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**QUEER STUDIES I:  
AN EXAMINATION OF THE FIRST  
ELEVEN STUDIES OF SEXUAL  
ORIENTATION BIAS BY THE  
LEGAL PROFESSION**

Jennifer Durkin\*

INTRODUCTION

Professor William Rubenstein first approached me with the idea for this Article in November 1997. I thought that it would be interesting to read through the sexual orientation bias studies that have been done and to evaluate their similarities and differences.

I began my research by reading several of the reports. Then, I began Westlaw and Internet searches to look for other reports. Often, the reports themselves pointed me in the direction of other studies through references to findings of earlier studies.

Once I had copies of all of the studies I could find, I read through each of them. The summaries are organized chronologically so that it would be possible to draw some conclusions about how these studies have evolved over time.

The goal of my Article is to provide a research tool for organizations conducting future studies — one place to look for a quick overview of the studies to date with information about how to get copies of the studies and also to provide background information on the studies that would be useful when reading Professor Rubenstein's Article which follows.

In the summaries, I broke each study down according to its goals, methodology, findings, and recommendations. Each survey could be nicely categorized along these lines, and I thought

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\* J.D. candidate, UCLA School of Law, 1999; *UCLA Women's Law Journal* Co-Symposium Editor, 1997-98.

that presenting the information in this way would facilitate quick evaluations of particular aspects of all of the surveys.

I.

Title: *Creating an Environment Conducive to Diversity: A Guide for Legal Employers on Eliminating Sexual Orientation Discrimination*

Published by: The Bar Association of San Francisco  
Committee on Lesbian and Gay Issues<sup>1</sup>

Date Published: August 1991

The main task of the Bar Association of San Francisco Committee on Lesbian and Gay Issues ("BASF") that undertook this report was to identify the sexual orientation biases faced by gay and lesbian attorneys and the various ways in which these biases manifest themselves in the hiring, firing, and retention of gay and lesbian employees in the legal profession and law students.<sup>2</sup>

The Committee did not prepare a survey. Instead, it studied the responses to a 1988 survey by the Bay Area Lawyers for Individual Freedom that examined the employment experiences of gay and lesbian attorneys in San Francisco. The Committee also examined information collected by the National Gay and Lesbian Association ("NGLA").<sup>3</sup> Members of the San Francisco legal community were surveyed regarding the various issues faced by legal employers trying to create equal employment opportunity policies on sexual orientation.<sup>4</sup>

In the first footnote of the report, the Committee stated that collecting data documenting sexual orientation discrimination is especially difficult because many gay lawyers and law students are not willing to out themselves. Moreover, many law schools and legal employers do not collect statistics on the number of openly gay and lesbian students or employees.<sup>5</sup>

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1. For a copy of the report, contact: The Bar Association of San Francisco, Committee on Sexual Orientation Issues, 685 Market Street, Suite 700, San Francisco, CA 94105, (415) 982-1600.

2. COMM. ON LESBIAN AND GAY ISSUES, B. ASS'N OF SAN FRANCISCO, CREATING AN ENVIRONMENT CONDUCIVE TO DIVERSITY: A GUIDE FOR LEGAL EMPLOYERS ON ELIMINATING SEXUAL ORIENTATION DISCRIMINATION 1 (1991).

3. No further details about the type of information NGLA gathered, or from whom it was gathered, appears in the BASF report.

4. *Id.* at 1 n.1.

5. *Id.*

The Committee recommended twenty-three steps for San Francisco legal employers that would address sexual orientation bias in the workplace. BASF unanimously adopted a resolution endorsing the Committee's report in August 1991.<sup>6</sup>

The Committee identified the following three broad problem areas: (1) antidiscrimination policies; (2) recruitment and hiring; and (3) retention, advancement and compensation. Highlights of their recommended findings:

(1) *Antidiscrimination Policies:*

- Many employers fail to include prohibitions against sexual orientation discrimination or discrimination based on HIV status in their antidiscrimination policies.<sup>7</sup>

(2) *Recruitment and Hiring:*

- Recruiters and hiring committees may screen out applicants whose resumé's reflect involvement in gay and lesbian activities.
- Interviewers may make overtly anti-gay comments or may unintentionally alienate gay applicants through a particular line of questioning.<sup>8</sup>

(3) *Retention, Advancement, and Compensation:*

- Many firms have not tried to create a workplace that is hospitable for gay attorneys. One visible manifestation is that employees often feel comfortable making homophobic remarks or jokes in the office.<sup>9</sup>
- Employers may insist that openly gay attorneys keep their personal life separate from their professional life. At larger firms, socialization is an important part of an attorney's career and can often help in advancement and in making important contacts. Employers who do not welcome same-sex partners at firm functions make it more difficult for a gay attorney to succeed. The Committee found that this forced separation of personal and professional lives often increases the stress felt by gay and lesbian attorneys, which can lead to diminished productivity and a sense of isolation. This sense

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6. *Id.* at 1.

7. *Id.* at 5.

8. *Id.* at 6.

9. *Id.* at 8.

of isolation may lead to the loss of valuable gay and lesbian employees.<sup>10</sup>

- Many employers continue to assume that clients will not want to work with a gay lawyer.<sup>11</sup>
- Through the use of subjective adjectives in evaluations of job performance, some employers will condemn a gay attorney who comes out to a client or brings a partner to an office function for their "immaturity" or "bad judgment."<sup>12</sup>
- Many employers have not revised their personnel and benefits policies to ensure that gay attorneys are treated fairly.<sup>13</sup>

The Committee then made its twenty-three recommendations. Beneath each recommendation they included the names of firms that had these policies in place at the time the report was compiled.

(1) *Management Commitment to Equality and Diversity*: Employers need to make a commitment to equality and diversity in recruitment, hiring, retention, advancement, and compensation.<sup>14</sup>

(2) *Antidiscrimination and Equal Employment Opportunity Policies*: Employers should publish antidiscrimination policies, which specifically prohibit sexual orientation bias. Policies should also explain that AIDS and HIV-related conditions are treated the same way as any other disability.<sup>15</sup>

(3) *Training*: Training programs should be offered to educate employees about sexual orientation issues.<sup>16</sup>

(4) *Representation on Hiring Committees*: Employers should appoint at least one lesbian or gay attorney to the hiring committee. Having an openly gay attorney on the committee can help to educate other committee members about their overt or unconscious biases against lesbian and gay applicants.<sup>17</sup>

(5) *Recruitment Letters*: Employers should send recruitment letters to law school lesbian and gay student groups.<sup>18</sup>

(6) *Gay-Sensitive Contacts*: Firm employees sensitive to gay issues should be identified to applicants both during the initial in-

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10. *Id.* at 9-10.

11. *Id.* at 10.

12. *Id.*

13. *Id.* at 11.

14. *Id.* at 12.

15. *Id.* at 13.

16. *Id.*

17. *Id.* at 13-14.

18. *Id.* at 14.

terview process and in the recruitment material sent to law schools.<sup>19</sup>

(7) *Firm Resumés*: Firm resumés that include the *pro bono* activities of employees should include lesbian or gay-related *pro bono* services provided by members of the firm.<sup>20</sup>

(8) *Specialized Training for All Interviewers*: Training for interviewers should cover sensitivity to and awareness of sexual orientation issues.<sup>21</sup>

(9) *Welcome Packets*: If welcome packets are given to new employees, they should include information about community gay and lesbian resources as well as a copy of the firm's antidiscrimination policy.<sup>22</sup>

(10) *Mentoring Program*: A mentoring program can serve as a support structure within the firm. A mentor can serve as an advocate for the new lawyer. The mentor should be a partner or supervising attorney with a commitment and sensitivity to the role of mentor.<sup>23</sup>

(11) *Nondiscrimination in Performance Evaluations, Work Assignments and Grievance Procedures*: Employers need to promote fairness and objectivity in performance evaluations. Perceptions of client biases should not impact the work assignments given to gay and lesbian attorneys. The employer should also provide a neutral process for lodging grievances.<sup>24</sup>

(12) *Social Function Policy*: All invitations to office functions should use neutral terms such as "guest."<sup>25</sup>

(13) *"Spouse" Lists*: If spouse lists are kept, the employer should list the domestic partners of gay and lesbian employees who would like their partner to be listed.<sup>26</sup>

(14) *Professional Associations*: Employers should pay attorneys' membership dues to lesbian and gay professional associations if they pay dues for other professional associations.<sup>27</sup>

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19. *Id.*

20. *Id.*

21. *Id.* at 14-15.

