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City Club of Portland Report on Homosexuality in Oregon

City Club of Portland (Portland, Or.)

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CITY CLUB OF PORTLAND
Report on
Homosexuality in Oregon

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The City Club membership will vote on this report on Friday, July 8, 1994. Until the membership vote, The City Club does not have an official position on this report. The outcome of this vote will be reported in the City Club Bulletin dated July 22, 1994 (Vol. 76, No. 8).
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I. EXECUTIVE SUMMARY

Although Ballot Measure 9 was defeated in November 1992, it caused considerable debate and divisiveness throughout Oregon. The ballot measure sought to prohibit state and local governments in Oregon from protecting homosexuals through civil rights laws, to force government agencies and schools to categorize homosexuality as "abnormal, wrong, unnatural, and perverse," and to teach that "these behaviors are to be discouraged and avoided." In the debate over the ballot measure there were many arguments and counter arguments. Because issues relating to the ballot measure and political activity concerning rights of homosexuals continues, the City Club initiated this study to research issues concerning homosexuality.

The study objectives were:
1. To provide factual underpinnings to assist in sound public policy development.
2. To make recommendations that are factually grounded that would reduce divisiveness.
3. To provide information that can inform future discussions and debates.

The committee investigated historical and scientific information concerning homosexuality, including its nature and role in society. The report focuses on three areas of concern regarding homosexuality: children and adolescents, the work environment, and the contentious issues surrounding the "equal rights vs. special rights" debate.

Our key findings are:
1. There is a strong biological component in the origins of homosexuality. The weight of medical and psychological opinion is that homosexuality is not a neural or psychological disorder. Sexual orientation appears to be more like an immutable trait than a matter of personal choice.
2. In school and work environments, conduct-based standards have been an effective way to deal with value-related issues such as homosexuality. Conduct-based standards describe categories of inappropriate behavior including personal harassment, abuse of authority, displays of affection, and explicit discussions of sexual practices.
3. Some public schools, including the Portland Public School District, have developed protocols for handling questions about value-laden issues such as homosexuality under which teachers respond to factual questions raised by students and encourage students to discuss the underlying value issues with their parents, religious leaders, or other responsible adults.
4. Some youths identify themselves as homosexual or are uneasy or confused about their evolving sexual orientation. These youth are at high risk of dropping out of school, becoming homeless, drug dependent, or suicidal.
5. Problems due to workers' lack of acceptance of homosexual co-workers have not been widespread and are not identified among the leading concerns of workers. Group cohesion and productivity is increased when leadership sets the tone and consistently requires conduct-based standards.
6. Homosexuals currently have no general protection from discrimination under federal or Oregon state law. The cities of Portland, Ashland and Corvallis have ordinances prohibiting discrimination against homosexuals.
7. Many people fear that anti-discrimination laws protecting homosexuals may lead to affirmative action requirements or quotas. However, the Committee believes affirmative action or quotas for homosexuals would be extremely difficult, if not impossible, to enforce since it is not reliably known what percent of the general population or any particular organization is homosexual.

The report recommends:

1. Oregon should pass a state constitutional amendment that prohibits intentional discrimination based on sexual orientation in employment, housing and public accommodations. The amendment should also provide that affirmative action programs, hiring quotas, and discrimination-based hiring preferences should not be afforded based on sexual orientation.

2. Oregon state school systems should implement a model like Portland School District's, which refers students to family, clergy and other trusted adults on sensitive issues such as homosexuality. The model should include its "Values Question Protocol" and "conduct-based" standards for acceptable conduct within school. Teachers and counselors should be provided increased training on effectively implementing the protocol related to human sexuality and sexual orientation.

3. State agencies that study and provide services for at-risk youth should acknowledge and adequately address the unique problems associated with homosexual youth.

4. Business leaders should recognize their role in promoting group cohesion within the workplace by developing "conduct-based" standards regarding homosexuality such as those recommended by the RAND study. These should be used in the workplace to maintain group cohesion and productivity when addressing issues concerning sexual orientation. These standards should focus on the job to be done and the kinds of professional interpersonal behaviors that are and are not acceptable. These standards should stress that people do not have to like each other to be able to work together effectively, but that they must accept the objectives of the group and the required conduct-based standards.

II. INTRODUCTION

A. Introduction to the Study

In March of 1993, the Board of Governors of the City Club of Portland charged this committee with preparing a study presenting an unbiased, factual report on key public policy issues related to homosexuality in Oregon. This decision was made following the defeat of Oregon State Ballot Measure 9 in November of 1992. Measure 9 sought to prohibit sexual orientation from being included as a protected class under state law, to force government agencies and schools to categorize homosexuality as "abnormal, wrong, unnatural, and perverse," and to teach that "these behaviors are to be discouraged and avoided." This measure drew substantial political attention, both within and outside the state. The City Club issued a ballot measure study recommending against its passage.

Homosexual rights is a divisive and controversial issue. Advocates of homosexual rights have been lobbying for legal protection in the Oregon legislature for many years. Opponents of homosexual rights have advocated against legal protection for homosexuals in cities and counties statewide, and a revised state
ballot measure petition is currently being circulated. What becomes clear in these debates is the wide range of views on homosexuality, from those who believe it is a sin or morally wrong to those who believe it is just as moral and deserving of societal protection as heterosexuality. Still others are undecided.

Both national and local debates on homosexuality are frequently clouded with disagreements of fact. In addition, there has been heated, inflammatory and misleading political rhetoric on both sides of the issue. This political material and rhetoric has portrayed the opposition in terms which apply, at most, only to a small minority of extremists. For example, proponents of Measure 9 and the more recent initiatives have been compared to Ku Klux Klan members and Nazis, while opponents have been characterized as pedophiles and exhibitionists. It has become obvious to the Committee that these characterizations do not describe the vast majority of individuals representing either point of view, and the distortions involved have the effect of heightening fears and distracting voters from the real issues.

This report looks beyond this rhetoric and provides some basis in fact upon which concerned citizens can carry on informed political debate.

B. Objectives of the Study

This study has three fundamental objectives:

1. To provide factual underpinnings to assist in sound public policy development, while avoiding judgments based on moral or religious beliefs.
2. To make recommendations that are factually grounded and, if possible, focused on reducing divisiveness within Oregon.
3. To create a report that can inform future discussions and debates to a material degree.

The Committee recognizes that individuals have a wide range of moral and religious views. This report should help concerned citizens distinguish between the facts and non-factual, political rhetoric that surrounds most debates on these issues and, as a result, allow citizens to make better-informed political decisions.

III. BACKGROUND

A. The Nature of Homosexuality

None of the important social and public policy issues that surround homosexuality can be addressed without first understanding the nature of homosexuality and the history of attitudes toward homosexuality and homosexuals. The Committee's investigations included review of published research in the field, as well as interviews with health care and social work professionals.

Orientation versus Behavior

To understand what is now known regarding homosexuality, one must first recognize that the term "homosexual" is used with two fundamentally different meanings, and it is important to distinguish clearly between them. "Homosexual" sometimes refers to sexual orientation and sometimes to sexual behavior.

A person with a homosexual orientation possesses enduring sexual feelings and emotional attraction or feelings for persons of the same sex. This orientation may or may not result in behavior that is different from the behavior of persons with a
heterosexual orientation. A person exhibiting homosexual behavior engages in sexual activity with a person of the same sex. This behavior may or may not be associated with the emotional attraction or feelings that define a homosexual orientation, as exemplified in the homosexual behavior of some men in prison. Unless the context makes a different meaning clear, this report will use the words "homosexual" and "homosexuality" to refer to sexual orientation.

As will be seen below, scientific findings indicate that sexual orientation may reveal itself very early in life, long before the onset of any sexual behavior.

The View of Mental Health Professionals

There are those within the political debate who characterize homosexuality as a chosen behavior of individuals, and thus a lifestyle that can be changed by personal choice. This view is inconsistent with most medical research into the nature of homosexuality conducted over the past forty years.

Most mental health care professionals no longer treat homosexuality as a mental illness. In 1973, the American Psychiatric Association removed "homosexuality" as a mental disorder from the Diagnostic and Statistical Manual, the standard reference in psychiatry and psychology. A small minority of psychologists continue to view homosexuality as a mental disorder, although there is no long-term research to show that efforts to convert sexual orientation through therapy are effective. Empirical evidence and professional norms do not support diagnosing or treating homosexuality as a mental disorder.

In 1992, the Oregon Psychological Association adopted the same position as the American Psychiatric Association, stating:

"Homosexuality is neither a mental nor a psychiatric disorder. Over the past four decades, an overwhelming body of empirical evidence has shown that homosexuality implies 'no impairment in judgment, stability, reliability, or general social or vocational abilities'."

The Oregon Psychological Association noted that before recent decades, "mental health professionals lacked factual information about homosexuality and so based their theories on assumptions, including personal biases and prejudices."

The Origins of Homosexuality

In the last few years, several scientific studies have examined the biological component of homosexual orientation. The most referenced and publicized neurobiological research on homosexuality that has appeared to date is the 1991 study conducted by Simon LeVay at the Salk Institute in La Jolla, California. LeVay dissected brain tissue obtained from routine autopsies of 41 people who had died in hospitals in New York and California. The study sample consisted of 19 homosexual men, all of whom had died of AIDS; 16 presumed heterosexual men, six of whom had been intravenous drug abusers and had died of AIDS; and six presumed heterosexual women. No brain tissue from lesbians was available.

LeVay examined the hypothalamus, and more specifically, four small groups of neurons in the anterior portion. He found that one of the neurons was sexually dimorphic in human beings, that is, significantly larger in men than in women. He found that one of these sexually dimorphic neurons was more than twice as large in heterosexual men as in homosexual men. There was also a similar difference between the heterosexual men and the women. He concluded, therefore, that "the
discovery that a nucleus differs in size between heterosexual and homosexual men illustrates that sexual orientation in humans is amenable to study at the biological level."

This study, although widely circulated and discussed, has several problems, as pointed out by other researchers, including the small sample group and a great variation of individual nucleus sizes. Research is continuing in this area, but LeVay's findings have not yet been replicated by other researchers. The idea that brain cells of heterosexuals and homosexuals may differ is derived from the idea that brains of men and women differ, but this latter idea is still hotly contested. Research results are inconclusive on either side of the debate.

