

PRESIDENT'S REPORT

Commitment to Diversity

by Raymond C. Marshall

On December 17, 1993, at the Sheraton Palace Hotel
President Raymond C. Marshall addressed
the Annual Meeting of the Bar Association of San Francisco.

I. Introduction.

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

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

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

There are my parents. My father, who was released from the hospital only two days ago, and my mother, have traveled a great distance from Great Falls, Montana to be with me today. I am especially happy therefore to be able to thank them publicly for all their years of love, support and en-

couragement. Raised in Little Rock, Arkansas, my father was 17 and my mother 15 when they married. With limited educational and employment opportunities available in a segregated south, my father served 28 years in the Air Force during which time my mother worked in a variety of jobs outside the house. Together, they instilled in me a sense of pride, family and a profound belief that through hard work and perseverance, anything, and everything, is possible.

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

II. The Work of BASF.

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

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



public schools and proposed changes to our country's immigration policies.

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

III. Eliminating Bias in the Profession.

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

In April 1988, this Bar Association established as its highest priority "the achievement of equal hiring, retention, promotion and working conditions for minority lawyers in the San Francisco legal community." It did so in response to a survey of white and racial and ethnic minority attor-

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neys within the San Francisco Bar, which found that minority attorneys experienced less favorable hiring, work and promotion experiences than their white counterparts. The survey, conducted by the University of California, Berkeley, also found that the experiences of minority attorneys were attributable not to class rank, law school reputation or other objective criteria of performance, but to their status as racial and ethnic minorities.

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

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

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

After more than five years of good faith efforts and only tenuous progress, the question remains—what can we do to help eradicate racial barriers faced by minority attorneys? There is no simple answer.

Good people, with good intentions, can, and will disagree on how best to integrate our profession. In trying to formulate future remedies to address this problem, however, we must be honest with ourselves and confront the reality of racial discrimination in this country and in this City. It is a reality which many of you may be uncomfortable discussing; a reality which some of you may not want to believe, but a reality which I hope each of you will not ignore.

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

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

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

Racism is institutional. Attitudes, patterns of behavior and cultural norms have created barriers which prevent minorities from becoming full participants in the City's law firms and legal departments. These barriers include the disparity between minority and white attorneys in the areas of work assignments, mentoring, access and market-

ing to clients, the opportunity to work with and for more senior and influential partner-level attorneys, the opportunity to serve on key committees and be appointed to positions of leadership, and the constant, oppressive and almost debilitating pressure to "fit in," so as to make white attorneys comfortable with the minority attorney's status as a racial or ethnic minority. The result is that for the most part, the work experience of minority attorneys — associates, counsels and partners alike — is fundamentally different than that of their white counterparts. Again, this is demonstrated by a number of findings by BASF, including that:

- One negative performance review, or a "slow start" by minority lawyers is too frequently the kiss of professional death, and seems to establish a permanent impediment to advancement, whereas their white counterparts are frequently given more chances to succeed.
- Minorities are regarded as representative of their entire race when they fail, but are considered the exception when they succeed.
- Younger minority attorneys have few role models in their workplace and too often face arbitrary ceilings on promotions and professional opportunities.
- Minority attorneys are often excluded from informal networks of communication, both within and outside the workplace, and do not receive the specific feedback from supervisors necessary to succeed in the workplace.
- As a result of many of these experiences, minority attorneys disproportionately experience isolation and loneliness within their workplace.

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

1993 INTERIM REPORT: COMMITTEE ON MINORITY EMPLOYMENT

On December 20, 1993, the Bar Association of San Francisco Committee on Minority Employment released its long-awaited Interim Report on the Goals and Timetables for Minority Hiring and Advancement. The Report assesses the progress of law firms and corporate legal departments towards hiring and promotion goals established by the Committee in 1989.

Participation in the Goals and Timetables is voluntary. To meet them, a signatory organization will be comprised of 15% minority associates (or junior counsel) and 5% minority partners (or senior/general counsel) by the end of 1995. The percentages rise to 25% and 15%, respectively, for the year 2000. (For purposes of the Goals and Timetables, minorities are attorneys who are African American, Native American, Hispanic/Latino, or Asian American/Pacific Islander.)

