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# **DISCRIMINATION IN INTERVIEWING: HOW TO PREPARE FOR IT AND WHAT YOU MIGHT DO IF YOU'RE SUBJECT TO IT**

©Boalt Hall Office of Career Services Handout No. 9

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The Law School is committed to providing equal opportunities for all students and to preventing discrimination in hiring. In order to interview at Boalt, employers are required to sign a statement of compliance with our non-discrimination policy. (For a description of the policy, as well as procedures for pursuing a complaint against employers who have violated the policy see Boalt Hall Handout No. 10.) You have the right to file a complaint if you believe you have experienced discrimination, and we encourage you to do so. The complaint must be filed by the student within thirty (30) working days from the date of the incident(s). The Office of Career Services shall investigate the complaint and shall reply to the student within sixty (60) working days from the receipt of the student's complaint.

Although few instances of discriminatory behavior on the part of employers who use Boalt's Career Services facilities are reported by students, it remains a serious problem in the legal employment marketplace. Many students express confusion about what constitutes discriminatory behavior in interviews and in other settings and about how they might handle situations which arise. Many are also uncertain about how to respond to inquiries which they think may be discriminatory.

This Handout will serve three purposes: First, it gives you information about the kinds of questions that may be illegal or inappropriate. Second, it offers suggestions for responding to questions that you believe are discriminatory (on the spot and after the interview). And third, it summarizes the procedures developed by the Faculty-Student-Alumni Career Services Committee for investigating and taking action on allegations of discriminatory behavior on the part of employers who use Boalt's Career Services facilities.

## **What kinds of questions should concern me?**

Interview questions which do not relate directly to your qualifications for performing a job are inappropriate or outright illegal if they are prohibited by federal, state, or local statute or ordinance. As a general rule, an interviewer shouldn't ask for the following information unless he or she is prepared and able to prove that the information sought is job-related and non-discriminatory:

Information relating to family background such as maiden or original name; citizenship or citizenship of relatives; national origin; length of residency in the U.S.; religion; holidays observed; memberships in organizations; clubs, churches, lodges, or fraternities; or names and addresses of relatives.

Information that could be used to discriminate against women, including current or anticipated pregnancy status, child care arrangements, marital plans or status; age (or date of birth); type of military discharge; credit standing; disabilities; sexual orientation.

The following areas are the ones which the **federal government** has specifically stated may not be asked about unless they are job related:

- |                            |                                |
|----------------------------|--------------------------------|
| 1. Race                    | 7. Color                       |
| 2. National Origin         | 8. Marital Status              |
| 3. Sex                     | 9. Disability                  |
| 4. Disabled veteran status | 10. Age                        |
| 5. Political affiliation   | 11. Vietnam era veteran status |
| 6. Religion                |                                |

More specifically, the Americans with Disabilities Act generally prohibits discrimination against any qualified individual<sup>1</sup> with a disability in regard to all terms, conditions and privileges of employment.<sup>2</sup> Additionally, the employer may not make inquiries about disability in job interviews, but may ask questions to determine if an applicant can perform specific job functions.

**California Law** prohibits discrimination in employment on the basis of race, religious creed, color, national origin, ancestry, physical disability, medical condition, marital status, sex or age (over 40)<sup>3</sup> and sexual orientation and prohibits employers from interfering with the political activities of employees.<sup>4</sup>

Finally, **Berkeley City Ordinance**<sup>5</sup> prohibits discrimination on the basis of sexual orientation by all employers.

There are more subtle forms of discrimination which are somewhat situational and may vary depending upon the context in which the question is asked. More subtle forms of discrimination include the following:

- \* Discouraging women from legal specialties considered "aggressive," or implying that assertive behavior in a woman is out of character.

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<sup>1</sup> A qualified individual means one who satisfies the requisite skill, experience, education, and other job-related requirements of the job and who (with or without reasonable accommodation) can perform the essential functions of such position.

<sup>2</sup>The Act protects individuals with a physical or mental impairment that substantially limits one or more major life activities or someone who has a record of such impairment or who is regarded as having such an impairment.

<sup>3</sup> Government Code §12900 et seq. (1992 West)

<sup>4</sup> California Labor Code §1101 et seq.

<sup>5</sup> Berkeley City Ordinance Chapter 13.28

- \* Assuming that the student being interviewed is heterosexual.
- \* Suggesting that female, disabled, gay, lesbian, or minority applicants might not feel comfortable in the workplace, since few of their group work there.
- \* Questioning an applicant's qualifications on the basis of physical characteristics not relevant to job performance, or making assumptions about the limitations imposed by such characteristics.
- \* Joking about sex or sexual preference.
- \* Commenting to older, disabled, or female students that they might find it difficult to work in a law office because of long hours.
- \* Questioning a candidate's language proficiency because of accent or national origin.
- \* Inquiring into the undergraduate grades or LSAT scores of people of color but not of other candidates.

