



THE BAR ASSOCIATION OF
SAN FRANCISCO

Report of the Charitable Giving Task Force

July 19, 2006

Background

In 2001, Doug Young, the President of The Bar Association of San Francisco, wrote in the fall issue of *San Francisco Attorney* that:

“One message is clear: lawyers ought to give to legal charities. The world outside the legal profession assumes that lawyers should support legal non-profits. Most foundations will not make grants to legal services, civil rights, and public interest organizations at all; the minority that do expect lawyers to provide substantial funding as well. ... Private donations, mainly from lawyers, are an indispensable part of the funding base upon which the legal safety net depends.”

In response to Doug Young’s call the BASF formed a task force on law-firm giving. The timing, however, was inauspicious. Within months the high-tech market had collapsed and law firms turned from good works to survival. The task force was put on hold.

Four years later the economy had recovered and another BASF President, Jim Finberg, renewed the focus on the importance of lawyer and law-firm support for community charitable organizations in general and non-profit legal service providers in particular. In the fall 2005 issue of *San Francisco Attorney* Jim wrote in President’s Report that:

“Earlier this year the Task Force on Law Firm Giving ... took up its task once again. ... An informal survey of the committee members indicates that several financially successful firms donate at least 1 percent of net profit to charity each year, at least half of which goes to funding legal services.

A published charitable giving metric will assist with budgeting and planning. If it succeeds as the *pro bono* [hour] metric has, it will also create a healthy sense of competition and lead to increased overall giving.

... Legal service organizations ... will only survive if law firms and lawyers provide the necessary financial assistance. The donation of *pro bono* hours is necessary but not sufficient for legal services organizations to survive.”

In April 2005 Finberg appointed a twelve-member task force to examine the issue of how best to encourage lawyers and law firms to provide financial support to non-profit organizations in general and legal-service non-profits in particular. The task force, all of whom are signatories to this report, began its work in early May 2005 and met regularly during the intervening year.

At its first meeting the task force concluded that an important first step was to determine the nature of charitable giving by San Francisco law firms. With the able assistance of Mecca Nelson of the Bar Association the task force engaged two graduate students at U.C. Berkeley's Goldman School of Public Policy to design and conduct a survey of San Francisco firms. The two graduate students, Jamie Allison and Ayesha Khan, supervised by Professor Kellie McElhaney at the Haas School of Business, prepared an electronic survey form. In February 2006 the survey, a copy of which is attached, was sent to 202 firms. Responses were received from fourteen percent of those firms, including a representative variety of types and sizes of firms that employ over 2,800 Bay Area lawyers. The task force was furnished with summaries and analyses but the individual firm's responses were available only to the students and their advisor.

Summary of Conclusions

The survey reports that among the responding law firms, both the average and the median amount of the firms' charitable contributions is approximately one percent of net income — which as lawyers well know, is the total amount of compensation to the firms' partners or shareholders. The task force believes that BASF should make it known that charitable contributions at this level represent the typical practice of law firms in our community. The task force recommends that BASF urge law firms to consider their level of charitable contributions and adopt a minimum of one percent of total partner compensation as a goal to which all Bay Area firms should aspire and, we hope, exceed; that every firm should make it a policy to contribute at least that amount to the support of non-profit organizations; and that the majority of those contributions should be devoted to organizations that provide legal services to those in need or engage in legal advocacy.

The task force believes that non-profit legal organizations are vital if our legal community is to carry out its obligation to assure that legal services are available to all, including those who are at the margins of our society. And adequate financial support is vital to the provision of legal services by non-profit organizations. That support can and must come in large measure from the community's lawyers and law firms. The contribution of *pro bono* time is necessary but not sufficient to assure that legal non-profit organizations, including both those that provide direct services and those that engage in advocacy, are able to continue effectively to operate.

The importance of financial contributions is underscored by the fact that many of the usual sources of support for non-profit organizations are reluctant to support non-profits that engage in legal representation and advocacy. And the need is exacerbated by the great and growing disparity between law-firm compensation and the compensation available to those who dedicate themselves to non-profit legal work.

The Law-Firm Survey

As noted above, the survey, which is attached, was sent to 202 firms ranging from the smallest single-office firms to multi-office national and international firms. The survey was constructed to prevent the task force from obtaining access to the responses of individual firms; the task force obtained only aggregated data. Although the number of firms that responded was relatively low, the responding firms represent approximately

thirty percent of Bay Area lawyers. The data that were collected are summarized in the attachments.

