

## WHEN GOOD INTENTIONS AREN'T ENOUGH: OBSERVATIONS OF AN OPENLY GAY LAW FIRM APPLICANT

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*How does “coming out” in an interview affect an openly gay law student’s job prospects? When interviewing for firm jobs, should we stay closeted until after we’re hired, or should we be ourselves during our interviews? What role should career services offices on law school campuses play in facilitating the job search process for all law students, including the gay, lesbian, and bisexual ones?*

For three weeks each October, partners and associates from the largest law firms in the country flock to law school campuses to recruit new blood. In my third year at Stanford Law School, I embarked on this on-campus interviewing process facing a dilemma. In previous weeks, I had asked several advisors for their views about whether or not I should come out as a lesbian on my resume, and a handful of them had advised me that any mention of my sexual orientation in the interviews might hurt my chances of getting hired. Knowing that recommending that I remain closeted would make me anxious, these advisors consoled me by arguing that I might effect more positive social change by getting hired first and coming out later.<sup>1</sup> In considering the effect coming out might have on my job search, I drew some comfort from the fact that Washington, D.C.—the city to which I had limited my job search—had a law prohibiting private employers from discriminating on the basis of sexual orientation.

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1. I considered their arguments against coming out but remained uncomfortable with the suggestion both because I believe coming out is the best way to change negative societal attitudes and because I did not want to weaken my resume by eliminating references to the gay rights work I had done.

After much deliberation, I decided to split the proverbial baby. I submitted my full resume, including my gay rights work and my leadership position in Stanford's Bisexual Gay and Lesbian Law Students Association, to half of the twenty firms with which I interviewed. To the remaining half, I gave a sanitized version, describing my gay rights work in general "human rights" terms. During my "out" interviews, I instigated discussion about my sexual orientation (by mentioning my gay legal work or talking about my life partner in D.C.) and made clear that I did not intend to hide my homosexuality at work. I asked about the number of openly gay employees in the office, about how many of them had made partner, about whether or not they had brought same-sex partners to firm functions, and whether I could speak to someone openly gay about the overall atmosphere at the firm. In my "closeted" interviews, I asked none of these questions and invited no discussion about my personal life.

Although initially I worried that I would receive fewer second-round interviews from the firms receiving my "gay" resume, I found to my pleasant surprise that being out did not work against me in the final tally. In fact, in many instances, the personal nature of the interactions I had with the interviewers who knew I was gay seemed to enhance my appeal as an applicant. Surprisingly, what ultimately proved more illuminating than the comparison of final callback results were my anecdotal observations of the interviewers' reactions to my openness about my sexual orientation.

In many of the interviews, I sensed an initial discomfort on the part of the employer when I mentioned my sexual orientation. Though I had foreseen the possibility that the topic might set interviewers on edge, I was unprepared for the responses I received. I had assumed, perhaps naively, that any interviewers who felt awkward would feel that way because of their own homophobic attitudes. I discovered instead that most interviewers had fine intentions, but simply did not know how to deal with gay applicants. Much of the uneasiness on both sides during the interviews grew not from any discriminatory intent on the part of the employers but rather from their lack of preparedness to address issues of sexual orientation and their fear that their questions or comments would insult or unsettle *me*.

Because of my discovery that most interviewers had good intentions, I have great confidence that small adjustments in the on-campus interviewing system can lead to substantial gains for the gay and lesbian legal community. Further, I have identified several areas in

which enhanced communication between law school administrators and interviewing firms could greatly improve the interview process for gay students.

My first “out” interview highlighted several of the informational deficits I would encounter throughout the course of this project. I met with a very kind man who, despite fine intentions, arrived on campus totally unprepared to interview an openly gay student. When I raised the topic of my sexual orientation, he suddenly appeared nervous and confused about what questions to ask me. He hesitated to acknowledge that sexual orientation might be relevant in any way to a job interview or a career and had trouble understanding why a young gay attorney might need information about the firm's treatment of openly gay employees.

