A bisexual jurisprudence? Until I decided to write this essay, there was no such thing as a bisexual jurisprudence. The publication of two recent anthologies, Bi Any Other Name: Bisexual People Speak Out [FN1] and Closer to Home: Bisexuality & Feminism, [FN2] however, is part of the movement to give bisexuality a name. As it has become acceptable to speak of "feminist jurisprudence," and now "lesbian jurisprudence," [FN3] I believe that it should also become acceptable to speak of "bisexual jurisprudence." Thus, this essay tries to take a step forward in inventing a bisexual jurisprudence. I argue that a bisexual jurisprudence should encourage us to be inclusive in our politics and to look at the law in a way that renders bisexuals visible. But I warn the reader--this essay is deeply personal--because a bisexual jurisprudence challenges our understanding of whom we are.

I. DEFINITIONS

A discussion of bisexuality always seems to begin with definitions. This need to define—an almost obsessive preoccupation of both the books named above—is itself an unfortunate reaction to patriarchy. We are socialized into believing that we must fit into a pigeon hole of heterosexual or homosexual. For those of us who have had satisfying relationships with people of both sexes, that often meant waking up one morning and saying "I'm straight" and waking up another morning and saying "I'm a lesbian" depending on the sex of the person on the other side of the bed. Some of us have also persisted in saying "I'm a lesbian" despite the fact that a man was on the other side of the bed and some of us have persisted in saying "I'm a heterosexual" despite the fact that a woman was on the other side of the bed. And then, some of us, have just been immobilized by society's obsession to categorize, the "Choose Not to Label" category. [FN4]

One of the beauties of bisexuality is that it can permanently embrace the "choose not to label" category; it can challenge our obsessive need to order and categorize society to make it static. Ruth Gibian does an excellent job in describing this dynamic. She says: "The definition of a static sexuality is based on binary opposition . . . Indeed, our entire Western system of thought is based on binary opposition; we define by comparison, by what things are not." [FN5] As Gibian argues, bisexuality: (1) a sexuality that doesn't strive for stasis or consistency. It "does not annihilate differences but cheers them on, pursues them, adds more." This is a sexuality that is not threatened by inclusion but instead becomes larger because of it. Desire itself becomes multiplicitous. It does not try to stop the top; it is the top. [FN6]

Although Gibian's work was included in an anthology on bisexuality, she does not feel comfortable with the label of bisexual. To compensate for the lack of an adequate label, which I know would have its limitations anyway, I find myself telling my story, or as much of it as the situation warrants. It gives people the chance to hear, not defector or fence-sitter, but process, struggle toward self-understanding, self-claiming. It gives them room to hear about feelings and to tell their own. It gives me—and all of us—room to be larger than a name. [FN7]

The first contribution that bisexuality can make to jurisprudence is therefore to encourage us to avoid categorization and staticity and to tell stories relentlessly. Those stories are more illuminating than theoretical attempts to define categories such as
A couple of years ago, I spoke at a conference and ran into a "Noted Feminist" who I talk to maybe once every two or three years (and who I will call Giddy). We also have a mutual acquaintance who is well-known in the feminist community (who I will call Sally). Giddy remarked that she knew that I had recently gotten married to a man (I made no secret of this fact by writing about it in an article for the Yale Journal on Law and Feminism). She also remarked that Sally was engaged to be married to a man. She said that she was very interested in the phenomenon. She wanted to write her next book on "Hasbians," and hoped that I would let her interview me.

Unfortunately, my bisexual identity was not sufficiently developed to understand why I felt so deeply insulted by her comments so I just smiled, changed the subject to my daughter who I was holding in my arms, and did not adequately respond to her insult. She had used the fact of my current relationship with a man to erase my fifteen year history of predominantly being involved with women. (Sally, too, had a long history of being involved with women before her engagement). Those histories constitute who we are at the present time and who we will be tomorrow. Speaking for myself, and I suspect Sally, as well, I did not leave behind my love and attraction for women when I got involved with a man. The obsession with categorization that Giddy represented, however, insisted upon pigeon-holing me as "straight" and my lesbian past as irrelevant to who I am. Thus Giddy had to use the negative label "hasbian" to describe me. This is especially disappointing given Giddy's reputation in the feminist and lesbian communities for writing insightful work on sexuality and sexual abuse.

