



# The Source

October 2005

Southern Wisconsin - Northern Illinois  
SHRM Chapter 71

## Letter From the President:

### Inside this Issue:

Letter from the President Pg.1

Meeting Schedule 2005/2006 Pg. 2

Upcoming Meeting Information Pg. 2

Job Opportunity Pg. 3

Volunteers Needed Pg. 4 & 5

The Undenfeudable, Top Managers are "Undefeudable"-Your Harassment Policy is Not Enough Pg. 6-8

BHRA Spotlight Member of the Month Pg. 9

Upcoming Events:  
10/11/05  
Breakfast Meeting:  
Janesville Country Club

10/18/05  
Diversity Workshop

Message From The President

Dear BHRA Members:

It's hard to believe that is officially autumn. Soon the air will be cool and crisp and the leaves will be turning from shades of yellow through red. It is one of my favorite times of year. I hope you all enjoyed your summer, and are ready to get back into the swing of our Blackhawk Human Resource Association schedule this fall!

We kicked off the year on September 13<sup>th</sup>, with our first dinner meeting. It was very well attended, and plenty of old and new members alike were present. Chad Schmidt, PHR, from Johnsonville Sausage gave an energetic presentation about how their company was selected as one of SHRM's "Top 50 Small to Medium Sized Companies To Work For", and how to engage your workforce. It was very well received by our membership. If you would like more information on the application process for this award, email Chad at [Cschmidt@Johnsonville.com](mailto:Cschmidt@Johnsonville.com).

Our next meeting will be held on Tuesday, October 11<sup>th</sup>. It will be a breakfast meeting at the Janesville County Club. Our presentation will be in regard to the recent spit of the AFL-CIO, and how this will affect non-union and union employers, and will be presented by Michael Flaherty from Jackson Lewis. You can register on-line at [www.bhraonline.org](http://www.bhraonline.org). We are now offering the ability to pay for meetings and/or membership fees by credit card. You simply provide us with your card number and expiration date, and we can call the charge in for you, and will provide you with a receipt. This is another service that our members asked us for. Please let us know how it is working for you.

Sincerely,

Jacqueline Swanson, PHR  
President, BHRA

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## Upcoming Meeting Information

Meeting Date	Time	Location	Speaker	Topic	Format
October 11, 2005	Breakfast	Janesville Country Club	Jerry McInnis Jackson/Lewis	Split in Organized Labor	Speaker
November 8, 2005	Lunch	Rock County Job Center	Cindy Groves, RN, Janesville Occupational Medicine	Safety Incentive Plans	Speaker

Blackhawk Human Resource Association  
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### Mark Your Calendars!

## October 11th Breakfast Meeting

We encourage you to attend the October 11th breakfast meeting! To RSVP, contact Elaine Schultz, PHR at (608)755-4297, or [elaine.schultz@micorp.com](mailto:elaine.schultz@micorp.com), or RSVP on the website at <http://www.stayinvolved.com/splash/bhra.htm>. Please RSVP by October 4th.

**WHEN:** Tuesday, October 11, registration begins at 7:30 am, breakfast at 7:45 am and the presentation will follow

**WHERE:** Janesville Country Club

### **TOPIC/SPEAKER INFORMATION:**

#### **Jerry McInnis Partner of Jackson Lewis LLP**

Jerry McInnis is a partner in the Chicago Office of Jackson Lewis LLP, a national law firm representing management exclusively in workplace law and related litigation.

#### **Split in Organized Labor**

Unions are ratcheting up efforts in their targeting of all types of employers. Understanding the background and goals of the New Unity Partnership (of unions) and what it means to employers is a necessary first step in understanding the "New Labor Relations" movement in the United States. At the conclusion of this session, participant should be able to: conduct a vulnerability assessment to avert and/or respond to a union campaign or prolonged contract negotiations; understand potential preventative and "best response" practices and policies for employers during a union corporate campaign; and understand "best employment practices" to avoid a union organizing campaign.

If your organization would like to sponsor one of our meetings, please contact Jennifer Griffith, SPHR, [jgriffith@freedomplastics.com](mailto:jgriffith@freedomplastics.com)

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## Do you know anyone interested?

