

REPORT OF PROGRAM ACTIVITIES

1987

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by:

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PUERTO RICAN LEGAL DEFENSE
AND EDUCATION FUND, INC.

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Introduction

This report reviews the work of The Fund during 1987. The Fund's programmatic activities in the Legal Division as well as the Legal Education and Training Division are reviewed. Case Development, advocacy and community outreach activities carried out by the organization during the year are also presented.

Highlights of this document will be presented with the President's Report during the January 14, 1988 Annual Board of Directors' meeting.

I. THE LEGAL DIVISION

A. Political Participation

The Fund considers the protection of the fundamental right to vote a critical obligation. To meet this obligation, during 1987 The Fund continued its major case in this area:

Vargas v. Calabrese (1985-JC)

This lawsuit, filed on behalf of a class of Latino and Black voters of Jersey City, New Jersey, seeks declaratory, injunctive and monetary relief against Hudson County election officials and the former mayor of the City for a concerted scheme to slow down, frustrate and deny the right to vote in a mayoral run-off election in June 1985. The Fund is lead counsel and is joined by the Lawyer's Committee for Civil Rights Under Law. By mid-October of 1985, The Fund obtained a preliminary injunction affecting procedures for the November 1985 elections. Although The Fund secured class certification and dismissal of defendant's motion for attorneys' fees, the Court rejected the argument that the New Jersey statute authorizing the challenge process is unconstitutional on its face. Consequently, since April 1986 through the present, The Fund has been engaged in discovery.

In September 1986 The Fund successfully appealed the grant of a protective order to the lead defendant. In January 1987, The Fund returned to court for an order affixing a date for the lead defendant's deposition. In March 1987, the Court again refused to grant a motion to dismiss the complaint made by the defendant Superintendent of Elections office.

Settlement discussions were renewed throughout April and May 1987. However, there being no substantial progress, The Fund amended the complaint to add three top level McCann campaign workers who played significant roles in the actions that led to the complaint. In June 1987, the Court granted the amendment as to one defendant and adjourned the matter for the remaining defendants.

Starting in July 1987, a number of significant developments occurred in this litigation, marking a turning point for plaintiffs. Every defendant in this litigation, except for former Mayor McCann, moved for summary judgement or dismissal of all counts in the complaint. Oral arguments on the majority of these motions were held on July 27, 1987, still pending. However, as a result of these motions, plaintiffs were permitted to conduct depositions of three members of the County Board of Elections in August 1987. Similarly, defendant Calbrese was able to convince the Court to allow all plaintiffs to be re-deposed on the issues raised in their second amended complaint alleging that she is also liable in her individual capacity.

The second round of depositions of the plaintiffs were held in December 1987. Subsequently, two additional defendants filed motions to dismiss. Plaintiffs are now preparing responses to these motions which will be heard in January 1988.

The Vargas litigation is therefore at a standstill. Until the Court decides these dispositive motions by defendants, all settlement discussions have been suspended.

Vargas still presents important issues for Puerto Ricans and voting rights litigation. First, The Fund hopes to establish voting as an exercise of free speech. Second, The Fund hopes to establish that voting rights violations are compensable through money damages. Inasmuch as these legal issues are not settled in civil rights and constitutional law, Vargas is an important test case. From the community's standpoint, Vargas represents a challenge to the corrupt politics customary in Hudson County and encourages future challenges to illegal practices.

B. Employment Rights

The Fund is committed to counteracting the movement to eradicate hard-won gains in the critical area of employment through efforts to seek and maintain job opportunities for Puerto Ricans and other Latinos. The following cases have contributed to our goal of ensuring equal employment

opportunity for our community:

Rodriguez v. State University of New York at New Paltz, et al. (1985-KK/JLM)

This employment case against SUNY at New Paltz charged that plaintiff was discriminatorily denied tenure as a professor on the basis of national origin. Mr. Rodriguez' record as a spokesperson for Hispanic and minority rights on campus led to the denial of tenure even though he obtained the credentials necessary for the position.

The case was litigated In July and, although it did not find in favor of the plaintiff, the jury did state as part of its verdict that it believed he was treated unfairly in the tenure process. The plaintiff is currently appealing this matter with representation from private counsel.

Hispanic Society of the Department of Sanitation v. N.Y.C. Department of Sanitation (1987-KK/JLM)

The Fund represents the Hispanic Society of the Department of Sanitation in regard to a claim that the Supervisor Examination has a severe disparate impact upon Hispanic test-takers. The supervisor is the first level supervisory position and of the approximately 1,163 supervisors, only 27 are Hispanic. The pass/fail ratio strongly shows disparate impact: Hispanics comprised 5.2% of the test-takers and only 3.8% of the passers, while Whites were 71% of the test-takers and 83% of passers. The pass rate for Hispanics was 37% and 83% for Whites. If Hispanics had passed in proportion to their numbers, there would have been 28 additional Hispanic passers.

More importantly, of those who passed most are at the bottom of the list and will not likely be reached; the first Hispanic is number 438 on the list. Successful litigation would lead to having over 20 Hispanics in their first 440.

The impact of this litigation lies not only in the number of positions gained, but also in the influence and impact supervisors have on policy decisions.

The case is presently pending before the EEOC while

litigation in federal court is being prepared.

Ramos v. N.Y.C.P.D., et al., (1983-JLM)

In 1981, plaintiff took and passed the civil service examination for the position of New York City Police Officer. During his medical examination, it was found that he had scoliosis of the spine. This was the basis for his disqualification and he was denied an appointment.

After exhausting his administrative appeal, The Fund filed a plenary action in N.Y.S. Supreme Court alleging discrimination against the handicapped under State law. The plaintiff's past employment indicated that he could "reasonably perform" the duties of a police officer; previously, he was a correction officer, a police officer in the City of Newburgh and is presently a police officer in the Town of Ramapo, a position which he has held for the last five (5) years.

The defendants moved to dismiss the complaint based upon the failure of plaintiff to commence on Article 78 proceeding within the four (4) month statute of limitations. Fortunately, the Court agreed with The Fund and eventually denied defendants' motion. The significance of that decision was to create a right to commence litigation with a longer statute of limitations other than that of Article 78. The decision is reported in 487 N.Y.S.2d 667 (Sup. 1985) and set precedent.

The parties agreed to await a decision from the Court of Appeals on a similar case and in June 1987, the Court reversed, finding discrimination against the handicapped.

While the Personnel Department has agreed to place plaintiff on the list, the NYCPD has yet to decide. The case has been adjourned until February 1988 pending a possible settlement.

Soto-Lopez v. NYC Civil Service Commission (1983-KK/JC)

The primary issue presented in this case was whether New York State could constitutionally condition the award of bonus points on competitive civil service examinations to

those wartime veterans who resided in the State at the time of their entry into the armed forces to the exclusion of all other war-time veterans who subsequently established residency in the State. In June 1986, the Supreme Court of the United States held that New York's residency requirement violated the equal protection clause and the constitutionally protected right to travel. The case benefits thousands of newly eligible veterans, and protections from lay-offs, additional bonuses in pension plans, etc., will also be established in the near future.

On remand from the United States Supreme Court, the District Court entered an order declaring the challenged provisions unconstitutional, however, without opinion, the Court denied an injunction prohibiting the City from applying the unconstitutional provision in the future. The issue is important insofar as the City has not agreed to cease requiring pre-enlistment residency for those persons on existing civil service lists. The City only has agreed not to apply these unconstitutional provisions on newly created lists. The District Court ordered the appointment of the individual plaintiffs, with retroactive seniority, to the positions denied them, but the Court denied back-pay, again without opinion.

The Fund has appealed the Court's order to the Court of Appeals. The matter has been briefed and was argued in September.