What I did not know at the time was the phrase "hasbian" was not original to Giddy. It is a term coined by the lesbian community to "describe" women like me. Stacey Young offered a critique of the term:

I object to the expression because it defines a person only in terms of what she once was. To refer to a woman as a "hasbian" implies that all one need know about her is her relationship to that exalted state, lesbianism. The term "hasbian" also, of course, evokes the word "has been" which Webster's defines as "a person or thing which was formerly popular or effective, but is no longer so." What interests, then, does the term serve? Who has the power to define here, and at whose expense?

I certainly do not mean to suggest that all lesbians have such a spiteful view of bisexuals. I, in fact, have found that some lesbians have been more supportive of my bisexuality than I have been myself. Bisexuality, however, challenges lesbians' (and other peoples') feelings and actions concerning inclusiveness. When bisexuals can exist within the community of women in their wholeness rather than as stereotypes then we will have created a more genuine feminist and lesbian politics.

II. INCLUSIVENESS

A common theme running through the anthologies about bisexuality was feelings of rejection when a woman "came out" as a bisexual, especially if she came out as a "formerly lesbian" bisexual. Feelings of rejection--which stem from actual experiences--harm the lesbian, gay, and bisexual community by robbing us of valuable political energy and leadership. Ruth Gibian described that effect on her life:

My concern about the approval of the lesbian community catalyzed other shifts as well. In anticipation of community disapproval, I gradually stopped considering myself part of the community. Of course I still had lesbian friends and continued to make new ones, and I went to marches and events, but I stopped feeling and expecting to feel universal, unconditional support. I would catch myself internalizing what I perceived as community principles of inclusion and exclusion. Sometimes I even put a face on the internal judge, letting one lesbian, usually one I didn't know very well or whom I perceived as having clout in the community, represent morality for the entire community. As long as I believed in the polarity of "us and them," I could find no way to include myself. I mourned my loss.
Similarly, Nina Silver, described her agonizing decision about whether to “come out” to her lesbian editor, Tori, who was going to be visiting soon. [FN12] When she wrote to Tori and told her that she was living with a man, whom she had also married, Tori wrote back and said that she could no longer have a working relationship with Nina, nor could Nina read her lesbian love poetry at a woman’s bookstore. *131 (The poems no longer genuinely reflected love for women?)

Finally Stacey Young described a series of letters published in various lesbian and gay newspapers in which lesbians sharply criticized women who got involved with a man after having relationships with women. [FN13] One letter defended the decision to drop the word "bisexual" from the title of the Lesbian/Gay Pride Day March in Amherst, Massachusetts. A bisexual, Micki Siegel, had strongly supported the inclusion of the word "bisexual" in the march's title. Two lesbians responded to Micki's arguments with the following statement (in which they also referred to Micki as "Mrs. Siegel"): For reasons we cannot comprehend, some bisexual women seem to feel they cannot create their own community, but must attach themselves to the lesbian community. For many of us, our lesbianism is a way of life, not just something we do in bed. If Mrs. Siegel and her ilk are so concerned with having their sexual minority status respected, why don't they march in the Lesbian/Gay Pride March as supporters, under their own banner? [FN14]

Unfortunately, my own experiences parallel those described by others. After ending a seven year relationship with a woman and getting involved with a man, I had dinner with one set of lesbian friends on Friday night and brunch with another set on Sunday. My Friday night friends were friends from my political work in the lesbian and gay community. I had previously mentioned to them that I had had relationships with men; one of them had previously been married to a man. Naively, I had not worried about telling them about my situation (except to worry that I would lose them as friends if they chose to be closer to my former lover than myself—a common problem after a relationship ends). They responded that they could not trust me any longer to represent the lesbian and gay community in New Orleans, and that I no longer could feel as comfortable in the community. These comments came after I had spent months assisting the campaign to get New Orleans to adopt a lesbian and gay rights ordinance and represented a gay man in one of the first AIDS lawsuits in the United States. I was shocked to learn that one relationship with a man could disqualify me from a leadership role in the lesbian and gay community.