In summary, 93 percent of the responding firms make charitable contributions. Their reasons for doing so include a desire to support the community, recognition of their professional responsibility, a desire to enhance firm reputation, recruitment and retention, and business development. Client recommendations play a relatively small role in the firm's decisions with respect to the charities that will receive support. The focus in most firms is the desire to support non-profit legal services and to support those non-profits that are recommended by partners, associates, and employees.

The great majority of firms — almost eighty percent — determine their annual charitable contributions based on a budget set independently by firm leadership. Only fifteen percent of the firms tied charitable contributions directly to revenue or net income, although plainly most firms take those data into account in setting their charitable contribution budgets. In determining what to give, firms rely primarily on the budgets that they have set, although pre-determined giving priorities play a significant role.

The responding firms ranged from below fifty to over 1,000 lawyers, and had net incomes of from below \$1 million to almost \$400 million. Collectively, they contributed to over 950 Bay Area charities of which over 270 were involved in legal advocacy or services. The total annual charitable giving of these firms to Bay Area organizations was over \$4,451,000, of which legal non-profits received almost \$2,215,000.

Measured as a percent of net income, the average and the median of the firms' charitable contributions were almost identical, .95 and .94 percent respectively.

Giving To Legal Non-Profits

Lawyers have a professional responsibility to devote some of their time to *pro bono* work. The American Bar Association's Model Rule 6.1 articulates that responsibility, and also notes that: "In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means." There are strong reasons for lawyers to consider it their responsibility to provide financial support to legal non-profits.

First, legal-aid organizations are dramatically underfunded. The Judicial Council of California reported in 2005 that:

California's low-income population continues to have a high level of unmet legal need. . . . [I]t is estimated that in the year 2000 only 28 percent of the legal needs of low-income Californians were served by legal aid. In that year, 6.4 million Californians lived in poverty, including nearly one in five children. The rate of poverty in California in 2000 was 12.9 percent, 1.6 percent higher than the national average. Since 1989 the poverty rate in California has consistently exceeded the national average, sometimes by as much as 3 percent, thereby posing significant challenges for the state's network of legal aid providers beyond those faced by many other states. The situation for children is even worse since California alone accounts for the net national increase of 800,000 children in

poverty since the late 1980's.

Due to lack of adequate resources, local providers are forced to turn away many needy clients who do not fit within their established priorities. . . . There are simply many more people who need help than can currently be served by the nonprofit legal aid provider community, leaving almost three-quarters of the need unmet.

Equal Access Fund — A Report to the California Legislature at 17, Judicial Council of California (March 2005)

The California Commission on Access To Justice published an assessment in 2002 that "The amount needed, from all sources, to adequately address the legal needs of California's poor is \$533 million; the amount being provided is \$148 million." *The Path To Equal Justice, A Five-Year Status Report On Access To Justice In California* at 37, California Commission on Access To Justice (October 2002).

Second, private lawyers cannot meet the need for free and low-cost legal assistance by doing *pro bono* work alone. Indeed, *pro bono* work cannot be done effectively on any substantial scale without institutionalized, staffed programs to attract, screen, and refer *pro bono* clients to lawyers in private practice and to give those lawyers training, mentoring, and other support. This cannot be done without funding.

BASF's Volunteer Legal Services Program may be the best *pro bono* project in the country. It provided very high quality *pro bono* assistance to over 7,500 clients last year through the efforts of 1,300 *pro bono* lawyers. To do so involves 28 full-time staff members and a budget of over \$3 million per year. As the example of VLSP demonstrates, lawyers cannot fulfill their professional responsibility to do *pro bono* work without adequate funding to legal aid organizations that make *pro bono* work possible.

Third, many grantmakers, corporations, and non-lawyer individual donors do not give to legal non-profits. Many assume that lawyers will, or should, carry out this responsibility. Lawyers may be best situated to appreciate the value of legal non-profits and identify the most appropriate recipients. Many other potential donors find some of the work done by legal non-profits — such as litigation and public policy work — too controversial. Whatever the reasons, it is clear that only a small minority of large charitable foundations will even consider providing financial support to legal organizations. Moreover, the few foundations that do, will ordinarily fund only start-up grants for specific new projects. But legal non-profits face huge, chronic shortfalls in operating funding needed to provide advice and representation to millions of people who cannot afford lawyers.

