against any employee who violates the sexual harassment policy or retaliates against an employee who reports perceived sexual harassment, up to and including termination;
  - h. follow-up procedures to be sure subsequent acts of harassment or retaliation are not occurring.
4. Procedures for preventing and acting against known or suspected harassment, whether or not a complaint has been filed.

## **SAMPLE POLICY: SEXUAL HARASSMENT**

The following sample policy is intended to serve as a guideline to individuals in developing a sexual harassment policy for their workplace. In drafting an effective policy, individuals should take into consideration the unique characteristics and culture of their workplace. Small law offices are encouraged to adapt the policy to accommodate their own particular size and structure. We hope the sample policy will serve as a useful starting point for lawyers who are interested in drafting and implementing a sexual harassment policy.

### **SAMPLE**

#### **FIRM STATEMENT OF PHILOSOPHY**

(Employer Name) is proud of its tradition of a collegial work environment in which all individuals are treated with respect and dignity. Each individual has the right to work in a professional atmosphere which promotes equal opportunities and prohibits discriminatory practices, including sexual harassment. At (Employer Name) sexual harassment, whether verbal, physical or environmental, is unacceptable and will not be tolerated. ([Managing Partner/General Counsel/CEO] letter committing to the policy should be attached.)

#### **DEFINITION OF SEXUAL HARASSMENT**

For purposes of this policy, sexual harassment is defined as unwelcome or unwanted advances, requests for sexual favors and any other verbal, visual, or physical conduct of a sexual nature when: (1) submission to or rejection of this conduct by an individual is used as a factor in decisions affecting hiring, evaluation, retention, promotion or other aspects of employment; or (2) this conduct substantially interferes with an individual's employment or creates an intimidating, hostile or offensive work environment.

Examples of sexual harassment may include, but are not limited to: unwanted sexual advances; demands for sexual favors in exchange for favorable treatment or continued employment; threats and demands to submit to sexual requests in order to obtain or retain any employment benefit; verbal conduct such as epithets, derogatory or obscene comments, slurs or sexual invitations, sexual jokes, propositions, suggestive, insulting, obscene comments or gestures or other verbal abuse of a sexual nature; graphic, verbal commentary about an individual's body, sexual prowess or sexual deficiencies; flirtations, advances, leering, whistling, touching, pinching, assault, coerced sexual acts, blocking normal movements; visual conduct such as derogatory or sexual posters, photographs, cartoons, drawings or gestures or other displays in the work place of sexually suggestive objects or pictures; conduct or comments consistently targeted at only one gender, even if the content is not sexual; retaliation for having reported or threatened to report sexual harassment.

This behavior is unacceptable in the workplace itself and in other work-related settings such as business trips, court appearances and business-related social events. In evaluating behavior, the standard to be applied is that of a reasonable victim of the same gender as the victim.

## DISSEMINATION OF POLICY

This policy will be disseminated to all employees, and its existence will be displayed prominently at the place of employment. All supervisors are responsible for knowing of its existence and substance, and of their responsibility for its implementation. The Human Resources Director will be available to answer all questions about the policy, or its implementation.

## INDIVIDUALS COVERED UNDER THE POLICY

This policy covers all individuals in the workplace (including associates, paralegals, support staff and partners). (Employer Name) will not tolerate, condone or allow sexual harassment, whether engaged in by fellow employees, supervisors, associates, partners or by outside clients, opposing counsel, court personnel or other non-employees who conduct business with this employer. The employer encourages reporting of all incidents of sexual harassment, regardless of who the offender may be, or of the offender's relationship to the firm.

## REPORTING A COMPLAINT

While (Employer Name) encourages individuals who believe they are being harassed to firmly and promptly notify the offender that his or her behavior is unwelcome, the employer also recognizes that power and status disparities between an alleged harasser and a target may make such a confrontation impossible. In the event that such informal, direct communication between individuals is either ineffective or impossible, the following steps should be followed in reporting a sexual harassment complaint.

### 1. Notification of Appropriate Staff

Individuals who believe they have been subjected to sexual harassment should report the incident to any member of the committee listed below. (The employer should designate a group of individuals within the employer who may receive complaints. These should be individuals of both genders, drawn from a variety of age groups, job positions and levels of seniority.)

An individual also may choose to report the complaint to his/her supervisor. If the supervisor successfully resolves the complaint in an informal manner to the complainant's satisfaction, the supervisor must file a confidential report to (employer management or designated individual) about the complaint and resolution so that the employer will be aware of any pattern of harassment by a particular individual and will also be aware of all complaints of sexual harassment on an employer-wide basis. If the supervisor does not successfully resolve the complaint informally, manner, a written report must be made to [the personnel director] within one work day. A supervisor who has not had special training in dealing with sexual harassment complaints is strongly encouraged to

consult a trained member of the employer's sexual harassment committee before taking action.

## **2. Description of Misconduct**

An accurate record of objectionable behavior or misconduct is needed to resolve a formal complain of sexual harassment.

Verbal reports of sexual harassment must be reduced to writing by either the complainant or the individual(s) designated to receive complaints, and must be signed by the complainant. Individuals who believe that they have been or are currently being harassed, should maintain a record of objectionable conduct in order to prepare effectively and substantiate their allegations.

While (Employer Name) encourages individuals to keep written notes in order to accurately record offensive conduct or behavior, the employer hereby notifies all employees that, in the event that a lawsuit develops from the reported incident, the complainant's written notes might not be considered privileged or confidential information.

## **3. Timeframe for Reporting Complaint**

(Employer Name) encourages a prompt reporting of complaints so that rapid response and appropriate action may be taken. This policy not only aids the complainant, but also helps to maintain an environment free from discrimination for all employees. Employees should also be aware of the time limits imposed by local, state and national governmental agencies for the filing of complaints of harassment or discrimination; those time limits are posted on the official notices which are prominently displayed (list location).

# **INVESTIGATING THE COMPLAINT**

## **1. Confidentiality**

Any allegation of sexual harassment brought to the attention of (the employer's appointed committee) will be promptly investigated. Confidentiality will be maintained throughout the investigatory process to the extent practical and appropriate under the circumstances.

## **2. Identification of Investigators**

Complaints will be investigated and resolved by the employer's sexual harassment committee. In addition, any of the following individuals may be included in reviewing the investigation and outcome: (list may include a number of appropriate partners, other members of the sexual harassment committee or other individuals such as the Director of Human Resources).

### **3. Investigation Process**

In pursuing the investigation, the investigator will try to take the wishes of the complainant under consideration, but will thoroughly investigate the matter, keeping the complainant informed as to the status of the investigation. Steps to be taken in the investigation include:

Confirm name and position of the complainant.

Identify the alleged harasser.

Thoroughly ascertain all facts that explain what happened. Questions should be asked in a non-judgmental manner.

Determine frequency/type of alleged harassment and, if possible, the dates and locations where alleged harassment occurred.

Find out if there were witnesses who observed the alleged harassment.

Ask the individual how he/she responded to the alleged harassment.

Develop a thorough understanding of the professional relationship, degree of control and amount of interaction between the alleged harasser and complainant. (Does the person control compensation, terms of employment or promotions? Do these individuals work in close proximity to one another and/or on the same projects?

Determine whether the alleged harasser has carried out any threats or promises directed at the complainant.

Does the complainant know of or suspect that there are other individuals who have been harassed by the alleged harasser?

Has the complainant informed other partners or supervisors of the situation? What response, if any, did complainant receive from these individuals?

Ask complainant what action he/she would like the employer to take as a consequence of the harassment.

When first interviewing the alleged harasser, remind him/her of the employer's policy against retaliation for making a complaint of sexual harassment.

## **RESOLVING THE COMPLAINT**

In order to minimize the damage to the firm, the complainant and the alleged harasser to the full extent possible, (Employer Name) will complete the investigation of a sexual harassment complaint and will communicate its findings and intended actions to the complainant and alleged harasser as expeditiously as possible.

If the investigator, [together with review committee], finds that harassment occurred, the harasser will be subject to appropriate disciplinary procedures, as listed below. The complainant will be informed of the disciplinary action taken.

If the investigator, [together with a review committee], determines that no sexual harassment has occurred, this finding will be communicated to the complainant in an appropriately sensitive manner.

If the investigator [together with review committee] cannot determine whether or not sexual harassment has occurred, this finding will be communicated to the complainant and the alleged harasser, and the matter will be recorded as unresolved.

Both the complainant and the alleged harasser will be informed again of the procedures set forth in this sexual harassment policy, including the appeal process contained below.

In the event that no resolution satisfactory to both parties can be reached based on the initial investigation, the matter shall be referred to (name an appropriate individual or group, such as the Managing Partner or Excessive Committee or Director of Human Resources), See “Appeals Process” below.

### **1. Sanctions**

Individuals found to have engaged in misconduct constituting sexual harassment will be severely disciplined, up to and including discharge. Appropriate sanctions will be determined by (select the appropriate individual or group of individuals). In addressing incidents of sexual harassment, the employer's response at a minimum will include reprimanding the offender and preparing a written record. Additional action may include: referral to counseling, withholding of a promotion, reassignment, temporary suspension without pay, financial penalties or termination.

This policy is designed to protect all employees from harassment in any way associated with the workplace or work environment, no matter who the harasser is.

Although the employer's ability to discipline a non-employee harasser (e.g. client, opposing counsel, supplier, or court officials) may be limited by the degree of control, if any, that the employer has over the alleged harasser, any employee or partner who has been subjected to sexual harassment should file a complaint and be assured that action will be taken. Such action may include closing business with a client, reporting a client contact to his or her employer, reporting a public official to an appropriate agency, or any other appropriate action to protect employees.

## **2. Appeal Process**

If any party directly involved in a sexual harassment investigation is dissatisfied with the outcome or resolution, that individual has the right to appeal the decision. The dissatisfied party should submit his/her written comments in a timely manner to (select the appropriate reviewers; individual or group of individuals, e.g. Administrative Partners of the employer).

## **MAINTAINING A WRITTEN REPORT OF THE COMPLAINT**

The employer shall maintain a complete written record of each complaint and how it was investigated and resolved. Written records shall be maintained in a confidential manner in the office of (name the appropriate individual or appropriate division within the office). The keeper of the records may vary depending on who filed the complaint - associate, partner, paralegal, administrative assistant, etc.

Written records will be maintained for 5 years from the date of the resolution unless new circumstances dictate that the file should be kept for a longer period of time.

## **PROTECTION AGAINST RETALIATION**

The employer will not in any way retaliate against an individual who makes a complaint of sexual harassment or against any participant in the investigation, nor permit any partner or employee to do so. Retaliation is a serious violation of this sexual harassment policy and should be reported immediately. Any person found to have retaliated against another individual for reporting sexual harassment will be subject to the same disciplinary action provided for sexual harassment offenders (see "Resolving the Complaint" above).

## **FORMAL LEGAL PROCEEDINGS**

The procedures above apply to internal complaints of harassment. Different procedures apply after a formal governmental administrative charge or civil lawsuit is filed. If you receive such a charge or complaint, you are directed to deliver it to [the personal director] immediately, all responses to such a formal charge or complaint will be made through [the personnel director]. RETALIATION AGAINST ANY PERSON WHO FILES A FORMAL CHARGE OR COMPLAINT OF HARASSMENT IS PROHIBITED, AND IS GROUNDS FOR DISCIPLINE UP TO AND INCLUDING TERMINATION.

## **CONCLUSION**

(Employer Name) has developed this policy to ensure that all its employees and partners can work in an environment free from sexual harassment. The employer will make every effort to ensure that all personnel are familiar with the policy and know that any complaint received will be thoroughly investigated and appropriately resolved.

# **BAR ASSOCIATION OF SAN FRANCISCO**

## **BREAST CANCER PROJECT**

### **PROJECT DESCRIPTION**

In 1992, 181,000 women received breast cancer diagnoses. Of these, 30% will die. In the next decade, 1.5 to two million new cases will be diagnosed. At the current rate, 450,000 women will die, unless solutions to curbing this disastrous disease are found.

Last year the Bar Association of San Francisco (BASF) began exploring the unique role that the legal community could play in the battle to eradicate this deadly disease.

The Breast Cancer Project demonstrates the ability of lawyers to assess the nature and impact of an overwhelming community problem, identify ways in which their special training, skills, resources, power and clout may be brought to bear on it, and take action, in concert with other community groups, that makes important changes in peoples' lives.

