Equal Rights Advocates: Addressing the Legal Issues of Women of Color

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I. INTRODUCTION

On February 21, 1991, reporters and television cameras crowded into a small conference room in San Francisco to hear an announcement by representatives of three local public interest law firms—Asian Law Caucus (“ALC”), Mexican American Legal Defense and Education Fund (“MALDEF”), and Equal Rights Advocates (“ERA”). The media had come to hear about the firms’ victory in a case that would affect the rights of hundreds of thousands of workers in America. At the request of these attorneys, a federal district judge in Fresno had just ruled that undocumented workers in this country were protected by federal civil rights law. At the press briefing, the decision was announced and explained in English, Spanish, and Chinese. The story was covered not only by Bay area reporters, but also by Univisión, a television station that broadcasts in Spanish throughout North and South America.
For Alicia Castrejón, an undocumented worker who was fired when she became pregnant, the victory meant that she might regain her job and receive back pay. But the decision had importance far beyond the particulars of her case. As one of the first federal rulings on the rights of undocumented workers in America, the case—EEOC v. Tortilleria “La Mejor”—sent a signal to those workers, and to their employers, that discrimination against undocumented workers would not be tolerated.¹

This was also an important moment in the life of ERA, a small public interest law firm in San Francisco. Since its creation in 1973, the firm had been addressing women’s legal issues in a variety of ways, with an emphasis on employment discrimination law. ERA attorneys had taken many cases, including those involving sexual harassment, discriminatory wages, and the exclusion of women from nontraditional jobs. The case of Tortilleria “La Mejor,” however, represented the more specialized focus on the legal issues of women of color—Latinas, Asian-American women, Native women, and African-American women—that the firm had come to adopt.

ERA’s focus on women of color developed because of the continuing marginalization of these groups of women.² In this country, it is common to speak about “women’s issues” or “the race problem,” and one often hears the phrase “minorities and women.” Categorizing people this way obscures the fact that some minorities are women, and some women are members of minority groups. Because women who are minorities (“women of color”) are not even visible in common parlance, their very real existence is obscured and their issues remain unaddressed.

Unfortunately, the invisibility of women of color persists even within the public interest law movement. Of the nearly 300 public interest legal organizations in this country, approximately seventeen, like the Women’s Legal Defense Fund, were created to address women’s legal issues, while approximately eleven others, like MALDEF, focus on those issues affecting a particular ethnic/racial group.³ These firms do, of course, perform work that has enormous value for women of color. When

² In 1995, there were 134.7 million women in the United States. The overwhelming majority were white women (73.6%). The rest, women of color, comprised over a quarter of the population of women. Most of them were African-American (12.4%) or Latina (9.8%); 3.5% were Asian or Pacific Islanders, and 7% were Native women. See CYNTHIA COSTELLO & BARBARA KIMMEL KRAMGOLD eds., THE AMERICAN WOMAN: 1996-97 WHERE WE STAND 253 (1996). The four largest groups of Asian-Americans were Chinese-American (0.66% of total U.S. population), Filipinas (0.57% of same), Japanese-American (0.34% of same), and Korean-American (0.32% of same). See TERESA AMOTT & JULIE MATHAEL, RACE, GENDER AND WORK 8 (rev. ed. 1996). Because the population of people of color has increased more rapidly than the white population since 1980, the proportion of women who are women of color is increasing rapidly too. Between 1980 and 1990, the Asian population nearly doubled and the black population grew by 14%, while the white population grew by only 7%. See id. at 9.
MALDEF wins a voting rights case, the importance of that victory for those Mexican Americans who are women cannot be understated. Similarly, the Women’s Legal Defense Fund played a crucial role in getting Congress to pass the Pregnancy Discrimination Act, which prohibits discrimination in the workplace on the basis of pregnancy. Clearly, an important percentage of the women who benefit from this statute are African-American, Latina, Asian-American, and/or Native women. Yet the major focus of these groups is not the effect of the intersection of gender and race/ethnicity on the lives of these women. Thus, issues that arise at this juncture are sometimes not even seen, or are rejected as unimportant or irrelevant.

One notable example of this phenomenon is the case of *Webster v. Reproductive Health Services.* In 1988, as the Supreme Court was preparing to hear the case, many women’s rights groups began to prepare briefs outlining their arguments for the continued protection of women’s constitutional right to abortion. Because the National Association for the Advancement of Colored People (“NAACP”) Legal Defense Fund had been a major public interest law firm for so long, and because of its national reputation as an important fighter for the oppressed, many activists thought that its support for the issue would send a powerful message to the Court. However, despite active lobbying by representatives of women’s groups, the NAACP Legal Defense Fund refused to sign on to any of the briefs. In its view, abortion was a women’s issue, not a race issue, and the NAACP Legal Defense Fund addressed only issues of race. Arguments that approximately half of all African Americans are women and that reproductive rights should, therefore, be important to an organization that cares about the lives of African Americans were to no avail.

Given this context, ERA’s unique willingness and ability to see and explore the complications that arise at the intersection of gender and race/ethnicity in American society, and thus in American law, is of great importance. Looking at how ERA conceptualizes and addresses these complications helps us to define and explore the issues affecting the lives of women of color. This investigation into the sole organization that focuses on the legal issues of women of color will also allow us to think about ERA’s work as a potential model for other civil rights groups.

This article begins by describing the creation and early years of ERA and the varied work performed by ERA attorneys throughout this period. Section II discusses the group’s evolving focus, which led the white women who directed and staffed ERA to create a Women of Color Project in 1983 and to hire their first woman of color attorney.

Section III then describes ERA's work on women of color issues between 1983 and 1991 and the major themes expressed in that work. The first area of work described is ERA's external work, including litigation, negotiation, advising clients, and coalition-building. I use three cases to show how ERA selected litigation for its Women of Color Project and how this litigation—and the ideas of the women of color attorneys—led ERA to broaden its focus.

In the first case, *Sai Chen Ha v. T & W Fashions and Fritzi Mfg. Co.*, ERA represented thirteen Asian-American workers in a garment factory who claimed that they had received neither the minimum wage nor overtime pay. Because some of these workers were men, and because this was not an issue that ERA would normally see as sex discrimination, this case provided a vehicle for the ERA attorneys to rethink who their clients should be and what kind of cases they should take.

In the second major case that helped ERA redefine its work, the 1987 case of *United States v. City & County of San Francisco*, the plaintiffs alleged that the San Francisco Fire Department discriminated in the hiring and promotion of white women, women of color, and men of color. In this case, ERA represented the women of color, and co-counseled with civil rights attorneys who represented the other groups in the litigation, including Latino men and white women. The analysis of this case shows what was gained by representing the interests of women of color separately from those of white women or men of color. It will also describe the struggle of ERA attorneys to work within a coalition to protect their clients' interests, as well as the critical role played by women of color plaintiffs in holding this coalition together.

The last case discussed in this section, *EEOC v. Tortilleria “La Mejor, “* describes how ERA got involved in those legal issues that affect immigrant women—women who, in the Bay area, are largely from Asia and Central and South America. By studying the ERA attorneys’ work on immigrant issues, we will see how they stretched their understanding of women's issues, as well as the many ways in which they worked for their clients—through research, congressional testimony, training sessions for other lawyers, and litigation. This material again reveals the important role of coalition work in ERA's success. This section concludes with a summary of the impact of the Women of Color Project on ERA and on other groups in the Bay area.

Next, Section IV describes ERA's internal work to address the problems of its own multiracial workforce. This section begins by addressing the issue of identity and representation: in a multiethnic public interest law firm, which attorney should represent which client? Some scholars

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have suggested that since one's position in society determines one's understanding of the world, it is important that those who experience discrimination speak for themselves. Indeed, women's studies departments and ethnic studies departments were founded on this very belief, which also gained currency in the public interest law arena. These questions become especially complicated within the work of ERA, where the issue is not only whether a white attorney should represent the interests of women of color, but also whether any particular woman of color may represent women of color in another ethnic group. Does an Asian-American attorney have to represent Asian-American clients? Should she represent only Asian-American clients and not, for example, Latina or white clients? How are these decisions made? And what is the effect of these decisions on the community of workers who constitute ERA?

The second internal issue addressed in this section is the racial hierarchy within the ERA organization itself. The ERA staff comprises women of color and white women. In 1991, those who ran the organization were white and two of the three staff attorneys were women of color. Not surprisingly, tensions caused by racial and ethnic differences in the larger society are sometimes felt within the ERA community too. This section concludes with a discussion of how the group addresses internal tensions and the effect of such tensions on the external work of ERA.

To study the work of ERA, I conducted seventeen interviews over a fifteen-month period in 1991 and 1992, including several in-depth interviews with Nancy Davis, one of the founders of ERA and its original executive director. The interviews took place in San Francisco, New York City, and Boston. I spoke with staff attorneys, law interns, clerical workers, administrative staff, organizational consultants, and clients. In addition, I attended office meetings, coalition meetings, lunches, and a Christmas party. I reviewed annual reports, funding proposals, internal memoranda, newsletters, and court pleadings and rulings. These interviews, observations, and documents form the basis for my analysis of the work of ERA.

I returned to ERA for an afternoon in July 1997, to see what changes had taken place since my initial interviews in 1991. Section V describes the issues ERA currently is addressing, as well as important changes within ERA during those six years and the goals and direction of ERA as it moves towards its twenty-fifth year.

10. For example, there was certainly much resentment within the black community when Jack Greenberg, a white attorney, became general counsel of the NAACP Legal Defense Fund following Thurgood Marshall. See JACK GREENBERG, CRUSADERS IN THE COURTS 295, 482–83 (1994).
11. Appendix A to this article provides a list of interviewees referred to in this article and their respective job titles.
II. EARLY YEARS (1971–1983)

In 1971, the Carnegie Corporation sponsored a conference at Yale Law School to bring together people who had taught or were planning to teach law school courses on sex discrimination. The group included students, teachers, and scholars who were trying to put together material for casebooks on the subject.\(^{12}\) Participants discussed which materials to use, how to teach, and whether issues of sex discrimination should be taught in a separate class, or incorporated into mainstream law school courses.\(^{13}\) Three of the conference participants were Nancy Davis, Mary C. Dunlap, and Wendy Williams, all of whom had attended law school at the University of California, Berkeley (Boalt Hall). Davis was in her last year of law school; Dunlap, a 1971 graduate, was then practicing law at a small firm and also taught at Boalt; and Williams, a 1970 graduate, was clerking for a California Supreme Court judge.\(^{14}\)

The conference was timely as it took place during a period when the number of women in law schools was increasing dramatically. In 1963, women made up only 3.8% of law students; by 1971, women composed 9.4% of that group.\(^{15}\) While Davis was at Boalt, women students lobbied for a course in gender discrimination,\(^{16}\) and the school hired Colquitt Meachum Walker to teach the course.\(^{17}\) Davis was among the group of women who had started Boalt’s Women’s Law Association. She also became a research assistant for Professor Herma Hill Kay, who was then writing one of the first casebooks on sex discrimination law with co-authors Kenneth Davidson and Ruth Bader Ginsburg.\(^{18}\)

At the Yale conference, Davis, Dunlap, and Williams got together to talk about the kind of work they wanted to do. They realized that they shared a dream of practicing public interest law to address sex discrimination, a natural outgrowth of each of their political backgrounds and tal-
Upon their return from the conference, the three researched how to create a public interest law firm. They talked to people who had created such firms, investigated public advocates in the San Francisco area, and sent out research proposals. Ultimately, however, they were unsuccessful in obtaining funding. As a result, they decided to go into private practice as law partners, working on general civil litigation to fund the public interest work they considered so important. At the same time, they continued to seek funding.

Davis, Dunlap, and Williams, a private partnership, opened its doors on February 15, 1973, the anniversary of Susan B. Anthony's birthday. A fourth attorney, Joan Graff, soon joined them. Their practice included drafting wills, contracts, and partnership dissolutions, as well as domestic relations, custody matters, and employment discrimination. The attorneys also taught law school courses on gender discrimination. At this time, the firm filed suit in *Bernardi v. Lyng*, a case in which Gene Bernardi, representing over 1,500 women in the U.S. Forest Service, alleged sex bias in hiring and promotion by the agency. During this period, the partnership was making enough money to cover overhead, and a little more, but the attorneys were not earning enough to support themselves. Some were drawing on their savings, some had other sources of income, and some had nothing. They continued to seek a funding source that would allow the partnership to focus full-time on legal work involving gender discrimination.

