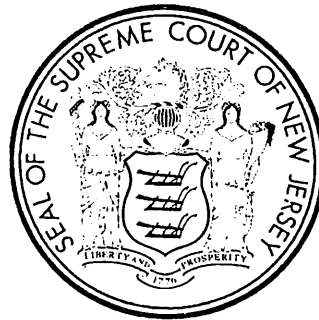


New Jersey Supreme Court

# Task Force On Sexual Orientation Issues

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**SUPREME COURT OF NEW JERSEY  
TASK FORCE ON GAY AND LESBIAN ISSUES**

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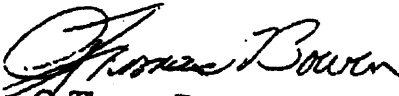
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TO: HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES  
OF THE SUPREME COURT OF NEW JERSEY


We are pleased to submit for your consideration the Final Report on the Task Force on Gay and Lesbian Issues. Chief Justice Poritz's charge to the Committee was to examine the experiences of litigants, attorneys, judges, criminal defendants, and other participants in the judicial process, as well as employees within the Judiciary, to find out whether there is evidence suggesting bias or discrimination against lesbians and gay men. This report responds to that charge and contains the findings and recommendations that have resulted from our study and survey.

In submitting this report, we express our deep appreciation to all members of the Committee for their dedicated efforts and thoughtful contributions. We also express our gratitude to staff for their untiring assistance.

Respectfully yours,

  
Hon. G. Thomas Bowen, J.S.C.  
Co-Chair

Respectfully yours,

  
Elizabeth Zuckerman, Esq.  
Co-Chair

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## I. EXECUTIVE SUMMARY

With the notable exception of marriage, gays and lesbians are afforded virtually all the legal rights, privileges, and protections to which all other New Jersey citizens are entitled. In this regard, the Executive, Legislative and Judicial branches have clearly stated that as a matter of public policy this State will not tolerate differential treatment based on sexual orientation. This makes New Jersey one of eleven states to acknowledge gays and lesbians as targets of discrimination to be recognized along with other minorities. Nevertheless, despite legal protection, gays and lesbians are still affected by biased attitudes and behaviors.

In order to ascertain whether, and to what extent, sexual orientation bias exists in the New Jersey court system and/or among judiciary employees, the New Jersey Supreme Court formed the Task Force on Gay and Lesbian Issues. By forming the Task Force, the Court intended to signal "its strong commitment to the equal treatment of all individuals seeking justice in our court system."

The Task Force employed various methods to assess the issue of discrimination, including public hearings, legal research and a survey. As the Task Force examined whether there is evidence of bias or discrimination against gays and lesbians in the New Jersey courts and in the workplace for judicial employees, it employed a broad definition of bias. In the survey, "sexual orientation bias" was defined to mean "offensive gestures, disparaging remarks, inappropriate jokes, unequal treatment, unfavorable outcome(s) [in court proceedings], etc., as a result of a person's actual or perceived sexual orientation." The scope of the Task Force's inquiry focused on the period from 1993 forward.

Of approximately 21,000 surveys distributed, 2,594 were returned, for a response rate of 12%. The overwhelming majority of responses came from employees of the court, who received copies of the survey with their paychecks. Court employees not only provided information about the workplace but served as valuable observers to the judicial process. In addition, judges and lawyers comprised nearly one-quarter of the survey respondents. Looking at survey respondents according to sexual orientation, seven percent of the respondents who identified their sexual orientation were gay, lesbian or bisexual.

Survey results were analyzed according to six categories of questions having to do with: (1) Experience/Observation of Disparate Treatment; (2) Perceptions About Outcome; (3) Bias In The Workplace; (4) Reporting Of Bias; (5) Professional Opportunities; and (6) Voir Dire.

Overall, the majority of survey respondents did not believe sexual orientation bias to be a problem in the court system or in the workplace for judicial employees. However, when the Task Force isolated responses by gays and lesbians a different perception was revealed. In question after question, gays and lesbians, in percentages far higher than heterosexuals, noted incidents of sexual orientation bias or indicated their belief that such bias affected the judicial process. The disparity of perception among gay/lesbian

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respondents and heterosexual respondents is not unexpected. Like any minority group, gays and lesbians are particularly aware of the kind of bias that personally affects them. Thus, although the actual number of gay/lesbian respondents was relatively low, the Task Force considers these findings significant because responses were consistent throughout the survey and were representative of the majority of the group most likely to be impacted by sexual orientation bias.

For example gay/lesbian respondents were nearly seven times more likely than heterosexuals to report, experiences or observations of bias against gay/lesbian litigants or witnesses. The most common type of bias reported was offensive remarks or gestures, again noted more frequently by gays and lesbians than heterosexuals. Respondents reported bias among all categories of participants in the judicial system.

Respondents were asked whether sexual orientation bias affected case outcomes. This area of inquiry went beyond reporting offensive remarks or gestures and focused on the substantive effect of bias. Ninety percent of those involved in the litigation process indicated that sexual orientation bias did not affect the outcome of a case that they observed or in which they participated, while 10% believed it did. However, gay/lesbian participants in litigation were more likely than heterosexuals (61% versus 6%) to believe bias affected outcomes. These findings were consistent in family, criminal and civil litigation.

Focusing on the judicial workplace, approximately one-third of the court employees who responded reported observing or experiencing derogatory statements or inappropriate jokes about gays and lesbians. An even higher percentage of gay/lesbian court employees reported this type of bias. Most of these comments were attributed to co-workers, although judges and supervisors were also identified as the source of objectionable remarks. Again, gay/lesbian respondents were more likely than other court employees to report perceived discrimination in promotions/advancement.

In the area of professional appointments (e.g. guardian ad litem), most respondents had no experience. Among those familiar with this subject, 12% felt sexual orientation affected appointments. This number was substantially higher for gays and lesbians experienced with professional appointments, two-thirds of whom said they believed sexual orientation affected opportunities.

Offensive jokes or remarks were by far the most prevalent form of bias reported to the Task Force. The prevailing attitude among respondents was that jokes and comments were acceptable because offense was not intended. However, comments submitted with the survey reveal that, in fact, people were often offended by such joking.

The survey data revealed that the system for reporting of bias and/or discrimination was underutilized. Some of the reasons given were fear of reprisal and lack of effectiveness. Of those who did report bias, many were not satisfied with the results.

The Task Force has concluded that sexual orientation bias, whether actual or perceived, has the capacity to create a hostile work environment, affect case disposition, hinder professional opportunities, dissuade individuals from using the court system and undermine public confidence in judicial neutrality. Accordingly, in light of the Court's strong anti-discrimination policy, the Task Force recommends the following:

1. **Distribute the full report to all judges, judiciary supervisors (team leaders), the president of the State Bar Association, each county bar association, statewide speciality bar associations and others the Court finds appropriate. Distribute the Executive Summary of this report to all judiciary employees along with a notice of how to obtain a copy of the full report. Make the full report available to the public through notice to the bar and other media;**
2. **The sexual orientation bias/discrimination component of education for judges and court employees should continue and be periodically reviewed for effectiveness. The education for judges and lawyers should continue to include a review of New Jersey law. Judges, lawyers and court employees should be instructed that the Code of Judicial Conduct, the Rules of Professional Conduct and the Code of Conduct for Judiciary Employees prohibit discrimination on the basis of sexual orientation. The Task Force further recommends that efforts be made to work with the Institute for Continuing Legal Education to incorporate education relating to sexual orientation bias into its program for new lawyers;**
3. **Employ all existing communication methods (e.g. the Judiciary's Infonet, Internet, newsletters, training, and posters) to publicize the mechanism for reporting bias/discrimination, and to ensure users of confidentiality of the reporting system; and**
4. **Appoint a working group which would oversee the implementation of these recommendations and assess the need for a follow-up study.**

## II. INTRODUCTION AND OVERVIEW

In June of 1997, the New Jersey Supreme Court formed the Task Force on Gay and Lesbian Issues to ascertain whether there is evidence of bias and discrimination against lesbians and gay men in the judicial process and in the judicial workplace. By forming the Task Force, the Court intended to signal "its strong commitment to the equal treatment of all individuals seeking justice in our court system."

The Task Force was asked to do two things: first, to examine the experiences of litigants, attorneys, judges, other participants in the judicial process, and judicial employees, to determine whether there was evidence suggesting bias or discrimination on the basis of sexual orientation; second, if evidence of discrimination was uncovered, the Task Force was asked to define the nature and scope of the problem and recommend ways to eliminate discrimination throughout the judiciary.

The 27-member Task Force, consisting of judges, lawyers, and others, included individuals from small and large law firms, nonprofit organizations, State and local government, and academia. Some members volunteered to participate; others were invited to do so by the Court. The Task Force included people of varying viewpoints and sexual orientations. This Report and its recommendations reflect the consensus of the Task Force and are the product of the Task Force as a whole rather than of any individual member.

After reviewing its charge from the Court, the Task Force discussed the difficult and sensitive issues implied by the charge: how to define bias, how to obtain and analyze data, and how to determine whether bias affects the workplace and disposition of cases. The members of the Task Force were concerned about addressing these issues independent of their own predispositions.

The Task Force formed a Substantive Law subcommittee to review statutes and case law relating to sexual orientation. It compiled a bibliography of relevant books, periodicals and other research. The subcommittee's survey of New Jersey law evidences New Jersey's strong public policy against discrimination on the basis of sexual orientation.

The question remained, however, whether, despite legal protections, court employees and users of the court system experienced or witnessed sexual orientation bias. To address this issue, the Task Force formed a Survey subcommittee. This subcommittee reviewed surveys and questionnaires prepared by other organizations nationwide and ultimately created a 23-question survey which was submitted to judges, lawyers, court employees, litigants, and other participants in the court system.

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The survey was published in the *New Jersey Law Journal* and the *New Jersey Lawyer*. In addition, approximately 21,000 copies of the survey were printed and distributed to bar associations and other groups, in both English and Spanish, with a 12% return rate. The results of the survey are detailed in the body of this report. The report also analyzes the comments received from survey participants.

Another subcommittee of the Task Force conducted public hearings in Deptford, Trenton, New Brunswick and Hackensack. Comments from those hearings appear in this report. The Task Force also reviewed materials submitted by way of letters and transcripts.

The Task Force reviewed the information obtained from the surveys, public hearings and unsolicited submissions and drew conclusions about sexual orientation bias in the judiciary. Based on these conclusions, the Task Force has drafted recommendations for the Court's consideration.

### III. CURRENT NEW JERSEY LAW PERTAINING TO SEXUAL ORIENTATION

#### A. Foreword

Throughout this report, use of the term "homosexual", which most frequently appears in quoted material, should be read to include both gay men and lesbian women. Our own text prefers the term "gay/lesbian" to refer to gays, lesbians and bisexuals.

#### B. Introduction

A survey of current New Jersey law reveals a clear public policy against discrimination based on sexual orientation. Most exceptions to this general rule are related to the unavailability of marriage to same-sex couples<sup>1</sup>; for example, in the denial of fringe benefits tied to marriage. However, in areas such as civil rights and family law, the legislature has expressed -- and the courts have recognized -- that individuals generally have the right to be free from discrimination on the basis of sexual orientation.

#### C. Historical Background

Laws specifically directed at the rights of individuals on the basis of their sexual orientation are relatively new. However, even in the past New Jersey law-makers and courts have considered the subject, albeit sporadically, in a variety of settings and with a variety of results, some concentrating solely on particular individual situations and others reflecting broader, changing societal norms.

A striking early attempt to regulate sexual conduct in New Jersey appeared in an 1898 criminal statute prohibiting sodomy:

Sodomy, or the infamous crime against nature, committed with man or beast, shall be high misdemeanor, and punished by fine not exceeding one thousand dollars, or imprisonment at hard labor not exceeding twenty-one years, or both.  
[L.1898, c. 235, §44]

The seriousness with which this offense was viewed apparent from the harsh penalty. Eventually, however, New Jersey's anti-sodomy statutes, N.J.S.A. 2A:143-1, -2, were declared unconstitutional in State v. Ciuffini, 164 N.J. Super. 145 (App. Div. 1978). See also, State v. J.O., 69 N.J. 574 (1976), both discussed below. These statutes were repealed by L.1978, c. 95; N.J.S.A. 2C:98-2, eff. September 1, 1979, as part of the general overhaul of the criminal code.

One early case recognizing that sexual orientation was not a valid justification for differential treatment arose in the context of alcohol licensing. In 1967, the New Jersey Supreme Court reversed the Division of Alcoholic Beverage Control for suspending or



revoking the licenses of bars where "apparent homosexuals" were permitted to congregate. One Eleven Wines & Liquors, Inc. v. Div. of A.B.C., 50 N.J. 329 (1967).<sup>2</sup> Noting the lack of any evidence of actual lewd or immoral conduct on the premises, the Court observed that "despite increasing public tolerance and understanding" of gays and lesbians, the State Division of Alcoholic Beverage Control had repeatedly held that "permitting ... apparent homosexuals to congregate" constituted a public nuisance. Id. at 332. The Court, using language that by today's standards seems somewhat archaic, said:

Though in our culture homosexuals are indeed unfortunates, their status does not make them criminals or outlaws. So long as their public behavior violates no legal proscriptions they have the undoubted right to congregate in public. And so long as their public behavior conforms with currently acceptable standards of decency and morality, they may, at least in the present context, be viewed as having the equal right to congregate within licensed establishments such as taverns, restaurants and the like. [Id. at 339; citations omitted]

The Court observed both the historical and prospective significance of its decision.

When in the 1930's the Department of Alcoholic Beverage Control first took its severe [anti-gay] position, it acted on the assumption that the mere congregation of apparent homosexuals had to be outlawed to achieve effective control. It of course had no experience to support the assumption but it took the prohibitory course as the safer one for the then fledgling system. At the time, the interests of the patrons in question were given little consideration and were in any event overwhelmed by the then highly felt transitional need for sweeping restraint. Now, in the 1960's, the transitional need as such is long past and it is entirely appropriate that full sweep be given to current understandings and concepts. Under them it seems clear that, so long as the division can deal effectively with the matter through lesser regulations which do not impair the rights of well behaved apparent homosexuals to patronize and meet in licensed premises, it should do so. [Id. at 341]<sup>3</sup>

Not all cases since One Eleven Wines & Liquors have been decided in favor of gay rights. For example, Gish v. Paramus Bd. of Ed., 145 N.J. Super. 96 (App. Div. 1976), cert. den. 74 N.J. 251 (1977), cert. den. 434 U.S. 879 (1977), upheld a Board of Education's directive that a public school teacher submit to a psychiatric examination because of his actions in support of "gay rights." Of note is that this determination had been corroborated by two psychiatrists who opined that the teacher's behavior displayed evidence of "deviation from

normal mental health," which might affect his ability to teach, discipline and associate with students.<sup>4</sup> Based on this, it was concluded that the Board of Education's directive was fair and reasonable and did not constitute a violation of the teacher's First or Fourteenth Amendment rights.

Despite the ruling in Gish, the overall context of New Jersey case law concerning sexual orientation, especially during the past 25 or 30 years, has evolved considerably. Even before sexual orientation became a protected classification under New Jersey's anti-discrimination law, a willingness to recognize the rights of gay individuals began to emerge. Legislative and judicial actions in the years following the One Eleven Wines & Liquors case reflect a progressive change in attitudes toward homosexuality by the legal and psychiatric communities as well as the increasing strength of an organized political movement aimed at achieving rights for gays and lesbians.<sup>5</sup>

#### D. Current Law

What follows is a brief outline of current statutory and decisional law addressing individual rights, protections and privileges for gays and lesbians. Note, too, that although early New Jersey law ameliorating the legal position of gays and lesbians appeared to focus on status alone, our contemporary law quite clearly encompasses protection against discrimination on the basis of behavior as well.

##### 1. Civil Rights Law

The most comprehensive legal expression of protection against sexual orientation discrimination is found in the New Jersey Law Against Discrimination ("LAD"), N.J.S.A. 10:5-1, et seq. The LAD prohibits discrimination based on an assortment of classifications (e.g., race, gender, age, etc.) in the areas of employment, housing and access to places of public accommodation.<sup>6</sup> The law was amended in 1991 to include "affectional or sexual orientation" as a prohibited basis of discrimination.<sup>7</sup> "Affectional or sexual orientation" is defined as: "male or female heterosexuality, homosexuality or bisexuality by inclination, practice, identity or expression, having a history thereof or being perceived, presumed or identified by others as having such an orientation." N.J.S.A. 10:5-5hh. The constitutionality of this statutory amendment was upheld in Orthodox Presbytery of New Jersey v. Florio, 99 F.3d 101 (3d. Cir. 1996), cert. den. 117 S.Ct. 1334 (1997), where the Third Circuit rejected a religious institution's allegations that the protection of sexual orientation from the enumerated types of discrimination interfered with the free exercise of religion and the right to free speech.

The Legislature has generally expressed its strong anti-discrimination policy regarding all of the protected classes. It has said that discrimination on the basis of sexual orientation "threatens not only the rights and proper privileges of the inhabitants of the State but menaces the institutions and foundation of a free democratic State." N.J.S.A. 10:5-3. It opposes such practices "in order that the economic prosperity and general welfare of the inhabitants of the State may be protected and ensured." Ibid. Moreover, all persons

are assured "the opportunity to obtain employment, and to obtain all the accommodations, advantages, facilities, and privileges of any place of public accommodation, publicly assisted housing accommodation, and other real property without discrimination because of ... sexual orientation.... This opportunity is recognized as and declared to be a civil right." N.J.S.A. 10:5-4.

These rights are not to be compromised by an individual's self-declaration of his or her sexual orientation. Such expression is "inextricably linked" to the individual's status as a gay man or lesbian. Dale v. Boy Scouts of America, 160 N.J. 562, 642 (Handler, J., concurring) (1999), rev. on other gr. 120 S.Ct. 2446 (2000).

Self-identifying speech that serves only to reveal the status of the speaker is always vulnerable to misinterpretation and misunderstanding based on stereotypes that are associated with the speaker's status. The reliance on such stereotypes to import additional meaning to self-identifying speech is impermissible . . . . Such stereotypes, baseless assumptions, and unsupported generalizations reflecting a discredited view of homosexuality as criminal, immoral and improper are discordant with current law and public policy. [160 N.J. 645, 651]

The LAD is intended to eliminate these destructive consequences of discrimination from our society. Id. at 646- 47.

#### a. Employment

A large number of cases arising under the LAD involve employment discrimination. Sexual orientation is among the categories protected in this context. The statute makes it unlawful to refuse to hire or employ someone, or to bar from employment, fire or force such person to retire for discriminatory purposes. Also prohibited is discrimination in compensation or in the terms, conditions or privileges of employment. N.J.S.A. 10:5-12. Employers may not express any limitation regarding sexual orientation -- directly or indirectly -- in advertising or employment applications or make inquiries into the sexual orientation of prospective employees.

#### b. Harassment

Sexual harassment in the workplace is a form of sex discrimination. In Lehmann v. Toys 'R' Us, 132 N.J. 587 (1993), the Court indicated that the LAD covers same-sex as well as opposite-sex sexual harassment. See also Zalewski v. Overlook Hosp., 300 N.J. Super. 202 (Law Div. 1996) (holding that acts committed by heterosexual co-workers against another heterosexual employee who was perceived to be a virgin constituted sexual harassment actionable under the LAD). Similarly, the United States Supreme Court held

that same-sex sexual harassment is actionable under federal Title VII in Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75, 118 S.Ct. 998, 140 L.Ed.2d 201 (1998).

c. Public Accommodations

The LAD forbids discrimination in access to places of public accommodation. There can be no discrimination in the furnishing of the accommodations, advantages, facilities or privileges of any such public place by anyone having control of it. N.J.S.A. 10:5-12f. Places of public accommodation include a wide variety of establishments, ranging from hotels, restaurants, taverns and theaters to hospitals, schools and colleges. N.J.S.A. 10:5-5l. Excluded from this category are distinctly private clubs. N.J.S.A. 10:5-5l. Case law has construed the term "public accommodation" broadly, holding that it does not necessarily hinge on a fixed physical place. For example, in National Organization For Women v. Little League Baseball, 127 N.J.Super. 522, 530 (App. Div. 1974), *aff'd* 67 N.J. 320 (1974), it was held that Little League baseball is a place of public accommodation, and therefore available to girls as well as boys, because the invitation to join had been open to children in the community at large with no restriction (other than gender). This was so even though the organization did not necessarily operate from a specific, exclusive parcel of land.

In its most comprehensive discussion of this subject to date, the New Jersey Supreme Court concluded that the Boy Scouts of America is a place of public accommodation and could not exclude the plaintiff from his position as assistant scoutmaster solely on the basis that he had publicly declared his homosexuality. Dale v. Boy Scouts of America, *supra*, 160 N.J. 562. In reaching its conclusion that the Boy Scouts is a place of public accommodation and none of the LAD exemptions apply, the Court considered: the Scouts' broad public solicitation of members; its close relationships with governmental bodies and other recognized public accommodations (including public schools and other school-affiliated groups), and the absence of a selective membership policy. By expelling plaintiff, the Scouts had "undeniably" violated the LAD by depriving him of the privileges and advantages of a public accommodation. *Id.* at 604.

The United States Supreme Court reversed the New Jersey Supreme Court's decision Boy Scouts of America v. James Dale, 120 S.Ct. 2446 (2000). The question the United States Supreme Court addressed was whether applying the New Jersey public accommodations law in the manner done by the New Jersey Supreme Court would violate the Boy Scout's First Amendment Right of expressive association. The Supreme Court held that application of the law in such a manner did violate the organization's First Amendment rights.

The U.S. Supreme Court determined that the application of the New Jersey public accommodation law in this case unnecessarily restricted the Scouts' freedom of expressive association. The U.S. Supreme Court recognized that it was within New Jersey's power to enact such a law when the Legislature has reason to believe that a given group is the target of discrimination and the law does not violate the First Amendment. The U.S. Supreme Court concluded that a State requirement that the Boy Scouts retain Dale would

significantly burden the organization's right to oppose or disfavor homosexual conduct. The State interests embodied in New Jersey's public accommodation law do not justify such a severe intrusion on the freedom of expressive association.

#### d. Housing

With respect to housing, the Law Against Discrimination makes it unlawful to refuse to sell, rent, lease, assign or sublease real property for a discriminatory reason. N.J.S.A. 10:5-12g. This also pertains to the terms, conditions or privileges of any real property transaction, and no real estate advertisement may contain discriminatory language. Besides owners, lessees and managers, the law also applies to brokers, salespeople and their agents and employees. N.J.S.A. 10:5-12h.

Even before the LAD was amended to include sexual orientation as a protected category, the New Jersey Supreme Court held that refusal to show or rent a listed apartment to a young unmarried woman because of her intent to share the apartment with another young unmarried woman is a violation of the LAD as discrimination on the basis of sex and marital status. Zahorian v. Russell Fitt Real Estate Agency, 62 N.J. 399 (1973).

#### e. Lending

No person engaged in money lending, including banks, mortgage companies, insurance companies, and financial or credit institutions, may discriminate against loan applicants. N.J.S.A. 10:5-12i. This provision pertains to the granting of loans as well as rates and other terms and conditions. It also forbids discriminatory inquiries on forms or in any other application process.

#### f. Refusal To Do Business

While other parts of the LAD pertain to specific people or entities, e.g., employers, realtors, etc., N.J.S.A. 10:5-12l makes it unlawful for any person to refuse to engage in business transactions with another person for discriminatory reasons. This provision is essentially concerned with buying and selling goods and other transactional contracts.