Certification Chair, Melissa Benson, PHR:  
[mjben@ssitech.com](mailto:mjben@ssitech.com)

Seminar Chair & Play Day Coordinator, Shannon Moe:  
(608) 741-3567  
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Legislative Chair, Kelly Hendee, PHR:  
(608) 364-6617  
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Diversity Chair, John Emmart, D. Minn, CEAD, SAP:  
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Newsletter Coordinator & Community Relations, Lindsay Hall:  
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[lhall@gazetteextra.com](mailto:lhall@gazetteextra.com)

Dinner & Reservations Chair, Elaine Schultz, PHR:  
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Student Chapter Representative, Ashley Erickson:  
[ericksonaa11@uww.edu](mailto:ericksonaa11@uww.edu)

### Human Resources – Recruiter

Company:	Scot Forge Company
Location:	Corporate Office – Spring Grove, IL
Status:	Full-Time, Exempt
Job Category:	Human Resources
Career Level:	Experienced (Non-Manager)
Education Level:	Bachelor's Degree, PHR Certification or equivalent work experience in Human Resources.
Salary/Wage:	Commensurate with experience.

Scot Forge Company, a 100% employee-owned forging company in business for over 100 years is seeking an experienced recruiter who will be responsible for the development of proactive recruitment programs for our three locations in the Northern Illinois/Southern Wisconsin area.

Individual will be solely responsible for recruiting at all levels and cultivating relationships with both internal and external customers. Experienced candidate must be able to manage multiple and shifting priorities while demonstrating good business expertise and a high sense of urgency in filling open positions.

#### Qualifications:

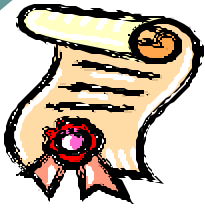
- ✦ HR Generalist experience with a strong emphasis on recruiting in a manufacturing environment, minimum 2 – 4 years experience.
- ✦ Excellent selection, assessment and customer service skills.
- ✦ Professional oral and written communication skills.
- ✦ Knowledge of Internet sourcing techniques.
- ✦ Knowledge of employment laws and practices.

Experience in training, succession planning, organizational development and mentoring programs a plus.

Resumes may be submitted via fax at (815)675-4130 or e-mail Jennifer Herman at [jherman@scotforge.com](mailto:jherman@scotforge.com) or mail to PO Box 8, Spring Grove, IL 60081. No phone calls please. For more information on our company visit our website at [www.scotforge.com](http://www.scotforge.com). **For a full job description please visit [www.bhraonline.org](http://www.bhraonline.org)!**

## Volunteers Needed for the 2006 Wisconsin Student Conference and HRGames!

Matthew Stollak, Ph.D., SPHR



### Congrats to PHR/SPHR Recipients:

During our September BHRA meeting, the following members received their certification gifts from the chapter:

**Nicole Frank**, formerly with Blain Supply Inc., PHR

**Jennifer Griffith**, Freedom Plastics Inc., SPHR

**Kelly Hendee**, City of Beloit, PHR

The 2006 Wisconsin Student Conference and HRGames (co-hosted by Alverno College and UW-Whitewater) will be taking place on February 24 and 25, 2006 at the beautiful Alverno College Campus in Greenfield, WI.

As always, volunteers are CRITICAL to make the HR Games a success. For every 2 teams that compete, five (5) volunteers are necessary. Last year, 10 teams competed in the Wisconsin HR Games. That created a need for 25 volunteers. So, if you are interested in volunteering, or know someone who is, please register!!!! There is no cap on the number of volunteers from a particular chapter. We are also trying something new this year - a MENTOR program. Given the response of previous years, and knowing that your calendars can quickly fill up as busy HR professionals, we wanted to let people know about this fantastic opportunity a little bit earlier.

### **WHAT ARE THE HRGAMES?**

The HRGames are a fun way to motivate and prepare students for PHR certification. The HRGames consist of a one or two-day series of game show style matches, between teams of up to three undergraduate students from various colleges and universities. The questions for the matches are divided into categories similar to those used in the PHR certification exam (i.e., Management Practices; Selection & Recruitment; Training & Development; Compensation & Benefits; Employee/Labor Relations; and Health, Safety & Security). In each round, students select points and a category of questions. The question is read twice and the teams have 15 seconds to supply the correct answer. After a series of initial matches, teams with the best records participate in the

championship rounds for first and second place.

### **WHY VOLUNTEER?**

There are many benefits to the HRGames. The HRGames are an event that offers the opportunity to bring professional chapter volunteers, students and student chapter advisors together in a meaningful way. The effort it takes to plan and conduct the games is worthwhile and beneficial to the professional members as well as the students. The volunteers conducting the games get a refresher course in the body of knowledge required of a human resource professional as they listen to the students answer questions. The students receive an opportunity to network with other students and showcase their knowledge to HR practitioners.