During this exploration, the attorneys discussed the funding problem with Barbara Babcock, who suggested that they contact the Carnegie Corporation. Because these were the beginning years of the movement to

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29. *See* EQUAL RTS. ADVOC., *supra* note 6, at 1. In 1981, the district court approved a five-year consent decree requiring the U.S. Forest Service to establish goals and timetables for upgrading its women employees, and to spend $1.5 million on affirmative action. *See id.* The Forest Service, however, was not very responsive. In August 1991, Judge Conti castigated the Forest Service for "foot-dragging" and for "not acting in good faith" to resolve the bias within the department. He also threatened to place all hiring and promotion decisions of the agency's California division under court supervision. *See* Jim Doyle, *US Agency Accused of ‘Foot-Dragging’ in ’73 Job Bias Case*, SAN FRANCISCO CHRONICLE, Aug. 2, 1991, at A23. On April 13, 1993, Judge Conti approved a final settlement of the litigation and suspended the Decree's injunctive relief. *See* Levitoff v. Espy, No. C92-4108 BAC, 1993 WL 557674, at *2 (N.D. Cal. 1993).
31. *See id.* at 12.
introduce public interest clinical work into law schools, the attorneys proposed creating a clinical teaching program at Stanford Law School, which would use its docket to train law students in gender discrimination law. At Stanford, this clinical program would be Professor Babcock’s primary teaching responsibility during the first few years of her teaching career. Carnegie agreed to fund the joint program. This funding also enabled the Davis, Dunlap, and Williams partnership to begin operating as ERA, a nonprofit organization.

The new course, “Litigative Strategies against Sex Discrimination,” jointly developed by Stanford Law School and ERA, was taught between 1974 and 1978. The course comprised three coordinated parts: students attended regular seminars introducing the principles of sex discrimination law and relevant civil procedure, participated in simulated exercises, and helped the firm’s lawyers on actual cases. When the Carnegie Corporation terminated its funding in 1978, as required by its restrictions against ongoing project support, the program came to an end. Nonetheless, this project played an important role in the life of ERA, enabling the attorneys to take cases chiefly for their public interest content, with less concern about making money.

At the end of this project in 1978, ERA was one of only seven public interest law firms in the country specializing in sex discrimination law. Two of its attorneys had represented ERA clients in arguments before the Supreme Court. ERA had also become a center for equal rights litigation in the Bay area. Its specialty was employment discrimination, with a focus on pregnancy discrimination, sexual harassment, and access to jobs generally reserved for men. With respect to nontraditional work,

33. See Davis Transcript 1, supra note 12, at 13.
34. See BLAKE, supra note 19, at 13.
35. See Telephone Interview with Nancy Davis, co-founder and former executive director of ERA, (Feb. 27, 1998).
36. See BLAKE, supra note 19, at 5. For the first two years, the program was limited to students of Stanford Law School; during the last two years, it was open to students from other Bay area law schools. See id. at 8. Although the bulk of the funding, $450,000.00, came from the Carnegie Corporation, other foundations provided another $175,000.00. Stanford University paid all costs associated with Professor Babcock’s work, as well as some overhead. See id. at 10.
37. See id. at 6.
38. See id. at 10.
39. See id. at 14.
41. See BLAKE, supra note 19, at 13.
42. See id. at 14–15.
ERA attorneys represented women who had been excluded from jobs as diverse as carpenter, plasterer, bus driver, ambulance driver, and deckhand on the Golden Gate ferries.\(^4\) They also had taken cases involving employment discrimination due to marital status or sexual preference.\(^4\) Approximately one-third of their caseload involved gender issues other than employment discrimination, such as the treatment of women in jails and the denial of credit to women.\(^4\)

The ERA attorneys, all white women, had also noticed that discrimination was often based upon a combination of characteristics. The combination they saw most frequently in their work was discrimination due to sex and race/ethnicity. As a result, from their earliest days, many of their clients were women of color.\(^4\) ERA represented a Chicana who was denied a promotion in Napa County’s drug program,\(^4\) a Native woman who lost her tribal membership when she married a non-Native,\(^4\) and a black woman who faced race and sex discrimination with respect to her employer’s maternity leave policy.\(^4\) Along with their litigation work, ERA also trained attorneys and provided legal advice and information regarding gender discrimination to government agencies, public officials, and community organizations.\(^5\)

The end of the Carnegie funding in 1978 meant that ERA would have to find other sources of income. Because of its litigation, ERA had received a few sizable attorney-fee awards, and ERA attorneys thought that they might receive more.\(^5\) They contacted foundations for grants, yet faced a consistent difficulty: ERA sought money for the work needed by its constituents, not for the work that foundations wanted to fund in any particular year.\(^5\) ERA also found it difficult to get funding as a public interest law firm on the West Coast, because of some funders’ perception that the most important national work was being done in New York City and Washington, D.C.\(^5\) In its struggle to keep money coming in during this period, ERA contracted with the State of California to sponsor two

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\(^{43.}\) See LEGAL DOCKET, supra note 40, at 3, 6, 9, 15 (discussing all closed and active cases as well as administrative and amicus curiae work).

\(^{44.}\) In 1977, ERA created the Lesbian Rights Project (“LRP”) when Donna Hitchens, a former ERA student from Boalt Hall, asked ERA to be its sponsoring agent for funding purposes. Once the project was funded, ERA acted as the LRP’s fiscal agent under section 3504 of the Internal Revenue Code. After a few years, when funding for the LRP diminished, Hitchens worked half-time with LRP and half-time with ERA. In 1989, LRP and ERA formally separated, and LRP became the National Center for Lesbian Rights. See Davis Transcript I, supra note 12, at 38–39.

\(^{45.}\) See BLAKE, supra note 19, at 15.

\(^{46.}\) See id. at 16.

\(^{47.}\) See LEGAL DOCKET, supra note 40, at 5.

\(^{48.}\) See id. at 6.

\(^{49.}\) See id. at 7.

\(^{50.}\) See BLAKE, supra note 19, at 13.

\(^{51.}\) See Davis Transcript I, supra note 12, at 24, 27.

\(^{52.}\) See id. at 31.

\(^{53.}\) See id. at 32.
projects. The first project was to help vocational education administrators ensure that women had equal access to their programs; the second assisted community groups that were concerned about providing women access to nontraditional jobs.\textsuperscript{44}

Despite these efforts, by 1980 ERA was in the midst of its most serious financial crisis yet. At one point, for approximately six months, all of the attorneys voluntarily went off salary, while ERA continued to pay the salaries of the clerical and nonlegal staff.\textsuperscript{55} One attorney who could not forgo a salary chose to leave, and Davis began to wonder if the law firm would ever be able to recover.\textsuperscript{56} But she wanted the opportunity to turn it around because there was clearly a great need for ERA’s services.\textsuperscript{57}

Davis applied for three grants that finally provided ERA with new opportunities. In the fall of 1982, the Columbia Foundation awarded ERA $10,000 for public education and development.\textsuperscript{58} This funding enabled ERA to maintain a full-time staff member to raise money and handle public education.\textsuperscript{59}

Davis also met with a representative of the Muskiwinnie Foundation, who told Davis that the foundation would fund one attorney’s salary if ERA hired a minority woman lawyer.\textsuperscript{60} In May of 1983, Davis wrote to the foundation to request funding for that purpose,\textsuperscript{61} noting that ERA had always served minority women clients, and that its Board of Directors had often included minority men and women. Moreover, ERA had always demonstrated a commitment to addressing issues of particular concern to minority women.\textsuperscript{62} Davis also stated that at ERA’s most recent annual retreat, the Board and staff had concluded that ERA should continue to emphasize equality of economic opportunity issues.\textsuperscript{63} Because a disproportionate percentage of poor women are women of color, ERA was thus developing a program on women of color issues. But ERA would first have to identify those issues by consulting with leaders of minority communities, minority organizations, former ERA clients, and other individuals with relevant experience and information. One major role of the new minority attorney, then, would be to meet with these groups and individu-

\textsuperscript{44} See 1982-1983 ANNUAL REPORT, supra note 40, at 4.
\textsuperscript{45} See Davis Transcript 1, supra note 12, at 25. During this six-month period, ERA maintained health insurance for the attorneys. The attorneys decided not to file for unemployment benefits. See id.
\textsuperscript{46} See id. at 32.
\textsuperscript{47} See id. at 37.
\textsuperscript{48} See EQUAL RTS. ADVOC. (Equal Rights Advocates, San Francisco, Cal.), Fall 1982, at 1.
\textsuperscript{49} See Davis Transcript 1, supra note 12, at 30.
\textsuperscript{50} See id. at 34.
\textsuperscript{51} See Letter from Nancy Davis to Monica Melamid, Program Associate, Joint Foundation Support 1 (May 8, 1983) [hereinafter Davis Letter to Melamid] (on file with author).
\textsuperscript{52} See id. at 2.
\textsuperscript{53} See id. at 3.
Further, as Davis candidly noted, having a minority attorney on staff would help ERA—a “white women’s organization”—“establish the credibility [they] need[ed] to strengthen [their] ties with minority women.” Davis also stated that ERA was about to make an offer to a Chinese-American attorney, Terisa Chaw, who worked in the Special Litigation Section of the Justice Department’s Civil Rights Division. Three weeks later, the Muskiwinni Foundation granted ERA $15,000 to support a minority staff position, money that would be paid when matched with an additional $15,000.

Davis immediately submitted a proposal to the Levi Strauss Foundation for an award of $10,000 to meet two-thirds of the Muskiwinnie challenge grant. In this proposal, she described several objectives of the Women of Color Project. The first objective was to provide direct services to women of color who alleged employment discrimination, both through legal representation and through ERA’s advice and counseling service. ERA also needed to increase its visibility within minority communities, so that minority women would think of going to ERA with their legal issues. A third objective was to educate women of color and the staff of a few of the community agencies that served them about employment rights. Davis concluded by noting that ERA would develop additional and more focused strategies as it gained more information through its legal work and community outreach.

On July 18, 1983, Chaw became the first minority attorney in the history of ERA, and the Women of Color Project began. When Chaw came on board, the staff of ERA was predominantly white. Both staff attorneys, as well as the executive director, administrator, and development director, were white; the public affairs director, an Asian American, was the only woman of color in a nonclerical position. However, two of the

64. See id.
65. Id. at 4. Davis related a conversation she had with a Latina friend around this time in which her friend said that ERA was not going to make any headway in communities of color as long as there were no minority women lawyers on staff. See Davis Transcript I, supra note 12, at 49.
66. See Davis Letter to Melamid, supra note 61, at 3.
67. See Letter from Patricia Hewitt, Executive Director of Joint Foundation Support, to Nancy Davis (June 1, 1983) [hereinafter Hewitt Letter to Davis] (on file with author).
68. See EQUAL RIGHTS ADVOCATES, INC., EQUAL ECONOMIC OPPORTUNITIES FOR WOMEN OF COLOR: A PROPOSAL FOR FUNDS SUBMITTED TO THE LEVI STRAUSS FOUNDATION BY EQUAL RIGHTS ADVOCATES, INC. (June 29, 1983), at 10 [hereinafter LEVI STRAUSS PROPOSAL] (on file with author). ERA also requested a challenge grant of $10,000 for the second year. See id.
69. See id. at 7–8.
70. See id. at 4.
nine members of the Board of Directors were black, and one of those, Cassandra Flipper, was Board Chair. 73

It had now been ten years since ERA had opened its doors. ERA still focused on the original three employment discrimination categories: sexual harassment, pregnancy discrimination, and access to nontraditional jobs. However, a fourth emphasis had been added: pay equity. 74 ERA's work was formalized into three major program areas: legal advocacy and representation, advice and counseling, and public education. 75 The organization trained law students through an internship program; held seminars for attorneys; and participated in local, regional, and national networks with organizations such as the American Civil Liberties Union ("ACLU") Women's Rights' Project, the Employment Law Center, and the National Organization for Women ("NOW") Legal Defense and Education Fund. 76 ERA had also started publishing a quarterly newsletter that described its activities and provided information about changes in the law affecting women's rights. 77 However fragile its financial base, ERA had made its mark in the local and national civil rights communities, and was ready to set out on a new path.


