



LGBT Attorneys of Color in the Legal Profession: A Discourse on Inclusion

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Attorneys of color have multiple stigmatized identities that the legal profession has yet to comprehensively address. For instance, the specific groups that fall within the American Bar Association's (ABA), as well as other organizations', diversity programs and policies, include racial and ethnic minorities, women, persons with disabilities, and individuals who identify as lesbian, gay, bisexual, and transgender (LGBT). As seen from an organization as comprehensive as the ABA, the unique considerations of LGBT persons of color is not siphoned out and explored, perhaps leaving this group to question their exclusion, or to attempt to silence the mutable characteristics of their diversity—their “queerness.” This lack of attention to multiple identities presented by attorneys of color is also evidenced by the lack of written materials on the subject.

Research tends to focus on either persons of color or LGBT attorneys, but rarely both. Similarly, diversity and inclusion efforts have taken the approach of singling out personal characteristics and addressing those characteristics on an individualized basis. For instance, most bar associations and law firms have committees or affinity groups dedicated to racial and ethnic diversity, gender inclusion, and/or sexual orientation. Rarely do these multiple identities intersect in their own affinity group.

Although significant progress has been made in the American legal profession to advance the case of diversity and inclusion of attorneys of color and LGBT attorneys, more must be done. The 2010 overall count of 2,137 LGBT lawyers is lower than it was in 2009.¹ Among the offices/firms reporting counts in 2010, almost half reported at least one openly LGBT lawyer and 13 percent of offices reported at least one openly LGBT summer associate.² The presence of LGBT lawyers continues to be highest among associates, at 2.35 percent, and is up a bit from the figure of 2.29 percent reported in 2009.³ Openly LGBT associates are also better-represented at large law firms, with firms of 70 lawyers reporting 2.78 percent openly LGBT associates.⁴ The National Association for Law Placement (NALP) also reports that “among all employers listed

in the 2009-2010 *NALP Directory of Legal Employers*, just over 6 percent of partners were minorities and 1.88 percent of partners were minority women, and yet many offices report no minority partners at all.⁵ NALP's statistics do not measure the number of LGBT attorneys of color.

In this article, I explore the barriers to inclusion of LGBT attorneys of color, including explaining how an essentialist approach to diversity has resulted in a narrow view of diversity by focusing efforts on specific groups, such as racial and ethnic diversity, gender diversity, disability, and sexual orientation diversity, rather than addressing the overlap that occurs within these groups. I will continue by exploring “coming out” for LGBT attorneys of color. Finally, this article provides recommendations that law firms can utilize to improve the attraction, advancement, and retention of LGBT attorneys of color.

Barriers to Inclusion

While the research on LGBT attorneys of color is scant, some available research is helpful in framing the issues. A small number of researchers studying the legal profession have reported that heterosexuals have witnessed discrimination against their LGBT peers:⁶

- In a survey of heterosexual attorneys in Minnesota law firms, 23 percent believed that LGBT attorneys were treated differently, with an additional 32 percent stating that they could not be certain of this.
- New Jersey Court system employees reported observing sexual orientation discrimination: 7 percent reported witnessing discrimination in hiring, 10 percent witnessed verbal abuse or harassment of LGBT co-workers, and 6 percent reported witnessing discrimination in the distribution of work assignments.
- Of the judges and attorneys surveyed in Arizona, 30 percent believed that lesbians and gays were discriminated against in the legal profession.
- From 12 percent to 14 percent of heterosexual political scientists reported witnessing antigay discrimination in academic employment decisions, such as hiring and tenure decisions.
- In Los Angeles, 24 percent of female heterosexual lawyers and 17 percent of male heterosexual lawyers reported either having experienced or witnessed antigay discrimination.

A survey of the research revealed that while attorneys of color and LGBT attorneys in the legal profession have been examined as distinct groups within the legal profession, there is not much research or analysis in the way of combining these groups. Indeed, this lack of available research makes evident that LGBT attorneys of color must identify with one group or the other, regardless of whether these attorneys fit comfortably within either.⁷ Without adequately studying the issues, the legal profession stands at a disadvantage when approaching how to improve inclusion of LGBT attorneys of color. Professor Kimberlé Crenshaw advocated in her pioneering law review article, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, that Americans will not understand the full extent of racism and sexism until they investigate the lives of women of color.⁸ Similarly, the legal profession will stall if it continues to fail to see how race and sexual orientation intersect and address this intersection.