### **WHY MENTOR?**

More and more, students are looking for stronger networking and mentoring opportunities at the conference. To accommodate this need, we are hoping to set up some mentoring opportunities with willing volunteers on Friday night and Saturday morning. As best as we can, we will try to pair up volunteers with no more than 3-5 students who express interest in the volunteer's area of expertise. Similarly, we will try to set up 30 minutes to an hour over the course of the conference for the proper interaction between the student and the mentor to take place. For students, a successful mentor program provides opportunities for students to explore the world of work through interaction with professionals, gain an experienced HR practitioner's perspective on applying textbook concepts, familiarize themselves with corporate protocol, realize the value of networking, and identify long-term professional development needs.

### *What keeps you from being certified???*



Contact: Melissa Benson, Certification Coordinator at (608) 373-2389 or [mjben@ssitech.com](mailto:mjben@ssitech.com) to find out how to attain these certifications. BHRA offers study materials and support groups to lead you to success!

### For more information contact:

Matthew J. Stollak, Ph.D., SPHR  
Assistant Professor of Business Administration  
St. Norbert College  
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920-403-3490

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**Calling all volunteers your help is need:**

The WI SHRM – State Conference planning - 2006  
 20<sup>th</sup> Annual WI SHRM State Conference  
 Kalahari resort - Wisconsin Dells  
 October 11, 12, 13, 2006



You are encouraged to volunteer to help with the 2006 WI SHRM state conference, below is specific volunteer information.

**Sponsoring Chapters:**  
**Jefferson County and Blackhawk**

**Co Chairs:**  
**Theresa Dew**– Jefferson County Human Resources Management Association  
**Amy Kingsland** – Blackhawk Human Resources Association (Rock County)

**Committee Chairs: 50% Experienced**  
**Committee Members / 50% Un-experienced**  
 Monthly Meetings (Dec. 05 – Oct. 06), 3 -4 hours a week, Busiest Times: May, June, and August.

Committee Chairs and number of volunteers needed:

**Activities/Social/Fun & Games** – Events, Attendee Appreciation, Reception, Exhibit Hall Events, etc. (2-4)

**Exhibits** – Exhibitor Sign-up, Packets, Layout, Coordinate Expo Company, Taking Care of Exhibitors( 2 )

**Registration** – Registration Fees, “Reg On-Line”, Sign up at Conference, Attendee Badges( 2 )

**Accommodations** – Contact with Resort, Logistics, Room Assignments, Food & Beverage, Audio/Visual Needs, Speaker Equipment( 2 )

**Communications/Publicity** – Conference Website updates, Signs, Banners, Newspaper Ads ( 1 )

**Programming** – Speakers, Learning Sessions, References on Speakers, Travel Arrangements, Pre-Conference Sessions ( 4 )

**Advertising** – Ads in Brochure, Selling ads ( 2 )

**Sponsorships** – Packets for Sponsorships, Finding Sponsors for various events, meals, bags, lanyards, etc. (1 – 2)

**Book Store** – Organize Bookstore, Contract Book Vendor, Book Signings, Refer Titles and/or Learning Tracks to Vendor ( 1 )

**Volunteers** – Organize volunteers (professional and students), Work with Student Chapters ( 2 )

**Publications** – Put out all printed materials (postcard notification, brochure, conference program with ads, etc.) ( 2 )

**Finance** – Current State Council Finance Chair, Money Management ( 1 )

**Evaluations** – Coordinate evaluations, email evaluation ( 1 )

If interested in serving on the 2006 State Conference Committee or for more information, please contact Theresa Dew at (920)206-2140 or email: [tdew@cshoppe.com](mailto:tdew@cshoppe.com). **The committee will be finalized in Oct. '05.**

**THE UNDEFENDABLE**  
**Top Managers are “Undefendable” - Your Harassment Policy is Not Enough**

By Bob Gregg, Boardman Law Firm

Most organizations understand that a good anti-harassment policy is the defense against “hostile environment” suits. Unfortunately, the courts have ruled that the “*Faragher/Ellerth* defense” to sexual harassment cases is NOT available to executive managers. CEOs, board members, stockholders, and even vice-presidents of HR are company’s “*alter ego*.” Their improper acts can bind the liability, and there is NO defense which can be asserted in court. Most companies are unaware of this part of law. Top managers may be “undefendable” and create strict liability.

