

LEXSEE 4 S. CAL. REV. L. & WOMEN'S STUD. 311

Copyright (c) 1995 Southern California Review of Law and Women's Studies
Southern California Review of Law and Women's Studies

Spring, 1995

4 S. Cal. Rev. L. & Women's Stud. 305

LENGTH: 33130 words

THE LOS ANGELES COUNTY BAR ASSOCIATION REPORT ON SEXUAL ORIENTATION BIAS n1

SUMMARY:

... At that meeting, the Chair organized the Committee into two principal subcommittees, each comprised of six Committee members: one to explore the policies and practices of legal employers regarding gay attorney employees and the other to explore the experiences and perceptions of attorneys concerning sexual orientation discrimination. ... One gay attorney stated, "[I] was removed from a major case in one office due to a client's objections to my sexual orientation." ... Approximately 28% of lesbians and 18% of gay men reported that a gay attorney in their workplace had been asked or advised to conceal his or her sexual orientation. ... By contrast, nearly half of all respondents, regardless of gender or sexual orientation, believe that simply discussing one's personal or family life in a manner that revealed the gender of one's partner - a matter of no consequence whatsoever for a heterosexual attorney - would harm a gay attorney's career. ... Reflecting the double standard regarding disclosures of sexual orientation, however, some legal employers would prefer to avoid addressing sexual orientation discrimination by ignoring the fact that they have gay attorney applicants and employees. ...

TEXT:

[*305]

I. INTRODUCTION

A. The Issue of Sexual Orientation Discrimination

Discrimination based upon sexual orientation is, in most employment contexts, a violation of California law. The California Labor Code prohibits sexual orientation discrimination by any California employer with five or more employees; a violation of this statute exposes the discriminating employer to the risk of administrative action and civil litigation. n2 In addition, California Rules of Professional Conduct prohibit members of the State Bar of California and California law firms from discriminating on the basis of sexual orientation in employment or in accepting or terminating the representation of a client. n3 Despite the laws intended to control discrimination, anti-gay bias appears to be a widespread and often virulent problem throughout California. n4

While the number of lawyers directly affected by this bias cannot be stated precisely, the data reviewed for this study suggest that it is [*306] substantial. It is clear from a number of studies, ranging from the path-breaking work of Alfred C. Kinsey and his colleagues to recent polls by Louis Harris & Associates, that at least 5% n5 and perhaps as many as 10% n6 of the general population is comprised of men and women who are lesbian, gay or bisexual. In the 1991 Demographic Survey of the State Bar of California ("State Bar Demographic Survey"), approximately 4% of State Bar members under forty years of age and approximately 3% of all State Bar members identified themselves as "a member of the lesbian, gay or bisexual community." n7 Those self-identified gay attorneys n8 appear to be

concentrated in California's largest urban centers, Los Angeles and the San Francisco Bay area. n9 Responses from the random sample of attorney members of the Los Angeles County Bar Association ("Association") surveyed for this Report suggest that at least 6% to 7% of the Association's attorney members are gay. n10

Because one's sexual orientation n11 generally is not discernable from visible characteristics, both gay people themselves and anyone [*307] wishing to understand sexual orientation bias must address the so-called "closet." n12 Gay people may choose whether and in what circumstances to be "out" as well as when to conceal their sexual orientation. While most heterosexuals take for granted the freedom to disclose their own sexual orientation in, for example, routine discussions or introductions of their spouses, straddling the line between concealment and disclosure of their sexual orientation is a daily and often painful dilemma for many gay people.

The frequent invisibility of homosexuality or bisexuality poses a problem for any study of sexual orientation discrimination. n13 The number of individuals who are willing to identify themselves as gay is likely less than - and perhaps even a minority of - all gay people. Further, the data reviewed for this study suggest that the invisibility of gay people is not only a manifestation of anti-gay discrimination, but also works to minimize the perception as well as the reporting of sexual orientation discrimination. Among gay people themselves, it appears that many individuals choose to remain "in the closet" and endure discrimination rather than take the risk that, by confronting it, their visibility as gay people will be increased and expose them to further discrimination. Among heterosexuals, it appears that if gay people are not readily visible, many do not perceive the problem of anti-gay discrimination as significant or do not perceive it at all.

Whatever the true percentage of gay people in society and in the legal profession may be, professional ethics and the law both dictate that the Association and the legal profession have an obligation to address sexual orientation discrimination. The legal profession has been a leader in attacking ethnic, racial and gender discrimination; discrimination based upon sexual orientation is not only illegal but is similarly hurtful in its impact and consequences for Association members and other members of the Bar. [*308]

B. The Preparation of This Report

In late 1992, Richard Chernick, then President of the Association, established an ad hoc committee ("Committee") to study the issue of sexual orientation discrimination by legal employers in Los Angeles County. President Chernick charged the Committee with the responsibility to recommend whether the Association should adopt and promote a policy among legal employers on the subject of sexual orientation discrimination. In November 1992, President Chernick appointed Joseph D. Mandel, Vice Chancellor-Legal Affairs at the University of California, Los Angeles ("UCLA") and former President of the Association, to chair the Committee. In December 1992, President Chernick appointed twelve additional Association members. Upon assuming the office of President of the Association on July 1, 1993, Gerald L. Chaleff reappointed the Chair and each of the Committee members for another term, ending June 30, 1994. n14

The Committee membership represents a microcosm of the Association's diverse membership, including gender, racial and ethnic diversity and representation from public, corporate and private law offices of various sizes. The Committee also reflects sexual orientation diversity; eight of the Committee's thirteen members (including its Chair) identify themselves as heterosexual, three are openly lesbian and two are openly gay men.

Prior to the Committee's first meeting, two other metropolitan bar associations, the Bar Association of San Francisco ("BASF") n15 and the Association of the Bar of the City of New York ("ABCNY"), n16 conducted studies on sexual orientation bias in the workplace. n17 The Committee reviewed the work of the BASF and ABCNY studies prior to undertaking its own study. n18 [*309]

The Committee convened for the first time in January 1993. At that meeting, the Chair organized the Committee into two principal subcommittees, each comprised of six Committee members: one to explore the policies and practices

of legal employers regarding gay attorney employees and the other to explore the experiences and perceptions of attorneys concerning sexual orientation discrimination. The Committee secured the services of an attitudinal survey expert, Curtis F. Shepard, Ph.D., to assist it in developing appropriate surveys and in tabulating and interpreting the survey responses. n19

With the assistance of Dr. Shepard, the Committee developed two surveys. One survey ("Attorney Survey") was designed to be completed by individual attorneys to assess their views of sexual orientation discrimination and the quality of work life for gay attorneys. In September 1993, the Attorney Survey was mailed to a sample of Los Angeles County attorneys including both heterosexual and gay attorneys: 550 attorneys belonging to local gay attorney associations and a random sample of 1634 Association members. The total response rate for the Attorney Survey was approximately 20%.

The Committee's other survey ("Employer Survey") was directed at managing partners (or their equivalent) at a variety of law firms and other settings at which lawyers are employed in Los Angeles County. Many of the Employer Survey questions paralleled those in the Attorney Survey, but the Employer Survey also included questions concerning specific employer policies and practices. In September 1993, the Employer Survey was mailed to a random sample of 400 Los Angeles County legal employers. The response rate from the Employer Survey was approximately 17%.

In addition to the information from the Committee's own surveys of attorneys and employers, n20 the Committee used information from [*310] two other sources as the basis of its study and this Report. First, the Committee conducted four focus group discussions ("Focus Groups") for the purpose of gathering anecdotal information from gay attorneys concerning their experiences with and perceptions of sexual orientation discrimination. n21 Second, the State Bar of California provided the Committee with an analysis of certain data from the State Bar Demographic Survey ("State Bar Data") comparing gay and heterosexual members of the State Bar. n22

During late 1993 and early 1994, Dr. Shepard tabulated and analyzed the results from the Committee's own two surveys. n23 At meetings in February and March 1994, the Committee reviewed, analyzed and discussed the results of the Committee's own surveys, the State Bar Data and the anecdotal information elicited at the Focus Groups. n24 The Committee Chair thereafter appointed a special drafting subcommittee, which prepared an initial draft of this Report. The Report was reviewed, debated and refined in meetings held in May 1994. The final Report was approved unanimously by the Committee on June 9, 1994.

II. FINDINGS

A. Sexual Orientation Discrimination in the Employment of Attorneys

The data reviewed by the Committee provide convincing evidence of discrimination against gay attorneys in the legal profession in Los Angeles County. The data from the Attorney Survey and State Bar Data suggest that sexual orientation discrimination in the employment of attorneys is widespread and manifests itself in all stages and [*311] aspects of attorney employment: recruitment and hiring; general work environments; work assignments; evaluation, promotion and advancement; compensation; and retention and career path.

As a general matter, 38.6% of the Attorney Survey respondents - almost two in five - report that they have experienced or witnessed some kind of sexual orientation discrimination against gay or gay-perceived attorneys in a professional setting in Los Angeles County. n25 Almost 68% of lesbian attorneys, 58.3% of gay male attorneys, 24.% of heterosexual female attorneys and 17.2% of heterosexual male attorneys report having witnessed or experienced such anti-gay discrimination in Los Angeles County. n26

Comments from the Attorney Survey responses and Focus Groups support the findings of sexual orientation discrimination in the legal profession in Los Angeles County. The comments also illustrate the range of problems gay attorneys face. As reported by heterosexual and gay attorneys alike, the ills suffered by gay attorneys range from

unconscious bias to subtle as well as overt forms of discrimination - including open hostility. Viewed in the light of legal and ethical prohibitions of sexual orientation discrimination, these findings are troubling.

1. Recruitment and Hiring

The Attorney Survey responses indicate that discrimination against gay attorneys in recruitment and hiring is a serious problem in Los Angeles County. Approximately 15% of the Attorney Survey respondents - more than one in seven - believe that their offices apply hiring criteria less favorably to an applicant who is gay or perceived to be gay. n27 By comparison, the percentages of Attorney Survey respondents who believe that their offices similarly discriminate [*312] against people of color and women are, respectively, approximately 12% and 10%. n28 Similarly, 15.3% of the Attorney Survey respondents report that they have witnessed or experienced anti-gay discrimination in attorney hiring. n29 In addition, 9.4% of the Attorney Survey respondents - almost one in ten - believe that one or more attorneys applying for employment in their office were turned down as a result of being or being perceived to be gay. n30

Attorney comments support the finding that gay attorneys are subject to discrimination in recruitment and hiring. The comments indicate that overt hostility and blatant discrimination against gay attorneys are not uncommon. Several heterosexual Attorney Survey respondents were straightforward, even defiant, about their admitted bias against gay attorneys. One stated, "We (I) do not believe we (I) have to hire gay or lesbian attorneys - ever... Don't have any; don't want any." n31 Similarly, another stated, "We do not seek out [gay] applicants and have no interest in hiring them... We are not interested in lawyers with that type of disability - a mental and emotional problem of obvious magnitude." n32 A heterosexual attorney from a "multi-national" firm said, "We will not hire [gay attorneys]... We have discussed the issue and how to prevent having them as lawyers... I and the rest of the firm do not want to work with them." n33 Yet another said, "I would not knowingly hire any such [gay] attorney." n34

Another heterosexual attorney commented that in his firm "Recruiting is controlled by the male labor group which is both sexist and very homophobic... All of the lawyers [who were openly [*313] gay] are gone... I have watched gay men be deprived of work and eased out of jobs." n35 Other heterosexual attorneys observed:

Openly gay attorneys or candidates [are] subject to overt criticism and discrimination by partners ... Being openly gay is fatal to any professional advancement in the firm. [The] work environment [is] openly hostile to gay or pro-gay attorneys ... n36

I believe there is "unofficial" discrimination in hiring - the firm, as an institution, thinks of itself as a tolerant, diverse community - but I do not doubt that individuals involved in recruiting and hiring have their own biases which affect their decision-making. The overwhelming majority of the approximately 200 attorneys in my firm are married, with kids... I think most of the attorneys (and probably almost all of the partners) don't even think about these issues. n37

The comments of gay attorneys also confirm the problem:

At my former firm, attorneys are encouraged to eliminate candidates perceived as gay or lesbian through initial interviews. n38

When I put Lawyers for Human Rights [a lesbian and gay attorneys group] on my resume, a number of my job interviews were essentially terminated once I explained what kind of organization it is. n39

When seeking to change firms several years ago, a number of firms ... made it clear how unpleasant it would be [because I am gay]. n40

The subjective nature of employment criteria was also cited as opening the door to more subtle forms of anti-gay discrimination. A heterosexual attorney stated, "It takes only one homophobe to blackball a qualified attorney from being hired." n41 Similarly, one gay attorney stated,

Interviewing/recruiting procedures make it very easy for a single attorney interviewing an applicant to blackball him/her for completely subjective reasons (e.g., the applicant won't "fit in"). This is a problem at all firms, and I don't have any solutions to suggest, but I'm aware of a number of instances when this resulted in an otherwise qualified applicant being rejected. n42

[*314] Another commonly cited manifestation of more subtle discrimination was the concern that an employer not have "too many" gay attorneys. For example, one heterosexual attorney reported,

We have something of a reputation as a "liberal" firm. ... Nevertheless, two of my partners - people [who] wouldn't dream of saying that we shouldn't have "too many" Jews or Catholics, for example - have expressed a desire that we not have "too many" gays, out of the concern that we might become known as a "gay firm" or attract too many gay candidates we'd have to turn down. ... Being a good liberal firm, of course, no one would articulate these concerns publicly. n43

2. General Work Environments

In Los Angeles County, attorney work environments frequently are described as not hospitable, supportive or secure places of employment for gay attorneys. Over 40% of the Attorney Survey respondents - more than two in five - believe that their work environment is less hospitable to gay attorneys than to heterosexual attorneys. n44 In addition, more than half of the Attorney Survey respondents - 51.7% - believe that their employers do not acknowledge, address and support the interests and activities of gay attorneys to the same extent as those of heterosexual attorneys. n45

a. Inappropriate statements and jokes: In particular, derogatory statements and jokes about gay people are commonplace in Los Angeles County attorney workplaces. Approximately 66% of the Attorney Survey respondents - almost two-thirds - report that attorneys in their office make such anti-gay statements or jokes. n46 Moreover, it appears that about half of the time such derogatory statements or jokes by attorneys are directed at a particular person in the office [*315] who is gay or perceived to be gay. Over a third of the Attorney Survey respondents report that attorneys in their office made anti-gay comments specifically relating to someone in their office. n47

Numerous Attorney Survey respondents cited anti-gay comments and jokes as the basis for their perceptions of a generally hostile attitude towards gay attorneys: n48

At [my old firm], there were a number of comments evidencing bias, [including] the use of the term "faggot" relatively consistently. At one point, a partner [was] talking about a letter he got from BALIF, the lesbian and gay bar association in San Francisco, inquiring as to the terms of the firm's policy regarding lesbians and gays. The partner said, "How could I answer that with a straight face? ... They should know that we don't allow homosexuality in associates." n49

In the last law firm I was with, the managing partner said that I could not be affiliated with the lesbian and gay bar association because that was not something a partner of his firm should be doing. Another partner continually made negative remarks about the fact that I was a lesbian. n50

It is acceptable in my office to verbally ridicule gays and lesbians in a way that is not acceptable towards other minorities. The manager of my department participates in this verbal gay bashing. n51

One gay male associate reported that a senior partner's secretary, surmising that he was gay, commented loudly to his own secretary and another attorney with lewd and graphic speculations about his weekend activities. n52 A lesbian attorney reported, "In court, I was referred to as 'the dyke attorney.'" n53

Some heterosexual attorneys seem to recognize the harm in verbal "gay bashing." n54 At the least, anti-gay comments and jokes strongly imply bias. One heterosexual attorney explained, "The one [*316] gay attorney we had was not comfortable disclosing his sexual preference at work except to 2 or 3 of us, and understandably so - the male attorneys of the firm consistently and frequently made jokes at the expense of gays." n55 Further, purported "jokes" can easily cross the line into outright harassment. An example provided by another gay attorney illustrates this:

I was walking out to my car one night and [the managing partner] screamed out at me, "Are you now going to play with your homosexual friends?" ... In the office ... six months to a year later, [he] placed his foot on my rear end basically out in the open hallway when I was leaning over to pick up some files ... The fact is he was in a position of power. He made me feel very uncomfortable. On a subsequent incident ... I was down on the floor looking at some files and he very provocatively said, "Well why don't you get off your knees?" and [he] chuckled. And I knew clearly what the inference was there. He also made a comment to me in the rest room about if I didn't use my penis that he was going to cut it off. You know, in a jovial, good ole boys type way. n56

Anti-gay comments and jokes have a corrosive effect in the workplace. One gay attorney said, "What's so disturbing [about derogatory comments] is the realization that things aren't as safe as you'd hoped or believed." n57 Similarly, another stated that at his firm, where attorneys showed open hostility to gay people through snide jokes about sexuality and gender, it was "just very difficult to feel completely welcome" n58 These sorts of comments and jokes are insulting and hurtful not only to gay people, but to others who may have gay family, friends or colleagues.