A. Outreach to the Asian-American Community: Sai Chen Ha et al. v. T & W Fashions, Inc. and Fritzi Manufacturing Company

When Chaw joined ERA to begin the Women of Color Project, she did not know what this work would involve. However, she did know that she needed to start by contacting the many organizations in the area that addressed issues of race and ethnicity—organizations such as the ALC and La Raza Centro Legal. She also had the impression that many of these organizations did not know about ERA, primarily because they somehow did not see women's issues as connected with issues of race and ethnicity. She needed to increase ERA's visibility in minority communities. 78 As a result, Chaw sent out a mailing and went in person to community organizations to explain the work of ERA, and to ask how ERA could be helpful to them. She found those organizations to be receptive. She also found that her contacts with them were useful as she began to learn what mi-

73. See id. at 2.
74. See id. at 7.
75. See id. at 3.
76. See id. at 15–17.
77. The first issue of the newsletter was published in December 1980.
78. See Transcript of interview with Terisa Chaw, ERA staff attorney, in Berkeley, Cal. (July 18, 1991), at 2, 3 [hereinafter Chaw Transcript] (on file with author).
In her view, the primary work she did during her year-long stay at ERA was outreach to communities of color and public education.80

Because of Chaw's contacts within the Asian community in the Bay area, the ALC asked ERA if it wanted to join them as co-counsel in a case involving the wages of some of the garment workers against Fritzi Manufacturing Company, a major San Francisco women's clothing manufacturer, and its contractor, T & W Fashions.81 ALC was representing thirteen former and present garment workers, all Chinese men and women. During this period, there were approximately 20,000 garment workers in the Bay area, most of whom worked in the 100 garment shops in Chinatown. The majority of these workers were immigrants who did not speak English and therefore had limited marketable skills, as well as little understanding of their employment rights. As a result, many of the workers received neither the minimum wage nor the overtime pay required by law.82

When Chaw suggested that ERA join the ALC in this litigation, the other ERA attorneys and senior staff initially did not understand why the case might involve gender discrimination.83 Even if the majority of the class members were women, how could there be gender discrimination if both men and women were aggrieved by these practices? Why should a law firm created to address women's issues represent men? What would be the ramifications if it did?

Chaw conceptualized this case as a women's issue well-suited for ERA. She explained to the ERA staff and legal committee that the garment workers were primarily women—poor women of color who, because they spoke only Chinese, were even more vulnerable than other women. Because of their particular vulnerability, they were being exploited by the manufacturer.84 As a result of Chaw's persuasive arguments, ERA decided to join the ALC in representing these garment workers. In October 1983, ERA and ALC filed a complaint in state court, alleging violations of federal and state labor laws.85 ERA and ALC argued that their clients were entitled to unpaid minimum wage and overtime compensation, as well as to compensatory and punitive damages.86

79. See id. at 3.
80. See id. at 8.
81. See Davis Transcript I, supra note 12, at 51.
83. See Davis Transcript I, supra note 12, at 53.
84. See id.
In this case, the attorneys put forward a new and important theory. Even when plaintiffs won in previous litigation against owners of sweatshops, the contractors often did not have enough money to pay the unpaid wages and damages ordered by the court. As a result, plaintiffs’ victories were often hollow. Here, ERA and ALC argued that because the manufacturer knew that the agreed-upon contract price was not enough to enable the contractor to pay the minimum wage, and because the manufacturer had a daily, ongoing relationship with the contractor, the manufacturer as well as the contractor should be held liable for damages. The attorneys were, in effect, trying to reach the manufacturer—the “deep pocket” needed to ensure that their clients would be able to obtain their monetary damages. A favorable ruling, the attorneys thought, would send a strong message to apparel manufacturers that they should supervise their contractors carefully, since they might now be held accountable for the labor violations of those contractors.

After only one year, Chaw left ERA in July of 1984. Her outreach efforts and public education campaign had made ERA more visible within communities of color in the Bay area, and had established important contacts for the firm. More importantly, she had helped the ERA staff begin to reconceptualize how they thought about women’s issues. In a case where most of those harmed were women, it would no longer matter whether or not men were included in the client group: it was the harmful impact on women that had to be addressed. Also, ERA, which had previously focused on employment discrimination, now included the minimum wage as one of its issues.

As Chaw was leaving, Shauna Marshall, an African-American attorney, arrived at ERA. Because of her extensive litigation background at the Justice Department, Marshall immediately became involved in several ongoing cases, including *Sai Chen Ha*. Six months later, in early 1985, ERA hired Marjorie Fujiki as director of the Women of Color Project. For the first time in the history of ERA, two of the three staff attorneys—the people who led the ERA program—were women of color.

87. *See id.*

88. *See Transcript of interview with Shauna Marshall, ERA staff attorney, in San Francisco, Cal. (July 17, 1991) [hereinafter Marshall Transcript I] (on file with author). Because of her litigation caseload, Marshall was never able to do much community education or outreach to communities of color. *See id.* at 5.

The distinctions I make here with respect to which attorney worked on which project are not absolute. In general, a particular case has been identified as that of the particular attorney who did most of the work on it. Although Marshall picked up the garment workers’ case after Chaw left and before Fujiki came, I identify it primarily as Chaw and Fujiki’s case because they did most of the work on it.

89. *See* EQUAL RTS. ADVOC., *supra* note 86, at 5.
Fujiki immediately began working with Marshall and the ALC on the garment workers' case. She had already worked with ALC as a law student and appreciated its approach to litigation, which was based in community education. The community education approach to litigation mirrored Fujiki's ideas, drawing her to ERA, where the attorneys spent approximately three-fourths of their time on litigation and the rest on community education. According to Fujiki, this community-based litigation was one of ERA's greatest strengths.

Consistent with this community-based approach, the attorneys not only held bi-weekly meetings with their clients during the litigation, but they also provided community education on the rights of garment workers as part of the Garment Workers' Educational Project created by ALC. For one of these events, ERA and ALC held a program in both English and Cantonese, where they gave an update on Sai Chen Ha and presented a skit, entirely in Cantonese, that depicted the employment rights of garment workers. Two of the garment workers who were in the Sai Chen Ha class told of the unfair treatment they had endured and explained why they were taking legal action.

On July 31, 1986, ERA, ALC, and the Employment Law Center won a motion for summary judgment made by the manufacturer in San Francisco Superior Court in the garment worker case. In that motion, the manufacturer had asked to be dismissed as a defendant in the suit because there were no significant facts in dispute concerning whether it exercised sufficient control over the contractor's workers to be held liable for unpaid wages and benefits. Rejecting Fritzi's argument for dismissal, the court ruled that significant facts were indeed in dispute on the issue of control. According to ERA attorneys, this ruling implied that their proving the disputed facts would be sufficient to hold the manufacturer liable for unpaid wages and benefits, as well as the contractor.

Several months later, at the close of this three-year struggle, both the contractor and the manufacturer settled the case for $172,000.00. It
was the first time that a garment manufacturer had been forced to pay damages for labor violations to the workers of one of its contractors. ERA felt strongly that this settlement was important not only for the money its clients would receive, but also for the message that manufacturers might now be held responsible for the unlawful practices of their contractors. 98

Several ERA projects grew out of the garment workers’ case. After seeing how little money their clients received in the settlement, the ERA staff had a stronger understanding of how low the minimum wage was and of how legal work to increase the minimum wage could be a gender issue. As a result, ERA involved itself in the Coalition for a Fair Minimum Wage. According to former executive director Davis, ERA would never have seen this as a women’s issue before its involvement in the garment workers’ case. 99 ERA submitted an amicus brief in support of eight public interest law firms that had filed a mandamus action asking the court to order the Industrial Welfare Commission to fulfill its statutory mandate by raising the minimum wage. In October of 1986, Fujiki presented testimony before the Commission during hearings on the question of the adequacy of the current minimum wage. Her testimony focused on the impact of the minimum wage on women, particularly women of color. As she noted, the majority of minimum-wage workers are women, and a disproportionate percentage of these women are people of color. 100

Another offshoot of the garment workers’ case was ERA’s decision to take an active role in opposing Proposition 63, which would amend the state constitution to declare English the official language of California. 101 Again, it was Fujiki who saw this as a gender issue that ERA should address. She pointed out that it is mainly the women in immigrant communities who bring their families to social services and that these women often speak no English. Therefore, any requirement limiting access to social services to those who speak English would adversely affect immi-

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98. See EQUAL RTS. ADVOC., supra note 86, at 7.
99. See Davis Transcript I, supra note 12, at 58.
100. See EQUAL RTS. ADVOC., supra note 86, at 5. On December 18, 1987, the Industrial Wage Commission raised the minimum wage from $3.35 per hour to $4.25 per hour. See Henning v. Industrial Welfare Commission, 762 P.2d 442 (Cal. 1988).
101. Seventy-four percent of California’s voters approved Proposition 63, which was added to the California Constitution in November 1986. See Jay Matthews, California Signals Retreat on Bilingual Education, Wash. Post, Jan. 15, 1987, at A3. Article 3, section 6(b) now declares that English is the official language of California, and section 6(c) authorizes the state legislature to enforce this provision “by appropriate legislation.” See CAL. CONST. art. III, § 6.

The constitutionality of an English-only provision in another state constitution was before the Supreme Court in 1997. See Arizonans for Official English v. Yniguez, 69 F.3d 920 (9th Cir. 1995), rev’d en banc, vacated as moot by 117 S. Ct. 1055 (Mar. 3, 1997).
grant women, as well as their families. In California, most of these women are Latinas and Asian-American women.102

Through the newly formed Bay Area Coalition for Civil Rights, ERA involved itself in the “No on Proposition 63” campaign. Fujiki played an important role in encouraging ERA to join the Coalition—a difficult step for ERA since it required ERA to cede some of its authority to the Coalition.103 As an ERA representative, Fujiki also took the lead in organizing the Coalition’s first conference in January 1986.104 The conference, entitled “Civil Rights on the Rebound,” was designed to help civil rights activists regain the offensive on affirmative action and other issues. Indeed, the conference addressed a broad array of civil rights issues, including voting rights, reproductive rights, and immigrant rights.105

During her two-year stay at ERA, Fujiki fostered much growth within the organization. Like all new attorneys there, she conducted client intake during her first months, to get a sense of the problems facing women in the community; she also supervised law students.106 Like Chaw, she conducted outreach to and public education within communities of color, both through her own contacts and in response to community requests.107 When one Asian organization facing a complaint about sexual harassment from one of its employees asked ERA to address the issue, Fujiki made the presentation.108 In other presentations, Fujiki spoke to business students at San Francisco State about the sexual harassment of women of color, co-taught classes on sexual harassment with Marshall,109 and spoke about racism toward Asians within the legal profession to law students and participants at a Women in the Law conference.110 Within two years of its inception, ERA’s Women of Color Project, begun with the garment workers’ case, had profoundly affected not only how ERA defined its issues, but also how ERA itself functioned.

With regard to defining issues, the impact of the garment workers’ case on ERA was much larger than any monetary award it won for its cli-
ents. As Davis noted: "[this case] really broadened our thinking considerably." This was the case that opened up for the law firm both how they defined gender issues, and how ERA would provide services to its constituents. From now on ERA would conceptualize issues as "women's issues" when it could see an adverse impact on a group of women. They no longer would think that gender issues had to include only women, and exclude men. Also, ERA would no longer be limited to discrimination issues: it now understood that unfair labor practices, for example, could also be women's issues.

With respect to how ERA conducted its work, the impact of the garment workers' case was two-fold. First, ERA would no longer pursue litigation for its own sake, but would view litigation as a stepping stone to open up a range of other activity. Second, ERA would now be more involved in coalition work. Serving as co-counsel with ALC and the Employment Law Center on the garment workers' case led ERA to work in broad-based community coalitions to address the low minimum wage and the English-only referendum. Indeed, when Fujiki left ERA in late 1986, the ERA newsletter noted that her work had not only helped ERA forge strong relationships with the minority women's community, but had also given ERA the opportunity to build "long-lasting alliances" with various communities within the Bay area. In her "Message from the Executive Director" that same year, Davis pointed out that during this period, ERA dramatically increased its work with community groups and coalitions.

B. Outreach to the African-American Community: United States v. City and County of San Francisco

In the summer of 1983, women started to contact ERA about the physical agility test ("PAT") required of San Francisco firefighter applicants. Although these women had passed the written test, failing the physical agility test meant that they would not be considered for a firefighter position. Eight of the ten women who initially contacted ERA were white, and two were black.