**The Standard Defense**

In 1998 the U.S. Supreme Court decided two “companion” cases regarding harassment under the Equal Employment Opportunity laws, *Faragher v. City of Boca Raton* and *Burlington Industries v. Ellerth*. In what has become known as the “*Faragher/Ellerth* defense” the Supreme Court set forth standards for an employer to make a viable defense of a harassment case: to defeat the charges the employer must show that it “exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and . . . that the plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.” *Faragher v. Boca Raton*, 524 U.S. 775, (1998); *Burlington Industries v. Ellerth*, 524 U.S. at 765 (1998). Based upon this language all knowledgeable employers have

implemented Anti-Harassment and Respectful Workplace Policies. In addition, they have implemented other proactive practices such as anti-harassment training, and continuing education and vigilance.

**However, that was not the whole quotation**

The Supreme Court also stated:

Vicarious liability automatically applies when the harassing supervisor is either: (1) “indisputably within that class of an employer organization’s officials who may be treated as the organization’s proxy” *Faragher*, 524 U.S. at 789, 118 S.Ct. 2275, or (2) “when the supervisor’s harassment culminates in a tangible employment action, such as discharge, demotion, or undesirable reassignment.” *Id.* at 808, 118 S.Ct. 2275.

This limited the *Faragher/Ellerth* defense. There are two exceptions. The second in the quote is for “*quid pro quo*” harassment, in which there is a tangible employment action such as hiring, firing, or discipline. This creates automatic liability in which the victim may skip the employer’s harassment policy, go straight to the EEOC, and the

company gets no “first chance” to know of and correct the issue prior to being liable.

The other exception is in the quote about direct, no defense liability is for “Hostile Environment,” harassment by those at the top of the organization. They are the organization. They have so much control that they are deemed to be the “*alter ego*” of the organization and their acts are a “*proxy*” for the organization’s acts.

In *Acked v. National Communications*, 339 F.3d 376, 383 (5th Cir. 2003), a federal circuit, citing *Faragher*, ruled:

“[A] corporation is vicariously liable for the harassment of its President ‘who was indisputably within that class of an employer organization’s officials who may be treated as the organization’s proxy’ . *Faragher* at 789, 118 S.Ct. 2275. The Court further suggested that an owner, supervisor holding a ‘sufficiently high position in the management hierarchy, a proprietor, partner, or corporate officer may also be treated as the organization’s proxy. Citing *Faragher* at 789-790, 118 S.Ct. 2275; see also *Johnson v. West*, 18

Bob Gregg, a partner at the Boardman Law Firm in Madison, Wisconsin, has been professionally involved in Employment Relations and Civil Rights work for more than 30 years. He has designed the workplace policies and procedures of numerous employers. He litigates and serves as an expert witness in employment cases. A recognized educator and trainer, Bob has conducted over 2,000 seminars throughout the United States and authored numerous articles on practical employment issues.

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F.3d 725, 730 (7th Cir. 2000).

Other cases which hold that no defense is available when harassment is committed by an employers' *proxy* or *alter-ego* are *Mallinson-Montague v. Pocrnick*, 224 F.3d 1224 (10th Cir. 2000) (where offender was Senior Vice President) and *EEOC v. Reeves*, 2003 WL 22999369 (C.C. Cal.) (offender was founder and CEO).<sup>1</sup>

**Adding Insult To Injury - Extra Punitive Damages**

In addition to no defense-automatic liability, owners, Senior Executives and Board members can generate extra punitive damages due to their own lack of attention or uninvolved in the anti-harassment process. An all too frequent phenomenon is that executives *excuse themselves* from anti-harassment and other employment relations training. Everyone else is required to go, but those at the top are "just too busy" to attend. This lack of attention looks "arrogant" to a jury.

The courts have found that inattention to training is an "extraordinary mistake" and "amounts to reckless inddefense" which justifies substantial extra punitive damages. *Anders v. GDC Inc.* (4th Cir., 2002); *Miller v. Kenworth of Dothan* (11th Cir. 2002); *Griffin v. City of Opa-Locka, et al.* (11th Cir. 2001). So, the very individuals who have the most at risk for their actions, tend to be the least

informed and the least involved in the anti-harassment process. This guarantees larger punitive awards in addition to the automatic liability. Executives should also be aware of the potential for personal liability in some sorts of harassment cases. [For instance, 42 U.S. Code §1983 allows suit of individuals for racial or ethnic discrimination, and tort actions may be added, as well.] It is not just a matter of the corporate coffers; the individual's own bank account can suffer the hit as well. If the executive is *undefendable* this can be a major personal problem.