#### g. Public Contracts

Bidders for public contracts must afford equal opportunities to minority workers and subcontractors; however, as to sexual orientation only, they are not required to engage in affirmative action. N.J.S.A. 10:5-32, -34. See also N.J.S.A. 10:2-1, providing that persons operating pursuant to a public works contract may not discriminate in hiring against any

qualified person on the basis of sexual orientation and may not intimidate any worker on account of sexual orientation.

#### h. Reprisal

Every aggrieved person has the unfettered right to complain about discrimination without fear of reprisal. This provision is applicable to any discrimination complaint; however, reprisal is frequently an issue in employment situations, where one who remains in his or her position may jeopardize job security and comfort by pursuing remediation. Pursuant to N.J.S.A. 10:5-12d, any person who has opposed an act or practice forbidden by the LAD is expressly protected against retaliation by any other person, not simply by the employer. This covers all expressions of opposition to discrimination, including, for example, complaints to supervisors, formal internal grievances, or the filing of a formal complaint with the Division on Civil Rights (DCR) or in court. Also specifically prohibited is reprisal because a person "has ... testified or assisted in any proceeding under [the LAD]." N.J.S.A. 10:5-12d. Importantly, the reprisal cause of action is separate and apart from the underlying charge of discrimination, and a party complaining of reprisal may prevail even if the original discrimination complaint is unsuccessful. Because the statute endows this right on any "person" who suffers reprisal, a cause of action may be pursued not only by the employee who alleges discrimination but also by co-workers or other associates of the employee who fulfill the provision's other requirements. See Craig v. Suburban Cablevision, 140 N.J. 623 (1995).

### 2. Family Law

Changes in New Jersey statutory and case law have clarified and enlarged the rights of people to receive equal treatment in the area of family law, irrespective of their sexual orientation. Most notably are developments in cases of adoption and custody.

#### a. Adoption

N.J.S.A. 9:3-43, which allows "any person" to institute action for adoption, permits unmarried persons, regardless of sexual orientation, to adopt. In the Matter of the Adoption of Two Children by H.N.R., 285 N.J. Super. 1 (App. Div. 1995). Although it does not preclude joint adoption by unmarried prospective parents, until recently the New Jersey Department of Human Services, Division of Youth and Family Services (DYFS), had a formalized internal policy to deny consent for joint adoptions by unmarried couples. This required one parent to go through the adoption process first, followed by a "second-parent" adoption by the other. In a Consent Judgment signed by the Superior Court, Chancery Division in 1997, however, DYFS agreed to repeal this policy and to treat unmarried couples the same as married couples for purposes of adoption. Holden, et al. v. New Jersey Department of Human Services, No. C-203-97 (Ch. Div., December 17, 1997). Accordingly, following a judicial determination that adoption by a gay couple was in the best interest of the child, In the Matter of the Adoption of a Child by Jon Holden and Michael Galluccio, No. 13,561 (Ch.

Div., Oct. 22, 1997), the adoptive male parents were permitted to proceed jointly rather than in separate actions.

The polestar of an adoption is the best interests of the child. N.J.S.A. 9:3-48f; In the Matter of the Adoption of Baby T., 311 N.J. Super. 408, 414 (App. Div. 1998). In considering what is in the best interest of the child, the sexual orientation of the prospective adoptive parent is not a dispositive factor. Adoption of a child by the biological mother's lesbian lover, for example, has been found to be in the best interest of the child. Sexual orientation of the parent can become a factor in a court's decision and be dispositive only if proven that something related to the parent's sexual orientation adversely affects the child. In the Matter of the Adoption of a Child by I.M.G., 267 N.J. Super. 622 (Ch. Div. 1993). See also, In re the Adoption of Two Children by H.N.R., 285 N.J. Super. 1 (App. Div. 1995) (granting a second parent adoption to the lesbian partner of a biological parent of two children).

#### b. Child Custody

Similarly, in the area of custody, the law does not favor a particular parent because of his or her sexual orientation.<sup>8</sup> For example, in M.P. v. S.P., 169 N.J. Super. 425 (App. Div. 1979), the former husband argued that the former wife's "variant" sexual orientation, namely homosexuality, made her an unfit parent because it might cause her children embarrassment in the eyes of their peers. The court rejected this argument, refusing to remove the children from the custody of their mother.<sup>9</sup> The Legislature has declared that "[i]n any proceeding involving the custody of a minor child, the rights of both parents shall be equal . . . ." N.J.S.A. 9:2-4. Again, the operative standard in deciding custody issues is the best interests of the child. N.J.S.A. 9:2-3; -4.

It has also been held that the fundamental rights of parents may not be denied, limited or restricted on the basis of sexual orientation per se. The rights of a parent in the companionship, care, custody and nurture of his or her child, absent a powerful countervailing specific need to protect the child from the parent, are fundamental, essential rights -- far more precious than any property right -- protected by the First, Ninth and Fourteenth Amendments. Stanley v. Illinois, 405 U.S. 645, 651 (1972). Thus, the rights articulated in Stanley belong to homosexual parents as well as heterosexuals and may not be restricted without a showing that the parent's activities may tend to impair the emotional or physical health of the child. In re I.S. & C., 129 N.J. Super. 486, 489, 492 (Ch. Div. 1974), aff'd 142 N.J. Super. 499 (App. Div. 1976) (granting visitation to a gay father).<sup>10</sup> See N.J.S.A. 9:2-4 (general legislative findings on parents' equal rights to custody).

In V.C. v. M.I.B., 163 N.J. 200 (2000), the Supreme Court considered whether the partner of a lesbian mother has rights to visitation and/or custody of her partner's children where there had been no second-party adoption. Making no distinction between same-sex partners and any other former unmarried domestic partners, the Court held that the former partner, whose action was based on her claim to be a "psychological parent" to the children, had standing to maintain an action for visitation and custody. The Court made clear that the four-part test it articulated would "govern all cases [not just those involving

same-gender parents] in which a third party asserts psychological parent status as a basis for a custody or visitation action regarding the child of a legal parent, with whom the third party has lived in a familial setting." 163 N.J. at 227. What is important is that the Court attached no significance whatever to the sexual orientation of the parties.

### c. Termination of Parental Rights

"Although the question of the best interests of the child is dispositive of the custody issue in a dispute between natural parents, it does not govern the question of [involuntary] termination [of a natural parent's rights]." In the Matter of Baby M., 109 N.J. 396, 445 (1988). "[T]he interests of the child are not the only interests involved when termination issues are raised. The parent's rights, both constitutional and statutory, have their own independent vitality." Ibid. There is "[n]o doubt that where there has been no written surrender to an approved agency or to DYFS, termination of parental rights will not be granted in this state absent a very strong showing of abandonment or neglect." Id. at 428. The "best interests of the child" standard provides that parental rights may be terminated upon a showing of: (1) continuing endangerment to the health and development of the child; (2) the parent is unwilling or unable to provide a safe and stable home; (3) diligent efforts have been made to rectify the circumstances leading to the child's removal, and consideration has been given to alternatives to terminating parental rights, and (4) termination of parental rights will not do more harm than good. N.J.S.A. 30:4C-15.1(a); In The Matter of the Guardianship of K.H.O., 161 N.J. 337, 347 - 48 (1999).

## 3. Criminal Law

New Jersey criminal law provides enhanced penalties for certain crimes committed with discriminatory bias based on the presumed sexual orientation of the victim. With respect to crimes of the First, Second or Third Degree, a sentencing judge has the discretion to impose a longer-than-usual sentence if the crime was committed with the purpose of intimidating because of sexual orientation. N.J.S.A. 2C:44-3.

Similar provisions apply to lesser offenses as well. For example, simple assault and harassment are elevated from petty disorderly persons offenses to Fourth Degree offenses if committed with the purpose to intimidate because of sexual orientation. N.J.S.A. 2C:12-1; N.J.S.A. 2C:33-4.

### a. Civil Liability

Additionally, N.J.S.A. 2A:53A-21 imposes civil liability for conduct which violates the Code of Criminal Justice if it is committed with a purpose to intimidate because of sexual orientation.



## b. Sexual Conduct

In the past, certain sexual behavior engaged in by consenting adults of the same sex violated New Jersey criminal law. However, as earlier noted, such laws have been repealed (anti-sodomy statutes, N.J.S.A. 2A:143-1, -2, were repealed by L.1978, c. 95, §2C:98-2, eff. Sept. 1, 1979), and, in fact, have been deemed unconstitutional. See State v. Ciuffini, 164 N.J. Super. 145 (App. Div. 1978) (recognizing unconstitutionality of criminalizing private acts between mutually consenting male adults), and State v. I.O., 69 N.J. 574 (1976) (holding that private acts of fellatio between mutually consenting male adults were not subject to criminal sanctions).<sup>11</sup>

## 4. Legal Status of Gay/Lesbian Relationships

Despite the protections contained in the various statutes discussed throughout this analysis, in several fundamental ways -- preeminently the right to marry -- same-sex relationships are not afforded the same legal status as traditional heterosexual relationships. Although our courts recognize that "[n]o specific language in New Jersey's marriage statutes prohibits same-sex marriage", Rutgers Council of AAUP Chapters v. Rutgers, 298 N.J. Super. 442, 455 (App. Div. 1997), certif. den. 153 N.J. 48 (1998), they have presumed that the Legislature intended that such a prohibition exists.

The pertinent statutes relating to marriages and married persons do not contain any explicit references to a requirement that marriage must be between a man and a woman. N.J.S.A. 37:1-1 et seq.; N.J.S.A. 2A:34-1 et seq. Nevertheless, that statutory condition must be extrapolated; it is so strongly and firmly implied from a full reading of the statutes that a different legislative intent, one which would sanction a marriage between persons of the same sex, cannot be fathomed. M.T. v. I.T., 140 N.J. Super. 77, 84-85 (App. Div. 1976), certif. den. 71 N.J. 345 (1976); quoted at 298 N.J. Super. at 456.]

When a challenge was made to the State's policy to provide benefits only to legally married spouses of employees -- resulting in the denial of benefits to homosexual domestic partners -- it was upheld. The court rejected the plaintiffs' equal protection argument under Article I, paragraph 1 of the New Jersey Constitution because certain heterosexuals (those related too closely by blood) also could not marry and therefore also could not qualify for benefits because of the marital requirement. Therefore, the court reasoned that since marriage was not universally available to all heterosexuals, denying the benefits of marriage to others on the basis of sexual orientation was not an equal protection violation. 298 N.J. Super. at 461-62. The result of this is that same sex couples are not legally entitled to the privileges and benefits conferred on couples opting to marry. Note, the exclusion from marriage itself has not been subject to a constitutional challenge in New Jersey to date.

### a. Domestic Violence

Unquestionably, statutes prohibiting domestic violence have been deemed to apply to homosexuals as well as heterosexuals. The Domestic Violence Act protects victims of violence that occurs in a family or family-like setting. Whereas prior law used the term "cohabitants," that term has been changed to "present or former household members." N.J.S.A. 2C:25-18. This means that the Act creates the potential for redress by lesbians and gay men caught in violent relationships. Bryant v. Burnett, 264 N.J. Super. 222, 224-25 n.2 (App. Div. 1993). In the same vein, the tort action commonly known as "battered person's syndrome" is available to any victim in an intimate domestic partnership, regardless of sexual orientation. Cusseaux v. Pickett, 279 N.J. Super. 335, 344 n. 7 (Law Div. 1994).

### b. Divorce

Case law has also recognized that extramarital affairs are not invariably between persons of the opposite gender. Accordingly, in a divorce matter, the former wife's lesbian relationship was held to constitute adultery so as to permit her husband to bring a cause of action for divorce. S.B. v. S.J.B., 258 N.J. Super. 151 (Ch. Div. 1992).

## 5. Privacy Issues

The need for confidentiality to prevent negative consequences due to revealing a party's sexual orientation has been recognized in several contexts. For example, in at least one case, a litigant who was homosexual and infected with the HIV virus was permitted to litigate a discrimination claim under a fictitious name to avoid the possibility of stigmatization from revelation of his HIV status and sexual orientation. Doe v. Tris Comprehensive Mental Health, Inc., 298 N.J. Super. 677 (Law Div. 1996).<sup>12</sup> Redress for violating an individual's right to confidentiality may be available. For example, one complaining of discrimination may pursue separate claims for retaliatory conduct. N.J.S.A. 10:5-12d. Nevertheless, certain circumstances require that the confidentiality needs of parties be protected.

On the other hand, those who victimize actual or perceived homosexuals may lose certain privacy rights, specifically those who commit hate crimes. Ordinarily the identity of a juvenile charged with committing an offense is not disclosed; however, law enforcement officials are required to advise the school principal of the identity of a juvenile charged with an offense that was committed with the purpose to intimidate because of the victim's sexual orientation. N.J.S.A. 2A:4A-60d.

## E. Professional Conduct

### 1. Judges

In the Code of Judicial Conduct, Canon 3A(4) requires judges to be impartial and to avoid discrimination because of sexual orientation. Moreover, judges are responsible

for keeping such bias from permeating proceedings by requiring lawyers to refrain from manifesting sexual orientation bias, whether by words or conduct. If sexual orientation is appropriately at issue in a case, however, legitimate advocacy is not precluded. Canon 3A(5).

The commentary to Canon 5A addresses a judge's expressions of bias or prejudice and indicates that this pertains not only to serious statements but also to casual comments made in jest. Thus, a judge should not make or tolerate jokes or other remarks which demean individuals on the basis of their sexual orientation. This pertains whenever the judge is functioning professionally, but even comments made outside a judge's judicial activities may cast reasonable doubt on his or her capacity to act impartially.

## 2. Lawyers

When a lawyer is acting in his or her professional capacity, it is professional misconduct to engage in behavior involving discrimination based on sexual orientation if such conduct is intended or likely to cause harm. RPC 8.4(g).

## 3. Judicial Employees

While conducting official duties, no court employee may -- by words or conduct -- discriminate on the basis of sexual orientation. Canon 1, Subsection E. Court employees are also forbidden from being officers in any organization that practices invidious discrimination on the basis of sexual orientation. Canon 5, Subsection C.

## F. Conclusion

With the notable exception of benefits and privileges associated with marriage, gays and lesbians are afforded virtually all the legal rights and protections to which all other New Jersey citizens are entitled. In this regard, the Executive, Legislative and Judicial branches have clearly stated that the public policy of this State is not to tolerate differential treatment based on sexual orientation. This puts New Jersey in the forefront among the states, many of which have yet to prohibit sexual orientation discrimination.

New Jersey is one of only eleven states offering general civil rights protection against discrimination based on sexual orientation.<sup>13</sup> With regard to sexual behavior, as recently as the 1960's all states had criminal laws in some form which prohibited consensual sodomy. New Jersey's law was repealed in 1978; however, to date, a significant number of states still maintain some anti-sodomy law on the books.<sup>14</sup>

While our laws may not in and of themselves end bias or discrimination, they are tools which, with consistent enforcement, will promote fairer treatment of gays and lesbians. However, fairness achieved in the courts and in the legislature do not necessarily eliminate bias, as illustrated in the following sections of this report.

## IV. SURVEY ANALYSIS

### A. Background/Methodology

In order to ascertain whether, and to what extent, a problem of sexual orientation bias exists in the New Jersey court system and/or among judiciary employees, the Task Force created a 23-question survey. The survey was designed to be answered by users of the court system (including lawyers, judges, litigants and witnesses) and by court employees. The survey questions focused on respondents' experiences and observations, rather than their opinions (political, religious or moral) about homosexuality.

The Task Force distributed approximately 21,000 surveys. Of those, 2,594 were returned, for a response rate of 12%. The most effective distribution method was inclusion of the survey with the paychecks of Superior Court employees and direct mailing to Municipal Court employees. As a result, nearly 70% of the respondents who identified their relationship to the court system were court employees. Where individuals identified themselves in more than one category (such as court employee and judge, or court employee and lawyer), their surveys were counted in the more specific category. The high response rate from court employees provided the Task Force with substantial information about workplace bias, but court employees also proved to be valuable observers of the judicial process.

The survey was published in its entirety in the *New Jersey Law Journal* and the *New Jersey Lawyer*, and surveys were distributed to various county bar associations, the Public Defender, various sections of the State Bar Association, and other attorney groups, including 75 to Deputy Attorneys General in the Division of Law. Three hundred seventy-one (371) lawyers responded to the survey.

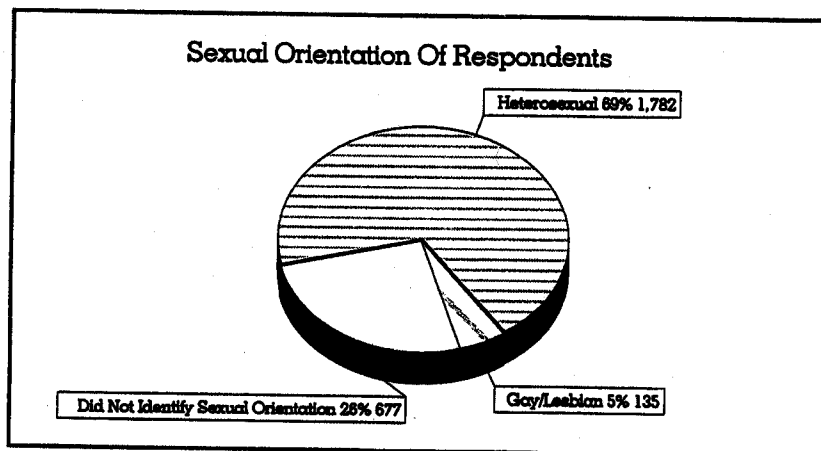
In order to reach witnesses and litigants, 4,000 surveys were distributed to gay and lesbian organizations and newspapers. Another 750 surveys were sent to Assignment Judges for distribution in the courthouses at the public information areas. Nineteen (19) respondents identified themselves as litigants, and one was identified as a witness. Another 55 respondents identified themselves as "other," which may include jurors or family members of litigants.

### B. Characteristics of Respondents

Survey respondents were asked to identify themselves by sexual orientation, gender, and relationship to the court system. This section of the report offers a picture of the respondents and provides information useful for analyzing the survey data.

## 1. Sexual Orientation

Of the total respondents, 677 did not identify their sexual orientation. Of the 1,917 respondents who did identify sexual orientation, 118 identified themselves as gay or lesbian, and 17 additional respondents identified themselves as bisexual. Overall, then, gays, lesbians, and bisexuals represented 7% of the respondents who identified their sexual orientation. Throughout this report, this group of respondents is referred to as "gay/lesbian."



## 2. Relationship To The Court System

Of the total respondents, 2,467 identified their relationship to the judicial process (judge, lawyer, court employee, litigant, witness, other).

### a. Judges

Judges represented 267 respondents. Twelve (12) of the judges did not identify their gender. Of the remaining 255 responding judges, 223 were male and 32 were female. Three of the male judges identified themselves as gay or bisexual, and one female judge identified herself as bisexual. Thirty-nine (39) judges did not identify their sexual orientation.

### b. Lawyers

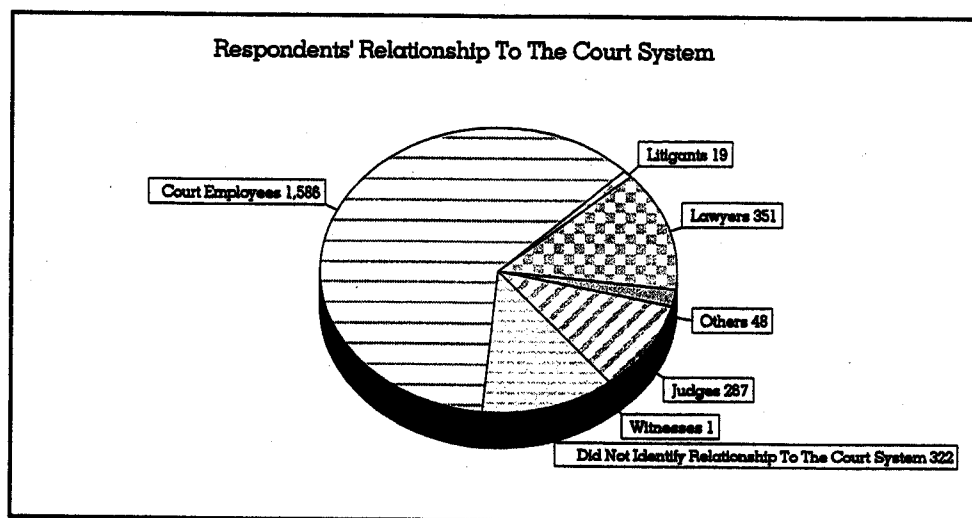
Three hundred fifty-one (351) lawyers responded to the survey. Of those, five did not identify their gender, and 22 did not identify their sexual orientation. Female lawyer respondents totaled 124, and male lawyer respondents totaled 222. Fourteen (14) female lawyers identified themselves as lesbian or bisexual; 21 male lawyers identified themselves as gay or bisexual.

### c. Court Employees

Of those who identified their relationship to the judicial process, 1,586 were court employees. Of the 1,534 court employees who identified their gender, 1,235 were female and 299 were males. Forty-two (42) court employees identified themselves as gay, lesbian or bisexual.

### d. Other Respondents

Also responding to the survey were 19 litigants, one witness, 48 individuals who identified themselves as something other than judge, lawyer, court employee, litigant or witness, and 322 individuals who did not identify their relationship to the court system. Of the 19 litigant respondents, 17 identified themselves as gay, lesbian or bisexual. Half of the individuals who identified themselves as other than judge, lawyer, court employee, litigant or witness were gay, lesbian or bisexual.



## 3. Gender

Of the 2,594 individuals responding, 182 did not identify their gender. The male/female split of the remaining 2,412 individuals was 837 males and 1,575 females. The disproportionate number of female respondents reflected the high response rate from court employees, most of whom were female.

Of the female respondents, 1,119 identified themselves as heterosexual, 42 identified themselves as lesbian, and 12 identified themselves as bisexual. Four hundred two (402) female respondents did not identify their sexual orientation. Thirty-two (32) female judges responded, 124 female lawyers, 1,235 female court employees, eight female litigants, and

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22 other female respondents. One hundred fifty-four (154) females who responded did not identify their relationship to the court system.

The male respondents who identified their sexual orientation revealed that 655 were heterosexual, 74 were gay and five were bisexual. One hundred three (103) male respondents did not identify their sexual orientation. Two hundred twenty-three (223) male judges responded, 222 male lawyers, 299 male court employees, 11 male litigants, one male witness, and 24 other male respondents. Fifty-seven (57) males who responded did not identify their relationship to the court system.

