

*The Bar Association of  
San Francisco Today*

January, 1975

# THE BAR ASSOCIATION OF SAN FRANCISCO TODAY

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## FORWARD

The Bar Association of San Francisco has been increasingly involved in a diversity of projects designed to benefit not only the lawyer, but the community in which we all practice. An increasing sense of obligation among lawyers to their local community has been evidenced by a number of major projects that are described in this report. The difficulty of communicating the activities of an organization which does not normally emphasize in public its efforts to counsel and constructively advise agencies and individuals engaged in public service is only partially overcome by this report. However, it was felt essential to make some effort to inform not only members of the Bar Association, but interested members of the public of the full range of these energetic public services.

Richard B. Morris, Executive Director and General Counsel of The Bar Association of San Francisco, wrote "Report on The Bar Association of San Francisco Today" during the summer and fall of 1974. Subsequently, Judith Ciani, President of the Barristers Club, and James Seff, the Club's Vice-President, prepared the material contained in the report which describes Barrister activities on behalf of the Association.

Mr. Morris is the first full-time lawyer employed as staff by the Bar Association. He has been General Counsel since July 1971, and became Executive Director as well in December 1973. Mr. Morris received his law degree from the University of California in Berkeley, and was admitted to the California Bar in 1961. He was in private practice in San Francisco for several years, and then served as General Counsel of the San Francisco Lawyers Committee for Urban Affairs from 1967 to 1970.

It is not possible in such a publication to express effectively all of the viewpoints which exist in as diverse an organization as one composed of over 4,000 lawyers. Nor is it even possible to express the range of viewpoints among the officers and directors of the association. As a result, the suggestions and opinions expressed in this report are those of the authors themselves, based upon the experience and perspective they have gained working within the structure of the organized bar.

Bar associations, just as any other vital contributor to a community, must grow, re-evaluate and sometimes change their direction and opinions in order to be responsive to the needs of the citizens they seek to serve. This report, then, is an *interim* report, to be read as a perspective of what has been and a potential for where we are going. It is not dogma and it is subject to development, modification and improvement. It is intended to provide an opportunity for those interested in knowing about this association to respond, advise and counsel us in the days ahead, and such counsel is solicited.

We are grateful to Sorg Printing Company for its generosity in printing the report without cost to the Bar Association.

E. ROBERT (BOB) WALLACH, *President*  
on behalf of  
The Board of Directors of  
The Bar Association of San Francisco

## INTRODUCTION

The purposes of this report are 1) to define the Bar Association at present in terms of its action agenda; 2) to provide a basis for assessing its present strengths and weaknesses; and 3) to document the evolution of the Bar Association over the past few years from an organization concerned primarily with economic and social interests of its members, to an organization concerned primarily with the administration of justice and the quality of legal services in San Francisco particularly, but also at State and national levels.

This report is not unsolicited. Since becoming Executive Director in December 1973, I have had several conversations with the Association's officers, past officers and members, and representatives of other bar associations, in which I have been urged to write such a report. Many persons are aware that our Bar Association has substantially changed its nature in recent years. Judging by a standard of deed and not only word, the trend has been toward conscious and systematic work to improve the administration of justice and to expand support for legal services programs of varying form. The process and results of this change make the Bar Association a good subject for a "case study" of the modern, organized bar.

In addition to the interest many lawyers have in our Bar Association, non-lawyers also want to know what the legal profession stands for today, a time in which no institution is above public question as to its goals and about its level of achievement. The San Francisco Foundation's grant of \$100,000, for example, renders nearly academic past debates within the profession about whether the Bar Association is simply a trade association or something more. In fact, it is

easily possible to predict that action in prosecution of the grant may conflict with the business interests of some lawyers, including members of this Bar Association. For example, pretrial diversion cuts into criminal defense practice. Criticism of police department operations invites enmity of City Hall politicians sensitive about "law and order" even those friendly to clients of our members.

Similarly, hearings held by Senator John V. Tunney's Subcommittee on Representation of Citizen Interests have demonstrated that the public wants to know a great deal about lawyers and about what lawyers do for people. In particular, these hearings have sought answers from lawyers who head bar associations throughout the nation.\* In his statements before the Tunney Subcommittee Orville Schell, President of the Association of the Bar of the City of New York, answered the question of the role of the organized bar in language which finds solid support in the facts and analysis presented in this report:

"In the final analysis it is the central role of lawyers in the administration of justice—rather than their licensed or professional status—which imposes upon them a special and affirmative duty to assure the fair and proper working of our laws . . . As DeToqueville observed, this system cannot function without the assistance of lawyers, who enjoy a unique role in our society precisely because of the extraordinary range of problems which our courts, agencies, legislatures and even lawyers are expected to resolve. When problems are not fairly presented to these bodies for resolution, they tend to become resolved through position, wealth, power, inertia or worse, a false appearance of justice which belies the nation's commitment to equal justice under the law. . . .\*\*

It is not enough that lawyers serve on boards of churches, schools and other charities, or on the local little league. They must give of their professional time. Nor do I feel that lawyers should be permitted to buy themselves out of this obligation by donations of money. To be sure, contributions will be welcome; what we need, however, is the professional skill of all levels of the bar . . .\*\*\*

I personally endorse Mr. Schell's position, and believe that the first priority of the organized bar is maintenance and improvement of the administration of justice and legal services. In my opinion, it is of great importance that most lawyers learn to accept the implications of this priority in terms of a duty to support and participate in the organized bar. This paper is intended to foster a new level of insight within the profession about the organized bar and its first priority.—

\*Copies of the transcripts through October 5, 1973 and of the hearings at Houston in February, 1974 are available in my office.

\*\*The Organized Bar: Self-Serving or Serving the Public, Hearings transcript p. 73 (February 3, 1974).

\*\*\*Ibid at p. 83.

## THE BAR ASSOCIATION TODAY

### A. Budget and Staff

What is described about the organized bar in San Francisco in the following documentary can be easily summarized by considering operational budgets and staffing. In such terms the changes are in kind, not merely degree. They are fundamental, although interestingly enough, they do not call for revision of our corporate purpose. The full implication of these changes, however, bearing as they do upon the role of the organized bar in San Francisco, other major cities, and in the nation as a whole, are not so easy to trace. Therefore, what is described is like the tip of an iceberg.

Although the numerical membership of the Bar Association has *not* changed greatly from the 4,000 figure reached about 1970, there has been great growth in staff and operations budget in the work of the Bar Association and collateral organizations during the period 1970-1974.

—Bar Association dues income has nearly doubled, from \$100,000 to \$190,000.

Lawyers' Referral Service (LRS) receipts (\$50,000) and other revenue items in 1974 were \$65,000, compared with a total of \$35,000 in 1970.

—The San Francisco Lawyers' Committee for Urban Affairs,\* which was founded and maintained by many of the same lawyers who support the Bar Association and which shares office space with the Bar Association, has an annual budget of \$140,000.

The San Francisco Foundation made a grant to the Association of \$50,000 for two years, commencing July 15, 1974, to be used for work on the criminal justice system in San Francisco. The ABA made a grant to the Association of \$40,000, commencing November 1, 1974, to be used for work on corrections problems in San Francisco.

