

**IS ANYBODY “OUT”
THERE?**

**STRATEGIES FOR LEGAL
EMPLOYERS TO ATTRACT
AND RETAIN
LGBT LAWYERS**

NALP 2010 Annual Education Conference

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An Affiliate of the American Bar Association

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GOALS:

- Language: Its Use and Abuse
- Defining the LGBT Community
 - History
 - Medical
 - Legal
- Professional and Workplace Best Practices

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**LANGUAGE: USE AND
ABUSE**

- GLAAD Media
- Reference Guide, 7th Ed.
- Use
 - Preferred Usage
 - *coming out*, a lifelong process of self-acceptance
- Abuse
 - Offensive Terms to Avoid
 - *admitted homosexual* versus *openly gay*;
 - *tranny* versus *transgender*

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DEFINING THE LGBT COMMUNITY

- *Homosexual*, n., Greek prefix, *homo*, meaning the same (note, *not* from the Latin, “man”); as opposed to hetero, meaning different
- *Gay*, adj., describing those who have enduring physical, romantic, emotional and/or spiritual attractions to other people of the same sex
- Why “LGBT?”

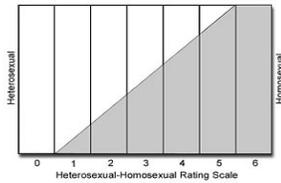
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DEFINING SEXUAL ORIENTATION

Kinsey Scale

0 - Exclusively heterosexual
1 - Predominantly heterosexual, only incidentally homosexual
2 - Predominantly heterosexual, but more than incidentally homosexual

3 - Equally heterosexual and homosexual
4 - Predominantly homosexual, but more than incidentally heterosexual
5 - Predominantly homosexual only incidentally heterosexual
6 - Exclusively homosexual



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DEFINING TRANSGENDER

- *Transgender*, n., an umbrella term for people whose gender identity and/or gender expression differs from the sex they were assigned at birth; distinguish pre-, post- and non-operative
- *Intersex*, n., conditions in which chromosomal sex is inconsistent with phenotypic sex, or the individual is not classifiable as either male or female
- *Gender Conformity*, n., presenting oneself according to traditional feminine or masculine roles

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MEDICAL

- The *Diagnostic and Statistical Manual of Mental Disorders* (DSM) is published by the American Psychiatric Association (APA) and provides diagnostic criteria for mental disorders
- APA removed homosexuality from its compendium of psychiatric illnesses in 1973 — a decision backed by all major medical and mental health organizations
- US Military maintained labeling of homosexuality as a mental disorder until 2006
 - Christine Jorgenson, ex-GI George Jorgenson, becomes *Blond Bombshell* in 1952

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LEGAL

- *Lawrence v. Texas* (2003) invalidated laws that made homosexual conduct a crime, holding that those laws violated the Fourteenth Amendment's Due Process Clause.
- Countries that recognize marriage equality: Netherlands, Belgium, Canada, Spain, South Africa, Norway, Sweden, and part of Mexico.

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RELATIONSHIP RECOGNITION IN THE U.S.

- *Full marriage equality*: Massachusetts 2004, Connecticut 2008, Iowa 2009, Vermont 2009, New Hampshire 2009, District of Columbia 2010
- *States with broad relationship recognition laws*: *Civil unions*: Vermont 2000, New Jersey 2006, New Hampshire 2007; *Domestic partnerships*: California 2005, Oregon 2007, Washington 2008, District of Columbia 2008, Nevada 2009
- *States with limited relationship recognition laws*: *Designated beneficiaries*: Colorado 2009; *Domestic partnerships*: Maryland 2008; Wisconsin 2009; Maine 2004; *Reciprocal beneficiaries*: Hawaii 1997

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DEFINING “LGBT” IN THE PROFESSION

- Sexual minorities in population
 - 1 in 10 of general population
 - LGBT organizations’ estimates vary from 3 – 12% of population

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DEFINING “LGBT” IN THE PROFESSION

NALP Data	2003	2009
Partners & Associates	1,100	2,200
Total of All Lawyers	< 1%	1.82%

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DEFINING “LGBT” IN THE PROFESSION

- About 47% of all firms report having at least 1 “openly gay” attorney.
- 61% of the reported “out” lawyers were in only four cities:
 - New York
 - Washington DC
 - Los Angeles
 - San Francisco

