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20th Anniversary Reprint of the 1995 HCBA Report: Legal Employers' Barriers to Advancement and to Economic Equality Based Upon Sexual Orientation

Thomas H. Garrett III

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**20TH ANNIVERSARY REPRINT OF THE
1995 HCBA REPORT:**

**LEGAL EMPLOYERS' BARRIERS TO ADVANCEMENT
AND TO ECONOMIC EQUALITY BASED UPON SEXUAL
ORIENTATION***

A Report of the Hennepin County Bar Association Gay and
Lesbian Issues Subcommittee

Minneapolis, Minnesota
June 1995/August 1995

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* This article was originally published by the Hennepin County Bar Association. It is being reprinted here in its entirety, with only minor changes to paragraph spacing to improve readability.

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INTRODUCTION

The Hennepin County Bar Association (HCBA) Glass Ceiling Task Force issued its Report in 1993¹ The Report detailed barriers to advancement and economic equality for women and lawyers of color in the legal workplace. While consciously limiting its content to issues affecting women and lawyers of color, the Report's authors acknowledged that sexual orientation issues also could critically affect the lives and careers of those who work for legal employers. The HCBA Diversity Committee was formed in 1993 in response to one of the Report's recommendations that the HCBA form a standing committee to implement the recommendations and take such additional action as may be deemed consistent with the diversity initiatives of the HCBA.

The HCBA Diversity Committee recognized the need to examine such critical issues. In the Fall of 1994, the Committee charged its Lesbian and Gay Issues Subcommittee with the task of investigating possible sexual orientation bias in the legal community. The following pages detail the first stage of the Subcommittee's work involving interviews with lesbian and gay lawyers and law firm staff members. Considering the experiences of these interviewees, this Report concludes that bias based on sexual orientation is a pronounced impediment to lesbians and gay men trying to practice their profession.

SEXUAL ORIENTATION

The words *sexual orientation* in this Report often are used as a shorthand way of referring to *same-sex sexual orientation*; that is, the experience of those whose primary emotional, physical, and sexual attraction is to persons of the same sex² State and local human and

1. Hennepin County Bar Association, Glass Ceiling Task Force Report (April 20, 1993).

2. See, Alfred C. Kinsey, Wardell R. Pomeroy & Clyde E. Martin, Sexual Behavior in the Human Male (Saunders, 1948). The Kinsey Report estimated that roughly 10% of American men were homosexual. The same researchers later estimated that a slightly smaller percentage of American women were lesbian. The figure of ten percent is generally accepted though it is not without challenge. Research in the area is problematic due to the reluctance of people to talk openly

civil rights laws protect all people—both those attracted to same-sex and to opposite-sex relationships—from discrimination based upon sexual orientation³

Terminology

Only imprecise terminology is available to describe the concepts examined in this Report. For example, the Minnesota Human Rights Act creates a protected class based upon “sexual orientation”; the Minneapolis Civil Rights ordinance uses the words “affectional preference” to describe the same class⁴ People in the workplace experience similar uncertainty about terminology. Lack of consensus about word choice hinders communication between co-workers. A co-worker may wish to inquire about the well-being of a gay or lesbian colleague’s same-sex partner, but may remain silent because she feels awkward about her choice of words. Spouse? Domestic partner? Significant other? From lesbian or gay person’s perspective, the colleague’s silence easily could be a sign of anti-gay / lesbian sentiment. In this way, stifled communication perpetuates misunderstanding, distance, and ignorance regarding sexual orientation issues.

The Lesbian and Gay Issues Subcommittee does not intend this Report to resolve questions about related language use or “political correctness” issues. We have, however, chosen to use some terms and avoid others in a manner generally consistent with the language used by interviewees⁵ These choices may or may not

about sexual matters. For example, research by Kinsey, Guttmacher, and the University of Chicago relied upon information-gathering by face-to-face interviews, a technique likely to result in underreported incidence of same-sex sexuality.

3 M.S. §363.01, *et. seq.*; *see* Minneapolis Code of Ord., Title 7§139.20 (1993); Saint Paul, Minnesota, Legislative Code §§ 183.01 -183.031 (1992). The Minnesota Human Rights Act defines sexual orientation as “having or being perceived as having an emotional, physical, or sexual attachment to another person without regard to the sex of that person or having or being perceived as having an orientation for such attachment, or having or being perceived as having a self-image or identity not traditionally associated with one’s biological maleness or femaleness. ‘Sexual orientation’ does not include a physical or sexual attachment to children by an adult.”

4. M.S. §363.01 (Subd. 45); Minneapolis, Minnesota, Code of Ordinances at §139.20 .

5. Consistently, interviewees referred to lesbians and gay men as such respectively. Further, lesbians and gay men in the legal workplace appeared

be the same as those made by the reader. Language is inherently imprecise and seems especially so when dealing with the sort of ideas considered in this Report. The authors ask the reader to focus more on substance than on form—both while reading this Report and while exchanging ideas with colleagues about related issues.

Sexual Orientation and the Professional Workplace

Increasingly, employers recognize that lesbians and gay men make up a significant portion of the professional workforce in this country⁶ This segment of the work force faces substantial problems in hiring, retention and promotion in academics, medicine, sports, the clergy and other professions⁷ Local employers such as St. Paul Companies, Noran Neurological Clinic, Minnesota Public Radio, Northern States Power and Park Nicollet Medical Center now address these inequities with domestic partner benefit plans and other policies that make the workplace a less hostile environment for those employees with same-sex sexual orientation⁸ Increasing numbers of law firms across the country are providing domestic partner benefits for their gay and lesbian attorneys⁹ Personal leave policies, equal opportunity statements, and spousal health insurance benefits are easily documented workplace changes. Less easily documented but just as profound is the creation of workplace

comfortable referring to their *partner*, *spouse* or *date*, depending on the level of commitment they share. *Partner* seems an almost universally accepted term. The word *friend* seems to be avoided – perhaps because it is not very descriptive – when lesbians and gay men refer to the person with whom they share an intimate relationship. The word *homosexual* was heard only occasionally during the interviews – a Subcommittee member suggested that this could be because the word may contain clinical or pathological overtones. Finally, the Report avoids using the term “lifestyle” as the authors believe it is simply inaccurate to suggest that any diverse population group could share a single lifestyle.

6. See, e.g., Brian McNaught, Gay Issues in the Workplace (St. Martin's 1993); James D. Woods, The Corporate Closet (Free Press 1993).

7. See the collected studies in Homosexual Issues in the Workplace (Louis Diamant, ed.) (Taylor & Francis, Washington, D.C. 1993).

8. An overview of employers that have made such efforts is found in Appendix A to this Report.

9. “More Firms Offer Benefits for Gay Couples”, *ABA Journal*, June 1995, page 34.

environments where people do not feel the pressure to hide their sexual orientation from others.

In recent years, several of the larger bar associations throughout the United States have turned their attention to lesbian and gay members. Studies commissioned by the San Francisco,¹⁰ Los Angeles County¹¹ and New York City¹² bar associations explored employment circumstances of lesbian and gay attorneys in the legal workplace. These studies show how the legal profession can be hostile to gay and lesbian professionals, and how some legal employers recognize the need to improve workplace environments.

Sexual Orientation and Discrimination

Unlike other groups subject to discrimination, there are many areas of the country where it is still completely legal to discriminate against lesbians and gay men on the basis of their sexual orientation. No federal civil rights statute bars sexual orientation discrimination, and only nine states (and the District of Columbia) include such protection in their state civil rights laws.¹³ In addition, many metropolitan areas around the country have passed ordinances on a city-wide or county-wide basis that prohibit discrimination against lesbians and gay men.

Minnesota is one of the nine states with statewide civil rights protection for lesbians and gay men.¹⁴ Each of the Twin Cities has enacted non-discrimination ordinances barring sexual orientation discrimination within its respective borders. However, as the Glass Ceiling Report found with race, color and gender discrimination, the mere fact that sexual orientation discrimination is forbidden does not eliminate such discrimination.

One of the Subcommittee's goals is to help law offices comply with Human Rights Act requirements. Most law office managers,

10. Bar Association of San Francisco, A Guide for Legal Employers on Eliminating Sexual Orientation Discrimination (August, 1991).

11. Los Angeles County Bar Association, Committee on Sexual Orientation Bias, Report (June 22, 1994).

12. Bar Association of the City of New York, Committee on Lesbians and Gay Men in the Legal Profession, Report on the Experience of Lesbians and Gay Men in the Legal Profession (August 1993).

13. The nine states are California, Connecticut, Hawaii, Massachusetts, Minnesota, New Jersey, Rhode Island, Vermont and Wisconsin.

14. M.S. §363.01, *et. seq.*

however, do not view their professional responsibilities as being satisfied when they have done merely what the law requires. Rather, most managers want to ensure a professional working environment that enables all personnel to fulfill their full potential as attorneys and legal professionals. Anything less discourages team-building and diverts valuable human resources.

When a law office environment encourages lesbians and gay men to hide their sexual orientation, it becomes virtually impossible for them to participate fully in the culture of the office. Such unwelcoming environments drive many lesbian and gay lawyers and legal professionals away from the profession, resulting in lost opportunities for both the employee and her former colleagues.¹⁵

Legal workplaces free of unkind, disrespectful and unlawful treatment allow legal employers to provide creative and effective services. In today's diverse and competitive market, those law offices treating employees with dignity and respect are most likely to maximize performance and profitability.

Some lawyers may believe they have no lesbian or gay employees in their office. However, because many workplace environments encourage lesbians and gay men to hide their sexual orientation, many lesbians and gay men remain invisible. There are many lesbians and gay men in the professional workplace. Managers tempted to deny the existence of lesbian and gay employees may be working in a law office most in need of the self-examination and corrective measures discussed in this Report.

SUBCOMMITTEE GOALS AND CHALLENGES

As noted above, the Subcommittee was charged with the task of investigating possible sexual orientation bias against lesbian and gay lawyers and legal professionals. Such bias is evident in the Twin Cities legal community, as are resultant barriers to career advancement. This Report summarizes the observations that compel these conclusions.

As the Subcommittee pursued its investigation, several factors made our work more challenging and complex.

15. See Appendix B to this Report: Lindquist & Venum memorandum dated January 30, 1995 from managing partner Tom Garrett to firm personnel.

“Closeted” Attorneys and Legal Professionals

It was difficult to gather information from those most severely affected by sexual orientation bias. By definition, such people have the most to lose by revealing their sexual orientation to others. They respond by “closeting”¹⁶ or concealing this aspect of themselves.