Fourth, legal aid organizations receive a smaller fraction of their funding from private, non-foundation donors than do non-profits in general. Notwithstanding the reluctance of most foundations to donate anything to legal nonprofits, in 2003 foundations gave California legal aid programs 30% more than the legal aid programs received from other private donors. *Equal Access Fund* at 18. The proportion given to legal aid programs by individual donors and firms is very low compared the comparable proportion of giving to non-profits in general. Last year, based on national figures, non-profits in general received five times as much from individuals and corporations as they received from

foundations. H. Hall, "Donations to Charity Rose by 2.7% Last Year, Study Finds," *The Chronicle of Philanthropy* (June 18, 2006).

Of course, there are good reasons for lawyers to urge others in the private sector to contribute more to legal non-profits, and to continue to work actively for increases in governmental support, both federal and state, for legal aid programs. But lawyers should lead. We should use our own giving to reduce the justice gap by giving more to legal non-profits.

The Task Force Conclusions

Law firms are a vital component of the Bay Area business community. As is true of all segments of the business community, it is important that law firms contribute to the non-profit organizations that make it possible for those on the margins of society to become active, participating, contributing members and that provide the cultural benefits that make the Bay Area a rewarding place in which to live and work. Law firms, however, have a special obligation to support non-profit legal service organizations that are providing essential services and advocating policy issues that are important to society.

If law firms and lawyers don't step up to their responsibility to support non-profit legal organizations others cannot be counted on to do so. These organizations look to us as lawyers for both *pro bono* and financial support. The Bar Association has long set goals for *pro bono* work. We believe that the time has come to set a goal for financial support to which all firms in the Bay Area will aspire and, we hope, exceed.

Based on the survey data we believe that goal should be one percent of net income (i.e., total partner or shareholder compensation) and that the majority of that amount should be devoted to legal-service and advocacy organizations, organizations that have relatively few alternative sources of funding. One percent may at first blush appear to some of our corporate clients and the media to be modest. It is important in that connection to underscore that law-firm contributions come directly from the money available to compensate partners or shareholders of law firms and are in addition to the contributions that the partners make in their individual capacities.

If every law firm in the Bay Area were to contribute one percent of its net income to non-profit organizations and the bulk of those contributions were directed to legal- service and advocacy organizations, our firms and we as lawyers would take a very large step toward fulfilling our responsibility.

In addition to acknowledging publicly the prevailing standard for charitable giving by Bay Area law firms, and asking firms to meet or exceed the prevailing standard — and to emphasize gifts to legal non-profits — the task force intends to organize opportunities for firms to exchange information and best practices regarding charitable activities. Leaders of Bay Area law firms have broad experience in how to form and maintain relationships with legal non-profits and other charitable organizations; how to involve lawyers and staff members in identifying giving opportunities and making decisions among potential recipients; and how a strong program of giving can reflect and strengthen a firm's culture. Firm leaders are willing to share their experience with others. We look forward to

holding meetings soon and organizing other ways for firms to learn from each other about effective and appropriate law firm charitable giving programs.

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THE BAR ASSOCIATION OF
SAN FRANCISCO

**CHARITABLE GIVING
TASK FORCE**

February, 2006

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Managing Partner
[Law Firm]
Address
City, State Zip

Re: Survey re: Charitable Giving

Dear Managing Partner:

We write to ask you to help us study the charitable giving of Bay Area law firms by completing the enclosed confidential survey.

The Bar Association of San Francisco has formed a task force to analyze law firm charitable contributions, and particularly contributions to non-profit legal-service organizations, with the goal of developing guidelines that law firms can use to help determine the level of their charitable contributions. The guidelines law firms use for pro bono hours are very useful, and we contemplate that the same could be true for law firms' charitable contributions.

Although all charitable giving is commendable, including the generous donations law firms made this past year to, among other things, the victims of the tsunami, the victims of Hurricane Katrina, and the Food From the Bar Program, one of the specific focuses of the study will be financial contributions to legal non-profits. Because legal non-profits find it difficult to raise funds outside of the legal community, the legal community should be the foremost supporter of these organizations. Legal services organizations will only survive if law firms and lawyers provide the necessary financial assistance. The donation of pro bono hours is necessary but not sufficient for legal services organizations to survive.

In order to develop charitable contribution guidelines, BASF has secured the assistance of Professor Kellie McElhaney, the Director of the Center for Responsible Business at the University of California, Berkeley, Haas School of Business, and two graduate students from the University of California, Berkeley, who work with her. The graduate students, Jamie Allison and Ayesha Khan, are students at the Goldman School of Public Policy and they have taken courses at the Haas School of Business in the

area of corporate social responsibility.

