

New Tool in Fight Against Hate Crimes

Last week, the Asian Pacific American Legal Center (APALC) joined civil rights groups around the nation in applauding President Obama's signing of the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act of 2009. The new law expands the federal definition of a hate crime to include gender, disability, gender identity and sexual orientation - previously, federal protection covered only attacks motivated by race, religion or national origin and only in very limited circumstances. In addition, the new law allows the U.S. Dept. of Justice to assist in local and state investigations or to bring cases where local and state officials do not. Although hate crimes are (and will continue to be) handled primarily by local and state authorities, the Hate Crimes Prevention Act is a critical new tool in the national fight against hate-motivated violence.



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In signing the new law, President Obama commented: "...we must stand against crimes that are meant not only to break bones, but to break spirits - not only to inflict harm, but to instill fear." At their core, hate crimes are insidious because they target an individual victim as a proxy for a larger community. As Asian Americans, our community has had first-hand experience with violence intended to "break" our spirits. Vincent Chin was beaten to death in 1982 by two white autoworkers in Detroit, Michigan, in part because they blamed Japan for the decline of the American auto industry. Joseph Ito was a Filipino American postal worker, shot to death in 1993 by a white supremacist intent on starting a "race war" in Southern California.

Following the attacks of Sept. 11, 2001, individual South Asian and Muslim Americans around the nation were singled out for attack and even murder in acts of vigilante retribution. Hundreds of violent attacks ensued across the U.S. in subsequent days and weeks. In these and other cases of anti-Asian violence over the years, the perpetrators acted against one individual in order to strike fear into an entire community. Ironically, these same acts of hate violence have also united communi-

ties - because they can be named as such, e.g., "anti-Asian" violence, these hate crimes have also served as rallying points for Asian American civil rights.

In other words, the signing of the Hate Crimes Prevention Act offers hope to those working to end hate violence in its many forms. By expanding the ability of the federal government to intervene in cases involving crimes based on gender, disability, gender identity and sexual orientation, the new law reaches those few states (five) that have not yet enacted hate crimes statutes as well as the many states whose existing statutes fail to cover as many groups as the new law (e.g., 20 states do not cover disability and 38 states do not include gender identity). Adding these new categories to federal protection not only strengthens enforcement but, more importantly, will make it easier to track and monitor these hate crimes, which will greatly expand efforts to prevent hate crimes in the first place. Tracking and monitoring of hate crimes on a national level will provide valuable information to not only local law enforcement but also community organizations by helping to identify "hot spots" or trends, allowing more effective targeting of limited resources.

As civil rights advocates, we have seen too many of our own community members singled out as targets of hate-motivated crimes and a lack of sufficient resources to ensure justice for the victims and their families. Thus, in addition to the expansion of federally-protected groups, the new law's other major impact will be the increased opportunities for the Dept. of Justice to engage in and support local investigations. Local jurisdictions are often hard-pressed to deal with hate investigations themselves so additional federal resources are very helpful, especially in places where there is not enough expertise or resources to properly investigate.

In recent years, APALC has fielded an increasing number of calls regarding hate-motivated violence against Asian Americans from far-flung suburban and semi-rural areas outside of the urban core of Los Angeles, including San Bernardino, Riverside and most recently, Ventura counties. The new law aids those in groups who were already included in existing hate crimes laws (e.g., those targeted because of their race, including not just Asian Americans, but also African Americans, Latinos, whites) but for whom the laws are often meaningless without real resources to investigate and prosecute.

Culminating a 13-year struggle to strengthen federal hate crimes enforcement, the signing of the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act of 2009 is a significant victory for all of us who work daily to en-



sure justice for all Americans. APALC believes that a hate crime against any group creates a hostile environment for all groups. By expanding the circle of those who are protected and providing more resources to enforce those protections, the new law helps lay the foundation for a stronger and safer America for all of us.

APALC has worked on hate crimes prevention and provided assistance to victims and their families for 26 years. Following the death of Joseph Ito, APALC and the Ito family established the Joseph Ito Hate Crimes Prevention Fellowship. For more information, call (213) 977-7500 or visit www.apalc.org.