Like sexist and racist comments and jokes, anti-gay comments and jokes are inappropriate behavior in a professional setting. As one gay attorney stated,

The same people who tell "fag" and "dyke" jokes today are the people ten years ago that were discriminating blatantly against women. And they wouldn't think about it today. They just need to be told - [*317] as they have about sex discrimination - clearly and repeatedly that it is not acceptable behavior. n59

Attorney Survey responses suggest that this workplace hostility stems in part from a lack of recognition of gay people and sexual orientation bias. Apparently, it never occurs to many heterosexual attorneys that a job applicant, subordinate, colleague or other attorney could be gay. One stated, "[The matter of gay attorneys] has never come up at my firm as far as I know. I have no idea if there are gay or lesbian attorneys in my office." n60 Another heterosexual attorney wrote, "My prior firm was essentially 'clueless' and insensitive regarding gay issues." n61 Similarly, a gay attorney said, "I don't think the hiring partners are aware of any issue [concerning hiring of gay attorneys]. They probably don't think they have had any gay or lesbian applicants." n62 Accordingly, when conversations turn to gay

people or related issues, many heterosexuals feel unrestrained by the usual rules of professional decorum and consideration.

b. Regard for relevant law and professional ethics: Even more troubling, some heterosexual attorneys appear unaware of or unconcerned with relevant laws and rules of professional conduct barring discrimination. One gay attorney reported,

A lot of people have the attitude that sexual orientation discrimination ... is not covered, or that it's not as well established under the law, or it's not an important area of discrimination. I went to a firm seminar in employment law about a year ago and I noticed in their sample nondiscrimination clause that sexual orientation wasn't included. I asked the partner in charge about it and he said, "Well, we just don't think it's covered in the law" n63

Another said,

At a firm lunch, the senior litigation partner raised a hypothetical concerning anti-discrimination protection for persons with HIV and whether you should advise a corporate client to adhere to that statute... [His view] was that you would advise them not to adhere to that statute out of concerns about communication of the disease by casual contact. Even when told at this luncheon that that was not the mode of transmission for the HIV virus, he continued to insist [*318] that, indeed, it was legally proper advice to advise the client to ignore the law because of the liability concerns, ostensibly. n64

Attorneys should not disregard laws against discrimination, whether in their own actions or in advice to their clients. Moreover, the hostility reflected in anti-gay comments and jokes is unacceptable in a professional workplace. Whatever their personal views on homosexuality, heterosexual attorneys should conform their words and actions to professional standards and the law. Although their exact number cannot be stated precisely, gay people are numerous enough that almost every attorney in Los Angeles County - knowingly or not - comes in contact with gay applicants, colleagues, clients, judges and other government officials each week, if not each day, he or she practices law. Disregard of this reality makes it harder to remedy the problem of sexual orientation discrimination. It can also produce myriad problems - misunderstandings, unintended offense and, potentially, complaints about discrimination.

c. Unconscious bias: Unconscious bias often appears to promote workplace discrimination against gay attorneys. The Attorney Survey and Focus Group comments reported the existence of harmful generalizations, stereotypes and misperceptions of gay attorneys in the workplace. For example, in response to an Attorney Survey question about incidents of bias, one heterosexual attorney said, "The only gay or lesbian attorney I know of did horrible work (in addition to running up thousands of dollars of 900 number phone bills to a psychic)." n65 One gay attorney - who had a copy of the September 1992 California Lawyer cover story, *Gays at Law*, on his office desk - reported, "One of the senior executives finally said 'Why do you have that out there? ... What does it do, talk about all the crimes that the gays do?' " n66

Gay attorneys, both male and female, are viewed by some as more sexually aggressive or predatory than heterosexuals - or less "stable" or committed in their romantic relationships. n67 For example, one gay attorney stated:

I don't think I have been the victim of intentional discrimination because I am gay, but I have been treated unfairly

because of other [*319] related factors or characteristics, such as being unmarried, not having children, being thought of as not having any responsibilities or pressures outside of work, being thought of as immature or "unsettled" as well as a greater degree of secrecy about my private life than is typical. n68

One lesbian attorney wrote that, after she shook hands with the clerk of the court, a government official "commented to the clerk of the court, knowing that I was a lesbian, "How can you stand her putting her hands on you?" " n69 Similarly, another gay attorney reported,

The partners on one matter seemed intent on keeping me away from [one] of the client's Vice Presidents, whom they apparently regarded as attractive - though I did not. ... They all knew I've been in a committed relationship with another man for twelve years, but seemed to think I would be so unable to control myself that I would land a big, wet kiss on this guy if I had a chance. n70

Another gay attorney stated, "If a straight male associate brings a series of different dates to firm events he is likely to be perceived as 'sowing his wild oats.' If a gay male associate or a female associate were to do so ... they would be perceived as 'unstable.'" n71

The common stereotype of gay men as "effeminate" appears to be particularly problematic for gay male attorneys. One gay attorney observed, "My firm does encourage 'machoism' and 'aggressiveness.' Anyone perceived as either 'feminine' or 'weak' may not be as easily promoted. This hinders both men and women with 'feminine' qualities. There is an assumption in my firm that 'feminine' men are gay." n72 Ironically, several attorneys commented that the common stereotype of lesbians as "aggressive," "macho" women is less of a problem - and perhaps even a benefit - in the practice of law. One lesbian attorney stated,

As a lesbian, I was sexually harassed less than heterosexual women - the male partners wouldn't flirt with me and so there wouldn't be that dynamic where I had to either flirt back or not have a relationship with them - which was extremely helpful to me. Also, I was perceived as being more assertive or aggressive, as were [*320] the other lesbians, than the heterosexual women. So, we were given opportunities ... when heterosexual women were not. n73

On the other hand, lesbians are also subject to negative stereotyping, most usually that they are unattractive, crude or unsophisticated. One lesbian attorney commented, "The comment that people have made to me [as a lesbian] - which I think they thought was a compliment - is that I didn't look like I was gay." n74

Another stereotype reported several times in the Focus Groups and Attorney Survey responses is the view that all gay men have or will contract AIDS. n75 One gay attorney reported that he was told by a partner in his firm, "We have to be very, very careful about who we hire, because of the insurance costs," and that, "The clear meaning was: no more gay men." n76 Another told this story: "After a partner at my firm died of AIDS, being out myself, I was constantly fielding questions from very senior partners who would come to me and say 'Okay, who are they and are they sick?'... There was a McCarthyite aspect to it... It was very disturbing." n77

These various stereotypes are inaccurate and serve to promote discrimination against gay attorneys. Like heterosexual attorneys, gay attorneys possess a wide variety of personal and professional qualities. It is incumbent upon employers, individual attorneys and the legal profession generally to ensure that gay attorneys are seen as individuals, rather than caricatures, and judged on their individual merits.

3. Work Assignments

The Attorney Survey data also evidence substantial problems of anti-gay bias in attorney workplaces by colleagues, supervisors and clients. Approximately 15% of the Attorney Survey respondents said that clients of their office have expressed a preference not to work with gay attorneys. n78 Over 12% of the Attorney Survey respondents [*321] said that partners or supervisors in their office have expressed a preference not to work with gay attorneys. n79 Over 8% said that attorneys in their office have been denied work assignments because of their actual or perceived sexual orientation. n80 Over 11% of the Attorney Survey respondents report that they have witnessed or experienced sexual orientation discrimination in attorney work assignments. n81

Numerous Attorney Survey and Focus Group comments suggest that many heterosexual attorneys, even those who may have no personal anti-gay prejudices, treat gay attorneys differently from their heterosexual peers out of fear of third party reactions. In particular, when it comes to matters relating to a gay or suspected gay colleague, heterosexual attorneys often act on the assumption that clients, judges and others will have a problem with that attorney's sexual orientation.

One gay attorney reported, "An important case with media attention was taken from me and given to another attorney by a supervisor ... who was concerned about my openness on being gay." n82 According to one gay attorney, at his firm, "openly gay and lesbian attorneys are held back because of fears (generally, of older, straight lawyers) of client discomfort." n83 Similarly, another reported, "I remember as a young lawyer being counseled not to be very out in client relationships until I somehow knew it was safe. And I do think that in some respects it affects work opportunity." n84 One gay attorney noted the difficult conflicts often presented by these concerns:

I distrust internal education to affect decisions ... to avoid confrontations with powerful people and institutions [over anti-gay bias]... It's always easier to decide ... that, "Well, no one wants to offend all our good friends ... and all these very good fellows who send us work." ... That kind of unthinking lack of awareness [*322] of issues that are of importance to gay and lesbian lawyers can go on [even] in ... the best of organizations ... n85

Fears about the reactions of clients and others may in fact be rooted as much in the discomfort of those who voice them as in reality. As one gay attorney stated, "My senior partners profess not to be prejudiced themselves, but express concern for 'others' (i.e., clients)." n86 Another observed, "There are also attorneys who project some of their own internal discomfort by saying, 'Well, clients won't understand.' " n87 Sometimes, of course, clients may actually be prejudiced. One gay attorney stated, "[I] was removed from a major case in one office due to a client's objections to my sexual orientation." n88

Whether real or imagined, however, the objections of third parties should not be allowed to hold back gay attorneys whose professional abilities would otherwise dictate they get the job - any more than should a perceived "customer preference" against women, people of color or members of other protected groups. While the task may often require considerable delicacy and some compromise, heterosexual attorneys also have a legal and professional duty to overcome the discomfort of clients, court authorities, government officials and others with whom gay attorneys must deal professionally. As is true for female and non-white attorneys, gay attorneys should not be denied opportunities to employ their talents because of indirect sources of bias.

4. Evaluation, Promotion and Advancement

The data reviewed by the Committee also contain substantial evidence of discrimination against gay attorneys in work evaluation, promotion and advancement. Approximately 17% of the Attorney Survey respondents - more than one in six - believe that their offices apply advancement criteria less favorably to an attorney who is gay or perceived to be gay. n89 By comparison, the percentages of Attorney [*323] Survey respondents who believe that their offices

similarly disadvantage people of color and women are, respectively, approximately 16% and 20%. n90 Further, almost one in eight of the Attorney Survey respondents - 12.4% - report they have witnessed or experienced anti-gay discrimination in attorney work evaluations. n91 Finally, 14.4% of the Attorney Survey respondents - more than one in seven - report they have witnessed or experienced anti-gay discrimination in attorney promotion or advancement decisions. n92

The State Bar Data support the finding of anti-gay discrimination with respect to attorney evaluation, promotion and advancement - particularly in law firms. n93 The State Bar Data reveal that, controlling for age and years of practice, gay attorneys are far less likely to become law firm partners than heterosexual attorneys. n94 These differences in the positions of gay and heterosexual attorneys are statistically significant - that is, highly unlikely to be the result of random sampling errors. Among lawyers in law firms with less than ten years in practice, the State Bar Data show that heterosexual lawyers are almost three times more likely to be partners than gay lawyers: 17% versus 6%. n95 Looked at another way, partners comprise a significantly larger portion of heterosexual lawyers with less than ten years [*324] in practice (11%), than of gay lawyers at the same experience level (4%). n96 Among lawyers in law firms with ten or more years in practice, heterosexual lawyers are still significantly more likely to be partners than gay lawyers: 86% versus 67%. n97 Partners also comprise a significantly larger segment of all heterosexual lawyers with ten or more years in practice (38%), than of all gay lawyers at the same experience level (26%). n98

This data and comments from several attorneys, both gay and heterosexual, suggest the existence of a "glass ceiling" for gay attorneys - particularly in law firms. n99 One gay attorney wrote,

A minority (sometimes, even one member) of the partnership can easily block any associate's chances. They are, of course, too smart to articulate blatantly discriminatory grounds for doing so. But I've seen it happen to gay associates three times in the last five years and it seems clear what's really going on. And the other partners are either unable or unwilling to counterbalance it - and would never confront it honestly as homophobia. As a result, qualified gay attorneys usually leave after five to seven years. n100

Similarly, another gay attorney stated, "Partners do not want to risk terminating a gay attorney, but will not offer a partnership to one. For me, there is no possibility for promotion here because of my sexual orientation." n101 Another reported,

I was denied advancement to partner status after five successful years as an associate in my former firm. A friend who was one of the partners privately advised me of what was going on; one of the partners did not like gays and blocked my being offered a partnership. n102

And yet another stated, "I was told I would not be able to advance after I disclosed that I was gay." n103

Similarly, one heterosexual attorney observed, "When the gay associate was up for partner, it was made clear that any reference to [*325] his sexuality would result in his loss of the partnership opportunity." n104 Another heterosexual attorney noted, "Advancement and pay criteria are subjective so that individual partners and the firm as a whole can tiptoe through the issues professing liberal attitudes." n105

Discrimination in evaluation, promotion and advancement sometimes takes cover in the expression of subjective judgments, such as remarks that a certain gay attorney does not "fit in." One heterosexual attorney commented, "In my firm, there would be no overt discrimination [against gay people]... It would be more subtle, i.e., the "need to fit in' or failure to do so." n106 Similarly, a gay attorney observed:

The process of advancement and promotion is even more subjective than hiring - and even harder to ensure as being nondiscriminatory. For example, in my first few years at this firm, I had absolutely stellar reviews. But when my main mentor left the firm, the new senior partner in my department told me that my prospects with the firm were limited because, in his view, I "didn't fit in." Afterwards, he seemed to go out of his way to make my work situation difficult and unpleasant - berating me in front of clients, giving me last-minute jobs with vague instructions, etc. I also started getting very bad work reviews from that partner. It all seemed personal to me. I am very "out" at this firm, but I can't be sure if that was part of my problem. n107

Another gay attorney explained this way how discrimination at his law firm was cloaked in subjective judgments about work quality:

[The kind of discrimination] I experienced ... most, both against gay people and against women, was ... less tolerance for error. I saw many times where a straight male associate - who was a deacon at the Methodist Church, you know - could have the sorts of little mistakes that come up in litigation and be immediately forgiven ... But God forbid that a female associate or, worse yet, a gay associate should make such a mistake. If so, suddenly it speaks to fundamental questions about their competence and basic skills... It is the issue that, I think, is most critical to fair treatment [of lesbians and gay men] and yet also the most difficult to get your arms around. The problem is the different standards you use when judging someone whom you perceive to be like you versus someone whom you perceive to be alien. And, unfortunately, I think many people - [*326] even relatively enlightened people - tend to see lesbians and gay men as alien in the extreme. n108

Sexual orientation discrimination is probably more common in evaluation, promotion and advancement than in recruitment and hiring for several reasons. First, biased employers may be less likely to discover in the hiring process that an attorney is gay than after the attorney has been employed for a period. Second, the necessarily more subjective standards for work evaluation, promotion and advancement make such discrimination easier to accomplish without detection or objection; a discriminatory decision often is difficult to distinguish from a valid decision based on the merits. Third, employers with anti-gay bias may have fewer qualms about hiring entry-level gay attorneys than about investing those attorneys with the power and authority of supervisors or firm partners later in their careers.

5. Retention and Career Path

Gay attorneys appear to have career paths different from those of their heterosexual peers. n109 The State Bar Data suggest that, even controlling for age and years of practice, gay attorneys generally have less "prestigious" or "powerful" positions than heterosexual attorneys. n110 As discussed above, among attorneys in law firms, gay attorneys at all age and experience levels are more likely to be associates and less likely to be partners than heterosexual attorneys. n111 Among attorneys with less than ten years in practice, gay attorneys, as compared to heterosexual attorneys, are more likely to be in larger firms (67% versus 56%) and less likely to be in smaller firms (33% versus 44%). n112 Among attorneys with ten or more years in practice, this tendency continues: as compared to heterosexual attorneys, gay attorneys are more likely to be in larger firms (52% versus 40%) and less [*327] likely to be in smaller firms (48% versus 60%). n113 But, again, more experienced gay attorneys in those firms are less likely to be partners than their heterosexual counterparts (67% versus 86%). n114

In addition, the State Bar Data suggest that, at all age and experience levels, gay attorneys are more likely to be employed "in house" than heterosexual attorneys. n115 Among attorneys with ten or more years in practice, gay attorneys are more likely to be in government jobs (19% versus 12% for their heterosexual counterparts); but among

attorneys with less than ten years in practice, gay attorneys are less likely to be in government jobs (10% versus 15% for their heterosexual counterparts). n116 Among attorneys with ten or more years in practice, gay attorneys, as compared with heterosexual attorneys, appear less likely to be sole practitioners (31% versus 35%) and less likely to practice in a law firm (39% versus 44%). n117

These differences in gay and heterosexual attorney career paths may, in part, result directly from sexual orientation discrimination. As one heterosexual attorney reported,

My firm has never employed an openly gay or lesbian attorney ... The [one closeted] gay attorney [we had] was eventually given 60 days termination notice, reportedly for quality of work reasons; however, he found another job (an in-house position at a prestigious, large company, doing similar work to what he had done in the firm) and has done very, very well there. After he left, I learned that the male attorneys he'd worked with at the firm had in fact suspected or been told of his sexual preference. n118

The effects of discrimination on gay attorney career paths may also be indirect. Attorney Survey responses suggest that gay attorneys in Los Angeles County are generally more dissatisfied with their jobs than their heterosexual counterparts. n119 It also appears that the dissatisfaction of gay attorneys stems, at least in part, from actual or perceived sexual orientation discrimination. Attorney Survey responses [*328] indicate that substantially more gay attorneys than heterosexual attorneys perceive that they were at a disadvantage in their current job. n120 This dissatisfaction may lead to more frequent job changes by gay attorneys.

Attorney comments confirm the influence of perceived discrimination on retention and career path. One lesbian attorney reported,

I left one large corporate law firm to go to another after two years of practice, in part because it was extremely uncomfortable at my first firm to be openly lesbian. In fact, there were times where, even though I was open as a lesbian, people pretended not to know - even if I'd bring a same-sex partner, or a date, to a firm function. People would actually treat us as though I was bringing some single woman to meet men there. That's why I chose the second firm, where there were people encouraging of gay men and lesbians. n121

Another lesbian wrote that she left a firm out of "fear of discrimination regarding making partner and the nature of work assignments and the likely deteriorations in training/mentoring once my orientation came out." n122 Another gay attorney said,

For me [the effect of being gay] has been a job progression... When I was at [my first law firm] it was uncomfortable to be out, so I left. I went to [another law firm,] where one of the conditions of my employment was that I would be completely out or I wouldn't come there. And it's actually been a good experience but now I even want more than that, so I'm going to start a firm. I just want to control my life and I really don't want to worry about who I am anymore. n123

Some gay attorneys leave larger firms and corporations for practice in smaller firms or on their own. One gay attorney stated, "In my old firm, the concern was expressed [that clients would prefer not to work with a gay] and this was part of the reason I opened my own [*329] office." n124 Other gay attorneys may opt for practice in government,

educational institutions or other non-profit organizations - because those employers are perceived to be relatively less hostile places for gay people than private practice. One gay attorney said,

[A] lot of [gay attorneys] seek out smaller firms, government jobs in some places, public interest jobs - jobs that, you know, create a place where you ... get to control your own thing. I think that that is a large factor in the distribution of where gay attorneys are found, the gay attorneys who want to be out, in particular. n125

Yet other gay attorneys find themselves frustrated with any aspect of the legal profession. One said "After 12 years, I'm changing careers. I'm giving up being a lawyer for many reasons - but mostly I need to leave - this is a socially conservative profession." n126

6. Compensation

a. Monetary compensation: The data reviewed by the Committee show a distinct disparity between the incomes of heterosexual attorneys and their gay peers. Controlling for age and years of practice, the State Bar Data indicate that gay attorneys earn substantially less than their heterosexual peers. n127 These income differences are in most cases statistically significant - that is, highly unlikely to be the result of random sampling error. For instance, among lawyers with ten or more years in practice, 41% of heterosexual lawyers earn over \$ 125,000 per year from the practice of law while only 27% of their gay counterparts earn as much. n128 Likewise, 21% of heterosexual lawyers with ten or more years in practice earn over \$ 200,000 per year from their practice while only 16% of their gay counterparts earn over \$ 200,000. n129 These differences are also reflected at the lower attorney [*330] income levels. Only about 26% of heterosexual attorneys in practice more than ten years earn less than \$ 75,000, but 44% of gay attorneys in the same experience level earn less than \$ 75,000. n130 Further, at this experience level, only 9% of heterosexual lawyers earn under \$ 50,000 per year from their practice while 15% of gay lawyers earn under \$ 50,000. n131

It is likely that the "glass ceiling" for gay attorneys in law firms plays a role in this income disparity. n132 Inasmuch as partnership in a law firm generally constitutes the highest potential income opportunity from the practice of law, the exclusion of gay attorneys from that opportunity no doubt diminishes their income potential as lawyers, particularly later in their careers.