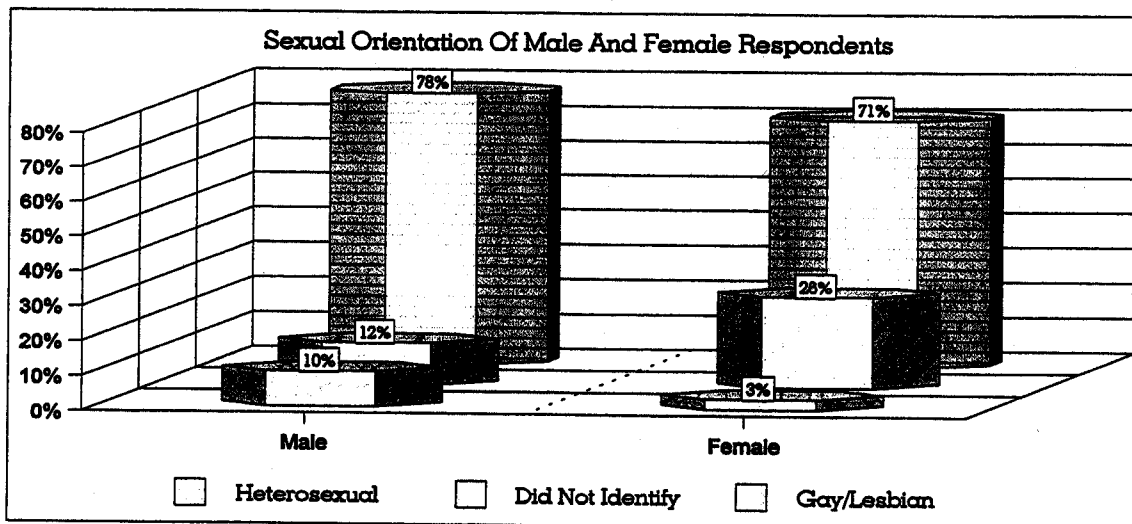
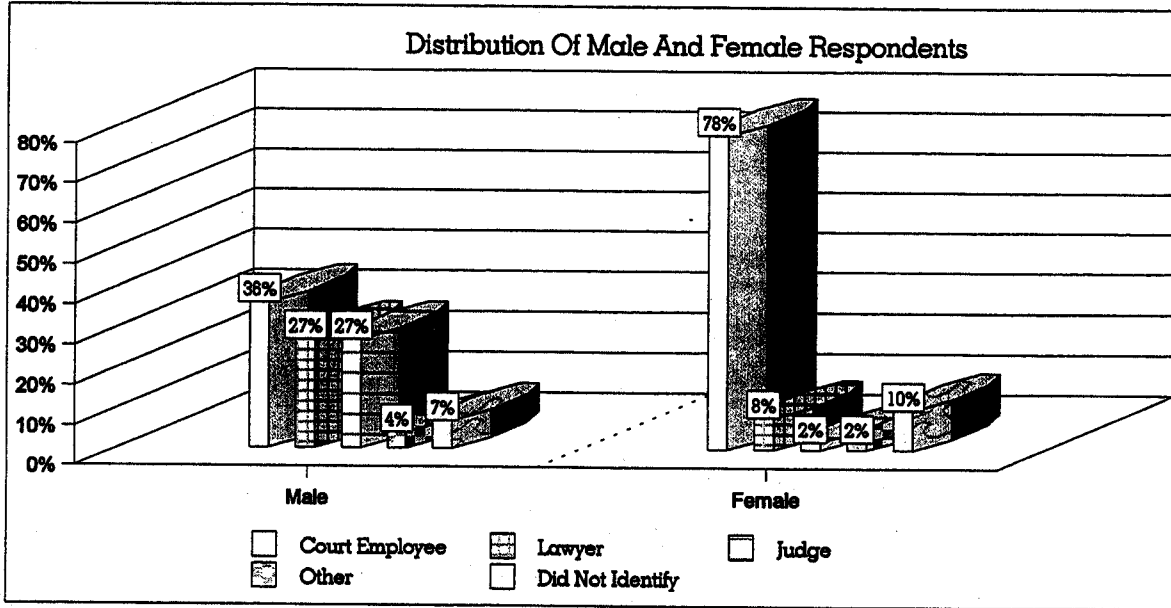
Sexual Orientation Distribution Of Respondents								
	Court Employee	Lawyer	Judge	Litigant	Witness	Other	Did Not Identify Their Relation To The Court System	Total
Gay/Lesbian	42	35	4	17	1	23	13	135
Heterosexual	1,193	290	224	2	0	21	52	1,782
Did Not Identify Orientation	351	26	39	0	0	4	257	677
Total	1,586	351	267	19	1	48	322	2,594

Gender Distribution Of Respondents								
	Court Employee	Lawyer	Judge	Litigant	Witness	Other	Did Not Identify Their Relation To The Court System	Total
Female	1,235	124	32	8	0	22	154	1,575
Male	299	222	223	11	1	24	57	837
Did Not Identify Gender	52	5	12	0	0	2	111	182
Total	1,586	351	267	19	1	48	322	2,594

It is worth noting that although only 35% of the respondents who identified their gender were male, there were disproportionately more male lawyers and judges than female lawyers and judges (27% of male respondents were lawyers versus 8% of female respondents; 27% of male respondents were judges versus 2% of female respondents). There was also a greater percentage of male respondents who identified themselves as

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gay or bisexual than female respondents who identified themselves as lesbian or bisexual (10% versus 3%). The percentages turned around dramatically with respect to court employees. Seventy-eight percent (78%) of female respondents identified themselves as court employees, as compared to 36% of males who identified themselves as court employees.





#### 4. Summary

Of the 21,000 surveys distributed, the majority of responses were received from employees of the court. This was due in part to the accessibility of this group. Court employees not only provided information about the workplace, but served as valuable observers to the judicial process. Lawyers and judges comprised nearly one-quarter of the survey respondents. Seven percent of the respondents who identified their sexual orientation were gay, lesbian or bisexual.

### C. Survey Results

To facilitate data collection and analysis, the survey was printed on computer forms and tallied by an outside service. The Task Force then analyzed the data according to various categories. In particular, the Task Force examined response variations according to sexual orientation and employment status (*i.e.*, court employees versus non-court employees). No distinction was made between Superior Court and Municipal Court responses. The survey questions addressed the following six categories.

1. Experience/Observation Of Disparate Treatment (Qs. 1- 6 & 23);
2. Perception About Outcome (Qs. 7,9,10 & 11);
3. Reporting Of Bias (Qs. 8, 14 & 15);
4. Sexual Orientation Issues In The Workplace (Qs. 16 - 20);
5. Professional Opportunities (Qs. 12 & 13);
6. Voir Dire (Qs. 21 & 22).

Survey respondents were given an opportunity to supplement their responses with comments relating to their experiences and observations. What follows is an analysis of the survey results according to the above enumerated categories. The questions are presented in bold type along with the total responses received for each. For each category, a statistical analysis of the survey results is provided. Where relevant, a discussion of respondents' comments is also included.

#### 1. Experience/Observation of Disparate Treatment

Questions 1-6 and 23 asked individuals whether they had experienced and/or observed disparate treatment against gays and lesbians. Questions 1-4 and 6 focused solely on judicial proceedings, while Questions 5 and 23 included both judicial proceedings and the workplace.

##### a. Statistics

**Question 1: Have you ever experienced or observed litigants or witnesses being treated disadvantageously because they are or were perceived to be gay or lesbian?**

No	Yes	By a Judge	By a Lawyer	By Other Court Personnel	By Other
2,319	205	62	70	123	82

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Of the total respondents answering this question, 205 (8%) said they had experienced or observed litigants or witnesses being treated disadvantageously because they were or were perceived to be gay or lesbian. Approximately 50 additional respondents indicated litigants or witnesses were treated disadvantageously by one of the groups, but did not check "yes" to the initial question.

One hundred twenty-eight (128) gay/lesbian respondents answered Question One. Fifty-eight (58) (45%) said they had experienced or observed litigants or witnesses being treated disadvantageously because they were or were perceived to be gay or lesbian.

Gay/lesbian respondents were far more likely than heterosexual respondents to report that they had experienced or observed litigants or witnesses being treated disadvantageously because they were or were perceived to be gay or lesbian (45% versus 7%).

Have you ever experienced or observed litigants or witnesses being treated disadvantageously because they are or were perceived to be gay or lesbian?			
	Yes	No	Total
All	205 (8%)	2,319 (92%)	2,524 (100%)
Gay/Lesbian	58 (45%)	70 (55%)	128 (100%)
Heterosexual	118 (7%)	1,641 (93%)	1,759 (100%)

**Question 2: Have you ever experienced or observed lawyers being treated disadvantageously because they are or were perceived to be gay or lesbian?**

No	Yes	By a Judge	By a Lawyer	By Other Court Personnel	By Other
2,466	78	35	43	49	20

Seventy-eight (78) respondents (3%) said they had experienced or observed lawyers being treated disadvantageously because they are or were perceived to be gay or lesbian. Approximately 18 additional respondents indicated lawyers were treated disadvantageously by one of the groups, but did not check "yes."

One hundred thirty-three (133) gay/lesbian individuals responded to this question. Of those, 31 (23%) said that they had experienced or observed lawyers being treated disadvantageously.

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Once again, gay and lesbian respondents were more likely than heterosexual respondents to answer yes to Question Two (23% versus 2%).

Have you ever experienced or observed lawyers being treated disadvantageously because they are or were perceived to be gay or lesbian?			
	Yes	No	Total
All	78 (3%)	2,466 (97%)	2,544 (100%)
Gay/Lesbian	31 (23%)	102 (77%)	129 (100%)
Heterosexual	36 (2%)	1,736 (98%)	1,772 (100%)

**Question 3: Have you ever experienced or observed lawyers being treated disadvantageously because they were representing a client who was, or was perceived to be, gay or lesbian?**

No	Yes	By a Judge	By a Lawyer	By Other Court Personnel	By Other
2,457	79	39	37	48	21

Seventy-nine (79) respondents (3%) said that lawyers who were representing gay or lesbian clients were treated disadvantageously. Gay/lesbian respondents were more likely to respond affirmatively to this question than heterosexual respondents.

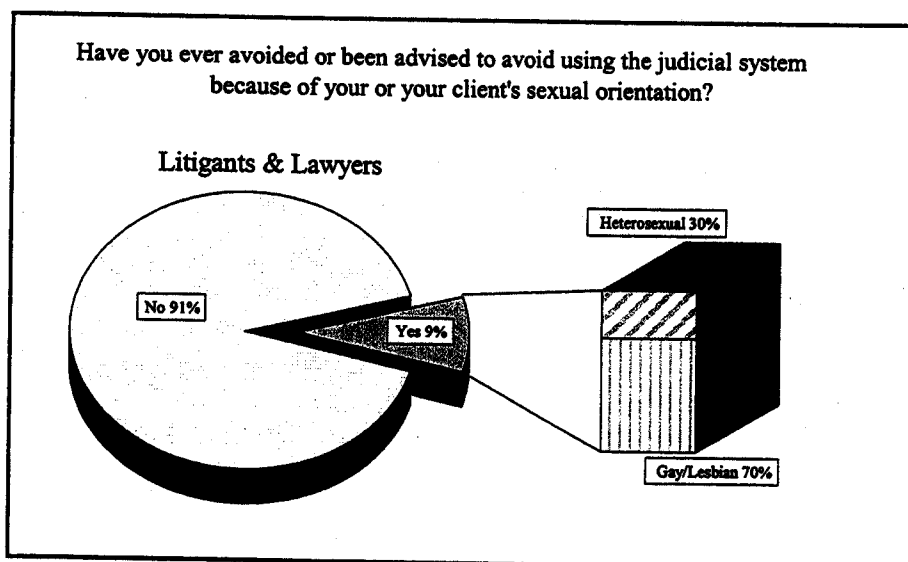
There were 129 gay/lesbian respondents to Question Three. Of those, 36 (28%) indicated that had experienced or observed lawyers being treated disadvantageously because they were representing a client who was or was perceived to be gay or lesbian.

Have you ever experienced or observed lawyers being treated disadvantageously because they were representing a client who was, or was perceived to be, gay or lesbian?			
	Yes	No	Total
All	79 (3%)	2,457 (97%)	2,536 (100%)
Gay/Lesbian	36 (28%)	93 (72%)	129 (100%)
Heterosexual	36 (2%)	1,782 (98%)	1,768 (100%)

**Question 4: Have you ever avoided or been advised to avoid using the judicial system because of your or your client's sexual orientation?**

No	Yes	Advised By a Judge	Advised By a Lawyer	Advised By Other Court Personnel	Advised By Other
2,376	50	9	18	17	13

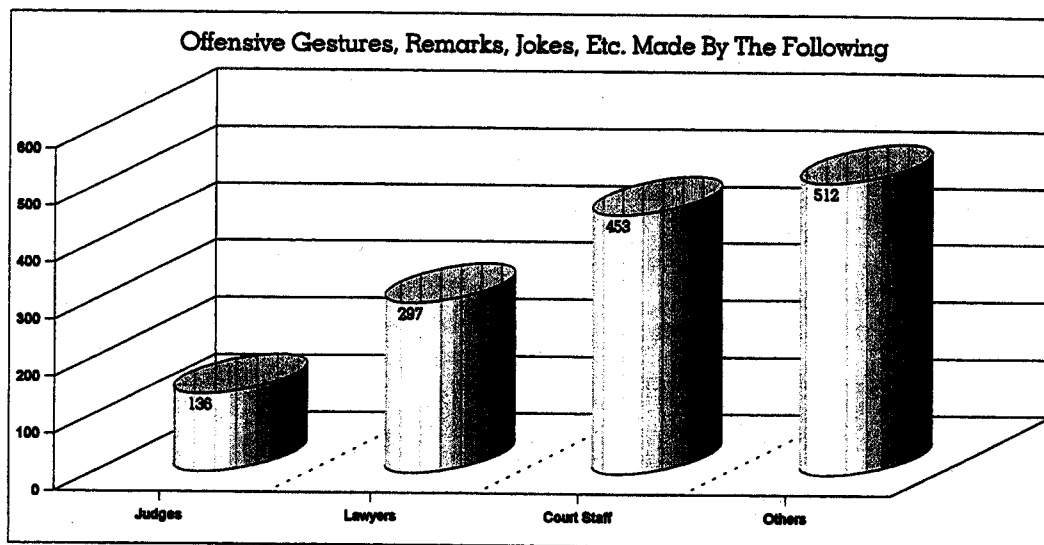
The Task Force considered only the responses of litigants and lawyers in analyzing this question. Twenty-two out of 347 lawyers (6%) and 11 out of 18 litigants (61%) indicated that they have avoided or have been advised to avoid the judicial system because of their or their client's sexual orientation. It should be noted that 17 of the 18 litigants who responded to Question Four reported that they were gay/lesbian. By comparison, 35 lawyers indicated they were gay/lesbian versus 290 who indicated they were heterosexual. Of the 35 gay/lesbian lawyers who answered this question, 36% answered yes, while 4% of the 290 heterosexual lawyers answered yes.



**Question 5: Have you ever observed offensive gestures or heard disparaging remarks, inappropriate jokes, or snickering about gays or lesbians?**

No	Yes	By a Judge	By a Lawyer	By Other Court Personnel	By Other
1,461	997	136	297	453	512

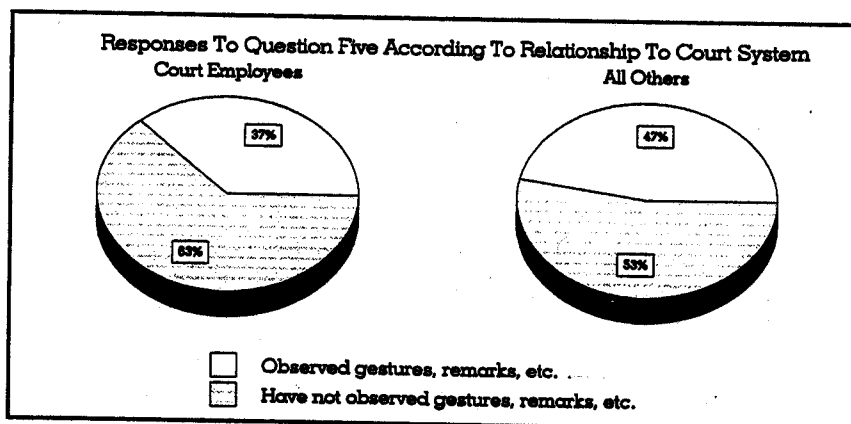
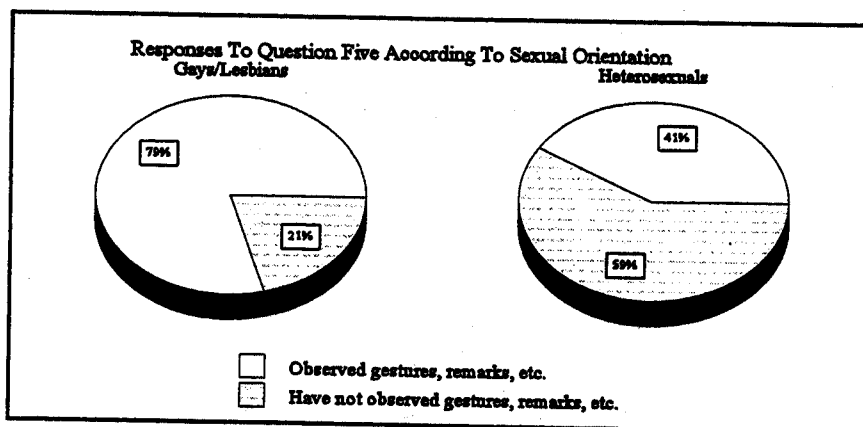
Nine hundred ninety-seven (997) respondents said they had observed offensive gestures or heard disparaging remarks, inappropriate jokes, or snickering about gays or lesbians, while 1,461 respondents said they had not. Thus, of all respondents who answered this question, regardless of sexual orientation, 41% indicated they observed or heard this form of sexual orientation bias. When asked who made the offensive remarks or gestures, 136 respondents indicated that judges had, 297 said lawyers had, 453 said other court personnel had, and 512 said the remarks or gestures had been made by someone other than judges, lawyers or other court personnel.



Of those respondents who answered this question and identified their sexual orientation, 130 respondents were gay/lesbian. Of those, 103 (79%) said that they had observed offensive gestures or heard disparaging remarks, inappropriate jokes, or snickering about gays or lesbians.

One thousand five hundred fifty-one (1,551) court employees answered this question. Of that group, 573 (37%) said they had observed offensive gestures or heard disparaging remarks.

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**Question 6: If you have been involved in arbitration, mediation, or an early settlement program, have you ever observed or experienced sexual orientation bias in such proceedings?**

Yes	No	No Experience
55	973	1,428

Fifty-five (55) of the respondents who answered this question responded affirmatively. Of the 127 gay/lesbian respondents, 70 had no experience. Of the remaining 57 with experience, 25 said they had been involved in arbitration, mediation, or early settlement programs and had observed sexual orientation bias in such a proceeding.

The following chart represents the data of those with experience only.

If you have been involved in arbitration, mediation or an early settlement program, have you ever observed or experienced sexual orientation bias in such proceedings?			
	Yes	No	Total
All	55 (5%)	973 (95%)	1,028 (100%)
Gay/Lesbian	25 (44%)	32 (56%)	57 (100%)
Heterosexual	18 (3%)	684 (97%)	702 (100%)
No Orientation Identified	12 (4%)	257 (96%)	269 (100%)

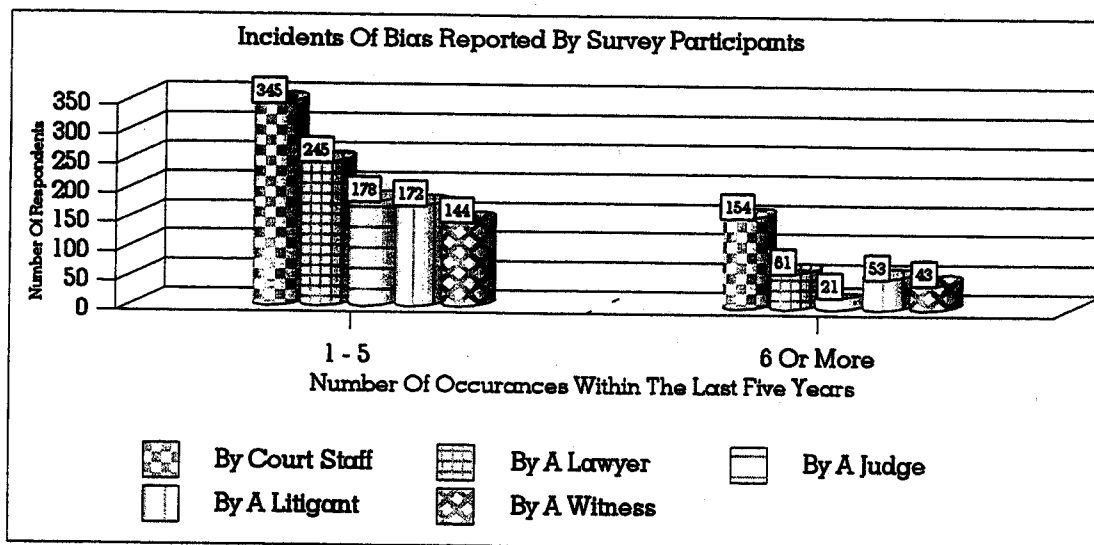
**Question 23: Approximate the number of incidents of sexual orientation bias you have experienced or observed in the last five years.**

	Never	1 - 5	6 - 9	10+
a. By Judge	2,188	178	9	12
b. By Lawyer	2,056	245	36	25
c. By Arbitrator/Mediator	2,254	28	4	3
d. By Other Court Personnel	1,879	348	68	86
e. By Litigant	2,076	172	32	21
f. By Witness	2,117	144	24	19
g. By Other	1,739	96	15	46

Although the majority of respondents had not experienced or observed incidents of sexual orientation bias over the last five years, enough individuals reported such incidents to cause concern. For example, 199 respondents (8%) indicated that they experienced or observed one or more incidents of sexual orientation bias by a judge. Twelve individuals experienced or observed ten or more such incidents. Three hundred-six (306) respondents (13%) experienced or observed one or more incidents of sexual orientation bias by a lawyer and 502 respondents (21%) experienced or observed one or more such incidents by court employees. Ranging in order from most to least, respondents experienced or observed bias by: court employees, attorneys, judges, litigants, and witnesses.



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**b. Comments of Survey Respondents**

The following was drawn from respondents' written comments to the survey and relates to their experience/observation of disparate treatment.

The overwhelming number of respondents who indicated that they had witnessed some acts of bias -- either in the courts or in the judiciary workplace -- said they had heard derogatory jokes and other negative remarks made about gays, lesbians, bisexuals, transsexuals and/or transvestites. However, of the 90 such responses, almost all said that such jokes had not been directed at any particular individual and were not intended to be hurtful. They had heard "comments made not about anyone in particular; just joking around" and characterized them as "normal type jokes." Most insisted that "gay jokes [are] made without malicious intent." "I don't believe these people are being intentionally hurtful."

Since most individuals who answered this question felt that the jokes were not meant to hurt anyone, they concluded that the remarks did not constitute bias or discrimination and were "nothing serious." A typical respondent remarked: "I cannot say I've seen acts of bias, but I have heard inappropriate remarks, language, and possibly offensive jokes made by people in the courthouse." A gay respondent said: "I have heard casual jokes told by other court personnel including jokes regarding sexual orientation. I was not offended. In twelve years with the Judiciary, I am glad to say that I have not witnessed discrimination based on sexual orientation or preference." Many readily recalled hearing "comments and jokes," but "not really discrimination." "Snickering about a gay's inappropriate mode of dress or grooming does not constitute sexual orientation bias in the court. A member of the staff or a judge may find female clothing on a male a bit out of the ordinary, but that does

not mean that justice meted out in the courtroom is unfair or unequal." Another said: "I do not feel that jokes about sexual orientation necessarily equate with unfair treatment."

One who was offended said that while s/he had never witnessed harassment, denial of a promotion or unjust treatment because of a person's sexual orientation, "it is common for people in a heterosexual community to make off-color remarks or accusations once the homosexual individual is out of earshot."