There are countless reasons why attorneys and other legal professionals may be “closeted”. Some of these reasons are unfounded. Others are not. Some lesbians and gay men struggle to deny their own sexual orientation so as not to violate any social rules—in effect, closeting their sexuality even to themselves. Sometimes, the struggle is a lonely and unhappy one. In these situations, it may not be accurate to attribute all social and professional difficulties to the specific environment created by the employer.

Some lesbian and gay attorneys fear losing or damaging their careers by speaking critically about legal employers. One attorney withdrew her or his statement because of such fears. It is reasonable to conclude that such fear caused many attorneys to avoid participating in the Subcommittee’s information gathering process.

Remaining closeted or coming out of the closet is an intensely personal choice that members of the Subcommittee deeply respect. We made every effort to protect the privacy of interviewees who requested confidentiality. For example, we conducted some interviews at locations away from the downtown area to avoid those settings where lawyers traditionally congregate. We avoided leaving telephone messages with support staff working for closeted gay and lesbian lawyers. When requested, we did not use law firm mailing

16. The colloquial phrase “in the closet” in this context refers to a lesbian or gay person who chooses to hide their own sexual orientation. To be “out of the closet” is to openly acknowledge one’s own same-sex sexual orientation. The phrases are most often shortened for convenience: for example, “I came out to my parents”; or “we have a gay lawyer but he’s closeted; only the support staff feels free to be out”. The colloquialism has spawned a verb form: “outing” means to force someone out of the closet by exposing the secret of their same-sex sexual orientation. It often is not as simple as being either “in” or “out”; rather, gay and lesbian people can experience a broad continuum from being totally closeted, to being out only to close friends, to being as totally out as heterosexuals can be about their sexual orientation.

addresses or faxes to send draft copies of statements to interviewees.

Overlap with Other Societal Groups

Attraction to a member of one's own sex is not limited to any particular social, racial or cultural group. Men and women of all descriptions can be and are lesbian and gay. As an office attempts to alleviate unfair treatment of lesbians and gay men, a law office will also be assisting those women and people of color who are also lesbian or gay. Race, gender and sexual orientation are not mutually exclusive traits.

Conversely, attempting to address diversity concerns only on the basis of sex or race will leave a significant number of women or people of color (i.e., those who are also lesbian or gay) with significant career impediments. Such an incomplete approach can have only incomplete success.

Bisexual and Transgender Individuals

State and municipal human rights laws' sexual orientation protections apply not only to lesbians and gay men, but to bisexuals and transgender individuals as well¹⁷ Though our advertisements in legal publications specifically invited bisexuals and transgendered people to participate in the Subcommittee's information gathering process, no interviewees identified themselves as members of these protected classes. Accordingly, this first stage of the Subcommittee's work does not address issues specific to these protected classes. Many of this Report's recommendations apply equally to the human rights of bisexual and transgender people. Recognizing that it is just as tragic—and just as illegal—for bisexual and transgender persons' careers to be limited by intolerance, we will continue to invite them to participate in Subcommittee work.

17. M.S. §363.01; note that duplicate wording is found in the Minneapolis civil rights ordinance; *bisexuals* – people whose primary emotional, physical, or sexual attachment can be either same-sex or opposite-sex – are protected by the same definitional clause in the statute which covers gay men and lesbians; *transgender and transsexual* people are protected by the clause identifying those who “have a self-image or identity not traditionally associated with one's biological maleness or one's biological femaleness.”

Beliefs and Convictions of Others in the Workplace

Some members of the legal community have sincere and deeply held religious and moral convictions that proscribe same-sex sexual behavior. Some argue that these moral and religious beliefs further prevent them from respecting the human rights of those with same-sex sexual orientation. Still others suggest that religious liberty concepts rooted in the First Amendment are offended when employers require respectful treatment of lesbian and gay co-workers and clients.

The body of law interpreting the First Amendment does not support such extension of religious liberty concepts. An employer can fully respect an individual's religious beliefs and moral convictions while at the same time requiring that that individual's behavior comply with human and civil rights laws. The personal feelings or convictions of some must not foreclose the opportunity of others to contribute to the legal profession to the fullest extent of their ability.

SUBCOMMITTEE MEMBERS

The Subcommittee consisted of the following members, drawn from a broad segment of the legal community:

CO-CHAIRS:

Thomas H. Garrett III, Managing Partner, *Lindquist & Vennum*
Robert Sykora, Legal Education Director, *Lambda Justice Center*

MEMBERS:

Scott Allen Benson, Corporate Counsel, *All Saint's Brands*; formerly *Dorsey & Whitney*
Jerry Burg, Associate, *Mackall, Crouse & Moore*
David Edwards, Associate, *Brown & Company*
Kirstin Gulling, Partner, *Johnson & Gulling*
Mini Jain, Associate, *Messerli & Kramer*
Amy Johnson, Partner, *Johnson & Gulling*
Mike Ponto, Associate, *Faegre & Benson*
Joni Thome, Legal Advocacy Coordinator, *Gay & Lesbian Community Action Council*
Andrew Voss, Associate, *Oppenheimer, Wolff & Donnelly*
Anthony Winer, Associate Professor, *William Mitchell College of Law*

SUBCOMMITTEE PROCESS

During January and February of 1995, the Subcommittee held nine sessions of group and individual interviews at various locations throughout the Twin Cities. Subcommittee members moderated and recorded these interviews. Subcommittee members conducted additional individual interviews from late February through June 1995.

The Subcommittee placed advertisements for the interview sessions in legal and community periodicals most likely read by lesbian and gay legal professionals. The number of interview participants fielded by the Subcommittee is comparable to the number interviewed for the HCBA's 1993 Glass Ceiling Report.

The pattern of questioning was similar to the questions used by those who interviewed women and lawyers of color for the Glass Ceiling Report. We asked these questions: (1) Is there a glass ceiling for lesbian, gay, bisexual and transgender lawyers and law office personnel in the Twin Cities legal community? (2) Are lesbian, gay, bisexual and transgender lawyers and law office personnel hired, retained and promoted at the same pace as their heterosexual counterparts? (3) What are Twin Cities lawyers doing to correct problems that exist? and (4) Which programs have worked and which have not?

The Subcommittee is grateful for the generous cooperation and support it received from the many individuals and groups who spoke to us. We appreciate the candor of our guests as they discussed their experiences in the Twin Cities legal community. Most interviewees asked for assurances that their statements be kept confidential. We appreciate the courage of those who felt that speaking about their experiences involved substantial risk.

Members of the Subcommittee reviewed the reports and studies issued by bar associations and other published works. Most of the information on which this Report is based was obtained from discussions at interview sessions and from published material. In addition, members of the Subcommittee relied on their own personal experiences in law firms and other legal offices.

The Subcommittee is grateful for the support of the Hennepin County Bar Association. We are thankful to the Diversity Committee for their support and cooperation, and especially to Jane Schoenike, Executive Director of the Bar Association, for her invaluable assistance.

SUBCOMMITTEE FINDINGS

A. The Pressure to Remain Closeted Impairs the Productivity of Lawyers and Legal Professionals

Lesbians and gay men in the legal workplace report experiencing stress and anxiety far beyond the usual tensions of practicing law. They face a “Hobson’s choice” of whether to be out of the closet. Remaining in hiding requires an almost obsessive attention to secrecy as the legal professional works to maintain her “cover” with others. Yet coming out of the closet may jeopardize personal relationships and re-route one’s career path. Deep fear about secrecy and job security saps creative energy that otherwise could benefit clients and the employer.

Almost unanimously, interviewees observed hostility toward gay and lesbian people in the legal workplace. The problem appears much more pronounced in private firms than in nonprofit or public sector legal workplaces. Interviewees offered examples of the mistreatment they experienced which contributed to a sense of isolation and fear. Whether because of overt hostility, disapproval communicated by private law firm partners or through experiencing unfair treatment, most interviewees feel tremendous pressure to remain closeted.

Hostility toward gay men and lesbians diminished the productivity of both closeted and out lawyers, interviewees agreed. To address the hostility, interviewees employed coping mechanisms ranging from secrecy to direct confrontation. Each alternative requires time and an expenditure of personal energy that could otherwise increase productivity. Interviewees’ comments demonstrate that hostility towards gay men and lesbians is indeed pervasive in the legal workplace. This hostility has a profound impact on the individuals who encounter it.

Interviews indicated that most gay and lesbian legal professionals perceive that being out at the office will result in adverse consequences ranging from the loss of important mentor relationships to termination. These outcomes are very real: most out gay and lesbian interviewees have paid a professional price for their honesty.

Many interviewees reported that private law firm partners consider same-sex sexual orientation an undesirable factor. While this is not universally true—at least one prominent local firm

partner is openly gay and has for many years been open about his sexual orientation—many firms lag far behind the progress made by public employers, nonprofit employers, and by nonlegal employers.

For those interviewees who have chosen to be out in law firms, the relief that comes with being out is balanced by a need to be on one's guard. Most of those persons who are out report expending energy to confront homophobia and to cope with varying degrees of fear that harm will befall them. Some interviewees reported that upon coming out at work, formerly positive relationships deteriorated. Out interviewees also reported that they encountered undue suspicion of their work, including concerns about leadership abilities and mistrust of their substantive skills.

In each situation where an out interviewee had received a negative performance evaluation, the criticisms were subjective, addressing characteristics that seem to reflect the evaluator's subjective feelings rather than measurable criteria. Consider the following example:

One interviewee came out of the closet after five years of consistently superior performance evaluations as an associate attorney. Suddenly, his evaluators abruptly altered their opinions about his work. The associate was told that his work was not timely and that he appeared unable to assume a leadership role in substantive matters. The interviewee had never missed a deadline and, in the same evaluation, was given excellent feedback about his litigation skills. The partners performing the evaluation told him he had no chance of being considered for partnership. When pressed to articulate the reasons for such ouster from the firm, one evaluator said "you just don't fit the [firm] mold."

Subjectivity in evaluation is an open invitation to bias. More than one interviewee reported that once sexual orientation was disclosed or discovered, the lawyer was suddenly considered unreliable, untimely with work assignments and generally undependable despite excellent ratings before the lawyer disclosed her sexual orientation.

A typical report came from an associate who received a mixed performance evaluation and was criticized as being undependable, in part because of a project that had been completed late. The evaluator acknowledged that the lateness had no real impact. The evaluator joked that he (the evaluator) was the most untimely

partner in the office, acknowledging that the interviewee himself had to bail the partner out of more than one tight spot.