The genesis of this project was BASF's growing recognition of the need for the organized bar to join forces with the medical profession, the grassroots breast cancer community, and educational and advocacy groups to begin to forge innovative approaches to the problem.

BASF's efforts have been orchestrated by a newly created Breast Cancer Committee, working together with the Association's Volunteer Legal Services Project and other branches of BASF, the State Bar and the ABA, as appropriate.

The Breast Cancer Project has had a four-pronged focus: (1) education, (2) legislation, (3) direct pro bono legal services and (4) impact litigation.

#### **(1) Education**

The Project's educational efforts have focussed on four areas: (1) Continuing Legal Education programs designed to educate practicing lawyers about cutting edge issues in this area; (2) programs at the State Bar and ABA level designed to educate bar leaders about the importance of pursuing this kind of project in their own communities; (3) worksite programs designed to educate the employees of legal employers about early detection and treatment options; and (4) community education, and, ultimately, assistance in provision of mammograms and other screening tools to low income and indigent women in the community. (planned to begin later this year).

a. CLE Program

On Thursday, November 19, 1992, the Bar Association of San Francisco brought together leading experts from the medical profession and the legal profession to discuss what they more often save for the courtroom: the medical and legal ramifications of the diagnosis of, treatment options for, and insurance concerns surrounding, today's breast cancer epidemic.

Over the course of five-and-a-half hours, twenty four medical and legal professionals discussed topics ranging from the progression of the disease to lawsuits arising out of claims of medical malpractice and wrongful denial of insurance coverage for autologous bone marrow transplant surgery.

Lawyers attending the program learned of the complexity of problems associated with research, diagnosis and treatment of the disease; doctors learned of the ramifications of inadequate patient/physician communication and the problems for women in being informed of and receiving the best treatment options. All learned of the importance of seeking solutions to these problems together.

b. State Bar and ABA Programs

This May, BASF will present a panel on Breast Cancer issues at the Statewide Conference of the Committee on Women of the State Bar of California. BASF has continually advertised and disseminated the work of the Committee at State Bar Conventions and to local bars throughout the state.

Working together with an activist group of lawyers and judges from New York, Judges and Lawyers Breast Cancer Alert, and with the ABA Commission on Women, BASF has helped to develop and present roundtables on Breast Cancer at the San Francisco and Boston meetings. These groups will jointly present the issue at the New York meeting before the plenary session of the NCBP-NABE group and at a subsequent break-out session. These, led by Chief Judge Judith Kaye of the New York Court of Appeal and BASF representatives, will feature a video depicting highlights of BASF's Breast Cancer Forum. It is BASF's hope that, with the leadership of the ABA, the work of the organized bar in this area will be further galvanized and coordinated.

c. Worksite Programs

The Bar Association is assisting in scheduling informational meetings at offices of individual legal employers with organizations such as the Northern California Cancer Center, in order to facilitate the education of employees on screening and treatments for breast cancer. We plan to subsidize programs for smaller employers who cannot afford the program.

(2) **Legislation**

Careful scrutiny of federal and state legislative framework surrounding the disease revealed areas of weakness that may be buttressed to ensure that the law treats women fairly as they struggle to cope with the realities of breast cancer. Breast Cancer Project participants produced a report that identified recurring problems that are amenable to legislative correction and provided a general working knowledge of California legislation affecting women with breast cancer.

Two issues on which proposed legislation has already been introduced in the State Legislature are the inadequacy of information made available to breast cancer patients regarding treatment alternatives and arbitrary and capricious denial of insurance coverage for women who require certain surgical procedures.

Other issues to be addressed by future legislation contemplated by BASF will be employment discrimination against breast cancer survivors, inaccessibility of health insurance and education at the high school level that includes breast self examination. Legislation is currently being drafted that will provide certain procedural amendments to the Health & Safety Code, the Insurance Code and the Code of Civil Procedure designed to eliminate obstacles to the provision of appropriate health care for breast cancer and other seriously ill patients.

(3) **Direct Pro Bono Legal Services**

Under the auspices of the Bar Association's Volunteer Legal Services Program, the Cancer Legal Services Project was founded last year in an effort to begin to meet the legal needs of poor and low-income clients affected by cancer. The Project provides free legal assistance to clients affected by cancer, including breast cancer, in such areas as simple wills and powers of attorney, family law, public and employee benefits, insurance, bankruptcy and collection defense.

(4) **Impact Litigation**

A compilation of litigation, principally High Dose Chemotherapy-Autologous Bone Marrow Transplants (HDC-ABMT), has been done by members of the Committee. In addition, a list of attorneys who have successfully litigated and/or settled these cases may be used as a resource.

# VIDEO PRESENTATION

## VIDEOTAPE I

- Introduction ..... Karen D. Kadushin, President  
Bar Association of San Francisco  
Insurance Litigation (Defense) ..... Lawrence Rose, Esq.  
Hassard, Bonnington, Rogers & Huber  
Insurance Litigation (Plaintiff) ..... Alice Philipson, Esq.  
Patients, Underserved Women ..... Judith Luce, MD  
San Francisco General Hospital  
Employment Litigation ..... Bill Lewis, Esq.  
Legislative Initiatives ..... Karen Stevenson  
Howard, Rice, Nemerovski, Canady, Robertson & Falk  
Malpractice Issues (Plaintiff) ..... Mary Wiss, Esq.  
Baum & Wiss  
Malpractice Issues (Defense) ..... Judith Craddick, Esq.  
Craddick, Candland & Conti

## VIDEOTAPE II

- Introduction ..... Karen D. Kadushin, President  
Bar Association of San Francisco  
Patient Perspectives ..... Sandie Pope  
Epidemiology ..... Margaret Wrensch, MD  
University of California Medical Center, San Francisco  
Progression of the Disease ..... Brian Mayall, MD  
University of California Medical Center, San Francisco  
Prevention, Nutrition, Environment ..... Ernest Rosenbaum, MD  
University of California Medical Center, San Francisco  
Chemotherapy Research ..... Charles Dollbaum, MD  
University of California Medical Center, San Francisco  
Mammographic Screening ..... David J. Soffa, MD  
University of California Medical Center, San Francisco  
Choices in Oncology ..... Richard Cohen, MD  
California Pacific Medical Center

## VIDEO PRESENTATION

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Presented by The Bar Association of San Francisco and The San Francisco Medical Society



## DOCTORS, LAWYERS AND BREAST CANCER

by Margaret Sparks

(Excerpts from San Francisco Attorney Magazine article)

legislation will affect the well-being of those you serve.

Physicians and attorneys need a forum to talk about breast cancer outside the courtroom.

Employers need to know about a disease that could touch one in nine employees.

Litigation cannot save a cancer patient's life.

In five-and-a-half hours, twenty four speakers, both medical and legal professionals, discussed topics ranging from the progression of the disease to lawsuits arising out of malpractice claims.

The purpose of the forum was to lay some groundwork for energizing the legal profession to assist patients, doctors and researchers in meeting the challenges of this disease.

### WHO GETS BREAST CANCER?

Margaret Wrensch, epidemiologist at UCSF, described breast cancer as by far the most commonly occurring cancer among women. It kills more women than any other cancer, except, most recently, lung cancer. Epidemiological studies have identified a number of risk factors that may be associated with the development of breast cancer, i.e., age, heredity, maternity. Other factors include diet and alcohol intake.

### PREVENTION OF BREAST CANCER

Dr. Ernest H. Rosenbaum, Medical Director of the Better Health Foundation and Clinical Professor of Medicine at the University of California, told the group that primary prevention, preventing the occurrence of breast cancer, consists of chemoprevention (treatment with drugs), diet and prophylactic mastectomy. Secondary prevention includes screening by breast self examination and mammography. These two in combination have the potential of reducing mortality from breast cancer by at least 30% in women over the age of 50. When detected early, before the lymph nodes have become involved, breast cancer has the best prognosis—five year relative survival of 92%.

### DIFFICULTIES IN DETECTING BREAST CANCER EARLY IN ITS DEVELOPMENT

Dr. Brian Mayall, an expert in cell analysis from the University of California Medical Center,

described the "doubling process" and the growth pattern of breast cancer, which is usually an extremely slow-growing form of cancer. While tumor growth is quite variable, the median time for a tumor to double is 85-90 days, or four doublings each year. The longer a tumor is present the more likely it is to develop metastases (spread outside the breast) but sooner or later it will if not treated. In general, the least aggressive breast cancers are also the slowest to metastasize.

The doubling factor emphasizes the importance of early detection. By the time a tumor has reached a size large enough for physical detection, in about 50-60% of the cases axillary metastases has taken place.

According to Radiologist David Soffa, Breast Cancer Detection Project conclusions indicated that mammography has a significantly greater role than physical examination in early cancer detection. And yet, mammography is a limited tool. It is less effective in dense glandular breasts. It is not always diagnostically specific and approximately 10% of carcinomas cannot be found on mammography because of unusual locations. Moreover, the accuracy of results depends on the quality of the apparatus and, most importantly, the experience and skill of the doctor "reading" the results.

### RESEARCH: WHERE IT HAS BEEN AND WHERE IT SHOULD GO

In general, there has been very little methodological advances in breast cancer detection and therapy over the past 20 years because very little basic research focussing specifically on the disease has been done.

Dr. Rosenbaum reports that research in detection of breast cancer includes work with computers that aims a laser which performs a localized biopsy automatically. Other work is being done with MRI that can detect smaller lesions than standard

mammography. A blood marking test for breast cancer, similar to that for prostate cancer, may be available in the foreseeable future.

Dr. Charles Dollbaum, University of California Medical Center, described the minimal nature of the research in the treatment of breast cancer. He described the current treatment of breast cancer in three stages: primary therapy (removal of lesions and lymph nodes by surgery with or without subsequent radiation therapy); adjuvant therapy (treatment with hormonal therapy or chemotherapy in addition to primary therapy); and metastatic cancer treatment, primarily hormonal therapy and chemotherapy with radiation. The importance of controlling breast cancer by the first two therapies is demonstrated by the fact that the treatment of metastatic disease is not curative; it may prolong life and reduce pain, but will not cure the cancer.

### LEGAL IMPLICATIONS IN BREAST CANCER DETECTION AND TREATMENT

Most lawsuits arising out of breast cancer issues have stemmed from questions surrounding failure to diagnose, lack of follow up, selection of diagnostic procedures (to do or not to do a surgical biopsy), prognosis of rapidity of growth, and use of treatments deemed "experimental" or "under investigation" by insurance carriers.

Failure of communication often causes patients to resort to litigation. In the instances when communication problems arise, according to plaintiff's attorney Mary Wiss, juries tend to believe what is in the medical records, not what the patient remembers.

Questions arose regarding denial of coverage for the highly publicized cancer treatment called High Dose Chemotherapy/Autologous Bone Marrow Transplant (HDCT/ABMT). While many physicians feel this is still an "experimental procedure under investigation," it is increasingly the treatment of last resort, and is believed by some to retard cancer growth by as much as seven years in some cases. Dr. Cohen noted that Blue Cross has undertaken an extensive research project with cancer patients and HDCT/ABMT.

Insurance litigator Alice Philipson described the dilemma posed by the patient when her doctor has prescribed a treatment for which her insurance company won't pay. This, in effect, makes the insurance company the "doctor," making decisions which rightfully must be made by physicians and patients.

Insurance defense litigator Lawrence Rose described HDCT/ABMT as a questionable procedure, but one to which patients understandably turn as a last resort.

