

Lavender Law – CLE Materials

Workshop Title: The Trans in Big Law Survival Guide

Workshop Description: Navigating law firm expectations and culture presents unique challenges and experiences for transgender and nonbinary lawyers and legal professionals, like bathroom access, pronoun and honorific use, and healthcare options. These experiences are complicated by intersections with race, ethnicity, nationality, gender expression/transmisogyny, mental health, class, etc. Building off the collaborative synergy from the National LGBTQ+ Bar's Trans in Big Law peer mentoring group, this panel of diverse transgender and nonbinary lawyers will explore strategies to navigate workplace challenges. The panel will include attorneys who were openly transgender prior to entering their law firm and those who came out after they started work. The conversation will center the voices of transgender and nonbinary individuals, and allies are welcome to listen in on the conversation.

Speakers

1. Jay Mills (they/them), Associate, Hogan Lovells, Washington, DC
2. Maxime Matthew (they/he), Associate, Sullivan & Cromwell LLP, New York
3. Maya E. Rivera (she/her), Associate, BakerHostetler, New York
4. Rafael Langer-Osuna (they/them), Partner, Squire Patton Boggs (US) LLP, San Francisco

Workshop objectives:

Attendees will: (1) identify barriers facing transgender and nonbinary individuals in law firms, law schools, and other legal workplaces; (2) gain an overview of ways to combat anti-trans bias; (3) evaluate tools, policies, and practices to increase inclusion for transgender and nonbinary individuals; and (4) develop advocacy strategies as part of and/or for the transgender and gender nonconforming community.

Program Outline:

- I. *Overview & Gender Basics*
 - a. Information about the Trans in BigLaw Monthly Networking Meetings
 - i. In an effort to increase trans and nonbinary inclusion in the legal profession, the National LGBTQ+ Bar Association, with support from our founding sponsor, Debevoise & Plimpton LLP, launched the Trans in BigLaw Monthly Networking Meetings. This program is a closed space for transgender and nonbinary lawyers and business professionals who work in BigLaw. Gatherings are held virtually on the last Monday of every month from 1pm to 2pm ET, and are facilitated by openly trans attorney Dru Levasseur, the LGBTQ+ Bar's Director of Diversity, Equity, and Inclusion.

- ii. Are you a transgender and/or nonbinary lawyer or law firm professional looking to join the group? Fill out the Google Form: <https://docs.google.com/forms/d/e/1FAIpQLSc7mBxyFXmKFflsysXkgN6LDTVZ71ykXwrHINHOab1d5SudVg/viewform?vc=0&c=0&w=1&flr=0>.
- iii. Are you an ally looking to support the work? Sponsorship opportunities are available. Please contact dru@lgbtqbar.org and check out https://lgbtqbar.org/wp-content/uploads/sites/6/sites/8/2024/04/Part3_DEI-Consulting-Practice-Prospectus.pdf

b. Overview

- i. The focus of this panel is to expose the challenges transgender and nonbinary attorneys may face in the law firm environment and explore the strategies that we as transgender and nonbinary attorneys have developed to navigate workplace challenges. The following topics provide some general introduction to the major discussions transgender and nonbinary lawyers and legal professionals. These topics will be contextualized by the lived experiences of the panelists.
- ii. Gender is everywhere and cannot be assumed by someone's name or appearance. Andy Wirkus & Zach Zarnow, *Gender-Inclusive Language in the Courts: How to Communicate with Fairness, Dignity, Impartiality, and Accuracy*, THE NAT'L CTR. FOR STATE CTS. 5-6 (2nd ed. 2024), https://www.ncsc.org/__data/assets/pdf_file/0028/84916/Gender-Inclusivity-in-the-Courts.pdf.

c. Gender Identity and Sex Assigned at Birth

- i. Gender identity and sex assigned at birth are distinct parts of our identities. Gender identity refers to an internal sense of one's own gender. Sex assigned at birth is a designation assigned by medical providers at birth based on an assessment of an infant's body. Gender identity does not always align with the sex an individual is assigned at birth. People whose gender identity differs from their sex assigned at birth fall under the umbrella of transgender identity. Society often categorizes gender into distinct and opposing categories of "male/man" or "female/woman," which creates a gender binary, erasing other gender identities. *See Understanding Transgender People: The Basics* NATIONAL CENTER FOR TRANS EQUALITY (Jan. 7, 2023) <https://transequality.org/issues/resources/understanding-transgender-people-the-basics>; *see also Best Practices for Non-Binary Inclusion In The Workplace*, Out & Equal Workplace Advocates, 5 (last visited Apr. 29, 2022) [hereinafter "Out & Equal Report"] https://outandequal.org/best-practices-for-non-binary-inclusion-in-the-workplace/#_ftn1.

