

# DIVERSITY

The Bar Association of San Francisco 2005 Report

## Goals and Timetables for Minority Hiring and Advancement

November 2005



THE BAR ASSOCIATION OF  
SAN FRANCISCO

## **ACKNOWLEDGEMENTS**

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# GOALS AND TIMETABLES FOR MINORITY HIRING AND ADVANCEMENT

## 2005 INTERIM REPORT

### PREFACE

This 2005 report on the progress of efforts by San Francisco's legal employers to diversify their attorneys is the fourth in a series of reports The Bar Association of San Francisco (BASF) has issued since it adopted goals and timetables in 1989 for the hiring and advancement of minority attorneys. The results set forth in this report, like those set forth in the 1993, 1995, and 1999 reports, tell of both great progress and of the need to redouble our efforts to make still greater progress in this critical area.

Measured against either the legal profession nationally or the state of the San Francisco legal community in 1989, the progress of the San Francisco legal community has been outstanding. In 1990, only 10 percent of associates and 3 percent of partners in San Francisco firms were minorities. With the benefit of 15 years of goals and timetables,<sup>1</sup> those numbers have risen in 2005 to 24 percent of associates and 7 percent of partners overall and 27 percent of associates and 8 percent of partners in large firms. Those numbers are not only double what they were in San Francisco, but are far ahead of the current national figures of 15 percent of associates and 4 percent of partners.

Measured against either California's census statistics, or BASF's own 2005 goals, however, it is clear that there is much more work left to do. According to the 2000 census, members of minority groups comprise 54 percent of California's population. BASF's goals for 2005 were that 35 percent of associates and 12 percent of partners be attorneys of color.

Although BASF thanks and congratulates San Francisco's legal employers for the progress we have made, we must not relax now. Instead, we must recommit to continuing to make progress. We cannot meet the legal needs of California's population if we reflect a small slice of that population. The public will not continue to have faith in the integrity of our judicial system if it is operated and run by an even narrower slice.<sup>2</sup>

So what accounts for the lack of greater progress, and how do we do even better in the future? The answers are not simple, but this report tries to divine them and makes several concrete recommendations about what legal employers can do to promote diversity.

First, the percentage of minority associates in San Francisco firms (24 percent) now exceeds the national percentage of minority law students (20 percent). We need to expand the pool of minority students attending law school. This will not be easy, but the following will help:

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<sup>1</sup> To our knowledge The Bar Association of San Francisco is the only bar association in the country to have adopted goals and timetables for minority attorneys, which likely accounts for San Francisco having made more progress than any other city.

<sup>2</sup> Only 14 percent of California judges are persons of color.

(1) increase the number and amount of law school scholarships to minority students; (2) counsel minority high school students on the college admission process; (3) encourage minority grade school students to pursue law as a career; and (4) support research into alternatives to the LSAT that measure the full range of primary skills that characterize good lawyers (including creativity, negotiation skills, and determination), not just a few cognitive skills.

Second, we must do a better job of retaining and promoting minority attorneys. Firms have not taken advantage of their successes in hiring minority associates by advancing a commensurate number to partner, an issue that affects all minority groups, but particularly Asian Americans, who have made the greatest gains in associate hiring to date. Almost 15 percent of associates in San Francisco firms are Asian Americans, but only 4 percent of the partners in those firms are Asian Americans. Although, thankfully, overt racism is very rare in San Francisco's legal community, subconscious bias still takes a toll. However well intentioned, people in power tend to support and promote people like themselves unless special efforts are made to control the influence of stereotypes. As President Clinton stated, 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."<sup>3</sup> To help control the influence of racial stereotypes, BASF has retained Professor Anthony Greenwald, a psychologist from the University of Washington, to create a diversity training course specifically tailored to the San Francisco legal community. That training course will be available on the BASF Web site.

In addition, the BASF Web site will serve as a clearinghouse to match junior minority attorneys with experienced minority, and majority, attorneys and judges. This Mentor Registry should particularly help those minority lawyers in firms without minority partners or without minority partners in their fields of interest.

This report also proposes specific goals for African American and Latino associates. We cannot ignore or hide the reality that the percentages of African American and Latino associates of San Francisco legal employers are only 5 percent and 4 percent respectively — very similar to the low national numbers. We must address that problem directly. As Charles Morgan, the former General Counsel of Bell South, wrote, "The things that are measured get done."

To make progress, we will need to work hard. The first step is to make a renewed commitment to continue to move ahead. BASF requests each of you to make that firm commitment. Together, we can further change our community and continue to be a model for the nation to follow. As Gandhi said, we must "be the change [we] want."

James M. Finberg  
President  
The Bar Association of San Francisco

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<sup>3</sup> President Clinton, July 20, 1999.

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## **EXECUTIVE SUMMARY**

The Bar Association of San Francisco (BASF) has been an outspoken proponent of efforts by the organized bar to achieve equal employment opportunity for minority attorneys for many years. Since 1989, BASF has led law firms in a voluntary diversity program featuring aspirational goals and timetables for minority hiring and advancement. This report—the fourth in an ongoing series—reports on the most recent progress in minority diversity. (It should be noted that earlier this year BASF released the positive results of its No Glass Ceiling gender advancement initiative. In addition, BASF committees are currently studying the desirability of adopting goals for the hiring and advancement of attorneys with disabilities and gay, lesbian, bisexual, and transgendered lawyers.)

The conclusion of this report is that there is much to be proud of, significant shortcomings, and much still to be done in the San Francisco legal community.

The percentages of minority lawyers—African Americans, Asian Americans, Latinos, and Native Americans—have increased tremendously since 1990, the baseline year, for minority lawyers as a whole. For example, in 1990 only 11 percent of associates and 3 percent of partners in large firms were minorities. By 2005, fully 27 percent of associates and 8 percent of partners in large firms were minorities. There were similar improvements in midsize and small firms.

That progress places San Francisco firms among national leaders in diversity in the legal profession. While 15 percent of associates and 4 percent of partners nationally were minority lawyers in 2003, see *ABA Commission on Racial and Ethnic Diversity in the Profession, Miles to Go 2004: Progress of Minorities in the Legal Profession*, 30, Table 18 (2005) (referred to hereafter as ABA Report), the San Francisco law firms participating in this study reported that 24 percent of their associates were minorities and 7 percent of their partners were minorities. (By contrast, minorities were 44 percent of junior counsel and 28 percent of senior counsel employed by San Francisco's three municipal law departments.)

San Francisco minority partners, moreover, hold management positions in far greater numbers than in firms in the rest of the country.

Despite the notable progress, it is important to note that our state's minority population as of the 2000 census stands at 54 percent and growing. While BASF's goals and timetables have been based on measures of availability, the long-term objective of BASF's efforts is to have the legal profession reflect California's diversity. As the preface to this report puts it, San Francisco's law firms and law departments cannot meet the legal needs of California's population if we reflect a small slice of that population.

Progress in law firms has not been uniform among the different minority groups. The following table summarizes the data concerning percentages of partners and associates in law firms by race.



**TABLE 1**  
**RACE OF PARTNERS AND ASSOCIATES**<sup>4</sup>

<u>Race</u>	<u>Associates</u>	<u>Partners</u>
White	76%	93%
Minority	24%	7%
Asian American	15%	4%
African American	5%	2%
Latinos	4%	2%

While Asian Americans account for much of the progress made in hiring minority associates, it is unclear if some Asian American subgroups, particularly Filipinos and Southeast Asians, have made gains. The percentages of African American and Latino associates in San Francisco law firms are so low—5 percent and 4 percent—that they are comparable to the low national percentages. Native Americans are less than 1 percent of partners and associates.

Firms generally have not matched their successes in hiring minority associates with successes in retaining and advancing minorities to the partner level. Minority associates have suffered significant and troubling attrition with Asian American associates bearing the brunt. While all minority groups have experienced difficulty in retention and advancement, the disparity between associate and partner levels is greatest among Asian Americans: while constituting 15 percent of all associates, Asian Americans constitute only 4 percent of all partners.

Minority attorneys, particularly Asian Americans, often attribute the high attrition rates of minority associates to stereotyping of minorities as “not partnership material” or “not leadership material.” Several Asian American associates believe that they are regarded by their firms as good enough to be “worker bees” but not considered good enough to advance further.

In each category of legal employer, there is wide variation in the attainment of diversity. The average diversity for a category of firm obscures that some firms do substantially better while some do substantially worse. The practices of successful firms are particularly instructive: whether a firm is successful largely depends on strong and visible leadership from the top and the existence of an articulated, consistently applied program that promotes hiring and advancement. Programs typified by “no special efforts,” a “sink or swim philosophy,” or a “color blind approach” do not work and are often counterproductive. Even law firms that have recently entered the San Francisco legal market have made substantial gains when they have had a directed and visibly committed leadership and have instituted thoughtful diversity programs.

Successful diversity programs have known, specific components, including,

Providing leadership:

- a firm, public, and consistent commitment to diversity from senior management;

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<sup>4</sup> Table 1 does not include municipal employers. Because of rounding, particular minority partners total more than 7 percent in Table 1.

Efforts to retain associates:

- mentoring programs to encourage retention;
- monitoring work assignments, evaluations, and business development;

Efforts to promote and value diversity within the firm:

- regular diversity training;
- effective communication;

Participation in diversity efforts in the legal community;

- development of working relationships with minority student groups and minority bar organizations;
- participation in the California Minority Counsel Program (CMCP), the Minority Corporate Counsel Association (MCCA), and other diversity-focused programs;
- participation in BASF-sponsored programs, such as the Bay Area Minority Summer Clerkship Program, the School-To-College mentoring program, and the Bay Area Minority Law Student Scholarship Program;

Efforts to expand the hiring of minority attorneys:

- targeted recruitment;
- hiring minority laterals; and
- use of expanded criteria for hiring.

With the exception of San Francisco municipal law offices, legal employers have not met the 2005 goals of 35 percent for minority associates and 12 percent for minority partners, although some have met the lower 2000 goals. Explanations offered by those interviewed for the failure to meet goals ranged from the restricting “pipeline” of minority law school graduates to the stereotyping of minority attorneys as not capable of handling associate assignments to the generally high attrition rates among all associates.

Government law departments continue to be an exception. They are the only segment of the legal community that exceeds both the 2005 goal for associate or junior counsel and the goal for partners or senior counsel.

In order to address questions raised about whether BASF’s aspirational 2010 associate goal of 37 percent, which this report recommends, is numerically infeasible, a rough analysis was undertaken of the number of minority associates needed to be hired by law firms compared

to estimates of the pool of minority law graduates over the next five years. That analysis, *see infra* at 12–13, found that the goal was numerically feasible and that concerns about lack of availability of minorities in the pool for associate hiring are overblown.

A significant development is the escalation in efforts by many corporate and government law departments to encourage diversity in the law firms that do their work. Several San Francisco–based corporations are leaders in these efforts. Motivated by internal corporate-wide inclusion policies, corporate General Counsel have moved from signing open letters of principle to seriously considering law firm diversity when giving business and also demanding documentation of diversity efforts that law firms have made.

# GOALS AND TIMETABLES FOR MINORITY HIRING AND ADVANCEMENT

## 2005 INTERIM REPORT

### I. BACKGROUND

The Bar Association of San Francisco's (BASF) diversity efforts had their genesis in a 1988 University of California study, commissioned by BASF, which found that racial and ethnic minorities as a group encountered extensive objective and subjective disadvantages within San Francisco's (City) legal workplaces.<sup>5</sup> In response, on June 14, 1989, the BASF adopted a set of Goals and Timetables for Minority Hiring and Advancement in order to provide a framework of benchmarks for voluntary efforts by firms and law departments to advance the progress of racial and ethnic minorities in the San Francisco legal community.

Ultimately adopted by more than 100 legal employers,<sup>6</sup> the Goals and Timetables for Minority Hiring and Advancement set target dates of 1995 and 2000 with corresponding percentages of minority attorneys sought to be employed by a subscribing organization for their San Francisco offices:

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

The first report, published in 1993, followed six years of highly visible, intensive efforts by BASF's top leadership to provide technical assistance to employers seeking to racially diversify their offices.<sup>7</sup> Intended to measure and enhance the likelihood of our signatories'

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<sup>5</sup> *Bar Association of San Francisco Minority Employment Survey: Final Report*, U.C. Berkeley, 1988. The study was based on interviews of more than 1,300 white and minority attorneys. It attributed continuing segregation in the profession to differential treatment based on race, finding that minorities had less favorable hiring, work, and promotion experiences than their white counterparts. These differences were found 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. Minority lawyers 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 also found to have been excluded from informal networks within the workplace deemed essential to advancement. A large majority of both minority and white respondents reported that minority attorneys were largely excluded from mentoring by powerful partners within firms. It was also 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.

<sup>6</sup> See Appendix A.

<sup>7</sup> These efforts included:

success in meeting the then-upcoming 1995 goals, the 1993 report compared 1990 baseline data with empirical and interview data collected in 1992–93. Despite the fact that the 1980s boom years for law firm growth had ended, the 1993 report noted that a substantial number of employers had nevertheless made significant gains in employment of minority attorneys and predicted that most firms would in fact meet the 1995 goals.

BASF's second report, published 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 1995 goals. The 1996 report documented that firms that utilized specified best practices enhanced their chances of meeting the goals.