(See attached "Pre-Employment Inquiry Guidelines" prepared by the California Department of Fair Employment and Housing. Also please see "How to Deal with Potential Sexual Harassment Claims in the Legal Workplace," [260] in the Office of Career Services).

Inappropriate Questions: Employers that do not make comments or ask questions that are illegal may make assumptions about the interviewee or behave in other ways that make the person being interviewed uncomfortable. Some examples include jokes about sex and assuming that a man is interested in sports or that a woman is interested in shopping.

If you are uncomfortable with an interview, we encourage you to speak to a counselor to explore why it is that you are uncomfortable. You may have been subject to one of the more subtle forms of discrimination.

### **How might I respond? Understanding how it happens**

#### The Employer's Perspective

Despite the ongoing efforts of law schools and the organized bar to educate them concerning effective and lawful interviewing, legal employers don't always interview as appropriately as we would wish. To prepare you to deal with situations you may encounter, it might be helpful to understand why they might occur.

First, employers are not always experienced at interviewing (or even interacting with people) and even though they are lawyers, many of them are not familiar with employment law. Further, they are likely unaware of it if they are insensitive to women, persons of color, older students, gays and lesbians, disabled persons, etc. Sometimes employers may ask intrusive questions in an attempt to get to know you as a person.

Although the attitude of an interviewer may be an important indication of the firm's culture, it is equally likely that the individual does not reflect the attitudes of the organization itself or even of a critical mass of its employees. Since attorneys tend to operate very autonomously in practice, delegation of interviewing to a particular attorney may not include any training or even a clear indication of the expectations of the employer in recruitment activities.

Accordingly, experience levels in recruiting will differ. Firms usually try to send partners or senior associates to interview. However, the decision on whom the firm sends as an interviewer may depend on a number of reasons. These may be attorney availability (sometimes last minute substitution is necessary due to

unexpected case or trial developments); whether or not the attorney is a graduate of that law school (employers will usually try to send a graduate of the law school at which they are recruiting); practice area and, the attorney's recruitment experience. Sometimes firms send a team of attorneys to conduct on-campus interviews and may team up a less experienced attorney with an experienced one.

### **Your response at the interview**

Often students reporting discrimination are embarrassed not only about the experience but also about their response to it. This is particularly true if they didn't challenge the interviewer on the spot.

However, interviews are often very difficult and stressful situations. The student is under stress even without the added problem of discriminatory or inappropriate questions. Determining how to handle this kind of situation is very complex and difficult--aggravated by the fact that the interview situation demands an immediate response.

The most common response to discriminatory interview questions seems to be shock. This is particularly true in a screening interview since the interview is so abbreviated that students have little time to think about what happened.

Unfortunately, failing to address the question in the interview often causes students to lose confidence in themselves. Keep in mind that your immediate reaction to the questions or comments of the interviewer is not the issue. Rather, the issue is the interviewer's comments or actions; your inaction doesn't mitigate the harm. It's important to try to talk through these issues with a counselor or with a classmate or friend. You'll probably find that your initial response was not unusual.

### **How you might respond after the interview**

If, on balance, you are troubled by an interview experience or you encounter overt discrimination, please document it immediately while the experience, feelings, and dialogue are still fresh in your mind. First, documenting the experience should help put what happened in perspective. Second, it may have some therapeutic benefit if you express how the statement or actions may have affected you. And third, it will serve as a record to which you may later refer to refresh your memory.

If you've been subject to an inappropriate or illegal question, please review Handout #10, which describes Boalt's policy and the procedures for filing a complaint. We recommend that you come in and speak to the Director or to a counselor about your experience and that you consider filing a complaint.

Your choices for following up include approaching the employer outside of Boalt's complaint process or taking advantage of the institutional structure provided in the formal or the informal Boalt complaint process. Students who are not satisfied with the outcome of an initial informal complaint may file a formal complaint.

For complete information about Boalt's complaint and enforcement procedures, see Career Services Handout #10.

### **Deciding how to follow up**

There are several important things to consider in choosing which approach to take, including the timing, whom to approach, how to approach them (in writing or orally) and whether you should do it directly or through an intermediary.

First, are you still willing to pursue employment with this organization or individual? If the answer is yes, it may affect your timing, among other matters. You may want to wait until after an offer has been made. On the other hand, if you don't want to work for this employer, you may want to raise the issue when, from the

employer's point of view, you have more to lose (rather than after you've been rejected), since it may lend more credibility to your complaint.

Second, do you want to handle this directly (which will require you to identify yourself) or remain anonymous and go through the Career Services Director as an intermediary?

