



2008

## An Assessment of the Law School Climate for GLBT Students

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### Recommended Citation

Kelly Strader, Brietta R. Clark, Robin Ingli, M. E. Kransberger, Lawrence C. Levine & William Perez, *An Assessment of the Law School Climate for GLBT Students*, 58 J. LEGAL EDUC. 214 (2008).

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# An Assessment of the Law School Climate for GLBT Students

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Lawrence Levine, and William Perez

## Introduction

Recent nationwide empirical research has assessed the law school climate for gay, lesbian, bisexual, and transgender (GLBT) students. This research duplicates and expands on similar research undertaken ten years ago. The latest research shows that the climate for GLBT students at most law schools in the United States, particularly those in urban areas, has improved over the last decade. The research also shows, though, that this group still encounters substantial discrimination on law school campuses and in law school classrooms. This discrimination may result from overt acts, thoughtlessness, and/or neglect on the part of various actors in law school communities. Whatever the cause, the result is that many GLBT students feel disenfranchised from their broader law school communities. Nowhere is this result more telling than in stories of students who do not feel safe “coming out” on law school campuses and, in particular, in the stories of students who go back into the closet in law school. This article addresses the complex and sometimes subtle discrimination faced by GLBT students, and provides proposals for law schools to address this discrimination.

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The authors were members of the Law School Admission Council’s GLBT Issues Subcommittee for the years 2005-2007. We would like to thank Anne Brandt, James Leipold, James Vaseleck, and Gita Wilder for their invaluable assistance at various stages of the Subcommittee’s work. Also, thanks to Sheryl Bailey, Southwestern Law School Class of 2009, for her research assistance. The views expressed in this article are solely the authors’ views and do not represent the LSAC’s views.

The analysis here is based on two assumptions: that the presence of a diverse student body contributes to both the richness of the legal education experience and ultimately to the ability of the legal community to serve groups that have historically been subject to discrimination; and that the presence of GLBT students on law school campuses contributes substantially to these goals. To the extent that the legal profession itself now views diversity as encompassing sexual orientation (and perhaps sexual identity),<sup>1</sup> it is all the more important that law schools do the same.<sup>2</sup>

In Part I, we describe empirical research on which this article is based. Part II describes some interesting and important issues that arose during the course of that research. In Part III, we analyze the data about the law school and classroom climate for GLBT students. In Part IV, we draw conclusions from the data concerning institutional and administrative support for GLBT students. We conclude by providing a brief list of suggested “best practices” for law schools to follow when attempting to foster a supportive environment for GLBT students.

### I. The Research

The research presented here was undertaken by the Law School Admission Council (LSAC)<sup>3</sup> as part of the ongoing work of the LSAC’s standing GLBT Issues Subcommittee. It flows from work that the LSAC undertook over ten years ago under the auspices of the Subcommittee’s predecessor, the LSAC’s ad hoc Gay and Lesbian Issues Work Group,<sup>4</sup> which initiated two nationwide

1. We use the term “sexual orientation” to describe gay, lesbian, and bisexual persons. We use the term “sexual identity” to describe a person’s gender identity, including transgender persons. For a fuller discussion issues relating to transgender persons, see notes 57 & 83, *infra*.
2. In a significant trend, major law firms are increasingly including G and L status (and, more tentatively, B and T status) in their diversity hiring efforts. See Leigh Jones, *Gay Attorneys Gain Ground at Large Firms*, N.Y.L.J., Mar. 30, 2007, at 19-20 (reporting increasing numbers of openly gay and lesbian attorneys in major firms and concluding that “[t]he uptick in the totals of gay or lesbian attorneys reported and in the number of firms providing the information, at least in part, comes from a push by law firms to diversify”). See also Henry Weinstein, *Big L.A. Firms Score Low on Diversity Survey*, L.A. Times, Oct. 11, 2007, at B3 (survey of diversity among partners and associates in large firms included sex, race, and sexual orientation).
3. The LSAC is a non-profit corporation that coordinates, facilitates, and enhances the law school admission process for some 200 member schools in the United States and Canada. Among other activities, the LSAC administers the Law School Admission Test, and regularly conducts research to assist law schools in their recruiting and admissions activities. See <<http://www.lsac.org/LSAC.asp?url=lsac/about-lsac.asp>> (last visited Sept. 5, 2008).
4. In 1996, during Leigh Taylor’s tenure as LSAC Chair, the LSAC established the ad hoc Gay and Lesbian Issues Work Group. As the Work Group later reported, “[a]mong its purposes was to explore ways in which LSAC could address some of the concerns specific to GLB applicants, and to assist law schools in understanding those concerns and developing responses.” Janice L. Austin, et al., *Results From A Survey: Gay, Lesbian, and Bisexual Students’ Attitudes About Law School*, 48 J. Legal Educ. 157 (1998). The ad hoc Work

surveys designed to capture students' perceptions of the law school experience.<sup>5</sup> Over the last several years, the Subcommittee has again undertaken the task of capturing the experiences of GLBT law school applicants and students.

Although intended largely to replicate the earlier surveys, the later research, consisting of three parts, was more comprehensive. First, at the Subcommittee's initiative, the LSAC undertook a survey of the law school climate for GLBT students (the "Climate Survey").<sup>6</sup> The Climate Survey asked all students in designated first-year classes to identify themselves by a number of categories, including ethnicity, sex, political beliefs, age, sexual orientation, and sexual identity, and surveyed those students' law school experiences.<sup>7</sup> Second, the Subcommittee initiated a national survey specifically directed to GLBT law students (the "GLBT Law Student Survey").<sup>8</sup> Third, the Subcommittee members determined

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Group was later transformed into the standing GLBT Issues Subcommittee. The creation of the GLBT Issues Subcommittee raised two interesting points. First, the Subcommittee was placed under the jurisdiction of the Services and Programs Committee rather than the Minority Affairs Committee. See note 18 *infra*. Second, transgender persons were explicitly included for the first time in the LSAC's diversity efforts.

5. One survey was directed to GLBT law student organizations and another to individual GLBT law students. The Work Group received responses from 41 student organizations, and from 313 students at 93 different law schools. The Work Group published the survey results and provided conclusions and recommendations concerning the conduct of the admission process, the fostering of a comfortable law school climate, and the establishment of effective GLBT student organizations. See Austin, et al., Results From a Survey, *supra* note 4, at 158.
6. The LSAC published the survey results in a report entitled "The Climate in Law Schools for GLBT Persons: Results from a Survey of Law Students." The Climate Survey is available at <<http://www.lsanet.org/publications/GLBT-Climate-Survey.pdf>> (last visited Sept. 12, 2008). The Climate Survey was administered to students at a sample of U.S. law schools selected to represent the national range of law schools in term of geographic location, size, public/private governance, degree of selectivity, and minority enrollment. A total of 3,205 first-year, second-semester students from 37 law schools completed the survey. Although undertaken pursuant to the Subcommittee's initiative, this project was developed and approved under the auspices of the LSAC's Test Development and Research Committee.
7. The sample of those who identified as members of the GLBT population was not well distributed among the thirty-seven schools. Three of the thirty-seven participating law schools had no openly GLBT students, and the number of openly GLBT students varied widely among the remaining schools. This disparity should not be surprising given the difficulties that rural law schools, particularly in the South and Midwest, have recruiting openly GLBT law students. See Steve Weinstein, Raising the Bar: Law Schools in the Heartland Struggle to Recruit GLBT Students, *The Advocate*, May 22, 2007, at Comment 14.
8. Unlike the Climate Survey, the GLBT Law Student Survey was specifically targeted to openly GLBT students. The latter was distributed through GLBT student organizations at schools that had such organizations, and through admissions offices at schools without GLBT student organizations. In addition to the numerical summaries, the survey includes hundreds of narrative responses. A total of 302 students from 79 different law schools responded. Once again, the GLBT students were not evenly distributed geographically; in particular, few students from law schools located in the

that narrative responses to a series of questions posed during personal discussions would add considerably to our portrait of the GLBT law school experience. To that end, the Subcommittee members held small focus group discussions with members of eleven GLBT student groups across the country (“Focus Groups”).<sup>9</sup>

We were also able to take advantage of two broader LSAC data collection efforts. First, the LSAC undertook a demographic survey of law school applicants (the “Applicant Survey”).<sup>10</sup> As part of the survey, respondents were asked whether they anticipated suffering discrimination in the application process, in law school, and in the search for a job after law school. The listed grounds of possible expected discrimination were gender, race/ethnicity, and sexual orientation.<sup>11</sup> Second, the LSAC regularly collects demographic data as part of its Candidate Referral Service (CRS).<sup>12</sup> We refer to those additional sources of data below.

## II. Identifying the GLBT Student Population

### *Possible Barriers to Accurate Reporting*

The challenges of identifying and surveying GLBT law school applicants and students are important and instructive. Duplicating the 1997 survey results, our most recent research found that between 4 and 5 percent of all law students are “out” GLBT students. For two reasons, however, we cannot be entirely confident that this figure accurately represents the percentage of law students who identify as GLBT.