## C A N C E R   L   E G A L   S   E R V I C E S   P   R O J E C T

The Cancer Legal Services Project (CLSP), a project of the Volunteer Legal Services Program of the Bar Association of San Francisco, was founded in 1992 in a pioneering effort with the Women's Cancer Resource Center to meet the legal needs of poor and low-income clients with cancer. CLSP provides free legal assistance in many areas, including simple wills and powers of attorney, family law, public and employee benefits, insurance, bankruptcy and collection defense. The Project has the following components:

- I. COMMUNITY OUTREACH AND TRAINING: The CLSP works closely with community cancer agencies to help clients identify and address legal needs. Specifically, the Project trains intake workers to "issue spot" legal matters and refer clients to CLSP and other legal service providers. CLSP also co-sponsors educational forums and workshops at cancer service provider agencies. CLSP in conjunction with the Legal Services Committee of the Women's Cancer Resource Center will be doing more extensive outreach to clients. In-services for the staff at hospitals and clinics will be instrumental in reaching clients who may need legal services.
- II. VOLUNTEER MANAGEMENT: The CLSP recruits, trains, and supervises volunteers to help people with cancer in the substantive areas identified above. Since the Project began in September of 1992, we have recruited and trained 50 volunteer attorneys who are able to assist clients.
- III. INTAKE AND DIRECT REFERRALS: The heart of the CLSP is conducting intakes for clients who need free legal assistance, and matching them with pro bono attorneys and other legal advocates. During the intake process, callers are screened for income eligibility and bona fide legal problems. Upon completion of the intake process, the CLSP referral staff matches clients with volunteers who have the relevant expertise or have completed a VLSP training program. Since September of 1992, the Project has provided direct referrals for legal services to over 30 clients. The majority of the clients are seeking assistance after their health insurance companies have refused to pay for treatment that has been recommended by their physicians.
- IV. LEGAL CLINICS: The CLSP has organized legal forums and workshops in addition to providing direct referrals. Volunteer attorneys have provided free workshops and follow-up services for clients in the areas of simple wills and durable powers of attorney for health care and finances. CLSP also co-sponsored a Breast Cancer Forum with the American Cancer Society that was publicized throughout the community. Since September 1992, CLSP provided legal services and legal education to over 60 clients through legal clinics and forums. Other clinics will be offered including: 1) a general clinic staffed by paralegal interviewers and attorneys; attorneys will meet individually with clients for brief advice and refer them to attorneys for representations, if warranted; 2) a general presentation by an expert in a specific area, followed by brief individual consultations and; 3) a training clinic attended by attorneys who agree to represent pre-screened clients at the completion of the clinic.
- V. POLICY AND ADVOCACY: The CLSP, in consortium with other cancer service providers, identifies policies and issues which merit advocacy and/or litigation.



**O**ver the past decade, government funding for critical human needs has eroded to a dangerous extent. Legal services for the indigent are no exception. In response to the decrease in available assistance, the Bar Association of San Francisco Volunteer Legal Services Program (VLSP) has mobilized a massive response from the legal community. Over 4,300 volunteer attorneys and other legal workers have come forward to repair the safety net that has deteriorated so fully. The award-winning VLSP is now the largest and only fully comprehensive legal services provider in San Francisco. Our efficient and cost-effective volunteer-based system assisted over 30,000 clients in 1993, at an estimated value of \$15,600,000.

The services provided by this volunteer corps are centrally important to the lives of all San Francisco residents: VLSP serves as a societal safety valve, providing critical services for those living on the edge. By solving problems and preventing the deterioration of lives already in jeopardy, our volunteers enhance the quality of life for all San Francisco residents. Timely legal services can prevent a newly-unemployed father and his family from becoming homeless; enable a pensioner to stabilize his ability to live self sufficiently; save the life of a battered woman. Our volunteers are available to help in virtually every area of law where problems arise. We are frequently the ONLY place where these residents of our city can turn for help. Without us, the already tattered safety net is completely withdrawn, and the client spirals into poverty and despair.

Volunteers respond to the day-to-day concerns of those who urgently need help through a host of vital projects sponsored by VLSP including:

VLSP also co-sponsors a number of important collaborative projects including:

Individual Case Referral Panels in

All Areas of Civil Law

Abused and Neglected Immigrant

Foster Children Project

Advocacy Clinic for Indigent and

At-Risk Children with Disabilities

Bankruptcy Consultation Clinic

Cancer Legal Services Project

Child Support Settlement Clinic

Consumer Credit and Finance Project

Disability Rights Project

District Attorney Orientation Program

Family Law Clinic

Federal Court Pro Bono Project

Guardianship Clinic

Homeless Advocacy Project

Homeless Shelter Arbitration Project

Immigration HIV Assistance Project

Landlord/Tenant Project

Legal Advice and Referral Clinic

Women's Poverty Prevention Project

AIDS Legal Referral Panel

Asian Legal Community Advice Clinic

Domestic Violence Restraining Order Clinic

Filipino Legal Community Advice Clinic

New Models in Family Law

School Discipline Taskforce

The flexibility of our volunteer-based program has made it possible to respond to emerging community needs by creating innovative projects to creatively provide services; during the past year, VLSP launched four such projects. The Cancer Legal Services Project assists indigent people affected by cancer with all types of legal matters including access to necessary medical treatment. The Abused and Neglected Immigrant Foster Children Project helps abused immigrant children obtain lawful permanent residency, allowing them to stabilize their living environments and recover. The Consumer Credit and Finance Project assists low-income families and individuals with all types of consumer problems including several -- such as unfair business practices and erroneous credit reports -- which could otherwise trigger a downward spiral into homelessness. The Women's Poverty Prevention Project is a multi-service clinic designed to provide poor and at-risk families with legal assistance while at the same time addressing their social service needs.

VLSP staff and volunteers assisted over 30,000 indigent clients in 1993. This huge volume, and the comprehensive nature of our services, reveal our importance to the health, safety and quality of life of our city. Donations to VLSP yield 10 to 1 in terms of dollars invested; last year, over \$15,600,000 in donated services were leveraged.



**VOLUNTEER LEGAL SERVICES PROGRAM**

# **CREATING AN ENVIRONMENT CONDUCTIVE TO DIVERSITY**

## **A GUIDE FOR LEGAL EMPLOYERS ON ELIMINATING SEXUAL ORIENTATION DISCRIMINATION**

### **BAR ASSOCIATION OF SAN FRANCISCO**

**August, 1991**

On August 14, 1991, the Board of Directors of the Bar Association of San Francisco unanimously approved a Resolution adopting the following Guide drafted by the Bar Association's Committee On Gay and Lesbian Issues. The Resolution urges all San Francisco law firms and legal employers to implement programs to achieve equal employment opportunity for lesbians and gay men and to make the recommendations contained in the following Guide the basis for those equal opportunity programs.

The costs of reproducing and binding this Guide were donated by the firm of Howard, Rice, Nemerovski, Canady, Robertson & Falk, A Professional Corporation.

### **INTRODUCTION**

In 1986 the Bar Association of San Francisco (BASF) established the Committee on Equality, whose mandate was to study and make recommendations to the BASF Board of Directors with respect to the elimination of barriers to the advancement of minorities, women, lesbians and gay men, and attorneys with physical or mental impairments in the San Francisco legal community. The Committee's efforts initially were focused on issues relating to the advancement of ethnic minorities and women. However, in January 1990, a subcommittee on lesbian and gay issues was established, which has subsequently become a BASF committee.

Over the past 18 months, the Committee on Lesbian and Gay Issues ("the Committee") has conducted exhaustive research to identify obstacles to, and recommend ameliorative steps to effect, the equal recruitment, hiring, retention, advancement and compensation of gay and lesbian attorneys and law students in San Francisco.<sup>1</sup>

The work of the Committee culminated in its recommendation that the Board of Directors endorse this Guide and urge its acceptance and implementation by San Francisco legal employers.<sup>2</sup> On August 14, 1991, the BASF Board unanimously adopted a resolution endorsing this Guide.

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<sup>1</sup> The Committee's work included: (1) study of responses of those willing to respond to a survey seeking the employment experiences of gay and lesbian attorneys, conducted in 1988 by the Bay Area Lawyers for Individual Freedom (BALIF); (2) analysis and extrapolation from information collected by the National Lesbian and Gay Bar Association; (3) solicitation of input from prominent members of the San Francisco legal community and evaluation of the legal, economic and management considerations for legal employees seeking to implement policies designed to achieve equal employment opportunities for gay and lesbian lawyers and law students; and (4) drafting and final adoption by the Committee of this Guide.

It is important to note that collection of data documenting this form of discrimination is particularly problematic because many gay and lesbian law students and attorneys are reluctant to reveal their sexual orientation, and many legal organizations are reluctant to collect data on

## OVERVIEW

Elimination of discrimination based on sexual orientation has long been recognized by BASF to be a matter of great importance, and one on which the BASF Board of Directors has taken strongly supportive positions.<sup>3</sup> Employer attitudes, policies and practices which impede the advancement of lesbians and gay men may often be subtle and even unconscious. Together with more blatant forms of discrimination which continue to persist, however, they deprive individuals of equal employment opportunity in the San Francisco legal community.<sup>4</sup>

Removal of barriers to the advancement of gay and lesbian employees is of particular importance in San Francisco. Bar associations and legal employers across the country look to the Bay Area for leadership on this issue, where arguably the largest applicant pool of talented gay and lesbian law students and attorneys in the nation exists.<sup>5</sup>

However, discrimination based on sexual orientation has only recently become the focus of study and action by the organized bar here and elsewhere.<sup>6</sup> It has only recently been the subject of explicit anti-discrimination legislation. In California, for example, express legal prohibitions against employment discrimination on the basis of sexual orientation are found only in local ordinances, including a San Francisco ordinance. San Francisco Municipal Code (Police) Article 33, Section 3303(a). California Assembly Bill 101, as proposed in the 1991-92 legislative session, would amend the California Fair Employment and Housing Act to add an express prohibition against discrimination on the basis of sexual orientation. However, former Governor George Deukmejian vetoed earlier legislation that would have prohibited sexual orientation discrimination. Lesbians and gay men, meanwhile, rely on California Labor Code Section 1101 and 1102, as construed by the California Supreme Court and the California Attorney General, for legal protection against employment discrimination.<sup>7</sup>

While the law, both in California and nationally, has begun to move toward greater protections against sexual orientation discrimination, there continue to be frequent setbacks, clear precedents remain few,<sup>8</sup> and statutory proscriptions which do exist continue to provide the clearest protections for gay and lesbian employees.<sup>9</sup>

BASF has determined that many legal employers in San Francisco have not yet initiated the process of sensitizing themselves and their employees about attitudes, policies and practices which illegally and adversely affect gay men and lesbians. BASF also notes that employers have not received information to assist them in their efforts to identify and address the problems in their own workplaces.

The following discussion and recommendations are designed to help legal employers identify and examine obstacles impeding the progress of gay men and lesbians in the legal workplace, and to suggest concrete steps to attack the problem. Endorsement of the Recommendations by the Board of Directors of BASF constitutes a critical step in achieving greater understanding of these issues by legal employers. It is the intent of BASF that broad-based implementation of the recommended policies will begin to move the legal

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the numbers of openly gay and lesbian law students and employees.

<sup>2</sup> “Firm” is used interchangeably with “legal employer” in this document for ease of reference. However, this policy is intended for use by all legal employers, including law firms, corporate legal departments, government agencies, law schools and non-profit organizations.

This policy primarily addresses issues as they affect attorneys. The same considerations should often be taken into account as they apply to staff and other legal employees.

<sup>3</sup> These have included the following: opposition to the Briggs Initiative which attempted to bar gay men and lesbians from teaching in public schools; support for an ABA resolution urging legislation to combat sexual orientation discriminations; opposition to the La Rouche

profession closer to the goal of equal employment opportunity for gay men and lesbians in San Francisco and across the nation.

## COMMON BARRIERS TO EQUAL RECRUITMENT, HIRING, RETENTION ADVANCEMENT AND COMPENSATION OF LESBIANS AND GAY MEN IN THE LEGAL PROFESSION

The Committee's research and interviews, supplemented by the experiences of many of its own members, revealed a disturbing panoply of employer attitudes, policies and practices which separately and in combination work to impede the progress of gay and lesbian attorneys and employees. As disturbing as any one experience may be in isolation, the cumulative effect over time of repeated instances of discrimination can seriously discourage lesbian and gay attorneys from remaining with a particular employer or in a mainstream legal environment at all.

### ANTI-DISCRIMINATION POLICY

1. Many employers have failed to send a clear message to their employees that manifestations of hostility and prejudice toward gay men and lesbians will not be tolerated. The failure, for example, to include explicit prohibition of discrimination based on sexual orientation, marital status or HIV status within an employer's formal non-discrimination policy may send a silent but powerful message to employees that such discrimination is condoned.<sup>10</sup>

### RECRUITMENT AND HIRING

2. Recruitment coordinators or hiring committee members may screen out from the interviewing process law students whose resumes reflect membership or leadership in gay/lesbian student, legal or political organizations, while granting interviews to similarly situated and qualified applicants who do not list such affiliations.”