The prevailing attitude of the 90 individuals who contributed comments to questions one through six and 23 (relating to experience/observation of disparate treatment) is that joking aimed at minorities, including gays and lesbians is a fact of life and should be tolerated because no malice is intended. "Everyone jokes around. That's life; it's what makes the world go round." Many were impatient with the idea that some sensitivity to the feelings of gays was called for, indicating that bias-related jokes are commonplace and should be accepted unless they have a direct impact on a case or individual's employment opportunities within the judiciary:

Human nature is to crack jokes about others in general. All ethnic groups as well as gays/lesbians are subject to off-color comments/jokes at any given time, just as blonds, presidents, handicapped and the list goes on. Anyone who does not share your own opinion is subject to jokes or bias. The majority of workers are intelligent human beings who consider the source of such comments and pay little attention. My experience with the Judiciary for eight years is that when it counts all are treated fairly and with respect.

The suggestion exemplified here is that casual remarks, as compared with an openly hostile environment or other direct negative impact on workplace success, "do not count." Thus: "The only sexual orientation bias I have experienced in the last five years is the occasional 'locker room' humor in personal conversations, but not courtroom related." One person objected that the survey addressed conversations among friends in the workplace, because it compelled him or her to acknowledge having witnessed bias, "though I have not seen discriminatory acts or even openly negative remarks which could create a hostile workplace environment for gays and lesbians."

An Assistant Prosecutor was reported to have referred to a lesbian witness as a "dyke on a bike," and another described the victim of a crime as "light in the loafers." A Municipal Prosecutor reported that "on a few occasions attorneys and litigants (usually in assault or harassment scenarios) have expressed the defendant's or victim's apparent orientation to me." One respondent said that prosecutors are more biased against gays and lesbians than are defense lawyers.

Many jokes and negative comments were reported. One said that lawyers made gay jokes and that one in particular had used the Spanish pejorative "marijon" to refer to

a gay person. Another said that a lawyer and a judge had made "gay and fag jokes about a defendant who is gay."

c. Summary

This group of questions elicited responses regarding bias observed or experienced, where bias was defined to include offensive gestures, remarks and jokes. As one might expect, gays and lesbians were more likely to recount incidents of sexual orientation bias than were heterosexuals. For example, gay/lesbian respondents were nearly seven times more likely than heterosexuals to experience or observe bias against gay/lesbian litigants or witnesses. Where responses addressed both the workplace and the judicial process, all respondents noted significant experience with bias, although gays and lesbians were still more likely than heterosexuals to do so (79% vs. 41%). Respondents reported bias among all categories of participants in the judicial system. In their comments, respondents acknowledged the prevalence of negative remarks and jokes about gays and lesbians; however, most accepted this as something to be expected and not an indication that case dispositions are affected by bias.

## 2. Perceptions About Outcome

### a. Statistics

In Questions 7, 9, 10 and 11, respondents were asked whether they believed sexual orientation bias affected the outcome of judicial proceedings.

**Question 7: Do you believe sexual orientation bias affected the outcome of any case in which you were involved or which you observed?**

Yes	No	No Experience
148	1,384	951

This question introduced the topic of the effect of bias on case outcome and was the most general in this group. Of all respondents with litigation experience who answered the question 90% believed bias did not affect case outcome. One hundred twenty-nine (129) gay/lesbian respondents answered this question. Of those, 39 reported no experience. Of those with experience, 55 (61%) believed that sexual orientation bias affected the outcome of a case in which they were involved or which they observed. Thus, of those with experience who identified their sexual orientation, gays and lesbians were more likely than heterosexuals to believe sexual orientation bias affected outcomes. Thirty-five gay/lesbian lawyers answered this question. Of these, 60% believed that orientation bias affected outcomes.

Do you believe sexual orientation bias affected the outcome of any case in which you were involved or which you observed?				
	Yes	No	Total With Experience	No Experience
Gay/Lesbian	55 (61%)	35 (39%)	90 (100%)	39
Heterosexual	70 (6%)	1,023 (94%)	1,093 (100%)	643
No Orientation Identified	23 (7%)	326 (93%)	349 (100%)	269

**Question 9: In family court matters, all other factors being equal, is your experience that gay and lesbian litigants, or clients of gay and lesbian lawyers, tend to fare worse in decisions regarding:**

	GAY/LESBIAN LITIGANTS			CLIENTS OF GAY/LESBIAN LAWYERS		
	Yes	No	No Experience	Yes	No	No Experience
a. Domestic Violence	71	550	1,770	13	326	1,717
b. Custody	132	419	1,755	23	275	1,731
c. Parenting Time (Visitation)	89	437	1,776	20	274	1,736
d. Alimony	30	400	1,873	7	264	1,760
e. Child Support	36	475	1,781	8	297	1,725
f. Equitable Distribution	40	368	1,886	14	249	1,756
g. Adoptions	108	284	1,905	22	213	1,781
h. Termination of Parental Rights	58	314	1,923	17	232	1,770
i. Juvenile Court	32	429	1,834	8	277	1,729
j. Child Abuse/Neglect	36	377	1,875	8	254	1,743

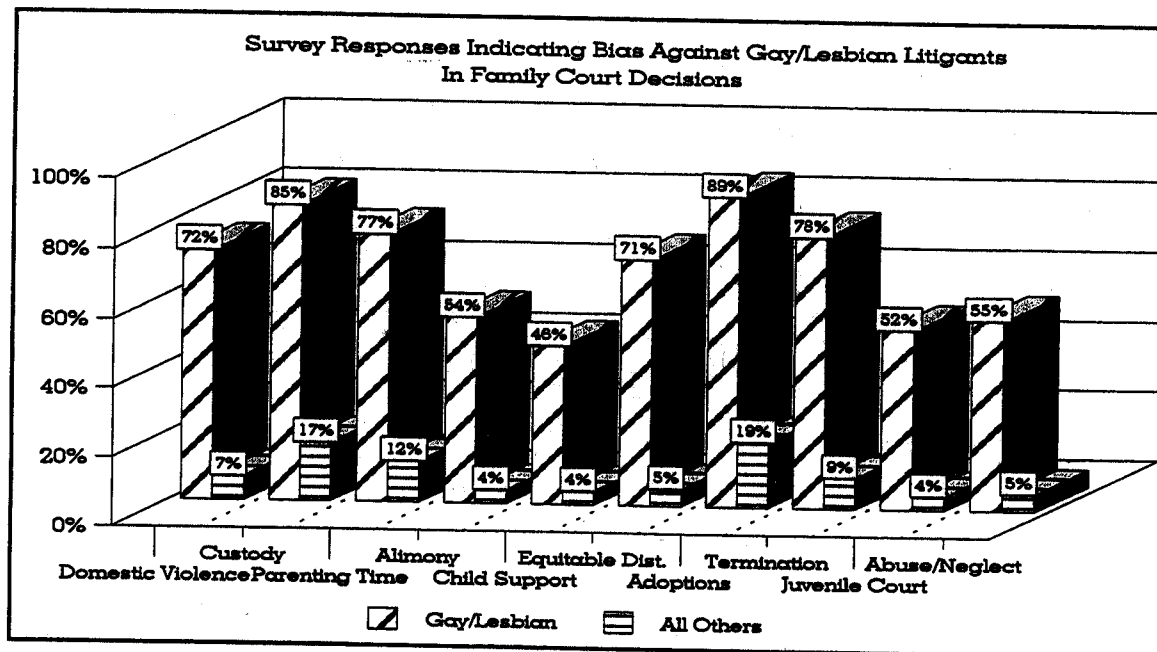
**Gay/Lesbian Litigants:**

In the area of family law, the majority of respondents reported no experience with the success rate of gay/lesbian litigants. Among those who did have some experience, the largest group (28%) believed gays and lesbians tended to fare worse than others in adoption proceedings. Significant percentages were also reported with respect to custody (23%) and visitation issues (17%). While 11% reported a greater likelihood of negative outcome in the area of domestic violence, in other areas, namely equitable distribution, child abuse/neglect, juvenile court and alimony, less than 10% of respondents with experience believed that gays and lesbians were at a disadvantage.

**Clients of Gay/Lesbian Lawyers:**

A similarly low percentage of overall respondents had any experience with case outcomes for the clients of gay/lesbian lawyers. Gays and lesbians were far more likely than others to indicate that clients of gay/lesbian lawyers fared worse than others in family court

decisions. The chart below reflects the difference in responses between gays/lesbians and all others.



**Question 10: In criminal matters, all other factors being equal, is your experience that gay and lesbian defendants, or clients of gay and lesbian lawyers, tend to fare worse with regard to:**

GAY/LESBIAN DEFENDANTS	CLIENTS OF GAY/LESBIAN LAWYERS		
	Yes	No	No Experience
a. Criminal Charges	89	957	1,333
b. Trial	67	926	1,378
c. Jury Instructions	21	690	1,650
d. Verdict	72	884	1,413
e. Probation	41	922	1,404
f. Fines	34	1,001	1,330
g. Incarceration	51	956	1,353

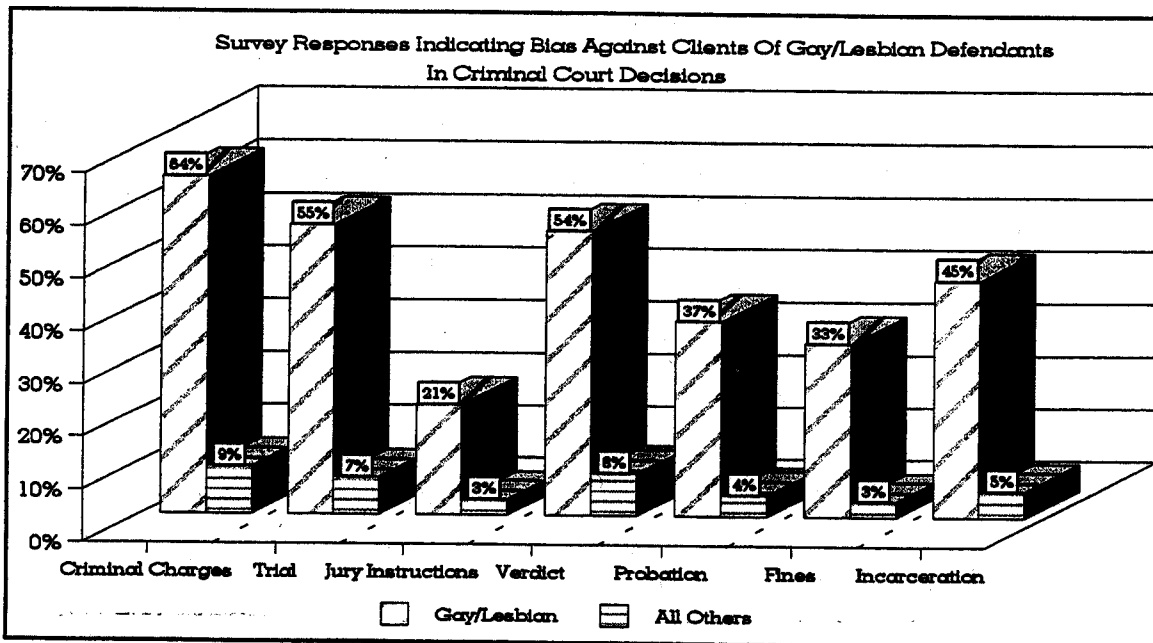
### Gay/Lesbian Defendants:

Although a sizable number of respondents reported no experience with the treatment of gay/lesbian criminal defendants, the number of those with experience exceeded those reporting on family court matters in Question Nine. Still, of those with experience, the percentages of those believing that the defendant's sexual orientation had been a detriment were less than 10% in each category of inquiry. While 8% felt that there was bias in criminal charges and in verdicts, only 3% found that jury instructions were affected by the defendant's sexual orientation.

### Clients of Gay/Lesbian Lawyers:

As with the responses to Question Nine concerning family court matters, the perception that there was bias in the criminal justice system was even lower with regard to the clients of gay and lesbian lawyers.

The chart below reflects the differences in responses between gays/lesbians and all others.

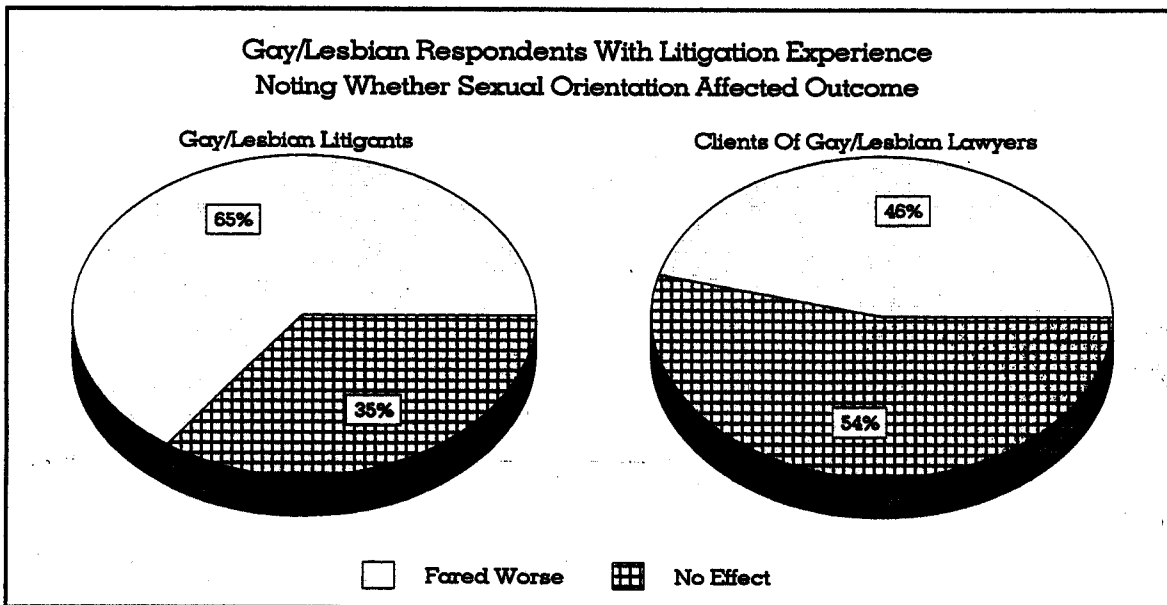


**Question 11: In any other litigation, all factors being equal, is it your experience that gay and lesbian litigants, or clients of gay and lesbian lawyers, tend to fare worse in the outcome?**

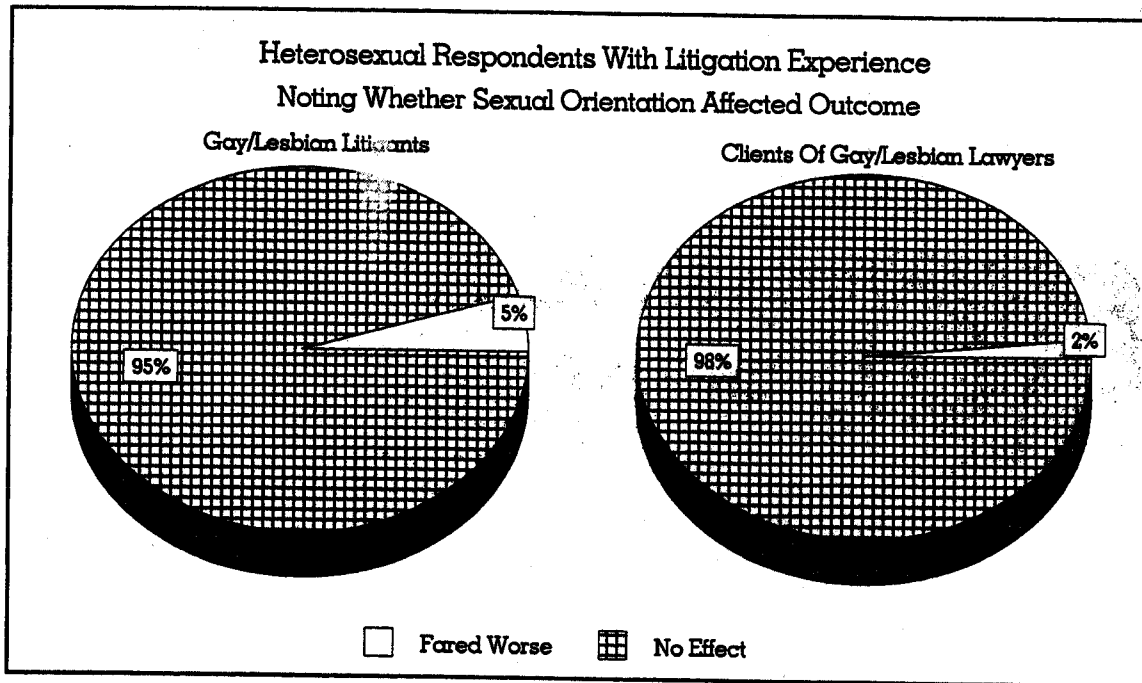
GAY/LESBIAN LITIGANTS			CLIENTS OF GAY/LESBIAN LAWYERS		
Yes	No	No Experience	Yes	No	No Experience
105	1,051	1,235	37	798	1,301

In this question, respondents were asked about outcomes in litigations other than family court and criminal matters. One hundred five (105) of the total respondents who answered this question (9% of those with experience) said that gay/lesbian litigants tended to fare worse than heterosexuals. Thirty-seven (37) (4%) indicated that clients of gay/lesbian lawyers tended to fare worse than clients of heterosexual lawyers.

Of the 80 gay/lesbian respondents with litigation experience, 52 (65%) said that in any other litigation, all other factors being equal, it was their experience that gay/lesbian litigants tended to fare worse in the outcome. Twenty-two (22) gay/lesbian respondents with experience (46%) said that the clients of gay/lesbian attorneys tended to fare worse in the outcome of cases.







#### b. Comments of Survey Respondents

The comments analyzed in this section relate to respondents' perceptions about outcomes of judicial proceedings.

While most respondents did not offer comments, of those who did, several supplied examples which they believed demonstrated judicial bias toward litigants and lawyers on the basis of their sexual orientation. A homosexual father complained to the Task Force that in family court proceedings, "the judge wanted to force me to take an HIV test [as] requested by [my] ex-wife's attorney." Another person perceived that "[p]articular counties are more conservative in their acceptance of homosexual couples raising children. I know friends who would not move from a particular county until after adoption proceedings had concluded to make sure a more conservative judge would not deny [their request]." Comments from another person familiar with the Family Court indicated that women openly identified as lesbian were "treated rudely" and that "feminine-looking men were mocked by judges, lawyers and court employees." The same person said that in chambers a judge had joked that a child who was the subject of a custody dispute "would 'skip to school' if custody was awarded to [the] gay father."

In the context of criminal law, one respondent observed that "police charge people they perceive to be gay or lesbian more often than others." Another said that courts "don't take crimes against homosexuals/lesbian people as seriously. It appears that the perpetrators of crimes against gays are given lighter sentences." Similarly, another said: "I actually had an instance when a client's perceived homosexuality due to being

effeminate helped keep him out of jail. The judge thought he would have a very rough incarceration so gave him probation instead."

A clinical social worker noted that "sentencing patterns are clearly stricter [for homosexual sex offenders] than [for] heterosexual sex offenders." The same person said several clients, who had been physically assaulted in bias attacks, were "threaten[ed], cajole[d] and pressure[d by lawyers] not to file complaints."

Again, many reported having heard jokes or other inappropriate comments. A judge reported hearing one or two other judges make "inappropriate remarks about homosexuals," but these remarks were "always said in jest and only in the company of other judges." Another person responding to the survey said that while a judge had demonstrated bias privately, sexual orientation bias did not generally play a significant role in "judiciary processing in this vicinage."

A lesbian criminal attorney had "heard and seen, countless times, gay/lesbian jokes, comments, disparaging looks, mocking behavior, etc. in many of the different county court houses." Similarly, one Public Defender reported frequently appearing "in the court of one . . . judge who both makes and allows [homophobic] comments."

One respondent reported hearing several people, including judges, making "[j]okes of a sexual nature ... which could be interpreted as homophobic or of a sexual orientation nature." Although most believe that these comments are made in jest, one respondent recalled an incident where a judge's remark about a lesbian couple "sound[ed] hurtful." Another joke was reportedly made by a judge who "often says things which are in poor taste."

One respondent commented about a judge motioning with "limp wrists to indicate that an attorney was gay," causing some laughter.

Two incidents were reported in which a judge's sexual orientation bias was the cause for recusal. One was a custody issue between a lesbian couple, and because of the demeaning remarks made informally and off the bench, the case was transferred to another judge. Another respondent indicated that some judges who acknowledged being homophobic had cases taken over by other judges where issues of sexual orientation were involved.

In a few instances, it was reported that lawyers deliberately used the homosexuality of their adversary for strategic purposes. "In one case, a lawyer, his client and several witnesses used the other litigants' homosexuality to assert [that] both the defendants and [their] witnesses were alcoholic and sexually promiscuous and predatory." In another case involving parental visitation, an attorney "impugned my client . . . as unfit solely because of his sexual orientation." The person reporting this incident noted that the court "rejected those remarks"; however, he limited the father's visitation "for other reasons." Another said that lawyers had made "sarcastic, negative and crude comments regarding my lesbian

clients during off-the-record conversation; however, the court refused to deny the clients their rights based on the asserted negative argument about their homosexuality." It was reported by another respondent that during an in-chambers conference an attorney had made a "disparaging remark" about lesbian litigants, but "the judge chastised the attorney immediately and ordered him never to make similar sexual oriented comments in any court proceeding." There was also a report by one homosexual father that his former wife's attorney repeatedly referred to his "alternate lifestyle" as often as possible, regardless of the issue at hand.

It was reported to the Task Force that a witness was "openly criticized on the stand [because] of homosexual orientation."

### c. Summary

Respondents were asked whether sexual orientation bias affected outcomes. This area of inquiring went beyond reporting of offensive remarks or gestures, and focused on the substantive effect of bias. Most respondents assumed that the jokes and comments did not impact on judicial proceedings. Several respondents drew a distinction between negative attitudes and unfair treatment, as in these comments: "I've heard comments about being gay/lesbian. However I've never seen or experienced bias where it affects the outcome of the case to my knowledge." Many similar responses were received: "I have heard people make comments with their own opinions, but they have never used it as a discriminating factor which could affect the judicial procedure and/or outcome of a case." Most had heard "inappropriate jokes or comments" about gays or lesbians, but believed they had "never seen or experienced bias where it affects the outcome of the case."

Ten percent (10%) of those with experience indicated that sexual orientation bias affected the outcome of a case in which they were involved or which they observed. Of those with experience and who identified their sexual orientation, gay/lesbian respondents were far more likely than heterosexuals (61% vs 6%) to believe bias affected outcome. These findings were consistent in family court, criminal matters, and other litigations.