Finally, what do you want to gain from the process? Raising the issue with the interviewer directly may provide you with a sense of having righted a wrong and may help you address the issue more easily in subsequent interviews. Additionally, addressing this kind of situation head-on may reflect positively on your professionalism and be quite impressive to the employer, particularly if you are informing the employer about one of its individual representatives who is doing harm by discriminating. On the other hand, addressing the issue with the institutional backing of Boalt Hall will underscore the seriousness of discrimination, provide some protection to you, and make sanctions available.

### Outside of the process

You may want to approach the employing organization or the interviewer after the interview directly in order to bring the inappropriate question or behavior to their attention.

### Informal Complaints

The informal complaint process is aimed at conciliation and goes through the Director of Career Services for an investigation. Students may retain confidentiality even though the complaint is filed. If the Director concludes that the employer's interviewing or hiring practices were improper, she will attempt to remedy the problem by encouraging the employer to take appropriate remedial action, including apologizing to the individual student or students, reaffirming its adherence to the school's policy, or modifying its practices. If either the student who files the informal complaint, the employer or the Director is dissatisfied with the results of the informal complaint procedure, the matter may be reviewed by the Dean. Students who are dissatisfied with the final outcome of the informal complaint procedures may file a formal complaint.

### Formal

The formal complaint procedures contemplate proceedings leading to a determination of whether Boalt's policies have been violated and the possible imposition of sanctions.

Under the formal procedures, if the Career Services Committee determines that a violation of Boalt's policies has occurred, it will recommend sanctions including but not limited to (1) placing the employer on probationary status, (2) requiring an apology to affected students, (3) identifying the employer in materials distributed to students as being in violation of Boalt's policy, and (4) suspension of interviewing privileges for one or more interviewing seasons.

### **Preparing for future interviews**

What will you do if you are asked a discriminatory question and you want to respond in a way that will not hurt your chances for a positive decision from the interviewer? You will need to think quickly about how serious a matter it is and how you wish to handle it. Your options include:

- 1) answer the question briefly and/or vaguely and change the subject;
- 2) ask tactfully why the question was asked and how it relates to the demands of the position;
- 3) respond to what you believe to be the underlying concern and ignore the presenting question. (For example, do they want to be reassured about your availability for overtime, travel, etc.);
- 4) fend off the question with humor. (Example: "This must be a test of how I would handle an

illegal question!");

- 5) choose not to answer and assert calmly that you do not see the question as relevant to your qualifications for the position. (You may or may not want to ease the discomfort of this moment by politely introducing a new topic of conversation.)

You may be in the strongest position if you have anticipated possible awkward questions and thought about what words and manner you would use to field them. Most of us are caught off guard when an interviewer asks something outrageous, and we stammer out an answer. Prepare for such situations by planning how you would respond. Some sample questions follow. Practice with them and/or think of other likely problem queries.

Sex discrimination:

(asked of women)

*Do you have plans for having children/family? What are your marriage plans? What does your husband do? The last woman we hired left in a year to have a baby.*

(asked of men)

*How would you feel working for a woman?*

Age discrimination:

*How old are you? What is your date of birth? How would you feel working for a person younger than you?*

National origin discrimination:

*Where were you born? Where were your parents born?*

Disability discrimination:

*What happened to you? How long have you been disabled? Can you get out of your wheel chair? I can't see how a person like you could have the stamina to stand up under the pressure of a legal job.*

Religious discrimination:

*What is your religion? What church do you attend? Do you hold any religious beliefs that would prevent you from working certain days of the week?*

Race or color discrimination:

*Wouldn't it be hard to be the only black in the office? Do you like salsa music? As an Asian woman, can you cope with tough litigators? Wouldn't you rather be working to help your people in a legal aid office?*

Other:

*What did your father do for a living? Do you own your own home?*

We can suggest possible responses, but you must determine the appropriate response if an employer behaves in a discriminatory way. Some students will try to handle the situation immediately in a fashion that doesn't interfere with their prospects for being hired; others will walk out of the interview; some will challenge the interviewer. Regardless of how you respond in the interview itself, you may follow up in many different ways. You may want to file a formal complaint against the employer. You may want to contact the employer in writing or orally to express your concerns, or have the Career Services Office raise the issue with the interviewer or the employer informally. The potential responses vary and the decision is yours.

Some students choose to introduce touchy topics themselves and to respond to what they believe are unvoiced

concerns. These students feel that while interviewers may avoid asking unlawful questions, they may act on mistaken assumptions about such groups as the disabled, single parents, second-career students. For more information including the actual laws that pertain to anti-discrimination, see Equal Employment Opportunity is...THE LAW [258] in the office of Career Services, published by the Equal Employment Opportunity Commission.

Attachment

Revised July 2000  
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