—The sum of the foregoing is an annual operating budget for programs under the direct supervision of the organized bar in San Francisco of \$485,000.

—A corollary of this budgetary escalation is the fact that the Bar Association now has four lawyers on its staff: the Executive Director and General Counsel, the Director of the Criminal Justice Project, the Director of the Corrections Program, and the LRS attorney-administrator. Combined with the three lawyers working for the Lawyers' Committee, there are a total of seven lawyers working full time under supervision of the private bar in San Francisco exclusively on legal system and legal service matters of great public importance. In addition, the two grants provide two staff persons for paralegal assistance (one of these is a lawyer not yet admitted in California.) In contrast to this strength, at the

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\*For discussion of the Lawyers' Committee, see pp. 22-23.

start of 1970, there was only a single lawyer provided by this same support base of private lawyers and law firms, namely the staff attorney of the then incipient Lawyers' Committee.

## **B. Pending Business**

Perspective regarding the current business of the Bar Association is established through review of the matters listed below which pertain directly to the administration of justice and legal services. Many of them are continuing and have already received considerable recent attention from the Bar Association.

No priority is intended by the order in which they are listed. Where applicable, committees responsible are indicated in some instances by name of its chairman.

### ***Recruitment and Selection of Judicial Candidates for the Trial Courts (Judiciary and Judicial Selection Committees)***

#### ***State Appellate Court System:***

- Meeting expanded case volume: See "The California Courts of Appeal" published by National Center for State Courts, August 1974.
- Sutro Committee reports on Appellate Court Judges; ACA 114. (Painter Committee)

### ***Reorganization and Reform of the Office of the County Clerk (Special Committee on County Clerk's Office)***

#### ***Corrections Reform***

- Consolidation of the jails (Penal Reform Committee and ABA corrections grant)
- Development and implementation of a pretrial services agency (Criminal Justice Project and ABA corrections grant)
- Improved medical conditions in local jails; secured ward at General Hospital (Criminal Justice Project and ABA corrections grant)
- Visiting facilities at San Bruno (Penal Reform Committee)
- Tour of judges of local jails (Penal Reform Committee)
- Installation of O.R. in City Prison; expansion of citation procedures (Criminal Justice Project)

#### ***Legal Services***

- Continued development of Lawyer Referral Service (Lawyer Referral Service Committee)
- Establishment of panels to supplement and assist San Francisco Neighborhood Legal Assistance Foundation (Lawyer Referral Committee)



- Study of ethical considerations regarding solicitation and advertising
- Support for continued experimentation in legal service programs for lower and middle income persons
- Support for legal services programs for the poor: San Francisco Neighborhood Legal Assistance Foundation, San Francisco Lawyers' Committee for Urban Affairs, Youth Law Center, etc. (Legal Services Coordinating Committee)

***Federal Appellate System***

- Follow through of report re: Ninth Circuit, including testimony at Senate hearings (Petrie Committee)
- Study of ABA proposal for a national division of the Court of Appeals (Petrie Committee)
- Study of format for annual Ninth Circuit Conference

***Federal District Courts***

- Uniformity of court rules and procedures
  - Development of procedural guidelines in class actions
  - Development of structure for continuing dialogue regarding court administration
  - Study of Sentencing
- All have been assigned to the Federal Courts Committee.

***Criminal Justice Grant***

- Improving the criminal justice system in San Francisco with added staff provided by two-year, \$100,000 grant from San Francisco Foundation

***Judicial Administration, City and County of San Francisco***

- Change of system for selecting the Presiding Judge, Superior Court
- Improvements in domestic relations system (Special Courts Committee)
- Improvements in calendar management, especially Superior Court, Civil (Special Courts Committee)
- Consolidation of budgets and reform of budgeting procedures in accordance with the doctrine of "separation of powers"
- Consideration of additional court space and/or new courthouse
- Conference on Court Modernization (with Judicature Society)

***Pending Legislative Hearings on Unification of State Court System (Hardy Committee)***

***Effectiveness of the Organized Bar***

- Relations and collaboration with Board of Governors of State Bar
- Relations and collaboration with Conference of Delegates

—Relations and collaboration with the ABA

—Relations and collaboration with bar organizations in the major cities in the United States

Detailed treatment of the subject of inter-bar organization relations is beyond the scope of this report. However, a few issues have surfaced and are matters of present concern. Thus, in respect of our relations with the State Bar, in the context of the increasing contests in all districts of the State to fill seats on the Board of Governors it seems proper to propose that a special study be made of the election process. Ideally, a statewide committee should do this, in consultation with the districts. It is too serious a matter to be determined as much by default of bar leadership at the level of the affiliated, voluntary bar organizations, as by the aggressive concerns of a comparatively small number of lawyers. In this regard it must be underscored that the State Bar is a public corporation, not a voluntary organization. Members of this unique public corporation have a duty to see that its business is well managed on behalf of the public interest.

On the general subject of ABA and State Bar relations, it seems to me that we should devote more attention to collaborative work at State and national levels with these organizations. For example, the ABA 'House of Delegates' agenda at its recent convention contained many matters of interest to our committees, sections and Board. Further, the number of San Francisco lawyers appearing on panels at the ABA Convention seminars demonstrates that we may already have a sizable resource of volunteers who would probably welcome such collaboration. Why should bar associations all over the United States study independently and without efforts to complement each other, common questions pertaining to the legal system and legal services? While the first priority of The Bar Association of San Francisco is the legal system as operative in San Francisco, we also have obligations at other levels of its structure, and we should not neglect them, especially if our members are already engaged in related bar organization efforts. A similar problem arises out of the non-coordinated committee and section systems of the state and local bar organizations.

In addition to the foregoing items of business pertaining to the legal system, there also exist a number of internal organizational goals of a continuing nature which require Board attention. These have been subordinated in this presentation because for the Bar Association they are the means of conducting its duties; they are not the responsibilities themselves. It is too easy for non-profit, public interest organizations, with their customary heavy reliance on the resources and time of volunteers, to become so worried about the issues of survival that they neglect the very goals which justify their survival. Pending business in this sphere includes:

- (a) Increasing membership, particularly going after the strays, i.e., those who have been members in past years.

- (b) Stabilizing LRS finances.
- (c) Improving and enlarging publications and communications programs.
- (d) Completion of operations manual and staff training.
- (e) Reorganization of the Bar Association Foundation.
- (f) Reorganization of insurance program.
- (g) Development of program for regular membership meetings.
- (h) Improvement of social programs for members.

Several of these subjects ((a), (b), and (e)), are touched upon elsewhere in this paper under separate headings.

## **STRENGTHS AND WEAKNESSES**

### **A. The Problem of the Organized Bar**

Whatever may be the philosophical validity of Mr. Schell's comments to the Tunney Subcommittee (p. 4), the descent from theory to act reveals gigantic obstacles to fulfillment of his explicit goals.