The Attorney Survey responses also evidence a strong perception of sexual orientation discrimination in employer compensation of gay and heterosexual attorney peers. Almost 30% of all Attorney Survey respondents believe that gay attorneys fare worse than similarly-situated heterosexual attorneys in terms of income. n133 Roughly 40% of gay attorneys believe so. n134 Among Attorney Survey respondents, over 42% of lesbians believe that their own compensation is less than that paid to heterosexual white male peers. n135 Almost 11% of lesbian attorneys reported that they had experienced pay discrimination based specifically upon sexual orientation; an additional 8.5% reported that they had witnessed sexual orientation discrimination in [*331] pay against others. n136 More than 11% of the gay male attorneys said that their own compensation was less than heterosexual white male peers. n137 Over 8% of them reported that they had experienced pay discrimination based specifically upon sexual orientation; an additional 7.4% reported that they had witnessed sexual orientation discrimination in pay against others. n138

b. Employee benefits: Benefits such as health insurance, life insurance, disability insurance, employee assistance programs, pensions, family leave, bereavement leave, sick leave, service discounts, company cars and paid parking can comprise a substantial portion of an employee's compensation. n139 Therefore, disparate treatment of gay attorneys with respect to benefits can result in gay attorney compensation being substantially less than that of their heterosexual peers.

Some employers appear to limit benefits in ways that expressly exclude gay attorneys. For example, while

approximately 35% of Employer Survey respondents reported that they pay membership dues for gay bar associations to the same extent as dues for other minority or women's bar associations, 28.6% reported that they do not do so. n140

According to the Attorney Survey and Employer Survey results, moreover, most gay attorneys with same-sex domestic partners n141 are not compensated the same as married heterosexual attorneys with respect to employee benefits. n142 Even at firms with policies against [*332] sexual orientation discrimination, such benefits disparities appear to be common. Roughly two-thirds of the gay Attorney Survey respondents and half of all Attorney Survey respondents believe that their employers have not taken steps necessary to ensure that lesbian and gay lawyers are provided employee benefits comparable to those provided heterosexual lawyers. n143 While 54% of Employer Survey respondents reported that they have reviewed their benefits policies to ensure that gay attorneys are treated fairly and equitably, 46% reported that they have not done so. n144

In particular, while Employer Survey responses suggest that most respondents' parental leave and part-time policies are gender neutral (67.2%), marital status neutral (67.8%) and apply irrespective of the biological relationship between parent and child (70.3%), only 50.8% of Employer Survey respondents reported that their bereavement or family leave policies allow leave for the death or caretaking of a same-sex domestic partner. n145 Only 19.6% of Employer Survey respondents reimburse the cost of moving a same-sex domestic partner on the same terms as the cost of moving an opposite-sex spouse. n146 Similarly, only 15.1% provide employee assistance benefits (such as substance abuse and crisis counseling) that cover same-sex domestic partners and children of a same-sex domestic partner on the same terms as opposite-sex spouses or children of an opposite-sex spouse. n147

Most significantly, the great majority of gay attorneys are not able to obtain coverage for their same-sex domestic partners under employer-provided health insurance programs. Some employers do not provide health care benefits even to employees; others do not [*333] offer such benefits to family members of employees. n148 But when firms provide health benefits for the immediate family members of heterosexual attorneys, they usually do not provide similar benefits for same-sex domestic partners of gay attorneys. n149 Only 15.2% of Employer Survey respondents reported that they offer health benefits to the same-sex domestic partner of an attorney on the same or similar terms as benefits available to an opposite-sex spouse of an attorney; 64.2% reported that they did not do so and the balance, 20.8%, did not offer health benefits to any spouse of an attorney. n150

Perhaps as a result of these disparities, far more gay attorneys than heterosexual attorneys are dissatisfied with their pay and fringe benefits. n151 Moreover, it appears that most gay and many heterosexual attorneys see the absence of comparable benefits for the domestic partners of gay employees as inequitable and discriminatory. n152 Some attorneys believe that, because marriage is not a legally-mandated requirement for extension of employee benefits, it is unjust for an employer to decline to offer such benefits on the grounds that same-sex couples cannot marry. n153

Gay attorneys seek benefits for their same-sex domestic partners for the same reasons that spousal benefits are considered important to heterosexual attorneys. One said, "My long term companion should be provided with the identical benefits a spouse is provided with." n154 Another said, "We need insurance and pension benefits for same-sex partners." n155 Yet another pointed out the powerful message equitable benefits sends: "Spousal equivalent benefits ... that says it all to gay employees." n156

On the other hand, employers reported several concerns with extending benefits to the domestic partners of gay employees. One [*334] heterosexual attorney said, "Management would probably be supportive of benefits for same-sex partners if coverage could be obtained at reasonable cost and if coverage standards were reasonably clear and limited to relatively stable, committed relationships." n157 Easy and effective ways exist to avoid potential fraud. n158 For example, some employers offering domestic partner benefits require that the employee submit an affidavit that his or her domestic partner is a true spousal equivalent - that the couple lives together, that both partners consider themselves life partners, that neither is married to or partnered with anyone else, that they are financially interdependent and that they take joint responsibility for one another's common welfare. n159

Other reasons for disparate benefits policies may relate to neglect or ignorance of the minimal economic and administrative costs involved. One heterosexual attorney said, "There are no efforts to achieve equity [for gay attorneys] in benefits or other policies. I would guess this is due to neglect, not deliberate discrimination." n160 Some employers fear high costs based upon the perceived incidence of AIDS among gay attorneys. n161 This fear is unsupported by the data reviewed by the Committee. n162 One study, when comparing the costs of average lifetime AIDS treatment with the costs of routine pregnancy, concluded that "it is probably more expensive to cover female heterosexual spouses. Maternity costs are among the biggest budget items in many insurance pools, but no one has seriously proposed eliminating dependent wives from eligibility. Lesbians and gay men [*335] are the only group for whom cost is advanced to justify discrimination." n163

Substantial evidence exists that domestic partner benefits for gay employees do not significantly increase economic or administrative costs. All of the studies on the subject reviewed by the Committee indicate that the cost of providing domestic partner health care benefits is nominal. For example, a report by the United States Bureau of National Affairs, a university report by Stanford University, a municipal report by the City of West Hollywood and a study of the experience of several large corporate employers offering such benefits all conclude that the economic and administrative costs associated with providing same-sex domestic partner health care benefits are minimal. n164 The experience of employers in the studies reviewed by the Committee suggest that the financial cost of providing health care benefits for same-sex and opposite-sex domestic partners and their children amounts to only 0.5% to 3% of total health care costs. n165

Many employers find that some insurers or health maintenance organizations from which they purchase group health benefits resist providing domestic partner coverage. Nonetheless, many large insurers and HMOs now do so. n166 In any event, where negotiations with insurers are unsuccessful, some employers subsidize the premiums on individual policies for domestic partners of gay employees to the extent the employer would have contributed toward the coverage of [*336] an opposite-sex spouse under the group plan. n167 From the perspective of gay employees, such a subsidy is a welcome statement of employer support but is also second-best to domestic partner coverage under the employer's group plan. The cost of individual policies is almost always higher than that of group plan coverage and, in some instances, individual policies may be unavailable.

In addition to the studies reviewed by the Committee, the large and growing number of employers offering domestic partner health insurance benefits suggests that such benefits can be provided practically and economically. n168 In 1991, Lotus Development Corporation became the first large, private employer to extend benefits, including health care benefits, to the domestic partners of gay employees. n169 Since then, large numbers of employers have followed suit. Many other California corporate employers n170 and public employers n171 now offer domestic partner benefits to gay employees. The trend towards such benefits is even more pronounced among colleges and universities n172 and non-profit organizations. n173 Most significantly for the legal [*337] community in Los Angeles, a significant and growing number of California law firms now provide domestic partner benefits to gay attorneys. n174

B. The Visibility of Gay Attorneys in the Profession

In Los Angeles County, sexual orientation discrimination is sufficiently pervasive that hiding "in the closet" is often the most certain and, in some instances, the only path to job security. Gay attorneys thus face difficult choices deciding when, if ever, to be "out" in their professional lives. The Attorney Survey responses reveal that many gay attorneys believe, as one stated, "[At this firm,] the policy is to discriminate against gay men and lesbians... I have to stay in the closet at work and would never have been hired if they knew." n175 The Committee's findings suggest that these fears are, in fact, often well-founded.

The data reviewed by the Committee also suggest that "the closet" imposes substantial costs on both gay attorneys and their employers. Requiring gay attorneys to separate their personal and professional lives in a fashion not required of heterosexuals is not only unlawful, but it also denies gay attorneys access to informal and formal networking and

professional opportunities within the workplace and the profession. This negatively affects an attorney's productivity and predictable tenure with his or her employer and takes its toll on the individual's sense of professional collegiality and emotional well-being.

The pressures upon gay attorneys to hide their sexual orientation also serve to suppress discussion of sexual orientation bias generally and to suppress complaints about sexual orientation discrimination in particular. One gay attorney stated,

There's a powerful person, not a lawyer, but someone important in my current company ... who does not acknowledge his relationship [*338] of 14 years with his significant other... There needs to be recognition [of gay people] from the top. I would like to think that if, from the bottom, we all came out, that would really do something. But as long as the top is the way it is, realistically, that's not going to happen. n176

Another observed that, although his firm has "at least three" gay attorneys, "the issues ... simply have not arisen since none of these attorneys, including myself, are 'out' in the firm or otherwise self-identified." n177

This is an important fact: it suggests that, troubling as all of the above findings of discrimination are, they may substantially understate the amount of sexual orientation discrimination that would be evident but for the fact that so many gay attorneys remain closeted. Further, "the closet" itself is both a form and evidence of invidious discrimination against gay attorneys.

1. "The Closet" as Evidence of Sexual Orientation Discrimination

The Attorney Survey data show that the vast majority of gay attorneys in Los Angeles remains "in the closet" to some or most colleagues and coworkers in their workplace and within the legal profession generally. Slightly more than half of the gay respondents report that they are "out" to most or all of their superiors and nearly half report that they are "out" to most or all of the non-attorney staff in their workplace. n178 Only 39.4% are out to most or all of their peers and less than 10% are "out" to most or all clients, judges, opposing counsel and courtroom personnel. n179 Although it appears that most gay attorneys attempt to avoid unlawful discrimination by leaving their sexuality ambiguous, or even making it appear mainstream, n180 it is also apparent that "the closet" is at best an incomplete and personally costly solution to the problem of anti-gay bias. [*339]

The repercussions flowing from the apprehensions of "closeted" gay attorneys are profound and destructive. Many gay Attorney Survey respondents and Focus Group participants described the fear, isolation and other negative consequences that are often related to being "closeted" in the workplace:

The emotional cost of being in the closet is enormous - you can't underestimate the potential lost. The most important function we have is to make sure that the younger people coming along will be the last to have to deal with this sort of anxiety. n181

Its [sic] hard if I have to sit anxiously in the office and at every moment try to figure out whether and when I can say "we" and risk someone asking who "we" is... If someone asks, "What happened this weekend?" and I slip and [say] "we" instead of "I" then I go through a kind of turmoil. That really requires energy that kind of prevents you ... from achieving any peace and assurance. n182

There is a strong culture of conformity - of not sticking out. For gays and lesbians, that means we must keep our personal life private. But, in our work reviews we get criticized for being private and quiet. n183

That so many gay attorneys would select "the closet" over facing the difficulties presented to an "out" gay attorney is itself evidence of the power of anti-gay bias in the legal profession. As one heterosexual attorney observed, "The reluctance of gay lawyers to identify themselves attests to the weight of the few lawyers who I believe would not be receptive." n184

2. Employer Pressure to Remain "Closeted"

Despite the pain and isolation "the closet" can inflict on gay lawyers, many employers appear to exert pressure on gay attorneys to remain "in the closet." n185 These practices are plainly discriminatory: no comparable restrictions are imposed upon direct or indirect disclosure of the private lives and public relationships of heterosexuals. A male attorney would, for example, never be instructed to hide the fact that his significant other is a woman. A female attorney would never [*340] be adversely affected by the fact that her committed relationship with a man reveals her to be heterosexual.

Approximately 28% of lesbians and 18% of gay men reported that a gay attorney in their workplace had been asked or advised to conceal his or her sexual orientation. n186 Gay attorneys stated:

I was told [by management] I would never have certain jobs because I was openly gay. They said not to tell anyone, to be grateful that I have that job. n187

During interviewing/hiring ... [I was] told to "stay closeted" to improve [my] advancement potential. n188

To one recruiter, I said that I would like to be out. And they just wanted to drop me like a hot potato. They encouraged me not to tell anyone ever, and particularly not to tell any other recruiter about my orientation, which was kind of a dampening experience for me. n189

[After coming out,] the General Counsel there, who is a close personal friend and could not have been more supportive, begged me - begged me, literally - not to tell anybody, saying that it would destroy my career. n190

Similarly, nearly 25% of all gay Attorney Survey respondents report that lawyers in their offices have said that an attorney demonstrates "bad judgment" by openly identifying as gay. n191 One gay attorney stated,

In my old office, I was deemed to show poor judgment by being openly gay... In my old firm, my advancement to partnership was in dispute because I was gay. I turned down the eventual offer because I realized it would continue to be an issue for the dissenters. n192

[*341]

Although far fewer heterosexual than gay Attorney Survey respondents reported specific incidents of gay attorneys being pressured to remain "closeted," n193 the comments of many heterosexual attorneys confirm the prevalence of employer pressure on gay attorneys to conceal their sexual orientation: n194

Here, you can "be" gay, but not "act gay" or show it at the office. n195

I don't think the firm would care if a lawyer was gay, but would care if he/she was openly gay at [the] office, social

events, etc. Support staff would be up in arms. n196

My sense is that being gay or lesbian is not a hinderance to advancement as long as one is quiet (although not necessarily secretive) about one's sexual orientation. n197

Moreover, large numbers of gay and heterosexual lawyers alike believe that being "out" can be harmful to an attorney's career. The Attorney Survey included a range of questions about whether an attorney's career would be harmed if the attorney participated in certain activities, or merely displayed certain cues, that might suggest a gay sexual orientation. n198 The responses reveal a general perception that being "out" is often harmful to a gay attorney's career. n199

The strongest Attorney Survey response concerning "out" gay attorneys related to clients: nearly three quarters of all respondents believe that it will harm a gay attorney's career to let most or all clients know that he or she is gay. n200 This concern about "customer [*342] preference" or biased clients was echoed in several attorney comments. For example, gay attorneys reported:

[At my large firm,] firm-wide functions included all significant others; functions at private homes or where clients would be present did not. n201

I was told that clients wanted an attorney that was "more aggressive" or that "liked sports." I was also told that the firm would not take on a gay pro bono case because it would upset clients. n202

We had lots of Pacific Rim clients. Gay and lesbian attorneys were told not to have client contact. n203

In addition to the concern about letting clients know, many Attorney Survey respondents perceived several other indicators of homosexuality to be especially harmful to an attorney's career: displaying indicators of gay or lesbian community involvement in one's office (48.0%); discussing one's personal or family life involving a same-sex partner (46.3%); and bringing a same-sex date to an outside social or professional event (46.2%). n204 The perception of career harm declined slightly when the indicators of an attorney's homosexuality stayed within the employer workplace. For example, only 37.9% of respondents believe it would be harmful to bring a same-sex date to an internal office event (without clients or outsiders). n205 Similarly, when indicators of homosexuality are kept within the gay community, the perceived risk of career harm was somewhat lower: 26.6% believe it harmful to take on gay-related pro bono work and 32.3% believe it harmful to become active in gay community organizations. n206

There were also differences of opinion between heterosexual and gay Attorney Survey respondents as to when being "out" is harmful to a gay attorney's career. Generally, gay respondents are more likely to perceive harm from being "out." n207 But on the subject of career harm if clients know that an attorney is gay, heterosexual women are the most likely to believe it harmful, and heterosexual men are the least [*343] likely. n208 Also, with respect to all but three ways of communicating one's homosexuality, n209 heterosexual men were the least likely to perceive being "out" as harmful to a gay lawyer's career. By contrast, nearly half of all respondents, regardless of gender or sexual orientation, believe that simply discussing one's personal or family life in a manner that revealed the gender of one's partner - a matter of no consequence whatsoever for a heterosexual attorney - would harm a gay attorney's career. n210

3. Social and Professional Relations Between Gay Attorneys and Heterosexuals

In the legal profession, socializing and personal relationships - with other attorneys, court and other government officials, business people and other current or potential clients - are important to professional advancement. n211 Approximately 52% of Attorney Survey respondents believe that social activities are important to advancement in their

offices. n212 In private practice, social activities are particularly important to business development and advancement. n213 Among Attorney Survey respondents in private firms, 58.2% believe that social activities are important to advancement while only 38.9% [*344] of respondents in in-house law departments and 39.0% of respondents in non-profit or government employment believe so. n214

When it comes to professional "networking," their sexual orientation often presents gay attorneys with problems not encountered by heterosexual attorneys. Generally, it appears that heterosexual and gay attorneys alike recognize the nature and magnitude of these problems. n215 One heterosexual attorney remarked, "Once it's out [that an attorney is homosexual], interpersonal relationships with co-workers change." n216 Another heterosexual attorney admitted frankly, "I would feel uneasy about socializing with gay people." n217 A gay attorney said, "There was a subtle chill in my relations with the office after I came out." n218 Another said,

I was out in a big firm but I knew I would never make partner because I knew I would not even stay long enough to be considered for partnership. How could I network with the partners? They were all white males, over 60 and married. We didn't belong to the same country club, if you know what I mean. I left that firm out of fear. n219

Other gay attorneys noted the frequent internal conflicts presented in their relationships with heterosexual colleagues:

[At my firm,] the choice of confronting or acquiescing in bigotry was a double-edged sword. I didn't want to partake in any of the sexist or anti-gay jokes that were being made in the groups who would gather to socialize in the office[,] ... so I typically removed myself from the situation as opposed to vocalizing my objection, knowing what hostility that would bring me. But in removing myself from those situations, ... I got the reputation of being aloof... When I did speak up I was seen as a malcontent, a trouble maker. When I didn't speak up, I was seen as aloof and held off onto my own. n220

It is very easy [for an openly gay attorney] ... to become perceived as the aggressive rabble-rouser - the odd man out or the odd [*345] woman out ... You could even try to laugh at the jokes and be part of the game, and you are not going to be "in" because people are hyper-cautious around you. n221

Perhaps even more than for "single" gay attorneys, the dysfunction in social and professional relations with heterosexuals presents a particularly painful choice for gay attorneys in long-term, committed relationships with a same-sex partner. One gay attorney wrote, "Firm social events were painfully formal and boring - but necessary for success. I was always uncomfortable not having my lover present and politely fending off 'marriage' type questions." n222 Another said, "I am very reluctant to bring my same-sex partner due to stigma or unacceptance." n223 Another gay attorney remarked

Office social events [are] when gay and lesbian attorneys are most likely to feel and be perceived as "different" - usually attending events without a date/spouse, making it more difficult to enjoy the event and participate fully. As a result, they are often perceived by other attorneys as antisocial or as mysterious - i.e., not fitting in. n224

As was the case many years ago for interracial couples and heterosexual couples where the wife is the employee, gay couples have become a reality that employers can no longer simply ignore. While 93.7% of the Employer Survey

respondents reported that their policy is that gay attorneys are welcome to bring same-sex guests to office-sponsored social events, n225 only 13% of Employer Survey respondents reported that gay attorneys in their office always did so, 71.7% reported that they only did so "sometimes" and 15.2% reported that they never did so. n226

Further, Attorney Survey questions that inspired the most written comments were those relating to same-sex couples at office-sponsored social events. Most respondents reported conscious or unconscious exclusion of same-sex couples. n227 Many employers apparently do not [*346] consider the possibility that an attorney may have a same-sex domestic partner n228 and many gay attorneys appear to be unwilling to test the waters where the welcome is uncertain. n229 A heterosexual attorney wrote that, at his firm's social events, "Same-sex partners would not be welcome and would be subjected to harassment." n230 A gay attorney said, "Although same-sex partners are tolerated, not 'welcome' at firm events, there is much informal socializing - that is important to one's career - from which gay couples are often excluded." n231 Another gay attorney reported, "In my year of being 'out' at the firm, my partner was invited only to one small (6 person) function. My partner has not been invited to any firm-wide functions, particularly those which clients with heterosexual spouses attend." n232 Another reported that immediately after a gay attorney brought his [*347] domestic partner to a firm Christmas party, "he noticed a marked change in the way partners related to him, he noticed a significant drop off in terms of the work assigned to him by a number of the partners and, the following year, he was asked to leave the firm." n233

Despite the easy acceptance of heterosexual relationships, the routine introduction of a gay attorney's same-sex domestic partner is still viewed by many as "flaunting" one's "sexuality." One gay attorney wrote, "I have been the object of critical statements about 'dragging in' my 'personal' life because I mentioned my life partner." n234 And as another noted, "There are certain people, generally more senior people in many firms, who are uncomfortable with many of the issues relating to people's sexuality... They just don't want to know." n235

Many of the concerns over same-sex relationships highlight a double standard. Most heterosexuals are not conscious of the myriad ways that their own sexual orientation is "out" in the workplace and in other professional contexts. Family photographs in the office, appearing in public with one's spouse and conversations about one's spouse and one's community activities are only a few examples of how the nature of one's personal and community affinities communicate sexual orientation in ordinary interactions with colleagues and clients. In most social and professional contexts, no heterosexual attorney would imagine that the simple introduction of his or her spouse or domestic partner would be understood as a "sexual" statement or an invitation to discuss sexuality. Acceptance of the relationship between gay domestic partners is no more - and no less - a "sexual" matter than acceptance of the relationship between opposite-sex spouses.