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If You Pay for Hours, You Get Hours

We've defined in earlier essays a value focused legal delivery system as one that is based on the true meaning of partnership between law firm and client through sharing of risks and rewards. There are many variants, but the critical element for all of them is there needs to be some portion - if not all - of the fees at risk coupled with a "true up" based on effectiveness, efficiency and customer satisfaction - in other words, value. It is a

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fundamental precept that you get that for which you pay. Firms built on originating credit, realization rates, and the leverage of associate hours all focus on top line revenue growth, as opposed to profitability to the law firm arising from reducing costs and providing effective services, efficiently cannot expect to see material changes in behavior. The existing compensation structure fosters inefficiency at the client's expense and creates free-agent lawyers with books of business to change firms whenever the compensation looks better elsewhere. Existing compensation systems do little to assist the firm in retaining its best and most valuable people. Thus, in this world, it is the individual lawyer, not the firm, whose interests come first. This is a zero sum game where the firm, one's other partners, and the customer suffer as the size of the slice of the pie is fought over. These "free-agent-what's-in-it-for-me" compensation systems stand in the way of meaningful progress.

One might look to the corporate compensation models in any public company proxy for inspiration to address this dysfunctionality. Here's a rather conventional structure to address each of these problems:

All firm employees are precisely that - employees. Each person has a pay grade that is based on their role, their education and their responsibility. This might mean all incoming lawyers start at one salary level - but they would not move in lock step based solely upon their law school vintage. Obviously, those at the top of the organization (by position, not vintage) would have a higher salary than those at the bottom. Those at the top are responsible for running the enterprise, planning for its long term sustainability and reinforcing firm culture from the top. These folks would constitute a C-Suite just as in a corporate environment. Practice group heads or regional office heads would be equivalent to division or general managers. There might be a linear, pyramidal structure or a matrix structure with compensation structures reflecting those models. All employees would have annual objectives, annual reviews and annual development plans. Each employee should be paid at a percentage of the midpoint of the pay grade based upon performance (e.g., those rated "needs improvement" at less than 95 percent of midpoint, "good" at 95-105 percent, "outstanding" at over 105 percent). There would be an annual salary pool for the enterprise that would be set each year as part of the budget process. Each manager would be responsible to divide their pool among their direct reports - some employees would get more, others less - all based upon performance and the manager would thereby be forced to stack rank their employees to stay within the budgetary constraints of the firm as a whole.

Annual incentive compensation would reflect

performance. Each upper and mid level manager would have a "target" bonus defined as a percentage of base salary. The CEO might have a 100 percent target, other C-Suite members, 50-75 percent, GM's and Division Managers, 40 percent, Managers 30 percent, other professionals 20 percent and other staff 10 percent. This target would be the base for a bonus calculation reflecting overall enterprise performance as well as individual contribution. For example, in order to encourage overall business performance, 70 percent of the base or target bonus might be subject to a multiplier of 0-3, with a 1.0 reflecting budgeted performance. If the enterprise exceeded budgeted profitability, the multiplier would be higher, if it failed to meet budget, the multiplier would be lower - or even 0. Individual performance and contribution would be rewarded in the same fashion with accomplishment of specific time based and measurable goals affecting the multiplier of the 30 percent of base or target bonus. A simpler structure reflecting only enterprise performance might be used for lower level professionals and the other staff. This structure encourages both a focus on overall enterprise profitability as well as individual contribution.

Long term incentive compensation would foster growth, ROI and retention. The employees need to be stakeholders in the long term growth and prosperity of the enterprise. In public companies, this is accomplished relatively easily through the use of options, stock appreciation rights and restrictive stock - all of which vest in the future. Unless firms become publicly traded (e.g., as in Australia and New Zealand), parallels from the private company and private equity worlds need to be adapted to law firm structures. In either case, such equity type grants encourage growth and create "golden handcuffs," making departure expensive as the employee forfeits that component of future compensation. As such, this makes retention of key employees easier. For those really interested in long term prosperity, performance based grant multipliers could also be used.

Moving away from lockstep, eat what you kill, originating credit, leveraged pyramid, top line revenue focused compensation models, and towards these three elements, when combined with alternative fee structures based on effectiveness, efficiency and customer satisfaction, would further enable transformation of the legal service delivery model. The status quo will resist such change because it necessarily means dislocation, redistribution of income and acceptance of performance-based risk. If, however, you believe that such change is necessary or indeed even inevitable, those firms that move to a more corporate styled compensation structure will be better able to survive and prosper as enterprises.

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