The conversation left me deeply depressed especially since my male partner did not even live in New Orleans and it was unlikely *132 that the sexual aspect of the relationship would be longlasting. I had expected to divorce my former lover, not the lesbian community. I rebounded, however, until Sunday morning when I had brunch with a lesbian couple who were not particularly involved in the community politically. We rarely had political discussions so I wasn't at all worried when I reported to them my conversation of Friday night. To my shock, they responded in a similar way. they reminded me that my female lover and I had vacationed with them and said that they would no longer be able to socialize with me in that way (if my partner were male). They had never met my male partner so they were speaking entirely form an abstract position; they could not imagine any man with whom they would want to share social space in a vacation setting. Oddly enough, they had repeatedly vacationed with one of their sisters and her husband. [FN15] My friendship, however, appeared to be contingent on my being a "pure lesbian." [FN16]

Like Ruth Gibian, I began to internalize this view that I was not a welcome member of the lesbian and gay community. Rather than seek leadership roles in the lesbian and gay community, I began to shun them. For example, when I was asked to become president of a national lesbian and gay professional organization, I said that I would not be comfortable taking on that role at this time in my life. The organizers responded by saying that they very much wanted me to serve as president and that no one would care that I was involved with a man. I remained adamant and refused to serve as president (although I had agreed to take on that role the previous year). They then found another woman who identified herself as a bisexual to serve as president, thereby showing me that not everyone is biphobic. (I was the biphobic person in this scenario, still believing that I had to choose between being lesbian and straight.) It took me a while to realize that the entire lesbian and gay community had
not rejected me.

Ironically, the lesbian community often criticizes female bisexuals for sleeping with men and diverting energy away from the lesbian community [FN17] but it is often the actions of lesbians rather than our male partners that keep us from working politically in the lesbian community. Like many bisexuals, I cannot imagine being involved with a man who did not share my feminist vision and commitment to equality for lesbian and gay people. By doing childcare, housework, food shopping, etc., my male partner facilitates my feminist and lesbian political work rather than hinders it. The assumption that the reverse would be true is obviously the result of stereotypical thinking about "all men" but, in addition, is deeply insulting about my taste and preferences. Why would anyone think that I would pursue a relationship with anyone--male of female--that prevented me from doing legal and political work?

Brenda Marie Blasingame argues that this failure to be inclusive is representative of the racism that has existed in the lesbian and gay community. She connects "biphobia" with racism:

We must also begin to look at another root of biphobia: racism. For many years the gay/lesbian community was seen as a white community. Until the last decade, people of color in the gay/lesbian community were not visible. We now see on a national level gay and lesbian people of color uniting and speaking out as a part of the gay/lesbian community. We also see the issue of racism within our community being looked at and worked on more every day. Because the gay/lesbian community was shaped by white gay and lesbian leaders for such a long time, I believe we have to look at how this contributed to the foundation of biphobia and the construction of our current definition of "queer." [FN18]

Blasingame argues that white lesbian and gay people can afford to be biphobic because they can afford to lose the support of some whites, such as bisexuals, so long as they have the support of the lesbian and gay community. By contrast, she argues that lesbian and gay people of color cannot afford to be biphobic. "For many people of color coming out can be a choice between family/community and being true to their sexual identity. Coming out could mean a loss of foundation, a support system." [FN19] Because of this strong need for ethnic community, Blasingame argues that communities of people of color have always tolerated bisexual and same-sex relationships. "Within this community, there was a certain acceptance that happened between people, a sense of belonging and responsibility for each other. Bisexuality did exist." [FN20] The failure of mainstream lesbian and gay culture to be supportive of bisexuals, she argues, is therefore reflective of its failure to be inclusive along racial, religious, and ethnic lines.

Thus, a failure to include bisexuals in lesbian, gay and feminist politics may reflect stereotypes and misunderstandings about bisexuals. In addition, it may be an exclusion that is supported by an unconscious racism. Embracing bisexuality needs to be part of the multicultural agenda of the lesbian, gay, and feminist communities.

III. A BISEXUAL JURISPRUDENCE

Thus far, I have talked about how the lesbian, gay and feminist communities might gain politically by being more inclusive of bisexuals. In the legal sphere, I also believe that a bisexual perspective or jurisprudence would sharpen our understanding of society's regulation of our sexuality.