d. Pronouns

- i. Precision and accuracy are hallmarks of legal writing and communication. “Making assumptions that lead to inaccuracy is an avoidable mistake.” Wirkus & Zarnow, at 7.
- ii. Individuals may use the pronouns they/them/their to refer to themselves. “They” is a gender-neutral singular pronoun, recognized by Merriam-Webster and the Oxford English Dictionary. *A Note on the Nonbinary ‘They’*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/grammar/nonbinary-they-is-in-the-dictionary> (last visited May 15, 2024); Dennis Baron, *A Brief History of Singular ‘they’*, OED: OXFORD ENGLISH DICTIONARY, <https://www.oed.com/discover/a-brief-history-of-singular-they> (last visited May 15, 2024).
- iii. People who are non-binary may use other gender-neutral pronouns (ze/zim). See Ezra Marcus, *A Guide to Neopronouns*, NY TIMES (Sept. 18, 2022), <https://www.nytimes.com/2021/04/08/style/neopronouns-nonbinary-explainer.html>.
- iv. Precedent and statute supports transgender and nonbinary people’s right to be referred to by the correct pronouns at work. For instance, in *Lusardi*, the Equal Employment Opportunity Commission (EEOC) found the Department of the Army discriminated against Tamara Lusardi, a veteran and software quality assurance specialist, when her supervisors repeatedly and intentionally used her deadname, he/him pronouns, and “Sir” after she transitioned on the job. *Lusardi v. Department of the Army*, EEOC Appeal No. 0120133395 (Apr. 1, 2015). Additionally, in some jurisdictions, there are statutory protection regarding pronoun usage in employment. See, e.g., New York City Commission on Human Rights Legal Enforcement Guidance on Discrimination on the Basis of Gender Identity or Expression: Local Law No. 3 (2002); N.Y.C. Admin. Code § 8-102(23).

e. Honorifics

- i. Mx. is an accepted gender-neutral alternative to the honorifics Mr., Mrs., or Ms. Amy Kimmel, Nicholas Martinez, and James G. Leipold, *Mx. Is Not A Mistake*, NATIONAL ASSOCIATION FOR LAW PLACEMENT (Dec. 2021) https://www.nalp.org/mx_article.
- ii. Instead of using an honorific, you can use a person’s full name to refer to them.

f. Transgender and Nonbinary Individuals and Transition

- i. Some, but not all, transgender and nonbinary individuals may use a name different from their legal name. Similarly, some, but not all, transgender and nonbinary individuals may opt to transition legally by changing their

names or gender markers, or transition medically by seeking out gender affirming medical treatment.

II. *Being Transgender and Nonbinary In The Workplace: Discrimination, Microaggressions, and Cistems at Work*

a. Discrimination in Hiring and Being Out at Work

- i. Members of the transgender and nonbinary community experience increased gender-based discrimination at work, including in hiring and promotion practices, as well as through misgendering, mispronouncing, and lack of gender-neutral language and facilities. As a result, a majority of transgender and nonbinary individuals remain closeted in the workplace. Only 38% of transgender and nonbinary individuals reported being out at work. In addition, 47% of transgender and nonbinary individuals reported experiencing an adverse job outcome like not being hired, denied a promotion, or being fired because of their gender identities. *See* Jaime M. Grant, Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling, *Injustice At Every Turn: A Report of the National Transgender Discrimination Survey*, WASHINGTON: NATIONAL CENTER FOR TRANSGENDER EQUALITY AND NATIONAL GAY AND LESBIAN TASK FORCE, 52-53 (2015) (comprehensive report on discrimination experienced by the transgender community, including in employment contexts), [HTTPS://TRANSEQUALITY.ORG/SITES/DEFAULT/FILES/DOCS/RESOURCES/NTDS_REPORT.PDF](https://transequality.org/sites/default/files/docs/resources/NTDS_REPORT.PDF).
- ii. Many workplaces' diversity initiatives have a tendency to focus on sexual orientation based identities as opposed to gender based identities. This presents issues as transgender and nonbinary individuals do not feel comfortable being open about their identity. A report done by McKinsey found "More than half of transgender employees say they are not comfortable being out at work. Two-thirds remain in the closet in professional interactions outside their own companies." David Baboolall (they/them), Sarah Greenberg (she/her), Maurice Obeid (he/him), and Jill Zucker (she/her), *Being Transgender at Work*, MCKINSEY QUARTERLY (Nov. 10, 2021), <https://www.mckinsey.com/featured-insights/diversity-and-inclusion/being-transgender-at-work>. This results in the erasure and invisibility of transgender and nonbinary individuals from the workforce.