San Francisco had a bad history with respect to hiring women in its fire department. Before 1976, women could not even apply for a posi-

111. Davis Transcript I, supra note 12, at 58.
112. For a discussion of this concept, see Judy Scales-Trent, Women of Color and Health: Issues of Gender, Community, and Power, 43 STANFORD L. REV. 1357, 1365 (1991) (defining women of color issues in part as impact issues).
113. See Davis Transcript I, supra note 12, at 58.
114. See id. at 56, 57. According to Davis, this is the way she had always wanted to operate as a public interest lawyer. See id. at 57.
115. See EQUAL RTS. ADVOC., supra note 86, at 5.
tion. Since then, the city had accepted applications but still had not hired any women firefighters. The entrance exam for 1982–83 consisted of a written test and the PAT, with both scores counting toward an applicant’s ranking. That year, the passage rate for women on the PAT was only 36% of the passage rate for men. Of all the men and women who applied, only 190 were certified to the eligibility list, none of whom were women.

At the same time, the Black Firefighters Association (“BFA”) was contacting the Lawyers’ Committee about race bias both in the written portion of the 1983 entrance exam and in promotional exams. The city’s record with regard to race in hiring firefighters was as dismal as it was with regard to gender. San Francisco had no black firefighters at all until 1955, when it hired one; and the city did not hire a second black firefighter until twelve years later. Previous federal litigation had led to a consent decree finding race and national origin discrimination with respect to hiring firefighters. However, the decree did not require affirmative action hiring.

The BFA did more than complain about bias in the San Francisco Fire Department: it actively recruited minority firefighters, focusing its efforts on black applicants, including black women. Further, BFA created a training program for both the written and physical agility components of the hiring exam. This training was open to all candidates, and several white women participated for the PAT training. After the scores on the 1982–83 exam were released, BFA contacted participants of its training program to see how they had fared and to ask if those who had not passed wanted to join the BFA lawsuit.

Thus, two sets of applicants were contemplating suit against the city for bias in the same exam—white and black women who had contacted ERA; and the BFA, which had contacted the Lawyers’ Committee. Rumors began to spread: female applicants feared that the all-male BFA would object to any city proposal regarding gender, and the BFA feared that the city would attempt to divide the groups. Lawyers for both groups called a meeting with both sets of clients, as well as with those black women who had failed both the written and physical agility components of the exam. As a result of this meeting, the women whom ERA was representing—primarily white women who had failed only the physi-

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119. See id. at 1296.
120. See id. at 1289 n.5.
121. See id. at 1291–92. State litigation about race bias in the 1978 promotional exam was also pending. This litigation was based on complaints to the California Fair Employment and Housing Commission. See id. at 1294.
122. See Marshall, supra note 117, at 921.
123. See id. at 922.
124. See id. at 915–17, 923.
125. See id. at 923.
126. See id. at 917.
cal agility part of the exam—realized that they needed also to find a remedy for those black women who had failed the written part of the exam. The white women applicants realized that they would have to address the race bias in the exam as well as the gender bias if they were to include the black women applicants. This realization led the women who contacted ERA to join with the black men applicants in their lawsuit to eliminate both discriminatory entry and promotional barriers in the fire department exams. Eva Paterson, director of the Lawyers' Committee, suggested that one explanation for the white women's decision was that some of them had benefited from BFA training and felt solidarity with the black men firefighters. The black men also supported this decision. Robert Demmons, then president of BFA, believed that the black men's support for this decision was not surprising, as BFA had already included women in its training sessions.

Yet because there was evidence of both race and gender bias in the entrance exams, and because some black men had already been hired as firefighters, the discriminatory exams did not affect each class member in the same way. The white women applicants had passed the written exam, but failed the physical agility test; the black men applicants had done poorly on the written exam but performed well on the physical agility test; and the black women applicants had struggled with both tests. At the same time, black men who were already firefighters were challenging a racial bias in a promotional exam and alleging racial harassment within the department. As a result of these differing interests, the attorneys decided to certify four subclasses of plaintiffs.

The system of subclasses was complicated by the city's subsequent offer to hire some of the women (most of them white) who had passed either the original physical agility test or the retest. If the women accepted the offer, it would save the city some embarrassment. However, it would also cut a group of white women out of the lawsuit and reduce the number of plaintiffs, without requiring the city to revise either the written or physical test to eliminate bias. In other words, admitting a few white women might help those women and the city, but it would not help black men, black women, or any future white women applicants since it would address neither gender nor race bias in the exams.

This offer created conflict within the women's group because some of the white women wanted to take advantage of the offer and become firefighters. However, it was clear that although some white women would

127. See id. at 923.
130. See id. at 944.
benefit from this offer, no black women would. As a result, the attorneys
decided that separate counsel should represent the white women appli-
cants and the women of color applicants. ERA would no longer represent
all women applicants—it would represent only the women of color.131

The white women subsequently held several meetings to discuss the
city’s offer. Robert Demmons, then president of BFA, informed them
that the city had previously hired a group of black men in the same way
without eliminating the underlying race bias, so BFA was still involved in
litigation.132 Marshall pointed out that if the white women applicants did
not deal with the discriminatory entrance exam, no women would follow
them. “You won’t stay,” she warned them. “You won’t make it. The re-
tention [rate] is going to plummet in a nontraditional setting if there are
not women coming behind you.”133 Further, the attorney for the white
women applicants, Mary Dunlap, reminded them that not all of the white
women in the class would benefit from the offer. After several meetings,
the white women applicants decided to turn down the city’s offer and re-
main in the lawsuit.134

Marshall later noted the crucial role that the black women applicants
played in these meetings, when they persuaded a few of the white women
applicants to reject the city’s deal. “Once a couple of white women got
on board,” Marshall stated, “we were able to convince [all the [white]
women that we’re going to go after the [eligibility] list and that you don’t
take a sweet deal that just takes care of you.”135 She described this dynamic
as black women “being the bridge” between the black men and the white
women.136 Kurtz described this same bridge phenomenon when she said
that “in some ways, women of color were the easiest ones to represent,”
because it was impossible to sell out the interests of any other group and
still represent the women of color: their interests were the sum of the in-
terests of the white women and the interests of the men of color.137

In the fall of 1987, the city of San Francisco capitulated, signing a
seven-year consent decree and admitting the first woman firefighter to
the department.138 Under the terms of the consent decree, both entry and

131. See id. at 945.
132. See id.
134. See Marshall, supra note 117, at 946. Dunlap, one of the co-founders of ERA, was in private
practice at this time.
136. See id. For one woman of color’s statement about how exhausting this work can be, see Donna
Kate Rushin, The Bridge Poem, in This BRIDGE CALLED My BACK: WRITINGS BY RADICAL
WOMEN OF COLOR xxi (Cherrie Moraga & Gloria Anzaldúa eds., 1981). ("I’ve had enough / I’m sick of
seeing and touching / Both sides of things / Sick of being the damn bridge for everybody . . .")
137. See Kurtz Transcript, supra note 102, at 22–23.
ALC and MALDEF intervened in the remedy phase of the litigation in February 1987, to protect
the interests of Asian-American and Mexican-American applicants. See EQUAL RTS. ADVOC.,
promotional exams would be developed and administered by a committee selected by the city and approved by the court, in consultation with plaintiffs. The decree also set hiring goals for each entrance exam. The minority hiring goal was 55%, broken out by ethnic group. The hiring goal for women was 10%, with half of that designated for women of color.

Along with the garment workers’ case, the firefighters’ case gave ERA a new understanding of how to view women’s issues. As the white women applicants had learned, if one ignores the impact of racism in issues of sex discrimination, one addresses only the employment discrimination issues of white women, and not those of women of color. Once more, ERA was thinking about gender issues in a broader way, and once again, it was working in coalition with legal groups that had expertise in discrimination based on race/ethnicity. To these groups, ERA brought its expertise in sex discrimination. In Marshall’s view, some of the most important work in this case was building a long-lasting coalition between MALDEF, ALC, the Lawyers’ Committee, Chinese for Affirmative Action, and ERA. “That,” she continued, “is really ERA’s strength.”

In 1983, when the women who failed the PAT initially came to ERA, ERA had only one woman of color attorney. By 1987, when the city signed the consent decree, two of the three attorneys at ERA, Marshall and Fujiki, were women of color, and were driving the ERA program. During this four-year period, while Chaw and Fujiki were developing the Women of Color Project and working with ALC on the garment workers’ case, the minimum wage, and opposing the English-only movement, Marshall was representing the women of color in the firefighters’ case, cocounselling with the BFA, the ALC, and the MALDEF.

In her 1987 “Message from the Executive Director,” Davis noted the transformation of ERA from a law firm specializing in sex discrimination to a law firm that “is dedicated to combating aggressively and affirmatively the disenfranchisement of women, especially low-income women and women of color.” She continued:

Easily the single most important factor in our metamorphosis was the establishment in 1983 of our Women of Color Project. The Project, more than any other aspect of ERA’s program, compelled us to look at the phenomenon now known as the “feminization of poverty.” The problems facing minority women are problems related to race, sex and class. For ERA, tackling these problems has meant working in coalitions with a broad range of organizations. Typically, these organizations were established to work on issues of race alone or race and class. Sex, if addressed at all, was a peripheral issue. In many instances, ERA has been the only feminist organization initiating contacts and

140. See id. at 1313–14.
participating in these coalitions and, as such, has served as a bridge linking the women’s movement to the civil rights movement.\textsuperscript{143}


By 1987, ERA had developed strong contacts in both the Asian-American and African-American communities through the community work of Chaw, Fujiki, and Marshall, and through its work on the garment workers’ and firefighters’ cases. However, the organization lacked a connection to the Latino community, an important community in the Bay area.

In the winter of 1986, Fujiki left ERA.\textsuperscript{144} In March 1987, ERA hired Maria Blanco, an attorney with the San Francisco Lawyers’ Committee for Urban Affairs, to work with Marshall on the Women of Color Project.\textsuperscript{145} Blanco brought to ERA her bilingual skills, a degree in Chicano Studies, and many contacts within the Chicano community.\textsuperscript{146} While at ERA, Blanco would not only conduct outreach to the Chicano community for the Women of Color Project,\textsuperscript{147} but she would also provide legal skills in Spanish.\textsuperscript{148} ERA thus became the only national women’s law center to provide services in both English and Spanish.

Blanco immediately picked up the work Fujiki had started with the Proposition 63 Coalition, organizing training sessions to educate both community activists and lawyers about the impact of the English-only rule.\textsuperscript{149} Like Fujiki, Blanco understood that a requirement to provide government services only in English would harm immigrant women. Isolated in either their own homes or as domestic workers in someone else’s home, immigrant women tend to remain monolingual non-English speakers longer than male immigrants. Also, it is generally the women who access these services, going to the welfare offices, schools, and health clinics.\textsuperscript{150} Blanco knew that seeing the English-only movement as a women’s issue was a stretch for ERA. But she also knew that through the Proposition 63 Coalition she could develop crucial connections, helping other groups to learn about and develop trust in ERA.\textsuperscript{151}

\textsuperscript{143} \textit{Id.}
\textsuperscript{144} \textit{See Equal Rts. Advoc., supra note 86, at 5.}
\textsuperscript{145} \textit{See Equal Rts. Advoc. (Equal Rights Advocates, San Francisco, Cal.), Mar. 1987, at 6. While at the Lawyers’ Committee, Blanco had worked with ERA on the firefighters’ lawsuit. See id.}
\textsuperscript{146} \textit{See Transcript of interview with Maria Blanco, ERA staff attorney, in San Francisco, Cal. (July 15, 1991), at 21 [hereinafter Blanco Transcript] (on file with author).}
\textsuperscript{147} \textit{See Equal Rts. Advoc., supra note 145, at 6.}
\textsuperscript{149} \textit{See Equal Rts. Advoc., supra note 145, at 6.}
\textsuperscript{150} \textit{See Blanco Transcript, supra note 146, at 24.}
\textsuperscript{151} \textit{See id. at 25.}
During this period, Alicia Castrejón asked Blanco to represent her as intervenor in an employment discrimination case that the Equal Employment Opportunity Commission was filing against her employer. Castrejón, an undocumented worker, had been granted pregnancy disability leave from her job at a tortilla factory in a small town in the San Joaquin Valley. However, when she was ready to return to work six months later, the employer refused to reinstate her. When Castrejón complained, the employer argued that Castrejón had no legal right to complain of sex discrimination since the protections of Title VII of the 1964 Civil Rights Act were not available to undocumented workers. The employer further claimed that the Immigration Reform and Control Act of 1986 ("IRCA"), which specifically forbids employers from hiring undocumented workers, would be "undermined" if such workers were granted protection by federal statutes.