Other out interviewees reported that after coming out at work they began to receive only menial work. They became the object of hostile remarks. Partners told lesbian and gay lawyers to keep their sexual orientation hidden from clients so that the firm would not lose business. Co-workers offered confidential advice about which people in the firm made homophobic comments when the gay or lesbian person was absent. One interviewee reported that although she was out at the office, she perceived that none of the partners would publicly take action supportive of gay or lesbian issues. She also reported that the firm feared that open support of gay men and lesbians would result in loss of clients.

Some interviewees reported that they often encountered a “don’t ask, don’t tell” response when they came out to supervisors or partners. In some instances, the message to the interviewee came across as an attempt to be supportive and reinforce the notion that the person could expect privacy. In other circumstances, the message was clearly “keep it to yourself”, creating the clear implication that being gay was bad.

The experiences reported by interviewees demonstrate that most out gay and lesbian legal professionals in private law firms must commit significant energy as they attempt to cope with a hostile workplace. Lesbian and gay legal professionals must invest significant personal resources as they develop strategies to minimize the negative impact of judgmental attitudes. They must struggle to stay “in the loop” to maintain opportunity for advancement. They expend energy developing a support system to help them cope with the turmoil that results from hostile treatment. All of these personal resources are, therefore, unavailable to benefit clients and the employer. Most gay and lesbian legal professionals—whether out of the closet or secretive—suffer some diminution of creative energy as a result of workplace intolerance.

People who remain closeted report that maintaining the secrecy takes tremendous time and effort. Closeted legal professionals craft their personal interactions to avoid any disclosures that could possibly reveal their sexual orientation. Many closeted legal professionals report that they purposely remain distant from their co-workers to avoid the sort of uncomfortable

personal questions that are considered benign by heterosexual people. Some closeted interviewees reported that they have confided in a close office friend, but expect that the friend will not disclose the interviewee's sexual orientation.

The legal profession's hostility towards gay men and lesbians undermines their ability to become productive, confident employees. Because of their sexual orientation, many gay and lesbian legal professionals are denied good work, are prevented from establishing important mentor relationships and are forced to defend unfair subjective criticisms of their work. Treating gay and lesbian employees equally would allow them to develop fully their legal skills, develop successful client relationships and become more involved team members in environments that emphasize collegiality.

The 1993 amendment to the Minnesota Human Rights Act gives gay and lesbian employees the same protection from discrimination in employment as do the historically recognized protected classes. Legal employers are, therefore, liable for discrimination against gay and lesbian employees under the traditional theories of intentional discrimination and hostile environment harassment. The experiences reported by the survey interviewees suggest that several legal employers have engaged in practices or allowed environments to exist that would expose them to liability under the Minnesota Human Rights Act. Not only should law firms avoid violating human rights laws, they should take advantage of the opportunity to lead other employers by demonstrating respect for the law.

B. There Is Broad Variation in the Ways Law Offices and Other Legal Employers Approach and Address Sexual Orientation Issues.

Nearly all of the gay and lesbian attorneys who participated in interviews and focus groups reported that their legal employers either struggle with issues surrounding sexual orientation or dismiss the issues as not important. Public and nonprofit legal workplace employees reported significant progress paralleling that made by nonlegal employers; private law firm employees reported slower progress.

The general consensus was that gay and lesbian lawyers do not "fit in" with the social culture of private law firms and are not considered "presentable" to clients of those firms. Several

interviewees noted that even when a firm's written policy and public "face" suggest that the firm is inclusive and welcoming, the internal message often is, "don't ask, don't tell."

Some interviewees reported that they work productively with law firm employers to change policies and to provide a plan for the firm to provide benefits to domestic partners. Others said they would not even raise such an issue. While a number of firms have created diversity committees, sexual orientation is not a matter universally considered relevant by such committees. One firm's diversity committee did not allow a gay lawyer to work with the group because it maintained he was not a member of a "historically underrepresented group." In some cases the committee addressed sexual orientation-related issues but the firm partners avoided doing so. In still other firms, partners were as receptive as the committee to the inclusion of sexual orientation issues in the diversity committee agenda.

Not all lesbians and gay men wish to participate in diversity committee work. Some interviewees noted that once they came out within the workplace, partners and coworkers saw them as the "expert" on related issues. "I came here to be a litigator, not a diversity consultant," commented one lawyer.

All workplaces struggle to accommodate social differences. Discomfort about such difference is at the root of many diversity-related problems in workplace cultures; it is, after all, a natural desire to be in the company of "people like us". The following comments highlight ways in which lesbian and gay people are viewed as people "not like us"—people outside the social structure of law firm culture:

- "it was apparent that I just did not fit in socially with most other lawyers in the firm."
— *Associate, Large Firm*
- "I have no doubt that I was fired because I just didn't fit in to their social structure."
— *Associate, Small Firm*
- "[if you want to succeed in this firm,] get a wife, get a Lexus, and get a mortgage"
— *Large Firm Partner*

- “I don’t know that I can point to any specific program which has attempted to create a ‘culture’ that is welcoming to gay and lesbian employees and partners.”
— *Associate, Large Firm*
- “Large firms don’t hire people that don’t fit their stereotypes. There’s no problem as long as you dress and wear your hair a certain way. A large firm wouldn’t like to hire someone they perceived as obviously gay.”
— *Associate, Large Firm*
- “If anyone even suspects that you are gay, you will not be trusted with the firm’s work”.
— *Statement from lawyer who insisted on anonymity*
- “There is an unspoken rule that people seem to understand: the firm will be nice to us as long as we don’t band together and demand things.”
— *Support staff person*
- “Our firm has worked hard at being inclusive in a more general sense. I am in the process of working with the firm’s management committee on allowing spousal insurance benefits to same sex employees.”
— *Associate, Large Firm*
- “The diversity committee at the firm is not very active. They issued a report at one point, but did not mention gay and lesbian issues.”
— *Associate, Large Firm*
- “I don’t want to be the firm’s official educator on lesbian and gay issues. Lesbian and gay issues should be part of every diversity committee. We need to bring in additional resources.”
— *Associate, Large Firm*

C. Private Law Firms in Particular Tend to View Lesbian and Gay Lawyers and Legal Professionals as a Threat to the Employer.

Dealing with one's employers is always a difficult path to walk. Internal politics, personalities, economic realities and the seeming arbitrariness of promotion and advancement are realities confronting almost any lawyer attempting to build a practice in a private law firm. These dynamics are even more complex for the lesbian or gay lawyer.

Private law firms tend to be rather conservative organizations. This conservatism affects management philosophy, compensation practices, and law firm economics. Great changes in the legal profession are occurring because of enhanced competition, increasing computerization, and a growing level of sophistication among consumers of legal services. Law firms have become more fragile institutions. This fragility is evidenced by significant partner defections, law firm collapses, and the impact of bankruptcy on individual partners.

It is against this backdrop that many of those involved in law office management are struggling with the challenges of changing firm cultures and economics. Lawyers of all ages and levels of experience have questioned their decision to enter the legal profession. One of the challenges to law firm managers and leaders is the issue of diversity. Most have little or no formal training in managing sizable business organizations. Few have had any training, formal or otherwise, in dealing with the myriad issues arising from diversity initiatives. Increased economic burdens on a law firm result in some firms shying away from formal diversity initiatives. Ironically, other employers embrace the same initiatives because they believe attention to diversity will enhance the productivity of those in the workforce who have historically stood outside the white, straight, male norm.

Because of the fragile nature of law office institutions, there is concern bordering on outright fear that diversity initiatives will upset the delicate balance that keeps professionals working together in harmony and collegiality. Law office managers struggle to maintain this balance by making sure that the firm's clients relate well to those lawyers assigned to work on the client's matters.

Such compatibility assessments are not easily made at a time when attitudes about same-sex sexual orientation are somewhat unpredictable. A firm may represent a major corporation that has

implemented domestic partnership policies for its lesbian and gay employees. Such a client may expect the firm doing its legal work to have similar policies, or at least to refrain from any discrimination based on sexual orientation. The next client may be a very conservative business person who objects to working with an openly gay attorney. And the next client may appear to be a conservative business person but is also a parent of a lesbian of gay child who feels strongly that law firms should not discriminate based upon sexual orientation.

Sexual orientation is yet another dynamic complicating the task of law office managers attempting to create productive attorney-client relationships. Whether clients' disposition toward lesbian and gay people is favorable or unfavorable, clearly even a client's small displeasure carries with it the threat that she will go elsewhere to obtain legal services. This loss has professional and economic consequences. It is not surprising that many law office managers do not welcome the additional dynamic, and seek to avoid the issue by maintaining a law firm culture in which secrecy surrounds same-sex sexual orientation.

Gay and lesbian people are a minority. As such, law firms consider them a social *extreme* incompatible with traditional firms' marketing patterns. Firms traditionally market their services to clients found "in the middle of the social bell curve". Some managers are reluctant to assign projects to gay and lesbian lawyers because they are "slightly different" than the perceived norm.

It is the "slightly different" part of the equation that results in this unspoken rule: *you must conform to a standard that is considered "normal" within the conservative law firm environment.* This conformity causes distinct "cultures" within law firms. Legal consultants are quick to point out that each firm is different. These differences are quite small, however, and often relate to superficial issues having more to do with appearance and less to do with the feelings of harmony and collegiality.

Private law firms are difficult places for persons who do not fit the "norm." Focus on this norm creates barriers to entry relating to gender, color, sexual orientation and other factors. Sexual orientation issues can be even more difficult than gender and racial distinctions because lesbians and gay men are often "invisible." Moreover, because there remain significant bias and hostility

toward gay men and lesbians, there is a fear that these professionals will be unacceptable to the law office's clientele.

Law office managers respond to these pressures differently. Some managers feel the need to retreat to a more traditional way of doing business—"circling the wagons 'round" in response to current economic pressures. Others believe that their firms will survive the decade only if they create more diverse and welcoming workplace cultures.

In the course of the Subcommittee's interviews with gay and lesbian professionals working in Twin Cities law firms and other legal employers, we found examples of the fears, biases and hostility referenced above. Consider the following examples:

Some lawyers met with blatant discrimination from partners:

[During my third year] . . . I was invited to a client development function by an associate. The associate was told by a partner in the firm that I shouldn't be invited because I am gay and that it would turn off the clients. This partner had been supportive of me to my face. I was devastated by this betrayal of trust.

