

# BE TRUE TO



One trial lawyer describes how her experiences as an openly gay student shaped her journey in the legal profession.

By || **JODI NOFSINGER**

I was flattered when *Trial* asked me to write an article about LGBT diversity in the law, but I quickly realized that I cannot speak for others. I am a trial lawyer who happens to be gay. I can speak only about my own experiences. I was a 20-year-old pre-med student at the University of Illinois when I came out in 1990. As I suspect is true for many, I felt safer in some circles than others, and no clear framework existed to guide me in choosing when, where, or with whom I could be honest about my sexuality.

Three years after I came out, President Clinton instituted “Don’t Ask, Don’t Tell,” effectively obligating military men and women to lie if they wished

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to serve their country. Don't Ask, Don't Tell reinforced the notion that being gay was unacceptable, shameful, and should be hidden. In April 1993, I joined many friends—LGBT and straight—at the March on Washington for Lesbian, Gay, and Bi Equal Rights and Liberation. The dismay at the march was palpable: How could our government endorse a policy requiring its servicemembers to hide their true selves?

That year made me think about what it means to be brave and to live with integrity. I wanted to be honest about who I was and free from internalized and institutionalized shame, and I wanted to make the concept of “gay” visible and less alien to people around me. This was not easy for me. I grew up in central Illinois, where people are

friendly so long as you appear to be a lot like them. But my government's choice to shame me with this policy brought out my courage.

Four months after the march, I enrolled at the University of Maine School of Law. Before arriving in Maine, I had decided I would live openly and honestly with my sexuality. I'm not one to wear it on my sleeve: I was as openly gay as others were openly straight. I didn't avoid talking about my girlfriend, and I joined the school's lesbian and gay law group. I was never on the front line for gay rights—I just did small things openly, and I was respected.

Still, there were awkward moments. When the law school's administration announced that it would bar military recruitment on campus because of Don't

Ask, Don't Tell, I found myself in uncomfortable interactions with students who opposed the decision. And when a referendum to prohibit discrimination based on sexual orientation was put to a statewide vote, I set up a table at school to raise money for the Maine Won't Discriminate campaign (we raffled off tickets to a Melissa Etheridge concert). This referendum failed, which was hugely disheartening to someone who had come to believe that her friends and neighbors were ready to embrace her true self.

In the fall of 1993, I attended a gay and lesbian law conference in Boston. Mary Bonauto was a featured speaker, and she spoke compellingly and stirringly about her work with Gay & Lesbian Advocates & Defenders (now GLBTQ Legal

Advocates & Defenders) to advance civil rights through legal advocacy. Mary would later argue—and win—*Obergefell v. Hodges* before the U.S. Supreme Court, which established that gay marriage is a constitutionally guaranteed right.

I wanted in. I was accepted as an intern in Mary's office for the summer of 1994. The privilege of working with and learning from Mary and her colleagues while working on groundbreaking cases was intoxicating. I was hooked; I wanted to grow up to be just like them.

And then, I didn't. I went back to Portland to start my second year of law school, and over the next two years, I took trial practice courses, joined the moot court team, and interned at the

Had I followed the path of working for an LGBT legal advocacy group, my work would be very different, but so too would my professional identity. I would be a gay lawyer working for LGBT clients, "out and proud" every working day. Instead, I am living authentically every day—a trial lawyer who happens to be a lesbian, fully engaged in advocating for harmed individuals, regardless of sexuality, who seek justice and protection under the law. I am privileged to do so.

As every trial lawyer knows, we come into our clients' lives when they face difficult and often deeply personal challenges. We learn intimate information about them—whether they are married or partnered; straight, gay, or transgender;

be fully out, I wondered: Should I be honest? Should I lie? Should I dodge? If I were straight, I would never hesitate to tell clients that I have a daughter. I chose to be true to myself and revealed that I am gay.

I have developed some protection for myself around my professional life. I learned not to divulge information that might make a client dig deeper unless I am comfortable with what might unfold. Part of me recognizes that withholding personal information resembles the sometimes-closeted behavior of my early twenties. I realize, as well, that this means missing opportunities to affirmatively shape my clients' preconceived thoughts about homosexuality and

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district attorney's office. My moot court partner and I won the National Trial Competition's New England Regional, and I clerked for trial court judges. I was hooked again—this time on becoming a plaintiff trial lawyer. Even though my professional focus changed, my openness about my sexuality did not. I was out and staying out.

I found my place at the trial firm of Berman & Simmons in Lewiston, Me. There I found the mentoring, support, and ample resources needed to become a successful medical malpractice and personal injury attorney. I am now in my twentieth year of practice, and I am happy with and proud of my career choice.

and whether they have children. Our clients are not always gay-friendly. Some are very gay-unfriendly. Regardless of their politics, prejudices, and personalities, we work with them. As we come to know them, sometimes they want to know us too. Even when they don't ask about our personal lives, we may share details to find common ground or express empathy.

