

**ADR**Profile

# Bias Buster

**The variety of neutral services provided by Bay Area attorney Barbara S. Bryant offers a genuine alternative to litigation.**

BY DEBORAH ROSENTHAL

**S**ome people grow up knowing what they want to be. Others, like Bay Area neutral Barbara S. Bryant, know what they want to do with their lives and let that commitment shape the course of their careers.

Bryant was raised by politically conscious Berkeley liberals who instilled in Bryant and her sister a sense of dedication to the fight for social justice and against discrimination and prejudice. With these guiding principals, Bryant obtained a bachelor's in psychology from the University of California, Berkeley, and then a master's in social work from the California State University, Sacramento.

After receiving her master's degree in 1975, however, Bryant decided that "it was a good time to do something nontraditional, if I was going to do it," and she sought work as a carpenter.

Bryant initially attempted to find a job through her local union, but on encountering discouragement and gender bias, she sought nonunion work and found a general contractor who "was ready to hire a woman and give her a try."

For the next two years, Bryant worked as a carpenter. She found great satisfaction in the physical nature of the work, the beauty of the setting (outdoors in the Oakland Hills), the support of her employer and the tangible fruits of her labor.

But Bryant continued to be driven by a desire to combat discrimination not only personally but professionally. In 1977, she enrolled in law school at Golden Gate University in San Francisco.

While in law school, Bryant became a class member in a lawsuit brought against the same carpenters' union through which she had earlier sought employment. The lawsuit alleged that the union, as well as various other local employers, had engaged in sex discrimination. Bryant was inspired by the plaintiffs'



Photo by S. Todd Rogers

**"One of the things that is so positive about the mediation process is that it supports broader communication..." says Bay Area neutral Barbara Bryant.**

attorney in that action, Alberta Blumen.

Blumen, Bryant says, was "a very brave and tenacious attorney" who, after many years and several appeals, ultimately prevailed in that action and obtained noteworthy redress for the class.

After graduating from law school with highest honors in 1980, Bryant clerked for Judge Marilyn Hall Patel in the U.S. District Court. She then worked as a staff attorney and supervisor of the administrative law unit at Solano County Legal Assistance in Vallejo, litigating and overseeing individual and class actions involving welfare rights, social security and domestic violence issues.

When Bryant left that position in 1983, her

work in the employment arena began in earnest. For the next five years, Bryant worked at the Oakland firm of Farnsworth, Saperstein & Seligman, where she represented employees in individual and class actions involving discrimination, harassment and civil rights claims, primarily in the employment setting.

In 1988, she ventured out on her own, establishing a solo practice in Oakland. Her focus broadened to include consulting and complaint investigation for public and private employers. In addition, her representation of individual plaintiffs expanded to include discrimination and harassment cases in nonemployment settings such as schools, housing and public accommodations.

In light of the social awareness with which she was raised, Bryant could not avoid becoming deeply involved in the evolution of employment law that took place in California in the 1980s and 1990s. She participated in a number of legal and bar associations, wrote amicus briefs in employment cases and served as a State Bar delegate, giving testimony in Sacramento about pending bills such as legislation to broaden the definition of sexual harassment.

When Bryant took her first case to mediation in the mid-1980s, she immediately became enamored of the process. In her view, traditional litigation encourages each side to focus exclusively on what the other side has done wrong, while mediation and other voluntary settlement processes encourage each side to better understand both perspectives and the role each played in contributing to a dispute.

Moreover, alternative dispute resolution allows the parties to consider a wider array of options for resolution and "saves money, time and emotional wear and tear on businesses and individuals," Bryant says.

# ADR Profile

Bryant started studying ADR and underwent training in the field. She also increasingly attempted to incorporate the principles of ADR — realistic case evaluation and collegiality with opposing counsel — into her legal practice.

In 1994, Bryant had her first opportunity to work as a neutral. Known in Alameda County for her work as chair of the county's judicial evaluation committee and the county bar association's gender bias committee, Bryant was asked to serve as a settlement commissioner for the Alameda County Superior Court.

From that point forward, Bryant's career gradually shifted from litigation to neutral work. In addition to participating in court settlement programs and working as a discovery referee, Bryant began conducting mediations and neutral evaluations. Her early referral sources frequently were opposing counsel from earlier cases.

Bryant also began conducting fact-finding investigations for employers whose employees had brought claims of discrimination or harassment. Bryant has found this work "very rewarding" because in each of the 10 such investigations she has conducted, the case resolved either before the complaint was filed or shortly thereafter, before active litigation.

As Bryant's ADR practice grew, she allowed her litigation practice to dwindle. In 1997, she stopped taking new cases as a litigator, and at the end of 1999, she became a full-time neutral. Her present practice consists of two-thirds mediation work and one-third neutral investigation and discovery referee appointments.

