

I read with interest, empathy, and some sadness, Mr. McGinnis' article, *Coming Out: A Reflection on Making the Practice of Law More LGBTQ-Friendly*. Interest, because every LGBTQ person remembers so many of their own coming out stories and yearns for the day when they end. Empathy, because every coming out experience continues to bring the risk of hurt or rejection, and in extreme cases, violence. And, sadness, because Mr. McGinnis' story is being told somewhere today by an unknown number of scared, exhausted, and vulnerable people of every age, race, ethnicity and stripe. Some are simply trying to survive. Indeed, gay youths, like Mr. McGinnis at the time of his coming out, are, according to the CDC, three (3) times more likely to attempt suicide than their straight counterparts, and 40% of transgender adults report having attempted suicide with 92% of them doing so before they reached the age of 25. Bluntly put, for some, coming out is a final act to break through the surface and breathe or drown trying.

Coming out to one's friends or family means overcoming fear of rejection by those closest to us: the ones who give us shelter, safety, affection. Coming out professionally involves an additional risk of materially, perhaps permanently, adversely affecting one's ability to earn a living. Surely, progress has been made in the workplace, but, still, no national laws exist to protect LGBTQ employees from discrimination based on sexual orientation or gender identity. Less than half of the states have enacted such protections. And, when local, usually more metropolitan, communities have stepped in to provide some measure of protection in employment, housing and public accommodations, they have felt pushback. For example, within the last year alone, the Florida legislature rejected a statewide employment antidiscrimination ordinance entitled the Florida Competitive Workforce Act (died in the House Governmental and Oversight Committee), and simultaneously introduced legislation which would have "preempted" and declared "Any [local] existing ordinance, regulation, or policy of a political subdivision that is preempted by this act is void." (House Bill 305 is currently pending in the House Commerce Committee).

One of the things that strikes me about Mr. McGinnis' excellent article is the old adage that "the more things change, the more they stay the same." On June 21, 2001,¹ I became the first openly gay attorney asked to address The Florida Bar's 90,000+ members on the issue of sexual orientation as a part of The Bar's diversity and professionalism enhancement efforts. I said, *inter alia*,

The fact is that one of the biggest challenges facing gay and lesbian attorneys is that of isolation. Isolation makes us invisible and uninvolved. We are often never made to feel comfortable in our workplace by such simple, personal, and routine but visible expressions of humanity as putting a photograph on our family on our desk. Or by bringing our life companion to professional functions as many of you have done at this meeting. Gay and lesbian attorneys therefore miss professional opportunities such events often raise rather than leave their loved one behind and attend under the pretense they are "single."

When discussions turn to family, gay lawyers are usually left silent. Alone. Different. For some, their sexual orientation is their greatest secret. Like all secrets, it gets heavier with time and loosens its grip only when the holder chooses to let it go. The DC Bar Task Force found that lesbian and gay lawyers are sometimes even advised

to conceal their sexual orientation or to alter their appearance to look less stereotypically gay. For example, one lesbian was told that she needed to appear more feminine, wear make-up and gold jewelry, and stop bringing her significant other to firm events. Most quietly acquiesce. But, when we rationalize this as a "little lie" in order to protect other people's feelings, or out of necessity for our own, lack of candor causes honest people to attach negative feelings to ourselves and, ultimately, to those we may feel have forced the pretense upon us.

Living dual lives takes enormous emotional and mental energy. One journalist in Tallahassee recently described this dilemma poignantly as: "She felt she moved in and out of safe environments as she would move in and out of air-conditioned buildings." Gay and lesbian attorneys learn to survive in parallel dimensions, expecting an explosion of cataclysmic proportion if the two worlds touch. But, put more practically, the energy spent hiding behind a mask could be used to make our work product, our lives, and our communities, better.

It was but another of my own coming out stories. You could have heard a pin drop in the room when I finished. The Chief Justice of the Florida Supreme Court was motioning for me to cut it short. But, I wasn't sure there would ever be another opportunity to speak for those whose voices had been silent for too long, so I kept going. The Chief Justice understood and commended me later.

Mr. McGinnis' article reflects an ongoing struggle that is still real. He writes:

... the legal profession needs to become more LGBTQ.-inclusive and affirming. Legal employers can do this in a number of ways: by improving diversity in hiring and retention and by devoting budgetary and mentorship resources to diverse attorneys and employees. In addition, legal employers should engage in implicit bias, LGBTQ-specific competency, and nondiscrimination/nonharassment training to affirm their commitment to their LGBTQ employees.

He notes, "As an attorney, I'm sharing my story because the legal profession and the court system must do better to understand, support, and protect LGBTQ people." I agree. Our profession can do more, and it should.

The article "Most Law Firms Score High In LGBTQ Inclusion Survey" suggests that more law firms are trying to abide by specific recommendations of the Human Rights Campaign, sponsor of the inclusion survey. But, there is plenty of evidence to suggest that the legal profession lags behind the companies they represent in terms of diversity and inclusion. For example, the latest National Association for Law Placement (NALP) study in 2019 suggests that enthusiasm for the high scores of the HRC inclusion survey should be tempered by acknowledgement of the

disproportionately low number of LGBTQ attorneys. NALP found that of "all firms" reporting, only 2.07% of the partners were LGBTQ. While presumably younger associate attorneys reflected a higher percentage self-identifying as LGBTQ, the percentage of "all lawyers" (partners, associates, and other lawyers), was only 2.99%. That said, in 2004 when NALP first did the survey, the percentage of "all lawyers" who were LGBTQ was only 1.07%. Progress continues.

I have some suggestions that employers and corporate clients can do to make things better for LGBTQ attorneys: 1) implement where possible the suggestions of the National LGBT Bar's "The Business of Inclusion: Raising the Bar on LGBT Diversity"; 2) work to ensure that the LGBTQ community, including legal professionals, cease to be "the invisible minority" through continued inclusion efforts; 3) recognize and reward law firms who strive for inclusive excellence; 4) become a signatory to the open letter authored by Michelle Fang, Chief Legal Officer of Turo, and published in the American Lawyer in January, 2019 (now signed by more than 200 legal officers); and 5) recruit, support, retain, and promote LGBTQ attorneys for corporate legal departments and their outside counsel.