



# Bar Association of San Francisco

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## 1999 INTERIM REPORT

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

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## PREFACE

The Bar Association of San Francisco is pleased to present this *1999 Interim Report on the BASF Goals and Timetables for Minority Hiring and Advancement*.

The Report's release follows two recent wake-up calls to the profession—President Bill Clinton's July 20, 1999 White House Call-to-Action to 200 leaders of the legal profession, urging recommitment to the paramount goals of racial equality and diversity; and the recent public commitment by over 200 general counsel of the nation's largest corporations to an insistence that "the law firms which represent our companies...work actively to promote diversity within their workplace."

The San Francisco legal community was well-represented at the East Room ceremony, when President Clinton challenged the bar to live up to the ideas of racial equity reflected in the Constitution:

"Just as your predecessors, with the Constitution as their shield, stared down the sheriffs of segregation, you must step forward to dismantle our time's most stubborn obstacles to equal justice – poverty, unemployment and, yes, continuing discrimination...Today, thanks in large measure to the efforts of our lawyers, Americans of all backgrounds and colors and religions are working, living and learning side by side. The doors of opportunity are wider than ever...[But while] we may have torn down the walls of segregation, there are still a lot of walls in our hearts and in our habits. And sometimes, we are not aware of those walls in our hearts, but we have to test them against our habits. How are we going to build one America if the legal profession, which is fighting for it, doesn't reflect it? We can't do it."<sup>1</sup>

The Association's *1999 Interim Report* shows progress in responding to this challenge, but also reveals the distance we have yet to travel in meeting the Year 2000 benchmarks to which our Bar Association committed over a decade ago. More graphically than the either of the two preceding Reports we have published, this *Report* demonstrates two over-arching realities:

- While efforts to recruit and hire minority attorneys have brought more young associates of color to San Francisco legal employers, it is retention of minorities – and the significant but elusive concept of critical mass – that continues to represent the profession's primary challenge. To the extent that our community fails to meet

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<sup>1</sup> Please see Attachment A for the complete text of the President's July 20, 1999 speech, together with the Mission Statement for Lawyers for One America, founded in response to the President's Call.

this challenge, we will grow increasingly out of step with demographic trends in California, and with the nature, needs and demands of the Bay Area's client base.

- With rare exceptions, and generally irrespective of a legal employer's "liberal" or "conservative" reputation, the employers who have been most successful in achieving racial diversity in their ranks are those who, with strong and visible leadership from the top, have steadily and continuously pursued targeted programs aimed at enhancing minority recruitment and retention. Conversely, those employers subscribing to a sink-or-swim, "color blind" paradigm with respect to diversity, tend to have the worst statistics and most significant minority morale problems.

Where relevant, the *Interim Report* also attempts to explore the impact on minority diversity of cultural and business forces at work with the Bay Area. These include:

- the nationally and internationally accelerating pattern of corporate mergers and acquisitions;
- the exponential growth of the Silicon Valley and the Silicon Valley law practice;
- the rapidly escalating growth, nationalization and internationalization of large law firms, often accompanied by increasing and self-professed emphasis on the bottom line, increased billable hour requirements and rapidly increasing overall profits, as reflected in six-figure first-year salaries and historically unparalleled partner compensation;
- the inability of certain kinds of small and mid-sized practices to compete under current economic conditions; and
- the increased lateral movement of partners and associates, including increased movement into corporate law departments, and movement of lawyers from San Francisco to Silicon Valley, partially offset by a countervailing move by Silicon Valley firms to open San Francisco offices in order to attract more young attorneys who do not wish to live in the Silicon Valley.

Discussion of the impact on minorities of some of these facially neutral phenomena is accompanied by consideration of the impact of overtly racial measures, such as Proposition 209, on minority-owned firms, law school enrollment, and, ultimately, patterns of recruitment, hiring and retention of minority lawyers by Bay Area employers.

We hope that this *Report*, with its appended "Best Practices" suggestions, will help to identify those barriers which continue to impede the advancement of minorities in the profession, and will also spark a new generation of successful efforts to integrate our legal community.

As we approach the new Millennium, in an era when the pendulum has swung back to the "good times," it is appropriate to recall President Clinton's admonition to our profession last July:

"[T]his booming economy has been pretty good to America's lawyers and law firms. Last year, top firms increased their revenues by 15 percent. There will never be a better opportunity to help those who need it most...I don't want to wait another 36 years. We will know we have succeeded when our law schools, our bar associations and our law firms not only represent all Americans, but look like all America."

Therese M. Stewart  
1999 President

Fred W. Alvarez  
2000 President

Bar Association of San Francisco

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# GOALS AND TIMETABLES FOR MINORITY HIRING AND ADVANCEMENT

## 1999 INTERIM REPORT

### I. INTRODUCTION AND OVERVIEW

The Bar Association of San Francisco has long been an outspoken leader in efforts by the organized bar to achieve equal employment opportunity for minority attorneys. These efforts had as their catalyst a disturbing University of California study, commissioned by the Association in 1987-88, which found that racial and ethnic minorities, as a class, encountered profound objective and subjective disadvantages within the City's legal workplaces.<sup>2</sup>

By Resolution dated June 14, 1989, the Association adopted a set of Goals and Timetables for Minority Hiring and Advancement as the lynch pin of its efforts to advance the progress of racial and ethnic minorities in the San Francisco legal community.

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<sup>2</sup> *Bar Association of San Francisco Minority Employment Survey: Final Report*, U.C. Berkeley, 1988. A prior ABA survey of law firm managers had concluded that "[A]n objective assessment [of the status of minorities] leads to the inevitable conclusion that the legal profession remains largely segregated" ascribing this problem, however, to a lack of available "qualified" minorities. By contrast, the BASE study of over 1300 white and minority attorneys attributed continuing segregatory patterns to differential treatment based on race, finding that minorities had 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. Minorities, for example, were more likely than comparably situated whites to be asked inappropriate and offensive questions during their hiring interviews, thereafter earned significantly less than white attorneys at similar points in their careers, and were twice as likely as white attorneys to be passed over or denied promotion.

Minorities were additionally found to have been excluded from the informal networks within the workplace generally viewed to be essential to advancement. A large majority of both minority and white respondents reported that minority attorneys were less likely to be asked to lunch by their more senior colleagues, less often invited to dinner at the home of a partner, for a round of golf on the weekend or for a night at the symphony, and less frequently approached for informal collegial or professional advice at the office. Minority attorneys were also believed to labor largely outside the system of informal mentoring relationships existing between powerful white partners and young white male associates within the firms.

Ultimately adopted by over 100 San Francisco legal employers,<sup>3</sup> the Goals and Timetables set target dates and corresponding percentages of minority attorneys sought to be employed by those dates within a subscribing organization's total attorney population in San Francisco, as follows:

Target Date	% Associates/Jr. Counsel	% Partners/Sr. Counsel
12/31/1995	15%	5%
12/31/2000	25%	10%

This *1999 Interim Report* represents the third of four studies attempting to measure the success of San Francisco employers in meeting first the 1995, and now the Year 2000, Goals. The first study, issued in late 1993, followed six years of highly visible, intensive efforts by BASF's top leadership to provide incentives and technical assistance to employers seeking to racially diversify their offices.<sup>4</sup> Intended to measure

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<sup>3</sup> See Attachment B

<sup>4</sup> These efforts included:

—Leadership of the effort to establish and maintain the statewide California Minority Counsel Program, which has since grown to become the nation's most successful such program, currently numbering over 40 corporations, 100 majority firms and 120 minority-owned firms as participants; the CMCP continues to be housed in, and to benefit from, the ongoing and substantial support of the Association

—Production, and purchase by over 300 legal employers nationwide, of *A Firm Commitment*, an award-winning videotape funded by Wells Fargo Bank, 10 bar associations, 30 law firms and local foundations and the National Association for Law Placement (NALP), designed to assist legal employers in identifying and overcoming obstacles to the retention and advancement of minority attorneys in their workplaces

—Hosting of an annual June reception for all Bay Area minority summer law clerks and new admittees

—Presentation of an annual fall program for all Bay Area minority law students on employment opportunities in the area, followed by a reception attended by representatives of a wide spectrum of employers and the subsequent scheduling of law firm/corporate law department informational visits by all minority attendees

—Half-day seminars: (a) for all Bay Area managing partners and general counsel on minority retention facilitated by Harvard law professor Charles Ogletree and diversity trainer Jacob Herring; (b) for all Bay Area hiring partners and recruitment directors on minority recruitment and hiring

—Presentation of a wide variety of seminars and MCLE programs for managing partners, hiring partners, general counsel, minority partners, minority associates, minority law students and recruitment personnel on topics ranging from hiring and retention of minorities to interviewing skills, effective marketing, business development, and survival skills in a recessionary economy

—Co-sponsorship of the Tri-County Bay Area First Year Minority Summer Law Clerk Program, a successful program designed to afford minority law students the opportunity to gain exposure to practice in a large law firm in the summer following their first year of law school and to broaden the pool from which similar firms would subsequently recruit

and enhance the likelihood of our signatories' success in meeting the upcoming 1995 Goals, the Report compared 1990 baseline empirical data with empirical and interview data collected as of 12/31/92 and early 1993. Despite the fact that prior to the Report's issuance the 1980's boom years for law firm growth had yielded to the recessionary years of the early '90's, (the total number of lawyers in the San Francisco offices of the large firm group fell by 225 lawyers between 1990 and 1994), the 1994 Report noted that a substantial number of employers had nevertheless made significant minority gains over the course this period and predicted that most firms would, in fact, meet the 1995 Goals.

BASF's second study in 1996, based on empirical and anecdotal data collected at the conclusion of the 1995 Goals year, established that most employer groups had indeed met or exceeded the '95 Goals, but that this success was largely attributable to the gains of the 1990-93 period. One hopeful note was that throughout the recession the minority ranks at these firms decreased at a slower rate than those of their white peers.

This third *Report* seeks to evaluate and enhance the likelihood that San Francisco's legal employers will be able to meet the upcoming Year 2000 Goals.<sup>5</sup> The

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<sup>5</sup> Between the 1995 Report and late 1999, additional BASF efforts to provide technical assistance to Goals signatories have included:

- Leadership of efforts of the statewide organized bar to defeat Proposition 209
- Organization of a 1,000-person Celebration of Diversity, which netted over \$75,000 for BASF's diversity-related efforts
- In the wake of disastrous post-209 statistic at Boalt and UCLA, issuance of a public statement signed by 50 general counsel and managing partners stating their commitment to diversity in their workforces, demanding that Boalt and other University of California law schools take necessary steps to regain diversity and declaring their intention to recruit at schools where students of all races could be found
- Implementation of Minority Law Student Scholarship Program, providing three-year, \$5000/year scholarships to students attending Northern California law schools, which has raised, to date, \$700,000 in scholarship funding, a program which has materially contributed to an upward shift in Boalt Hall's African American and Latino enrollment
- Implementation of a Law Academy program at two of San Francisco's inner-city high schools, intensively training, mentoring and placing in summer law firm employment 75 to 100 high school juniors each year
- Implementation of a three-year High School-to-College program providing fully subsidized SAT preparation and refresher classes to 30 inner-city high school juniors per year; subsidization of college trips for the students and their parents or guardians through lawyer-contributed frequent flyer miles and donations by hotel chains; provision of college application and selection counseling through a partnership between the college counseling staff of a nearby private school and a group of trained attorney volunteers; assistance in admission to selected colleges via lawyers who are alumni interviewers; and long-term motivational activities within the high school, including visiting speakers and year-round posting of hundreds of specially-designed posters and fliers
- Active leadership of Lawyers for One America initiative

Report's conclusions reflect consideration of empirical data collected from 1990 through December 31, 1998, and information derived from hundreds of personal interviews conducted over the course of that period with managing partners, general counsel, minority partners and minority associates in dozens of legal offices across the City.

## II. METHODOLOGY

In order to fairly assess progress toward the Year 2000 Goals, all law firm and corporate signatories to the Goals were asked to provide confidential demographic data on the racial and ethnic make-up of their San Francisco offices. As in the 1996 study, five public offices and a small group of San Francisco firms whose primary offices are outside the City were also asked to provide statistical profiles. For the first time, we also sought empirical data from 12 major Silicon Valley law offices, eight of which were branch offices of San Francisco-headquartered firms.

A cross-section of responding employers, representing a wide variety of office sizes and cultures, was selected for closer study. These included those denoted as "large firms" (the seven surviving firms of the City's eight largest firms in 1989, the date the Goals were first adopted), together with a group of "large mid-sized firms," averaging 50 to 100 employees, smaller firms, corporate law offices and public employers. Because the BASF goals apply by their terms solely to the San Francisco office of each signatory, the information contained in this Report accordingly applies only to the San Francisco offices of the employers studied.

The Association's Committee on Minority Employment selected and trained a group of over 30 attorney interviewers, each of whom was assigned to conduct all the interviews at an office dissimilar in size or kind from his/her own employer. An expert consultant conducted a two-hour training session, stressing the necessity for confidentiality and outlining seven major areas of inquiry: (1) the interviewee's overall assessment of where his/her office stood, both subjectively and objectively, on the issue of achievement of racial and ethnic diversity among its attorneys; (2) the office's successes and (3) failures with respect to this issue, and the reasons therefor; (4) the efforts of the office, if any, to ensure that minorities experienced equal opportunity in assignment to advantageous partners, practice groups, individual matters and/or clients; (5) the office's efforts to provide equal marketing opportunities to minorities; (6) the probable future of the office with respect to achievement of racial and ethnic diversity; and (7) the interviewee's opinion as to whether lawyers of races/ethnicities other than their own would concur in the interviewee's views as to Questions 1-6.

Over 100 confidential interviews were conducted over the first ten months of 1999 with: (1) the office's managing partner/general counsel; (2) a senior minority partner/senior counsel, where applicable; and (3) a junior minority associate/counsel,

where applicable. The interview notes were sent to a designated Association employee who removed identifying individual and employer names and classified them by the employment status of the interviewee and the type of employer (e.g., "managing partner, large firm"). These notes, together with the statistical data, were then collected, analyzed and compared to the information contained in the earlier Reports.

### III. SUMMARY OF CONCLUSIONS

A. The numbers and percentages of minorities rose overall in all the groups of employers for which 1990-1999 longitudinal data were available. Moreover, these gains occurred despite the fact that the large and mid-sized firm groups downsized dramatically during the recession of the early '90's and have only slowly regained an attorney mass that is beginning to approach their 1990 numbers.

B. While the convergence of these two trends had earlier produced minority percentages in large and mid-sized firm groups that approached or exceeded both the 1995 Minority Associate and Partnership Goals of 15% and 5%, respectively, the 1999 statistics are less promising with respect to the likelihood of these firms meeting both Year 2000 Goals. Thus, in 1999, minorities comprised 6% of the partners in the seven "large firms" studied (up from 4.7% in 1995, but 4% short of the Year 2000 Partnership Goal of 10%). This group is quite likely, however, to meet the Year 2000 Associate Goal of 25%, with their minority associate percentage currently standing just below the goal, at 24.3%. In the large mid-sized firms the percentage of minority partners currently stands at a dismal 2.6%. Minority associates in this group comprise 20.4%, however, with half of the firms at or above the 25% Goal.

C. The Silicon Valley branch offices of the large San Francisco firms were generally found to have somewhat higher percentages of minority attorneys than the parent firms, while the minority percentages of the overall 12-firm Valley group were roughly comparable to those of the "large firm" group of San Francisco firms.

D. The original group of small firms for whom longitudinal data were available, which includes several firms in the 20-35 lawyer range, has grown 29% in size since 1990 (in contrast to the larger firm groups) and their minority attorney numbers have more than doubled, currently comprising 3.7% of partners and 18.3% of associates. In the larger group of all small firm signatories who returned 1999 data sheets, the minority percentages appear much more promising, with minorities reported to be 8.9% of all partners and 21.6% of all associates. It must be noted, however, that many of these firms number fewer than 5 attorneys, so small changes can cause large percentage fluctuations.

E. Corporate law departments reflected the extraordinary state of flux created by the escalating pattern of mergers and acquisitions taking place in corporate America, with the impact on minority attorneys remaining unclear.

F. As in 1995, San Francisco's three municipal law offices reported much larger percentages of minority attorneys than those found in the private bar generally, with minorities currently comprising 29.8% of all lawyers in these offices.

G. Asian Americans are by far the most rapidly growing group of minority attorneys in all sectors of the legal profession, especially in the Silicon Valley.

H. With some exceptions and generally irrespective of a legal employer's overall "liberal" or "conservative" reputation, the San Francisco employers who have been most successful in attaining and maintaining some meaningful degree of racial diversity in their ranks are those who, with strong and visible leadership from the top, have engaged in a number of self-consciously conceived and targeted programs and efforts aimed at enhancing minority recruitment and retention. Even firms that have only recently begun to concentrate on turning around a historically poor record of minority hiring and retention have been able to make substantial gains once they have embarked upon aggressive targeted diversity initiatives. Conversely, those employers which have continued to subscribe to a benign neglect, sink-or-swim, "color blind" paradigm with respect to racial diversity issues continue to have the worst statistics and most significant minority morale problems.

I. The large firms which were most successful in recruiting and retaining minorities shared some or all of the following characteristics: (1) the firm had developed and maintained concrete programs for the recruitment, hiring, retention and advancement of minorities, and had experienced some success in creating a diverse work environment; (2) the minority partners and associates knew of, and participated in, these efforts and felt a correspondingly higher level of commitment to the business enterprise; (3) the known and ongoing commitment of some of the firm's most prominent white male partners to issues of diversity — both intra-firm and, often, in the greater legal community — had helped the firm to create and maintain a climate more open and susceptible to attracting, hiring and advancing minorities; (4) either the firm's earlier and sustained efforts had produced a small group of minority partners, some of whom had become prominent both inside and outside the firm, or the firm had more recently been successful in bringing in lateral minority partners who were perceived to be committed to increasing minority representation and advancement within the firm. In addition to their otherwise valuable contributions to the firm's business and reputation, these partners serve as role models, and, as such, both advance the firm's minority recruitment efforts outside the firm and retention efforts inside the firm; and (5) these firms were more likely to have advanced a reasonably large number of women into the partnership, and often had one or more women on the management committee and/or as firm-wide, office or departmental chairs.

J. Programs successful in recruiting and retaining minorities include: formal mentoring programs, not necessarily focusing only on minorities; periodic and ongoing diversity training for all attorneys and staff; participation in one or more successful bar-sponsored programs, such as the California Minority Counsel Program, the Bay Area First Year Minority Clerkship Program and the BASF Minority Scholarship

Program; the hiring of minority laterals; formal programs for work assignment, evaluation and business development to ensure and enhance the success of minority attorneys, including financial incentives for supervisory success in this area; structured and aggressive recruitment programs designed to increase the pool of minority applicants considered for hire in the firm, including, in the post-209 environment, recruitment at additional schools known to have high minority enrollments; and policies to ensure that the criteria for hiring include recognition of the value of diversity, prior community service and other indicia of excellence beyond grades and test scores.

As the following *Interim Report* demonstrates, the San Francisco legal community, and the Silicon Valley, now stand at a historical crossroads, where the path next taken will largely dictate the future of racial integration of the legal profession. As Harvard Professor David Wilkins has observed:

“Few would dispute that the campaign to end legal segregation culminating in *Brown v. Board of Education* is the legal profession’s finest accomplishment — just as the profession’s complicity in the regime that this campaign demolished was its darkest hour. The fact that the country’s most prestigious law firms are nearly as segregated today as the entire legal system was forty years ago stands as a constant rebuke to the profession’s attempt to claim the noble side of this heritage. At the same time, initiatives such as Minority Counsel [Programs] and the efforts by state and local bar associations to promote workplace diversity demonstrate that the ideals captured by *Brown* can still energize lawyers to work for institutional change. As the legal profession confronts the uncertainties of the next millennium, it is this energy that holds the best hope for charting a new path that connects the profession’s future to the best of its past.”

#### IV. LARGE FIRMS

##### A. The Numbers

In the period between 1990 and December 1999, the San Francisco offices of the seven surviving “large firms”<sup>6</sup> in San Francisco had reduced in size by 20.6%, from 1,373 attorneys to 1,090. During that same time period, however, their minority ranks increased 45%, from 120 attorneys to 174. Overall, minorities as a whole now comprise

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<sup>6</sup> Throughout our studies since 1990, our baseline for firms denoted as the “large firms” has been the eight San Francisco firms that were the largest in 1990. Of these firms, one has since disbanded and another came close to foundering, but is recovering, albeit at a diminished size. The other six have remained the largest firms in the City.

just under 16% of all the attorneys in the large firm group, nearly double their 1990 percentage of 8.7%, and up from 11.6% in 1995.<sup>7</sup>

The large firm group as a whole currently falls just short of meeting the Year 2000 associate goal, averaging 24.3% minority associates, with five of the seven firms meeting or coming close to the 25% Goal. With respect to partnership, however, while the group as a whole has exceeded the 1995 Goal, they fall far short of the Year 2000 Goal, at only 6%. In fact, only one of the seven firms has met the 10% partnership goal, while the other six are at 6.6% or fewer minority partners; one firm, with only one partner of color, is at a bare 1.5%.<sup>8</sup>

Although overall numbers have risen for all four minority groups since 1990, Asian Americans are increasingly dominating the minority ranks, evidencing a particularly dramatic increase in the partnership area. Thus, Asian American partners went from four to 14 between 1990 and 1999, while the number of all other minority partners combined rose from 14 to only 16, with the number of African American partners actually falling from nine to seven. Meanwhile, Asian American associate numbers rose by 26, from 56 to 82 over this same time period, while all other minority associates together rose by only 16, from 46 to 62, with African American associates increasing from 22 to 27, Latinos from 21 to 30 and Native Americans increasing by only one attorney, from three to four.

It should be noted that the substantial gains of the early '90's, the African American and Latino ranks were badly hurt by the ensuing recession, with their levels just now beginning to reach and exceed 1993 levels, six years later in 1999. (African American associates, for example, had reached 32 by 1993, only to fall back to 20 by 1996; they are now at 27. Similarly, Latino associate numbers fell from the 1993 level of 29 to only 23 in 1996 and have now finally climbed back up again to 30. Native Americans had risen to eight in 1993, but fell to three in '96 and still have risen back to only four.)

