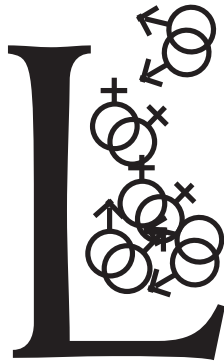


# Lawyer Life After *Lawrence*

 GAY AND LESBIAN ATTORNEYS PLEASSED WITH THE PROFESSION'S PROGRESS WHEN IT COMES TO ACCEPTANCE — BUT PREJUDICE LINGERS

by **CRISTINA SMITH**

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ike any proud parent, Mitchell Katine likes to show off his family, as evidenced by the photo he displays prominently on the credenza in his office. It's a common portrait of Americana: a snapshot of the beaming parents and their two angelic children. But the difference in this photo hints at the country's — and Texas' — ever-changing social landscape: The two parents are men.

Katine, a partner in Houston's Williams, Birnberg & Andersen, was part of the team that argued before the U.S. Supreme Court in *Lawrence v. Texas*, which sought, successfully, to overrule Texas' same-sex sodomy law. In the landmark gay rights case — Lambda Legal Defense & Education Fund calls it the "most significant ruling ever for lesbian and gay Americans' civil rights" — Katine and lawyers from around the country fought for years to end a law that essentially criminalized their private lives.

Several gay lawyers agree that the past decade leading up to the June 26 *Lawrence* decision has seen great strides made when it comes to acceptance of gays and lesbians nationally. Following the AIDS awareness campaign of the 1980s, gays and their lifestyles, while initially incorrectly targeted as partially responsible for the deadly disease, began to be examined more closely. Human stories emerged from the tragedies, and homosexuality became something talked about more easily.

Chris Bacon, of counsel at Vinson & Elkins in Houston, calls what happened between 1990 and 2000, a domino

effect of acceptance toward homosexuals in American society.

"You tend to view gay people differently when you start to know some," he says, noting that as homosexuals began to feel safer coming out, mainstream America realized gay people were there neighbors, friends and family. And the *Lawrence* decision solidifies, for many Americans, the idea that homosexual activity is but a footnote to someone's life.

"Most people say, 'Well of course. Why do we care what people do in their bedroom?'" Bacon says. "That's where we've come a long way."

Katine and others agree that sexuality doesn't have anything to do with being a great lawyer, either. But, like women and minorities, gay, lesbian, bisexual and transgendered (GLBT) attorneys often must work extra hard to prove themselves, Katine says.

While some Texas lawyers may agree that the trend is moving toward acceptance of GLBT lawyers within the conservative legal community, there is still discrimination and bigotry. Fear of not being accepted — or worse, being discriminated against — is what keeps some gay and lesbian attorneys from sharing their personal lives with colleagues and clients.

Even while collecting information for this article, *Texas Lawyer* received letters from two attorneys displeased with the fact that such an article would be published. "I won't pay to have that kind of stuff mailed to me at my home or office," one e-mail stated. Also, out of the 20 responses *De Novo* received from its online survey, two of them were bogus and included derogatory responses to some of the questions posed. [See "Gay and Lesbian Attorneys Speak Out," page 26.]

One 37-year-old male attorney, who answered *Texas Lawyer's* anonymous online survey, says he's out at the small firm where he works, but has felt discriminated against in the past.

"At a former firm, the partner for whom I worked was an older guy who 'lost it' when he found out that I was gay. He tolerated and encouraged the telling of anti-gay jokes, etc., in my presence."

Phyllis Frye, a retired Houston attorney-activist who has fought for years to end discrimination of the GLBT community, says her legal life has been harsh and fraught with challenge. "I took tons of shit," she says, citing slashed tires and obscene phone calls. "It was awful." Frye says she couldn't get a job as an attorney until 1986 — five years after she graduated from the University of Houston Law Center — when she hung her shingle out as a solo.

Frye, a transgender lesbian, interned at the Harris County District Attorney's office in 1980. District Attorney Chuck Rosenthal remembers her.

"There was a person in law school who wanted to be an intern at the office," he says. "There was a question about which restroom facilities they were going to use." Rosenthal says he doesn't remember how the issue was resolved, but Frye does.

She says she was asked to use a bathroom located on another floor, which required security clearance to traverse. A judge, when he found out about Frye's dilemma, insisted she use his personal facilities.

Rosenthal, who argued *Lawrence* before the U.S. Supreme Court for the state, says he does not know of any GLBT attorneys, other than Frye, who have worked or do work in his office, but he notes that sexual orientation doesn't make a difference to him as DA.