To build the nexus between race, ethnicity, sexual orientation, and gender identity in diversity and inclusion efforts, members of the legal profession must first understand what factors have prevented the inclusion of these groups in past diversity and inclusion efforts.

Essentialism

Essentialism is the theory that there is a single woman's, Asian-American, lesbian, or any other group's experience that can be described independently from other aspects of the person—that there is an “essence” to that experience.⁹ “[T]he result of essentialism is to reduce the lives of people who experience multiple forms of oppression to addition problems: ‘racism + sexism = straight black women's experience,’ or ‘racism + sexism + homophobia = black lesbian experience.’”¹⁰ LGBT attorneys of color have multiple stigmatized identities yet, thus far, the focus has been on a “single issue,” “disregarding the impact of intersections of oppression and the diversity of experiences within marginalized communities.”¹¹

Former Seattle City Councilwoman Sherry Harris, the first black lesbian elected to public office in the United States, described her experience with essentialism as follows: “To make matters more challenging, the gay community demanded that I present myself only as ‘gay’ and focus my attention on the gay community. The black community demanded I present myself only as ‘black’ and focus exclu-

sively on issues of concern to African Americans. I am more than my race, more than my gender and more than my sexual orientation.”¹² Two paradigms of the legal profession further evidence Councilwoman Harris' experience: (1) various characteristics of one's identity, such as sexual orientation, gender, and race, are always disconnected; and (2) the various aspects of one's identity may be ranked so that one aspect takes precedence over another.¹³ For example, in the law firm setting, race may take precedence over sexual orientation, or gender may be prioritized over status as a parent.

Since “there is no monolithic black community nor are there monolithic lesbian or black lesbian communities,”¹⁴ members of the legal profession should consciously seek to learn about the various components that make up diverse identities such as LGBT persons of color. Members of the legal community should combat the ease and convenience in essentialism because that convenience ultimately results in diverse attorneys of color being left out of inclusion efforts, with concerns and considerations specific to their group being minimized or ignored altogether. This minimizing and ignorance contributes to the lack of LGBT attorneys of color in the profession, which ultimately serves as a hindrance to diversity and inclusion.

A person's identity is rarely limited to a single characteristic and when efforts are made to account for and include these various characteristics, the business of the firm will improve, as more and more, clients are looking for their attorneys to represent the communities they serve. The experience of the firm on the whole and of attorneys individually will also improve as an inclusive environment creates a more functional and collaborative work community. Indeed, as Councilwoman Harris pronounced, “[w]e are not a homogeneous species—each human is complex and multifaceted.”¹⁵

Coming Out

For many, sexual orientation is an invisible characteristic that requires disclosure for others to be aware.¹⁶ LGBT persons often have to navigate that process of disclosure, “coming out,” repeatedly, deciding when to come out, to whom, and how, all while considering the impact that coming out may have on their careers and relationships. Many LGBT attorneys remain silent about their personal lives:

Non-gay people announce their sexual orientation whenever they mention a date, a spouse, or a child. But these normal conversations can be fraught with tension for lesbians and gay men. If they decide to remain silent about their personal lives, the word “we” is banished from their vocabularies, along with talk about weekends, homes, Thanksgiving plans, theater subscriptions, and in-laws. It's a silence that can often be interpreted by colleagues as distant and cold.¹⁷

The problem with remaining closeted is that “[t]o remain closeted, one has to become somewhat aloof. And successful lawyers tend to be gregarious and friendly and open.”¹⁸ Further, the intersection of race and sexual orientation presents a common problematic perception:

[T]hat people of color truly experience oppression by the majority, whereas gay men and lesbians merely experience “normal” people's discomfort with their sexuality and openness about it ... racism remains a constant and expected experience. Unfortunately, homophobic and heterosexist people often make statements ... that “seeing” race somehow means

that people of color merit certain protections, whereas gay men and lesbians “choose” to come out, when they can remain invisible and should do so anyway.¹⁹

It is imperative that members of the legal profession realize that one identity, whether based on race, ethnicity, sexual orientation, or gender identity, does not take precedence over another, and instead acknowledge that the issue is more complex. Additionally, the legal community should move beyond this acknowledgment and commit to doing the work to understand the complexities of identity, which is necessary in improving inclusion of LGBT attorneys of color in the legal profession.