First, members of this group are often closeted and therefore are largely invisible on law school campuses. General societal pressures may keep GLBT people in the closet. Second, GLBT law students may hesitate to self-identify because of fears of discrimination on law school campuses and in legal employment. To overcome fears of discriminatory impact

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South responded to the survey. Copies of the GLBT Law Student Survey, including the narrative responses, may be obtained from the LSAC at (215) 968-1101.

9. Although Subcommittee members visited schools on the east coast, in the mid-west, and on the west coast, this sample does not represent a cross section of U.S. law schools. Nonetheless, the discussions proved very helpful for members of the Subcommittee by putting a personal face on many of the issues we were studying.
10. In the Applicant Survey, the LSAC surveyed 10,000 law school applicants who applied to enter in the fall of 2005. The LSAC later surveyed a subset of 1,567 of the initial respondents who were accepted by at least two law schools. The surveys were designed to ascertain the principal factors that applicants relied upon when deciding where to apply and where to enroll. A copy of the Applicant Survey may be obtained from the LSAC at (215) 968-1101.
11. Applicant Survey, *id.* at 90.
12. Prospective students are allowed to opt in to the CRS, which collects names and demographic data that is made available to law schools in reaching out to particular subsets of the national pool of potential applicants. The CRS option is available to all who are interested in the law school admission process, and it draws upon a larger pool of people than those who ultimately either take the LSAT or apply to law school in that year.

from self-identification, we used the two anonymous survey formats, one administered to the general first-year student population and one to members of GLBT student groups.<sup>13</sup> Despite the anonymous format, the possibility of underreporting remains.

In addition, many students apparently did not self-identify as GLB and/or T because of a general reluctance to be categorized, itself an interesting and potentially significant finding. This reluctance may be part of a larger trend among younger people, who express a reluctance to be labeled.<sup>14</sup> A number of respondents to the GLBT Law Student Survey explicitly stated that they did not want to be “pigeonholed” (their word) as GLBT.<sup>15</sup> Some GLBT applicants and students probably declined to self-identify not because they are afraid to come out but because they simply do not want to be labeled.

### *Multiple Identities*

Many GLBT students do not view their exclusive or even primary identities as revolving around their sexual orientation or identity. Few of our respondents self-identified as “only” GLBT; the majority described themselves as having multiple identities. This finding indicates that, as law

13. The LSAC does not ask applicants to identify GLBT status when registering with the Law School Data Assembly Service (LSDAS), a service that the LSAC provides that assembles undergraduate academic records and helps simplify the admission process. The LSDAS does, however, ask applicants to identify by gender and ethnicity. See <<http://www.lzac.org/LSAC.asp?url=/lsac/lscdas-general-information.asp>> (last visited Sept. 18, 2008). Soliciting information relating to GLBT status on the LSDAS registration form could both prove very helpful to the Subcommittee’s research efforts and assist law schools in building diverse student bodies by providing a ready means of identifying GLBT applicants. One former negative repercussion to self-identification could theoretically have occurred in bar admissions in those states that criminalized same-sex sodomy. This no longer remains a valid consideration in light of the United States Supreme Court’s decision in *Lawrence v. Texas*, 539 U.S. 558 (2003), overturning *Bowers v. Hardwick*, 478 U.S. 186, 196 (1986), and holding that sodomy laws violate the right to privacy under the Due Process Clause. Nonetheless, only twenty states currently have laws that prohibit employment discrimination based on sexual orientation and only twelve have laws that prohibit employment discrimination based on gender identity. See Human Rights Campaign, *Statewide Employment Laws and Policies*, updated Aug. 1, 2007, available at <[http://www.hrc.org/documents/Employment\\_Laws\\_with\\_legislation.pdf](http://www.hrc.org/documents/Employment_Laws_with_legislation.pdf)> (last visited Sept. 12, 2008). In any event, however, student admissions files are confidential and are not available to employers.
14. See John Cloud, *The Battle Over Gay Teens: What Happens When You Come Out as a Kid? How Gay Youths Are Challenging the Right—And the Left*, *Time*, Oct. 10, 2005, at 42 *et seq.* (describing trend among gay youth to refuse to be defined by their sexual orientation and concluding that many young people are moving to a “post-gay” identity); Gregory Rodriguez, *Gay—The New Straight*, *L.A. Times*, Nov. 5, 2007, at A17 (describing recent research showing that, as GLBT people become more integrated into broader society, sexual orientation does not play the central role in self-identity that it once did).
15. See, e.g., GLBT Law Student Survey, *supra* note 8, at 4, 6, 7 (“my own desire [is] not to be pigeonholed as the ‘gay’ guy;” “[I] don’t want to be pigeonholed. Not in law school to be a GLBT activist.” “[I] don’t want to be pigeonholed as the ‘Lesbo Poster Child; ‘[I’m] uncomfortable allowing people to label me as ‘the gay guy.’”).

schools reach out to GLBT persons, they are also reaching out to people of color, people who represent socioeconomic diversity, and people who are older than most applicants and students.

The research tells the story. For example, 21.4 percent of GLBT respondents in the Climate Survey identified as GLBT persons of color.<sup>16</sup> The GLBT Law Student Survey yielded a similar result. In response to the question, “With what racial/ethnic group(s) do you identify,” the GLBT students answered as follows:<sup>17</sup>

	Responses	Percent
Aboriginal Indian/American Indian/Alaskan Native	5	1.7%
Asian/Asian American/Pacific Islander	21	7.3%
Black/African American (not of Hispanic origin)	13	4.5%
Latino(a)/Chicano(a)/Puerto Rican/or other Hispanic	25	8.7%
White/Caucasian (not of Hispanic origin)	218	76.1%
Other	5	1.7%
Total Responses	287	100.0%

Thus, we have an emerging and *more visible* group of students: those students who report that their identities include components of race, membership in communities of faith, “nontraditional” age, socioeconomic disadvantage, foreign national status, and politically liberal and conservative ideologies.

In this regard, we note that there is still something of a disconnect between GLBT groups and racial/ethnic minority groups in the legal academy. GLBT groups have struggled, with mixed degrees of success to be included within discussions of “diversity.” Not surprisingly, the conversations on this issue reflect the complexities of the intersection of race and sexual orientation in our society in general.<sup>18</sup>

Finally, some students felt that their multiple identities created difficulties for them and made it hard to fit in. For example, in Focus Group discussions, conservative and religious GLBT students reported that they were sometimes received suspiciously by all concerned. Similarly, bisexual students reported feeling uncomfortable at times in both straight and gay environments.

16. Climate Survey, *supra* note 6, at 2.

17. GLBT Law Student Survey, *supra* note 8, at 48. In a similar result, the Climate Survey reported that 21 percent of openly GLBT students were members of racial/ethnic minority groups, *supra* note 6, at 3.

18. As noted above, *supra* note 4, the GLBT Issues Subcommittee is a subcommittee of the LSAC Services and Programs Committee, not of the Minority Affairs Committee. The latter might seem to be a more natural fit for the Subcommittee, the principal purpose of which is to help foster diversity within law schools and the legal community.



### III. The Law School and Classroom Climates for GLBT Students

Our research allows us to draw some important conclusions concerning the law school and classroom climates for GLBT students. Overall, GLBT law students, at least in law schools located in urban areas, seem more comfortable in their educational environments than in the 1997 survey. Many respondents to the GLBT Law Student Survey from some schools, however, did express some substantial degree of discomfort in being openly GLBT and/or in expressing topics of concern to the GLBT community in class. These concerns were particularly apparent among students in law schools in rural areas and parts of the South.

#### *The Law School Climate*

The research examined actual and expected discrimination of both law school applicants and law students, with conflicting results. Still, the research indicates that law schools can do a great deal to improve the comfort level of both applicants and students.

The Applicant Survey examined discrimination based on minority status, including GLBT status, that applicants expected to face during the application process, law school, and the job search after law school. A total of 2 percent of the GLBT respondents said that they expected discrimination in the application process because of their GLBT status, with the highest positive response rate (at 4 percent) for GLBT Hispanics.<sup>19</sup> The same percentage of GLBT respondents expected discrimination during law school, with the highest positive response rate (at 4 percent) for GLBT African-Americans.<sup>20</sup> Finally, 3 percent of GLBT respondents expected discrimination during the job search, with GLBT African-Americans and Hispanics giving the highest positive responses at 6 and 5 percent, respectively.<sup>21</sup> It should not be surprising that GLBT people of color anticipated the most discrimination.