Another study that gained attention was conducted in 1991 by a Northwestern University psychologist, Michael Bailey, and Boston University's Richard Pillard, in which they compared 56 identical twins (twins from the same egg), 54 fraternal twins (twins from separate eggs), and 57 genetically unrelated adopted brothers. Identical twins are important to these studies because they have identical genomes, including the sex chromosome pair. One hypothesis suggests that if homosexuality is largely genetic in origin, then the more closely related the people are, the greater should be the similarity of their sexual orientation. This study, in fact, found that to be true. Bailey and Pillard reported that if one twin was gay, the rate of the other twin being gay was 52 percent for identical twins, but only 22 percent for fraternal twins. Adoptive brothers' gay-gay rate was even lower at 11 percent. These results support the hypothesis that homosexuality is at least partially attributable to genetics, perhaps even as much as 70 percent attributable.

A more recent genetic study of female twins by Bailey and Pillard, which is soon to be published in "The Archives of General Psychiatry", finds the same results that the researchers found in the original male twin findings.

In summary, recent research indicates that there appears to be an important biological component in individuals having a homosexual orientation. However, it should be noted that no study indicates that biology is the only determinant of homosexuality; early environmental experience probably plays a substantial role as well in determining one's sexual orientation.

One study indicates that a person's sexual orientation may be set at a very early age, even if environment (experience, learning, etc.) influences an individual's eventual sexual orientation. Richard Green, a psychiatrist at the University of California at Los Angeles, conducted a study that showed that children who manifest aspects of gender-atypical play often are identified as homosexual later in life. He found that certain gender-atypical play in prepubescent boys (for example, dressing in women's clothes, playing with dolls, or taking the role of mother when playing house) indicated a future homosexual orientation 75 percent of the time. This conclusion is important because the study examined not sexual behavior but rather play behavior, which suggests how deeply rooted sexual orientation may be.

Though the environment may affect the young child's eventual sexual orientation, any effect appears to be more indirect than the homosexuality of one person rubbing off onto the child. For example, research indicates that being raised by a homosexual parent does not appear to contribute to a child's eventual sexual orientation. In a paper on lesbian mothers and family law, Patricia J. Falk cites several studies investigating the effects of lesbian mothers on their children's gender role development. These studies found no significant difference in gender role
development between children in a lesbian household and children in a comparable heterosexual household. G.M. Herek, a psychologist at the University of California at Davis, identifies studies by Richard Green which gave the same results:

"Green and his colleagues compared children raised by 50 lesbian mothers (30 daughters, 26 sons) with children raised by 40 single heterosexual mothers (28 daughters, 20 sons). They found no differences between the two groups of children on measures of intelligence, gender identity, wishes to be the other sex, popularity with peers, or social adjustment."8

"Green concluded that 'boys and girls raised from early childhood by a homosexual mother without an adult male in the household for about four years do not appear appreciably different on parameters of psychosexual and psychosocial development from children raised by heterosexual mothers, also without an adult male present.'"9

The Committee is not aware of a similar study on children raised in a household with homosexual men.

As mentioned above, whatever the biological and environmental components of homosexuality, professionals generally agree that one's sexual orientation is fixed at an early age and cannot be changed without serious consequences for the individual. The Committee interviewed a representative from a local religious group that ministers to those who are unhappy with their homosexual orientation and wish to change it. The representative cited specific examples of homosexuals who appear to have changed their orientation. However, there is no objective research showing that such therapies actually work, that the individuals involved are representative of the homosexual population as a whole, or that the psychological consequences of this therapy do not have consequences that are harmful to the individual's long-term psychological well-being. To quote again from the Oregon Psychological Association:

"Sexual orientation is highly resistant to change, and attempts to change it can be harmful. Dr. Bryant Welch, Executive Director for Professional Practice of the American Psychological Association has concluded: 'No scientific evidence exists to support the effectiveness of any of the conversion treatments that try to change one's sexual orientation.'"10

Herek notes that "Many interventions aimed at changing sexual orientation have succeeded only in reducing or eliminating homosexual behavior rather than in creating or increasing heterosexual attractions; they have, in effect, deprived individuals of their capacity for sexual response to partners of either gender."11

The Prevalence of Homosexuality

Testimony and the literature indicates that studies of the prevalence of homosexuality are handicapped by several methodological problems. First, the social stigma attached to homosexuality has made it difficult to design surveys that assure confidentiality and anonymity. Closely related are the problems of identifying and reaching representative sample populations. Because so little is known about the demographics of homosexuals, it has been hard to define methodologies that eliminate sampling bias.

In addition, the social controversy surrounding the issue has made it difficult to secure public funding for large-scale, sophisticated surveys. A major survey of sexual behavior in America, proposed as research to fight AIDS, was canceled..."
during the Bush administration due to pressure from conservative members of Congress.

Studies of the prevalence of homosexuality have also been handicapped by lack of precision about the phenomenon they have tried to measure. The first large scale effort to measure the incidence of various kinds of sexual behavior in America was the 1948 Kinsey study *Sexual Behavior in the American Male*. Kinsey described a range of sexual behavior, from exclusively homosexual to exclusively heterosexual.

The Kinsey study is often cited as finding that 10 percent of the American male population is homosexual. However, the Kinsey study actually stated that about 4 percent of the white male population was exclusively homosexual (as defined by sexual outlet and "psychosexual reactions," determined by interview) throughout their adult lives, whereas the 10 percent figure referred to men who were more or less exclusively homosexual for three years. However, Kinsey's study was based on a "convenience sample" that may have not been fully representative of the population and may have led to an over estimate of the prevalence of homosexuals.

Subsequent studies have used slightly different definitions of homosexuality, and have typically arrived at estimates of "exclusive homosexuals" in the range of 2 percent to 6 percent. In addition, many individuals reportedly experience some elements of a bisexual orientation. Kinsey reported that 37 percent of the men interviewed reported same-sex experience that led to orgasm, and 13 percent of the women reported same-sex behavior.

The more recent *Janus Report*, published in 1993, found that 22 percent of male respondents and 17 percent of female respondents had same-sex experiences at some time in their lives. However, only 9 percent of men and 5 percent of women indicated they had "ongoing" homosexual experiences. When asked to identify their sexual orientation, 4 percent of men and 2 percent of women indicated they were homosexual, while 5 percent of men indicated they were bisexual and 3 percent of women indicated they were bisexual. Sometimes those attractions have equal intensity and sometimes a bisexual person is more attracted to one gender than the other. A 1991 survey conducted by researchers from the Battelle Human Affairs Research Centers found that only 1.1 percent of men surveyed had exclusively same-gender sexual activity. This study has been criticized because, like many other surveys on the subject, it relied on face-to-face interviews, and some respondents may have altered their responses because of concerns about confidentiality or the interviewer’s reaction.

To put these figures in context, if Oregon's population is representative of the nation as a whole, perhaps 2-6 percent of Oregonians are exclusively homosexual and another 2-6 percent are bisexual. In comparison, the 1990 U.S. Census indicates that African-Americans account for 1.6 percent of the state’s population, Hispanics 4 percent, and Asian-Americans and Pacific Islanders 2.4 percent. These numbers indicate that homosexuals are a sizable minority in Oregon. Moreover, although information is hard to come by, anecdotal evidence suggests that the percentage of homosexuals in the urban population may be much higher than in the state as a whole, and therefore the social and political issues may affect a larger proportion of city dwellers.
B. History of Attitudes toward Homosexuality

Historically, attitudes toward homosexuality have varied between cultures. Some non-Western societies have been highly tolerant of homosexuality or have viewed it as appropriate for certain people such as the young or men when there were no women available. Conversely, Judeo-Christian cultures have typically treated it as "an abomination." This conflict of attitudes was apparent when Europeans first arrived on the North American continent. Among the Native American tribes they found an openness and range of sexual behavior that astounded them. Within Native American tribes, they found individuals they called berdache (from the French word for sodomite), men who dressed and lived as women and sometimes women who dressed and lived as men. These berdache could be the most esteemed and bravest in the community. To the European, the acceptance of men in a society who practiced "abuse" of their bodies and who performed women's tasks "led to 'a corruption of morals past all expression.'"18

In European cultures during the sixteenth, seventeenth and eighteenth centuries, homosexuality was suppressed and individuals could not openly admit to homosexuality without grave consequence. Homosexuality was often a capital offense, and court records reveal punishments which range from "public execution, drowning, castration, and court-martial to imprisonment and lobotomy."19

In the late nineteenth century, the secrecy surrounding male homosexuality began to lift and the medical profession became interested in examining homosexuality as a medical condition that might be treated. This was an era when the medical profession had launched a campaign against masturbation and all sexual behavior beyond that absolutely necessary for procreation:

"[The medical profession] also considered marital sexual relations potentially dangerous to a healthy body and warned that they should occur only in moderation and preferably for procreation. Masturbation, excessive intercourse, and most especially, homosexual behavior headed the list of injurious sexual practices warned against by 'modern medicine.'"20

During this time, the medical profession expounded many theories about the causes of homosexuality and proposed a wide range of treatments. In 1886, an influential work on the subject appeared by the German physician Richard von Krafft-Ebing, who stated that "homosexuality was the result of a congenital problem in the central nervous system and was unchangeable. Homosexuals were, therefore, 'sick,' but not through any fault of their own. They should be treated therapeutically by the medical profession rather than criminally by the courts."21

Sigmund Freud opposed the view that homosexuality was an illness:

"Homosexuals, according to Freud, were stuck at one point in sexual development, a stage that 'normal' people passed through on their way to 'mature' (hetero)sexuality. He saw homosexuals, accordingly, as 'regressed' but not 'sick.' He rejected genetic explanations and indeed said that 'inversion' was not disabling; rather, he felt that it was often found in people of high intellectual ability and impeccable moral character. In a letter to the mother of a homosexual son, he said that 'homosexuality is assuredly an advantage, but it is nothing to be ashamed of, no vice, no degradation it cannot be classified as an illness.'"22
Though much of psychiatry was built upon the views of Freud, psychiatrists generally ignored his views on homosexuality until the time of Kinsey. When Kinsey reported that the prevalence of homosexuality and homosexual behavior was much greater than had been previously believed, the medical profession began to look more objectively at homosexuality, its causes, and the differences or lack of differences between homosexuals and heterosexuals. These studies led to the view currently accepted by the major professional organizations of psychiatrists, psychologists and sociologists that "homosexuality is not the result of any personal problem or family deficiency and does not indicate any psychological maladjustment."23

In spite of the results of current research and the evolution of accepted medical conclusions, public attitudes towards homosexuality and homosexuals in the U.S. have been slow to change. In recent times, many Judeo-Christian churches have taken a more tolerant view of homosexuality and there is a tension between these churches and those that continue to hold to their traditional, less accepting views. While it is true that in some communities homosexuals can live openly with little fear of negative consequences, in most communities homosexuality remains a social taboo.