Recommendations for Inclusion of LGBT Attorneys of Color

Diversity and inclusion generate a number of benefits, including increasing profitability by expanding the ability to market and advertise to diverse clients, leveraging a workforce’s cultural difference to create a broad base of expertise that leads to the development of new ideas, reducing attrition within legal businesses by embracing difference rather than creating a culture in which diverse individuals feel as though they are outsiders, and strengthening the core societal values that “diversity should be accepted, encouraged, and appreciated.”²⁰ To achieve these benefits and more, firms should consider and implement the following recommendations to improve the attraction, retention, and advancement of LGBT attorneys of color:

- **Think Expansively:** Law firms should think expansively about what constitutes diversity.²¹ Moving away from essentialism will promote a more inclusive environment by encouraging the

acknowledgment that individuals’ identities are comprised of various characteristics and are not singular. Thinking expansively about what makes up individuals’ identities will encourage LGBT attorneys to not “pick one or the other”—we can be both persons of color *and* LGBT, in addition to the many other facets of our identities.

- **Implement Training:** A formal diversity-training program that is mandatory for all employees at every level helps to ensure an inclusive environment. Building awareness and creating a common language regarding LGBT attorneys of color, as well as other diverse characteristics, promotes understanding within the profession. Trainings should address multiple dimensions of diversity and inclusion, including, but not limited to, attorneys of color, women attorneys, and LGBT attorneys. Defining key terms such as LGBT, and promoting acceptance and understanding of attorneys’ revelation of their sexual orientation and gender identity should be included in training. Training should also encourage attorneys to express the intersection of the multiple components of their identities, rather than suppress these aspects of their identities. Working with consultants and other experts who specialize in diversity training would help to identify areas that are particular to the legal organization and the market in which the organization operates. For instance, a diversity consultant may help the law firm shape a diversity training program that addresses the particular needs of being an LGBT attorney of color in a small town versus in a big city or firms owned by minorities, women, LGBT, or disabled persons. Moreover, large law firms and general counsel offices encounter different challenges and opportunities than small firms and solo practitioners.

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Training should also consider and address factors that may inhibit inclusion and retention, such as explicit and implicit bias, unconscious discrimination, and overt and covert opposition to diversity and inclusion.²²

- **Serve and Promote the Community:** Law firms can provide information and materials regarding community organizations and affinity groups to attorneys who are openly LGBT, particularly for those attorneys who are new to the city in which the firm is located, which occurs fairly often, especially in the case of summer associates. Law firms can provide lists of affinity groups and bar associations, sponsor activities, or even serve as pro bono counsel for the groups. If the firm is already doing these things, then the firm should be sure to highlight its efforts to the firm, including its diverse attorneys, and to the community at large, as this information will emphasize the firm's commitment to inclusion and will promote the retention of diverse attorneys.
- **Avoid Stereotypes:** Stigmatization and stereotyping play a role in job satisfaction and retention and firms should be sensitive to this. Indeed, “[a]ll forms of oppression involve taking a trait, x, often with attached cultural meaning, and using x to make some group the *other*, reducing their entitlements and powers.”²³ Firms should avoid assumptions about a lawyer and avoid the perpetuation of such stereotypes and the denial of opportunities based upon those stereotypes.²⁴ Many lawyers of color feel they have to work twice as hard in order to prove themselves, and female lawyers of color feel there is a double bias against them.²⁵ Attorneys are not immune from the lingering effects of historical stereotypes. Thus, firms should recognize that conscious and unconscious stereotyping occurs and avoid reaching conclusions about attorneys' work ethic, based on gender, cultural/ethnic and/or racial stereotypes or based upon a single event or mistake.
- **Strategic Planning:** Include diversity and inclusion in the firm's strategic plan and have the firm's management announce and explain the strategic plan so that diverse attorneys will see a “top down” commitment.
- **Measure Your Success (or Failure):** NALP has been collecting demographic information on LGBT lawyers since 1996. During that time, the number of firms that give their LGBT lawyers an opportunity to self-identify has risen to almost 90 percent. While 90 percent is a solid A-minus, law firms should strive for the often-elusive A-plus in self-reporting. If a firm can meet and exceed its own expectations in measuring its progress toward diversity and inclusion, this success will inevitably be reflected in the profession as a whole. A written plan for inclusion is essential to measuring the firm's success and shortcomings. Firms must evaluate where they stand to determine goals and their strategic plan. Plans should include goals, assign responsibility, specify a timeline, and include accountability. Where possible, the firm's plan should be circulated throughout the firm, similar to the way in which firms share their strategic plan on an annual basis. LGBT attorneys should be a part of this evaluation process.