The interviewer asked me if I would like someday to serve as a federal judge. In response, I pointed to the resume resting on his lap. “You’ve probably noticed from my resume that I’m openly gay,” I reminded him. “It might be overly-ambitious of me to hold my breath and wait for a spot on the bench.” This answer seemed genuinely to concern the interviewer, who asked if I really thought sexual orientation made a difference in job opportunities, even in a democratic administration. Out of respect for his sincerity, I stifled a chuckle before I responded, explaining to him that as of three months before the interview there had never in the history of the United States been a single openly gay federal judge, and that as of our meeting there was exactly one. I concluded that yes, I would have to say it does matter.

The interviewer nodded his agreement, then paused, and said he wanted to ask me a question. First, though, he wanted me to know that he generally tried to be sensitive to other cultures and identities and that if he said anything that offended me . . . well, I should just . . . . “I’ll kick you,” I finished for him, trying to put him more at ease. “Yes, yes—kick me” he smiled. Then he asked why I thought there were not more openly gay lawyers in positions of power. I explained that I thought the problem stemmed from the fact that gay lawyers often do not feel safe coming out at work. This encourages newly hired lawyers to remain in the closet and allows the cycle to repeat itself. The interviewer, leaning forward with his hand on his chin, inquired, “But don’t you think sexual orientation is irrelevant to lawyering?”

The exchange that took place in this interview and in many that followed revealed to me how many of the interviewers—even those with the finest intentions—tacitly (and, on occasion, expressly) encouraged gay applicants to remain closeted. Additionally, I learned that several of

my interviewers arrived on campus with direct instructions from their firms about how to respond to students' questions regarding sexual orientation; these pat responses, which reminded me of the military's "don't-ask-don't-tell policy," reflect a lack of openness to lawyers choosing to be "out." Finally, some of the interviewers demonstrated confusion or frustration about what questions they could legitimately ask of an openly gay applicant without exposing themselves to the risk of a discrimination claim.

## I. BACKGROUND

During the initial step in the on-campus interviewing (OCI) process, second and third-year law students apply to interview with up to thirty recruiters, most of whom represent large corporate firms. The students rank their preferences for interviews and submit their selections to the Office of Career Services (OCS). OCS coordinates the employers' schedules and runs a computer program that consolidates the interviewers' availability with the students' schedules and preferences to generate the final interview assignments. The firm representatives have no discretion regarding whom they interview in this first round; their initial introduction to the recruits comes at the second stage, when OCS forwards to them the resumes and transcripts of the students to whom the computer has randomly granted interviews. After the on-campus interview takes place, the representative usually meets with the firm's hiring committee before deciding whether or not to invite the applicant to the home office for a second-round interview. Beyond this point, OCS has only minimal involvement in the process; the office will offer advice and facilitate travel plans but can not control the process as it does in the first round.

In the first stage, I signed up for thirty interviews with employers I chose at random from the list of D.C. firms participating in the OCI process. The computer assigned me twenty interview slots, all with large firms that enjoy good reputations in the legal community. I listed firms alphabetically and gave odd-numbered firms my "out" resume and even-numbered ones my "closeted" one. I kept a record of which firms had which resume so I would know as I went into each interview whether or not I should discuss my sexual orientation and ask questions about the atmosphere the firm maintains for gay employees.

In order to accurately test the effect of my being out, I attempted to neutralize many factors. I tried to standardize the physical impression I made, wearing pants, a blouse, a jacket, and flat shoes to all of the

interviews. I also wore similar jewelry in all interviews: a ring, a lapel pin, and small gold hoop earrings. Finally, I considered in advance how I wanted to answer the predictable questions (Why do I want to work in D.C.? Why am I interested in this firm? What kind of law do I want to practice?) and responded similarly to all of the recruiters. At the end of each interview that had just transpired, I made detailed notes about the conversation.

Although I had attempted to control my answers to the usual interview questions, I found that the content of my conversations with the employers varied enormously between the “closeted” and “out” interviews. Once I began asking about openly gay employees and the firm’s attitude toward sexual orientation, I found that we spent a significant portion of the twenty minute time slot chatting about my work in the gay community, my decision to come out in the interviews, and my views on coming out publicly. Although many of the attorneys I met initially seemed uncomfortable with the topic of sexual orientation, it turned out they all had questions they wanted to ask.