C. Homosexuality in Oregon

For most of Oregon's history, homosexuality was an invisible element of Oregon life.24 Until the 1960s, the only mention of homosexuality in Oregon's newspapers was an occasional story of scandals alluding to "vice" or "the sin not to be named among Christians." Nonetheless, as early as 1937, when the Music Hall nightclub opened in Portland, homosexuals found ways to meet each other and began to develop a sense of common identity. Through the 1960s, clubs and bars were almost the only meeting places for homosexuals; but during periodic sweeps against "vice and perversity," nightclubs were closed and their patrons arrested. A notable example was the 1949 raids by police that closed the Music Hall and Rathskeller. Periodic campaigns against gay nightspots continued in the mid-1960s.

Despite crackdowns on homosexual meeting places, gays and lesbians in Oregon continued to meet and to develop an incipient identity, in part as a group that experienced persecution and injustice. In the mid-1950s, the nation's first gay rights organization, the Mattachine Society, was founded in Los Angeles; its members included a few Oregonians.

By the late 1960s, when gay men in New York rioted in response to another police raid on the Stonewall Inn, a gay bar in that city, gays and lesbians in Oregon were no longer willing to react passively to perceived persecution. In July 1969, a group of female impersonators founded Oregon's first gay organization, the Portland Forum, as a charitable organization, raising funds for numerous organizations including FISH, the Salvation Army, and the Portland Fire Department's Toy and Joy Makers. In August of that year, the Portland Gay Liberation Front was founded at Portland State University, followed in 1970 by the Second Foundation, a counseling service for gays and lesbians. In 1971, the state's first gay newspaper, The Fountain, began publication, the first gay pride day took place in Portland in July, and the first meeting of the Metropolitan Community Church occurred in October. Also in 1971, homosexual acts were decriminalized in Oregon.

Thereafter, gay organizations began appearing in other parts of the state and homosexual groups became more political. Gay political and social organizations were founded in Eugene in 1970, in Salem and Bend in 1976, and in Klamath Falls in 1977.
The political and social goals of most of Oregon’s homosexuals in the 1970s must be viewed within the context of the political climate of the period. The 1970s was a period of new political and reform movements throughout the United States, as evidenced by the growth of black power and feminism. Oregon was particularly active in political change; the bottle bill, state-wide land use reform, and the beginnings of the rebirth of downtown Portland were a few of the political and social innovations of the mid-1970s.

The political goals of many gays of the 1970s, focusing on elimination of discrimination in employment and family law and on social acceptance, were little different from the goals voiced by many gays and lesbians 20 years later. In the mid-1970s, such goals seemed achievable. In 1973, Oregon House Bill 2930, which would have prohibited discrimination on the basis of sexual orientation in housing and employment, was defeated by just one vote. In 1975, a similar bill never made it out of committee, and a bill that would have prohibited discrimination in state hiring on the basis of sex and sexual orientation also failed by one vote in the Oregon House.

As mainstream political change was frustrated, some gays and lesbians chose another path, organizing collectives and communes in rural Oregon. The creation of groups such as WomanShare, a lesbian collective organized in southern Oregon in 1974, and the gay commune Creekland near Klamath Falls in 1976 paralleled the development of “intentional communities” by other back-to-the-land idealists of the 1970s.

In the 1980s, two factors quickly brought an end to the political optimism that had been prevalent among homosexual political groups in the 1970s. First, AIDS struck many homosexual men, and fighting AIDS quickly became the chief preoccupation of many homosexuals. (The first AIDS case in the U.S. was identified in 1981.) Second, in part in reaction to the appearance of AIDS among homosexual men, homosexuality regained some of the pariah status that it had begun to lose in the 1970s. In addition, new conservative groups organized and overtly opposed the political and social goals of homosexual rights groups.

One conservative political group which formed in the 1980s was the Oregon Citizens Alliance (OCA). The OCA took the lead in an initiative to repeal Governor Goldschmidt’s 1988 executive order prohibiting discrimination based on sexual orientation. OCA’s initiative passed in 1989, but was overturned by the Court of Appeals in 1992. The OCA followed by sponsoring the Measure 9 initiative in 1992, which was defeated at the polls.

These events can be seen as the escalation of a political battle between those advocating protection from discrimination based on sexual orientation and those advocating against such protection. The political battles were an additional incentive for homosexuals to “come out” and become more politically active. The battles continue, with 24 (as of June, 1994) local communities passing OCA-sponsored “Son of 9” initiatives limiting anti-discrimination legislation in these communities. These measures were countered by the passage of House Bill 3500, reserving to the state all legislation that singles out people on the basis of sexual orientation.

One final concern during these politically active times is whether or not there has been an increase of hate crimes directed against homosexuals. Evidence of hate crimes and other harassment of homosexuals is limited because until recently no records were kept, so there is no way to accurately measure crime statistics.
Nevertheless, the Committee did find that in recent years there has been an increased awareness of crimes against homosexuals. Police departments in Oregon are now training their officers to be more sensitive and more aware of crimes associated with sexual orientation.

D. Summary

- Although the stigma associated with homosexuality has made it very difficult to measure the number of homosexuals in the U.S., it appears that they amount to 2-6 percent of the population overall, with an additional 2-6 percent identifying themselves as bisexual. This makes homosexuals a minority comparable in size to African Americans, Hispanics, and other ethnic minority groups in Oregon.

- The major medical and psychological professional associations have uniformly concluded that homosexuality is not a neural or psychiatric disorder and does not involve an impairment of social, psychological, or vocational attributes.

- There appears to be a strong biological component to sexual orientation, though research is unclear on exactly how much is determined by biology and how much by environment.

- Though environment may contribute to one's sexual orientation, whether or not one associates with or lives with homosexuals does not appear to be a contributing factor.

- One's sexual orientation appears fixed at an early age.

- One's sexual orientation (as opposed to sexual behavior) is highly resistant to change and attempts to change it may be harmful to the individual's psychological well-being.

- Homosexuality exists in most cultures and is accepted in many. However, Judeo-Christian cultures have historically treated homosexuality as an "abomination." In recent times, many churches have taken a more tolerant view of homosexuality and there is a tension between these churches and those that continue to hold to their traditional, less accepting views. Still, homosexuality continues to be a social taboo in most communities.

- The 1970s and 1980s have seen both an increase in the political activities of homosexuals to overcome the social taboos of the past and receive protection from discrimination and an increase in the political activities of those opposed to the political and social goals of homosexual rights groups.

IV. CHILDREN AND ADOLESCENTS

The Committee investigated information about homosexuality provided to students through Oregon public schools, the rights of parents in controlling exposure of their children to such information, Oregon's experience with homosexual teachers and care-givers, and the services provided to children and adolescents who identify themselves as homosexual.

A. State Guidelines for School Curricula

The Committee investigated state guidelines regarding homosexuality in school curricula. The Committee interviewed officials of the state Board of Education and reviewed published state curriculum guidelines.
The Board of Education and other state agencies do not require Oregon public school students to receive instruction on the subject of homosexuality. According to Norma Paulus, state superintendent of public instruction:

"The State Board of Education does not require schools to provide sex education courses. It does require study in health education, but local school boards, not the state, decide whether sex education, including information about homosexuality, is taught. If sex education is provided, Oregon Law (ORS 336.035) requires local boards to notify parents or guardians in advance in writing that their child may be excused from the class. Parents may inspect the instructional materials that will be used. Local boards also determine what goes on in counseling programs."25

The Superintendent of Public Instruction pointed out that "...local school boards-after working with their community-determine the specific instruction."26 The Committee found a recurring theme: the state provides guidelines, but local school districts, working with their communities, have great latitude in developing and implementing specific curricula.

The AIDS epidemic led the Oregon state Board of Education to adopt a special policy in 1987 (#5680) which states in part:

"Age-appropriate instruction and materials about Acquired Immune Deficiency Syndrome/Human Immunodeficiency Virus (AIDS/HIV) should be included as an integral part of each school district's health education curriculum throughout the elementary, middle and senior high school grade levels. And, at least annually, senior high school students should receive additional age-appropriate (AIDS/HIV) instruction beyond that included in the required health education classes."

The Oregon Health Division took the lead in preparing educational materials for use by schools in teaching AIDS prevention, although advocating abstinence from sexual activity as the preferred method of avoiding infection. In addition, the health division included in its "Optional Lesson Plans" information dealing with discrimination against homosexuals. In the cover letter to its "AIDS Prevention: Optional Lesson Plans," dated March 1, 1992, the administrator of the health division wrote: "Information on sexual orientation and discrimination is included because silence and misunderstanding on these issues have seriously limited the effectiveness of prevention education."

Lesson plans developed by the health division on "Discrimination and Other Social Implications of HIV/AIDS" are consistent with the latest scientific research into the nature of homosexuality and its origins. For example, the lesson plans provide the following answers to some of the most often asked questions about homosexuality:

"Gay males and lesbians do not follow a uniform lifestyle. They have as varied lifestyles as do heterosexuals. They work in all types of jobs, live in all types of situations and families, belong to all ethnic and racial groups, are members of all religious faiths, differ in mental and physical abilities and are all ages.

"Stereotypical sex role behaviors do not determine sexual orientation. Generally, lesbians and gay males cannot be identified by certain mannerisms,
activities, dress or physical characteristics. Gay men and lesbians are as varied as heterosexuals.

"We probably all know people who are gay and lesbian whether we know it or not. Their experience and fear of rejection can prevent them from sharing that information with us.

"It is a myth that gay men and lesbians 'recruit' others to homosexuality. No one knows why someone tends more toward the homosexual or heterosexual end of the continuum. Researchers believe that one's basic sexual orientation is predisposed at birth or established at a very early age.

"The belief that lesbians and gay men should not be teachers, counselors, religious leaders, soldiers or fill other such roles is based on prejudice, myth, and unwarranted fear of sexual molestation. Studies show that 90 percent of all sexual abuse is committed by heterosexual men against young girls."

