

# THE CRACKER BARREL RESTAURANTS

John Howard

*King's College London*

Discrimination against lesbians and gays is common in the workplace. Sole proprietors, managing partners, and corporate personnel officers can and often do make hiring, promoting, and firing decisions based on an individual's real or perceived sexual orientation. Lesbian and gay job applicants are turned down and lesbian and gay employees are passed over for promotion or even fired by employers who view homosexuality as somehow detrimental to job performance or harmful to the company's public profile. Such discrimination frequently results from the personal biases of individual decision makers. It is rarely written into company policy and thus is difficult to trace. However, in January 1991, Cracker Barrel Old Country Store, Inc., a chain of family restaurants, became the first and only major American corporation in recent memory to expressly prohibit the employment of lesbians and gays in its operating units. A nationally publicized boycott followed, with demonstrations in dozens of cities and towns. The controversy would not be resolved until a decade later. In the interim, Cracker Barrel would also face several charges of racism from both its employees and customers—suggesting that corporate bias against one cultural group may prove a useful predictor of bias against others.

## **THE COMPANY: A BRIEF HISTORY OF CRACKER BARREL**

Dan Evins founded Cracker Barrel in 1969 in his hometown of Lebanon, Tennessee, 40 miles east of Nashville. Evins, a 34-year-old ex-Marine sergeant and oil jobber, decided to take advantage of the traffic on the nearby interstate highway and open a gas station with a restaurant and gift shop. Specializing in down-home cooking at low prices, the restaurant was immediately profitable.

Evins began building Cracker Barrel stores throughout the region, gradually phasing out gasoline sales. By 1974, he owned a dozen restaurants. Within

five years of going public in 1981, Cracker Barrel doubled its number of stores and quadrupled its revenues: In 1986, there were 47 Cracker Barrel restaurants with net sales of \$81 million. Continuing to expand aggressively, the chain again grew to twice its size and nearly quadrupled its revenues during the next 5 years.

By the end of the fiscal year, August 2, 1991, Cracker Barrel operated over 100 stores, almost all located along the interstate highways of the Southeast and, increasingly, the Midwest. Revenues exceeded \$300 million. Employing roughly 10,000 nonunionized workers, Cracker Barrel ranked well behind such mammoth family chains as Denny's and Big Boy in total sales, but led all U.S. family chains in sales per operating unit for both 1990 and 1991.

As of 1991, Cracker Barrel was a well-recognized corporate success story, known for its effective, centralized, but authoritarian leadership. From its headquarters, Cracker Barrel maintained uniformity in its store designs, menu offerings, and operating procedures. Travelers and local customers dining at any Cracker Barrel restaurant knew to expect a spacious, homey atmosphere; an inexpensive, country-style meal; and a friendly, efficient staff. All were guaranteed by Dan Evins, who remained as president, chief executive officer, and chairman of the board.

## **THE POLICY: NO LESBIAN OR GAY EMPLOYEES**

In early January 1991, managers in the roughly 100 Cracker Barrel operating units received a communiqué from the home office in Lebanon. The personnel policy memorandum from William Bridges, vice president of human resources, declared that Cracker Barrel was "founded upon a concept of traditional American values." As such, it was deemed "inconsistent with our concept and values and . . . with those of our customer base, to continue to employ individuals . . . whose sexual preferences fail to demonstrate normal heterosexual values which have been the foundation of families in our society."

Throughout the chain, individual store managers, acting on orders of corporate officials, began conducting brief, one-on-one interviews with their employees to see if any were in violation of the new policy. Cheryl Summerville, a cook in the Douglasville, Georgia, store for 3 1/2 years, asked if she were a lesbian, knew she had to answer truthfully. She felt she owed that to her partner of 10 years. Despite a history of consistently high performance evaluations, Summerville was fired on the spot, without warning and without severance pay. Her official separation notice, filled out by the manager and filed with the state department of labor, clearly indicated the reason for her dismissal: "This employee is being terminated due to violation of company policy. The employee is gay."