The bases for this exclusion may vary, but they often include:

- conscious discrimination based solely on the student's sexual orientation;
- unconscious discomfort with the idea of employing openly gay or lesbian employees;

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AIDS Initiatives and Proposition 102, a proposed California initiative imposing mandatory HIV testing of hospital patients; endorsement of a local ordinance barring private club discrimination based, *inter alia*, on sexual orientation; support in principle of a State Bar disciplinary rule barring discriminatory conduct by attorneys based, *inter alia*, on sexual orientation; and sponsorship of a resolution proposed by the BASF delegation to the State Bar Conference of Delegates endorsing legislation to allow same-sex marriage in California (subsequently adopted without debate at the Conference).

<sup>4</sup> The Committee's research revealed that only 10 of the 957 partners in the local offices of the Bay Area's 15 largest firms are openly gay or lesbian. While the percentage within the associate ranks is likely to be higher, the Committee has concluded that gay and lesbian attorneys are seriously underrepresented at all levels and in all segments of the profession

- the assumption that the firm's clients may prefer not to be represented by gay or lesbian attorneys and that such client preferences should be honored;
- the conscious or unconscious belief that the open listing of such activities demonstrates "bad judgment" or that the weight accorded leadership experience in gay/lesbian organizations is not equal to that given analogous experience in other activist organizations, such as BALSA, MALDEF, the women law students' association, or the Sierra Club Legal Defense Fund.

Whatever the rationale, the result is the same — the employer has arbitrarily denied to the applicant the opportunity to pursue a desirable position in his or her intended profession; other members of the law firm are deprived of the opportunity to explore the qualifications of an individual who might well be a promising candidate; the firm's local and national reputation as an employer may be damaged by these discriminatory employment practices, discouraging highly qualified applicants, both heterosexual individuals and lesbians and gay men, from applying for positions;<sup>12</sup> and, the firm will deprive itself of the wide spectrum of perspectives and experiences conferred by a culturally diverse workforce reflective of the client base and the community it serves.

3. Law firm interviewers can make statements or pursue lines of inquiry which have the intended or unintended effect of excluding or alienating gay and lesbian applicants. Examples include:

- Statements which are openly hostile or which otherwise clearly convey to the applicant a bigoted, fearful, or discriminatory attitude toward gay men and lesbians. Hatred or fear of lesbians and gay men is a tragic reality which continues to be tolerated or even encouraged. It should come as no surprise that there exist in the legal community those who share some of these prejudices, animosities and misunderstandings.<sup>13</sup> In one reported interview with a promising Ivy League applicant, a partner in a major San Francisco firm listed among the City's few disadvantages its "gay community." The interviewee, in fact, was a lesbian whose interest in bringing her talents to a San Francisco law firm was largely motivated by the City's reputation for being open and hospitable to gay men and lesbians. It is hard to imagine this same interviewer feeling free to similarly disparage San Francisco's Asian or Black community.
- Questions inquiring into the personal life of the applicant which contain assumptions about sexual orientation. Female applicants, for example, are frequently asked about "boyfriends" and their views regarding "marriage and children;" male applicants are asked about their "girlfriends" or their marital status.<sup>14</sup> Many employers do not realize that questions of this nature create a serious barrier to equal opportunity for lesbian and gay applicants. Faced with questions of this nature, these applicants are put on the spot, often feeling they must

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<sup>5</sup> While researchers place the percentage of gay men and lesbian women at ten percent of the national population, the percentage in San Francisco is believed to be approximately twenty percent. Although statistics are not available documenting the number of gay and lesbian law students and attorneys in San Francisco or nationally, there is no reason to believe that gay men and lesbians are underrepresented in the bar, and San Francisco is considered a very desirable location among many gay men and lesbians. There are thriving gay and lesbian student associations on most major law school campuses, including at Harvard, Yale, Boalt, Hall, Hastings, The University of San Francisco, Golden Gate and Stanford.

<sup>6</sup> The Association of the Bar of the City of New York and BASF are among the few which have established specialized committees on this issue, and both did so as late as 1990. Only after several years of defeat did the ABA adopt, in 1989, a resolution supporting legislation to

openly disclose or actively conceal their sexual orientation. They frequently emerge from the interview believing that only heterosexual relationships are acceptable to the firm and the firm's culture.

Avoidance of questions exploring the applicant's relevant legal or community-based work with lesbian and gay related organizations listed on the applicant's resume. This may arise from misplaced concern for the privacy of the applicant, despite the fact that the applicant has volunteered this information or may stem from the interviewer's personal discomfort with homosexuality. Such behavior, presumably premised on the often erroneous assumption that only lesbian or gay men participate in groups dedicated to advancing the right to be free from discrimination based on sexual orientation, serves as an impediment to the ability of both gay and heterosexual candidates' ability to elaborate easily on the skills and experiences gained through such activities.

Aside from blatant instances of discrimination in the hiring process, it is the finding of the Committee, based on the available anecdotal evidence and the underrepresentation of gay and lesbian attorneys in the partnership ranks, that law students and attorneys who are known or thought to be gay or lesbian are disproportionately refused employment by comparison to similarly situated heterosexual candidates.

## RETENTION, ADVANCEMENT AND COMPENSATION

5. Many firms have not taken the steps necessary to ensure a work environment that is hospitable to gay men and lesbians. In many legal workplaces, for example, attorneys and staff feel free to refer to others as "fags" or "queers" and to make homophobic<sup>15</sup> comments and jokes. In other instances, staff or clients have refused to work with a gay man or a lesbian employee. This problem is compounded by persistent misconceptions held by many employees about HIV-infection and its transmission.

In addition to incurring possible legal liability for maintenance of a discriminatorily hostile work environment,<sup>16</sup> employers who fail to make affirmative efforts to eliminate continuing manifestations of prejudice against lesbians and gay men stand to lose talented employees who are fearful of or offended by such a charged and hostile environment. These employers additionally forego the substantial investment made in the recruitment, hiring and training of these employees and others who decline to remain with an employer that does not encourage and nourish diversity in the workplace.<sup>17</sup>

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combat discrimination against lesbians and gay men.

<sup>7</sup> Labor Code Sections 1101 and 1102 prohibit California employers from attempting to influence their employees' political activities and affiliations of discharge or loss of employment. In *Gay Law Students Association v. Pacific Tel. & Tel.* (1979) 24 Cal.3d 458, the Supreme Court ruled that discrimination against persons who identify themselves as gay or lesbian or as members or participants in lesbian or gay organizations violates Labor Code Sections 1101 and 1102. The Attorney General issued Opinion No. 85-404 in 1986 in which he concluded that Labor Code Sections 1101 and 1102 prohibit private employers from discriminating on the basis of sexual orientation or affiliation (or even perceived sexual orientation or affiliation) regardless of whether the protected employee proclaims his or her orientation or affiliation. 69 Ops. Atty. Gen. 80 (1986).

6. Legal employers often insist that lesbian and gay attorneys should separate their personal and professional lives in situations in which heterosexual attorneys are expected to do the opposite. This denies lesbian and gay attorneys opportunities to develop and further their professional goals.

An employer may view an employee's sexual orientation as a personal attribute that is best kept secret, one that need never, or should never, be made known to others in the firm. However, this stymies participation in the informal networks of communication within a firm which is critical to an attorney's ultimate advancement and success. These networks normally involve development of closer personal relationships and frequent exchange of views by attorneys via informal lunches, golf and other sporting events, dinners at other lawyers' homes, and other social activities. On these occasions, as well as at more formal, firm-sponsored events which attorneys are expected to attend, discussions about family, friends and community activities are a staple, and are part of the normal degree of collegiality encouraged and expected by most employers. Lawyers additionally are routinely urged or invited to bring their spouses or dates to many of these events.

Even a lawyer's office usually provides clear evidence of his or her sexual orientation. Lawyers routinely display photographs of their spouses or other loved ones on their desks and credenzas, together with photos of their children, who are frequently posed with the other parent; certificates awarded for charitable service to community and political organizations often adorn office walls. These common accoutrements of the professional workplace are taken for granted, but only insofar as they reflect a heterosexual personal life.

Under these circumstances, in firms where an employer has not undertaken a process of firm-wide sensitization and education regarding equal opportunity issues facing gay and lesbian attorneys, these individuals often are effectively precluded from full participation in the "networking" and routine social interactions necessary to success in any firm. Lesbians and gay men may even feel precluded from displaying in their own offices pictures of same-sex partners or certificates of service to a lesbian or gay organization.

Apart from barriers to advancement, this pressure to hide some significant portion of oneself from one's colleagues and friends may cause anxiety and anger that will affect an attorney's performance, creating an unconscionable burden for lesbian and gay attorneys to carry.

Ultimately, where the leadership of the firm does not make it clear that same-sex relationships and same-sex partners are of equal value to the firm as their heterosexual counterparts, lesbian and gay attorneys are impeded in their ability to participate fully in the life of the firm, with the result that many become increasingly non-productive, isolated and alienated, causing them to leave, willingly or not.

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<sup>8</sup> See, e.g., *High Tech Gays v. Defense Indus. Security Clearance Office*, reversing United States District Judge Thelton Henderson's holding that discrimination based on sexual orientation is subject to the "strict scrutiny" test applied to classifications based on race or national origin, and, therefore, is violative of Fourteenth Amendment Equal Protection guarantees unless proven to be justified by a compelling governmental interest. 895 F.2d 563 (9th Cir. 1990), reh'g denied, 909 F.2d 375 (9th Cir. 1990) (Canby, J., and Norris, J., dissenting), reversing 668 F.Supp. 1361 (N.D. Ca. 1987). The Seventh Circuit similarly reversed a District Court's application of the strict scrutiny test to discrimination based on sexual orientation. *BenShalom v. Marsh*, 881 F.2d 454 (7th Cir. 1980), cert. denied, 110 S. Ct. 1296 (1991), reversing 703 F.Supp. 1372 (E.D. Wis. 1989). A third district court recently held discrimination based on sexual orientation to be subject to strict scrutiny and violative of the Fourteenth Amendment. *Jantz v. Muci*, 759 F. Supp. 1543 (D. Kan. 1991).

7. Many employers have failed to establish, communicate, and implement the use of, specific and objective criteria for the evaluation of their attorneys' performance. Continuing reliance by some firms on criteria such as "judgment," "maturity" and other highly subjective measures, allows deeply-rooted biases and prejudices to persist, excluding from advancement qualified gay and lesbian employees.<sup>18</sup> The employer might attempt to define the meaning of these and similar terms by reference to the abilities and skills which the employer requires for advancement, specifying that openness about one's sexual orientation (for example, referring to one's domestic partner in a context in which it would be appropriate to refer to one's spouse, or discussing lesbian and gay-oriented community service) is not to be deemed indicative of poor judgment or lack of professional maturity.
8. Many employers continue to accede to their clients' actual or assumed customer preference for a heterosexual lawyer. This deprives lesbian and gay attorneys of the kind of client contact that is so essential to advancement in the firm.

In addition to potentially expensive and damaging issues of legal liability which may arise,<sup>19</sup> such conduct further disserves the firm and its clients by depriving clients of the full breadth of the firm's expertise. Moreover, the numbers of lesbian and gay in-house counsel have grown across the nation, at corporations ranging from Wells Fargo Bank, Bank of America, Citibank, and McKesson to Blue Cross, Pacific Bell, Apple and The Gap. As the sensitivity of these and other corporate clients has grown in this regard, firms which affirmatively demonstrate diversity among their attorneys by hiring and advancing gay and lesbian attorneys, as well as those who are minority or women or have a disability, stand to gain significant advantage in an increasingly competitive environment.

9. Many employers are unaware of the dates or meaning of important celebrations and occasions reflective of lesbian or gay culture, including the lesbian and gay civil rights movement. Office retreats, for example, should not be held on dates which conflict with the annual Lesbian/Gay Freedom Day Parade, held nationally to commemorate the birth of that movement.
10. Many employers have not reviewed their personnel and benefits policies to ensure that lesbian and gay employees are treated fairly and equitably. For example, although gay men and lesbian are not legally pertained to marry their same-sex partners,<sup>20</sup> most employers do not make affirmative provision for relocation costs, caretaker and bereavement leave, or parenting leave for non-marital partners on a basis equal to that provided for marital partners. Additionally, most legal employers provide health insurance coverage and survivor benefits for attorneys' spouses and stepchildren but have not provided these same benefits for the domestic partners<sup>21</sup> of gay and lesbian lawyers.<sup>22</sup>

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The United States Supreme Court in 1986 upheld the criminalizations of homosexual sodomy as not violative of the Fourteenth Amendment Due Process guarantees, but left open the question of whether discrimination against gay men and lesbians violates the Equal Protection guarantees of the Fifth and Fourteenth Amendments. *Bowers v. Hardwick*, 478 U.S. 186 (1986).