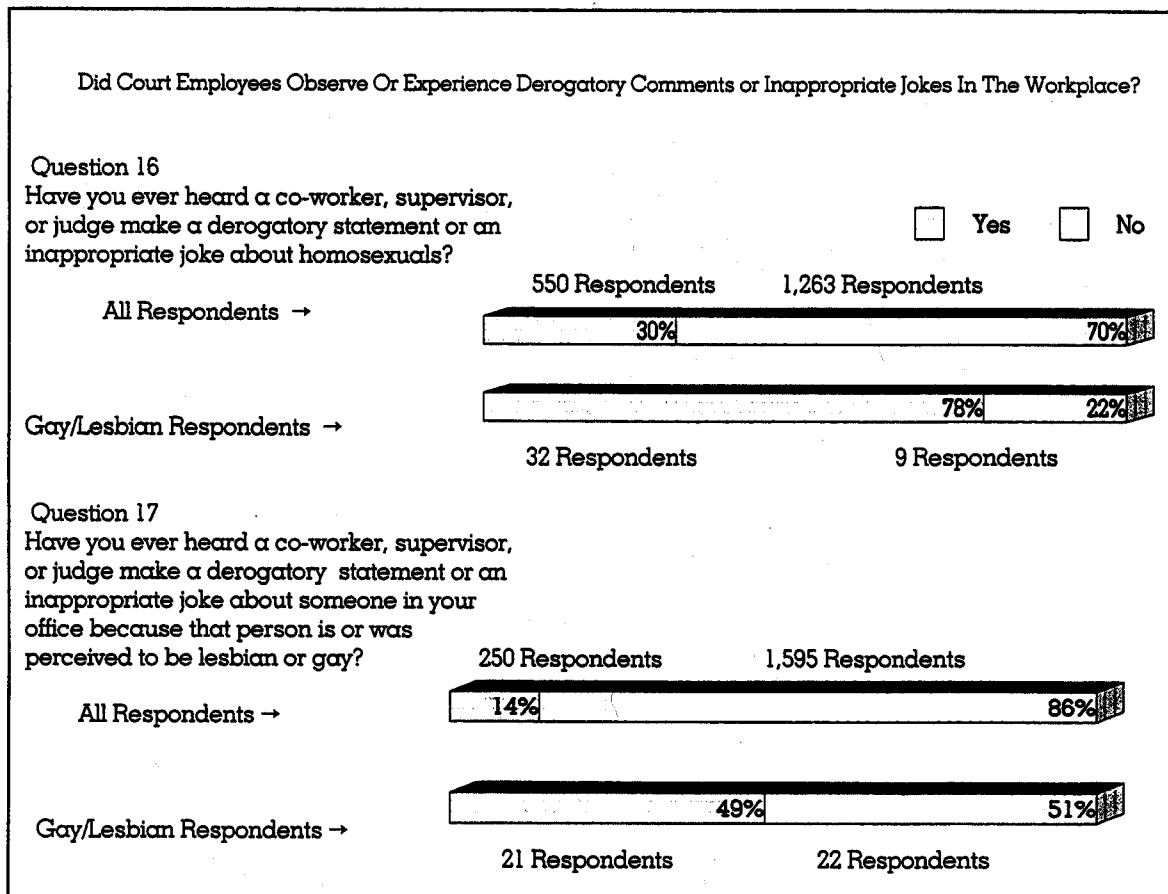
### 3. Sexual Orientation Issues In The Workplace

#### a. Statistics

In calculating the responses of court employees in Questions 16 through 20, the Task Force included the responses from judges and lawyers employed by the judiciary.

From the overall pool of respondents, 1,586 identified themselves as court employees, 36 were identified as lawyers employed by the judiciary, and 267 were judges, for a total of 1,889. Compared to the total number of respondents, judicial employees (including lawyers and judges) represented 73%.

The workplace questions were designed to obtain data regarding the degree that and extent to which sexual orientation bias exists within the judicial workplace. The responses from court employees are depicted below. The first group of responses reflects the percentage of respondents who had experienced bias in the workplace. The second group of responses depicts who exhibited the bias.

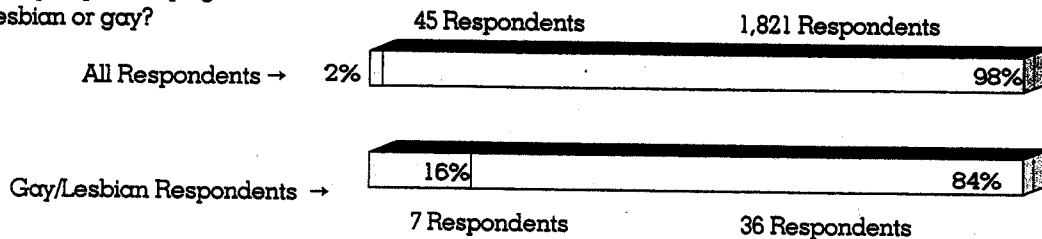


NEW JERSEY JUDICIARY  
Final Report of the Task Force on Gay and Lesbian Issues

Did Court Employees Observe Or Experience Derogatory Comments or Inappropriate Jokes In The Workplace?

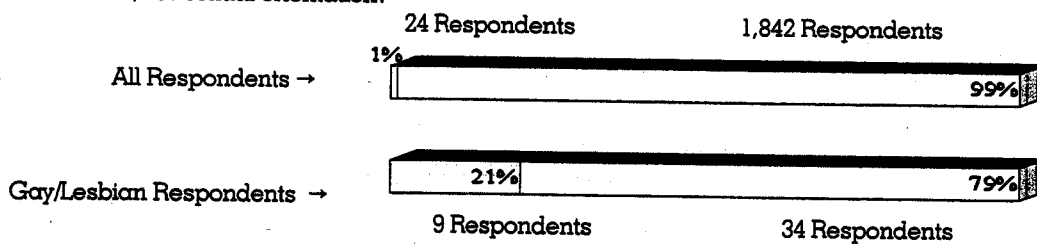
Question 18

Have you ever heard a co-worker, supervisor, or judge criticize an employee or applicant for openly identifying her/himself as lesbian or gay?



Question 19

Have you ever heard that a co-worker, supervisor, or judge was asked or advised by someone in their office to conceal his/her sexual orientation?



NEW JERSEY JUDICIARY  
Final Report of the Task Force on Gay and Lesbian Issues

Who Exhibited The Bias?  
As reported by those who answered Yes to Questions 16 - 19.

☐ Co-Worker      ☐ Supervisor      ☐ Judge

Question 16

If you have ever heard a derogatory statement or an inappropriate joke about homosexuals who made it?

Number Of Respondents Who Answered Yes  
375                      108                      73



Question 17

If you have ever heard a derogatory statement or an inappropriate joke about someone in your office because that person is or was perceived to be lesbian or gay who made it?

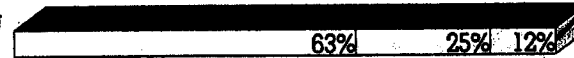
Number Of Respondents Who Answered Yes  
187                      53                      14



Question 18

If you have ever heard someone criticize an employee or applicant for openly identifying her/himself as lesbian or gay who did so?

Number Of Respondents Who Answered Yes  
27                      11                      5



Question 19

If you have ever heard that someone was asked or advised to conceal his/her sexual orientation who asked/advised them?

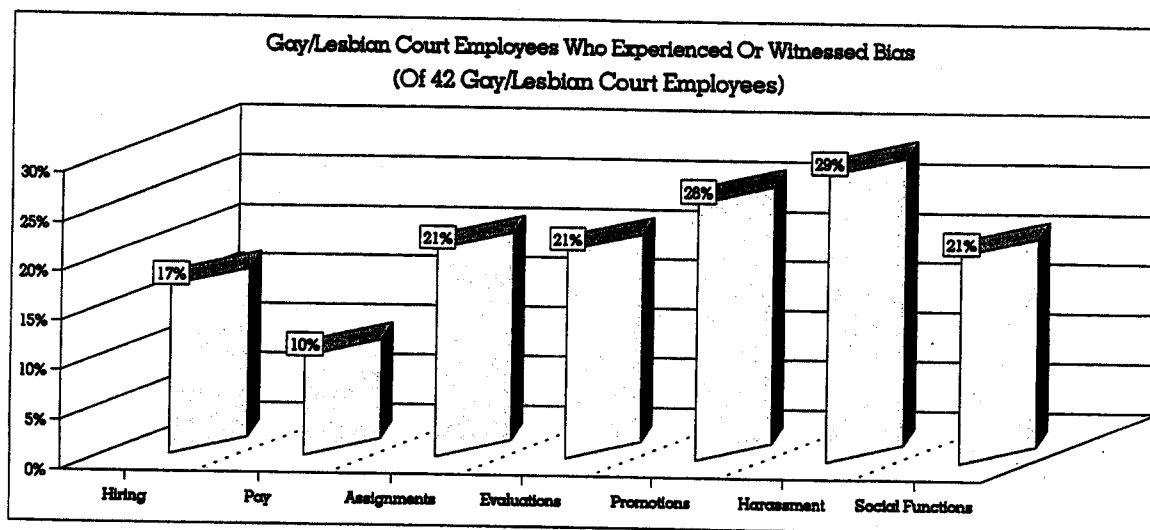
Number Of Respondents Who Answered Yes  
8                      2                      1



**Question 20: With respect to sexual orientation have you ever experienced or witnessed:**

	Experienced	Witnessed
a. Discrimination in hiring	49	83
b. Discrimination in pay	76	50
c. Discrimination in work assignments	59	67
d. Discrimination in work evaluations	51	51
e. Discriminations in promotions and/or advancement at work	69	61
f. Verbal abuse or harassment	55	116
g. Exclusion from office social functions	27	62

Of all court employees, between 3% and 6% experienced or witnessed sexual orientation discrimination in the workplace. Verbal abuse or harassment was the most widely reported type of bias. Gay/lesbian respondents were more likely than others to experience or witness bias in the workplace.



## b. Comments of Survey Respondents

The comments in this section address sexual orientation issues in the workplace.

A large number of court employees reported incidents of bias in the workplace, particularly by their co-workers. Once again, most of this type of bias is manifested in jokes and other derogatory remarks. Among co-workers, there is a perception that jokes are tolerable if made outside the company of people known to be gay or lesbian. "I have heard and made remarks in the office about people perceived to be homosexual. I have never heard or said anything directly to the individual or within earshot of them. We don't know who is homosexual and who isn't and it doesn't matter to us one way or another." This respondent is typical in admitting that while s/he does make jokes about homosexuality, it is not deliberately done in the presence of the target of the joke. Still, it is acknowledged that remarks are made even in the presence of others whose sexual orientations are not known.

A prevalent attitude is that "gays and lesbians do not wear badges of identification; most would prefer to 'blend in.'" It was also largely believed that homosexuality is a private matter and should not be revealed in the workplace. "They sometimes try and come on to you. If they are gay, they should keep it to themselves. I don't care one way or the other."

Some also admitted that jokes and other comments about sexual orientation are sometimes made in the presence of people known to be gay. The attitude that such jokes are acceptable if made in front of a gay or lesbian person was stated by one respondent: "Everyone jokes around. That's life; it's what makes the world go 'round. Every joke I ever heard was usually said in front of the person who was a gay/lesbian." Another said:

I have worked in an area where there is someone who is openly homosexual. The person is very popular and well-liked by everyone, but some jokes and comments made throughout the years by co-workers and supervisors alike have at times been very inappropriate for office chatter. The person doesn't seem to mind at all because comments are usually made in a good-natured, albeit sometimes very suggestive, manner. The person seems to see the kidding as acceptance of their lifestyle rather than bias or harassment.

The distinction between "harmless" jokes and overt discriminatory acts was made repeatedly. "I have occasionally heard gay jokes or mimicking behavior during lunch with co-workers.... These 'jokes' were generic and not aimed at any particular person." This commenter continued, however, "I have never personally witnessed any harassment or bias against a co-worker, lawyer or litigant based upon their perceived or stated sexual orientation." This is contrasted with a different respondent who complained that the survey questions should have excluded remarks made among people who are well-acquainted with each other. The respondent reluctantly answered "yes" to whether s/he had observed



jokes or other comments based on sexual orientation, "though I have not seen discriminatory acts or even openly negative remarks which could create a hostile workplace environment for gays and lesbians."

A Municipal Court employee said: "In my court it is cool to talk, laugh and joke about gay/lesbian people. I have worked in the court system for sixteen-and-one-half years, and gays and lesbians are discussed with the same quality as eating habits, shopping, etc. Sometimes I speak on it; sometimes I put my earphones on." The respondent added that these comments are not made when a judge is present.

The responses from gay or lesbian respondents seem to indicate that they are more affected by casual comments than their co-workers believe. Their responses indicate that they perceive their choices to be either risk alienation by opposing such jokes or remain quiet and conceal their sexual orientation. Accordingly, they generally go along with the jokes to avoid conflict. For example: "Most comments have come in the form of jokes or comments about individuals with assumed preferences. My sexuality is unknown and I want to keep it that way. I keep quiet when people talk, I must admit at times I even go along with it to keep any suspicion off me." The same respondent added: "I am glad to see this survey. When it was handed out with our checks, there were many comments. I felt the need to complete it at home. I hope you get responses, my office was not too thrilled with the subject, they think it's silly."

Several court employees reported that this "joking" atmosphere made them uncomfortable about their sexual orientation. One said:

As a single woman, childless, and 40+, being a court employee I sometimes feel some of my co-workers think I am a lesbian and/or indirectly think "I missed the boat." Sometimes, court co-workers have said to me that I do not understand about family issues because I don't have either children of my own or that I'm not married because males in particular want younger women, although they do not know my true situation. Sometimes this upsets my confidence and who I really am.

A gay respondent said that having heard words such as "faggot" and "queer" directed toward others resulted in this person believing "that 'coming out' at my office will subject me to comments and increased scrutiny." Another said:

As a gay employee there is not much that I can say about this delicate subject because I cannot even be myself at my place of employment. I have to live two different lives. Sometimes my co-workers ask me if I have a girlfriend, if I am married, how many children I have, and I have to answer with a lie. All this makes me feel very unhappy. In addition, sometimes the

people that I work with make fun of gay people in front of me, and I have to laugh about it and pretend that it does not bother me .... I have a co-worker who is gay too; this person lives in a fantasy world and lives in a constant fear that people will find out he is gay. What I am trying to say here is that it is not very easy to be gay and work in the judicial system. I do not think there are many employees of the court who openly identify themselves as lesbian or gay.

Some people reported worrying that their homosexuality would be exposed, specifically fearing hostility as reflected by comments they hear in the workplace. Despite the belief by others that remarks are harmless because they are not directed at a particular individual or made in the presence of gay people, the responses of some of the gays and lesbians involved in the judicial system indicate that this is not true. Several gay or lesbian respondents said that because co-workers and others do not know that they are gay, they feel free to make gay jokes in their presence. Therefore, even if the individuals making such homophobic remarks believe they are not offending anyone, they are unaware of the impact that their comments are having. This reinforces to closeted gays that they are best off keeping their identity hidden. As one State-employed attorney said:

I am not open about my lifestyle at my job for fear of retaliation and/or job loss. I have appeared in many of the different county courthouses as part of my State job. I have heard and seen, countless times, gay/lesbian jokes, comments, disparaging looks, mocking behavior, etc. I have seen many instances of discrimination towards gays and lesbians in the New Jersey courts.... The system is in desperate need of reform and education. How surprised all the judges and lawyers I deal with on a continuing basis would be if I was allowed to be open and honest about my life.

Some of the respondents recognized that even if jokes about sexual orientation are not intentionally malicious they may still have a negative effect. After noting that there are jokes made in the workplace but that s/he had never seen more substantial discriminatory acts, one respondent continued, "ingrained prejudice, even when tempered with an appreciation of 'political correctness' and sensitivity to 'diversity' may, however, subconsciously impact on treatment/decisions involving gays/lesbians."

Another observer was more direct: "I have heard people make rude comments about female sheriff's officers, openly gossip about 'suspected' people. I have heard the terms 'fag' and 'dyke' used openly. Anyone who is gay would understandably be afraid in this atmosphere."

Co-workers were not the only ones displaying bias. Court employees also reported a variety of inappropriate remarks and jokes made by supervisors. These included incidents ranging from "inappropriate remarks and jokes made by a supervisor" to negative job action. One typical respondent said: "My feeling is that [my supervisor] is very biased against gays and lesbians notwithstanding the fact that there are four openly gay or lesbian staff members. Their sexual preferences always come up in some derogatory context." Another said: "Only one time I observed a supervisor making gestures about a person's sexual behavior (gay). This being done without the visual contact of the individual. Done behind their back causing snickering of others present."

Some gay respondents provided insight into the impact of this atmosphere on them. One respondent reported hearing about rumors that she engaged in lesbian sexual activity in the workplace. "Although I was the most qualified, I was not [promoted] because [my supervisor] didn't approve of my lifestyle. I was advised of this information in confidence by another [supervisor]."

Managers also noted the prevalence of homophobic remarks. One manager said: "As a supervisor distributing this survey, I heard many comments regarding sexual discrimination bias that I felt were inappropriate, unnecessary, untrue, biased and prejudicial."

There were also a handful of comments about joking and other negative expressions by judges. One said that while all court personnel make such remarks in jest, "only once did it sound hurtful when said by a judge about a lesbian couple." Several judges were reported to have joked with lawyers and other court personnel in a manner "which could be interpreted as homophobic or of a sexual orientation nature." In some instances, such remarks were made about parties appearing before these judges.

Many respondents also reported expressions of bias by other court personnel, primarily police and sheriff's officers working in the courthouses. Prevalent among these comments is the observation that such personnel express their biases openly. It was common, for example, for respondents to report that court personnel laugh, joke and make rude remarks about "gay men or women when they come to court because of the way they acted."

It was reported that derogatory terms such as "faggot" and "queer" were commonly used among police and sheriff's officers. Observers reported a pattern of uncensored expressions of homophobic bias. One Public Defender reported widespread use of insulting, biased language within the criminal justice system, but said that the "sheriff's department is the worst offender at the courthouse.... The system is filled with ignorant people who do and say quite cruel things." This person had also observed hostility toward gays and lesbians by "religiously conservative personnel."

Typical comments indicated that police and sheriff's officers are "loud and ignorant in this particular area," "make jokes and comments about gay people," display "facial

expressions and/or gestures," are "rude and abrupt," and frequently use offensive epithets to express contempt. One person concluded that "law enforcement officers tend to possess a very biased attitude toward gay/lesbians, etc. This attitude is unhealthy and seems to filter into other court personnel." Another person said that sheriff's officers had been gossiping about him/her, prompting this person to file a complaint.

On the other hand, there were those who felt that overall gay people receive preferential treatment because of their sexual orientation. "Gays have more rights than others.... Gay people seem to get more promotions, higher salaries and more perks.... These people are afforded more benefits than non-quota personnel." Another complained that management "permitted gay employees to display 'rainbow' gay pride flags in their offices.... [I]f I displayed anything in my office which expressed my sexual interest I would be reprimanded."

### c. Summary

Approximately one-third of all court employees reported observing or experiencing derogatory statements or inappropriate jokes about gays and lesbians. An even higher number of gay/lesbian court employees reported this type of bias. Most respondents identified co-workers as the source of these remarks, although supervisors and judges were also identified in notable percentages. Gay/lesbian respondents were also more likely than other court employees to report discrimination in promotions/advancement.

The comments highlight the dichotomy between those in the workplace who believe their remarks are harmless and the fear which others feel about objecting to them. Because many people in the judicial workplace maintain that joking made without malice is acceptable, many gay and lesbian workers are afraid to expose their own sexual orientation and risk negative consequences.

#### 4. Reporting of Bias

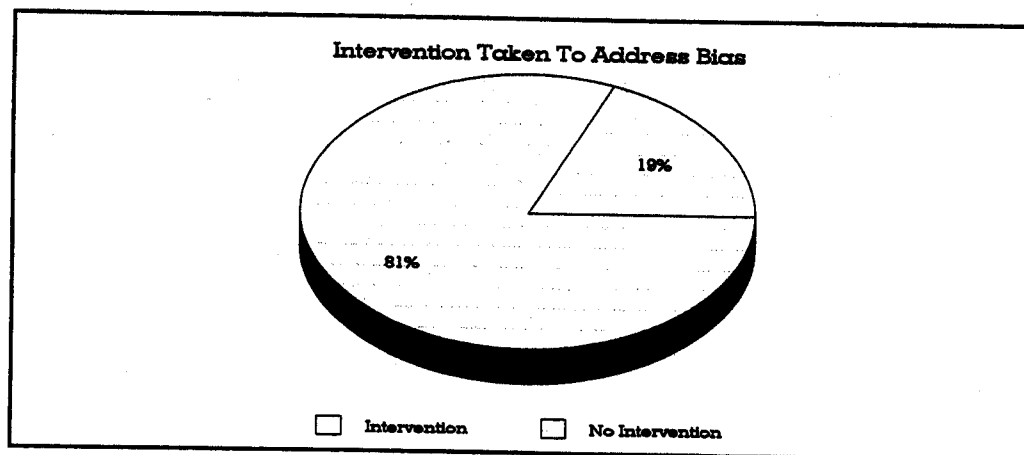
##### a. Statistics

Questions 8, 14, and 15 address the issue of reporting or preventing bias.

**Question 8: In any instance in which you observed or were subjected to sexual orientation bias, did a judge, lawyer, or supervisor (if you are a court employee) take steps to correct, object to, or prevent the situation?**

Yes	No	No Experience
100	420	1,890

Of the respondents who observed or were subjected to sexual orientation bias (*i.e.*, those with experience), 19% said a judge, lawyer or supervisor (in the case of court employees) took steps to correct, object to or prevent the situation, while 81% said there was no such intervention. The percentages of those with experience were consistent with responses of gays and lesbians and of court employees.



Although Question Eight was designed to elicit information about reporting of bias, it also served as a useful indication of who experienced bias. Consistent with responses received in other sections of the survey, gays/lesbians were far more likely than others to experience or observe sexual orientation bias.

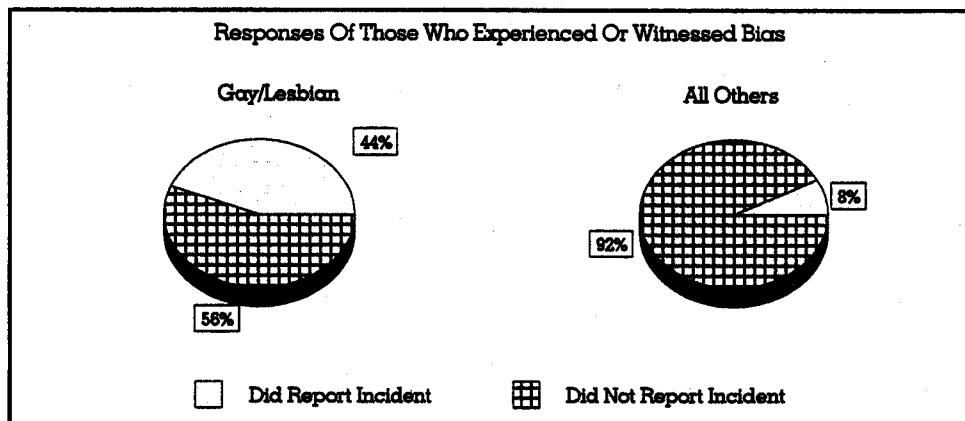
**Question 14: If you have experienced or witnessed bias against gays and/or lesbians, did you report it?**

Yes	No	No Experience
68	352	2,077

**Question 14 a: If yes, to whom?**

Judge	Lawyer	Supervisor	Disciplinary Agency	Other
17	8	30	9	22

Of 2,497 respondents, 2,077 (83%) had no experience. Of the 420 with experience, 68 (16%) indicated they reported it and 352 (84%) did not. There were 129 gay/lesbian respondents, 36 (28%) of whom had no experience. Of those with experience, 41 (44%) said they had reported sexual orientation bias; 52 (56%) had not reported it.



Focusing on the 1,559 court employees who answered this question, 1,332 (85%) had no experience. Of those with experience, 26 (12%) reported bias and 201 (89%) did not.

**Question 15: If you have reported instances of bias against gays and/or lesbians, were you satisfied with the results?**

Yes	No	No Experience
30	87	1,945

This question was intended to track the results of reporting bias. Of all the individuals who reported instances of bias against gays or lesbians, 30 (26%) were satisfied with the results, and 87 (74%) were not. However, gays and lesbians were more likely than other respondents to be satisfied with the results following their reporting of the bias (36% versus 20%).