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<sup>7</sup> Please see tables and graphs contained in Attachment E, p. 76. Summary, as of 12/31/98, minorities comprised 15.9% of all attorneys in the large firm group (v. 8.7% in 1990), including 6.0% of the partners (v. 3.1% in 1990), and 24.3% of the associate attorneys (v. 12.8% in 1990). African Americans, Asian Americans, Latinos and Native Americans represented 3.1%, 8.8%, 3.4%, and 0.64%, respectively of all attorneys in 1998, as compared to 2.3%, 4.4%, 1.8% and .29%, respectively, in 1990. African Americans, Asian Americans, Latinos and Native Americans represented 1.41%, 2.81%, 1.41% and .40%, respectively, of the partners in 1998, as compared to 1.56%, .69%, .69% and .17%, respectively, in 1990. 1998 levels for African American, Asian American, Latino and Native American associates stand at 4.56%, 13.9%, 5.07% and .84%, respectively, as compared to 2.76%, 7.03%, 2.63% and .38%, respectively, in 1990.

<sup>8</sup> NALP's recently released 1999-2000 *National Directory of Legal Employers* nevertheless reveals that among the largest of the 28 cities with the most individual law offices listed in the *Directory*, "San Francisco was the most consistently high in representation of both women and minorities across all levels...Offices in Los Angeles, Menlo Park, Miami, Portland and San Francisco ranked highest on representation of minorities among associates." NALP News Release, 11/18/99



It is also noteworthy that all but one of the surviving seven "Large Firms" have developed substantial and still rapidly growing Silicon Valley offices over the course of the past decade, most of which have minority percentages similar to or greater than those of the "parent" firm. These "branch" offices, as of 12/31/98, totaled 366 attorneys, bringing the combined Silicon Valley/S.F. totals for the Large Firms finally up to or in excess of their pre-recession 1990 populations.

Assuming that the economy holds strong, that the firms will compensate for 209's disastrous impact on potential minority hiring by successful recruitment at non-U.C. schools, and that the Silicon Valley will not overwhelmingly siphon off minority hires and laterals in the Bay Area, the prospects for the large firm San Francisco offices' meeting or exceeding the Year 2000 Associate Goal appear promising. Given the stubborn retention problems experienced by these firms, however, the low hiring levels experienced during the recession and the correspondingly meager numbers of senior level minority associates eligible for promotion to partnership in the coming 13 months, it appears highly unlikely, absent an unprecedented influx of minority lateral hires and transfers, that most firms will be able to meet the Year 2000 partnership Goal.

#### B. Attitudes Toward Diversity: The Spectrum of Commitment

The picture with respect to minority diversity which emerged from the large firm interviews was decidedly mixed. On the one hand, in contrast to the 1996 Report's findings of a retrenchment in commitment to diversity as a top priority issue, many firms appeared pleased with their current hiring record and at least somewhat recommitted, in these booming economic times, to doing something active about their generally acknowledged and deplored failures in the retention area. Moreover, the managing partners as a group expressed an open and positive attitude toward BASF efforts and other initiatives to increase racial and ethnic diversity in their firms, including their status as Goals signatories, and the minority partners and associates interviewed generally expressed less alienation and more optimism than those interviewed in earlier studies.

On the other hand, managing partners as a group often seemed flummoxed by the challenge of creating and maintaining the critical mass at the partnership level that they all professed to seek as the *sine qua non* for successful retention of Latinos and African Americans at any level. By contrast, the minorities in these same firms largely said, in effect, "its commitment, stupid." One minority associate, for example, in noting his/her firm's "astonishing" attrition rate, simply felt the firm was morally and intellectually remiss in not analyzing and solving these problems head-on as they did other business challenges.

While interviewees overwhelmingly agreed that the dearth of minorities at senior levels was a persistent, seemingly intractable problem, the question of whether subtle, unconscious bias persisted and/or whether special programs specifically targeting minorities needed to be employed, elicited great ambivalence. Lastly, many interviewees, at all levels, often evidenced a surprising lack of awareness that their own firm had, in fact, engaged and/or was currently engaging in many such programs, at least some of which had been successful.

One managing partner, for example, stated that s/he was "pleasantly surprised" at the numbers in their summer program, even as s/he described a number of minority-specific efforts in which the firm had actively engaged over a period of years which had arguably led to those numbers. Another joined many of his/her managing partner colleagues in believing his/her firm was also doing "fairly well" in retention when the firm, in fact, had among the very lowest numbers of minority partners of any major firm in San Francisco, with very few senior minorities in the pipeline. Similarly, a third managing partner of a firm with very low minority numbers said, "We are doing great, fine," then confessed him/herself to be somewhat "isolated" but nevertheless confident that "if there's unrest, I believe I would hear of it." S/he was generally opposed to special programs for minorities in the firm ("We try to run all our programs on the merits...we believe that we will increase diversity by continuing to be fair and neutral...") even as s/he stated that other more diverse firms were more attractive to top minorities, and that this was hurting the firm with its larger clients. S/he thereupon proceeded to list a number of fairly aggressive minority-directed efforts upon which the firm had recently embarked to reverse this situation.

A minority lawyer in this same firm had a much more straight-forward view. "There's no internal desire or goal in this firm to recruit and retain minority attorneys, no perception that it's enough of a problem to change behavior. Because people do what is comfortable for themselves—for instance, white male partners are more comfortable with white male associates—that leaves minorities excluded from the more desirable work, responsibility and client contacts where you need to be judged well and progress....This will never change without fundamental changes in the goals and nature of what this firm does."

A minority partner in another firm expressed both sides of the ambivalence. S/he felt minority-specific programs to be a bad idea, while simultaneously subscribing to the belief that minorities tended to be afforded fewer opportunities to impress major clients, were less often given the benefit of the doubt, received less direct and honest feedback, were sometimes unconsciously assumed to be less competent, felt somewhat isolated and bereft of mentors with whom they could feel comfortable, and, at the senior levels, sometimes felt unfairly burdened with handling all diversity matters for the firm; s/he also was skeptical of management's continuing "hand-wringing" about minority retention when it was obvious that "bureaucratic inertia" and a "muddle through" mentality on the issue needed to be replaced by systematic application of the firm's "considerable resources and wisdom" to achieve clearly defined strategic objectives in the diversity area.

Broadly speaking, as in earlier studies, firms tended to break down into two groups vis-a-vis racial and ethnic diversity.

#### 1. The "Color-Blind," Merit-Based Paradigm of Management Response

At one end of the spectrum was an otherwise economically and politically diverse group of firms whose approach to minority retention was a self-professed "color blind" philosophy. The white managing partners, and some minorities, in these firms

preliminarily asserted their own and the firm's philosophical belief in the virtues of diversity and value of the Goals. Although they were candid in their appraisal, shared by all the firms in the group, that "we are not where we should be," particularly with respect to retention of African Americans and Latinos, (many said, in the words of one managing partner, "I don't even think of Asians as minority"), these firms nevertheless took the view that they should not engage in minority-specific retention programs. Often describing themselves, because of the current crush of business, as operating on a *de facto* "sink or swim" basis, these firms are nevertheless pinning their hopes on their summer clerkship programs, salted by a few senior laterals, to slowly "trickle up" to a state of critical mass.<sup>9</sup> Several of these managing partners acknowledged that their

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<sup>9</sup> Unless these firms refocus their recruitment and hiring efforts on non-U.C. schools, however, recruitment and hiring of minorities may re-emerge as a major problem for California legal employers. Passage of Proposition 209 has had a devastating impact on Boalt Hall and UCLA. As early as 1982 minorities comprised over 20% of the student population at Boalt Hall, Stanford, Hastings, and UCLA, and this trend accelerated through the 1996-97 entering class, making the University of California by far the largest pool of minority law students in the nation. Thus, Boalt Hall's '96-97 entering class of 269 students included 103 minority students, who constituted 38% of the class, with Asian Americans, African Americans, Latinos and Native Americans constituting 15%, 8%, 14% and 1.5%, respectively of the class. In fall 1996, 24% of the entire Boalt student body was comprised of African American, Latino and Native American students.

In the wake of the elimination of affirmative action by the U.C. Regents' actions and Proposition 209, by Fall 1999, that percentage had plummeted 60%, with African Americans, Latinos and Native Americans together representing only 9.5% of the school's student body. (At Stanford, by contrast, that group constitutes 22% of the student body.) The U.C. free fall began with the 1997-98 entering class, in which African Americans enrollment was devastated, dropping from 21 to 2, with their representation in the class falling from 8% in the '96-97 entering class to under 1% (0.7%). Latino enrollment plummeted from 37 to 17 (falling from 14% to 6% of the class), and Native American enrollment dropped from 4 to 0; Asian American enrollment remained approximately the same at 42.

Although, through an initially far more aggressive response to the post-209 challenge, UCLA's 1997-98 figures were not as disastrous as Boalt's, by the third post-209 year (the 1999-2000 entering class), UCLA's African American enrollees had fallen from 19 in the last pre-209 entering class ('96-'97) to 2; Latinos had descended from 45 to 17, and Native American from 5 to 1, while Asian Americans had risen from 48 to 66. This re-segregation of the crown jewels of the U.C. legal education system is particularly tragic in light of a recent study released by the University of Michigan tracking the relative success rates of three decades of all their minority graduates—the vast majority of whom had been admitted through affirmative action—versus a stratified random sample of white graduates. The study established that both groups were overwhelmingly successful in their careers with no statistically significant difference in success rates, except that the minorities were significantly more likely to report satisfaction with their work's social value. The study also found LSAT scores and undergraduate GPA to have "no relationship to achievement after law school...whether achievement is measured by earned income, career satisfaction, or service contributions." *Law Quadrangle Notes*, Volume 42, Number 2, Summer 1999, 60, 62. See also, William Bowen and Derek Bok's book, *The Shape of the River*, Princeton Univ. Press (1998), an excellent study of the success of undergraduates of elite colleges who were affirmative action admittees, which reaches similar results vis-a-vis the extraordinary success of the group studied.

Meanwhile, the saving grace may lie in the ability of employers to increasingly rely on the major private "feeder" schools which continue to graduate large minority populations, and to search out and hire from schools with traditionally high minority numbers. Stanford's 1999-2000 entering class, for example, is 34.2% minority, with African Americans (15 students), Latinos (26 students) and Native Americans (3 students) together constituting 24.7% of the class. Minorities currently constitute 31% of Stanford's entire law student body and African Americans, Latinos and Native Americans together make up almost 22% of all law students. Similarly, Yale Law School's 1999-2000 entering class is over 30% minority (the 1998-99 class was 35%), with 19 African Americans (24 in 1998), 12 Latinos (16 the year before), 2 native Americans (one the prior year) and 16 Asian Americans (28 the year before). Overall, Yale's student body is 31.3% minority. Harvard Law School's entering 1999-2000 class stands at 26.2%. Entering 1998-99 law school classes for other schools include Columbia and NYU at 27%.

firm was anxious to overcome an unfortunate record on retention, but they reported few active programs to change that record.

These managing partners appeared unaware of the negative impact which a firm's lack of active diversity programs had on the morale of their minority attorneys and their ability to see a viable future for themselves in that work environment. "Several senior minority associates left a few years ago, because they felt there was an inadequate support network for them here," said one associate whose managing partner had omitted any mention of this fact. "One view in the firm was that minority-specific programs are essential, that partners hadn't helped the minorities make business contacts or otherwise mentor minorities and that there are subtle, hidden biases against non-Asian minorities, while the other view is that there should be strictly 'color blind' programs." This associate bluntly stated that "This firm needs to figure out how to retain minorities, because it doesn't know how." An Asian American associate also felt that his/her firm's color-blind policies, including that of sending out solely majority lawyers to interview minorities, were misguided. "While I feel I am being definitely groomed for success, I know my African American colleagues feel differently and are less optimistic about prospects for change here."

Still, many of these firms did attempt to attack overall retention problems, albeit with racially neutral programs open to all, including:

- Results-based counseling whereby all associates meet with a senior lawyer once every six months to identify 3-4 specific activities they wish to complete to advance their career, then meet again to review outcomes and set new goals, generally aiming to help each individual create his/her own career development plan.
- Other kinds of "racially neutral" mentoring programs for all associates, (many of which fall by the wayside because of the failure of busy, and largely white, partners to actually devote the time necessary). These programs tend to fail particularly for minorities because a trusting relationship is harder to create between people who may share very little common background. Some programs succeed where, as in some of the firms interviewed, the mentees are given substantial choice in the mentor they select and where the firm insists that senior partners participate. Sometimes, where key figures within the firm informally make it their business to seek out and mentor minority associates, these associates' careers have flourished. Minority associates who feel they have a good relationship with a powerful partner generally feel an extra level of comfort that they are being groomed for success and can advance in the firm. One "color blind" firm who has used laterals as one way to begin to build a critical mass, has, at the behest of one of the associate "classes" developed a formalized mentoring program over the past two years that has produced good morale, using senior associates as well as partners as mentors. But, the lack of minority mentors was still seen by minorities at the firm as a problem. Minority associates questioned whether a "home growner" can/will be elevated to partner. "That's when we will be encouraged and inspired."

- Establishment of a retention bonus system, whereby a certain percentage of an associate's salary is put in a 401(k), vesting after five years if the employee is still there (this was recommended by NALP in its recently released *Strategies for Associate Retention* publication)
- Special orientation and training programs for all newer associates, designed to acclimate new associates to the inner workings of the firm, as well as to basic business, planning, management and accounting principles useful to all lawyers
- Efforts to include representatives of all major groups, including minorities, on recruitment/hiring committees. (Many minorities, however, were critical of the decision of some firms to fold their hitherto minority recruitment/retention, committees into general committees of this sort, feeling that the problems facing minorities were different and required tailored solutions. One firm's decision to combine statistics relating to gay men and lesbians with those measuring minority progress was viewed with mixed feelings, because the firm's greater success in retaining gay and lesbian (largely white) attorneys tended to skew the figures (and the firm's perceptions) regarding success with respect to minorities.

As with some of San Francisco's prestigious mid-sized firms, some previously "color blind" firms, as they became increasingly concerned with their historically grim retention picture, have begun to transmogrify into more "color pro-active" firms in recent years. One such firm, for example, has recently brought in several minority laterals, has begun more targeted recruitment, is re-examining its previously inflexible emphasis on grade-point average alone in hiring, and has consciously sent minority associates with partners on important client presentations. They have found, on balance, that it is good business, and makes the firm a better, more inviting place to work and one which is more open and conducive to needed structural change.<sup>10</sup>

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<sup>10</sup> The authors of a 1996 *Harvard Business Review* article argue that paradigms for the advantages of diversity must go beyond the traditional rationales of fairness and/or minorities' special access to "niche" markets. Rather, they posit, the transcendent value of diversity is "the varied perspectives and approaches to work that members of different identity groups bring...[T]hese groups don't bring with them just their 'insider information.' They bring different, important, and competitively relevant knowledge and perspectives about how to actually *do work* – how to design processes, reach goals, frame tasks, create effective teams, communicate ideas and lead. When allowed to, members of these groups can help companies grow and improve by challenging basic assumptions about an organization's functions, strategies, operations, practices and procedures." "Making Differences Matter: A New Paradigm for Managing Diversity," David A. Thomas and Robin J. Ely, *Harvard Business Review*, Sept.-Oct. 1996, pp. 79-90.

## 2. The "Demonstrably Serious/Searching for Solutions" Paradigm

At the other end of the spectrum was a second group of economically and politically diverse large firms. This group were more likely to have had a long history of diversity efforts in the areas of both hiring and retention, and were also currently creating new programs to maintain and increase the diversity they had achieved. However, both majority and minority attorneys felt frustrated over the more subtle and complex "second generation" retention issues facing them, and several managing partners were very concerned about possible post-209 pipeline problems. (One managing partner flat-out stated his refusal to make any financial contribution to Boalt until they did something about their numbers. See, e.g., the recent Law Student Admission Council's *Alternative Admission Decision Making Models*, which includes among its recommendations the use of interviews, alumni studies and other programs which Boalt has to date failed to adopt despite intense pressure from BASF and others.) Several firms have re-oriented their recruitment policies to expand the range of schools at which they recruit "in order to maintain traditional diversity levels."

Managing partners in this group tended to point with pride to their firm's accomplishments ("We're proud of what we've accomplished. You name it and we've done it.") but also expressed their frustration that retention, particularly of African Americans and Latinos, still loomed as an issue, and that minorities still felt excluded from the mainstream of firm life. These firms also tended to feel that their commitment to diversity had enhanced the firm's business opportunities, citing specific clients who demanded such commitment. As stated in the Summary above, these firms shared some or all of the following characteristics: (1) They had a small but growing group of minority partners, some of them quite prominent inside and/or outside the firm, who served as role models, and whose zealotry on the issue had a major impact on the firm's level of commitment to the issue; conversely, however, when those minorities' attention was diverted, the firm had more trouble remaining focused on the issue; (2) women had advanced well within the firm, providing an especially hopeful-looking pattern for the women of color in the firm; (3) prominent white male partners, including usually the Chair of the firm, were visibly committed to diversity; (4) the firm had numerous on-going diversity programs that were publicized intra-firm as well as to potential recruits and clients; and (5) the minorities in the firm were, as a consequence, more committed to their employer.

"The firm is doing well," said one associate. "We can't be color blind. We need to sell the firm specifically, and we make a conscious effort to include minorities in key practice sections. I am optimistic because our minority role models are sufficiently committed to addressing the retention problem." "It's striking to walk around and see diversity in the office; the firm consciously tries to put minorities and women in positions of leadership and to market their skills directly to clients via beauty contests and otherwise." said another. "There has been no retrenchment here in light of 209," said a third. "If anything, the firm is more committed, at partner meetings, at associate meetings, in recruiting and in local and national Bar

Association activities and programs like Lawyers for One America. If there isn't going to be affirmative action, we will find other ways to achieve diversity." Associates at such firms were also more likely to feel energized to engage in self-help activities to increase their visibility and opportunities in the firm and in their careers.

To the extent that these firms have offices around the world, there was substantial unanimity that San Francisco was light years ahead due to the "old white haired guys in San Francisco." As one attorney put it: "These guys care about diversity." Yet, as one associate noted, "Today, lawyers of color expect more and they are disappointed... They're not used to being the only one." New York and Silicon Valley firms were most often singled out as not caring about diversity but, if the economic boom continues, many felt that most firms will see more diversity, even outside San Francisco and in transactional work as well as in litigation.

Among the racially-conscious programs implemented by firms in this category were:

- Initial subscription to, and continuing commitment to meeting BASF's Goals and Timetables for Minority Advancement

- Substantial outreach efforts to reach, attract and hire minority law students, and formal tracking of the success, especially numerical results, of programs including:

—Participation in Minority Law Student Scholarship Programs, including BASF's 3-year, \$5,000/year post-209 program, to which San Francisco firms have contributed well over \$700,000 in funding for scholarships bearing the firm's as well as BASF's name, followed by group-wide and individual social events introducing the recipients to their benefactors and creating a relationship with the firm which funded their scholarship

—Provision of, *e.g.*, \$500 grants to minority law student groups in targeted law schools

—Recruitment efforts at Howard and other law schools with large percentages of minority students (lawyers in these firms feel strongly that firms should largely send minorities on recruitment visits to meet with minority students, so that the hard questions can be discussed, while many managing partners of the "color blind" law firm group deliberately send majority partners, believing that this shows the firm's commitment.)

—Participation in programs like the Bay Area's Tri-County First Year Minority Clerkship Program, which screens and places in firms students who demonstrate the requisite drive, initiative and community commitment, but not necessarily the prestigious law school credentials or top-10%-of-the-class grades firms claim to require, thus giving a larger minority pool the opportunity to acquire the skills, connections and social comfort level necessary for hire as second year summer associates in similarly situated firms (many interviewees of all races noted that while firms sometimes think of themselves as "taking a chance" by going lower

in the class or school rankings for minority students, they are much more likely, in fact, to do so with white students, with whom they feel more in common, and especially when asked to do so by relatives or friends of powerful white partners in the firm. One prominent Stanford professor verifies that this has repeatedly been his experience.)

—Outreach to minority law students group, including meetings at schools, invitations to firm receptions, attendance at local, statewide and national job fairs, and funding of the citywide BASF reception honoring minority law clerks. One firm is conducting its own survey of close to 1000 minority law students at 8 or 9 schools to determine their attitudes toward big firms and the reasons therefor. Another is conducting pre-interview workshops for minority law students at two schools.

- A clear statement of commitment to diversity by the firm's leadership via all appropriate forms of intra-firm communication, including preparation of strategic plans. Inclusion of minorities on the firm's management committee is one commitment mentioned by almost all minorities as an important index of their firm's level of diversity commitment. (Conversely, in one major mid-sized firm which has experienced very substantial minority partner and associate defections recently, promulgation of a new strategic plan for the firm emphasizing the "bottom line" to the virtual exclusion of all else, and with no mention of any kind to diversity, has been viewed with tremendous concern by the remaining minorities in the firm.) Information on diversity efforts must particularly be relayed to minority lawyers highlighting all efforts made by the firm to increase/maintain diversity, stressing commitment from the Chair of the firm on down.
- Implementation of managerial training and compensation programs which recognize the importance of racial diversity as part of each legal and administrative manager's job description, together with provision of financial incentives for concrete achievements in this area.
- Special mentoring programs aimed at the special issues posed by minority retention. (NALP's report on *Strategies for Associate Retention*, for example, notes very substantially higher attrition rates for minority men vs. all men, with a gap of 11 to 13 percentage points in the 3<sup>rd</sup> through 6<sup>th</sup> years, and emphasizing that minority men hired by firms of 51-100 attorneys were about two and one-half times more likely to have departed within one year. Attrition rates for minority women were highest of all groups in nearly all years, and by the fourth year, attrition is the very highest in firms of more than 100.) Sometimes mentors come from the minority lawyer's practice group, sometimes outside it. Similarly, variants often differ in approaches as to whether minorities should be mentored by minorities (a virtual impossibility in many of these firms owing to the vacuum in minority partners), or whether only white mentors can really be of use given the white, male power structure within firms. One firm, for example, has achieved substantial success with the idea of having a mentor, usually white, in each practice



- “family,” with these mentors making it clear that they and other senior partners are interested in mentoring associates of color. Another firm has both a general mentoring program and one targeted for attorneys of color, and formally trains the partners, by use of outside trainers, while senior associate mentors are used as mentors in more informal relationships.
- Creation of a racial diversity committee, with active participation by Chair of the firm or sufficiently powerful member of management committee, and strong financial and moral support from the top of the firm.
  - One firm holds a biannual retreat for attorneys of color, providing a network among all their offices, whereby people feel they can speak candidly.
  - Placement of influential minorities not only on the hiring committee, but also on committees handling associate evaluation and compensation, promotion to partnership, partnership compensation, and, of course, overall firm management.
  - Efforts to increase hiring of minority laterals, as part of overall strategy to create a critical mass of minority attorneys. These kinds of efforts are successful in firms where the “home-grown” minorities believe that the purpose is in part to create a critical mass which will make them feel more comfortable and will encourage them to stay and become partners. Unless proper communication exists, however, and lateral attorneys feel strongly about diversity issues, lateral hiring can boomerang, with associates believing, as they do in one firm, that the influx of laterals means that the firm has no intention of making an investment in its “home grown” minorities and that minorities will never make partner by coming up through the ranks.
  - Special efforts to create greater opportunities for minorities enabling them to meet, have meaningful contact with, do work for and impress important clients, to engage in marketing opportunities (e.g., “beauty contests”) and opportunities to socialize with partners and clients in a more relaxed setting. One very senior minority partner expressed concern, for example, that although minority associates increasingly say that “identity politics” is no longer necessary, or even counter-productive and tend to “hang out together” much less than they used to, the truth is they are oblivious to the fact that they are still being excluded from the kind of white-partner to white-associate, “father-son” kinds of relationships that are infinitely helpful in facilitating their white male peers’ rise within the firm. As s/he saw it, the firm fails to foster the kinds of subtle interactions between minority associates and white partners which result in a relationship where the senior person becomes the junior attorney’s advocate, and believed that minorities will continue to be denied the opportunity to become the top trial lawyers they could be, because that “final measure of trust by the partners is not there.”
  - Active participation in the California Minority Counsel Program. Although many minority attorneys in large firms feel the program has been of no assistance to

them in securing corporate work, others who have been aggressive in pursuing what the program has to offer have found the program very useful. The firms who got most out of the Program were those that actively let all attorneys in the firm know about the firm's participation (most firms do not inform even their minority attorneys about their membership in the Program, and do not publicize its roundtables, do not keep their on-line/paper *CMCP Directory* listings up to date, or otherwise exploit the Program's considerable potential). Some firms, however, make it a point to send minority partners and associates to CMCP events, especially at corporate offices, and publicize them via e-mail, voicemail, intra-office newsletters, etc.; many place a high level firm partner on the Steering Committee, which is dominated by corporate counsel in charge of giving out work; many actively court corporations known to be committed to the Program; a few set up a monitoring and response system for all corporations expressing an interest in knowing the firm's minority diversity numbers and programs; a few include a report on the Program and efforts made to use it, at firm executive committee meetings; many advertise their active involvement to minority candidates (summer and first year, as well as lateral), as well as on their webpage and in firm promotional brochures.