The heart of the matter is that too many lawyers equate the voluntary character of organized bar work with freedom to take or leave the public service responsibility of the legal profession. There are many tasks which the profession must perform if the public is to have the information it needs to formulate sound policy about our legal system. In this task, there is much which the individual lawyers simply cannot do alone. The legal profession is involved in the system of justice as a group, not merely through the services of individual lawyers on behalf of particular clients. This involvement is underlined by such ethical principles as Canons 2, duty to provide legal counsel, and 8, duty to improve the legal system, of the American Bar Association's Code of Professional Responsibility. No individual lawyer can or should exclusively provide the profession's contribution to these important public needs. Therefore, lawyers must join together in formal organizations to assure that the views of all their members are fairly represented in respect of our system of justice.\*

The difficulty is not that lawyers do not accept these operating principles as part of their professional mold or outlook. Rather it is that they do not take them very seriously, unless they are continually exposed to the kinds

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\*This duty is not met by participation in the integrated bar. The State Bar of California has more than enough to do as the public corporation charged with the licensing and disciplining of the practicing bar, as well as the duty to address problems of the legal system in California. Occupied with these priorities, it cannot contribute to the day-to-day operations of the legal system in the City and County of San Francisco all that is required from the bar. Similarly, it cannot sufficiently represent the bar of San Francisco and other communities on broader questions.

of problems on which The Bar Association of San Francisco increasingly has been focusing, and are drawn into the Bar Association's action related to them. The low vote on the principal recommendations\* of the 1970 Special Review Committee is of substantial interest in this regard. One could assume that under the circumstances our dues-paying members would behave like taxpayers and turn out heavily at the polls. But they did not—only about 30% returned ballots. One would also assume that such a sophisticated electorate would recognize the radical nature of the recommendation in terms of the organization's fundamental structure. For this reason also they should have voted in large numbers to express favor or disfavor. However, only about one out of three members voted. Why? Nobody knows for certain. It is my personal view that those who did not vote are more or less indifferent to the activities of the Bar Association. They are probably not indifferent to whether the Bar Association should exist, but they are indifferent to what it is.

I do not think this is a particularly new problem or one that has disappeared as of 1974. Our recent dues delinquency problem last year, for example, shows that it is still with us. However, recent Bar Association experience in San Francisco suggests methods for overcoming this indifference, which must constantly be attacked. It is like dry rot, and if passively ignored by bar leadership, it will sooner or later sap the organization of its major resources. With respect to such a consequence it is *not* the embarrassment of bar leaders or lawyers generally that is the major concern. Rather the risk is that the citizenry is left with a legal system that has lost its greatest potential for continuing reform and adaption to public needs.\*\*

The solution to this intrinsic problem of the organized bar is to develop esprit within the profession. I do not believe it is hard to do this, even in our age of acute cynicism.\*\*\* For example, in writing recently about the Bar

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\*These were that the Association's public interest activity be expanded, particularly in respect to the administration of justice and legal services, and that a staff attorney be hired to direct such work. Committee members were Robert E. Burns, Chairman, Joseph R. Grodin, Gardiner Johnson, Richard B. Morris, and Frank D. Winston.

\*\*Some may conclude that my emphasis on the relationship of bar association work to the public welfare in respect of the quality of justice implies that I think the Bar Association, or more generally, the organized bar, should have exclusive say about the legal system and its operations. I do not. The bar is involved in it, has say, and must speak out. This does not preclude others, who are also involved in a variety of ways, from having their say, too. In fact, if the bar speaks out, I think it is the best way to assure that others will know what the problems are so that they can intelligently and resourcefully react. And, on the contrary, if the bar is silent, the public has little independent information on which to rely about the workings of the law and legal system. This point was forcefully made at one of the seminars held during the recent ABA Convention by a non-lawyer, Mrs. Gloria Cole, long active in court reform in Maryland.

\*\*\*In fact, this report demonstrates, I believe, that such esprit is present, albeit latent, and that thoughtful leadership can tap it.

Association's efforts to straighten out the mess in the County Clerk's office, I praised Morrow Otis and Larry Jordan for demonstrating the same excellence of legal skills and the same tenacity of purpose to fulfill the responsibility of the organized bar that undoubtedly characterizes their labors on behalf of fee-paying clients. In the comments I received following this article, it was evident that the goal I wrote about, viz, that a lawyer's ethical responsibilities to participate in the profession's undertakings on behalf of the legal system should reflect a standard of performance equal to that demanded by his responsibility to his client, was widely accepted by our members. Furthermore, my personal experience during over six years of intense collaboration with the volunteer members of our Bar Association on matters of public concern, shows convincingly that they understand and generally accept this goal. Thus, law firms and lawyers generally accord Lawyers' Committee referrals the same level of services received by firm clients, instead of assigning them to associates for services on a nights and week-end basis. Nonetheless because lawyers cannot be forced to adhere to this high standard of performance (even for fee-paying clients, as common knowledge and the disciplinary records prove) too many often do little or nothing at all on behalf of the administration of justice and our system of law. This sanctionless ethic is at present a crucial problem for the legal profession.

## **B. Organizational Resources**

### **1. Board of Directors and Officers**

A By-Laws Committee\* is presently considering the By-Laws, particularly structural aspects of the Bar Association such as its governance. Pending its report, which will presumably be comprehensive, there is only one matter worth noting here. It seems to me that the Board, and thereby the Bar Association as a whole, would benefit from assistance of an Executive Committee.\*\* I am advised that this was successfully utilized in years past.

As I see it the Executive Committee would be composed of the five officers and Barristers' Club President. In general, it would *not* make policy, or act in place of the Board of Directors. Its function would be to meet in advance of each Board meeting to consult with the President concerning:

- (a) The flow of pending Bar Association business such as that specified above, p. 6-8, including assignment of officer or Board liaison to assure execution of section or committee assignments;
- (b) Matters to be placed on the agenda for Board consideration, and the procedures for obtaining Board action on these items;

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\*Committee members are: Charles H. Clifford, Chairman, James J. Brosnahan, Jr., Ruth Gupta, Samuel Holmes, Keith Petty, Robert Thompson, and William E. Trautman.

\*\*On January 8, 1975, the Board of Directors authorized creation of such a committee on an experimental basis.

(c) Alternative policy considerations to be referred to the Board regarding Bar Association business;

(d) Continuing allocation of staff and other resources to Bar Association business.

It may also be wise to permit the Executive Committee to act in lieu of the Board on minor matters which do not justify either delay or full Board consideration.

In connection with this suggestion, recent comments of Chesterfield Smith, President's Page, 60 ABA Jo. 759 (July, 1974)\* in respect of responsibilities of the Board of Governors of the ABA are enlightening. Recognizing that his remarks extend to an entire Board, an Executive Committee as proposed above seems to me to be a necessary tool to enable Board members to heed Mr. Smith's counsel about Bar management.

## **2. Staff**

In a sense this report is the best evidence to consider in evaluating the quality of the staff, at least with respect to the Executive Director and General counsel. (Value judgments are for the readers.) Taken as a whole, it tends to describe staff priorities and progress made in attaining them.

As to the other staff positions, in my judgment we are developing an adequate staff. Almost every position was "turned over" in 1974 to a new hire. This includes LRS staff and the Association's bookkeeper, Sandy Smith, since she has been moved up to the position of Comptroller at considerable savings and great improvement in our bookkeeping efficiency. Some staff weaknesses remain. By and large, however, staff capability was considerably expanded last year. Remaining problems relate to the level of service provided committees, for example, Youth Education, but their resolution hinge on overall financial conditions of the Association.