By the time I exited my twentieth interview and reviewed my copious notes, I had drawn several conclusions. Most importantly, I had learned that some of the nervousness I sensed from the interviewers came from their expectation either that *I* would be uncomfortable if they asked questions or that their questions would offend me. Because of the lack of information they had received from their firms or from OCS, even well-intentioned interviewers hesitated to discuss sexual orientation freely. And, of course, this lack of information also guaranteed that not-so-well-intentioned interviewers could stifle gay applicants as they wished, despite Stanford’s nondiscrimination policy that includes sexual orientation.

## II. THE GOOD FAITH INTERVIEWER IN NEED OF GUIDANCE

The white-haired gentleman asked me why a young girl from Virginia would choose to go to college in California, three thousand miles from home. I explained that for me, leaving was an escape. I needed distance from my family in order to find myself and accept that I was gay. After that, I was able to return to my family and reintroduce them to a *Me* I could be comfortable with.

The interviewer started to ask a follow-up question but stopped himself mid-sentence. He rifled through a notebook on his lap and then smacked his hand down on the desk and blurted out in frustration that, dammit, he didn’t know what he could and could not ask me about this

topic. “The Career Office tells me I can’t ask what languages you speak, unless we’re hiring for a particular foreign practice. I can’t ask you your religion, and I can’t ask if you’re married, because they think I’m going to discriminate.”

I did not know what his notebook said, but I assured him that I did not mind talking to him about my sexual orientation. “If you ask something I don’t want to answer,” I promised, “I’ll be sure to let you know.” It turned out he had an innocent question about how my parents had responded when I initially came out to them. After an enjoyable twenty minutes, the interviewer invited me to come to D.C. to meet with some other people in the firm, but added that he did not really know how other people would react to my being openly gay. In his kind, fatherly way, he asked me how I would feel if he recommended that I not “highlight” my sexual orientation in my second-round interview.

I smiled and told him that I would feel fine about his recommendation but would, of course, ignore it. Although I was not sure how he would react to my response, I explained that I was determined not to censor myself. Since I plan to be out once I have a job, one of the best ways for me to make a decision about where I will be comfortable is for me to find out who is and is not comfortable with me.

To my surprise, the interviewer smiled broadly and told me that he had expected my response. He could not give me any guarantees about how the people in D.C. would react to me, but he would do what he could to see that I came to work for them. Then he surprised me again: he thanked me for my candidness and told me that the interview had been quite a learning experience for him. He confided that he had been interviewing on law school campuses for twenty-five years, but that this was the first year he had ever had contact with openly gay candidates.

An openly gay friend who happened to meet with this same man told me that his interview, unlike mine, had been unpleasant. The older gentleman, like many of the other interviewers with whom my friend had talked, reviewed my friend’s resume and asked about everything on it *except* the gay-related items. He asked about all of the jobs not involving gay rights and asked about extracurricular activities while skipping over the bisexual, gay, and lesbian group. After my interview, I felt convinced that what my friend had mistakenly attributed to anti-gay sentiment had, in this case at least, merely been confusion over how to respond to an “out” resume.

Although only this particular interviewer admitted his concern about how to respond to my introduction of the topic of sexual

orientation, I do not believe he was alone in his confusion. The man who asked me if I wanted to be a judge seemed nervous about giving any indication that my homosexuality might affect my career. Similarly, nine of the ten people who had my “out” resume avoided asking any questions about the gay organization I chaired or about my jobs in the gay community until after *I* had initiated the discussion of sexual orientation by asking if their firms employed other openly gay attorneys.

On the other hand, most of the interviewers with my “out” resume did not hold my sexual orientation against me. In fact, being “out” generally had a positive effect, as nine out of the ten invited me back to D.C. for more interviews. I think the employers failed to ask the *right* questions because they feared asking the *wrong* questions and giving the impression of discrimination. Most of the people I met lacked critical information about sexual orientation and what constitutes discrimination; yet they universally demonstrated a willingness to learn. The white-haired gentleman was grateful for what he learned during the interview.

### III. DON'T ASK, DON'T TELL: GOOD INTENTIONS SHOULD NOT SUFFICE

“I have to give you the answer the firm tells me to give you,” one interviewer offered in response to my inquiry about openly gay attorneys. “The firm believes that sexual orientation is a private matter. Your sexual orientation is irrelevant to your ability to do the job. The firm does not ask your sexual orientation and respects your privacy in this matter.”