- Regular diversity training, on a periodic basis, experimenting as to type and duration. One firm, for example, hired a consult over the course of an 18-month period. Some firms use *A Firm Commitment*, BASF's retention video, with its instructional materials, led by people inside the firm; another featured a panel of senior minorities from other firms to address hot button issues at a full-firm retreat outside the City; one firm does training every other year, with an outside consultant performing interviews or a survey, producing a report to management, and engaging in follow-up meetings of the Diversity Committee that address issues that are raised. Although white partners and others were sometimes said to resent and resist such programs, and although their success is widely variable depending on the level of support from the firm's top leadership, the talent of the trainers and the degree to which the program is tailored to the particular workplace, nevertheless the need for and success of sensitivity training to bridge enormous gaps of knowledge and understanding was clear. As one minority put it, "Minorities always carry the burden of dispelling unconscious assumptions and perceptions, of putting people at ease. But at the same time, they struggle to maintain their ethnic identity, and consequently experience greater stress than their white counterparts and have to work harder to succeed. Diversity training in the firm has helped to ease that burden."
- Diversity audits performed by professional diversity experts who interview a wide range of people in firm, including all minorities, in an effort to determine where the firm stands and report back to management with suggested changes and programs to address problems. (Some managing partners have found this useful, others not.)
- Special efforts to monitor assignments of minority lawyers to growing practice areas, particular work assignments and powerful partners

- Special efforts to ensure bias free systems of performance evaluation and compensation (see, e.g., the excellent 1997 report on bias free performance evaluations, "Fair Measure: Toward Effective Attorney Evaluations" from the ABA Commission on Women in the Profession.)
- Purchase of tables at minority bar events and BASF minority events, coupled with firm's support for holidays and festivals particularly important to communities of color, including, of course, the Martin Luther King, Jr. holiday.
- In-depth exit interviews with minorities who leave, preferably conducted by other minorities, plus follow-up on their suggestions. Managing partners of sink-or-swim firms often discount the value of these interviews, feeling that minorities leave for the same reasons whites do (lifestyle, Silicon Valley start-ups, academia, and, occasionally "maybe just not as prepared for this kind of practice as whites"). But minorities at both kinds of firms tend to believe that if the right people ask the right questions they can get behind the platitudes and find out ways in which their firm can improve in retention of minorities. As one put it, "Why don't they ask why they weren't happy? This is demoralizing. If they were happy, they would not leave. They leave because they are not encouraged to stay."

#### C. Views of Law Firm Life, White and Minority—*Rashomon* in the Bar

The interviews again drew into focus the contrasting world views of whites and minorities working in the same environment. White lawyers who would blush at the suggestion that they truly believed America to be a "color-blind" society often clung to the notion that their own law firm constituted nearly a level playing field for whites and minorities. Few, if any, minority attorneys, even those who felt that they themselves had not experienced a great deal of bias, concurred in this assumption believing, to the contrary, that minorities were subjected to differential and inferior treatment, whether intentionally or unconsciously. The statements of these attorneys closely parallel the paradigm presented by distinguished diversity consultant Jacob Herring, which he has entitled *The Everyday Realities of Minority Professional Life in the Majority Workplace*.<sup>11</sup>

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<sup>11</sup> As set forth by Mr. Herring, these realities include:

—Minorities are presumed to be incompetent until proven otherwise and must overcome this presumption anew with each new supervisor, while the opposite is true for whites.

—Minorities are regarded as representatives of their entire race when they fail, but are considered the exception when they succeed.

—Minorities are accorded far less latitude for displays of aggressiveness than is considered acceptable for whites.

—Minorities who are perceived to be in authoritative positions often encounter resistance from white attorneys and staff.

While there was clear agreement, across racial and ethnic lines, about the overall failure of the large firms to retain their minority associates and partners, the reasons cited therefore tended to break out along racial lines

### **The Challenge of Retention: Isolation and Lack of Role Models**

Managing partners and minority attorneys both overwhelmingly agreed that the absence of a "critical mass" of minority attorneys in these firms resulted in the professional and personal isolation of the few minorities who were there. All agreed that the problem was worst for African Americans and for minority women in general. This view is reinforced by recent ABA statistics on the differential attrition rates for attorneys.

As in 1996, most white managers in 1999 initially laid the blame for the firms' retention failure on the same racially neutral external factors which tended to cause white lawyers to leave, *e.g.*, "better opportunities" in the law, especially the siren song of more lucrative, stock-option rich Silicon Valley firms and companies, as well as teaching or personal commitments which take lawyers elsewhere.

While not wholly discounting these factors, minority lawyers, particularly African Americans, also traced retention failures to the continuing "like seeks out/is more comfortable with like" phenomena, and were concerned at the broader impact on minorities of the passage of Proposition 209, the not unrelated dissolution of a number of minority owned law firms, the loss of racially committed general counsel of influence owing to the spate of recent corporate mergers, and the as yet unknown impact on minorities of the growing hegemony of the Silicon Valley practice. Some minority partners argue, for example, that the huge amount of money and work in the Valley, coupled with the relative lack of bureaucratic fossilization in Valley law firms, works to the advantage of talented minorities who want to and can do the work. Other minorities are concerned, however, that the absence of any tradition of giving back to the community, coupled with the young but highly conservative, bottom line, apolitical and almost all-white (male) leadership of the client base, and the view that IP attorneys must additionally possess the technical degrees less commonly found among African American and Latino attorneys, may well work to the disadvantage of minority lawyers.

Lastly, the frequently interjected question of "standards" and the related issues of competence and affirmative action clearly takes a special toll on minority attorneys, many of whom continue to feel there to be a pervasive linkage in the minds of many of

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—Younger minority professionals have few role models in their workplace and develop the perception that there exists a ceiling on promotions for minorities in their firm.

—Minority attorneys are often excluded from informal networks of communication within the firm and do not receive the specific feedback from supervisors necessary to succeed in the firm.

—As a result of many of the above experiences, minority attorneys tend to experience disproportionate isolation and loneliness within the organization.

their white colleagues, equating affirmative efforts to diversify with lowering standards of quality. Managing partners and minorities alike, however, in general seemed more optimistic than in prior years, with fewer feeling that the minorities who left "were unsuited to the practice."

Asian Americans, about whom these particular stereotypes are less commonly held by whites, were seen by other minorities and by managing partners to be making better headway than either African Americans or Latinos in the large firms, and the statistics bear that out.

### **Differential Assignment and Marketing Opportunities<sup>12</sup>**

While managing partners generally said that assignments, both as to particular attorneys or as to particular matters, were made on a color-blind basis, numerous minority respondents, across all racial lines, noted the tendency of senior white male attorneys to reach out and "bring along" more junior white male attorneys much like themselves.

Although all the large firms in the study are long-standing participants in the California Minority Counsel Program (CMCP), managing partners and minority attorneys alike viewed the program as primarily beneficial to minority-owned firms. Nevertheless, many felt that the CMCP's goals, even if honored only in the breach, were helpful in focusing the firms' attention on diversity as a client-driven consideration. No firm reported having stressed the possible advantages of the CMCP to their minority lawyers and/or to the firm as a whole.

In contrast to the 1996 study, many firms have begun to address alarming minority and across-the-board attrition rates by embarking on fairly extensive, albeit generally 'race neutral' mentoring programs, though few reported any formal mechanism to ensure against unconscious bias in assignment. "You can't be obvious in assignments," said one managing partner, "or it would be perceived as unfair and as stigmatizing." One managing partner, however, stated that the firm was always looking for opportunities to include minorities, and deliberately structured committees and work assignments to assure diversity. Notably, minority attorneys in this second firm were among the most positive in the entire study.

Despite the efforts of the CMCP and a few major clients — Wells Fargo in particular — most minority lawyers said they never received any training in marketing and were rarely included in "beauty contests" and other forms of marketing and contact with the firm's prospective or current clients. It remains to be seen what impact the new Bell South initiative among Fortune 500 General Counsel, or the recent formation of

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<sup>12</sup> For an excellent discussion of the institutional and other factors which adversely affect the employment prospects of African American and other minority lawyers, see David B. Wilkins and G. Mitu Gulati, "Why are There So Few Black Lawyers in Corporate Law Firms? An Institutional Analysis," 84 Cal. L. Rev. 493 (1996).

Lawyers for One America, will have on diversity among Bay Area employers, although BASF is a leader in both initiatives.<sup>13</sup>

## V. LARGE MID-SIZED FIRMS

### A. The Numbers

Between 1990 and 1998, while the San Francisco offices of the eight large mid-sized firms studied had reduced in size by 15.5%, from 664 attorneys to 561 (substantially attributable to a 27% drop in associates). The minority ranks in these firms had risen 43%, from 42 to 60 attorneys. Minorities thus represented 10.7% of all attorneys in these firms in 1998, as compared to 6.3% in 1990.<sup>14</sup> The number of minority partners (eight) in 1999, however, actually reduced minorities' share of partnership positions in these firms to 2.6% of all partners (as compared to 3.5% in 1995) and represented a more than 50% fall from 1995 numbers, from 17 to 8, failing even to approach the 1995 Goal of 5%, let alone the Year 2000 Goal of 10%. Not one of the eight firms met the partnership Goal; three have no minority partners at all. The group fared far better on the associate level, however, with minorities constituting 20.4% of all associates (up from 8.9% in 1990). While falling short of the Year 2000 associate goal of 25%,<sup>15</sup> half of the firms have surpassed the goal.

The large mid-sized firms are far more varied than the large firm group in size, age, history and culture, and consequently come at diversity issues from a wider range of perspectives. A number began as boutiques, but then grew substantially and became full-service commercial law firms, albeit while maintaining, to some degree, their core values and constituencies. They run the gamut from old-line "white shoe" firms (with more of the large firm "noblesse oblige" attitude to community service) to more recently formed, rapidly expanding partnerships, with less of a heritage of community service. As a group they are less likely to have branch offices, and if they do, the branch offices are still more likely to be within California. Salary levels have generally been substantially lower than those in the largest firms and these firms view their resources as more limited for purposes of implementing diversity initiatives. Lastly, many of these firms have not been as closely involved in the local bar's diversity efforts as their large firm counterparts. Some of their managing partners, therefore, tend to be less familiar with the Goals, and less knowledgeable about their own firm's diversity efforts or those of the larger firms.

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<sup>13</sup> See, e.g., statement of Bell South General Counsel Charles Morgan and the list of signatories appended as Exhibit C to this Report.

<sup>14</sup> Currently, African American, Asian Americans, Latinos and Native Americans constitute 2.5%, 6.1%, 1.8% and .36%, respectively of all attorneys in these eight firms. African Americans, Asian Americans, Latinos and Native Americans constitute, respectively, 1.3%, 1.0%, 0.0% and .33% of all partners, and 3.9%, 12.2%, 3.9% and 0.4% of all associates in these firms.

<sup>15</sup> While all partners in these firms rose only 1.7% between 1990 and 1995, minority partners rose 27.3%. Similarly, while the total of all associates dropped 36.4% over this period, minority associates rose 67.7%.

The overall attorney-flow statistics of this group increasingly have demonstrated the wildly fluctuating fortunes of mid-sized firms in the 1990's, producing an uneven and often unpredictable impact on their willingness/ability to retain a commitment to minority diversity. Many see themselves as operating in "survival mode", though even that mentality works out in a highly variable fashion, depending on the firm in question. Firms which historically relied on high-end insurance defense work, have appeared to be in substantial jeopardy, while those that have diversified their practice and/or expanded to other geographic venues have appeared to fare better. Some continue to thrive as blue ribbon, mid-sized general commercial law firms with a distinctly progressive San Francisco approach to issues including racial diversity.<sup>16</sup>

The increasing economic uncertainties facing this group include a world characterized by accelerating corporate concentration, and rapid growth, and consolidation and accelerating partnership draws in the largest firms. In addition, decreasing client loyalty, partnership defections by big ticket rainmakers, the pressure to compete for business and attorney talent in a soaring economy, and the lure of huge and seemingly instant profits of the Silicon Valley, has made for especially dramatic, sometimes demoralizing shifts in organization and culture in this group of firms.

One large, old-line San Francisco firm, for example, has made a dramatic shift in emphasis to the Silicon Valley, where two-thirds of its attorneys are now employed. Several others have increasingly moved from leadership by historically high-profile community-oriented leaders to less visible attorneys, often newer to the firm, who were chosen, at least in part, because of their greater focus on the bottom line.

#### B. Attitudes Toward Diversity

As a result of the above trends, attitudes toward the importance of diversity and the need to invest in its achievement vary greatly among and within the firms in this group. Reactions within the firms are more polarized, reminiscent of the schism in attitudes documented in the large firm group in earlier studies. Paradoxically, in this group of firms, diversity efforts were often viewed as a luxury in these booming economic times, and one which necessarily took a back seat to profitability, as the firms rushed to grab their piece of the rock.

In at least three firms, for example, the managing partners deplored the inability of the firm to make substantial inroads into their retention problems with respect to African Americans and Latinos while simultaneously justifying the need of their firms

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<sup>16</sup> One of the oldest and most venerable large mid-sized firms in the original 1990 group, was forced to close its doors this year, and is no longer included among the group studied in this *Report*. A second large and historically powerful firm in this group has suffered substantial defections over the past decade and appears to be in some jeopardy. On the other hand, several firms in this group appear healthier than ever, with many of them having opened branches elsewhere in the recent past. At least three well-respected smaller blue-ribbon firms have recently foundered and are no longer included in this *Report's* discussion of the small firm group.

to proceed in the new, bottom-line direction in which they were headed. Such attitudes have not sat well with many minorities in these firms, eliciting emotions ranging from anger to saddened resignation, and, ultimately, contributing to departures by large numbers of minorities from the firm, often followed by low morale among those who remain.

One firm chair was not unaware of the toll being taken, noting, for example, that s/he personally felt that new policies within the firm, while economically necessary, ignored the disparate impact on minorities of the firm's increasing focus on Silicon Valley-based bottom line issues. He particularly felt that African Americans, who were generally not living on the Peninsula and who often, in his/her view, lacked the technological background, were disproportionately disadvantaged by the firm's move away from its historically more "family-based" approach to law practice. The firm, however, felt the need to respond by phasing out its traditional one-on-one services to small start-ups, opting instead for the profits to be gained by an increasingly team-based approach to meet the complex and multi-dimensional contours of the dominant behemoths of the industry.

Minorities within and outside the firm, however, were blunt in viewing the institution of the new bottom line policy strategy (including, apparently, adoption of a model "recruitment check-list" for hiring the optimal associate) as condescending and exclusionary, especially with respect to minorities. One which had already triggered a mass exodus of an entire mid-'90's "class" of African American and Latino associates and was perceived by many to signify the firm's lack of commitment to minority advancement. This, in turn, has hurt the firm's ability to recruit and retain non-Asian minorities. One problem, said a minority lawyer, is that at this juncture, "No one knows what the current culture is or should be...Minorities need to know they are a part of the team, but instead feel increasingly isolated. It also appears as though the firm has given up on achieving true diversity. The minority departures made some in the firm believe that minorities are not as committed to the firm."

A relatively new managing partner similarly deplored his/her firm's general failure to retain African Americans and Latinos, but professed to have little understanding of the reasons therefor, outside of the fierce competition for those who met the firm's high criteria ("the worst thing would be to bring them in and have them fail"). "The firm is very open with respect to women, minorities and gays and has no problems with diversity," s/he said, although s/he preferred relying on a general sense of things rather than focusing on numerical goals, which s/he deemed to be unimportant. "It doesn't matter to the institution if its 37 or it's 44," s/he commented, further noting that the firm did not "discriminate in favor of minorities" in areas like marketing or assignment of matters. This managing partner nevertheless expressed the hope that things would get better, if the firm could be more successful in hiring from the limited, highly sought-after pool of African Americans and Latinos who met the firm's high standards.

By contrast, several minority lawyers in the firm had clearly thought through their ideas about why the firm had such an historically poor record, and one which was seen as likely to worsen. Observing (as the managing partner had not) that a large minority group had recently left the firm and had not been replaced, one lawyer said,



“Because of its liberal tradition, the firm has a hard time viewing this issue objectively and, particularly under the new regime, persists in the notion that all in the firm should be treated the same, not realizing that this actually translates to ‘do what white males do’ and ignores the existence, potential value and differential impact, of different cultures, styles, and expectations.” “This firm does not value diversity and is often insensitive to minority concerns, said a second. “The new business plan, for example, has no mention whatsoever of diversity. [But] the fact is, minorities are not treated the same. Minorities are not invited to some social events that white men are routinely taken to; there is zero effort to involve minorities in marketing, the mentoring program is essentially nonexistent and diversity training has not been recently pursued....Meanwhile, partners, perhaps unconsciously, talk in terms of merit and level playing field, but in fact treat particularly African Americans differently, demanding transcripts, for example, of Black Ivy League graduates when they never would do that for whites.”

Another minority attorney noted the pejorative, perhaps unconscious, but no less demeaning, statements that partners continue to make. One partner, for example, thanked him/her for something in Spanish, then went on to say, “I have this Central American maid and I’m trying to practice my Spanish,” while another told a minority colleague with whom he/she was working on a case alleging a possibly unethical action by a Chinese party to the action, that “[t]hat’s just the Chinese way of doing things.” A third partner, in discussing with a minority attorney an opposing party’s likely response in a matter speculated that “As far as s/he’s concerned, it’s just another spic case, or a case of ‘my nigger is happier than your nigger.’”

The problem in a nutshell, as one lawyer put it, is that far from instituting programs “in favor” of minorities, the firm actually excludes them from firm leadership and even from some social events to which only white males are invited. “This firm doesn’t measure success in terms of diversity, because it’s not very important to the firm,” said one minority. “Although the firm will buy tables for other organizations, and, laudably, invest to a degree in organizations like MALDEF and the CMCP, or in BASF’s scholarship program, it has no key players on its own Minority Retention Committee (whose functions are not clear) and does not involve minorities in firm management. We have no internal goals; the Bar’s Goals are not made known within the firm and the leadership of the firm doesn’t have any interest in how many minorities we have. Because we have no real systems in place, things will gradually deteriorate.”

In conclusion, by contrast to the managing partner, the minorities in the firm see the problem as worsening. “I see it getting worse because there is no recognition of diversity as a goal. The business plan focuses only on financial objectives, and, as such, takes away from the energy and concerted effort needed to recruit and retain a diverse attorney workplace.”

A third firm in the large mid-sized firm group presented its own variant of a mixed message. On the one hand, the firm had sought affirmatively to bolster its minority ranks by bringing in a well-known African American as a lateral partner. On the other hand, the firm’s one senior Latino associate recently left the firm, whose remaining

minority numbers were so thin that other recently-arrived minority associates felt demoralized and powerless. As one associate put it, "The firm is more interested in money than diversity. It tolerates but does not value diversity, and exercises little initiative to achieve it. Recruitment, for example, takes place only at traditional schools, even when there's no diversity to be found there anymore, while partners are 'shuffling their feet' rather than taking the initiative, and wondering why the numbers look so bad." Another associate was aware of such programs as the First Year Minority Summer Clerkship Program and wondered why BASF was not providing greater policy leadership for firms that "pay lip service to the Goals, but do not actually make diversity a priority." As another associate put it, "It's hard for minority laterals to affect the inner workings of a firm like this, which needs more indigenous partners who can help achieve real change. We need to look at the example of how women have begun to have a meaningful voice in law firm leadership."

By contrast, the majority and minority attorneys in a fourth firm in this group felt that the firm had experienced an immediate, clearly discernible, firm-wide benefit with the addition of an African American as a lateral partner. This partner has been extremely active as an informal mentor for minorities and other associates, helping to create a senior-to-junior minority attorney mentor system, assisting in associates' development of a personal and business development plan, and making it a point to him/herself interview minority candidates. While the minorities at this firm feel they have a long way to go, and agree with those in other firms that their firm doesn't really know how to solve hiring/retention/critical mass problems, they were pleased with some of the steps that had been taken, which included: active participation in and funding of CMCP programs and receptions; regular participation in minority career fairs; housing and support of a minority publication; implementation and support of firm-wide meetings and conference calls of the firm's national minority attorneys' conference group; implementation of a policy of looking beyond traditional credentials to other indicia of the ability to be a great lawyer; assignment to associates of "work product mentors;" promotion of minorities to positions of leadership in the firm; and seeking guidance from programs which have proven successful for women in the firm and elsewhere.