C. Employer Policies Against Sexual Orientation Discrimination

Sexual orientation discrimination in employment cannot be overcome without effective employer policies. Several gay attorneys spoke to the positive effects of strong institutional support for nondiscrimination. One reported, "That [the head of my office] has made it very clear about sexual orientation discrimination not being [*348] tolerated made a big difference this time - I was in the office before and I was not out and it was not comfortable." n236 Another said,

There's a male-locker-room attitude among senior management. It's redneck macho. But, when someone said they weren't sure the lawyers would be comfortable with my sexual orientation, a senior partner said to "judge him on his work, not his sexual orientation." Although risky, in reality, I take my significant other to events - though we stick out a lot. The lawyers are trying - despite their backgrounds. n237

Reflecting the double standard regarding disclosures of sexual orientation, however, some legal employers would prefer to avoid addressing sexual orientation discrimination by ignoring the fact that they have gay attorney applicants and

employees. n238

Through both the Employer Survey and Attorney Survey, the Committee sought to evaluate the steps Los Angeles County legal employers have taken to counteract sexual orientation discrimination. Specifically, the Attorney Survey included several questions asking the respondents to evaluate the steps taken by their employers to counteract sexual orientation discrimination. In addition, the Employer Survey sought responses to several basic questions concerning the respondents' nondiscrimination policies: (1) whether the employers have such policies in written form; n239 (2) if so, whether those policies expressly extend protections to gay attorneys; and (3) whether the employers have taken steps to counteract sexual orientation discrimination comparable to steps taken to counteract gender, race and ethnicity discrimination. n240 [*349]

Employer Survey responses reveal that a majority of respondents have nondiscrimination policies that expressly prohibit sexual orientation discrimination, but it also appears from both Employer Survey and Attorney Survey responses that many employers have yet to put these policies into practice effectively with respect to gay attorneys.

1. The Prevalence of Nondiscrimination Policies

Approximately 67% of Employer Survey respondents reported that they have a written nondiscrimination policy that expressly covers sexual orientation discrimination to the same extent as discrimination based upon gender, race or ethnicity. n241 The nondiscrimination policy most Employer Survey respondents have adopted covers three areas most critical to a lawyer's career: hiring, retention and promotion. An additional 22% of employer respondents reported that their nondiscrimination policy expressly prohibited discrimination based on gender, race or ethnicity, but did not expressly prohibit sexual orientation discrimination; 10% of Employer Survey respondents reported that, while their nondiscrimination policy did not make express reference to sexual orientation discrimination, it also did not make express reference to gender, race or ethnicity discrimination. n242

Regarding the form of nondiscrimination policy, Employer Survey responses were generally consistent across legal employers of different size and type - law firms, businesses with law departments and other types of employers. n243 In-house law offices were somewhat more likely to have written nondiscrimination policies that expressly cover sexual orientation discrimination (75%). n244 Similarly, a substantial majority of both large (twenty-one or more attorneys) and small (one to ten attorneys) law offices reported adopting written nondiscrimination policies that expressly cover sexual orientation discrimination: 70% and 83%, respectively. n245 The only category of Employer Survey respondents that had a substantially different response was medium-sized law offices (eleven to twenty attorneys); only 25% of such respondents reported that they had adopted an explicit policy against sexual orientation discrimination. n246 [*350]

2. The Implementation of Nondiscrimination Policies

Both the Employer Survey and Attorney Survey responses suggest generally that most employer nondiscrimination policies have not effectively eliminated sexual orientation discrimination in their workplaces. Several attorneys underscored the need to strengthen the enforcement of nondiscrimination policies with respect to gay attorneys:

In the environment and at the firm that I'm with I'm not sure if we have an antidiscrimination policy. But even if we did, it wouldn't guarantee that all of us complied. n247

Whatever [policies employers adopt], there would have to be reinforcement of the policies whether it be through the threat of litigation or internal enforcement - it can be very tricky when you have people like lawyers who are not stupid and are adept at evading rules. Because they have learned, on the racial and gender issues, how not to speak their prejudices but to still act on them. n248

The only problem with paper policies is that many people who will sign on because it seems right don't really know how much work is needed because they don't see in themselves some of the problems. n249

Several gay attorneys spoke particularly of the need for management support to overcome the problem of disparate standards in attorney evaluations:

I think the subtle double standard [in workplace evaluations] ... is far harder to address except from the inside... I am a fairly senior partner [and] whenever a gay or lesbian lawyer is being reviewed by a particular work group in my firm, I'll sit in on the partners' lunch meeting in that work group. I will be there to try to make my own judgments about whether this is fair ... It doesn't eliminate [all bias], but when people know ... that I'm there and watching - it keeps the process more honest. n250

What is really needed is for the straight, white male partners and managers ... to pay special attention to evaluations of gay - and [*351] other minority - attorneys to make sure that the subtle double standard does not work to weed them out. n251

a. Recruitment and hiring: Almost 29% of Attorney Survey respondents believe that their employers have not taken the steps necessary to ensure the absence of sexual orientation discrimination in recruitment and hiring. n252 In addition, almost 32% of Attorney Survey respondents believe that their employers have not taken the steps necessary to ensure that gay attorneys are not discouraged from seeking employment in their offices. n253 And while several Employer Survey respondents were enthusiastic about their hiring policies and practices, n254 Employer Survey responses generally indicate that policies against sexual orientation discrimination have been implemented only in a limited manner as regards recruitment and hiring.

In particular, the Employer Survey responses suggest that most Los Angeles County legal employers do not treat gay attorneys as entitled to the same type of nondiscrimination protections as women attorneys and attorneys of color. When asked whether they provided training for interviewers about appropriate (and inappropriate) areas of inquiry, approximately 63% of the employers responded that they provided training that covered issues related to sexual orientation to the same extent that training is provided for issues related to gender, race and ethnicity. n255 Overall, this response is only slightly less than the reports of employers adopting a nondiscrimination policy that explicitly covers sexual orientation. n256

Nonetheless, only about 15% of the employers reported that they inform search firms of their nondiscrimination policy for gay attorneys [*352] when such information was provided for women attorneys and attorneys of color. n257 Only about 9% of the employers responded that they identify attorneys who volunteer to be contacts for applicants with questions about the employer's treatment of gay employees, even though such identification is commonplace for similar questions from women and people of color. n258 Only 6% of the employers reported that they actively recruit gay attorneys to the same extent as they recruit women attorneys and attorneys of color; over 76% of the employers reported that they do not actively recruit gay attorneys to the same extent as women attorneys and attorneys of color. n259

Moreover, those employers who involve their gay attorneys in the interviewing process appear to do so somewhat selectively. While 39.6% of the Employer Survey respondents reported that they include gay attorneys as members of their hiring committees n260 and 41.2% reported that they include gay attorneys in the in-office interviewing process, n261 only 29.8% reported that they include gay attorneys when interviewing law students on campus - even though the employers do include women attorneys and attorneys of color in on-campus interviewing. n262

b. Work assignment, evaluation, retention and promotion: The Employer Survey responses indicate that most

employers have taken important steps to implement nondiscrimination policies with respect to gay attorneys in work assignment, evaluation, retention and promotion. Nevertheless, the Attorney Survey responses suggest that this progress is not perceived to be sufficient. A third of Attorney Survey respondents believes that their employers have not taken the steps necessary to ensure that performance reviews and work assignments are not affected by the actual or perceived sexual orientation of lawyers. n263 Moreover, 36.4% of Attorney Survey respondents believe that their employers have not taken the steps necessary to ensure that advancement and promotion decisions do not discriminate on the [*353] basis of sexual orientation. n264 Finally, 56% of Attorney Survey respondents believe that their employers have not taken steps necessary to ensure that their attorney workforce reflects the diversity of attorneys in Los Angeles County, including gay attorneys. n265

Consistent with the Attorney Survey responses, the Employer Survey responses were mixed as to whether employers make efforts to train and retain gay attorneys comparable to efforts they report making with respect to women attorneys and attorneys of color. Nearly 60% of Employer Survey respondents reported that they have policies and procedures to ensure that performance reviews and work assignments are not affected by the actual or perceived sexual orientation of attorneys to the same extent that they have such review policies in place to counteract gender, race or ethnicity bias. n266 An additional 30% reported that they have no written policies concerning performance reviews or work assignments for women, people of color or gay people. n267 Only 8.7% of the employers reported that they have such written policies for women and people of color which do not cover gay people. n268 In this regard, while medium-sized employers appear less likely to have review and work assignment policies with respect to gay people comparable to their policies for women and people of color, essentially no difference exists between large and small employers. n269

Employer Survey responses also indicate that employers have not implemented their nondiscrimination policies regarding the promotion of gay attorneys to the same extent as comparable policies for women attorneys and attorneys of color. Well over half of the Employer Survey respondents - approximately 56% - do not have stated goals for promoting gay attorneys even though they have such [*354] goals for women and people of color. n270 Only about 6% report that they have stated goals for the promotion of gay attorneys. n271 A substantial portion of the respondents, however - approximately 36% - reported that they do not have stated goals for the promotion of women attorneys, attorneys of color or gay attorneys. n272

Similarly, a large portion of Employer Survey respondents reported that they did not provide gay attorneys with institutional support and recognition to the same extent as women attorneys or attorneys of color: 47.7% reported that they provide peer group or mentoring for women attorneys and attorneys of color but not for gay attorneys; 52.8% reported that their office newsletter reports on office activities relating to women and people of color but not gay people; and 43.8% reported that their employee meetings or luncheons included programs on current issues relating to women and people of color but not gay people. n273

3. The Awareness of Bias and Response to Complaints

Employers have taken some notable steps to implement their nondiscrimination policies with respect to gay attorneys. Significantly, however, it also appears that employers may only rarely hear of incidents of sexual orientation bias in their workplaces. For example, only 26% of the Employer Survey respondents reported that they were aware of derogatory statements or jokes about gay people, n274 even though almost two-thirds of the Attorney Survey respondents reported hearing such statements or jokes. n275 Similarly, only about 8% of Employer Survey respondents reported that they were aware of derogatory remarks by an attorney in their offices about another employee based upon the other employee's actual or perceived sexual orientation, n276 even though over a third of the Attorney Survey [*355] respondents reported hearing such specifically-targeted anti-gay remarks. n277 This difference in the Employer Survey and Attorney Survey reports could reflect either severe problems at a small number of employers or, more likely in the Committee's judgment, a widespread problem that is not being reported to employers.

Even more troubling, it appears that, even when employers hear allegations of anti-gay bias, few take action. Most

do not even make inquiries about the alleged incident. For example, of the Employer Survey respondents that were aware of general anti-gay remarks or jokes, only 25% of them treated them seriously, 25% worked to determine the truth of the allegations or learn of the relevant facts and 44% of those identifying a problem developed a plan to correct it. n278 Of Employer Survey respondents that were aware of anti-gay remarks targeted at a specific employee, only 50% took the allegations seriously; only 50% of those identifying a problem developed a plan to correct it. n279

The apparent rarity of reports to and intervention by employers regarding incidents of anti-gay bias may be explained in part by employee fears of retaliation for raising a complaint. As one gay attorney observed,

Most people are willing to go on leading lives of silent desperation, rather than take the risks involved in a serious confrontation with an employer. Who wouldn't rather have a career than a lawsuit? For whatever [the wrong done] is, the lives of these people are easy to disrupt ... [they are] very vulnerable ... because they're gay. n280

Similarly, another stated,

[My former employer] purports to have an anti-discrimination policy ... Any attempt to call [discrimination] to the attention of the higher executives would have resulted in some dutiful lip service. However, it would have been difficult to obtain another job in the industry after having been labeled a "troublemaker." n281

[*356]

4. The Communication of Nondiscrimination Policies

While a few heterosexual Attorney Survey respondents questioned the need to publicize their nondiscrimination policies, n282 several gay Attorney Survey responses suggested the importance of clear communication of nondiscrimination policies to applicants and employees:

My firm appears to have no consciousness of the issue of sexual orientation bias. The silence is deafening. n283

A formal nondiscrimination policy should be adopted and announced to all employees. n284

It's really, really crucial to have a written policy. ... I've seen them from the receiving end and know the message they send out... If you're a new employee someplace ... and you see "sexual orientation" ... in type [in the employee manual,] it means someone has thought about this enough to put [it] on a parallel with all those other prohibited discrimination categories ... That, in itself, is a very powerful message ... n285

Employer Survey and Attorney Survey responses both indicate that most employers do not effectively communicate their nondiscrimination policies regarding gay employees. Approximately 53% of Attorney Survey respondents believe that their employers have not taken the steps necessary to make their policies and practices with respect to gay attorneys known to their employees n286 and 56% believe that their employers have not taken steps sufficient to make those policies and practices known to job applicants. n287 These responses were fairly consistent across gay and heterosexual, male and female respondents. n288 [*357]

Employer Survey responses support the Attorney Survey indications of a problem with the communication of policies against sexual orientation discrimination. The Employer Survey asked whether the respondents publish their

nondiscrimination policies regarding gay employees in "welcome packets" for incoming attorneys to the same extent as nondiscrimination policies for women and people of color are published; 46% responded that they did, 22% responded that they did not and 32% responded that no such actions were taken for women employees or for employees of color. n289 Larger employers and businesses were better at publishing their policies than others: 63% of the larger firms (and 69% of corporate law offices) reported that they publish their policies in a welcome packet; only 36% of smaller law firms and 40.5% of all law firms did so. n290

About 9% of Employer Survey respondents reported that they have employee education programs that address bias issues related to gay people to the same extent as bias issues relating to women and people of color. n291 Over 55%, however, reported that they have education programs that address issues relating to gender bias, race bias and ethnicity bias but do not address issues relating to sexual orientation bias; approximately 35% reported that they have no education programs relating to bias issues. n292

D. The Reaction to the Study and the Committee Itself

Beyond the evidence of anti-gay bias in the data obtained for this study, the Committee's own experience in performing this study suggests apathy, even hostility, concerning the subject of sexual orientation bias. For example, the rates of response to the Attorney Survey and Employer Survey are somewhat troubling. The typical response rate for mail questionnaires such as the Attorney Survey and Employer Survey is between 20% and 30%. n293 While the overall [*358] response rate for the Attorney Survey was 20%, a striking difference is evident in the Attorney Survey response rates for the predominantly gay attorney sample, 31%, and for the predominantly heterosexual attorneys in the random sample of Association members, 16%. n294 Also, the response rate for heterosexual attorneys was below the norm. The 17% response rate for the Employer Survey was similarly low. While the low response rates from heterosexuals and employers could reflect some trouble with the survey instruments, they may also reflect, at least in part, apathy concerning the problem of sexual orientation bias.

In addition, while some attorneys expressed gratitude to the Association for addressing the issue of sexual orientation bias, n295 the study itself and the Committee were also the targets of sharp criticism. Some heterosexual attorneys expressed fundamental objections to the Association addressing the matter of sexual orientation bias at all. A few suggested that the effort was unnecessary:

I believe this survey is indicative of over-sensitivity to large and recognized minority groups. We all need more tolerance toward others, and that includes more tolerance by "traditional" minorities of "minor" acts of perceived discrimination... For the record, this respondent is absolutely opposed to limiting an individual's advancement because of any ethnic, race, sexual or similar characteristics. n296

To spend this amount of time on what should be a non-issue is approaching the absurd. n297

Moreover, other heterosexual attorneys indicated that sexual orientation discrimination, even if severe, should not be a concern of the Association: n298

My firm's recruitment and hiring of homosexual attorneys is no business of the L.A. County Bar. n299

Doesn't the County Bar have better things to do with our dues besides establishing a Committee on Sexual Orientation Bias to "examine the quality of work life for lesbian and gay attorneys in [*359] Los Angeles County"? What next? "Pay Discrimination Against Marginally Competent Attorneys"? n300

I am unwilling to participate in the survey and strongly believe it is not an activity the Los Angeles County Bar Association should be carrying on... All the survey is going to do is to upset many people and create unnecessary problems among attorneys and firms... I am sure you are aware of the many complex legal, moral, religious and political problems and questions which exist in this field. n301

Frankly, I can find no justification for the Los Angeles County Bar Association to be expending its funds (and my dues) on investigating policies regarding lesbians, gay men and bisexuals. I have practiced law for 20 years in Los Angeles County, and I know many, many attorneys. To date, not a single attorney has ever expressed an interest to me in this subject nor has it ever been discussed. The most probable reason for that lack of interest is that there are some subjects which may better be left unevaluated. n302

There are plenty of important issues that the Bar should be addressing, this certainly is not one of them. Find someone else to spend his/her valuable time responding to this garbage. n303

I object to the intrusion of sexual questions such as those contained in the attached questionnaire. I object to a committee on the purported subject of "bias" in sexual orientation. Please discontinue this obnoxious intrusion. Why are the sexual practices of lawyers of interest to my bar association? n304

These comments and the survey response rates both suggest a need for greater awareness and further education concerning the problem of sexual orientation discrimination. Viewed in the light of the laws and ethical rules against sexual orientation discrimination, as well as the severity of the problem of such discrimination identified in this Report, the matter is one which should concern both the Association and the Los Angeles County legal profession greatly. [*360]

III. RECOMMENDATIONS FOR EMPLOYERS

The data collected and reviewed for this Report suggest not just a problem of sexual orientation discrimination in the legal profession in Los Angeles County, but also steps to be taken to begin to address that problem. Because a large portion of gay attorneys in Los Angeles County feel constrained to remain "in the closet," many Los Angeles legal employers do not realize that they may have substantial numbers of gay attorney applicants and employees. In part as a result, many Los Angeles legal employers have failed to address discrimination against gay attorneys adequately. This failure not only causes strain between gay attorneys and employers or potential employers - often unseen by employers - but needlessly exposes employers to risks of violating laws and ethical rules prohibiting sexual orientation discrimination.

