



Getting Real: Transgender Attorneys Talk About Coming Out in the Workplace

BY PATRICK FOLLIARD | PATRICK FOLLIARD

GENDER IDENTITY

One's internal, personal sense of being a man or a woman. For transgender people, their birth-assigned legal identity and their own internal sense of gender identity do not match.

GENDER EXPRESSION

External manifestation of one's gender identity, usually expressed through "masculine," "feminine," or gender-variant behavior, clothing, haircut, voice, or body characteristics. Typically, transgender people seek to make their gender expression match their gender identity, rather than their birth-assigned sex.

TRANSGENDER

An umbrella term for people whose gender identity and/or gender expression differs from the sex they were assigned at birth. The term may include, but is not limited to transsexuals,

cross-dressers, and other gender-variant people. Transgender people may or may not choose to alter their bodies hormonally and/or surgically.

TRANSITION

The complex process of altering one's birth sex. Transitioning is not a one-step procedure, and occurs over a long period of time. Transitioning includes some or all of the following cultural, legal, and medical adjustments: telling one's family, friends, and/or co-workers; changing one's name and/or sex on legal documents; hormone therapy; and possibly (though not always) some form of surgical alteration.

Definitions adapted from the GLAAD Media Reference Guide, 7th Edition. Transgender Glossary of Terms, available at www.glaad.org/media/guide/transfocus.php.

Today, most large firms and corporate legal departments are transgender inclusive, with some listing "gender expression" in their antidiscrimination statements. Across the nation, almost 70 jurisdictions provide some level of protection against discrimination on the basis of gender identity or gender expression. Currently, fourteen states and the District of Columbia do so in the workplace. Transgender attorneys do not receive all the employment benefits enjoyed by some of their gay and lesbian counterparts, however, and it is clear that the T in LGBT (lesbian, gay, bisexual and transgender) is the least understood. While gay and lesbian attorneys may ponder how "out" they should be while interviewing or working at a firm, the question for many transgender attorneys is whether they should be out at all.

Still, many attorneys are heartened by the small but growing number of transgender law students and young transgender attorneys who are writing scholarly articles, finding work at prestigious firms and corporations, and becoming increasingly engaged in bar associations. In the following paragraphs, three transgender attorneys—all trailblazers in the struggle for transgender equality—share the great strides they have made and are making for the transgender community.

KYLAR W. BROADUS

Growing up, Kylar W. Broadus often accompanied his father, a truck driver, to work. When the other men complimented the elder Broadus on his hardworking young son, he never corrected them. "My father intuitively got that I was a guy even though I was born biologically female," explains Broadus, a solo practitioner in Columbia, Mo. "It took my mother a little longer to catch on, but eventually she got it, too. As a transgender man, I've been very fortunate on the home front. Unfortunately, work has been a different story."

While employed as a claims specialist with a law degree in the Missouri office of a nationally known insurance company, Broadus wore masculine attire to work and was frequently taken for a man. It was never a problem until the day he announced to his colleagues that he was officially beginning his transition from female to male. Within months, despite years of service

and stellar reviews, Broadus was out the door. The blatant injustice of the constructive discharge prompted Broadus to file a lawsuit, but it was dismissed on summary judgment motion.

“That was 11 years ago,” recalls Broadus. “At the time, I didn’t have the tools to articulate my situation to the company and there were no laws to protect me, so there really wasn’t much I could do. Ultimately, the experience spurred me to become an activist—I was unwilling to hide or to be ashamed, and I wasn’t going to sit by and allow what happened to me happen to other transgender people.”

Without a job, Broadus hung out his shingle and took whatever cases came his way—mostly criminal and family court—and continued transitioning with hormones and some surgeries. (“There are always things we want to tweak and refine about ourselves,” he says, “but I consider my transition complete.”) Broadus reports that he continues to be underemployed and discriminated against because he is transgender and African American. “I’m disrespected by judges and other attorneys because of who I am,” he says. “Headhunters here in Missouri have asked me to play down any references to ‘transgender’ on my resume. Funny, if I replaced the words ‘transgender law’ with ‘tort reform,’ they’d have tremendous respect for my body of work.”

If he were to come out as an openly transgender man on the job again, Broadus says he would do it earlier rather than later, and he would be careful to educate the company and colleagues on every step of his transition. “Sometimes we think we can gradually do it on our own, and those in the office will automatically accept us,” he says. “It doesn’t always work that way.”

“The person doing the transitioning needs to be the one steering the ship,” advises D’Arcy Kemnitz, the openly lesbian executive director of the National Lesbian and Gay Law Association (NLGLA). “He or she needs an open line of communication with whomever is handling diversity at the company or firm. To the degree that it is appropriate and within the transitioning attorney’s level of comfort, colleagues and clients should be kept informed, but the transitioning attorney needs to own that timeline.”

DENISE E. BROGAN-KATOR

As managing attorney of the Rainbow Law Center PLLC, in Southfield, Mich., transgender woman Denise E. Brogan-Kator, along with her law partner and spouse (since 2005) Mary Kator, strives to provide competent, affordable legal services to the LGBT community. Brogan-Kator knows well the discrimination and risks that sometimes come with living one’s life authentically.

When Brogan-Kator first began transitioning from male to female in the mid-1990s, she was a divorced father of three and the well-respected CFO for a mid-sized medical supplies company in Florida. At the first outward sign of feminization, she was let go. Brogan-Kator sought legal

recourse, but soon learned there was nothing she could do. Then and there, she vowed to attend law school and to try to make a difference for other transgender people.