— Associate at a mid-size firm.

Some lawyers were "frozen out" of their firms after coming out:

When I started in my firm . . . I wasn't even "out" to myself. . . . After five years, I finally came out and talked to several people about it. My mentor heard the rumors and dropped me like a hot potato. He took our entire division out and told them to stay away from me. Suddenly I wasn't invited to any meetings of the hiring committee.

Thereafter. . . [I got work requiring] such a low skill level that I tried to joke with people by asking "Would you like fries with that?" when they gave me an assignment. I left the firm and since have been practicing law in my own office.

—Associate at a medium-size firm.

Some lawyers in large firms can simply avoid (or are avoided by) homophobic partners. Even so, they may still face opposition from those who may otherwise be supportive or, at least, neutral:

On one occasion, a partner expressed concern about whether [my] being gay would affect my business development abilities negatively. Since that partner is in a position of influence, I feel this creates an extra burden for me to “prove” that I do have business development skills.

—Associate at a large firm.

I was told that, by attempting to start a gay and lesbian employee group at the firm, and sponsor some activities, we were “shaking things up” and that, among the partners who found this MOST threatening were several gay and lesbian partners who were closeted. There was also great concern that any attempts by the firm to address gay and lesbian issues would be perceived by at least some of the partners as a “political” (read: “inappropriate”) issue rather than a civil rights issue.

—Associate at a large firm.

Not all meet with outright hostility. However, some lawyers experience the sting of prejudice from well-intentioned, but ignorant remarks from their colleagues and superiors:

[A partner at the firm] said: “It’s a good thing that you are a litigator because lesbians are really tough.”

—Associate at a medium-size firm.

Some firms have been successful in creating an environment where lesbian and gay lawyers feel that they can be “out” and supported, at least to some degree. They do not report that they are immune from difficult situations, but they feel that they can communicate their concerns to certain partners in the firm without serious, negative repercussions:

If a partner made an [anti-gay remark], I'd be comfortable addressing the issue if I were out to that partner, but not if I weren't out to that partner.

—Associate at a large law firm.

Homophobia is by no means the exclusive territory of the law firm; nevertheless the perception of hostility by law firms deters a number of law students from even considering private practice:

I expect the corporate world would not be friendly to me, and I wouldn't like the corporate culture . . . I plan public sector work [sic] because diversity policies exist there which would protect me. Law firms don't have to abide by those rules.

—Second-year law student.

As with the experience of women and racial and ethnic minorities, often the problem is that law firm leadership will not acknowledge that there is a problem. Conflict between a gay or lesbian lawyer and their law firm superiors on the issue of the lawyer's sexual orientation is not addressed as such. One gay lawyer at a large law firm who had received excellent evaluations for six years suddenly received negative evaluations when he came out. He pointed out this fact and expressed his belief that the negative evaluations were otherwise unsubstantiated. In response, a partner expressed "shock" that he would suggest the possibility of sexual orientation discrimination.

While law firms are facing a global shift in their economic identities, gay and lesbian lawyers face the added burden of the repercussions of the attitudes reflected above. The private law firm environment, even in its economic heyday during the mid-1980's, was never a welcoming place for lesbians and gay men. In today's economic environment, the pressure to find and retain business in a seemingly shrinking market serves to create a chasm between partners and associates, ever more so for lesbians and gay men.

D. Tension Exists in the Law Firm Environment Because of Uncertainty About the Boundary Between Professional and Personal Lives.

When is it appropriate for law firm professionals to speak to others in the firm about their personal lives? When is it appropriate to exchange such information with clients? People are uncertain about which information is appropriately private and that which is a natural part of the exchange between professionals working together closely. This uncertainty and tension interferes with workplace cohesiveness and team-building.

Lesbian and gay legal professionals feel pressure to remain silent about their personal lives while listening to their heterosexual colleagues talk casually about their opposite-sex spouses and partners. A managing attorney in a firm with 60 employees commented:

“I don’t know if we have any gay or lesbian employees. I keep things on a very professional level with people here; I don’t ask about people’s private lives.”

This managing attorney acknowledged that it is standard practice for him to attend weddings for his staff, funerals for staff family members, to inquire as to the health of an employee’s spouse who had been hospitalized, or to converse casually with the wives or husbands of employees at the firm holiday party. The managing attorney does not consider it inappropriate to have his employees’ heterosexuality revealed to him. He feels uncomfortable when gay and lesbian employees acknowledge their sexuality. In this firm, there are approximately six closeted lesbian and gay employees who are afraid to ask for the same social courtesies that are extended to their heterosexual colleagues.

The absence of social courtesies is only a visible symptom of a much larger dynamic that appears to be at work in the law firm environment. Interviewees consistently spoke of the exclusion of lesbian and gay people from the culture of the firm, the investment of energy in “pretending you’re straight”, and the re-routing of careers to avoid related tensions.

The comments of a partner of a major Minneapolis law firm help describe these larger dynamics. This managing partner wrote a memorandum to everyone in the firm, describing how his

attitudes changed as a result of the experiences of his gay brother and lesbian daughter. He noted that lesbian and gay attorneys and staff may be receiving a message to keep their sexual orientation private within law firms, despite the Minnesota human rights law's prohibition of discrimination. The effect of such silence was to make it difficult for lesbians and gay men to fulfill their potential as attorneys and legal employees:

“[Hiding sexual orientation makes it] virtually impossible for them to participate fully in the culture of the workplace environment. Over time, many are driven away from their practice environments, resulting in lost opportunities for both the employee/attorney and the employer.”

The managing partner wrote that he intended the memo as a first effort of the firm to encourage colleagues “who are laboring with the difficult decision of whether it is ‘safe’ to come out in the work environment”. He noted that some closeted gay and lesbian lawyers were taking a “wait and see” posture. The tentative approach is not unreasonable, the managing partner continued, “given the extremely conservative environment of major law firms and the economic and emotional risks that such a decision entails for the individual and his or her partner and family members”. Significantly, several months after the managing partner's memorandum circulated, a young associate attorney in the firm openly acknowledged being lesbian.

Lawyers clearly fear that a negative career track will be the result of acknowledging being gay or lesbian. A closeted partner in a 120+ attorney, downtown Minneapolis law firm described his employer as a very “traditional” firm in which most people appear to be in opposite-sex relationships. No one in the firm is openly gay. The partner would be uncomfortable being the first openly gay or lesbian person in the firm because:

“I have fears that my gayness may adversely affect my work flow, being welcome to serve on firm committees and being held out as a mentor / role model . . . Being openly gay would push the envelope in my firm. We had a summer clerk who declined our offer for an associate

position. In the months that followed, the hiring partner learned that the clerk was gay, and the comment made was: “what would the ‘gray hairs’ have said about that?!” After hearing that this statement was made, it left me wondering if I would ever be welcome to be myself.”

This partner likely would have a different experience at the firm employing the partner who made this comment:

“[I am open about my sexual orientation because] Law firms are intimate places in that you spend a great deal of time working with your fellow attorneys and staff members. In the long run, I believe it is difficult to hide one’s sexual orientation, and certainly it is not healthy to do so.”

— *Openly gay partner in Minneapolis law firm*

Most interviewees felt pressure to consider as deeply private anything related to their sexual orientation. Once accepted as private, it seems only proper to keep such matters secret. Often lost in the debate about privacy and secrecy is the undeniable truth that heterosexuals feel no pressure at all to keep secret the gender of their partners or spouses.

The thing that concerns me most about my firm is a general attitude that being gay is simply not an issue and shouldn’t even be addressed in the work context. This attitude pervades to the extent that I personally feel pressure not to raise “gay” issues, even when it otherwise seems appropriate to do so.

—*Associate in large firm*

Interviewees were unanimous in their expressed belief that it is not possible for law firms to maintain the illusion that personal lives are separate from professional existences. The following comment was representative:

I have come to the conclusion that the only way to solve this in the long run will be for firm management to

become far more diverse than it is today. Unfortunately, I am suspicious that will not happen, since there seems to be a tendency for the “good old boys” (women included) to perpetuate themselves. These are the people who have always been in the privileged majority and are the ones who seem most intent upon trying to look the other way and pretend that business can remain entirely separate from the rest of life.

—Associate in large firm

E. Openness and Acceptance Toward Lesbian and Gay Employees in Some Law Offices Seems Inversely Proportional to the Degree of Authority and Responsibility Held by Such Employees.

Law firm cultures seem less threatened by lesbian and gay support staff and junior attorneys than by lesbian and gay lawyers with a more permanent place in the firm hierarchy. Support staff members interviewed by the subcommittee consistently commented that the pressure on lawyers to be closeted simply did not exist for others.

Law firms are incredibly classist places . . . I believe it is far easier for support staff to come out than it is for lawyers to come out. . . . If you’re gay or lesbian, you are thought to be in an undesirable class.

- Paralegal in a large firm

We have more openly gay and lesbian staff than most firms [but of the] seventy lawyers in our firm, no lawyers are openly gay or lesbian.”

- Paralegal in a medium-sized firm

This tendency may be in part responsible for a frequently observed pattern, wherein young associates at law firms appear to be doing well until they reach a certain level of seniority. Then when their same-sex sexual orientation becomes known, they become perceived much more negatively. Although there may be various factors involved in a change in the way a law firm views an associate over time, this pattern was so recurrent that the

subcommittee believes it warrants careful attention. Some of the comments relevant to this area follow.

When I started in my firm . . . I wasn't out even to myself. All of my evaluations were top-notch. I worked for a partner who . . . guided business my way and did everything he could to accelerate my career. He was a valuable mentor for me. . . . After five years, I finally came out and talked to several people about it. My mentor heard the rumors and with no hesitation dropped me like a hot potato. . . . Thereafter I only got paralegal work."

- Associate in a medium-sized firm

When I was hired, only one associate knew I was gay. . . . The partner I worked with most closely was a strong supporter. I'm sure he did a lot to convince the others that having a gay lawyer in the firm was not a problem. Even though the situation went well for the first three years, it was apparent to everyone that I just did not fit in socially with most other lawyers in the firm. . . . After a while, it seemed obvious that a few of the partners would have been a lot happier if I went elsewhere."