The managing partner of this firm summed it up by stating his/her own commitment to diversity as a bottom line economic issue, whose success is dependent upon client pressure from the outside, commitment (from the top down) on the inside; the presence of visible minority role models in positions of leadership in the firm and, ultimately, a shared perception that a critical mass of diverse attorneys serves as a vital source of the talent necessary to maximize the firm's chances for success.

The challenge of diversity becomes even more problematical in those of the mid-sized firms who see themselves as endangered species fighting to hold the line against an increasingly competitive market. "This is not the era of the mid-size firm" said one managing partner, who seemed somewhat surprised, albeit pleased that the firm still had some minority partners dating back, presumably, to the days when his firm had been more active on racial diversity, including its active involvement in the CMCP. "[But] I wouldn't sign the Goals today," he said, commenting that the firm

would not want to "dip down" to get minority representation. He (and at least one other managing partner of a similarly situated firm) believed that the firm should, and did work at marketing its women lawyers, but they did not feel the same pressure, or pay-off, vis-a-vis minority attorneys. They expressed a hope that eventually outside demands would grow when minorities attained more corporate power.

This attitude had not gone unremarked by minorities at the firm. "The firm prides itself on its lack of bureaucracy, but with no systems in place to hire and retain African Americans and Latinos, the bottom line question is, does diversity really matter to them?" said one minority associate. This lawyer went on to note that, contrary to its own belief system, the firm actually goes lower for whites, both as to class rank and ranking of school, than it does for minorities.

Although this firm's managing partner was fearful that specific minority-targeted efforts might appear to its minority lawyers to be empty gestures, those attorneys were pleased with the firm's participation in the First Year Minority Clerkship Program, as well as with its contributions to minority bars, their placement, in at least one case, of a minority attorney in a clear growth area of the firm and the firm's generally accepting culture. Although one minority associate felt the firm should work harder to dispel largely unconscious assumptions of incompetence (*e.g.*, minorities can't pass the bar exam) s/he ultimately was philosophical about what really mattered at the firm—who likes you and office politics—and felt she had an inside line on both.

In a second "holding the line" firm, the managing partner felt strongly that diversity made the firm work more effectively and at a higher level. S/he was regretful that the firm had had to dispense with a formal recruitment program since the recession, when retention had been number one in the firm's master strategic plan. Nevertheless, the firm had been able to recruit informally, through, *e.g.*, the efforts of one partner who taught adjunct at Boalt Hall; half of their recent hires had been minorities; and the firm had been able to retain both women and a few minorities as partners, factors which were particularly hopeful portents to female minority associates in the firm.

In fact, despite the obvious economic uncertainties facing the firm, many of its minority attorneys were far more upbeat than their colleagues at arguably more stable firms, agreeing with the managing partner that the firm was doing the best it could, and pleased to be working in a youthful culture that was very tolerant of differences. One in particular remarked on how important it was for BASF and the ABA to push firms on diversity issue, was pleased that the firm had signed onto the Goals and Timetables, and was gratified that the firm had recently followed up on a woman-focused marketing plan suggested by the women in the firm. It was feared, however, that the firm's experience with a low bar pass rate for non-Asian minorities, combined with the slowdown in growth, would produce an Asian-dominated, rather than more balanced-minority, critical mass.

At the other end of the spectrum were firms which had very actively pursued, and were continuing to pioneer, a variety of programs to recruit and retain minority attorneys, including lateral hiring, diversity committees, diversity training, mentoring programs, centralized case assignment, an associate rotation system, personal efforts

by the managing partner and other senior white attorneys to check in with and work with minority attorneys, and some combination of the other programs discussed in this *Report*. These firms were more likely to have one or more strong minority partners who had aggressively sought to attract others. The minorities in this group of firms still fought the battles of isolation and struggle to maintain identity in an overwhelmingly white workplace, but they generally felt more positive about their work environment because of their firm's efforts.

The Goals and Timetables had proven to be a useful starting point in both kinds of firms. "The Goals are good because they force the firm as a competitive enterprise to meet the standards it has committed to," said one attorney. "We were initially passive but now take a more aggressive position on diversity." However, as Harvard Professor David B. Wilkins has written, "The solution is...to extend [voluntary affirmative action in hiring] to decisions regarding the choice of associates for projects and other internal firm decisions. Designing affirmative measures that will ensure that [minority] associates have meaningful access to the training track is a complex task. Goals and timetables for promotion as well as hiring are a good start, but standing alone, they are unlikely to change the way that partners assign work or decide whom to mentor. If firms are truly serious about improving the prospects of their black lawyers, they must implement policies that change the incentives of partners."

## VI. SMALL MID-SIZED AND SMALLER FIRMS

### A. The Numbers

Because the numbers are so small in several of the nine firms studied longitudinally, very slight population changes exerted a dramatic impact on percentage calculations. Individual experiences among the different firms also vary widely.

In contrast to the larger firms in the Study, the nine-firm small firm group has steadily grown between 1990 and 1998, from 212 to 274 attorneys, or 29.2.0%. The minority population in these firms more than doubled over this period, increasing from 14 to 32 attorneys, although the growth patterns for each minority group varied substantially. Thus, Asian Americans increased steadily, from 8 to 18 over the 9-year period, while African Americans largely plateaued by 1994 at 10, actually decreasing by one by the end of 1999. Latino associates, already minimal in number, decreased over the decade, from 5 to 3, and these firms employed only 2 Latino partners by the end of this period. As a group, by 1999, the small firms' minority partnership percentage of 3.7% failed to meet even the earlier 1995 partnership goal, and fell 6.3% short of the Year 2000's 10% minority partner goal. They fared better with respect to minority associates, ending 1999 with 18.3%, although they remain 6.7% short of the 25% Year 2000 minority associate goal. Six of the firms have no minority partners, while the

remaining three have three, two and one, respectively. Although the largest of the firms now has 8 minority associates, two have none, and two firms have no minority lawyers at all.<sup>17</sup>

Data collected in 1998 from all the small/small-mid-sized firms which had signed the Goals yielded statistics from 24 firms, 21 of whom had two or fewer minority associates, and, at the other end of the spectrum, one of which had eight minority associates. Of these 24 firms, 17 had no minority partners, seven had one, and, at the high end, four firms had two or three. This larger group exhibited higher minority percentages than the smaller group studied longitudinally, although it has not yet met either Year 2000 goal, with 8.9% minority partners and 21.6% minority associates.

#### B. Attitudes Toward Diversity

Perhaps because the leadership and membership of the small firm group had experienced less turnover over time, their adoption of the BASF Goals generally appeared to have had more of a conscious impact on them than on their colleagues in the larger firm groups. "Participating in this interview and in the Goals is a good reminder that we could make a better effort to find minority attorneys through a more active approach to recruitment of minorities," said one managing partner of a blue ribbon boutique firm which generally recruits informally and has historically employed very few minorities. "Our firm is committed to the Goals and they are known throughout the firm," commented another. Conversely, one minority associate in a third firm saw the firm's refusal to sign onto the Goals as personally alienating and "makes it almost impossible to recruit attorneys or students of color."

As with the larger firms, the small firm group generally tended to fall into two discernibly different camps with respect to diversity—those whose leadership actively pursued efforts to recruit and retain minorities and those that adhered to a relatively passive approach to diversity. The minority attorneys who were interviewed tended, in turn, to express a degree of commitment to the firm roughly commensurate with their perception of the firm's commitment to diversity.

Although Asian Americans tended to dominate the minority ranks of the small firm group, those firms who had experienced some success in hiring and/or retaining Latino and African American attorneys were firms which had engaged in a much wider variety of efforts to diversify their ranks, including, *e.g.*, actively seeking to persuade minority partners and/or associates at other firms to join the firm as laterals; participation in the CMCP; participation in the First Year Minority Summer Clerkship Program; active outreach to minority law student groups at schools where the firm recruited and special requests to law schools to distribute information about the firm to minority organizations

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<sup>17</sup> In 1998, African American, Asian American, Latino and Native American associates comprised, respectively 5.6%, 10.6%, 2.1% and 0% of the 142 total associates in the nine firms. The 1998 minority partnership ranks are composed of one African American, three Asian Americans, two Latinos and no Native American, representing, respectively, 0.6%, 1.8%, 1.2% and 0% of the 164 partners in the nine firms.

and at minority forums and other events; conducting interviewing workshops for minority law student organizations; and conscious screening for minorities by the firm's hiring committee at every step of the process, using steps including active recruitment of minorities as second year summer law clerks, aggressive efforts to convince minorities to return to the firm for call-backs and subsequent outreach to other minority law students via successful summer hires.

Irrespective of their level of commitment to diversity, the leaders of several in the small firm group, including a firm that was generally indifferent about racial diversity, acknowledged increasing client pressure to provide a racially diverse team on their work, or otherwise felt that the nature of their client base (*e.g.*, labor unions, public agencies, minority business people or political figures) made diversity especially desirable and more of a necessity than in the past.

The small firm group's self-assessments regarding probable future success on diversity diverged along predictable lines. The managing partner and a minority associate at one of the "passive" firms, for example, both felt that despite the firm's stellar and progressive reputation, its progress vis-a-vis non-Asian minorities would be very slow, concluding, nevertheless, with the hope that "with luck, we will eventually get people who reflect the community." A minority attorney at a firm with absolutely no visible commitment to diversity was considerably less sanguine about the likelihood that talented minorities would ever consider joining the firm, despite the high quality of its clients and outstanding opportunities for acquisition of lawyering skills. "Some minorities may be willing to overlook the firm's lack of dedication to diversifying the attorneys it recruits, but I am not optimistic." By contrast, both the managing partner and the minority lawyers at one of the "activist" firms were upbeat about the future. "I'm proud of our efforts," a minority associate said. "This is a very good place to work. Even though we only hire a few people a year, our atmosphere, philosophy and commitment to diversity programs will make for across-the-board improvement." The managing partner added, "Given the traditions of this firm, if we can get them, we can keep them."

## VII. IMPACT OF THE SILICON VALLEY

The popular, legal and business press have increasingly engaged in analyses seeking to determine the true nature of the Silicon Valley, often veering between "The Valley as Angel" and "The Valley as Devil" paradigms.<sup>18</sup>

The "Angel" adherents focus on: (a) exploding numbers of start-up corporations and exponential growth of older high-tech firms, resulting in the rapid growth, in number and size, of in-house law departments, new firms, branch offices and "indigenous"

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<sup>18</sup> See, *e.g.*, Joel Dreyfus, "Valley of Denial", *Fortune Magazine*, 1/19/99, p. 60; "Cost of Living: Attorneys in Silicon Valley pay a price for practicing cutting-edge law," *California Law Business*, 11/15/99, p. 10; and recent "Digital Divide" series of articles in the *San Francisco Chronicle*.

firms, and creating an enormous market for legal services, both in-house and as outside counsel (implications for minority attorneys: enormous opportunities for hiring and advancement in companies and firms); (b) generally unlimited opportunity for anyone willing and able to do the work (implication for minority lawyers: race is irrelevant; no time for racial discrimination and other irrational exclusions of talented people); (c) a youthful culture of informality and rejection of hierarchy and other tired conventions that stand in the way of the free flow of ideas and talent (implications for minorities: fewer arbitrary and exclusionary barriers to advancement in Silicon Valley companies and law firms for minorities, most of whom are relatively young); (d) creation of instant millionaires, including in-house and outside lawyers who are recipients of stock options, and other incentives in addition to salary (implications for minority lawyers: enormous economic opportunity).

Valley as Devil characterizations, on the other hand, include: (a) exclusive focus on quick profits, big money, and the bottom line, with little interest in or tradition of philanthropy or giving back to the community<sup>19</sup> (implications for minority lawyers: refusal of many Silicon Valley firms and corporations to contribute to, or participate in, organizations like the CMCP, minority bars or minority-oriented activities; disinterest in addressing the growing gap between rich and poor in their community; insensitivity to, and/or denial of existence of minority concerns or issues within law firms and corporations); (b) lack of racial diversity in Valley corporations and the surrounding communities (implications for minority lawyers: personal and cultural isolation for them and their families; insensitivity, and lack of responsiveness by surrounding community, to issues affecting racial minorities; tortuous commute from Oakland and other non-valley areas seen as preferable to living in the Valley); (c) Valley's self-righteous self image as a color-blind meritocracy, where, as Joel Dreyfus put it, people "are too busy to care about diversity," masking the reality that the high tech industry is overwhelmingly white, with a small Asian infusion, and that "blacks and Hispanics in the Valley are as rare as orchids in a snow storm" (implications for minority lawyers: "Silicon Valley is no happy valley for most minorities"); (d) more work than can be done; 80-hr. workweeks and other life-style issues (implications for minority attorneys: intensification of sense of isolation for them and their families; inability to participate in activities allowing them to give back to the minority community or to otherwise help to equalize opportunity in, and access to, the justice system for racial minorities);

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<sup>19</sup> *California Lawyer's* 12/99 issue, at p.17 contained a squib, for example, entitled, "Let the Poor Cash in Their Stock Options," which noted, "Though their practices are flourishing, Silicon Valley's lawyers have been called the cheapest in the nation. A study conducted by a bar association consultant found that on average they give less than ten dollars a year to legal aid programs." (San Francisco firms, by contrast, are consistently rated the highest contributors to legal services in the nation, in both time and money.) The President of the Santa Clara County Bar Association, which covers the heart of the Valley, made similar note of the "appalling" fact that County lawyers "provide about the LOWEST support" to legal services of any comparable bar in the country, stating, "[I]t's about time the Association that purports to represent this learned and privileged profession in the most affluent part of the country leads the way in a long overdue effort to fulfill one of the basic responsibilities that is required to be regarded as a 'professional.'"

(d) prohibitive expense of housing in the Valley (implications for minority lawyers: particularly for younger attorneys with families, reinforces decision to live elsewhere, necessitating prohibitively long commutes and decreasing informal socializing opportunities).

It remains to be seen how the culture and economics of Silicon Valley will affect race and diversity in the future. A brief examination of the comparative racial make-up of current Silicon Valley law offices with their San Francisco counterparts nevertheless yields interesting results. In general, the Silicon Valley offices of large San Francisco firms were somewhat more diverse than their main San Francisco offices, with a few being quite substantially more diverse. A broader cross-section of 12 Silicon Valley firms, however, yielded diversity figures that were more or less on a par with those of the San Francisco large firm group. Asian Americans, while increasingly represented in both groups, are present in significantly higher numbers than other minority groups in the Silicon Valley samples.

It should also be noted that although the Silicon Valley offices of the largest San Francisco firms are for the most part considerably smaller than the San Francisco mother ship, they are growing rapidly. One large mid-sized firm, in fact, has completely transferred the focus of the firm to the Valley, where its office is now twice the size of the San Francisco office. On the other hand, a countervailing trend appears to be taking place, whereby Silicon Valley firms are opening up San Francisco offices to attract young people who refuse to work in the Valley, and some out-of-state firms are choosing San Francisco as their California *pied a terre* for the same reason.

Minorities in the Silicon Valley branches of the 6 San Francisco large firms comprised 20.8% of their combined lawyer population of 366 attorneys, as compared to 16.6% of their combined San Francisco office population of 976 attorneys. Minorities make up 10% of the combined Silicon Valley partners in these firms (v. 6.2 % in their San Francisco offices), and 26% of their Silicon Valley associates, (v. 25% in their San Francisco offices.) Given their relatively recent vintage the Silicon Valley minority partnership numbers of these San Francisco-based firms presumably owe largely to the transfer of minority partners from their San Francisco offices, and the acquisition of minority laterals from other firms, rather than from advancement up through the ranks.

Overall, the minority representation in the larger, combined sampling of 12 leading Silicon Valley law offices, including the flagship indigenous firm of Wilson, Sonsini (at 513 attorneys), newer "Valley" firms like the Venture Law Group, and branch offices of various large firms from around the state and nation, was 18.9%, with minorities comprising 6.7% of all partners and 23.9% of all associates in these offices.

As to intra-racial breakdowns in the 12-firm Valley sample, African Americans, Asian Americans, Latinos and Native Americans represented 3.4%, 12.7%, 2.3% and .4%, respectively of all attorneys in this sample in 1998. Following similar trends, Asian Americans comprise 16.6% of associates and 3.2% of partners in these firms, numbers that are sure to rise. African Americans comprise 3.4% of minority associates



and 1.8% of minority partners while Latinos stand at 2.3% of minority associates and 1.1% of partners. Native Americans comprise only .4% of minority associates and .5% of minority partners.

## VIII. CORPORATE LAW DEPARTMENTS

Perhaps no other group studied was more illustrative of the radically changing legal environment of the late '90's than the corporate law department group, which consisted of seven San Francisco-based corporations and one Silicon Valley company.

First, as a result of corporate mergers, takeovers and restructuring, all eight of the corporate signatories to the Goals who were examined in our earlier studies had changed general counsel since the 1995 *Report*, and only four of the eight new general counsel could be reached for interviews. Second, of the four corporations we were able to study in 1999, all had undergone dramatic changes in organization and personnel including the departure of one department's long-time, highly visible general counsel. Of the four corporations at which interviews were not possible to arrange, one had been acquired by a foreign corporation and two others had been acquired by out-of-state corporations headquartered, together with the bulk of their legal departments, half-way across the country.

While the ultimate impact of these changes on minority attorneys in San Francisco will not become clear for some time, some relatively immediate challenges are apparent. First, as a general matter, the relative predictability and stability of in-house employment in old-line San Francisco based corporations has been replaced by great uncertainty, as these corporations have increasingly been the targets of corporate take-overs, often from out-of-state, bringing massive reorganizations and/or wholesale layoffs in their wake. Since many minorities are relatively recent arrivals in these office, they may be more vulnerable to job loss or demotion than white attorneys.

Second, to the extent that bias, both unconscious and conscious, continues to be a problem in the profession, incumbent minorities in "taken over" law departments may have greater difficulty in gaining the confidence of, and advancing under, new departmental general counsel and managers. To the extent that new leadership may hail from areas with fewer racial minorities, or may otherwise have less experience in working with minority lawyers or in participating in efforts/programs to increase diversity, the careers of minority attorneys may suffer.

For example, three of the eight former general counsel were among a small group of exceptionally prominent general counsel nationally acclaimed for their longtime and aggressive commitment to racial diversity—in their own departments, in their retention of outside counsel and in their financial and political support of efforts by the organized bar to diversify the profession. With the support of their CEO's and utilizing their considerable stature within the larger corporate counsel and law firm community, these corporate counsel had made San Francisco a national leader in efforts to diversify the profession. Irrespective of the commitment level of those who have taken their

place, the departure of this group has generated uncertainty among the minority lawyers in their own departments and in the larger community, and has created something of a vacuum in local leadership of the corporate effort to equalize opportunities for minority attorneys. It has also meant that new relationships of trust and commitment must be developed with a new, and, in some cases, geographically distant, group of corporate leaders who are largely unknown quantities with respect to the highly charged issue of racial diversity.

Lastly, the few minority general counsel and senior counsel who lead corporate law departments have also been affected by these changes. It seems clear that such factors may well have a "trickle down" negative impact on overall minority hiring and retention. Two of the original eight general counsel in our earlier studies were minorities (one a minority woman); both are now gone.<sup>20</sup> Their successors are both white men, one of whom is the general counsel of the acquiring corporation, domiciled 1500 miles away. Both corporations have subsequently left the CMCP.

#### A. The Numbers/Attitudes Toward Diversity

Given the complexities of the merger, acquisition and restructuring situation described above, it is virtually impossible to perform a meaningful statistical analysis of the corporate signatories to the Goals. The following paragraphs, therefore, are more in the nature of case studies emblematic of a state of flux in the corporate arena.

At one end of the spectrum, interviews at one "merged" corporate law department revealed that despite considerable uneasiness on the part of minorities from the "old" department, the new general counsel (who had recently been brought in by the acquiring, out-of-state corporation) is genuinely committed to retaining and increasing the department's outstanding levels of diversity.

Prior to the recent merger, just under a third of this law department's attorneys were minority, owing largely to a decade of unrelenting insistence by its longtime general counsel on attaining true racial diversity. As one minority lawyer in the department put it, "We have the kind of critical mass of minorities in the department that makes it so that diversity is not even noteworthy, it's just a given and the inclusive atmosphere makes for high morale." Although the acquiring corporation's numbers are much lower (its original home base is minimally diverse), the general counsel was emphatic in his support for continuing insistence on diversity. "Managers need to understand and address barriers to advancement, and need to be rewarded for creating a workplace reflective of our demographics, not because of altruism but because it's necessary to the success of the business." S/he stated his/her intention to be very active in and financially generous to the CMCP, and his/her personal commitment to ensure diversity both in internal hiring and in retention of outside counsel.

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<sup>20</sup> We also note with concern that at least six prominent female general counsel of major Bay Area corporations have recently been displaced as a result of corporate acquisitions by out-of-state or foreign corporations; all have been replaced by the white male general counsel of the acquiring corporation.

By contrast, a relatively new general counsel at a Silicon Valley corporation seemed to epitomize the "[we're] too busy to care about diversity" attitude noted by Joel Dreyfus in his "Valley of Denial" article. This general counsel felt it was not necessary to focus on diversity, an attitude apparently shared by the minorities in the department who were interviewed. "We don't maintain race statistics and don't make specific efforts to diversify, but we're diverse. We're a hot company, with high job satisfaction and low attrition. We need people with a high level of technological skills, and they self select," the general counsel said. "Since we're an international company, we hire locals overseas and diversity is built in, a little like the U.N." In one extremely important way, however, the department does overtly recognize and actively push for diversity, through its inclusion of a paragraph in each of its outside counsel contracts which states:

"[X] Corporation...has adopted a diversity policy in support of the hiring and retention of minority and women attorneys by outside law firms... We understand your firm is...an equal employment opportunity employer and that your firm will continue to actively recruit and promote women and minorities. We ask that you consider for assignment to the case a woman or minority member of your firm with appropriate experience in the issues this matter concerns."

A recent minority hire in this corporation, who said s/he doesn't really think of him/herself as minority, echoed the general counsel's sentiments. "It's all merit here; there's no color barrier and no need to classify people as to race. Diversity is not a priority; we hire the most capable person. If it's a minority, so be it. We have a good cultural mix. The Bay Area is the new melting pot, with lots of opportunities. There will be a gradual infusion of diversity in the workplace at all high tech companies." Noting that all their hiring is done through headhunters, a senior minority attorney concurred, noting that "We don't think along racial lines. We focus on neutral factors, on merit; we have a very diverse workforce along all lines, with lots of women managers, and race is simply not an issue." It should be noted, however, that although this department employs several Asian-American attorneys, its approximately 40-attorney Valley office includes only one African American and one Latino attorney.