Inclusion efforts should always consider the public policy behind antidiscrimination law when developing their efforts: respect for one's total identity, including gender, race, age, religion, ethnicity, and sexuality. None of these traits are permissible justifications for

discrimination (as found in various federal, state, and local laws), yet all of these traits should be considered and accounted for in inclusion efforts, in addition to other identifiers.

A final recommendation for inclusion is that law firms should consider the rationales behind achieving diversity and inclusion when shaping plans to move forward on these fronts. The American Bar Association's Presidential Diversity Initiative's *Diversity in the Legal Profession: The Next Steps*²⁶ articulates four rationales for creating a more diverse legal profession:

The Democracy Rationale: Lawyers and judges have a unique responsibility for sustaining a political system with broad participation by all its citizens. A diverse bar and bench create greater trust in the mechanisms of government and the rule of law. Without a diverse bench and bar, the rule of law is weakened as the people see and come to distrust their exclusion from the mechanisms of justice.

The Business Rationale: Business entities are rapidly responding to the needs of global customers, suppliers, and competitors by creating workforces from many different backgrounds, perspectives, skill sets, and tastes. Ever more frequently, clients expect and sometimes demand lawyers who are culturally and linguistically proficient. A diverse workforce within legal and judicial offices exhibits different perspectives, life experiences, linguistic and cultural skills, and knowledge about international markets, legal regimes, different geographies, and current events.

The Leadership Rationale: Individuals with law degrees often possess the communication and interpersonal skills and the social networks to rise into civic leadership positions, both in and out of politics. Justice Sandra Day O'Connor recognized this when she noted in *Grutter v. Bollinger*²⁷ that law schools serve as the training ground for such leadership and therefore access to the profession must be broadly inclusive.

The Demographic Rationale: Our country is becoming diverse along many dimensions and we expect that the profile of LGBT lawyers and lawyers with disabilities will increase more rapidly. With respect to the nation's racial/ethnic populations, the Census Bureau projects that by 2042 the United States will be a “majority minority” country.

Understanding and incorporating these rationales will lead to attracting, advancing, and retaining diverse attorneys, including LGBT attorneys of color, as these rationales promote a more holistic approach to diversity and inclusion that moves beyond the business case.

Conclusion

Attorneys, researchers, taskforces, and commissions on diversity alike should begin to move away from the notion that only a single diverse experience can be considered at a time. Considering the overlap of multiple identities and experiences will make for a more robust and representative profession and is “more just, productive and intelligent because diversity, both cognitive and cultural, often leads to better questions, analyses, solutions, and processes.”²⁸ ◎



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presented on topics related to diversity and inclusion in the legal profession, being LGBT in the workplace, the intersection of race, gender and sexual orientation, and marriage equality. Dedicated to activism, Johnson most recently served as a commissioner for the American Bar Association's Commission on Sexual Orientation and Gender Identity, whose mission is to promote full and equal participation in the legal profession by persons of differing sexual orientations and gender identities. She also spearheaded the founding of a nonprofit scholarship organization in Los Angeles which provided scholarships to college-bound young women of African descent and is a proud member of Delta Sigma Theta Sorority, Inc. Johnson received her Juris Doctor from DePaul University College of Law, earning a Certificate in Public Interest. Reprinted with permission from the Second Annual IILP Review: The State of Diversity and Inclusion in the Legal Profession (2011). © 2017 Takeia R. Johnson. All rights reserved.

Endnotes

¹⁴“Most Firms Collect LGBT Lawyer Information—LGBT Representation Up Slightly” *NALP Bulletin*, December 2010, available at <http://www.nalp.org/dec10lgbt>. In 2009, NALP reported 2,200 openly gay lawyers. Although overall percentage of LGBT lawyers reported in the NALP Directory of Legal Employers in 2010 increase compared to 2009, this increase is misleading because the total number of lawyers included in the analysis was smaller compared with 2009.

²*Id.*

³*Id.*

⁴*Id.*

⁵*Women and Minorities in Law Firms by Race and Ethnicity*, *NALP Bulletin*, January 2010, available at nalp.org/race_ethn_jan2010.