The third report, published in 1999, found that many firms continued to adhere to the original 1995 goals, but most were unlikely to meet the higher 2000 goals. The report noted that the recession had hurt African American and Latino lawyers particularly, with 1998 levels returning to 1993 levels. 1999 report at 8. The 1999 report found that most firms made progress in hiring associates, while promotion of minorities to partner had proved problematic. Firms who were most successful in achieving a meaningful degree of diversity were typified by strong and visible leadership from the top and aggressive efforts to enhance minority recruitment and advancement.<sup>8</sup>

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—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 program, currently numbering more than 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 more than 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). It is 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 generals 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.

—Cosponsorship 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.

<sup>8</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.

On May 24, 2001, BASF adopted supplemental goals and timetables for 2005.<sup>9</sup>

<u>Target Date</u>	<u>% Associates/Jr. Counsel</u>	<u>% Partners/Sr. Counsel</u>
12/31/2005	35%	12%

This fourth report seeks to evaluate the current status of diversity efforts. Unlike the 1990–99 period, when BASF produced reports of progress every three years, this is the first report in six years. The report’s conclusions reflect empirical data collected from 65 legal employers and information derived from hundreds of personal interviews conducted with managing partners, general counsel, hiring and recruitment personnel, promotion committee chairs, minority partners, and minority associates in 26 legal offices across San Francisco. The report is also based on input from panelists and BASF members who attended a conference held on October 28, 2005, to discuss the report’s findings and recommendations.

In addition to the results of the fourth report, BASF announced the results of its No Glass Ceiling gender advancement initiative on July 11, 2005. More than 60 percent of responding law firms met goals of 25 percent women partners and 25 percent women in management positions.

In addition, BASF’s Disability Rights and Sexual Orientation Subcommittees are currently studying whether it is appropriate for BASF to set goals for the hiring and advancement

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—Organization of a 1,000-person Celebration of Diversity Conference, which netted more than \$75,000 for BASF to promote diversity.

—In the wake of low post–Prop 209 statistics 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 maintain diversity, and declaring their intention to recruit at schools where students of all races could be found.

—Implementation of the Bay Area Minority Law Student Scholarship Program, providing three-year, \$10,000/year scholarships to students attending Northern California law schools. This program has raised, to date, \$700,000 in scholarship funding, a program that 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. The program included intensively training, mentoring, and placing in summer law firm employment 75 to 100 high school juniors each year.

—Implementation of a three-year 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 through 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 the Lawyers for One America initiative.

<sup>9</sup> The Bar Association of San Francisco at that time also approved higher 2010 goals of 40 percent for associates and junior counsel and 15 percent for partners and senior counsel.

of two other groups of attorneys: attorneys with disabilities and attorneys who are lesbian, gay, bisexual, or transgendered.

## **II. METHODOLOGY**

In order to assess progress, all law firm and corporate signatories to the goals, and other firms and governmental entities, were asked to provide confidential demographic data on the racial and ethnic make-up of their San Francisco office as of January 1, 2005. As in the earlier reports, public offices and a group of San Francisco firms whose primary offices are outside the city were also asked to provide statistical profiles on the numbers of minority attorneys in their San Francisco offices. In addition, for the first time, BASF requested demographic data on minorities holding leadership management positions within firms and departments.

Because the sample of firms who provided demographic data was not randomly drawn, the data may not be representative of all San Francisco legal employers. As a practical check on the representativeness of the sample, the data summarized in this report—notably that 24 percent of associates and 7 percent of partners were minority—was compared to data in the ABA Report. The ABA Report cites a 2003 survey of legal employers for San Francisco that showed 21 percent of associates and 6 percent of partners were minority. ABA Report at 31.

Responding law firms were grouped by office size for closer study. These included:

- (a) those denoted as large firms (the surviving firms of the City's eight largest firms in 1989) and other firms employing more than 150 lawyers in San Francisco;
- (b) midsize firms ranging between 50 to 149 lawyers;
- (c) small firms of 49 or fewer lawyers;
- (d) non-San Francisco-based firms;
- (e) corporate law offices; and
- (f) government law offices.

Because the BASF goals apply solely to the San Francisco office of each signatory, the information contained in this report applies only to the San Francisco offices of the employers studied.

BASF's Diversity Committee selected and trained a group of more than 50 volunteer attorney interviewers. An expert consultant<sup>10</sup> conducted a two-hour training session for the volunteer interviewers, stressing the necessity for confidentiality and outlining seven major areas of inquiry: (1) the overall assessment of where the interviewee's office stood, both subjectively and objectively, on the issue of achievement of racial and ethnic diversity among its attorneys; (2) the office's successes; (3) the office's failures; (4) the efforts of the office, if any, to ensure

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<sup>10</sup> BASF thanks Susan Springborg who provided her expert services on a pro bono basis.

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 with the interviewee's views as to Questions 1-6.

More than 250 confidential interviews were conducted over the first seven months of 2005 with the office's managing partner/general counsel; hiring and recruitment personnel; the chair of the promotions committee; a senior minority partner/senior counsel, where applicable; and a junior minority associate/counsel. The interview notes were redacted to remove identifying individual and employer names and classified by the employment status of the interviewee and the type of employer (for example, "managing partner, large firm"). These notes, together with the statistical survey data, were then collected and analyzed.

As noted above, the comments of panelists and BASF members attending the October 28, 2005, conference have been incorporated into the report. Experts who participated in the conference included Harvard Law School Professor David Wilkins; University of Washington Psychology Professor Anthony Greenwald; Mary Lou Egan, Ph.D., and Marc Bendick, Jr., Ph.D., of Bendick & Egan, Economic Consultants; University of Pennsylvania Sociology Professor William Bielby; EEOC Commissioner Stuart Ishimaru; Columbia University Law School Professor Susan P. Sturm; Hastings College of Law Professor Vik Amar; and Boalt Hall School of Law Professor Marjorie M. Shultz.

### **III. 2005 STATISTICAL PROFILE OF SAN FRANCISCO LEGAL EMPLOYERS**<sup>11</sup>

#### **A. The Percentages of Minorities Employed by Law Firms Have Increased since 1990, the Baseline Year for All Reports, for Minority Lawyers as a Group.**

Although the identity and number of firms in different size groupings has shifted over the course of time, the trend has been generally upward in the percentage of minority lawyers as a group in the various categories. The following table summarizes the trend among large, midsize, and small firms:

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<sup>11</sup> Statistics reported in the 1993, 1996, 1999, and 2005 reports are summarized in Appendix B. Because of limitations in the data requested, neither this report nor prior reports contain specific data on associate attrition, partner promotion, or lateral hiring. One of the recommendations of this report is that such data be collected for future reports.



**TABLE 2**  
**MINORITY PARTNER AND ASSOCIATE TRENDS**<sup>12</sup>

	<u>Year</u>	<u>% Minority Associates</u>	<u>% Minority Partners</u>
<b>Large Firms</b>	1990	11%	3%
	1998	24%	6%
	2005	27%	8%
<b>Midsized Firms</b>	1990	8%	3%
	1998	20%	3%
	2005	23%	7%
<b>Small Firms</b>	1990	12%	1%
	1998	18%	4%
	2005	23%	7%

Thus, the rate of increase for minority associates in large and midsized firms has been somewhat slower from 1999 to the present than in the period before 1999, while the rate of change among the small firms has been more consistent.

The slowing rate of increase for minority associates since 1999 coincided with the national controversy about the legitimacy of affirmative action in law school admissions and a flattening in the national rate of increase in the number of minority law students. If these factors have constrained the pool of minority candidates for associate jobs, there is reason to expect changes. First, the recent decision of the U.S. Supreme Court in *Grutter v. Bollinger*, 539 U.S. 306 (2003), upholding race-based affirmative action in University of Michigan Law School admissions, has settled the debate about affirmative action in law school admissions. In the words of the ABA Report at 3, the decision “promises renewed support for efforts to increase minority access to legal education.”

Second, enrollment statistics appear to be on the rise in the law schools most San Francisco employers point to as supplying most of their associates. While the 2003–04 national figure on minority law student enrollment was 20 percent, ABA Report at 8, most employers state that they are hiring from the top California or top national schools. The most current statistics for these law schools show much higher minority enrollment. 2004–05 enrollment statistics show that minority enrollment is fully 33 percent in one ranking of the top 10 California schools (5 percent African American, 9 percent Latino, 19 percent Asian American). *See* data at [http://www.usnews.com/usnews/edu/grad/rankings/law/brief/lawrank\\_brief.php](http://www.usnews.com/usnews/edu/grad/rankings/law/brief/lawrank_brief.php) (U.S. News & World Report rankings, Latino statistics derived from adding statistics for Mexican Americans and Other Hispanic Americans). Minority enrollment statistics for 2004–05 for the top 20

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<sup>12</sup> Non–San Francisco–based firms, which were not separately reported before 2005, are not included in Table 2. Nor are government lawyers included. Native Americans total less than 1 percent of partners and associates.

national law schools, including four California schools, show that minority enrollment is 27 percent (8 percent African American, 7 percent Latino, 12 percent Asian American). *See id.* (Minority statistics of graduates and those who pass the bar exam are lower than for enrollment.)

**B. The Progress Made by San Francisco Law Firms and Law Departments Makes Them National Leaders in Diversity.**

The most current statistics show that nationally only 15 percent of associates and 4 percent of partners were minority lawyers in 2003, see ABA Report at 30, Table 18. In contrast, the San Francisco law firms who participated in the survey reported that fully 24 percent of their associates and 7 percent of their partners were minority attorneys.

San Francisco's three municipal law departments—the Office of the City Attorney, the Office of the Public Defender, and the Office of the District Attorney—are an exception. Minority attorneys are 44 percent of junior counsel and 28 percent of experienced counsel. Overall, minority attorneys are more than a third (34 percent) of municipal lawyers.

Minority partners and experienced attorneys hold management positions in far greater numbers in San Francisco than in the rest of the country. BASF reported information about minorities in management positions at law firms in this report for the first time. While the ABA reported that nationally, “[f]ew minority partners hold leadership positions,” ABA Report at 36, the percentage of management attorneys in Bay Area law firms (managing partners, heads of management committees and practice group heads) who were minority was 10 percent overall. Reflecting their trendsetter status, a third of all managers were minority in San Francisco municipal law offices.

Nevertheless, it bears emphasis that the minority population of the State of California as of the 2000 census was fully 54 percent, and has grown since.

**C. Progress Has Not Been Uniform for Different Minority Groups.**

The following table summarizes 2005 data concerning numbers and percentages of partners and associates by race for the legal employers participating in this study.

**TABLE 3**  
**RACE OF PARTNERS AND ASSOCIATES**<sup>13</sup>

<u>RACE</u>	<u>ASSOCIATES</u>		<u>PARTNERS</u>	
	<u>Number</u>	<u>Percentage</u>	<u>Number</u>	<u>Percentage</u>
White	1,468	76%	1,450	93%
Minority	448	24%	115	7%
Asian American	282	15%	57	4%
African American	89	5%	27	2%
Latinos	73	4%	29	2%

While Asian Americans represent much of the progress made by minorities in law firm diversity in San Francisco, it is not clear whether Asian American subgroups, such as Filipinos and Southeast Asians, which comprise sizable portions of the state’s Asian American population, have made gains, an issue on which future BASF reports should collect more data.

The percentages of African American and Latino associates and partners in San Francisco firms were so low that their representation is comparable to their percentage representation in firms nationally. African Americans were 3 percent of all attorneys and Latinos were 4 percent at all the legal employers surveyed in 2005.

**TABLE 4**  
**AFRICAN AMERICAN AND LATINO ATTORNEYS**

<u>Firm Size</u>	<u>% African American</u>	<u>% Latino</u>
Large	4%	3%
Midsized	2%	3%
Small	4%	3%
Non-SF-Based	4%	2%

By comparison, the ABA reported in 2000 that 4 percent of all attorneys nationally were African American and 3 percent were Latino. On the other hand, Asian Americans were 10 percent of San Francisco attorneys in 2005, or five times the 2 percent proportion of Asian Americans attorneys in the nation.

San Francisco’s unique setting was itself presented as one reason for this difference. As a managing partner of one large firm observed, “It is more difficult to recruit African Americans to San Francisco than to other cities.” Similar comments were made about Latino associates and lateral associates. On the other hand, firm managers generally believed that Asian Americans were easier to recruit to San Francisco. Regardless of cause, the disparity exists. A minority

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<sup>13</sup> Table 3 does not include municipal lawyers. Because of rounding, the percentages of particular minority group partners total more than 7 percent in Table 3.

partner at a large firm referred to the small number of African American associates and partners as “shocking” and that the net effect of low levels of African American recruitment and retention as resulting in the firm getting “whiter.”

**D. Firms Generally Have Not Matched Their Successes in Hiring of Minority Associates with Successes in Retaining and Advancing Minorities to the Partner Level.**

Minority associates statistics have suffered from heavy attrition rates with Asian Americans bearing the brunt of attrition. All minority groups have experienced difficulty in retention and advancement; however, the disparity between associate and partner levels is greatest among Asian Americans: while 15 percent of all associates were Asian American, they were only 4 percent of all partners.<sup>14</sup>

Minority attorneys, particularly Asian Americans, often attribute the high attrition rates of minority associates to stereotyping of minorities as “not partnership material” or “not leadership material.” Several Asian American associates believe that they are regarded by their firms as good enough to be “worker bees” but not good enough to advance further.