As a mediator, Bryant becomes involved in a case before any of the players near the conference room. She typically conducts a premediation conference call with counsel, often in conjunction with scheduling, in order

to assure that all of the right people — those with sufficient authority and knowledge of the case — will attend.

Other topics include prior settlement offers and positions, what counsel should expect in terms of Bryant's style and process and any other issues which counsel wish to broach before mediation. Bryant does not charge for her time associated with the call.

"I just do that because I feel it is such an important part of preparation," she says.

Bryant also encourages counsel to prepare briefs and exchange them with one another before meeting. The briefs, like the conference call, are intended to enable the opposing parties to develop, early on, a sense of how the other side sees the case and why.

When the formal mediation starts, Bryant begins with an introduction explaining her approach ("facilitative and evaluative") and her view of the mediation process: At least for that day, the parties "really are on the same side ...because we are not going to settle unless we can find terms on which everybody can agree."

"I try to encourage that feeling of mutual problem solving," she says.

Next, Bryant conducts a joint session in which counsel present opening statements. Bryant suggests that, rather than repeat the same arguments they have made in the past, the attorneys present information "that will best help the other side to understand why they have come to their position, and also, where practical, to acknowledge what they understand about the other side's position."

"One of the things that is so positive about the mediation process is that it supports broader communication and it helps people understand one another's position and what motivates them," Bryant says.

"Most people want a reasonable or fair outcome," she continues. "They start mediation with a very different idea of what that is, but mediation allows them to broaden their understanding of what that may be."

Bryant views each case as "a unique combination of parties, attorneys, issues and timing" and varies her approach based on these considerations.

San Francisco attorney George C. Leal, who represents both plaintiffs and defendants in employment and commercial cases, attests to Bryant's ability to be both tough and empathetic.

Earlier this summer, Bryant mediated a multiparty employment case involving eight defendants, including a school district, in which Leal and his co-counsel, Valerie O'Dell, represented the plaintiffs. Leal found that Bryant "brought a high level of empathy to both sides," but that she was also "very good at cutting through the litigators' hyperbole and hot air."

"I think she handles litigators like myself, who are strident, very well," Leal says. "She worked very hard to get the attorneys to the proverbial ballpark."

Margaret Hart Edwards, an attorney in the San Francisco office of Littler Mendelson, who represents exclusively management-side clients and has practiced employment law for 23 years, has had two mediated by Bryant.

In both cases, Bryant exhibited an admirable ability to handle "prickly personalities" and a willingness "to let everybody say what they really wanted to say, and then she reflected back to them in such a way that they genuinely had the feeling that she listened to them and understood them," Edwards says.

Bryant also exhibited what Edwards describes as "a real devotion to making a deal happen that was beyond my usual experience with mediators": When one of the cases did not settle during the mediation, Bryant continued the negotiations in follow-up telephone calls until the parties reached an agreement.

Leal had a similar experience with Bryant. At the end of the mediation, the parties were six figures apart, and Leal thought there was no chance of a pretrial settlement. However, Bryant made repeated calls to the attorneys on both sides in the weeks that followed.

"She was just dogged," Leal says. "She closed the gap, and we got a deal. ...She handled our case exceptionally."

Mark Rudy, a plaintiffs' attorney with the San Francisco law firm of Rudy, Exelrod, Zieff & True, has worked with Bryant as a mediator on several occasions and has found her highly effective.

"She bonds extremely well with the parties, [and] she is very patient and tolerant, which is essential in employment law matters," Rudy says.

Rudy believes that, because of Bryant's manner, her understanding of the law and her keen ability with regard to case evaluation, Bryant "is going to be one of the top mediators in the area for a long time to come."

Attorneys who have used Bryant's services as a mediator consider her to be "a consummate professional" and "a very fair-minded individual" with invaluable subject matter expertise in the fields of employment law, discrimination, harassment, class action and attorney-fee issues.

Since 1989, Bryant has taught a course on sexual harassment law at Boalt Hall, and she has spoken about dispute resolution to a variety of legal, judicial and ADR groups. Earlier this year, she was asked to serve as a mediation coach for the 1st District Court of Appeal pilot mediation training program.

Although her busy work life leaves little time for extra-curricular activities, Bryant's personal interests include gardening, reading, sports and various outdoor activities.

## SNAPSHOT

### Barbara S. Bryant

**ADR groups:** Independent

**Case types:** Employment matters; discrimination and harassment claims in both employment and nonemployment settings; discovery referee

**Service area:** California

**Law School:** Golden Gate University School of Law, 1980

**Career Highlights:** Professional neutral, investigator, discovery referee; staff attorney and supervisor, administrative law unit, Solano County Legal Assistance, Vallejo; law clerk, Judge Marilyn Hall Patel, U.S. District Court.