

(Publication page references are not available for this document.)

American Lawyer
Vol. 29, No. 3
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March 2007

Bar Talk

RAINBOW REVOLUTION

DESPITE THE LAWSUIT AGAINST SULLIVAN AND CROMWELL, THESE ARE THE BEST OF TIMES TO BE A GAY LAWYER

Vivia Chen

In his famous dissent in *Lawrence v. Texas*, the 2003 U.S. Supreme Court decision that struck down Texas's same-sex sodomy law, Antonin Scalia railed against the legal profession for embracing the 'anti-antihomosexual culture.' Well, Scalia got that right.

Not only are the nation's elite law firms not antigay, they are putting out the lavender welcome mat. Perks that seemed radical just ten years ago are now standard fare at Am Law 200 firms: health care benefits for domestic partners, nondiscrimination pledges, and sponsorship of gay organizations. Firms are also stampeding to recruit candidates at gay job fairs. And according to a survey by gay rights organization Human Right Campaign, the legal profession ranks high in gay-friendliness when compared to other industries.

All that good news makes the recent lawsuit against Sullivan & Cromwell for sexual orientation discrimination especially ironic [see 'Antigay or Antihuman?' page 16]. With 11 gay partners, S&C has become a mecca for gay lawyers. Though S&C's numbers are striking--particularly for a Wall Street firm--we found progress across the board. Cravath, Swaine & Moore, arguably the most elite of elite New York firms, now counts five open gays in its club of 87 partners.

And it's not just New York or California; gays are making strides across the country. Houston's Vinson & Elkins has five gay partners, while Atlanta's Alston & Bird has seven, and Chicago's Sidley Austin has six. 'Yes, this is a red state, and the state of George W. Bush,' says Vinson & Elkins counsel Christopher Bacon, who's active in the gay bar association. 'But when you deal with urban areas, you won't find that much difference from Boston or New York.'

No wonder gay lawyers sound ebullient. 'It used to be the love that dare not speak its name,' says Morrison & Foerster managing partner Keith Wetmore about being gay in firms. 'Now it's the love that cannot keep its mouth shut.' Wetmore, who joined MoFo in San Francisco as an openly gay associate in 1982, says that these days, being gay is neither a liability nor a novelty. 'There are so many of us that we don't have to like each other,' says Wetmore.

But despite the gay-friendly policies and the visibility of gays at elite firms, the actual percentage of openly gay lawyers reported by firms is low. According to the National Association for Law Placement (NALP), member firms report only 1.42 percent of lawyers as gay, lesbian, bisexual, or transgendered (GLBT). NALP executive director James Leipold speculates that the number of gays in the profession is much higher, citing studies that show homosexuals constitute 3-7 percent of the general population. Truth is, despite the profession's public embrace of diversity, neither firms nor individuals are completely at ease about the issue of sexual identity. 'Don't ask, don't tell' remains an unspoken credo.

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One reason that accurate data is hard to collect is that GLBT individuals can stay below the radar screen. 'It's not obvious; I don't sing 'YMCA' when I walk into a room,' says Joseph Hall, 43, the only openly **gay** partner at Davis Polk & Wardwell. Unlike gender or race, revealing sexual orientation is a matter of choice.

For lawyers who entered the profession in the 1980s or before, the initial choice was to keep quiet. Sullivan & Cromwell's Donald Toumey, 50, the firm's first openly **gay** partner, says he kept his sexuality under wraps until he was a second-year partner. Conservative personally and politically--'I'm a card-carrying member of the Federalist Society'--Toumey says that he didn't come out before because he was 'risk-averse.' Even afterward, Toumey says, other **gay** lawyers at S&C remained cautious. Toumey recalls that the firm's first **gay** lawyers meeting was held off-premises, because 'people were concerned that other people would be checking who would show up.'