It is important to note that these state-supplied guidelines and lesson plans are not mandates to local school districts. In fact, the Committee found no school district curriculum that includes the above state-provided information. Even the mandated instruction on HIV/AIDS and other sexually transmitted diseases is left to the individual school districts to implement as they see fit.

B. Parental Rights and School Curricula

The Committee confirmed that parents have the right to limit exposure of their children to any information regarding homosexuality, either in sex or health education programs, by asking that they be removed from such classes or activities.

Oregon Law (ORS 336.035.2) and Oregon Administrative Rule (OAR 581-22-412) gives parents the absolute right to exclude their children from instructional programs, or portions thereof, pertaining to human sexuality, including HIV/AIDS. School districts are required to notify parents or guardians in writing that they have the right to review sex education materials in advance and to exclude their children from sex education classes. This parental right has been interpreted to include informational content of school assemblies, dramatic productions, and even popular music.

School administrators indicated to the Committee that this requirement may occasionally cause problems, because administrators are not always aware of the exact content of the material being presented to students. For example, a teacher may deviate from the approved lesson plan or otherwise get into an ad hoc discussion with students on a sex-related topic. Even more difficult, visiting speakers may not submit a complete description of their material sufficiently in advance to allow the school to notify parents.

Interestingly, ORS 336.035 also states that "No teacher shall be subject to discipline or removal for teaching or refusing to teach venereal disease education." Thus, even teachers have a right to withdraw from certain types of courses.

The Committee made inquiries to several Oregon public school districts to ascertain the nature of any information regarding homosexuality in school curricula. Because of the sensitive nature of these issues, representatives for districts outside of Portland asked that they not be quoted directly. These inquiries indicated
that if the subject of homosexuality is being presented at all to Kindergarten through grade 12 students, it is treated very cautiously.

Since the Portland Public School District is the largest district in the state, it is useful to describe its treatment of sexual orientation questions in some detail. The Committee interviewed senior representatives of the Portland Public Schools curriculum and counseling departments.

The Portland School District has no curriculum that specifically addresses homosexuality. Sexual orientation is treated as a "value" question and teachers and other staff have been provided with extensive training on handling all such questions. The Portland policy is to address value questions only when raised by students. When this occurs, the teacher or counselor is to follow the "Values Question Protocol:"

**Values Question Protocol**

1. Affirm the student for asking.
2. Identify it as a belief question (distinguishing it from factual questions).
3. Answer the factual part, if there is one.
4. Help the class describe the range of beliefs...not theirs, but society's.
5. State your own belief, if it is asked for and if it is relatively universal.
6. Refer to family, clergy and other trusted adults.

According to those who developed the Portland curriculum, the teacher or counselor is told never to express an opinion on homosexuality as a value. Instead, homosexuality should be identified as a part of the range of values that some people affirm and some people denounce (a factual claim). No personal opinion should be expressed, even when asked, since this is an area where universality of opinion does not exist. Students who wish to know more will always be referred to family, clergy and other trusted adults outside the school environment.

The values position of the Portland district is worth reviewing. Teachers take a value-neutral stand on homosexuality and refer students to family and others for information on values. The district does affirm one value: all students must feel safe within the school environment, whatever their beliefs and lifestyle. To quote from the Portland "Instructions for Teachers:"

"Overall our teaching must reflect the entire community, acknowledging our spectrum of diversity so that all students feel that they are included and feel that their way of life is respected. A teacher is expected to model and maintain an environment of mutual respect for all. It is the teacher's responsibility to see that all students feel safe in their classroom. (The PPS Student Handbook states it is a violation of the discipline code to pester, torment, threaten, display sexually, racially or religiously offensive materials or to engage in other similar acts which endanger the physical safety or mental or emotional well-being of others.)"

Teachers do not take a position on values questions, including those associated with sexual orientation, but affirm the rights of all individuals to have differing values.
It is interesting to note that the Portland Public School’s approach to sexual orientation and other value-laden questions fits in the category of “conduct-based standards.” Conduct-based standards are those which focus on permissible behavior within an environment rather than on the fundamental beliefs of those involved. In the Portland Public School environment, taking a value-neutral stand on sexual orientation but affirming the right of every student to be safe and free from harassment, a focus on permissible behavior, is a conduct-based standards approach. These are discussed in more detail in the next chapter.

Turning to other districts, a Central Oregon district official reported that the district had no written curriculum and no formal instruction planned regarding homosexuality. While the district maintains some material for teachers to use, if a question about homosexuality is raised, each teacher and counselor is left to handle the subject as that person sees fit.

A representative from a Willamette Valley district wrote to the committee:

“Homosexuality does appear in our curriculum regarding high risk behavior for contracting AIDS. This first appears at the mid-school level. In some of our classrooms, the genetic and social factors that may encourage homosexuality are discussed; however, the goal of these lessons is to teach students that violence toward any persons regardless of race, gender or sexual preference is not acceptable. There is an absence of moral judgment regarding any type of lifestyle.

“Any student wishing to discuss homosexuality as a lifestyle is usually encouraged to talk with a school counselor. Students are also encouraged to talk with their parents or church official or representatives.”

A Portland area suburban school district reported that all students, K-12, receive some instruction about HIV/AIDS. This particular curriculum was recently revised after considerable community input through several public hearings. It is the policy of this district to refer students in K-4 to parents or their churches when they raise questions about homosexuality. Students in grades 5-12 are allowed to discuss homosexuality, but the discussion is treated as a controversial issue and students are encouraged to talk with their parents or churches about it. In addition to HIV/AIDS curriculum, students in grades 7-12 receive instruction in human sexuality. If students raise questions about homosexuality or about their own sexuality, they are referred to “various resources inside and outside the school.”

Although the Committee was able to interview only a sampling of the school districts in the state, it found that the exposure of children in Oregon schools to information about homosexuality is limited. Even in grades 9-12, most school districts choose to deal with questions about sexuality, and homosexuality in particular, as a politically and socially sensitive area that should be handled either by parents, churches, or in one-on-one sessions with a school counselor.

C. Oregon’s Experience with Homosexual Teachers

Oregon has had no identifiable experience with homosexual teachers as a group, since there are no records kept regarding teachers’ sexual orientation. Identification of sexual orientation is not required for employment as a teacher in Oregon and, thus, one’s sexual orientation is not a matter of record.
From January 1991 to June 1993, five of Oregon’s 48,300 licensed active teachers had their teaching licenses revoked for “inappropriate homosexual behavior.” The significance of this fact is unknown for at least two reasons. First, records do not indicate the sexual orientation of the teacher whose license was revoked. Second, the records do not indicate what actions were classified as “inappropriate homosexual behavior.”

In Oregon, the sexual conduct of teachers is regulated without reference to their sexual orientation. Sexual contact of any kind between teacher and student is strictly illegal under Oregon statutes. Likewise, overt public sexual behavior (homosexual or heterosexual) is also illegal, as is sexual abuse of children. These laws are designed to protect children from inappropriate sexual experiences without regard to the sexual orientation of the perpetrator.

D. Foster Care

To understand the role of homosexuals in Oregon’s foster care system, the Committee reviewed published policy and interviewed senior representatives of the state Children’s Services Division (CSD). Witnesses indicated that there are few CSD placements of children with identified homosexual foster care givers. CSD has published the following statement concerning placement with homosexual foster parents:

“When placing a child in foster-care, we look for a home which is most similar to the child’s own. We consult with the child’s parents and relatives to find the best possible placement.

“All foster homes must complete a home study and a criminal record check before being certified as a safe, temporary home for children.

“Of our approximately 2700 foster homes, few are declared gay or lesbian.

“There are several circumstances in which we would place a child in a gay or lesbian foster home:

“If the child’s parent is gay or lesbian and asks that we place his/her child in a gay or lesbian home, we would consider the request and make a decision based on the best interests of the child.

“If a relative of the family or a close family friend is a resource and is gay or lesbian, and the parent wants the child in this home, we would consider a special certification and place the child if the home can provide a safe and nurturing environment.

“If the child is self-declared gay or lesbian, and the parents prefer that we place him/her in a gay or lesbian home, we would consider this as an option.

“In all cases, we would consult with the parents. When appropriate, we would inform the juvenile court.

“We neither discriminate against nor advocate for gay and lesbian foster parents. We make decisions considering the best interests of the families and children involved.

“Most children in need of temporary, safe homes will be placed in traditional family homes. However, Children’s Services Division needs the flexibility to consider alternative homes in special situations.”
E. Exposure to Homosexuality and Sexual Orientation

One area of special concern to the Committee was the extent to which the sexual orientation of children and adolescents is affected by information about homosexuality and by contact with homosexual teachers and care givers.

The Committee found no evidence that acquaintance with homosexual teachers or care givers or school curriculum on sexual orientation has any effect on the eventual sexual orientation of children. No statistics are available on this point, since Oregon schools do not record the sexual orientation of teachers or of students. CSD does record the sexual orientation of caregivers when the information is volunteered, but has placed only a few children in identified homosexual households; CSD recorded no problems with these placements. The Committee interviewed several representatives of CSD, the state school system and local school districts. None of these representatives could identify a single problem in this area. Finally, sex and health education curricula used throughout Oregon do not introduce information about homosexuality until well beyond the age when research indicates sexual orientation is established in the individual.

These findings are consistent with the Committee's investigation of the nature of homosexuality and its determinants. Neither information about homosexuality nor acquaintance with homosexuals affects a child's eventual sexual orientation. Most research indicates that sexual orientation is the result of a combination of genetic, hormonal, and early developmental factors. It is not the result of either information about sexual orientation (whether heterosexual or homosexual) or of acquaintance with persons of a particular sexual orientation. Even studies of children raised in lesbian households (where contact is much closer and continuous than in the classroom) found the incidence of homosexual orientation to be no different than for children raised in heterosexual households.