Hispanic Society v. New York City Police Department
(1984-KK)

This is a class action brought by The Fund on behalf of Hispanic police officers challenging the examination for the position of sergeant in the New York City Police Department as discriminatory and not job related. After extensive discovery, a settlement was reached providing for positions of sergeant consistent with the percentage of Hispanic test-takers. As a result almost 100 Hispanics were promoted, over twice the number that would have been promoted without the settlement. Backpay and retroactive seniority

were also secured. However, an appeal was filed by some non-minority police officers which the Court of Appeals dismissed because the appellants had not been parties to the lawsuit; they had never sought to intervene. A petition for certiorari was filed in the United States Supreme Court by non-minority police officers and granted by the Court. The case was argued before the Court in November and the decision is pending.

Hispanic Police Society v. New York City Civil Service Commission (1984-KK)

This is a Title VII employment discrimination case challenging the validity of the examination for lieutenant in the New York City Police Department. A settlement has been reached allowing plaintiffs the opportunity to participate in the preparation of a new lieutenants test scheduled for 1988.

Guardians Association v. New York City Civil Service Commission (1976-KK)

This Title VII employment discrimination case challenged seven examinations for police officers given from 1968 through 1970 by New York City. After successful district court litigation, there have been three appeals to the Circuit Court of Appeals and one to the United States Supreme Court. Under the terms of the resulting order, Hispanic and Black police officers who sat for the challenged examinations are entitled to at least the median date of appointment from those examinations as well as backpay. The retroactive seniority and benefits have just recently been secured. The parties have begun the process of determining the amount of backpay owed to the plaintiffs.

Ramos v. Flagship International (1984-KK/JC)

This case was brought on behalf of Latinos who were discharged by the food catering subsidiary of American Airlines known as Sky-Chefs. The issue in this case is whether an employer, who fired Latino workers for alleged

excessive absenteeism and possession of alcoholic beverages on the job, intentionally discriminated against those Latinos by failing to similarly treat other non-Latino workers with poorer records of attendance, intoxication on the premises and more egregious safety violations of the personnel rules.

The Court issued an Opinion in April 1987 finding against the two plaintiffs who were discharged for possession of alcoholic beverages and finding in favor of the two plaintiffs who were discharged because of absenteeism. Back pay and other damages were awarded.

This partial victory is significant because the Court found intentional discrimination against a large private employer. This finding and the award of substantial back pay and damages should help advance the interests generally of the many Hispanics who work in the industry.

C. Housing Opportunities

The Puerto Rican Legal Defense and Education Fund has focused its efforts and resources to expand housing opportunities, including housing discrimination litigation as illustrated through the following cases:

Ramos v. Proulx (1982--RR/JLM)

The lawsuit was filed on behalf of Puerto Rican and Black residents of Holyoke, Massachusetts challenging municipal government policies in Holyoke that have systematically caused the displacement and homelessness of Black and Puerto Rican tenants. The complaint charges that the City of Holyoke has selectively and discriminatorily enforced the sanitation code and urban renewal laws against multiple dwellings housing Blacks and Puerto Rican tenants. It has caused these buildings to be shut down without providing relocation assistance for displaced tenants, without providing replacement housing, and without any attempt to rehabilitate salvageable housing. Instead, Holyoke has pursued a plan to convert these residential neighborhoods to commercial districts through forced displacement.

Defendants are the mayor, municipal officials and the U.S. Department of Housing and Urban Development. The Massachusetts Law Reform Institute in Boston and Western Massachusetts Legal Services in Holyoke are co-counsel in the case which is still in the discovery phase. The issue in the case is whether these actions constitute a violation of law such that a court could order the set aside of monies for the creation of low and moderate income housing.

Gomez v. Maguire, et al. (1987-JLM)

This is a housing discrimination case brought against a landlord and real estate broker on behalf of a Puerto Rican couple. Compensatory and punitive damages are being sought in this case to assist in opening housing opportunities for Puerto Ricans and other Hispanics in the largely White neighborhood of Bayridge, Brooklyn. If successful, the case may assist in preventing the complete displacement of Hispanics from New York City resulting from the increase of unaffordable housing.

All parties have agreed to a settlement in this case.

Mariani, et al v. Banat Realty, et al. (1986-JLM/KK)

This is a housing discrimination lawsuit in which a Puerto Rican couple allege that they were denied the rental of an apartment because of their race and color.

Inasmuch as landlords and realtors often own and serve as agents for several properties, this lawsuit is designed to chill the illegal discriminatory practices that further exacerbate the limited housing opportunities in New York City.

Huertas v. East River Housing Corp. (1977-KK)

This housing discrimination case involves the sale of 4,500 cooperative apartments in four housing complexes. The buildings are located on the Lower East Side of New York and are occupied almost exclusively by White residents. After the trial, the Court urged the parties to negotiate a settlement. A settlement was reached providing for 40% to 50% quotas for eight years to remedy the long standing and

egregious pattern of discrimination. Defendants, however, sought to withdraw from the agreement in objection to payment of attorneys' fees. The Court nevertheless entered the settlement over defendants' objection. The defendants appealed, and the Court of Appeals reversed.

On remand, the District Court issued an Opinion finding long standing and egregious intentional discrimination. The Court ordered the relief that had been previously agreed upon. The defendants have appealed, but a tentative settlement has been reached to avoid the appeal. The settlement provides for full relief but requires withdrawal of the opinion.

Salvador v. City of New York (1987-RR)

This is a declaratory judgement action in State Supreme Court challenging the City's plan to sell two fully-occupied City-owned buildings to a private developer. The sale was made possible by the inclusion of these building in an urban renewal plan published in 1979. This designation was made without notice to the tenants who, consequently, did not participate in scheduled public hearings.

This "urban renewal approach" appears to be the City's attempt to divest itself of residential properties by selling them to private developers. As such, it holds severe consequences for tenants of City-owned properties. Developers will receive low-interest loans from the City for rehabilitation which will result in rent increases. Sale to developers will preclude sale of the buildings to the tenants themselves through the Tenant Interim Lease program. Moreover, rent control laws will not apply to many of these buildings upon resale to developers. Further, gentrification and cooperative conversion pressures will increase under the funding schemes that many of these buildings will receive.

In September, 1987, the trial court granted the City's motion to dismiss holding that the action was untimely and that the plaintiffs did not have a due process right to actual notice regarding the urban renewal designation of

their buildings, the proposed sale to a developer, and the related rented increases. We are filing an appeal with the Appellate Division, First Department.

Campbell v. City of New York (1987-RR)

This Article 78 proceeding challenges a middle income housing plan proposed for East Harlem that would be unaffordable for current community residents and would fuel gentrification and displacement pressures in the area. The lawsuit maintains that the plan violated the applicable urban renewal plans for the housing site which provided only for the construction of low and moderate income housing; the plan could not go forward until the City prepared an Environmental Income Statement, as required by state law, measuring the project's gentrification effects and available alternatives; and, that the proposed developer was acting ultra vires of its corporate charter by participating in this project.

Inasmuch as the project lost its private financing base, we have stipulated to mark the case off the trial calendar in return for which the City has agreed to provide notice of major decisions regarding the project and not to evict site tenants in furtherance of the project while the litigation is dormant.

Our expert has prepared preliminary studies regarding the reality of gentrification in East Harlem and how the partnership project would exacerbate it. The study is designed to assist in settlement discussions with the City.

Almonte v. Pierce (1987-RR)

This is a housing discrimination lawsuit brought in federal court challenging the discriminatory tenant selection and outreach procedures used by the housing sponsor of Goodheart House in Brooklyn. Goodheart House is a 59 unit senior citizen housing development in Brooklyn financed with federal funds. Because of the way the sponsor advertised the project and developed the eligible pool of tenants, White applicants were clearly favored over Hispanic and Black applicants.

The District Court agreed that the eligibility pool proportionately favored White applicants because of the methods used and it ordered the development of another eligibility pool. As a result of our lawsuit, our clients will form over 50% of the initial tenants at Goodheart House.

We continue to monitor the case as to rent-up procedures and the "re-logging" of the waiting list applications to develop an additional pool of applicants.