## **3. Finances**

The Bar Association has had two dues increases since 1970. In terms of revenue, the Bar Association now collects about \$190,000 from its 4,000 plus members. In 1970 dues revenue from approximately this same number of lawyers was slightly under \$100,000. Additional revenues presently bring in another

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\* "The liaison role is an obligation of Board membership and, in my opinion, probably the most important obligation of that office."

"... it can be seen that membership on the Board of Governors is far more than an honorary recognition . . . Service on the Board of Governors requires dedication and a high degree of professional competence.

"It also requires time, a great amount of time . . . One of the most significant improvements in the representative character of the Association would be the universal selection of individuals who are able and willing to meet these requirements . . ." 60 ABA Jo. at 770.

\$15,000 and LRS income is about \$50,000. In 1970, only \$35,000 of non-dues revenue was earned, \$21,000 of which was attributable to LRS. On the expense side, 1974 produced a surplus of about \$26,000, with LRS producing another \$4,000. In 1972 the Bar Association lost \$28,000; in 1973 it lost \$5,000 from its operations. These factors have improved operating results: (a) closing the lounge, a \$20,000 annual loser in its declining years; (b) consolidation of lounge and office space in the former restaurant, cutting out substantial rent; and the dues increase of 1974 to \$75.00 for members with 11 years of practice. It is unlikely that such a surplus will result in 1975, because staff was added in late 1974 to fill positions cut back in 1973.

Several conclusions are pertinent in the light of the Association's relatively sound financial health. First, our members are putting up in total a good sum. It is not at all clear that further dues increases, if deemed necessary, could be imposed without a loss of membership nearly equivalent to the expected income rise. On the other hand, our dues structure is not high, compared to other major cities, except Los Angeles:

Baltimore \$60, 6th year (of membership);

Boston \$100, 15th year;

Chicago \$125, 16th year;

Cleveland \$120, 6th year;

Indianapolis \$100, 10th year;

Milwaukee \$60, 9th year;

Philadelphia \$65, 5th year;

Rochester \$65, 17th year;

St. Louis \$60, 11th year

The Association of the Bar of the City of New York is going to \$95 for the 5th year, *and \$195 after 14*, because of deficits amounting to \$286,000 in the period 1973-1975.

The essence of the dues problem is, of course, that it does not in many instances conform to the theory of progressive taxation, even though it purports to do so.

Los Angeles probably expects to raise its presently very low dues by about  $33\frac{1}{3}\%$  this year, although its high level will still be under our \$75.00. In 1974 we lost about 10% of our 1973 members. It is probable that a significant segment of these former members left because of the 1973 dues increase, but I personally do *not* think the dues increase is the sole or even chief reason for the loss in membership. Rather, it is due to our failure to effectively inform them of the worthwhile activities and programs undertaken in recent years.

A corollary of the fact that the dues of our regular members add up to a large sum of money is that their proper use is a major public service responsibility of those who serve as officers and directors. Many non-profit and public service organizations have far less to look to for their annual operations. This amount of money, pretty much on a guaranteed basis, and augmented by

\$50-60,000 from LRS, poses serious responsibilities both at the level of membership policy preferences, and at the level of the public interest in a sound legal system.

The final conclusion associated with present financial condition, is that the Bar Association should be able to plan its program over the next few years without the spectre of another dues raise across the board. This possibility is strengthened by the fact that the next few years will probably see a continuance of the present trend of new lawyers to join the Bar Association. This revenue potential tends to offset inflation and salary raises.

There are other factors which bear on the Association's financial condition. They are considered separately under sub-headings of Membership, Grants, and the Bar Association Foundation.

#### **4. Membership**

In general the Bar Association has not increased its membership since 1969. It has stayed at about the 4,000 level, until in 1974 when the new members have pushed membership to over 4,150, despite a loss of past members of about 350. The membership would probably *not* have increased if the Board had not undertaken its special campaign to urge approximately 400 delinquent members to renew membership. Because this campaign was very successful—it reduced the delinquency level from about 800 or 20% of the members to less than 350—and because each year since 1970 there has been a significant number of non-renewals, it seems that a special campaign should be seriously considered to be directed first at all San Francisco lawyers who have at any time been a member of the Association, and second, at those San Francisco lawyers who have never been members.

Two suggestions seem appropriate in connection with a new membership drive. This paper in summary form would appear an appropriate means of informing San Francisco lawyers, member and non-member alike, of what the Bar Association stands for in 1974. Assuming that at least one motive for membership is a lawyer's desire to participate in a worthwhile professional organization, our record should be attractive. In my judgment, this is the most we have to offer, in any event. In support of this view, I cite the generally positive reception of the bar for Chesterfield Smith's attempts to make the American Bar Association visible to and respected by the bar and the public.

Some half dozen law firms in San Francisco have for many years paid the bar dues of all lawyers in the firm. All law firms and corporate law offices (public and private) should be urged to pay the dues of all firms or office lawyers. The Bar Association is a large organization, too large in membership to expect that each and every member can at all times be made to feel part of the membership. This may have been a valid premise for asking the individual to pay his



own dues in an earlier, simpler professional environment. It is no longer practicable. Further, the rapid dues escalation in early years is a burden for many younger lawyers, even those in the larger firms and law offices. For these two reasons, it seems necessary for the bar to adopt a policy that encourages firm payment of bar dues. If it is essential that the work of the Association be supported, it is essential that the bar find ways and means of meeting its support obligation. Payment of dues by firms and law offices is one important means.

A final comment about membership: Whatever may be the ultimate fate of the Conference of Delegates, it is important for the time being that our members be urged to attribute this Bar Association as its representative at the Conference. Our leadership position within the bar of the State of California is helped by the fact that we have the second largest delegation at the Conference. The law firm liaison network established in 1974 should be employed to gain increased attribution. Only 60% of our members sent in the required card certifying this Bar Association in 1974. Incidentally, the task of gaining this membership support would probably be facilitated if firms paid the dues of all lawyers.

## **C. Bar Association Programs**

### ***I. Lawyer Referral Service***

This Bar Association's Lawyer Referral Service takes itself seriously. In 1970 Mort Herzstein was assigned by President Charles P. Scully to reorganize LRS. The energy and leadership he provided over the next few years was matched by his successor Jim Dimitriou. As a result our LRS is now a major and effective public service activity of the Bar Association. A few statistics tell the story:

1970—Budget: Approximately \$15,600  
Staff: One secretary  
Referrals: About 240 per month  
Experience Panels: None  
Accountability of lawyers: Vague and unspecified

1974—Budget: \$48,000  
Staff: One attorney, two secretaries  
Referrals: 620 per month and rising  
Experience Panels: Eight

Accountability of Lawyers: Mandatory arbitration of fee disputes and malpractice insurance or equivalent is required. The changes that have been made to improve LRS are not to be under-estimated.

LRS programs nationwide are often looked upon as self-interest ploys of the organized bar to get around the solicitation rules. "At best," writes one

recent critic of lawyers' referral services, "it is hard to see how lawyers reference services are much more than a less scary method of finding an attorney than picking one at random out of the telephone book." *"Consumerism and the Delivery of Legal Services,"* Meyers, Cal. St. Bar Jo. May-June at 256 (1974). In particular, the changes made in our LRS have dealt with two of the biggest legal service problems, i.e., quality of services rendered and accessibility to a lawyer. The experience panels do require staff and committee screening of applicants for registration. Further, the staff attorney is now capable of dealing with client complaints, and of convincing them in deeds that complaints are seriously entertained. Experimentation with new panels in the no fee and limited fee area is slow, because of pending antitrust questions, but some progress is being made nonetheless.