#### b. Comments of Survey Respondents

This portion of the comment analysis relates to the reporting of bias.

One person said that "fear of retribution prohibits most lawyers I know from even considering a report of a problem."

There was also concern that reports of bias to management produced no results. One respondent who had observed bias by court personnel said that when it was reported, "not one of the persons involved with 'top' court management would come forward. The management got bolder and got worse when it was reported to Trenton over the years. Nothing was done. To this day these problems still go on in our vicinage with no hope of relief from the AOC. All hope has been abandoned by the majority of employees."

One respondent observed harassing behavior that exceeded the bounds of joking. In one instance, where an employee was being considered for a promotion, the supervisor noted in personnel files that "one female candidate had named another female in the unit as a primary beneficiary of an insurance [policy]. The news spread throughout the department like wildfire. The two women felt humiliated and resigned shortly thereafter." The same respondent reported that another woman had been harassed because she was perceived by male co-workers to be a lesbian, and she filed charges against them. "The charges took about four months to be resolved, and in the meantime, the female and the male officer remained on the same floor and unit. She became even more of a pariah ...[and eventually] resigned under the pressure and strain of the ordeal." This respondent concluded: "Although most co-workers and the management will not speak disparagingly of gays and lesbians openly, the undercurrent is always there."

#### c. Summary

Whereas previous questions addressed whether bias occurred, this section focused on the remediation of bias. Eighty-four percent (84%) of those who experienced or witnessed bias did not report it, supporting the need for the Task Force's recommendation that an optional centralized complaint process be implemented. Even among gays and lesbians, fewer than one-half reported their experience with bias. Moreover, most who did report sexual orientation bias were not satisfied with the results.

Of the handful of respondents who provided comments on reporting bias, all believed that management failed to respond or eliminate retribution. This was emphasized by the written comments on this topic. They demonstrated cynicism about the effectiveness

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of reporting bias and also provided examples of how the respondents had been disappointed after having reported it.



## 5. Professional Opportunities

### a. Statistics

**Question 12: In your experience, are gay and lesbian lawyers given fewer opportunities for receiving court appointments (such as guardianships, condemnations, guardians ad litem, etc.)?**

Yes	No	No Experience
51	564	1,854

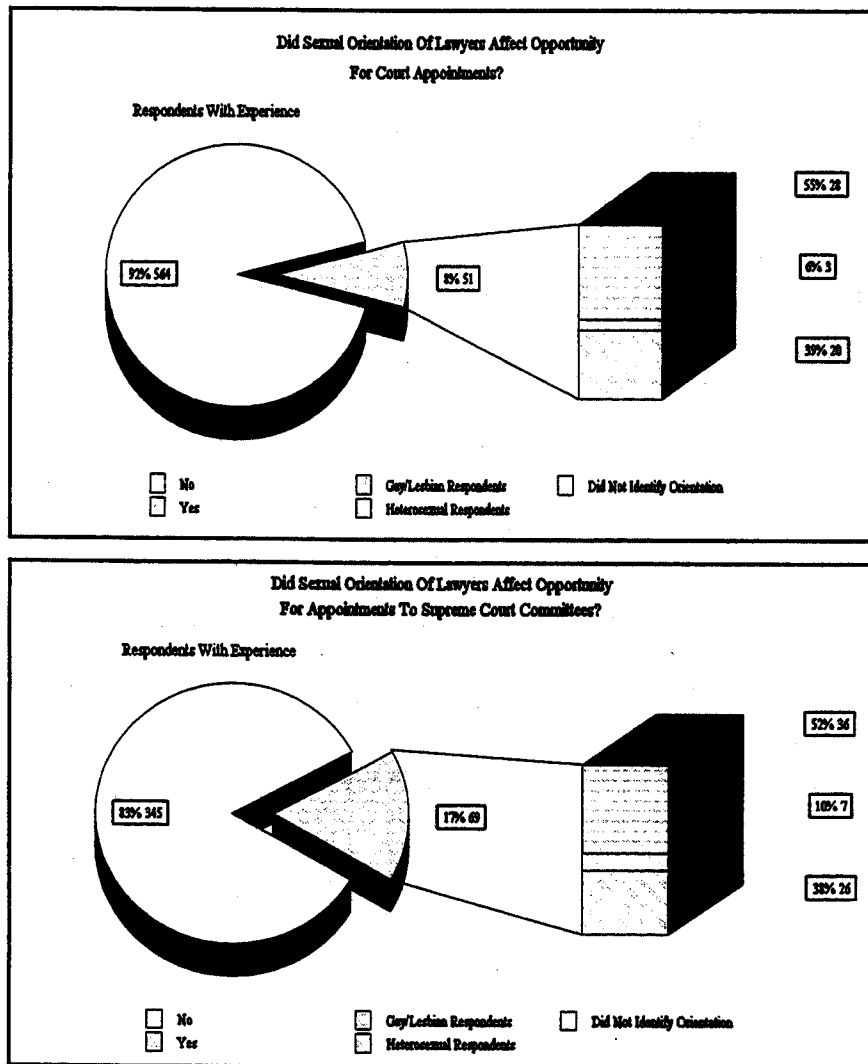
**Question 13: In your experience, are gay and lesbian lawyers given fewer opportunities for appointments to Supreme Court Committees (such as Task Forces, District Ethics Committees, Disciplinary Review Boards, etc.)?**

Yes	No	No Experience
69	345	2,044

These questions asked respondents whether the sexual orientation of lawyers affects their opportunities for professional appointments. Seventy-five percent (75%) of respondents had no experience with respect to opportunities to receive court appointments. Of those with experience, 51 ( 8%) said gay and lesbian lawyers were given fewer opportunities. Eighty-three percent (83%) of respondents had no experience with respect to opportunities for appointments to Supreme Court committees. Of those with experience, 69 (17%) said gay and lesbian lawyers are given fewer opportunities for such appointments.

The charts on the next page reflect only the responses of those with experience in this area and break out the affirmative responses according to sexual orientation.

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Focusing on gay/lesbian respondents with experience, 28 (55%) said that gay/lesbian attorneys were given fewer opportunities to receive court appointments and 36 (72%) said that gay/lesbian attorneys were given fewer opportunities for appointments to Supreme Court committees.

#### b. Summary

More than three-quarters of respondents had no experience with professional appointments. Although Question 13 yielded a higher percentage of affirmative responses than Question 12, when affirmative responses were categorized by sexual orientation, the results were virtually identical.

## 6. Voir Dire

### a. Statistics

**Question 21: Have you ever been asked to conduct voir dire designed to elicit information from potential jurors about attitudes regarding sexual orientation?**

Yes	No
21	530

**Question 22: If you answered yes to question 21, did you permit it?**

Yes	No
17	83

In these questions, judges were asked whether they had ever been requested to conduct voir dire to elicit information from potential jurors about attitudes regarding sexual orientation. The Task Force considered only responses from judges, even though it received responses from others as well. Sixteen (16) judges indicated that they had been asked to conduct voir dire into this area. Of these, 14 indicated that they allowed it and two did not. The two who did not allow it indicated by way of comment that it was not relevant to the case.

### b. Comments of Survey Respondents

On the issue of jury voir dire, a request to screen jurors on the issue of sexual orientation was granted in a relevant context. The attorney was "personally shocked at how candidly [people] discussed their bias; the verdict came back as a 'no cause' and I am convinced it was because of my client's sexual orientation."

### c. Summary

Only 16 out of 267 responding judges had been asked to question potential jurors about their attitudes toward sexual orientation. Where relevant, judges permitted such questioning.

## **7. General Comments from Respondents About the Survey and/or Sexual Orientation**

Numerous respondents submitted comments that were not directly related to the survey questions. What follows is an analysis of these general comments.

A great deal of hostility was expressed against the survey, much of it emanating from court employees who, receiving it with their paychecks, felt forced to complete it. Samples of such responses are: "My own bias is against inane surveys. I refuse to participate." "[A]t one point in everyone's life, everyone has felt discriminated. Get over it; we have." One respondent wrote in large letters in magic marker across the face of the survey: "I feel this is bias toward anyone who is not gay."

Many expressed anger that State funding was being used for this study and felt that completing it was a waste of time. "I am offended that the State of New Jersey would waste more money on another Task Force to single out this one issue of discrimination from a list of many. How much of my tax dollars are wasted on the implementation of this project, starting with salary, printing and postage." Another said: "I am insulted by the fact that I was asked to read this and take my valuable work time or personal time to complete this garbage. This is what is wrong with the world today!!!! Perhaps more work would be completed if people weren't looking for garbage like this!!!!" "I am insulted at having to answer what I believe to be a survey on an unfounded issue." Another called it "stupid and a waste of time."

Others were more explicit in their disdain for gays/lesbians. "To spend this much money on a group of people whose conduct was recently illegal (and probably still is in some states) and who are denounced in the Bible is pathetic. What is this world coming to?" Further reference to the Bible included: "The Bible teaches us that homosexuality is a sin. You cannot ask me to evaluate sin." Another asked: "Are all gays and lesbians perfect and all heterosexuals imperfect? Will all criticism be [considered] discriminatory?" "Based on my religious beliefs, I feel that homosexuality is an aberration and is not an 'alternative lifestyle.' I resent having a 'gay' agenda being pushed on my beliefs."

The notion of "special rights" for gay and lesbian people was also raised. "Gays and lesbians are guaranteed the same rights under the U.S. Constitution as anyone, they are not eligible for special rights. Neither should their partners be covered under the employee's benefits the same as married couples. This is a waste of the taxpayers' money." "This survey separates gay/lesbian individuals rather than include them as part of the mainstream society. Don't separate them, and providing this preferential treatment will not be necessary."

The survey was perceived by many as being biased in favor of gays/lesbians.

This entire survey is constructed and phrased to record only homosexual whining about alleged bias. As such, it appears to reflect a pro-homosexual slant on the part of the Task

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Force . . . . Homosexuals and their supporters can be very biased, and the bias should also have been the subject of your survey.

## V. PUBLIC HEARINGS AND UNSOLICITED SUBMISSIONS

This section of the report summarizes the comments made during four public hearings and through letters and other materials sent directly to the Task Force. Despite efforts by the Task Force to encourage attendance at the public hearings, which were held in Deptford, Trenton, New Brunswick, and Hackensack, the hearings were not well attended. Nevertheless, the Task Force did receive the following pertinent comments.

Some commentators expressed concern that sexual orientation bias was not being adequately addressed by authorities. One reported incident involved two gay men who had been taunted, abused and threatened by neighborhood youths so continually that they were forced to sell their home. The question posed was why there had been no judicial intervention to protect them. Another speaker asked why local prosecutors don't educate high school students about hate crimes against gays and lesbians in the same manner in which racially motivated crimes are addressed.

Many comments concerned the area of family law. One lawyer, for example, said that parties in domestic violence cases involving same-sex couples receive biased treatment from some Superior Court judges who are reluctant to believe that a man would harm another man or that a woman would hurt another woman.

Another person spoke of inappropriate comments by a judge in a case involving a second-parent adoption. The judge was reported to have said to the parents: "The child must obey the laws, even though your relationship doesn't." The same woman said that in her experience judges tended to order more extensive investigation when adoptive parents are gays or lesbians as compared to heterosexuals.

In a letter received by the Task Force, the writer recalled an incident in which a family court judge failed to rebuke an attorney who cited a husband's gay sexual orientation in seeking to limit his parenting time. According to the writer, in a motion in the same case, the wife's lawyer included in her certification reference to the husband's "intense, ardent and obsessive homosexual lifestyle." The judge reportedly remained silent about these submissions, causing the husband to doubt the fairness of the treatment he would receive in court.

Several commentators spoke of disrespectful comments and unequal treatment by judges. For example, one attorney said that two different judges, on separate occasions, had referred in chambers to the lawyer's clients as a "dyke" and a "faggot." Although one judge subsequently apologized, the other did not.

At one of the public hearings, the Task Force was told about municipal prosecution of gay men suspected of "cruising" in a park. This speaker said that the Municipal Court

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judge presiding over the case convicted the defendants of loitering and ordered that they have psychiatric evaluations, which, it was suggested, is unusual.

There were also positive comments received about the way judges handled cases involving gays and lesbians. One letter which was forwarded to the Task Force commended a Superior Court judge for conducting a case with appropriate fairness, despite what might be perceived as sensitive issues. Recognizing that issues of concern to gay men and lesbians make "some people . . . uncomfortable," the writer said: "I want to thank you for taking your time to listen to me and putting [aside any] thoughts and . . . biases you [may] have."

Thus, the comments offered at the public hearings and in unsolicited letters were consistent with other information gathered during the Task Force's study. Largely, they indicated some perception of insensitivity and, to a lesser degree, direct bias against gay and lesbian lawyers and parties. When there was a potential for bias, but the matter was handled fairly instead, the participant credited the judge for remaining impartial.

## VI. CONCLUSIONS/RECOMMENDATIONS

New Jersey provides comprehensive legal protection to gays and lesbians. Historically, however, legal protection alone does not eradicate bias. The results of the Task Force's study establish that, at least to some degree, bias influences both the judicial process and the judicial workplace.

### Recommendation Number 1:

**Distribute the full report to all judges, supervisors (team leaders), president of the State Bar Association, each county bar association, statewide speciality bar associations and others the Court finds appropriate. Distribute the Executive Summary of this report to all judiciary employees along with a notice of how to obtain a copy of the full report. Make the full report available to the public through notice to the bar and other media.**

The Task Force distributed over 20,000 copies of the survey and received a 12% return rate. In light of this level of interest, the Task Force would like to make this Report as widely available as possible. In addition, the results reflect concerns of which the Court and management should be aware. Our further recommendations provide guidance as to how to address these concerns.

### Recommendation Number 2:

**The sexual orientation bias/discrimination education component for judges and court employees should continue and be periodically reviewed for effectiveness. The education for judges and lawyers should continue to include a review of New Jersey law. Judges, lawyers and court employees should be instructed that the Code of Judicial Conduct, the Rules of Professional Conduct and the Code of Conduct for Judiciary Employees prohibit discrimination on the basis of sexual orientation. The Task Force further recommends that efforts be made to work with the Institute for Continuing Legal Education to incorporate education relating to sexual orientation bias into its program for new lawyers.**

By far, offensive jokes or remarks were the most prevalent form of bias reported to the Task Force. Of all survey respondents, forty-one percent reported observing or hearing this form of sexual orientation bias. Among those who made such remarks were judiciary employees and their supervisors and, to a lesser extent, judges and lawyers. Gays and lesbians were nearly twice as likely as heterosexuals to observe or hear offensive gestures, remarks or jokes. The prevailing attitude among respondents was that jokes and comments were acceptable because offense was not intended. However, from the results of the



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survey, the Task Force concludes that, in fact, people were often offended by such comments. It is for this reason that the Task Force emphasizes the importance of educating judges, lawyers and court employees to make them aware that comments and jokes are offensive and unacceptable in the workplace and in the courtroom.

In addition to the comments being offensive, they also create the impression that biased attitudes are tolerated. This perception leads the Task Force to conclude that for some gays and lesbians at least the appearance of judicial neutrality has been compromised. This conclusion is supported by the survey data which revealed that many gay/lesbian respondents believed sexual orientation bias affected case outcomes. Others avoided using the judicial system entirely for fear of bias.

For example, of 80 gay and lesbian respondents with civil litigation experience, 65% said that gay and lesbian litigants tended to fare worse than heterosexuals in the outcome of judicial proceedings. Nearly half the gay and lesbian respondents with litigation experience said clients of gay and lesbian attorneys tended to fare worse in the outcome of cases. Approximately one-third of the gay/lesbian respondents indicated that their employment opportunities were negatively affected by sexual orientation bias. Thirty-six percent of the gay/lesbian attorneys who responded to the survey reported that they had avoided using the judicial system because of sexual orientation bias. In addition, the survey revealed at least the perception that gay and lesbian lawyers are provided fewer opportunities to serve in court-appointed positions such as guardianships or on Supreme Court committees.

The possibility that bias may create a hostile work environment, affect case disposition, hinder professional opportunities, dissuade individuals from using the court system and undermine public confidence in judicial neutrality is a serious concern which warrants heightened awareness by the bench and bar of the importance of education as recommended by the Task Force.

**Recommendation Number 3:**

**Employ all existing communication methods (e.g. the Judiciary's Infonet, Internet, newsletters, training, and posters) to publicize the mechanism for reporting bias/discrimination, and to ensure users of confidentiality of the reporting system.**

The survey data revealed that the prior system for reporting of bias and/or discrimination was underutilized. Eighty-four percent of people who experienced or witnessed sexual orientation bias did not report it. Some of the reasons given were fear of reprisal and lack of effectiveness. Of those who did report bias, 74% were not satisfied with the results. Since the gathering of this data, the Court has begun to revamp the reporting system, making it more accessible and independent from court administration. For the new system to be effective, it is important that it is well publicized

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to ensure that individuals are aware of the mechanism for reporting suspected bias and/or discrimination. The reporting system should be periodically reviewed for its effectiveness.

**Recommendation Number 4:**

**Appoint a working group which would oversee the implementation of these recommendations and assess the need for a follow-up study.**

A working group to oversee implementation of these recommendations would instill public confidence that there will be tangible change made to address the issues raised by this study. In particular, the working group should ensure that existing training includes adequate attention to issues of sexual orientation bias. It should also review the reporting mechanism for its effectiveness. Through periodic reviews of these recommendations, the working group can assess the need for a follow-up study.

## BIBLIOGRAPHY

This bibliography has been prepared by combining input from Task Force members, various other bibliographies, and the tables of authorities in amicus curiae briefs filed by expert bodies such as the American Psychological Association, the National Association of Social Workers, and the American Psychiatric Association, in litigation involving issues related to sexual orientation. It is meant to be a sampling of the literature, not to be comprehensive. It includes more social scientific literature than legal references, because the scientific sources may be more difficult for this report's readers to find than the voluminous and still growing body of work in legal journals and legal reference works. We encourage readers interested in these subjects to read widely, rather than relying on any one source, and to do additional research beyond this list. We hope it is a helpful starting point.

### LEGAL

#### Books

NAN D. HUNTER & WILLIAM N. ESKRIDGE, JR., *SEXUALITY, GENDER, AND THE LAW* (1997).

RICHARD A. POSNER, *OVERCOMING LAW* (Harvard University Press, 1995).

RICHARD A. POSNER *SEX AND REASON* (1992).

WILLIAM B. RUBENSTEIN, *CASES AND MATERIALS ON SEXUAL ORIENTATION AND THE LAW* (2d ed. 1997).

ANDREW SULLIVAN, *VIRTUALLY NORMAL* (Knopf, 1995)

ANDREW SULLIVAN, and JOSEPH LANDAU, editors, *SAME SEX MARRIAGE: PRO AND CON* (Vintage Books, 1997)

#### Articles

Abby Abinati, Legal Challenges Facing Lesbian and Gay Youth, in *HELPING GAY AND LESBIAN YOUTH: NEW POLICIES, NEW PROGRAMS, NEW PRACTICE* (Teresa DeCrescenzo ed., 1994).

Mary Becker, Strength in Diversity: Feminist Theoretical Approaches to Child Custody and Same-Sex Relationship, 23 STETSON L. REV. 701 (1994).

Patricia A. Cain, Same-Sex Couples and the Federal Tax Laws, 1 LAW & SEXUALITY 97 (1991).

NEW JERSEY JUDICIARY  
Final Report of the Task Force on Gay and Lesbian Issues

- Joshua Dressler, Judicial Homophobia: Gay Rights Biggest Roadblock, 5 CIV. LIBERTIES REV. 19 (Jan./Feb. 1979).
- William N. Eskridge, Jr., Gay Legal Narratives, 46 STAN. L. REV. 607 (1994).
- Marc A. Fajer, Authority, Can Two Real Men Eat Quiche Together: Storytelling, Gender-Role Stereotypes, and Legal Protection for Lesbians and Gay Men, 46 MIAMI L. REV. 511 (1992).
- Suzanne B. Goldberg, Facing the Challenge: A Lawyer's Response to Anti-Gay Initiatives, 55 OHIO ST. L.J. 665 (1994).
- Lawrence Goldyn, Gratuitous Language in Appellate Cases Involving Gay People: "Queer Baiting" From the Bench, 3 POL. BEHAV. 31 (1981).
- Chai R. Feldblum, Sexual Orientation, Morality, and the Law: Devlin Revisited, 57 U. PITT. L. REV. 237 (1996).
- Janet Halley, Sexual Orientation and the Politics of Biology: A Critique of the Argument from Immutability, 46 STAN. L. REV. 503 (1994).
- Gregory M. Herek, Myths About Sexual Orientation: A Lawyer's Guide to Social Science Research, 1 LAW & SEXUALITY 133 (1991).
- Nan D. Hunter, Life After Hardwick, 27 HARV. C.R.-C.L.L. REV. 531 (1992).
- Diane H. Mazur, The Unknown Soldier: A Critique of "Gays in the Military" Scholarship and Litigation, 29 U.C. DAVIS L. REV. 223 (1996).
- Rhonda Rivera, Our Straight-Laced Judges: The Legal Position of Homosexual Persons in the United States, 30 HASTINGS L.J. 799 (1979).
- William B. Rubenstein, We Are Family: A Reflection for the Search for Legal Recognition of Lesbian and Gay Relationships, VIII J.L. & POL. 89 (1991).
- Jane S. Schacter, The Gay Civil Rights Debate in the States: Decoding the Discourse of Equivalents, 29 HARV. C.R.-C.L.L. REV. 283 (1994).
- Standing Committee on Lesbian and Gay Issues, AALL Social Responsibilities SIS, Sexual Orientation and The Law: A Selective Bibliography on Homosexuality and the Law, 1969-1993, 86 L. LIB. J. 1 (Winter 1994).
- Thomas B. Stoddard, Lesbian and Gay Rights Litigation Before a Hostile Federal Judiciary: Extracting Benefit From Peril, 27 HARV. C.R.-C.L.L. REV. 555 (1992).

Cass Sunstein, Sexual Orientation and the Constitution: A Note on the Relationship Between Due Process and Equal Protection, 55 U. CHI. L. REV. 1161 (1988).

Cass Sunstein, Homosexuality and the Constitution, 70 IND. L.J. 1 (1994).

Kendall Thomas, Beyond the Privacy Principal, 92 COLUM. L. REV. 1431 (1992).

Francisco Valdes, Queers, Sissies, Dykes, and Tomboys: Deconstructing the Conflation of "Sex," "Gender" and "Sexual Orientation" in Euro-American Law and Culture, 93 CAL. L. REV. 1 (1995).

Lynn D. Wardle, A Critical Analysis of Constitutional Claims for Same-Sex Marriage, 1996 B.Y.U.L. REV. 1 (1996).

#### NON-LEGAL

##### Books

AUSTIN HUMAN RIGHTS COMMISSION, REPORT ON LESBIAN, GAY, AND BISEXUAL YOUTH (1995).

M.V. LEE BADGETT ET AL., PERVASIVE PATTERNS OF DISCRIMINATION AGAINST LESBIANS AND GAY MEN: EVIDENCE FROM SURVEYS ACROSS THE UNITED STATES (1992).

MORTON BARD & DAWN SANGREY, THE CRIME VICTIM'S BOOK (1986).

ROBERT L. BARRET & BRYAN E. ROBINSON, GAY FATHERS (1990).

