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Rule 8.4: Misconduct

Maintaining The Integrity Of The Profession

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

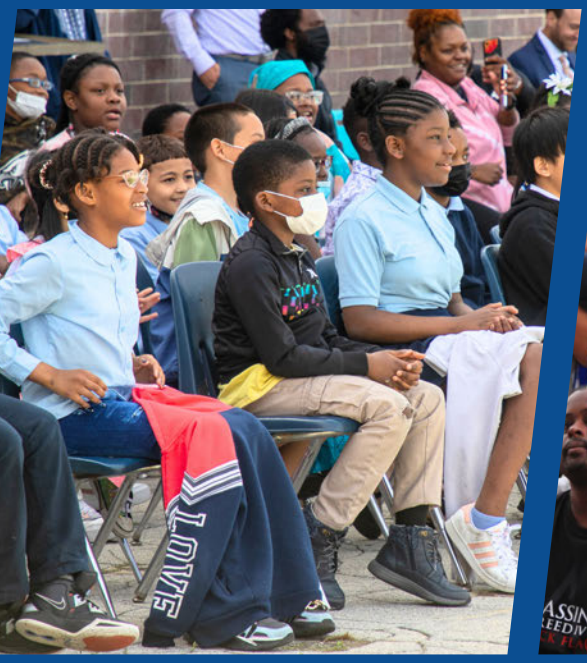
(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or

(g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these Rules.

CITY OF PHILADELPHIA
Law Department



Inclusive Language Guide

A guide to describing identities respectfully in legal writing.

Published May, 2023. © City of Philadelphia.

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INTRODUCTION

How legal professionals use language has consequences at both an institutional and a societal level. It affects how we interact with each other, with our clients, the courts, and the communities around us. What we write in our briefs, our legislation, and our contracts can reinforce individual dignity or take it away.

Descriptive words and phrases communicate people's identities to a reader. However, some of these widely used words and phrases may be hurtful and outdated.

Because there is little guidance within current legal style guides for the use of inclusive language, we have compiled the best practices regarding language use in legal writing that reflect the City of Philadelphia's commitment to fostering inclusivity, equity, and respect for one's identity and individual circumstances.

This guide addresses how best to describe identities respectfully in legal writing. We ask that you treat yourself and others with grace and kindness as we all learn together.

Because language is constantly evolving, this guide is not meant to be exhaustive. For further information and context please refer to the links at the end of this document.

Last updated in 2023.

With any suggested edits, please contact: law@phila.gov.

ABOUT THE LAW DEPARTMENT

The mission of the Law Department is to serve the residents of Philadelphia by providing legal counsel to the highest quality to all City of Philadelphia officials, employees, departments, agencies, boards, and commissions.

We are an ever-evolving Department where all are empowered to reach their full potential, to collaborate with clients as true partners, and to see their work have real impact on the city of Philadelphia. We celebrate the diversity of our staff, the City's workforce, and the residents whom we serve and promote an environment of comradery, accountability, and inclusiveness.

The Law Department's responsibilities include:

- Representing the City and its officials and employees in all litigation.
- Negotiating, drafting, and approving City contracts.
- Collecting unpaid taxes, fines, and other debts.
- Advising the City on matters of regulatory compliance.
- Representing the City in child welfare and health matters.
- Preparing legislation for introduction in City Council.

Meghan Byrnes (she/her) and Zach Strassburger (they/them) authored this document, with significant contributions from Tianna Kalogerakis (she/her), Jane Istvan (she/her), Ava Schwemler (she/they), and the Diversity, Equity, and Inclusion Committee of the Law Department.

HOW TO USE THIS GUIDE

In this guide, we provide inclusive language suggestions for describing identities and alternative terms for outmoded language with an explanation when available.

Suggested terms appear in italics and bolded text, ***example***, and terms to avoid appear inside quotation marks, “example.” We also note instances where there is not significant consensus on appropriate terminology.