The significance of LRS in the light of total Bar Association responsibilities goes beyond the possibility of continued growth along currently established guidelines. In the context of the controversy regarding provision of legal service for the middle class, LRS constitutes, I think, a major resource in its present form. With some significant changes, LRS could become a major tool of the organized bar to expand substantially delivery of legal services in San Francisco. For example, LRS is not only privileged to advertise under ABA and State Bar rules of professional conduct, but it might even be permitted to advertise prices of panel attorneys. LRS staff is now looking into this question. Similarly, LRS may well be capable of serving as an "open" panel legal services program with its own pre-paid financial base. Others have proposed that LRS employ legal staff to provide limited, low-cost legal services.

Other important policy questions relate to the LRS operation. Why should not the LRS staff attorney become the Bar Association's expert on legal services, including expert regarding legal service programs in the City and County (and regarding their financial needs) and on the Code of Ethics? As a practical matter to run the LRS properly, especially in the no-fee, low-fee areas, thorough knowledge of existing programs is essential. Also, ethical rules relating to legal services and their delivery are increasingly a subject of concern for the profession, as was demonstrated earlier this year at hearings of the ABA's Committee on Legal Ethics regarding legal service offices. I believe the time has come to seriously consider so expanding the duties of the LRS staff attorney, and thereby offer important additional services to the Board and to our members in respect to their own professional services.

Another aspect of LRS to consider is tying its revenues, at least in part, to a regular Bar Association subsidy of the San Francisco Lawyers' Committee for Urban Affairs. The latter organization is not yet completely self-financed, despite several years of growth in its fund-raising from the private bar. While it is not the only legal services program in San Francisco that could benefit from an LRS contribution of a portion of its annual surplus, its special rela-

tionship to the Bar Association, in that many supporters of both are the same lawyers and many areas exist for collaboration between the two, makes appropriate a subsidy comparable to the free-rent policy of 1968-1973. Under State Bar regulations, support for legal service programs such as the Lawyers' Committee is one of the purposes for which LRS surplus can be utilized. LRS itself is virtually self-supporting.

## **2. Grant Programs**

The interplay between the organized bar as a trade association concentrating on improving business conditions for lawyers and as a public service organization appears to be a constant of Bar Association experience. The recent foundation grants to The Bar Association of San Francisco are clearly premised upon the latter goal, i.e., one for \$100,000 from The San Francisco Foundation, and one for \$40,000 from the Edna McConnell Clark Foundation, transmitted through the ABA Commission on Correctional Facilities and Services. The grants actually require the Bar Association to study, to recommend and even to demand needed reforms in the criminal justice and corrections systems of the City and County of San Francisco. Little debate or deliberation of the Board of Directors actually accompanied the processing of these grants. These grants raise fundamental questions about the present and potential ability of the Bar Association to influence significantly the criminal justice system in this community. Are we developing the leadership and commitment in our officers and board, and in our staff and committees to carry out this responsibility?

The grants themselves are, of course, major resources that go a long way toward enabling us to do whatever extra we must. In particular, they provide added professional staff so that we can become informed about problems and options for improvements, and maintain continuity in program. However, they do not automatically inspire leadership or commitment on the part of our volunteers to become involved in the inevitable morass and controversy associated with criminal justice reform. There is no monetary incentive to them; nor do these pursuits attract indirect benefits, such as increased law firm business through name recognition. This is not to say that incentives are lacking: governmental reform is a challenging engagement; it means exercising influence and power. In the last analysis lawyers will do these jobs in proportion to the level of their conviction that lawyers must do them because they are lawyers. In this light the grant programs suggest again why the task of developing esprit among lawyers about their participation in the organized bar is the number one tactic for bar leadership. Bar accomplishments to improve the legal system in the criminal justice area under the grant programs, when made visible to members and the public, will be the best evidence for attracting lawyer support for the Bar Association.

If the Bar Association does not do a good job, it is doubtful that the grants will be renewed for these or similar purposes, and that is as it should be. The

money is a public trust, and in executing our responsibilities the public becomes a "client." If dissatisfied, this client like others so treated will not come back.

The grants are a great opportunity for many reasons. In the first place, the work of reform must be done and lawyers are uniquely valuable in carrying it out. They are involved in criminal justice and everyone knows it, including the criminal justice bureaucracy. Our experience with the Mayor's Criminal Justice Program showed this. (See "San Francisco Criminal Justice Project," 58 ABA Jo. 263 (1972). Furthermore, a bar association, unlike the police, the sheriff, the district attorney and the public defender, is independent and non-partisan regarding criminal justice. It can be a match to these agencies, however, in that it is a permanent institution with recognized credentials as part of the "Establishment". For these reasons, its potential for gaining public support for recommended action is considerable.

Bar Associations and foundations throughout the nation will be watching results here. If the modern bar association claims that it has a contribution to make regarding the operating conditions and goals of the legal system, then it must deliver when the opportunity to act is presented. In part this is a question of money, i.e., to obtain adequate staffing; and in part it is a question of will.\* However, it may also be that many of the pertinent issues are too big for the bar alone, at least as presently organized and that with aid of grant funds the bar can make significant contributions. If so, it could be predicted that the use of the bar could be greatly multiplied in dealing with legal system problems through expanded resources provided by private and public grants, as well as those of lawyers themselves.

### **3. *Committees and Sections***

Generally speaking, the committees and sections of the Bar Association could be much more effective. There are notable exceptions: LRS, the County Clerk's Committee, Fee Arbitration, Penal Reform, Clients' Relations, the Courts Committee in its first 12 to 18 months to name the outstanding. And in particular instances they all perform work of significant value at high standards. However, many are rarely asked to do anything as part of the corporate work of the Bar Association. And generally committees and sections rarely initiate projects directed to the same end. When they are asked, excellent results can be expected, for example, from the Corporate Law Section's subcommittee chaired

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\*Some contend that the lack of money proves a lack of will. They say that the bar is rich and should long ago have put its money where its mouth is. See "Pro Bono Publico or Pro Bono Organized Bar," Tucker 60 ABA Jo. 916 (August, 1974). Since no one gives "enough." This is obviously partly true. To what degree lawyers should be "special givers" so to speak, seems to me an academic matter at this time. As this report shows, there is much more that can be done before that question arises.

by Robert Nelson, which is examining the proposed revisions of the corporation code.

In my experience two elements are indispensable to effective committee work: a clear request from the President or Board of Directors for a defined or specified work, and somebody's work, i.e., mine or that of a few committee members, usually the chairman (there are many examples). Because my time is limited in comparison to that potentially available from members of the Committees we should concentrate on increasing the work of the committees. I believe we have *not* used our committees and sections well, primarily because we have not given them clear assignments, and because we have not insisted that Board members undertake the task of spurring action according to high standards and a reasonable timetable. The Executive Committee proposed above could and should take care of both these deficiencies.