Correspondingly, many GLBT law students perceive that the environment in law schools and in the legal profession is essentially conservative and

19. Applicant Survey, *supra* note 10, at 90. Of course, this number does not reflect the number of GLBT applicants because many applicants were not out on their applications. In the GLBT Law Student Survey, nearly one-third stated that they were not out on any applications, 14 percent stated that they were out on some applications, and 53 percent stated that they were out on all their applications. GLBT Law Student Survey, *supra* note 8, at 16. Because this survey only reached openly GLBT law students who were members of GLBT student groups or, at schools with no GLBT student groups, who were out to admission personnel, it overstates the number of GLBT applicants who were out on their applications. In addition, the GLBT Law Student Survey narrative responses revealed widespread disagreement about whether GLBT status should be relevant to a student's application. Nearly 40 percent said that GLBT issues were not important to them in the application process. *Id.* at 40.
20. *Id.* Of the total pool, 7 percent stated that they expected discrimination in law school based upon gender and an equal percentage stated that they expected discrimination based on race/ethnicity. *Id.* at 62.
21. *Id.* In the GLBT Law Student Survey, 77 percent said they planned to be out during the job search, and 23 percent said that they did not. *Id.* at 44.

unwelcoming. For example, in the GLBT Law Student Survey, a significant number of students reported going at least partially back into the closet upon entering law school.<sup>22</sup>

The tendency to revert to the closet may increase as students graduate from law school and look for jobs. While the Climate Survey reported that nearly 4 percent of first-year law students are openly GLBT, one survey reported that only about 2 percent of the lawyers at the country's 250 largest law firms are openly gay or lesbian.<sup>23</sup> The latter percentage may reflect GLBT graduates' decisions not to apply to large firms, or those firms' decisions not to hire openly GLBT applicants. The small percentage of openly GLBT attorneys may reflect an underreporting of GLBT attorneys, many of whom are at least sufficiently closeted at those firms that their sexual orientation is not known to firm management. The latter conclusion would comport with the discomfort that many GLBT students expressed with being in the job application process.<sup>24</sup>

The Climate Survey confirmed that law school environments are not uniformly hospitable or welcoming for GLBT people.<sup>25</sup> Nearly a quarter of GLBT respondents to the study reported that they had witnessed or experienced discrimination in law school because of their sexual orientation or identity.<sup>26</sup>

The GLBT Law Student Survey and Focus Groups provide a much richer picture. One of the goals of the GLBT Law Student Survey was to assess the amount and nature of homophobia experienced by students at some schools. Students were first asked, "Have you experienced harassment in your law school based on your sexual orientation?" The results: 86.9 percent responded "No," while about 13 percent responded "Yes."<sup>27</sup>

The number reporting harassment is low compared to what emerges in the survey's narrative section, where students were asked to describe homophobic

22. In the survey, 74 percent of respondents were generally out before entering law school, but only 65 percent were generally out in law school. GLBT Law Student Survey, *supra* note 8, questions two and three. Because this survey was principally administered to people who were at least sufficiently out to be members of the GLBT student organization, it surely overstates the percentage of GLBT law students who are out in law school. That is, the survey did not capture the many students who are so closeted in law school that they do not reach out to the GLBT organizations.

23. See Jones, *Gay Attorneys Gain Ground*, *supra* note 2. A survey conducted by the National Law Journal in 2007 showed that 1.9 percent of the attorneys at the 250 largest firms are openly gay or lesbian, up from 1.7 percent in 2005. *Id.* at 20. Because the data was gathered from a survey completed by the firms rather than by individual attorneys, it only captures openly gay or lesbian attorneys whose sexual orientation was known to the firms.

24. See Weinstein, *Raising the Bar*, *supra* note 7, at Comment 14.

25. Climate Survey, *supra* note 6, at 9.

26. *Id.*

27. See GLBT Law Student Survey, *supra* note 8, at 11.

experiences at the law school. Some of the more common examples of such experiences include:

- Epithets directed at students and faculty believed to be GLBT.
- Defacing posters advertising GLBT events.
- Disparaging comments and posting epithets on community bulletin boards or sent via the law school e-mail system.
- Disparaging remarks and scoffing when GLBT issues are raised inside and outside of class.
- Professors showing disdain for the GLBT community and referring to the “Gay Agenda” in class.
- Isolating and freezing-out of students believed to be GLBT in social, class, and student governance settings; avoidance of GLBT-sponsored events.
- Students and faculty using the term “gay” in a pejorative manner.
- Joking in class when GLBT-related cases, such as *Bowers*, *Romer*, or *Lawrence*, are discussed.<sup>28</sup>

Relatively few students reported being the actual target of such attacks or discrimination. The students distinguished direct personal attacks from attacks they felt targeted GLBT people in general and from homophobic actions or comments made by those who did not realize that a GLBT student was present. This distinction might explain why only 13 percent of respondents stated that they had experienced homophobia; the question was phrased in a way that could be interpreted to be asking narrowly whether the student was personally the target of homophobia.<sup>29</sup> In the narrative portion, however, students clearly felt free to provide direct and indirect examples of observed homophobia.<sup>30</sup>

28. See *id.* at 11-16. These are three of the leading United States Supreme Court cases relating to GLBT rights. See *Bowers v. Hardwick*, 478 U.S. 186 (1986) (holding a Georgia sodomy law constitutional because a right to privacy did not include consensual same-sex sodomy); *Romer v. Evans*, 517 U.S. 620 (1996) (holding a Colorado state constitutional amendment preventing any legislative, judicial, or executive action to protect citizens against discrimination on the basis of sexual orientation unconstitutional because it violated the Equal Protection Clause); *Lawrence v. Texas*, 539 U.S. 558 (2003) (holding a Texas same-sex anti-sodomy law unconstitutional because it violated the Due Process Clause, overruling *Bowers*).

29. The exact question was: “Have you experienced *harassment* in your law school based on your sexual orientation?”

30. It should also be emphasized that because this survey was directed to GLBT student organizations, the pool of respondents is slightly skewed in favor of schools that at least have visible GLBT organizations already and thus in theory should be experiencing far less discrimination than students at schools that do not even have such organizations yet.

*Course Offerings*

The surveys show that there are two important classroom-related indicators of the law school climate for GLBT students. Students focus on the extent to which GLBT issues are meaningfully represented in course offerings and substance, and they emphasize the classroom climate for discussion of GLBT issues.<sup>31</sup> Many survey respondents recommended that GLBT applicants determine whether a law school regularly offers a course in sexual orientation. Current students also recommended that applicants should talk to current GLBT students to get an honest assessment of the climate for GLBT students. In Focus Group interviews, students also reported researching GLBT course offerings and faculty scholarship on GLBT-related issues as ways of determining a school's commitment to GLBT persons and issues.

In the GLBT Law Student Survey, over half (60.7 percent) reported that their law schools have courses on law and sexuality or some other course in which a primary focus is GLBT legal issues. A significant number report having no such course.<sup>32</sup> Some students complained about a lack of faculty or administrative support for such courses. Some viewed this lack of support as linked to a lack of commitment to hiring "out" faculty, who the students perceive as more likely to create and consistently teach GLBT-specific courses. While students value such courses when they are offered consistently, students expressed frustration when, upon enrollment, they discovered that the course was offered rarely or had been eliminated because the sole "out" faculty member had left. The students felt that sporadic course offerings and lack of visible GLBT faculty evidenced a lack of commitment to GLBT persons and issues.<sup>33</sup>

Another important factor for GLBT students is the extent to which GLBT legal issues are covered in non-GLBT specific courses. Inclusion of such issues is important for several reasons: (1) it serves an important expressive value because it signals the integration and value of GLBT perspectives by all faculty; (2) it helps validate GLBT experiences and makes GLBT persons visible in the classroom and larger community; and (3) it is relevant to the professional goals of many GLBT students who came to law school to advocate in this area.<sup>34</sup>

According to the GLBT Law Student Survey, the extent to which GLBT legal issues are integrated into the rest of the curriculum (bar and non-bar

31. GLBT Law Student Survey, *supra* note 8, at 4-16.

32. *Id.* at 3.

33. *Id.* at 31-39.

34. For an enlightened discussion of this topic with respect to substantive criminal law courses in particular, see Henry F. Fradella, Integrating the Study of Sexuality into the Core Law School Curriculum: Suggestions for Substantive Criminal Law Courses, 57 J. Legal Educ. 60, 62 (2007). Professor Fradella concludes that failure to integrate GLBT issues into the broader law school curriculum "contribute[s] to the isolation and invisibility of GLBT law students."

subjects) varies widely. Not surprisingly, over half (55.1 percent) reported that GLBT-specific issues were addressed in Constitutional Law and Family Law courses. The next highest numbers were relatively low, with 32.6 percent in Criminal Law, 26.9 percent Employment Law, and 26.3 percent in Property Law.<sup>35</sup> Some students noted that such issues were raised in Trusts and Estates, Torts, and Contracts, but significantly more reported that GLBT issues were not addressed at all or that they were unaware of whether the issues were addressed. Some were surprised that GLBT issues were not even brought up in classes where they seem most likely to appear, such as Constitutional Law, Family Law, Trusts and Estates, and Employment Law.<sup>36</sup> Finally, some students noted that GLBT-related issues had been raised in a number of courses not listed in the survey question, including Civil Procedure, Evidence, Civil Rights, Immigration, Conflict of Laws, Legal Writing, Law and Political Economy, Jurisprudence, Law and Violence, Adoption Law, and Children and the Law, and Statutory Interpretation.<sup>37</sup>

Despite the apparent increase in coverage, there were still many students who expressed frustration either with the failure to address GLBT issues or with the manner in which such issues were addressed. A few students commented that some teachers seemed hostile to considering GLBT issues, while in other cases they felt that the teacher was apathetic.<sup>38</sup> Some professors assigned GLBT-related cases or statutes only when the assigned casebook did. Students appreciated professors who raised GLBT issues that were not necessarily part of the assigned materials, but where there could be significant implications for GLBT persons. One student gave the example of a Torts professor who, when discussing the legal doctrine that allows recovery for loss of consortium, mentioned the implications for same-sex partners. Students also appreciated professors introducing state and local legislation specifically addressing GLBT issues.