<sup>9</sup> See, e.g., San Francisco Municipal Code (Police), Article 33, Section 3303(a) (prohibiting employment discrimination by San Francisco employers and employment agencies against gay men and lesbians); id., Sections 3304(a) and 3305(b) (prohibiting sexual orientation discrimination in real property transactions and public accommodations, respectively); id., Article 338, Section 3303B.3 (prohibiting discrimination by certain clubs on the basis of, inter alia, sexual orientation); see also Cal. Civ. Code Section 51.7 (establishing the right to be free from violence or threats of violence committed because of an individual's sexual orientation). That code section defines sexual orientation

The differential provision of employee benefits operates to deprive lesbian and gay employees of compensation equal to that of their similarly situated heterosexual colleagues.

## RECOMMENDED STEPS FOR LEGAL EMPLOYERS TO ACHIEVE EQUAL EMPLOYMENT OPPORTUNITY FOR LESBIAN AND GAY ATTORNEYS AND LAW STUDENTS

Being supportive of lesbians and gay men means creating the opportunity for those who choose to be open with their sexual orientation to do so without fear. It also requires respecting the privacy of those who choose not to be open with their sexual orientation.

It is important to stress preliminarily that the choice to make one's sexual orientation known is an intensely personal one for each individual. It is not the purpose of these Recommendations to encourage any employer to "bring out" an employee or applicant against his or her will, and none of the recommendations that follow will encourage, permit or cause this to happen.<sup>23</sup>

There are many reasons why lesbians and gay men may not be open about their sexual orientation. Some lesbian and gay people legitimately fear losing their families should their sexual orientation become known. Some people have experienced serious traumas that have left them fiercely protective of their privacy, including involuntary discharge from the military and loss of a child in a custody battle. The employer's duty is simply to make the working environment one in which it is safe and comfortable to be openly gay or lesbian should any employee so choose.

The Committee recognizes that legal employers vary considerably in their structure, management, philosophy and culture, and that the approaches and solutions adopted by a given employer may need to be tailored to its unique characteristics. With this in mind, every organization should scrutinize its own internal environment and must devise an approach or solution that enables employees who are openly lesbian or gay to participate fully in firm functions and advancement of their professional careers on an equal footing with heterosexual employees. However, the following recommendations are believed to be realistic and achievable tools that legal management should strongly consider implementing — with skill and sensitivity — in a greater effort to achieve the goals of equality and workplace diversification.

## GENERAL EMPLOYMENT POLICIES AND PRACTICES

### RECOMMENDATION 1

**Management Commitment to Equality and Diversity:** Legal employers must make a commitment to the fair and equal recruitment, hiring, retention advancement and compensation of gay and lesbian employees and applicants. In order to effectively move the entire institution toward adoption of these goals as important business and management objectives the managing partner/chief counsel, or a formally and publicly

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as "heterosexuality, homosexuality, or bisexuality."

<sup>23</sup> Discrimination on the basis of HIV-status is prohibited by the Americans with Disabilities Act of 1990 (Pub.L. No. 101-336) ("ADA"), as well as the federal Rehabilitation Act of 1974 and a host of state and local laws prohibiting discrimination on account of handicap or disability. San Francisco Municipal Code (Police), Article 38 Section 3803(a) forbids discrimination in employment because "a person has AIDS or any of the associated conditions covered by this Article." Section 3852(a) bans discrimination in employment "as a result of the fact ... that a person has any disease or affliction that cannot be transmitted by casual contact." Section 3802 specifically refers to "individuals infected with the virus" as being victimized "due to the nature of their infection." Model Employment Policies with respect to AIDS and other HIV-related illnesses can be ordered through the Management Information and Exchange. (See appended Resources list).

designated high-profile attorney with authority and clout, should assume an active leadership role in the organization's efforts,

Employers with this policy: McCutchen, Doyle, Brown & Enerksen. McCutchen's managing partner and Executive Committee are vocal in support of diversity.<sup>24</sup>

#### RECOMMENDATION 2

**Anti-discrimination and Equal Employment Opportunity Policies:** Employers should articulate, in all appropriate publications, policies and procedures, the organization's commitment to and policy of equal opportunity in employment, which should specifically prohibit discrimination, including harassment, on the basis of sexual orientation and marital status. The policy should include a statement that AIDS and HIV-related conditions will be treated in the same manner as any other disability protected by law.

Employers with this policy: Heller, Ehrman, White & McAuliffe; Lilienthal & Fowler; Morrison & Foerster; Orrick, Herrington & Sutcliffe; Thelen, Marrin, Johnson & Bridges.

#### RECOMMENDATION 3

**Training:** Employers should conduct educational and training programs and provide employees with written guidelines intended to educate all employees, including non-lawyer staff, about sexual orientation issues, including HIV-related issues. Human relations workshops, either led by experienced outside consultants or by gay and lesbian attorneys or others within the firm, and focused on issues affecting lesbian and gay men as well as minorities, women and individuals with disabilities, can serve as an ideal first step in such efforts. These workshops can result in a frank exchange of views among employees, bringing to the attention of heterosexual employees the everyday realities of law firm life as experienced by gay and lesbian employees.

Employers with this policy: Heller, Ehrman, White & McAuliffe has sponsored a number of education/training session on AIDS-related issues during normal work hours; Lilienthal & Fowler; Morrison & Foerster. Morrison pays overtime for the time spent by employees in attending HIV-sensitivity training.

### RECRUITMENT AND HIRING

#### RECOMMENDATION 4

**Representation on Hiring Committees:** Employers should ensure that at least one lesbian or gay attorney sits on the hiring committee<sup>25</sup> This attorney can review resumes that are submitted to ensure that openly lesbian and gay candidates (and those whose resumes indicate that this may be the case) are matched with lesbian and gay-sensitive attorneys in the course of their call-back interviews, and are steered away from those who have consistently manifested bias based on the sexual orientation of applicants.

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<sup>11</sup> One recruiter from a major firm, for example, recently stated at a recruitment professionals' conference that gay and lesbian attorneys should "do their work" and "keep their mouths shut" about their sexual orientation. Several others were vocally hostile to the inclusion, on a National Association for Law Placement questionnaire, of any inquiry into law firm practices relating to openly gay and lesbian attorneys, despite strong student support for inclusion of these questions.

<sup>12</sup> One Hastings law student, who happens to be heterosexual, gained valuable litigation skills and substantive expertise in constitutional law over the course of his summer clerkship at National Gay Rights Advocates. When he listed this experience on his resume, he was not granted a single interview, but upon removing this legal experience from his resume, he received multiple interviews and subsequent offers of employment. Numerous lesbian and gay law students and attorneys have reported similar experiences.

Active participation of openly lesbian or gay members in the recruitment and hiring process can often change the dynamics of the committee, educating and sensitizing the other members, confronting and challenging overt or subtle bias on the part of committee colleagues when necessary, and causing the committee as a whole to be more objective and fair in its deliberations and decisions.

Employers with this policy: Heller, Ehrman, White & McAuliffe; Lilienthal & Fowler.

#### RECOMMENDATION 5

**Recruitment Letters:** Employers should ensure that recruitment letters are sent to law school lesbian and gay student organizations. These letters should convey the employers commitment to workforce diversity, including assurances that an applicant's sexual orientation, or openness about his or her sexual orientation, will not adversely affect the employment prospects of that individual.

Employers with this policy: Heller, Ehrman, White & McAuliffe; Lilienthal & Fowler; McCutchen, Doyle, Brown & Enersen; Morrison & Foerster; Orrick, Herrington & Sutcliffe.

#### RECOMMENDATION 6

**Gay-sensitive Contacts:** Employers should identify and publicize the names of lesbian and gay-sensitive contacts (ideally, at least one male and one female) within the organization whom applicants can contact with questions that they might not feel comfortable raising during an interview. These individuals can be identified in recruitment literature sent to lesbian and gay law student organizations, or in more generic materials sent to placement offices. If there are currently no openly gay or lesbian attorneys in the organization, a heterosexual attorney who is sensitive to lesbian and gay issues should serve as the contact. This person must be fully briefed on the employer's policies concerning gay and lesbian issues, understanding that applicants must be given the option of having these discussions kept confidential.

Employers with this policy: Heller, Ehrman, White & McAuliffe; Howard, Rice, Nemerovski, Canady, Robertson & Falk; Morrison & Foerster; McCutchen, Doyle, Brown & Enersen; Orrick, Herrington & Sutcliffe.

#### RECOMMENDATION 7

**Firm Resumes:** Firm resumes and brochures that include reference to pro bono activities should include lesbian or gay-related pro bono services performed by members of the firm such as service on the AIDS Legal Referral Panel. Similarly, service on the boards of lesbian, gay or HIV-related community organizations should be highlighted along with the firm's other community service activities.

Employers with this policy: Heller, Ehrman, White & McAuliffe; Howard, Rice, Nemerovski, Canady, Robertson & Falk; Lilienthal & Fowler, McCutchen, Doyle, Brown & Enersen; Morrison & Foerster

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<sup>13</sup> See, e.g., the recently reported statements of a United States District Judge, making reference in open court to a group of inmates as "a bunch of queers." The judge reportedly reaffirmed his earlier remarks in interviews with the press, adding that he had drawn reactions "from all over creation — favorable mainly," and that his comments reflected his dislike of homosexuals. San Francisco Chronicle, July 18, 1991. p. 14.

<sup>14</sup> These questions may evidence discrimination on the basis of sexual orientation. They may also evidence discrimination on other bases and should be avoided for those reasons as well. When they are asked of women and not men, they may be perceived as evidence of discrimination on the basis of gender. Even if there is no apparent gender bias in the pattern of asking the questions, they may be perceived as evidence of discrimination on the basis of marital status. Discrimination in employment on the basis of sex and marital status are prohibited by the Fair Employment and Housing Act, California Government Code Sections 12940(a) and (c). See, "Right Questions, Wrong Questions," by Jane Cooperman, National Law Journal, pp. 20, 22, July 31, 1989.

## **RECOMMENDATION 8**

**Specialized Training for All Interviewers:** Training for interviewers should include identification both of inappropriate areas of inquiry, such as the candidate's sexual orientation (unless volunteered), marital or relationship status or family plans. It should also emphasize exploring appropriate areas of inquiry, such as lesbian and gay-oriented activities or employment listed on the resume. It is important to note that this is a sensitive area. Therefore, questions should be restricted to activities and employment experiences that are disclosed, unless an applicant volunteers information about his or her private life.

Employers with this policy: McCutchen, Doyle, Brown & Enersen.

## **RECOMMENDATION 9**

**Welcome Packets:** If a "Welcome Packet" is given to new employees or summer associates, the packet should include the firm's policy of non-discrimination on the basis, *inter alia*, of sexual orientation, marital status or HIV-status. It may also identify gay and lesbian contacts within the firm. Community resources should include those oriented toward the gay and lesbian communities. If a summer associate or new employee has clearly identified herself or himself as lesbian or gay, a publication such as the B.A.R., the Sentinel, and/or the Bay Times can be included in the packet. If professional associations are listed, lesbian and gay organizations such as BALIF and the Bar Association's Committee on Lesbian and Gay Issues should be included. Calendars of local events should contain the Lesbian/Gay Freedom Day Parade, the San Francisco International Lesbian & Gay Film Festival, and the AIDS Walk.

Employers with this policy: McCutchen, Doyle, Brown & Enersen.

# **RETENTION, ADVANCEMENT AND COMPENSATION**

## **RECOMMENDATION 10**

**Mentoring Program:** Employers should provide their attorneys with formal support structures, such as a mentoring program. The importance of the assignment of an advisor or a mentor cannot be over-emphasized. This is especially the case for gay men and lesbians, women, minorities, and individuals with disabilities, who have traditionally been excluded from the informal networking process existing in the workplace. The mentor can serve as a resource in numerous ways: as a teacher of the law and lawyering; as a source of business opportunities and career-enhancing work assignments; as a source of feedback and publicity for the newer lawyers accomplishments; as a bridge/link for connecting to the organization; as a troubleshooter, as a career counselor, as a source of collegiality and friendship; and, as an advocate for the newer lawyer's advancement and promotion.

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<sup>15</sup> In the last two decades, the term homophobia has come to include any bigoted, fearful, discriminatory, or violent reaction to lesbians, gay men or bisexuals.