**What Can Be Done To Diminish The Liability?**

The "*alter ego*" liability cannot be eliminated. If a person in a "*proxy*" position engages in hostile environment harassment the automatic liability will attach. However, an organization can seek to diminish the chances of the liability.

**Training and Involvement**

Those at the top of the organization should not skip training. Instead, they should be the primary examples of pro-active behavior, attending training, and encouraging all others to do so.

Executives, facility managers, and board members should be given information, such as this article, regarding their special status as an "undefendable *alter ego*" at the time they

come into a potentially "*proxy position*."

**Appropriate Humor**

Special emphasis should be given to humor. "Teasing" or "off the cuff" comments take on a heightened significance when done by someone at the top. The little incidents of racial, ethnic, religious, humor or the small sexual innuendoes of an executive can become evidence in court, and can generate big legal expense and liability. Those in "*proxy position*" might read It Was Just A Joke (Boardman Law Firm) or other articles which illustrate the liability effects of what is uttered by executives.

**Diminish the Alter Ego Status**

In small organizations this may be impossible. The owner is the authority and there is little that can be done to balance or diffuse that fact.

In larger organizations the division of authority can help protect executives and board members.

**Off-Site Complaint**

**Alternative.** One does not have to be an officer of the company to be in a "*proxy position*."

The general manager of a stand alone facility may in practicality have almost all personnel authority over that operation and be deemed an "*alter ego*" for that location. To diminish this status the organization's anti-harassment and other complaint policies should name both an on-site and a headquarter level off-site

State laws can expand the undefendability to even lower levels. Some state's anti-harassment laws make employers strictly liable for harassment by low level managers, including line supervisors and lead workers. For example, decisions under the Wisconsin Fair Employment Act have firmly stated that the WFEA is not Title VII. It has different language, and the federal defenses do not apply. The employer is liable "whether or not it addressed the matter and without regard to whether the complainant availed herself of opportunities to complain. There is no affirmative defense available to the employer where sexual harassment is perpetrated by its agent." *Sanderson v. Handi Gadgets Corp.*, ERD Case No. CR200201194 and 89 (Wis. Labor Ind. Rev. Comm., 2005); *Jim Walter Color Separations v. LIRC and Tobias*, 226 Wis.2d 334, 595 N.W. 2d 68 (Wis. Ct. App., 1999).

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person to whom employees can raise concerns about harassment. Having only an on-site complaint process means the general managers at the top could block any investigations about themselves. The off-site alternative provides a way around the general manager and shows that higher levels of the organization are still "in charge," thus diminishing the chances for "alter ego liability."

**Human Resources Final Approval for Tangible Employment Actions.**

Another way to diminish automatic, indefensible liability is by assuring that human resources has the final approval authority over all tangible employment decisions (hiring, firing, discipline, promotion, pay adjustments, transfers). This means that an executive or officer does not have absolute control, and employees who believe they are being harassed can raise concerns to HR before a tangible decision becomes effective.

The human resources final authority helps limited the "alter ego" status of the officers and executives regarding personnel matters. It helps prevent *quid pro quo* harassment through both a formal review of the validity of a decision and a complaint process to catch problems before they become indefensible.

This final approval practice will not change the liability once a tangible employment decision has been implemented. It will not change the "alter ego" status of an officer or top executive who bullies or bamboozles human resources into approving a problematic action. The final approval can, if effectively used, be an important safeguard to diminish the chances of that liability.