Examples from two recent cases can demonstrate how our understanding of law and society's control of our sexuality would be improved from the perspective of a bisexual jurisprudence. The first case was discussed extensively at a symposium sponsored by Law & Sexuality at Tulane Law School. Bill Rubenstein, the Director of the Lesbian and Gay Rights Project of the ACLU, and other speakers discussed a case, Rowland v. Mad River Local School District. [FN21] The case involved a female guidance counselor who was suspended, then transferred and finally not rehired at the end of her one-year appointment. In discussing the case, one speaker, Sandy Lowe, said that the plaintiff was a guidance counselor who had "told a co-worker...
that she’d fallen in love over the weekend with a woman." [FN22] Bill Rubenstein then discussed the case as standing for the proposition that "our rights can be vindicated, that you can say, 'I am gay,' and be protected by the First Amendment in this country." [FN23]

In fact, Ms. Rowland had stated that she was a bisexual and had a female lover. [FN24] Although Bill believed that Rowland was a very important case in the field of lesbian and gay rights, he did not acknowledge that it, in fact, involved a bisexual. I wonder if organizations like the Lesbian and Gay Rights project of the ACLU added the word "bisexual" to their title whether they might become more *135 inclusive in their legal perspective.

My second example concerns a well-known legal doctrine in sexual harassment law--that it is not unlawful sexual harassment for a bisexual supervisor to harass members of both sexes. [FN25] Nevertheless, it is unlawful sexual harassment for a female supervisor to harass only women, for a male supervisor to harass only men, for a female supervisor to harass only men, and for a male supervisor to harass only women. I have often wondered why the courts would construct such a silly exception for bisexual supervisors. Moreover, I have often wondered why men and women can receive legal protection when they are harassed by a same-sex supervisor but cannot get legal protection under Title VII if they are fired for being gay or lesbian. [FN26] Why would harassment be considered worse than discharge? It was only when I looked at this doctrine from a bisexual perspective that I could begin to understand what it tells us about law and society's attitude and control over our sexuality.

It does not require a bisexual perspective to see the blatant homophobia underlying those rules. The courts assume that the worker who is harassed by a same-sex supervisor is not necessarily gay or lesbian. The supervisor, however, is gay or lesbian. By offering the worker legal protection, the courts are actually giving the employer a justification to fire the lesbian or gay supervisor. And since lesbian and gay people are not protected from blatant sexual orientation discrimination, the employer can fire the gay or lesbian supervisor irrespective of whether that person has harassed anyone. As for the worker who is being harassed by a same-sex supervisor, that person better beware if he or she actually is a lesbian or gay man. The worker may have a successful cause of action against the employer but, at the culmination of the lawsuit (after the employee's gay or lesbian sexual orientation has "come out" trial), the employer could turn around and fire the employee for being gay or lesbian! It is only a heterosexual employee who need not fear being fired if his or her heterosexual orientation "came out" at trial. The law of sexual harassment therefore does not protect lesbian or gay people from same-sex harassment; it only protects heterosexuals who are the victims of same-sex (as well as opposite-sex) harassment.

Nevertheless, there is the bisexual exception. Why are heterosexual employees not protected when the supervisor is bisexual? One explanation could be that bisexual people have a favored legal status; *136 therefore, the courts don’t want legal doctrine to be able to harm them in their sexual expression. Such an explanation, if true, could divide the lesbian and gay community from bisexuals by making bisexuals appear to be politically favored. As I will discuss below, that favored status is illusory.