Both the general counsel and minority staff attorneys at a third corporation, whose minority percentage stands at about 14%, felt emphatically to the contrary. "You must have a conscious, visible program and commitment to diversity by senior management, including the Board of Directors of the company," the general counsel said. S/he was particularly concerned at the inability of the department to retain African Americans. The corporation has been extremely supportive of the CMCP, both financially and in leadership positions on its Steering Committee. Because the San Francisco office is in a hiring freeze, the general counsel felt his/her main impact can and will be in insisting on diversity in their hiring elsewhere, and in ensuring that the outside firms the corporation retains on its work are diverse and that they assign minority lawyers to company matters.

Interviewees at a fourth corporation were similarly convinced that diversity was a critical concern, and had had considerable success in achieving it at senior levels,

despite the parent corporation's seeming lack of interest or support. The senior minority attorneys interviewed there felt their success owed to a lack of hierarchical structure within the department.

## IX. GOVERNMENTAL LAW DEPARTMENTS

### A. The Numbers

Although none of the governmental law offices in San Francisco had originally been asked to sign the Goals and Timetables, the Committee opted to gather statistics from a sampling of such offices in 1995 and 1999 in an effort to provide a comparison to employment patterns in the private bar.

As in 1995, the combined minority percentages of the offices of the San Francisco City Attorney, District Attorney and Public Defender were very substantially higher than in any other employer group in 1999, and more than double that of the large firm group in particular. Minority attorneys in the City's public offices constitute an overall 37.66% of the total of 340 attorneys, up from 29.8% of the 336 attorneys in these three offices in 1995. African Americans, Asian Americans, Latinos and Native Americans constituted, respectively, 12.25%, 15.6%, 9.8% and 0% of all attorneys in the combined offices, as compared to 8.3%, 12.8%, 8% and .6% of all attorneys in 1995. Minorities had risen slightly in the U.S. Attorney's office, from 16.4% in 1995 to 18.5% in 1999.

### B. Attitudes Toward Diversity

Both the high statistical representation of minorities and the subjective views of those working in the public offices stand in sharp contrast to the tenor of interviews with their private bar counterparts. All interviewees within these offices emphasized the high degree of diversity in their workplace, and the need to demonstrate to the client constituency and the public that the office reflected community demographics. Interviewees at the U. S. Attorney's office were particularly pleased with the new administration's clear commitment to achieving greater diversity and to opening up a hitherto somewhat closed hiring process, by implementation of a more formal and structured committee hiring system, replacing what was perceived to have been an almost completely politicized system steered by influential partners in large firms.

The office chiefs and supervisors generally considered themselves to be, and were observed by the minorities in their offices as, aggressively committed to diversity over the long haul, and their statistics bore it out. "In this business, diversity is a must," said one supervisor. "There needs to be a direct correlation between the diversity of the clients and the attorneys." One office head was particularly critical of the private bar's emphasis on grades and prestigious law school credentials in the hiring process, noting that these criteria are not necessarily good indicators of the ability to practice law, and, as such, are artificial standards that eliminate otherwise talented attorneys. "Those who say there is a dearth of qualified minority candidates are unconsciously trying to exclude minorities," s/he maintained.

The minorities in these office, in turn, noted that the environment of public offices was much more conducive to success and job satisfaction for minorities, citing such factors as the welcoming atmosphere, the clear commitment to diversity from the top down, the diversity of the work teams, the fair distribution of high profile cases, the public utility of the work being done and ability to give back to the community, the efforts of their bosses to put them out in front and the office's participation in programs like the BASF Law Academy. Other favorable factors included the absence of the pressure to market, the ability to work one's own cases, the absence of "high profile partner" hegemony, the good family leave policy, the fact that one's livelihood is not dependent on a win/loss record, but on ability to do the work, the fact that the staff in general is more diverse, and, generally, the fact that minorities don't feel segregated, don't feel they have to be supermen/women in order to succeed, don't feel ghettoized, and don't feel the need to get together to commiserate about mutually felt exclusion from the mainstream. One office also had the added attraction of a child care center.

All stressed the importance of word-of-mouth recruitment by the minority attorneys in the office. One minority noted that the office chief's conduct of "informational interviews" on an ongoing basis for future openings ensured a strongly diverse applicant pool.

Among the problems discussed by this group were: (1) because of low turnover in the higher level positions, and, in some offices, a policy of basing salary solely on tenure in the particular law department, minorities tended to be locked into a comparatively lower salary structure than longtime white employees, even if their work was of the same quality and level of difficulty as that of an attorney with more tenure in the department; (2) because of low turnover, promotional opportunities were less plentiful than in private practice; and (3) minorities are lured away by the financial opportunities available in private practice.

ATTACHMENT A

REMARKS BY THE PRESIDENT  
TO THE LEGAL PROFESSION ON  
A NEW "CALL TO ACTION"

The East Room

July 20, 1999

3:00 P.M. EDT

**THE PRESIDENT:** Thank you. Let me say to all of you, I can't do any better than that. (Laughter.) It was terrific. I wish every newspaper in America would reprint those remarks. Thank you, sir. Thank you very much. (Applause.)

I want to thank you all for coming. What a wonderful group we have here. First, I thank Attorney General Reno and Deputy Attorney General Holder for the wonderful job they do in so many ways. Associate Attorney General Fisher is here with them, and Bill Lann Lee of the Civil Rights Division. One big civil rights issue is getting him confirmed, I might add. (Applause.) Thank you.

I thank Secretary Slater and Secretary Daley for joining us, and Ben Johnson, who runs our One America Initiative; and Chris Edley, who used to be part of our administration — still is — I just don't have to pay him anymore. (Laughter.)

Thank you Senator Leahy, and Congressman Becerra for coming. I think there are at least two people in this room, Gary Shestack and Bill Taylor, who were here in 1963 with President Kennedy. I thank them for coming. Thank you, Mayor Archer, for coming -- former Secretary of State Warren Christopher, former Attorney General Benjamin Civiletti.

There are so many people here — I just have to mention one person because it's my most intimate, personal acquaintance with affirmative action — the President of the American Bar Association Phil Anderson gave me a job in 1981, when I was the youngest former governor in American history — (laughter) — with dim future prospects. So I thank him for being here, as well. (Applause.) Thank you.

And I'd like to say a special word of appreciation to the man who directs our national service program, Senator Harris Wofford, who was very intimately involved with President Kennedy's civil rights initiatives. Thank you for being here, sir, today. (Applause.)

As has been pointed out, President Kennedy called more than 200 of America's leading lawyers to this room 36 years ago, the summer of 1963 — when America was awakening to the fact that in our laws and in our hearts, we were still far short of our ideals.

It is difficult today to imagine an America without civil rights. But when I came here 36 years ago in the summer of 1963, as a delegate to American Legion Boys Nation, there were only four African American boys there, and the hottest issue was what we were going to do about civil rights.

It didn't seem so inevitable back then. Across my native South, there were sheriffs, mayors, governors defying the courts; police dogs attacking peaceful demonstrators; fire hoses toppling children; protestors led away in handcuffs; and too little refuge in the hallowed sanctuary of the law.

It was in this atmosphere that the President turned to America's lawyers and enlisted them in the fight for equal justice. With Vice President Johnson and Attorney General Robert Kennedy at his side, the President asked the lawyers there to remember their duty to uphold justice, especially in places where the principles of justice had been defied.

The lawyers answered that call, creating a new Lawyers Committee for Civil Rights Under Law, and a new tradition of pro bono service in the legal profession. I asked you here today because we need your help as much as ever, in our most enduring challenge as a nation, the challenge of creating one America. We have worked hard on that here. In the audience today I see Dr. John Hope Franklin, Governor William Winter, Judy Winston. I think Angela Oh and Dr. Susan Johnson are here, but I haven't seen them yet — people who worked on this for me to shine a special spotlight on the issues. And we have now institutionalized that effort insofar as we can in the White House. But there is a limit to what we can do without you.

Just as your predecessors, with the Constitution as their shield, stared down the sheriffs of segregation, you must step forward to dismantle our time's most stubborn obstacles to equal justice — poverty, unemployment and, yes, continuing discrimination. Behind every watershed event of the civil rights struggle, lawyers, many pro bono, remain vigilant, securing equal rights for employment, education, housing, voting and citizenship for all Americans. Their success, as you just heard from Bill — every time a lawyer does that it inspires a whole new generation of people to seek the law as a career. I suspect many of us were inspired to go to law school because we thought lawyers were standing up for what was right, not simply because they were making a good living.

Thirty-six years ago, in that 200, there were 50 African American lawyers. They came to the White House, but they couldn't have found the same welcome in the hotels, restaurants and lunch counters of America — a cruel irony.

Today, thanks in large measure to the efforts of our lawyers, Americans of all backgrounds and colors and religions are working, living and learning side by side. The doors of opportunity are open wider than ever. We are living in a time of unprecedented prosperity, with the longest peacetime expansion in our history and the lowest African American and Hispanic unemployment ever recorded since we began to keep separate data in the early 1970s. Our social fabric is mending, with declining rates of welfare, crime, teen pregnancy and drug abuse.

But the challenge to build one America continues. It is different, but it is just as real as it was when Vernon Jordan started with the Urban League as a young man, or before was working in the South on registering voters. I saw firsthand in the New Markets tour I took a couple of weeks ago, we will never be one America when our central cities, our Indian reservations, our small towns and rural areas, here in the most prosperous time in history are still living in the shadows of need and want. They're struggling with unemployment and poverty rates more than twice the national average — over 70 percent on some of our reservations. Your fellow Americans, many of them, are living in houses that it would sicken you to walk through — at the time of our greatest prosperity.

Everything President Johnson worked for and dreamed of that he thought could happen after all these years has still not reached quite a large number of your fellow Americans. So what are we going to do about it?

We know that two out of five African American and Latino children under the age of six are still in poverty, in spite of all of our prosperity, in spite of the fact that a million children were lifted out of poverty just in the last couple of years. We also know that we can't be one America when a lot of minorities still distrust law enforcement and our legal system generally, and shy away from entering the legal profession.

We can't be one America when, here we are, on the eve of the new millennium, when we act as if everything good will happen and all the rationality will fade away, but we still have to read about brutal killings like those in Indiana and Illinois, allegedly conducted on the basis of religious conviction. Or what happened in Jasper, Texas; or to Matthew Shepard in Laramie, Wyoming.

The struggle for one America today is more complex than it was 36 years ago, more subtle than it seemed to us that it would be back then. For then there was the clear enemy of legal segregation and overt hatred. Today, the progress we make in building one America depends more on whether we can expand opportunity and deal with a whole range of social challenges. In 1963, the challenge was to open our schools to all our children. In 1999, the challenge is to make sure all those children get a world-class education.

And, of course, if I could just expound on that for a moment, we've worked hard on that. And one of the things we have to do is to bring teachers to the communities where they're needed most. I offered an initiative to give scholarships to young people



who would go and teach in inner-city or rural schools that were under-served. And I call for these scholarships as part of our race initiative. I believe they will make a real difference.

The efforts we have made to make the class sizes smaller and to bring the Internet to all of our kids, even in the poorest classrooms, these things are beginning to make a difference. The hundreds of thousands of people who have gone into the elementary schools to teach people to read are making a difference. I can tell you that in the last three years we have seen, for the first time in a very long time, at the 4th, 8th and 12th grade level substantial improvements in reading scores, our children moving up about half a grade level. But there is a long way to go.

Last year, just before the election, the Congress came together across party lines, and I shouted, hallelujah, because they voted to create and fund — to create 100,000 school teachers to lower class size in the early grades, something we know that is particularly important to poor children and people who don't come from strong educational backgrounds. And we now have the research that shows it has continuing benefits. I just released the funds to hire the first 30,000 of those teachers.

But now, unbelievably, in this non-election year — although you wouldn't know it from reading the press — (laughter) — there are some who propose to kill the class size initiative and replace it with a program that doesn't guarantee that one red cent will go to hiring a single teacher or reducing the size of a single class. Now, this is very important because we now, finally, for the last two years, have a student population that is bigger than the baby boom generation. So it is not only the most diverse in history, it is the largest in history, and about 2 million teachers are scheduled to retire in the next few years.

I'm happy to report, I hope in part because of the importance of education rising in the national consciousness, as the Secretary of Education told me two days ago, that we now have 10 percent of our college students saying they're considering being teachers. That's twice the percentage of five years ago and that's encouraging. But we have to get them in the classroom.

So if the research says it's a good idea, if we voted to do it, if we've already funded 30,000 of the teachers, why in the world would we turn around and reverse field? The people who want to kill the 100,000 teacher initiative say they want to do it because they want to improve the quality of the existing teacher core. Well, I'm for that and we've set aside sums to do it. But that shouldn't be a cover for the fact that we've got to do more to lower class size in the early grades, especially for our poorest children, especially for our minority children, especially for all these children whose first language is not even English.

Across the river here in Alexandria we have kids who literally speak 100 different languages as their native tongue, from 180 different racial and ethnic groups. We cannot afford to back up on this. I also believe very strongly that it would be wrong to pass a

risky tax scheme before we first fund education and make sure we can save Social Security and Medicare, something that also has a big impact on minority communities in our country and will have a huge impact on the ability of the baby boom generation to retire in dignity without imposing new burdens on their children and their grandchildren, just as many of them are moving into the middle class for the first time in their family's history.

So I hope that this is a non-legal issue, but since all of us, our detractors never tire of saying, are over-educated, those of you who believe in education will stand with us as we try to preserve this important reform. Well, strengthening our schools is important, and bringing economic opportunity to those places that I visited and all those places like them in America, it is absolutely essential. But what I ask you here today for was to simply say we still need lawyers. We need the work lawyers do. We need the ideas lawyers get. We need the dreams lawyers dream. We still need people to fight for equal justice.

And so I ask you to do two things today. First, I ask you to recommit yourselves, as Bill has asked, to fighting discrimination, to revitalizing our poorest communities, and to giving people an opportunity to serve in law firms who would not otherwise have it. You can help inner-city entrepreneurs negotiate loans to start new businesses. You can help neighborhood health clinics navigate the regulatory mazes they have to do to stay open. You can help nonprofits secure new supermarkets and merchants in under-served communities. Just for example, those of you who come from urban areas, today in the highest unemployment urban areas in America, there is still at least a 25-percent gap between the money that the people who live there earn and have to spend to support themselves and the opportunities they have to spend it in their own communities.

In East St. Louis where I visited, there is a 40-percent gap. We went to a Walgreen's store that was the first new store to open in the inner city in 40 years. Mayor Archer here is exhibit A. The unemployment rate in Detroit is less than half what it was in 1993 when I took office, because he convinced people that there were people in his community that could work and that were already working, and that had money to spend, and that they ought to be part of the future. And we need to do that everywhere, and that work cannot be done without legal assistance.

And it is a civil rights issue. It is a civil rights issue for people to have jobs and dignity and a chance to start businesses, and the chance to be able to shop in their own neighborhoods and walk to the grocery store, instead of having to ride a bus and wait on the schedule and stand in the rain and do all the things people have to do. It is a huge issue. And if we can't do it now, we'll never get around to doing it. So I ask you to help us with that.

I hope you will help me to pass my New Markets Initiative, because what it says is, we're going to give people the same incentives to invest in inner cities and rural areas and Indian reservations, the same incentives to invest there we give them to invest

in the Caribbean, in Africa, in Latin America and Asia. I don't want to repeal those incentives; I want Americans to help poor people all over the world rise up. But they ought to have the same incentives to invest in poor people right here at home, and I hope you'll help me do that. (Applause.)

The second thing I want you to do is to set the best possible example. Mr. McBride has spoken better than I can. We may have torn down the walls of segregation, but there are still a lot of walls in our hearts and in our habits. And sometimes, we can -- we are not aware of those walls in our hearts, but we have to test them against our habits. So invite more lawyers of all backgrounds to join your firms. How are we going to build one America if the legal profession which is fighting for it doesn't reflect it? We can't do it.

I am so pleased that the organizations here have made the commitments they've made — to diversity and to pro bono work. I thank the American Bar Association, the Corporate Counsel Association, for pledging to launch new initiatives to promote greater diversity in the profession. The ABA will bring together lawyers and academics, law firms and bar associations, to provide financial aid to minority law students and to mentor them as they embark on their legal careers. We've got to do more work to mentor them before, in the places that have tried to do away with affirmative action — I believe wrongly — sometimes under court decisions with which I respectfully disagree. But if you don't get there in the first place, it won't matter if there's someone helping you once you do get there.

The Counsel Association has promised to encourage its 11,000 members to hire more minority-owned law firms and to dedicate more of their resources to pro bono legal work in communities. I thank the hundreds of law firms who have agreed to dedicate at least 3 percent of billable hours — about 50 hours a year per lawyer — to pro bono work, which is the ABA standard. As Bill pointed out, this booming economy has been pretty good to America's lawyers and law firms. Last year, top firms increased their revenues by 15 percent. There will never be a better opportunity to help those who need it most. If Mr. McBride's firm thought it was a good idea, it's probably a pretty good idea for other firms, as well.

And there's one other point I would make, following on what he said. I think it's good business strategy over the long run, not only for all the reasons you said, but because the recovery of the last six years has proved a fundamental thing about a community: that is, when other people, particularly people who haven't had a chance, do well, those of us that are in a position to take it, that are going to do all right, regardless, do better. When the least of us do well, the rest of us do better. We are all stronger. And we should never forget that.

So I hope every American firm will meet the ABA standard. Just imagine this: if every lawyer in America — about 800,000 — dedicated just 50 hours a year to pro bono work, that would be 40 million hours of legal help. That's a lot of personal problems

solved, a lot of headaches gone away, a lot of hurdles overcome, a lot of businesses started. Think of what we could do.

A 1993 ABA study found that half of all low-income households had at least one serious legal problem each year, but three-quarters had no access to a lawyer. Now we can fill that gap. Now America's lawyers can afford to fill that gap. And I would argue, if we really believe in equal justice we cannot afford not to fill that gap.

I want to thank the Association of American Law Schools for pledging to help more schools incorporate community service in their curriculum — something I strongly believe in — so that more law graduates will come out of law school predisposed to do volunteer work and pro bono work. All these are wonderful pledges. I thank the presidents of the ABA, the Minority Bar Associations here, the American Corporate Counsel Association, the representatives of the San Francisco and New York City bars, the co-chairs to the Lawyers Committee for Civil Rights, for agreeing to meet every month.

You heard what Eric Holder said — for our part the Justice Department, working with Ben Johnson and the White House Office on One America, will do whatever we can to support these efforts. And a year from now, we'll gather again and see where we've succeeded and where we need to do more. I don't want to wait another 36 years. I ask you to work on this. I want it to be steady work for America's lawyers.

I ask Eric Holder and Neal Katyal of the Justice Department to report to me on the progress. We will know we have succeeded if more lawyers begin to make community service a vital part of their practice. We will know we will have succeeded when we have more businesses, more health clinics, more affordable housing in places once bypassed by hope and opportunity. We'll know we'll have succeeded when our law schools, our bar associations and our law firms not only represent all Americans, but look like all America.

One of the best things Dr. King ever said was that "the arc of the moral universe is long, but it bends toward justice." Our nation's lawyers have bent that arc toward justice. Our nation has been transformed for the better. So I ask you again to lead us along that arc — from the America we know to the one America we all long to live in.

Thank you very much.

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## Mission Statement

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### Lawyers For One America

Lawyers For One America is a collaboration of lawyers and organizations in the legal profession committed to working together to insure both that the legal profession reflects the diversity of the society we serve and that the profession provides full service to communities of color so that those communities can enjoy equal access to our system of justice.

To achieve the mission, Lawyers For One America will

- Collect and magnify the work of the lawyers and organizations participating in this effort so that their coordinated efforts may be of exponential value and their stakeholders more informed and united in this effort.
- Identify the leaders of the legal community who are not yet pursuing the goals of LFOA and obtain their commitment to take action in furtherance of those goals.
- Seek more active involvement from all sectors of the legal community by developing avenues of participation in our efforts that are targeted to draw from their strengths.
- Survey, collect and disseminate information about best practices for enhancing diversity and pro bono work from the individuals and organizations that are making a difference and develop means that will allow other organizations to adopt those practices.
- Provide the means by which all stakeholders in the legal profession – lawyers, law schools, law firms, corporate employers of lawyers, bar associations, public interest organizations and others in the legal community – can work with LFOA to actively pursue equal justice and diversity.

**Speech by William McBride,  
Managing Partner of Holland & Knight**

**The White House  
East Room  
July 20, 1999 at 2:30 p.m.**

**A Call to Action  
To the American Legal Community**

**WILLIAM MCBRIDE:** Thank you.

Mr. President, your personal validation of the importance of racial justice, diversity, and pro-bono work – evidenced by this gathering and by your call to action – is an achievement in and of itself. It has been 36 years since another great President challenged the bar in this way. Thank you for bringing us together.

I also thank Janet Reno – her inspiration and integrity were among the reasons I decided to practice law.

Many in this room through your scholarship, service and courage have shaped me and others to do the right things and to reach beyond ourselves. It is an honor to participate here today.

Mr. President, each of us here applauds your call to the private bar to fulfill our nation's promise of equal justice under law. That promise will never be fulfilled unless lawyers, bar associations, law firms, corporate counsel, and law schools, do the hard, sometimes thankless, often scorned, work of vigorously representing those who otherwise would have no access to our justice system and of providing and supporting those lawyers who will do so.

Last year the 100 largest U.S. law firms had 46,497 lawyers with aggregate revenues of \$23,199,000,000. Never in our profession has there been such a concentration of power, wealth and privilege; and the pace of concentration is accelerating this year.

Yet, less than 2% of the partners of those firms are minorities and, despite significant exceptions, many spend little time or money helping the poor or the unrepresented and some do no such work at all. That is wrong. Your call to action is to

those firms as well as to the two thousand or so other "big" firms with over 50 lawyers, and to the hundreds of thousands of other American lawyers.

At the urging primarily of two magnificent self-less leaders – Barbara Arnwine of the Lawyers' Committee for Civil Rights Under Law and Esther Lardent of the Pro Bono Institute – I speak today representing one of those 100 firms. I speak as one who is an advocate for pro bono work and diversity. Esther, Barbara and I have worked for many years on all aspects of these subjects – from mandatory pro bono to impact suits. I speak, most importantly, in resonance to your call, Mr. President, for us in the private bar to do better.

For over three decades, my firm – with varying degrees of intensity – has pursued civil rights pro bono work and diversity as key business strategies. In recent years, they have become a major focus.