Echoing these concerns, several experts commented at the BASF conference on the disparity between the proportion of minority associates and minority partners as suggesting a lack of genuine inclusion of minorities in the inner circle or decision-making group within firms. According to Marc Bendick, for instance, the disparity may indicate a revolving door of constant hiring, fast departure, and replacement hiring of minority associates without their ever getting to the point of being considered for partner. Mr. Bendick also noted that the proliferation of “nonequity partnerships” and “of counsel” positions at firms might also indicate that even if minorities reach partnerships, they are nevertheless closed out of the inner circle.

BASF has not collected specific data concerning associate attrition, partner promotion, and lateral hiring that might help explain the general patterns. Nor has BASF collected the gender data that would permit analysis of the relative standing of minority men and minority women. This report recommends that BASF collect such data in the future as part of an effort to understand and to focus more attention on issues of retention and advancement.

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<sup>14</sup> The pattern of relatively high Asian American associate hiring but low advancement to partner is not unique to San Francisco. According to the 2005 report of the Association of the Bar of the City of New York *Diversity Benchmarking Study, A Report to Signatory Firms* 14, minorities were 21 percent of New York associates studied with 12 percent Asian American, 5 percent African American, and 4 percent Latino. Minorities, however, were only 4 percent of New York partners with 2 percent Asian Americans and 1 percent each African American and Latino. *Id.* at 15.

**E. With a Handful of Exceptions, San Francisco Legal Employers Have Not Met Both the 2005 Goal of 35 Percent for Minority Associates and the Goal of 12 Percent Minority Partners, and Only a Dozen or so Legal Employers Met Either Goal.**

Large firms as a group have exceeded or met the 2000 associate goal of 25 percent (27 percent) and all almost met the 10 percent partner goal (8 percent). Several large firms have met or will soon meet the 2005 associate goal. Many midsize firms (as a group at 23 percent associate, 7 percent partner) and smaller firms (23 percent associate and 7 percent partner) are further behind. Explanations offered by those interviewed for the failure to meet the goals ranged from the restricting “pipeline” of minority law school graduates, particularly African Americans and Latinos, to stereotyping minority attorneys as not capable, to attrition among associates.

One curious finding in the interviews conducted for this report was that few interviewees mentioned the BASF goals. While managing partners knew of the goals and agreed that they focused attention on diversity as an issue and diversity programs, few non-managing attorneys mentioned the goals or seemed to be aware of them. (One firm, however, has developed its own internal benchmarks and advancement goals, which were widely communicated within the firm. Unsurprisingly, this firm has attained high levels of diversity.)

This report concludes that the lack of awareness of the goals may be attributable to the fact that BASF last issued a Goals and Timetables Interim Report six years ago in 1999 and therefore recommends that the next two reports be issued on a more frequent basis in 2007 and in 2010 in order to focus more attention on the need for programs to increase firm diversity and to disseminate successful best practices.

A question voiced by several managing partners was whether BASF goals, even if only aspirational in character, were so high that they were impossible to meet. As noted above, this report recommends 2010 goals of 37 percent minority associates and 15 percent minority partners. The 37 percent associate goal is in the same ballpark as the 33 percent minority enrollment at the top California law schools discussed *supra* at 10–11. The 15 percent partner goal is substantially less than the current 24 percent minority associate representation, which serves as the pool for partner promotions.

Further, an effort was made to quantify the size of the pool of potential minority associates and compare it to the number of minority associates needed to meet the 2010 goals. Using 2003–04 graduation statistics, the number of minority graduates was projected over the next five years for the top 10 California law schools and the top 20 national law schools (excluding four California schools in the top California category and including the next four non-California schools). Such projections are fairly conservative because they assume no growth in the number of minority law graduates. Nor do firms in fact restrict themselves to hiring from the top law schools or are such restrictions desirable. *See infra* at 25–26.

Table 5 shows the estimated five-year 2005–10 availability of minority graduates in the categories from which law firms stated they hired most of their associates.

**TABLE 5**  
**ESTIMATED FIVE-YEAR 2005–10 AVAILABILITY OF MINORITY GRADUATES**

	<u>Total Minority</u>	<u>Asian American</u>	<u>African American</u>	<u>Latino</u>	<u>American Indian</u>
Top 10 California	4275	2455	555	1150	22
Top 20 National	7075	2715	2405	1730	40

Looking at the large firm category, for example, there are approximately 600 associates. *See infra* at 32. If all six of the large firms based in San Francisco, all of whom participated in the report’s survey, complied with the 37 percent goal, they would have to hire and retain over the next five years a net 62 minority associates over and above the 160 minorities they now employ (600 x 37 % – 160). For each large firm, that roughly works out to a net additional 2 minority associates per year or a total of 10 over the next five years.

With respect to the 15 percent partner goal for 2010, the large firms currently have 8 percent or 35 minority partners. In order to meet the 15 percent goal, roughly speaking, each large firm would have to double the current number, that is, to each advance a net additional 1 minority associate per year, or a total of 6, out of the pool of minority associates over the next five years.

The same analysis could be done for other categories of law firms and for particular minority groups. Given the above five-year 2005–10 availability, numerical infeasibility does not appear to be a substantial impediment. Concerns about unavailability of minority candidates thus appear to be overblown.

#### **IV. BEST PRACTICES**

In each category of legal employer, there is wide variation in the attainment of diversity. The average diversity for a category of firm obscures that some firms do substantially better while some do substantially worse. The practices of successful firms are particularly instructive.

The employers who have been successful in achieving racial diversity in their ranks are those with strong and visible leadership from the top irrespective of whether the employer is a firm, corporate law office, or government department or whether a legal employer is “liberal” or “conservative” in reputation. In addition, the most successful firms have articulated and developed programs designed to encourage the recruitment, hiring, retention, and advancement of minority attorneys, and have maintained consistent efforts to include minority attorneys.

At the BASF conference, experts made clear that successful diversity efforts often require a firm to engage in institutional transformation. Professor Wilkins believes that the first step for a law firm is to engage in critical self-study and reflection. Due to a rapidly changing marketplace, many associates are becoming disaffected with the work lives and leaving law firms for career alternatives, such as investment banking and in-house opportunities. Law firms must focus therefore on developing programs to retain all their associates. Professor Wilkins characterized law firms as typically among the worst-managed businesses and diversity as one of the hardest

challenges to handle effectively. He thought that diversity efforts offered the law firms the opportunity to address long-neglected issues.

Mary Lou Egan and Marc Bendick recommended that law firms distinguish between “diversity” in the sense of simple workforce changes and “inclusion” in the sense of the complex cultural and other changes an institution has to make to accommodate new groups of individuals. A law firm, according to Professor Sturm, must re-create itself as a new institution in which all individuals can be functionally integrated. One example is mentoring programs, discussed below, which, when done well, have the potential for altering the culture of firms and, not coincidentally, benefiting minority and white associates, women and men, alike.

An example given at the conference by a managing partner of this kind of institutional transformation was the new part-time, flex-time, and liberal leave policies that her firm established after the firm realized that it needed to take a long-term view of the value of retaining women associates that the firm had devoted significant resources to training. The managing partner reported that the resulting high retention rates for its associates, both men and women, more than justified the policies from an economic point of view. More importantly, the firm has acquired a reputation as a place at which women as well as men can succeed.

#### **A. Leadership**

Leadership is the indispensable ingredient in diversity efforts. Leaders are not just individuals; they are the face of the law firm. For diversity or other firm initiatives to succeed, the firm’s leaders have to be front and center.

Most firms and departments reporting success at promoting diversity report visible leadership from the top of the organization. Law firms and departments attach different levels of priority to diversity efforts. At entities where diversity has a high priority, that message is usually communicated by the firm or department’s top leadership. At one firm that has made diversity a priority, a minority partner pointed with pride to the fact that “the firm leadership is clear on the importance of diversity and clearly demonstrates its strong commitment to diversity.” At another firm, a managing partner stated, “The best way to be successful is to have a consistent message from the firm leadership.” The ABA reports that most diversity consultants agree that the key to progress in diversity is a visible and sustained commitment by a law firm or law department’s leaders, and that diversity should be spelled out in a firm’s business plan. ABA Report at 96.

On the other hand, the failure of top leadership to personally espouse the importance of diversity in the firm’s business plan or to participate in activities such as diversity committees and retreats has been construed by lawyers, white and minority, as demonstrating the low priority the firm attaches to diversity. Employees are acutely aware of the firm’s level of commitment and minority lawyer morale is directly affected. Paying lip service to commitment is easily seen through.

The chair of a firm’s diversity committee reported that “[i]n the last two years we have actively recruited minority lawyers. I was asked to lead the diversity committee. It seems to make sense to ask an older white male attorney to lead the committee because it showed the firm’s level of commitment to place a senior attorney in this position.” See ABA Report at 96

(“[The Minority Corporate Counsel Association] emphasizes the importance of designating a senior partner to diversity efforts and avoiding diversity committees staffed primarily by women and minorities. Likewise, firms should avoid hiring a non-partner (or non-lawyer) ‘diversity officer’ and delegating all diversity-related responsibilities to that person. Promoting diversity is not a personnel function; it is an executive management function. The people in charge of the firm’s diversity efforts should be the people in charge of the firm.”).

Minority partners and associates often draw an adverse inference about the firm’s commitment to diversity and inclusion from the failure of top management to participate or from inconsistent leadership. One minority associate believed that the failure of the firm’s management to embrace diversity communicated the message that “there was no corporate buy-in from management or powerful partners” and that “diversity was not a firm message—and that really hurts.” While some individual partners appeared friendly to diversity, they were not able to influence the policies of the firm. The associate concluded, “If they don’t start making specific efforts, I think they’ll suffer and lose quality minority associates to other firms.”

Programs typified by “no special efforts,” a “sink or swim philosophy,” or a “color-blind approach” have failed. In the 1995 report at 10, BASF found that significant differences in retention of minority associates in large firms were largely a function of the particular firm’s commitment to diversity as manifested in concrete programs. Few firms today take the position that no special efforts are needed to achieve diversity. One firm commented that it made no special efforts to recruit minorities, to mentor minorities, to market them, or to work with minority bar associations or diversity-focused organizations. This firm also had a high degree of dissatisfaction with its recruitment and retention efforts by firm management as well as the few minorities working there.

Prior reports have consistently documented that firms and legal departments that take a proactive approach are much more likely to succeed. What has worked is leadership, specific programs, steady application, and constant vigilance to ensure efforts are maintained. Even firms that have recently begun to concentrate on addressing diversity, such as non-San Francisco-based firms, have made substantial gains through leadership and targeting. In contrast, firms that created a strong program yet allowed these efforts to languish ultimately are unsatisfied that their efforts go unrewarded. The most successful efforts have required sustained commitment and energy. Once a firm has invested time and energy, the efforts often take on a life of their own; however, even these firms report needing to ensure that efforts are maintained to prevent backsliding.

Successful programs treat diversity efforts as a joint effort of the employer’s management, its minority attorneys, and the entire firm in which the articulated commitment of top leadership has created a climate conducive to attracting, retaining, and advancing minority lawyers. An entity’s success in retaining and advancing minority lawyers affects the credibility of the firm’s commitment to diversity and success in recruiting associates. Minority partners and managers who participate fully in the life of the organization and who serve as role models demonstrate that “the firm means business in diversity.”



## **B. Other Elements of Successful Diversity Programs**

In addition to leadership, successful diversity programs have known, specific components to address maintaining existing minority lawyers as well as to expand diversity and to develop the pipeline for the future, including,

### **Efforts to retain associates:**

- mentoring programs to encourage retention;
- monitoring work assignments, evaluations, and business development;

### **Efforts to promote and value diversity within the firm:**

- regular diversity training;
- effective communication;

### **Participation in diversity efforts in the legal community:**

- developing working relationships with minority student groups and minority bar organizations;
- participation in the California Minority Counsel Program, the Minority Corporate Counsel Association, and other diversity-focused programs;
- participation in BASF-sponsored programs, such as the Bay Area Minority Summer Clerkship Program, the School-To-College mentoring program, and the Bay Area Minority Law Student Scholarship Program;

### **Efforts to expand the hiring of minority attorneys:**

- targeted recruitment;
- hiring minority laterals; and
- use of expanded criteria for hiring.

#### **1. Mentoring Associates to Encourage Inclusion and Retention**

##### **a. The existence and need for mentoring programs**

Unlike recruitment programs designed to encourage diversity, most mentoring programs are not specifically targeted to minority attorneys, but directed to all associates. Nonetheless, most law firms have initiated formal mentoring programs to address issues of culture, attrition, and the failure to retain minority associates. One large firm offers universal associate mentoring,

but also sponsors a semiannual two-day workshop for the firm's minority attorneys to discuss issues of importance to lawyers of color in the firm.

Despite the widespread prevalence of these programs, many firms are reevaluating their existing mentor activities because attrition among associates at many firms has reached new levels. There is further basis for this concern; new lawyers, according to Professor Wilkins, now rarely see themselves remaining at a particular firm or even in the profession itself for very long. He reported that many of his former students at law firms see the top partners at their firms leading lives they cannot imagine themselves leading in the future. These young lawyers are already preparing to leave their firms for alternate career paths, Professor Wilkins stated. Information from the BASF interviews shows that some firms now have problems of retention affecting all attorneys, regardless of ethnicity. At other firms, retention is a problem particularly concerning women associates, and at still other firms, minority associates have been leaving at higher rates than others.