22. *Id.* at 15.

23. *Id.*

24. *Id.* at 15-16.

25. *Id.* at 16.

26. *Id.*

27. *Id.* at 16-17.

(15) *Internal Newsletters*: If the firm has an employee newsletter, the employer should ensure that periodic articles relating to gay and lesbian issues appear within it.<sup>28</sup>

(16) *Informal Exchanges*: Employers should sponsor social events, such as dinners or lunches, for lesbian and gay attorneys.<sup>29</sup>

(17) *Lunch Programs*: If a firm has regular lunches that focus on particular legal issues, it should include programs on lesbian and gay legal issues.<sup>30</sup>

(18) *Health Benefits*: Health benefits should be offered equally to same-sex domestic partners and spouses, as well as to children of gay and lesbian couples.<sup>31</sup>

(19) *Parenting Leave*: Parenting leave policies should be gender-neutral and not require a biological relationship between the parent and child.<sup>32</sup>

(20) *Child Care*: If child care is provided to employees, it should be available to nonbiological children of employees as well.<sup>33</sup>

(21) *Care-Taking Policies and Bereavement Leave*: Caretaking leave should be allowed for the care of a domestic partner or an employee's nonbiological child. Bereavement leave should be allowed for the death of a domestic partner or the immediate relative of a domestic partner to the same extent it is permitted for married couples.<sup>34</sup>

(22) *Relocation Benefits*: Employers should reimburse new employees for the cost of relocating domestic partners if these expenses are reimbursed for the spouses of new employees.<sup>35</sup>

(23) *Employee Assistance Programs*: If benefits are made available to employees and their families, these benefits should apply equally to domestic partners and nonbiological children.<sup>36</sup>

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28. *Id.* at 17.

29. *Id.*

30. *Id.*

31. *Id.* at 17-18.

32. *Id.* at 18.

33. *Id.*

34. *Id.*

35. *Id.* at 19.

36. *Id.*

## II.

- Title: *Report on the Experience of Lesbians and Gay Men in the Legal Profession*
- Published by: The Record of the Association of the Bar of the City of New York ("ABCNY")<sup>37</sup>
- Prepared by: The Committee on Lesbians and Gay Men in the Legal Profession  
The Association of the Bar of the City of New York
- Date Published: August 1993

One of the goals of the Committee on Lesbians and Gay Men in the Legal Profession, which was formed in 1990, was to identify and eliminate "barriers to full participation in the legal profession faced by lesbians and gay men."<sup>38</sup> The survey was written and conducted by the Employment Practices Subcommittee of the Committee on Lesbians and Gay Men in the Legal Profession. A forty-three question survey was drafted to gather basic demographic data and anecdotal information from gay and lesbian attorneys in specific areas. The questions asked for yes or no answers as well as for explanatory comments. Survey participants could either identify themselves or remain anonymous.<sup>39</sup>

The Subcommittee received membership lists from organizations such as the Lesbian and Gay Law Association of Greater New York, Lamda, Gay and Lesbian Committee of the National Lawyers Guild and the American Civil Liberties Union Gay and Lesbian Rights Project. Members of the Subcommittee also sent copies of the survey to individuals who expressed an interest in distributing them. Over 600 copies were distributed and 229 completed surveys were returned.<sup>40</sup>

The demographic breakdown was as follows: Sixty-six percent of the participants were men. Sixty-four percent of the participants were gay men. Thirty percent were lesbians, three percent bisexual, and three percent straight. Ninety-two percent of participants were white. Fifty percent worked in law firms. Sixty-four percent were between the ages of thirty and forty.<sup>41</sup>

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37. For a copy of the report, call: (212) 382-6695.

38. Committee on Lesbian and Gay Men in the Legal Profession, *Report on the Experience of Lesbians and Gay Men in the Legal Profession*, 48 REC. ASS'N B. CITY N.Y. 843, 844 (1993).

39. *Id.* at 849.

40. *Id.* at 850.

41. *Id.* at 850-51.



The Committee acknowledged that the survey was not indicative of the experiences of lesbians and bisexual women or of non-white gay attorneys. The Committee is currently attempting to expand the input of people of color and women.<sup>42</sup>

The Committee also noted that, because of the method of dissemination, the results may not be a representative sample of what gay and lesbian lawyers experience or feel on certain issues because the participants were overwhelmingly out and members of gay legal organizations. For instance, the fear of adverse impact of coming out on the job is probably quite a bit higher among gay attorneys in general than is reflected in this report.<sup>43</sup>

After discussing the methodology of the report, the Subcommittee focused on each of the five specific areas targeted in the questionnaire: 1) hiring and retention; 2) discrimination, antidiscrimination policies and benefits; 3) visibility of lesbians and gay men at the workplace; 4) treatment or perceived treatment of lesbians and gay men; and 5) perceptions of the effect of being lesbian or gay on a legal career.

(1) *Hiring and Recruitment*: The information included in this section focused on the interview process. Nearly 70% of participants did not include any employment history or membership in organizations that might suggest that the person was gay.<sup>44</sup> However, approximately 15% of participants' employers told applicants that they sought diversity in the workplace and welcomed a "gay and lesbian perspective".<sup>45</sup>

(2) *Discrimination, Antidiscrimination Policies, and Benefits*: The Subcommittee solicited personal accounts of sexual orientation discrimination, written policies that prohibited discrimination, and employee benefits policies that extended to domestic partners of lesbian and gay employees.<sup>46</sup>

- *Discrimination*: Seventy-two percent of participants were unaware of specific incidents of discrimination against gay or lesbian attorneys being reported to management. Among participants who had personally experienced discrimination, only one in four reported the incident to a supervisor or a co-worker.<sup>47</sup>

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42. *Id.* at 851-52.

43. *Id.* at 851.

44. *Id.* at 852.

45. *Id.* at 853.

46. *Id.*

47. *Id.* at 854.

- **Employment Policies:** A slight majority of participants reported that their employers had formal policies and procedures that prohibit sexual orientation discrimination. However, only 24% of participants' employers had a formal grievance procedure to follow in reporting violations.<sup>48</sup>

- **Benefits:** About half of participants were given bereavement leave for their domestic partners and the partners' children. But only 3% had health coverage for domestic partners and the partners' children.<sup>49</sup>

(3) *Treatment or Perceived Treatment of Gay and Lesbian Attorneys:* Sixty percent of the participants replied that they were not aware of discriminatory attitudes or treatment from coworkers or clients. Among the 40% of participants who were aware of these attitudes, many mentioned that homophobic jokes were often exchanged in the workplace.<sup>50</sup>

(4) *Visibility at the Workplace:* Fifty-eight percent of participants were out to most people at their job. Another 30% reported that a small number of their coworkers were aware. A discussion on subtle ways that gay and lesbian attorneys are encouraged not to be out at the workplace follows.<sup>51</sup>

(5) *Participants' Perceptions of the Effects of Being Lesbian or Gay:* Fifty-four percent of participants felt that their sexual orientation negatively affected their ability to succeed in the legal profession.<sup>52</sup>

The report ends with a conclusory section on the direction to be taken and a set of recommendations for employers. The Commission particularly stressed the need for employers to implement concrete grievance procedures for employees to follow when filing a complaint about sexual orientation discrimination. Meaningful enforcement mechanisms need to be provided in order for the system to work effectively.<sup>53</sup>

- (1) Employers must be committed to equality and diversity in the workplace.
- (2) Employers should implement antidiscrimination and equal employment opportunity policies.

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48. *Id.* at 857.

49. *Id.*

50. *Id.* at 860.

51. *Id.* at 865-67.

52. *Id.* at 868.

53. *Id.* at 877.