Civil justice pro bono work can easily – and rightfully – be justified morally as an obligation of a professional monopoly. Furthermore, a distillation of all of the wisdom of human history and the fundamental tenet of all religions is that to get love you must first give love – to receive you must first give.

But if those reasons are not enough, and, for those who see everything in a business context, a pro bono work commitment is, I believe, a sound long-term business strategy. The leaders of my firm - including Chesterfield Smith and another soon-to-be-President of the ABA Martha Barnett – have never felt that revenues per lawyer, profits per partner or profitability indexes measured the right things. Mr. Smith has always told me that those statistics measured everything about the practice of law except what makes us proud to be lawyers. Only recently have law firms become seemingly obsessed with money – and regrettably so. Money alone is a false god – and like all false gods - leads to obsession and emptiness.

\*Civil justice pro bono work, on the other hand, when coupled with paying clients, enhances lawyer and law firm self-esteem; promotes a sense of community both internally and externally; instills in paying clients, even when they disagree with the cause, a feeling of pride in their lawyers; helps to attract and retain the best-motivated young lawyers (those less interested in making a buck and more interested in making a difference); and builds loyalty and cohesiveness to better enable firms to survive economic and other challenges.

Every \$1 spent supporting a legal clinic or a pro bono intern is worth \$10 of advertising. Every hour working on a death case or class action housing discrimination case is worth 10 hours of the selfish pursuit of new clients. In addition, of course, there is the added benefit of rendering true service. I live in a poor area of my state. The only time many of my neighbors see a lawyer is when the lawyer is representing the mobile home park owner evicting them or taking their car because of a defaulted title loan charging 80% interest. Often just access to a lawyer can save them from unfair misery.

Diversity in law firms is also a long-term business strategy. Given the direction of world commerce, firms without meaningful diversity will, I predict, ultimately fail. Diversity enhances sensitivity and connectivity to communities and to clients. In fact, it may for most firms be the key to future global success.

However, the current minority hiring pool is simply too small – law schools must give us more minority law graduates. Attacks on efforts to do so, if successful, will have devastating consequences. To argue that fairness dictates that you give two climbers the same tests and resources when one is starting half-way up the mountain and the other is starting at the bottom is an absurdity and law firms know it to be such. Give us the lawyers; we will give them the opportunities to succeed.

The major source of big law firm business is corporate America through corporate in-house counsel. Over 80% of the work of my 850 lawyer firm comes from corporate counsel. They can also help by demanding pro bono work and meaningful diversity as a condition of the employment of outside law firms.

Mr. President, not since the 1960's – when – as I understand it – you made your life-long commitment to civil rights and fairness – has a President brought such personal passion, vision and leadership to the causes of racial and civil justice. Not since John Kennedy has the private bar been so challenged by a President. No President has ever done what you have done today and over this past year.

You will have many wonderful legacies – one of the greatest and long-lasting of which – will be the fires you have ignited in the hearts and minds of lawyers, law firms and all Americans to do right and to do good.

Ladies and gentlemen, the President of the United States of all Americans



ATTACHMENT B

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 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

Please return this form to:

BAR ASSOCIATION OF SAN FRANCISCO  
    3 Attention: Drucilla Ramey  
    465 California Street, Suite 1100  
    3 San Francisco, CA 94104

Bar Association of San Francisco Goals and Timetables for Minority Hiring and Advancement – 1989 Signatories

- (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.

Angell, Brunner & Angell

Arnelle & Hastie

AT&T Communications of California

Baker & McKenzie

Bancroft & McAlister

Berman & Glenn

Beveridge & Diamond

David Michael Bigeleisen, APC

Broad, Schultz, Larson & Wineberg

Brobeck, Phleger & Harrison

Bronson, Bronson & McKinnon

Buffington & Konigsberg

Bushnell, Caplan & Fielding

Carroll, Burdick & McDonough

Cassidy & Verges

Cooley Godward LLB

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, Hohback, Test, Albritton & Herbert

Fleischmann & Fleischmann

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, Nemerovski, Canady, Falk & Rabkin

Law Offices of Helen Y. H. Hui

Jackson, Tufts, Cole & Black

Jeffrey & Heinemann

Jonas & Matthews	Pillsbury Madison & Sutro
Jordan, Keeler & Seligman	The Recorder
Kadushin.Fancher.Wickland	Remcho, Johansen & Purcell
Knox & Cincotta	Rogers, Joseph, O'Donnell & Quinn
Lagarias & Masson	Rosen, Bien, & Asaro
Landels, Ripley & Diamond	Rosenblum, Parish & Isaacs
Leland, Parachini, Steinberg, Flinn,	Rothschild & Goldin
Matzger & Melnick	Rouda, Feder & Tietjen
Lew & Fong, APC	Saperstein, Mayeda, Larkin & Goldstein
Lilienthal & Fowler	Sawamura, Chin & Nishimi
Lillick & Charles	Sedgwick, Detert, Moran & Arnold
Littler, Mendelson, Fastiff & Tichy	Severson & Werson
Long & Levit	Shartsis, Friese & Ginsburg
Majestic, Parsons, Siebert & Hsue	Shute, Mihaly & Weinberger
McCutchen, Doyle, Brown & Enersen	Silk, Adler & Colvin
McGee, Lafayette, Willis & Greene	Steefel, Levitt & Weiss
McKesson Corporation	Stein Lubin & Lerner
McTernan, Stender & Walsh	Steinhart & Falconer
Minami, Lew, Tamaki & Lee	Tandem Computers Incorporated
Morrison & Foerster	Tarkington, O'Connor & O'Neill
Murphy, Weir & Butler	Thelen, Marrin, Johnson & Bridges
Nichols, Doi, Rapaport & Chan	Townsend and Townsend
Niesar Pahl Cecchini & Gosselin	Transamerica Corporation
Nossaman, Guthner, Knox & Elliott	Law Offices of Chandler Visher
Oracle Corporation	Wells Fargo Bank
Orrick, Herrington & Sutcliffe	Willdorf & Stevens
Pacific Gas & Electric	
Pacific Telesis Group	
Pettit & Martin	

ATTACHMENT C

*DIVERSITY IN THE WORKPLACE:*

*A STATEMENT OF PRINCIPLE*

As the Chief Legal Officers of the companies listed below, we wish to express to the law firms which represent us our strong commitment to the goal of diversity in the workplace. Our companies conduct business throughout the United States and around the world, and we value highly the perspectives and varied experiences which are found only in a diverse workplace. Our companies recognize that diversity makes for a broader, richer environment which produces more creative thinking and solutions. Thus, we believe that promoting diversity is essential to the success of our respective businesses. It is also the right thing to do.

We expect the law firms which represent our companies to work actively to promote diversity within their workplace. In making our respective decisions concerning selection of outside counsel, we will give significant weight to a firm's commitment and progress in the this area.

Please find below a list of companies who support a strong commitment to diversity.

3M  
Abbott Laboratories  
Adidas America  
Advantica Restaurant Group, Inc.  
Aetna US Health Care  
AFC Enterprises, Inc.  
AGL Resources, Inc.  
Allegheny Teledyne Incorporated  
American Airlines  
American Electric Power  
American Express Company  
American Lawyer Media, Inc.  
American Standard Companies  
Anheuser-Busch Companies

Archer Daniels Midland Co.  
Asbury Automotive Group  
Ashland Inc.  
AT&T  
AT&T Wireless  
Atlanta Life Insurance Company  
Atlantic Richfield Company  
AutoNation, Inc.  
Bank of America Corporation  
Bank One Corporation  
BankBoston, N.A.  
BASF Corporation  
Battelle  
Baxter International Inc.

Bear, Stearns & Co., Inc.  
Bell Atlantic Corporation  
BellSouth Corporation  
Bestfoods  
Bethlehem Steel Corporation  
The Boeing Company  
Boise Cascade Corporation  
Brown-Forman Corporation  
Burlington Northern Sate Fe  
Railway  
Cardinal Health, Inc.  
Caremark Rx, Inc.  
Carnival Cruise Lines  
Case Corporation  
Caterpillar Inc.  
CBS Corporation  
Cendant Corporation  
Central and South West Corp.  
Ceridian Corporation  
Champion International Corp.  
Charles Schwab & Co., Inc.  
The Chase Manhattan Company  
ChemRex, Inc.  
Chevron Corporation  
ChoicePoint Inc.  
Cincinnati Bell Inc.  
Citigroup Inc.  
The Clark Construction Group  
Clark USA, Inc.  
CMS Energy Corporation  
Colgate-Palmolive Company  
Comcast Corporation  
Comdisco, Inc.  
Comerica Incorporated  
Commonwealth Edison Co.  
Compaq  
Computer Sciences Corporation  
Conoco Inc.  
Consolidated Stores Corporation  
Coors Brewing Company  
Cordant Technologies Inc.  
Cox Communications, Inc.  
Credit Suisse First Boston Corp.  
Crown Cork & Seal Company  
CVS Corporation

CVS/Pharmacy, Inc.  
Daewoo Motor America, Inc.  
Dana Corporation  
Darden Restaurants  
Delta Air Lines, Inc.  
Discovery Communications  
Dominion Homes  
The Dow Chemical Company  
Dow Corning Corporation  
Duke Energy Corporation  
E.I. du Pont de Nemours and Co.  
EarthLink, Inc.  
Eastman Chemical Company  
Eastman Kodak Company  
Eaton Corporation  
Eli Lilly and Company  
Emerson Electric Co.  
Energizer Battery Company  
Enron Corporation  
Ensign-Bickford Industries, Inc  
Entergy Corporation  
Equifax Inc.  
Ernst & Young LLP  
Farmland Industries, Inc.  
Federal Express Corporation  
Federated Department Stores  
Ferro Corporation  
Fifth Third Bank  
First Data Corporation  
First Union Corporation  
Fleet Financial Group, Inc.  
Fluor Corporation  
FMC Corporation  
Ford Motor Company  
Foster Wheeler Corporation  
Freddie Mac  
General Dynamics  
General Mills  
General Motors Corporation  
The Goodyear Tire & Rubber Co  
Graybar Electric Company, Inc.  
GST Telecommunications, Inc.  
Halliburton Company  
Hannaford Bros. Co.  
Hartford Life, Inc.

The Hartz Mountain Corporation  
Hewlett-Packard Company  
The Home Depot, Inc.  
Honeywell Inc.  
Bristol-Myers Squibb Company  
Host Marriott Corporation  
Howmet International Inc.  
HSBC USA Inc.  
Illinois Tool Works Inc.  
Ingersoll-Rand Company  
Ingram Micro, Inc.  
Insurance Services Corporation  
Interface, Inc.  
International Paper Company  
The Interpublic Group of  
Companies, Inc.  
JC Penney Company, Inc.  
John Hancock Mutual Life  
Insurance Company  
Johnson Controls, Inc.  
Kanematsu USA, Inc.  
Kellogg Company  
KeyCorp  
KeySpan Energy  
KPMG International  
The Kroger Co.  
Leggett & Platt, Incorporated  
Let's Talk Cellular & Wireless  
Levi Strauss & Co.  
LG&E Energy Corp.  
Life Technologies  
The Limited, Inc.  
Lincoln National Corporation  
The LTV Corporation  
Lucent Technologies Inc.  
Malcolm Pirnie, Inc.  
Maytag Corporation  
MCI WorldCom, Inc.  
McKesson HBOC, Inc.  
The Mead Corporation  
MedCare Financial, Inc.  
Mercedes-Benz of North  
America, Inc.  
Merck & Co., Inc.

Methodist Health System  
Foundation, Inc.  
Minerals Technologies Inc.  
Mitsubishi Motor Sales of  
America, Inc.  
Modis Professional Services  
Monsanto Company  
The MONY Group  
Mothers Against Drunk Driving  
"MADD"  
Motorola Inc.  
Nalco Chemical Company  
National Basketball Association  
National Football League  
Navistar International Corp.  
The New York Times Company  
Nike, Inc.  
Northeast Utilities Service Co.  
Northern Trust Corporation  
Norwegian Cruise Line  
Office Depot  
Ohio Education Association  
Ohio State Medical Association  
Oracle Corporation  
Orbcomm  
Payless ShoeSource, Inc.  
PECO Energy Company  
Peoples Energy Corporation  
PepsiCo, Inc.  
Pet Products Group  
Philip Morris Companies Inc.  
Pitney Bowes Inc.  
The Pittston Company  
Powertel, Inc.  
Premark International, Inc.  
Procter & Gamble  
The Prudential Insurance  
Company of America  
R.J. Reynolds Tobacco  
Ralston Purina Company  
Randstad North America  
RARE Hospitality International  
Reebok International Ltd.  
Reliance Group Holdings, Inc.

Rohm and Haas Company  
Rolls-Royce North America Inc.  
Ryder System, Inc.  
The Ryland Group, Inc.  
Safeway, Inc.  
Sara Lee Corporation  
SBC Communications Inc.  
Scientific Atlanta, Inc.  
Sears, Roebuck and Co.  
Shell Oil Company  
Sodexo Marriott Services, Inc.  
Sony Electronics Inc.  
Southern Company  
Sprint  
The St. Paul Companies, Inc.  
State Street Bank & Trust  
Company  
Stateside Associates  
The Stop & Shop Companies  
Summit Bancorp  
Sunoco, Inc.  
Temple-Inland Inc.  
Terra Industries Inc.  
Texaco Inc.  
TIA-CREF  
Tidewater, Inc.  
Time Warner Inc.  
Toshiba America Information  
Systems, Inc.

Toys "R" Us, Inc.  
Tribune Company  
Tyco International (US), Inc.  
Ulramar Diamond Shamrock  
Union Bank of California,  
Union Carbide Corporation  
UNISYS Corporation  
United Air Lines  
United Parcel Service  
United States Filter Corporation  
United States Postal Service  
Unocal Corporation  
US Office Products Company  
US West, Inc.  
USX Corporation  
Viacom, Inc.  
Walgreen Co.  
Wal-Mart Stores, Inc.  
The Washington Post Company  
Wells Fargo Bank  
Wendy's International Inc.  
Weyerhaeuser  
Whirlpool Corporation  
The Williams Companies  
World Kitchen, Inc.  
Xerox  
Zale Corporation

## ATTACHMENT D

### *Lawyers for One America: Recommended Best Practices for Law Firms and Bar Associations*

## **I. Law Firms**

### **A. Recruitment**

#### **1. Commitment**

- Stress the firm's programs for lawyers of color in promotional materials and discussions with all law schools, prospective hires and other individuals and organizations.
- Provide active administrative and/or financial support to minority law students and minority bar associations.
- Use executive search firms who specialize in minority lawyers, for both new attorneys just out of law school and laterals. Insist that all search firms include minorities in the slate to be considered. Review the diversity performance of search firms and, if necessary, change firms if diversity needs are not met. When there is a job opening, do not accept a candidate slate that does not include people of color.
- Broaden the pool of schools used by the firm. Include schools with greater numbers of minority students. Establish relationships with deans and minority and other professors at these and all schools to identify promising minority applicants.
- Institute mentoring programs at local junior and senior high schools and colleges to attract people of color to the profession.

#### **2. Recognition/Compensation**

- Publicly recognize and reward partners, associates, law clerks and staff who show outstanding performances in achieving diversity.
- Award "bonus points" to attorneys in the firm who are actively recruiting attorneys of color. These points should be included in all calculations/evaluations and decisions on salary, draw, bonus and advancement.



### 3. Networking

- Senior partners hold informational interviews with minority attorneys who later can be contacted when positions open. This also builds a positive relationship with the attorney.
- Attend/sponsor minority career days with law schools, corporations and other organizations within the legal community.
- Sponsor periodic receptions, both at law schools and on-site at the firm, to provide minority law students an opportunity to meet minority and majority attorneys within the firm and see what the firm can offer minority lawyers.
- Co-sponsor seminars at law schools with minority student organizations.
- Sponsor seminars at minority law schools and law schools and high schools that have large numbers of minority students.
- Encourage minority attorneys and law clerks to engage in informal "word of mouth" recruitment of minority lawyers/clerks through their own networks.

### 4. Law Clerks

- Actively participate in local first year minority summer law clerk program (Usually sponsored by local bar associations and/or law schools.)
- Hire local second and third year minority law students to work at the firm during the academic year.

## *B. Hiring*

### 1. Commitment

- Ensure that the firm's strategic plans include substantial provisions relating to minority hiring, retention and advancement, with concrete programs focused on achieving specific goals. (Failure to include specific commitments to diversity in new business oriented strategic plans was frequently cited by minorities in San Francisco survey as reason they were thinking of leaving the firm.)

- Maintain a well funded, minority retention committee that meets regularly, preferably chaired by managing partner. (Some firms have recently merged such committees with general retention committee. This consolidation was perceived by some minorities as symbolic of the firm's diminishing commitment to racial diversity.)
- Include minority lawyers on the Hiring Committee and other leadership committees.
- Include minority lawyers in the firm as interviewers whenever possible.

## 2. Accountability

- Adopt goals and timetables for minority hiring and advancement, as well as written firm policies on non-discrimination and prohibition of racial harassment.
- Carefully monitor and measure progress with respect to real goals and timetable for minority hiring and advancement, (cf., *Fortune Magazine* article on Texaco 9/6/99).

## 3. Laterals

- Hire minority laterals, making sure that minority associates coming up through the ranks know that the firm is anxious to develop a critical mass of minorities in the firm and fully intends and desires to promote minority associates to partnership positions as well.
- The firm should make it clear that the lateral partners can be role models and mentors for associates coming up through the ranks.

## C. *Retention/Promotion*

### 1. **Commitment**

- Involve managing partner and other influential members of the firm's management in demonstrations of the firm's commitment to diversity, including chairing of committees dealing with diversity efforts and establishment of a diversity plan that is strongly supported by management, communicated to the entire firm, and evaluated and updated annually by the management committee.
- Immediately stop behavior and practices that are prejudicial to lawyers of color in order to effectuate an institutional change in attitude. Publicly state (without identifying individuals) that prejudicial behavior will not be tolerated. (*Race in the US Workplace*). The actions the firm takes to address such behavior at the partner and associate level will improve the environment for all employees in the firm and increase productivity.

### 2. **Policies and Practices**

- Review and revamp internal policies and practices that affect retention rates of lawyers to eliminate bias and maximize potential for minority lawyers.
- The firm's practices should include attention to including attorneys of color in formal and informal firm and client events. It is often the informal relationships that often prove most valuable. (*Race in the US Workplace*)

### 3. **Assignments**

- Review and revamp internal policies and practices that affect assignment of matters to associates, assignment of associates to particular partners and inclusion of minority lawyers in marketing efforts, including direct contact with clients.
- Smaller practice groups, centralization of assignments within the group, and rotation between groups have proven advantageous to minorities, as have efforts to avoid "channeling" of minorities to less advantageous or growing areas of the practice.

#### 4. Mentoring

- Implement a formal, written mentoring program. Experiment to see what approaches work best for minority associates – e.g., focus on minority mentees only vs. all associates; use minority mentors for minority mentees vs. senior white males in the firm as mentors; or use of mentors from mentee's practice group vs. mentors from another part of the firm.
- Elements common to successful programs include:
  - Careful selection of mentors, including powerful and influential partners in the firm, but excluding partners whose personality or biases make them inappropriate as mentors.
  - Successful mentors have the necessary position, authority, commitment, ability and sensitivity to fulfill the role effectively.
  - Program provides adequate training to mentors and mentees, including what to expect and how to conduct the relationship.
  - Ensure that the managing partner and/or department head regularly checks with minority associates to learn their perspective of how they are doing in the firm and the mentoring program. Include in the discussion the associate's views of the features of the program that are working and the features that could be improved and how to make those improvements.
  - Commitment and willingness to try different models when one particular variant fails.
- Establish specific goal-oriented plans jointly with mentors and mentees. Determine jointly whether it is better to monitor and update every six months vs. informal meetings.
- Stress to mentor the importance of including mentee in social settings with clients, including dinner parties, lunch and golf vs. strictly in-office meetings.

**5. Evaluations**

- Review and revise as appropriate internal policies and practices to eliminate bias in reviews and evaluations that determine performance, compensation and advancement. See, e.g., American Bar Association, Commission on Women in the Profession, Fair Measure: Toward Effective Attorney Evaluations.
- Educate lawyers who perform evaluations on the most effective ways to measure performance, conduct an effective performance appraisal and deliver feedback on substance and style of performance.
- Monitor evaluations to determine if there is a difference in the kind and number of comments about white attorneys and attorneys of color.
- Educate lawyers on how to elicit and receive constructive feedback on their work.

**6. Tracking**

- Perform an ongoing lawyer retention tracking survey to determine the firm's success in retaining and promoting lawyers of color and the effectiveness of the firm's policies and practices.

**7. Exit Interviews**

- Perform exit interviews of minority lawyers, using minority interviewers.
- Provide the management committee with the results of those interviews and implement responsive efforts where appropriate.

## **D. Leadership in Diversity**

### **1. Diversity and Management Training**

- Provide and require diversity training for everyone in the firm, on a periodic basis to examine how assumptions evolve, how treatment of others can be inadvertent, and how behavior and perceptions based on stereotypes can be altered.
- Provide and require management training for all supervisors in the Firm. Many issues that have a disproportionately negative affect on minority lawyers stem from poor management.
- If one training program does not work for your firm, hire another one that is more suited to your firm's needs, culture and style.
- Such training is important because minority lawyers often feel oppressed by the need to carry the burden of dispelling unconscious assumptions and perceptions. Diversity training helps to ease these burdens.

### **2. Minority Bar Associations and Minority Counsel Programs**

- Actively and strategically participate in local, state and/or national minority bar associations and/or minority counsel associations.
- Ensure that all members of the firm know of the firm's involvement in these programs.
- Openly and positively support and encourage all members of the firm to participate in these programs and encourage minority partners and associates to participate in the programs, including program events, meetings, roundtables, conferences and leadership positions.
- Ensure inclusion of lawyers of color at prestigious or otherwise professionally advantageous events, including for example attendance at conferences and judges' dinners.
- Managing partners and other influential partners in the firm should seek seats on boards or committees of minority bars and/or minority counsel programs to demonstrate the firm's commitment.
- Maintain up to date information on the firm's minority lawyers and provide that information to the minority bar associations and/or minority counsel programs.

### **3. Client's Request for Diversity Information**

- Track the status of matters of clients that are members of minority bar associations and/or minority counsel programs and keep such clients informed of the firm's minority statistics and the matters that are represented by lawyers of color in the firm.
- Respond completely and timely to clients' requests for information on the diversity of the lawyers in the firm representing that client.
- Provide all partners in the firm with the diversity numbers for clients, including the names of all clients who have orally or in writing requested evidence of the firm's diversity commitment.