The recommendations in this section are designed to mitigate the risk of violations of relevant laws and ethical rules, as well as to improve professional relations between employers and gay attorneys. Adoption of these recommendations by an employer should also enhance the productivity of a now generally invisible number of gay attorney employees. These recommendations follow from the findings set forth above and, in many respects, parallel similar steps already endorsed by the Association and adopted by many Los Angeles County legal employers to remedy the problems of gender bias, race bias and ethnicity bias. n305

A. Adopt, Implement and Publicize a Nondiscrimination Policy Relating to Gay Attorneys

Employers should adopt formal policies and procedures to prohibit sexual orientation discrimination and should take actions to implement those policies and procedures, just as they have adopted formal policies and procedures and taken actions to prohibit discrimination based on gender, race and ethnicity. In particular, employers should adopt and implement a nondiscrimination policy which expressly prohibits sexual orientation discrimination and promotes equal opportunity in employment for gay attorneys. This policy should prohibit discrimination and harassment on the basis of sexual [*361] orientation and should be enforced by clearly established grievance and complaint follow-up procedures.

The grievance procedure should provide a neutral forum for the resolution of complaints of bias based upon sexual orientation; the complaint follow-up procedure should ensure that complaints are taken seriously and investigated promptly and adequately. The nondiscrimination policy and grievance and follow-up procedures should be publicized throughout the workplace.

B. Encourage Nondiscriminatory Recruitment and Hiring of Qualified Gay Attorneys

Employers should promote fair and equal recruitment and hiring of qualified gay attorneys. This effort should include not only implementation of procedures and practices for nondiscriminatory recruitment of qualified gay attorneys, but training for interviewers to eliminate even subtle bias, such as inquiries about (unvolunteered) sexual orientation and marital status. Employers should involve their gay attorneys in all aspects of the hiring process, not only to create a more sensitive and fair process and to obtain contacts for recruiting, but to demonstrate their nondiscrimination policy to potential attorney employees. Employers should also identify a gay-sensitive contact to whom applicants can address questions relating to the treatment of gay employees which might not otherwise be raised. Regarding all other aspects of recruitment and hiring, employers should undertake actions with respect to gay attorneys comparable to actions undertaken with respect to women attorneys and attorneys of color.

C. Promote a Workplace Climate That Ensures Equal Employment Opportunities for Gay Attorneys

The problems of overt and subtle discrimination against gay attorneys, as well as the effects of unconscious and indirect anti-gay bias, can be mitigated by broad institutional support from employers. In addition to adopting, publicizing and implementing an express nondiscrimination policy, employers should ensure that their other policies and practices promote equal opportunities for, and fair evaluation, monetary compensation, advancement and retention of, qualified gay attorneys.

In particular, employers should take steps to ensure that work assignments, performance evaluation, compensation and promotion are unaffected by an attorney's sexual orientation. Any employer [*362] mentoring program or support group system should be utilized to create an open and unbiased work environment for gay attorneys. Regarding other actions to ensure fairness in work assignment, evaluation, compensation and promotion, or to provide mentoring and support, employers should take actions with respect to gay attorneys comparable to actions taken with respect to women and people of color.

Employers should also demonstrate a commitment in the workplace to fair treatment of their gay attorneys. Employers should take steps to prevent harassment of gay employees and discourage inappropriate anti-gay comments and jokes. These steps should include education and sensitivity training on both legal and social aspects of sexual orientation bias in employee training programs. Regarding other employer anti-bias programs, employers should undertake actions with respect to sexual orientation bias comparable to actions undertaken with respect to gender, race and ethnicity bias.

Employers should support, acknowledge and promote the interests and activities of gay attorneys to the same extent that the interests and activities of other attorney employees are supported, acknowledged and promoted. For example, employers should pay membership dues and expenses for gay professional associations to the same extent that membership dues and expenses are paid for professional associations for women or people of color. Employer-sponsored newsletters, employee luncheons, office meetings and other programs should include activities and topics relating to the gay community to the same extent that activities and topics relating to people of color or women are included. Similarly, such newsletters, luncheons and programs should acknowledge and include the activities of gay attorneys to the same extent that the activities of women attorneys and attorneys of color are acknowledged and included.

D. Provide Gay Attorneys and Their Same-Sex Domestic Partners with Employee Benefits Comparable to Those Provided to Heterosexual Attorneys and Their Opposite-Sex Spouses

Although the question remains open whether it is required by law, employers should take steps to provide employee benefits to gay attorneys and their same-sex domestic partners comparable to those provided to heterosexual attorneys and their opposite-sex spouses. [*363]

In particular, employers should provide health and other insurance benefits to the same-sex domestic partners of attorneys on the same terms that such benefits are provided to opposite-sex spouses of attorneys; children of gay attorneys or their same-sex domestic partners should be covered to the same extent that children of heterosexual attorneys or their opposite-sex spouses are covered. n306 If an employer cannot obtain group coverage for same-sex domestic partners or their children, it should assist gay attorney employees in obtaining individual coverage for their same-sex domestic partners and their children and should - at least to the extent that the employer would have contributed to group coverage for an opposite-sex spouse or children of an opposite-sex spouse - contribute toward the premium for such individual coverage.

Similarly, other employee benefits should cover the families of gay employees in the same manner as the families of heterosexual employees. Employer parenting leave policies and part-time policies should be gender neutral, marital status neutral and not dependent upon the biological relationship between the parent and the child. Employers should provide sick leave, caretaking leave, bereavement leave and other family leave benefits to gay employees with needs relating to their children, same-sex domestic partners and the children or family of their same-sex domestic partners on the same terms that such leave is provided to heterosexual employees with needs relating to their children, opposite-sex spouses and the children or family of their opposite-sex spouses. Similarly, employers should provide relocation benefits and employee assistance programs (such as substance abuse treatment or crisis counseling) to gay employees, their children, same-sex domestic partners and the children or family of their same-sex domestic partners to the same extent that such benefits are provided to heterosexual employees, their children, opposite-sex spouses and the children or family of their opposite-sex spouses.

E. Provide Gay Couples the Same Opportunities to Socialize with Colleagues as Heterosexual Couples

Employers should provide same-sex couples the same opportunities to socialize with colleagues that they provide heterosexual [*364] couples, both at office-sponsored social events and in other employer efforts to facilitate socializing among colleagues. In the same manner that an employer invites its attorneys to identify their opposite-sex spouses - for example, in soliciting information for employee rosters and announcements of office-sponsored events - the employer should also invite its attorneys to identify their same-sex domestic partners. Similarly, employers should acknowledge and include a same-sex domestic partner identified by an attorney in the same manner that it acknowledges and includes an opposite-sex spouse identified by an attorney - for example, in employee rosters, invitations to office-sponsored events and attendance lists for work-related activities. In such invitations and listings, employers should use inclusive terms such as "guest," "partner" or "significant other," instead of or in addition to terms such as "husband," "wife" or "spouse."

F. Do Not Encourage Gay Attorneys to Be "Closeted" at Work or in Their Professional Activities

Employers should ensure that gay attorneys have the same freedom as heterosexual attorneys to determine whether, when and the extent to which their personal relationships are revealed at work or in their professional activities. Practices that encourage gay attorneys to conceal their sexual orientation perpetuate a fundamental dysfunction in professional relations between gay attorneys and heterosexuals. Employers should allow gay attorneys to be open about their sexual orientation and should support "out" gay attorneys who encounter difficulties because of their sexual orientation from clients, coworkers or superiors.

Although employers should allow gay attorneys to be open about their sexual orientation, employers should not pressure a gay attorney to be more "out" than he or she wishes to be. The question of whether and when to disclose one's own sexual orientation and personal life should remain a personal matter for gay attorneys - just as it is for heterosexual attorneys. n307 The appropriate goal for legal employers should be to create a workplace that is as unbiased and [*365] supportive for gay people as it is for heterosexuals. In such a workplace, gay attorneys may choose freely whether to be open about their sexual orientation without fear of discriminatory reprisal.

IV. RECOMMENDATIONS FOR THE ASSOCIATION

As it has with respect to gender, race and ethnicity bias, the Association should lead the Los Angeles legal community in the elimination of sexual orientation bias. Accordingly, this Report recommends that the Association take certain steps to that end. The Association should establish an ongoing committee on Sexual Orientation Bias in the Legal Profession, comparable to the Association's existing committee on Minority Representation in the Legal Profession, charged with responsibility for the implementation of these recommendations.

A. Publish This Report

Many of the findings in this Report identify a basic lack of knowledge about gay people and sexual orientation discrimination. Through widespread distribution, this Report can provide some of the needed education. The Association should disseminate this study throughout its organization and the legal profession, using news media, seminars and continuing legal education programs.

B. Encourage Employers to Implement the Recommendations

The Association should encourage employers to implement the recommendations in this Report. The Association, as a member benefit, should provide model policies and other assistance to employers wishing to implement these recommendations. In addition, the Association should consider the most appropriate way to measure the effect of these recommendations and the Association's efforts to implement them.

C. Provide Information on Domestic Partner Benefits

The Association, as a member benefit, should act as a clearinghouse for information on insurance alternatives and benefit options relating to same-sex domestic partners and gay families. [*366]

D. Sponsor and Promote Relevant CLE Programs

The Association should ensure that its continuing legal education program offerings include programs on the subject of sexual orientation bias.

E. Sponsor Programs to Counteract Sexual Orientation Discrimination

The Association should sponsor support group, mentoring or other programs for gay attorneys aimed at counteracting the effects of sexual orientation discrimination in legal employment.

V. CONCLUSION

Widespread adoption and implementation of the Committee's recommendations for employers will trigger substantial benefits for legal employers and for the gay attorneys - whether "out" or "closeted" - whom employers now

or may in the future employ. The elimination of practices that are illegal and violate professional ethics is in itself a laudable end. The elimination of such practices will begin to restore the dignity and professional standing of attorneys now adversely affected by sexual orientation discrimination. Moreover, in the highly competitive environment of law practice in the 1990s, the creation of a professional environment free of sexual orientation discrimination will have a salutary effect on the productivity of previously encumbered gay attorneys and, in turn, a positive influence on the economic competitiveness of those attorneys and their employers. The Committee urges all Los Angeles County lawyers and legal employers to consider with deep commitment how best to implement the recommendations contained in this Report with the greatest possible dispatch.

June 9, 1994

[*367]

THE LOS ANGELES COUNTY BAR ASSOCIATION APPENDICES TO REPORT ON SEXUAL ORIENTATION BIAS

[*368] [*369]

APPENDIX A

METHODS

[*370] [*371]

APPENDIX A-1

DESCRIPTION OF METHODS AND DATA

[*372] [*373]

DESCRIPTION OF METHODS AND DATA

(1) The Attorney Survey and Employer Survey Instruments

With the assistance of Dr. Shepard, the subcommittee on employers and the subcommittee on attorneys each developed a proposed form of survey that thereafter was reviewed, refined and approved by the Committee as a whole. The Attorney Survey was designed to be completed by individual attorneys for purposes of assessing their views of the quality of work life for lesbian, gay and bisexual attorneys in their current and/or previous work settings. The Employer Survey was directed at managing partners (or equivalent) at a variety of law firms and other settings in which lawyers are employed. Copies of the final forms of the Attorney Survey and Employer Survey are attached as Appendices A-2 and A-4, respectively.

Development of the subject matter for both survey instruments was guided by the surveys prepared in connection with the ABCNY and BASF studies as well as the personal experiences and anecdotal information collected by various Committee members. The process was also facilitated by a focus group meeting among Dr. Shepard, two Committee members and ten volunteer gay attorneys, who discussed what areas should be addressed by the surveys. In addition, both survey instruments were pilot-tested with gay and heterosexual attorneys and revised before final versions were produced and distributed.

The Attorney Survey is divided into five major sections:

Recruitment and Hiring, with questions designed to determine attorney views of what steps, if any, have been taken by their firms or offices to ensure that recruitment and hiring practices do not discriminate on the basis of sexual orientation;

Social Events and Activities, serving as an index of workplace climate, with questions exploring attorney views of the importance of social activities to professional advancement as well as the receptivity of their workplaces to including same-sex guests in the social activities of the firm or office;

Retention and Promotion, with questions aimed at determining attorney views of what steps, if any, have been taken by their firms or offices to ensure that retention and promotion decisions are made in a manner that does not discriminate against lesbians, gay men and bisexuals;

Attitudes, Beliefs and Experience, with questions exploring attorney satisfaction with various aspects of their work lives, their assessment of how lesbian, gay and bisexual attorneys fare with [*374] regard to a variety of job-related factors when compared to heterosexual attorneys, as well as workplace bias against gay attorneys; and

Personal Information, for purposes of constructing a demographic profile of survey respondents.

The Employer Survey contains questions about the employment of lesbian, gay and bisexual attorneys designed to parallel the questions in the Attorney Survey, and also includes questions concerning particular employment policies and practices. The Employer Survey is divided into the following six areas: Recruitment and Hiring, Social Events and Activities, General Policies and Practices, Personnel Policies and Benefits, Retention and Promotion and Firm/Office Information.

Most questions on both the Attorney Survey and Employer Survey employed a "forced answer" format, requiring the respondents to select from among several alternative responses provided on the survey form. In addition, however, both the Employer Survey and Attorney Survey included several "open-ended" questions, permitting but not requiring the respondent to include extemporaneous written comments on the subjects addressed.

(2) The Distribution of and Response to the Attorney Survey and Employer Survey

On September 13, 1993, the Attorney Survey was mailed to a sample of 2184 attorneys in Los Angeles County. The sample included a random sample of 1634 Association member attorneys. In addition, a total of 550 Attorney Surveys were mailed to members of Lawyers for Human Rights, the Lesbian and Gay Bar Association of Los Angeles ("LHR") and non-LHR member Los Angeles attorneys who belong to the cooperating attorney network of Lambda Legal Defense and Education Fund, Inc. ("LLDEF"), a national lesbian and gay rights organization. The Committee over-sampled gay attorneys for two reasons. First, the Committee wanted to ensure adequate responses from gay attorneys, who may be more attuned to issues of sexual orientation bias than heterosexual attorneys. Second, the Committee wanted to have a sample of gay attorneys sufficiently large to permit meaningful comparisons of the Attorney Survey responses of gay and heterosexual attorneys.

Of the 2184 Attorney Surveys mailed, 427 were completed and returned for a 20% overall response rate. Of the randomly-sampled [*375] group of Association members, 255 (16%) returned a completed Attorney Survey and, of the LHR/LLDEF sample, 172 (31%) returned a completed Attorney Survey. The demographic characteristics of the Attorney Survey respondents are summarized in Appendix A-3.

On September 24, 1993, the Employer Survey was sent to a sample of 400 employers in Los Angeles County, selected at random from entities with at least twenty employees according to information from the National Association for Legal Placement ("NALP") on file with the University of Southern California Law Center Placement Office.

Surveys were directed to managing partners, department supervisors or their equivalent. Of the 400 Employer Surveys mailed, seventy were completed and returned for a 17% rate of response. The characteristics of the Employer Survey respondents are summarized in Appendix A-5.

(3) Research Procedures and Survey Data Compilation

The mailing of the Employer Surveys was preceded by a letter from Gerald L. Chaleff, President of the Association, and Joseph D. Mandel, Chair of the Committee, telling the recipients that they would be sent an Employer Survey and urging participation in the Employer Survey project. The mailing of both the Attorney Survey and the Employer Survey was accompanied by a cover letter from Messrs. Chaleff and Mandel urging the recipient to complete and return the survey. As further encouragement, reminder postcards were mailed to the entire sample for both the Attorney Survey and Employer Survey approximately two weeks after the original survey mailing. In addition, follow-up telephone calls were made to each employer in the Employer Survey sample. The forms of the Employer Survey pre-letter, the Employer Survey and Attorney Survey cover letters and the reminder postcards, as well as the instructions for the Employer Survey telephone calls, are attached in Appendix A-6.

Because some survey questions are of a personal nature and thus may be highly sensitive, all responses to both the Attorney Survey and Employer Survey were anonymous, with no identifying information appearing on the survey forms.

The sensitive (and, to some, controversial) nature of the questions in the Attorney Survey and Employer Survey likely had a negative impact on the rates of response. As indicated elsewhere in this Report, some survey recipients directly expressed their displeasure [*376] that the Association was addressing issues of sexual orientation, believing that one's sexuality is a private matter with no relevance to the workplace. Those who share this view, or harbor some other objection to answering survey questions related to sexual orientation, are probably among those who simply chose to ignore the survey.

(4) The Focus Groups

To augment data gathered from the Attorney Survey and Employer Survey, the Committee conducted four focus group discussions with lesbian, gay and bisexual attorneys who returned a form attached to the Attorney Survey indicating their willingness to participate in such a session. The Focus Groups took place in late October and early November 1993; each took place on a weekday after regular business hours. Each of the discussions was held in a different location: one at the Century City offices of Gibson, Dunn & Crutcher, one at the downtown Los Angeles corporate offices of Bank of America, one at the downtown Los Angeles offices of Fried, Frank, Harris, Schriever & Jacobson and one at the University of Southern California Law Center.

Each Focus Group was comprised of eight to twelve gay attorney volunteers, three or four Committee members and Dr. Shepard. In all, thirty-eight gay attorney volunteers participated; there was no overlap of attorney participants in the four different discussions. All but one member of the Committee attended at least one of the four Focus Groups. All but three of the gay attorney volunteers who participated had reportedly disclosed their status as a gay attorney to at least some people within their workplace. Thus, "closeted" attorneys were, for the most part, not represented in the Focus Groups.

The Focus Groups were designed to elicit information from the participants that might help to clarify the information obtained by the surveys. While non-Committee participants were encouraged to contribute freely to each Focus Group, the discussion was led by a Committee member following a pre-scripted set of discussion questions. The discussion questions are included in Appendix A-7. Excerpts from the Focus Group discussions compiled by the Committee are included together with the Attorney Survey Comments in Appendix B-1. [*377]

(5) The State Bar Data

The State Bar Data derive from data gathered in mid-1991 as part of the State Bar Demographic Survey, a survey of 14,300 randomly-selected active California bar members. This survey was planned and conducted by SRI International ("SRI"), a professional social science research organization headquartered in Menlo Park, California. The questionnaire used in the State Bar Demographic Survey asked respondents for a variety of professional and demographic information, including whether they identified as "a member of the lesbian, gay and bisexual community." Accordingly, the data from the State Bar Demographic Survey permit comparison of the demographic and professional characteristics of self-identified gay and heterosexual attorneys in California.

The comparison of gay and heterosexual attorneys reflected in the State Bar Data was prepared by SRI in January 1994 at the request of the State Bar of California's Standing Committee on Sexual Orientation Discrimination ("State Bar Committee"). The State Bar Data compare gay and heterosexual California attorneys of similar age and with similar levels of experience. These comparisons are summarized in five tables and eight charts reproduced in Appendix C-3.