- (3) Employers should provide comparable benefits to all employees.
- (4) Employers should employ greater sensitivity in the hiring process.
- (5) Employers should provide training on workplace-related issues affecting gays and lesbians.
- (6) Employers should eliminate discriminatory aspects of workplace conditions and practices.<sup>54</sup>

### III.

Title: *1991 Demographic Survey of the State Bar of California: Comparisons of Gay and Nongay State Bar Members*

Published by: The State Bar of California<sup>55</sup>  
 Standing Committee on Sexual Orientation  
 Discrimination ("CSOD")

Date Published: January 1994

Although the published version of this report provides no background information on the impetus for the survey or the methods used, there is some information about this survey in the introduction to the "Report and Recommendations Regarding Sexual Orientation Discrimination in the California Legal Profession" issued by the State Bar of California.<sup>56</sup> According to the report, in 1991, the State Bar of California distributed a demographic survey to 14,300 randomly selected active Bar members. SRI International reanalyzed that data in 1994, at CSOD's request, to determine if there were significant differences between the responses of self-identified gay attorneys and those of other participants.<sup>57</sup>

The survey poses four questions that assessed the following: (1) distribution of the participants by legal profession (solo practitioner, partner, associate, corporate in-house counsel, government attorney); (2) distribution by size of law firm; (3) distribution by income; and (4) percentage of time spent on uncompensated law-related activities. The data was analyzed and

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54. *Id.* at 878-82.

55. For a copy of the report, contact: Committee on Sexual Orientation Discrimination, The State Bar of California, 555 Franklin Street, San Francisco, CA 94102-4498, (415) 561-8200.

56. COMM. ON SEXUAL ORIENTATION DISCRIMINATION, THE STATE B. OF CAL., REP. AND RECOMMENDATIONS REGARDING SEXUAL ORIENTATION DISCRIMINATION IN THE CAL. LEGAL PROFESSION 2 (1996).

57. *Id.*

separated to reflect the responses from gay and non-gay attorneys in light of their age and by number of years in practice.<sup>58</sup>

The survey highlights each area where there was a statistically significant difference between gay and non-gay attorneys. These areas included: distribution by legal profession for those under forty, distribution by income for those over forty, and distribution by income for those with more than ten years of experience.<sup>59</sup>

The study provides no recommendations.

#### IV.

Title: *The Prevalence of Sexual Orientation  
Discrimination In The Legal Profession in  
Massachusetts*

Prepared by: The Massachusetts Lesbian and Gay Bar  
Association<sup>60</sup>

Date Published: March 1994

The Massachusetts Lesbian and Gay Bar Association ("MLGBA") conducted this survey to expose the prevalence of discrimination against gays and lesbians in the legal profession. Two hundred members of the MLGBA received copies of the surveys. Sixty-four (32%) completed surveys were returned.<sup>61</sup> Questions focused on discrimination in the workplace, anti-gay comments, treatment of openly gay or lesbian attorneys, and employment benefits.<sup>62</sup>

Although 69% of participants said they had not personally experienced sexual orientation discrimination and only 22% thought that being gay could negatively affect advancement, many participants gave anecdotal accounts of discrimination. Some responses mentioned perceived barriers to partnership. Others cited being passed over for advancement or quality work assignments.<sup>63</sup>

Participants were asked if they had heard anti-gay remarks or jokes made by coworkers or by judges and mediators.

58. SRI INT'L, 1991 DEMOGRAPHIC SURVEY OF THE STATE B. OF CAL.: COMPARISONS OF GAY AND NON-GAY STATE B. MEMBERS 1-4 (1994).

59. *Id.*

60. For a copy of the report, contact: The Massachusetts Lesbian and Gay Bar Association, P.O. Box 9072, Boston, MA 02111.

61. MASS. LESBIAN AND GAY B. ASS'N, THE PREVALENCE OF SEXUAL ORIENTATION DISCRIMINATION IN THE LEGAL PROFESSION IN MASS. 1 (1994).

62. *Id.*

63. *Id.*

Twenty-three percent of participants had heard these types of remarks while at work and 14% had heard these comments made by judges or mediators. In their written comments, several participants suggested that questions about the frequency of anti-gay comments should also have investigated comments by clerks, court officers, and opposing counsel.<sup>64</sup>

A full 82% of participants were out to their supervisors or some of their coworkers. Sixty-six percent of participants stated they avoided working for law firms thought to be hostile to gays and lesbians. The majority of participants (75%) did not receive employee benefits, such as health insurance, for their domestic partners.<sup>65</sup>

The report suggests that further surveys should be conducted so as to include both gay and non-gay attorneys. Surveys should address such issues as differences in career paths, salary, and promotion between gay and non-gay attorneys. The report also recommends the development of mechanisms for the reduction of discriminatory comments made in the workplace and courtroom. Written guidelines prohibiting such comments, bias workshops, and the establishment of a special task force are examples of such mechanisms.<sup>66</sup>

#### V.

Title: *The Los Angeles County Bar Association  
Report on Sexual Orientation Bias*  
Published by: Southern California Review of Law and  
Women's Studies  
Prepared by: The Los Angeles County Bar Association  
Committee on Sexual Orientation Bias<sup>67</sup>  
Date Published: Spring 1995

The Los Angeles County Bar Association ("LACBA") asked the Committee on Sexual Orientation Bias ("the Committee") to begin researching sexual orientation bias in late 1992. The goal of the report was to determine if LACBA should adopt and advocate a policy among legal employers on sexual orientation bias in the workplace.<sup>68</sup>

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64. *Id.* at 2.

65. *Id.* at 3.

66. *Id.* at 4-5.

67. For a copy of the report, see: 4 S. CAL. REV. L. & WOMEN'S STUD. 297 (1995).

68. 4 S. CAL. REV. L. & WOMEN'S STUD. 297, 308 (1995).

Prior to beginning its own study, the Committee read the reports already published by BASF and ABCNY. The Committee divided into two subcommittees. One group was responsible for researching the policies of legal employers relating to gay and lesbian attorney employees. The other studied the perceptions of attorneys concerning sexual orientation discrimination.<sup>69</sup> The Committee drafted surveys and interpreted the responses it received with the help of Dr. Curtis F. Shepard, then-Acting Director of UCLA's Student Affairs Information and Research Office, who served as an in-house research consultant.

Two different surveys were developed: one for individual attorneys ("Attorney Survey"), and one for the managing partners at a variety of types of legal employers ("Employer Survey"). The Attorney Survey examined attitudes on sexual orientation discrimination and the effect that sexual orientation had on the working life of gay and lesbian attorneys. This survey was mailed to a random sample of 1,634 LACBA members as well as to 550 attorneys who belonged to local gay bar associations. The response rate was approximately 20%, with 16% returned from the LACBA random sample and 31% returned from the targeted gay and lesbian attorney sample. The Employer Survey was quite similar to the Attorney Survey, but it contained additional questions intended to elicit information on specific employer policies. This survey was sent to a random sample of 440 Los Angeles County legal employers. The response rate to the Employer Survey was 17%.<sup>70</sup>

The Committee also conducted four focus group discussions to collect personal stories from gay and lesbian attorneys that reflected their experiences of sexual orientation discrimination. These focus groups had between eight and twelve attorneys, and a total of thirty-eight gay and lesbian attorneys participated. All but three of these attorneys were out to at least some people at work. The Committee also used statistics compiled by the State Bar Demographic survey to supplement the information gathered from the LACBA surveys.<sup>71</sup>

The findings of the report are divided into four sections: (1) sexual orientation discrimination in employment; (2) the visibility of gay and lesbian attorneys in the legal profession; (3) employer policies against sexual orientation discrimination; and (4)

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69. *Id.* at 309.

70. *Id.*

71. *Id.* at 310.

reaction to the Committee's study. Following the findings are a list of recommendations endorsed by the Committee.

(1) *Sexual Orientation Discrimination in Employment*

- *Recruitment and Hiring:* The Attorney Surveys revealed that 15% of participants believed that their employer discriminated in considering an applicant who is gay or perceived to be gay. Approximately the same percentage of participants actually witnessed or experienced anti-gay bias in the hiring process.<sup>72</sup>
- *General Work Environment:* Forty percent of the Attorney Survey participants believed that their work environment was less hospitable to gay and lesbian attorneys than it was to heterosexual attorneys. Sixty-six percent reported that attorneys in their office make homophobic comments or jokes. Many participants attribute this to a lack of awareness about gay people or gay-related issues.<sup>73</sup> Attorneys reported that unconscious bias against gay and lesbian attorneys has a negative impact on the work environment.<sup>74</sup>
- *Work Assignments:* Approximately 15% of Attorney Survey participants said that clients have expressed a desire not to work with gay attorneys. Similarly, over 12% report that partners in their office have expressed the same preference. Eleven percent of participants in the Attorney Survey report that they had knowledge of, or had themselves experienced, sexual orientation discrimination in the distribution of work assignments.<sup>75</sup>
- *Evaluations, Promotions and Advancement:* Seventeen percent of Attorney Survey participants felt that their employer disfavored gay and lesbian attorneys when making decisions about promotions and advancement. The report stated that discrimination was more prevalent in promotions than in hiring and retention because the criteria used for advancement was much more subjective than that used for hiring. Discrimination is easier to hide because many factors are evaluated when considering someone for advancement.<sup>76</sup>

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72. *Id.* at 311.