"What we're looking for is people who can represent the state well and try a lawsuit.

When asked how he feels about the fact that pre-*Lawrence*, homosexual sex was considered a crime, and that would mean gay attorneys who worked for him would law-breakers, he says: "I'm sure people do things that are Class C misdemeanors all the time. If they keep it in check, and it doesn't affect anyone else, it doesn't make a difference to me." He adds, "Not to sound like a Bible thumper, but 'hate the sin, love the sinner.'"

### **Ahead of the Curve**

Bacon says he was "out" when he started at V&E as a summer associate in 1988.

"If someone were to not hire me [because of] my sexual orientation, I wouldn't want to work for them," he says. A Harvard Law School graduate, 46-year-old Bacon says there's been a dramatic change in attitude toward gays and lesbians over the past 10 years, citing popular culture exam-

ples such as the television show "Will and Grace," which features two gay men, one of whom is an attorney.

"Lawyers tend to be a little bit ahead of the curve on these kinds of issues," he says. "Our profession is one where we tend to combat discrimination much more readily than other professions."

Nonetheless, Bacon says lawyers still have fears about coming out and being rejected or discriminated against.

"I'm not going to say it's a non-issue, but certainly, overt, intentional discrimination against gay and lesbian lawyers in big firms is practically non-existent," Bacon says.

Smaller firms in smaller cities might have different policies, he says, but most often, the larger, more metropolitan firms adhere to nondiscrimination policies, and some, such as V&E, even offer same-sex partner benefits. [See "Benefits of Being Diverse," page 29.] Larger firms have to be inclusive, he says, to stay competitive.

"The more inclusive you are, the bigger pool of people you have to

choose from," he says. Also, he notes that, in recent years, clients and people in management positions of major corporations are much more likely to be women, people of color and gay. Bacon, an adjunct professor at the UH Law Center who has taught a class on sexual orientation and the law since 1992, says that, when interviewing for jobs, students from top law schools often ask questions about a firm's policy toward diversity, including its policies and benefits that affect gays and lesbians, even if they themselves are not homosexual.

"It's perceived as the right thing to do," he says about firms offering same-sex partner benefits.

But while big firms may be leading the trend, he's not sure about smaller to mid-size firms that don't necessarily compete for top law graduates.

"Being out in Corpus [Christi], period, is not the thing to do," says one lesbian attorney who worked at a four-person firm in Corpus. Since moving to Dallas more than a year

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ago, she says she's noticed a more accepting attitude toward gays and lesbians in general.

"Here in Dallas, it's not such an issue," she says. The 36-year-old, who requests anonymity, came out after she graduated from law school in 1993 and says she's still not completely comfortable at her new job. "It's more conservative of a firm," she says. "I don't know how they would react knowing that I'm gay."



"When I went to law school, I heard some of the worst epithets about gay people in my life. I was very shocked," says Jerry Simoneaux.

Although she is not open about her homosexuality at work, the attorney says she doesn't go to efforts to hide her personal life.

"I live my life. If I happen to run into my boss while [my life partner and I are] at the movies, and we're

holding hands, then I'll deal with that when it happens."

A transgender attorney, who requests anonymity, says most of the discrimination she faces is subtle.

"In trial, the other attorney would use it against you and try to prejudice you in front of the jury," says the attorney, a former prosecutor turned solo. After she became a woman, she says she recalls one opposing counsel who had known her as a man who insisted on calling her "Mr." The judge had to instruct the attorney to use the proper courtesy title and pronoun.

"It could be very discomfoting," the attorney says.

Houston solo Jerry Simoneaux, who describes himself as "completely, openly gay," says he went back into the closet when he went to law school, a second career for him. Simoneaux, who formerly worked as a consultant for the French government, graduated from South Texas College of Law in Houston in 2001

"I would never do that again," he says about hiding his sexual orientation. "I was never in the closet my whole life," he says. "I had no idea how incredibly stressful that alone would be."

During his years in law school, Simoneaux, 37, says he was surprised by what he heard. "When I went to law school, I heard some of the worst epithets about gay people in my life. I was very shocked." Simoneaux says he would hear male law students make comments when they were hanging out together. They would say things like, "That's gay," or "Don't be a fag." Even though Simoneaux says they weren't directing the comments at anyone in particular, it still took him off guard. "That's shocking to someone who is gay," Simoneaux says.

Trying to gauge an employer's tolerance level toward GLBT lawyers is difficult for some attorneys. Even simple things such as having pictures of your loved ones on your desk can be stressful for an attorney who's unsure about the acceptance level at work. And office functions, where spouses are invited, often pose problems for gay and lesbian attorneys, who may attend alone or bring a platonic friend of the opposite sex.