<sup>16</sup> It is now established law that racial and sexual harassment in the course of employment is actionable as employment discrimination on the basis of race and sex. *Patterson v. McLean Credit Union*, 491 U.S. 164 (1989); *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57,65-68 (1986); *Ellison v. Brady*, 974 F.2d 872 (9th Cir. 1991); *E.E.O.C v. Hacienda Hotel*, 881 F.2d 1504, 1515 (9th Cir. 1989). By the same token, to the extent that employment discrimination on the basis of sexual orientation is illegal (see pp. 3-4, *supra*), so is harassment in the workplace. See *E.E.O.C v. Hacienda Hotel*, *supra*, 881 F.2d at 1515, n. 8 (Liability attaches when the harassment is sufficiently severe and pervasive as to create a hostile work environment for its victim). It is easier to establish liability against the employer in the racial context under the California Fair

The mentor should be a partner or comparable-level supervising attorney, who may or may not be in a direct line supervisory relationship with the new lawyer. It is important that the mentor have the necessary position and authority, and the commitment, ability and sensitivity, to fulfill the role effectively.

#### RECOMMENDATION 11

Non-discrimination in Performance Evaluations, Work Assignment and Grievance Procedures: An employer's anti-discrimination policy with regard to sexual orientation is given life through its application to exiting personnel. Employers should promote fairness and objectivity in performance reviews by making special efforts to identify and overcome subtle bias in the evaluation of gay and lesbian employees.

Similarly, presumed or actual client preference should play no role in the assignment of work to gay and lesbian lawyers, just as racist or sexist client biases are not honored. If an employer exhibits confidence in an employee, the client is likely to do the same. Finally, to ensure that homophobic hostility can be remedied when it arises, an employer should provide employees with a neutral mechanism, independent of an immediate supervisor, for discussion of perceived bias. This could take the form of a general announcement of the ability to raise diversity-related concerns to line management, mentors, or a designated representative or committee, or by the employer's use of independent evaluators—separate, from those actually providing the substantive evaluation — who invite response from the employee and are in a position to probe and challenge evaluators as to their conclusions.

The difficult question may arise as to whether a partner/supervising attorney/mentor should initiate a discussion with an openly gay or lesbian lawyer concerning issues relating to sexual orientation if the employee has not first raised them. Although some lawyers may regard this as intrusive, there are many others who would prefer greater management recognition of and sensitivity to their concerns, but who do not wish to be perceived as malcontents with an “attitude problem.”

If a manager does decide to inquire about the comfort level of an openly gay or lesbian employees in the work environment, it should be done privately on an individual basis. One opening might be, “We realize that there are only a few openly gay or lesbian lawyers here and we recognize the issues that may be posed by this. If there are any concerns you have in that regard that you would like to discuss, please feel free to discuss them with me or [other designee].”

Employers with this policy: Heller, Ehrman, White & McAuliffe; Lilienthal & Fowler; McCutchen, Doyle, Brown & Enersen.

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Employment and Housing Act, which may be amended this year to add sexual orientation as a prohibited basis for discrimination and harassment (see p. 3, *supra*). California Government Code, Section 1294, subsections (h) and (i).

<sup>17</sup> Both gay and heterosexual students from the country's most well-regarded law schools are beginning to look to a firm's handling of lesbian and gay employment issues as a key “quality of life” indicator. See, e.g., Boalt Hall Fall 1991 Interview Program, Quality of Life Questionnaire; National Association for Law Placement, 1990 Quality of Life Questionnaire, “Draft #3;” Student comments at NALP Western Regional meeting (Feb. 22, 1991).

<sup>18</sup> One firm, for example, criticized a summer associate for introducing his same-sex partner to another associate at a firm event, indicating that in the firm's view his behavior reflected “a lack of judgment.”

<sup>19</sup> In the racial context, this practice is facially violative of Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e, et seq. and analogous state and local legislation. In the sex discrimination area, gender-based customer preference has been held not to constitute a bona fide occupational qualification (BFOQ) under Title VII and analogous state and local legislation. Cf., *Diaz v. Pan American World Airways*.

## RECOMMENDATION 12

Social Function Policy: Employers should establish a policy, communicated in personnel manuals and orientation meetings, stating that invitations to office functions or other employer-sponsored events should use neutral designations such as “guest” rather than “spouse.”

Employers with this policy: Lilenthal & Fowler; McCutchen, Doyle, Brown & Enersen; Morrison & Foerster.

## RECOMMENDATION 13

“Spouse” Lists: Employers should list the domestic partners of lesbian and gay employees who so desire in the same manner that the spouses of heterosexual employees are listed, for example in “spouse” lists or “face books” distributed either in-house or to applicants and clients.

Employers with this policy: Heller, Ehrman, White & McAuliffe; Howard, Rice, Nemerovski, Canady, Robertson & Falk; McCutchen, Doyle, Brown & Enersen; Morrison & Foerster; Thelen, Marrin, Johnson & Bridges.

## RECOMMENDATION 14

Professional Associations: Employers should pay employees’ membership dues to lesbian and gay professional associations, such as BALIF, on the same basis as the employer pays for memberships in other professional associations. Employees’ activities in lesbian and gay professional associations should be supported on the same basis as activities in other professional associations, such as table sponsorship at annual dinners and fundraising events.

Employers with this policy: Heller, Ehrman, White & McAuliffe; Howard, Rice, Nemerovski, Canady, Robertson & Falk; McCutchen, Doyle, Brown & Enersen; Morrison & Foerster; Thelen, Marrin, Johnson & Bridges.

## RECOMMENDATION 15

Internal Newsletters: If the employer has an internal newsletter, it should periodically include items of particular interest to lesbian and gay employees. Internal newsletters may also be used to help educate heterosexual employees about issues affecting lesbians and gay men. Additionally, newsletters should report the achievements of those who work within the lesbian and gay community.

Employers with this policy: Heller, Ehrman, White & McAuliffe; McCutchen, Doyle, Brown & Enersen; Morrison & Foerster.

## RECOMMENDATION 16

Informal Exchanges: Employers should foster opportunities for gay and lesbian attorneys to support each other in the work environment. For instance, an employer may sponsor a periodic luncheon, dinner or other

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Inc., 442 F.2d 385 (5th Cir. 1971), cert. denied, 404 U.S. 950 (1971). To the extent that discrimination in employment on the basis of sexual orientation is against the law (see pp. 3-4, *supra*), there is no BFOQ defense and discrimination based on customer preference is facially illegal, as it is in the racial context.

<sup>2</sup> <sup>0</sup> California law does not allow for same-sex marriage. California Civil Code Section 4100. Hence, distinctions in employee benefits based on marital status necessarily and adversely affect gay men and lesbians in a way and to a degree beyond and worse than the way they affect non-married heterosexuals, who have the right to choose to marry.

<sup>2</sup> <sup>1</sup> in this context, the term “domestic partnership” refers to intimate committed relationships between adults of any sexual orientation.

appropriate social event for lesbian and gay employees. Events should also be sponsored for lesbian and gay employees that include heterosexual employees, to build mutual understanding and respect.

Employers with this policy: McCutchen, Doyle, Brown & Enersen; Morrison & Foerster.

#### RECOMMENDATION 17

bunch Programs: Employers who sponsor regular firm lunches focusing on legal issues of interest to their attorneys should include programs on lesbian and gay legal issues, pro bono opportunities with local lesbian and gay rights groups, or the work of local lesbian and gay professional associations. The employer may contact such organizations as BALIF, the National Center for Lesbian Rights, the AIDS Legal Referral Panel, Lambda Legal Defense and Education Fund, the Committee on Lesbian and Gay Issues of the Bar Association of San Francisco, or the Gay Rights Chapter of the ACLU of Northern California to provide guest speakers for such programs.

Employers with this policy: McCutchen, Doyle, Brown & Enersen.

### EMPLOYEE BENEFITS

#### RECOMMENDATION 18

Health Benefits: Employers should offer health benefits to the domestic partners or lesbian and gay employees, to the extent possible under the federal tax law rules, on the same terms that they are available to the spouses of heterosexual employees.<sup>26</sup> Children of lesbian and gay couples should also be eligible for coverage on the same basis as the biological children, adopted children and stepchildren of married employees. See the appended Resources list for further information on domestic partner health benefits.

Employers with this policy: ACLU of Northern California; City of Berkeley; City and County of San Francisco; Lilienthal & Fowler.

#### RECOMMENDATION 19

Parenting Leave: Employers should ensure that all parenting leave policies and part-time policies accommodating parenting are gender-neutral and are not dependent on the biological relationship between the parent and the child.<sup>27</sup> This will ensure that the families of lesbian and gay employees, which may include children legally adopted only by the employee's partner, including those where a primary caregiver is not the biological parent, are treated in the same manner as are the families of heterosexual employees.<sup>28</sup>

Employers with this policy: Heller, Ehrman, White & McAuliffe; Lilienthal & Fowler; McCutchen, Doyle, Brown & Enersen; Orrick, Herrington & Sutcliffe; Rogers, Joseph, O'Donnell & Quinn.

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However, this term is also now a legal concept derived from newly enacted local ordinances that may extend to unmarried partners employment benefits previously reserved to married people. See San Francisco Municipal Code (Administrative) Sections 62.1 to 62.8.

<sup>22</sup> See Recommendation 18 & n. 27 below for a brief discussion of applicable tax and ERISA considerations.

<sup>23</sup> The term "closeted" derives from a Victorian concept of the closet, in which one put away the morally devalued characteristics of one's life, including one's homosexuality. During the last half of this century, the gay and lesbian rights movement has demanded the right to bring homosexuality and bisexuality out of this closet, a process called "coming out." When a third party discloses a lesbian's or gay man's sexual orientation to someone who was not previously aware of it, that third party "brings out" or "outs" the lesbian or gay man.

## RECOMMENDATION 20

Child Care: Where child care is provided to employees, it should be made available to employees' non-biological children.

Employers with this policy: Orrick, Herrington & Sutcliffe (Orrick has on-site emergency child care available to children of employees).

## RECOMMENDATION 21

Care-Taking Policies and Bereavement Leave: Caretaking leave policies should allow leave time to be taken for the care of domestic partners and non-biological children. Employers should also provide leave time for the death of a domestic partner or immediate relative of such a partner on the same terms that they provide leave time for the death of a spouse or immediate relative of a spouse.

Employers with this policy: Landels, Ripley & Diamond; Lilienthal & Fowler, McCutchen, Doyle, Brown & Enersen; Morrison & Foerster; City and County of San Francisco.

## RECOMMENDATION 22

Relocation Benefits: Employers should reimburse new employees for the cost of relocating the employees domestic partner to the Bay Area from other parts of the country on the same terms as are expenses of an employee's spouse. One nondiscriminatory approach used by a growing number of legal employers, is to distribute to all employees who relocate a lump sum for relocation, with no restriction as to whom the allowance may be applied.

Employers with this policy: Howard, Rice, Nemerovski, Canady, Robertson & Falk; McCutchen, Doyle, Brown & Enersen; Orrick, Herrington & Sutcliffe.

## RECOMMENDATION 23

Employee Assistance Programs: If the employer has an Employee Assistance Program through which various benefits are made available to employees and their families, including drug and alcohol counseling or crisis counseling such as that provided by many employers in the wake of the 1989 earthquake, the definition of "family" for such benefits should include domestic partners and non-biological children.

Employers with this policy: Morrison & Foerster.

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<sup>24</sup> The list of employers which follows each recommended policy is not intended to be, and is not, an exhaustive list of all firms with such policies, but rather those whose policies were known to the Committee.

<sup>25</sup> Heller, Ehrman has also adopted express goals and timetables for the hiring and promotion of gay and lesbian attorneys.

<sup>26</sup> If an employer wishes to place an openly lesbian or gay attorney on its hiring committee, it can send a memo to all attorneys indicating its desire to place such a person on the committee and asking that anyone interested in this role contact the person in charge of hiring. The employer can then make its selection from among the volunteers.

<sup>27</sup> Employers should seek the admission of domestic partners to a covered group, with the cost of coverage to be paid on an after-tax basis. If an employer is unable to obtain such coverage, it can pay the premium for outside individual insurance for domestic partners, though this usually costs more, covers less, and excludes more pre-existing conditions. Since the value of this benefit is not a non-taxable employee benefit under ERISA, and, therefore, taxable income to the employee, the employer should additionally pay the employee a dollar amount equal, after taxes, to the income tax liability for the benefit. Employers are advised to seek the advice of tax counsel in promulgating their policies in this area.