Some committees might benefit from additional staffing of an administrative nature: youth education, membership, speakers' bureau, or a committee to arrange general or special meetings.

#### **4. Barristers Club**

All members of the Bar Association under the age of 37 are automatically members of the Barristers Club. At present, nearly 2,000 members of the San Francisco bar are Barrister Club members, and almost half of them are actively engaged in one or more Club activity.

The Barristers Club is an integral part of the Bar Association and owes its funding to a budget allocation by the Association. This allocation not only provides sustenance for the Club's numerous projects, but in addition pays the salary of one full-time Barristers Club administrator who is an employee of the Bar Association.

The Barristers Club operates under its own Constitution and By-laws, and is governed by a nine-person Board of Directors elected at large by the membership. The Club may take a public position on any matter it deems proper without prior approval of the Board of Directors of the Association so long as the position does not conflict with announced policy of the Bar Association. The Club's four officers serve six month terms, and are ex-officio members of the Association's Board of Directors. In addition, the President and one other officer serve on the Association's Executive Committee.

The work of the Barristers Club is discharged through a network of committees and special projects which in the aggregate presently number forty-four. Membership on any committee is open to all Club members. Certain of the committees concentrate on "educational" activities while others are primarily "action oriented". All of the committees display some combination of these two features. The substantive law committees (such as Corporations, Anti-

trust, and Criminal Law) also function as advisors to the Board on matters within the area of their expertise. The activities of the Barristers Club are announced, coordinated and editorially dissected by means of a monthly publication, the *Barristers Bailiwick*, distributed to all Club members.

Barrister activity for 1970-74 has been consistently high. The following are among recent significant accomplishments of the Club:

1. Legislative and amicus curiae efforts to decriminalize or reduce penalties for personal possession and cultivation of marijuana and other non-victim crimes;
2. Preparation and publication of a "Jail House Lawyers' Manual on Habeas Corpus", which was distributed to jails and prisons throughout the United States. The Club recently received awards for this manual from the State Bar and the American Bar Association;
3. Recommending the creation of the Association's Advisory Council to oversee the Criminal Justice Grant;
4. Recommending the formation by the Association of a joint special committee to consider survey evaluations of sitting judges;
5. Initiating and successfully carrying the resolution of the San Francisco Board of Supervisors which encourages the use of citations, rather than station-house bookings for arrests for certain non-victim crimes;
6. Drafting the legislation which created the Golden Gate Recreation Area;
7. Conducting a poll of San Francisco lawyers on the subject of price advertising by lawyers and carrying a resolution to the State Bar Conference of Delegates which would have established a committee to study the rules against advertising and to consider possible antitrust implications of the present prohibition against advertising.

Through its Child Care Committee, the Barristers Club has formed a non-profit corporation for the purpose of operating a downtown child care center in San Francisco which will be open to, among others, all persons connected with the legal community. The center has received grants from several foundations totalling nearly \$30,000. Assuming that necessary additional funding is obtained, the center will renovate and occupy a site which will accommodate approximately 100 children.

The Barristers Club has attempted to reach out to law students in the many Bay Area law schools. A pilot program during the 1973-74 school year brought law school representatives to Barristers Board meetings to participate in discussion of Club affairs and stimulate the development of a stronger liaison with the law schools. A program was instituted whereby the committees were required to publish notices of all meetings of interest at the law schools and make arrangements with restaurants hosting meetings to permit law students to

attend without charge the program portion of luncheon meetings. The program has been difficult to establish because of the lack of continuity within the schools and the absence of a cohesive political group with which the Barristers can communicate.

Among the many valuable activities and services of the Club which continue from year to year are the following:

1. The Resolutions Committee, now a standing "Conference Committee", is responsible for coordinating resolutions prepared by Barristers Club committees for presentation to the annual State Bar Conference of Delegates. During 1974 the Association sponsored nine resolutions before the Conference, eight of which were prepared by the Barristers. Three additional resolutions which emanated from Barristers committees were sponsored before the Conference by individual members of the Club.

2. The Summer Job Project succeeds each year in placing several disadvantaged high school youths in jobs with downtown law firms. The purpose of the project is to develop responsibility and to improve respect for the legal process.

3. Twice each year the Bridging-the-Gap Program assembles a series of "nuts and bolts" seminars, offered to new admittees to the Bar. The program is open to all without charge, whether or not they are members of the Bar Association and the Barristers Club. It draws an average attendance in excess of 150.

The Club has developed a position on marijuana reform of decriminalization which would decriminalize the cultivation and possession of marijuana for personal use without legalizing sale. This position, it is felt, will discourage large scale commercialization of marijuana. The position has been adopted by the Bar Association of San Francisco and in three consecutive years by the Conference of Delegates. The Club is considering the formation of a tax exempt organization for the purpose of educating the public as to this and other law related matters.

The organic nature of the Barristers Club is demonstrated by the creation within recent months of several new committees; among them are:

1. a Labor Law Committee, which is unique in that it is governed by a triumvirate of chairpersons representing, respectively, labor, management and the NLRB. The committee's first program brought together representatives of the Teamsters, grape growers and farm laborers;

2. a committee on Mental Health and the Law, to attempt through legislation and other means to promote recognition of the rights of persons voluntarily or involuntarily committed to mental institutions;

3. a committee to study and recommend reforms in the present Bar examination system in the State of California;

4. a Bar Reform Committee to recommend means, including the addition of non-lawyer members to the State Bar Board of Governors, of improving the responsiveness of the organized bar to public needs;

6. a Law Day project which will bring young attorneys into San Francisco school classrooms.

Over the years, the Barristers Club has consistently provided an impetus for legal reform and public service projects of the Association while furnishing a variety of professional services to its members. The overall excellence of the Club's continuing program has been recognized by the American Bar Association with first place awards in the Young Lawyers Section in 1970-71 and 1973-74.

## **D. Related Resources**

### ***1. The San Francisco Lawyers' Committee for Urban Affairs***

Organized in December of 1968, the Lawyers' Committee's principal purpose continues to be "to enlist the members of the legal profession and their skills, leadership and special competence in a major effort to help solve the problems of our urban areas." Since 1968 the Lawyers' Committee has raised approximately \$250,000 from San Francisco lawyers, law firms and law offices to pay for its public service program. Speaking generally, about 1300 San Francisco lawyers constitute its financial base. It is important to note that these funds are provided in the most part by many of the same lawyers who have paid for the expansion of the Bar Association's own program with increased dues. It is even more important to note that the lawyers who have supported the staff and overhead have also provided the free legal services needed by Lawyers' Committee clients.

This year Gil Graham has somewhat altered the original format of the Lawyers' Committee by undertaking more cases at staff level. Greater public visibility for the Lawyers' Committee should result, although a decline in visibility of the participating law firms is a risk of such a system.

The Lawyers' Committee also operates a so-called Title VII project directed against discrimination in employment. This program is supported by a special Federal grant from the Equal Employment Opportunity Commission to the Lawyers' Committee's national office for San Francisco, Philadelphia and Chicago. It provides staff to take discrimination cases and to train lawyers, especially minority lawyers, in Title VII law. All told, three full time lawyers staff the Lawyers' Committee's program, all elements of which are operated from the Bar Center.