Your participation in this survey is very important. Please complete the confidential questionnaire by logging onto the following confidential site at the Haas School of Business website [] by March 3, 2006. If you would like to complete the survey by hand, please contact Ms. Allison at 415-378-7735 and she will mail you a hard copy of the survey and a return envelope. After receiving your response, we would like to request an hour of your time, in person or by telephone, in February or March with either Ms. Allison or Ms. Khan.

Your response will remain confidential. The BASF task force will not have access to your response but will only have access to data that have been aggregated by the Haas School researchers.

Our goal is to learn how we are all approaching this issue as a community and to learn as much as we can about what is working and how we may collectively enhance the charitable giving of Bay Area law firms, particularly giving to legal services organizations.

Thank you for assisting us with this important project.

Sincerely,

Jack Londen
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PILLSBURY WINTHROP SHAW PITTMAN
LLP

*Co-Chairs of the BASF Charitable
Contributions Task Force*

Professor Kellie McElhaney
Haas School of Business

cc: Jamie Allison
Ayesha Khan

DRAFT 2/6/2006

To: The BASF Survey Subcommittee

Ref: Preliminary Survey Draft

Objective: To design guidelines to assess total financial contributions of Bay area law firms to legal and non-legal charitable organizations.

1. Do you believe that the creation of guidelines for total law firm charitable contributions would be helpful for budgeting, planning or other purposes associated with charitable giving?
2. How many attorneys are in your firm?
3. How many attorneys do you have in the Bay Area¹?
4. What was your firm's net income² in the last fiscal year?
5. What was your firm's total revenue in the last fiscal year?
6. Does your firm make financial contributions to charities³?
 - a. Yes
 - b. No
7. If yes, why does your firm choose to make financial contributions to charity? (Rank in order of importance if more than one applies.)
 - ___ Business Development
 - ___ Recruitment/ Retention of employees
 - ___ To enhance firm reputation
 - ___ Professional responsibility
 - ___ To support the community
 - ___ Other _____
8. What is your process for dealing with requests for contributions?
9. How does your firm prioritize its financial giving opportunities?
10. How does your firm decide which charities to support? (Rank in order of importance if more than one applies.)
 - ___ Partner/Attorney/Employee recommendation
 - ___ Client recommendation
 - ___ Charities that emphasize legal services
 - ___ Other factors _____
11. How does your firm determine the dollar amount it will grant to individual charities? (Rank in order of importance if more than one applies.)
 - ___ Based on the firm's charitable giving budget
 - ___ Based on firm's pre-determined giving priorities
 - ___ Based on partner request
 - ___ Honors the request as stated by the charitable organization
 - ___ Other _____

¹ The Bay Area is defined as San Francisco, Santa Clara, East Bay and San Mateo Counties

² Net Income is defined as the aggregate amount available prior to distribution to equity partners

³ Charities are defined as all organizations with 501(c) 3 designation

DRAFT 2/6/2006

12. How does your firm determine its yearly budget for charitable giving?
 - a. Tied to total revenue of firm
 - b. Tied to net income of firm
 - c. Tied to billable hours per attorney or by partner
 - d. Set independently by firm leadership
 - e. No official budget
13. What was your firm's total amount of financial contributions⁴ to all charities in the last fiscal year?
14. Does your firm have a matching program⁵?
 - a. Yes
 - b. No
15. If Yes, Please describe the matching program briefly.
16. What is the total dollar amount of contributions your firm donated to:
 - a. Legal services charities⁶
 - b. Non-legal charities
 - c. Matching programs⁷
 - d. Total: Sum of response a+b+c (should be the same as your response to Question 13)
17. What was the total number of charities to which your firm made contributions in the last fiscal year?
18. How many of these charities are located in the San Francisco Bay Area?
19. To how many legal services charities did your firm provide financial contributions in the last fiscal year?
20. Of the legal services charities to which you contributed, how many were in the San Francisco Bay Area?

⁴ Pro Bono hours, cy pres awards, and individual contributions given by partners or other staff should be excluded when computing total financial contributions.

⁵ Please include descriptions of any charitable drives such as United Way

⁶ Legal services charities under ABA Model Rule of Professional Responsibility 6.1, include organizations that provide legal services at no fee or substantially reduced fee to individuals and groups of limited means or that are involved in activities intended to protect civil rights, civil liberties, public rights, or to improve the law or the legal system. This definition includes both organizations that provide legal services to persons of limited means (see Appendix A), as well as organizations such as (but not limited to) Legal Community Against Violence, the Pacific Legal Foundation, and the Mexican American Legal Defense and Education Fund.

⁷ Please list total matching amount separately only if you are unable to allocate matching contributions into legal and non-legal charities designation