73. *Id.* at 314-17.

74. *Id.* at 319-20.

75. *Id.* at 320-21.

76. *Id.* at 322-26.

- *Retention and Career Path*: The data in this section comes largely from the State Bar Demographic Survey. However, the Attorney Survey seems to support these statistics, suggesting that gay and lesbian attorneys were generally less satisfied with their jobs than heterosexual attorneys and that much of this dissatisfaction stems from a perception that they were at a disadvantage because of their sexual orientation.<sup>77</sup>

- *Compensation*: Almost 30% of Attorney Survey participants believed that gay and lesbian attorneys probably received compensation which was less than their heterosexual counterparts. Gay and lesbian attorneys also fared worse than their heterosexual counterparts because of employee benefit policies. Almost two-thirds of the gay Attorney Survey participants and half of all the Attorney Survey participants felt that their employers had not made an effort to ensure that the domestic partners or lesbian and gay attorneys had access to the same employee benefits as spouses of heterosexual attorneys.<sup>78</sup>

(2) *Visibility of Gay and Lesbian Attorneys in the Profession*

- *"The Closet" as Evidence of Sexual Orientation Discrimination*: A slight majority of gay Attorney Survey participants report that they were out to most of their superiors. Only 39% were out to most of their coworkers. Fewer than 10% were out to clients, judges, or opposing counsel. The report emphasized the stress and emotional cost that comes from being in the closet. This was reflected both in the survey responses and in the focus groups.<sup>79</sup>

- *Employer Pressure to Remain "Closeted"*: Nearly 25% of gay Attorney Survey participants reported that lawyers in their offices said that being openly gay demonstrated poor judgment. Almost 75% of participants believed that it would harm a gay or lesbian attorney's career to "come out" to clients. Gay participants were more likely to think that their career could be harmed by "coming out."<sup>80</sup>

- *Social and Professional Relations Between Gay and Heterosexual Attorneys*: The questions in the survey that

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77. *Id.* at 326-27.

78. *Id.* at 329-32.

79. *Id.* at 338-39.

80. *Id.* at 340-42.



prompted the most written comments were those that dealt with bringing a same-sex partner to office social events. Many participants wrote that the attitudes of coworkers towards them began to change after they brought a same-sex partner to an event. Other participants who chose not to bring partners to these social events felt isolated from the social networking that takes place at firm events.<sup>81</sup>

(3) *Employer Policies Against Sexual Orientation Discrimination*

- *The Prevalence of Nondiscrimination Policies:* Approximately 67% of Employer Survey participants stated that their firm had a nondiscrimination policy that expressly addressed sexual orientation discrimination.<sup>82</sup>

- *The Implementation of Nondiscrimination Policies:* The responses to both Attorney and Employer surveys indicated that nondiscrimination policies have not eliminated sexual orientation discrimination.<sup>83</sup> Many Attorney Survey participants did not feel that nondiscrimination policies were respected in recruiting and hiring. Thirty-three percent of Attorney Survey participants believe that their employer did not take steps to guarantee that performance reviews and work assignments were not affected by sexual orientation bias.<sup>84</sup>

- *The Awareness of Bias and Response to Complaints:* There was a wide disparity in responses to the Employer and Attorney Surveys regarding the prevalence of homophobic comments and jokes. Only 26% of Employer Survey participants stated they were aware of homophobic comments or jokes in the workplace, in contrast to almost 66% of Attorney Survey participants. The report hypothesized that this difference could be because the problem was not being reported to employers.<sup>85</sup>

- *The Communication of Nondiscrimination Policies:* Participants to both surveys indicated that employers need to more clearly communicate their sexual orientation nondiscrimination policy. Over 55% of Employer Survey partici-

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81. *Id.* at 345-46.

82. *Id.* at 349.

83. *Id.* at 350.

84. *Id.* at 352.

85. *Id.* at 354-55.

pants stated that their firms did not include sexual orientation bias in education programs addressing bias issues.<sup>86</sup>

(4) *The Reaction to the Study and the Committee Itself:*

- The Committee's experience in conducting this study provided evidence of anti-gay bias within the legal profession. The average response rate to mail questionnaires is between 20% and 30%. The response rate here was significantly smaller. The Committee received many angry responses to the bar association's use of member dues to fund such a survey.<sup>87</sup>

The report concludes with a series of six recommendations for legal employers and five recommendations for the LACBA.

*Recommendations for Employers*

- *Adopt, Implement, and Publicize a Nondiscrimination Policy Relating to Gay Attorneys:* Employers should adopt nondiscrimination policies that expressly cover sexual orientation. Procedures for filing grievances should be publicized, and complaints should be taken seriously and investigated quickly.<sup>88</sup>
- *Encourage Nondiscriminatory Recruitment and Hiring of Qualified Gay Attorneys:* Interviewers should be trained so as to eliminate even subtle bias against sexual orientation. Gay attorneys presently employed in an office should be involved in the hiring process and a list of supportive contact attorneys should be provided to applicants.<sup>89</sup>
- *Promote a Workplace Climate That Ensures Equal Employment Opportunity for Gay Attorneys:* Employers should ensure that work assignments, performance evaluations, compensation, and promotion are not withheld because of an attorney's sexual orientation. Employers should provide education and sensitivity training about sexual orientation bias.<sup>90</sup>
- *Provide Gay Attorneys and Their Same-Sex Domestic Partners with Employee Benefits Comparable to Those Pro-*

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86. *Id.* at 356-57.

87. *Id.* at 357-58.

88. *Id.* at 360-61.

89. *Id.* at 361.

90. *Id.* at 361-62.

*vided to Heterosexual Attorneys and Their Opposite-Sex Spouses:* Particularly important are health insurance benefits for same-sex partners. If employees cannot get coverage for their same-sex domestic partner, employers should help them find individual coverage and contribute the same amount towards this coverage as they would for a spouse. Employers should also grant sick leave, caretaking leave, bereavement leave, and parenting leave to gay and heterosexual attorneys equally.<sup>91</sup>

- *Provide Gay Couples the Same Opportunities to Socialize with Colleagues as Heterosexual Couples:* Employers should provide same-sex couples the same chance to socialize with coworkers and colleagues that they provide heterosexual couples. Invitations should use terms such as “partner” or “significant other,” instead of “spouse.”<sup>92</sup>

- *Do Not Encourage Gay Attorneys to Be “Closeted” at Work or in Their Professional Activities:* Employers need to allow gay employees to be open about their sexual orientation. The goal for the office should be to create an atmosphere of acceptance.<sup>93</sup>

#### *Recommendations for LACBA*

- *Publish this Report:* If the LACBA widely distributes this report, much needed educational materials about sexual orientation issues will be available to people within the legal profession.

- *Encourage Employers to Implement the Recommendations:* The LACBA should provide model policies for member employers to follow as well as other assistance for employers who wish to implement these recommendations.

- *Provide Information on Domestic Partner Benefits:* LACBA should act as a clearinghouse for information on the options available for domestic partner benefits.

- *Sponsor and Promote Relevant CLE Programs:* The LACBA should offer continuing legal education programs that cover sexual orientation bias.

- *Sponsor Programs to Counteract Sexual Orientation Discrimination:* The LACBA should sponsor support groups,

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91. *Id.* at 363.

92. *Id.* at 364.