ALAN P. BELL & MARTIN S. WEINBERG, HOMOSEXUALITIES: A STUDY OF DIVERSITY AMONG MEN AND WOMEN (1978).

ALAN P. BELL ET AL., SEXUAL PREFERENCE: ITS DEVELOPMENT IN MEN AND WOMEN (1981).

ALLAN BERUBE, COMING OUT UNDER FIRE: THE HISTORY OF GAY MEN AND WOMEN IN WORLD WAR TWO (1990).

JOHN BOSWELL, CHRISTIANITY, SOCIAL TOLERANCE, AND HOMOSEXUALITY: GAY PEOPLE IN WESTERN EUROPE FROM THE BEGINNING OF THE CHRISTIAN ERA TO THE FOURTEENTH CENTURY (1980).

FREDERICK W. BOZETT, GAY AND LESBIAN PARENTS (1987).

GEORGE A. CHAUNCEY, JR., GAY NEW YORK: GENDER, URBAN CULTURE AND THE MAKING OF THE GAY MALE WORLD, 1890-1940 (1994).

NEW JERSEY JUDICIARY  
Final Report of the Task Force on Gay and Lesbian Issues

- GARY DAVID COMSTOCK, VIOLENCE AGAINST LESBIANS AND GAY MEN (1991).
- JOHN D'EMILIO, SEXUAL POLITICS, SEXUAL COMMUNITIES: THE MAKING OF A HOMOSEXUAL MINORITY IN THE UNITED STATES, 1940-1970 (1983).
- LILLIAN FADERMAN, ODD GIRLS AND TWILIGHT LOVERS: A HISTORY OF LESBIAN LIFE IN TWENTIETH-CENTURY AMERICA (1991).
- MARK FREEDMAN, HOMOSEXUALITY AND PSYCHOLOGICAL FUNCTIONING (1971).
- RICHARD GREEN, THE "SISSY BOY SYNDROME" AND THE DEVELOPMENT OF HOMOSEXUALITY (1987).
- HATE CRIMES: CONFRONTING VIOLENCE AGAINST LESBIANS AND GAY MEN (Gregory M. Herek & Kevin T. Berill eds., 1992).
- HEINZ HEGER, THE MEN WITH THE PINK TRIANGLE (David Fernbach trans., 1980).
- GILBERT HERDT & ANDREW BOXER, CHILDREN OF HORIZONS: HOW GAY AND LESBIAN TEENS ARE LEADING A NEW WAY OUT OF THE CLOSET (1993).
- HOMOSEXUALITY: RESEARCH IMPLICATIONS FOR PUBLIC POLICY (John C. Gonsiorek & James D. Weinrich eds., 1991).
- JONATHAN NED KATZ, GAY AMERICAN HISTORY: LESBIANS AND GAY MEN IN THE U.S.A. (1976).
- ALFRED C. KINSEY ET AL., SEXUAL BEHAVIOR IN THE HUMAN MALE (1948).
- ALFRED C. KINSEY ET AL., SEXUAL BEHAVIOR IN THE HUMAN FEMALE (1953).
- EDWARD O. LAUMANN ET AL., THE SOCIAL ORGANIZATION OF SEXUALITY: SEXUAL PRACTICES IN THE UNITED STATES (1994).
- SIMON LEVAY, THE SEXUAL BRAIN (1993).
- MASSACHUSETTS GOVERNOR'S COMMISSION ON GAY AND LESBIAN YOUTH, MAKING SCHOOLS SAFE FOR GAY AND LESBIAN YOUTH (1993).
- DAVID PARR MCWHIRTER & ANDREW M. MATTISON, THE MALE COUPLE: HOW RELATIONSHIPS DEVELOP (1984).
- JOHN MONEY & ANKE A. EHRHARDT, MAN & WOMAN, BOY & GIRL: DIFFERENTIATION AND DIMORPHISM OF GENDER IDENTITY FROM CONCEPTION TO MATURITY (1972).

NEW JERSEY JUDICIARY  
Final Report of the Task Force on Gay and Lesbian Issues

NATIONAL ASSOCIATION OF SOCIAL WORKERS, POLICY STATEMENT ON LESBIAN AND GAY ISSUES (1993), reprinted in NATIONAL ASSOCIATION OF SOCIAL WORKERS, SOCIAL WORK SPEAKS: NASW POLICY STATEMENTS (3d ed. 1994).

PSYCHOLOGICAL PERSPECTIVES ON LESBIAN AND GAY MALE EXPERIENCES (Linda D. Garnets & Douglas C. Kimmel eds., 1993).

GLENDIA M. RUSSELL, THE PSYCHOLOGICAL EFFECTS OF AMENDMENT 2 ON LESBIANS, GAYS AND BISEXUALS IN COLORADO (1995).

SAFE SCHOOLS COALITION OF WASHINGTON, SAFE SCHOOLS ANTI-VIOLENCE DOCUMENTATION PROJECT: SECOND ANNUAL REPORT (Fall 1995).

J. SCHULENBURG, GAY PARENTING (1985).

CHARLES SILVERSTEIN, MAN TO MAN: GAY COUPLES IN AMERICA (1981).

FIONA L. TASKER & SUSAN GOLOMBOK, GROWING UP IN A LESBIAN FAMILY: EFFECTS ON CHILD DEVELOPMENT (1997).

TEXTBOOK OF HOMOSEXUALITY AND MENTAL HEALTH (Robert P. Cabaj & Terry S. Stein eds., 1996).

Articles

Dennis A. Anderson, Lesbian and Gay Adolescents: Social and Developmental Considerations, 77 THE HIGH SCH. J. 13 (1993-94).

Joseph E. Aguero et al., The Relationships Among Sexual Beliefs, Attitudes, Experiences, and Homophobia, 10 J. HOMOSEXUALITY 95 (1984).

J. Michael Bailey & Deana S. Benishay, Familial Aggregation of Female Sexual Orientation, 150 (2) AM. J. PSYCHIATRY 272 (Feb. 1993).

J. Michael Bailey & Richard C. Pillard, A Genetic Study of Male Sexual Orientation, 48 ARCHIVES GEN. PSYCHIATRY 1089 (1991).

J. Michael Bailey & Kenneth J. Zucker, Childhood Sex-Typed Behavior and Sexual Orientation: A Conceptual Analysis and Quantitative Review, 31 DEV. PSYCHOL. 43 (Jan. 1995).

J. Michael Bailey et al., Heritable Factors Influence Sexual Orientation in Women, 50 ARCHIVES GEN. PSYCHIATRY 217 (1993).

NEW JERSEY JUDICIARY  
Final Report of the Task Force on Gay and Lesbian Issues

- J. Michael Bailey et al., Sexual Orientation of Adult Sons of Gay Fathers, 31 DEV. PSYCHOL. 124 (Jan. 1995).
- Robert L. Barret & Bryan E. Robinson, Gay Dads, in REDEFINING FAMILIES: IMPLICATIONS FOR CHILDREN'S DEVELOPMENT (Adele Eskeles Gottfried & Allen W. Gottfried eds., 1994).
- Jerry J. Bigner & R. Brooke Jacobsen, Parenting Behaviors of Homosexual and Heterosexual Fathers, 18 (1/2) J. HOMOSEXUALITY 173 (1989).
- Jerry J. Bigner & R. Brooke Jacobsen, Adult Responses to Child Behavior and Attitudes Toward Fathering: Gay and Nongay Fathers, 23 (3) J. HOMOSEXUALITY 99 (1992).
- Ray Blanchard et al., Birth Order and Sibling Sex Ratio in Homosexual Male Adolescents and Probably Prehomosexual Feminine Boys, 31 DEV. PSYCHOL. 22 (1995).
- David A. Brent, Risk Factors for Adolescent Suicide and Suicidal Behavior: Mental and Substance Abuse Disorders, Family Environmental Factors, and Life Stress, 25 SUICIDE AND LIFE-THREATENING BEHAV. 52 (Supp. 1995).
- William Byne & Bruce Parsons, Human Sexual Orientation: The Biologic Theories Reappraised, 50 ARCHIVES GEN. PSYCHIATRY 228 (1993).
- Raymond W. Chan et al., Psychosocial Adjustment Among Children Conceived Via Donor Insemination by Lesbian and Heterosexual Mothers, 69 (2) CHILD DEV. 443 (April 1998).
- Committee on Adolescence, Homosexuality and Adolescence, 92 PEDIATRICS 631 (1993).
- Jennifer Crocker & Brenda Major, Social Stigma and Self-Esteem: The Self-Protective Properties of Stigma, 96 PSYCHOL. REV. 608 (Oct. 1989).
- Margaret Crosbie-Burnett & Lawrence Helmbrecht, A Descriptive Empirical Study of Gay Male Stepfamilies, 42 FAM. REL. 256 (July 1993).
- Milton Diamond, Homosexuality and Bisexuality in Different Populations, 22 ARCHIVES SEX. BEHAV. 292 (Aug. 1993).
- Lynda S. Doll et al., Homosexually and Nonhomosexually Identified Men Who Have Sex With Men: A Behavioral Comparison. HIV Blood Donor Study Group, 29 J. SEX RES. 1 (1992).
- Murray J. Edelman, Understanding the Gay and Lesbian Vote in '92, PUB. PERSP., March-April 1993.
- Stuart Elliott, A Sharper View of Gay Consumers, N.Y. TIMES, June 9, 1994, at D-1.



NEW JERSEY JUDICIARY  
Final Report of the Task Force on Gay and Lesbian Issues

- Alan L. Ellis & R. Brent Vasseur, Prior Interpersonal Contact With and Attitudes Towards Gays and Lesbians in an Interviewing Context, 25 (4) J. HOMOSEXUALITY 31 (1993).
- Robert E. Fay et al., Prevalence and Patterns of Same-Gender Sexual Contact Among Men, 243 SCI. 338 (1989).
- David K. Flaks et al., Lesbians Choosing Motherhood: A Comparative Study of Lesbian and Heterosexual Parents and Their Children, 31 DEV. PSYCHOL. 105 (Jan. 1995).
- Kurt Freund et al., Heterosexuality, Homosexuality, and Erotic Age Preference, 26 J. SEX RES. 107 (1989).
- Linda Garnets & Douglas Kimmel, Lesbian and Gay Male Dimensions in the Psychological Study of Human Diversity, in PSYCHOLOGICAL PERSPECTIVES ON HUMAN DIVERSITY IN AMERICA (Jacqueline D. Goodchilds ed., 1991).
- Paul Gibson, Gay Male and Lesbian Youth Suicide, in REPORT OF THE SECRETARY'S TASK FORCE ON YOUTH SUICIDE, at 3 (U.S. Dept. of Health & Human Services ed., 1989).
- Susan Golombok et al., Children in Lesbian and Single-Parent Households: Psychosexual and Psychiatric Appraisal, 24 J. CHILD PSYCHOL. AND PSYCHIATRY 551 (1997).
- Susan Golombok et al., Children Raised in Fatherless Families From Infancy: Families and the Socioemotional Development of Children of Lesbian and Single Heterosexual Mothers, 38 J. CHILD PSYCHOL. AND PSYCHIATRY 783 (Oct. 1997).
- John C. Gonsiorek, Results of Psychological Testing on Homosexual Populations, 25 (4) AM. BEHAV. SCI. 385 (1982).
- John C. Gonsiorek, Mental Health Issues of Gay and Lesbian Adolescents, 9 J. ADOLESCENT HEALTH CARE 114 (1988).
- John C. Gonsiorek et al., Definition and Measurement of Sexual Orientation, 25 SUICIDE AND LIFE-THREATENING BEHAV. 40 (Supp. 1995).
- Gail S. Goodman et al., Developmental Psychology and Law: Divorce, Child Maltreatment, Foster Care, and Adoption, in HANDBOOK OF CHILD PSYCHOLOGY, at 775 (William Damon et al. eds., 1998).
- Julia A. Graber & Jeanne Brooks-Gunn, Models of Development: Understanding Risk in Adolescence, 25 SUICIDE AND LIFE-THREATENING BEHAV. 18 (Supp. 1995).

NEW JERSEY JUDICIARY  
Final Report of the Task Force on Gay and Lesbian Issues

Richard Green, Sexual Identity of 37 Children Raised By Homosexual or Transexual Parents, 135 AM. J. PSYCHIATRY 692 (1978).

Richard Green, The Best Interests of the Child With a Lesbian Mother, 10 BULL. AAPL 7 (1982).

Richard Green, The Immutability of (Homo)sexual Orientation: Behavioral Science Implications for a Constitutional (Legal) Analysis, 16 J. PSYCHIATRY & L. 537 (1988).

Richard Green et al., Lesbian Mothers and Their Children: A Comparison with Solo Parent Heterosexual Mothers and Their Children, 15 ARCHIVES OF SEX. BEHAV. 167 (1986).

A. Nicolas Groth, Patterns of Sexual Assault Against Children and Adolescents, in SEXUAL ASSAULT OF CHILDREN AND ADOLESCENTS (Ann Wolbert Burgess et al. eds., 1978).

A. Nicolas Groth & H. Jean Birnbaum, Adult Sexual Orientation and Attraction to Underage Persons, 7 ARCHIVES SEX. BEHAV. 175 (1978).

Douglas C. Haldeman, The Practice and Ethics of Sexual Orientation Conversion Therapy, 62 J. CONSULTING AND CLINICAL PSYCHOL. 221 (1994).

Dean H. Hamer et al., A Linkage Between DNA Markers on the X Chromosome and Male Sexual Orientation, 261 SCI. 321 (1993).

Jan Hare & Leslie N. Richards, Children Raised by Lesbian Couples: Does Context of Birth Affect Father and Partner Involvement?, 42 FAM. REL. 249 (July 1993).

Mary B. Harris & Pauline H. Turner, Gay and Lesbian Parents, 12 (2) J. HOMOSEXUALITY 101 (1985-86).

Maureen Hart et al., Psychological Adjustment of Nonpatient Homosexuals: Critical Review of the Research Literature, 39 J. CLINICAL PSYCHIATRY 604 (1978).

Jeffrey J. Haugaard et al., Lesbian-Headed Households, 1 ADOPTION Q. 93 (1998).

Gregory M. Herek, Beyond "Homophobia": A Social Psychological Perspective on Attitudes Toward Lesbians and Gay Men, 10 J. HOMOSEXUALITY 1 (1984).

Gregory M. Herek, Hate Crimes Against Lesbians and Gay Men: Issues for Research and Policy, 44 AM. PSYCHOLOGIST 948 (1989).

Gregory M. Herek, Sexual Orientation and Military Service: A Social Science Perspective, 48 (5) AM. PSYCHOLOGIST 538 (1993).

NEW JERSEY JUDICIARY  
Final Report of the Task Force on Gay and Lesbian Issues

Gregory M. Herek & Eric K. Glunt, Interpersonal Contact and Heterosexuals' Attitudes Toward Gay Men: Results From a National Survey, 30 J. SEX RES. 239 (1993).

Gregory M. Herek & John P. Capitanio, Black Heterosexuals' Attitudes Toward Lesbians and Gay Men in the United States, 32 J. SEX RES. 95 (1995).

Gregory M. Herek & John P. Capitanio, "Some of My Best Friends": Intergroup Contact, Concealable Stigma, and Heterosexuals' Attitudes Toward Gay Men and Lesbians, 22 (4) PERSONALITY & SOC. PSYCHOL. BULL. 412 (April 1996).

Scott L. Hershberger & Anthony R. D'Augelli, The Impact of Victimization on the Mental Health and Suicidality of Lesbian, Gay, and Bisexual Youths, 31 DEV. PSYCHOL. 65 (Jan. 1995).

Emery S. Hetrick & A. Damien Martin, Developmental Issues and Their Resolution for Gay and Lesbian Adolescents, 14 J. HOMOSEXUALITY 25 (1987).

Beverly Hoeffler, Children's Acquisition of Sex-Role Behavior in Lesbian Mother Families, 51 AM. J. ORTHOPSYCHIATRY 536 (1981).

Evelyn Hooker, The Adjustment of the Male Overt Homosexual, 21 J. PROJECTIVE TECHS. 18 (1957).

Sharon L. Huggins, A Comparative Study of Self-Esteem of Adolescent Children of Divorced Lesbian Mothers and Divorced Heterosexual Mothers, 18 (1/2) J. HOMOSEXUALITY 123 (1989).

Joyce Hunter, Violence Against Lesbians and Gay Male Youths, 5 (3) J. INTERPERSONAL VIOLENCE 295 (1990).

Joyce Hunter & Robert Schaecher, Adolescents and AIDS, Coping Issues, in LIVING AND DYING WITH AIDS (Paul I. Ahmed & Nancy Ahmed eds., 1992).

Joyce Hunter & Robert Schaecher, AIDS Prevention for Lesbian, Gay, and Bisexual Adolescents, 75 FAMILIES IN SOCIETY 346 (June 1994).

Joyce Hunter & Robert Schaecher, Gay and Lesbian Adolescents, in ENCYCLOPEDIA OF SOCIAL WORK, at 1055 (Richard L. Edwards et al. eds., 19th ed. 1995).

Joyce Hunter & Robert Schaecher, Lesbian and Gay Youth, in PLANNING TO LIVE: EVALUATING AND TREATING SUICIDAL TEENS IN COMMUNITY SETTINGS, at 297 (Mary Jane Rotheram-Borus et al. eds., 1990).

Joyce Hunter & Robert Schaecher, Stresses on Lesbian and Gay Adolescents in Schools, 9 (3) SOC. WORK IN EDUCATION 180 (1987).

NEW JERSEY JUDICIARY  
Final Report of the Task Force on Gay and Lesbian Issues

- Richard A. Isay, Dynamic Psychotherapy With Gay Men: Developmental Considerations, 12 REV. PSYCHIATRY 85 (1993).
- John A. Jacobs & William H. Tedford, Jr., Factors Affecting the Self-Esteem of the Homosexual Individual, 5 (4) J. HOMOSEXUALITY 373 (1980).
- Carole Jenny et al., Are Children at Risk for Sexual Abuse by Homosexuals?, 94 (1) PEDIATRICS 41 (July 1994).
- Dirk Johnson, Colorado Homosexuals Feel Betrayed, N.Y. TIMES, Nov. 8, 1992, at 38.
- Martha Kirkpatrick et al., Lesbian Mothers and Their Children: A Comparative Study, 51 AM. J. ORTHOPSYCHIATRY 545 (1981).
- D.J. Kleber et al., The Impact of Parental Homosexuality in Child Custody Cases: A Review of the Literature, 14 BULL. AM. ACADEMY PSYCHIATRY & L. 81 (1986).
- Lawrence A. Kurdek, Correlates of Negative Attitudes Toward Homosexuals in Heterosexual College Students, 18 (11/12) SEX ROLES 727 (June 1988).
- Paul C. Larson, Gay Male Relationships, in HOMOSEXUALITY: SOCIAL, PSYCHOLOGICAL, AND BIOLOGICAL ISSUES (William Paul et al. eds., 1982).
- Simon LeVay, A Difference in Hypothalamic Structure Between Heterosexual and Homosexual Men, 253 SCI. 1034 (1991).
- Martin P. Levine, Employment Discrimination Against Gay Men, 9 INT'L REV. MOD. SOC. 151 (1979).
- Martin P. Levine & Robin Leonard, Discrimination Against Lesbians in the Work Force, 9 (4) SIGNS: J. WOMEN CULTURE & SOC. 700 (1984).
- Geraldo Lima et al., The Relationship Between Homophobia and Self-Esteem in Gay Males with AIDS, 25 (4) J. HOMOSEXUALITY 69 (1993).
- A.P. MacDonald, Jr. & Richard G. Games, Some Characteristics of Those Who Hold Positive and Negative Attitudes Toward Homosexuals, 1 (1) J. HOMOSEXUALITY 9 (1974).
- Brian Magruder et al., The Relationship Between AIDS-Related Information Sources and Homophobic Attitudes: A Comparison of Two Models, 25 (4) J. HOMOSEXUALITY 47 (1993).
- Gary Mallon, Gay and No Place to Go: Assessing the Needs of Gay and Lesbian Adolescents in Out-of-Home Care Settings, 71 (6) CHILD WELFARE 547 (Nov./Dec. 1992).

NEW JERSEY JUDICIARY  
Final Report of the Task Force on Gay and Lesbian Issues

Gerald P. Mallon, Serving the Needs of Gay and Lesbian Youth in Residential Treatment Centers, 10 (2) RESIDENTIAL TREATMENT FOR CHILDREN AND YOUTH 47 (1992).

Alan K. Malyon, The Homosexual Adolescent: Developmental Issues and Social Bias, 60 J. CHILD WELFARE 321 (1981).

A. Damien Martin, Learning to Hide: The Socialization of the Gay Adolescent, in ADOLESCENT PSYCHIATRY: DEV. & CLINICAL STUDIES (Sherman C. Feinstein et al. eds., 1982).

A. Damien Martin & Emory S. Hetrick, Designing an AIDS Risk Reduction Program for Gay Teenagers: Problems and Proposed Solutions, in BIOBEHAVIORAL APPROACHES TO THE CONTROL OF AIDS, at 137 (1987).

A. Damien Martin & Emory S. Hetrick, The Stigmatization of the Gay and Lesbian Adolescent, 15 (1/2) J. HOMOSEXUALITY 163 (Michael W. Ross ed., 1988).

Gary B. Melton, Public Policy and Private Prejudice, 44 AM. PSYCHOLOGIST 933 (1989).

Ilan H. Meyer, Minority Stress and Mental Health in Gay Men, 36 J. HEALTH & SOC. BEHAV. 38 (1995).

Heino F.L. Meyer-Bahlburg et al., Prenatal Estrogens and the Development of Homosexual Orientation, 31 DEV. PSYCHOL. 12 (1995).

Brian Miller, Gay Fathers and Their Children, 28 FAM. COORDINATOR 544 (1979).

Judith A. Miller et al., The Child's Home Environment for Lesbian vs. Heterosexual Mothers: A Neglected Area of Research, 75 HOMOSEXUALITY 49 (1981).

Peter Muehrer, Suicide and Sexual Orientation: A Critical Summary of Recent Research and Directions for Future Research, 25 SUICIDE AND LIFE-THREATENING BEHAV. 72 (Supp. 1995).

Eva D. Olson & Cheryl A. King, Gay and Lesbian Self-Identification: A Response to Rotheram-Borus and Fernandez, 25 SUICIDE AND LIFE-THREATENING BEHAV. 35 (Supp. 1995).

Paul A. Paroski, Jr., Health Care Delivery and the Concerns of Gay and Lesbian Adolescents, 8 J. ADOLESCENT HEALTH CARE 188 (1987).

Charlotte J. Patterson, Children of Lesbian and Gay Parents: Review of the Literature, 63 CHILD DEV. 1025 (1992).

NEW JERSEY JUDICIARY  
Final Report of the Task Force on Gay and Lesbian Issues

Charlotte J. Patterson, Children of the Lesbian Baby Boom: Behavioral Adjustment, Self-Concepts, and Sex-Role Identity, in LESBIAN AND GAY PSYCHOLOGY: THEORY, RESEARCH AND CLINICAL APPLICATIONS, at 156 (Beverly Greene & Gregory M. Herek eds., 1994).

Charlotte J. Patterson, Children of Lesbian and Gay Parents, 19 ADVANCES IN CLINICAL CHILD PSYCHOL. 235 (Thomas H. Ollendick & Ronald J. Prinz eds., 1997).

Letitia Anne Peplau, Research on Homosexual Couples: An Overview, 8 J. HOMOSEXUALITY 3 (1982).