According to the ABA, most evidence suggests that many minority associates face social and professional isolation in law firms nationwide, have difficulty gaining access to influential mentors and quality work assignments, and are victims of stereotyping about their inability to do high-quality work. ABA Report at 34 (“The culture of these law firms is not openly hostile, but it is not perceived by attorneys of color as a culture that values them. As opposed to open discrimination, it is more like benign neglect... Minorities have a harder time finding partners to take an interest in them, to shake the bushes on their behalf and put them on the good files.”).

While mentoring programs may have originally been upgraded to address concerns about minorities and women, they plainly benefit *all* associates. *See id.* at 88 (“All associates need mentors, training, and help with client development. All associates need ‘relationship capital’—bonds with powerful partners who give them good work and tout their contributions to other partners in the firm. And while minorities are more likely than whites to be excluded from these internal markets, in numbers, most lawyers who fail to gain access to the ‘training track’ are white.”).

#### **b. The best format for mentoring programs**

Mentoring programs vary in their formality. Many programs are informal: new hires are assigned a partner to help them settle in and to look out for them. Minority associates sometimes complain that such mentoring programs are not enough to make them feel welcome and provide an inadequate orientation. One senior minority associate commented that his firm needed to take an “extra step” for the minorities “to make sure they stay on track.” While some mentoring programs are available for six months or a year, several extend to two years.

Programs that are most successful are the most comprehensive and formalized. Such programs have the greatest potential for ultimately fostering work-based mentoring relationships, which lead to the greatest success (see below). Several programs offered innovative ways to make it easier for the new attorney to establish a relationship, as well as rewarding for the experienced attorney to do so. One firm has a mentoring program in which each associate is linked to a number of senior lawyers in order to provide multiple avenues for developing relationships. Minority lawyers in this firm also may participate in firm-sponsored affinity

groups for attorneys of color. The head of the mentoring program sits on the firm's associates committee. Strong mentors and mentees are recognized at an annual awards event. (At the BASF conference, Professor Bielby recommended that, since mentoring of associates is so important, law firms should consider rewarding successful mentors with additional compensation as well as recognition.)

Another firm has initiated a comprehensive program with a half-day training with outside consultants, annual reviews of mentors and mentees by section heads and associates, the ability to request a change in the mentor relationship, trial clinics, litigation and transactional workshops, an extensive associate orientation program, individual section training, and free participation in outside training programs. Minority associates were pleased with the welcoming atmosphere of the mentoring program and the insights provided into the firm's culture and traditions. At several firms, associates are not only assigned to partners as mentors but also to senior associates.

At another firm with a mentoring program that brought mentors and mentees together on a monthly basis, a minority associate believed that the too-casual mentoring program was worthwhile but that improvements were required. "The current mentoring program is more social than professional because you are assigned to somebody outside your practice group. What we need is somebody inside your practice group that will look out for you. It should be intense for all attorneys but it is the only thing that works. The interesting thing is that if it works for minority attorneys it will work for all attorneys."

At many firms, minority associates do not have minority partner mentors in many practice areas because of the relatively small number of minority partners at many firms. In order to address the dearth of minority partner role models in San Francisco, BASF is developing a Mentor Registry, a cross-mentoring program in which minority associates will be paired with outside minority partners and senior counsel or with outside partners and senior counsel of whatever race with similar practices. The purpose of the Mentor Registry is to supplement, not to replace, in-house mentoring programs.

The most successful training programs create the environment for mentoring based on working relationships to develop. As one minority member put it, "Real mentoring happens in the work, so if mentoring isn't happening in the cases, no satellite program will fix that." The conversion does not take place in unsuccessful mentoring programs. At the BASF conference, Professor Greenwald reported research confirming that only mentoring programs that were work-based succeeded.

## **2. Monitoring of Assignments, Evaluations, and Business Development**

As one managing partner put it, diversity programs are easy to create. It is their implementation that is difficult. Monitoring directly addresses whether implementation is occurring.

Monitoring assignments, evaluations, and business development assists minority attorneys in developing into the type of attorneys a firm is more likely to promote to partner. One firm has initiated a diversity strategy committee to monitor the progress of minority associates

with respect to assignments, evaluations, and business development. The committee discusses long-term strategy and identifies “star” minority associates in order to later communicate to them that “they are on track” and to help them receive “strategic mentoring to get to the next level....” The committee was established so that the firm “would not lose good people who simply failed to receive adequate feedback and encouragement.” Another firm has developed a program to review associate assignments in order to ensure that minority and other associates are not excluded. The firm has also retained a consulting firm to explore assumptions and attitudes about diversity at the firm and to recommend additional best practices.

The concerns regarding monitoring programs have been widely recognized. The ABA reports that “minority associates tend to be less likely to get choice assignments and access to top clients, and therefore miss opportunities to develop the business that is essential to partnership.” ABA Report at 34. While mentoring and diversity training address these concerns, monitoring programs are beginning to become more common. However, monitoring of assignments, evaluations, and business development at most firms appears to be somewhat ad hoc.

Clients can also play an important role from the outside in monitoring assignments and promoting business development for a minority attorney at a firm. A young Latina attorney was noticed by one of the firm’s larger clients at a meeting. After the meeting the client pulled the attorney aside and asked about her, her role at the firm, and what she wanted to accomplish in her work. After this discussion, the client insisted that she be involved in all of the client’s work. Eventually, the attorney became the principal contact for the firm’s client. The client continued to support the attorney by writing letters to her supervisor praising her good work and sent an unsolicited letter supporting her successful promotion to partner. The attorney grew in experience, confidence, and stature within the firm as a result of this external influence.

### **3. Regular Diversity Training**

Firms that conduct regular diversity training for the support staff as well as attorneys at all levels within the firm report success at retaining minority attorneys. Firms who retain minority associates at disproportionately low rates are typified by a lack of diversity training. At one such firm, formal diversity programs were not staffed by partners or associates, firm leaders did not generally participate in diversity programs, the diversity committee met on an irregular basis, and the diversity committee had an unclear mission beyond recruitment. At another firm, minority associates joked about being drafted for the chore of sitting on the diversity committee, most of whose members were minority associates.

Minority partners and associates believed that stereotypic assessments of the abilities of minority attorneys went unchecked in the absence of diversity training. According to a minority partner at his firm, “White associates ‘get the halo’ and get mentored. Minority associates generally do not because of deeply entrenched assumptions that minorities are not up to the work.” Another minority partner referred to “unconscious bias in evaluations and assignments” at the partner’s firm. A minority associate observed that bias was subtle, recounting an episode in which a minority applicant from a top school was unaccountably singled out as not being “sharp” enough. The candidate was rejected, but was hired right away by another firm of the same size.

It is not unusual that minority lawyers do not feel free to speak up about diversity issues in their firms without fear of repercussion. Unfortunately, minority associates—in whom the firm has often invested substantial training—in such circumstances often vote with their feet and leave.

Another minority partner made the point that African American and Latino associates do not come with the same confidence and feeling of entitlement as white attorneys and that they sometimes lack writing experience or never learned how to conduct themselves in meetings, but that such lack of experience was about seasoning not competence. Unfortunately, this partner believed that when a minority attorney made what would otherwise be regarded as only a mistake it ended up confirming a stereotype about the minority group.

While many firms pay lip service to the need for regular diversity training, it appears that many firms could use technical assistance in developing such training. BASF has therefore commissioned Professor Anthony Greenwald of the University of Washington, an eminent psychologist, to develop an Internet-based MCLE training program that will be made available to firms and that will provide diversity training featuring self-administered tests of implicit bias and scenarios based on the real-life experiences of minority attorneys in San Francisco legal employers.

#### **4. Effective Communication**

Effective communication is an important element of a successful diversity program or, for that matter, any successful program. Firm management must communicate (advertise and promote) to everyone within the firm, and in particular, to minority attorneys, what the firm is doing to promote diversity. It was not surprising to find in more than one instance that attorneys in the same firm had different perceptions about the programs the firm had in place to recruit and retain minority attorneys. In some instances, it was clear that junior attorneys, in particular, did not know about programs the firm had in place, which led to the conclusion that the firm did not have any such program and, more importantly, did not care about the minority attorneys.

At one firm, the diversity committee has an exemplary program not only to identify and recommend opportunities to recruit and retain a more diverse workforce, but also to develop and implement a diversity plan. Notably, the committee annually reports on progress in meeting those goals.

Communication regarding diversity should be regular and consistent and should come from different levels of management (from firm-wide management, practice group leaders, office leaders, and so on). There are many reasons why effective communication about diversity efforts is important. If the attorneys in the firm are familiar with the firm's diversity efforts, they will be able to talk to potential recruits about the firm's efforts. In addition, if the minority associates at the firm know what the firm is doing to enhance diversity, they will feel that they are at a firm that values diversity and them.

## 5. Developing Relationships with Minority Student Organizations and Bar Groups

Several law firms spread the word about job openings or summer clerkship opportunities through minority student and bar groups. One firm advertises in minority law student and bar publications. Firms report that they raised their profiles among minority students and attorneys not only with recruiting but by supporting organizations and legal activities of interest to minority communities. One example, often mentioned, was legal pro bono services. Most firms believe that they win credibility in minority legal circles with such activities.

During the on-campus interview period, one firm sends letters to minority student groups inviting their members to apply and guaranteeing an interview to each member of the group who submits an application. Many firms participate in job fairs for minority lawyers and law students. Other firms cosponsor receptions, lunches, or other events on-campus or in their offices with minority student groups or holds such events with minority bar groups such as the La Raza Lawyers Association, the Asian American Bar Association of the Greater Bay Area, or the Charles Houston Bar Association. Firms report that they sponsor scholarships or summer fellowships aimed at minority students. One firm sponsors fellowships at public interest organizations of interest to minority communities.

One common way firms demonstrate to their lawyers that the firm stands behind and supports their minority lawyers' interests is by paying membership dues/fees in minority bar associations and sponsoring events such as dinners, MCLE seminars, and mixers with minority bar associations. Minority attorneys report feeling that such support shows the firm accepts, appreciates, and values diversity.

While minority bars provide a safety net or support network for young minority attorneys, not all young minority lawyers are aware of the large number of minority bar associations in the Bay Area or the work they do. Young associates are usually too busy in a new environment to seek out this information. Law firms can often play a valuable role in facilitating access to their lawyers by bar association leaders. Through either formal presentations or informal brown bag lunches with bar association officers, young lawyers can network, meet peers or minority partners who can provide cross-mentoring, and learn of pro bono opportunities. Some law firms engage in simple steps such as making various bar association materials available for lawyers at associate orientations or jointly host an event for new lawyers to introduce them to the minority bar opportunities.

Law firms take steps to identify pro bono opportunities for their attorneys by finding cases to take on or by connecting the associates with nonprofit organizations such as the Lawyers' Committee for Civil Rights through pro bono coordinators. Similar liaisons with minority bar groups could aid in spreading the word about job announcement, scheduling events (such as receptions, career fairs, or MCLE's), and generally assisting in the coordination in the firm's participation in student group or bar association events. With such a liaison, law firms could become more visibly and consistently coordinated with the activities of minority bar groups.

Several minority bar leaders reported that there is substantial law firm interest in working with them. Some firms have developed significant relationships with a particular minority bar association even though the firms do not themselves yet have a large presence of the particular minority group. Minority bar leaders welcome this development as forward looking and it creates goodwill between the legal community and the students at a particular school. Students often share their impression of law firms with their classmates and the positive reputation creates invaluable goodwill for the firm among the students.

Law firms can provide further incentive for their attorneys, not only to be involved in minority bar associations, but also to make positive contributions in positions of leadership. Certainly, as lawyers gain public profiles in minority bar associations or gain positions of leadership, the firm benefits. These contributions should be recognized and rewarded.

#### **6. Participation in CMCP, MCCA, and Other Diversity-Focused Organizations**

Several firms reported that participating in the California Minority Counsel Program (CMCP), or at the national level, in the Minority Corporate Counsel Association (MCCA) helped develop and nurture their minority attorneys. CMCP is a statewide membership organization with the stated mission of promoting diversity in the legal profession and increasing opportunities for attorneys of color. Because of this focus, CMCP's programs tend to emphasize business development and career development more than many other types of organizations—and thus, CMCP can provide a support and opportunities network that can help nurture minority attorneys and assist in their success. CMCP has an annual conference in which it matches its law firm and individual attorney members in interviews with government law offices and corporate legal departments for whom diversity is important in their retention of outside counsel, a subject discussed further *infra* at 43–46, on the role of corporate law departments). CMCP has also, for example, run programs aimed at minority associates to help them think about how to develop their careers and try to advance within their organizations, and CMCP has consulted with its member organizations in the design and implementation of their diversity programs. Law firms, government law offices, and corporate law departments can join and participate in CMCP—and importantly, must then publicize their involvement in CMCP internally so that attorneys across an organization can take advantage of the benefits that redound to an organization as a result of CMCP membership.

While MCCA's membership is restricted to corporate law departments, it also serves as a resource for all organizations. In addition to its conferences and programs, it conducts and oversees research on issues important to diversity in the legal profession—and has, as a result of these research projects, published reports on best practices and on subjects such as mentoring across differences in background. Corporate law departments can participate in MCCA by joining; and law firms can take advantage of this resource by participating in or sponsoring programs or events and by studying MCCA publications and research.

#### **7. Participation in BASF-Sponsored Programs**

Over and above the Goals and Timetables For Minority Hiring and Advancement, BASF has a variety of programs designed, first, to assist law firm diversity programs, such as the Bay

Area Minority Summer Clerkship Program and diversity training, and, second, to help firms supplement their internal diversity efforts with external efforts to build the pipeline of minority students. Many of these programs have proven to be effective over time. Some were developed as a result of the findings of this report.