93. *Id.*

mentoring, and other programs that will help counteract the effects of sexual orientation bias in the legal profession.<sup>94</sup>

## VI.

Title: *Legal Employers' Barriers to Advancement and Economic Equality Based Upon Sexual Orientation*

Published by: The Hennepin County Bar Association<sup>95</sup>  
Lesbian and Gay Issues Subcommittee

Date Published: June–August 1995

This report was produced by a subcommittee of the Hennepin County Bar Association (“HCBA”) Diversity Committee. In the Fall of 1994, the Committee asked the Subcommittee to investigate the extent of sexual orientation bias in the legal communities of the Twin Cities.<sup>96</sup> The Twin Cities have civil rights protections and nondiscrimination ordinances that prohibit sexual orientation discrimination. The subcommittee hoped the report would help law offices comply more fully with these Human Rights Act requirements. In addition, the recommendations contained within the report are geared towards creating a working environment in which all employees are able to fulfill their potential.<sup>97</sup>

The report does not go into great detail about the methods used to gather information. The subcommittee published advertisements in legal and community periodicals judged most likely to be read by gay and lesbian professionals. The advertisements invited people to contact the subcommittee if they were interested in participating in the interviews. Between January and February 1995, nine sessions of group and individual interviews were held. Subcommittee members moderated and recorded these interviews. Additional individual interviews were held through June 1995. There is no numerical breakdown of any kind, even in terms of how many people were interviewed or their gender distribution.

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94. *Id.* at 365-66.

95. For a copy of this report, contact: Hennepin County Bar Association, Minnesota Law Center #350, 514 Nicollet Mall, Minneapolis, MN 55402-1021, (612) 340-0022.

96. LESBIAN AND GAY ISSUES SUBCOMM., HENNEPIN COUNTY B. ASS'N, LEGAL EMPLOYERS' BARRIERS TO ADVANCEMENT AND TO ECONOMIC EQUALITY BASED UPON SEXUAL ORIENTATION 1 (1995).

97. *Id.* at 5.

The participants were asked the following: (1) Is there a glass ceiling for lesbian, gay, bisexual, and transgender lawyers? (2) Are lesbian, gay, bisexual, and transgender lawyers retained and promoted equally with heterosexual attorneys? (3) What are attorneys and legal employers doing to correct problems that exist? and (4) Which programs have worked and which have not?<sup>98</sup> The subcommittee acknowledged that it was difficult to gather information from those people who are probably most seriously affected by sexual orientation bias because they have the most to lose and often remain closeted.

The subcommittee included a section on the terminology used in the report. It discussed the various terms that are used to describe sexual orientation both in statutory language and during the interviews. The report focuses on issues relating to sexual orientation and the workplace. It gives some background information on problems gay and lesbian employees faced in the workplace, including domestic partner benefits, personal leave policies, and equal opportunity statements that include protection for gay and lesbian employees.<sup>99</sup>

The report also examines sexual orientation discrimination. Minnesota has civil rights protections for gays and lesbians, and the Twin Cities have nondiscrimination policies that prohibit sexual orientation discrimination. The report stresses the need to not only meet the basic requirements of these statutes, but to effectuate workplace policies consistent with the spirit of the statutes. The report concludes that legal workplaces free of disrespectful and unlawful treatment lead to higher productivity and allow employers to provide more creative and effective services to their clients.<sup>100</sup>

A discussion follows about the obstacles faced in conducting the investigation, such as identifying closeted attorneys and legal professionals as well as the fact that no bisexual or transgender people responded to the advertisements. The report also emphasizes the link between sexual orientation, race, and gender bias. Because race, gender, and sexual orientation are not mutually exclusive traits, when legal employers address sexual orientation bias, they may help people of color and women who also happen to be gay or lesbian.<sup>101</sup>

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98. *Id.* at 12.

99. *Id.* at 2-4.

100. *Id.* at 5-6.

101. *Id.* at 7-9.

The subcommittee then summarized the seven findings of the report:

(1) *The Pressure to Remain Closeted Impairs the Productivity of Lawyers and Legal Professionals*: Interviewees experienced workplace pressure to remain closeted, in the form of overt hostility, unequal treatment, and other behavior. The participants dealt with this antagonism in a variety of ways ranging from hiding their sexual orientation to confrontation. These alternatives raise anxiety and tension, resulting in a loss of productivity. Dealing with the pressure takes time and energy that would otherwise contribute to the attorney's productivity. Many of the interviewees reported that once they came out, their performance reviews became less satisfactory, a fact attributed in the report to the highly subjective nature of these evaluations.<sup>102</sup>

(2) *There Is Broad Variation in the Ways Law Offices and Other Legal Employers Approach and Address Sexual Orientation Issues*: Interviewees who worked in the public or nonprofit legal sector reported that their employers were making progress in dealing with issues surrounding sexual orientation. Unfortunately, interviewees who were employed at private law firms reported much slower progress. Some firms allowed interviewees to work to change policies and to create a domestic partner benefit plan. Other firms did not consider sexual orientation issues to be a relevant issue for their diversity committees.<sup>103</sup>

(3) *Private Law Firms in Particular Tend to View Lesbian and Gay Lawyers and Legal Professionals as a Threat to the Employer*: Law firms worried that diversity initiatives may upset team-building efforts and disrupt a cooperative work environment. Many firms were concerned with making sure that their clients relate well to the lawyers assigned to represent them. Firm managers were often reluctant to assign an openly gay attorney to many clients due to their fear of potentially negative reactions from clients.<sup>104</sup>

(4) *Tension Exists in the Law Firm Environment Because of Uncertainty About the Boundary Between Professional and Personal Lives*: There was a general consensus among the interviewees that lesbians and gay men were excluded from the social culture of the firm — an important part of the firm dynamic that can affect an associate's future success. Many of those interviewed

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102. *Id.* at 14-16.

103. *Id.* at 20.

104. *Id.* at 23-24.

worried that it was considered inappropriate for them to discuss their personal lives with colleagues or with clients or to bring same-sex partners to employer-sponsored social events.<sup>105</sup>

(5) *Openness and Acceptance Toward Lesbian and Gay Employees in Some Law Offices Seems Inversely Proportional to the Degree of Authority and Responsibility Held by Such Employees:* The subcommittee reached the conclusion that there was a noticeable problem in the way that openly gay and lesbian attorneys are treated. Often, the longer an openly gay attorney was with a firm and the more often they came up for advancement, the more obvious it becomes that they are not promoted. A glass ceiling seems to operate against openly gay and lesbian attorneys, holding them back from reaching high levels of authority and seniority at a firm.<sup>106</sup>

(6) *The Legal Profession Communicates a Powerful Message to Lesbian and Gay Law Students — If You Want a Job, Pretend You Are Straight:* Students<sup>107</sup> believe that openly gay and lesbian attorneys will not advance in law firms and will probably lose their jobs after a short time. The report states that law students often remain closeted because they see no positive role models in the profession.<sup>108</sup>

(7) *A Law Office Environment That Encourages Lesbians and Gay Men to Hide Their Sexual Orientation Imposes a "Code Of Silence" Regarding Their Personal and Family Life That Does Not Apply to Heterosexual People in the Office:* Law offices pressured their gay and lesbian employees to stay silent about significant aspects of their personal or family lives. Meanwhile, heterosexuals are allowed considerably more freedom to discuss their personal or family lives. The report states that this "code of silence" imposes stress and isolation on gay and lesbian employees. The "code of silence" is identified as one of the major roadblocks to achieving the protection against discrimination granted by law.<sup>109</sup>

The report makes seven recommendations that should be implemented by legal employers to ameliorate the problems discussed above:

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105. *Id.* at 29-30.

106. *Id.* at 33.

107. The report does not state whether students participated in the interviews or if the subcommittee gathered this information from reading the reports of other bar associations.

108. *Id.* at 35-36.

109. *Id.* at 37-38.

(1) *To Maximize Productivity and to Comply with Human Rights Law, Law Offices Should Not Impose Explicitly or Implicitly, the Need to Be Closeted:*

- Upper level management need to act as leaders within the firm and clearly show their support for sexual orientation diversity initiatives.
- Law offices cannot allow homophobic jokes or comments to be made in the workplace environment.
- Employers should not ask employees to remain silent regarding their sexual orientation when interacting with clients.
- Employee job evaluations should not include subjective comments that may reflect the reviewer's personal biases.<sup>110</sup>

(2) *Legal Employers Can Take Meaningful Steps to Make Work Environments Less Hostile to Lesbian and Gay Employees:*

- Sexual orientation should be added to all legal employers' nondiscrimination policies.
- Employers should ensure that forums are created in which employees can discuss diversity issues and be educated about them.
- Any benefits extended to married employees should also be extended to the domestic partners of employees.<sup>111</sup>

(3) *Lawyers in Positions of Responsibility Should Send an Unequivocal Message That the Legal Employer Will Provide Equal Opportunities to Lesbian and Gay Lawyers:*

- Firms should begin to educate their clients about antidiscrimination laws that cover sexual orientation.
- The HCBA Diversity Committee should create programs to encourage legal employers to discuss sexual orientation issues with employees and clients.
- Attorneys who support their employers' nondiscrimination policy should make this support known to other employees.<sup>112</sup>

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110. *Id.* at 39-41.