F. Homosexual Adolescents

The Committee found a growing set of problems associated with adolescents who have become troubled with their sexual orientation or who have actually identified themselves as homosexual. In 1989, Paul Gibson, a San Francisco therapist and program consultant wrote:

"Gay and lesbian youth belong to two groups at high risk of suicide: youth and homosexuals. A majority of suicide attempts by homosexuals occur during their youth, and gay youth are 2 to 3 times more likely to attempt suicide than other young people. They may comprise up to 30 percent of completed youth suicides annually. The earlier youth are aware of their orientation and identify themselves as gay, the greater the conflicts they have. Gay youth face problems in accepting themselves due to internalization of a negative self-image and the lack of accurate information about homosexuality during adolescence. Gay youth face extreme physical and verbal abuse, rejection and isolation from family and peers. They often feel totally alone and socially withdrawn out of fear of adverse consequences. As a result of these pressures, lesbian and gay youth are more vulnerable than other youth to psycho-social problems including substance abuse, chronic depression, school failure, early relationship conflicts, being forced to leave their families, and having to survive on their own prematurely. Each of these problems presents a risk factor for suicidal feelings and behavior among gay, lesbian, bisexual and transsexual youth."
In Oregon, a Task Force on Sexual Minority Youth was convened in December 1989 "to examine the issues and challenges Oregon's sexual minority youth face as well as to study the experiences of young people growing up with lesbian, gay, or bisexual parents." The purpose of the Task Force grew directly out of the 1989 Department of Health and Human Services Task Force on Youth Suicide. The Oregon Task Force confirmed most of the findings in the national study. They concluded:

"Oregon's sexual minority youth are an unrecognized and unserved at-risk population. Many of these youths (1) feel isolated from their peers and others; (2) lack information about what it means to be a healthy and productive lesbian, gay, or bisexual person; (3) lack appropriate role models; and (4) experience disruptions in their adolescent development as they do not have the opportunities to date and socialize that their heterosexual peers enjoy. Moreover, shame or confusion about their same-sex affectional orientation can lead to drug and alcohol abuse, inappropriate sexual acting out with the same or opposite sex (which may result in unwanted pregnancies and sexually transmitted diseases), serious depression and suicide. Further, lesbian, gay and bisexual youth may experience intimidation and harassment due to their sexual orientation from peers as well as from figures of authority and may-for the same reason-be rejected by their families. As a consequence of this alienation or rejection, some sexual minority youth live on the streets and exchange sexual favors for food, shelter, or money. While most lesbian, gay and bisexual youth emerge as healthy adults from the struggles associated with adjusting to a stigmatized and reviled minority status, their journey is lonely, uncharted and unsupported by families, friends, neighbors, service providers and others."

In 1992 and again in 1993, the Oregon Health Division, along with other state and local agencies and a number of public and private organizations, sponsored a "Regional Gay, Lesbian and Bisexual Youth Conference" in the Portland area. The conferences were aimed at addressing the problems documented in the Task Force report.

G. Summary

- Current state guidelines for addressing homosexuality in the classroom treat it as a sensitive subject best left to other sources (family, church, etc.) for discussion.
- State agencies have developed a variety of guidelines and lesson plans concerning HIV/AIDS, homosexuality and other sensitive subjects, but use of these is not mandatory and the Committee found no school district which uses them.
- The Portland Public School District has implemented an effective protocol and trained teachers, counselors and others in the handling of value-laden questions raised by students, referring the value portion to parents and other trusted adults.
- Under Oregon state statutes, parents have the right to review all school materials relating to sex education and to have their children excused from such classes or activities if the parents desire.
- The state does not keep records on teachers’ sexual orientation but reports no more problems with homosexual teachers than with heterosexual
teachers. There is no evidence that homosexual teachers have behaved more or less appropriately than their heterosexual counterparts.

- The Children's Services Division places children in identified homosexual foster homes only under special circumstances and generally with the consent of the parents.
- There is no evidence that the sexual orientation of children is influenced by being in classrooms with homosexual teachers or in homes with homosexual caregivers. This is consistent with empirical evidence which suggests that even close experience with homosexuals has no direct effect on a child's eventual sexual orientation.
- Homosexual youth are at substantially higher risk of becoming school dropouts, homeless, suicidal, and drug users than others, in part because of the social stigma attached to homosexuality and the lack of services within schools and elsewhere that can provide support.

V. EMPLOYMENT

Questions and concerns regarding homosexuals in the workplace generally revolve around productivity and discrimination. The Committee investigated how productivity in the workplace is affected by the existence of homosexual workers and by the existence of anti-homosexual attitudes among workers and managers. The Committee also investigated what is known about discrimination on the basis of sexual orientation in the workplace.

The Committee's research and experience indicates that the presence of homosexuals has not generally been a major issue within the workplace. Working conditions, pay rates, promotions, downsizing, sexual harassment, participation in decision making, etc. have far greater impact. The following discussion should be read in this context.

A. Background

Gay men and lesbian women, estimated by researchers to make up between two and six percent of the work force in the United States, are "coming out" in every profession. This has belied historical stereotypes of homosexuals as confined to certain occupations. A study of 4,000 gay men and lesbians conducted by Overlooked Opinions, a Chicago market research firm, found that more homosexuals work in science and engineering than in social services, 40 percent more are employed in finance and insurance than in entertainment and the arts, and ten times as many work in the computer field as in fashion.31

Within the work environment, homosexuals generally take one of three stances: there are those who fabricate a heterosexual identity, those who are openly known to be gay or lesbian, and those who hope the question won't come up but do not lie when faced with the question. Until the last decade, most homosexuals attempted to keep their sexual orientation concealed. Thus, workers weren't typically aware of the sexual orientation of their co-workers. But the number of homosexuals who are open regarding their sexual orientation has increased dramatically. This has forced homosexuals, co-workers and companies to address openly issues raised by differing attitudes toward homosexuality.

Companies respond in various ways to the presence of homosexuals among their employees. Some companies actively work to secure the well-being of
homosexuals among their work force. AT&T, Levi Strauss, USWEST, Microsoft, Intel, and Nordstrom are among the companies in this category. In addition, most national and many local labor unions have policies supporting and protecting homosexuals from discrimination. Some companies are now moving to provide benefits to “domestic partners,” which can include homosexual couples.

Most companies do not explicitly recognize the existence of homosexuals in the work force in their human resource policies and provide no specific support. Within these companies, a wide range of attitudes are expressed: some are sensitive to homosexual issues but think discrimination is best dealt with by treating all workers alike, some think homosexuality is a non-issue, and some express openly anti-homosexual attitudes.

There are a variety of reasons that companies do not provide explicit policies regarding homosexuals in the workplace. One of the primary reasons is that federal law, including Equal Employment Opportunity Commission (EEOC), provides no protection for homosexuals, and most companies adopt policies that adhere to EEOC guidelines. In addition, the size of the company may affect its policies. Small companies may have different concerns and resources. This is especially significant in Oregon where 80 percent of the private work force is employed by small companies.

B. Sexual Orientation and Productivity in the Workplace

Gays have “come out” in increasing numbers to promote AIDS/HIV education and research. This has created both dialogue and empathy with many fellow workers. While this new openness has fostered awareness, the emergence of gay people in the work force may be perplexing morally, personally, and professionally to some heterosexual co-workers. The confusion may be compounded when the co-worker is from a culture in which there is little or no discussion of homosexuality, or when the heterosexual belongs to a group that rigorously opposes homosexual behavior, either on religious grounds or as an erosion of traditional family values.

The Committee found relatively little objective information on the effects on productivity of openly gay individuals in the work force. What information exists suggests a work environment in a state of change. The productivity of both homosexuals and heterosexuals can be negatively impacted in the present situation.

A 1991 article in *Fortune* magazine discussed the effect on the productivity of homosexual workers because knowledge of their orientation could negatively impact their careers. These concerns seem well founded according to a *Wall Street Journal* article (July 1, 1992) citing research conducted by Overlooked Opinions. In a survey of 7,500 lesbians and gay men, survey respondents indicated that 11 percent of the women and 8 percent of the men said they were denied promotions, harassed or fired in just the prior six months and believe it was directly related to the knowledge of their sexual orientation. In fact, a 1987 survey by the *Wall Street Journal* revealed that 66 percent of major-company CEOs said they would be reluctant to put a homosexual on a management committee.

Productivity of homosexuals can also be affected by homophobic attitudes and behaviors from co-workers. These include isolation, ridicule and harassment.

While the coming out of gays and lesbians has heightened awareness of their presence in the workplace, the outspoken advocacy of the gay rights movement has engendered some fear and resentment. Fear comes, in part, from ignorance
regarding the contagion of HIV/AIDS and, in part, from the belief that homosexuals will be accorded rights through affirmative action and/or quotas which would jeopardize the jobs of heterosexuals.

Advanced Research Management Consultants (ARMC), a Philadelphia-based consulting firm specializing in human resources issues, measured the extent to which employees surveyed were bothered by the presence of subordinates and supervisors with sexual orientations different from their own. They found that 37 percent of 50,000 surveyed were bothered by people with different sexual orientations. A much higher percentage of men (46 percent) than women (29 percent) indicated that alternative sexual orientation is a problem for them.42

Nevertheless, according to a 1992 Newsweek poll, although public attitudes toward gay rights remain deeply ambivalent, nearly 80 percent of those responding believed gays and lesbians should enjoy the same access to job opportunities as heterosexuals.43

Although other work-related issues are generally of greater significance, the increased visibility of homosexuals and homosexual rights advocacy groups, combined with the general discomfort with considering a co-worker's sexual preference, has had an unsettling effect in the workplace. Some employers directly address this issue in their policies and procedures manuals with statements related to equal employment opportunity and prohibition of harassment, and many larger companies are including sensitivity and diversity training as part of their general training program.44

While American business has generally assumed, in recent years, that education and training of workers would increase tolerance and enhance productivity, a federally financed study provides a different perspective. A 1993 study by the RAND Corporation provides information and analysis used by the Department of Defense in formulating policy regarding homosexuals. RAND reviewed a large body of empirical research in the fields of industrial organization, social psychology, sports psychology, and group behavior. RAND found "no systematic empirical research has been conducted on the effect of acknowledged homosexuals on unit cohesion or unit performance."45

The principal conclusion of the RAND study is that it is not necessary to like people in order to work with them so long as group members share a commitment to the group's objectives. In contrast to the policies in many of the largest American corporations, RAND's recommended policy emphasizes defining and enforcing acceptable work behavior and conduct, instead of teaching tolerance and sensitivity. In fact, they found that for those who believe that homosexuality is primarily a moral issue, efforts to teach tolerance would breed additional resentment. They suggest a "conduct-based standard" which, among other items, includes:

"A list of categories of inappropriate conduct, including personal harassment (physical or verbal conduct toward others, based on race, gender, sexual orientation, or physical features), abuse of authority, displays of affection, and explicit discussions of sexual practices, experience, or desires."46

In implementing such a conduct-based standard, the role of managers and other leaders cannot be overemphasized. As the RAND study notes in the context of the military, "The message of policy change must be clear and must be consistently communicated from the top."47 A failure to address issues or an apparent ambivalence toward them aggravates situations that do arise.
In summarizing their position, the RAND researchers said:

"A policy that focuses on conduct and considers sexual orientation, by itself, as not germane in determining who may serve was judged to meet the President's criteria and to be most consistent with the research findings. Such a policy emphasizes actual conduct, not behavior presumed because of sexual orientation, and holds all service members to the same standard of professional conduct. It requires tolerance and restraint to foster the good of the group, but implies no endorsement of a 'homosexual lifestyle.'"\(^{48}\)

C. Discrimination in the Workplace

The Committee's investigation of discrimination in employment was limited because of the relative lack of data on the issue.