One important limitation of the Climate Survey instrument was the grouping together of gay, lesbian, bisexual, and transgender issues. This grouping obscured the different progress made in coverage of legal issues affecting gay men and lesbians as opposed to transgender individuals. For example, when students described coverage of GLBT issues, they almost exclusively gave examples of legal issues affecting same sex couples and discrimination on the basis of sexual orientation. The Focus Groups confirmed that legal issues affecting gay men and lesbians get much more coverage than legal issues specific to transgender individuals. The only example of a transgender-related legal issue given involved a 1984 case of employment discrimination against a transsexual woman. A few students expressed the

35. GLBT Law Student Survey, *supra* note 8 at 2.

36. The least number of students identified Tax as a class in which these issues were addressed, though this could be due in part to the low number of students who had taken the course.

37. GLBT Law Student Survey, *supra* note 8, at 2-3.

38. *Id.* at 3-11.

desire for more comprehensive and updated coverage of transgender legal issues across the curriculum.

No notable distinctions were made between bisexual individuals and other groups with respect to course coverage.<sup>39</sup> From the lack of written comments distinguishing concerns of bisexual individuals and students' responses in Focus Groups, it seems that students explicitly or implicitly assume that legal issues affecting bisexual individuals largely arise from the discrimination directed toward gay men and lesbians and thus are synonymous with the legal problems facing these groups.

### *Classroom Climate*

While students value coverage of GLBT issues in their courses, the manner in which professors introduce and manage student discussion of GLBT issues also significantly influences the classroom climate for GLBT students. To assess classroom climate, students were asked whether they felt comfortable discussing GLBT issues in the classroom and were invited to share examples of their positive and negative experiences.

The good news is that students generally have become more comfortable discussing GLBT issues in the classroom over the last ten years. In the GLBT Law Student Survey, 43.8 percent of the 301 respondents said they were very comfortable discussing GLBT issues in class and 28.9 percent said they were somewhat comfortable. A minority expressed some hesitation; 14.6 percent said they were comfortable in some cases, but not others and 11 percent said somewhat uncomfortable. Only 1.7 percent reported being very uncomfortable.<sup>40</sup> This is a significant improvement over the data from the 1998 Survey of Gay, Lesbian, and Bisexual Students' Attitudes About Law School, in which only 23 percent answered "very comfortable," 31 percent said "somewhat comfortable," and 45 percent said "somewhat uncomfortable."<sup>41</sup>

Although a few students said they felt comfortable in class regardless of the attitudes of the other students or the professor, the majority of comments revealed that students' comfort in the classroom is influenced by a number of factors, one of the most important of which seems to be the treatment by students and professors of GLBT issues in class. A number of students complained about offensive terminology used or derogatory jokes made by other students in class and the failure of professors to respond in a timely and

39. There were a few places in the written comments of the GLBT Law Student Survey and in Focus Groups where students clearly identified as bisexual and expressed frustration with the collapsing of the bisexual with gay and lesbian categories. However, no legal issues or concerns unique to bisexual individuals were raised. The main problem identified seemed to be that collapsing these categories facilitated the intolerance some bisexual students experienced from other members of the GLBT student groups.

40. GLBT Law Student Survey, *supra* note 8, at 2.

41. Austin, et al., Results from a Survey, *supra* note 4, at 164.



appropriate manner. Fewer students reported that professors made offensive remarks or jokes.<sup>42</sup>

Interestingly, a number of students made a point of distinguishing offensive stereotyping or joking about GLBT persons from differences of opinions on GLBT issues expressed in a respectful and open manner. The students felt more comfortable when students aired their divergent opinions in class, so long as they did so respectfully. Some GLBT students reported being affirmatively grateful that students who hold contrary views were willing to express those views. The students felt this gave GLBT students a chance to have a more informed and respectful dialogue that might change other students' minds about these issues and preempt offensive and derogatory remarks outside of class.<sup>43</sup>

Correspondingly, students who perceived their professors as open to GLBT issues felt comfortable discussing those issues in class. Students gauged a professor's openness in a number of ways. Faculty who were proactive in raising GLBT issues and facilitating discussion in class, used gay or lesbian figures in exams or class hypotheticals, or who had written on GLBT issues or had a record of service to GLBT persons were perceived as open.<sup>44</sup>

Students reported being uncomfortable where professors were silent on GLBT issues or seemed uncertain how to respond when they were raised. A number complained about professors who did not cover GLBT issues or only treated them as side issues. Students did not feel comfortable raising GLBT issues because they did not want to risk being labeled and then alienated if the professor was homophobic.<sup>45</sup> Some students wanted professors to be more proactive on GLBT issues to help counter what was described as a pervasive heterosexual viewpoint that either ignored or devalued GLBT issues. One of the most telling parts of the survey was the question "Do classmates and professors look to you to represent the GLBT perspective?" Out of 290 responses, 74.8 percent said "No," while only 25.2 percent said "Yes."<sup>46</sup>

Once again, the grouping of GLBT issues obscures the lack of progress made in the climate for discussing transgender issues as compared to gay and lesbian issues. First, it seems that transgender students still are largely invisible in most law schools. Almost all of the respondents seemed to either self-identify as gay or lesbian and raise issues specific to these populations. Only a few mentioned transgender students or issues.<sup>47</sup>

While there are examples of overt hostility toward transgender persons, much of the problem of their invisibility in the classroom is probably due to a

42. GLBT Law Student Survey, *supra* note 8, at 3-16.

43. *Id.* at 3-11.

44. *Id.*

45. *Id.*

46. *Id.* at 2.

47. *Id.* at 48 (only 1.7 percent of respondents identified as transgender).

lack of exposure and discomfort with addressing these issues. Until transgender persons began to be included in the “GLB” groups some years ago, many of us were quite uninformed about the social and legal problems transgender groups face, and many GLB and non-GLB people still are uninformed.

Fear of mishandling such a sensitive and complex issue is another reason that some faculty members do not raise such issues in class. Many of us are still uninformed about the subtleties of different groups included under the transgender umbrella and the proper terminology and definitions of these groups. Moreover, a thoughtful and informed discussion about transgender issues raises complex definitions of sexuality that society in general is still reluctant to acknowledge.

In one of the few examples given where transgender issues were raised, the student described frustration with how the discussion proceeded. One of her professors assigned the 1984 case *Ulane v. Eastern Airlines, Inc.*, an employment discrimination case brought by a woman who was fired because she was transsexual.<sup>48</sup> The student described her fellow students and professors as being quite progressive and thoughtful on GLB issues. While the professor was respectful in presenting the material, many students began snickering and making jokes throughout the discussion. Despite the professor’s good intentions, the student felt there was a fundamental misunderstanding of the underlying sexuality issues presented and was disappointed that the professor did not quickly and directly respond to the offensive remarks and jokes.

It is clear that we still have a long way to go to create a safe and open classroom climate for transgender individuals and issues. While this is a new and complex area for many professors and students, avoiding it only encourages the invisibility of these issues in legal education and allows bias and discriminatory assumptions to go unchecked. As described in the “best practices” section below, there are good resources to help faculty understand where transgender issues arise in bar and non-bar subjects and to help them sensitively and intelligently manage discussions around these issues.

Overall, then, there is an important connection between the classroom climate and the climate of the larger law school community. What happens in one has a direct impact on the other. For example, many students cited an overall lack of commitment to GLBT students by administrators and pervasive heterosexual bias on campus as contributing to their discomfort discussing GLBT issues in class. Some who felt uncomfortable said they perceived homophobia by the student body in general and feared alienation by colleagues if they raised GLBT issues. A few noted that their schools’ religious ties made them uncomfortable. On the other hand, many students who were comfortable noted a general GLBT-friendly environment as evidenced by the number of “out” administrators and faculty and visibility of GLBT organizations and activities.<sup>49</sup>

48. 742 F.2d 1081 (7th Cir. 1984).