### **4. Scholarship Programs**

- Fund one or more minority law student scholarship for students attending area law schools, administered by law schools, or minority or majority bar associations, including the American Bar Association Minority Scholarship Program.

## **II. Bar Associations**

### ***A. Leadership in Diversity***

#### **1. Diversity is Highest Priority**

- Make diversity the Association's highest priority, at every level, including the board, committee chairs and members and general leadership. Dedicate sufficient resources, financial and staff, to primary diversity programs. (See, e.g. The Columbus (Ohio) Bar Association's Commitment to diversity as its top priority for Strategic Plan for 2000-2005, and the Association of the Bar of the City of New York and the Bar Association of San Francisco).

#### **2. Diversify the Bar Association**

- Develop diversity programs designed to diversify the bar and publicize to membership, minority law students and the general public all job positions at the bar that create opportunities for minorities.

- Create Leadership Development Team to identify minorities for bar leadership positions.
- Ensure that minorities are well represented in at-large slots on both “senior bar” and young lawyers’ boards of directors.
- Train and encourage committee and section chairs to identify and bring into leadership positions leaders within their particular sectors. (cf., Columbus OH Bar)
- Encourage lawyers of color to become bar members.
- Increase the number of, and give high profile to, minority continuing legal education presenters. (cf., Columbus OH Bar).
- See outline for **Law Firms** above for guidance on recruitment, hiring, retention and promotion within the bar association.

### **3. President, Executive Director and Staff**

- Devote a substantial amount of the President’s and Executive Director’s time to diversity.
- Personal visits by the President and Executive Director at meetings and events of minority bar associations, minority law students.
- Hire an employee for at least one year to work solely on implementing diversity programs or assign a substantial block of an existing staff member’s time to diversity.
- Provide diversity training to all bar staff.

### **4. Bar Presidents’ Counsel**

- Establish a Bar Presidents’ Council, consisting of presidents of all local bars, including minority bars. Develop joint alliances and co-sponsorships as appropriate. (cf., Bar Association of San Francisco)



- Meet monthly with representatives of minority bars for purposes of discussing issues of mutual concern and invite minority bar leaders to participate in board meetings, Bench/Bar Committees (cf., Alameda County, CA, Columbus OH Bar) and other bar activities.
- Reserve a slot or slots on board of directors for minority bar "affiliates" (establishing percentage of their members who must be metro bar members) or establishing minority slots on board, on a rotating basis among the minority bars. (cf., Alameda County Bar, American Bar Association, and Los Angeles.)

#### 5. Outreach to Legal Community

- Develop strategies for outreach to large and small firms, sole practitioners, corporations and government agencies, including a focused campaign to attract lawyers of color.
- Present programs and establish other procedures to inform lawyers of color of opportunities with the bar association for education, public service and leadership. (cf., South Carolina Bar Association)
- Bring together representatives of largest firms and law departments to discuss need for integration of the profession to meet clients' needs for lawyers that look like the clients' customer base. (Philadelphia and New York bars have recently held such meetings)
- Establish minority dues credit program where members of minority bars are given a "credit" on some part of their metro bar dues.

#### *B. Goals and Timetables*

1. Establish goals and timetables for hiring and/or advancement of lawyers of color and secure adoption of those goals and timetables by local employers of lawyers. Association of the Bar of the City of New York, Bar Association of San Francisco and Los Angeles County Bar Association have taken this approach.
2. Periodically re-state or re-formulate goals as appropriate. (cf., Association of the Bar of the City of New York)

3. Regularly monitor progress in attaining goals within the committed timetable. Perform periodic surveys on minority hiring, retention and promotion. (cf., Alameda County Bar, Bar Association of San Francisco, Los Angeles Bar, Association of the City of New York).
4. Bar President and/or Executive Director meet with managing partners and general counsel to address progress on achieving goals and meeting President Clinton's Call to Action. (cf., Association of the Bar of the City of New York)
5. Produce videotapes and accompanying "how to" manuals for use by employers in their efforts to hire, retain and promote attorneys of color. (cf., Bar Association of San Francisco's video and materials, "A Firm Commitment".)
6. Present annual awards to individuals who and organizations that have demonstrated a real commitment to diversity in the profession and the membership of the bar. (cf., Indiana Bar)

### *C. Diversity Programs*

1. **Minority Employment Committee**
  - Establish well-funded Minority Employment Committees in main association and young lawyers' division.
  - Maintain diverse leadership.
  - Provide visibility within and outside the association, working closely with minority bars and other interested groups. (cf., South Carolina Bar Association's Standing Committee on Diversity and Inclusiveness).

## 2. Minority Counsel Programs

- Establish a local or state minority counsels program, whereby corporations, minority-owned and majority firms join together in a structured effort to provide real opportunities for minority attorneys. Programs also focus on assisting minority lawyers and law students advance in their careers, client marketing, and judicial appointments.
- Develop and host programs that focus on problems that may affect all lawyers, but affect lawyers of color disproportionately. (cf., Association of the Bar of the City of New York's Mentoring Program on January 24, 2000 focusing on the special difficulties of minorities and women lawyers in finding and using mentors. ABCNY's program also provided information on the design and implementation of mentoring programs. See ABCNY's book, "Lawyers' Guide to Mentoring".)
- Provide interviewing and networking opportunities for lawyers of color through conferences, seminars where minority lawyers showcase their expertise, published program directories (paper and on-line), annual reports, newsletters and magazines. (Large programs in Arizona, California, Georgia and Texas.)
- Provide interactive seminars for general counsel, other corporate managers of lawyers, and managing partners focusing on hiring and retention of lawyers of color, using both diversity trainers and academic experts like Prof. Charles Ogletree, Prof. David Wilkins (Harvard Law School) and Prof. Kim Taylor-Thompson (New York University Law School).

## 3. Students

- Develop and present a program that recruits and matches minority lawyer on a one on one basis with minority high school, college and/or law student.
- Create videos to inform minority pre-law and law students and recent law graduates about the law school experience and professional opportunities available. (cf., Association of the Bar of the City of New York's "Don't Be Shocked, Be Ready")
- Provide local second and third year minority law students with opportunities to work with the association during the academic year. (cf., Association of the Bar of the City of New York)

#### 4. Directory

- Publish and distribute to membership, a Minority Lawyers Directory, including minority-owned law firms and minority lawyers in majority firms, corporate law departments and government offices.
- Include directory on association's website with area(s) of expertise and other relevant information. (cf., Indiana Bar Association)

### *D. Fellowships and Scholarships*

#### 1. Fellowships and Clerkships

- Create fellowships for minority law students. (cf., Association of the Bar of the City of New York's Thurgood Marshall Fellowship for 3 minority law students to work with specific community/civil rights programs and ABCNY's Minority Environmental Fellowship to encourage minority law students to consider practice in environmental law.) (See also, Santa Clara County Bar Association and Indiana Bar Association.)
- Create first year summer clerkships for minority law students.

#### 2. Scholarship

- Create and administer a minority law student scholarship program.
  - ABA: over \$1,000,000 raised
  - Bar Association of San Francisco: over \$700,000 raised
  - Los Angeles County Bar Association: over \$150,000 raised
- Co-sponsor scholarship with minority bar associations and law schools where legally permissible.

## ATTACHMENT E

### Recommendations from BASF Training Materials for *A Firm Commitment*

Every organization must scrutinize its own internal environment, and must devise the approach or solution that best fits its own structure, management, philosophy and culture at any particular time. No matter how enlightened an employer's practices may be, or how hard an employer may try, some level of attrition among minority lawyers, as among white lawyers, is inevitable. However, the following recommended procedures are believed to be realistic and achievable tools that legal management should strongly consider implementing - with skill and sensitivity — in a greater effort to improve minority retention and to achieve the goals of workplace integration and diversification.

#### RECOMMENDATION 1

**Top-level management must make a highly visible and substantial commitment to retention and advancement of minority lawyers.**

The entire institution must ultimately adopt the goal of retaining and advancing minority lawyers as a bona fide business and management objective, rather than as a part-time social experiment or temporary expedient.

This goal cannot be accomplished by the efforts of only a few minority lawyers, or a handful of sympathetic white supervisory attorneys. Rather, the highest-level managers of the firm should lead the effort to scrutinize the organization's history and environment to identify and address any minority retention issues or barriers that may exist.

As a part of this effort, it is recommended that the firm perform a thorough review of its history of minority employment: how many minorities have been employed; when they were hired; how long they were employed, in what practice groups, and under the supervision of which attorneys; when they left and why; and why those who remained chose to stay. When minority lawyers depart from the workforce, exit interviews about their professional experience with the organization should be conducted and the results reported to senior management.

This review and analysis may reveal policies, patterns, attitudes, and behaviors in need of attention and change. These may range from, *e.g.*, methods of work, case or department assignments or performance evaluations which are particularly vulnerable to distortion by subtle biases, to identification of supervisory attorneys or practice groups which have proven to be unsuccessful in developing, retaining and advancing minority attorneys.

Positive action plans should be devised and implemented to address any issues identified. These may include some or all of the following recommendations.

## RECOMMENDATION 2

**The managing partner/chief counsel of the organization, or a formally and publicly designated high-profile partner or attorney with authority and clout, should assume the active leadership role in the institution's efforts to address minority-related issues.**

## RECOMMENDATION 3

**The organization should clearly articulate, in all appropriate publications, policies, and procedures the organization's commitment to and policy of equal opportunity in employment.**

In a comprehensive effort to make clear and enforce its commitment to create and maintain a racially/ethnically diverse workforce, an employer should publicly articulate this commitment (1) outside the firm, in recruitment and hiring materials and practices and in communications with clients and prospective clients and (2) inside the firm, to staff and attorneys, in personnel manuals, newsletters, bulletin board postings, staffing policies, criteria for supervisory responsibility and success, criteria for promotion, and in communication of expectations of employee collegiality and cooperation.

## RECOMMENDATION 4

**Formal support structures, such as a mentoring program, should be provided.**

The mentor program concept formalizes a critical component of a firm's informal networking process that has proven successful for generations of white lawyers, but from which minorities have often been excluded.

The importance of the assignment of an advisor or mentor cannot be overstressed. The mentor can serve as a resource to the junior lawyer in numerous ways: as a teacher of the law and lawyering; as a source of business opportunities and work assignments, particularly those that are career-enhancing; as a source of praise and publicity for the younger lawyer's accomplishments; as a bridge/link for connecting to the organization, and advice and counsel; as a troubleshooter for resolution of problematic situations; as a career counselor; as an advocate for the newer lawyer's advancement and promotion; and as a source of collegiality and friendship.

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

The advisor/mentor need not, and often should not, be a minority lawyer. In many firms, for example, there may be few, if any, minority attorneys in positions of real power within the organization. Moreover, exclusively minority pairings may

incorrectly project the impression that the issue of minority lawyer retention is not the responsibility of the entire organization, but rather that of minority lawyers only. Additionally, minority lawyers should not uniquely be assigned the mentoring responsibility without equal sharing of the duty by white attorneys.

It is also suggested that the organization provide training, guidelines or other formal communication to mentor lawyers about the structuring of the mentor relationship, and the expectations for lawyers serving in that role.

#### RECOMMENDATION 5

**Management should consider implementing training for supervisory attorneys in effective personnel practices and techniques, which should include training in the area of managing diversity.**

Many problems in the workplace — for minority and white attorneys alike — are the result of or are exacerbated by poor personnel management, but minority attorneys may disproportionately bear the brunt of poor personnel practices. Although an essential part of the partner's or supervising attorneys' job is management, supervision, training and development, and evaluation of less senior lawyers, little formal attention or training has traditionally been devoted to this dimension of the job.

Although resistance may be encountered due to time constraints, it is recommended that a training program be instituted for supervisory and other senior attorneys in personnel management skills (*e.g.*, performance evaluations; handling sensitive or volatile employee situations; handling charges of unfair treatment). This program should include a specific component on the effective management of a racially and ethnically diverse workforce.

#### RECOMMENDATION 6

**The organization should consider conducting one or more human relations workshops or sessions specifically intended to sensitize all employees, including non-lawyer staff, to race and ethnic-related issues that may exist or arise with increasing diversification of the lawyer workforce.**

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.

Rather, the low rate of minority lawyer retention at majority legal organizations has been and largely continues to be rooted in systematic attitudes, patterns of behavior, and forces. Such attitudes - which often exist not only among management, but also among peer lawyers and non-lawyer staff - operate sometimes overtly and consciously, but more often subtly and seemingly unconsciously as exclusionary barriers to acceptance of minorities on equal terms with their white peers.

As consultant Jacob Herring demonstrates in the video, human relations workshops on issues surrounding minority retention can dramatically call to the attention of majority attorneys and staff the everyday realities of corporate life as experienced by minority professionals. Listed below are some of these realities, more fully explained by Mr. Herring in the workshops he conducts:

-Minorities are presumed to be incompetent until proven otherwise and must overcome this presumption anew with each new supervisor, while the opposite is true for whites.

-Minorities are regarded as representative of their entire race when they fail, but are considered the exception when they succeed.

-Minorities are accorded far less latitude for displays of aggressiveness than is considered respectable for whites.

-Minorities who are perceived to be in authoritative positions often encounter resistance from white attorneys and staff.

-Younger minority professionals have few role models in their workplace and develop the perception that there exists a ceiling on promotions for minorities in their firm.

-Minority attorneys are often excluded from informal networks of communication within the firm and do not receive the specific feedback from supervisors necessary to succeed in the firm.

-As a result of many of the above experiences, minority attorneys tend to disproportionately experience isolation and loneliness within the organization.

Human relations workshops led by experienced outside consultants, using as discussion tools films like *A Firm Commitment* and its predecessor, *All Things Being Equal*, can serve as an ideal first step in an employer's exploration of these and other barriers to minority retention in its own workplace.

#### RECOMMENDATION 7

**Mechanisms should be developed to ensure open lines of communication with minority lawyers and should include a neutral mechanism, independent of an immediate supervisor, for lawyers to discuss perceived unfair treatment or perceived racism.**

Because of the historical legacy of racism in our society, the perennial question inevitably raised for the minority lawyer who has an adverse experience is: "Did this occur because I am a minority?" It should be made clear that the employee can raise this or any other professional/ career concerns he/she may have in this regard without fear of reprisal or retaliation.



The very difficult question may arise as to whether a partner/supervising attorney/mentor should initiate with a minority lawyer issues relating to race or ethnic status if the employee has not first raised it. Although many minority lawyers may regard this as intrusive, there are many other minority lawyers who would prefer greater management recognition of and sensitivity to the fact that they are different from most, if not all, other lawyers in the workplace; however, lawyers among this latter group may be reluctant to assert their concerns to management for fear of being perceived as malcontents with an "attitude problem" or a chip-on-their-shoulder about race.

While every workplace differs, employers should develop policies to handle and respond to diversity-related concerns raised by employees, rather than simply ignore them.

-The employer might generally announce throughout the lawyer workforce its receptivity to discussion of an employee's diversity-related concerns, and specify the forum or mechanism through which any such concerns can be raised, *e.g.*, to line management, to mentors, to a designated committee, or to a designated representative of management.

-Where a manager decides to inquire about the comfort level of a minority lawyer 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 or a small number of minority lawyers here, and we recognize that that circumstance may [pose issues] for some individuals. 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]."

-An employer might periodically disseminate, perhaps on an annual basis, a questionnaire among all staff/associate lawyers about various aspects of the employer job experience, such as quality of work assignments and supervision, and opportunity for and quality of training.

#### RECOMMENDATION 8

**Legal employers should consider use of career development plans or guidelines that can provide some objective criteria for assignment, training, development, and performance evaluation of employee lawyers.**

Although the realities of law practice make it difficult to calibrate lawyer development along a rigid timeline, there do exist, often uncommunicated to the employee, certain expectations of basic skills development and performance standards that attorneys are expected to meet within general time parameters.

It is recommended that supervising attorneys make use of individually tailored plans for each employee attorney that set concrete, but flexible, guidelines for the lawyer's performance and improvement. This ensures that both the supervising and employee attorneys focus on mutually understood and communicated objectives against which performance can be measured and plans for improvement can be implemented in identified areas of deficiency.

#### RECOMMENDATION 9

**Particular care and sensitivity should be exercised in the procedures for initial placement/assignment of the incoming minority lawyer and in subsequent work assignments.**

Initial mismatches of minority lawyers with racially insensitive supervisors, or in work situations with known deeply-rooted problems have historically caused a significant number of departures of minorities from many legal organizations. Placement of minority lawyers with more effective and sensitive supervisors/managing lawyers or in strong departments is recommended.

Channeling of the minority lawyer to perceived "minority" areas of practice, such as employment discrimination, as opposed to permitting such a lawyer the choice of other areas of work where practicable (*e.g.*, environmental, employee benefits), should be avoided.

Employers should consider rotating the minority lawyer among various reviewing or assigning lawyers to enhance that lawyer's developmental experience and exposure.

#### RECOMMENDATION 10

**The organization should promote fairness in the performance review process, both in the standards used and in their application, with particular efforts made to identify and overcome subtle bias in the evaluation of minority lawyers. This should include development of an early warning system for performance deficiencies.**

The criteria used in performance evaluation should be scrutinized by the organization for job relatedness and for their fair, rational and consistent application to each employee. Evaluations determined to be unsound or unfair should be appropriately modified, and the subject discussed with the reviewing lawyer to ensure that future evaluations are accurate and unbiased.

#### RECOMMENDATION 11

**The representation of minority lawyers in the organization should be increased.**

Recruiting and retention issues are interdependent. The experience of white women in the legal profession, for example, shows that as many legal organizations have attained a "critical mass" of successful women lawyers and role models, these organizations have been able to attract and retain more women attorneys.

Just as informal support structures have developed among growing numbers of women attorneys in legal organizations, increasing their comfort and identification with the institution, so too, will increased hiring and retention of minority attorneys increase

their prospects for success in the firm and cause the attorneys to feel encouraged to remain.

Accordingly, legal employers must redouble their efforts, not only to recruit more minority attorneys into their organizations, but also to develop and retain them as competent and valued members of the legal workforce.

ATTACHMENT F

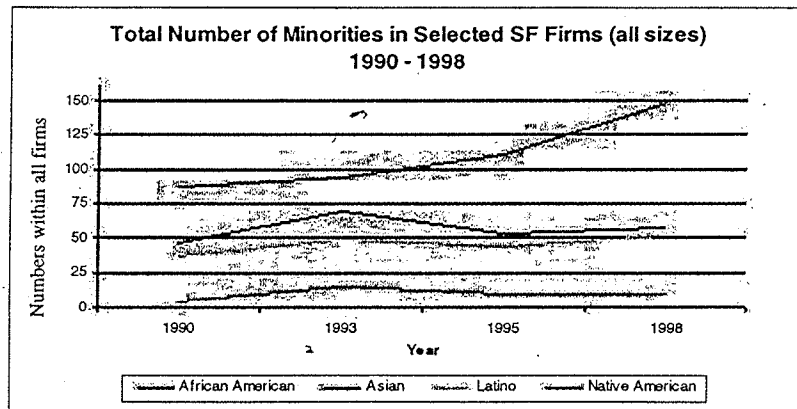
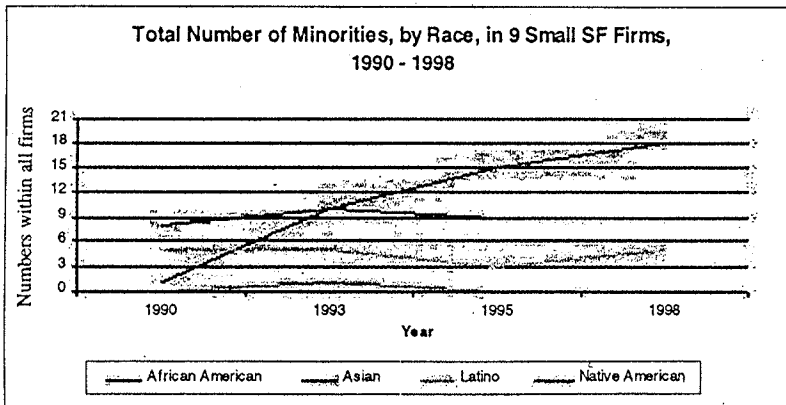
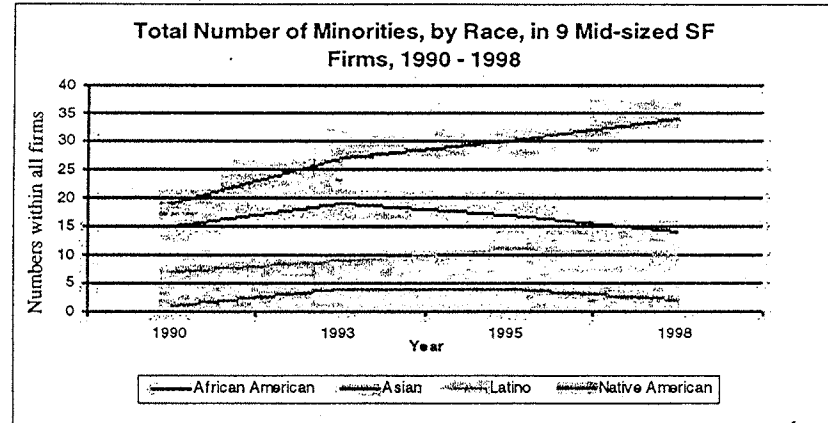
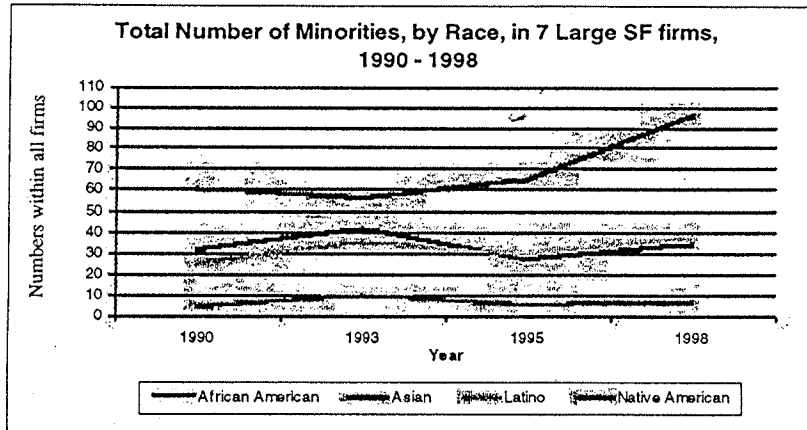
Tables/Charts