In February 1994, the State Bar Committee provided the State Bar Data to the Committee as a courtesy and, in March 1994, formally authorized the Committee to use the State Bar Data in its study and for publication in this Report. The State Bar Committee and the State Bar have expressly reserved all of their rights to the use and publication of the State Bar Data for their own purposes.

(6) Scope and Limitations of Analysis

This Report presents findings from the Attorney Survey, Employer Survey, Focus Groups and State Bar Data. The material covered by the Attorney Survey, Employer Survey and Focus Groups requires some caution in interpreting the findings.

First, while the heterosexual attorneys in the Attorney Survey sample were drawn from a random sample of Association members, the gay attorneys in the Attorney Survey sample are not a random sample of all the lesbians, gay men and bisexuals in the Association. Rather, most are self-identified lesbians and gay men who have joined a gay legal organization or at least been open with friends. As was observed in the ABCNY Study: [*378]

This bias might be assumed to make the survey results more typical of individuals who openly acknowledge their sexual orientation. Thus, it seems likely that fears of adverse consequences flowing from being openly lesbian or gay could be greater than those indicated in this survey among those who could not be reached through this survey methodology.
n308

Second, these results are based on respondents' self reports, which are inherently subjective. Thus, the incidence of bias or discrimination in the workplace may be over reported or under reported due to psychological denial (of either discrimination or the real merits of an adverse employment action), fear of reprisal or a desire to provide socially acceptable answers. In any case, bias and discrimination can be subtle; something that one person may not notice may be highly objectionable or offensive to someone else.

Third, in reporting its findings, the Committee considered whether to report the findings from either a positive or negative perspective - focusing either on levels of satisfaction or levels of dissatisfaction. Because sexual orientation bias in the legal workplace is prohibited by law and professional ethics, this Report contains findings regarding the incidence of bias (negative) rather than the absence of bias (positive). Put another way, rather than report how satisfied Association members are with aspects of their profession with regard to gay concerns, this study focuses on levels of dissatisfaction.

Fourth, in interpreting responses to the Employer Survey and Attorney Survey, the data cannot be read in the same manner as election results. That is, "majority rule" is not dispositive of whether a significant problem exists. To illustrate, 9.4% of Attorney Survey respondents believe that an attorney applying for employment in their workplace has been declined employment as a result of being (or being perceived to be) gay. n309 It follows that 90.6% of the Attorney Survey respondents either are uncertain or do not believe that such hiring discrimination has occurred. These results should not be read to suggest that discrimination against gay attorneys in hiring is not a problem. In this regard, it may be useful to compare the Attorney Survey data on the perception of sexual orientation bias in hiring with the Attorney Survey data on the perception of race/ethnicity or gender bias in hiring. Attorney Survey respondents were asked if their employer applies its hiring criteria more severely depending on the [*379] sexual orientation, race/ethnicity or gender of the attorney applicant: 14.7% said their employer is more severe when the candidate is gay; 11.9% said their employer is more severe when the candidate is a member of a racial or ethnic minority group; and 10.3% said their employer is more severe when the candidate is a woman. n310 Probably very few observers would conclude from these figures that race/ethnicity or gender bias in attorney hiring does not remain a significant problem. Nor should they conclude that sexual orientation bias is not a significant problem. Invidious bias in the legal profession, even if experienced by a minority of its members, is unlawful and unethical. Taken together with other survey results, moreover, each finding is part of a pattern of discrimination and bias described throughout this Report.

Fifth, there may be some reluctance on the part of respondents to admit, even anonymously, that they or their employers are in violation of statutes, rules of professional conduct, other laws or workplace policies that prohibit sexual orientation discrimination. This may suppress the reported incidence of bias experienced or witnessed by survey respondents.

Sixth, this analysis presents descriptive and correlational data and cannot be used to determine causal relations among the variables. In other words, the data do not reveal the underlying causes of the differences reported. Further, due to the limited sample size, tests of statistical significance do not apply to the data from the Attorney Survey and Employer Survey. Tests of statistical significance also do not apply to the anecdotal data from the Focus Groups or extemporaneous comments from the Attorney Surveys or Employer Surveys. Tests of statistical significance do, however, apply to the State Bar Data.

Legal Topics:

For related research and practice materials, see the following legal topics:

Labor & Employment Law
 Discrimination
 Actionable Discrimination
 Labor & Employment Law
 Discrimination
 Gender & Sex Discrimination
 Coverage & Definitions
 Sexual Orientation
 Labor & Employment Law
 Discrimination
 Gender & Sex Discrimination
 Employment Practices
 Demotions & Promotions

FOOTNOTES:

n1. This Report was prepared by the Los Angeles County Bar Association's Ad Hoc Committee on Sexual Orientation Bias; it was unanimously adopted by the LACBA's Board of Trustees on June 22, 1994.

The Committee wishes to thank Richard Walch, Executive Director of the Association, and the Association staff for their support of and assistance with this study. The Committee also wishes to thank the law firm of Munger, Tolles & Olson, and its secretarial, word processing and duplicating staff in particular, for their assistance with the preparation of this Report. All errors and omissions are those of the Committee.

n2. *Cal. Lab. Code* 1101, 1102, 1102.1 (West 1989 & Supp. 1995). See generally H. Thomas Cadell, Jr., *Enforcing the New Sexual Orientation Discrimination Law*, L.A. Law., July-Aug. 1993, at 26 (discussing the enforcement of California's recently adopted 1102.1).

n3. *Cal. Rules of Professional Conduct Rule 2-400* (1994); see Supreme Court of California, Order No. S034144 (Feb. 3, 1994).

n4. See, e.g., Denise Hamilton, *Gay Men Become No. 1 Hate-Crime Targets*, L.A. Times, May 10, 1994, at B1 (according to the 14th Annual Report of the Los Angeles County Commission on Human Relations, "For the first time since the county began keeping track, African Americans have been supplanted by gay men as the leading target of hate crimes.").

n5. See, e.g., Felicity Barringer, *Polling on Sexual Issues Has Its Drawbacks*, N.Y. Times, Apr. 25, 1993, 1, at 23 (reporting on a poll by Louis Harris & Associates).

n6. See, e.g., Alfred C. Kinsey et al., *Sexual Behavior in the Human Male* 651 (1948).

n7. Susan H. Russell & Cynthia L. Williamson, SRI International, SRI Project 2310, Demographic Survey of the State Bar of California, at S-2 (4% figure, extrapolated based upon the relative ages of gay and all respondents), 7, Table I-1 (3% figure) (Aug. 1991). To the extent that some gay attorneys may be unwilling to identify themselves as gay, even in a confidential State Bar survey, these figures may understate the true percentage of gay attorneys in California.

n8. This Report uses the adjective "gay" to mean either homosexual or bisexual. Similarly, terms such as "gay people" or "gay attorneys" are used to refer, collectively, to lesbians, gay men and bisexual men or women. In addition, this Report uses the terms "gay male" and "gay men" to refer, collectively, to bisexual and homosexual men and uses the term "lesbian" to refer, collectively, to bisexual and homosexual women.

n9. See Russell & Williamson, *supra* note 7, at S-4.

n10. Of the 255 respondents from the random sample of Association members, 30 (11.8%) identified themselves as gay. As discussed in Appendix A-1, however, the response rate from the separate sample of gay attorneys was just under twice the response rate from the random sample of Association members. See *infra* Appendix A-1, part (2). Assuming that the higher response rate held true for gay attorneys in the random sample of Association members, that 30 of 255 respondents from the random sample identified themselves as gay suggests that roughly 6% to 7% of the Association's attorney members are gay. But this may understate the true percentage of gay attorneys in the Association's membership to the extent that some Association members may not be willing to identify themselves as gay, even in a confidential Association survey.

n11. As do the California Labor Code and the California Rules of Professional Conduct, this Report uses the term "sexual orientation" rather than "sexual preference" or other terms to describe the phenomenon of human sexuality. In doing so, this Report intends no comment as to the nature of human sexuality. We simply note that the extent to which sexuality is inborn or developed, immutable or flexible, or learned or beyond conscious influence is subject to much debate among experts and well beyond our expertise. In any event, because sexual orientation discrimination is, in California, both illegal and a violation of professional ethics, these matters are irrelevant to the questions addressed by this Report: the extent to which sexual orientation discrimination exists in the legal profession in Los Angeles County and what steps should be taken to remedy it.

n12. Phrases like "in the closet" or "closeted" refer to a gay person whose sexuality is not known to others - either because he or she actively conceals it or simply because he or she does not take steps to correct the common presumption that all people are heterosexual. Similarly, terms like "out of the closet" or "out" refer to a gay person whose sexuality is known to others or who takes steps to let it be known.

n13. See, e.g., Bettina Boxall, *Statistics On Gays Called Unreliable*, L.A. Times, May 1, 1994, at A1, A3; Barringer, *supra* note 5.

n14. Since then, two members of the Committee resigned in connection with acceptance of employment outside California. Both were replaced at the request of the Committee Chair.

n15. Bar Association of San Francisco, *Creating an Environment Conducive to Diversity: A Guide for Legal Employers on Eliminating Sexual Orientation Discrimination* (Aug. 1991) [hereinafter BASF Study].

n16. Committee on Lesbians and Gay Men in the Legal Profession, *Report on the Experience of Lesbians and Gay Men in the Legal Profession*, in 48 *The Record of the Association of the Bar of the City of New York* 843 (1993) [hereinafter ABCNY Study].

n17. The Committee also understands that at least two other voluntary bar associations in California, the San Diego County Bar Association and the Santa Clara County Bar Association, are currently engaged in studies of sexual orientation bias.

n18. Although the Committee's methodology was different in material respects from the methodologies employed in the BASF Study and ABCNY Study, the findings of the Committee are consistent with the findings contained in the BASF and ABCNY Reports.

n19. At the time of his retention, Dr. Shepard was serving as Acting Director of UCLA's Student Affairs Information and Research Office ("SAIRO"), an in-house research consulting department. Prior to assuming the Acting Director position, Dr. Shepard, among other professional activities, had managed attitudinal survey projects as a research analyst with SAIRO. Dr. Shepard is currently Director of the Campus Project of the National Gay & Lesbian Task Force.

n20. Data collected from the Attorney Survey and Employer Survey include responses to standardized "forced answer" questions as well as extemporaneous comments written by respondents in places provided on the survey forms. Tabular summaries of responses to selected "forced answer" questions in the Attorney Survey and Employer Survey appear in Appendix C-1 *infra* and Appendix C-2 *infra*, respectively. Excerpts from the comments written on the Attorney Survey and Employer Survey forms appear in Appendix B-1 *infra* and Appendix B-2 *infra*, respectively. Appendix B-1 combines comments from the Attorney Surveys with excerpted comments from the Focus Groups (discussed below), all organized under various subject matter headings. Appendix B-1 also identifies the source of each comment (Attorney Survey or Focus Group Discussion) as well as the sexual orientation of the commentator. Appendix B-2 identifies the source of each comment by type of employer. In both Appendices B-1 and B-2, information identifying the persons or institutions to which the comments relate has been excised.

n21. Appendix B-1 *infra* combines excerpted comments from the Focus Groups with extemporaneous comments from the Attorney Surveys.

n22. SRI International, 1991 Demographic Survey of the State Bar of California: Comparisons of Gay and Non-gay State Bar Members (Jan. 1994). Tabular summaries and graphic representations of the State Bar Data appear in Appendix C-3 *infra*.

n23. Sandra Frith, a research analyst for the UCLA Business Enterprises Administration, assisted in this process.

n24. Appendices A-1 through A-7 *infra* contain a more detailed discussion of the methods used for the Employer Survey and Attorney Survey, the characteristics of the sample and respondents for both surveys, the methods used for the Focus Groups, the source of and methods used for the State Bar Data, as well as the scope and limitations of the Committee's analysis of this data.

n25. See *infra* Appendix C-1, Table 12. The more specific data on the incidence of anti-gay discrimination in particular employment contexts are discussed in detail below.

n26. See *infra* Appendix C-1, Table 12. Here and elsewhere in this Report where such differential responses appear, the differences by gender and sexual orientation could be attributed to several factors. It may be that heterosexual women, lesbians and gay men are more attuned to the problem of bias generally - and in the case of gay attorneys, sexual orientation bias in particular - and are therefore both more likely to monitor their employers for discriminatory actions and also more likely to detect them when they occur. But it may also be that some heterosexual women, heterosexual men, lesbians and gay men are more inclined to perceive discrimination even when it did not really occur - perhaps particularly so if they themselves are members of a protected group.

n27. See *infra* Appendix C-1, Table 2. Breaking this response out by gender and sexual orientation, 20.5% of lesbian attorneys and 19.7% of gay male attorneys believe that their offices apply hiring criteria more severely to gay or gay-perceived applicants, while 6.7% of heterosexual female attorneys and 11.8% of heterosexual male attorneys believe that their offices do so.

n28. See *infra* Appendix C-1, Table 2.

n29. See *infra* Appendix C-1, Table 12. Breaking this response out by gender and sexual orientation, 29.8% of lesbian attorneys, 22.3% of gay male attorneys, 5.3% of heterosexual female attorneys and 8.2% of heterosexual male attorneys report that they have witnessed or experienced anti-gay discrimination in attorney hiring.

n30. See *infra* Appendix C-1, Table 1. Breaking this response out by gender and sexual orientation, 15.0% of lesbian attorneys and 17.3% of gay male attorneys believe that their office has engaged in anti-gay discrimination in recruitment or hiring, while 4.1% of heterosexual female attorneys and 2.3% of heterosexual male attorneys believe that their office has done so.

n31. *Infra* Appendix B-1, Comment 13.

n32. *Infra* Appendix B-1, Comment 11.

n33. *Infra* Appendix B-1, Comment 18.

n34. *Infra* Appendix B-1, Comment 17; see also *infra* Appendix B-1, Comment 14.

n35. *Infra* Appendix B-1, Comment 7.

n36. *Infra* Appendix B-1, Comment 1.

n37. *Infra* Appendix B-1, Comment 3.

n38. *Infra* Appendix B-1, Comment 27.

n39. *Infra* Appendix B-1, Comment 45.

n40. *Infra* Appendix B-1, Comment 26.

n41. *Infra* Appendix B-1, Comment 8.

n42. *Infra* Appendix B-1, Comment 99.

n43. *Infra* Appendix B-1, Comment 74; see also *infra* Appendix B-1, Comment 52.

n44. See *infra* Appendix C-1, Table 3. Breaking this response out by gender and sexual orientation, 52.3% of lesbian attorneys and 49.3% of gay male attorneys believe that their work environment is less hospitable to gay attorneys, while 34.9% of heterosexual female attorneys and 28.8% of heterosexual male attorneys believe so.

n45. See *infra* Appendix C-1, Table 3. Breaking this response out by gender and sexual orientation, 59.1% of lesbian attorneys and 59.6% of gay male attorneys believe that their office does not support gay attorneys to the same extent it supports heterosexual attorneys, while 45.0% of heterosexual female attorneys and 42.5% of heterosexual male attorneys believe so.

n46. See *infra* Appendix C-1, Table 5. These reports are very consistent when broken out by gender and sexual orientation: 64.4% of lesbian attorneys, 65.5% of gay male attorneys, 61.2% of heterosexual female attorneys and 69.5% of heterosexual male attorneys report anti-gay comments by attorneys in their offices.

n47. See *infra* Appendix C-1, Table 5. Breaking this response out by gender and sexual orientation: 40.9% of lesbian attorneys, 38.2% of gay male attorneys, 29.8% of heterosexual female attorneys and 27.5% of heterosexual male attorneys report specifically-targeted anti-gay comments.

n48. See generally *infra* Appendix B-1, Comments 6, 26, 41, 68, 81, 83, 87, 106, 149-69.

n49. *Infra* Appendix B-1, Comment 162.

n50. *Infra* Appendix B-1, Comment 34.

n51. *Infra* Appendix B-1, Comment 151.

n52. *Infra* Appendix B-1, Comment 152.

n53. *Infra* Appendix B-1, Comment 157.

n54. But see *infra* Appendix B-1, Comments 147 ("People should be able to tell nasty jokes and make fun of anyone"), 146, 148.

n55. *Infra* Appendix B-1, Comment 6; see also *infra* Appendix B-1, Comment 149 ("This is a small firm with no gays, lesbians, minority or women attorneys, or disabled. So derogatory statements [about gay people and others] are accepted and forgotten - i.e., there is no one to complain about them.").

n56. *Infra* Appendix B-1, Comment 163.

n57. *Infra* Appendix B-1, Comment 168.

n58. *Infra* Appendix B-1, Comment 166.

n59. *Infra* Appendix B-1, Comment 167.

n60. *Infra* Appendix B-1, Comment 206.

n61. *Infra* Appendix B-1, Comment 207.

n62. *Infra* Appendix B-1, Comment 208; see also *infra* Appendix B-1, Comment 155 ("I was told a 'gay' joke by a partner who did not know I was gay.").

n63. *Infra* Appendix B-1, Comment 211.

n64. *Infra* Appendix B-1, Comment 173.

n65. *Infra* Appendix B-1, Comment 136.

n66. *Infra* Appendix B-1, Comment 217 (emphasis added).

n67. See *infra* Appendix B-1, Comment 137.

n68. *Infra* Appendix B-1, Comment 100.

n69. *Infra* Appendix B-1, Comment 153.

n70. *Infra* Appendix B-1, Comment 91.

n71. *Infra* Appendix B-1, Comment 137.

n72. *Infra* Appendix B-1, Comment 134; see also *infra* Appendix B-1, Comments 143, 144.

n73. *Infra* Appendix B-1, Comment 13; see also *infra* Appendix B-1, Comments 134, 142.

n74. *Infra* Appendix B-1, Comment 141.

n75. In this connection, it is important to note that discrimination based upon HIV/AIDS is also limited by law. See Rehabilitation Act of 1973, 29 U.S.C. 701 (1988); see, e.g., *Chalk v. United States Dist. Court*, 840 F.2d 701 (9th Cir. 1988).

n76. *Infra* Appendix B-1, Comment 171.

n77. *Infra* Appendix B-1, Comment 175.

n78. See *infra* Appendix C-1, Table 6. Breaking this out by gender and sexual orientation, 21.0% of lesbian attorneys, 23.6% of gay male attorneys, 4.2% of heterosexual female attorneys and 9.4% of heterosexual male attorneys report that clients have expressed such a preference.

n79. See *infra* Appendix C-1, Table 6. Breaking this out by gender and sexual orientation, 16.6% of lesbian attorneys, 18.7% of gay male attorneys, 2.8% of heterosexual female attorneys and 10.0% of heterosexual male attorneys report that partners or supervisors in their offices have expressed such a preference.

n80. See *infra* Appendix C-1, Table 6. Breaking this out by gender and sexual orientation, 14.3% of lesbian attorneys, 17.3% of gay male attorneys, no heterosexual female attorneys and 0.8% of heterosexual male

attorneys report that attorneys in their offices have been denied work assignments on such a basis.