NYCCELP v. Koch (1987-RR)

The Fund is lead counsel in this class action which seeks to compel the City of New York to enforce health and administrative code provisions including sanctioning of landlords who fail to remove lead-based paint from residential apartments; the greatest concentrations of buildings with lead paint violations are in neighborhood where predominantly Puerto Rican and Black residents reside. Prior counsel defeated the City's motion to dismiss the action, and the City has appealed.

The City perfected its appeal from the denial of its motion to dismiss. We have thirty (30) days to submit an answering brief. In the meantime, we have met with plaintiffs and discussed various alternative strategies, one of which is to draft proposed lead paint regulations for the City adoption.

D. Language Rights Initiatives

One of the major priorities of The Fund is to continue and expand its efforts, through litigation and advocacy strategies, to secure the language rights of Puerto Ricans and other language minority communities. Our work in this area has included the following cases:

United States and Yonkers Branch of the NAACP, et al. v. Yonkers Board of Education, City of Yonkers and Yonkers Community Development Agency (1980-JLM)

The Fund represents the Organization of Hispanic Parents of Yonkers as amicus curiae in this landmark school

and housing desegregation case. The goal of The Fund's participation in this suit has been to secure the maintenance of the bilingual education program as part of the school desegregation order. Judge Leonard Sand of the U.S. District Court for the Southern District of New York has included as part of his decision in the case provisions for bilingual education as a result of The Fund's work. The Fund continues to monitor the desegregation plan's implementation and its effect on the Latino community.

Zamora, et al. v. Local 11, et al. (1986-JLM)

The Fund filed a joint amicus curiae brief with the Mexican American Legal Defense and Educational Fund to secure adequate Spanish language translations at Local 11 Union meetings. This union is 80% Hispanic of which 60% speak and understand only Spanish. The amicus brief was filed in the Court of Appeals for the 9th circuit. The case was originally decided in favor of the Hispanic union members at the District Court level.

In May 1987, the 9th Circuit affirmed in favor of granting summary judgement for Zamora. Presently, an order is pending concerning the advisability of taking this case of first impression en banc.

E. Education Rights

Education is one of the most critical areas for advancement of the Puerto Rican and Hispanic community in the long-term. Consequently, the protection of the educational rights of our community remains a significant area of emphasis for The Fund as demonstrated below:

Parents Association of P.S. 16 v. Quinones (1986-RR)

On behalf of the Parents Association of P.S. 16, The Fund filed an action for permanent injunction in federal court challenging the racial and religious segregation of school children at P.S. 16. Specifically, we challenged the Board of Education's plan to provide federally funded remedial education classes for parochial school children

whose religious tenets required the strict segregation by gender. To accommodate this and other beliefs, the Board of Education constructed doors and walls to segregate public from parochial school children. Although the United States District Court denied our motion for a preliminary injunction, the United States Court of Appeals for the Second Circuit reversed the District Court and granted our motion. Settlement negotiations are underway.

We discussed a specific settlement proposal with the City of New York whereby it would consent to our proposed summary judgement. The proposed judgement narrowly tracks the United States Court of Appeals' decision on our appeal, and the City has indicated it would settle on those terms. We are awaiting the City's final response to this proposal.

Puerto Rican Education Coalition v. Board of Education of Jersey City (1981-JC)

This is The Fund's bilingual education case in Jersey City, New Jersey. All claims related to an appropriate bilingual education program were settled in the 1983 partial consent decree. The outstanding issues revolve around bilingual special education.

The factual situation for these claims include the appropriate evaluation of Latino students both as to their language needs and their handicapping needs and the placement of handicapped Limited English Proficient (LEP) students in bilingual special education settings. In the 1986-87 school year over 50 handicapped students were receiving English as a Second Language instruction. Yet, nearly all of them were in need of a bilingual education program according to their own files. Additionally, the majority of these students have either been initially evaluated, reviewed or re-evaluated by monolingual clinicians. Therefore, the legal issues involve the rights of these students to assessments in a bilingual setting and their rights to receive bilingual special education instruction.

The impact of this litigation is underscored by the

formulation of adequate programs and procedures for handicapped LEP students in New Jersey's second largest city. This sub-class of plaintiffs has already been defined by the court as including all handicapped LEP students presently enrolled, or enrolled in the future who are entitled to bilingual education instruction.

In June 1987, The Fund obtained professional assistance from the Department of Bilingual Education and the Bilingual Special Education at Kean College in New Jersey as well as the Newark Board of Education which had established their bilingual special education program for purposes of drafting a consent decree.

The Court selected a trial date in December 1987 as a result of which settlement discussions have resumed. At present the parties have reached agreement in principle only as to the assessment issues.

The legal issues in the area of bilingual education have never received the attention of a full trial on the merits. Discussions with the legal staffs of MALDEF and the META Project in August 1987 confirmed the scarcity of legal precedent in this area. This litigation therefore, could potentially have enormous impact in this important area.

Dyrcia S. v. Board of Education (1979-JC)

This class action suit alleged that defendants violated plaintiffs' rights to an appropriate bilingual/bicultural special education program. The school system failed to evaluate students properly and to place them in programs which would meet their dual needs as handicapped children with limited skills in English in a timely manner. This case was consolidated with the case of Jose v. Ambach which raised similar issues on behalf of all special education students. In 1982, a federal district court agreed with The Fund's claims and found the Board of Education in violation of federal education and civil rights laws.

Since then, The Fund has focused on the implementation and monitoring of this historic judgement. The order provides that children suspected of being handicapped must

be evaluated within thirty days, and placed in a special class if warranted within another thirty days. If these deadlines are not met, the parents may obtain private evaluations or placements at the school's expense. Translation of all relevant notices to the parents in Spanish is an important part of the order.

Bilingual special education poses critical and demanding problems which The Fund is attempting to address in its on-going negotiations with the Board of Education. Paramount among these are the critical shortages of bilingual clinicians and bilingual special education teachers. It is this challenge that must be met to make this legal victory a reality in our schools.

In January 1987, the Court ruled that the Board's plan did not go far enough on all levels. It ordered the Board to develop specific plans for recruiting and hiring bilingual clinicians, and ordered hearings on the issues pertaining to social workers on the School Based Support Teams.

In August 1987, the City defendants reported that they were unable to meet their hiring goals. The Court referred the matter, once again, for hearing to review the City defendants' new plan and its impact on the waiting lists; hearings were held in late Fall.

The significance and impact of the Dyrcia S. case is clear. There are over 100,000 students classified as handicapped in New York City. More than 3,000 of these students are LEP. Yet thousands of other Latino students have yet to be evaluated, reviewed and re-evaluated. The Jose P. judgement is known throughout the country as the leading judicial determination on matters affecting the timeliness of evaluations.

Aspira v. Board of Education (1972-JC)

This suit was filed in 1972 and a Consent Decree was signed in 1974 mandating bilingual education instruction. The implementation of these programs under the mandate of the Consent Decree is subject to constant attack and encroachment and must be safeguarded for future eligible

students.

To correct and prevent violations and to guarantee compliance, The Fund is working with community based organizations in New York City, such as Aspira of New York, the Puerto Rican/Latino Education Roundtable, the Bilingual Education Task Force of the National Congress for Puerto Rican Rights and numerous parent associations. The Fund's efforts address abuses such as: school official's refusal to establish more bilingual classes even where the number of eligible pupils has clearly increased; and, schools' encouragement of parental withdrawal of children from the bilingual program, a practice prohibited by the Consent Decree.

As with Dyrcia S., the task in Aspira is to enforce the judgement as dictated by the Consent Decree. Over 90,000 students are entitled to services under the Consent Decree. Aspira, therefore, is one of the leading bilingual education cases in the nation.

In June 1987, The Fund supported Aspira of New York's efforts for increased funding from the City above and beyond the State allocations for bilingual education. These efforts were successful in generating an additional \$2 million dollars in the City's budget for this purpose.

In August 1987, The Fund reviewed the Educational Priorities Panel's Monitoring Report on the Board of Education's Action Plan to improve compliance with the Consent Decree and Lau requirements for Limited English Proficient students. The Report confirmed significant progress by the Board citywide in record-keeping and accountability, however, it noted serious shortcomings in the capacity to track the use of additional funding for LEP students and in the lack of bilingual guidance and parental outreach services.