See the following pages

### All Surveyed San Francisco Firms 1990 - 1998

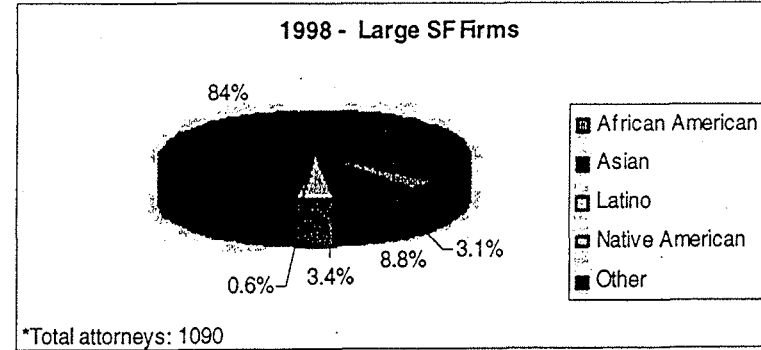
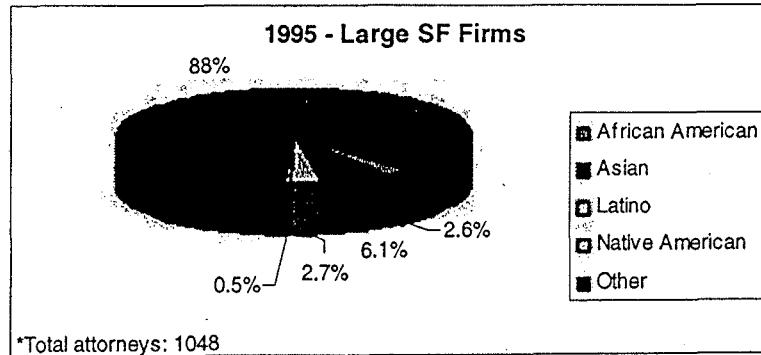
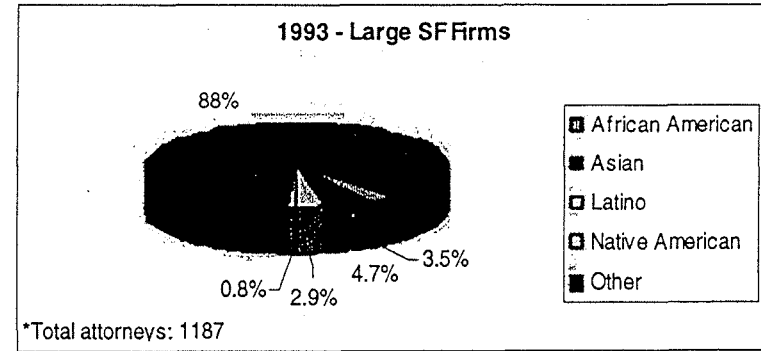
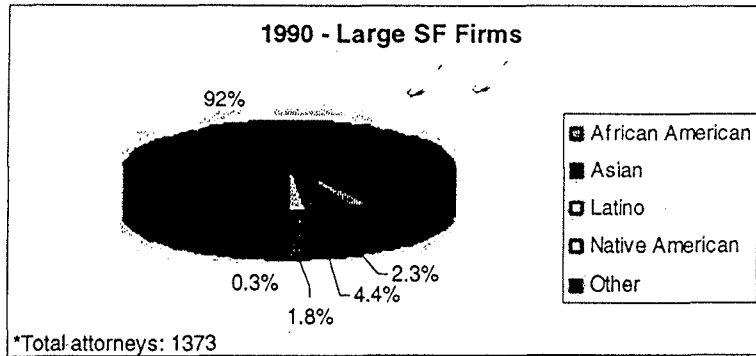
	Total in office	African American	% of total	Asian American	% of total	Latino America	% of total	Native American	% of total	Other	% of total	Total # minorities	% of minority
<b>Small Firms Associates</b>													
1990	107	1	0.9%	7	6.5%	5	4.7%	0	0.0%	94	87.9%	13	12.1%
1993	122	8	6.6%	8	6.6%	4	3.3%	1	0.8%	101	82.8%	21	17.2%
1995	123	8	6.5%	12	9.8%	2	1.6%	0	0.0%	101	82.1%	22	17.9%
1998	125	8	6.4%	15	12.0%	3	2.4%	0	0.0%	99	79.2%	26	20.8%
<b>Small -- Partners</b>													
1990	105	0	0.0%	1	1.0%	0	0.0%	0	0.0%	104	99.0%	1	1.0%
1993	129	2	1.6%	2	1.6%	1	0.8%	0	0.0%	124	96.1%	5	3.9%
1995	152	1	0.7%	3	2.0%	1	0.7%	0	0.0%	147	96.7%	5	3.3%
1998	149	1	0.7%	3	2.0%	2	1.3%	0	0.0%	143	96.0%	6	4.0%
<b>Mid-sized Firms Associates</b>													
1990	350	11	3.1%	14	4.0%	6	1.7%	0	0.0%	319	91.1%	31	8.9%
1993	318	16	5.0%	22	6.9%	9	2.8%	3	0.9%	268	84.3%	50	15.7%
1995	290	10	3.4%	23	7.9%	11	3.8%	1	0.3%	245	84.5%	47	15.5%
1998	255	10	3.9%	31	12.2%	10	3.9%	1	0.4%	203	79.6%	52	20.4%
<b>Mid-sized --Partners</b>													
1990	314	4	1.3%	5	1.6%	1	0.3%	1	0.3%	303	96.5%	11	3.5%
1993	327	3	0.9%	5	1.5%	0	0.0%	1	0.3%	318	97.2%	9	2.8%
1995	329	7	2.1%	7	2.1%	0	0.0%	3	0.9%	312	94.8%	17	5.2%
1998	306	4	1.3%	3	1.0%	0	0.0%	1	0.3%	298	97.4%	8	2.6%
<b>Large Firms Associates</b>													
1990	797	22	2.8%	56	7.0%	21	2.6%	3	0.4%	695	87.2%	102	12.8%
1993	635	32	5.0%	44	6.9%	29	4.6%	8	1.3%	522	82.2%	113	17.8%
1995	550	19	3.5%	56	10.2%	23	4.2%	3	0.5%	459	83.5%	101	18.4%
1998	592	27	4.6%	82	13.9%	30	5.1%	5	0.8%	448	75.7%	144	24.3%
<b>Large -- Partners</b>													
1990	576	9	1.6%	4	0.7%	4	0.7%	1	0.2%	558	96.9%	18	3.1%
1993	552	9	1.6%	12	2.2%	6	1.1%	2	0.4%	523	94.7%	27	5.3%
1995	498	8	1.6%	9	1.8%	6	1.2%	2	0.4%	473	95.0%	25	5.0%
1998	498	7	1.4%	14	2.8%	7	1.4%	2	0.4%	468	94.0%	30	6.0%

# 1990-1998 Minorities within SF Firms

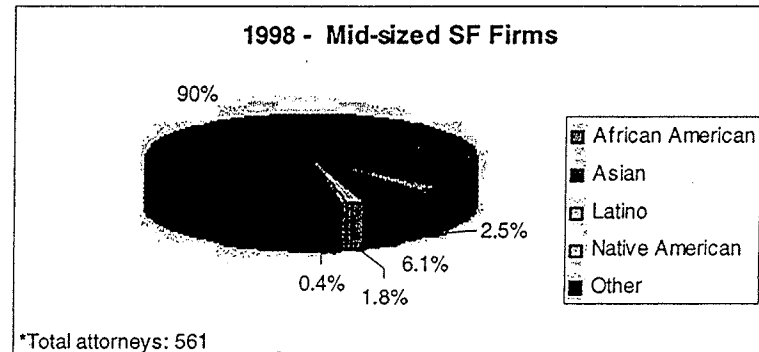
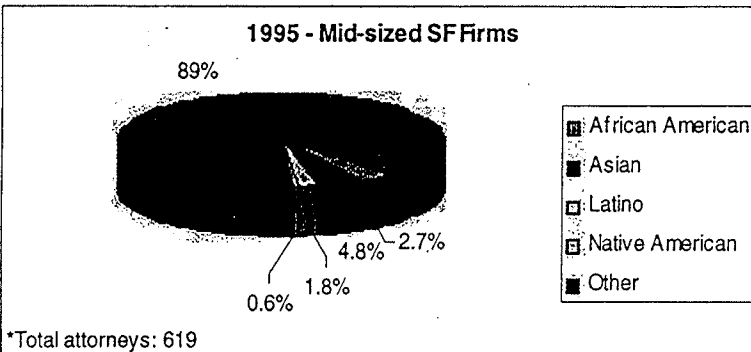
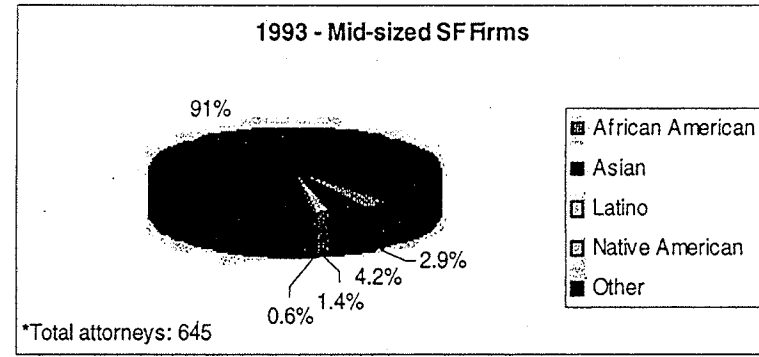
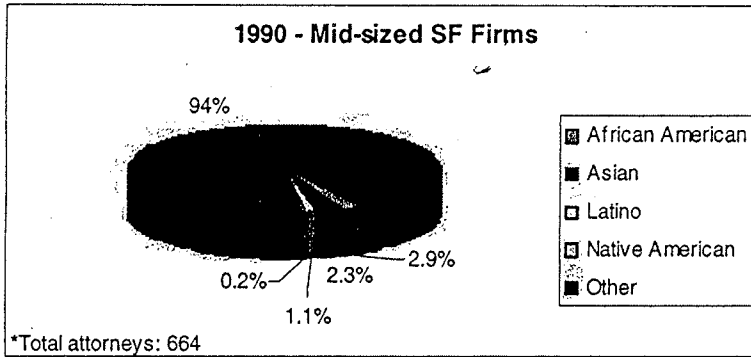


# 1990-1998 Percentage of Minorities and Majorities within 7 Large SF Firms

79

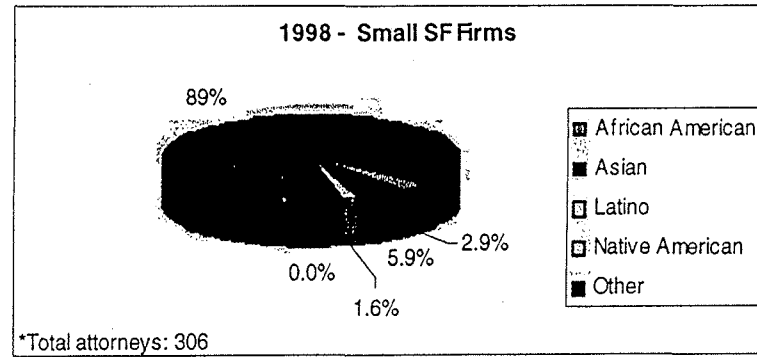
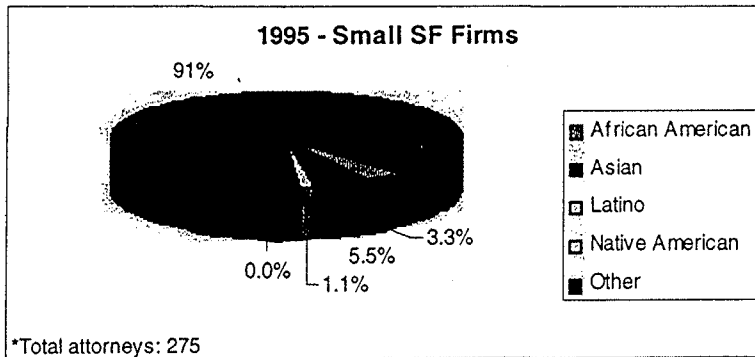
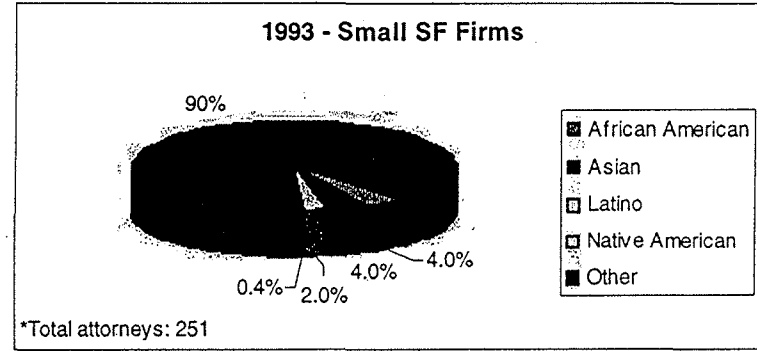
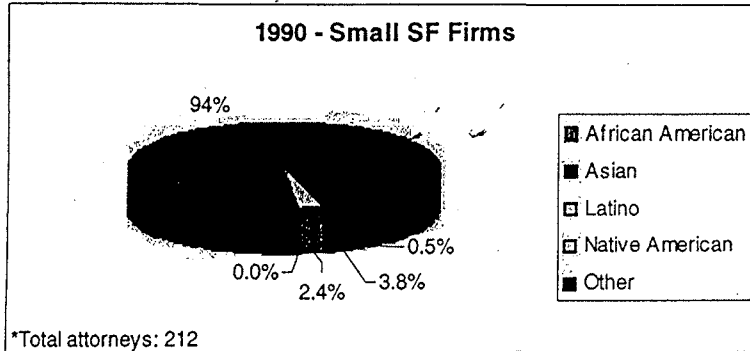


# 1990-1998 Percentage of Minorities and Majorities within 9 Mid-sized SF Firms

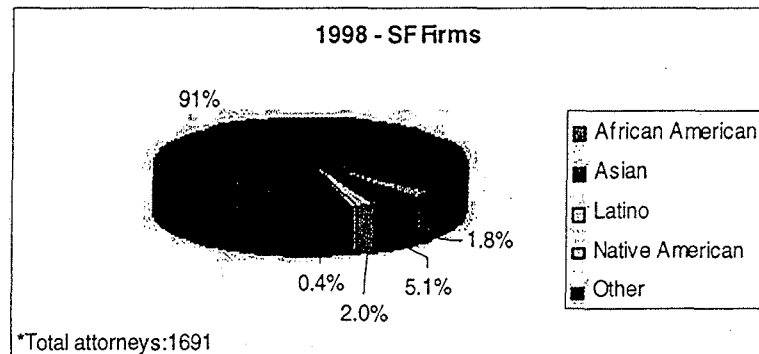
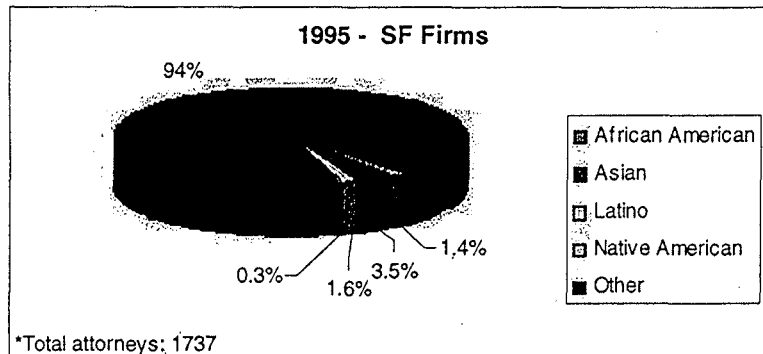
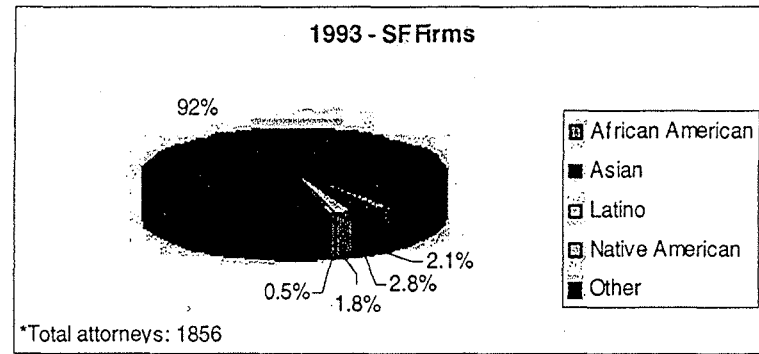
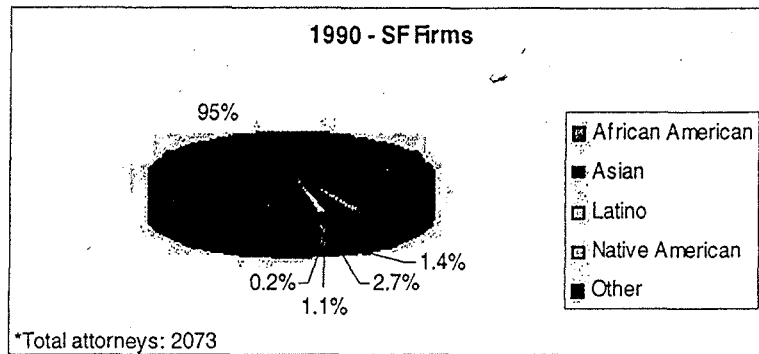




# 1990-1998 Percentage of Minorities and Majorities within 7 Small SF Firms

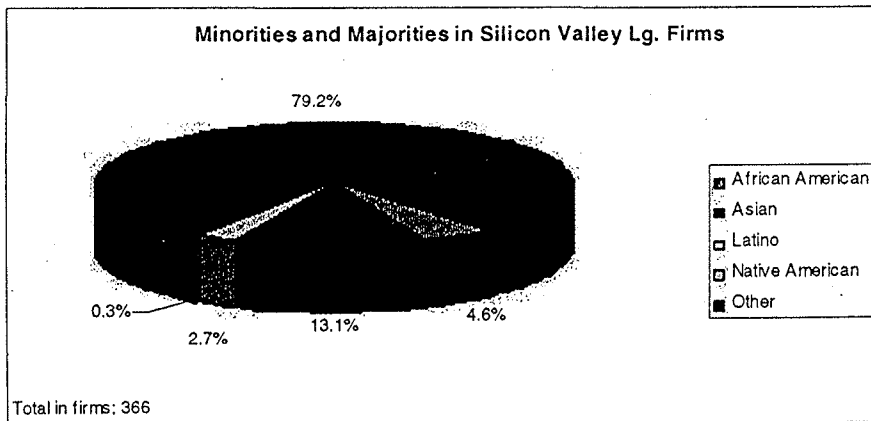
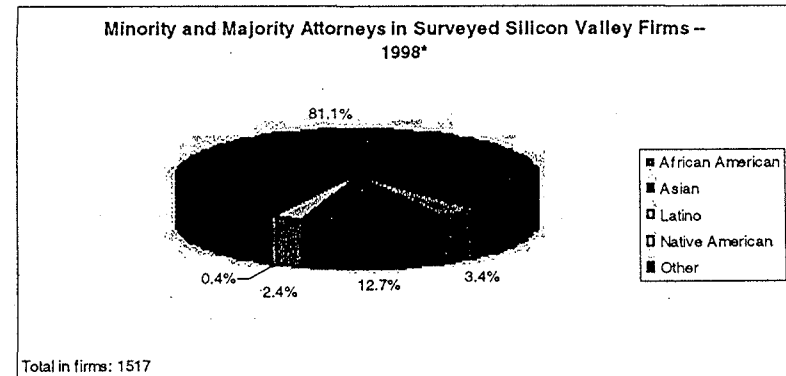
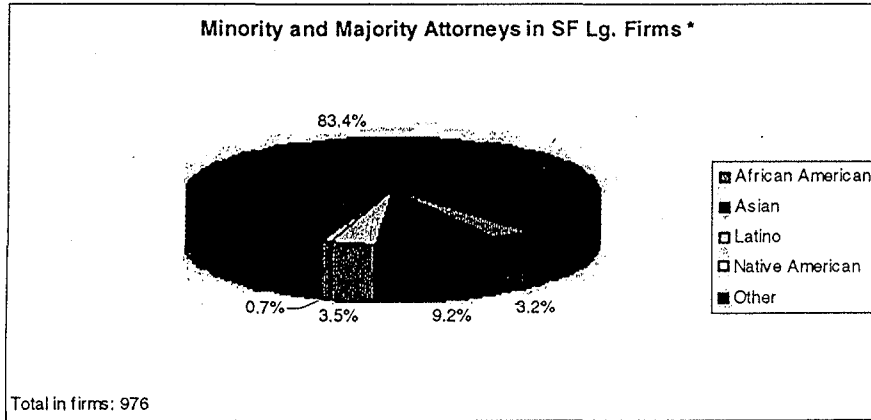


# 1990-1998 Percentage of Minority and Majority Attorneys in Selected SF Law Firms



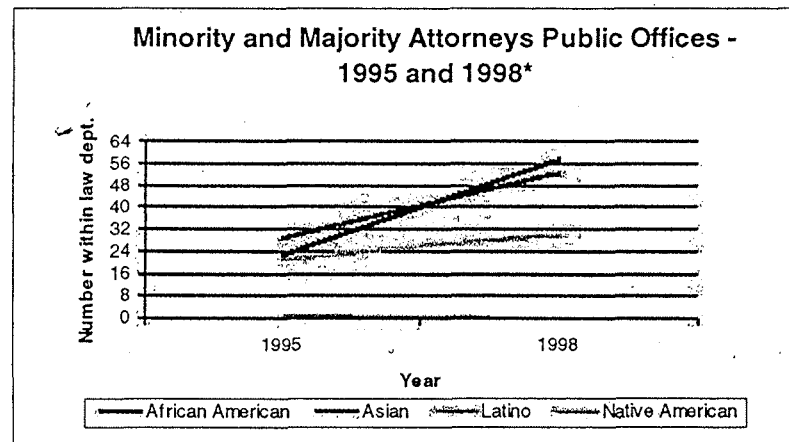
# San Francisco vs. Silicon Valley Large Firms 1998 and Silicon Valley Firms (all surveyed) 1998

83



\*For comparison reasons, only 6 large SF firm and 6 Silicon Valley Firms figures have been included.

## Minority and Majority Attorneys Public Offices



\*1995 - Three Public Offices submitted figures; total attorneys: 249  
1998 - Four Public Offices submitted figures; total attorneys: 544

# Notes

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# Notes

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# Notes

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LAWYERS FOR  
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