Implementing the recommendations in this guide will help you to be more inclusive when describing identities and avoid over-generalizing or using language that blames individuals for systemic circumstances - conditions that they experience due to their race, ethnicity, gender, age, ability, economic status, and other factors that are out of control of the individual.

BEST PRACTICES

Using Identifying Descriptors

A person's identity should only be described in legal writing if it is a fact that may determine the outcome of the case. For example, in a case where a plaintiff alleges racial discrimination, it would be necessary to describe the racial identity of the plaintiff. Whereas, if a plaintiff is involved in a trip-and-fall case, the individual's racial identity would not need to be disclosed as it is not a relevant fact in the case, and including that information may increase opportunity for bias in the outcome of the case.

Making fewer assumptions about a person or group generally increases the inclusivity of your writing. When unknown, you may ask an individual how they prefer to be described in terms of identity.

Accessible Design

Ensure that your writing follows accessible design practices. Best practices in this area include the provision of text descriptions for all photographs and the conversion of PDF documents for screen readers using OCR technology.

Font selection may enhance or reduce readability. Sans-serif (without tails) fonts are accessible for many readers. Verdana is great on both screens and printed documents.

Footnotes and endnotes cannot be accessed by many screen readers. Whenever possible, footnotes and endnotes should be deleted, and the content included within the document's content.

If you are using Microsoft Word or Outlook, you may check the accessibility of your document by visiting the Review menu and clicking on the Check Accessibility button. This feature will let you know if people with disabilities could have difficulty reading your document and provide suggestions to make your document more accessible. Many other platforms also offer accessibility prompts or guides.

ABILITY AND DISABILITY

Use ***disabled people*** and ***people with disabilities*** (both are generally acceptable), NOT "the disabled."

→ Ableism refers to discrimination and social prejudice against people with disabilities. Avoid ableist language, e.g. "dumb" or "lame." Note that terms like "blind spot," "tone deaf," "deaf to our pleas," or "blind drunk" contribute to stigmas around disabilities and should be avoided.

→ Avoid using terms like "high functioning" or "low functioning" to describe ability. Instead, describe the person's abilities and the things for which they may need support, e.g. *She is able to communicate verbally and do most things with little to no support. She will need support traveling up the stairs.*

Use only neutral descriptors of a person's disability status. For example, use ***has multiple sclerosis*** NOT "is afflicted by multiple sclerosis" or "suffers from multiple sclerosis." Similarly, don't use "confined to a wheelchair;" rather use a more neutral term like ***wheelchair user***.

→ Use ***accessible parking***, NOT "handicapped parking."

Many people prefer to use person-first language to avoid insinuating that their illness or disability is the primary characteristic that defines who they are. However, some communities do prefer identity first, such as ***autistic people/autistics*** or ***Deaf people*** instead of "people who are Deaf."

→ Use a lowercase *d* to refer to audiological status and the use of a capital *D* when referring to the culture and community of ***Deaf people***.

Use ***blind*** or ***legally blind***. The terms ***blind*** or ***legally blind*** are acceptable for people with almost complete vision loss.

→ The American Foundation for the Blind recommends the use of the terms ***low vision***, ***limited vision*** or ***visually impaired*** unless the person refers to themself as legally blind or blind. While ***visually impaired*** is generally considered acceptable for a wide range of visual functions, some people may object to it because it describes the condition in terms of deficiency, as with the term ***hearing impaired***.

Use ***intellectual disability***, NOT "mental retardation."

→ The terms ***mental disability***, ***intellectual disability***, ***cognitive disability***, and ***developmental disability*** are also acceptable.

→ Do not use "special" or "special needs", as it is offensive when used in reference to those with disabilities. It can be considered a euphemism for "less-than." It may be necessary to use the term "Special Education" in reference to a specific program that uses the title, but in your own writing, replace "special needs" by referring to the specific needs of the person or persons being referenced. For example, you could write that someone needs a wheelchair-accessible bus or the Braille menu.