In September 1987, The Fund and Aspira of New York met directly with the Board's Office of Bilingual Education (OBE) and representatives from the high school division. This meeting addressed numerous concerns including: statistical disparities in various reports; access to OBE's profiles for every district in the City; funding resources;

teacher recruitment and teacher training; curriculum development; pre-kindergarten services; and OBE staffing.

In a related matter, The Fund provided technical and legal assistance to the PTA of P.S. #9 in the Upper West Side in Manhattan. The parents at this school were concerned with the creation of a gifted program with the school's failure to provide materials for its bilingual education program. After meeting with parents in October and November, The Fund requested a review by the Office of Bilingual Education. The office immediately responded by informing the district that it would, in fact, conduct a review. The parents have been so informed.

F. Health Issues

In the last year, The Fund has become increasingly more aware of health care issues affecting our community. The area represents an expansion of The Fund's areas of emphasis and potential law reform in future years.

Budet v. Health and Hospitals Corporation et al. (1982-JLM)

This is an employment discrimination case before the New York City Commission on Human Rights based on national origin and sex discrimination. The Fund represents a female security officer who was dismissed from her job at Lincoln Hospital because she was pregnant while male officers with similar qualifications were retained. The case is still pending before the Commission. Recently, the plaintiff was requested to produce additional evidence in the form of witnesses who can corroborate instances of discrimination. That information, if available, will be forwarded to the Commission.

II. CASE DEVELOPMENT AND OTHER ACTIVITIES

The Fund regularly participates in case development work and other legal activities which provide the foundation for instituting litigation on a variety of issues. Following is a summary of these activities during the current reporting period.

A. Political Participation

New York City Board of Estimate Restructuring

Under the 1986 Morris v. Board of Estimate case, Federal District Court Judge Neaher ordered the restructuring of the New York City Board of Estimate because of its violation of the one person, one vote principle. Presently, The Fund is investigating the various options for changing the City's political structure to provide increased Latino voter participation and representation at the local level. This investigation is conducted with an eye towards litigation either through intervention in the case itself, which is currently on appeal, or through the initiation of new litigation under the Voting Rights Act.

Voting Rights Act PreClearance Monitoring

Under Section 5 of the Voting Rights Act, certain jurisdictions including New York, Kings and Bronx Counties, must submit for Justice Department preclearance any change in electoral laws or procedures. The Fund monitors the submissions of these submissions to the Justice Department to comment on their effect on the Latino community and to uncover any possible violation of Section 5 for litigation in federal court. Efforts to increase community participation in monitoring electoral changes in the Latino community are currently being undertaken to increase our effectiveness in this regard. Section 5 preclearance monitoring is an ongoing activity of The Fund.

B. Employment

Non-Traditional Employment for Women

The Fund, NOW Legal Defense Fund, and NAACP Legal Defense Fund are meeting with Non-Traditional Employment for Women (NEW) to develop approaches for enforcing equal access for women and minority men in construction industry apprenticeship positions. The three organizations are urging the State to use its statutory powers to require apprenticeship programs to adopt hiring goals and timetables for women and minority men. We are exploring possible litigation in State

court which would request mandamus relief requiring the use of its aforementioned powers.

A Freedom of Information Act request has been submitted to the City of New York seeking minority reports to secure necessary information to further these efforts.

C. Housing

Housing Justice Campaign

The Fund is part of a legal team drafting a complaint to challenge the City of New York's announced ten year, \$4.2 billion housing plan. Although promoted as a low and moderate income housing plan, the ten year plan in fact excludes most low and moderate income families with up to \$25,000 incomes annually and favors middle income families with incomes up to \$48,000. This plan will likely have gentrifying effects throughout New York City and, significantly, depletes large amounts of City-owned buildings and land which will be used to create this housing. Puerto Rican New Yorkers will largely be excluded from this project since their incomes are not high enough to qualify.

Major plans such as this must be reviewed at City-wide public hearings under various provisions of the New York City Charter, and the City of New York is required to evaluate the potential effects of such plans upon low and moderate income New Yorkers. The City has failed to comply with this requirement.

The proposed lawsuit seeks to have the City comply with the City Charter and with State environmental laws and seeks as well to have the City utilize public subsidies to serve low and moderate families.

D. Education

Special Education Litigation

Puerto Rican Parents from Brooklyn have contacted The Fund regarding the misclassification of their children for special education classes in public schools.

The Fund is exploring its potential involvement in District 20 in Brooklyn in the special education problems

affecting Puerto Rican students in this district. At issue is a documented pattern of misclassification and misplacement of Puerto Rican students who are referred, assessed, classified and placed into special education classes. The misclassification results from misdiagnosis by school officials, language differences, lack of appropriate training for diagnosticians, or combination thereof. The parents have secured, at their own expense, independent psychological diagnoses which differ substantially from those of school officials. In about 2½ years of work, Concerned Parents, a Puerto Rican parent group, has handled 40 individual cases and in every case but one, the district has upgraded the placement of the child given the divergent diagnoses.

Misclassification not only stigmatizes children, but it virtually locks them into special education for most of their educational life because of the difficulty in securing reclassification by the Board of Education. Moreover, the Parents claim that special education children do not receive bilingual services nor quality education.

The Fund has met with the independent psychologists in its efforts to explore the viability of fashioning impact litigation in this area. Also, The Fund has been requested to examine similar claims of misclassification in the Great Neck school system.

Connecticut's Public Elementary and Secondary Education System

In the Fall of 1987, the NAACP Legal Defense Fund, the Connecticut Civil Liberties Union and The Fund began collaborating on legal strategies aimed at improving the disparities in Connecticut's public schools for Connecticut Black and Latino communities, notwithstanding progressive educational reforms and significant resources targeted at correcting the disparity. At issue is the stark disparity between the educational achievements between students in urban and suburban districts.

Because any potential legal strategy raises the specter

of interdistrict remedies which are often controversial, community hearings in the targeted communities of Bridgeport, Hartford and New Haven have been conducted to identify the specific educational needs and priorities, to ascertain support for a proposed strategy and to assess the political climate of each community. A result of these efforts in Connecticut is a statewide conference on educational issues to be held in January 1988. Hopefully, this would be the start of a statewide coalition of Blacks and Puerto Ricans involved in education.

As present, litigation alternatives include inter-district desegregation or the establishment of a right to an appropriate education as defined by the State's minimum standards, or a combination thereof.

New Jersey Bilingual Education

In November 1987, acting on the request of Aspira of New Jersey, The Fund began to explore the legal issues regarding the State Board of Education's plan to change the exit criteria in its bilingual education programs. The Office of the Public Advocate has also requested The Fund's opinion on the impact the proposed plan would have on the students affected. The Fund is now preparing its position on the proposed criteria.

E. Health

Greater Trenton Community Mental Health Center, Trenton, New Jersey (JLM;RR)

The Fund is involved in advocating for bilingual services at Greater Trenton Community Mental Health Center (GTCMHC), Trenton, New Jersey. Presently, this center does not provide any language assistance in its crisis room, emergency housing, substance abuse, youth, residential care and vocational programs. Consequently, Hispanics are virtually excluded from all programs sponsored by GTCMHC. The Fund has worked with the P'alante Community Committee, composed of various Hispanic organizations in Trenton, to assist their efforts to negotiate a resolution of this issue with the GTCMHC Board of Directors and The Fund is seeking

the assistance of the Public Advocates' Office of New Jersey to obtain an appropriate settlement. A complaint for lack of bilingual services is pending with the Office of Civil Rights of the Department of Health and Human Services.

The Fund is presently finalizing preparation for litigation in this case as well as lending support to the advocacy efforts of the Latino community.