**a. Bay Area Minority Summer Clerkship Program**

Together with the Alameda, Contra Costa, and Santa Clara Bar Associations, BASF encourages San Francisco firms to each hire at least one minority law student each summer through the Bay Area Minority Summer Clerkship Program. The ground rules are that no offer needs to be given at the end of the summer. The empirical experience establishes that this program has helped many firms to form relationships with, and eventually hire, minority students as associates.

**b. Diversity Training Specifically Tailored to the Bay Area Legal Community**

One of the new programs that will begin soon as a result of the effort of BASF's 2005 Diversity Task Force is diversity training specifically tailored to the Bay Area legal community. Professor Anthony Greenwald, a professor of psychology at the University of Washington, has collected information about the Bay Area legal community and created an online diversity training course specifically tailored to the needs of Bay Area lawyers. *See supra* at 20. It will be available on the BASF Web site.

At the October 28, 2005, conference, Professor Greenwald provided a demonstration of the training materials. After engaging in psychological testing showing that we are all prone to make implicit associations about minority groups that are more subtle and persistent than overt bias, the course presents law firm scenarios devised by Professor Greenwald on the basis of interviews with San Francisco lawyers. One example presented a scenario in which a partner has to choose to assign a minority associate to a either a high-risk, complex assignment or a low-risk, simple task. The materials explore, among other issues, the implications of implicit bias research that minorities often do not get the opportunity to prove themselves in challenging assignments.

**c. Mentor Registry**

Another new program resulting from the 2005 Task Force is a Mentor Registry. This Mentor Registry is designed to address the fact that many firms, particularly small and medium-size firms, do not have many partners of color in their practice areas to serve as role models and mentors. Under this new program BASF will keep lists of experienced lawyers and judges—communitywide—who are interested in serving as mentors and of junior minority lawyers who would like mentors from outside their firms, for whatever reason. The Mentor Registry will seek practice area information so that, if possible, mentees are matched with mentors who can give them advice about their specific practice area.

As noted above, the Mentor Registry is intended to supplement—not to replace—internal mentoring programs. Professors Greenwald and Bielby both noted at the BASF conference that research shows that the most efficacious mentoring grows out of work relationships.



**d. Efforts to Build the Pipeline**

Part of the reason that Bay Area firms have not met the aspirational associate goals is the low percentage of African American and Latino law students. *See supra* at 10–12. Since the population of California is diversifying much faster than the pool of minority law students, to maintain our relevance to our client base, California lawyers must take steps to increase the pool of minority law students. While these programs do not directly improve the current diversity situation of firms, they address long-term issues of lack of opportunity.

**(1) Bay Area Minority Law Student Scholarship Program**

Each year BASF raises money for, and awards, three-year scholarships of \$10,000 per year to minority students attending Bay Area law schools. Such scholarships have contributed to raising the percentage of minority students attending Bay Area law schools. At the BASF conference, a minority Boalt Hall student described how he and other minority law students deal with the economic hardships of scraping together tuition and board that exceeds \$50,000 and is scheduled to increase.

More scholarships would have even more of an impact. A partner related how the University of Chicago had increased its minority enrollment from nil to a third through offering minority scholarships. Because of the high impact of scholarships, this report recommends that BASF's Bay Area Minority Law Student Scholarship Program be expanded to a least ten scholarships per year.

**(2) School-To-College Program**

BASF's School-To-College program encourages students at inner-city high schools to attend four-year colleges. For the past several years, the program has been active at Balboa High School, where only 10 percent of the class goes on to four-year colleges. In 2005, 38 Balboa students participated in BASF's School-To-College program. Mentors from law firms helped those students with the college application process, including helping them with their personal statements. All 38 of the students in the Balboa School-To-College program are now attending four-year colleges. It is hoped that in the long run the pool of local minority law students will be increased.

In light of the program's success, this report recommends that the School-To-College program be extended to Thurgood Marshall, Mission, and Galileo High Schools, other schools in inner-city neighborhoods, in addition to Balboa High.

**(3) Lawyers in the Schools**

The Lawyers in the Schools program teaches grade school students about legal topics. Volunteers spend a few hours going to Bay Area grade schools and talking to the students about legal topics, such as the Bill of Rights, or about what it is like to be a lawyer. Such programs can encourage interest in law as a career.

#### **(4) Law Academy**

BASF's Law Academy program is designed to teach high school students about the law. The program is currently active at Mission and Balboa High Schools. Students are taught for several sessions about legal topics and attend court hearings. Law firms also give summer jobs to Law Academy students. This program also encourages interest in law as a career.

#### **(5) Changing the Definition of Qualified**

Professor Marjorie Shultz of the Boalt Hall School of Law and Professor Sheldon Zedeck of the University of California Psychology Department, who are doing long-term research into the question of whether tests other than the LSAT, which measures only a small range of cognitive abilities, would increase the ability to predict who makes a good lawyer. *See infra* at 30; Appendix C. The preliminary research of Professors Shultz and Zedeck indicates that good lawyers have a variety of traits, including creativity, determination, interpersonal skills, and negotiation skills, that are not measured by the LSAT. Additional or supplemental tests that measure those skills, potentially used in conjunction with or to enhance the LSAT, could lead to a different group of people being admitted into law school. There is reason to believe that that group would be more diverse. If so, Professors Shultz and Zedeck's study changes the question from "Do we need to lower standards to provide diversity?" to "Should we be measuring other criteria in order to get the best lawyers?"

Supporting Professor Shultz's research, and encouraging law schools to use the test she designs, has the potential to greatly increase the pool of minority law students.

### **8. Targeted Recruitment**

The pool of minority students at the top law schools is small, and therefore competition for these minority graduates is keen not only among San Francisco legal employers, but also in the national market. Within San Francisco, large firms with few minority partners complain that they cannot compete with large firms that have attained a critical mass of minority partners. Medium-size and small firms complain that they cannot compete with the higher salaries offered by large firms. Several firms have addressed this problem by broadening their recruitment to include schools that are not considered "top ten." For example, a boutique litigation firm that has recruited only at top schools and uses judicial clerkships as a further screen is nevertheless considering broadening the number of schools at which it recruits applicants because its pool of minority applicants is so restricted.

While the competition is keen, several managing partners concede that graduation from a top law school and high grades are not the sole indicators of success. One managing partner noted, "We started to look for indications of success other than just numbers. We broadened our criteria to include life experiences that would suggest success at litigation: students attending night school because they held down a job, students holding down two jobs while attending law school. These are students who would normally pass under the radar.... Our quality has not suffered. In fact, we have improved the overall quality and productivity of the firm." A large-firm managing partner stated that his firm "made affirmative efforts to increase minority representation by recruiting at Howard [University Law School] and other schools out of the top

tier and by reaching beyond the top of the class.” While some firms expressed concern about broadening the hiring criteria beyond the traditional top tier school, class rank, and grades, those firms that made this shift reported success and are happy with netting “excellent attorneys” that many firms would overlook.

Broadening the number of schools at which a firm recruits beyond the top schools is sometimes not such a big step for a firm: it is not unusual for some of its most widely admired partners to have graduated from such lower tier schools, although some firms have not expanded such recruitment to similar schools beyond the specific lower tier law schools attended by their partners. Recruiting at schools in which larger numbers of minority students are enrolled such as Howard University for African American students and the University of Texas for Latino students has become more common.

The managing partner at one firm that has increased its recruitment of minority applicants attributes the firm’s success to: “(1) establishing direct contact with minority law school student groups and associations; (2) conducting interviewing workshops for first-years; (3) participating in various minority scholarship and recognition programs; (4) establishing firm guidelines for recruitment and hiring of associates; and (5) making diversity of candidates a priority.”

Another firm’s managing partner points to an annual reception held specifically for minority law students as highly successful in attracting candidates and maintaining entering classes of attorneys with consistently high numbers of minority summer associates as the keystone of their minority recruiting efforts. (“We decided to draw students to us based on our strengths: what we do and our people. At our receptions partners show up in droves not because they have to be there, but because they want to be there.”) The program has produced a high number of minority applicants and raised the profile of the firm as a good place for minorities to work. Since this program was instituted several years ago, the number of minority applicants and hires at the firm has increased dramatically. This firm’s experience illustrates an integral component of establishing a solid base of minority attorneys. Substantial effort and commitment need to be made to initiate a minority recruiting program; however, once there are sustained results, the impact takes on a life of its own. Firms reporting success maintain that it is crucial to continue the recruiting efforts, but they reach a point where minorities begin to seek them out because they have developed a reputation for being a place that is welcoming to minorities.

Establishing relationships with minority student associations and minority bar groups, discussed *supra* at 20–22, has become an accepted technique for identifying minority candidates as is participation in minority job fairs and minority bar group activities. Several firms reported that they participated in the Bay Area Minority Summer Clerkship Program. This program identifies a minority student in the first year of law school and encourages a firm to adopt the student, resulting sometimes in the student developing a relationship with the law firm and occasionally leading to hiring the student after graduation.

Although most firms recruit second-year law students for summer clerkships, many firms specially seek out minority first-year students for summer clerkships. At least one firm offers such summer associates a stipend in addition to their salary.

It should also be noted that law school recruiting will not increase the total number of minority associates in San Francisco unless law students are targeted who would not otherwise come to the City.

## **9. Hiring Minority Laterals**

Several firms reported that hiring experienced minority laterals as a successful way to increase their levels of minority attorneys. While many firms previously relied on entry-level recruitment as the prime means of filling associate and partner ranks, more firms than in the past engage in lateral hiring to fill their ranks. Several managing partners pointed out that many attorneys no longer expected to remain at one firm for their entire careers. Government and corporate law departments have historically hired experienced lawyers. Some firms have business models that call upon them to hire only experienced attorneys. Many minority lawyers begin their careers or gain prominence in non-firm settings, such as government law departments or public interest organizations.

A minority partner observed that lateral hires at his firm were not judged by the same standards as entry level applicants with the ironic result that white lateral associates were hired who failed to meet law school and grade standards that minority associates were held to when hired out of law school.

Firms often cited the difficulty of attracting minority attorneys, particularly African Americans and Latinos, for lateral entry. One managing partner attributed the difficulty of attracting Latino lateral candidates to the fact that his firm had no Latino partners. (“We know that some of the best advertising we have is done by attorneys already here at the firm. Since we do not have many Latino attorneys, we may not be attracting more because we don’t have any that can get the word out.”)

Minority partners who were lateral hires have played important validating roles at their firms: they demonstrate a firm’s commitment to diversity to potential applicants and serve as role models for minority associates.

Many managing partners noted the difficulty of attracting minority candidates for firm positions without having some minority partners in place, something that several characterized as “success breeding success.” One firm with a successful diversity program is able to boast of minorities in management, practice group, and hiring committee leadership roles. Managing partners and other firm leaders agree that attainment of a “critical mass” among partners and associates as well as minority participation in firm management vastly increases successful recruitment and retention. *See* ABA Report at 37 (referring to a study of large firms in major cities that found that the level of minority partners positively affected the rate of integration among associates independent of other firm characteristics).

One minority partner at a large firm observed that in light of the low numbers of African Americans and Latinos being recruited by the partner’s firm, “Things will get worse with diversity unless something is done about hiring lateral partners and lateral associates.”

One firm that places a high priority on diversity has developed a focused minority lateral recruitment strategy consisting of the establishment of a firmwide lateral hiring committee with a

recruiting coordinator to ensure that diversity goals are part of the hiring decision making. The recruiting coordinator is involved in the development of lateral hiring guidelines that include diversity as a goal, partnering with the California Minority Counsel Program to identify and contact minority practitioners, and emphasizing to recruitment firms the importance of minority recruitment (including the payment of financial incentives).

As is true for targeted recruitment, only hiring minority laterals from outside San Francisco or from government or public interest employers would increase the total number of minority attorneys in the City.

#### **10. Use of Expanded Criteria**

Several firms that have been successful in diversity have usually expanded recruitment beyond those with the highest grades at the top schools.

While some have raised the issue of “standards,” what constitutes appropriate “qualifications” for hiring attorneys is in flux. Boalt Professor Marjorie Shultz points out that law schools effectively select who will be attorneys through their admissions policies. See Appendix C (“*Boalt Hall Transcript Summer 2005*”) at 22, “What Makes for Good Lawyering” and “Expanding the Definition of Merit.” The reliance of law schools on the LSAT and undergraduate grades (criteria that together predicts 25 percent of the variance in first-year law school grades) has been criticized as a predictor of academic performance rather than professional competence. Instead, scholars have proposed that a broader set of predictors of effective lawyering be derived. One such effort has provisionally analyzed the work performed by attorneys, identifying 26 behaviorally anchored factors. These factors include not only “analysis and reasoning” and “researching the law,” but also “practical judgment,” “questioning and interviewing,” “negotiation skills,” and “networking and business development.” *See id.* at 24–27.

Several interviewees made the point that the “standards” debate often erroneously assumes that departures from hiring those with the top grades at the top school are made only for minorities. In fact, the ABA reports on the phenomenon of an “invisible double standard” in which many firms rely more heavily on traditional “box credentials” of top school, class rank, law review, moot court participation and clerkship when hiring minority attorneys than when hiring white attorneys. ABA Report at 33 (“When applied to lawyers of color, the term “qualified” is usually used as a code for graduation from a name law school, top or close to the top class ranking, academic honors or significant journal experience. It rarely includes or makes exceptions for work or life experience, natural talent, interest and aptitude or determination.... When the term is applied to non-minorities, however, being “qualified” tends to expand to include all of the above plus personal background and lifestyle, personal and professional interests, and familiarity. In those cases, being ‘qualified’ clearly is the result of the viewer being open-minded enough to look beyond a limited number of criteria and imagine a candidate’s potential based on demonstrated interest, achievement, and personality.”).