b. Intersectionality: Experiences of Transgender and Nonbinary Attorneys of Color

- i. Intersectionality is the term coined by scholar Kimberlé Crenshaw in 1989, to describe the increased and compounded harm experienced by individuals with multiple oppressed identities. Transgender and nonbinary attorneys of color navigate racism, sexism, and cissexism, among other overlapping systems of power and oppression in the workplace and in life generally. How these experiences manifest in the workplace may differ.

- ii. Generally speaking, many transgender and nonbinary attorneys of color often have to maintain a higher quality of work than their white peers, and their cisgender peers. Joan C. Williams et al., *You Can't Change What You Can't See: Interrupting Racial & Gender Bias in the Legal Profession*, AM. BAR ASS'N COMM'N ON WOMEN IN THE PRO. & THE MINORITY CORP. COUNS. ASS'N (2018), <https://mcca.com/wp-content/uploads/2018/09/You-Cant-Change-What-You-Cant-See-Executive-Summary.pdf>. This can be exhausting as there is consistently this double consciousness present, forcing attorneys to choose whether to code switch. See John P. Pittman, *Double Consciousness*, STANFORD ENCYC. PHIL. (Feb. 16, 2023), <https://plato.stanford.edu/entries/double-consciousness/> (quoting W.E.B. DU BOIS, *THE SOULS OF BLACK FOLK* (1903) (“It is a peculiar sensation, this double-consciousness, this sense of always looking at one’s self through the eyes of others, of measuring one’s soul by the tape of a world that looks on in amused contempt and pity”); Vershawn Ashanti Young, “*Nah, We Straight*”: *An Argument Against Code Switching*, 29 JAC 49 (Jan. 2009) (“[P]eople’s so-called ‘non-standard’ dialects are already fully compatible with standard English. Code meshing secures their right to represent that meshing in all forms and venues where they communicate.”)).
- iii. Transgender and nonbinary people often change the way they speak and act to be taken more seriously by their white and cis peers. Transgender and nonbinary lawyers are forced to speak more formally than what is comfortable to embody a neutral persona that otherwise could not fit into the traditional law firm culture. This erasure in language perpetuates the use of standard academic English, which has its own issues in accessibility and is rooted in systemic racism. Individually, it takes a toll having to erase yourself, the way you speak, and interact with the world, especially in Big Law where most of your time is spent.
- iv. From a recent conversation with a nonbinary legal assistant of color starting law school this fall: “I knew I wanted to be a lawyer, but I had to work two times harder than some of my other peers because my parents didn’t speak English and I grew up poor. Having a lack of access to these spaces especially in academia and the legal community highlights the barriers that exist. It’s exhausting enough to be a person of color, but also transgender and nonbinary?”

c. Professionalism and Gender Presentation

- i. Historically, the expectation for how attorneys are expected to present and dress themselves has been consistent with heteronormative gender roles. Nonbinary and transgender individuals are often limited in their expression of gender due to the expectations laid before them by their cisgender counterparts. This adds pressure to transgender and nonbinary attorneys to compromise the way they would normally express and present themselves out of fear of not being hired or taken as a serious attorney by firms and

colleagues. An article from the ABA recounts the experience of Cayman Mitchell, a nonbinary law student at Harvard Law. Their classmates with similar GPA's and resumes received more than double the callbacks Mitchell did because they chose to not follow the expected gendered dress code. Julianne Hill, *Keeping Up Appearances*, AM. BAR ASS'N (Oct. 1, 2023, 4:10 AM), <https://www.abajournal.com/magazine/article/keeping-up-appearances-slow-to-evolve-dress-codes-often-burden-female-and-minority-lawyers>.

- ii. Discrimination for presentation extends beyond and tends to be worse for transgender and nonbinary attorneys of color, especially Black attorneys. They tend to face racism coupled with comments on their appearance, more specifically in relation to hair. *Natural Hair Discrimination: Frequently Asked Questions*, LEGAL DEFENSE FUND, <https://www.naacpldf.org/natural-hair-discrimination/> (last visited May 15, 2024). To combat this racism and challenge the ideas of professionalism new legal support has come to fruition such as The Crown Act which supports attorneys in wearing their natural hair. This act challenges archaic and discriminatory ways the legal system and firms dictate the standards of what professionalism and dress codes can look like in a firm. Natalie Runyon, *The CROWN Act & Transforming the Rules of Professionalism Around Black Hair*, Thomson Reuters (Feb. 17, 2021), <https://www.thomsonreuters.com/en-us/posts/legal/crown-act-legal-professionalism/>.