Pilgrim State Psychiatric Center, Long Island, New York
(JLM)

Bilingual/bicultural wards to assist in the diagnoses and treatment of Spanish-speaking mental health patients at Pilgrim State Psychiatric Center had been rejected despite the critical need for such services to the significant numbers of Hispanics at the facility. The Fund has worked to develop a coalition of community and professional Hispanic organizations to advocate for the establishment of an effective bilingual program at Pilgrim State. As a result of The Fund's advocacy efforts, including testimony before Governor Cuomo's Grievance Committee, a plan has been set in motion to develop bilingual programs not only for Pilgrim State but for other centers in New York State, such as Lincoln Hospital in the Bronx.

Litigation by The Fund remains a possibility if the State employs ineffective programs for Hispanics. Contact with mental health organizations and providers is being maintained by The Fund to monitor the progress of the plan.

However, it should be noted that in the fall of 1987, the Hispanic Day Program formally opened at Pilgrim State and the reports thus far have been very favorable.

III. LEGAL EDUCATION AND TRAINING DIVISION

The Education Division has remained involved in the areas of Pre-admissions, Post-admissions and Professional Development. Following is a description of our activities and current status of the Legal Education and Training Division in each of these areas.

A. Pre-Admissions

Counseling

The Fund's pre-admissions counseling work has centered around assisting law school candidates who have questions about the admissions process, scholarships and financial aid prospects. The Legal Education and Training Division receives approximately 20 calls per day from these students. Those who come in for counseling are provided with pre-admission materials designed to provide them with general guidelines and a strategic approach to the admissions process.

During 1986-1987, we made a significant effort to increase our outreach to prospective Latino law students. Flyers, brochures and letters describing our services were sent to community centers and organizations to accomplish this goal. Further, presentations at Northeastern colleges and law schools have increased our visibility. We currently have approximately 600 students in our caseload, as contrasted with the 170 students for 1985-1986.

LSAT Preparatory Course

The number of students enrolled in the LSAT preparatory courses held in 1987 was over 300. As a consequence, the LSAT preparatory course no longer has an open admissions policy. The application has been modified and admission into the course is now based on demonstrated educational and financial disadvantage. Priority is given to students who have traditionally performed poorly on standardized examinations.

Personal Statement Course

Last year some 80 students were enrolled in our Personal Statement Course which is designed to provide guidelines on the structural and substantive requirements of the essay. In an effort to address the serious writing problems of many of our students, we added an extra session and provided many students with individualized counseling. This year we reviewed over 100 personal statements.

Law Day

The Fall 1987 Law Day was attended by approximately 250 prospective law students, and over 64 law schools participated, reflecting an increase of 30% in the rate of law school representation over the previous year. The evaluations from students, law schools and speakers have been excellent.

GAPSEAS Work Shop

At The Fund's request, Janice Bruno, Assistant Program Director at the Education Testing Center, conducted a GAPSEAS/financial aid workshop at New York Law School in November 1987. The workshop provided a comprehensive review of financial aid prospects as well as detailed guidance on the process for securing financial resources to attend law school. The workshop was assessed as "extremely helpful" by the 100 students who attended.

Law School Liaison Program

In 1987, the Director of Legal Education and Training met with several admissions officers in the Northeast Region to discuss their minority recruitment, admission and retention policies. The following schools were visited:

- American University School of Law
- Antioch Law School
- Catholic University School of Law
- Columbia University School of Law
- Fordham University School of Law
- George Washington University National Law Center
- Georgetown University Law Center
- Hofstra University Law School
- New York Law School
- Rutgers University School of Law (Newark)
- University of Connecticut School of Law

These meetings have enabled The Fund to develop a strong working relationship with law school admission officers and the information we were able to elicit has proven invaluable to our pre-admission efforts. The opportunity to assess first hand the different institutional

affirmative action policies of these schools is essential to the Division's work.

Although manpower limitations precluded visits to as many law schools as we had planned, informal telephone interviews were conducted. Moreover, many admission officers contacted our office, particularly after the Law Day, to encourage our referral of students.

Research and Pre-Law Manual

To assess the effectiveness of our programs, determine the needs of our client population and improve our services, it is necessary for the Legal Education and Training Division to engage in on-going data collection and analysis. Specific studies on problems peculiar to minority students will also be useful in guiding program development.

A comprehensive study on the number of minorities passing the bar each year and admitted to practice throughout the United States is essential. State Bar Examiners are in the best position to gather these statistics, but are not required to do so and examination applications do not solicit information regarding race or national origin. Through our liaison meetings with the various law schools, we were informed that the Bar Examiners provide bar exam results on each graduate and that they are in the position to track the number of times it takes a minority person to pass the bar examination. With the cooperation of the law schools, a study can be conducted to determine:

- 1) The number of Blacks and Latinos who pass the bar the first time;
- 2) The median number of times the exam is taken;
- 3) The factors which contribute to both success and failure.

The legal community is aware that the number of minority graduates passing the bar is significantly lower, but this has not been documented. This study would make a substantial contribution to the field of legal education, and provide The Fund critical documentation to develop a program in this area.

B. Post-Admissions

Internships

The Legal Education and Training Division is actively involved in the process of recruiting for the student internship program. Announcement letters were sent out to law students, law student organizations and the placement offices at different law schools describing the program and encouraging their application. Once the applications are reviewed, selected candidates are interviewed. This year, we received over 60 applications for two summer internship positions.

Network of Latino Law Students

The Network of Latino Law Students coordinated by The Fund is currently exploring the following:

- 1) Co-sponsoring a Regional Latino moot court competition;
- 2) Assisting in the coordination of a job fair for Latino law students; and,
- 3) An approach to dealing with the admissions and retention of Latinos in law school, for example, considering the coordination of a two week summer orientation for incoming first year students.

Scholarship Program

General scholarship applications were sent to all first and second year students in our post-admissions caseload. Additionally, packages of 10 applications were sent to Latino law student associations and the schools which requested them. We have received over 100 applications through these efforts. We are now finalizing the selection of scholarship recipients for the 1987-88 academic year. Additionally, as a result of our recommendations, the Puerto Rican Bar Association awarded scholarships to five of our students.

Moot Court Competition

The Legal Education and Training Division is currently developing a proposal for the creation of a moot court

competition for Latino law students. The competition will be nationwide and will serve to provide students with access to an important educational opportunity while in law school.

C. Professional Development

Directory of Latino Attorneys and Law Graduates

The Directory has been completed.

Legal Employment Opportunities

The Division currently maintains a comprehensive file of legal and non-legal job announcements. The information is readily available to students seeking employment. This year the Legal Education and Training Division participated in an employment forum co-sponsored by the National Association of Law Placement (NALP) and the Black American Law Student Association. We plan to continue to participate in NALP activities in order to keep abreast of employment opportunities and strategies to enhance placement of our students.

Other activities carried out by the Legal Education and Training Division include:

- Workshops on civil rights and legal career opportunities for high school and college students;
- Meetings with the Puerto Rican Bar Association to evaluate law student scholarship applications;
- Presentation at the City College legislative forum on minorities in the criminal justice system; other participants were Senator David Patterson, Judge John Carro, Judge Yvonne Lewis and Professor Lennox Hinds;
- Presentations at the Women and the Law Conference on access to legal education;
- Presentation at conference sponsored by the Women's Law Association at Harvard Law School on Latino representation in the legal profession;
- Presentation at Hofstra Law School on civil rights and Legal Career Opportunities;
- Presentation at John Jay College and New York Institute of Technology on the admissions process;

- ° Participation at the Montclair State College law fair in New Jersey;
- ° Presentation on civil rights and legal education at forum co-sponsored by the New Jersey Judiciary and ASPIRA of New Jersey before 300 high school students.

IV. ADVOCACY AND COMMUNITY OUTREACH

The Fund's work on behalf of the Puerto Rican/Latino community is carried out not only in the courts but also through other activities including advocacy, community outreach and networking. Accomplishments in this area can be summarized as follows:

ALI-ABA Conference on Continuing Legal Education

A Fund attorney, was requested by the American Law Institute-American Bar Association (ALI-ABA) to prepare a paper for publication on "Bringing Minority and Public Interest Practitioners into Continuing Legal Education." In addition, the ALI-ABA requested the author's participation in a three day conference on Continuing Legal Education in November to address 140 leaders in the field of continuing legal education.