- Associate in a small firm

F. *The Legal Profession Communicates a Powerful Message to Lesbian and Gay Law Students: If You Want A Job, Pretend You Are Straight.*

Fear, anxiety and dread all temper the law school experience for gay men and lesbians. For those who are "out," studying law carries with it the question of whether one should reenter the "closet." Law students see few if any examples of lesbians and gay men practicing in large law firms. Those few rumored to practice in large firms are thought to be known as gay only to a few within the gay community, and to be hidden within the legal community. Law students view the profession as generally unwelcoming, and private law firms as overwhelmingly hostile to gay and lesbian people.

Students believe (perhaps accurately) that openly gay and lesbian lawyers will last only a short time in law firms before losing their jobs. As a result, a major topic of debate among lesbian and

gay law students is whether to be closeted or out on one's résumé. To preserve employment opportunities, students often choose not to disclose their work with agencies known to deal with issues involving HIV and AIDS and lesbian, gay, bisexual and transgender civil rights issues. Lesbian and gay students are disadvantaged in the competition for employment by their inability to disclose significant clerkship experiences in these areas.

Lesbians and gay men in law school are acutely aware of "top down" messages sent by the profession to which they aspire. Law students perceive the judiciary as the "top" of the profession and themselves on the other end of the spectrum. The judiciary's message to law students is a dismal one. Lesbian and gay judges remain silent, perhaps declining the opportunity to be role models out of concern for the vitality of their judicial careers. The only message heard from the bench, then, is when a closeted judge's sexual orientation is exposed. Exposure of the hidden sexual orientation of a member of the judiciary generally results in negative media attention. Such negative exposure is far more visible to law students—and everyone else—than is the daily hard work accomplished by closeted lesbian and gay lawyers and judges.

Law students remain closeted not only because they do not see positive role models in the legal profession but because the examples they do see often are deeply discouraging. The image of gay people in the legal profession suffers when the sexual orientation of closeted people is exposed under lurid and sensational circumstances.

Students are alert to messages about sexual orientation from law school faculty and staff. Students in Hamline Law School's gay and lesbian student organization spoke of the discouragement they felt this past year when no faculty member stepped forward to serve as faculty liaison for their group. The University of Minnesota Gay, Lesbian, Bisexual and Transgender law student group has experienced tidal changes varying from being welcomed on campus to being the target of hate speech and an active campaign by other students to eliminate the group. A 1992 graduate of William Mitchell College of Law reported that the president of the WMCL gay and lesbian student group at the time instructed members *not to acknowledge each other in public at the school to avoid being identified by other students*. The student group met in private homes to maintain secrecy. They discussed the need to preserve

their future career options by remaining as closeted as possible. This was an abrupt return to the closet by people who had been open about their sexuality before law school.

- G. *A Law Office Environment that Encourages Lesbians and Gay Men to Hide Their Sexual Orientation Imposes a “Code of Silence” Regarding Their Personal and Family Life that Does Not Apply to Heterosexual People in the Office.*

Some law office cultures implicitly but emphatically pressure lesbian or gay employees to remain silent about their personal or family lives.

“When I first ‘came out’ to people, I was told by many that ‘nobody has to know this’ and that it was my own personal business.”

— *Associate with a medium-sized law firm*

The pressure to remain silent creates two concerns.

First, the pressure is discriminatory because heterosexuals face no such restriction. Any comment about a wife or husband, children, marriage or wedding shower is generally a comment about one’s heterosexual personal or family life. Lesbian and gay employees should have the same freedom to discuss such matters as heterosexual employees.

Second, when lesbian and gay employees are discouraged from being honest about their sexual orientation, the resulting “code of silence” imposes stress, isolation and other obstacles to the full development of their potential.

“I knew that I would lose work if any partners found out that I was gay. I did not reveal this fact to anyone except my closest friends at the firm. I was conscious of having to remain somewhat distant from most people. I did not get close to people because in the natural course of conversation most people talk about their spouses and families and I had resolved never to lie by fabricating an opposite-sex spouse. . . . I only spoke about work-related matters, never joined any group of co-workers for a drink,

and never went to any firm events except those that were absolutely obligatory, and then I left as soon as possible.”

— *Associate with a large firm*

Enforced silence about sexual orientation in this way becomes one of the key obstacles to the development by lesbian and gay attorneys of their full potential.

“I also ‘came out’ to my supervising attorney. He was obviously uncomfortable [and] told me: (1) not to tell clients that I am gay; (2) not to be ‘too gay’ around a particular client; and, (3) that if a client learned that I was gay that they would fire the firm”

— *Associate with a medium-sized law firm*

This “code of silence” about the sexual orientation of employees is one of the major hindrances to lesbian and gay attorneys in the Twin Cities. The protection against discrimination afforded by law and in many cases, law office policy, can not be realized in any situation in which this “code of silence” is operating.

A law office with a “code of silence” operates against lesbian and gay attorneys. In noting its existence, the Subcommittee is not suggesting that it be replaced by enforced openness for lesbian and gay attorneys that results in involuntary outing. Rather, the office environment should be such that lesbian and gay attorneys are able to make decisions about openness themselves.

This code of silence often is perpetuated when an employee is fired by a firm and the terms of the settlement agreement prevent the terminated employee from discussing the circumstances of the alleged discrimination.

SUBCOMMITTEE RECOMMENDATIONS

- A. *To Maximize Productivity and to Comply with Human Rights Law, Law Offices Should Not Impose Explicitly or Implicitly, the Need to Be Closeted.*

Law offices should not impose upon employees or partners the need to be closeted.

Once freed from the pressure to hide their sexual orientation, gay and lesbian employees report that their productivity increases. Instead of spending time and energy hiding their sexual orientation from superiors and clients, gay and lesbian employees are free to do the work they were hired to do. Law offices must avoid both explicit and implicit pressures which impose the need to be closeted.

Explicit pressures include actions such as derogatory homophobic comments, tolerating gay and lesbian jokes, and asking that “out” attorneys not reveal their sexual orientation to clients for fear of reprisal.

Implicit pressures are more difficult to recognize. Such implicit pressure is evident when a superior nonverbally expresses displeasure in response to an employee’s honesty about his sexual orientation. It is also apparent when unchallenged “hidden agendas” in performance evaluations allow wholly subjective criticisms of gay and lesbian employees. Evaluation processes invite illegal discrimination when they allow generalized comments (i.e., “he just doesn’t fit the mold”; “I just don’t like her attitude”) to shape a lawyer’s career.

Although law offices should strive to end the need to be closeted, they should respect the privacy of employees and acknowledge that each gay or lesbian employee must determine for him or herself when the time is right to “come out” at work.

The Subcommittee recommends that the following steps be taken to eliminate the pressure to keep sexual orientation a secret in the legal workplace:

- (1) Law firm managers must be leaders. No diversity initiative can be successful in a workplace until it is clear throughout the firm hierarchy that the concept enjoys CEO-level support. Law firm managers can begin to lead in this area by making an unequivocal nondiscrimination statement highlighting the protected classes added to Minnesota Human Rights law in 1993¹⁸

18. A sample scenario-based equal opportunity statement is included as Appendix C of this Report.

(2) Law offices should not explicitly impose the need to be closeted by tolerating or condoning homophobic statements, jokes or policy positions such as asking employees to not disclose to clients the employee's sexual orientation.

(3) Law offices should not implicitly impose the need to be closeted.

(a) The performance evaluation process must not allow unsupported subjective criticism (which may merely reflect the bias of the evaluator) to comprise the sum total of the evaluation.

(b) Law offices should not adopt the position that gay and lesbian employees just shouldn't talk about their lives.

(4) Despite the need to allow employees comfortably to acknowledge their sexual orientation, law offices should respect the privacy of their employees and should not attempt to "out" closeted gay or lesbian employees.

(5) Express firm policies should acknowledge the existence of lesbian and gay employees. Specific policies are articulated elsewhere in these Recommendations.

(6) Businesses that have implemented policies which respect the human rights of their employees regardless of sexual orientation could assist law firms in reducing workplace discrimination by letting law firms know that they prefer to do business with law firms which similarly respect human rights.

(7) Law firms should not allow the sexual orientation of a lawyer to disqualify her or him from performing legal work. Consumers of legal services may wish to encourage law firms to adhere to such a policy.

(8) The HCBA annually should poll legal employers to determine whether firms have been successful in their effort to create a firm culture that allows lesbian and gay people to be open about their sexual orientation. Assessment of the

improvement of workplace environment can be determined by several indications of progress:

- (a) the lawyers from the firm participating in programs of outreach to lesbian and gay law students (see *infra*);
- (b) the employees who have expressly come out to their coworkers by, for example, bringing a same-sex partner to a firm social event;
- (c) the involvement of the firm in *pro bono* projects dealing with issues affecting the human rights of lesbian, gay, bisexual or transgender people;
- (d) the utilization of a domestic partner benefits program.

B. Legal Employers Can Take Meaningful Steps to Make Work Environments Less Hostile to Lesbian and Gay Employees.

Legal employers should:

- (1) Add sexual orientation to the firm's nondiscrimination policy.
- (2) Develop and implement a sexual orientation harassment policy.
 - (a) This policy should work to eliminate discrimination and harassment directed toward lesbian and gay employees through intervention, education, and the imposition of meaningful sanctions.
 - (b) Policies should proscribe same-sex sexual harassment whenever opposite-sex harassment is prohibited.
- (3) Create an environment in which all employees can openly discuss issues relating to diversity, including sexual orientation issues. Such an environment is best created when all employees hear an unequivocal CEO-level message that equal opportunity will be assured regardless of sexual orientation.
- (4) Extend all benefits currently offered to married employees and their families to employees and their domestic partners. Such benefits include, but may not be limited to:

- (a) Health Insurance Benefits
- (b) Life Insurance Benefits
- (c) Bereavement Leave
- (d) Invitations to firm functions
- (e) Inclusion on mailing lists
- (f) Memberships and benefits in athletic, social and country clubs

(5) Advertise open positions within the firm in publications that are most likely to be read by potential lesbian and gay employees¹⁹

(6) Most law schools have a Lesbian, Gay, Bisexual and Transgender student group. Firms can encourage sexual orientation diversity in hiring by meeting with these student groups and inviting students to apply for summer internships and associate positions. In all announcements of interviews, announce that lesbian, gay and other minority law students are encouraged to meet with firm representatives.

(7) Create a welcoming environment for lesbian and gay employees. This may be started by participating in or encouraging the following:

- (a) Publicly recognize and honor employees who participate in *pro bono* activities that advance human rights based upon sexual orientation.
- (b) Encourage all employees to do research, write articles, participate in panels and speak on legal issues related to sexual orientation.
- (c) Encourage lesbian and gay employees to participate in Bar Association activities to enhance their advancement within the firm.