111. *Id.* at 42-43.

112. *Id.* at 45.



(4) *Open Dialog and Policy Development Can Help Articulate the Boundaries Between Professional and Private Lives of Employees in the Legal Profession:*

- Firms should develop a concrete list of expectations to govern the boundaries between personal and professional life.
- Firm directories that include opposite-sex partners should include same-sex partners.
- Firm invitations should include the term "significant other" rather than "spouse."<sup>113</sup>

(5) *Legal Employers Should Not Allow Any Evaluation of Whether an Employee "Fits In" to the Office Environment to Be Influenced by Bias Against Sexual Orientation:*

- Legal employers should be aware of subjective criteria that is used when determining the evaluation or promotion of an employee.
- Subjective criteria cannot be used to inject a bias against openly gay and lesbian attorneys into the advancement process.
- A determination may not be made that the sexual orientation of an attorney prevents them from "fitting in" to the firm environment.<sup>114</sup>

(6) *Law Schools with the Support of Legal Employers Should Develop Outreach Programs to Mentor, Encourage, and Recruit Lesbian and Gay Law Students:*

- Law schools should include sexual orientation in their antidiscrimination policy. Law school curricula should have material that deals with sexual orientation issues.<sup>115</sup>

(7) *Confidentiality Agreements Entered into with an Employee Who Has Alleged Discrimination Should Not Impose Any Confidentiality Obligation Limiting Disclosure of the Circumstances of the Alleged Discrimination:*

- This recommendation is urged because, if an employee cannot share the details of alleged discrimination, other les-

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113. *Id.* at 46-47.

114. *Id.* at 48.

115. *Id.* at 49.

bian and gay attorneys will not have the necessary information to determine their true position within a firm.<sup>116</sup>

## VII.

Title: *In Pursuit of Equality: The Final Report Of The King County Bar Association Task Force On Lesbian And Gay Issues In The Legal Profession*

Published by: King County Bar Association<sup>117</sup>  
Task Force On Lesbian and Gay Issues In  
The Legal Profession

Date Published: September 1995

The King County Bar Association ("KCBA") created a special task force of judges and lawyers and gay and heterosexual legal professionals to examine sexual orientation discrimination in the legal profession.<sup>118</sup> The task force divided into five working committees: (1) the judicial committee; (2) the education committee; (3) the employment committee; (4) the communications committee; and (5) the law review committee.<sup>119</sup>

The report begins with a discussion about the general societal bias against lesbians and gay men. The bias found within the legal profession is then tied into this more broad-based societal bias, because people working in the legal profession are products of society as a whole and share many of the same biases. The Committee highlights the reasons that the legal field should be at the forefront of changing societal attitudes towards lesbians and gay men. First, because lawyers have a high level of education, they are often in a position in which to create social change. Also, there are many attorneys who truly want to make a difference. Finally, by tolerating bias within the legal profession and the legal system, attorneys perpetuate the larger effects of bias on society as a whole. Lawyers are crucially important in the struggle against homophobia because they interpret and apply

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116. *Id.* at 50.

117. For a copy of the report, contact: King County Bar Association, 600 Bank of California Building, 900 Fourth Avenue, Seattle, WA 98164, (206) 624-9365.

118. TASK FORCE ON LESBIAN AND GAY ISSUES IN THE LEGAL PROFESSION, KING COUNTY B. ASS'N, IN PURSUIT OF EQUALITY: THE FINAL REP. OF THE KING COUNTY B. ASS'N TASK FORCE ON LESBIAN AND GAY ISSUES IN THE LEGAL PROFESSION 1 (1995).

119. *Id.* at 62.

the laws and help shape public policy. These are activities that clearly impact society on a broad scale.<sup>120</sup>

The Employment Committee put together two surveys: one for the managing partners at local law firms and the other for gay and lesbian attorneys. The Employment Committee sent 173 surveys to law firms. A total of fifty-one firms completed the survey, a 29% response rate. Thirteen of the seventeen larger firms in Washington state responded.<sup>121</sup> The survey was intended to uncover firm policies regarding gay and lesbian attorneys. The attorney survey was sent to 120 attorneys who were members of the King County gay bar association. Forty-five responses were returned. The Employment Committee noted that some of the employee responses might be skewed because they reflected the views of openly gay attorneys. The survey was also completed primarily by young attorneys new to the profession.<sup>122</sup>

The majority of law firms reported that they were not aware of any lesbian or gay attorneys working for them. The ten largest firms to reply employed over 1,000 attorneys between them. These firms reported that they employed a total of only seventeen openly gay attorneys.<sup>123</sup> Although both King County and Seattle prohibit sexual orientation discrimination in employment, very few of the firms with antidiscrimination policies prohibited sexual orientation discrimination.<sup>124</sup>

The report discusses the disproportionate number of gay and lesbian lawyers who work outside of the large law firm setting and who consequently made significantly less than most heterosexual attorneys. Relative compensation is also decreased by the benefits packages offered to gay and lesbian attorneys because they do not cover same-sex partners.<sup>125</sup>

The Employment Committee concluded that anti-gay bias negatively impacted many aspects of gay and lesbian attorneys' work. Client development opportunities were hindered because of fear from upper level partners that clients would not respond well to a gay attorney. Thus, work assignments were altered, and many attorneys reported an inability to get to know clients and

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120. *Id.* at 13.

121. *Id.* at 65.

122. *Id.* at 67.

123. *Id.* at 66.

124. *Id.* at 20.

125. *Id.* at 22.

work with them over time. This treatment also affected performance evaluations and advancement within the firm.<sup>126</sup>

The negative treatment of openly gay attorneys forced others to remain in the closet. Many participants reported that, when they were still in the closet at work, the stress they experienced negatively impacted their emotional health. However, openly gay attorneys reported that they too began to yearn for a safer working environment and often moved from larger, private firms to nonprofit legal work or the public sector. This indicates that openly gay attorneys did not find large private firms hospitable to them once their true sexual orientation was revealed.<sup>127</sup>

The report also addresses bias in the courts. Most of this information was gathered from experiences of task force members or written comments by attorneys returning the employment surveys.

It was noted that litigants are often hesitant to enter the legal system if they are not out because the courts are seen as a difficult place to maintain privacy. Fears included the introduction of evidence relating to a litigant's sexual orientation when it was irrelevant to the case. Even for those litigants who were openly gay, there was doubt that justice would be delivered equally to heterosexuals and homosexuals. Judges, juries, and attorneys reflected the same general bias against homosexuals.<sup>128</sup>

The report discussed gay and lesbian advocates. Because there is little reason for advocates to be open about their sexual orientation to the judge or jury, most prefer not to reveal this information. Some attorneys reported that at times opposing counsel made homophobic comments directed at gay attorneys in open court. There were no openly lesbian or gay judges in Washington State. However, the Mayor of Seattle invited representatives of the gay bar association to participate with KCBA to screen applicants for the bench.<sup>129</sup>

The survey listed sixty recommendations for employers, law schools, the courts, the legislature, individuals, and KCBA.<sup>130</sup>

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126. *Id.* at 23-24.

127. *Id.* at 26-28.

128. *Id.* at 33-35.

129. *Id.* at 37-38.

130. *Id.* at 40-41.