The paper entitled, "Bringing Minority and Public Interest Practitioners into CLE" was a major focus of the conference. It was published in a two volume edition for the conference and will be republished in the January 1988 issue of ALI's CLE Journal (the paper is provided as an attachment to this Report).

Development of a Latino Legislative Agenda

On August 6th, the Association of Puerto Rican Executive Directors (APRED) initiated the first of eight meetings to formulate a legislative advocacy agenda. Among The Fund's recommendations was the need for a special state prosecutor's office in New York to document, monitor and prosecute instances of racial violence in our community.

Racially Motivated Violence against Latinos

The Latino Coalition for Racial Justice, of which The

Fund is a founding member, has continued its efforts to organize in and monitor the Latino community around the issue of racially-motivated violence against the Latino community.

Additionally, The Fund continues to meet with other groups involved in organizing around issues of police brutality and racial violence. The Medgar Evers College Center for Law and the Coalition Against Anti-Asian Violence are among the groups with which The Fund maintains communication in an effort to network with others on this issue. To that end, The Fund endorsed the October rally sponsored by the Coalition Against Anti-Asian Violence and Koreans Against Anti-Asian Violence which protested the beating of a Korean bicyclist by New York City Police Officers.

Moreover, The Fund is monitoring and receiving calls involving the current scandal concerning NYC Transit Police Officers who have targeted innocent Latinos and Blacks for arrests over the last several years.

In addition to the activities as a member of the Latino Coalition for Racial Justice as described above, The Fund has been monitoring recent cases of racially motivated violence against Latinos in the criminal courts. Presently, three Latinos are awaiting trial for charges brought against them by police officers who apparently brutalized these individual in two separate incidents in Manhattan and the Bronx. Moreover, The Fund is monitoring prosecution of White youths who attacked two Latinos in Ozone Park, Queens. The Fund and the Coalition seek to use the knowledge gained by its monitoring efforts to further organize and educate the Latino community.

Finally, The Fund testified before the New York City Council's Committee on International Intergroup Relations and Special Events on racially-motivated violence.

Robert Bork Nomination to the Supreme Court

The Fund officially opposed the nomination of Robert Bork to the United States Supreme Court because of the threat he poses to the civil rights of the Latino community.

Fund attorneys prepared press releases and worked on numerous efforts to build coalitions against the nominee. The coalitions The Fund has worked with include the New York Coalition against Bork and the Campaign for a Just Supreme Court.

Latinos and the Media

In the summer of 1987, The Fund and the Institute for Puerto Rican Policy met with the publisher and President of the Daily News, James Hogue. The meeting was called for the purpose of addressing this newspaper's lack of Latino reporters, editors and other staff as well as the negative images of Puerto Ricans presented by the News' staff, including Jimmy Breslin, in their articles.

The Institute and The Fund stressed the need for the News to change its policies in this regard and further discussions about these changes will be forthcoming between Latino community representatives and the Daily News.

Recently, the Daily News added a Puerto Rican columnist from Philadelphia to its staff.

Federal Bureau of Investigations' One Year Rule

Criminal records are provided by the FBI to federal, state and city employees, although under its "one-year rule", it was prohibited from reporting the arrest records over one year old. The rule is designed to limit the damaging impact to an applicant's employment prospects. This is particularly true for Hispanics and other minorities who are often the subject of unjustified arrests as exemplified by the recent NYC Transit Authority police scandal. The FBI now proposes to eliminate the rule. The Fund has officially opposed the change and has joined with other civil rights groups in seeking a meeting with the new head of the FBI.

New York City Affirmative Action

New York City has an Equal Employment Opportunity Unit within its Commission on Human Rights that monitors the

City's employment practices. Where minorities or women are not properly represented in the work force, action is proposed to remedy the under-representation. The unit has been ineffective and understaffed for many years. In November, Mayor Koch announced his intention to transfer the unit to the Department of Personnel, the very agency being monitored. The Fund and other minority organizations have mobilized to block the change and have called for public debate on the issue.

Mutual Housing Association (MHA)

The Fund assisted several organization (CDLAC, Pratt Institute, and Acorn) in representing low income Puerto Rican families in East New York in forming the first MHA in New York City. The City agreed to transfer title over 58 City-owned buildings in East New York to a corporation consisting of the "tenants" and the three organizations mentioned above. The City will provide the corporation \$2 million to be used for renovation and rehabilitation of the buildings. Upon issuance of a certificate of occupancy for the buildings, the tenants would own their buildings as limited equity cooperatives and the corporation would own the land. This is a major model for affordable housing in New York City utilizing City-owned property.

East Harlem Land Trust

The Fund has met with various community groups and the Institute For Community Economics to discuss incorporating an East Harlem Mutual Housing Association along the Brooklyn model which hopes to incorporate by sometime early in 1988. The Community Service Society is interested in using this East Harlem project as a prototype for their new economic development project. Our hope is that this effort will create low income housing in East Harlem, and that we can use this MHA as leverage for perhaps settling Campbell.

Remington Building Products

Remington Building Products, a Long Island factory, is closing its plant and relocating effective December 1987.

The Fund has contacted the union on behalf of the workers, 95% of whom are Latino, to protect the workers' benefits, including pensions, accumulated vacation, etc. and to provide for re-training and re-employment, through advocacy efforts.

Puerto Rican/Latino Education Roundtable

The Fund has directly participated in a number of initiatives sponsored by the Roundtable. In October 1987, The Fund and other Roundtable members met with the staff of a member of the NYC Board of Education. The issue raised concerns the administration's efforts to eliminate or sharply reduce the Office of Bilingual Services in the Division of Special Education. This would be particularly harmful to Puerto Rican students who have practically no one to advocate on their behalf within the Division. The Board of Education has agreed to meet with the Roundtable.

In November 1987, The Fund was active in the Puerto Rican and Latino community's efforts to secure the appointment of a Latino to the NYC Board of Education. A group of Puerto Rican and Latino organizations, including non-Roundtable members, called for a major rally in November at City Hall Park. The Fund co-sponsored the rally which drew close to 1,000 protesters. The Fund provided legal and technical assistance to the coalition by securing appropriate park and sound permits and in coordinating the deployment of legal observers during the rally. The rally was received favorably and was clearly a catalyst in the Mayor's nomination of a Latina to the Board of Education in December 1987.

New York City Board of Education's Task Force on Human Relations

The Fund is a member of the New York City Board of Education's Task Force on Human Relations, an advisory group to the Board. The Task Force is divided into three subcommittees, Personnel (Affirmative Action), Curriculum and Students; Fund staff serves on the chair of the Subcommittee

on Personnel. Fund representation on the Task Force provides a direct avenue to the Board to communicate the affirmative action and civil rights concerns of minority groups and Latinos in particular. The Task Force will continue its work into 1988.

Conference of Latino Legal Defense Funds

The Fund began planning a historic conference of lawyers from The Fund, MALDEF, and the META Project. The initial conference will be held in Los Angeles in midJanuary 1988, immediately following the annual meeting of the Inter University Program for Latino Research (IUP) in San Francisco. As a result, IUP members will be able to join in our discussion in Los Angeles. Lawyers from MALDEF, META and The Fund will be travelling from throughout the country to participate.

The first conference will focus on language policy and language rights with an eye toward identifying legal strategies to defeat The English Only movement. Additionally, conferees will spend time planning future meetings and agenda for discussion and collaborative work in other substantive areas of law.

NAACP Legal Defense Fund Voting Rights Conference

The Fund participated in the NAACP LDF's excellent voting rights conference in San Antonio in October 1987. Participants included every major litigator, voter registration activist and litigation expert in the country. As a result of the participation, The Fund was able to identify several projects for potential litigation in this critical area.

New York State Governor's Task Force on Encouraging Electoral Participation

The Fund accepted Governor Cuomo's invitation to serve on his Task Force on Encouraging Electoral Participation. The Task Force was created by Executive Order to analyze New York's laws and regulations affecting voter registration and

turnout, to compare same to other states with higher registration and turnout rates, and to make recommendations. Public hearings throughout the state began in December 1987 to gather public comments regarding this issue.