As discussed above, it is not unusual for law firms to recruit at specific lower-tier schools attended by their own partners. *See supra* at 25–26.

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In order to make the above best practices permanent within a firm or office, it is important to make them part of the core identity of the organization. Institutionalization can be achieved by providing incentives for all attorneys and employees to engage in diversity activities. The organizations that view diversity efforts as add-ons to office practices and policies rather than central to the mission of the organization can lose momentum and focus in their efforts. Firms can adopt the following practices to institutionalize diversity:

- Make diversity part of the office mission/definition of success. Several firms and offices have included in their mission statement the goal of increasing diversity within the organization. These organizations consider improving diversity central to their definition of success with specific targets and goals. They recruit minority candidates aggressively. They sponsor and participate in several minority recruiting activities and conferences. They support scholarships to minority law students in areas where minorities do not traditionally practice, for example, intellectual property. If organizations have not reached these goals, they view themselves as not having fully achieved their definition of success for the quarter or year.
- Include diversity activities, notably retention and recruitment activities, as part of the formal annual review process. As part of the annual review, attorneys can be required to engage in certain activities to enhance diversity within the organization. For example, conducting informational interviews for minority candidates, speaking to minority student associations, attending minority law student job fairs, membership in minority-focused conferences, bar associations, and dinners, and so on.
- Count retention and recruitment activities as pro bono hours. Many attorneys are interested in minority recruitment and retention, but given the many demands placed on them by the firm, they are reluctant to give even more time to non-billable hours not recognized by the organization. Several firms credit time spent engaged in retention and recruitment activities as counting towards pro bono hours officially recognized by the firm.

## **V. THE STATUS OF LARGE FIRMS**

### **A. The Numbers**

From 1999–2005, the number of lawyers affiliated with large firms essentially remained static, declining from 1,090 attorneys to 1,056. During that time, however, their minority ranks increased from 174 attorneys to 197. Almost one in every five large-firm attorneys is a minority, and the overall minority representation in 2005 was 19 percent. This compares with 9 percent in 1990 and 16 percent in 1999. When compared to 1990, the number of minority attorneys in large firms rose from 120 to 197, an increase of 64 percent.

With 27 percent minority associates and 8 percent minority partners, the large firms as a group fell short of the 2005 goals of 35 percent minority associates and 12 percent minority partners. They were, however, in substantial compliance with the 2000 goals of 25 percent and 10 percent.

As in the other categories, the large firms exhibited a high degree of variability in the degree of success in attaining diversity: Two large firms exceeded or were within striking distance of the 35 percent goal for associates. Three large firms exceeded the 12 percent goal for partners. On the other hand, three firms had barely 20 percent minority associates and one firm had fewer than 5 percent minority partners.

Asian Americans constitute 11 percent of all large-firm attorneys while African Americans constitute only 4 percent and Latinos constitute only 3 percent.

Overall, the total number of all large-firm associates in San Francisco fell from 797 to 592 between 1990 and 1999 and rose slightly to 601 in 2005. In contrast, the number of minority associates in each of the three groups generally increased steadily between 1990 and 2005, as the following table indicates.

**TABLE 6**  
**LARGE-FIRM MINORITY ASSOCIATES**

<u>Year</u>	<u>Asian American</u>	<u>African American</u>	<u>Latino</u>
1990	56	22	21
1998	82	27	30
2005	97	37	26

Overall, the number of all large-firm partners fell from 576 in 1990 to 498 in 1998 and then fell further to 455 in 2005. The number of minority partners, however, generally increased, as shown in the following table.

**TABLE 7**  
**LARGE-FIRM MINORITY PARTNERS**

<u>Year</u>	<u>Asian American</u>	<u>African American</u>	<u>Latino</u>
1990	4	9	4
1998	14	7	7
2005	17	9	9

Seven percent of attorneys holding management positions in large firms were minority.

**B. Impact of Diversity Programs**

Although the representation of minority attorneys at the large firms is impressive in some respects, many minority lawyers who work there have attitudes that differ markedly from those of non-minority managing partners and others in leadership positions. Numerous large-firm

minority partners as well as minority associates expressed frustration and even anger with regard to their firm's degree of progress on diversity. Some of the disparity in views between management and minority attorneys is due to the fact that, while some gains are impressive, the greatest gains in diversity in the large firms came in the 1990s and recent gains have been more modest. Some of the disparity also appears attributable to how the two groups perceive the diversity programs that the firms have instituted and how those programs are implemented.

All of the participating large firms believe that diversity in their attorney ranks is both a necessary and achievable goal. However, their commitment to actualizing this goal is sometimes tempered by the perceived need to meet other objectives in recruitment, retention, promotion, or client relations.

Comments made by managing attorneys ranged from "we are doing superbly compared to others in the legal profession, but less well when compared to private industry" to the candid statement that "the firm is very disappointed as to how diversity has developed." The variance in characterization demonstrates both startling inconsistencies in approach and, as some critics would claim, over-reliance on hiring Asian Americans to satisfy diversity goals. For instance, a minority partner from the same firm whose managing partner characterizes their diversity efforts as "superb" comments "the term 'minority' is a joke because it includes Asians, which skews the numbers. If you excluded Asians, the numbers are 'shocking.'"

Such conflicting statements within a single firm highlight a perception gap and suggest a failure to appreciate the specific obstacles experienced by specific minority groups in the hiring process and in the workplace experience. This gap exists even among a firm's minority ranks. One female partner commented that her firm as of late was not devoting attention to women's issues, as minority issues were being given much more attention. It is counterproductive for African American, Asian American, Latino, or other diverse candidates to feel pitted against one another or that they are in competition for "favored minority status."

As reflected in most of the interviews, the large firms believe that they are making advances in hiring Asian Americans and women, although the data support this statement with regard to entry-level hiring only. Many firms candidly express dismay at their inability to recruit more African American and Latino attorneys. Some managing partners made sweeping generalizations to account for this problem, such as the possibility that firm demands conflict with minority communities' values and/or family needs that require minority attorneys' time or that "it is more difficult to recruit African Americans to San Francisco than other cities." The managing partner who made the latter comment, however, admitted that he was unaware whether his firm was doing better in hiring African Americans in other cities where the firm had offices and the African American attorney population was higher.

Some firms tout a more holistic definition of the term *diversity*, which includes people of different races, genders, sexual orientations, geographic and cultural backgrounds, and people with disabilities. This report, in fact, recommends that BASF's minority hiring and advancement initiative be coordinated with efforts on behalf of other groups as well. In some instances, however, the holistic approach can be used as a means to obscure whether a firm is meeting specific initiatives.



Large firms continue to approach recruitment with inconsistent diversity strategies. Almost uniformly, emphasis is placed on recruiting first-year minority attorneys with little to no effort focused on recruiting lateral associate and partner attorneys of color. For example, one minority associate commented that his firm is making “a real good effort to recruit and hire.” However, the associate did not mention anything but the firm’s effort at first-year associate recruitment.

Minority attorneys comment that their firms’ standards are more stringent for prospective minority hires. One minority partner claimed that his firm “applied inconsistent hiring practices. The firm was elitist in recruiting from certain schools and emphasizing pedigree and gray matter in the normal track.” Other attorneys agreed that, even when evaluating minority candidates from “certain schools,” minority candidates are expected to supply transcripts, writing samples, and other means of establishing credentials and competence, while their white counterparts from the same institutions are often taken at face value. Moreover, there is often a difference in how minorities are evaluated and their performance critiqued. As one minority partner puts it, “When an attorney of color makes a mistake, it confirms a stereotype; if they are white, it’s just a mistake.” The attorney went on to say, “Such a lack of experience is just about seasoning, not about competence, but partners are less willing to give associates of color valuable, visible work.”

As to lateral hiring, attorneys at all experience levels report that their employers continue to hold minority laterals to entry-level attorney requirements, such as top ten schools and submission of transcripts reflecting high class standing. This is no longer appropriate, as lateral hires have a professional track record that demonstrates their capability in the practice of law. However, only white, male laterals are given the benefit of being judged only by their previous work experience.

A managing partner stated that “the firm does not hire many minorities as laterals. Small numbers among junior partners has an impact upon associates.” Most of the large firms responded similarly, tacitly admitting that an increase in these numbers would draw not only more entry-level minority attorneys but encourage associates to “stick it out to reach the partnership level.”

Large-firm managers expressed the belief that greater retention of minority attorneys can be accomplished by providing mentoring, role models, and fulfilling work assignments. However, the firms span the range, from those that make an intense effort to those that make no effort. For instance, one large firm has hired a noted consulting firm to identify and adopt best practices that will help it achieve its goals in recruiting, obtaining, and developing a diverse work force. Furthermore, the firm has developed extensive mentoring programs and “pipeline” recruitment efforts and has established guidelines that the firm adheres to in order to reduce the attrition rate amongst its minority and women attorneys. No other firm reports such an extensive retention and recruitment program, but it is relatively common for firms to have formalized mentoring programs, minority retreats, and affinity group dinners and social activities. Some firms have “no formal mentoring” but only informal check-ins and evaluations.

While managing partners laud these efforts as either successful or an earnest attempt to address the issues of minority retention, minority attorneys view the efforts differently. As one

minority partner commented: “Two-day retreats at the firm are a good thing, but they’re only good first efforts. There is often no follow-through.” An attorney with disabilities further noted that partners are afraid to criticize minority attorneys or attorneys with disabilities so that they get no feedback at all and are effectively ignored. Without mentoring programs that provide unbiased, but rigorous, evaluation of work product, development of identified skills, and exposure to work that is both challenging and interesting, minority attorneys at large firms will continue to leave large firms in great numbers.

One managing partner commented that “client pressures have been beneficial to management efforts to increase representation of minority attorneys and women on teams.” However, the same managing partner also tempered his comment by saying “such pressure or interest is not universal with all clients.” Indeed, a minority partner felt that diversity as an institutional objective was a low priority for clients. He was angered by the fact that he had been “trotted out for client meetings which have been a waste of time.” He further commented, if the clients were serious, they would pick up the phone and call the minority partner and ask him to be the “relationship” partner. These responses demonstrate that clients tout diversity as an objective, but are only interested in appearances—that is, do you have minority attorneys at your firm? Such an attitude promotes tokenization rather than diversity. Only time will tell.

Large-firm lawyers, though showing dramatic shifts in attitudes from those expressed in previous BASF reports, continue to harbor stereotypes that presume that minority attorneys lack ability. As a managing partner of a large San Francisco firm noted, “Perception among some in the firm that some minority attorneys were a ‘stretch’ hire might cause a lag on their success but only in small part.”

A related belief, as one large-firm minority partner stated, “is that we can afford diversity in good times, but not in hard times.” The diversity-only-in-good-times approach promotes a view that diversity hiring is charitable rather than an acknowledgment that stereotyping and implicit bias need to be combated. Nor does this approach recognize that clients and the firm will benefit from the gifts minority attorneys possess.

## **VI. THE STATUS OF MIDSIZE FIRMS**

### **A. The Numbers**

There were 14 midsize law firms with 50 to 149 attorneys studied in 2005. In 1999, there were eight in the sample studied. Unlike the large firms, both the number of firms and number of attorneys in this category experienced tremendous growth. The number of midsize attorneys grew from 561 to 1101 between 1998 and 2005. During that time, however, their minority ranks increased from 60 attorneys to 163. Less than one in every six midsize-firm attorneys is a minority, and the overall minority representation in 2005 was 15 percent. This compares with 6 percent in 1990 and 11 percent in 1999. When compared to 1990, the number of minority attorneys in midsize firms rose from 42 to 163, an increase of almost four times.

With 23 percent minority associates and 7 percent minority partners, the midsize firms as a group fell short of the 2005 goals of 35 percent minority associates and 12 percent minority partners. Nor was this group in compliance with the 2000 goals of 25 percent and 10 percent.

The midsize firms exhibited a very high degree of variation in their success in diversity, reflecting the heterogeneity of this category which includes old-line San Francisco firms, former boutique firms that grew large, and other rapidly growing partnerships. Three midsize firms exceeded the 35 percent goal for associates. Two firms exceeded the 12 percent goal for partners. On the other hand, one midsize firm had only 10 percent minority associates, and two firms had no minority partners at all.

Asian Americans constitute 9 percent of all midsize-firm attorneys, while African Americans constitute only 2 percent of total midsize-firm attorneys and Latinos constitute only 3 percent of total midsize-firm attorneys.

Overall, the number of midsize-firm associates in the sample fell from 350 to 255 between 1990 and 1999 and then rose to 569 in 2005. The number of minority associates generally increased.

**TABLE 8**  
**NUMBER OF MIDSIZE-FIRM MINORITY ASSOCIATES**

<u>Year</u>	<u>Asian American</u>	<u>African American</u>	<u>Latino</u>
1990	56	22	6
1998	82	27	10
2005	82	17	25

Overall, the number of midsize-firm partners fell from 314 in 1990 to 306 in 1998 and then rose to 532 in 2005. The number of minority partners generally followed the same pattern.