The Lawyers' Committee is not yet self-financed, despite the efforts of past finance chairmen John A. Sutro, Richard E. Guggenhime and the incumbent Burnham Enersen. The Bar Association's original logistical support for this program—free rent—had a side effect of vesting the Committee with the respect-



ability it needed in its genesis. At this date it would, if restored, be mainly important for its economic benefits. (In the interest of an accurate record, I confess that I opposed acceptance of the space at the time, because I thought close proximity to the Bar Association would hurt the program's image with its clientele. I admit to being wrong, and failing to recognize what actually might happen: that the life of the new, independent program could invigorate the established institution.) As noted, there is a unique relationship between the Lawyers' Committee and the Bar Association, in that many of the supporting members of both are the same lawyers. Efforts to strengthen the Committee's financial position and to further coordinate programs, e.g., in the area of corrections, referral of cases, promotion of legal services generally is an important and continuing priority for the Bar Association.

## **2. *The San Francisco Bar Foundation***

Despite its high sounding title, this Foundation ranks as a beggar in the foundation world. Its total assets are under \$15,000. It has existed since May 11, 1962. Its officers and members are past presidents and current directors of the Bar Association. In 1972, then President Richard C. Dinkelspiel tried to launch a special fund-raising program among San Francisco lawyers, but this never got off the ground. The idea was simple: annual giving by "fellows" at the \$100 plus level, and a regular program of grants, bequests, etc., in memory of and from San Francisco lawyers and their families.

This program should have been started in 1950. Had it been, the organized bar in San Francisco would be financing its own grants, for its own programs and for other programs to aid legal services and work to improve the legal system. In brief, the Bar Foundation needs the help of all. Immediate special efforts of this Bar Association are needed to compensate for the inactivity of the past.

## **3. *John H. Miller Fund***

This fund resulted from a \$10,000 bequest to The Bar Association of San Francisco by Susie Miller ". . . as a memorial to my late husband, John Henry Miller . . ." (her will). The bequest was distributed to the Association by Decree of Partial Distribution, June 2, 1939. By action of the Board of Governors (sic) of the Bar Association of San Francisco on June 9, 1939, the fund was accepted and to be, "by appropriate resolution," identified as a memorial to Mrs. Miller's husband, and set aside for "educational and scientific purposes." (Letter of then President Hartley F. Peart to Crocker First National Bank of San Francisco, June 13, 1939.)

Minutes of a Board meeting of May 24, 1940 reveal the following resolution:

**RESOLVED**, That the sum of money left by Mrs. Susie Miller to The Bar Association as a memorial to her late husband, John Henry Miller, should

remain as a distinct and special fund, to be applied by the Board of Governors of The Bar Association of San Francisco to assist the Bar Association in performing a public service.

The file contains little else of an informative nature. A "Miller Committee," established in 1947 to examine how the money might best be spent made some general recommendations, apparently never implemented. I am advised that the last grant was about \$300 in 1970 or 1971 to assist a few persons interested in our "Youth and the Law" work attend a conference on that subject in Los Angeles. I question the propriety of the Bar Association's continuing to sit on this money (now about \$11,500) with no plans for its use.

## REFORMS

### A. Philosophical Considerations

In a recent article in *Juris Doctor* Bruce Terris, co-founder of the Center for Law and Social Policy, writes as follows with respect to the phenomenon of public interest law practice:

"If public interest law is to continue getting the support it needs, it must be explained not in terms of the rightness of a particular position but as an essential and crucial part of our legal system. If it is justified solely as part of some particular partisan movement, I believe it will remain under attack and prevail only to the limited extent that social reform succeeds. ("Hard Times Ahead for Public Interest Law," 4 *Juris Doctor* 22 at 23, July/August, 1974).

In another passage he writes:

"We have come to the point where the value of public interest law is widely recognized. There are now statutes recognizing the need for representation by citizen suits. Agencies are changing their rules to make intervention by citizens easier. Law schools are adding courses in public interest fields. And the bar is working on methods to expand representation for the middle class, is doing more "pro bono" work, and is establishing public interest firms of its own.

While this is all important, I think that this first phase of public interest law—a period of major break-throughs—is over. Now the question is whether the activities of all these new groups can be sustained and expanded. This requires two ingredients: adequate funding and sustained intellectual leadership." (*op.cit.* at 29)

These comments are sound and apply with comparable validity to the expanded and new public interest role of the organized bar, as demonstrated in the described undertakings of the Bar Association and its affiliated programs, the Lawyer Referral Service, the Lawyers' Committee, and the grant projects. This report provides a factual foundation for initial consideration of some of the philosophical or intellectual issues bearing on this transformed organized bar. It can be expected that adequate discussion of the report and similar evidence

of the changing legal profession among lawyers and non-lawyers will develop a definitive philosophy to govern the modern legal profession. What follows, therefore, are preliminary ideas about certain aspects of the overall phenomenon.

### **1. *Responsibility to the Public***

In the work described, the organized bar in San Francisco has assumed that it has been serving the public. The fact is, however, that there exists neither a method whereby the Bar Association can be sure the public wanted it to do the things it chose to work on, nor a method to assure fair reporting by the bar to the public of its accomplishments and shortcomings from time to time. Such fundamental elements of responsibility are necessary if the bar is to be effective in its public interest role. Methods to provide these elements ought to be developed, with the advice and consultation of representatives of the public.

It is perhaps apposite to note that the bar's relationship to the court system, one of the three co-equal branches of government in our system, is not an adequate means of governing its responsibility to the public. The courts supervise the bar in only a general way, and in our state its affiliate, the State Bar, does not make up the difference between what is provided by the courts and what is required. Thus, neither the courts nor the State Bar can help the Bar Association very much on the question of how it should allocate its resources regarding such questions as consolidation of the two pretrial detention jails in San Francisco, improvements in court administration, continuing education of its members, decriminalization of marijuana and prostitution, price advertising of legal services, etc. And yet, the public interest in San Francisco may demand substantial attention by the organized bar to some or all of such legal system concerns.

Furthermore, the organized bar may even find itself in conflict with what it perceives to be the public interest and what is the policy of the courts or the State Bar. In my experience, for example, it frequently happens that lawyers and judges disagree regarding administration of trial court business or their subsidiary elements. Our County Clerk's project is a case in point. The system for selecting presiding judges is another. The public should have ready access to the facts in an objective format so that its views, too, could influence the ultimate policy employed. Independent action by the organized bar is one way such information can be developed and publicly circulated.

### **2. *Responsibility to the Profession***

In its public interest work, the Bar Association finds itself, at least in the public eye, speaking not only for its members, but for the bar generally. The facts are, however, that the Bar Association has and always will have members who disagree with its positions from time to time, and that it can never be certain what non-members think of these same positions. There is a serious

question, therefore, as to how the Bar Association's positions can be fairly considered legitimate, that is, genuinely the view of the organized bar.

The plebiscite of members or lawyers route is often posed as the only "safe" system. But since it is impractical—too slow, too expensive, and even too imprecise—it is not much of a system at all, let alone safe. Furthermore, I believe the plebiscite idea hinges on an erroneous premise about the lawyers who support the organized bar, which in my experience means practically all lawyers *when they are properly approached and engaged*. This false premise is that lawyers are concerned only with their law practice income, and therefore, believe that the organized bar should stay out of so-called "political" questions: i.e., all questions not directly related to law practice income.