P.S. 9, Upper West Side of Manhattan

In addition to the legal assistance The Fund provided to the PTA on the bilingual education issues described above under the Aspira litigation, The Fund also provided assistance to parents of P.S. 9 in their challenge to the creation of a gifted program in their schools. Parents of P.S. 9 brought suit, Buchanan v. O'Brien, in New York State Supreme Court charging that the gifted program was not made public to the school's community and that funds to serve their students were being illegally allocated to the gifted program. The parents are represented by attorneys from the NAACP. The Fund assisted by preparing an expert witness with his testimony for their challenge to the gifted program. At present, the litigation is pending but the parties have begun to consider settlement proposals.

Puerto Rican Heritage Month

In November 1987, The fund participated in the WWOR-TV broadcast of "Hispanic Horizons." The show was dedicated to Puerto Ricans and their contributions and current conditions in the United States.

V. CONCLUSION

The Activities Report provides the major highlights on the programmatic work of The Fund which includes activities in every major area of critical concern to the Puerto Rican and Latino community. These initiatives provide a sound foundation for the future growth and expansion of The Fund.

ATTACHMENT

Bringing Minority and Public
Interest Practitioners into CLE

by José Luis Morín*

I. INTRODUCTION

The concept of continuing legal education (CLE) for practicing attorneys has gained considerable popularity as a means of improving the quality of legal services to the public. Despite its growing acceptance, CLE programs sponsored by the American Law Institute-American Bar Association (ALI-ABA) have failed to attract significant support or participation from minority attorneys and public interest practitioners. Consequently, the goal of CLE to seek improvement in all sectors of the legal profession in the country has not been met. The lack of participation by these two distinct but often overlapping groups relates to the fact that these groups continue to occupy the fringes of the legal profession with respect to access and acceptance into the profession. Black, Latino, Asian American/Pacific Islander and Native American attorneys as well as public interest lawyers will not be drawn to ALI-ABA sponsored CLE programs absent profound changes not only within the CLE movement but throughout the legal profession.

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II. HISTORICAL BARRIERS TO PARTICIPATION

The historical exclusion of minority attorneys within the legal profession has hindered minority participation throughout the profession. The American Bar Association (ABA) until 1943 maintained its policy of excluding Blacks from membership in the Association and it was only in 1950 that the first Black attorney was admitted into the ABA.¹ A discernible minority presence in the ABA did not exist until 1966.² Currently, only a small number of Blacks and Latinos are members of the ABA.³ The glaring absence of minority participation in the ABA can thus be viewed as a contributing factor in the current reluctance on the part of minority attorneys to become involved in ABA sponsored activities, such as its CLE programs.

The persistent exclusion of minorities in all facets of the profession contributes to their alienation from mainstream bar activities. The lack of minority law students, attorneys, law professors and judges continues to be the focus of minority discontentment in the profession.⁴

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1. Patrick, Modern Solutions to Historical Problems: Minority Lawyers' Involvement in the ABA, Member NET, January 1987 at 3.
 2. Id.
 3. Margolick, Bar Group Is Told of Racial Barriers (Reprinted from Times), ABA Journal, April 1985 at 3.
 4. Id.

While Blacks and Latinos comprise more than 23 percent of the population of the United States, they represent less than 10 percent of the country's law students, only 6 percent of its lawyers and only 5.6 percent of its law professors.⁵

Moreover, the future for minority group representation in the profession remains bleak.⁶ Minority enrollment in law school is expected to decline⁷ and the number of Black attorneys in the 100 largest law firms has decreased from 2.9 percent in 1982 to 1.5 percent in 1984.⁸ These indicators demonstrate a continuing inability or unwillingness to incorporate minority talent into the legal profession. Consequently, minority attorneys have been compelled to form their own organizations, such as the National Bar Association (NBA) and the Hispanic National Bar Association (HNBA), to address the needs of their members. Their independence from the mainstream bar has been a necessary step for professional development, but it has also further distanced minority lawyers from the mainstream bar and its activities. Only as recently as 1986 has the HNBA received representation in the ABA's House of Delegates.⁹

5. Id.

6. See generally Smith, Career Patterns of Black Lawyers in the 1980's, 7 Black L.J. 75 (Fall 1981).

7. Diamond, A Trace Element in the Law, ABA Journal, May 15, 1987 at 46.

8. Margolick, supra.

9. See Patrick, supra at 10.

Similarly, public interest practitioners are not regarded as part of the mainstream of the legal profession. A public interest practice is often characterized as less prestigious because of the low paying scales of most public interest law organizations. In 1985, the average starting salary for all law school graduates was \$29,224 as compared to the average wage of \$19,976 for those graduates entering the public interest sector.¹⁰ The 1985 average public interest starting salary contrasts dramatically with the starting salary of \$65,000 of large New York private firms of more than 100 attorneys.¹¹

In addition, the public interest practitioner is often given the dubious distinction as the champion of unpopular causes and clients.¹² All attorneys have an ethical obligation to make legal services fully available.¹³ Yet, public interest practitioners are not often recognized for their service to the poor or their representation of unpopular causes. If the Legal Aid Society and other public interest law organizations did not exist, the private bar would be unable to meet the service needs of the poor in this country.

10. Thieberger, More Graduates Turning to Law Firm Practice, National Law Journal, March 30, 1987 at 14.

11. Id.

12. See, Brill, The Stentch of Room 202, The American Lawyer, April 1987 at 1.

13. See Model Rules of Professional Responsibility, Rule 6.1 (1983); See also Model Code of Professional Responsibility, as amended, Canon 2, EC 2-24, EC 2-25, EC 2-27 (1980).

The alienation from the mainstream bar experienced by public interest lawyers has led to the creation of alternative associations. These organizations, such as the National Lawyers Guild, conduct their own skills training sessions as part of their commitment to furthering the objectives of public interest attorneys. Similarly, the various Legal Services Corporation back-up centers and other public interest organizations throughout the country regularly hold their own skills development programs to assist public interest practitioners.

While many minority and women attorneys who choose to work in the public interest do so out of deep commitment and understanding of community needs and concerns, minorities and women also continue to gravitate to public interest careers because of their increased acceptance into that sector. Minority and women law graduates are undoubtedly part of the growing number of law graduates aspiring for private law firm jobs,¹⁴ but nevertheless, minority and women law graduates enter the public interest sector in disproportionate numbers in comparison to White male graduates.

The 1985 employment survey of the National Association for Law Placement (NALP) indicates that of the 787 law graduates entering the public interest sector, 366 or 46.5

14. See Thieberger, supra.

percent were men and even though women constitute only 36.6 percent of all law graduates, 400 or 50.8% of the women entered public interest employment.¹⁵ While only 8 percent of all law graduates in the United States are from minority groups, the survey revealed that 59 or 16 percent of the men entering public interest were minorities and 70 or 17.5 percent of the women were minorities.¹⁶ Overall, the percentage of law graduates beginning public interest careers nationwide is approximately 3.4 percent, while 6.8 percent of minority persons and 4.7 percent of women enter public interest employment.¹⁷ This factor is significant. The substantial number of minority and women law graduates attracted to public interest law careers reduces their interaction with the mainstream private bar and consequently, reduces the likelihood of their participation in activities traditionally sponsored by the ALI-ABA.

Minority attorneys who do seek careers with private law firms encounter greater difficulties than women. In 1981, women comprised 23.9 percent of all associates and 2.8 percent of all partners in a National Law Journal survey of 250 of the largest firms in the country.¹⁸ By 1985, women

15. National Association for Law Placement, Class of 1985 Employment Report and Salary Survey. The sex for the remaining 21 respondents was unrecorded.