While **gays** were well accepted at California firms by the 1980s, New York lagged behind. Weil, Gotshal & Manges banking partner Daniel Dokos says he first came out as a MoFo associate in San Francisco in the early 1980s. (He credits MoFo's Wetmore, then a third-year associate, for 'bringing me out of the closet.') But he retreated to the closet once he moved to Sidley's New York office in 1985. At that time, he says, New York was 'more buttoned-up.' Tired of being closeted--'People thought I was a loner who took interesting vacations'--he decided to 'make a statement' as a senior associate by bringing his boyfriend to Sidley's Christmas party. He made partner at Sidley the next year. By the time he moved to Weil in 1998, he says, being **gay** was a nonissue.

That's not always true in client relations. Even now, Dokos says there are awkward situations where he wonders if he should reveal his sexual identity to new clients. 'As much as you want to think you're cool about being open, you realize you're not,' says Dokos.

Other **gay** lawyers agree that coming out to colleagues is easier than coming out to clients. Bryan Cave partner William Hibsher, 63, who also chairs a **gay** partners group in New York, says that when he senses clients might not be comfortable with his sexuality, he becomes 'less than authentic.' He adds, 'That doesn't mean I talk about my wife and kiddies. The difference is that your colleagues know the rules of the institution; clients aren't functioning under the same rules.' But Hibsher says the big change is that clients are also increasingly identifying themselves as **gay**.

Indeed, the emphasis placed on diversity by clients is putting pressure on firms to collect better statistics on **gay** lawyers. Dokos says firms need to be proactive about data collection. What doesn't work, warns Orrick, Herrington & Sutcliffe partner Joseph Evall, who's vice-chair of the firm's GLBT initiative, is tiptoeing around the subject.

That, in a sense, describes the experience of Debevoise & Plimpton. Though it's been known for decades as a bastion of **gay** tolerance, Debevoise didn't collect detailed data about its GLBT population until three years ago. In the past, says Jennifer Foster, the firm's director of attorney development, the firm would give only a response of 'ten-plus partners and associates' to questions about its GLBT lawyers. 'Originally, we wanted to protect privacy,' she says. Prodded by clients on diversity information, and after consulting with the firm's associates and diversity committees, Debevoise changed course and lobbied actively for lawyers to fill in sexual orientation information. The result, says Foster, was a 200 percent increase in the number of reported **gay** lawyers. (There are now 29, including five partners.) Foster adds, 'We do know there are others,' but says that 'we respect their right' not to identify themselves.

But to the generation of lawyers who grew up with GLBT affinity groups and **gay** recruiting parties, ambivalence about coming out is puzzling. Some young lawyers happily list GLBT memberships on their resume. Kirkland & Ellis partner Edward Sadtler, a class of 1999 law graduate, says that listing membership in a **gay** group helps 'distinguish you' from other candidates.

'There is quite a bit of peer pressure not to be closeted,' says first-year Davis Polk associate Craig Phillips. 'My generation has experienced less adversity.' Phillips, who took his boyfriend to a dinner when he interviewed at the firm, says that it's refreshing that Davis Polk makes no special effort to recruit **gays**: 'Davis Polk didn't have these **gay** events, like going to a **gay** bar or club, and I liked that.'

But does the fact that Davis Polk lists only one openly **gay** partner indicate that it's behind the **gay** curve? Davis Polk partner Hall doesn't think so; he says it's 'a statistical anomaly.' Hall adds, 'We have a lot of **gay** associates here'

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but that the odds of making partner are daunting for everyone. As for giving **gays** more support, like the mentoring and affinity groups offered to women and minorities, Hall is skeptical: 'It's difficult to see what more needs to be done for white **gay** males who went to Ivy League schools and clerked.' To Hall and others, **gays** are doing just fine.

Of course, many **gays** in the profession don't agree. They emphasize that there are still vestiges of prejudice, and that the odyssey of coming out to colleagues, clients, and family is difficult. 'No matter how many episodes of Will & Grace they watch,' says Hibsher, 'there are people who will be shocked when some fourth-year associate tells them he's **gay**. .. and that can lead to some rough edges.'

That said, the progress made by **gays** in the profession is undeniable. Who knew Scalia could be so prescient?

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