Two more jobs were followed by two unwarranted firings before Brogan-Kator landed a well-paying position as CFO of a Florida software company where, she says, “the company’s owner was more interested in the work I could do than my past.” After several lucrative years with the company, Brogan-Kator was able to semi-retire and attend law school full-time.

At the University of Michigan Law School, Brogan-Kator, who by then had completed her transition, might have gone “stealth” (i.e., passed as a biologically born woman). Instead, says Brogan-Kator, she opted to be the institution’s first and only openly transgender woman, happily introducing herself to the campus through her very popular blog titled “Musings on life, law, and gender.”

“It’s more challenging for openly transgender attorneys to achieve equality and find acceptance in the legal profession than it is for gay, lesbian, and bisexual attorneys,” says Brogan-Kator. “At the time of transition, transgender becomes the core of one’s identity. When a person comes out as gay, it’s between him or her and whomever he or she chooses to involve, whereas if you’re transitioning, it’s between that person and the entire world—transitioning is more obvious and problematic than ‘coming out.’ One day everyone knows you as one sex, and the next they have to think of you as another.

“Challenging something so fundamental to our concept of self and identity as sex does not always go over so well with society at large,” Brogan-Kator explains. “Because of that, discrimination against the transgender community is enormous: Many transgender individuals suffer verbal and physical violence or immediate threats of violence. Unemployment is very high. Believe me, I’m in rarified company in being an employed, successful transgender woman. Certainly most transgender people don’t have the money to finance a lot of transitioning—hormones and surgery are not cheap, and neither is the probability of losing one’s job.”

For Brogan-Kator, transitioning is akin to breathing. “One can only hold one’s breath for so long,” she says, “and then you have to exhale and draw in new breath. Similarly, you can stay in the gender that you’ve been assigned for as long as you can, but at some point in time, the need to breathe becomes paramount and then you transition.”

MIA F. YAMAMOTO

Shortly after completing her transition from male to female five years ago, Mia F. Yamamoto, a private practice criminal defense lawyer since 1984, lost one case and then entered a winning streak that continues through today. “It’s reminiscent of when I was first coming up as a Japanese American litigator and had something to prove,” she recalls. “People didn’t believe that an Asian litigator could be as assertive or effective as other attorneys, especially in the

courtroom. In some ways, that chip on my shoulder prodded me to do well. Once again, I'm feeling that I have something to prove: People must understand that a transgender woman can do as good a job as anyone else. I'm working hard to do that in terms of quality of practice and production."

Is it simpler to transition as a solo practitioner? Interestingly, it's not, says Yamamoto. "In a firm or a corporate legal department, transitioning becomes more of a human relations problem," she says, "and in a bureaucracy, it becomes a question of internal politics regarding what clients the transitioning attorney can serve. As a former public defender in Los Angeles for 10 years, I'm familiar with bureaucracy—most of the organizations I've worked for would make accommodations for a transitioning attorney. As a solo practitioner, however, "I faced my clients alone," Yamamoto continues. "If they didn't like what I was doing, they were more than free to leave. In that sense, I had no safety net."

Yamamoto transitioned on the job, but before she began to live as a woman, she approached each of her clients and gave them the opportunity to fire her if they were uncomfortable with what she was doing. Yamamoto even recommended a good lawyer who would be willing to take their cases. "I was aware that a great deal of law is presentation, and my transition might have been perceived as a problem—they hire a guy and end up with a woman," she says. "I have some pretty tough clients—murder cases, a death penalty case—and all of them stayed with me. It was very touching, to be honest."

Born "Michael" while her family was interned at the Poston Relocation Camp for Japanese Americans in Arizona during World War II, Yamamoto is very aware that she belongs to two minority groups. Because so many more people are working for racial equality, however, she feels a special obligation to advocate for the transgender community and to be as high profile and active as she can possibly be.

"I don't consider myself neurotically confessional," explains the commended Vietnam veteran, "but I'm very open about who I am. At one point, I thought it was going to be a struggle to overcome the ridicule and rejection that I'd encounter as a transgender woman, but that's not how it went down. Almost from the beginning, I've been in a position to answer questions and educate people about being transgender. For many people at court and in LA's Asian Pacific legal community, I was the first out transgender person that they had ever met, and they were curious. I believe that the more forthcoming I am, the easier it will be for other transgender attorneys, so I'm open even when it's uncomfortable."

Yamamoto's advice to those working with transgender attorneys who have been or are transitioning is "get over the shock and go back to business as usual." And she says not to worry if you mistakenly call someone by their former first name or use the wrong pronoun: "People I've known the best and longest have the most trouble with my name and pronouns, so it's not something to get judgmental about."

D'Arcy Kemnitz adds, "People are so afraid about getting it wrong. We have to give ourselves permission to use the wrong pronoun, say we're sorry, really mean it when we say it, and move on. Really, it's okay. People who are transitioning understand."

Not only should transitioning at the firm or the corporate legal department be visible, it should be celebrated, argues Kemnitz. "The lawyer is getting a chance to improve his or her life, and with that comes happiness in life and happiness at the workplace. While most of us may not understand what it is like to be born into the wrong body, we can certainly understand the importance of improving one's quality of life." **DB**

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