I clearly remember the first time I told a client that I had a baby daughter. She asked what my husband did for work, thinking that I probably didn't have much time to take care of a baby because of my job. Although this was five or six years after I had decided to

gay people. But I no longer feel shame about choosing not to speak up, because I respect that the attorney-client relationship is not a two-way street.


Even today, I still don't consider myself to be on the front line for gay rights, although I am open about myself. I know how lucky I am to live in an era in which public opinion about LGBT individuals has evolved dramatically. To most people I meet, my sexuality is a fact about me, like my blond hair or my job as a trial lawyer, and not a problem.

My daughter is now a bright, lovely, and curious 14-year-old. We recently discussed Don't Ask, Don't Tell and how it affected me. I was delighted that she

was incredulous that anyone would have an issue with gay servicemembers. It made me appreciate how far we have come as a society.

Few of us—perhaps too few of us—work directly for organizations dedicated to LGBT legal advocacy. But many of us care greatly, even passionately, about discrimination of all forms that affects our communities. I carve out time to serve as a board member of the American Civil Liberties Union of Maine. And one of my proudest moments was winning a landmark case in Maine’s highest court that guaranteed my transgender client access to the girl’s bathroom in her middle school.

While the result I helped achieve makes me proud, I’m reminded that all trial lawyers are uniquely positioned to help others. We can, and do, give generously to causes that oppose discrimination and promote diversity. By applying our training, talents, skills, and resources, we can shape the communities we practice in and live in for the better.

I admit that, sometimes, clients are referred to me simply because I am a gay lawyer. I give them my very best, just as I do all my clients. I assist them if I can, and if I cannot, I help them find someone better suited to do so. You don’t have to be gay to appreciate the benefits of diversity among trial lawyers. Having gay trial lawyers—indeed, having diversity of all kinds in our ranks—benefits our clients, our courts, our communities, and ourselves. After all, our democracy’s founding principle is that all people are equal under the law. So too should be its lawyers. 

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## AAJ’S LGBT CAUCUS

**AAJ’s LGBT Caucus aims to raise awareness of the unique issues LGBT attorneys and clients face, and to provide a forum for members to come together.**

**Laura V. Yaeger**

During AAJ’s 2014 Winter Convention, New Orleans attorney Zachary Wool searched his schedule for the LGBT Caucus meeting. He couldn’t find it, and he came to realize that no such caucus existed. It was then that the idea of an LGBT Caucus was born. Zachary knew that lawyers face all kinds of issues in their practices above and beyond the substance or procedure in a case.

For this reason, AAJ has a Minority Caucus, a Women Trial Lawyers Caucus (WTLA), and a New Lawyers Division. He knew it was equally important for LGBT lawyers to come together to discuss issues of gender or sexuality that may impact them and their practices.

When I received an email from the WTLA leadership outlining Zachary’s ideas and asking for volunteers, I did not hesitate. After months of emails and phone calls, Zachary and I planned to meet face-to-face at the 2014 Annual Convention in Baltimore and map out the steps to create an LGBT Caucus.


One of our goals, which became part of the caucus’s mission statement, was to increase awareness of LGBT issues, education, and networking opportunities. It also was important to have an open and inclusive caucus so that any AAJ member could join, regardless of their sexual orientation. All lawyers have LGBT clients, and we wanted to be a resource for lawyers who may not have experience discussing or handling LGBT issues.

Our next step was to draft the caucus bylaws. We did so with the help of AAJ leadership and staff, and support for the caucus continued to grow. We raised money to support our networking receptions and CLE programs, created “LGBT ALLY” buttons, and saw a tremendous show of enthusiasm and offers to help from other AAJ members. Zachary and I were humbled by the

many attorneys and firms who sponsored the caucus. Without their generosity, we could not have successfully planned for the 2015 Annual Convention in Montreal, where the caucus bylaws were approved.

Over the next year, the caucus acquired more members, sponsors, and support. Zachary and I were anxious and excited as the 2016 Annual Convention in Los Angeles approached. All of our hard work would culminate in a general membership vote, a crucial step in making the caucus official. As the LGBT Caucus was unanimously approved, cheers erupted and tears flowed.

One area that is crucial to the caucus is holding and sponsoring CLE programs to educate members about some of the issues LGBT lawyers and clients face. In Montreal, the caucus’s debut CLE featured former Massachusetts Supreme Judicial Court Justice John Greaney, who wrote the concurrence in *Goodridge v. Department of Public Health*—the case that made Massachusetts the first state to legalize same-sex marriage. David Boies, who argued *Hollingsworth v. Perry* before the U.S. Supreme Court, also spoke about the status of marriage equality.

At AAJ’s Annual Convention in Boston next month, the caucus will cosponsor a full-day education program, “Civil Rights: Proving Liability, Effective Discovery, and Damages.” The caucus will also hold a business meeting and networking reception. For more information, visit [www.justiceannualconvention.org](http://www.justiceannualconvention.org). 



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