Several, more plausible explanations become apparent from a bisexual perspective. First, the courts don’t believe that bisexuals exist. The doctrine is actually a joke--the courts’ own version of "hasbian." Second, even if the courts believe that bisexuals exist, they do not sincerely believe that bisexuals would take advantage of the doctrine. A bisexual supervisor would have to defend a charge of sexual harassment by acknowledging that she harassed Person A but also claiming that she harassed Person B who is the opposite sex. But since bisexual people, like lesbian and gay people, are not protected from being discharged on the basis of their sexual orientation under federal law, the employer could then fire the bisexual supervisor for being bisexual. I have never heard of a case where the bisexual defense even arose; I cannot imagine a lawyer advising her client to use it. So the doctrine is a tease. It sounds complimentary to bisexuals but is actually unavailable. Third, the doctrine sends the message that bisexuals would be the most inappropriate individuals to hire as supervisors, because they can harass
workers with impunity. It therefore gives employers yet one more excuse not to hire bisexuals as supervisors. Finally, it rein-
forces the notion that bisexuals have an unbridled sexual appetite. They indiscriminately harass every man and woman in the
office. Such individuals would, of course, be unsuitable for employment.

The example of the bisexual supervisor teaches me that a bisexual perspective can really help us understand society's control
of our sexual lives. The only accepted sexuality is heterosexuality. The commitment to heterosexuality must be complete. Bi-
sexual lapses are not tolerated. The courts may attempt to divide us by creating seeming "escape hatches" for bisexuals but,
on closer examination, those escape hatches are illusory. It is only by insisting on an inclusive politics that the gay, lesbian,
and bisexual communities can come together to see our common oppression and political agenda.

IV. CONCLUSION
A bisexual jurisprudence should be a dynamic, inclusive jurisprudence which serves to understand society's control of our
sexuality in all of its dimensions. It should also be a very personal jurisprudence which helps us to embrace our wholeness
rather than labels. Writing this essay has helped me view my own sexuality more holistically *137 while also letting go of the
need to worry about whether I "fit in" the category of bisexual or lesbian. Most importantly, I now know that I am certainly
not a "hasbian." And I also know that this journal should have the name "bisexual" in its title.

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say.


[FN4] . See Dvora Zipkin, Why Bi? in Closer to Home, supra note 2, at 55-73 (describing an experience where women were
asked to join one of four groups-- bisexual, heterosexual, lesbian or choose not to label; twice she chose "choose not to la-
bel").


[FN6] . Id. at 7 (quoting Helene Cixous, Sorties Out and Out: Attacks/Ways Out/Forays in The Feminist Reader: Essays in
Gender and the Politics of Literary Criticism (Catherine Belsey and Jane Moore eds., 1989) at 104).

[FN7] . Id. at 13-14.

[FN8] . Like Ruth Gibian, I feel uncomfortable with the label bisexual. I am married to a man, the mother of a two-year old,
in my late-thirties, and usually too tired to remember that I have a sexual side. Embracing the label of bisexuality seems to
suggest something about my sexual desires at the moment whereas embracing my sexual history evokes a more authentic pic-
ture of change and continuity.


[FN10] . Stacey Young, Breaking Silence About the "B-Word": Bisexual Identity and Lesbian-Feminist Discourse in Closer
to Home, supra note 2, at 75, 77.


[FN12]. Nina Silver, Coming Out as a Heterosexual in Closer to Home, supra note 2, at 45.

[FN13]. Young, supra note 10, at 75-87.

[FN14]. Id. at 84 (quoting Micki Siegel, Bisexual Invisibility, Gay Community News, Mar. 1990, at 11-17) (emphasis added).

[FN15]. It turned out, however, that that was more of an abstract statement than a statement of how they would, in practice, treat my male partner. When I married a man who moved to New Orleans, they socialized with him to the same extent that they had previously socialized with my female partner.

[FN16]. Further experiences perpetuated that pattern. A gay activist reportedly said that the only true bisexuals were cowards when he heard of my situation. A lesbian activist reportedly said that it was unfortunate that I was involved with a man because I was such a good role model for lesbian law students.

[FN17]. For further discussion, see Young, supra note 10, at 75-87.

[FN18]. Brenda Marie Blasingame, The Roots of Biphobia: Racism and Internalized Heterosexism in Closer to Home, supra note 2, at 50.

[FN19]. Id. at 51.

[FN20]. Id.

[FN21]. 730 F.2d 444 (6th Cir. 1984).


[FN24]. Rowland, 730 F.2d at 446.


[FN26]. See, e.g., DeSantis v. Pacific Telephone & Telegraph Co., Inc., 608 F.2d 327 (9th Cir. 1979) (concluding that Title VII does not cover sexual orientation discrimination).

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