19. Local civil and human rights commissions maintain up-to-date mailing lists of publications which target a gay and lesbian readership. For national hiring efforts, a publication list can be obtained from the National Lesbian and Gay Law Association, 1555 Connecticut Avenue N.W., Suite 200, Washington DC 20036, (202)462-9600, ext 28.

(d) Encourage all employees to attend CLE programs that deal with diversity issues.

(e) Implement firm-wide diversity training which includes sexual orientation as a component; make participation in diversity curricula a factor which contributes to an individual's opportunity for advancement.

(1) sponsor regular, formal diversity training programs;

(2) provide informal diversity inservices; for example, encourage workplace dialog by showing the video tape entitled *Inside Out: A Portrait of Lesbian and Gay Lawyers*²⁰

(g) Report significant sexual orientation-related legal issues to employees in firm newsletters.

(h) Encourage lesbian and gay attorneys to participate in mentoring programs. Provide mentoring opportunities for out attorneys. Encourage supportive attorneys to mentor lesbian and gay law students.

(I) Be alert to current legal issues affecting sexual orientation law and help advance matters consistent with public policy embodied by Minnesota Human Rights law²¹

(8) Monitor progress. This should include:

(a) Tracking the advancement of out lesbian and gay employees within the firm.

20. The tape and a "Discussion Guide for Legal Employers" is available for loan at William Mitchell College of Law; for purchase, contact the National Educational Foundation For Individual Rights, (415)956-5050.

21. For example, Minnesota's legal community recently made a significant positive contribution in a matter pending before the U.S. Supreme Court. In Romer v. Evans, an appeal challenging the Colorado Supreme Court's reversal of Amendment 2 (which would make it impossible to protect Coloradans' human rights based upon sexual orientation), *amicus* support was given to Respondents by Minnesota Attorney General Hubert Humphrey III, the Minnesota State Bar Association, and Minnesota Women Lawyers.

(b) Conducting exit interviews to understand the reasons lesbian and gay employees leave the firm.

(9) Actively participate in the programs of the Hennepin County Bar Association Diversity Committee.

C. *Lawyers in Positions of Responsibility Should Send an Unequivocal Message that the Legal Employer Will Provide Equal Opportunities to Lesbian and Gay Lawyers.*

(1) Managing attorneys need to take a leadership role by discussing all diversity issues within the workplace, including those related to sexual orientation.

(2) Private legal employers should open a dialog with public employers and corporate human relations professionals; they should discuss issues related to sexual orientation diversity in the workplace, including domestic partner benefits.

(3) The HCBA Diversity Committee should develop specific programs to encourage legal employers to discuss issues related to sexual orientation.

(4) Firms should develop strategies to educate clients about human rights laws protecting lesbian and gay people, and about the value of diversity in law firms including the presence of lesbian and gay lawyers.

(5) Lawyers supportive of diversity in the workplace should let their opinions be known to others in the legal workplace. A simple memorandum from a managing partner can improve the workplace environment²²

22. An example of such a memorandum by a firm managing partner is included as Appendix B to this Report.

D. Open Dialog and Policy Development Can Help Articulate the Boundaries Between Professional and Private Lives of Employees in the Legal Profession.

Law firms should have well defined and clearly articulated expectations about the boundaries between personal and professional life, and *to apply those expectations even-handedly*. Certain differences in expectations are inevitable, given differences in overall firm cultures. For example, while most firms consider it appropriate for attorneys and other employees to display family photographs in offices and other work areas, some firms may dislike such displays altogether. Whatever the firm's view, it is to the benefit of all employees for that view to be articulated in some readily-available form. Not only will this leave everyone with a clear view of what is acceptable, it should also serve to enhance even-handed application of the policies. For example, a gay or lesbian employee working for a firm which allows family portraits and similar personal items should be able to rely on that policy extending to gay family portraits.

The mere existence of written policies does not automatically resolve tensions. In some cases, gay and lesbian employees may feel that the policies, even if enforced, do not comport with what actually is expected. Firms have an obligation to alleviate any such fears by making it clear that whatever policies are put in place do reflect firm expectations. This message needs to come directly from the same managers who are seen to establish and enforce expectations in the first place.

No firm would prevent a heterosexual employee from discussing social activities merely because the nature of those activities happens to reveal his or her sexual orientation. The same should be true for gay employees. Not only is it unfair to provide different standards, but also it is unrealistic to believe that an attorney or employee can develop healthy working relationships while hiding parts of their personal lives. That is no less true in the context of client relationships than in the context of in-firm relationships. It is consistent with the spirit of Minnesota Human Rights law for firms to stand behind attorneys when their sexual orientation becomes known to a client. Such openness will enhance existing client relations. Law firms need to be aware that all types of diversity can be assets in that they open new doors to business. In that regard, gay and lesbian employees should be

encouraged to cultivate their own social and community contacts as business prospects.

Seemingly small administrative issues matter greatly in this regard. Consider the effect of an office directory which includes opposite-sex but overlooks same-sex partners, or an invitation which includes only heterosexual spouses. Such omissions send a strong message that whatever else the firm says, it does not really want gay and lesbian employees to participate fully. Law firms should make every effort to see that they are sending the right message in contexts such as these.

E. Legal Employers Should Not Allow Any Evaluation of Whether an Employee “Fits In” to the Office Environment to Be Influenced by Bias About Sexual Orientation.

Law firms must not deny advancement opportunity to employees because of their sexual orientation. This denial of opportunity often is cloaked in subjective evaluations of how well an employee “fits the mold” of the workplace.

This consideration is usually less relevant to the employees at a relatively low level of responsibility. However, as lawyers acquire greater authority or become more senior, evaluators begin to focus on the “fit” of a lawyer in the firm. Firms must guard against the subtle introduction of sexual orientation bias into this process.

Determining that a person does not “fit in” can and does mask the simple judgment that the person involved is disliked or resented simply because the person is lesbian or gay. It is a treacherous time in a young lesbian or gay lawyer’s career when evaluators ask “does she fit the mold?” Legal employers should make such determinations with the greatest care to avoid engaging in unfair and illegal discrimination.

F. Law Schools With the Support of Legal Employers Should Develop Outreach Programs to Mentor, Encourage, and Recruit Lesbian and Gay Law Students.

We recommend that the Hennepin County Bar Association, the Minnesota State Bar Association, and local law schools cooperate in the following initiatives:

(1) All law schools should implement policies that explicitly include sexual and gender orientation in their non-discrimination policy. The American Association of Law Schools recommends that law schools include sexual orientation in their non-discrimination policy.

(2) Law school student orientation sessions each year should include a segment which explains the nondiscrimination policy to all students.

(3) Law schools should include lesbian, gay, bisexual and transgender law student organizations in student recruitment brochures. Law school admissions offices should be provided with the names of contact persons within those student organizations. Law schools should refer interested students to lesbian and gay legal organizations if they have questions about “being out” at each law school.

(4) Law school curricula should include material that addresses sexual orientation related legal issues. Gay and lesbian student organizations need to be informed when sexual orientation issues will be addressed or discussed, whether it be in seminars, classes, or meetings of other organizations on or off campus.

(5) Students should be encouraged to raise sexual orientation related legal issues at relevant points throughout the law school curriculum. Law school faculty should be informed of gay / lesbian as well as heterosexual perspectives, where the differing perspectives are relevant.

(6) Law library acquisitions policy should include scholarly works on the history of sexual orientation related legal issues, related sociological studies, and the practice of law when sexual orientation is a relevant issue.

(7) Schools and bar associations should establish mentoring programs, both between students and between law students and supportive lawyers. Social events where mentors and

students can meet in a casual atmosphere should be held to encourage these contacts.

(8) *Pro Bono* legal research on issues affecting the lesbian and gay people should be encouraged as a way of networking law students with the local bar.

G. *Confidentiality Agreements Entered into with an Employee Who Has Alleged Discrimination Should Not Impose Any Confidentiality Obligation Limiting Disclosure of the Circumstances of the Alleged Discrimination.*

The Subcommittee found that a workplace-imposed “code of silence” can be one of the most destructive aspects limiting the career prospects of lesbian and gay attorneys. Confidentiality agreements entered in connection with a termination settlement agreement can perpetuate silence about sexual orientation discrimination issues. This is especially true where the confidentiality agreement prohibits disclosure of the circumstances of the alleged discrimination.

If such a confidentiality agreement prevents an employee from discussing the circumstances of discrimination, other lesbian and gay attorneys in that office and elsewhere are deprived of the information necessary to know about their true position. They remain barred by the “code of silence” that is perpetuated by the confidentiality obligation.

The Subcommittee is not suggesting that legal employers never enter into confidentiality agreements. This Recommendation only applies to confidentiality agreements entered into when discrimination is alleged and only to the extent the agreement imposes a confidentiality obligation on the circumstances of the alleged discrimination.

CONCLUSION

The practice of law is changing as dramatically as the society in which it is practiced. Lawyers in the past did business on the strength of their reputation. Now the same lawyers spend hours considering marketing strategy to compete with firms that purchase full page advertisements and billboards. Until thirty years ago, psychologists described homosexuality as a disorder. Now the

American Psychological Association recognizes its lesbian and gay employees with a domestic partners benefits plan. Three years ago, statewide human rights law based on sexual orientation was no more than a concept; as of this writing, nearly five dozen sexual orientation complaints have been filed with the Minnesota Department of Human Rights.

All social change eventually puts some pressure on the practice of law. Legal employers feel this pressure acutely. The very presence of openly gay men and lesbians in the legal workplace seems like a challenge to the status quo. Some lawyers easily accommodate this change, others are resentful. Many ask, “What’s all the fuss?”

The question “What’s all the fuss?” often accompanies the question, “Why do you have to *tell* everybody about it? Why can’t you just keep it private?”

This Subcommittee Report answers those questions. We heard emphatically from interviewees that the pressure to disguise or conceal sexual orientation results in reduced productivity, workplace disharmony, personal pain and an overall distraction from professional pursuits. Yet it is more than just unwise and unproductive to ask lesbians and gay men to hide their sexual orientation: it is wrong and illegal unless the same requirement is imposed upon everyone.

Many in the legal workplace believe that the visible presence of lesbians and gay men in the profession threatens profitability, public relations, and productivity. In fact it is the *reaction* by others to the presence of lesbian and gay people that yields negative consequences, not the people themselves.