When the ALC first heard of this case, they called it to ERA’s attention, as it involved a woman of color. ERA was indeed interested and decided to participate in the litigation. ALC and ERA also asked MALDEF to serve as co-counsel with them. According to Blanco, it was important that these three public interest law firms work together on the case, for two reasons. First, she valued the experience of these attorneys in immigration law. Second, she thought that the participation of these public interest law firms would send a powerful message to both the Latino and Asian communities. In April 1988, ERA, ALC, and MALDEF filed a motion to allow their client, Alicia Castrejón, to intervene in the lawsuit brought by the Equal Employment Opportunity Commission.

152. See id.; EQUAL RTS. ADVOC. (Equal Rights Advocates, San Francisco, Cal.), Jan. 1989, at 6. Section 703(a) of Title VII provides, in pertinent part: "It shall be an unlawful employment practice for an employer... to discriminate against any individual with respect to... terms, conditions, or privileges of employment, because of such individual's... sex..." 42 U.S.C. § 2000e-2(a) (1994) (emphasis added).

153. IRCA forbids the knowing hiring, recruiting, or referral for fee of "unauthorized aliens," that is, aliens who have been neither lawfully admitted for permanent residence nor otherwise authorized to work by the federal government. See 8 U.S.C. § 1324(a)(1)(A) (1994 & Supp. 1996). Employers who hire unauthorized aliens face civil penalties. See 8 U.S.C. § 1324a(e)(4). The statute also provides temporary resident alien status to certain unauthorized aliens who can prove that they have resided continuously in the United States since January 1, 1982. See 8 U.S.C. § 1255a(a)(2)(A). All unauthorized aliens are not, however, treated the same under IRCA. Certain groups are granted favorable rights under the statute. For example, agricultural workers are entitled to temporary resident alien status upon proof of a shorter residency period in the United States than otherwise required by statute. See 8 U.S.C. § 1160. Other unauthorized aliens, however, are not entitled to amnesty at all under the statute, including those who are deemed "likely at any time to become a public charge." 8 U.S.C. § 1182(a)(4).

154. See EQUAL RTS. ADVOC., supra note 152, at 6. In October 1987, Castrejón applied for legalization pursuant to IRCA. See EEOC v. Tortillería "La Mejor," 758 F. Supp. 585, 586 (E.D. Cal. 1991). Because she was applying for amnesty and otherwise protected under IRCA, Castrejón could not be deported. See id. at 594 n.5.

155. See Telephone Interview with Maria Blanco, Visiting Associate Professor and Supervising Clinical Attorney, Women's Employment Clinic, Golden Gate University Law School, in San Francisco, Cal. (Mar. 26, 1997) (notes on file with the author).

156. See Blanco Transcript, supra note 146, at 27–29.
was the first lawsuit since IRCA's passage to raise the question of whether undocumented workers were covered by federal civil rights law.\textsuperscript{157} ERA called the case "a 1980s version of \textit{Dred Scott}," the infamous nineteenth-century case in which the Supreme Court held that black Americans were not citizens and could therefore not sue in federal court.\textsuperscript{158} If ERA, MALDEF, and ALC lost this case, it would suggest to other employers that there was now a group of workers whom they could exploit with impunity.

In November of 1988, ERA presented its argument for summary judgment in federal district court.\textsuperscript{159} Blanco argued that the employer was wrong in its assertion that undocumented workers were not "individuals" within the meaning of Title VII and therefore had no Title VII rights. That statute, she continued, protects all "employees" and "individuals," regardless of their citizenship status, and she argued that Congress said nothing explicit in IRCA to undermine this reading of Title VII.\textsuperscript{160} On February 20, 1991, the district court agreed with ERA, opening the way for a trial in which Alicia Castrejón would likely receive back pay, as well as reinstatement in her former job.\textsuperscript{161} Recognizing that this was an important message for immigrants and businesses across the country, ERA and its co-counsel invited the media to the ALC office where they held a news conference in English, Spanish, and Chinese.

Also in the summer of 1988, Alissa Hummer, a graduate student in Public Policy at the University of Minnesota's Hubert H. Humphrey Institute, contacted ERA about an internship. Blanco and Kaufman thought that it would be helpful if Hummer could study the issues facing immigrant women since IRCA went into effect in 1986. As a result, Hummer joined ERA for the summer to do this study. Blanco gave Hummer a list of contacts and helped her get started on interviews with immigrant women and with service providers.\textsuperscript{162} ERA's goal was to discover whether and how IRCA promoted unfair treatment of women, so that ERA could inform policy makers as well as social service workers about the special needs of immigrant women. ERA also wanted to define a role on these issues for itself, and possibly for other public interest law firms.\textsuperscript{163}


\textsuperscript{158} See Dred Scott v. Sandford, 60 U.S. (19 How.) 393, 411 (1856).

\textsuperscript{159} See \textit{Equal Rts. Advoc.}, supra note 152, at 6.

\textsuperscript{160} See Tortillera "La Mejor," 758 F. Supp. at 587. The Equal Employment Opportunity Commission's Compliance Manual has stated since 1981 that the term "any individual" in section 703 of the statute includes undocumented persons. See id. at 589.

\textsuperscript{161} See \textit{id.} at 594 n.5. Tortillera "La Mejor" provided the only ruling on this issue until September 1996, when the Fourth Circuit held that a former employee's status as an alien without work authorization did not disqualify him from making out a prima facie case under Title VII. See \textit{Ebuna v. Time-Life Libraries, Inc.}, 95 F.3d 353 (4th Cir. 1996), \textit{vacated on reh'g en banc}, Dec. 17, 1996.

\textsuperscript{162} See Blanco Transcript, supra note 146, at 6.

In May 1989, Hummer completed her report, which indicated that most of the IRCA provisions had a disparate effect on women. For example, one of the provisions stated that undocumented workers would be eligible for amnesty if they could prove continuous residency in the United States since January 1, 1982.\(^{164}\) To prove residency, the applicant would have to provide documentation, which could take the form of work records, or receipts for rent, tax payments, or insurance policies.\(^{165}\) However, because women immigrants tend to work in informal settings more than in formal ones, they often do not have work records, and receipts for rent or utilities are often kept in the husband’s name.\(^{166}\)

Another IRCA provision stated that anyone likely to become a “public charge” was not eligible for amnesty.\(^{167}\) Immigration and Naturalization Service ("INS") regulations determined this “likelihood” based on whether one had applied for welfare in the past. The regulations also provided that assistance granted to children would be charged to the requester.\(^{168}\) Again, because women drop out of the labor force to bear and raise children, and because female undocumented workers earn lower wages than do male undocumented workers, it is women who are most likely to request welfare for themselves, or AFDC support for their children. Thus, women were most likely to be excluded from amnesty under the “public charge” provision.\(^{169}\)

Further, IRCA provided a more flexible set of eligibility criteria for agricultural workers. One provision allowed amnesty if an alien could prove that she worked 90 days in the year ending 1986, instead of proving continuous residency since 1982.\(^{170}\) However, approximately twice as many men as women immigrants perform agricultural work. This more flexible route to amnesty would therefore be more helpful to men. And even when women are agricultural workers, farmers often credit the men in the family for the work of the entire family. Thus, once more, women who worked for the required 90 days might well have no proof that they had worked at all.\(^{171}\)

Hummer also noted that the exception from sanctions for employers whose undocumented workers had worked for them continuously since the enactment of IRCA in November 1986, created a trapped, exploitable class of workers who were “grandfathered” in but who could not then

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168. See Hummer, supra note 166, at 22.
169. See id. at 21–22.
171. See Hummer, supra note 166, at 25.
move to another workplace. Like men, women would not be able to complain of low wages or bad working conditions, or move to another job. The women, however, would also be vulnerable to sexual harassment, and would have to simply endure unlawful harrassment if they wanted to keep working.172

Finally, the Marriage Fraud Amendments, enacted several months after the passage of IRCA were likely to trap women in abusive relationships. These amendments were based on the presumption that any marriage between an American and an alien was fraudulent. For the alien to receive full legal resident status, both spouses were required to appear at a hearing at the end of the two-year period of conditional status.173 Therefore, to become a citizen, the immigrant wife had to both stay in the marriage for two years, and make sure that her spouse attended the hearing. If her spouse decided not to go to the hearing with her, she was eligible for deportation. As a result, abusive husbands who were citizens could prevent their immigrant wives from reporting the abuse or seeking a divorce.174

ERA decided that the documentation requirement for amnesty lent itself to a lawsuit. Although INS regulations stated that INS should accept any type of evidence that tended to prove residency, INS agents in the Bay area were accepting only official documents.175 Thus, even if an undocumented woman who cleaned houses for a living was able to persuade her employers to submit affidavits stating that she had worked for them since before January 1982, thereby indicating that the employer had violated federal law, INS officials were not willing to accept these affidavits as sufficient proof of residency.

ERA informed other advocacy organizations that they were planning a lawsuit and started to interview potential plaintiffs.176 When Blanco attended meetings of the Bay Area Coalition for Immigrant and Refugee Rights ("CIRRS"),177 she began to ask for information about the documentation issue, as well as for names of potential plaintiffs. She also started discussing other immigrant women's issues with coalition members, and shared with them the Hummer research on IRCA's effect on undocu-

172. See id. at 27.
174. See Hummer, supra note 166, at 32. The requirement that the marriage last two years (unless terminated by death of the spouse) can be waived by the Attorney General for "good cause." See 8 U.S.C. § 1186a(c)(4). However, an undocumented woman might not know how much abuse is sufficient to meet the "good cause" standard. See Hummer, supra note 166, at 32.
175. See Blanco Transcript, supra note 146, at 6.
176. See id. at 9.
177. CIRRS is now the Northern California Coalition for Immigrant Rights. See Telephone Interview with Maria Blanco, supra note 155.
sembled women. As a result of these discussions, ERA and CIRRS created the Immigrant Women’s Task Force within CIRRS.

The task force immediately became active, with one of its first projects being to co-sponsor a training session in July 1989 on immigration law, family law, and domestic violence. Family law specialists were told of the immigration consequences of divorce for a conditional resident seeking amnesty, along with the options for a client in an abusive marriage. Immigration lawyers were advised of the family law consequences of divorce for a conditional resident in an abusive marriage. The task force also planned workshops to inform immigrant wives of servicemen in the Bay area about their rights. In addition, the task force sought national support for Representative Slaughter’s proposed amendment to the Marriage Fraud Act, which would allow battered women to waive the requirement that spouses petition jointly for the removal of conditional status, and would thus enable immigrant women to escape abusive marriages without being deported. Finally, the task force urged INS to change its policy of not accepting affidavits to prove residency. By July 1990, ERA was able to report that INS “appears to have changed its policy” about nonofficial documents.

Because of publicity surrounding the victory in *Tortilleria “La Mejor,”* and because of Blanco’s active involvement in the Immigrant Women’s Task Force and outreach to Latino communities, Blanco started to receive many calls from undocumented immigrant women about employment discrimination issues. She soon discovered that she could do nothing about most of them, because of IRCA’s creation of sanctions against employers who hired undocumented workers. Although each woman had faced discrimination, the remedy was not clear: Could she indeed get her job back? Thus, attorneys were unsure about whether they should fight vigorously for their clients when federal labor laws were violated.

As a result of her growing interest in immigration issues, Blanco co-authored two reports to increase public awareness and submitted written testimony to the Senate on behalf of CIRRS to urge the repeal of the employer sanction provision of IRCA. In February 1991, Blanco traveled

179. *See* id. at 11; *see also* Maria Blanco, Senate Testimony in Support of SB 1734 To Repeal Employer Sanctions 1 (undated) (unpublished paper) [hereinafter Blanco Senate Testimony] (on file with author).
182. *See* Telephone Interview with Maria Blanco, *supra* note 155.
to Washington, D.C., as part of a national delegation to urge Congress and DC-based advocacy groups to work together to repeal the employer sanction provisions. The delegation met with some members and staff of the Congressional Women's Caucus, who suggested that the delegation's argument would be stronger if it came to the Caucus with the support of other national women's organizations. As a result, ERA began to talk with the leadership of some of these groups, explaining why the employer sanctions were a women's issue. In October 1991, ERA announced that as a result of its lobbying efforts, NOW had just passed a resolution at its national convention calling for a repeal of IRCA's employer sanction provision.