When discussing mental illness, refer specifically to the illness a person has. When their diagnosis is unknown, refer to them as a ***person living with a mental illness*** rather than referring to them as "mentally ill."

→ When referencing a diagnosis, describe the person just as you would someone with any other form of illness, such as ***they have depression***. Do not describe individuals as a diagnosis, like "she is a schizophrenic."

→ Avoid using a diagnosable condition such as "bipolar," "schizophrenic," "OCD," etc, as a synonym to generally describe someone's behavior as it makes light of serious illnesses.

Use care when discussing suicide. Use ***killed himself***, ***took her own life***, or ***died by suicide***. Do NOT use the term "commit suicide." because the term "commit" commonly refers to the commission of a criminal act.

→ Use ***attempted suicide***, NOT an "unsuccessful" suicide attempt.

→ Avoid stigmatizing terms like "insane" or "crazy."

GENDER, SEXUALITY, AND PRONOUNS

Be sure to use gender and sexuality terminology accurately. For example, the following terms are commonly confused:

- ***Gender identity*** is a person's deeply held core sense of self in relation to gender;
- ***Gender expression*** is the manner in which a person communicates about gender to others through external means such as clothing, appearance, or mannerisms;
- ***Sex*** refers to a biological status, e.g. internal and external physical features and hormones;
- ***Sexual orientation*** refers to whom someone is attracted to. You should not describe it as a lifestyle or a preference. Also referred to as ***sexuality***.

LGBTQ is acceptable in all references for a group of lesbian, gay, bisexual or transgender people and includes people who are queer and/or questioning their sexual orientation. ***LGBTQ+*** is even more inclusive.

→ Use ***gay*** or ***lesbian***, NOT "homosexual."

→ "Queer" was originally a derogatory term but is now reclaimed by some LGBTQ+ people. It is best to avoid this term in legal writing except when referencing a self-identification.

If it is necessary to refer to someone's assigned sex at birth, use the terms ***assigned male at birth***, ***assigned female at birth***, ***raised female***, or ***raised male***, as opposed to "biological gender," "biological sex," "biological woman," "biological man," "biological female," or "biological male."

→ Use ***different sex*** instead of "opposite sex", because the term ***different sex*** recognizes gender as a spectrum, rather than a binary.

Transgender is used to describe a variety of identities of people who are not cisgender. ***Cisgender*** means that a person's gender identity corresponds with the sex assigned to them at birth. ***Nonbinary*** is a transgender identity that falls outside the gender binary, as is ***genderqueer***. However, some people who identify as nonbinary or genderqueer may not identify as transgender. It is best to let people explain their own identities and follow their lead.

→ Use ***transgender*** or ***trans***, NOT "transgendered." ***Trans men*** and ***trans women*** are also appropriate terms, although a trans man can simply be referred to as a man and a trans woman as a woman, unless their trans identity is necessary to disclose. Transgender is an adjective, not a noun.

→ Always use a transgender person's chosen name. Do not put quotation marks around either a transgender person's chosen name or the pronoun that reflects that person's gender identity.

→ Where a transgender person uses a chosen name different from their legal or birth name, avoid including or referencing their legal or birth name (called a dead name). Referencing a dead name, or deadnaming a person, can be dangerous to a person's safety due to transphobia and can be perceived as an attempt to deny or undermine a person's gender identity.

→ Use ***gender transition*** or ***sex reassignment***, NOT "sex change."

Pronouns are used in place of a proper noun, such as a name.

→ Refer simply to ***pronouns***, NOT "preferred pronouns" which suggests that there is some choice in whether the pronouns should be used.

→ There are many gender-neutral pronouns, but the most common are ***they*** and ***them***. ***They***, ***their***, and ***them*** are grammatically correct both in singular and plural form, e.g. *The winning brief is Kai's. Their work is really strong* or *Candice and Tom aren't in office, they are in court.*

→ While you may simply ask someone's pronouns, it is appropriate to use someone's name or use the singular ***they*** if their pronouns are unknown. If you are writing about a hypothetical person we suggest using ***they*** or ***them***.