**TABLE 9**  
**NUMBER OF MIDSIZE-FIRM MINORITY PARTNERS**

<u>Year</u>	<u>Asian American</u>	<u>African American</u>	<u>Latino</u>
1990	5	4	1
1998	3	4	0
2005	22	5	8

Seven percent of midsize-firm management were minority.

**B. Impact of Diversity Programs**

The attitudes and approaches regarding diversity at the midsize firms mirror the high degree of variation in their achievement of diversity goals. The firms varied in the breadth and focus of their diversity programs as well as in their perception of current and future progress. Nevertheless, the midsize firms shared the common view that they were “improving” in hiring of minority attorneys and that their numbers show “strong progress.” As is characteristic of firms in other categories, individuals at midsize firms that did not have organized diversity programs attributed that to the lack of “buy-in” from management or powerful partners.

Almost all of the midsize firms surveyed participate in minority recruitment programs, and some have expanded the ways in which they recruit so as to promote the hiring of minority candidates. One firm, which regards itself as doing “better than most” firms in hiring minority attorneys, appeared to have one of the most well thought-out plans for recruiting entry-level and lateral attorneys. It implements many, if not all, of the best practice programs discussed *supra* at 13–29, and it also employs a unique firm-created minority attorney database. This database contains the names of every attorney of color who has come into contact with the firm so that certain minority candidates may be re-approached should the needs of the candidates or the firm change.

Another firm has, in addition to implementing best practices, broadened its hiring criteria to include life experiences that would suggest success at litigation, such as holding a job while being enrolled in law school.

Proactive minority recruitment was generally successful, but like the large and small firms, midsize firms have achieved much greater success in increasing gender diversity than in increasing racial and ethnic minority diversity. Midsize firms have also expressed challenges to attracting African American and Latino attorneys. One partner speculated that the difficulty in recruiting African American and Latino attorneys was attributable to the absence of such attorneys at the firm—what the partner called the “chicken and egg” problem.

While proactive minority recruitment has generated positive results for firms, one area midsize firms are struggling with is minority retention and advancement. One attorney voiced concern that while there was a genuine effort to improve recruitment of minority attorneys, there was also a palpable sense of reluctance to broaden the partnership beyond the typical law firm structure. In recognizing that minority retention and advancement is a priority at another firm, its managing partner remarked that the firm “turns the corner with respect to diversity when the partnership is diverse.”

To address minority retention and advancement issues, midsize firms establish mentoring programs, although most firms do not have mentoring programs that are targeted toward or handled differently for minority attorneys. For one firm, this approach is rooted in the attitude that associates have issues more similar to each other based on their being associates rather than have different issues based on their minority status. Still, a minority associate felt that, while the firm makes no formal effort to ensure diversity in assignment of minority attorneys to work with influential partners or clients, the associate has had good mentors within the firm who have provided the associate opportunities for challenging experiences, including participating in client pitches with new and existing clients.

While rare, one midsize firm reported having a mentoring program that specifically focuses on minority attorneys. This firm has initiated a comprehensive mentor program, which includes a half-day training with outside consultants and annual reviews of mentors and mentees by section heads and associates. Minority associates are also encouraged to participate in and develop their own opportunities with clients. Such opportunities include developing partner and associate teams to participate in making client pitches and actual presentation and marketing efforts and managing projects from entry to completion. This firm believes that, by fostering the relationship between experienced partners and associates and offering firm management

positions to its minority attorneys, it will engender a sense of belonging and encourage participation by providing visible role models for both partners and associates.

Similar to law firms in other categories, it is widely recognized that in order to succeed in achieving diversity at the firm, there not only has to be management support, but also an accompanying sense of institutional priority. One associate observed that, while individuals are “sincerely” interested in diversity and that diversity was a priority of the recruiting committee, diversity in the firm was not set out as an institutional priority or firm-wide message: there was no buy-in from management or powerful partners. Importantly, the firm’s strategic business plan made no mention of diversity. An attorney at another firm likewise observed that a challenge for the firm is obtaining “complete buy-in from all on diversity initiatives.” Although senior management at this firm makes it clear that diversity is a goal and a priority in recruitment, hiring, and retention, at times there is some resistance because some attorneys feel the firm has done “enough” along these lines. At another firm, one associate commented, “There has been no paradigm shift that acknowledges that for minorities to succeed they must be admitted to the more subtle parts of the firm: seeing clients, consulted on tough matters, taken to dinner or to play golf.” Individuals at other firms echoed that sentiment—that it is necessary to have *consistent* firm leadership in encouraging all attorneys to focus and improve minority hiring and retention.

Not surprisingly, the midsize firms were mixed in their assessment of the future of their firms with respect to diversity. Some view the future optimistically, anticipating that the number of minority attorneys at the firm will increase as a result of the increase of minority students and minority attorneys entering the legal field and what they foresee as a more aggressive hiring approach. The optimists also expect that minority associates will rise through the ranks and advance to partnership level. In contrast, other firms took a more cynical approach, predicting that the lack of internal commitment to diversity will lead to continued problems in increasing numbers of minorities.

## **VII. THE STATUS OF SMALL FIRMS**

### **A. The Numbers**

From 1999–2005, the small-firm sample grew from 274 attorneys to 571. Because of the large number of firms, some of very small size, in this sample and the rapidly shifting population of firms, longitudinal comparisons are not meaningful. Overall, less than one in six small-firm attorneys is a minority as of 2005.

With 23 percent minority associates and 7 percent minority partners, the small firms in the sample as a group fell well short of the 2005 goals of 35 percent minority associates and 12 percent minority partners. They came closer to meeting the lower 2000 goals of 25 percent and 10 percent. Unsurprisingly, small firms varied from firms with no minority associates to several with over 40 percent minority associates and from firms with no minority partners to firms with all minority partners.

Asian Americans constitute 8 percent of all small-firm attorneys, African Americans constitute only 4 percent of total small-firm attorneys and Latinos constitute only 3 percent of total small-firm attorneys.

Minority attorneys constituted 14 percent of small-firm management.

## **B. Impact of Diversity Programs**

The leadership of the small firms interviewed consistently expressed interest in improving diversity within their organizations. Like firms in other categories, however, small firms have had much greater success increasing gender diversity than racial and ethnic diversity. To the extent that there has been progress in advancing racial diversity, the interviewees consistently reported that increases in the number of Asian American attorneys account for those gains. It is unclear whether these diversity advances were attributable to area demographics or to efforts initiated by the firms. Virtually every interviewee indicated that it would benefit the firm to increase the number of minority attorneys—African American and Latino attorneys, in particular—at their firm.

There was broad agreement that having a “top-down” commitment to diversity is critical. There are, however, significant differences in terms of how systematic firms have been in pursuing diversity goals. Few of the firms interviewed in the small-firm category had explicit programs in place that are designed to increase diversity in the hiring or retention of minority attorneys.

Although a number of the firms had high minority attrition rates, virtually none of the partner interviewees were able to explain that phenomenon. Most of the interviewees attributed the absence of systematic diversity efforts to the economic realities of being a smaller firm. Because smaller firms often do not have summer associate programs, do not recruit directly from law schools, and/or hire in response to staffing needs on an ad hoc basis (as opposed to hiring “classes” as large and midsize firms do), smaller firms have less control over the timing of their hiring and, consequently, the pool of applicants from which they can draw. The interviewees reported that these factors limit their ability to specifically target minority candidates. The hiring partner at one firm complained that the lack of a summer associate program prevented the firm from developing a positive reputation amongst minority law students.

Those firms that have demonstrated a “top-down” commitment to improving diversity have also tended to be more formal in creating programs and pursuing goals. Such firms appear to have had better results with actually improving diversity at their firms. For example, various sources at one firm that has had success in hiring and retaining minorities reported that the firm has identified the absence of Latino and African American attorneys as a problem that the firm must remedy. The firm anticipates recruiting at schools with larger African American and Latino student populations than those schools at which the firm has traditionally recruited in order to develop a “critical mass” of African American and Latino attorneys.

The challenges of being a smaller firm have led some firms not to focus on diversity issues at all. The managing partner at one such firm reported that the firm does not consider diversity at all when hiring and that there is no need to do so because the firm has non-white

partners and associates. The human resources director at the same firm believes that the absence of a top-level commitment to diversity has created a culture of apathy that results in fewer minority attorneys—the firm currently has no African American attorneys—being hired than would otherwise be the case.

Several sources at one plaintiffs' firm reported that minority lawyers are perceived as challenged by the firm's emphasis on writing skills. The firm has a low minority retention rate in spite of the fact that partners at the firm appear genuinely interested in improving diversity. The firm does not have a formal minority recruitment or retention policy. Plaintiffs' firms face the same challenges as all small firms, but these challenges are compounded by the fact that clients do not have leverage to compel plaintiffs' firms to improve their diversity as clients of defense side firms do. Thus, plaintiffs' firms are not accountable to outside actors for their diversity policies (or lack thereof) in the same way that defense side firms are. This lack of accountability presents an additional hurdle to improving the diversity of the plaintiffs' bar.

Most of the small firms were optimistic about improving their diversity in the future but acknowledged difficult challenges in increasing the representation of African American and Latino attorneys. The "challenges" typically identified by interviewees related to the small pool of qualified candidates to which their firms have access. Most of the firms did not indicate that they anticipated developing any formal program for improving attorney diversity. As a result, progress, particularly with regard to African American and Latino attorneys, is likely to be very gradual.

## **VIII. THE STATUS OF NON-SAN FRANCISCO-BASED FIRMS**

### **A. The Numbers**

Because of the rapid growth of firms with headquarters outside of San Francisco, this report breaks these firms out separately from other midsize and small firms with which they would otherwise have been categorized. Longitudinal comparisons are not possible because these firms were previously not separately analyzed. Overall, 753 attorneys were affiliated with twelve non-San Francisco-based firms. Of these, one in every six attorneys is a minority.

With 21 percent minority associates and 7 percent minority partners, these firms as a group fell short of the 2005 goals of 35 percent minority associates and 12 percent minority partners. Nor did they as a group meet the 2000 goal of 25 percent for associates and 10 percent for minority partners.

As was true of other categories of firms, there was a wide range in achieving diversity. One firm exceeded the 35 percent goal for associates. Four firms exceeded the 12 percent goal for partners. On the other hand, four of the 12 firms had 5 percent or fewer minority associates and two had no minority partners at all. As with other categories, the non-San Francisco-based firms exhibited a high degree of variation in their achievement of diversity, although on average their achievement of the goals was between the large firms and the midsize firms.

Asian Americans constitute 10 percent of all the attorneys in the non-San Francisco-based category; African Americans constitute only 4 percent, and Latinos only 2 percent of the total.

Ten percent of non–San Francisco–based firms’ management were minority in 2005.

## **B. Impact of Diversity Programs**

As a general matter, the non–San Francisco–based firms seem to have attitudes and programs directed to diversity that are similar to those found in large firms, although like the large firms, there was variation among the non–San Francisco firms in terms of their actual and perceived success at improving diversity. Many (mainly partners or managers) observed that their firms had made improvements either when considering the firm as a whole, or in San Francisco, in particular.

Most firms have recruiting initiatives that are directed to minority students (for example, events at law schools, attending minority job fairs). One firm established a minority scholarship for the law school located in the same city as their main office. Generally, the attorneys were aware of the efforts their firms were making to recruit minority attorneys.

Many interviewees had concerns about their firms’ poor performance in retaining minority attorneys. Some firms have formal diversity committees, although the effectiveness of these committees was unclear from the interviews. Few interviewees described specific programs directed at retaining minority attorneys, although attorneys at two firms described retreats for minority attorneys that focused on diversity. Another firm holds dinners for minority attorneys. These kinds of events had made a substantial positive impression on at least some of the interviewees. In addition, one interviewee remarked favorably on the fact that her firm had hired a diversity director. No one reported mentoring programs directed specifically at minorities; some had formal mentoring for all associates. The importance of mentoring was noted by associates in particular.

Most interviewees felt that their firms had environments that were welcoming to minority attorneys, although most interviewees felt that the firms could be doing more. Some interviewees were critical of their firm’s failure to make specific efforts to improve diversity or to communicate an interest in diversity to attorneys in the firm. For example, one associate was critical of the firm’s diversity committee because it did not reach out effectively to minority attorneys. In contrast, interviewees at another firm noted that the firm does nothing to recruit or retain minority attorneys because the firm is a “meritocracy” where “race does not matter.” As a result, that firm has lost minority attorneys because of its perceived lack of commitment to diversity.

Few interviewees commented on the fact that, on the whole, the non–San Francisco–based firms had more success hiring Asian American attorneys than Latino or African American attorneys. Some noted their firm’s failure to hire or retain African American attorneys.

Few of the attorneys interviewed from the non–San Francisco–based firms contrasted their office’s experience with “headquarters.”



## **IX. THE STATUS OF GOVERNMENT LAW OFFICES**

### **A. The Numbers**

Statistics for the San Francisco City Attorney, District Attorney, and Public Defender's offices were previously reported in 1995 and 1999.

From 1999–2005, these government law offices grew from 340 attorneys to 390 attorneys. During that time, the minority percentage actually fell from 38 percent to 34 percent. Nevertheless, one in every three municipal governmental attorneys is a minority.

The government law departments each complied with the 2005 goals of 35 percent minority associates and 12 percent minority partners. The proportion of minority junior counsel ranged from 27 percent to 56 percent, and the proportion of minority senior counsel ranged from 18 percent to 36 percent.