I clarified his answer: “In other words, the firm does *not* have openly gay attorneys?” He told me that he had given me the official firm line, but that, *unofficially*, there were some people who didn't *talk* about being gay, but whom others *knew* were gay. Naturally, I remained somewhat skeptical.

Ten minutes later, the interviewer inquired about my work for a national gay rights organization and asked me if I knew a certain friend of his who worked for that organization. I did know his friend and asked if they had gone to school together. “We're very old friends,” he responded noncommittally.

I noted his subtle evasiveness and asked him again where he had met this friend. The interviewer quickly glanced around the courtyard (we were meeting outside, since the interview rooms had overheated) and leaned toward me. “I should just go ahead and tell you this,” he whispered. “I'm gay.”

I laughed and told him that was great news, because it made him the perfect person to answer my questions. Although I suspected the answer, I asked him if he had ever come out at work. His response, although sincere, amused me: “Well, I know people know. Some people I *know* know, and others I’m *sure* know. The rest *should* know, but might not. I don’t try to hide it, though.”

This interview, too, was very pleasant. I believe the interviewer was sincere when he said he did not try to hide his sexual orientation; I do not believe he even realized how uncomfortable the topic made him. And I’m quite sure he did not realize that his answers to prospective employees about the firm’s “privacy” policy would further discourage gay applicants from coming out.

This interviewer’s message about his firm’s attitude toward open discussion of sexual orientation resurfaced in other interviews. Representatives from several firms explained that the firm respected the employees’ privacy and did not ask questions about sexual orientation. Accordingly, these interviewers were unable to provide me with useful answers to my inquiry about whether openly gay attorneys feel comfortable on the job. Many of these representatives seemed proud of their responses, as if they considered their firms progressive, rather than repressive, for insisting on the irrelevance of sexuality. The interviewers did not seem to understand that for someone who wishes to be out, a “don’t ask, don’t tell” policy guarantees misery.

An exclusive focus on the privacy aspect of sexual orientation—to the extent that it prevents a firm from being able to offer critical information about the climate at the office—discourages employees from coming out. While a homosexual orientation *can* be a very private matter (just as a heterosexual orientation or relationship can be), it can also be just another facet of the personality an employee decides to share with co-workers. When a firm has an official policy that prevents its representatives from answering legitimate questions an openly gay applicant would be likely to ask, that policy, by making discussion of sexual orientation somehow taboo, actually endorses the closet.

If the employer considers sexuality a purely private matter, will a gay attorney feel welcome to bring a partner to firm functions? To register for domestic partnership benefits? Would an interviewer feel proud to tell an African-American student that he cannot answer questions about the number of black employees because the firm considers race irrelevant? Or would the employers understand that a

minority student needs answers to these questions in order to evaluate the atmosphere she will meet in a potential workplace?

#### IV. RECOMMENDATIONS

Unfortunately, the current interview system drops the burden of educating interviewers on the shoulders of the applicants, most of whom have their own set of anxieties and pressures surrounding the interview process. These interviewers—and certainly the gay applicants with whom they meet—would benefit enormously from a decision by law schools to remove this burden from the students by distributing to the firms explicit guidelines on dealing with sexual orientation during the interviews.

Currently, Stanford's Office of Career Services (OCS) supplies the on-campus interviewers with an explanation of the school's nondiscrimination policy. If an employer does not agree to comply with the policy, Stanford will not permit that employer to participate in the program. OCS currently includes sexual orientation on the list of protected statuses but offers interviewers no further guidance on the meaning of the nondiscrimination policy as it applies to this topic. For other types of discrimination, the booklet gives examples of inappropriate questions. For example, interviewers are warned that they may not ask applicants their marital status, and, apparently, that they cannot ask what languages the students speak. My experience suggests that minor modifications to bring the OCS sexual orientation guidelines in line with race, gender, and religious guidelines could make the information significantly more helpful for on-campus representatives.