n81. See *infra* Appendix C-1, Table 12. Breaking this out by gender and sexual orientation, 17.0% of lesbian attorneys, 16.9% of gay male attorneys, 9.3% of heterosexual female attorneys and 3.8% of heterosexual male attorneys report that they have witnessed or experienced anti-gay discrimination in attorney work assignments.

n82. *Infra* Appendix B-1, Comment 48; see also *infra* Appendix B-1, Comment 210.

n83. *Infra* Appendix B-1, Comment 92.

n84. *Infra* Appendix B-1, Comment 204.

n85. *Infra* Appendix B-1, Comment 212.

n86. *Infra* Appendix B-1, Comment 93.

n87. *Infra* Appendix B-1, Comment 204.

n88. *Infra* Appendix B-1, Comment 37.

n89. See *infra* Appendix C-1, Table 4. Breaking this response out by gender and sexual orientation, 32.6% of lesbian attorneys and 23.0% of gay male attorneys believe that their offices apply their advancement criteria more severely to gay or gay-perceived applicants, while 9.6% of heterosexual female attorneys and 9.6% of heterosexual male attorneys believe that their offices do so.

n90. See *infra* Appendix C-1, Table 4.

n91. See *infra* Appendix C-1, Table 12. Breaking this response out by gender and sexual orientation, 25.5% of lesbian attorneys, 18.9% of gay male attorneys, 8.0% of heterosexual female attorneys and 3.0% of heterosexual male attorneys report that they have witnessed or experienced anti-gay discrimination in attorney work evaluations.

n92. See *infra* Appendix C-1, Table 12. Breaking this response out by gender and sexual orientation, 19.1% of lesbian attorneys, 23.6% of gay male attorneys, 8.0% of heterosexual female attorneys and 6.0% of heterosexual male attorneys report that they have witnessed or experienced anti-gay discrimination in attorney promotion or advancement.

n93. See *infra* Appendix C-3, Table 1 and Figures 1-A to 1-D; see also California Women Lawyers Educational Foundation, *Glass Ceiling Survey: Women Lawyers in Large California Law Firms* (Sept. 1993) [hereinafter *CWL Glass Ceiling Study*] (reaching similar conclusions with respect to women attorneys based on a survey of 161 California law firms).

n94. See *infra* Appendix C-3, Table 1 and Figures 1-A to 1-D. Because analysis of the State Bar Data cannot control for whether gay attorneys were "out" in their workplaces, it may understate the effects of sexual orientation discrimination; gay attorneys who are "closeted" may avoid adverse career consequences. In addition, although the analysis of the State Bar Data controls for age and years of practice, other factors such as systematic differences in the education and training of gay and heterosexual attorneys may also explain the differences in attorney status. Finally, it may be that gay attorneys have systematically different career aspirations than heterosexual attorneys and simply do not wish to invest the effort required to become law firm partners or achieve higher incomes. But see CWL Glass Ceiling Study, *supra* note 93 (dismissing similar arguments with respect to women attorneys).

n95. See *infra* Appendix C-3, Table 1 and Figures 1-A to 1-D. These figures were extrapolated by converting the raw scores from the partner and associate categories into percentages of the total number of respondents.

n96. See *infra* Appendix C-3, Table 1 and Figures 1-A to 1-D. This is true even though the percentage of all gay lawyers with less than ten years of experience who practice in law firms (64%) is almost identical to the percentage of non-gay lawyers with less than ten years of experience who practice in law firms (65%).

n97. See *infra* Appendix C-3, Table 1 and Figures 1-A to 1-D.

n98. See *infra* Appendix C-3, Table 1 and Figures 1-A to 1-D.

n99. See, e.g., *infra* Appendix B-1, Comments 27, 92, 104.

n100. *Infra* Appendix B-1, Comment 104.

n101. *Infra* Appendix B-1, Comment 24.

n102. *Infra* Appendix B-1, Comment 19.

n103. *Infra* Appendix B-1, Comment 30.

n104. *Infra* Appendix B-1, Comment 49.

n105. *Infra* Appendix B-1, Comment 65.

n106. *Infra* Appendix B-1, Comment 73.

n107. *Infra* Appendix B-1, Comment 78.

n108. *Infra* Appendix B-1, Comment 112.

n109. Gay attorneys also earn substantially less than heterosexual attorneys of similar age and experience. See *infra* section II.A.6.a (discussing Appendix C-3, Table 3 and Figures 3-A to 3-D).

n110. See *supra* note 94 for a discussion of how the State Bar Data may either understate or overstate the effects of sexual orientation discrimination on attorney career paths.

n111. See *supra* section II.A.4 (discussing Appendix C-3, Table 1 and Figures 1-A to 1-D).

n112. See *infra* Appendix C-3, Table 2. Similarly, among attorneys under forty years of age, gay attorneys, as compared to heterosexual attorneys, are even more likely to be in larger firms (74% versus 54%) and even less likely to be in smaller firms (26% versus 46%). See *infra* Appendix C-3, Table 2.

n113. See *infra* Appendix C-3, Table 2. Among attorneys forty or older, this is also true: gay attorneys, as compared to heterosexual attorneys, are about as likely to be in larger firms (40% versus 39%) as to be in smaller firms (60% versus 61%). See *infra* Appendix C-3, Table 2.

n114. See *infra* Appendix C-3, Table 1 and Figures 1-A to 1-D.

n115. See *infra* Appendix C-3, Table 1 and Figures 1-A to 1-D.

n116. See *infra* Appendix C-3, Table 1 and Figures 1-A to 1-D.

n117. See *infra* Appendix C-3, Table 1 and Figures 1-A to 1-D.

n118. *Infra* Appendix B-1, Comment 6.

n119. Gay male Attorney Survey respondents report consistently and substantially higher levels of job dissatisfaction than do heterosexual male attorneys - with the exceptions of work hours and relations with female co-workers. See *infra* Appendix C-1, Table 10. Similarly, lesbian attorneys report levels of job dissatisfaction consistently and substantially higher than heterosexual male attorneys and - with the exception of relations with female co-workers, support staff help and job security - also higher than heterosexual female attorneys. See *infra* Appendix C-1, Table 10.

n120. Gay male attorneys report consistently and substantially higher perceptions of disadvantage in their current jobs than do heterosexual male attorneys. See *infra* Appendix C-1, Table 9. Similarly, lesbian Attorney Survey respondents report levels of perceived disadvantage in their current jobs consistently higher than do heterosexual male attorneys and sometimes, but not always, higher than do heterosexual female attorneys. See *infra* Appendix C-1, Table 9.

n121. *Infra* Appendix B-1, Comment 194.

n122. *Infra* Appendix B-1, Comment 199.

n123. *Infra* Appendix B-1, Comment 203.

n124. *Infra* Appendix B-1, Comment 195; see also *infra* Appendix B-1, Comment 196.

n125. *Infra* Appendix B-1, Comment 202.

n126. *Infra* Appendix B-1, Comment 201; see also *infra* Appendix B-1, Comment 199.

n127. See generally *infra* Appendix C-3, Table 3 and Figures 3-A to 3-D. As noted above, factors other than age or years of practice experience cannot be analyzed in the State Bar Data and may suggest that these findings either understate or overstate the true effects of sexual orientation discrimination on attorney income. See *supra* note 94.

n128. See *infra* Appendix C-3, Table 3 and Figures 3-A to 3-D. These statewide statistics on the relative income of gay and lesbian California lawyers compare roughly to national statistics on the relative income of gay and lesbian employees. According to the first nationally-conducted econometric study of sexual orientation discrimination based upon the General Social Survey conducted by the National Opinion Research Center, "Gay/bisexual men earn from 11% to 27% less than behaviorally heterosexual men ... The difference for lesbians ranges from 12% to 30% [less than heterosexual women]." M.V. Lee Badgett, *The Wage Effects of Sexual Orientation Discrimination*, *Indus. & Lab. Rel. Rev.* (forthcoming).

n129. See *infra* Appendix C-3, Table 3 and Figures 3-A to 3-D.

n130. See *infra* Appendix C-3, Table 3 and Figures 3-A to 3-D.

n131. See *infra* Appendix C-3, Table 3 and Figures 3-A to 3-D. The State Bar Data show similar income differences between gay and heterosexual attorneys according to age. For example, 67% of gay attorneys under the age of forty earn less than \$ 75,000 per year and only 5% earn more than \$ 125,000 per year; while 57% of heterosexual attorneys under forty earn less than \$ 75,000 and 15% earn more than \$ 125,000. See *infra* Appendix C-3, Table 3 and Figures 3-A to 3-D. Half of heterosexual attorneys over forty earn more than \$ 100,000, while only 25% of gay attorneys over forty earn more than \$ 100,000. See *infra* Appendix C-3, Table 3 and Figures 3-A to 3-D.

n132. See CWL Glass Ceiling Study, *supra* notes 93-94 and accompanying text.

n133. See *infra* Appendix C-1, Table 11. Breaking this response out by gender and sexual orientation, 40.5% of lesbian attorneys, 37.2% of gay male attorneys, 25.7% of heterosexual female attorneys and 18.8% of heterosexual male attorneys believe that gay attorneys fare worse than similarly-situated heterosexual attorneys in terms of income.

n134. See *infra* Appendix C-1, Table 11.

n135. See *infra* Appendix C-1, Table 14A. To some extent, these reports by lesbians may reflect

discrimination based on gender. Nevertheless, by comparison, only 22.4% of heterosexual women said their compensation was less than heterosexual white male peers. See *infra* Appendix C-1, Table 14A. The reports by lesbians and heterosexual women may to some extent also reflect discrimination based on race, ethnicity, religion and disability.

n136. See *infra* Appendix C-1, Table 12.

n137. See *infra* Appendix C-1, Table 14A. To some extent, these reports may reflect discrimination based on race, ethnicity, religion and disability.

n138. See *infra* Appendix C-1, Table 12.

n139. See Jean Latz Griffin, Push for Domestic Partner Benefits Picking Up Steam, *Chi. Trib.*, Nov. 8, 1993, at C3 (according to a 1989 U.S. Department of Commerce report, benefits comprise 37% of average U.S. employee compensation); Employer 1993 Costs Rose 3.5 Percent, Reflecting Drop in Benefits Expenditures, *BNA Pensions & Benefits Daily*, Jan. 27, 1994, available in WESTLAW, BNA Database (according to a BNA study, benefits costs constitute about 29% of total compensation costs).

n140. See *infra* Appendix C-2, Tables 17-18. The balance, 35%, did not pay dues for any minority or women's bar associations.

n141. As do several municipal ordinances in California permitting the registration of such relationships, this Report uses the term "domestic partner" to refer to the relationship between a same-sex or opposite-sex couple in a committed, long-term relationship similar to a marriage. Other terms commonly used to describe such relationships include, for example, "partner," "life partner," "companion," "long-term companion," "significant other" or "spousal equivalent."

n142. Similarly, however, unmarried heterosexual attorneys with opposite-sex domestic partners usually are not compensated comparably to married heterosexual attorneys. The difference between unmarried heterosexual couples and gay couples is that most heterosexual couples have the option of marriage while no gay couples in California currently have that option. As a result, most unmarried heterosexual attorneys can cure disparate employee benefits treatment if they choose to marry their domestic partners, while gay attorneys with same-sex domestic partners cannot overcome disparate employee benefits treatment without a policy change by their employers.

n143. See *infra* Appendix C-1, Table 3. Breaking this out by gender and sexual orientation, 63.0% of gay male attorneys, 67.4% of lesbian attorneys, 35.1% of heterosexual female attorneys and 31.5% of heterosexual male attorneys believe that their firms have not taken steps necessary to ensure that lesbian and gay attorneys receive employee benefits comparable to those of heterosexual attorneys. See, e.g., *infra* Appendix B-1, Comments 360 ("No benefits extend to gay lawyers' significant others as would happen for heterosexuals."), 362, 369, 379.

n144. See *infra* Appendix C-2, Table 15.

n145. See *infra* Appendix C-2, Tables 16-17.

n146. See *infra* Appendix C-2, Tables 16-17.

n147. See *infra* Appendix C-2, Tables 16-17.

n148. See, e.g., *infra* Appendix B-1, Comments 351, 364.

n149. See, e.g., *infra* Appendix B-1, Comments 350 ("Unfortunately . . . the corporate dictates of this firm as an in-house legal firm ... don't allot family-oriented benefit packages for non-traditional couples."), 373 ("There is no insurance for same-sex partners (mates) of employees/attorneys.").

n150. See *infra* Appendix C-2, Table 17.

n151. See *infra* Appendix C-1, Table 10.

n152. See, e.g., *infra* Appendix B-1, Comment 374 ("There is no same-sex health coverage for domestic couples - a clear discrimination against gay and lesbian attorneys.").

n153. See *infra* Appendix B-1, Comments 359, 366, 386. But see *infra* Appendix B-1, Comment 353 ("Gays should receive no better treatment than any other unmarried individuals, whether they live together or not.").

n154. *Infra* Appendix B-1, Comment 381.

n155. *Infra* Appendix B-1, Comment 383.

n156. *Infra* Appendix B-1, Comment 384; see also *infra* Appendix B-1, Comment 385.

n157. *Infra* Appendix B-1, Comment 347.

n158. It should be noted, however, that "most employers do not require heterosexual [employees] claiming to be married to submit any proof thereof, when they sign up for spousal benefits." City of West Hollywood, *Understanding the Domestic Partner Dilemma: Perspectives of Employer and Insurer* 21 (2d ed. Oct. 1993) [hereinafter *Domestic Partner Dilemma*].

n159. See *id.* at 21-24.

n160. See *infra* Appendix B-1, Comment 367.

n161. See, e.g., *infra* Appendix B-1, Comment 355 ("The firm will not consider extending benefits to

same-sex domestic partners on cost grounds - largely, fear of AIDS-related health claims.").

n162. Lesbians are in the lowest risk group for HIV/AIDS. Domestic Partner Dilemma, *supra* note 158, at 18. Moreover, the rate of HIV infection among gay men has slowed significantly while the rate of heterosexual HIV infection continues to climb. *Id.* In any event, the cost of AIDS is much less than the cost of other common catastrophic health problems. For example, the average cost of lifetime AIDS treatment is much lower than the cost of heart disease, cancer, high-risk pregnancies and caesarian-section births; it is comparable to the cost of a single coronary. *Id.* at 18-19.

n163. *Id.* at 19 (quoting Catherine Ianuzzo & Alexandra Pinck, Benefits for the Domestic Partners of Gay and Lesbian Employees at Lotus Development Corporation 5 (1991) (unpublished study, on file at Simmons College Graduate School of Management)).

n164. The Bureau of National Affairs (BNA), Special Report #38, The BNA Special Report Series on Work & Family: Recognizing Non-Traditional Families (Feb. 1991); Stanford University, Report of the Subcommittee on Domestic Partners' Benefits, University Committee on Faculty and Staff Benefits (June 1992); Domestic Partner Dilemma, *supra* note 158; Steward D. Lawrence & John J. Fadel, 'Total Compensation' Plan Design: The Dollars and Sense of Adding Domestic Partner Health Coverage, Compensation & Benefits Management, Autumn 1993, at 82-86 (studying the cost experience with such benefits at Lotus Development Corporation, Levi Strauss & Co. and other employers). Part of the reason the cost of such benefits is so low is that enrollment tends to be low: few employees have domestic partners and few of those have domestic partners who are not otherwise insured. See Domestic Partner Dilemma, *supra* note 158, at 15-18.

n165. See, e.g., Domestic Partner Dilemma, *supra* note 158, at 13-20. Obviously, the cost would be even lower if such benefits were offered to same-sex couples but not to unmarried heterosexual couples.

n166. These include Blue Cross in some locations, Cigna and Kaiser Permanente. Even more insurers, including Aetna, will cover domestic partners for employers who are self-insured.

n167. Among Los Angeles law firms, these include both large firms (for example, Heller, Ehrman, White & McAuliffe) and smaller firms (for example, Hedges & Caldwell).

n168. It also appears that, while an employer may deduct amounts paid for domestic partner benefits as "ordinary and necessary" business expenses, the value of employer-provided benefits for domestic partners is taxable as income to the employee, unlike the value of employer-provided benefits for opposite-sex spouses. See Glenn W. Carlson & Susan E. Goodwin, COBRA and Tax Implications of Domestic Partner Coverage, Employee Benefits Journal, June 1993 at 6; Domestic Partner Dilemma, *supra* note 158, at 52-53.

n169. See, e.g., Keith H. Hammonds, Lotus Opens A Door for Gay Partners, Bus. Wk., Nov. 4, 1991, at 80.

n170. Among these are Adobe Systems, Apple Computer, Ask/Ingres, Autodesk, Inc., Borland International, California Pacific Medical Center, HBO, Levi Strauss Corporation, Lotus Development Corporation, MCA/Universal, Microsoft Corporation, NeXT Computer, Oracle Corporation, Para Transit Inc., Silicon Graphics Inc., Sun Microsystems, SuperMac Technologies, Sybase Inc., Viacom International and

Warner Brothers Pictures.

n171. Among these are Bay Area Rapid Transit, Berkeley Unified School District, City of San Francisco, City of Santa Cruz, City of West Hollywood and Santa Cruz Transit Employees. In addition, the Los Angeles City Council on November 16, 1993 passed a resolution to offer domestic partner health care benefits.

n172. Among these are Pitzer College, Pomona College and Stanford University in California, as well as many well-known higher education institutions across the country, including Colby College, Columbia University, Harvard University, Middlebury College, MIT, Princeton University, Smith College, Swarthmore College, University of Chicago, University of Colorado, University of Iowa, University of Minnesota, University of Pennsylvania, University of Vermont, University of Wisconsin, Wellesley College, Williams College and Yale University.

n173. Among these are American Civil Liberties Union, American Friends Services Committee, Episcopal Church of Newark, Greenpeace International, Human Rights Campaign Fund, Lambda Legal Defense and Education Fund, Los Angeles Philharmonic, Museum of Modern Art-NY, National Organization for Women, National Public Radio, Union of American Hebrew Congregations and Writers Guild of America West.

n174. These include Cooley, Godward, Castro, Huddleson & Tatum (San Francisco, Menlo Park and San Diego); Hedges & Caldwell (Los Angeles); Heller, Ehrman, White & McAuliffe (Los Angeles, San Francisco and Palo Alto); Howard, Rice, Nemerovski, Canady, Robertson & Falk (San Francisco and Irvine); Irell & Manella (Los Angeles/Downtown, Los Angeles/Century City and Newport Beach); Milbank, Tweed, Hadley & McCloy (Los Angeles); Morrison & Foerster (Los Angeles, San Francisco and Irvine); Orrick, Herrington and Sutcliffe (Los Angeles and San Francisco) and; Pillsbury, Madison & Sutro (Los Angeles, San Francisco, San Diego, San Jose, Orange County and Menlo Park).

n175. *Infra* Appendix B-1, Comment 9.

n176. *Infra* Appendix B-1, Comment 237.

n177. *Infra* Appendix B-1, Comment 229; see also *infra* Appendix B-1, Comments 243, 269, 272.

n178. See *infra* Appendix C-1, Table 15.

n179. See *infra* Appendix C-1, Table 15.

n180. See, e.g., *infra* Appendix B-1, Comment 205 ("One closeted lesbian actually got married so she would make partner.").