49. GLBT Law Student Survey, *supra* note 8, at 3-11.



Correspondingly, what happens in the classroom also affects the law school climate. The tone professors set in class helps establish a code of conduct outside of class by giving students a safe forum and teaching them how to discuss these issues respectfully. If GLBT persons or issues are ignored in class or offensive remarks are not appropriately addressed, there can be spillover outside of the class. In the example given above of students making inappropriate remarks about the transsexual plaintiff, the jokes continued outside of class.<sup>50</sup>

In sum, law school faculty, staff, and administrators who have a stated commitment to GLBT diversity should make sure that these goals are being realized through their course offerings and through the scope and quality of coverage of GLBT legal issues in the classroom.

#### *GLBT Student Organizations and Activities*

Our research shows that GLBT students continue to experience overt and subtle forms of homophobia in law school, creating an unwelcoming environment for GLBT students. GLBT student organizations can help ameliorate these effects. The environment not only contributes to a feeling of social isolation; many students also fear negative ramifications for their employability and relationships with professors. As a result, even students who are “out” in other parts of their lives decide to go back in the closet when they come to law school.<sup>51</sup> The organizations can increase GLBT visibility and create a safe place for GLBT students to be themselves. This is important both for students’ social connection to the larger community, as well as for their ability to network professionally to find a GLBT-friendly employer. Student organizations are also instrumental in informing the law school and broader community about GLBT legal issues otherwise absent from mainstream legal discourse. Finally, student organizations can serve as a catalyst for change by mobilizing students and faculty to advocate for consistent GLBT course offerings, hiring of GLBT faculty, and the development of GLBT-specific career programming. Data from the GLBT Law Student Survey and Focus Groups confirm the importance of GLBT student organizations for all of these reasons.<sup>52</sup>

The existence of a GLBT student organization on campus is an important criterion for assessing the law school climate for GLBT students. In the comments section of the GLBT Law Student Survey, many students recommend that GLBT applicants research whether a law school has a GLBT student organization and talk to current GLBT students to determine how visible and active the organization is on campus.<sup>53</sup> In Focus Group interviews, students

50. For Halloween, one student even came to school “dressed up” as the plaintiff in the case.

51. See GLBT Law Student Survey, *supra* note 8, at 11-16.

52. GLBT Law Student Survey, *supra* note 8, at 24-30 (students’ advice to GLBT applicants), 31-39 (students’ reasons for why they would or would not recommend their law school to GLBT applicants).

53. See *id.* at 24-30.

reported checking admissions materials and school websites and reaching out to existing GLBT student leaders for this information.

While the existence of GLBT student organizations is important, student comments reveal that this does not always translate into a GLBT-friendly climate. While 93.7 percent of students in the GLBT Law Student Survey reported a GLBT student organization at their school and 91.7 percent of those reported membership in that organization, only 66.4 percent reported that they would be “very likely” to recommend their school to other GLBT students.<sup>54</sup> A significant number (30.3 percent) said they would be only “somewhat likely” to recommend their school.<sup>55</sup>

Many of the written comments explaining why someone would or would not recommend a particular school were based on the size, strength, and visibility of the GLBT student organization. Some examples of students’ comments in support of their school include:

- “There is a strong student GLBT group that is very socially and politically active.”
- “It is an open atmosphere and some faculty belong to our GLBT group.”
- “My school has an active GLBT student organization. Several faculty members who are out [among] their peers and their students have hosted a Law and Sexuality Conference.”
- “I would recommend my school because there is a visible contingent of GLBT students and faculty. Also [our GLBT organization] is a very supportive student organization for social [activities] and academics.”
- “We have a strong GLBT community that grows larger every year. We are extremely active with frequent social events, political affairs, educating the broader community, etc.”
- “[My school] is a welcoming environment from all angles—students, faculty, and administration. There are GLBT-inclusive courses and a strong GLBT student group.”<sup>56</sup>

Students who were more reserved in their recommendation of the school or admitted that they did not feel safe being out on campus complained about the lack of GLBT visibility, activity, and overall support for students.<sup>57</sup>

Activity of GLBT organizations varied from the inactive, where students met only a few times a year, to the extremely engaged, with frequent meetings, social and professional gatherings, and educational programs. Active GLBT student organizations hosted a wide variety of programs, including panels on

54. See *id.* at 30-31. The reported high percentage of membership occurred because the GLBT Law Student Survey was principally administered through GLBT student organizations.

55. See *id.*

56. See *id.* at 31-39.

57. See *id.*

civil union legislation and recent court rulings on marriage equality; discussions of the impact of the Supreme Court case *Lawrence v. Texas*; programs for National Coming Out Day; protests regarding military recruitment on campus; and career panels of GLBT professionals on job search challenges for GLBT students. Some student organizations increased their visibility in the law school community by co-sponsoring programs with other student organizations, such as the National Lawyers Guild, ACLU, Black Law Student Association, Multi-Cultural Students, Children's Rights Association, American Constitution Society, Law School Democrats, and the Federalist Society.

Students responding to the GLBT Law Student Survey and Focus Groups emphasized that the activity level for a particular GLBT organization depends in large part on the energy, commitment, and goals of student leadership that changes every year. In at least one case, a student reported that the GLBT student leadership deliberately chose to remain less visible on campus. More common complaints were about the inaction of student leadership due to time pressures and student apathy. Many students seemed frustrated by this, while others were more forgiving if they were in an environment that offered other safe opportunities. For example, at one urban school, students said that while their law school organization was not very active, they attended events organized by the university-wide GLBT student organization. Students also attended events sponsored by local GLBT legal organizations, such as the Lesbian and Gay Law Association (LGLA).

Once again because of the grouping of gay, lesbian, bisexual, and transgender students in the survey instruments, we lack information about how well GLBT student organizations are effectively representing and meeting the unique needs of bisexual and transgender students. For example, a few students clearly identified themselves as bisexual and expressed frustration with the collapsing of the bisexual with gay and lesbian categories. The main problem seemed to be that collapsing these categories facilitated the intolerance some bisexual students experienced from other members of the GLBT student groups.

It also appears that GLBT student organizations are not as good at addressing or meeting the unique needs faced by transgender students in law school. For example, the type of educational and professional programs held by the student organizations center primarily on issues affecting gay and lesbian students, which may or may not overlap with issues affecting transgender students. Moreover, some students noted that transgender students experience discrimination and social isolation from GLB as well as non-GLB students. One Focus Group did note that the GLBT organization successfully fought for unisex bathrooms at the law school.

The lack of information about transgender students could be the product of the fact that this group is still largely invisible in most law schools. Even in the GLBT Law Student Survey distributed through GLBT organizations, almost all respondents who self-identified in the comments section were gay or lesbian, with a few identifying as bisexual. There was one comment encouraging the recruiting of more transgender students, but the person did not self-identify.

Only a single student commented that there were a few transgender students at his/her school.<sup>58</sup>

Faculty and administrative support is critical for two reasons. First, faculty or administrative advisors are often the only source of continuity for GLBT student organizations because the leadership of those organizations changes every year. Active involvement and guidance by faculty or administrators can help combat student leadership apathy or uncertainty about ways to serve GLBT students. Second, students care deeply about the amount and quality of faculty and administrative support of GLBT organizations because they see this as a key indicator of how open and welcoming the law school community really is.<sup>59</sup> A number of students expressed frustration that their schools' claims of being open and GLBT friendly did not translate into meaningful support for GLBT students and programming by faculty and administration.

Faculty involvement in student programming varied from none to faculty being heavily involved. By most reports, the degree of activity of the student organization seems primarily driven by the student leadership. Students complained about the lack of faculty support, but in some cases noted that it was probably due more to time pressures than lack of moral support. Some students did not even know if their organization had a faculty advisor. Many wished that the faculty and administration would take a more active role in creating educational and professional programming specific to GLBT issues rather than simply depending on the student organizations to initiate it.

While the extent of faculty involvement depends on the individual faculty member in most cases, some schools had a more formal mechanism for ensuring faculty involvement. For example, one school created a "Solomon Amelioration faculty committee" committed to planning one program per year. Students appreciated this kind of formal support, as well as the informal support from faculty who attended programs or participated in protests.<sup>60</sup>

As noted above, student organizations can be a powerful tool in securing administrative support for educational and career programming for GLBT students. Some student organizations request help from career services and other administrative departments in organizing career advice panels, connecting

58. *Id.* at 34. One reason for the "invisibility" of some groups identified as "transgender" is based on the individual's own preference for self-identification. The term "transgender" is a very complex, social umbrella that is used to describe many different groups, including transsexuals (female-to-male, FTM, or male-to-female, MTF). See Nan D. Hunter, et al., *The Rights of Lesbians, Gay Men, Bisexuals and Transgender People: The Authoritative ACLU Guide to a Lesbian, Gay, Bisexual, or Transgender Person's Rights* (4th ed., Carbondale, Ill., 2004) (ACLU Handbook Series). In the case of an individual who has already transitioned, for example, a FTM, the person may prefer to self-identify exclusively as female. See note 84, *infra*.