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EXPOSING BIAS

- *Lesbian, Gay, Bisexual, and Transgender Issues*
 - Report of the Bar Association of San Francisco Equality Subcommittee
 - November 2007
 - Available at lgbtbar.org/studies.html

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CHALLENGES IN THE WORKPLACE

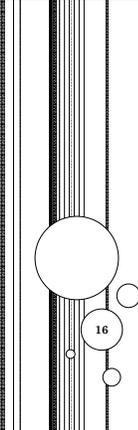
- Case Studies
 - Julia
 - Ryan
- True Inclusion Ceiling / Baseline Tolerance Floor
- Being “out” in the workplace
 - Anti-gay lobbying efforts
 - Murder of Harvey Milk
 - Absence of employment law protections
 - Absence of cultures of inclusion and equality
 - Public opinion

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CHALLENGES IN THE WORKPLACE

- ***Sexual prejudice directed toward sexual minorities is stressful and may lead to adverse mental health outcomes.***
 - Ian H. Meyer, Ph.D., Columbia University, “Stress, Identity and Health in Diverse NYC LGB Communities”
- Expectation of Rejection
 - By Employer
 - By Client
 - *Example:* Job interview
- Pressure of Concealment
 - Immense cognitive effort required
 - Self-exile from social support network
 - *Example:* “Don’t Ask, Don’t Tell”
- Coming Out at Work: ***There came a time when the risk to remain tight in the bud was more painful than the risk it took to blossom.*** - Anais Nin

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**WHAT CONSTITUTES
A “DIVERSE”
WORKPLACE?**

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TRADITIONAL FOCUS

- Gender
- Race and Ethnicity
- Religion
- National Origin

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**LGBT WORKPLACE
DIVERSITY**

- Is your organization a player in the LGBT diversity community?
- What are the hallmarks of a diverse and inclusive organizational culture?
- What are the resources available to you and your organization as you establish an LGBT diversity program?
- How do you handle resistance to LGBT workplace inclusion?

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**LGBT WORKPLACE
DISCRIMINATION: STILL A
PROBLEM?**

- Short Answer: YES
- Persistent stereotypes of LGBT people
- Issues specific to employees who are non-gender conforming
- Hidden workplace biases
- Location-specific issues (smaller markets, small firms & offices vs. large urban markets / firms)
- Patchwork of successes and failures in the courts on issues of workplace discrimination for LGBT employees

**HUMAN RIGHTS
CAMPAIGN FOUNDATION'S CORPORATE
EQUALITY INDEX (CEI)**

- *"HRC Foundation believes that all Americans should have the opportunity to care for their families, earn a living, serve their country and live open, honest and safe lives at home, work and in their community. Through pioneering research, advocacy and education, HRC pursues practices and policies that support and protect LGBT individuals and their families ... [and] encourages LGBT Americans to live their lives openly and seeks to change the hearts and minds of Americans to the side of equality."*
- The CEI provides employers with a roadmap for establishing and maintaining inclusive workplaces for LGBT employees
 - 13 businesses achieved a 100% score on the CEI in 2002 when started
 - In 2010, 305 businesses achieved 100% scores on the CEI, collectively representing over 9 million full-time U.S. workers
- Law Firms are beginning to understand the importance of LGBT diversity
 - In 2006, 12 law firms in the country achieved a 100% score on the CEI
 - In 2010, 127 law firms in the country achieved a 100% score on the CEI

**NATIONAL LGBT BAR
ASSOCIATION: LAVENDER LAW**

- National LGBT Bar Association
 - American Bar Association affiliation beginning officially in 1992
 - One of many minority / affinity group bar associations (including National Bar Association, Hispanic National Bar Association, National Asian Pacific American Bar Association)
- *Lavender Law*
 - Conference began in 1988
 - Career Fair was added in 2002 (Philadelphia)
 - Career Fair 2005 (San Diego)
 - Over 60 recruiters and 200 students
 - Career Fair 2009 (Brooklyn)
 - 136 recruiters, 635 law students and 370 professionals
 - 2010 Lavender Law Career Fair and Conference: August 26-28th