Cracker Barrel fired as many as 16 other employees across several states in the following months. These workers, mostly waiters, were left without any legal recourse. Lesbian and gay antidiscrimination statutes were in effect in Massachusetts and Wisconsin and in roughly 80 U.S. cities and counties, but none of the firings occurred in those jurisdictions. Federal civil rights laws, the employees learned, did not cover discrimination based on sexual orientation.

Under pressure from a variety of groups, the company issued a statement in late February 1991. In it, Cracker Barrel management said, "We have re-visited our thinking on the subject and feel it only makes good business sense to continue to employ those folks who will provide the quality service our customers have come to expect." The recent personnel policy had been a "well-intentioned over-reaction." Cracker Barrel pledged to deal with any future disruptions in its units "on a store-by-store basis." Activists charged that the statement did not represent a retraction of the policy, as some company officials claimed. None of the fired employees had been rehired, activists noted, and none had been offered severance pay. Moreover, on February 27, just days after the statement, Dan Evins reiterated the company's antagonism toward nonheterosexual employees in a rare interview with a Nashville newspaper. Lesbians and gays, he said, would not be employed in more rural Cracker Barrel locations if their presence was viewed to cause problems in those communities.

### **THE BOYCOTT: QUEER NATIONALS VERSUS GOOD OL' BOYS**

The next day, when news of Cracker Barrel employment policies appeared in *The Wall Street Journal*, *New York Times*, and *Los Angeles Times*, investment analysts expressed surprise. "I look on [Cracker Barrel executives] as pretty prudent business people," said one market watcher. "These guys are not fire-breathing good ol' boys." Unconvinced, lesbian and gay activists called for a nationwide boycott of Cracker Barrel restaurants and began a series of demonstrations that attracted extensive media coverage.

The protest movement was coordinated by the Atlanta chapter of Queer Nation, which Cheryl Summerville joined as co-chair with Lynn Cothren, an official with the Martin Luther King, Jr. Center for Non-Violent Social Change. Committed to nonviolent civil disobedience, lesbian and gay activists and supporters staged pickets and sit-ins at various Cracker Barrel locations, often occupying an entire restaurant during peak lunch hours, ordering only coffee.

Protesters were further angered and spurred on by news in June from Mobile, Alabama. A 16-year-old Cracker Barrel employee had been fired for effeminate mannerisms and subsequently was thrown out of his home by his father. Demonstrations continued throughout the summer of 1991, spreading from the Southeast to the Midwest stores. Arrests were made at demonstrations in the Detroit area; Cothren and Summerville were among several people arrested for criminal trespass at both the Lithonia and Union City, Georgia, stores. Reporters and politicians dubbed Summerville the "Rosa Parks of the movement," after the civil rights figure whose arrest sparked the Montgomery, Alabama Bus Boycott of 1955-1956.

Support for the Cracker Barrel boycott grew, as organizers further charged the company with racism and sexism. Restaurant gift shops, they pointed out, sold Confederate flags, black mammy dolls, and other offensive items. The Cracker Barrel board of directors, they said, was

indeed a good ol' boy network, made up exclusively of middle-aged and older white men. In addition, there was only one female in the ranks of upper management. Among the numerous groups that joined in support of the protests were the National Organization for Women (NOW); Jobs with Justice, a coalition of labor unions; the National Rainbow Coalition, founded by Reverend Jesse Jackson; and the American Association of Public Health Workers. By early 1992, Summerville and Cothren had appeared on the television talk shows "Larry King Live" and "The Oprah Winfrey Show." The two were also featured in a segment on ABC's "20/20," after which Barbara Walters declared that she would refuse to eat at Cracker Barrel restaurants

## **THE RESOLUTION: NEW YORK ATTEMPTS TO FORCE CHANGE**

Meanwhile, New York City comptroller, Elizabeth Holtzman, and finance commissioner, Carol O'Cleiracain, at the urging of the National Gay and Lesbian Task Force, wrote a letter to Dan Evins, dated March 12, 1991. As trustees of various city pension funds, which owned about \$3 million in Cracker Barrel stock, they were "concerned about the potential negative impact on the company's sales and earnings which could result from adverse public reaction." They asked for a "clear statement" of the company's policy regarding employment and sexual orientation, as well as a description of "what remedial steps, if any, [had] been taken by the company respecting the employees dismissed."