59. This theme is pervasive throughout students' comments giving advice to GLBT applicants and explaining why they would or would not recommend their law school. See Hunter, et al., *The Rights of Lesbians*, *supra* note 58, at 24-39.

60. *Id.* at 31-39.

with GLBT alumni, or organizing protests in response to military recruiting on campus. At some schools, the administration has actively created and supported opportunities for GLBT students to participate in events outside of the law school, such as events sponsored by Human Rights Campaign (HRC)<sup>61</sup> or the annual Lavender Law Conference organized by the National Lesbian and Gay Law Association (NLGLA).<sup>62</sup> Some schools have done this as part of the school's amelioration policy because of military recruiting on campus. In one Focus Group, a student said that his GLBT leadership successfully advocated for this, despite initial resistance by the administration. It is important to note here that an administration's willingness to support GLBT organizations in these efforts sends a clear signal to GLBT students as to whether their presence and perspective are truly valued at the law school.

Funding for most programs comes from the student government structure and not many concerns were raised about lack of funding from this source. There was at least one complaint about GLBT persons being "frozen out" by the student government leader that year who had a reputation for being homophobic.<sup>63</sup> Another student reported that the group's funding was cut drastically, but that it was due to a history of inactivity. Some law schools separately fund events sponsored by the GLBT organization as part of their Solomon amelioration efforts. One law school, for example, funds a program each year sponsored by the law school's GLBT organization that consists of speakers on the military's policy of discrimination against gays and lesbians.

In sum, law school faculty and administrators who have a stated commitment to creating a GLBT-friendly climate should make sure that this goal is being realized by supporting and encouraging a robust and active GLBT student organization.

#### **IV. Institutional and Administrative Support for GLBT Students**

In this section, we provide guidance to law schools in providing an institutional means of addressing issues of concern raised by the research projects. To ensure a productive, comfortable environment for GLBT students, schools must be vigilant and proactive.

##### *Admissions*

A decade ago, little information was available to assist GLBT law school applicants in the admission process. Strides have been made in both the amount and the quality of information available. However, there is still much work to be done.

In terms of available information, in the late 1990s the LSAC began an annual survey of law schools to collect data on a number of topics of

61. See *infra* note 77.

62. See *infra* note 78.

63. See GLBT Law Student Survey, *supra* note 8, at 12.

importance to GLBT applicants. The law schools are asked to answer a series of questions, the individual schools' answers to which are made available annually in a publication titled *Out and In*.<sup>64</sup>

GLBT law students overwhelmingly indicate that they consulted *Out and In* when deciding where to apply. Most report using *Out and In* to get a basic sense of how GLBT-friendly the environment might be. Some GLBT law students report that they set a benchmark of affirmative response to certain categories or required an affirmative response to all categories, for a law school to make it onto their list.<sup>65</sup> Certain law schools choose not to participate in the survey or be listed in *Out and In*. GLBT students may regard this lack of response as a clear indication of an unwelcoming environment.

With respect to deciding where to apply, the issues that GLBT students focus on are largely the same as the issues viewed as important by non-GLBT students. GLBT students did include three law school climate issues in their top ten issues that were not included by the non-GLBT students, all dealing with the environment of the law school: friendliness to GLBT students; diversity; and friendliness to women. Focus Group interviews with GLBT students confirm that the environment is an important issue. GLBT students indicated in these interviews that they sought out schools with a friendly environment and excluded those with indications of an unfriendly environment. It is interesting to note that at a few public university campuses where interviews were conducted, the GLBT students indicated that diversity was clearly aligned with race and that racial diversity trumped GLBT status in importance for those students.

Some law schools have taken affirmative steps to include outreach efforts to GLBT prospective students in their promotional materials, on their websites, and on their applications. GLBT students cited the presence of a GLBT checkbox on one application and the clear inclusion of GLBT status in another school's diversity materials. Students also indicated that many schools include in faculty information scholarly or legal community service on GLBT issues, but noted that finding the information usually requires scanning all of the faculty biographies. Students report that much of the relevant information had to be gathered indirectly. For instance, students viewed as positive the use of appropriate language in printed materials and letters, such as the term

64. An electronic version of this publication is available at <<http://www.lsac.org/SpecialInterests/information-lesbian-gay-bisexual-applicants.asp>> (last visited Sept. 18, 2008). The survey asks whether the school (1) has a LGBT student organization, (2) has openly LGBT faculty, (3) has courses specific to GLBT legal issues, (4) provides some GLBT partnership benefits, and (5) considers LGBT status as a positive admission factor.

65. While cited as helpful by nearly all of the students interviewed, some students were quick to point out that they often found some differences between a school's response and what they found after enrolling. For instance, students at one law school indicated that *Out and In* listed openly GLBT faculty when there were no out faculty at the school. The LSAC typically has the chief admission officer complete the survey, and while she or he may know GLBT faculty, those faculty members may not be out to the school at large. Greater care needs to be taken in completing the annual survey.



“partner” instead of or in addition to “spouse.” Students indicate that some law schools list a GLBT contact person but found poor response or lack of response when attempting to reach that person. The common thread gleaned from the Focus Group interviews with GLBT students is that the availability of information is quite inconsistent and that the information or the language used often makes GLBT persons feel excluded.

GLBT students whose motivation for law study is rooted in GLBT issues indicate that their applications were driven by academic offerings. Those students report that they had to research the course offerings and descriptions and engage admission officers, faculty, and career services officers in discussions early in the process.

The Focus Group interviews with GLBT students indicate that available information is typically focused solely on gay men and lesbians. One openly bisexual student interviewed indicated that he could easily make inferences as to the environment he could expect at a school. There is very little information that is specific to transgender students, even inclusion of gender identity or gender expression in nondiscrimination policies.

The application process is fraught with anxiety for many law school applicants. This can be particularly so for GLBT applicants. The majority of GLBT law school applicants in the survey did not self-identify on their applications (53.4 percent); 29.1 percent reported self-identification on all applications, with 9.7 percent indicating they self-identified on some.<sup>66</sup> Reasons for not identifying themselves ranged from fear of a negative impact on the admission decision to a belief that it is, or should be, irrelevant to an admission decision. Schools that regard GLBT identity as a positive factor in the admission process should clearly state this and encourage applicants to self-identify. GLBT students interviewed indicate that only a distinct majority of schools do a good job of encouraging openness.

The Applicant Survey shows that many of the same factors that were important in determining where to apply were also important in deciding where to enroll. For both the GLBT group and the non-GLBT group, affordability and anticipated level of comfort take on greater importance at this stage. Thus, a law school that does a good job in conveying a GLBT-friendly environment from the early stages of recruitment is at an advantage at the enrollment stage.

#### *Dean of Students/Student Support Services/Student Counseling*

In addition to the need for affirmative outreach to GLBT prospective students through the law school admissions office, the other most important implication of our research relates to the retention of GLBT law students. Retention issues generally fall to the Dean of Students office or to a team composed of key student support personnel. Ideally, every law school would have a retention team that both tightly coordinates the delivery of

66. Climate Survey, *supra* note 6, at 5.

support services to students in every area and that represents a diversity of personalities, identities, and areas of expertise. The team could consist of the Director of Financial Aid, the Dean of Students or the Chief Retention Officer, the Dean of Admissions, the Academic Success Director, the Dean of Career Services, and the Chief Diversity Officer if one exists for the school. This team would represent expertise from admissions to graduation and thus could deliver services designed to assist all students to thrive during law school.

As we discuss above, one of the most striking findings was the high incidence of multiple identities that our respondents reported. This is a particularly important fact that challenges traditional notions of who GLBT law students are and what their needs and issues may be. Of particular note is the high incidence of respondents who identify as GLBT people of color. This presents challenges and a substantial need for expertise, given the overlay of race and potentially strained relationships with family and the usual support structures. Such students report struggling not only with issues of race, but also acceptance of their sexuality by family and friends, all of this taking place in the context of law-school induced stress. Law schools should be aware that the coming out process can be especially complicated when a GLBT student is also a person of color, or older, or actively engaging in religious practice, or has parenting responsibilities.

In many ways, GLBT law students have the same needs as other law students. That is, they can be “at risk” in the same ways as other students who are subject to societal discrimination. However, the risks may have particular twists for GLBT students. The alienation and isolation that GLBT law students may experience can be exacerbated by being in the closet. The usual support that can be derived from family may not be present if the person has been alienated from his or her immediate family because of GLBT status. In addition, the illness of a life partner can be more stressful in a state that does not recognize the status of the law student’s partner by, for example, requiring insurers to provide domestic partner benefits or granting hospital visitation rights to domestic partners.

#### *Financial Aid*

At first blush, the relationship between financial aid and the recruitment, retention, and support of GLBT students may not seem apparent. How a law school elects to distribute its limited resources says much about the institution, however.