⁶*Symposium: The Evolution of Academic Discourse on Sexual Orientation and the Law: A Festschrift in Honor of Jeffrey Sherman. Article: Bias in the Workplace: Consistent Evidence of Sexual Orientation and Gender Identity Discrimination 1998-2008*. M.V. Lee Badgett, Brad Sears, Holning Lau, and Deborah Ho. 84 *Chi. – Kent L. Rev.* 559, 568-69 (2009). Limitations of these studies include: many of the studies only surveyed individuals in a particular geographic region, occupation, or population group; almost all were convenience samples, rather than random or probability samples; individuals who have been subject to discrimination may have been more likely to respond; peoples' perceptions of discrimination may not be accurate measures of actual discrimination perhaps because individuals may misperceive motives behind employment decisions, or employers may conceal their discriminatory motives and as a result, less discrimination is perceived than actually exists. *Id.* at 569. Finally, many of the cited studies used vague definitions of discrimination, such as denials of promotions and receiving “hard stares.” *Id.* Despite these limitations, the studies are helpful in identifying some of the barriers to inclusion that LGBT attorneys face, including LGBT attorneys of color.

⁷Jeffrey C. Mingo, *More Colors Than the Rainbow: Gay Men of Color Speak About Their Identities and Legal Choices*, 8 *LAW & SEX.* 561, 562 (1998).

⁸Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 *STAN. L. REV.* 1241, 1252.

⁹Trina Grillo, *Anti-Essentialism and Intersectionality: Tools to Dismantle the Master's House*, 10 *BERKELEY WOMEN'S L.J.* 16-22, 24-30 (1995).

¹⁰Jefferson, *supra* note 27 at 266.

¹¹Gabriel Arkles, Pooja Gehi, and Elana Redfield, *Transgender Issues and the Law: The Role of Lawyers in Trans Liberation: Building a Transformative Movement for Social Change*, 8 *SEATTLE J. SOC. JUST.* 579, 602-03 (Spring/Summer 2010).

¹²Sherry Harris, Essay for *Out and Elected in the U.S.A.*, available at www.outhistory.org/wiki/Sherry_Harris (last visited Jan. 8, 2011).

¹³Elvia R. Arriola, *Gendered Inequality*, in “The Cutting Edge: Critical Race Theory,” 2nd ed., Richard Delgado & Jean Stefancic, eds, 322-324, 322 (2000).

¹⁴Arriola, *supra* Note XIV.

¹⁵Harris, *supra* Note XII.

¹⁶Christine Silva and Anika K. Warren, *Building LGBT-Inclusive Workplaces: Engaging Organizations and Individuals in Change*, *CATALYST*, p. 11 (2009).

¹⁷Creating Pathways to Diversity: Perspectives from the Invisible Bar—Gay & Lesbian Attorneys in the Profession, 8-11 (hereinafter “Pathways to Diversity”) (MCCA 2003).

¹⁸*Id.*

¹⁹Mingo, *supra* Note VI, at 592.

²⁰Joseph M. Hanna and Nikia A. O'Neal, *Moving Beyond Rhetoric—Fostering Diversity in the Legal Profession*, *FOR THE DEFENSE*, p. 6 (May 2007).

²¹Denis P. Riva, Jr. and Rebecca S. Herbig, *Embracing “Phase II:” A Diversity Primer for Young Lawyers*, *FOR THE DEFENSE*, p. 40 (April 2010).

²²American Bar Association's Presidential Diversity Initiative—Diversity in the Legal Profession: The Next Steps, p. 27 (April 2010) available at new.abanet.org/centers/diversity/.../Diversity_Summary_Report.pdf.

²³Mari J. Matsuda, *Standing Beside My Sister; Facing the Enemy: Legal Theory Out of Coalition*, in “Where is Your Body?” 63-64 (1996). (Emphasis added).

²⁴*The DRI Law Firm Diversity Retention Manual*, p. 13 (2005) available at www.dri.org/open/Committees.aspx?com=0440.

²⁵*Id.*

²⁶ABA Report, *supra* Note XXIII, at 5-9.

²⁷*Grutter v. Bollinger*, 539 U.S. 306, 308 (2003).

²⁸Ellen F. Rosenblum, Chair, Presidential Commission on Diversity, *supra* Note XXII at 4.