The OCS material describing inappropriate questioning should include a section specifically addressing sexual orientation. An interviewer should not ask if a candidate is gay or bisexual, just as she should not ask about a student's religious identification, but neither should she shy from these issues once the student has raised them. Additionally, an interviewer should know in advance that she should arrive on campus with details about the firm's policy on sexual orientation and about the numbers of openly gay employees at the firm. The information from OCS should also mention that the employer should feel comfortable inquiring about any and all items a student has listed on a resume, but that if she chooses not to ask about all of them, the decision about which items to omit should not depend on considerations of sexual orientation, race, religion, or any other element of the applicant's identity.

OCS should also respond to the firms' tacit encouragement for gay applicants to remain closeted as firmly as it would address a similar policy discouraging attorneys from mentioning a spouse of a different race or religion. Particularly at law schools which, like Stanford, include sexual orientation in their nondiscrimination policies, firms should receive warning that they will be expected to state a policy of full equality for gay, lesbian, and bisexual people. Full equality necessarily includes freedom to be open about issues of sexual orientation.

Of course, pressuring a firm to agree to a policy of openness does not automatically improve the working conditions of gay employees in firms made up of individuals who do not accept social differences. An employer interviewing on campus should feel free to answer questions truthfully, even if the truth is that the employer fears that some people will refuse to welcome an openly gay attorney and will try to make life difficult for her. In fact, my interviewing experiences suggests that this unfortunate state currently exists in most large firms; most of my interviewers expressed the concern that certain employees at the firm would "have a problem" with my sexual orientation.<sup>2</sup>

Still, despite the undeniable and impassioned prejudices of many individuals—including people who work for large law firms—employers hiring for offices in areas in which the law prohibits sexual orientation discrimination (like Washington, D.C.) or interviewing on campuses that prohibit employers who discriminate from using campus services (like Stanford) cannot espouse a firm-wide policy condoning these people's private discriminations. Further, my most surprising discovery—that most interviewers harbored no intentionally discriminatory motive—suggests that mere education on this topic might prove fruitful. OCS should include in the packet distributed to interviewers information describing the discriminatory effect of a "don't ask, don't tell" policy and requiring that the representatives ask their home offices to modify any such stance before taking advantage of the school's services. OCS should recommend that the firm representatives arrive on campus with

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2. I asked ten employers how many openly gay attorneys they had working for them in D.C.: four said they had none; four gave some version of what I have called their "don't ask, don't tell" policy and denied any knowledge of who was gay and who was not; one said they had several openly gay attorneys, but added that none of them had ever brought a same-sex date to the annual firm dinner dance. The interviewer for the tenth firm, which is based in the west and has a very small D.C. office, told me she headed the minority hiring efforts for the firm, and that she considered sexual orientation a positive "diversity" factor; although they had several openly gay attorneys in their home office, she didn't think anybody in the small D.C. office had come out.

names and telephone numbers of gay employees willing to speak with potential recruits who ask about the climate for sexual minorities.

#### V. THE POTENTIAL BACKLASH: DO WE MAKE PEOPLE NERVOUS?

I concluded after my twenty interviews that listing my gay rights experience on my resume and expressing my concerns about the firms' attitudes toward sexual minorities generally worked to my benefit. The same percentage of firms with my gay resume offered me second-round interviews as firms with my straight resume, but I felt that I established a better rapport with the interviewers who knew I identified as a lesbian. Not surprisingly, I relaxed more in my "out" interviews and asked and answered questions more confidently. Three of the firms with my "out" resume told me on the spot that they would like me to fly to D.C. for another interview, compared to only one firm with my "closeted" resume. Unfortunately, like all rose gardens, the one I discovered during this process harbored a thorn.

One of the three interviewers who told me on campus that he wanted to see me again in D.C. surprised me with a form rejection letter three weeks later. During the interview, he had complimented me on my grades and my legal experience. I asked my usual questions about the firm, and he told me that they had hired several openly gay attorneys but that none of them had ever brought a date to the annual firm "prom." He laughed and said he was looking forward to me inviting my partner; he expected it would ruffle some feathers but that it would be a good experience for everyone. At the end of our allotted time, the interviewer remarked that his next student had canceled and requested that I stay through the next interview slot as well. In the following twenty minutes, we discussed two articles of mine that had been accepted for publication, and he pressed me about my interest in an academic future. I confessed that I hoped to teach some day and asked if my academic interest made him question my commitment to working for a firm. "Not at all," he assured me. "We hire people who are smart and can do good work. A lot of people who think they'll stay with the firm don't, and many who think they won't, do. If you leave to teach, it only makes us look good."