In the four years since Blanco's arrival at ERA, the law firm had used its well-tested techniques to address issues facing Latinas. ERA had developed an information base to help focus on key problems within the Latino community, and had used outreach and litigation to educate both the Latino community and the larger public about issues of importance to immigrant women. Once again, ERA had worked in coalitions with public interest groups addressing issues of race/ethnicity, but now ERA was working within coalitions not only at the local and state level, but also at the national level. As Davis explained in 1991, "We want to stay connected to our clients, and indeed be the channel for their voices. But we also want to operate in the bigger arena, and take their voices to the highest levels we can, whatever that level may be."

D. Impact of the Women of Color Project

1. Effects within ERA

Because Judith Kurtz came to ERA as a staff attorney in 1978, she could track the changes within ERA since the inception of its Women of Color Project. In her view, the project caused a major shift in ERA, lead-

186. See Blanco Transcript, supra note 146, at 39.
189. See Kurtz Transcript, supra note 102, at 1. By the time I conducted these interviews in 1991, Kurtz had had such extensive litigation responsibility within ERA that Marshall and Blanco had asked her to take on the role of "managing attorney." See Marshall Transcript II, supra note 97, at 5. One of her most important cases was Kouba v. Allstate Insurance Co., in which ERA charged Allstate with perpetuating sex discrimination by using prior salary to set the salaries of its sales agents. The Ninth Circuit held that employers violate Title VII if, without acceptable business reasons, they set salaries using a method that causes a wage differential between male and female employees. See Kouba v. Allstate Ins. Co., 691 F.2d 873, 876 (9th Cir. 1982). In 1984, the district court approved a settlement agreement in which Allstate agreed to pay over $5 million to the 3300 women in the class. See EQUAL RTS. ADVOC. (Equal Rights Advocates, San Francisco, Cal.), Fall 1984, at 1.
ing the law firm to think more broadly about what issues are women's issues. Before this project, she said, ERA would not have seen Alicia Castrejón's case as one of gender discrimination. Similarly, she now agrees that employer sanctions are a women's issue because they harm so many women.

Kurtz also thought that litigation would have been handled differently in ERA's early years had the Women of Color Project begun earlier. In Bernardi, since the majority of the women at the Forest Service were white, ERA looked only at the issue of access to nontraditional jobs and never tried to get women of color involved in the lawsuit. Indeed, women of color at the Forest Service needed something different. For example, the African-American women did not necessarily want to work in rural, predominantly white areas to gain better opportunities within the Forest Service. Instead, they wanted to be able to gain promotions where they were. These women are now frustrated because, as they say, "this decree doesn't address our issues." Kurtz believes that they are right. If contacted by a group of white women about a sex discrimination case today, Kurtz believes that one of her first questions would be: "Where are the women of color issues?"

The Women of Color Project also taught ERA the long-term value of coalitions. According to Kurtz, this understanding of the value of coalition work led ERA to take a novel litigation position in a case concerning the constitutionality of San Francisco's set-asides for minority and women's businesses. ERA represented the women, while several other public interest law firms, including ALC and the Lawyers' Committee for Urban Affairs, represented minority interests. In 1987, the Ninth Circuit held that because race-based preferences are subject to a higher constitutional standard than sex-based preferences, San Francisco's set-asides for women would be upheld, while those for minorities would be struck down. At this point, since the women's program had been upheld, ERA could legitimately have dropped out of the case: their clients had won.

Instead, ERA decided to continue working with the coalition of public interest law groups that was defending the minority business set-asides. Kurtz explained why:

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190. See Kurtz Transcript, supra note 102, at 13.
191. See id. at 34.
192. See id. at 15.
193. See id. at 31–32.
194. See id. at 33.
195. Id. at 32.
197. See Associated General Contractors of California v. City and County of San Francisco, 813 F.2d 922, 944 (9th Cir. 1987).
Even though [the second lawsuit by the contractors] didn’t attack the women’s preference, we were involved in the case because we felt like the strategy of the contractors’ association was to try to divide the women from the minorities . . . and you know, this can be a really successful strategy . . . . We decided specifically not to argue that a different standard for women was appropriate.  

As a result, ERA, a law firm that represents women, was involved in the litigation to uphold San Francisco’s revised minority business set-aside provision. Kurtz continued: “As a lawyer, your clients have the right to make the choice, but you can tell them what you think is the right way to make the choice and [let them know] that it is not in their interest to sell out the other groups.” ERA was clear by this point that the strongest position for their clients often lay in coalition with other similar groups.

Gail Kaufman, the current associate director of ERA, joined the staff in 1984, just as the Women of Color Project was beginning. One of her primary tasks has been to focus on how ERA wants to be, and is, seen. In her view, one of the major changes in the life of ERA can be seen in the fact that it has dropped from its promotional literature the language “Women of Color Project,” a phrase which suggested that women of color issues were somehow marginal to the major work of ERA. The work of the Women of Color Project, she points out, is now fully integrated into all of ERA’s work.

Kaufman also thinks that ERA now sees its interests and constituency as broader than just women. This breadth has given ERA a unique perspective among women’s groups, as ERA is the only women’s organization with direct experience working on race-based issues. In her view, the fact that ERA is a women’s organization that also understands race issues might put ERA in a stronger political position in the national arena as it comes together with other civil rights organizations to address national issues.

The second major shift Kaufman noted is a move from describing ERA’s focus as “employment related” work to describing it as “economic justice” work, which includes ERA’s work on immigration and the minimum wage. In her view, although ERA has always been concerned about economic justice, specifically labelling their work as such gives ERA a

198. Kurtz Transcript, supra note 102, at 19–21.
199. Id. at 23.
201. See id. at 12.
202. See id. at 44.
203. See id. at 36–37.
204. See id. at 44.
wider playing field and a greater ability to work in communities of color.205

Finally, the third major change Kaufman has noted is that ERA now provides its services in Spanish.206 As a result, ERA gets more calls for advice and counseling from the Latino community.207

2. Resonance in the community

The impact of the Women of Color Project extends beyond ERA's legal and policy work to influence the work of other groups in the larger community in at least two ways. First, other groups in the community have begun to see the intersection of sex and race/ethnicity in their own work and to act upon that new knowledge. Second, other groups have been empowered to act by their relationship with ERA.

For example, it became clear that Spanish radio and television had begun to see women's issues within the larger problem of ethnicity when they began to contact ERA for information. Kaufman noted that the Spanish-language media in the Bay area had never covered a story on abortion. But when ERA did work on abortion rights, Spanish radio and television contacted ERA for information and ran stories on this issue.208 Blanco points out that legal advocacy groups like MALDEF or ALC, which focus on issues of race/ethnicity, now see the related gender issues and refer these cases to ERA.209

Another example of the effect that ERA's work has had on other community groups can be seen in Marshall's status as the only non-Chinese member of the twenty-five-member board of Chinese for Affirmative Action. When asking her to join the board, group members explained that they wanted her help in addressing black-Asian tensions within the community, and help in understanding both their own racism and the fact that the civil rights movement they are now a part of "was built on the backs of African Americans."210 Marshall noted that at one meeting, the board discussed what position they should take on the nomination of Clarence Thomas to the Supreme Court. She thought it significant that the board recognized this as an important question for an Asian advocacy group to consider. Marshall understood that the group wanted her on the board so she could push them to broaden their perspective on civil rights issues, as including women of color had helped ERA broaden its perspective on gender issues. Marshall continued, "[T]hey didn't ask one

205. See id. at 9-10.
206. See id. at 17.
207. See id. at 19-22.
208. See id. at 19-22.
209. See Blanco Transcript, supra note 146, at 61.
of our Asian staff or former staff members to be on the board .... They made a decision to really expand themselves and to push.211

Former clients have also learned important lessons from ERA about the value of coalitions, lessons that they have carried on in their professional lives. One example came from Demmons, battalion chief with the San Francisco Fire Department at the time of our interview. Demmons reported that because the minority and white women firefighters worked so long together in a coalition as plaintiffs in the litigation, they now have a network within the fire department through which they challenge racism and sexism in their workplace.212

IV. MANAGING ISSUES OF RACE AND ETHNICITY WITHIN ERA

Because the ERA staff could not represent their clients without understanding both the gender issue and the race/ethnicity issue, the ERA attorneys were often the "glue" that held coalitions together.213 Indeed, coalition-building eventually became one of ERA's strengths. Yet even while learning how to build coalitions in its external work, ERA would also have to build a coalition between the women of color and white women on its staff.

In 1984, ERA transformed itself from a public interest law firm where the senior staff and attorneys were, and had always been, white, to a law firm where two of the three attorneys were women of color. With this transformation, diversity issues of race and ethnicity surfaced within ERA much as they did within the rest of the country. Two issues that confronted the newly integrated ERA staff were: (1) the question of whether attorneys were expected to work only with clients from their own ethnic/racial background, and (2) the problem presented by a racial hierarchy within ERA's own office.

A. Identity and Representation

ERA hired women of color attorneys not only for their legal skills, but also on the basis of their ethnic/racial identity. The staff assumed that the particular attorney hired would bring an interest in her community, as well as skills and contacts that would enhance outreach to that community. While these attorneys were hired in part on the basis of their identities, legal work was not necessarily assigned within ERA on the basis of those identities.

211. Id. at 38–40.
212. See Demmons Transcript, supra note 128, at 33.
213. See Kaufman Transcript, supra note 200, at 34, 39.
According to ERA staff members, there appeared to be general agreement that racial/ethnic identity was not the main criterion, and that a combination of factors influenced how legal work was assigned. First, the legal staff had autonomy to select issues and cases based on their own interests. Legal work was also assigned based on who was available to take a particular case. Marshall, who is black, worked on *Sai Chen Hai*, a case involving unfair wages for Asian factory workers, and *Columbano*, a case alleging sexual harassment of a white police officer; Kurtz, who is white, represented black women firefighters in Oakland; and Blanco, who is Latina, represented Lana Pallas, a white worker, in a pregnancy-related case. Marshall did note that the black firefighters were initially nervous about co-counselling with a women's advocacy group. Yet the fact that Marshall, a black woman, was their attorney helped them get over this problem. Marshall was the "bridge" between the black organization and the women's organization, thus playing the same role as the black women plaintiffs during the firefighters' litigation.

Attorney identity came into play more when the attorneys were engaged in coalition work or outreach to communities of color. Kurtz, who is white, stated that when ERA wanted to work on the issue of reproductive choice within the Latina community, she could not have been the person to do it: "It had to be Maria. There's no one else in the office who could do that work and have credibility, and be a spokesperson . . . . It doesn't mean that [people who are not Latina] can't do the work, but . . . [they] can't be the spearhead."

There was some sense, however, that once ERA had established a certain amount of credibility within a community, anyone from ERA could do follow-up work within that community. Marshall used Kurtz's representation of black firefighters in Oakland as an example of this notion: "I think if Judy had taken on the Oakland case in 1980 . . . as a white women, it would have been a problem. But by the time she took over that case, since the Oakland firefighters and the San Francisco firefighters are all part of a northern California black network, ERA was a known entity. So she went in with a lot of goodwill." Kurtz concurred, noting that she gained credibility by coming from an organization that was integrated.

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214. See Marshall Transcript I, supra note 88, at 31; Transcript of interview with Rose Fua, ERA staff attorney, in San Francisco, Cal. (July 16, 1991), at 7 [hereinafter Fua Transcript] (on file with author).
215. See Kurtz Transcript, supra note 102, at 42.
217. See Pallas v. Pacific Bell, 940 F.2d 1324 (9th Cir. 1991).
219. See supra text accompanying notes 135–137.
220. Kurtz Transcript, supra note 102, at 43.
222. See Kurtz Transcript, supra note 102, at 40.
To the extent that work was assigned on the basis of the racial or ethnic identity of the attorneys, such assignments created problems within the organization. One problem was that such separation by race/ethnicity went against important organizational ideals. As Rose Fua explained it:

[The immigration work] really shouldn’t be Maria’s work in particular, in my view, because she happens to be a Latina . . . I or Judy or, [anyone else] could do it easily . . . I guess part of me, the idealist part of me, thinks that people should be able to be interchanged. Because that’s part of the problem . . . getting stuck in these stereotypes, you know . . . I don’t want to be pigeon-holed . . . If I were an Asian woman with a connection with the black . . . community, I presume I could walk into that role.  