**Special Attention for Board Members**

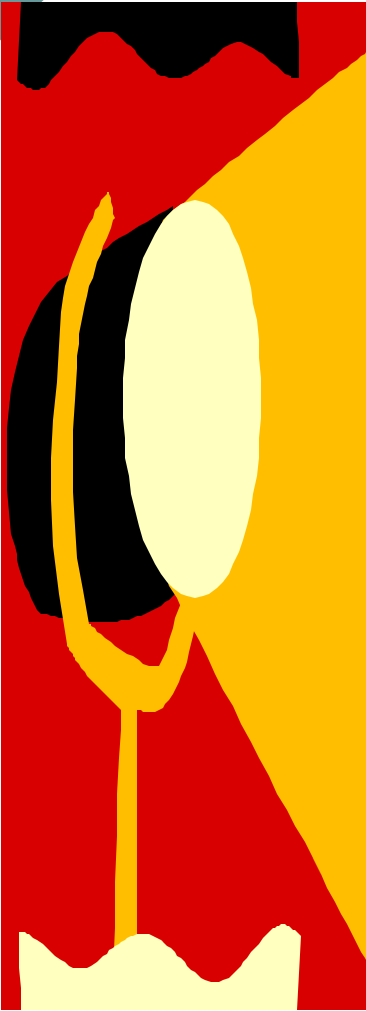
Boards of Directors often include members who are not employees. They do not receive the company policies, do not attend training, do not get orientation regarding the rules of conduct. Yet they can wield very great authority, especially if they are major stockholders, or family members of the owners. They are also frequently present in the company's offices. Even though the board members do not sign the employment documents, they can exercise influence. In some instances the key board members are seen as "all powerful" and their every action takes on significance. In the case of *Russell v. McKinny Hospital Venture* (5th Cir. 2000), the extraordinary influence of a shareholder/family member in a family corporation influenced the decisions of executives and created liability.

Board members need special attention to assure that they understand their ability to generate liability, and at least a rudimentary understanding of the employment discrimination laws. Board members who do not have this understanding can unwittingly create indefensible liability, often thinking that they are "just joking" or bantering. Since they are in such important positions, no one is going to tell them that they are offending, until the trap door is sprung with the filing of the undefendable case. Information for the board members is in their best interest, and is essential for the protection of the organization.

**Conclusion**

The standard *Faragher/Ellerth* defense for harassment cases is not available for acts committed by those at the top. They are *undefendable* and the organization is *undefendable* if the acts constitute discriminatory harassment. Organizations can limit this liability through education; final HR review of employment decisions; and off-site alternative methods for complaints. The only way to really stop this indefensible liability is for those at the top, the organization *alter egos*, to be aware, understand the laws, and assure that their own behaviors are models of non-discrimination and a respectful workplace.  
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## BHRA Spotlight Member of the month Introducing Sarah Straub!



**Sarah Straub**, HR Assistant at SSI Technologies graduated from Clinton High School in Clinton, WI. She attended the University of Wisconsin Madison and studied English Lit., then completed her education at University of Wisconsin Milwaukee with a BA in Organizational Administration/ Communication. At SSI tech, she is responsible for recruiting, employee relations, EEO and AA audits, recordkeeping, and reporting, coordination of company events (United Way, perfect attendance, scholarship), service awards, creating and updating policies and role descriptions, compiling and reporting wage survey data.

### **Job History:**

DependiCare Home Health (a subsidiary of Air Products, Inc.)

### **What she likes about BHRA:**

I especially enjoy the networking opportunity that the BHRA provides. It is great to meet other people that face some of the same challenges in their careers—a great opportunity to solicit feedback, give advice, or simply vent.

### **How she likes to spend her leisure time:**

My husband and I are building our own home, so that consumes the bulk of my leisure time right now. I do find time to enjoy bowling on a league, hanging out with friends, cooking, planning trips, and reading classical literature.

### **JOIN US!**

**Spotlight on Diversity: Race**  
*an exploration of workplace challenges in corporate America*  
Lambert & Associates, Inc.

In this workshop you will examine current workplace challenges in a safe and honest setting designed to explode myths and preconceived notions regarding race. We'll uncover the sources of conflict and help you be comfortable dealing with the uncomfortable, emotionally charged issues you may face in a diverse workplace. For more information visit: [www.lambert-diversity.com](http://www.lambert-diversity.com) Please register by October 11, 2005

For more information contact:  
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(847) 428-6650 ext. 213  
[danata@lambert-diversity.com](mailto:danata@lambert-diversity.com)

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Other Contact information:

Wisconsin SHRM  
[www.wishrm.org](http://www.wishrm.org)

National SHRM  
[www.shrm.org](http://www.shrm.org)

HR Certification Institute  
[www.hrci.org](http://www.hrci.org)

HR Voice  
<http://www.shrm.org/government/hrvoice>

***Next Month's Issue of The Source:***

• **Information on November's lunch meeting**

*If you know a human resource professional that would be interested in joining our association, please spread the word! We can all benefit from each other's experience!*

*If you have anything you would like to submit or suggestions for the BHRA Newsletter, please let us know!*

**Contact Information:**

*Lindsay Hall at Bliss Communications, Inc at (608) 755-8301 or email [lhall@gazetteextra.com](mailto:lhall@gazetteextra.com).*