Finally, the interviewer confided that he was breaking with tradition in telling me that he wanted to invite me to D.C. to see the firm, but he assured me that, with my record, a callback was all-but-guaranteed. The next word I received from him came almost a month later, in the form of a rejection letter. Competition was particularly tough

this year, the letter explained, and the firm regretted being unable to offer me a second interview.

Surprised by the letter, I called the interviewer to question his sudden change of heart. He explained that the competition for third-year positions proved stiffer than he had realized. In fact, even Yale students at the top of their class had failed to receive offers this year. Under cross examination, however, he sheepishly admitted that no, none of these Yale students at the top of their class had, like me, gotten a rejection letter *before* the second round.

Next, he told me that the hiring committee had decided that I would make a poor investment, as my resume indicated that I would end up in academia. He explained that associates cost the firm money for the first several years of their employment and give a return on the investment only if they stay with the firm beyond that point. He had tried to convince the committee that if I left the firm to teach, it would only reflect positively on them, but the committee remained unconvinced.

“I disbelieve your explanation,” I told him at the outset, “especially given the philosophy you explained to me during my interview.” I reminded him that “people who expect to leave the firm stay, and many who expect to stay end up leaving.” He asked me what *I* thought had happened. I explained that, as I saw it, he had two legitimate considerations: my paper record and my interview. He had already told me that my record impressed him, so that left the interview. “As for the interview,” I told him, “I might have assumed we just didn’t click, had you not assured me so emphatically that I was perfect for the firm. Perhaps your enthusiasm during the interview was a mistake (in fact, it clearly was a mistake) because it eliminates the second legitimate consideration. Which leads me to conclude that some other—*illegitimate*—consideration came into play.”

I told him I would not be surprised if someone on the hiring committee had looked at my resume and worried aloud that I might be the type to rock the boat. “Perhaps someone else agreed that I might be a risk. After some discussion of the matter, I would guess, you were sent back to your office to write a rejection letter that must have embarrassed you a great deal, after your exuberance during our first meeting.”

Then the interviewer asked me a telling question: “If you came to work for the firm, and two years later got a bad evaluation, would you immediately assume that the evaluation was the result of anti-gay discrimination? I don’t know that this was a factor,” he assured me, “but

I wouldn't be surprised if some people on the hiring committee had this concern in mind."

At first I could not believe that he had actually said what I heard. I responded that his "hypothetical" explanation would make perfect sense, but that such a consideration would be illegitimate, and in the District of Columbia, illegal. I analogized the situation to refusing to call back an African-American student who worked for the NAACP legal defense fund because of a fear that she might contest an evaluation two years down the line. "No doubt a 'logical' explanation, but one that is nevertheless both morally and legally unacceptable."

He did not seem pleased with my line of argument. "You misunderstood me," he intoned. "I didn't say that I thought anybody here had that concern. In fact, I questioned every one of them until I was convinced that their concerns were legitimate." And, while I cannot say with assurance that I did not receive a call-back because of my openness about my sexual orientation, this incident reminded me of the risk inherent in a decision to come out during the interview process.

## VI. CONCLUSION

Although my observations during this project cannot prove any ultimate truths about the state of sexual orientation discrimination in the legal world, these anecdotes identify a concrete problem that law schools can begin to address immediately. Many—if not most—of the law firm representatives interviewing on campus *intend* to take an open-minded approach to the hiring process but lack critical information about what action does and does not constitute sexual orientation discrimination. Career Services Offices can fill this informational void by providing the people who take advantage of on-campus interviewing privileges with guidelines explaining that questions about items on a resume do not discriminate and that policies endorsing the closet do discriminate. Any discussion initiated by Offices of Career Services will increase the interviewers' comfort level with the topic of sexual orientation. This comfort will trickle down to gay students with whom they meet. So this story has a happy moral: a small investment of time and energy on the part of law school administrations could result in significant improvements in what can now be a remarkably unpleasant process for gay and lesbian students.