Marshall agreed: “My feeling is, if the community trusts us, any staff member at ERA has to be able to participate: we can’t marginalize anybody.” She pointed out that when the black firefighters’ case in Oakland was about to “explode,” everyone at ERA thought that she should handle it, even though the initial contact had come through Kurtz, who is white. Because Marshall was overextended with other litigation, and because the contact came through Kurtz, Marshall argued that it should be Kurtz’s case: “There was a little nervousness. Judy was also reluctant, and I think part of that was her feeling she wouldn’t be accepted, but she did it. And it was the best thing . . . it’s very healthy for the organization.”

Another problem with identity-based work assignment is that some attorneys feel overworked, while others feel marginalized. Kurtz pointed out that, at times, people contact ERA looking for an attorney to be on a panel or to give a talk from “the Latina point of view.” At these times, “Maria has to go and be the person who makes a presentation. She feels like it’s extra work, and then I feel like I’m getting excluded.” Marshall also noticed this phenomenon: “There are times that Kurtz gets marginalized. And I think that’s an ongoing problem that needs to be worked with.”

A related concern is the issue of what might happen to a particular ERA program if the attorney who is closely identified with it leaves. In 1991, the ERA staff discussed this issue around two departures. The first was the imminent departure of Rachel Morello-Frosch, who was originally hired to write grants and raise funds. Because she spoke Spanish fluently, she also had become deeply involved in public education and coalition work. She had been working extensively with Blanco, who expanded her

225. Id. at 24.
226. Kurtz Transcript, supra note 102, at 36.
228. See Marshall Transcript II, supra note 97, at 6–7.
own work with the Latina community because of this extra assistance. Morello-Frosch also helped Blanco by answering phone calls to ERA from monolingual Spanish speakers.\textsuperscript{229} Blanco was concerned about whether ERA was going to have to cut back its work with the Latina community after Morello-Frosch's departure.\textsuperscript{230} Although ERA had just hired a bilingual receptionist, and made a commitment that the receptionist always be bilingual,\textsuperscript{231} this did not address Blanco's programmatic concerns. Similarly, Blanco was concerned about what would happen to the work she was doing on the issues of immigrant women if she left the law firm:

What I worry about is whether the organization is making a commitment to the work, or whether the organization is saying 'we have an individual who is interested in this: let them do what they want.' . . . We make a lot of commitments to a community . . . . In a sense, they become constituents. And then what happens once you've made that commitment if that particular individual is not around anymore?\textsuperscript{232}

ERA experienced this very situation when Marshall, the only black attorney in the firm, left ERA. After her departure, ERA not only did not have a black attorney, but it also did not have a black member on its senior staff. As Davis noted, "our credibility in communities is in part a function of who is on our staff, and Shauna's departure was a significant loss to us."\textsuperscript{233} As a result, ERA's connections to the black community faded. As Blanco noted, "when you're not in there doing something daily, daily, daily, after a while . . . you can begin to see the connection fade away."\textsuperscript{234} Kaufman added that even though Marshall continued to speak on behalf of ERA, and even though the ERA board chair, Eva Patterson, was black, it was not the same as having black senior staff on board.\textsuperscript{235}

Another effect of Marshall's departure was that certain issues facing the black community were not being addressed, since there was no longer anyone on staff with a special interest in the issues of African-American women. Before her departure, Marshall had been developing an interest in issues related to welfare. She had met several times with the staff of the Income Rights Project, as well as the staff of the local NAACP, to talk about the California workfare program and its job training component. Marshall had hoped that ERA could somehow use these employment issues to get involved with the welfare and job training issues that affect so many black women. Marshall thought that ERA's work on the minimum wage was of particular benefit to the black community, as so many mi-
mum-wage workers—in hotels, hospitals, and convalescent homes—are black women. While Marshall wanted to do more, efforts in that direction ceased with her departure. 236

ERA’s retreat from African-American issues will hurt the organization. As Marshall pointed out, “to be a multi-racial organization and not address problems that are particularly problematic to the African-American community, I think, is going to be a real problem of the organization.” 237 When one thinks about civil rights issues in America, the racism experienced by black Americans “is always the archetype.” 238 Also, if ERA wants to build connections with civil rights groups on the east coast, this is “their only language.” 239 Kaufman agreed:

[W]hether we like it or not, most race politics in this country are played out in black and white . . . So for us to wheel and deal in the whole range of issues, and not have an African-American attorney or public policy person on the staff, that makes it difficult in terms of D.C. politics. 240

The problem of attorney specialization also surfaces at ERA in non-racial contexts. For example, Davis pointed out that Kurtz was the ERA expert in the area of nontraditional work: What would happen if she left the organization? 241 In a sense, this is simply the problem of specialization within any small office. Yet at ERA, the issue becomes more charged as often specialty is linked to the race/ethnicity of the attorneys.

B. Hierarchy and Power

Although the dominant work of ERA involves issues of women of color, and although the majority of attorneys at ERA for the previous six years had been women of color, the leadership of ERA was and had always been white. Marshall thought that this situation existed simply because the organization had integrated late, 242 but that it still had a detrimental effect. According to Blanco, the white leadership affected how people of color in other civil rights organizations viewed the organization: “The outside view is to some extent, that this is a white women’s organization that has had the good sense to hire some very good women of color . . . . They see [the women of color] as . . . on the inside chipping away . . . but [the law firm is] not ours.” 243 Kaufman thought that the racial hierarchy affected morale at ERA. 244 Marshall concurred: “In terms of program,
what goes on inside ERA affects our work outside. The racial stratification also affects the staff of color’s sense of pride and belief in the commitment of the organization.245

At the same time, the racial hierarchy had a direct bearing on who was working at ERA. One attorney maintained that the existence of this racial hierarchy limited the pool of attorneys who would be willing to work there.246 Also, as Marshall noted, the existence of this hierarchy meant that ERA would have “a revolving door for their seasoned women of color,” because when these women get tired of litigating, they can’t move up within the organization.247

ERA has addressed this issue in several ways. In early 1990, the women of color on staff decided to meet regularly. One of the issues they wanted to address was the hierarchy: How much of it was simply an organizational issue, and how much of it was racism?248 In Marshall’s view, initially the existence of a women of color caucus made the white staff anxious. “But then,” she continued, “I was really impressed because Gail’s reaction was, ‘This is great, this is actually great . . . . This really shows that this is . . . . a multicultural organization . . . . that recognizes it has a white hierarchy and we should deal with it.’ Nancy’s response was, ‘Maybe we should do some training and deal [with] it because who knows what is lurking.’”249 As a result, a few months later, ERA hired Adrian Williams, a black psychologist, to hold a workshop with the staff on the issue of racism within the organization.250

There also appeared to be much informal discussion about racial issues within ERA, which the staff considered to be positive. The process, according to Fujiki, was to talk about everything, whether at weekly staff meetings or at the yearly retreat: “It’s wonderful that they’re so aware of the tension, problems, and conflicts.”251 She continued: “I think what’s unique to ERA is that we have these individuals like Nancy and Judy and Gail who are so open to dealing with the issue of the racial division and the hierarchy . . . . Most people would just be defensive about it.”252

Indeed, Davis appeared to have a great interest in addressing issues of race/ethnicity within ERA in a sensitive way. In a discussion of how ERA was developing as an organization, she noted that ERA staff had recently decided to have formal performance appraisals. She was concerned that the system for evaluating her be a safe one, where ERA staff could “raise

246. See Blanco Transcript, supra note 146, at 72.
249. Id. at 20.
250. See id.
251. Fujiki Transcript, supra note 90, at 14–15.
252. Id. at 21.
whatever issue they wanted and do so in confidence.” As a result, Davis decided to ask Adrian Williams, the black psychologist who led their workshop on racism, to work with the staff on Davis’ own performance appraisal:

[Williams] was the person, I decided, who would have the greatest ability with new and old [staff], because of her accessibility, to do the evaluation of me and be able to gain the confidence of all the staff. [Since Williams is] a woman of color, I thought that would be important for my colleagues in talking about those issues that they have with me—or institutionally—that there would be a greater comfort level in talking it over with her than with anybody else. And I certainly have great regard and faith in her.

The ERA staff addressed the tension caused by the racial hierarchy within the workforce through workshops, leadership sensitivity, caucuses, and continuing discussion. However, as a small law firm with low turnover, nothing was likely to change. Kaufman pointed out that none of the white women on senior staff were necessarily going to move aside so that a woman of color could move into a senior position, although the executive director, Nancy Davis, had contemplated that very move.

The difficulty of changing the racial hierarchy was also evident in two other situations that took place while I was conducting interviews. In July of 1991, ERA had an opening for a senior staff person to carry out development and public policy work. Here, then, was an opportunity to hire a woman of color in a senior position, thereby resolving some of the problems created by the racial hierarchy. Marshall was hopeful that ERA would hire an African American. Five months later, in December 1991, I learned that ERA had hired a white woman to fill the senior staff position. Marshall raised this as a serious issue: “I personally am disappointed in the organization . . . I think that was a real backslide. And I know now they’re going to hire someone as an administrative assistant, I believe to work with Nancy, who will be a woman of color. But here we go. It’s the same problem . . . and . . . the bottom line starts at home.” She continued by relating a conversation she had recently held with a black attorney in another civil rights organization: “He said, ‘When your executive director is white and there are so many white attorneys . . . it’s a diverse staff, but it still feels like a white organization.’ And I really feel like ERA was moving to feeling more like a multicultural organization and that it slid back.”

253. Davis Transcript II, supra note 188, at 20.
254. Id. at 24.
255. See Kaufman Transcript, supra note 200, at 49–50.
258. Id. at 11.
During December, I also conducted a long interview with Davis about the future of ERA. She was engaged in a process of strategic, long-term planning: Should ERA be doing more public policy work? How might they envision their work differently? How should they position themselves in the world of public interest groups? Davis had the sense that ERA was at an important crossroad in terms of organizational development, and was about to involve others to help her think through this planning.\(^{259}\) She invited me to attend a major meeting to discuss these issues the next day. The invited participants included Kaufman, associate director of ERA; Kurtz, senior staff attorney; Katherine Kline, the new policy development staff member; and two organizational consultants, Karen Paget, a professor of political science at U.C. Berkeley, and Trudi Fulton-Smith, who had conducted a session of conflict-resolution training at ERA.\(^{260}\) But even as ERA was planning to move forward as an institution, it was retaining some of its troublesome patterns. As Davis said, after noting who was invited to this important meeting, "The trouble is . . . they're all white."\(^{261}\)

V. CONCLUSION

My interest in ERA grew out of a long-standing interest in the issues of women of color—issues I had long written and taught about. In 1990, I learned about ERA, a group of legal activists who understood that, to be more inclusive, they would have to put women of color at the center of their analysis. Who were these women? How did ERA get to the point of embracing the issues of women of color so seriously? How did the women of color attorneys at ERA conceptualize women of color issues? And how did this inform the work of the law firm? These were the questions that I wanted to explore when I started my research on ERA in 1991.

In my research, I learned that at a certain point in ERA’s development, the vagaries of funding coalesced with ERA’s own thinking and direction, leading to the creation of ERA’s Women of Color Project. The white women attorneys and administrators thought that having a woman of color attorney would better enable them to reach out to communities of color and to identify the issues these women faced. And, indeed, the women of color attorneys began to point out issues that the white women attorneys did not initially see as women’s issues. The willingness of ERA’s white staff to understand and learn led to profound changes at ERA—changes in the cases they brought, their litigation strategy, their workstyle, and their staffing.

\(^{259}\) See Davis Transcript II, supra note 188, at 43.
\(^{260}\) See id.
\(^{261}\) Id.
ERA summarized this transition clearly in its 1993–1994 Annual Report, as it celebrated its twentieth year:

Beginning in 1974 as a teaching law firm specializing in issues of sex-based discrimination, ERA has evolved into a legal organization with a multifaceted approach to achieving equality and economic justice for all women. Today, the focus of ERA’s program continues to be on discriminatory practices that are of great consequence to all women, but place a particularly harsh burden on women of color and low-income women. Equal Rights Advocates tackles these issues using the strategies that have proven most effective throughout its two decade history: legal representation to challenge violations of existing law and establish legal precedent to broaden the scope of women’s rights; public policy and public education advocacy that reflects a multi-racial and grassroots perspective; a Spanish/English bilingual Advice & Counseling Hotline to provide women with sound, practical advice; and coalition building that strengthens ties between, for example, the women’s, civil rights and immigrant rights communities.262

And once more, in ERA’s twentieth year, two of the three staff attorneys were women of color.