III. *Cultivating a Transgender and Nonbinary Inclusive Workplace*

- a. Choose gender-inclusive language.
 - i. Prioritize gender neutral terms (e.g., “folks,” “friends,” or “colleagues” rather than “guys” or “ladies and gentlemen”).
 - ii. Remove unnecessary salutations (e.g., legal opinions that start with “Ladies and Gentlemen”) and gendered terms (such as chairman) from legal documents.
 - iii. Avoid using “he or she” as a default neutral pronoun.
 - iv. For possessive pronouns, instead try to use definite articles (such as the desk rather than his desk).
 - v. Or try repeating the noun (e.g., “The defendant argues the bill was paid by the defendant on the last day of September.”). Wirkus & Zarnow, at 12.
- b. Normalize sharing pronouns and/or honorifics.
 - i. Cis folks, please share your pronouns when introducing yourself, in your email signature, on video calls, in your professional bio, and on your business card.

- ii. If you hear someone being mispronounced, correct it in the moment. Be open to being corrected if you mispronoun someone. Apologize briefly (without over-apologizing), correct yourself, and use the correct pronoun moving forward. *Out & Equal Report*, at 8-11.
 - iii. Other transgender and nonbinary lawyers have found success petitioning federal and state courts to recognize the honorific Mx., use “Attorney” as an honorific, and to remove the use of any honorific. *See, e.g., Member Spotlight: Maxime Matthew*, THE LGBTQ+ BAR (Sept. 12, 2023), <https://lgbtqbar.org/bar-news/maxime-matthew/> (“After discussing the issue with other trans and nonbinary attorneys, they requested that the Eighth Circuit change their honorific to Mx., which the court did.”).
- c. Adopt gender-affirming records and policies.
 - i. Remove gender-specific language in policies, and include options beyond male and female when collecting employee information.
 - ii. Surveys and forms that collect demographic information should include options other than male and female, and include the option for Mx. when collecting data on titles.
 - iii. Benefits provide options for listing employee genders other than male and female. Health insurance should cover medical transition. *See Out & Equal Report*, 12-13.
- d. Expand access to all-gender restrooms and changing facilities.
 - i. All single-use restrooms should be converted to all-gender facilities. Use restroom signs that do not reinforce gender binaries (i.e. with a toilet icon instead of gendered pictograms). *Out & Equal Report*, 15-16.
- e. Elevate transgender and nonbinary voices in the workplace.
 - i. LGBTQIA+ Employee Resource Groups (ERGs) can elevate and include the voices and needs of transgender and nonbinary employees. Engage with and support members on: (1) building an inclusive dress code, (2) ensuring records accurately reflect genders, (3) enforcement of anti-discrimination policies in the context of misgendering or misuse of proper titles, and (4) gender-neutral restroom facilities. *Out & Equal Report*, 17.

IV. Additional Resources

- a. *Creating More Welcoming Workplaces: Practical Steps Towards Nonbinary Inclusion in the Legal Profession*, THE HARVARD LAW SCHOOL LGBTQ+ ADVOCACY CLINIC AND BEYOND BINARY LEGAL (2023), <https://harvard.turtl.co/story/nonbinaryguide/page/1>.

- b. *Backlash Against Trans People Happening Because We're Winning*, LEGAL SPEAK PODCAST (June 23, 2023), <https://legalspeak.libsyn.com/backlash-against-trans-people-happening-because-were-winning-says-lgbtq-advocate>.
- c. *Transgender and Nonbinary Workers' Toolkit*, LEGAL AID AT WORK AND BEYOND BINARY LEGAL (Mar. 2022), <https://legalaidatwork.org/wp-content/uploads/2022/03/Transgender-and-Nonbinary-Workers-Toolkit-English-1.pdf>.
- d. M. Dru Levasseur, *Gender Identity Defines Sex: Updating the Law to Reflect Modern Medical Science Is Key to Transgender Rights*, 39 VT. L. REV. 943 (2015). https://lawreview.vermontlaw.edu/wp-content/uploads/2015/05/39-4-06_Levasseur.pdf.