While Asian Americans are 14 percent of all municipal attorneys, African Americans are 10 percent of total number of attorneys and Latinos are 10 percent of the total.

Minorities constituted a third of all municipal law department management.

### **B. Impact of Diversity Programs**

While the statistical representation of minorities remained quite high for these three San Francisco city government law offices relative to other types of organizations, the overall percentage of minority attorneys did in fact fall, as described above. These offices made very little collective headway on diversity issues during the period from 1999 to 2005. During this period, these offices had a net growth in the number of attorneys of +50—but a net growth in the number of minority attorneys of only +3. This was in contrast to the strides made by these offices in the period between 1995 and 1999, during which the net growth in the number of minority attorneys was approximately +29. This suggests that, over the last five to six years, government law offices may have had less success retaining minority attorneys, less success recruiting minority attorneys, or both. As noted above, this report recommends that BASF in the future collect associate attrition, partner promotion, and lateral hire data in order to better address issues of retention and advancement.

There are reasons for optimism. Perhaps most striking, at the time of this report, the top position in all three offices was held by a person of color: the San Francisco City Attorney, the San Francisco District Attorney, and the San Francisco Public Defender are all attorneys of color. In turn, the comments in the interviews conducted for this report reflected a high commitment to diversity from the top. One interviewee commented how it is a priority that the office reflect the diverse community it serves.

While the information from the interviews was available for only two of the three offices here, for both of those offices, the interviewees indicated a long-time office commitment to diversity that has been taken up by the current leaders. One office appeared to be taking fresh looks at its own hiring practices to try to improve its diversity performance. That office had put into place a new recruiting committee headed by a senior attorney who is active in the hiring

process. Furthermore, it examined office practices to try to find any biases that might be hidden in the application process and found that the office had been using a prerequisite for a particular type of experience that was turning out to have a negative effect on the diversity of the applicant pool. Similarly, the other office represented in the interviews had formed a new in-house diversity task force to institutionalize diversity as a priority.

That said, some of these efforts seemed to be quite recent, with attorneys from one office seeming to indicate that they had only started recruiting more with minority bar associations and were only beginning to discuss how to expand their recruiting pool—and they had only started plans to have a mentorship program within the office. And in the other office, at least one attorney, while comforted by the general commitment to diversity in the office, felt that a clearer and more specific commitment to the issues—particularly with respect to advancement within the office—would be an improvement. Another attorney from this office observed that the office had low turnover—which translated to fewer opportunities for advancement. This was an issue raised also by government law-office interviewees for the 1999 report and appears to persist today.

## **X. THE ROLE OF CORPORATE LAW DEPARTMENTS**

### **A. Recent Developments**

Recent developments concerning corporate law offices as clients of law firms are noteworthy.<sup>15</sup>

BASF's efforts to diversify law firms and law departments was largely self-initiated by members of the bar rather than client-driven. One of the key changes since the 1999 report has been the increasing interest of many corporate clients in the diversity of the law firms they retain to do their work. While the empirical effect of this development in driving further diversity is unknown, managing partners of many of the responding firms believe that client demands for diversity will only increase with time.

In the 1999 report, BASF reported that the chief legal officers of over 320 corporations led by the General Counsel of Bell South Corporation signed a statement titled "Diversity in the Workplace—Statement of Principle" on diversity in the workplace in which they "wish[ed] to express to the law firms which represent us our strong commitment to the goal of diversity in the workplace" and their "belie[f] that promoting diversity is essential to the success of our respective businesses."<sup>16</sup> The General Counsel concluded: "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 this area." By 2004, the number of signatories to the Statement of Principle was more than 500. ABA Report at 42.

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<sup>15</sup> Because of the small number of corporate law offices surveyed, it is inappropriate to draw any conclusions from the survey.

<sup>16</sup> A Statement of Principle is appended as Appendix D.

The Statement of Principle has been followed by other client demands for law firm diversity. In October 2004, Rick Palmore, the Chief Legal Officer of Sara Lee authored “A Call to Action—Diversity in the Legal Profession,” which was “intended to be a Call to Action for the profession generally and in particular for our law departments and for the law firms with which our companies do business.”<sup>17</sup> The Call to Action was subsequently endorsed by the Association of Corporate Counsel. The Call to Action stated that:

[W]e pledge that we will make decisions regarding which law firms represent our companies based in significant part on the diversity performance of the firms. We intend to look for opportunities for firms we regularly use which positively distinguish themselves in this area. We further intend to end or limit our relationships with firms whose performance consistently evidences a lack of meaningful interest in being diverse.

The Call to Action has been signed by more than seventy-five corporations.

In March 2005, the General Counsel of Visa International Service Association, Del Monte Foods, and the Gap along with the City Attorneys of San Francisco and Oakland circulated a 2005 Bay Area Law Department Plan of Action on Diversity.<sup>18</sup> The Plan of Action stated, *inter alia*, that:

We pledge that we will require Bay Area law firms that work with us or hope to work with us to review with us their diversity and inclusiveness efforts and programs. To that end, we intend to monitor the following as part of our routine process of awarding and continuing work:

- (a) the firm’s support of BASF, CMCP and/or MCCA initiatives;
- (b) the representation of minorities and women among the firm’s team of lawyers assigned to our work;
- (c) the firm’s support of recruiting, retention, promotion, mentoring, and other programs to enhance the number of minority and women lawyers within the firm, as well as their success;
- (d) the allocation of billing or origination credit for our matters to women and minority partners;

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<sup>17</sup> A Call to Action is appended as Appendix E.

<sup>18</sup> The Plan of Action is appended as Appendix F.

- (e) the firm's periodic completion of the MCCA/Vault Law Firm Diversity Survey which tracks the representation of minorities and women among the firm's associates, partners and management, and in the practice areas of the firm (or presentation of a comparable survey of representation); and
- (f) the firm's participation in other activities to enhance diversity in the legal profession and the community.

**B. Law Firm Responses to Client Calls for Diversity**

One indication of the extent of change since 1990 is that no firm reported in 2005 that any client resisted having their work done by its minority or women attorneys, a concern sometimes expressed by firms in the past. One managing partner unequivocally stated in 2005 that if that were to happen, that client would be a "former" client. Rather than posing possible obstacles, many clients have emerged as potential proponents of diversity with firms reporting varying degrees of client interest in having their work done by diverse teams of lawyers.

One minority partner expressed the hope that if corporate clients were truly committed to diversifying the firms with which they did business, San Francisco law firms would follow their lead just as they changed their practice areas when clients "shifted work to IP and biotech."

Diversity developments among corporate clients have been keenly observed by firms, particularly managing partners, whether their firms have strong diversity records or not. As the managing partner at a firm whose diversity efforts and compliance with BASF goals lag behind those of similarly sized firms put it: "Many clients are explicitly asking for information about diversity. General counsel say they are interested in diversity. The trend is that diversity will be more important. Clients' legal staffs are becoming more diverse." See ABA Report at 40 ("General Counsel, themselves, are becoming more diverse, and they want people who reflect their backgrounds."). A managing partner at a firm that touted its diversity reported, "Half of our RFPs [requests for proposal] require us to assess our commitment to diversity. In this regard, we do quite well." A management team member at another firm noted, "We have lots of clients and companies who demand a diverse law firm. I know that once partners realize that we could lose business because we are not sufficiently diverse, it gets their attention." Others agreed that "there are diversity initiatives coming out of the corporate departments (clients looking for a diverse pool)," "more clients are becoming focused on diversity," and "clients do want diversity and the firm is mindful of that."

Firms reported that prospective corporate clients consider diversity when evaluating a new firm through the RFP process or "beauty contests." One firm reported that minority and women attorneys are included in marketing efforts, noting that "Sara Lee demands minority attorneys participate in their matters." The managing partner of another firm that prides itself on its diversity noted that minority partners are major forces in client development activities. Another firm with a strong diversity record noted that it customarily sent diverse sets of attorneys to "pitch sessions" because their firm has found that "corporate clients are more aware of the need for diversity and see it as good business." One firm reported, "Often clients will

request that minority or women attorneys are included in the team working on a matter, and the firm does what the clients request. This is absolutely necessary to be competitive, and the firm pays a lot of attention to these requests.”

Noting that the firm lagged “behind corporate America,” a minority associate reported that some partners in his firm did not take the corporate interest in diversity seriously, questioning the clients’ true commitment to diversity. A minority partner thought that one potential client had not been serious about diversity, wasting the partner’s time with meetings that never led to work for the firm. Another minority partner agreed that “clients aren’t actually that serious about wanting diversity and still pick white guys.”

A managing partner at a large firm observed that while “client pressure has been beneficial to management efforts” to increase the number of minority attorneys assigned to important work and teams, “such pressure or interest is not universal with all clients.” The managing partner also noted that “sometimes clients want a minority partner, but then demand that the case be managed by a very experienced star lawyer.” The ABA reports that a study of in-house counsel concluded that in practice the most important hiring criteria are quality and cost, and that diversity is at best a tie-breaker. ABA Report at 35.

A panel at the BASF conference, including San Francisco City Attorney Dennis Herrera, Del Monte Corporation General Counsel James Potter, and The Gap General Counsel Lauri Shanahan, addressed the business case for diversity. The panel noted that while many corporations had signed the 1999 Call to Action, it was only recently that many corporations were beginning to grapple with their role in encouraging law firm diversity. The panelists agreed that corporate and governmental interest in encouraging diversity was likely to be a long-term trend, noting the law department personnel in charge of distributing business in many corporations were themselves growing much more diverse than the firms themselves. That corporations were not uniform in their approaches was a point made by several. Diversity has become an area in which increasing numbers of firms seek to distinguish themselves from the competition. Examples of areas that the corporate and government law departments believed were practice areas in which they had difficulty identifying minority lawyers were bond work, real estate, and IP. It was also suggested that partners involve minority associates in business development activities and mentor them on the subject as part of their training.

## **XI. RECOMMENDATIONS**

This report recommends that the BASF Board approve the following:

1. Call upon law firms and law departments to renew their commitment to minority hiring and advancement;
2. Adopt the following goals for 2010:
  - (a) a goal of 37 percent for minority associates or junior counsel;
  - (b) subgoals of 9 percent for African American associates and 9 percent for Latino associates and other efforts to focus greater attention on the fair hiring of African American and Latino associates while maintaining

efforts on behalf of all minorities; and

(c) a minority goal of 15 percent partners in order to focus attention on the need to retain minority associates and to advance them to the partner level and leadership positions in a fair manner;<sup>19</sup>

3. Schedule for 2007 and for 2010 the next two reports on implementing the Goals and Timetables for Minority Hiring and Advancement. In particular, the next two reports should address (a) the hiring of African American and Latino associates specifically as well as the hiring of minority associates generally and (b) the advancement of minority associates to partner, including Asian American associates. The reports should also collect data on associate attrition, partner promotions, lateral hiring, the intersection of race and gender, and Asian American subgroups in order to enhance fact-finding;
4. Urge law firms and law departments to adopt the following best practices, as set forth in Section IV of this report:
  - (a) Providing leadership:
    - a firm, public, and consistent commitment to diversity from senior management;
  - (b) Efforts to retain associates:
    - mentoring programs to encourage retention;
    - monitoring the equitable distribution of work assignments and business development opportunities, and the fairness and reliability of evaluations;
  - (c) Efforts to promote and value diversity within the firm:
    - regular diversity training;
    - effective communication within the firm about diversity efforts;
  - (d) Participation in diversity efforts in the legal community
    - developing working relationships with minority student groups and minority bar organizations;

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<sup>19</sup> In order to meet the 15 percent goal, law firms should select for promotion minority associates in proportion to their representation among all associates. Thus, if 24 percent of a firm's associates are minority, the firm should use a selection rate of 24 percent for promotion of minority partners.

- participation in the California Minority Counsel Program, the Minority Corporate Counsel Association, and other diversity-focused programs;
  - participation in BASF-sponsored programs, such as the Bay Area Minority Summer Clerkship Program, the School-To-College Mentoring Program, and the BASF Bay Area Minority Law Student Scholarship Program;
- (e) Efforts to expand the hiring of minority attorneys:
- targeted recruitment;
  - hiring minority laterals; and
  - use of expanded criteria for hiring;
5. Expand technical assistance programs to assist law firms and law departments in implementing best practices programs, including meetings of managing partners and general counsel to address current challenges and to share emerging best practices and programs for small firms;
  6. Develop and implement a BASF Mentor Registry in order to supplement internal mentoring programs by offering minority associates the opportunity for mentoring by outside minority partners and experienced attorneys or by partners and senior lawyers of whatever race with a similar practice;
  7. Offer training to address cultural sensitivity and stereotyping of minority attorneys in associate retention, leadership development, and partner promotion, including making available on BASF's Web site the recently developed Internet MCLE training program based on recent psychological findings regarding implicit association and latent bias;
  8. Offer corporate and government law departments training and technical assistance to assess documentation of diversity programs and profiles submitted by law firms in cooperation with the California Minority Counsel Program and the Minority Corporate Counsel Association;
  9. Expand programs designed to increase the pipeline of minority law school graduates, such as the BASF School-To-College Mentoring Program to cover Thurgood Marshall, Mission, and Galileo High Schools in addition to Balboa High School, and the BASF Bay Area Minority Summer Clerkship Program to at least 10 scholarships per year;
  10. Support long-term research into which characteristics make a good lawyer; and

11. Coordinate minority diversity efforts with efforts on behalf of women attorneys, attorneys with disabilities, and attorneys who are lesbian, gay, bisexual, or transgendered.