Evins replied in a letter of March 19 that the policy had been rescinded and that there had been "no negative impact on the company's sales." Unsatisfied, the City of New York officials wrote back, again inquiring as to the status of the fired workers. They also asked that the company put forth a policy that "would provide unequivocally" that discrimination based on sexual orientation was prohibited. Evins never responded.

Shortly thereafter, Queer Nation launched a "buy one" campaign. Hoping to gain additional leverage in company decision making, activists became stockholders by purchasing single shares of Cracker Barrel common stock. At the least, they reasoned, the company would suffer from the relative expense of mailing and processing numerous one-cent quarterly dividend checks. More importantly, they could attend the annual stockholders meeting in Lebanon, Tennessee.

In November 1991, company officials successfully prevented the new shareholders from participating in the annual meeting, and they used a court injunction to block protests at the corporate complex. Nonetheless, demonstrators lined the street, while inside, a representative of the New York City comptroller's office announced the submission of a resolution "banning employment discrimination against gay and lesbian men and women," to be voted on at the next year's meeting. The resolution was endorsed by the Philadelphia Municipal Retirement System, another major stockholder. Cracker Barrel refused any further public comment on the issue.

## **THE EFFECT: NO DECLINE IN CORPORATE GROWTH**

The impact of the boycott on the corporate bottom line was negligible. Trade magazines reiterated the company's claim that neither sales nor stock price had been negatively affected. Indeed, net sales remained strong, up 33% at fiscal year-end 1992 to \$400 million, owing in good part to continued expansion: There were now 127 restaurants in the chain. Though the increase in same-store sales was not as great as the previous year, Cracker Barrel at least could boast growth, whereas other chains blamed flat sales on the recession. Cracker Barrel stock, trading on the NASDAQ exchange, appreciated 18% during the first month after news of the scandal broke, and the stock remained strong throughout the next fiscal year, splitting three-for-two in the third quarter.

Dan Evins had good reason to believe that the firings and the boycott had not adversely impacted profitability. One market analyst said that "the feedback they get from their customers might be in favor of not hiring homosexuals." Another even ventured that "it's plausible . . . the majority of Cracker Barrel's local users support an explicit discriminatory policy." Such speculation was bolstered by social science surveys indicating that respondents from the South and from rural areas in particular tended to be less tolerant of homosexuality than were other Americans.

Queer Nationals looked to other measures of success, claiming at least partial victory in the battle. Many customers they met at picket lines and inside restaurants vowed to eat elsewhere. Coalitions were formed with a variety of civil rights, women's, labor, and peace and justice organizations. Most importantly, the media attention greatly heightened national awareness of the lack of protections for lesbians and gays on the job. As the boycott continued, increasing numbers of states, counties, and municipalities passed legislation designed to prevent employment discrimination based on sexual orientation.

## **THE STANDOFF: OLD ANTAGONISMS, NEW ALLEGATIONS**

As the November 1992 annual meeting approached, Cracker Barrel requested that the Securities and Exchange Commission make a ruling on the resolution offered by the New York pension fund administrators. The resolution, according to Cracker Barrel, amounted to shareholder intrusion into the company's ordinary business operations. As such, it should be excluded from consideration at the annual meeting and excluded from proxy ballots sent out before the meeting. The SEC agreed, despite previous rulings in which it had allowed stockholder resolutions regarding race- or gender-based employment bias.

Acknowledging that frivolous stockholder inquiries had to be curtailed, the dissenting SEC commissioner nonetheless expressed great dismay: "To claim that the shareholders, as owners of the corporation, do not have a legitimate interest in management-sanctioned discrimination against employees defies logic." A noted legal scholar warned of the dangerous precedent that

had been set: "Ruling an entire area of corporate activity (here, employee relations) off limits to moral debate effectively disenfranchises shareholders."

Thus, the standoff continued. Queer Nation and its supporters persisted in the boycott. The Cracker Barrel board of directors and, with one exception, upper management remained all-white, all-male bastions. Lynn Cothren, Cheryl Summerville, and the other protesters arrested in Lithonia, Georgia, were acquitted on charges of criminal trespass. Jurors ruled that the protesters' legitimate reasons for peaceably demonstrating superseded the company's rights to deny access or refuse service. Charges stemming from the Union City, Georgia, demonstrations were subsequently dropped. Meanwhile, within weeks of the original policy against lesbian and gay employees, Cracker Barrel vice president for human resources, William Bridges, had left the company. Cracker Barrel declined comment on the reasons for his departure.