RECRUITING LGBT LAWYERS

- Create LGBT-Inclusive Workplaces
 - Best way to attract top LGBT legal talent:
Be an LGBT-Friendly Organization
 - Make inclusion a core value

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RECRUITING LGBT LAWYERS

- Recruit in the right places
 - Lavender Law (National LGBT Bar Association)
 - Greater NY Metro Career Fair (The LGBT Law Association of Greater NY (LeGaL))
 - On-Campus Recruiting and Diversity Events
 - Host Targeted Diversity Receptions
- Recognize the achievements of LGBT lawyers and groups within the organization in order to promote inclusion
- Update employer policies to include LGBT-specific initiatives (*e.g.*, gender transition guidelines, domestic partner benefits, inclusion of same-sex spouses and partners in work functions)

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RECRUITING LGBT LAWYERS: HOW STUDENTS & LATERALS FIND LGBT-FRIENDLY EMPLOYERS

- Importance of HRC Corporate Equality Index
 - Shows your logo if you scored 100%
 - Law students and lateral candidates know what achieving a 100% score on the HRC CEI means. Nondiscrimination policies, diversity training, health benefits, diversity committees and affinity groups are examined and scored

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RECRUITING LGBT LAWYERS: HOW STUDENTS & LATERALS FIND LGBT-FRIENDLY EMPLOYERS

- NALP Directory
- Vault
- Stonewall Workplace Equality Index (UK)
- Building a Better Legal Profession (Stanford Law)
- Local Bar Associations

RECRUITING LGBT LAWYERS: WHAT DO LAW STUDENTS WANT?

- Three Hallmarks of a Successful LGBT Recruiting Program
 - A Sense of Community
 - Successful Mentoring Programs
 - LGBT-Related Pro Bono Programs

THE INTERPLAY OF LGBT AND *PRO BONO* INITIATIVES

- Why *Pro Bono* Opportunities Matter to LGBT Lawyers
- Why Organization Commitment is Important
- How to Obtain *Pro Bono* Work from LGBT Organizations

RECRUITING LGBT

LAWYERS: DOES THIS MATTER IN A DOWN ECONOMY?

- When do things get back to “normal?”
- Increasing profits per partner by cutting staff
- The true measure of a law firm’s commitment to diversity
- Find low-cost ways to ensure retention and strategic recruitment of top LGBT legal talent

RECRUITING LGBT LAWYERS

- Demographic considerations
- Employers can start the search for talent early and include out LGBT lawyers in the process
- Make sure all recruiters are familiar with your organization’s diversity policies and programs

HOW TO ATTRACT & RETAIN LGBT LAWYERS: GETTING STARTED

- Is anybody “out” there? Identifying your LGBT lawyers and sending the message of inclusion
- Recognizing the need to include LGBT lawyers and communicating to management
- Including LGBT lawyers on your diversity committee
- Reviewing and updating employer policies, diversity statement, website and brochures for LGBT equality and inclusion
- Training and conducting programs of interest to LGBT Lawyers
- Showcasing LGBT diversity initiatives and organization successes

RETAINING LGBT LAWYERS

- Support professional development of LGBT lawyers – tomorrow’s rainmakers
- Support LGBT bar associations and committees
- Invest wisely in diversity-related organizations and events

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ATTRACTING & RETAINING LGBT LAWYERS: CLIENT EXPECTATIONS

- Clients care about diversity and want to know that their outside legal services providers are likewise committed
- How?
 - Hiring, advancing and retaining diverse attorneys
 - Providing opportunities for diverse attorneys to pitch for work
 - Staffing client matters with diverse teams
 - Establishing diversity committees and programs
 - Being involved in community outreach and philanthropy

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RETAINING LGBT LAWYERS: WHY RETENTION MATTERS

- Diversity impacts the bottom line and is a business imperative
- Clients care about genuine commitment
 - Client intimacy: building relationships that last
 - Client diversity surveys and RFPs
 - Leadership Council on Legal Diversity www.lclldnet.org
- Improving diverse lawyer retention means saving recruiting and training dollars
- Today’s top diverse lawyers are tomorrow’s leaders
 - Importance of creativity, talent and flexibility
- Valued/included shareholders are productive attorneys

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CONCLUSION

- You are empowered to strive for LGBT diversity and inclusion at your organization
- Do not hesitate to ask for guidance

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