Although federal civil rights law prohibits discrimination in employment on the basis of gender, race, nationality, age and handicap, federal law makes no mention of sexual orientation (see "Individual Rights" below). Most employment law is developed at the state level and the underlying legal principle is "employment at will." What this means is that the employee can quit "at will" and the employer can fire "at will," i.e., at any time and for any reason not prohibited by law.\(^{49}\) Since discrimination based on sexual orientation is not explicitly protected, it is legally permissible for an employer to fire an employee simply for being homosexual. This legal situation promotes much of the concern noted above among homosexual employees.

Six states have statutes prohibiting discrimination based on sexual orientation for both private and public employment (California, Connecticut, Hawaii, Massachusetts, New Jersey and Wisconsin). Other states, including Oregon, leave the matter solely to the discretion of employers. However, many large cities have laws prohibiting discrimination on the basis of sexual orientation.

One of the few cases of employment discrimination on the basis of sexual orientation brought in Oregon was based on a violation of First Amendment rights because no applicable law specifically addressed discrimination based on sexual orientation. This 1991 case involved two female musicians from Ashland who were hired to teach a workshop on Renaissance music at a grade school. When promotional material appeared mentioning one of the women as the composer and musical director for a play about a lesbian softball team, the school principal called the arts organizations and canceled the contract, citing the play as the reason.

This case was settled out of court. The women were reinstated to their teaching positions and received a monetary settlement. In addition, the Oregon Arts Commission agreed to strengthen its contracts to prohibit discrimination on the basis of sexual orientation.\(^{50}\)

In 1991, the City of Portland passed a civil rights ordinance that included a prohibition against sexual orientation discrimination in employment, and in 1992 the Corvallis City Council passed a similar ordinance. In May of 1993, the Ashland City Council passed a resolution adopting an equal employment policy which prohibits the city from discriminating in employment based on sexual orientation. In June of that year, Ashland passed an ordinance prohibiting discrimination in housing on the basis of sexual orientation.
Thirty-eight cases have been filed in the city of Portland between passage of the civil rights ordinance in 1991 and November, 1993. Nine of these were “no cause closures,” three were withdrawn, and a finding of “no jurisdiction” was filed in four of the cases. There have been ten settlements, three cases withdrawn to court and twelve are still open pending determination. Ashland has had no cases.

Based upon the experience to date, the adoption of these protections for homosexuals in Portland, Ashland and Corvallis has created no substantial increase in the numbers of discriminatory complaints from employees. The numbers of complaints are not substantially different from complaints received by employees based on other employee rights protections.

D. Summary

- Measured by the number of complaints voiced, the presence of homosexuals in the workplace is not a significant problem for heterosexuals, when compared with other workplace issues such as working conditions, pay rates, promotions, downsizing, sexual harassment and participation in decision making.
- Sexual orientation is often an issue for homosexuals in the workplace, since they justifiably fear that knowledge of their sexual orientation may lead to discrimination in employment.
- Increased visibility of homosexual workers, who are coming out to support AIDS research and anti-discrimination political activities, is unsettling in some work environments. Some homosexuals fear workplace discrimination and harassment. Some heterosexuals have difficulty accepting the presence of homosexuals due to their moral, religious or other beliefs.
- There is little research available related to the effects of sexual orientation on productivity.
- There is no state law in Oregon that protects homosexuals from discrimination in employment.
- Three Oregon cities have ordinances banning discrimination based on sexual orientation, but relatively few claims of discrimination have been brought.

VI. INDIVIDUAL RIGHTS

One of the key issues that has dominated political discussions in Oregon is the claim by some that homosexual groups are seeking “special rights” by seeking protected minority status under civil rights and other legislation.

To understand this and related issues, the Committee investigated current federal and state laws affecting homosexuals and homosexuality in Oregon and elsewhere. In addition, the Committee interviewed in person and through correspondence representatives of several political groups within Oregon to understand the arguments on various sides of these debates.

A. Legal Background

Government and private actions impact people differently and there is nothing inherently unlawful about treating different people differently. At issue is the degree to which these actions are based upon lawful or unlawful distinctions between individuals. For example, a landlord may refuse to rent to someone with pets but cannot legally refuse to rent to someone based on race because racial discrimination
in housing violates the law. Which distinctions are legal and illegal depend upon federal, state and local law.

**Federal Law**

There is no federal legislation that identifies homosexuals or individuals based on their sexual orientation as a protected class. In 1964, the Civil Rights Act was passed declaring it illegal to discriminate against persons in employment, housing and public accommodations based upon one's race, color, religion, sex or national origin. The Act was amended in 1988 to add handicap and familial status to the list of protected classes. In 1975, the EEOC (Equal Employment Opportunity Commission) ruled that the Act does not extend protection to sexual orientation. Every year since the Act's passage, bills have been introduced to include sexual orientation in the list of protected classes. All have failed.

Despite the lack of specific federal legislation, homosexual rights cases have been brought by citing the equal protection and fundamental right guarantees of the U.S. Constitution as interpreted through case law. These constitutional guarantees limit only government action and do not apply to private individuals and organizations. (For an outline of the grounds under which such claims may be brought, see Appendix B.)

Federal appellate and U.S. Supreme court decisions have defined the bounds of existing homosexual rights. A leading federal case in employment discrimination is *Pruitt v Cheney*. Pruitt's pending promotion in the Army Reserve was denied after her homosexual orientation came to the attention of the Army through a newspaper article. She filed suit claiming a violation of her First and Fifth Amendment rights. After a formal investigation, she was given an honorable discharge, brought suit and appealed the case after it was dismissed by the federal district court. On appeal, the court found that Pruitt's First Amendment rights were not violated. The court reasoned that her admission of homosexuality was not the cause of her dismissal, but her status as a homosexual gave the Army grounds to discharge her. The court noted that in cases relating to status rather than conduct the government need only show that the discriminatory action was "rationally related to a legitimate government purpose."

The leading U.S. Supreme Court case involving homosexuality and the right to privacy is *Bowers v Hardwick*, decided in 1985. At issue in *Bowers* was Georgia's sodomy statute which makes consensual adult sodomy a felony crime. In a 5-4 decision, the Supreme Court upheld the statute on the basis that there is no constitutional fundamental privacy right for homosexuals to engage in sodomy. Since this case was decided, the states have polarized in their decisions on homosexual privacy issues. What is considered a criminal act in one state may be non-criminal or even protected by civil laws in another state.

Prior to *Bowers*, the Supreme Court had opined that fundamental rights to privacy exist on the issues of sexual unions between married persons, procreative freedom of unmarried persons (in essence the fundamental right of non-married persons to engage in sexual behavior), and abortion. The majority opinion distinguished *Bowers* from prior privacy cases on the theory that "family, marriage or procreation" did not support a claim that homosexuality was constitutionally "insulated from state proscription." In contrast, the dissent argued that Georgia could not enforce private morality on fundamentally private issues. It also characterized as "obsessive" the majority's focus on homosexuality when the statute was neutral
as to gender and orientation. The majority refused to rule whether the statute applied to heterosexuals.

**Oregon Law**

Oregon has no state statute protecting homosexuals from discrimination in housing, employment and public accommodations. The single substantive case directly dealing with the issue of homosexual rights is *Merrick v Board of Higher Education*. The case concerned Executive Order 87-20 of then governor Neil Goldschmidt which prohibited discrimination on the basis of sexual orientation in the executive branch of the Oregon government. The state board of education had drafted its administrative rules following E.O. 87-20. They prevented employment discrimination for people of various classes, including sexual orientation. After Ballot Measure 8, which was designed to nullify E.O. 87-20, was passed by voters in 1988, a case was filed by a lesbian employee who sought a declaration that the administrative rules of the board of higher education were constitutional, thus invalidating Ballot Measure 8. The Oregon Court of Appeals described Ballot Measure 8 as meaning "that a state official is free to take a personnel action against an employee on the basis of the employee's sexual orientation." The court found that "a content-based restriction on the free expression rights of public employees cannot be sustained" under the freedom of expression provisions of the Oregon constitution. In this context, the court found speech and status "inextricably intertwined," and thus that the measure violated the Oregon constitution. 51

Three Oregon cities have enacted ordinances that extend protection to persons of any sexual orientation. The cities of Ashland, Corvallis and Portland have passed ordinances which prohibit discrimination based on sexual orientation in housing. Corvallis and Portland also include employment and public accommodations. Ashland prohibits discrimination in city hiring.

Multnomah County provides medical benefits to domestic partners of its employees not covered by collective bargaining agreements. Ordinance 740 was adopted on December 3, 1992 and the domestic partner section became effective on July 1, 1993. This program applies to non-married heterosexual couples as well as homosexuals. In order for a couple to receive the benefits of this program, they must file an affidavit of marriage or domestic partnership with the county. A similar ordinance covering city employees was passed unanimously by the Portland city council on June 8, 1994.

Not only are Oregonians expanding upon the federal and state base by enacting local protections in Ashland, Corvallis and Portland, some communities have taken the opposite approach by attempting to bar minority status for homosexuals. After Measure 9 was defeated by a 54 percent to 46 percent margin, a number of localities adopted initiatives designed to prohibit protection to homosexuals in the areas of employment, housing, and public accommodations as previously listed. These initiatives were chiefly sponsored by the primary proponent of Measure 9, the Oregon Citizens Alliance (OCA).

The Oregon legislature responded to the various city and county actions by enacting House Bill 3500, an emergency provision effective August 2, 1993. This law prevents any Oregon governmental body from "enacting or enforcing" any law or policy "granting special rights, privileges or treatment" on account of sexual orientation or any law which "singles out" citizens on account of sexual orientation. As a result, the local initiatives are presumably invalid, although court challenge is
underway. At least 11 of the 24 cities and counties that passed OCA measures agreed not to enforce them because of HB 3500.