The client base of legal employers includes lesbian and gay people, their families, friends, and employers. This very client base has begun to encourage legal employers to accept all bright, competent people—regardless of sexual orientation—as equal partners in the work of the employer. Employers who can respond positively to this social change will survive into the next century. Employers who can *anticipate* its magnitude will thrive.

APPENDIX A

OVERVIEW OF EMPLOYERS WITH DOMESTIC PARTNERSHIP BENEFITS

I. Companies, Municipalities and Universities with Domestic Partnership Plans**A. Public Sector Plans**

Key:

- (A) Access to school records
- (B) Bereavement and family leave policies
- (C) County plan
- (c) City plan
- (D) Dental Insurance Only
- (f) Family leave policy for domestic partners is same as married partners under the Family Medical Leave Act
- (f-) two different policies exist for family leave
- (M) Medical Benefits
- (P) Parenting leave
- (p) Pension benefits
- (R) Registration of partnership
- (r) use of recreational areas
- (S) Sick Leave
- (s) State Plan
- (T) Tax benefits for companies in the city which recognize DPs
- (U) Policy derived from collective bargaining
- (V) visitation in prisons, hospitals, etc.
- (=) no benefits available to spouses are excluded
- (-) some benefits available to spouses are excluded
- (?) specifics of plan unknown
- [n] number of employees

Government:

Alameda, CA

Ann Arbor, MI

Atlanta, GA

Bay Area Rapid Transit [2,600]

Berkeley, CA [1,550]

Boston, MA

Burlington, VT

Benefits

(c) (B) (S)

(c) (B) (S)

(c) (R)

(B) (M)

(c) (R) (B) (P) (S) (M)

(B)

(c) (?)

Cambridge, MA	(c) (A) (B) (M) (P) (=)
Carrboro, NC	(c) (B) (M) (R) (r) (S) (-)
Chicago, IL	(c) (B)
East Lansing, MI	(c) (B) (S) (M)
Ithaca, NY	(c) (R)
Laguna Beach, CA [560]	(c) (R)
Los Angeles, CA [46,000]	(c) (B) (S)
Madison, WI	(c) (R) (B) (S)
Marin County, CA	(C) (?)
Massachusetts [23,800]	(s) (B) (V)
Minneapolis, MN [6,000]	(c) (R) (B) (S)
Multnomah County, OR	(C) (M)
New Orleans, LA	(c) (M) (R)
New York, NY [417,000]	(c) (B) (M) (P) (R)
New York	(s) (M) (O) (U)
Oak Park, IL	(c) (?)
Ontario Canada	(M) (p)
Portland, OR	(?)
Rochester, NY	(c) (M)
San Diego, CA	(c) (O) (R) (?)
San Francisco, CA [23,000]	(c) (M)
San Mateo County, CA	(c) (R) (M)
Santa Cruz, CA [650]	(C) (S) (D)
Seattle Metro [4,000]	(c) (B) (S) (M)
Seattle, WA [11,000]	(C) (B) (S) (M) (=)
Shorewood Hills, WI	(c) (B) (S) (M)
Takoma Park, MD	(c) (r)
Travis County, TX	(c) (B) (S)
Washington, DC [48,000]	(C) (B) (R) (S)
West Hollywood, CA [125]	(c) (M)
West Palm Beach, FL	(c) (R) (B) (S) (M)
Vermont	(c) (B)
	(s) (M) (D)

B. Private Sector Plans

Key:

- (A) Adoption benefits
- (B) Bereavement and family leave policies
- (b) Child care

- (C) COBRA benefits
- (D) Dental Insurance
- (f) Family leave policy for domestic partners is same as married partners under the Family Medical Leave Act
- (f-) two different policies exist for family leave
- (L) Dependent Life Insurance
- (M) Medical Benefits
- (P) Parenting leave
- (r) use of health and fitness programs
- (R) relocation policy
- (S) Sick Leave
- (U) Policy derived from collective bargaining
- (v) Vision medical insurance included
- (O) benefits offered to same-sex and opposite-sex couples
- (=) no benefits available to spouses are excluded
- (-) some benefits available to spouses are excluded
- (?) specifics of plan unknown
- [n] number of employees

CompanyBenefits

Adamation Inc., Oakland CA [10]	(O)
Advanced Micro Devices	(M) (D)
American Association of University Professors	(M - stipend) (O)
American Automobile Association [3,200]	(?)
American Civil Liberties Union, San Francisco Office	(?)
American Friends Service Committee [350]	(?)
American Psychological Association	(?)
Apple Computer, Inc. [11,500]	(M) (A) (B) (b) (C) (D) (f)
Arent Fox Kintner Plotkin & Kahn Law Firm, Washington DC	(M) (?)
Autodesk	(M) (B) (C) (D) (f) (R) (=)
Banyan Systems	(M) (C) (D)
Ben & Jerry's [300]	(?) (=)
Beth Israel Medical Center, New York	(?)
Beth Israel Hospital, Boston	(M) (=)
Blue Cross/Blue Shield of Mass	(M) (O)
Borland [986]	(D) (M)
Boston's Children's Hospital	(D) (L) (M) (f) (=)
Boston Hotel Workers Union	(?)

Boston Globe [3445]	(M)(B)
Cadance	(D)(M)(v)(O)
Canadian Press/Broadcast News [440]	(B)(D)(M)(U)
Capital Cities/ABC [19,200]	(M)
Celestial Seasonings	(M)(=)
Chiron Corp	(D)(M)
Columbia University clerical workers, NYC	(B)(U)
Committee of Interns and Residents Staff Union, NYC	(U)
Consumers United Insurance Company [15]	(?)
Covington & Burling Law Firm, Washington DC	(M)(?)
DEC-Belgium	(D)(M)(O)(-)
Devebose & Plimpton Law Firm, New York	(M)
Dow, Lohnes & Albertson Law Firm, Washington DC	(M)(?)
Episcopal Church of Newark	(M)
Finnegan, Henderson, Farabow, Garrett & Dunner, Wash. DC	(M)(?)
Frame Technology [303]	(D)(M)(O)
Fred Hutchinson Cancer Research Center (Seattle)	(M)
Fried, Frank, Harris, Shriver & Jacobson Law Firm, New York	(M)
Genetech	(M)
Greenpeace	(?)
Group Health Cooperative (Seattle) [9000]	(M)
HBO [1600]	(M)(?)
Howrey & Simon Law Firm, Washington DC	(M)(?)
Human Rights Campaign Fund	(?)
IDG [530]	(M)(f)
Interleaf [800]	(D)(M)(=)
Intermedia Partners	(M)(?)
Irell & Manella (law firm)	(M)(?)
Jewish Board of Family and Children Services, New York	(M)(O)(?)
Kaiser Permanente KQED, San Francisco	(M)(?)(U pending)
Lambda Legal Defense & Education Fund	(?)
Levi Strauss and Company [31,000]	(B)(U)(L)(M)(=)
Los Angeles Philharmonic	(M)(?)

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Lotus Development Corporation [3,500]	(M) (P) (r) (R) (S) (v) (=)
MCA/Universal [18,000]	(M) (C)
Microsoft [12,000]	(M) (R) (S)
Milbank, Tweed, Hadley & McCloy Law Firm, New York	(M)
Minnesota Public Radio [218]	(M)
Mobil Oil Corp.	(?)
Montefiore Medical Center, New York City	(?)
Mt. Sinai Hospital Nurses, New York City	(B) (U)
Museum of Modern Art, New York City	(B) (U)
NYNEX workers (NY/NJ telephone company) [93,800]	(U)
National Organization for Women	(?)
NeXT Computer Inc	(M)
National Public Radio	(M) (=)
Noral Neurological Clinic, Minneapolis	(M)
Northern States Power	(D) (M) (O) [1/95]
Northern Telecom/Bell -Northern Research	(M) (O) (=)
Oil Chemical and Atomic Workers (several locals in NY and elsewhere)	(U)
Oracle	(C) (D) (M) (v)
Orrick, Herrington & Sutcliffe (law firm) [761]	(M)
Park Nicollet Medical Center	(D) (M) (O)
Planned Parenthood	(D) (M) (?)
Proskauer, Rose, Goetz & Mendelsohn Law Firm, New York	(M)
Quark, Inc. [375]	(M)
ROLM Systems Inc. (a Siemens Co.)	(?)
St. Paul Companies	(D) (M) (O) [1/95]
Santa Cruz Operation [1,300]	(O)
SAS Inc	(A) (B) (b) (P) (r) (R) (s)
Sears (Canada)	(M) (=)
Seattle Mental Health Institute	(M)
Seattle Public Library	(M)
Seattle Times [2500]	(M) (D) (F)
Segal Company (consulting firm)	(M)
San Francisco Giants	(M)
Shaw, Pittman, Potts & Trowbridge Law Firm, Washington DC	(M) (?)
Shearman & Sterling Lw Firm, New York	(M)

Silicon Graphics Inc. [3100]	(A) (B) (D) (M) (R) (=)
Skadden, Arps, Slate, Meagher & Flom Law Firm, New York	(M)
Sony Corp	(M) (?)
Step toe & Johnson Law Firm, Washington DC	(M) (?)
Sullivan & Cromwell Law Firm, New York	(M) (?)
Sun Microsystems [11,000] (7/93)	(B) (D) (M) (O)
Sybase [2100]	(B) (D) (M) (O) (P) (R)
TGIFridays - Dallas, TX	(?)
Thinking Machines [500]	(M) (B) (D) (v) (R)
Time Inc	(M)
Unitarian Universalist Association	(?)
Unitarian Universalist Service Committee	(?)
United Auto Workers, Detroit, MI	(?)
Viacom [5,000]	(M) (C?)
Village Voice newspaper [226]	(M)
Wachtel, Lipton, Rosen & Katz Law Firm, New York	(M) (?)
Walt Disney, Inc.	(?)
Warner Bros.	(M)
Wells Fargo Bank	(?)
Wilder Foundation	(D) (M) (O) [1/95]
Wiley, Rein & Fielding Law Firm, Washington DC	(M) (?)
WGBH [800]	(M)
WQED , Pittsburgh Public Television	(M) (=)
Woodward and Lothrop Department Stores [16,000]	(?)
Xerox Corporation	(?)
Zenith Data Systems, St. Joseph, MI (Groupe Bull)	(?)
Zenith Electronics Corp., Glenview, IL	(?)