Lesbian and gay activists' charge of racism at Cracker Barrel seemed to be borne out over time. In the year 2000, a local human rights commission awarded \$5,000 in damages to a black employee in Kentucky after she suffered racial and religious bias in the scheduling of shifts. Months later, the NAACP joined a group of employees and former employees in a class-action lawsuit against Cracker Barrel, alleging that the company repeatedly discriminated against African Americans in hiring, promotions, and firing practices. African-American workers further were said to have received less pay, to have been given inferior terms and conditions of employment, and to have been subjected to racial epithets and racist jokes, including one told by Dan Evins. In a second suit filed by the NAACP, along with 42 customers, and supported by over 400 witnesses, Cracker Barrel was accused of repeatedly offering better, faster, segregated seating to whites and inferior service to blacks. A similar case was filed by 23 African Americans in Little Rock a year later.

## **THE OUTCOME: POLICY REVERSALS**

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As of 2002, Cracker Barrel annual net sales surpassed two billion dollars. The company still had not issued a complete retraction of its employment policy with regard to sexual orientation, and those employees fired back in 1991 had never been offered their old jobs back. In contrast, for a year's work, Chairman Dan Evins regularly pulled in over a million dollars in salary, bonus, awards, and stock options.

A total of 14 states and the District of Columbia offered protections for lesbians and gays on the job, both in the public and private sectors. With over 400 restaurants in 41 states, Cracker Barrel now operated in 11 of those jurisdictions with protections: California, Connecticut, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey, New Mexico, New York, Rhode Island, and Wisconsin. (The other states with antidiscrimination statutes were Hawaii, Nevada, and Vermont.) Expansion had taken the company into areas even less receptive to employment discrimination. As one business editor had correctly predicted, "Cracker Barrel [wa]sn't going to be in the South and Midwest forever. Eventually they w[ould] have to face the issue—like it or not."

In 1998, the SEC reversed itself, allowing the New York City Employees' Retirement System to again offer a shareholder resolution, which was defeated yet again and again. By 2002, however, the tide was turning. In its proxy statement sent out in advance of the annual meeting, the Cracker Barrel board of directors still recommended that stockholders vote against the proposal. "[A]ny attempt to name all possible examples of prohibited discrimination other than those . . . specifically prohibited by federal law," it said, "would result in a long list" that was neither "appropriate" nor "necessary."

But shareholders were ready to defy the board. After 58 percent voted in support of the proposal in an informal vote, the board members unanimously agreed to add the category of sexual orientation to its equal employment opportunities policy.

## **THE PROPOSAL: FEDERAL LEGISLATION**

In 36 states it is perfectly legal to fire workers because they are gay—or straight. For example, a Florida bar owner decided to newly target a lesbian and gay clientele and so fired the entire heterosexual staff. Queer activists boycotted, and the bar eventually was forced out of business. Still, in most American jurisdictions, employment discrimination based on sexual orientation remains a constant threat.

The vast majority of Americans, 80%, tell pollsters that lesbians and gays should have equal rights in terms of job opportunities. In every region including the South, among both Democrats and Republicans, solid majorities support federal legislation to remedy the situation. Nonetheless, despite several close votes in Congress, the Employment Non-Discrimination Act, or ENDA, has yet to be passed into law.

Although there are no federal laws to prevent discrimination based on sexual orientation, protections do exist for workers on the basis of religion, gender, national origin, age, disability, and race. Still, as the NAACP and other lawsuits against Cracker Barrel demonstrate, federal legislation does not ensure corporate compliance. Aggrieved parties and their supporters often must invest years of their lives in protest and litigation simply to achieve the equal treatment ostensibly guaranteed in the American marketplace. Even after the terms *race* and *sexual orientation* have been added to policy statements, broader cultural transformations will be required before these added burdens are removed from the shoulders of workers already greatly disadvantaged in our society.

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