The OCA is currently circulating a petition to include a new initiative on the November 1994 ballot and has filed for certification of two additional initiatives for the 1996 ballot. As of this writing, the 1994 initiative has not been certified for inclusion on the ballot on technical grounds, but its rejection is being challenged in the courts by the OCA. The 1994 initiative reads as follows:

"AMENDS CONSTITUTION: GOVERNMENTS CANNOT APPROVE, CREATE CLASSIFICATIONS BASED ON HOMOSEXUALITY

"QUESTION: Shall constitution bar governments from creating classifications based on homosexuality or spending public funds in manner expressing approval of homosexuality?

"SUMMARY: Amends state Constitution. Governments cannot:

—create classifications based on homosexuality;
—advise or teach children, students or employees that homosexuality equates legally or socially with race, other protected classifications;
—spend public funds in manner promoting or expressing approval of homosexuality;
—grant spousal benefits, marital status based on homosexuality;
—deny constitutional rights, services due under existing statutes.

Measure nonetheless allows adult library books addressing homosexuality with adult-only access. Public employees' private lawful sexual behaviors may be cause for personnel action, if those behaviors disrupt the work place."52

Prior to 1971, certain adult consensual sex acts such as sodomy were illegal in Oregon, whether engaged in by persons of the same or different genders, although prosecutions for consensual activity were rare. Such conduct was decriminalized in 1971. Currently, no such acts are illegal, whether performed by homosexual or heterosexual couples.

The only remaining Oregon criminal statutes mentioning sexual orientation are the intimidation statutes.53 One commits the crime of intimidation if that person harasses, threatens to inflict serious physical injury, or interferes with the property of another because of the victim’s perceived race, color, religion, national origin or sexual orientation. This is a Class A Misdemeanor unless two or more persons intimidate a victim, in which case it is a Class C Felony.

Oregon civil law in essence discourages homosexual unions since it does not recognize such relationships. By legal definition, marriage laws prevent the lawful sanctioning of homosexual couples. The residual effects of the marriage statutes filter into other substantive areas including insurance benefits, property rights, probate-intestate succession and tax benefits as well as various non-legal policies such as benefits and bereavement leave provided by many private employers.
Overview of Law in Other States

Criminal Law

Because the Supreme Court of the United States has ruled there is no privacy protection for sexual behavior between consenting adult homosexuals, the decision whether to make such conduct criminal is left up to the individual states. Illinois was the first state to decriminalize such acts in 1962. Shortly thereafter, the Model Penal Code was drafted and adopted in whole or in part by many states. The Code abolished the criminality of consensual sex between adults regardless of marital status or gender. Some states have left it up to the judiciary to decide. Currently, 25 states still have legislation labeling it a crime to engage in sexual activity with consenting adults of the same gender. However, Massachusetts’ highest court ruled that the statute could not be applied to consensual adult sexual conduct, and lower courts in Kentucky, Michigan and Texas have held that criminalizing such behavior is unconstitutional under their state constitutions.

Civil Law

Some states have enacted legislation and executive orders designed to safeguard against discrimination on the basis of sexuality in housing, employment, public accommodations and the like. Six states have enacted laws that prohibit discrimination on the basis of sexual orientation, ten have executive orders that prohibit discrimination by state government and its employees, and a few prohibit discrimination in other arenas, such as election law and civil service.

In 1992, Colorado voters passed a state constitutional amendment that in essence stated that homosexuals would not be recognized as a legal minority. The Colorado courts subsequently held the amendment invalid on the ground that it violated the equal protection clause of the United States Constitution. Currently pending in Hawaii is a case involving the constitutionality of homosexual marriages. The Hawaii Supreme Court has sent the case back to the lower court to determine whether preserving the ban on homosexual marriages is of “compelling state interest,” something legal experts do not expect to happen. As a result, Hawaii is expected to either legalize gay marriages or pass a broad domestic-partnership act or do both.

Many large cities ban discrimination against homosexuals. These cities include New York, Los Angeles, Chicago, Philadelphia, Detroit, Atlanta, Boston, San Diego, San Francisco, Seattle, Minneapolis, St. Paul, Baltimore, Pittsburgh and Washington, D.C. Additionally, many counties and smaller cities have enacted similar ordinances.

B. Rights - Special or Equal?

Oregon has become a political battleground for groups attempting to pass legislation related to homosexual rights. Homosexual advocacy groups have been attempting to pass state and local legislation to prohibit discrimination on the basis of sexual orientation in employment, housing and services since the early 1970s. Groups such as the OCA have opposed these laws and sought to limit protected legal status based on sexual orientation. The political rhetoric of these debates has made it difficult for the average voter to be sure just what is at stake and what the consequences of any proposed legislation might be.
Almost everyone in Oregon is aware of the bumper-sticker version of this debate. On one side are those who propose “No Special Rights,” while on the other side are those who respond “Equal Rights are not Special Rights.” These slogans oversimplify the debate and to some extent misstate the issues involved.

As stated, neither federal nor state civil rights laws explicitly protect individuals from discrimination based on sexual orientation. In Oregon, it is arguably legal outside of Portland, Corvallis and Ashland to discriminate against an individual on the basis of sexual orientation in employment, housing, and public accommodations.

The lack of legislation has been controversial. Some see no change necessary and propose resolutions denying classifications of homosexual or sexual orientation in various laws to ensure that no change takes place. Others see change as necessary to prevent discrimination in housing, employment and public accommodations. One way this has been proposed is to amend existing civil rights legislation to include “sexual orientation” as one of the “protected classes,” along with race, color, gender, religion, marital status and handicap.

Laws supported by homosexual rights advocacy groups do not on their face grant special status or quotas to homosexuals. With the exception of “handicap,” no individual or group gains a right that others do not have by virtue of being a member of a “protected class” since civil rights legislation includes everyone. For example, everyone has a race, therefore everyone is protected from discrimination on the basis of their race. Similarly this is true for color, religion, sex, national origin, and familial status. Likewise, everyone has a sexual orientation. If legal protection was extended to sexual orientation, heterosexuals as well as homosexuals would be included.

Including sexual orientation as a protected class does change how all individuals are legally treated. Such a change implies that one’s access to opportunities may not be limited due to a particular sexual orientation, meaning that an individual has legal recourse if such access is denied.

Some believe that if homosexuals were classified as a recognized legal minority group, this in turn would lead to mandatory hiring principles, affirmative action programs, quotas and preferential treatment. People with this belief are also concerned that in addition to claims of intentional discrimination, cases of impact or defacto discrimination would create preferential treatment for homosexuals. The Oregon Board of Education’s administrative rules, which include “unintended” as well as intended discrimination on the basis of sexual orientation, provide an example (see the discussion of the Merrick case above). Preferential treatment is arguably a possibility. Laws that define discrimination to include unintended conduct may give rise to “defensive” preferences by employers and others in the same way expansive malpractice laws may encourage “defensive” medicine.

There are two typical methods of proving discrimination. Disparate treatment cases refer to overt, intentional discrimination. Such a claim could be made if an employer refused to hire women or Hispanics. Conversely, a disparate impact, or defacto discrimination, refers to policies that are neutral on their face but that have an adverse impact on a recognized class. For example, if it was company policy to only hire people over 5’11”, the effect of such a requirement would tend to discriminate against women because more women than men are below this height.
In the context of discrimination against homosexuals, proof of intentional discrimination would be accomplished in the same way it is for currently defined protected minorities. For example, one would have to prove that employment was denied specifically because one was homosexual. However, proof of defacto discrimination would be more difficult. This results from two factors. First, it is hard to identify a “neutral” policy (one which does not mention “sexual orientation”) that would discriminate against individuals based on sexual orientation.

Second, it is hard to meet the necessary statistical proof of discrimination. Statistical use and analysis can readily be performed in the context of race, gender or ethnicity, but it is highly suspect in the arena of sexual orientation. Identification of color and gender is usually straightforward: for example, the number of African-American women in a given company can generally be counted. But how can the number of gay men or lesbians within a work environment be counted to determine whether that group is correctly and demographically represented? In spite of numerous studies seeking to determine the percentage of homosexuals compared to the overall population, what that percentage is has not been definitely determined. The two-six percent range, although widely accepted, may or may not be accurate. Additionally, the stigma attached to homosexuality continues to restrict many gay people from identifying themselves to employers, co-workers, family and even those gathering information on the subject.

Affirmative action plans are of particular concern to some because they fear the imposition of quotas or preferences in employment. However, in the case of sexual orientation, affirmative action plans would be virtually impossible to implement because of the statistical problems noted above: it is not possible to accurately identify the number of homosexuals in the work force versus the population as a whole.

The anti-minority status initiatives are aimed at achieving two results: preserving individuals’ current legal ability to make decisions concerning employment, housing and services on the basis of an individual’s sexual orientation, and ending what in the view of some is the advocacy of homosexuality in government, schools and other public contexts.

Prohibiting the advocacy of homosexuality by state agencies is a goal of the proponents of the proposed ballot measure. However, in the political debate, most of the examples of “advocating homosexuality” consist of no more than mentioning homosexuality, upholding non-discrimination practices, and including consideration of sexual orientation in sponsored diversity training programs.

Tolerance of differences is a fundamental requirement for a democratic society. Protecting individuals from discrimination on the basis of religion does not put the government in the position of “advocating” any particular religion. Likewise, protecting individuals from discrimination on the basis of sexual orientation does not put the government in the position of “advocating” any particular sexual orientation.

With respect to training programs, if a government agency attempts to train its employees in skills needed to work productively with individuals who have differing sexual orientations or differing fundamental beliefs, this does not put the agency in the position of advocating any particular fundamental belief or value.

Some diversity training programs go a step further and suggest that homosexuality is as viable or valuable a lifestyle as heterosexuality. Such programs understandably raise the concerns of those with different beliefs. An alternative approach,
and one followed by many diversity training programs, is to focus on "conduct-based" standards and the objectives of the group as of primary importance, affirming the fact that people do not have to like each other or even agree on fundamental issues to work productively together. It is worth quoting again from the RAND study on homosexuality in the military: "Emphasis should be placed on behavior and conduct, not on teaching tolerance or sensitivity. For those who believe that homosexuality is primarily a moral issue, efforts to teach tolerance would breed additional resentment."\(^{61}\)

On balance, the use of the terms "equal rights," "special rights" and "advocating homosexuality" is misleading and divisive. The issues involved are far more complex and multi-faceted than these political buzzwords convey.