Letitia Anne Peplau & Susan D. Cochran, Value Orientations in the Intimate Relationships of Gay Men, 6 J. HOMOSEXUALITY 1 (1990).

John Wayne Plasek & Janicemarie Allard, Misconceptions of Homophobia, in HOMOPHOBIA: AN OVERVIEW (John P. De Cecco ed., 1984).

Curtis D. Proctor & Victor K. Groze, Risk Factors for Suicide Among Gay, Lesbian, and Bisexual Youths, 39 (5) SOC. WORK 504 (Sept. 1994).

Bernard F. Reiss, Psychological Tests in Homosexuality, in HOMOSEXUAL BEHAVIOR: A MODERN REAPPRAISAL (Judd Marmor ed., 1980).

Gary Remafedi, Adolescent Homosexuality: Psychosocial and Medical Implications, 79 PEDIATRICS 331 (1987).

Gary Remafedi, Homosexual Youth: A Challenge to Contemporary Society, 258 JAMA 222 (July 1987).

Gary Remafedi, Homosexuality, Adolescent, 1 ENCYCLOPEDIA OF ADOLESCENCE 504 (Richard M. Lerner et al. eds., 1991).

Gary Remafedi et al., Risk Factors for Attempted Suicide in Gay and Bisexual Youth, 87 (6) PEDIATRICS 869 (1991).

Resolution of the American Psychiatric Association (Dec. 15, 1973), reprinted in 131 AM. J. PSYCHIATRY 497 (1974).

Results of Poll, S.F. EXAMINER, June 6, 1989, at A-19.

Ellen D. Riggle & Alan L. Ellis, Political Tolerance of Homosexuals: The Role of Group Attitudes and Legal Principles, 26 (4) J. HOMOSEXUALITY 135 (1994).

NEW JERSEY JUDICIARY  
Final Report of the Task Force on Gay and Lesbian Issues

Susan M. Rogers & Charles F. Turner, Male-Male Sexual Contact in the USA: Findings From Five Sample Surveys, 1970-1990, 28 J. SEX RES. 491 (Nov. 1991).

Mary Jane Rotheram-Borus et al., Coming Out as Lesbian or Gay in the Era of AIDS, in AIDS, IDENTITY, AND COMMUNITY: THE HIV EPIDEMIC AND LESBIANS AND GAY MEN VOL. 2, at 150 (Gregory M. Herek & Beverly Greene eds., 1995).

Mary Jane Rotheram-Borus et al., Suicidal Behavior and Gay-Related Stress Among Gay and Bisexual Male Adolescents, 9 (4) J. ADOLESCENT RES. 498 (1994).

Mary Jane Rotheram-Borus et al., Prevalence, Course, and Predictors of Multiple Problem Behaviors Among Gay and Bisexual Male Adolescents, 31 DEV. PSYCHOL. 75 (1995).

Ritch C. Savin-Williams, Gay and Lesbian Youth, in 1 ENCYCLOPEDIA OF ADOLESCENCE 385 (Richard M. Lerner et al. eds., 1991).

David Shaffer et. al., Sexual Orientation in Adolescents Who Commit Suicide, 25 SUICIDE AND LIFE-THREATENING BEHAV. 64 (Supp. 1995).

William Schneider & I.A. Lewis, The Straight Story on Homosexuality and Gay Rights, 7 PUB. OPINION 16 (Feb./March 1984).

Myra Sencer, Adoption in the Non-Traditional Family: A Look at Some Alternatives, 16 HOFSTRA L. REV. 191 (1987).

Jaime Smith, Psychopathology, Homosexuality, and Homophobia, 15 (1/2) J. HOMOSEXUALITY 59 (1988).

William P. Snyder & Kenneth L. Nyberg, Gays and the Military: An Emerging Policy Issue, 8 J. POL. & MIL. SOC. 71 (1980).

Terry S. Stein, Afterword to Section I, 12 REV. PSYCHIATRY 127 (1993).

Terry S. Stein, Overview of New Developments in Understanding Homosexuality, 12 REV. PSYCHIATRY 9 (1993).

Kara Swisher, Area Firms Lauded on Gay Bias Policies, WASH. POST, Oct. 11, 1994, at C-2.

T. Richard Sullivan, Obstacles to Effective Child Welfare Service with Gay and Lesbian Youths, 73 CHILD WELFARE 291 (1994).

Bob Tremble et al., Growing Up Gay or Lesbian in a Multicultural Context, 17 (3/4) J. HOMOSEXUALITY 253 (1989).

NEW JERSEY JUDICIARY  
Final Report of the Task Force on Gay and Lesbian Issues

Richard R. Troiden, The Formation of Homosexual Identities, 17 J. HOMOSEXUALITY 43 (1989).

William J. Turner, Homosexuality, Type 1: An Xq28 Phenomenon, 24 ARCHIVES SEX. BEHAV. 109 (1995).

Linda E. Weinberger & Jim Millham, Attitudinal Homophobia and Support of Traditional Sex Roles, 4 (3) J. HOMOSEXUALITY 237 (1979).

Frederick L. Whitam et al., Homosexual Orientation in Twins: A Report on 61 Pairs and Three Triplet Sets, 22 (3) ARCHIVES SEX. BEHAV. 187 (1993).

Bernard E. Whitley, Jr., The Relationship of Sex-Role Orientation to Heterosexuals' Attitudes Toward Homosexuals, 17 (1/2) SEX ROLES 103 (July 1987).



## ENDNOTES

1. There is no specific language in New Jersey law prohibiting same-sex marriage; however, it is generally presumed to limit marriage to male-female couples only. See: Rutgers Council of AAUP Chapters v. Rutgers, 298 N.J. Super. 442, 455-462 (App. Div. 1997), cert. den. 153 N.J. 48 (1998).
2. New Jersey's approach in this case was not typical for its time. Compare, Inman v. City of Miami, 197 So.2d 50, 51-52 (Fla. App. 3 Dist. 1967), cert. den. 201 So.2d 895 (Fla. 1967), cert. den. 389 U.S. 1048 (1968), reflecting different attitudes.
3. In contrast to the majority, Justice Proctor concurred, but with some reservation, emphasizing that while "well-behaved" homosexuals should not be prohibited from patronizing taverns, "they may not engage in any conduct which would be offensive to public decency." Evidence of conduct such as men kissing each other on the lips was sufficient in his estimation to justify disciplinary action. Id. at 342.
4. The American Psychiatric Association had, however, removed homosexuality from its list of psychiatric disorders in December 1973. *American Psychiatric Association Fact Sheet: Homosexual and Bisexual Issues*, September 1997, p. 1; *The Long Road to Freedom, The Advocate History of the Gay and Lesbian Movement* (Mark Thompson, ed., St. Martin's Press, New York, 1994), p. 85.
5. Molly McGarry and Fred Wasserman, *Becoming Visible: An Illustrated History of Lesbian and Gay Life in Twentieth-Century America* (Penguin Studio, 1998) pp. 199-205.
6. By contrast, the New Jersey Constitution provides only that "[n]o person shall be denied the enjoyment of any civil or military right, nor be discriminated against in the exercise of any civil or military right, nor be segregated in the militia or in the public schools because of religious principles, race, color, ancestry or national origin." N.J. Const., Art. 1, ¶ 5.
7. Other states which prohibit discrimination based on sexual orientation are: California (employment) (Cal. Labor Code §§ 1101, 1102 and 1102.1 (1992)); Connecticut (employment, public accommodations, education, housing and credit) (Conn. Gen. Stat. §§ 46a through 46r (1991)); Hawaii (employment)(Haw. Rev. Stats. §§ 368-1 and 378-2 (1991)); Massachusetts (employment, public accommodations, education, housing and credit)(Mass. Gen. L., ch. 151B §§ 3-4 (1995)); Minnesota (employment, public accommodations, education, housing and credit)(Minn. Stat. Ann. § 363.03 (1993)); New Hampshire (employment, public accommodations and housing)(N.H. Rev. Stat. Ann. §354-A:6, :7, :8, :10, :16, :17)(1997); Rhode Island (employment, public accommodations, housing and credit)(R.I. Gen. Laws, 1956, §§ 11-24-2; 28-5-7; 34-37-4; 34-37-4.3(1995)); Vermont (employment, public accommodations, education, housing and credit)(Ver. Stat. Ann., Title 3, § 961 (1987), § 963 (1991); Title 8, § 1211 (1995), § 1302 (1991); Title 9, § 4502 (1991), § 4503 (1991); Title 21 § 495 (1991)), and Wisconsin (employment, public accommodations, education, housing and credit)(Wisc. Stat. Ann. §

106.04 (1991); § 111.36 (1993)). The District of Columbia's Human Rights Act, 1997, D.C.L. 2-38, D.C. Code § 1-2541(c) (1977), prohibits all forms of discrimination as well. Maine's law was passed in 1997 but was repealed by public referendum in 1998.

8. New Jersey typifies the "nexus" test, requiring a clear relationship between a parent's homosexuality and harm to the child before custody will be denied to the parent on that basis. Other states, however, employ a "per se" rule, either requiring or permitting courts to presume that a parent is unfit because he or she falls into a certain class of persons; here, homosexuals. Karen Markey, Comment, *An Overview of the Legal Challenges Faced by Gay and Lesbian Parents: How Courts Treat the Growing Number of Gay Families*, 14 N.Y.L. Sch. J. Hum. Rts. 721 (Spring 1998). See, e.g., S.E.G. v. R.A.G., 735 S.W.2d 164 (Mo. Ct. App. 1987)(applying rigid per se rule).

9. Contrast: Bottoms v. Bottoms, 249 Va. 410, 457 S.E.2d 102, 108 (Va. S.Ct. 1995), holding that "living daily under conditions stemming from active lesbianism practiced in the home may impose a burden upon a child by reason of the 'social condemnation' attached to such an arrangement, which will inevitably afflict the child's relationships with its 'peers and community at large'", quoting Roe v. Roe, 228 Va.722, 728, 324 S.E.2d 691, 694 (1985).

10. Note, however, the restrictions imposed on the gay father's visitation rights: "During such periods of visitation the defendant shall ... not cohabit or sleep with any individual other than a lawful spouse, ... not take the children or allow them to be taken to 'The Firehouse,' [described as "a meeting hall for homosexuals"] , and ... not involve the children in any homosexual related activities or publicity, [and] not be in the presence of his [live-in] lover." 129 N.J. Super. at 498. The court said: "The lack of understanding and controversy which surrounds homosexuality, together with the immutable effects which are engendered by the parent-child relationship, demands that the court be most hesitant in allowing any unnecessary exposure of a child to an environment which may be deleterious." Id. at 497.

11. Note, however, that engaging in consensual sexual activity is not a right protected by the United States Constitution. In Bowers v. Hardwick, 474 U.S. 943 (1986), reh. den. 478 U.S. 1039 (1986), the United States Supreme Court upheld Georgia's criminal laws against sodomy, saying that the federal constitution does not confer upon homosexuals the right to engage in sodomy.

12. A significant fear of many gay people is that exposure of their sexual orientation will result in social stigmatization, loss of family and friends, and job and housing discrimination. Greater use of anonymous status in lawsuits -- where the facts warrant and the parties seek such status -- can offset these fears. It also avoids forcing gay people to choose between risking serious harms or avoiding the courts altogether. Robert G. Bagnall, Patrick C. Gallagher, and Joni L. Goldstein, Comment, *Burdens on Gay Litigants and Bias in the Court System: Homosexual Panic, Child Custody, and Anonymous Parties*, 19 Harv. C.R.-C.L. L. Rev. 497, 557-558 (1984).

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13. Other jurisdictions offer protection to public employees only, either by statute, ordinance or executive order. See, e.g., a May 1998 amendment to Executive Order 11478, pertaining to equal employment opportunities in the federal government; Colorado, Executive Order 90-13-98 (1990); Louisiana, Executive Order No. Ewe 92-7, Feb. 1992; New Mexico, Executive Order 85-15 (April 1985); New York State, Executive Order 28.1 (Nov. 1993); Ohio, Executive Order 83-64 (Dec. 1983); Pennsylvania, Executive Order No. 1988-1 (Jan. 1988); Washington State, executive order 85-09 (Dec. 1985); Cook County, Illinois, Human Rights Ordinance, March 1993; City of Atlanta, GA, City Charter, Ga. L. 1973, p. 2188, March 1986); among others.

14. See Alabama (Ala. Code 1975, §§ 13A-6-60(2); 13A-6-65(a)(3)); Arizona (Ariz. Rev. Stat. Ann. § 13-1411); Arkansas (Ark. Stat. Ann. § 5-14-122); Idaho (Id. Code § 18-6605); Kansas (Kan. Stat. Ann. § 21-3505(a)(1)); Louisiana (La. Stat. Ann., § 14:89); Massachusetts (Mass. Gen. Laws Ann. 272 § 34); Minnesota (Minn. Stat. Ann. § 609.293); Mississippi (Miss. Code 1972, § 97-29-59); Missouri (Vernon's Ann. Mo. Stat. § 566.090); North Carolina (N.C. Stat. § 14-177); Oklahoma (Okl. St. Ann. § 886); Texas (Vernon's Tex. Stats. and Codes Ann., Penal Code § 21.06); Utah (Utah Code Ann. 1953, § 76-5-403); Virginia (Va. Code 1950, § 18.2-361). Florida's sodomy statute was declared unconstitutional, Franklin v. State, 257 So.2d 21 (Fla. 1971), and subsequently repealed in 1973. However, conduct which had previously constituted a "crime against nature" could thereafter be deemed a violation of Fla. Stat. Ann. § 798.02, "lewd and lascivious behavior," a lesser-included offense. Zimmerman v. State, 320 So.2d 41 (Dist. Ct. of App., 2d Dist. 1975). In 1998, the Georgia Supreme Court declared that the portion of its state anti-sodomy statute pertaining to consensual acts between competent adults violated the Georgia state constitution. It held that the law, OCGA§16-6-2, as so applied, infringed upon the right to privacy guaranteed by the Georgia constitution. Powell v. State, 510 S.E.2d 18, 26 (Ga. Supreme Ct. 1998).

# SEXUAL ORIENTATION BIAS SURVEY



## To Survey Participants:

On behalf of the Supreme Court Task Force on Gay and Lesbian Issues ("Task Force"), we wish to thank you for your anticipated cooperation in completing this survey. You need not be gay or lesbian to complete the survey. Please do not fill out more than one survey. Your responses will remain the property of the Task Force and will be kept confidential.

The New Jersey Supreme Court formed the Task Force in June 1997 to examine the experiences of litigants, attorneys, judges, criminal defendants, and other participants in the judicial process to find out whether there is evidence suggesting bias or discrimination against lesbians and gay men. This survey was designed by the Task Force as a tool for ascertaining whether sexual orientation bias exists in the New Jersey judicial process and in the workplace for judicial employees. In a final report to the Supreme Court, the Task Force will compile the results of this survey and the testimony from public hearings, and will recommend a proposed Action Plan if evidence of bias and discrimination is uncovered.

As you fill out this survey, please keep in mind the following: (1) The term "sexual orientation bias" is used in the survey to include an array of conduct and/or treatment including, but not necessarily limited to, offensive gestures, disparaging remarks, inappropriate jokes, unequal treatment, unfavorable outcome, etc., as a result of a person's actual or perceived sexual orientation; (2) All responses pertain only to your experience and observations while in a New Jersey courthouse, during the course of litigation in a state or municipal matter within the last five years. This does not include Federal Courts, Worker's Compensation or Administrative Law Courts. By "during the course of litigation", we mean to include depositions, settlement and case management conferences, and any other interaction with lawyers and/or judges which occur within the litigation process; (3) Finally, as an employee of the Judiciary, your responses pertain to the workplace.

We invite you to supplement your answers on a separate sheet with details of your experiences or observations which you would like to share with the Task Force. We also welcome any transcripts or decisions relevant to this inquiry. If you wish to communicate further with the Task Force, you may do so in writing to: Jeffrey A. Newman, Chief, Reporting Services, P.O. Box 968, Trenton, NJ 08625.

Once again, thank you for your participation. All surveys must be completed and returned by August 15, 1998.

Hon. G. Thomas Bowen, J.S.C., Co-Chair

Elizabeth Zuckerman, Esq., Co-Chair

## MARKING INSTRUCTIONS

Proper Mark



Improper Marks



Use a No. 2 pencil or blue/black pen.

Darken the circle completely.

Erase cleanly any mark you wish to change.

Make no stray marks.



DO NOT MARK IN THIS AREA

11776

## BIOGRAPHICAL DATA

A 837 Male 1,575 Female  
 B 1,782 Heterosexual 118 Gay/Lesbian 17 Bisexual  
 C 267 Judge 351 Lawyer 1,586 Court Employee 19 Litigant 1 Witness 48 Other

	No	Yes	By a Judge	By a Lawyer	By Other Court Personnel	By Other
1. Have you ever experienced or observed litigants or witnesses being treated disadvantageously because they are or were perceived to be gay or lesbian? .....	2,319	205	62	70	123	82
2. Have you ever experienced or observed lawyers being treated disadvantageously because they are or were perceived to be gay or lesbian?.....	2,466	78	35	43	49	20
3. Have you ever experienced or observed lawyers being treated disadvantageously because they were representing a client who was, or was perceived to be, gay or lesbian? .....	2,457	79	39	37	48	21
4. Have you ever avoided or been advised to avoid using the judicial system because of your or your client's sexual orientation? .....	2,376	50	9	18	17	13
5. Have you ever observed offensive gestures or heard disparaging remarks, inappropriate jokes, or snickering about gays or lesbians? .....	1,461	997	136	297	453	512
					Yes No	No Experience
6. If you have been involved in arbitration, mediation, or an early settlement program, have you ever observed or experienced sexual orientation bias in such proceedings? .....				55	973	1,428
7. Do you believe sexual orientation bias affected the outcome of any case in which you were involved or which you observed? .....				148	1,384	951
8. In any instance in which you observed or were subjected to sexual orientation bias, did a judge, lawyer, or supervisor (if you are a court employee) take steps to correct, object to, or prevent the situation? ...				100	420	1,890
9. In family court matters, all other factors being equal, is it your experience that gay and lesbian litigants, or clients of gay and lesbian lawyers, tend to fare worse in decisions regarding:						

### CLIENTS OF GAY/LESBIAN LITIGANTS GAY/LESBIAN LAWYERS

	Yes	No	No Experience	Yes	No	No Experience
a. Domestic Violence .....	71	550	1,770	13	326	1,717
b. Custody .....	132	419	1,755	23	275	1,731
c. Parenting Time (Visitations) .....	89	437	1,776	20	274	1,736
d. Alimony .....	30	400	1,873	7	264	1,760
e. Child Support .....	36	475	1,781	8	297	1,725
f. Equitable Distribution .....	40	368	1,886	14	249	1,756
g. Adoptions .....	108	284	1,905	22	213	1,781
h. Termination of Parental Rights .....	58	314	1,923	17	232	1,770
i. Juvenile Court .....	32	429	1,834	8	277	1,729
j. Child Abuse/Neglect .....	36	327	1,875	8	254	1,743

10. In criminal matters, all other factors being equal, is it your experience that gay and lesbian defendants, or clients of gay and lesbian lawyers, tend to fare worse with regard to:

	GAY/LESBIAN DEFENDANTS			CLIENTS OF GAY/LESBIAN LAWYER		
	Yes	No	Experience	Yes	No	Experience
a. Criminal Charges .....	89	957	1,333	29	665	1,445
b. Trial. ....	67	926	1,378	23	647	1,458
c. Jury Instructions .....	21	690	1,650	8	491	1,627
d. Verdict .....	72	884	1,413	21	635	1,475
e. Probation. ....	41	922	1,404	17	635	1,477
f. Fines .....	34	1,001	1,330	16	676	1,436
g. Incarceration .....	51	956	1,353	17	663	1,450

	GAY/LESBIAN LITIGANTS			CLIENTS OF GAY/LESBIAN LAWYERS		
	Yes	No	Experience	Yes	No	Experience
11. In any other litigation, all other factors being equal, is it your experience that gay and lesbian litigants, or clients of gay and lesbian lawyers, tend to fare worse in the outcome? .....	105	1,051	1,235	37	798	1,301
12. In your experience, are gay and lesbian lawyers given fewer opportunities for receiving court appointments (such as guardianships, condemnations, guardians ad litem, etc.)? .....				51	564	1,854
13. In your experience, are gay and lesbian lawyers given fewer opportunities for appointments to Supreme Court Committees (such as Task Forces, District Ethics Committees, Disciplinary Review Boards, etc.)? ..	69	345	2,044			
14. If you have experienced or witnessed bias against gays and/or lesbians, did you report it? .....	68	352	2,077			
14a. If yes, to whom? 17 Judge 8 Lawyer 30 Supervisor 9 Disciplinary Agency 22 Other (specify) .....						
If no, why? .....						

	Yes	No	Experience
15. If you have reported instances of bias against gays and/or lesbians, were you satisfied with the results? .....	30	87	1,945
Why or why not? .....			

**QUESTIONS 16 - 22 TO BE ANSWERED ONLY BY EMPLOYEES OF THE COURT INCLUDING JUDGES. OTHERWISE PLEASE SKIP TO QUESTION 23.**

			By a	By a	By a
	No	Yes	Co-Worker	Supervisor	Judge
16. Have you ever heard a co-worker, supervisor, or judge make a derogatory statement or an inappropriate joke about homosexuals? .....	1,263	550	375	108	73
17. Have you ever heard a co-worker, supervisor, or judge make a derogatory statement or an inappropriate joke about someone in your office because that person is or was perceived to be lesbian or gay? .....	1,595	250	187	53	14
18. Have you ever heard a co-worker, supervisor, or judge criticize an employee or applicant for openly identifying her/himself as lesbian or gay? .....	1,821	45	27	11	5
19. Have you ever heard that a co-worker, supervisor, or judge was asked or advised by someone in their office to conceal his/her sexual orientation! ..	1,842	24	8	2	1

20. With respect to sexual orientation have you ever experienced or witnessed:

	Experienced	Witnessed
a. Discrimination in hiring .....	49	83
b. Discrimination in pay .....	76	50
c. Discrimination in work assignments .....	59	67
d. Discrimination in work evaluations .....	51	51
e. Discriminations in promotions and/or advancement at work .....	69	61
f. Verbal abuse or harassment .....	55	116
g. Exclusion from office social functions .....	27	62

QUESTIONS 21 - 22 TO BE ANSWERED ONLY BY JUDGES.  
OTHERWISE PLEASE SKIP TO QUESTION 23.

21. Have you ever been asked to conduct voir dire designed to elicit information from potential jurors about attitudes regarding sexual orientation? .....	Yes	No
22. If you answered yes to question 21, did you permit it? .....	21	530
Why or why not? .....	17	83

QUESTION 23 TO BE ANSWERED BY ALL SURVEY PARTICIPANTS.

23. Approximate the number of incidents of sexual orientation bias you have experienced or observed in the last five years.	Never	1-5	6-9	10+
a. By Judge .....	2,188	178	9	12
b. By Lawyer .....	2,056	245	36	25
c. By Arbitrator/Mediator .....	2,254	28	4	3
d. By Other Court Personnel .....	1,879	348	68	86
e. By Litigant .....	2,076	172	32	21
f. By Witness .....	2,117	144	24	19
g. By Other (specify title below) .....	1,739	96	15	46

If you answered yes to any of the questions in the survey please provide details below. Feel free to attach additional pages as needed:

Please complete the survey by August 15, 1998.

Send the survey and any additional material to:

Jeffrey A. Newman  
Task Force  
P.O. Box 968  
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*Thank you!*

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