Changes in the racial/ethnic make-up of the staff attorneys also brought new tensions to the office. Along with differences in religion, personality, workstyle, class, and sexual orientation, the office also had to adjust to differences of race, ethnicity, and language. One of the issues ERA faced was whether attorneys would be assigned work solely on the basis of their racial identity. The staff agreed that initial outreach to a particular community of color would probably be enhanced if an attorney from the community did that work, but as the community came to know and trust ERA, any of the attorneys could represent it. While this approach created situations where some attorneys felt marginalized and others overworked, this was not perceived as a major problem within the law firm.

The issue that appeared most problematic, especially for the women of color staff, was the racial hierarchy within the firm. Although ERA had changed its focus primarily to address the issues of women of color, and although the women of color staff attorneys by and large drove the ERA program, the administrative staff who directed the organization was, and always had been, composed entirely of white women. Women of color attorneys at ERA were struck by the anomalous situation in which they found themselves: while they were working hard in their professional lives to protect and empower women of color who came to ERA for help, they felt unable to do the same for themselves within ERA. The white staff appeared sensitive to the racial troubles within the office, and the executive director had even organized training sessions and retreats around this

issue. Still, in 1991 the organization appeared to be somehow stuck, unable to move forward on this issue.

I returned to the ERA office in San Francisco in July 1997, to round out my study of ERA before concluding this article. Was the organization still in existence? Was it thriving? Did it still focus on women of color issues? How was it now conceptualizing its work? Had its emphasis on coalition-building changed? And what about the staff: had ERA made any progress with respect to the racial/ethnic tension noted so frequently by interviewees during my earlier visit?

The most striking change in 1997 was the departure of ERA co-founder and former executive director, Nancy Davis. After some fifteen years at the helm, she had decided to step down. According to Davis, it was in mid-1995 that she began to think about leaving ERA. She wanted more time with her children, time to gain perspective on her life. She also wondered if perhaps she was not the person to move the organization to its next developmental step. When she contemplated leaving ERA, Davis thought that this would be a good time, as the organization seemed sufficiently strong in terms of both funding and staff to weather the transition. Finally, Davis thought it would be wonderful if ERA could be the first national women’s law center headed by a woman of color.263

In November 1995, the ERA board of directors asked one of its members, Irma D. Herrera, to act as interim director while it conducted a search for director.264 Herrera, who had been on the board since spring of 1993, had recently left her position as a staff attorney at Multicultural Education Training and Advocacy, a legal organization that represented poor children and children of color on education-related issues. Before that, she had represented migrant farmworkers as a Legal Aid attorney, headed the education programs at MALDEF, and practiced law at two San Francisco law firms. Herrera ultimately applied for the director’s position at ERA, and in May 1996, the board selected her as ERA’s new director.265 Davis and Herrera overlapped at ERA for two months, while Herrera was interim director, to ease the transition. During that time, Davis took Herrera to the east coast to introduce her to contacts at foundations that had supported ERA, as well as to the heads of the other major women’s public interest law firms.266 Both Davis and Herrera said that they worked hard together to facilitate a smooth transition.267

264. See id.
266. See 1997 Davis Interview, supra note 263.
267. See id.; Interview with Irma D. Herrera, executive director of ERA, in San Francisco, Cal. (July 10, 1997) [hereinafter Herrera Interview] (notes on file with author).
Still, the departure of a director who had been one of the founders and head of the organization for over fifteen years was bound to put stress on ERA. There are indications that the transition was difficult, including the fact that the ERA newsletter was not published in 1995, and almost all of the staff members I interviewed in 1991 had left by the time I returned in 1997.

Nonetheless, the ERA I visited in 1997 appeared to be thriving. Indeed, ERA has become the first national women’s law firm headed by a woman of color. Thus, at the same time that Herrera’s appointment serves to ease concerns about racial hierarchy within ERA, it also sends a powerful message to the outside world about the kinds of positions women of color can hold and the kind of work they can do.

I noticed a sense of change at ERA under Herrera’s new leadership. Even at a superficial level, I noticed immediately that the first newsletter published under her leadership featured a new format and logo, and announced several new steps to increase ERA’s visibility: a toll-free telephone number for the bilingual advice and counseling hotline, a new e-mail address, plans for a web site, and a brown bag lunch series featuring Bay area women as guest speakers.

Herrera has more ideas for change. With respect to ERA activity, she envisions more litigation on cutting-edge legal issues. They are especially looking for cases in the welfare reform arena. Also, in Herrera’s view, in a “post-Proposition 209 world,” ERA must be aggressive about identifying systemic discrimination and taking legal action. In terms of policy development, she plans to have a full-time policy analyst on staff by the year 2000. In her view, the presence of a scholar who thinks about social issues in a nonlegal way would greatly aid the staff. She recently hired a partner from a well-established San Francisco law firm, an attorney with fifteen years’ experience, to be ERA’s director of program and litigation. Herrera thinks that it will be helpful to have a supervisory attorney at ERA who already has extensive experience supervising new lawyers. Also, by having this staff member supervise both program and litigation, Herrera will free up her own time for more fundraising, as well as for the public speaking and writing that will give ERA more exposure.

268. See Memorandum from Debbi Stallings, assistant to the executive director of ERA (July 1, 1997) (on file with author).
269. See EQUAL RTS. ADVOC., supra note 265, at 1. The toll-free number is (800) 839-4ERA; the e-mail address is equalrights@igc.org; and the web site address is <ftp://www.equalrights.org>.
270. See EQUAL RTS. ADVOC., supra note 265, at 3. When I visited ERA in July 1997, I attended a “brown bag lunch” where the speakers addressed the development of microeconomic enterprises for women.
272. See Herrera Interview, supra note 267. This idea comes from her MALDEF experience: when she worked at that organization, MALDEF brought new doctoral graduates on staff in one-year rotations. See id.
273. See id.
Herrera would like to attract new supporters outside of the Bay area so that more lawyers and community activists will know about ERA's work and thus be in a position to identify situations that could lead to potentially important lawsuits. To this end, she wants ERA to hold events outside of San Francisco—in Silicon Valley, for example, and in formerly rural areas such as Fresno and Modesto. She also wants to identify women professionals in fields other than law, and help them understand that they have a stake in ERA's work and should support it. Finally, Herrera is interested in going into local areas such as Oakland. Although the Oakland population is not as wealthy as San Francisco's, Herrera thinks it would be good for ERA to expand its financial base by getting small contributions from the poorer communities that it serves.

Another noticeable difference between the ERA I visited in 1991 and the one I visited in 1997 involves staffing, as almost every ERA staff member I interviewed in 1991 had left. The two staff attorneys in July 1997 were Asian-American and African-American, and Herrera was trying to hire a third attorney who would be Spanish-speaking, so that ERA could continue to provide legal services in both English and Spanish. Since this attorney will likely be a Latina, three of the four attorneys at ERA, as well as the executive director, will be women of color.

Herrera and Davis both pointed out that the Board of Directors is now taking a more active role in ERA activities, and both see this as a positive development. Davis had long wanted more Board involvement. As she explained, when the current director of an organization is also its co-founder, boards commonly defer to the director, one of the people with the initial vision of the organization. This situation no longer exists at ERA. When I interviewed Herrera, the Board had recently informed her that it wanted ERA to return to more cutting-edge litigation. Herrera was pleased, as this was consistent with her vision of ERA.

Although changes are indeed under way at ERA, the legal and policy issues ERA addresses remain much the same. Issues of affirmative ac-

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274. See Letter from Irma D. Herrera, supra note 271, at 1.
275. See id.
276. The one exception is Rose Fua, who had just joined ERA when I interviewed her in the summer of 1991.
277. See Herrera Interview, supra note 267.
278. See 1997 Davis Interview, supra note 263.
279. See Herrera Interview, supra note 267.
280. Indeed, the firefighters' case was still on ERA's docket when I returned in July of 1997. One month earlier, ERA and its co-counsel had proposed a settlement to the court that, if approved, would end the current consent decree and require the fire department to complete specific tasks within one year. Kurtz, who left ERA in 1996, was representing the women in this case as a cooperating attorney with ERA. See EQUAL RTS. ADVOC. (Equal Rights Advocates, San Francisco, Cal.), Fall 1997, at 4. In early December 1997, the same judge who had imposed the consent decree lifted it, after finding that the city and the fire department had made "significant strides... in integrating the San Francisco Fire Department workforce." Diana Walsh, Court Lifts Order on Fire Department: Judge Acts After Saying City Has Made Significant Strides in Hiring Women, Minorities, S.F. EXAMINER, Dec. 9, 1997, at A-6. Mayor Brown "boasted" that the fire department
tion, sexual harassment, and the rights of immigrant women are still in the fore. In 1995, ERA created an Affirmative Action Public Education Project to counter misinformation about affirmative action. Through this project, it disseminated to organizations and individuals throughout the country almost 10,000 copies of its educational booklet, as well as several hundred copies of its award-winning video, "Keeping the Door Open: Why Women Should Support Affirmative Action." Finally, in 1996, ERA worked with a coalition of over 150 civil rights groups that had tried to defeat Proposition 209, a California ballot initiative to prohibit affirmative action programs based on race, sex, color, ethnicity, or national origin, in state employment, education, or contracting.

From its earliest days, ERA had been involved in protecting women from sexual harassment in the workplace. While still actively involved in workplace harassment issues, ERA has expanded its scope of activity to include school peer harassment. When I returned in 1997, I learned that ERA and its co-counsel had just won the first case in the country in which a court held that a student could claim relief for peer sexual harassment under Title IX of the Education Amendments, which prohibits sex discrimination in educational institutions that receive federal funds. The case, Doe v. Petaluma City School District, was settled on the eve of trial for $250,000.

ERA is also still actively engaged in issues involving immigrant women. In 1997, ERA was once again representing garment workers who were not being paid minimum wage or overtime; and once more, ERA was trying to hold both contractors and manufacturers liable for these violations. ERA was also sponsoring Elia Gallardo in a fellowship from the echo generation foundation. Gallardo was the legal coordinator of Organiz-
zación en California de Lideres Campesinas ("Lideres Campesinas"), a statewide organization created by women farmworkers to address domestic violence and environmental protection issues. This particular project is reminiscent not only of earlier ERA work with immigrant women, but also of the way in which ERA previously brought another fledgling group, the Lesbian Rights Project ("LRP"), under its organizational umbrella, offering it a home base while the Project developed and grew stronger.

New in 1997 was ERA’s involvement in welfare issues, which grew out of Congress’ 1996 reform of federal welfare laws. Because the federal government has passed fiscal authority for so many social service programs to state governments, California is designing new strategies to deal with both declining budgets and new obligations. In 1997, ERA was the lead organization for the California Family Economic Self-Sufficiency Project, a grass-roots project with over twenty-five groups from across the state on the steering committee. As leader, ERA has been coordinating the efforts of service providers, welfare recipients, and advocates to create a new state welfare policy that will help poor families in California instead of harming them. Again, this work is reminiscent of Marshall’s effort in the 1980s to connect ERA’s work in the employment arena with welfare issues.

Thus, with a combination of new staff and consistent policy goals, ERA faces the year 2000 from a position of strength. It has weathered the transition from its first director, it has an activist board, and its financial base is solid.

It will be interesting to watch ERA continue to change over the next years. What direction will its litigation take? What new issues will it address? What new techniques will it use to advance client goals? As ERA served as a “home” for awhile to the LRP, as well as to Lideres Campesinas, what is the next group of women it will welcome?

Even though the issues of women of color might be gaining some prominence, they do so in a society marked by disappearing jobs, growing jail populations, immigrant-bashing, and problematic welfare “reform.” As always, women of color will be harmed by those public and private policies that negatively affect people of color, as well as by those policies that harm women.

286. See id. Gallardo brought a two-year grant to work with Lideres Campesinas when she came to ERA. She subsequently got an extension for one year, during which time the granting organization paid half of her salary and ERA paid the other half. See Herrera Interview, supra note 267. ERA also covered the cost of her benefits beyond the amount provided by the fellowship. See Letter from Irma D. Herrera, supra note 271, at 6.

287. See Herrera Interview, supra note 267; see also supra note 44.


290. See Davis Transcript II, supra note 188, at 42.
One small law firm—ERA—came to understand that it could protect women of color only by joining in broad-based coalition with other women's and civil rights' groups. For those of us concerned about the lives of women of color, the lesson is clear: we must do the same.

VI. APPENDIX: INTERVIEWEES

Rose Fua, ERA staff attorney, 1991–present.