Many law schools have scholarships earmarked for members of certain groups, for example support for law students who are Latino, Armenian, or female. Yet, very few schools have scholarships targeting GLBT students or financial support earmarked for those committed to GLBT rights. An obvious



way for a law school to make clear its commitment to its GLBT students is to provide GLBT-related scholarships.<sup>67</sup>

Some law schools do just that. Several law schools offer financial assistance to continuing students who are committed to using their legal education to further GLBT rights. Some law schools provide this assistance in the form of a stipend to support student summer internships with GLBT legal groups (e.g., Lambda Legal Defense or the National Center for Lesbian Rights), while others provide scholarships in the form of tuition assistance.

The criteria to receive a GLBT-focused scholarship vary. Some law schools state expressly that financial need and sexual orientation are *not* relevant criteria in the determination of eligibility for the financial assistance. A few schools consider financial need or other criteria such as academic standing.

As far as we could discern, few law schools have a scholarship that is available only to students who identify as lesbian or gay. To the extent law schools provide GLBT financial support, they tend to focus on students who are working to further GLBT rights regardless of the person's sexual orientation.

The schools that offer financial support overwhelmingly focus on continuing students as opposed to entering students. The existence of the scholarship, however, surely proves helpful in recruiting GLBT students even if it is not available until the student has finished her or his first year of law school.<sup>68</sup>

Even if a school does not have its own GLBT-focused scholarship, it can send a message of its commitment to its GLBT students by publicizing external funding sources. There are foundations and organizations that regularly support student work with a GLBT focus. A law school's financial aid office should be aware of these and publicize them.<sup>69</sup> In short, a law school's financial support for GLBT-related student endeavors speaks volumes about the institution itself.

#### *Career Services*

According to the Applicant Survey, job success of graduates is the most important factor considered by all applicants when choosing law schools to which to apply.<sup>70</sup> Similarly, the Climate Survey reports that both GLBT and

67. At least one law school expressly informed its students that its GLBT-focused summer stipend program is part of its efforts to ameliorate the negative impact of the Solomon Amendment. See Focus Group interviews.

68. In meeting with members of the GLBT student group at one law school, most of the dozen students in attendance were uniform in their view that the existence of a GLBT-related scholarship was relevant to their decision to attend the law school. *Id.*

69. For example, the Pride Law Fund offers a variety of GLBT-focused fellowships. Additionally, each year the National Lesbian and Gay Lawyers Association provides thousands of dollars in award money for selected student papers dealing with a "cutting edge" legal issues affecting the GLBT community. *Id.*

70. Applicant Survey, *supra* note 10, at 6.

non-GLBT applicants rank “options for jobs” third highest (behind location and academic reputation) when considering reasons to apply to schools.<sup>71</sup>

Many issues that arise for GLBT students necessarily revolve around career issues. In fact, some students report that they remain in, or even return to, the closet in law school because of fears that being out may limit their employment opportunities.<sup>72</sup> How law schools respond to issues of comfort for GLBT students in the career services context has a large impact on how GLBT students perceive the law school environment in general.

In the Focus Groups, GLBT students reported that they received a wide range of responses from Career Services Office (CSO) staff when searching for employment and seeking guidance about a variety of employment-related issues. Depending on the particular school, the CSO support for issues of concern for GLBT students ranged from helpful to non-existent.

With respect to employment applications, Focus Group participants indicated that discussion with CSO personnel about job applications and GLBT issues is sporadic.<sup>73</sup> Some law schools offer nothing specific but hold workshops open to all that address broad issues. At other schools, these types of issues are only addressed in personal counseling sessions and not in printed materials. At one large public school, students answered with a resounding “no” when asked if any GLBT-related discussion occurs.

Similarly, responses ran the gamut on whether students were encouraged or discouraged to “come out” on employment applications and/or resumes. The spectrum of answers ranged from staff providing supportive advice, to balanced advice, to no advice. At one school, students were not comfortable being out due to the perception that Career Services staff seemed unwelcoming to GLBT students. Discussions with CSO staff and/or potential employers about being out can “be awkward,” according to some students. Others felt that they received good advice and many others had not asked about for GLBT-specific advice.

With respect to the decision as to whether to come out on applications or in interviews, students stated that this is a personal decision that often depends on the type of employment the student is seeking. Many felt that it was important to be out because they wanted to work in an open and welcoming environment. Others did not feel safe being out due to the conservative nature of the legal community or certain employers.<sup>74</sup>

One hot button issue concerns professional attire, particularly for women. Only at one school did Focus Group participants state this was not an issue.<sup>75</sup>

71. Climate Survey, *supra* note 6, at 4.

72. Focus Group interviews.

73. *Id.*

74. *Id.*

75. *Id.*

Students at all the other Focus Group schools affirmed that this is an issue, and related stories that were both humorous and appalling. The major concern is that most women are advised to wear skirts and sometimes feminine jewelry. In some instances men are told to cut their hair, and others are advised to remove piercings. This response is reinforced in the employment setting; one student reported that “in court, a sheriff’s deputy told me my earring made me look faggy.” Thus, in many instances, advice from CSOs simply reflects the reality of the workplace.

With respect to employment counseling in general, many students expressed disappointment with the level of assistance that CSOs provide GLBT students. The students would appreciate such efforts as GLBT-specific networking events, individual counseling sessions, and workshops.<sup>76</sup> GLBT students would prefer that GLBT specific events not be principally student-organization driven. In other words, GLBT students would like to see more initiative taken by CSOs for such programming.

In addition, most Focus Group participants reported that CSOs could do a better job of connecting students with GLBT-friendly employers. No students reported that their CSO maintains a list of friendly employers. Thus, finding GLBT-friendly employers has been a hit-or-miss process for students. Some students take it upon themselves to find such listings with NALP, LAMBDA job postings on Symplicity, or through the HRC.<sup>77</sup> Students in one urban area reported that some firms reach out to potential GLBT student applicants by hosting receptions for GLBT law students, but such efforts seem rare.

On the other hand, many students reported positive experiences with CSOs. In particular, many students appreciatively commented on the funding provided for GLBT students to attend the national Lavender Law Conference.<sup>78</sup> Also, at many schools, the GLBT student organization connects with the state and/or local GLBT bar association. While most schools do not have a GLBT alumni network, students are still able to connect with these alumni on a case-by-case basis.<sup>79</sup>

76. *Id.*

77. NALP (National Association for Law Placement) was organized in 1971 to promote the exchange of information and cooperation between law schools and employers (<http://www.nalp.org>). LAMBDA Legal is the oldest national organization pursuing high-impact litigation, public education and advocacy on behalf of equality and civil rights for lesbians, gay men, bisexuals, transgender people, and people with HIV (<http://www.lambdalegal.org>). Symplicity is an online Career Services job bank that is utilized by CSOs in many ABA-approved law schools (<http://www.symplicity.com>). HRC (Human Rights Campaign) is America’s largest civil rights organization working to achieve gay, lesbian, bisexual and transgender equality (<http://www.hrc.org>).

78. The annual Lavender Law Conference is hosted by the National Lesbian and Gay Law Association (<http://www.nlgl.org>), and the Lavender Law Career Fair held during the annual conference is designed to achieve a sense of community and inclusion for GLBT candidates within the legal profession’s recruiting efforts (<http://www.lavenderlaw.org>).

79. Focus Group interviews.

With respect to GLBT-related issues, then, Career Services Offices are caught in a quandary. Often they are advising progressive GLBT students on how to succeed in a conservative law firm environment. CSO staff may be overly cautious when advising these students and are often criticized or blamed for this mentality. Because employment opportunities are so important to all law school applicants, current students, and law school administrators, GLBT students should receive the best advice possible and have adequate resources such as GLBT mentors and friendly employer information. At the very least, candid conversations about disclosures on resumes should be invited and entertained by Career Services staff.

Finally, and as discussed more fully in a recent issue of the *Journal of Legal Education*,<sup>80</sup> law schools in general and Career Services offices in particular need to be mindful of issues concerning military recruiting. In its 1998 article, the GLBT Work Group reported that military recruiting on law school campuses significantly undermines the morale of GLBT students.<sup>81</sup> Not much has changed. Military recruiting still sends the single most powerful message to GLBT students that they may suffer frequent, and sometimes even explicit, discrimination when seeking employment. That this message occurs on law school campuses has a broader impact on the degree to which GLBT students feel generally comfortable.

One concern expressed in the Focus Groups is that law schools often undertake the bare minimum in terms of the amelioration that AALS policy requires if the military recruits on campus. As one student put it, the school's "words are empty" when it comes to taking affirmative steps to counter the military's presence. Another student described the school's amelioration efforts as "lip service." Students at several schools expressed frustration that amelioration efforts are usually undertaken only on student initiative, when the amelioration responsibility belongs to the schools.

On the other hand, when schools do provide strong amelioration efforts, the GLBT students take this as a sign of strong school support. In particular, students saw support for attendance at the Lavender Law conference and special career services efforts as particularly meaningful. The message here is that schools that allow the military to recruit bear the burden of undertaking strong, effective amelioration efforts.