Law students who wonder whether they should include membership and leadership positions in GLBT groups on their résumés should do what they're comfortable with, lawyers say.

### A Better Life

"It's funny how things have changed in the past few

## Gay and Lesbian Attorneys Speak Out

Editor's note: We posed questions about the professional lives of gay and lesbian lawyers in Texas. Of the 18 attorneys who answered our online survey, four were women and 14 were men. This is what we found:

	FEMALES	MALES
Average age	37	38
"Out" at work	25 percent	79 percent
"Out" otherwise	100 percent	100 percent
Feel it's necessary to hide sexual orientation at work	75 percent	21 percent
Feel discriminated against because of sexual orientation	0 percent	57 percent
Practice at small firm (fewer than 30 attorneys)	50 percent	43 percent
Practice at mid-size firm (30 to 49 attorneys)	0 percent	0 percent
Practice at large firm (50 to 99 attorneys)	25 percent	21 percent
Practice at very large firm (100+ attorneys)	25 percent	21 percent
Practice in-house	0 percent	14 percent

# Gay Lawyers in a Conservative Profession

years," says John Nechman, a Houston solo who is the outgoing chairman of the State Bar Of Texas' Sexual Orientation and Gender Identification Issues (SOGII) Section, which became a full section in 1999 and boasts 335 members — more than double its original membership. The section, which Frye and Katine along with several other attorneys worked to create, strives to ensure equal rights for GLBT lawyers.

Frye says years of fighting to establish the section is one of the reasons life for a GLBT lawyer in Texas has improved so much over the last decade. During her years practicing as a criminal-defense attorney in Harris County, from 1986 to 1999, Frye says she met dozens of GLBT lawyers who were closeted and afraid to come out, especially those who worked in government offices.

"That's radically changed in the last 10 years," she says. Because GLBT lawyers are recognized and protected by the State Bar — one of the things the section did was to convince the Bar to change its language to include GLBT employees in its anti-discrimination policy — Frye says that makes a world of difference for younger lawyers. Now they have mentors and places they can go to feel safe and accepted.

While it's impossible to track statistics on the number of gays and lesbians in the State Bar, Nechman suggests the "10 percent rule" — that 10 percent of the population at large is homosexual — might be a good guess. The SOGII Section is one of the first of its kind in the country, Nechman says; he believes *Lawrence* will spur even more members to join, as it will create a sea of change in attitudes toward GLBTs.

If his prediction comes true, gay lawyers should have an easier time finding jobs where they feel comfortable and accepted.

Connie Moore, a partner in Houston's Hunt & Moore who practices family law, says the most critical thing for young gay and lesbian lawyers is to know themselves.

"I think that it is very important to be sure of yourself and be happy and recognize that who you are is part of the type of lawyer you're going to be." Moore, who graduated from the University of Houston Law Center, opened her firm with her life partner of 17 years, Deborah Hunt, in 1987.

When looking for jobs, Moore says finding that right match of attorney and firm depends on the individual as to how and whether he or she divulges sexual orientation.

"It's completely dependent on how comfortable someone is and where they are trying to work."

## Going for Great

Katine, who has been with his life partner for four years, says that, for him, his sexual orientation has never been an issue with colleagues, judges or clients and he believes that the new generation of gay and lesbian attorneys should focus on becoming good lawyers — so that decisions such as *Lawrence* can happen — and the respect and acceptance will follow.

"First, you must establish your credibility as a good lawyer. The firm you work at should value and accept you," he says. But Katine, 42, also advises young gay lawyers to

## What has been your greatest challenge as a Texas lawyer who is gay?

"Trying to live an open life in a conservative work environment."

"Hiding it from most everyone I work with! It's terribly debilitating and not something I want to do forever (hiding it, I mean)."

"I think that being gay is about as irrelevant to being a lawyer as is hair color or what type of car you drive."

"Fearing discrimination — but it turns out that most people don't care whether I'm gay."

"Overcoming the misconception that gay equals weak."

"Finding an accepting work environment and convincing the gay community that not all lawyers are rich!"

"Putting up with anti-gay slurs."

"Getting other lawyers to see me as a good lawyer, rather than as a gay man."

"Getting up the courage to stop keeping secrets."

"Dealing with people from other firms who make anti-gay comments, assuming I'm straight."

"Trying to get my firm to provide health insurance for my partner."

"Sometimes it's a bit tricky when straight clients get curious . . . but if they ask me directly, I will not lie. Life is too short to hide. If I act as though my life is shameful, then of course people are going to treat me as though it is."