n181. *Infra* Appendix B-1, Comment 282; see also *infra* Appendix B-1, Comment 199.

n182. *Infra* Appendix B-1, Comment 281.

n183. *Infra* Appendix B-1, Comment 278.

n184. *Infra* Appendix B-1, Comment 349.

n185. See, e.g., *infra* Appendix B-1, Comments 240-83. Policies that pressure gay people to conceal their sexual orientation are sometimes known euphemistically as "don't ask; don't tell" policies.

n186. See *infra* Appendix C-1, Table 7. In contrast, only 2.7% of heterosexual women and no heterosexual men reported that this had occurred. See *infra* Appendix C-1, Table 7. It may be that, because gay attorneys are uniformly more affected by restrictions on workplace disclosures of sexual orientation, heterosexual attorneys do not perceive such restrictions to be significant or do not perceive them at all.

n187. *Infra* Appendix B-1, Comment 280.

n188. *Infra* Appendix B-1, Comment 27.

n189. *Infra* Appendix B-1, Comment 58.

n190. *Infra* Appendix B-1, Comment 238.

n191. See *infra* Appendix C-1, Table 7. In contrast, only 5.5% of heterosexual men and only 1.4% of heterosexual women report that attorneys in their offices have said so. See *infra* Appendix C-1, Table 7. As to what may explain this difference between gay and heterosexual reports, see *supra* note 186.

n192. *Infra* Appendix B-1, Comment 195. One gay attorney agreed that being "out" is foolish, stating, "[Sexual orientation] is a non-issue. It doesn't even come up - unless it's thrown in my face by the applicant - at which time I would seriously question that individual's discretion and judgment, two qualities important to being an effective attorney." *Infra* Appendix B-1, Comment 244.

n193. See *supra* notes 186, 191.

n194. See, e.g., *infra* Appendix B-1, Comments 2, 49, 65, 240-43, 245-49, 253-57.

n195. *Infra* Appendix B-1, Comment 240.

n196. *Infra* Appendix B-1, Comment 241.

n197. *Infra* Appendix B-1, Comment 250.

n198. The ways of being "out" identified in the Attorney Survey included: (1) letting peers know; (2) letting subordinates know; (3) letting supervisors/superiors know; (4) letting "selected" clients know; (5) letting

most/all clients know; (6) taking on gay-related pro bono work; (7) becoming active in gay community organizations; (8) discussing gay issues or gay community activities in the office; (9) discussing one's same-sex partner in the office; (10) displaying a picture of one's same-sex partner in the office; (11) displaying evidence of gay community activities in the office; (12) bringing a same-sex date to an internal office event (without clients or outsiders) where opposite-sex dates were appropriate; and (13) bringing a same-sex date to a social or professional event where clients or outsiders attended and where opposite-sex dates were appropriate. See *Infra* Appendix C-1, Table 8

n199. See *infra* Appendix C-1, Table 8.

n200. See *infra* Appendix C-1, Table 8.

n201. *Infra* Appendix B-1, Comment 302.

n202. *Infra* Appendix B-1, Comment 31 (emphasis added).

n203. *Infra* Appendix B-1, Comment 205.

n204. See *infra* Appendix C-1, Table 8.

n205. See *infra* Appendix C-1, Table 8.

n206. See *infra* Appendix C-1, Table 8. But, were an attorney to display indicators of this gay community work in his or her office, the "harmful" rating went up to 48.0%. See *infra* Appendix C-1, Table 8.

n207. See *infra* Appendix C-1, Table 8.

n208. See *infra* Appendix C-1, Table 8.

n209. The three were: (1) letting supervisors (as opposed to peers or subordinates) know; (2) letting "selected" clients know; and (3) discussing one's personal life involving a same-sex partner. See *infra* Appendix C-1, Table 8.

n210. See *infra* Appendix C-1, Table 8.

n211. See Donna K. H. Walters, For Minority Lawyers, It's Who You Know, Bar Survey Suggests, *L.A. Times*, Mar. 1, 1994, at D1, D10 [hereinafter Walters, Who You Know] (according to a recent American Bar Association survey, "Without business contacts on the outside and the mentoring and support network needed on the inside, minority lawyers fail to generate the numbers of clients and cases that are a key requirement of partnership and successive executive ranks within law firms."); Donna K. H. Walters, Barriers Still Persist, Women Lawyers Say, *L.A. Times*, Mar. 10, 1994, at D1, D4 [hereinafter Walters, Barriers] (according to a recent survey by the Women Lawyers Association of Los Angeles, there is a "lack of mentors within law firms

or government agencies that could help women learn the ropes of legal practice" and "female attorneys are at a great disadvantage compared to their male colleagues, who network with clients and each other").

n212. See *infra* Appendix C-1, Table 16. Almost 62% of gay attorneys believe that social activities are important to advancement in their offices while just under 43% of heterosexual attorneys believe so. See *infra* Appendix C-1, Table 16.

n213. See Walters, *Who You Know*, *supra* note 211, at D1 ("Minorities remain rare in partnership ranks at major U.S. law firms, largely because they have few contacts in white-dominated corporate suites - where decisions about hiring lawyers are made"); Walters, *Barriers*, *supra* note 211, at D4 (stating that on a woman attorney's career path to "power, prestige and standing in the profession ... one primary roadblock, according to this survey and others, is exclusion from formal and informal settings designed to bring in new clients and sharpen so-called rainmaking skills").

n214. See *infra* Appendix C-1, Table 16.

n215. Nonetheless, some heterosexual attorneys suggest that, at least for gay attorneys, personal and professional relationships should be segregated strictly. One said, "What's the point of all this openness [about homosexuality]? Work is unrelated to sexual preference - why try to mix them? These are personal matters, not work matters." *Infra* Appendix B-1, Comment 249; see also *infra*, Appendix B-1, Comments 248, 251, 256, 257.

n216. *Infra* Appendix B-1, Comment 218.

n217. *Infra* Appendix B-1, Comment 219.

n218. *Infra* Appendix B-1, Comment 220.

n219. *Infra* Appendix B-1, Comment 221.

n220. *Infra* Appendix B-1, Comment 222.

n221. *Infra* Appendix B-1, Comment 225.

n222. *Infra* Appendix B-1, Comment 303.

n223. *Infra* Appendix B-1, Comment 329.

n224. *Infra* Appendix B-1, Comment 325; see also *infra* Appendix B-1, Comment 338.

n225. See *infra* Appendix C-2, Table 19. Only 4.8% of the Employer Survey respondents reported that same-sex guests were only "sometimes" welcome and 1.6% reported that they were never welcome. See *infra*

Appendix C-2, Table 19.

n226. See *infra* Appendix C-2, Table 19.

n227. See generally *infra* Appendix B-1, Comments 284-338. Some of these comments, however, reported a welcoming environment for same-sex partners. See, e.g., *infra* Appendix B-1, Comments 287 ("Our attorneys feel free to bring same-sex significant others to the firm's annual retreat, holiday party, summer associate events, etc."), 298 ("This [large] firm is comfortable with gay and lesbian attorneys bringing [same-sex] guests to social functions."), 313 ("Before I was hired, the firm went out of its way to include my significant other in various activities, so that she could meet the firm."), 318 ("The firm is very social. There are two out attorneys (including me) and we bring our partners to events where spouses are welcome (usually recruiting events). However, this is fairly new for the firm as we are the first out attorneys.").

n228. For example, one heterosexual attorney said, "No effort has ever been made [at my office] to reach out to gay and lesbian attorneys and to make them feel welcome at social events." *Infra* Appendix B-1, Comment 291. One gay male attorney said, "At firm social events it is assumed I am heterosexual and, if I am welcome to bring a guest, I am told that I may bring 'a girlfriend.'" *Infra* Appendix B-1, Comment 323. Another gay attorney said, "No one is going to go out of his or her way to specifically invite same-sex guests in this corporate environment. I bring my same-sex partner because I treat him as a spouse and assume that he is welcome." *Infra* Appendix B-1, Comment 299; see also *infra* Appendix B-1, Comment 304.

n229. For example, one gay attorney said, "[On invitations to office social events,] the word 'guest' is used for single attorneys and probably anticipates an opposite-sex guest. I have never tested it by bringing a same-sex guest." *Infra* Appendix B-1, Comment 296. Another said, "Gay attorneys have been afraid to bring same-sex spouses to social events. As a result, it is difficult to evaluate whether the firm 'welcomes' same-sex spouses, or what its real reaction would be." *Infra* Appendix B-1, Comment 306.

n230. *Infra* Appendix B-1, Comment 284. Similarly, a gay attorney said, "During the firm's [long] history, there was only one openly-gay attorney hired... He attended one firm function ... with his life partner[,] ... [who] was isolated and alienated from the heterosexual group during the entire evening." *Infra* Appendix B-1, Comment 309.

n231. *Infra* Appendix B-1, Comment 300; see also *infra* Appendix B-1, Comment 302. Similarly, a heterosexual attorney reported,

The partners are fairly accepting of same-sex spouses showing up at/attending social events though I don't think that would apply if clients were also invited - unless they could be fairly certain that the nature of the relationship would not be revealed. Also ... I don't think it would be wise to bring a same-sex boyfriend or girlfriend, as opposed to a domestic partner, to a firm event. I'm pretty sure that would be frowned upon.

Infra Appendix B-1, Comment 292.

n232. *Infra* Appendix B-1, Comment 307. Another gay attorney said that, at his employer's social functions, "The guest was expected to be of the opposite sex. On a firm retreat where spouses were included, it was clear that my companion was not invited." *Infra* Appendix B-1, Comment 328; see also *infra* Appendix B-1, Comments 333-34.

n233. *Infra* Appendix B-1, Comment 335; see also *infra* Appendix B-1, Comments 315, 327, 336.

n234. *Infra* Appendix B-1, Comment 273.

n235. *Infra* Appendix B-1, Comment 274.

n236. *Infra* Appendix B-1, Comment 182.

n237. *Infra* Appendix B-1, Comment 184.

n238. See, e.g., *infra* Appendix B-1, Comment 242 ("We do not have a policy on sexual orientation. [Sexual orientation] is not an issue and therefore nothing needs to be said about it. Such things should not be discussed in the office anyway.").

n239. The Employer Survey did not ask the precise nature of the nondiscrimination policies. Instead, it asked whether the employer's policy covers hiring, retention and promotion and whether the policy covers gay employees to the same extent as women and people of color. The Employer Survey also asked employers if they had a policy that did not specifically identify the groups protected by the policy or had no nondiscrimination policy at all.

n240. In this regard, it is not to be assumed that employers have necessarily met with success in efforts to counteract gender, race and ethnicity discrimination in the employment of attorneys. Rather, the purpose of phrasing the relevant Employer Survey questions in this manner was to determine the extent to which employers, by their own reports, had begun to take steps to counteract sexual orientation discrimination in attorney employment comparable to steps taken to counteract gender, race and ethnicity discrimination.

n241. See *infra* Appendix C-2, Table 1.

n242. See *infra* Appendix C-2, Table 1.

n243. See *infra* Appendix C-2, Table 2.

n244. See *infra* Appendix C-2, Table 2.

n245. See *infra* Appendix C-2, Table 1.

n246. See *infra* Appendix C-2, Table 1. Many of the employer responses from small offices pointed out that, as a result of their size, formal and written policies did not exist. "We do not care what sexual orientation [an attorney] is. We have gay attorneys on staff (we're [a] small firm)." *Infra* Appendix B-2, Comment 1; see also *infra* Appendix B-1, Comments 405, 439, 440.

n247. *Infra* Appendix B-1, Comment 344.

n248. *Infra* Appendix B-1, Comment 343.

n249. *Infra* Appendix B-1, Comment 345.

n250. *Infra* Appendix B-1, Comment 192.

n251. *Infra* Appendix B-1, Comment 193.

n252. See *infra* Appendix C-1, Table 3. Breaking this down by gender and sexual orientation, 40% of lesbians, 34.5% of gay men, 21.7% of heterosexual women and 21.6% of heterosexual men believe that their employers have not taken such steps.

n253. See *infra* Appendix C-1, Table 3. Breaking this down by gender and sexual orientation, 62.2% of lesbians, 62.9% of gay men, 22.1% of heterosexual women and 26.8% of heterosexual men believe that their employers have not taken such steps.

n254. See *infra* Appendix B-2, Comments 8 (regarding a large law firm: "If they are talented, we want them."), 7 (regarding a medium-sized law firm: "We strive [to hire] the best qualified candidate without regard to gender, color, sexual orientation, etc."), 19 (regarding a large law firm: "One's sexual preference has no business being considered in the hiring process.").

n255. See *infra* Appendix C-2, Tables 3-4.

n256. The slight decrease is accounted for by law firms, which appear to be less likely to provide such training compared to corporate employers with legal departments. Almost 60% of the law firms provide training, whereas 75% of the corporate employers provide training. See *infra* Appendix C-2, Tables 3-4.

n257. See *infra* Appendix C-2, Tables 5-6.

n258. See *infra* Appendix C-2, Table 20.

n259. See *infra* Appendix C-2, Table 20.

n260. See *infra* Appendix C-2, Table 20.

n261. See *infra* Appendix C-2, Table 20.

n262. See *infra* Appendix C-2, Table 7.

n263. See *infra* Appendix C-1, Table 3. Breaking this down by gender and sexual orientation, 40.9% of lesbians, 42.1% of gay men, 25.8% of heterosexual women and 28.8% of heterosexual men believe that their employers have not taken such steps.

n264. See *infra* Appendix C-1, Table 3. Breaking this down by gender and sexual orientation, 47.7% of lesbians, 44.6% of gay men, 29.7% of heterosexual women and 26.3% of heterosexual men believe that their employers have not taken such steps.

n265. See *infra* Appendix C-1, Table 3. Breaking this down by gender and sexual orientation, 65.1% of lesbians, 59.9% of gay men, 43.9% of heterosexual women and 54.9% of heterosexual men believe that their employers have not taken such steps.

n266. See *infra* Appendix C-2, Tables 8-9.

n267. See *infra* Appendix C-2, Tables 8-9.

n268. See *infra* Appendix C-2, Tables 8-9.

n269. See *infra* Appendix C-2, Tables 8-9. For example, one small law firm employer responded, "There are two openly gay/lesbian attorneys in this firm of 15, one of whom is responding to this survey on behalf of the firm. Sexual preference simply has not been an issue in terms of work assignments, partnership, committee assignments, social events or interaction with clients." *Infra* Appendix B-2, Comment 6.

n270. See *infra* Appendix C-2, Table 11. This may be explained in part by the fact that some employers have adopted stated goals for the hiring and promotion of women and people of color in response to federal procurement law or specific court orders that do not address sexual orientation discrimination.

n271. See *infra* Appendix C-2, Table 11.

n272. See *infra* Appendix C-2, Table 11.

n273. See *infra* Appendix C-2, Table 21. Employer Survey respondents reporting that they took no such actions for any women, people of color or gay people were, respectively, 49.2% (no peer group or mentoring), 24.5% (no newsletter coverage) and 43.8% (no meeting or luncheon discussions). See *infra* Appendix C-2, Table 21.

n274. See *infra* Appendix C-2, Table 12.

n275. See *infra* Appendix C-1, Table 5.

n276. See *infra* Appendix C-2, Table 12.

n277. See *infra* Appendix C-1, Table 5.

n278. See *infra* Appendix C-2, Table 12.

n279. See *infra* Appendix C-2, Table 12. Only one employer reported that it had heard of a person in its office accusing a lawyer of using "bad judgment" by openly identifying as gay, but did not elaborate as to how it responded to the incident.

n280. *Infra* Appendix B-1, Comment 342.

n281. *Infra* Appendix B-1, Comment 339; see also *infra* Appendix B-1, Comment 341.

n282. See, e.g., *infra* Appendix B-1, Comments 416 ("We do not affirmatively publicize our policy of nondiscrimination... Our actions [] speak for themselves."), 417 ("Since the firm/office has no criteria concerning sexual orientation ... there is no reason to make its policies regarding gay/lesbians known to applicants.").

n283. *Infra* Appendix B-1, Comment 422.

n284. *Infra* Appendix B-1, Comment 418.

n285. *Infra* Appendix B-1, Comment 423.

n286. See *infra* Appendix C-1, Table 3. Breaking this down by gender and sexual orientation, 53.5% of lesbians, 61.7% of gay men, 50% of heterosexual women and 44.7% of heterosexual men believe that their employers have not taken such steps to communicate their policies to employees.

n287. See *infra* Appendix C-1, Table 3. Breaking this down by gender and sexual orientation, 62.2% of lesbians, 62.9% of gay men, 56.7% of heterosexual women and 54.9% of heterosexual men believe that their employers have not taken such steps.

n288. See *supra* notes 286-287.

n289. See *infra* Appendix C-2, Table 14.

n290. One explanation for this difference in responses is that larger firms are more likely to have welcome packets.

n291. See *infra* Appendix C-2, Table 10.

n292. See *infra* Appendix C-2, Table 10.

n293. Conversation between Dr. Curtis F. Shepard and Dr. Maryann Jacoby, Associate Behavioral Scientist, Rand Corporation (May 31, 1994). For additional information regarding Dr. Shepard's involvement with this Report, see *supra* notes 19-24 and accompanying text. See also CWL Glass Ceiling Study, *supra* note 93, at 2 (25-30% is a "typical" response rate for mail surveys). See generally Donald P. Warwick & Charles A. Lininger, *The Sample Survey: Theory and Practice* 129 (1975) (discussing the "notoriously low" completion rates of mail surveys).

n294. See *infra* Appendix A-1, part (2).

n295. See, e.g., *infra* Appendix B-1, Comments 436, 437, 442.

n296. *Infra* Appendix B-1, Comment 425.

n297. *Infra* Appendix B-1, Comment 429.

n298. See, e.g., *infra* Appendix B-1, Comments 426, 427, 435 (questioning the study's objectivity).

n299. *Infra* Appendix B-1, Comment 428.

n300. *Infra* Appendix B-1, Comment 430.

n301. *Infra* Appendix B-1, Comment 431.

n302. *Infra* Appendix B-1, Comment 432.

n303. *Infra* Appendix B-1, Comment 433.

n304. *Infra* Appendix B-1, Comment 434.

n305. The recommendations are also very similar to the recommendations adopted by BASF and the ABCNY in their respective studies of sexual orientation discrimination. See BASF Study, *supra* note 15; ABCNY Study, *supra* note 16.

n306. Model documents for extending health coverage to employees' domestic partners are included in Appendix E *infra*. In addition, assistance and other model documents are available through Lambda Legal Defense and Education Fund (Los Angeles), the National Center for Lesbian Rights (San Francisco), the National Gay and Lesbian Task Force and Hollywood Supports (Los Angeles).

n307. Moreover, gay attorneys may have particular reasons for remaining "in the closet." For example, some may rightly fear problems in connection with the military, child custody arrangements, family relationships and discriminatory employers, colleagues or clients. As they would a heterosexual attorney,

however, employers may require that a gay attorney disclose the gender of his or her domestic partner when the attorney enrolls that domestic partner in employer-sponsored benefits programs.

n308. ABCNY Study, *supra* note 16, at 851.

n309. See *infra* Appendix C-1, Table 1.

n310. See *infra* Appendix C-1, Table 2.