<sup>28</sup> The children of lesbians and gay men may be adopted, foster children, the product of donor insemination, or the children of an earlier marriage of one of the parents. It may be that neither parent has a biological relationship to the child, or that a parent without a biological tie is taking primary caretaking responsibility for the child.

# **BAR ASSOCIATION OF SAN FRANCISCO 1994 PILOT SUMMER CLERKSHIP PROGRAM FOR LAW STUDENTS WITH DISABILITIES**

## **INTRODUCTORY LETTER**

July 8, 1994

Dear Bay Area Legal Employer:

The Bar Association of San Francisco (BASF) in partnership with Boalt Hall School of Law and Hastings College of Law, invite your corporate law firm, public interest law firm, corporate legal department or government agency to participate in the inaugural summer of the "Pilot" Summer Clerkship Program for Law Students with Disabilities.

Legal employers participating in this Pilot Program will employ a law student with a disability as a fully participating member of the summer staff. No promise of second summer or permanent employment will be made to the student, although such offers are not precluded. A full description of the program is attached.

BASF's Disability Rights Committee anticipates working very closely with participating employers to assist in the process of providing reasonable accommodations for the summer clerks. Before placing any student, the Committee will confer with the employer to ensure the compatibility of the placement. The Disability Resource Specialists from both Boalt and Hastings will also work in consultation with the employer before the placement and will be available during the summer if any needs arise.

The success of the Bay Area Minority Clerkship Program served as the catalyst for developing this Pilot Program for law students with disabilities. We believe this Program will be an essential component to improving access to legal employment for Bay Area law students with disabilities. It is a pioneering effort at creating opportunities for introducing legal employers to law students with disabilities and vice versa.

We would like your firm, corporation or agency to commit to participate for the summer of 1994. Applications from students will be received by March 11th with selections and assignments made by or before April 1st. A "kick off" reception for the clerks, legal employers and other persons will be held prior to the summer.

Please contact the Bar Association of San Francisco with any questions or to confirm your firm, corporation or agency's willingness to join in this effort. We look forward to hearing from you soon.

Very truly yours,

Ray C. Marshall

President of BASF

Enclosures

## INTRODUCTION

The Disability Rights Committee (“Committee”) of the Bar Association of San Francisco (“BASF”) is sponsoring a Pilot Summer Clerkship Program (“Program”) for law students with disabilities from Boalt Hall School of Law and Hastings College of the Law.

## PURPOSE OF PILOT PROGRAM

After surveying San Francisco law firms, public interest law firms, corporate legal departments and government agencies, the Committee found a historic under-representation of people with disabilities working as attorneys in the legal profession. The premise of this Pilot Program is that the number of attorneys with disabilities in law firms,<sup>1</sup> at both the associate and partner level, is not reflective of the available pool of talented, capable, and hard-working attorneys with disabilities. This lack of representation is even more consequential considering enrollment of law students with disabilities at Bay Area law schools has substantially increased in the last decade. While the reasons for this inequity are complex, opportunities for law students with disabilities will remain restricted if conventional means and criteria for selection of attorneys continues. Because law firms traditionally utilize summer clerkship programs in recruiting attorneys, it is essential that law students with disabilities are given an opportunity to participate in summer clerkship programs. If not, this under-representation of attorneys with disabilities will only continue and the legal profession will remain inaccessible.

This Pilot Program is not designed to create permanent job opportunities in law firms for those law students with disabilities who participate. Its purpose is to serve as a means for exposing law firms to law students with disabilities and vice versa. One goal of the Program is to educate and sensitize legal employers by demonstrating how easy it can be to provide accommodations to attorneys with disabilities. On the other hand, law students with disabilities will gain invaluable experience working in a professional legal environment. The object is to establish a vehicle for increasing the participation of law students with disabilities in law firm clerkship programs. The long-term goal of this Pilot Program is opening avenues for increased hiring of law students and attorneys with disabilities.

The specific purposes are:

- (1) To expose law students with disabilities to the work, requirements and culture of law firms.
- (2) To help these students develop skills, confidence, resume credentials and professional contacts for the future.
- (3) To encourage these students to consider law firms in their career planning.
- (4) To introduce law firms to certain talented students who might not have been selected for the firms’ summer programs under traditional criteria and to demonstrate that these students can successfully

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<sup>1</sup> From here on, this proposal will only specifically name “law firms” in the document. However, it is the Committee’s intent that the term “law firms” includes San Francisco public interest law firms, corporate legal departments and government agencies, as well as small, medium and large private law firms.

<sup>2</sup> The definition of “disability” is defined by the state “Fair Employment and Housing Act” and the federal “Americans with Disabilities Act.”

meet the demands of law practice.

- (5) To expose law firms to law students with disabilities by challenging stereotypes and thereby raising the awareness of the people within the firm.
- (6) To educate the firms regarding the process of providing reasonable accommodations for law students with disabilities in a law firm environment.

## PROGRAM PARTICIPANTS

Students: All first and second year Boalt Hall and Hastings law students with disabilities will be eligible to apply. Only those students who will have completed the entire first year courses by the program summer are eligible. Students must be in good academic standing as defined by their respective law school. Although this is a targeted program, all students with disabilities<sup>2</sup> will be eligible to participate.

This Pilot Program is intended to acquaint these students with law practice and the legal community; to offer them training; and to give them a sense of their strengths and weaknesses in a supportive environment so that they may shape appropriate career plans. This Program will also give those selected the opportunity to explore the possible accommodations each student may need to effectively function in a legal environment. The next year, these students will then be able to discuss in an informed manner with prospective employers the accommodations they may need when searching for permanent employment.

The Committee anticipates working very closely with the employers to assist in the process of providing reasonable accommodations for the summer clerks. Before placing any student with an employer, the Committee will extensively confer with the employer to ensure the compatibility of the placement. The Disability Resource Specialists from both Boalt and Hastings will work in consultation with the employer before the placement and will be available during the summer if any needs arise.

Employers: Employers who participate must agree to hire, train and supervise at least one summer clerk. Employers may participate on a full or part time basis. Depending upon the type of employment involved, students will work for pay, work-study or experience only. In consultation with the Committee, employers will provide reasonable accommodations to enable their clerks to effectively function and fully participate in all aspects of employment.

## **OPERATION OF PILOT PROGRAM**

**Application:** Applications will be made available at both schools. Students will submit applications to the Career Services Department. Students will not have a voice as to the placement but may indicate a preference for part-time or full-time hours of work. Students may also indicate a preference for pay, work-study or experience only. The application form will require each applicant to provide a personal statement of why he or she is applying, qualifications, and any other pertinent information. Letters of recommendation and similar material will not be required.

**Monitoring:** At each placement, one attorney will be assigned responsibility for the successful implementation of the program. Those individuals will be the contact people for the summer clerks and the Clerkship Committee with respect to all matters arising in the course of the summer. The Clerkship Committee will also assign each summer clerk a "mentor attorney" from the Disability Rights Committee who will be an outside contact person for the student. The Disability Resource Specialists will work with the students from their respective law schools if accommodation needs arise during the summer.

The summer clerks will participate in the law firms' summer program in the same manner as other summer clerks. The Clerkship Committee will maintain contact with each of the firms during the program to carefully monitor the progress of the student and ensure that the purposes of the Program are being effectuated. At the end of the summer, the mentor attorneys will interview their student and the firm's representatives and report their findings to the Clerkship Committee.

**Offers:** Participating employers will have absolutely no obligation to make offers of second summer or permanent employment to the clerks employed under this program. Participating clerks will be advised not to expect such offers and that this is not a hiring or recruiting program. However, employers are not prohibited from extending offers of further employment to any summer clerks.

This restriction serves several additional purposes. First, the law firms should be more receptive to the Program if the students come with "no strings attached." Second, it will encourage the student to widen his or her search and base of experience during another work experience the following year. Third, there will be no stigma associated with a student not receiving an offer after his or her summer. For the same reasons, and consistent with current practice at most firms, offers of permanent employment may not be made until students finish their next year of course work.

## **SELECTION**

**Criteria:** Selection of the students will be based on indicia of ability, experience, leadership, motivation, resourcefulness and other characteristics which indicate potential for success within the legal environment. Grades will not be overemphasized and life experience will be a considerable factor.

The Clerkship Committee will review all applications and conduct interviews of chosen students. The Clerkship Committee will make assignments of summer clerks in close consultation with employers. Students will be selected without regard to their school, provided, that at least one student from both of the participating schools will be chosen.

## ADMINISTRATION

Each law school shall publicize the Program to its law students with disabilities and make applications available immediately. Applications will be accepted until 5:00 p.m. on Thursday, March 10, 1994.

The Career Services Directors will then overnight mail all of the applications to the Bar Association of San Francisco. BASF will then send copies of the applications to each Clerkship Committee member who will review the applications. The Clerkship Committee will meet as necessary to decide which students they will interview. Interviews will take place on Wednesday, March 16. Students who are selected will be notified of their placement by Friday, April 1st.

A kick-off reception in conjunction with the Minority Clerkship Program shall be held prior to commencement of the summer programs.

Following the summer, evaluations of the program will be conducted among students, employers and other concerned parties.

**THE BAR ASSOCIATION OF SAN FRANCISCO'S  
PILOT SUMMER CLERKSHIP PROGRAM  
FOR LAW STUDENTS WITH DISABILITIES**

**APPLICATION COVER SHEET**

A complete application must include: the application cover sheet, a resume (detailing education and employment experience), a personal statement and a legal writing sample.

**Personal Information**

Name \_\_\_\_\_

Complete Address \_\_\_\_\_

Telephone Numbers: Home \_\_\_\_\_ Work/Other \_\_\_\_\_

Disability (optional) \_\_\_\_\_

Check as many as apply: Full-time \_\_\_\_\_ Part-time \_\_\_\_\_

Pay \_\_\_\_\_ Work-study \_\_\_\_\_ Experience Only \_\_\_\_\_

References Please provide information on two persons from your previous employment, academic experience, community involvement, or personal contact who can attest to your abilities, moral character and work ethic, and motivation (preferably at least one academic reference).

Name \_\_\_\_\_

Organization Name \_\_\_\_\_

Position/Occupation \_\_\_\_\_

Relationship to applicant \_\_\_\_\_

Telephone number \_\_\_\_\_

Name \_\_\_\_\_

Organization Name \_\_\_\_\_

Position/Occupation \_\_\_\_\_

Relationship to applicant \_\_\_\_\_

Telephone number \_\_\_\_\_

I attest to the fact that I am in good academic standing at my law school and that all of the above is true and accurate.

Signature of Applicant \_\_\_\_\_ Date \_\_\_\_\_

Charles Schug, Esq.  
Bronson, Bronson & McKinnon  
505 Montgomery Street  
San Francisco, CA 94111-2514

Dear Mr. Schug:

A few weeks ago, Carol Kingsley and I were discussing the fact that Bronson was planning to set up a foundation which would have a limited amount of resources to devote to causes which were near and dear to Jack's heart. Among the projects we discussed were the Bar Association of San Francisco's current plans to produce an instructional videotape, which will be distributed nationally to legal employers and bar associations across the country, on issues of disability.

Ironically and tragically, the publicity surrounding the passage of the Americans with Disabilities Act (ADA) has caused many employers to be even more fearful of hiring persons with disabilities, and, thus, has even further delimited the already extraordinarily narrow range of opportunities available prior to its passage.

Since my last discussion with Carol, we have been able to raise the lion's share of the funding. A \$5,000 contribution from Bronson's Jack Berman Fund, however, would put us over the top and enable us to commence production. (see attached budget). As you may know, several years ago, Bronson contributed most generously to "A Firm Commitment," our earlier video on retention of minorities, which has since received several awards and has been nationally distributed to hundreds of employers and bar associations.

The proposed videotape will not follow a narrative plot-line, but, rather, will be a straight forward depiction of the ways in which several carefully selected Bay Area attorneys with various disabilities have successfully adapted their workplaces. The highlighted attorneys will discuss the day-to-day obstacles they encounter and explain how they overcome these hurdles and successfully perform their responsibilities. We believe the videotape will dispel some of the myths and misconceptions that some legal employers might have regarding people with disabilities, which have continued to result in a virtually 100% barrier to employment.

## TARGET AUDIENCE

The primary group targeted by this project are those in the legal profession who either hire or supervise attorneys and/or other legal professionals. We anticipate that much of the information in the videotape and accompanying materials will be applicable to corporations and similar settings outside of the legal profession.