16. Id.

17. Id.

18. Marcus, For Black Lawyers, Path to Top is Slow, Washington Post, November 16, 1986 at 12.

increased to 30.5 percent of all associates and 6 percent of all partners.¹⁹ The same survey, however, showed that the percentage of Blacks in these law firm positions remained at low levels or declined during the same period.²⁰ Thus, racial segregation and discriminatory practices apparently persist within the legal profession.²¹ The alienation of minority attorneys, whether they pursue public interest or private sector careers, is certain to manifest itself in low levels of interest and involvement in ALI-ABA sponsored CLE programs.

III. CLE DIFFICULTIES IN BROADENING PARTICIPATION

Continuing legal education programs to date have not targeted minority and public interest practitioners. Among the obvious problems is that CLE programs involve considerable monetary costs to low salaried minority and public interest lawyers. The registration fees for CLE programs as listed in the June 1987 ABA Master Calendar of Meetings are in many instances well beyond the means of minority practitioners and public interest lawyers. Travel and other expenses add further to the burdensome fees. Moreover, nonprofit, public interest organizations often lack the resources to subsidize continuing education for their staff attorneys. Therefore, the cost of attending CLE

19. Id.

20. Id.

21. Diamond, supra at 49.

courses is a major deterrent to minority and public interest lawyer participation. Since the quality of the program does not necessarily correspond to the amount paid for the course, less expensive programs by public interest groups are far more appealing when available.

Further, CLE programs have not focused adequately on topics of interest and concern to minority and public interest lawyers. Although important principles and skills of law can be drawn from most legal seminars, ALI-ABA sponsored CLE programs generally neglect specific areas of the law directly relevant to these groups. Public interest practitioners, for instance, would most likely be interested in employment and housing discrimination, voting rights litigation or poverty law issues.

Certain proposed changes for CLE may generate further alienation and resentment on the part of minority and public interest lawyers. Most disturbing to minority and public interest lawyers is the expansion of mandatory CLE and the prospects of mandatory CLE testing. Minority and public interest attorneys continue to fear the institutionalization of mandatory CLE for the financial burden they would be required to bear. The notion that the practice of law could become the exclusive domain of wealthy practitioners or that mandatory CLE would raise the cost of providing legal services to the poor is cause for concern among minority and public interest practitioners.

Minority lawyers, in particular, may object to mandatory CLE testing of attorneys duly admitted to practice as yet another attempt to discourage and exclude minority groups from the practice of law. The Black and Latino legal community for many years has criticized standardized examinations, such as the Law School Admission Test (LSAT), as culturally biased and discriminatory in impact.²² If instituted, CLE testing of practicing attorneys logically would take the form of standardized examinations as an "objective" measurement of competency. Nevertheless, opposition from the minority bar would be sure to follow because no reason exists to believe that a standardized CLE examination will be perceived as a better predictor of competency or as less biased than the LSAT examination. Moreover, the glaring absence of minority participation on questions of mandatory CLE and CLE testing assures an increase in tensions between minority attorneys and the traditional bar.

IV. TOWARDS GREATER INCLUSION

Continuing legal education programs must change if the participation of minority lawyers and public interest prac-

22. See, White, An Investigation into the Validity and Cultural Bias of the Law School Admission Test in White, Ed. Towards a Diversified Legal Profession, San Francisco: Julian Richardson Associates, 1981 at 66; See also, Moorhead, The Impact on Minorities of the Legal Professionalization Process: An Overview, 22 How. L.J. 463 (1979).

tioners is to be realized. ALI-ABA is the most prominent sponsor of CLE programs nationally and thus, is best suited to address the lack of minority and public interest lawyer participation in CLE. Various corrective measures can be taken by the ALI-ABA's actions including: the improvement of delivery systems; the development of special programs; minority and public interest lawyer representation in planning; and continuing dialogue with minority and public interest groups.

A. Improvement of Delivery Systems:

Methods of delivering CLE to minority and public interest lawyers can be devised to increase awareness and access to CLE. ALI-ABA can seek the cooperation of minority and public interest law organizations throughout the country to broaden the reach of CLE programs. These cooperating organizations, which can include minority bar associations or a variety of public interest legal defense organizations, may be able to co-sponsor CLE activities; help publicize CLE among minority or public interest lawyers; advise ALI-ABA as to the CLE needs of their members; and identify the most appropriate sites and times to sponsor CLE programs. These organizations, may also assist in recruiting minority and public interest attorneys to teach programs and to expand the areas of instruction to include courses of interest to these groups.

New technologies can be employed to reach the minority and public interest legal communities. Increasing the use

and availability of videotaped CLE training seminars produced by and for minority or public interest practitioners may make CLE more accessible. Moreover, CLE broadcasts over closed-circuit television have already become available to a limited extent through the Continuing Legal Education Satellite Network (CLESN).²³ The use of CLE broadcasts may become yet another means to increase the accessibility of CLE Programs.

B. The Development of Special Programs:

CLE must be made financially feasible to minority and public interest lawyers. Stipends and fee waiver programs for low salaried attorneys should be an integral part of CLE. Consequently, ALI-ABA should pursue sources of funding for these programs and select readily accessible locations to reduce the costs of travel for participants. In view of the lack of minority attorneys in large private firms and the low salaries of public interest lawyers, the cost of CLE will continue to act as an obstacle if not addressed adequately and with sufficient publicity about the availability of stipends or fee waivers.

The scope of CLE programs can also be expanded to increase participation. ALI-ABA should expand its course curriculum to offer courses of specific interest to minority

23. Gang, Using Satellite Technology to Broaden the Reach of Today's CLE Programs, The National Law Journal, June 1, 1987 at 15.

attorneys and public interest lawyers. Skills training and development in specialized areas within civil rights, poverty law and other areas can be developed to attract public interest practitioners. Minority attorneys in private practice would also benefit from programs specifically designed to assist them in the development of a successful law practice.

C. Minority and Public Interest Lawyer Representation in CLE Planning:

The above recommendations cannot realistically be implemented without representation of minority and public interest lawyers in planning the changes necessary to broaden CLE participation. ALI-ABA should seek minority attorneys, who are familiar with the needs of minority lawyers, their areas of practice and their organizations, to serve on the highest levels of CLE planning. Similarly, individuals knowledgeable in the field of public interest law should be sought to serve and advise in the ALI-ABA planning process. Only those most familiar with these groups can effectively and efficiently address the problem of low involvement by these groups. An initiative to increase representation in planning would be an indicator of ALI-ABA's commitment to addressing this problem.

D. Ongoing Dialogue:

The distant and often strained relationship between minority attorneys and the traditional bar is an aspect of

the profession which cannot be overlooked in the effort to expand CLE. The traditional bar's relationship with the public interest sector can be similarly described and requires the attention of CLE planners. ALI-ABA can begin to close the gap by initiating ongoing discussions with representatives of these sectors. These discussions should focus on fostering greater understanding of this problem and developing specific action plans to improve participation.

Ultimately, minority and public interest practitioner involvement will grow only with increased access and acceptance of these lawyers within the ABA and throughout the legal profession. Implementation of the numerous recommendations set forth by the ABA's Task Force on Minorities in the Legal Profession can be a significant first step in making the profession more inclusive of all sectors of the bar.²⁴ Minority attorney involvement will be essential in this effort as well. Among the various recommendations for extending equal opportunity to minorities in legal education and employment, the ABA Task Force also cited the use of CLE to broaden minority involvement.²⁵ Nevertheless, the push to extend mandatory CLE to other states and to institute mandatory CLE testing must be opposed as anathema to the increased involvement of minority and public interests attorneys in the profession.

24. See American Bar Association Board of Governors Recommendations on the Report of the Task Force on Minorities in the Legal Profession (January 16, 1986).

25. Id. at 43.

V. CONCLUSION

The continuing legal education concept is a worthy attempt to enhance the capability of all lawyers. The failure of the CLE movement to include minority attorneys and public interest practitioners demonstrates the extent to which CLE must still reach all sectors of the legal profession. In view of the historical difficulties in the development of a profession truly representative of all persons in this society, an intense effort must be made by CLE sponsoring organizations concomitantly with the efforts by the legal profession at large to become accessible and accepting of minority and public interest lawyers.

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