In the four years since the Goals and Timetables were introduced, 98 San Francisco legal employers have signed on.

THE 1993 SCORE

The Report shows promising numerical results. Below are statistics for employers in the four categories studied in the Report (due to institutional record-keeping practices, corporate law department statistics are not broken out into senior and junior attorney categories):

	1990		1993	
	Partners	Associates	Partners	Associates
Large Firms	3.1%	10.7%	5.0%	17.3%
Mid-Sized Firms	2.6%	8.2%	3.3%	14.9%
Small/Small Mid-Sized Firms	<1%	12.1%	5.7%	17.2%
Corporate Law Depts.	12.3%		13.7%	

BEYOND THE NUMBERS

Gains in minority representation in majority firms are impressive, the more so be-

cause the total attorney populations of two categories of employers—large and mid-sized firms—shrank during the time period covered by the Report, the first by over 23%, the second by over 9%.

All the Report's findings, however, were not positive. Through a series of interviews conducted with 87 interviewees at 31 employers, the Committee's 27 interviewers formulated a cloudy forecast for continued efforts at integration. Major findings were:

- The absolute number of minority partners is very small relative to the number of white partners, and both white and minority interviewees expressed fear that even the small gains in partnership ranks are in jeopardy in the current economy.
- The numbers obscure retention problems which have resulted in a dearth of senior minority associates in the "pipeline" to become the next generation of minority partners.
- Senior white managers rarely attribute relatively low numbers of minorities at their institutions to discrimination or racism, but rather to neutral factors such as lifestyle choices; external factors like the economy; or the lack of a pool of "qualified minorities."
- In contrast, while acknowledging good faith efforts of legal employers in recruiting and hiring, minority attorneys find the basis for continuing diversity problems in institutional factors and systems such as training, work assignment, evaluation, mentoring, marketing, and communication of an exclusionary firm "culture."

CONCLUSION

The Report concluded that despite encouraging statistics, the work of diversifying the legal workplace is far from finished, and only the continued efforts of white and minority attorneys at all levels will ensure ultimate success.

To receive a copy of the report contact Anasuya Dubey at the Bar Association of San Francisco (415) 764-1600.

treme, monitor and follow your every action as if you suffer from a public case of kleptomania.

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

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

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

Intellectual lip service to the concept of diversity is not enough. Commitment must be demonstrated by action. Employers ask minorities to take them at their word when they say that they believe in racial integration, equal opportunity and health and prosperity for all. At the same time, however, minorities fairly ask whether employers are prepared to make the hard decisions, or take the difficult steps, necessary to create a work environment hospitable to minority attorneys. For example, only a handful of the approximately 100 law firms, corporations and government agencies that have

signed on to BASF's goals and timetables evaluate and compensate their managers on the basis of their success in achieving and managing a diverse workforce, and even fewer are prepared to terminate an otherwise valued manager for a demonstrated pattern and practice of racial discrimination.

We must demonstrate the strength of our conviction. And we must do so now, or risk losing what progress has been made. Commitment to diversity must be long-term and it must be sustained, through good times and bad times alike. The issue is simply too important, and the stakes too

high, to allow this recession, or anything else, to be used as an excuse to prevent us from doing what we can to end bias in the profession.

The last two years have been difficult for all of us, but particularly so for minority attorneys. As in other professions, economic hard times have forced minority attorneys to feel the pain of being the "last hired" and the "first fired." Moreover, this phenomenon risks being played out not only at the associate level, but for minority partners as well. For example, as has been documented in other legal markets across the country, we have started to see in the Bay

Area the departures of the first generation of minority partners, who, while expected to meet the same standards of client billings as their white partners, do not believe they are accorded the same opportunities or level of support as their white partners to develop or maintain business relationships with their firm's existing or potential clients.

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

IV. Conclusion.

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

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

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