Source: 18 Texas lawyers who responded to De Novo's online survey.

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"come out" one step at a time, as the climate toward gays and lesbians still can be unforgiving.

"Before you can ask people to accept you personally, they need to want you to be there," the South Texas College of Law graduate says.

By coming out slowly, over the course of many years during which attorneys can prove themselves professionally, Katine says, there also is an education process for colleagues.

"You can teach them that gay and lesbian people are just like heterosexual people," he says, referring to that method of professional "outing" as his "formula."

Katine says law students should look at hunting for that first job as an opportunity to focus on developing their own expertise first. "The area of law you start practicing in often, I feel, determines the rest of your career," he says.

"I would encourage younger gay lawyers to think about the long-term ramification of where they go and what they do," he says, noting that most lawyers don't stay with the first law firm that hires them. Eventually they move on. But it's an important element to a young lawyer's education. "That's where they gain their experience. That's where they gain their knowledge," Katine says.

Not sharing information about sexual orientation can help create a buffer that allows the new attorney to build professional relationships and focus on learning the practice of law. In big firms, if there's something personal that is offensive — the way someone talks, wearing too much perfume or even a person's personality — it makes it easier for the powers that be to let that attorney go if he or she doesn't quite meet the firm's professional standards, Katine says. Hiring partners may ask themselves, "Why do I need to deal with someone that makes me uncomfortable when I'm not even sure I want you here as a lawyer?" Katine says.

But, what some perceive as discrimination because of sexual orientation may be discrimination because of gender expectations, Bacon and Katine say.

"Sometimes issues of sexual orientation and gender are hard to separate," Bacon says, noting that when gay people are perceived as not conforming to gender stereotypes, sometimes they are discriminated against. Katine agrees, saying a man who wears an earring, whatever his sexuality, might not be as accepted in a firm environment, since that goes against a masculine stereotype. But that's something the U.S. Supreme Court had its say on in 1989 in *Pricewaterhouse v. Hopkins* when a female accounting firm associate was denied partnership for allegedly appearing too masculine and aggressive. The court ruled that enforcing a sex stereotype is discriminatory.

A lesbian lawyer who requests anonymity says because she fits the "heterosexual female mold," there haven't been many questions raised at her firm about her sexual orienta-

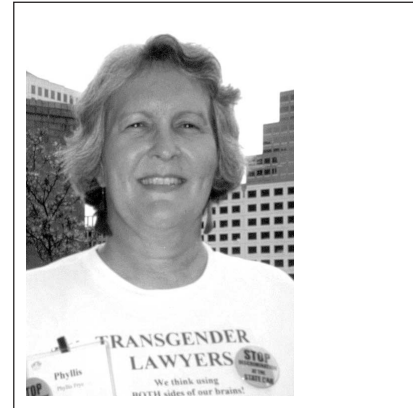
tion, and she hasn't felt the need to bring it up.

She says she feels that women are more tolerant of differences in sexual orientation and as a result, gay men who are answering to men, rather than women, stand a much greater chance of facing rejection professionally if they were to come out.

Finding mentors for young gay and lesbian attorneys doesn't pose quite as big a problem now as in prior years. Nechman, a 1995 South Texas College of Law graduate, says members of the Bar's SOGII Section speak at law schools to let students know the group exists and can help put young gay and lesbian attorneys in touch with more seasoned ones. Also, having gay and lesbian on-campus groups offers GLBT law students a support system and peers.

Finding a mentor can be challenging to anyone who's not a white, heterosexual male, Bacon says. "People tend to hang around people who are like them," he says, which makes it harder for a gay man or a woman to find that connection with a heterosexual man, whose life experiences will differ.

"There is a definite glass ceiling here which separates the good ole boys from everyone else," says a 50-year-old male



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attorney who works in-house and is not out at work.

Despite continued obstacles, Nechman says the Bar has come a long way toward accepting gays and les-

biens by recognizing and supporting the SOGII Section. "I think in 2003, [young attorneys] have a lot of wonderful reasons to be open about who they are. I think most firms now recognize the need to have GLBT attorneys on board."

Simoneaux heads the Stonewall Law Association of Greater Houston, a local bar association for gays and lesbians. He hopes that students never feel they have to be in the closet, like he chose to do when he was in law school.

"It hindered me a lot," he says. "It stunted my growth as a person." He encourages law students to be true to themselves and others about who they are.

"We don't want them to be in the closet," he says. "If they stifle themselves, then the byproduct is self-hate."

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