In the course of the study, potential legislation was considered that might alleviate the political debate on these issues in Oregon. The investigation suggested that few within the political debate advocate intentional discrimination against homosexuals, an area which is the primary concern of many homosexual rights groups. Thus, a law or amendment to Oregon's constitution prohibiting intentional discrimination based on sexual orientation might satisfy many with legitimate concerns about discrimination without contradicting the concerns of most others. A constitutional amendment would have the added benefit of requiring a vote of the people, as well as having a permanence not provided by passage of a law by the legislature.

In considering potential legislation, a ban against affirmative action programs, quotas and hiring preferences would satisfy the concerns of many who fear that enactment of anti-discrimination statutes would lead to unwanted programs and quotas in an area where they are unproductive and unwanted. Wisconsin is an example of a state which provides protection from discrimination on the basis of sexual orientation but excludes the imposition of affirmative action programs and quotas based on sexual orientation.

Combining these factors, a constitutional amendment which protects against intentional discrimination based on sexual orientation but which excludes affirmative action programs, quotas and discrimination-based hiring preferences might go far in addressing the concerns of those on both sides of the debate and reduce tensions on a very divisive issue within Oregon.

C. Summary

- Homosexuals in Oregon have no rights that are not also provided to heterosexuals.
- Heterosexuals in Oregon do have rights not provided to homosexuals, especially marriage and attendant benefits.
- There is no Oregon state law protecting homosexuals from discrimination.
- Portland, Corvallis and Ashland have laws protecting people from discrimination based on sexual orientation.
- Over the past 30 years, Oregon and 28 other states have eliminated laws that prohibit consensual adult sexual activity between persons of the same sex. Furthermore, a few states have enacted civil protections on the basis of sexual orientation.
- "Equal rights," "special rights" and "advocates homosexuality" are misleading and divisive political buzzwords that confuse instead of clarify the issues.
Few involved in this debate believe that it ought to be legal to intentionally discriminate against others on the basis of their sexual orientation, but many fear that anti-discrimination laws protecting homosexuals may lead to affirmative action requirements, quotas or hiring preferences.

A constitutional amendment which protects against intentional discrimination based on sexual orientation but which excludes affirmative action programs, quotas and discrimination-based hiring preferences might go far to address the concerns of those on both sides of the debate and reduce tensions on a very divisive issue within Oregon.

VII. CONCLUSIONS

A. Nature of Homosexuality

There is a strong biological component in the genesis of homosexuality and an individual’s sexual orientation appears to be determined at an early age. Major medical and psychological professional associations have uniformly concluded that homosexuality is not a neural or psychiatric disorder and does not involve an impairment of social, psychological, or vocational attributes. Given this, sexual orientation appears to be more an immutable trait than personal choice.

B. Conduct-Based Standards

"Conduct-based standards," such as those described in the recent RAND study, have been used effectively in many contexts where value-related issues threaten to undermine the function and cohesion of the group involved. Conduct-based standards are those which recognize that the objectives of the group are of primary importance and which specify categories of inappropriate behavior, including personal harassment, abuse of authority, displays of affection, and explicit discussions of sexual practices.

Conduct-based standards have broad application in addressing homosexuality-related issues and provide a means of reducing divisiveness in many environments, including the workplace, schools and communities.

C. Children and Adolescents

In some Oregon school districts there is a strong and continuing effort to prepare teachers and counselors to address issues raised by students regarding sexuality in general and homosexuality in particular. However, many districts avoid the topic and extend little or no effort to prepare teachers and counselors. The Portland School District has created a successful conduct-based model which provides teachers with the tools and skills necessary to address sexual orientation issues.

Parents have the right as a matter of state law to review all school materials relating to sex education and to have their children excused from such classes or activities if they desire. All school districts contacted by the Committee proactively encourage parents to avail themselves of this right.

A significant population of youth either have identified themselves as homosexual or are uneasy and confused about their evolving sexual orientation. These youth are at high risk of dropping out of school or becoming homeless, drug dependent or suicidal.
D. Employment

Problems due to workers' lack of acceptance of homosexual co-workers have not been widespread and are not among the leading concerns of workers. Situations that do arise are aggravated by managers' ambivalence toward them or attempts to avoid addressing the issues involved.

Group cohesion and productivity are increased when leadership sets the tone and consistently requires conduct-based standards regarding homosexuality. Inconsistent or ambivalent leadership contributes significantly to a breakdown in group cohesion, a reduction in productivity, and an increase in employment-related harassment.

There is no state law in Oregon that protects homosexuals from discrimination in employment. Three cities have ordinances banning discrimination based on sexual orientation (Ashland, Corvallis, and Portland), but few claims of discrimination have been brought.

E. Individual Rights

Homosexuals currently have no general protection from discrimination under Oregon or federal law.

Using language such as "equal rights," "special rights" and "advocating homosexuality" is subjective and polarizes the discussion of legal issues regarding sexual orientation.

Few believe that it ought to be legal to intentionally discriminate against others on the basis of their sexual orientation, but many people fear that anti-discrimination laws protecting homosexuals may lead to affirmative action requirements or quotas. Laws involving unintentional discrimination or affirmative action would be very difficult to enforce and would create more resentment than protection. Homosexual rights groups are primarily concerned about intentional discrimination and do not advocate the use of hiring or other quotas.

A constitutional amendment providing protection from intentional discrimination on the basis of sexual orientation but avoiding the problems associated with unintentional discrimination, affirmative action, quotas, and discrimination-based hiring preferences would go far to satisfy the concerns of most people on both sides of the debate.
VIII. RECOMMENDATIONS

The Committee recommends:

1. Oregon should pass a state constitutional amendment that prohibits intentional discrimination based on sexual orientation in employment, housing and public accommodations. The amendment should also provide that affirmative action programs, hiring quotas, and discrimination-based hiring preferences not be afforded based on sexual orientation.

2. Oregon state school systems should implement a model like the Portland School District’s, which refers students to family, clergy and other trusted adults on sensitive issues such as homosexuality. The model should include its “Values Question Protocol” and “conduct-based” standards for acceptable conduct within school. Teachers and counselors should be provided increased training on effectively implementing the protocol related to human sexuality and sexual orientation.

3. State agencies that study and provide services for at-risk youth should acknowledge and adequately address the unique problems associated with homosexual youth.

4. Business leaders should recognize their role in promoting group cohesion within the workplace by developing “conduct-based” standards regarding homosexuality such as those recommended by the RAND study. These should be used in the workplace to maintain group cohesion and productivity when addressing issues concerning sexual orientation. These standards should focus on the job to be done and the kinds of professional interpersonal behaviors that are and are not acceptable. These standards should stress that people do not have to like each other to be able to work together effectively, but that they must accept the objectives of the group and the required conduct-based standards.

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APPENDIX A: POLITICAL CHRONOLOGY

Advocacy for gay and lesbian rights in Oregon reached prominence state-wide in the early 1970s and has continued since then. Following is a summary of major legislative events in the state over the past twenty years:52

The first state lesbian and gay civil rights legislation bill was introduced and failed in 1973, with similar legislation being introduced in each legislature from 1973 through 1987 without passing.

In 1977, the city of Eugene passed a gay and lesbian rights ordinance which was repealed by Eugene voters in 1978.

In 1986, the American Civil Liberties Union (ACLU) of Oregon established a Commission on Gay and Lesbian Rights and was active in organizing grassroots support of civil rights legislation in gay and lesbian communities.

In 1988, Governor Goldschmidt issued an executive order prohibiting sexual orientation discrimination in the state executive department. A citizens’ initiative (Measure 8) was passed that repealed the executive order. In November 1992, the Oregon Court of Appeals declared Measure 8 unconstitutional because it infringes on the freedom of speech under the Oregon constitution.

In 1991, the city of Portland passed a civil rights ordinance that included a prohibition against sexual orientation discrimination in employment.

In 1992, Measure 9 became the central political issue of the year and was defeated.

In 1992 and 1993, the cities of Corvallis and Ashland passed ordinances prohibiting discrimination on the basis of sexual orientation.

In 1993, the Oregon Citizens Alliance (OCA) filed dozens of city and county anti-gay-rights initiatives in an effort to build momentum for a new statewide measure planned for 1994. These measures passed in 24 cities and counties (as of June, 1994).

In August 1993, House Bill 3500 became law. HB 3500 says cities and counties may neither enact nor enforce laws that single out people on the basis of sexual orientation. It also prohibits cities and counties from extending special rights based on sexual orientation. At least 11 of the 24 cities and counties that passed OCA measures agreed not to enforce them because of HB 3500.
APPENDIX B: FUNDAMENTAL RIGHTS CLAIMS

In equal protection cases, the issue is whether the government has unlawfully treated people differently. Courts will use one of three criteria: strict scrutiny analysis, intermediate review, or the rational basis test.

**Strict Scrutiny.** The strict scrutiny test mandates that the government establish that the classification is necessary to further a compelling governmental interest and that the means for doing so are narrowly tailored to achieve that interest. Courts apply the strict scrutiny test where a fundamental right or a suspect class is the issue in controversy. Fundamental rights include voting rights, privacy rights, marriage and family life issues. A suspect class is one that courts have found meet the following conditions:

1. There is a history of persecution for irrational stereotypes.
2. Relief is unavailable from non-judicial branches of government.
3. The group is defined by an immutable trait.

Suspect classes include national origin, race, and sometimes alienage (citizenship status). Cases regarding religion are also treated with a strict scrutiny analysis. To date, federal courts have not extended suspect class status to homosexuals or sexual orientation.

**Intermediate Review.** The intermediate test is used when the controversy involves classifications based on gender, illegitimacy and sometimes alienage. This standard requires the government to show that the classification is substantially related to an important government objective. Intermediate review eliminates the strong presumption that the law is constitutional on its face, as seen in the rational basis test.

**Rational Basis Test.** The rational basis test is used in equal protection and substantive due process issues when neither strict scrutiny nor intermediate review apply. The court will only inquire whether it is possible that the classification bears a rational relationship to the governmental end; the court cannot assess the scope of the governmental ends, regardless of any residual effects the classification may have.
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