#### *Alumni Relations*

Many law schools have alumni affiliates, such as an African-American alumni group, but few have a GLBT alumni association. Creating a GLBT alumni association is a way for a law school to bring alumni back into the fold, to create a donor base to support GLBT outreach efforts, and to signal a commitment to its GLBT students and alumni. Also, members of the GLBT

80. For a discussion of the background of the military recruiting issue, see 57(2) *J. Legal Educ.* (June 2007).

81. Austin, et al., *Results from a Survey*, *supra* note 4, at 173-75.

alumni group can serve as mentors for the law school's GLBT students, and might provide job opportunities.

An initial challenge, of course, is identifying GLBT law school graduates. Few law schools have that information about their students and alumni. An active GLBT student group can assist with identifying GLBT alumni in the community. Law school publications and other communications can announce the formation of a GLBT alumni group with contact information provided for those interested in joining the organization.

The law school at which one of this article's authors teaches recently created a GLBT alumni association (to join already existing affiliates for African-American alumni, Latino alumni, and Asian alumni). A few gay and lesbian alumni met with the GLBT students group and an openly gay faculty member to create a list of gay, lesbian, bisexual, and sympathetic alumni. Those individuals identified were contacted by either a graduate or a faculty member and invited to join the new GLBT alumni chapter. Nearly all accepted the invitation, even though many had had little contact with the law school since graduating. The first event was held in August 2006 on the law school campus and over fifty alumni attended (including two heterosexual but supportive federal judges), along with faculty, administration, and students. In its first year of existence, the GLBT chapter is already the second largest of the law school's alumni affiliates.

### **Conclusion**

Law schools that truly value diverse student bodies need to be vigilant and proactive in creating comfortable environments for GLBT students. Because members of this population, unlike other minority populations, are often invisible, engaging in this task creates special challenges. We hope that our suggestions will provide a helpful starting point for schools undertaking this task.

## Best Practices Suggestions for Improving the Law School Climate for GLBT Students

### *Law School and Classroom Climate*

#### *GLBT-Focused Course Offerings*

- Ensure a consistent course offering by supporting current faculty and/or recruiting new faculty committed to teaching a course focused on GLBT-related issues.

#### *Coverage of GLBT Legal Issues*

- Cover GLBT issues in non-GLBT specific classes, even if not part of the assigned case book, by including cases where GLBT status is directly at issue, by considering how apparently facially neutral laws affect GLBT persons or exclude those persons from important benefits, and by introducing statutes specifically designed to address GLBT issues (for example, domestic partnership laws).<sup>82</sup>
- In particular, there are a number of legal issues specific to transgender persons that could be incorporated in non-GLBT specific courses.<sup>83</sup>
- Be sure to note coverage of GLBT legal issues in the course description for the non-specific GLBT course. Students pay attention to this.

#### *Other Tips for Creating a GLBT-Friendly Classroom Climate*

- Take a proactive role in defining appropriate and respectful terminology when discussing GLBT issues. This can be particularly challenging for transgender issues because the transgender label is expansive and encompasses many different groups.<sup>84</sup> There are helpful resources that

82. For an overview of the various legal issues facing GLBT groups, see Hunter, et al., *The Rights of Lesbians*, *supra* note 58.

83. *Id.* See also *Transgender Rights* (Paisley Currah, et al., eds., Minneapolis, 2006); Shannon Price Minter, *Representing Transsexual Clients: Selected Legal Issues* (last modified Oct. 2003). See <<http://www.transgenderlaw.org/resources/translaw.htm>> (last visited Sept. 12, 2008)(giving an overview of the legal issues affecting transsexual persons, discussing recent case and statutory law addressing these issues, and providing a list of additional resources). Some examples are: traditional forms of employment discrimination (firing, hostile work environment); the discriminatory impact of sex-segregated bathrooms and dress codes; expulsion and other discriminatory actions against transgender students in school settings; discriminatory impact of housing prisoners by biological sex and the vulnerability of transgender women to rape in men's prisons; custody problems for transgender parents; legal sex classification systems that prevent some transgender individuals from getting married; contractual or statutory rights to insurance coverage for sex reassignment surgery; questions about whether existing disability or sex-based civil rights frameworks are appropriate or sufficient for protecting transgender individuals. See <<http://www.transgenderlaw.org/resources/translaw.htm>> (last visited Sept. 12, 2008)(giving an overview of the legal issues affecting transsexual persons, discussing recent case and statutory law addressing these issues, and providing a list of additional resources).

84. "Transgender is an umbrella term used to describe a range of identities and experiences, including but not limited to preoperative, postoperative, and nonoperative transsexual people; male and female cross-dressers; intersex individuals; and men and women, regardless of their sexual orientation, whose appearance, behavior, or characteristics are

can guide faculty in this area. Faculty should also consider inviting legal advocates of the transgender community to be guest speakers and share their expertise, as faculty often do to enhance their coverage of other subjects.<sup>85</sup>

- Respond quickly to inappropriate or offensive terminology or jokes about GLBT persons or issues.
- Increase visibility of GLBT persons by incorporating them as characters in theoretical and skills exercises and exams.
- Highlight faculty scholarship and service on GLBT issues.

#### *GLBT Student Organizations and Activities*

- Publicize the existence of a law school's GLBT organization, both to enable interested students to participate and to send a message to the law school community of inclusiveness. One way to do this is to ensure that the law school's webpage includes easy access to information about the GLBT organization, including perhaps the contact information for the organization's faculty advisor(s).
- Assign *at least* one dedicated faculty advisor who is available and active in the organization.
- Encourage faculty and administrators to attend events sponsored by the GLBT organization to show institutional support for the group.
- Incorporate GLBT-legal issues in faculty sponsored workshops or speakers invited to campus and reach out to GLBT student organizations to inform them about these programs.

#### *Admission*

- Include information concerning the GLBT student organization and make it easy to identify out faculty in promotional materials and on your website.
- Consider establishing a GLBT prospective student contact person to facilitate advising applicants and answering questions about environment.
- Provide applicants and students a gender-neutral option for self-identification and salutations in letters (i.e. no "male/female" check box and salutation options other than Mr. and Ms.) so as to be inclusive to transgender students.

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perceived to be different than that stereotypically associated with their sex assigned at birth.... Other current terms used as synonyms for *transgender* include *gender variant* and *gender nonconforming*." Hunter, et al, *The Rights of Lesbians*, *supra* note 58, at 172. See also *Transgender Rights*, *supra* note 83, at xiv-xvi (noting that the term transgender is an expansive and complicated social category and that there is an existing tension about whether intersex individuals should be classified as transgender for legal, social, or political reasons).

85. For information concerning advocacy in this area, see <[http://www.nclrights.org/site/PageServer?pagename=issue\\_transgender](http://www.nclrights.org/site/PageServer?pagename=issue_transgender)> and <<http://www.transgenderlaw.org>> (last visited Sept. 18, 2008).



- Include GLBT status in admission materials and the application discussions of diversity.
- Feature a GLBT student or graduate in admission materials, on the website, or in the alumni magazine.
- Modify parent questions on applications to accommodate non-traditional families, including gay or lesbian parents.

*Retention of Satisfied GLBT Students*

- Ensure that GLBT students are included in your support services efforts, and that publications and web text publicizes those services.
- Offer the services of mental health providers who have expertise working with GLBT clients.
- Do advanced planning on your response to gay slurs, destruction of gay posters, and other such occurrences.
- Ensure that at some point during orientation you signal that you know there are GLBT students.
- Schedule an activity during orientation that gives an opportunity for community to be created among GLBT students and any allies.
- Do not let incidences of thoughtlessness or harassment go unaddressed.

*Financial Aid*

- Create, fund, and publicize a GLBT-focused scholarship.
- Research and publicize external sources of support for GLBT students and for those committed to furthering GLBT rights.

*Career Services*

- Provide workshops, programming, and networking opportunities for GLBT students.
- GLBT students need better connection to friendly firms as well as alumni mentors.
- Collect a list of GLBT friendly firms. CSO staff could start by consulting the NALP directory, finding out what firms recruited at the annual Lavender Law conference, and compiling data from word of mouth. Once GLBT alumni are identified, they may be able to provide some additional leads.
- On and around days when the military is recruiting on campus, prominently distribute and post notices stating that the military's presence violates the school's and the AALS non-discrimination policy, and is allowed only under the threatened cut-off of federal funding.
- Arrange for all military recruiting to occur on the same day, to facilitate student responses and minimize disruptions for students involved.
- Limit the military's access to the basic required access; do not rub salt in the wound by, for example, inviting the military recruiters to campus social events.



- Undertake strong amelioration efforts. For example: provide financial support for students to attend Lavender Law; sponsor tables at local GLBT bar events; provide GLBT student networking opportunities and career counseling.

*Alumni Relations*

- Create, fund, and publicize a GLBT alumni association.