C. Colleges and Universities

Key:

(B) Bereavement and Sick Leave

(c) child care

(f) Family leave policy for domestic partners is same as married partners
under the Family Medical Leave Act

- (f-) two different policies exist for family leave
- (H) Student housing only
- (h) Home purchase loan
- (I) informal policy – not in writing
- (ID) issues university identification
- (P) pension plan
- (M) offers medical benefits
- (T) tuition waiver
- (O) benefits offered to same-sex and opposite-sex couples
- (S) students only
- (=) no benefits available to spouses are excluded
- (-) some benefits available to spouses are excluded
- (?) specifics of plan unknown
- [m/n] number of faculty/students

InstitutionBenefits

Albert Einstein College of Medicine	(?)
Bowdoin College	(H) (S) (P)
Brown University	(S) (P) (M) (D)
Carnegie Mellon University [616/5000]	(ID) (B) (f-) (O) (-)
Clark University	(B) (D) (M) (T)
Colby College, ME [140/1880]	(ID) (T)
Columbia University	(H) (ID) (M) (P)
City University of New York	(M) (B) (S) (f+)
Cornell University (7/1/94)	(M*) (T) (ID)
Dartmouth College [proposed only 8/10/93]	(M)
DeAnza Community College	(M)
Georgia State University [746/24247]	(S) (P)
Grinnell College, IA [131/1291]	(H)
Harvard Law School	(H)
Harvard University	(M)
Ithaca College	(H)
Middlebury College	(M) (O) (=)
MIT [1000/9564]	(F) (f) (M)
Moorehead State University	(P)
New York University	(M) (P)
North Dakota University [532/9711]	(H) (S)
Northeastern	(M)
Oberlin College, OH [185/1783]	(ID) (T)
Occidental College, CA [125/1680]	(ID) (T)

Ohio State University [3097/51,000]	(B) (P)
Pitzer College [80/750]	(F) (M)
Ponoma College	(F) (ID) (h) (M) (T) (=)
Princeton University [671/6200]	(ID) (H) (M 7/94)
Rutgers University [1964/48,000]	(ID) (?)
Simmons College	(M) (?)
Smith College	(M) (?)
SUNY at Purchase, NY [129/2999]	(H)
State Universities of New York	(M) (O)
Stanford University [650/6500]	(S) (ID) (M) (D)
Swarthmore College [135/1320]	(ID) (T)
Swathmore College [135/1320]	(M) (?)
Union Theological Seminary	(H) (S) (P)
University of British Columbia	(M)
Univ. of CA at Irvine [957/15,776]	(ID)
Univ. of CA at Santa Cruz [405/2036]	(ID)
Univ. of Chicago, IL [120/9000]	(ID) (F) (H) (M) (T)
Univ. of Colorado [4500/41,689]	(ID) (H) (M) (S)
Univ. of Iowa [1600/28,000]	(M)
Univ. of Michigan [3035/42,673]	(ID) (S) (P)
University of Minnesota	(B) (c) (M*) (P)
University of New Brunswick	(M)
University of New Mexico	(B) (M) (T) (=)
University of Pennsylvania	(M) (P) (T)
Univ. of Pittsburgh, PA [3447/34,336]	(ID) (B) (T) (-)
University of Toronto	(ID) (M) (D) (T)
University of Vermont	(M)
University of Waterloo	(M)
University of Windsor	(M) (T)
University of Wisconsin [7200/162,330]	(H)
Wesleyan University [284/1833]	(ID) (T) (H) (M) (D)
Wilfred Laruer University	(M) (T)
Williams College	(?)
Wright State University	(B) (M,S) (ID)
Yale University [2239/9800]	(ID) (I)
York University	(M)

DISCLAIMER: The organizations listed have been compiled from the submissions of many people to a list maintained on the Internet. No attempt has been made to verify the accuracy of these submissions.

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APPENDIX B

LINDQUIST & VENNUM P.L.L.P.
4200 IDS Center
80 South 8th Street
Minneapolis, Minnesota 55402

M E M O R A N D U M

DATE: January 30, 1995

TO: Everyone at L&V

FROM: Tom Garrett

RE: Including Gays and Lesbians In Our Commitment to Diversity

As many of you know, I am the chair of the Gay/Lesbian Issues Sub-Committee of the Hennepin County Bar Association's Diversity Committee. What most of you probably do not know is the depth and basis of my commitment to the issues facing the gay and lesbian members of our profession and our society.

Over twenty years ago, my brother told me and the rest of our immediate family that he was gay. I and other family members had many of the reactions that are typical when a loved one "comes out." We worried about the reactions of others and felt awkward, perhaps shameful, about this unexpected disclosure. We could have and should have been more supportive but we did the best we could at the time. Over time, I adapted to my brother's sexual orientation and could talk about it when we were together, but my understanding was fairly superficial and my fear of the unknown kept me from trying for a deeper understanding.

In more recent years, my daughter has let our family know that she is a lesbian. My daughter's coming out really forced me to deal with the issues of homosexuality and homophobia at an extremely personal level. I suspect that I was the last in the family to know

about this important part of my daughter's life and that knowledge caused me to confront the reason why she may have been hesitant to confide in me. I realized that although my brother's being gay had made me more sensitive to the jokes and the irrational behavior that some people exhibited toward gay and lesbian people, I had simply tolerated it and had not taken any action to make myself known as a person who believed the world should be a more welcoming and accepting place for gays and lesbians.

It is clear that my brother's and my daughter's decision to let their family know who they are has been more difficult for them than for us. They risked the kind of personal rejection that they and others often experience from friends, families, and colleagues when this aspect of their lives becomes known. My love and respect for these two family members made me realize that I could certainly take some public risks in an effort to support them as well as other gays and lesbians.

In late 1992 I read the Hennepin County Bar Association's Glass Ceiling Task Force Report, in which the Task Force defined the term "diversity" as relating to women and people of color only. I communicated to the Task Force my view that the definition was too narrow in that it failed to include other groups, including those who are gay or lesbian. I agreed to become the Co-Chair of the HCBA Diversity Committee, a committee charged with the implementation of the recommendations of the Glass Ceiling Task Force. At the first meeting of the HCBA Diversity Committee, a Continuing Missions Sub-Committee was formed which later became the Gay/Lesbian Issues Sub-Committee. I have chaired that sub-committee since its inception and I am extremely proud of the committee's energy and its accomplishments.

At the present time, the sub-committee is conducting focus groups and individual interviews with members of the gay and lesbian community with a view toward gathering information for the purpose of assisting legal employers in the elimination of sexual orientation discrimination. It is clear that many legal workplace employees are unwilling to be open about their sexual orientation because they fear negative career consequences. It is also clear that many gays and lesbians have decided to "come out" in the

workplace and many of the major law firms in the Twin Cities have experienced the “coming out” of gay and lesbian partners, associates and employees.

Based upon the sub-committee’s fact finding interviews to date, I believe it is a fair statement that, despite the legal prohibition of discrimination on the basis of sexual orientation, certain barriers exist that make it difficult for lesbians and gay men to fulfill their potential as attorneys and legal employees. As a consequence, many lesbians and gays choose to hide their sexual orientation, making it virtually impossible for them to participate fully in the culture of their workplace environment. Over time, many are driven away from their practice environments, resulting in lost opportunities for both the employee/attorney and the employer.

While I have not taken a survey, I have assumed for some time that there are members of Lindquist & Vennum who are gay or lesbian. Because of my familiarity with the situation in other major law firms, I have begun to wonder whether our work environment is viewed as inhospitable to lesbians and gay men. I hope that if one or more of my colleagues are going through the difficult process of deciding whether to “come out” in the workplace, they know they will have my full personal support. It is my further hope that our gay and lesbian colleagues will have the support of the entire firm.

When I first became Managing Partner, I made it clear that it was extremely important to the morale and future of Lindquist & Vennum that our working relationships be premised upon the concepts of professionalism, support for one another, and the treatment of co-workers with dignity and respect. If we live by these principles, we can all expect that our work environment will be free from unkind or disrespectful treatment, as well as unlawful or inappropriate discrimination.

I believe that one of the things that makes Lindquist & Vennum unique is the sense of “family” that most of us have when we think about our colleagues in the Firm. This camaraderie is not simply a Christmas party phenomenon; it permeates our work environment throughout the year. There will be a time (and it may have already begun) when one of our co-workers will make the difficult decision

to come out. I fully expect that the vast majority of us will be supportive and respectful of the dignity of our co-worker and his or her partner. It is my hope that every member of the Firm who is emotionally “in hiding” will recognize this reaction as an invitation to join us as a complete and accepted member of our family.

There may also be some of us who will have difficulty with these disclosures. Having experienced those difficulties myself, I recognize that it will take some time to feel comfortable but each of us is capable of achieving that level of comfort with our co-workers. Just as the Firm will be supportive of those who make the difficult decision to come out, it will also be supportive of those who may struggle with the decisions of their co-workers. The challenge of dealing with homosexuality and homophobia will be met, due in large part to the traditions of our Firm and our sense of caring for one another. I am looking forward to meeting this challenge.

APPENDIX C

**EQUAL EMPLOYMENT OPPORTUNITY
STATEMENT**

Almost every one of us has read an employer's Equal Opportunity in employment statement. Generally, the statements assert that the employer will not discriminate against employees or applicants with respect to any term of employment. The statements include a laundry list of protected classifications that the employer will refrain from using in making any employment related decision. The statements are generic and usually cover only those classifications that are protected by federal, state or municipal law.

Rather than including the boiler plate EEO statement in your employment materials, consider using a statement similar to the following:

Equal employment opportunity exists in an organization that embraces differences in its employees and challenges all employees to recognize the value of diversity in the workplace. Consequently, we find that simply prohibiting unlawful discrimination does not communicate the significance that we place on insuring a safe, comfortable working environment for all employees, nor does it adequately articulate our recognition that some of the most harmful forms of discrimination are subtle and difficult to identify. For example, mentoring relationships may be critical to an individual's success and the existence of a mentoring relationship may be strongly influenced by both individuals' personal comfort with differences in others.

Neither explicit nor subtle forms of discrimination will be tolerated. Differences in our employees due to race, religion, national origin, sexual orientation, disability and marital status are welcomed, as are the expression of those differences. We want all of our employees to experience the enrichment that exists in an environment which encourages all employees to share their culture and background, be that by wearing ethnic

apparel or bringing your same sex companion to our family events.

We invite all employees to identify practices, attitudes or systems which undermine our commitment to diversity in the workplace. We will not tolerate any degree of retaliation against an employee who has challenged discrimination in any form.