## VIII.

- Title: *Report of Findings From The Survey On  
Barrier and Opportunities Relating to Sexual  
Orientation*
- Prepared by: Association of the Bar of the City of New  
York<sup>131</sup>  
Special Committee on Lesbians and Gay  
Men in the Legal Profession
- Date Published: March 1996

The Association of the Bar of the City of New York ("ABCNY") Special Committee on Lesbians and Gay Men in the Legal Profession's purpose was to identify and develop ways to eliminate the obstacles that prevent the full participation of lesbians and gay men in the legal profession. One of the most important areas that the committee focused on was studying the state court system. The court system was thought to be of particular importance because the courtroom is often an attorney's working environment. Moreover, the court system is viewed as the embodiment of law, morality, and equality in society. Therefore, it is crucial that the courts not be perceived as tolerating or endorsing discriminatory attitudes or behavior.<sup>132</sup>

This report summarizes the results received from a survey conducted by the subcommittee. The survey was designed with the assistance of the Partnership for Community Health, Inc., a nonprofit research group specializing in quantitative and qualitative research. The Partnership also worked with the subcommittee to evaluate the survey data and with the preparation of the report.<sup>133</sup> The survey was sent to all of the lawyers who worked for the Legal Aid Society in New York City. A total of 1,099 questionnaires were sent out and 229, or 21%, were completed and returned. The Special Committee targeted Legal Aid attorneys because they practice in all of the civil and criminal courts in New York City. It was thought that their experiences would be indicative of what is experienced by attorneys when interacting in the court system. The survey was three pages in length and was intended to gauge the extent of positive or negative comments and actions regarding sexual orientation that took place in the

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131. For a copy of the report, call: (212) 382-6695.

132. Special Comm. on Lesbians and Gay Men in the Profession, *Rep. of Findings from the Survey on Barriers and Opportunities Related to Sexual Orientation*, 51 REC. ASS'N B. CITY N.Y. 130, 130-31 (1996).

133. *Id.* at 131 n.2.

courtroom. The survey was comprised of a series of closed-ended questions to determine the awareness and frequency of positive and negative actions and comments in the courtroom towards lesbians and gay men. There was also a set of open-ended questions, designed to elicit details about the type of comments or actions that had been reported.<sup>134</sup>

Of the 229 completed surveys, only 12% of participants identified themselves as gay (4%), lesbian (5%) or bisexual (3%). Fifty-one percent of the participants were women. Ninety-four percent of the participants stated that they frequently or sometimes appeared in court.<sup>135</sup>

Almost 41% of the lawyers reported that they had heard other lawyers make homophobic comments about judges or lawyers. Thirty-five percent of the lawyers had heard court personnel making similar remarks. Eleven percent of the lawyers reported that judges frequently or sometimes made negative comments to or about the lawyers appearing before them.<sup>136</sup>

The results of the survey indicate a disturbing amount of sexual orientation discrimination against litigants, witnesses, and jurors. Forty-three percent of the participants had heard other lawyers or court personnel make negative comments about litigants, witnesses, or jurors based on their sexual orientation. Male transvestites and homosexual prisoners were those against whom most negative comments were made.<sup>137</sup>

The participants were asked to suggest rules and procedures which could help to minimize these problems within the court system. The most popular suggestion was that rules banning discrimination based on sexual orientation should be adopted and enforced. The second most popular idea was for sensitivity training for court personnel.<sup>138</sup>

The Special Committee ended the report with the following recommendations:

(1) Judges need to set a tone of respect and tolerance in the courtroom. When discrimination occurs, judges need to respond with disciplinary action.<sup>139</sup>

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134. *Id.* at 131-32.

135. *Id.* at 132.

136. *Id.* at 134-35.

137. *Id.* at 136-37.

138. *Id.* at 138.

139. *Id.* at 142.

(2) Sensitivity training for all court personnel is crucial. The Committee offered to help establish guidelines and programs for these sessions.<sup>140</sup>

(3) Clear guidelines and rules prohibiting discriminatory acts or comments based on sexual orientation need to be implemented. If there is a suspicion of systematic sexual orientation bias, the Committee advises the use of independent advisors to investigate the allegations.<sup>141</sup>

The Committee intends to further study the possibility that many cases involving gay and lesbian litigants do not come to trial, bail is unjustly applied, and the cases are taken less seriously.<sup>142</sup>

#### IX.

- Title: *Report on the Experience of Lesbian and Gay Law Students in New York Metropolitan Area Law Schools*
- Published by: The Record of the Association of the Bar of the City of New York  
Volume 51, Number 2, page 145 (1996)
- Prepared by: The Association of the Bar of the City of New York<sup>143</sup>  
Special Committee on Lesbians and Gay Men in the Profession
- Date Published: March 1996

The Association of the Bar of the City of New York ("ABCNY") Special Committee on Lesbians and Gay Men in the Profession intended this report to highlight the barriers and inequalities faced by gay and lesbian law students in the New York metropolitan area. The Committee hoped that the report would provide a basis for further work and discussion on sexual orientation bias in legal education.<sup>144</sup>

The Committee drafted a survey that was distributed to approximately 500 people at a social event sponsored by the Lesbian and Gay Law Association of Greater New York. The event

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140. *Id.*

141. *Id.*

142. *Id.* at 142-43.

143. For a copy of this report, call: (212) 382-6695.

144. Special Comm. on Lesbians and Gay Men in the Profession, *Rep. on the Experience of Lesbian and Gay Law Students in New York Metropolitan Area Law Schools*, 51 REC. ASS'N B. CITY N.Y. 145, 145-46 (1996).

was attended by over 100 law students. Committee members who knew lesbian or gay students at local law schools asked these students to distribute surveys to other gay students they knew.<sup>145</sup> The Committee received sixty-nine completed surveys from students at ten different New York area law schools. Sixty-seven percent of the participants were men, and all of the male participants identified themselves as gay. Thirty-three percent of the participants were women, approximately two-thirds of whom identified themselves as lesbian.<sup>146</sup>

The report details student responses to questions in four different categories: (1) the application process; (2) impact of sexual orientation on ability to succeed in law school; (3) lesbian and gay law student groups; and (4) law students' perceptions of sexual orientation's impact on ability to succeed professionally.

(1) *The Application Process*: Nearly 33% of the students felt that identifying themselves as lesbian or gay on their law school applications had a positive impact on their acceptances. Some students mentioned that they did not apply to schools that did not include sexual orientation in their antidiscrimination policy or that refused to fund a gay and lesbian student organizations. Eighty-one percent of the participants felt that law schools should make efforts to actively recruit gay and lesbian students.<sup>147</sup>

(2) *Impact of Sexual Orientation on Ability to Succeed in Law School*: Forty percent of all first-year students felt that their sexual orientation would have an impact on their ability to succeed in school. This percentage dropped to only 24% of third-year students. Many students felt that the denial of insurance, housing and gym privileges to same-sex partners was an example of heterosexism. Others did not feel comfortable bringing a same-sex partner to a law school event. Professors' exam questions and hypotheticals were seen as heterosexist as well.<sup>148</sup>

(3) *Lesbian and Gay Law Student Groups*: Nearly all of the participants knew of a lesbian and gay law group on campus that was officially recognized and received student bar association funding. These groups almost all met on campus, had a bulletin board, sponsored programs, and had a faculty advisor.<sup>149</sup>

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145. *Id.* at 146 n.1.

146. *Id.* at 145 n.2.

147. *Id.* at 146.

148. *Id.* at 147-48.

149. *Id.* at 148.



(4) *Law Students' Perception of Sexual Orientation's Impact on Ability to Succeed Professionally*: Sixty-eight percent of first-year students felt that their sexual orientation would have an impact on their ability to succeed in the legal profession. This figure jumped to 84% for third-year students. Many students reported being counseled by career planning personnel not to be out on their resumes. Twenty percent of the participants knew that their school had a policy that barred employers that discriminated on the basis of sexual orientation from coming on campus, but many of these students also reported that the ban was not absolute.<sup>150</sup>

The Committee suggested that the following recommendations be implemented by law schools to create a more open and welcoming environment for lesbian and gay students:

(1) *Encourage Students to Include Relevant Information About Sexual Orientation or Lesbian/Gay Activities in Their Application to Law School*: Schools should state their antidiscrimination policy in brochures. Informational brochures should also include the information about any gay and lesbian student groups.<sup>151</sup>

(2) *Schools Should Make an Effort to Hire Openly Gay Faculty and Encourage Gay and Lesbian Professors, Staff, and Administrators to Be Open About Their Sexual Orientation*: Students felt that it was important to have openly gay professors and staff who were willing to serve as student mentors.<sup>152</sup>

(3) *Schools Should Take Other Steps to Provide Lesbian and Gay Professional Role Models for Students*: Schools can form lesbian and gay alumni networks, publicize the existence of the local gay bar association, and invite openly gay and lesbian legal professionals to participate in school events.<sup>153</sup>

(4) *Legal Curricula Should Address Lesbian and Gay Legal Issues*: In addition to having courses specifically on gay and lesbian issues, schools should include these issues in other courses, such as employment law, family law and constitutional law.<sup>154</sup>

(5) *Comparable Benefits and Privileges Should Be Extended to the Domestic Partners and Families of Lesbian and Gay Students to the Same Extent That Such Benefits Are Extended to the Spouses and Families of Heterosexual Students*.<sup>155</sup>

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150. *Id.* at 149.