If it proves nothing else, the foregoing report proves to the contrary that lawyers are very interested in such questions. For if they were not, it is obvious that they would not have supported these programs and built the Bar Association and its affiliates into the strong organization that it is as of this date. Accordingly, I believe that the "legitimacy" question should be resolved, in the light of precisely the opposite view of lawyers. Thus, as I have noted, I believe that the strongest motive by far for participation in the work of the organized bar is the fact that it is important work that only good and well-motivated lawyers can perform.

On this premise the requirements for legitimacy boil down to clear professional standards to govern the Bar Association's work product (see below) and the guideline our by-laws contain in respect of the Nominating Committee: it should be "representative" of the membership as far as possible. In my opinion this is a primitive rule at best, although it is in the right direction. Several indices of representativeness come to mind:

- (a) Reputation in the profession as a lawyer
- (b) Reputation in the community as a lawyer and as a citizen
- (c) Nature of law practice or legal system involvement; e.g., specialty, academic, etc.
- (d) Experience: law practice and related public service
- (e) Size of firm
- (f) Sociological characteristics: sex, age, race, ethnicity

Consistent with the goal of representativeness, it seems also appropriate to place on the Board the chairman of the Lawyer Referral Service Committee, because this is one of the most important activities of the Bar Association.

An easier although equally serious aspect of representativeness stems from the relation of the Bar Association non-members. Why should not the Bar Association associate their representatives on its committees *ex-officio*, and even

on its Board of Directors?\*

For example, the President of the Lawyers' Club and Federal Bar Association and the Lawyers' Committee Co-Chairmen should perhaps be added to the Board of Directors. Assuming the San Francisco Bar Foundation commences systematic development of its potential, its chief officer, too, should be considered for Board membership.

### **3. Professionalism**

As noted above, the standard here is that no less than the highest quality of skills and the full commitment of resources extended to fee paying clients is what the organized bar must provide in its public interest work. Anything short of this betrays the public and also defaults on the legitimacy requirement. The work described in this report meets this standard in most of the projects and accomplishments listed. It is not, however, an easy standard to maintain.

Meeting this standard means at the minimum that the Board, staff and volunteer committee members understand it and are committed to it. It means rejection of a double standard whereby some positions are taken on a relatively knee-jerk basis, whereas others are ignored or studied to death. In years past this practice often meant that the "social cause" questions were axed, whereas today the tendency may be to adopt a position just because it means change. Professionalism requires a judgment as to the merits, with due process, year in and year out.

### **4. Financing**

Who pays for all this?

First, the lawyers themselves, through their dues and contributions. As noted, law firm payment of dues of its partners and associates seems essential. Given the record of accomplishment, it is expected that when properly presented this policy will be widely accepted as a matter of professional pride. Second, the Bar Foundation: regular membership, regular giving, bequests and legacies—these should build it up to the \$1,000,000 level over the next five years. Third, public assistance, primarily through foundation grants should be utilized. Even assuming that lawyers can and are willing to put up more, it does not follow that they alone should bear the total burden of maintaining and improving the administration of justice and our system of law. No one seriously contends this, of course, although some seem to argue that the bar should finance public interest legal services at least. The facts are that for the moment private Foundations (San Francisco Foundation and Edna McConnell Clark through the ABA) and government funds (EEOC Title VII Project for the Lawyers' Committee) have "matched" voluntary contributions of San Francisco lawyers to form a total

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\*The Special Courts Committee, chaired by John A. Sutro, has met this problem by associating official representatives of almost all San Francisco bar organizations within its working and decision-making structures.

public service effort well beyond the present commitment of the private bar alone. Assuming our past success rate continues, it would seem to follow that such combinations of resources may also characterize the future.

## **B. Organizational Changes**

### ***1. For the Bar Association***

To assure continued strength and development of the Bar Association's public service capability, the following reforms proposed in this report should be studied further:

- (a) A special Board meeting with the committee chairmen responsible for pending business to receive status reports and to determine what the Association should do to assist their efforts. (See pp 6-9)
- (b) Bringing home to the members and the public changes in the Bar Association (See pp 9-11)
- (c) Establishment of an Executive Committee (See pp 11-12)
- (d) Systematic campaign to retain and gain members (See pp 14-15)
- (e) Adoption of a policy encouraging law firms and law offices to pay Bar Association dues for all firm or office lawyers (See p 14)
- (f) Improved method of obtaining designation of the Bar Association for purposes of Conference of Delegates representation (See p 15)
- (g) Expanding duties of LRS staff attorney (See p 16)
- (h) Rent subsidy for Lawyers Committee (See pp 16-17)
- (i) Additional staffing for committees (See pp 17-18)
- (j) Establishment of a special committee to report on the desirability and methods for building the San Francisco Bar Foundation (See p 23)
- (k) Determination of appropriate use of John H. Miller Fund (See pp 23-24)
- (l) Development of methods for reporting Bar Association work to the public, and for receiving inquiry and comment from the public (See p 25)
- (m) Consideration of standards for Bar Association work (See pp 25-27)
- (n) Consideration of guidelines regarding representativeness (See pp 25-27)
- (o) Consideration of ex-officio Board positions (See p 26)

## **2. For the Organized Bar**

The experience of The Bar Association of San Francisco described in this report suggests organizational changes which other bar associations,\* local and state, might profitably consider:

(a) Study of the electoral process for State Bar Board of Governors' seats (See p 8)

(b) Consideration of improved coordination among bar associations (See p 8)

(c) Bringing home to lawyers and the public the changes in the organized bar (See pp 9-11)

(d) Adoption of a policy encouraging law firms and law offices to pay organized bar dues for all firm or office lawyers (See p 14)

(e) Employment of staff experienced in the legal system and public service. A lawyer, but not any lawyer, is recommended for primary staff responsibilities. (The total report relates to this recommendation.)

(f) Development of a more or less systemized method of reporting Bar Association work to the public, and for receiving inquiry and comment from the public (See p 25)

(g) Consideration of standards for Bar Association work (See pp 25-27)

(h) Consideration of guidelines regarding representativeness (See pp 25-27)

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\*It should be noted that many bar associations, particularly in the larger cities, have been reviewing structure and program in recent years.

## AUTHORITIES

1. Transcript on Hearings before the Subcommittee on Representation of Citizen Interests, February 3, 1974, on "The Organized Bar: Self-Serving or Serving the Public Interest?" p. 4
2. ABA Code of Professional Responsibility p. 9
3. Chesterfield Smith, President's Letter 60 ABA Jo 759 (July, 1974) p. 12
4. "Consumerism and the Delivery of Legal Services," Meyers, Cal. State Bar Jo. 256 (May-June, 1974) pp. 15-16
5. "San Francisco Criminal Justice Project," Morris/Van Kessel 58 ABA Jo. 263 (1972) p. 18
6. "Pro Bono Publico or Pro Bono Organized Bar," Tucker, 60 ABA Jo. 916 (August, 1974) p. 18
7. "Hard Times Ahead for Public Interest Law," Terris, 4 Juris Doctor 22 (July/August, 1974) p. 24