## PROJECT NEED

At the present time, we are not aware of any videotapes of this type that have been produced for this audience. The videotape, together with the status report and personnel guidelines we are in the process of finalizing, will make a major contribution to educating the legal profession that an attorney with a significant disability can compete on an equal level. We are hopeful that the success of the video will make a significant contribution to the currently skeletal library of materials available to assist employers in implementing the spirit and goals of the ADA.

## PROGRAM CONTENT

The videotape will feature interviews with several Bay Area attorneys with different disabilities. In each circumstance, ranging from large corporate environments to small law firms, the mechanics and cost of specific workplace adaptations will be detailed and highlighted. The goal of this approach is to increase awareness within the legal profession of the efficiency and ease with which attorneys with disabilities have been and can be accommodated. The video will educate the viewer that accommodating attorneys with significant disabilities can be easily accomplished, at a fraction of the cost which most employers fear.

## PROCEDURE

The video will be produced and directed by Abby Ginsberg, who is a lawyer turned filmmaker who has recently completed four videos aimed at eradicating racial, gender and sexual orientation bias in the legal profession. Ms. Ginsburg has a proven track record with BASF and the San Francisco legal community, and her skills as a filmmaker will ensure that the finished product is of the highest quality and completed within the attached budget.

Needless to say, Bronson's contribution in the name of Jack Berman would be prominently featured in the advance publicity for the video as well as on the tape itself. We believe that participation in this project would be a fitting way to commemorate the ideals and work of Jack Berman, because it will make for some real chance for change. In all our work on "diversity" issues here at the Bar, in fact, we have not encountered a group that is more completely and systematically shut out of our profession than is the group of lawyers who happen to be disabled. We really believe that this kind of practical assistance to firms like yours (and mine, for that matter) can make a difference,

We would like to thank you and Bronson for considering this request.

Very truly yours,

Drucilla Stender Ramey  
Executive Director and General Counsel

cc: Carol Kingsley

## VIDEOTAPE DESCRIPTION

### BREAKING DOWN BARRIERS: OVERCOMING DISCRIMINATION AGAINST LAWYERS' WITH DISABILITIES

A thirty minute film which profiles a number of lawyers with disabilities. Their experiences and success within the legal profession help inspire law schools to expand their admission of people with disabilities and legal employers to hire them.

The film contains information about technology that enables these lawyers to practice and includes a dramatic sequence highlighting the do's and don'ts of interviewing job candidates with disabilities.

# SURVEY: COMPLIANCE WITH THE REQUIREMENTS OF TITLE III OF THE AMERICANS WITH DISABILITIES ACT

The purpose of this survey is to determine what steps Bay Area law firms have taken to alter their facilities in order to comply with the letter and spirit of the ADA. Title III of the Act requires that most alterations and new construction in commercial facilities meet certain accessibility guidelines developed by the Architectural and Transportation Barriers Compliance Board. Title III also requires the removal of certain structural barriers in places of public accommodation and mandates the provision of certain auxiliary aids and services.

1. Please indicate on a separate sheet of paper what renovations, alterations and/or barrier removals your law firm has made to comply with Title III. If applicable, also indicate in a separate section, what changes your law firm intends to make in the future.
  - a. Halls, corridors, aisles, skywalks, tunnels and other accessible routes.
  - b. Objects projecting from walls (e.g. artwork, telephones, fire extinguishers).
  - c. Overhanging objects and overhead hazards.
  - d. Ground and floor surfaces. (Please consider changes in level, carpet, tile and grading.)
  - e. Ramps; Stairs (interior and exterior); and Entrances to your facilities.
  - f. Elevators; Wheelchair lifts.
  - g. Doors; Windows.
  - h. Drinking fountains and water coolers.
  - i. Toilet stalls, urinals, bathtubs, shower stalls, lavatory fixtures, sinks and mirrors.
  - j. Alarms (audible or visual; signage).
  - k. Telephones.
  - l. Fixed or built-in seating and tables.
  - m. Firm conference rooms; Libraries.
  - n. Cafeterias.
2. What auxiliary aids and services does your law firm have on hand? What aids are available on short notice?
3. Are there any other steps which your law firm has taken to comply with Title III of the ADA?

## **SURVEY OF PERSONNEL POLICIES & EMPLOYEE BENEFITS**

Check box on left side if your law firm has the applicable personnel policies or benefits for attorneys. Check box on right side if the policy specifically refers to disability. Please provide a copy of the policy or benefit if possible.

- Equal Employment Opportunity Policy
- Policy against Harassment
- Reasonable Accommodation Policy
- Part-time/Flex-time Policy
- Personal Leaves of Absence
- Sick Leave Policy
- Short Term Disability Leave Policy
- Long Term Disability Leave Policy
- Return to Work Policy
- Maternity Leave Policy
- Family Care Leave Policy
- Pre-Tax Medical Reimbursement Policy
- Pre-Tax Child Care Reimbursement
- Retirement Plans: 401K, etc.
- Domestic Partner Medical Benefits
- Employee Psychological Assistance
- Drug or Alcohol Addiction Assistance
- Medical Insurance: Does medical insurance have any:
  - Pre-existing Conditions Exemptions
  - Allow for durable medical goods
  - Set benefit limits for some disabilities
  - Other restrictions or limitations

On the back of this sheet, please list and describe any other personnel policies or employee benefits provided which are not listed. Then, outline in detail any specific training workshops or diversity programs your firm has conducted in response to Americans with Disabilities Act.

# SURVEY OF ATTORNEYS WITH DISABILITIES<sup>1</sup>

1. What is your age, gender and racial background?
2. What is the nature of your disability and the date of its onset?
3. What limitations are created by your disability?
4. Did you have this disability when you were in law school?
5. If so, how did it affect your law school performance? How were you accommodated through law school?
6. Did you have this disability when you took the bar exam?
7. If so, how did it affect your bar exam performance? How were you accommodated during the bar exam?
8. Are you an attorney? If so, are you actively practicing law?

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1 Information obtained from this questionnaire will be used by the Bar Association of San Francisco's Disability Rights Committee in drafting a report to increase the hiring and retention of attorneys with disabilities. No names of persons or employers will be used. Please complete this survey on a separate sheet of paper and send the survey results as soon as possible: Kathi Pugh, Morrison & Foerster 345 California St., #30th Floor, San Francisco, CA 94104.

2 This information will remain confidential in the written report, but we will likely identify the disability and the effective accommodations made for each person in the video.

9. If you are not actively practicing law, why not? (Due to disability?)
  10. Did you have this disability when you started practicing law? If so, did it affect your ability to obtain a job?
  11. What type of setting do you work in and what kind of law do you practice?
  12. Have you disclosed your disability to your employer? What was the reaction?
  13. What are the primary or essential functions of your job?
  14. Could anything be provided or done to make your job more effective? (reasonable accommodations i.e. part-time, extra help, modifying work site, etc.)
  15. Are the personnel policies sufficient to meet your needs? If so, why? If not, why not? (i.e. pre-existing conditions or other exclusions in medical policy, no part-time policy,
  16. Have you ever had to take time off for your disability? Why? How long?
  17. Do you work part time or full time?
  18. Briefly describe any positive or negative experiences that have been directly related to your disability while practicing as an attorney.

19. How have the “Americans with Disabilities Act” and the California State disability laws affected your job or search for employment?
  20. Do you know any other attorneys or judges we could interview?
  21. Would you be willing to be part of a training video? If so, please state your name, address and telephone number.<sup>2</sup>

## SURVEY OF LAW STUDENTS WITH DISABILITIES

Information obtained from this questionnaire will be used by the San Francisco Bar Association's Disability Rights Committee in drafting a report to increase the hiring and retention of law students and attorneys with disabilities. Your assistance is voluntary and information obtained is anonymous and strictly confidential. If additional space is needed, please continue your answers on the back.

1. What is your age, gender and racial background?
  2. What is the nature of your disability?
  3. What are your current employment goal(s)?
  4. Briefly describe your legal job seeking experience?
  5. Did you pursue (or going to pursue if you are a first year law student) On Campus Interviewing?  
Why or why not?
  6. Briefly describe any positive or negative experiences that have been directly related to your disability while working for a legal or law-related employer.
  7. How has the “Americans with Disabilities Act” effected you in your search for legal or law-related employment?
  8. On the back of this sheet, please provide any additional comments you may have regarding the difficulties attorneys and law students with disabilities encounter when seeking viable employment in a law-related or legal job.

# SURVEY OF LAW STUDENTS WITH DISABILITIES

9. Please check all the accommodations you have needed while attending law school or working in legal employment.

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|--|--|
| <input type="checkbox"/> Pre-Admissions Counseling       | <input type="checkbox"/> Lexis/Westlaw Training, Special Library Training Programs |
| <input type="checkbox"/> Research Assistant              | <input type="checkbox"/> LEOP Support Services                                     |
| <input type="checkbox"/> Advising                        | <input type="checkbox"/> Notification of Health Services                           |
| <input type="checkbox"/> Typist                          | <input type="checkbox"/> Call when Medical Info sent                               |
| <input type="checkbox"/> On-campus Parking               | <input type="checkbox"/> Recordings for the Blind                                  |
| <input type="checkbox"/> Service Priority                | <input type="checkbox"/> Notes on Recording  |
| <input type="checkbox"/> Pre-Registration                | <input type="checkbox"/> Readers   |
| <input type="checkbox"/> Wheelchair Repair               | <input type="checkbox"/> Sign Language Interpreters                                |
| <input type="checkbox"/> First-Year Section Choice       | <input type="checkbox"/> Letter of Explanation to Faculty                          |
| <input type="checkbox"/> Wheelchair Access in Classrooms | <input type="checkbox"/> Special Selection of Advisor                              |
| <input type="checkbox"/> Table in Classroom              | <input type="checkbox"/> Mobility Orientation Training                             |
| <input type="checkbox"/> Chair in Classroom              | <input type="checkbox"/> Public Transportation & Parking                           |
| <input type="checkbox"/> Reduced Course Load             | <input type="checkbox"/> Cut Binding of Books                                      |
| <input type="checkbox"/> LD Support Group                | <input type="checkbox"/> Re-Binding of Books                                       |
| <input type="checkbox"/> LD Counseling                   | <input type="checkbox"/> Enlarge Print   |
| <input type="checkbox"/> Resting Room                    | <input type="checkbox"/> Extension of 5-Year Rule                                  |
| <input type="checkbox"/> Letters to Bar, Employers       | <input type="checkbox"/> Liaison with Department of Rehabilitation                 |
| <input type="checkbox"/> Notetakers                      | <input type="checkbox"/> Other   |

## ACCOMMODATIONS FOR EXAMS

- |  |  |
|--|--|
| <input type="checkbox"/> Time allowed for each exam (extended time)  | <input type="checkbox"/> Use of personal typewriter with one-page memory                                       |
| <input type="checkbox"/> Food and beverages allowed in room  | <input type="checkbox"/> Scratch pads  |
| <input type="checkbox"/> Use of semi-private room  | <input type="checkbox"/> Verbal instructions given in writing  |
| <input type="checkbox"/> Use of bookstand and clipboard  | <input type="checkbox"/> Exams spaced apart  |
| <input type="checkbox"/> Private room  | <input type="checkbox"/> Exercise pad  |
| <input type="checkbox"/> Private room with window, electrical outlet, close to restroom                    | <input type="checkbox"/> Use of tape recorder, transcriber   |
| <input type="checkbox"/> Medications allowed in room   | <input type="checkbox"/> Telephone in room   |
| <input type="checkbox"/> Use of computer <input type="checkbox"/> with spell check<br>(campus or personal) | <input type="checkbox"/> Other   |
| <input type="checkbox"/> Use of Braille machine, transcriber   | <input type="checkbox"/> Reader  |
| <input type="checkbox"/> Use of spelling book or Franklin Speller  | <input type="checkbox"/> Dis. Res. Program provides proofreading of exam on disk; makes mechanical corrections |
| <input type="checkbox"/> Breaks outside of exam writing time   | <input type="checkbox"/> Writer or typist provided   |
| <input type="checkbox"/> Word processor with large print   | <input type="checkbox"/> Double-spaced exam for visual impairment  |
| <input type="checkbox"/> Enlarged print on exams or double spaced  | <input type="checkbox"/> List any other accommodations:  |

On the back of this sheet, please list any other accommodations you have received in law school or any accommodations you anticipate you may need in a legal or law related job.