151. *Id.* at 150.

152. *Id.*

153. *Id.* at 151.

154. *Id.*

155. *Id.*

(6) *Complaint Processes Should Be Established to Address Incidents of Discrimination, Heterosexism, and Homophobia*: Schools should provide training for those who receive complaints so that they are equipped to handle lesbian and gay discrimination.<sup>156</sup>

(7) *The Creation and Maintenance of Lesbian and Gay Law Student Organizations Should Be Encouraged*: Funding equal to that given to other student groups should be available for lesbian and gay groups.<sup>157</sup>

(8) *Placement Offices Should Insure That Services Offered to Students Are Not Affected by Discriminatory Attitudes*: Information about potential discrimination against gays and lesbians within the legal profession needs to be explained sensitively to students. Placement officers should also remember that sometimes being out on a resume may work to a student's advantage.<sup>158</sup>

#### X.

Title: *BASF Report on Employment Policies for Gay and Lesbian Attorneys*

Published by: The Bar Association of San Francisco<sup>159</sup>  
Committee on Sexual Orientation Issues

Date Published: 1996

After the Bar Association of San Francisco ("BASF") adopted the 1991 report, a copy of it was sent to each of the approximately 400 law firms that pays BASF dues for its attorneys.<sup>160</sup> In 1995, BASF decided to officially survey employers to measure and report how successfully the recommendations from the 1991 report had been adopted.<sup>161</sup>

The Committee drafted a survey consisting of twenty-eight yes or no questions. The questions were aimed at asking whether the firm does or does not do what the recommendation advised. For some questions, participants could check "not applicable," but they were asked why the recommendation was not applicable to their company (i.e. if a recommendation pertains to the hiring committee and the firm has no hiring committee).<sup>162</sup>

156. *Id.*

157. *Id.* at 151-52.

158. *Id.* at 152.

159. For a copy of the report contact: The Bar Association of San Francisco, 685 Market Street, Suite 700, San Francisco, CA 94105, (415) 982-1600.

160. COMM. ON SEXUAL ORIENTATION ISSUES, B. ASS'N OF SAN FRANCISCO, BASF REP. ON EMPLOYMENT POLICIES FOR GAY AND LESBIAN ATTORNEYS 2 (1996).

161. *Id.*

162. *Id.* at 5.

The survey and a copy of the 1991 BASF report were sent to 339 firms and corporate legal departments. The survey responses were broken down based on the firm's size: small (1-15 attorneys), mid-size (16-50), or large (51 or more). However, only five mid-size firms returned the survey so they were analyzed with the large firms. A total of sixty-four firms, nineteen percent, responded to the survey.<sup>163</sup>

The report advises some caution when interpreting the results of the survey. Caution is advised for several reasons: the results are only what the firms say they do and was not compared with the corresponding perceptions of their attorneys; only BASF firms were surveyed; and only a minority of the BASF firms responded. However, the Committee explained that it still felt the results were valid. BASF firms employ 4,500 attorneys in San Francisco. Therefore, a survey of these firms would likely reflect general trends in a large portion of the San Francisco legal community. Compliance with some of the recommendations became law since the 1991 report was issued, and many of the recommendations were easy to implement so compliance rates of nonresponding firms would probably be close to the same as those of responding firms.<sup>164</sup>

The report supplies detailed summaries of the responses regarding each recommendation. There are "Selected Comments" for each recommendation that gave samples of the written comments made by the firms. There are also a "Summary of Responses" that discusses any disparities between large and small firms and lists reasons why a majority of firms might implement each recommendation. The Committee also supplied charts detailing the answers given to each question. Finally, compliance rates are given for each question. The compliance score was calculated by dividing the number of "yes" responses by the total number of "yes" and "no" responses. "Not applicable" responses were not added in when calculating the compliance score.<sup>165</sup>

The final pages of the 1996 report discusses the Committee's conclusions based on the analysis of the survey responses. The Committee suggested that the compliance scores were the best way to judge the extent to which the recommendations had been implemented. The Committee then discussed the survey re-

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163. *Id.* at 6.

164. *Id.* at 7.

165. *Id.*

sponses by breaking the twenty-three BASF recommendations down into those dealing with equal treatment directly and those dealing with the less tangible goal of creating an atmosphere conducive to diversity.<sup>166</sup>

(1) *Equal Treatment*: Twelve of the recommendations are classified as dealing with equal treatment directly. Compliance rates tended to be higher for these recommendations than for those aimed at fostering diversity.<sup>167</sup>

(2) *Fostering Diversity*: Eleven of the recommendations are classified as ones which fostered diversity. The Report states that comments by firms indicated that following many of these recommendations was often considered unnecessary because of the firms' general nondiscriminatory workplace. This would help to explain the lower compliance rates.<sup>168</sup>

No recommendation has a compliance rate of less than 25%. No firm expressed hostility to the recommendations or the goals on which they were based. The report concludes with a discussion about encouraging future compliance with the recommendations aimed at fostering diversity. No further recommendations are made in this report.

## XI.

Title: *Report and Recommendations Regarding Sexual Orientation Discrimination in the California Legal Profession*

Published by: The State Bar of California<sup>169</sup>  
Committee on Sexual Orientation  
Discrimination

Date Published: August 1996

The State Bar of California Committee on Sexual Orientation Discrimination ("CSOD") was asked to report to the Board of Governors on the extent of sexual orientation discrimination in the legal profession in California. This report detailed CSOD's efforts and included recommendations that the Board of Governors was encouraged to adopt.<sup>170</sup>

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166. *Id.* at 56.

167. *Id.* at 57.

168. *Id.* at 58-59.

169. For a copy of the report, contact: The State Bar of California, 555 Franklin Street, San Francisco, CA 94102, (415) 561-8200.

170. COMM. ON SEXUAL ORIENTATION DISCRIMINATION, STATE B. OF CAL., REP. AND RECOMMENDATIONS REGARDING SEXUAL ORIENTATION DISCRIMINATION IN THE CAL. LEGAL PROFESSION 1 (1996).

The CSOD examined the data collected in the 1991 State Bar Demographic Survey and the 1994 L.A. County Bar Association Report on Sexual Orientation Bias and also read the personal accounts of anti-gay bias recounted by lawyers in Los Angeles and San Francisco. The report gives a brief overview of the important findings from each of the surveys that the CSOD relied upon.<sup>171</sup>

The second section of the report details the CSOD's "Recommendations for Action by Legal Employers." These recommendations are consistent with those adopted by the BASF and the L.A. County Bar. This report urges legal employers to adopt, implement, and publicize antidiscrimination policies; effective grievance procedures, nondiscriminatory recruitment and hiring practices, nondiscriminatory procedures for promotion, compensation and work assignments, and benefit packages with the same set of benefits for all employees. Legal employers are also encouraged to refrain from maintaining work environments where gay attorneys are encouraged to, or feel compelled to, remain "closeted."<sup>172</sup>

Finally, the CSOD asked the Board of Governors to adopt a resolution reminding lawyers and law firms that employment discrimination on the basis of sexual orientation is illegal and endorsing the recommendations made by the CSOD.<sup>173</sup>

#### CONCLUSION

Given the number of studies that have already been conducted on sexual orientation bias by the legal profession in recent years, it has become clear that slowly, some portions of the legal profession have begun to recognize the serious nature of sexual orientation bias. I hope that this survey of the studies done to date and Professor Rubenstein's Article will assist further studies and research into this problem.

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171. *Id.*

172. *Id.* at 6-7.

173. *Id.* at 8.