→ Avoid the phrase "identifies as" to write about a person's gender if replacing the phrase with the word ***is*** doesn't change the meaning of the sentence. This level of specificity questions a person's gender instead of just stating someone is nonbinary or a man/woman.

→ "S/he" is often disliked by judges and that is still not inclusive of non-binary people, use ***they*** or, if possible, write in the plural, e.g. *All residents must change their water meters* instead of *Each resident must change his water meter.*

→ Some people prefer the use of Mx. as a gender-neutral courtesy title that is an alternative to Ms. or Mr.

→ Including your pronouns in your introduction or email signature allows others to use the appropriate pronouns for you and encourages colleagues to feel comfortable sharing their own pronouns.

Use ***spouse*** or ***partner***, NOT "husband" or "wife." Using gendered roles when not specified by the person being referenced makes assumptions about marital or family relationships.

> → Where possible, use ***parent***, NOT "mother" or "father," unless you know that that individual being described selected the descriptor. However, we recognize that in Child Welfare cases in particular, it may not be possible to change terminology already used by an agency or investigators without causing confusion.

Avoid words and phrases that indicate gender bias or reinforce gender-based stereotypes (e.g. "emasculate" meaning "to weaken"). Use ***firefighter***, ***police officer***, or ***mail carrier***, NOT "fireman," "policeman," "mailman." Some examples in common usage include referring to mixed-gender groups as "guys" (some alternatives include ***folks*** or ***y'all***), describing a woman as "detail-oriented" or "maternal" when her acts would be described differently if done by a man, or using only "he" as the pronouns in your legal writing.

NATIONALITY AND CITIZENSHIP STATUS:

Use ***the public*** or ***residents***, NOT "Americans" or "the American public." These terms are ambiguous and are often used as synonyms for citizens, a legally recognized subject of a nation, state, or city. In most cases, ***the public*** is equally clear and includes a larger group than citizens.

Use ***undocumented worker*** or ***undocumented immigrant***, NOT "illegal alien" or "illegal immigrant." Those terms are outdated and often used in an inflammatory manner.

RACE, ETHNICITY, AND RELIGION

Race is a social construct, not a biological category, that is often used to describe a group of people who share physical traits of appearance, such as skin color or hair texture. As definitions of race in the U.S. are not universal and have changed over time, people with similar physical features may identify as or be perceived as different races. ***Ethnicity*** refers to shared cultural characteristics such as language, ancestry, and customs.

→ Allow the individual who is being described to self-identify their race and ethnicity whenever possible.

POC*, or *people of color, is a useful umbrella term referring to people who are not white.

→ When known, it is important to acknowledge a person's specific racial or ethnic group as each group has its own distinct experience.

BIPOC (pronounced *buy-pock*) is an acronym that stands for Black, Indigenous and people of color. The term is meant to unite all people of color while acknowledging that Black and Indigenous people face different and often more severe forms of racial oppression and cultural erasure as consequences of systemic white supremacy and colonialism. To avoid overgeneralizing, only use BIPOC when you are referring to a group of people of color that includes both Black and Indigenous people.

→ The City of Philadelphia generally uses BIPOC but some prefer the term ***Black and brown people***. ***Brown*** is often used as a term referring to people who are not white but do not identify as Black.

Capitalize the word ***Black*** when referring to a person's race.

> → It is acceptable to use the term ***African American***. However, be aware of complexities within racial and ethnic identities. For example, not all Black people are African Americans if they were born outside of the United States. Where an individual's race is relevant and there is no stated preference for such individual, use Black because it is an accurate description of race.

When referring to a person's race or ethnicity, use adjectives, not nouns. For example, use ***a Hispanic person***, not "a Hispanic".

Latina (feminine)/ ***Latino*** (masculine) and ***Hispanic*** are generally acceptable to refer to residents or citizens of the United States with Latin American or Spanish ancestry. Although there is some variation, generally, people from Mexico, Central America, South America, and the Spanish-speaking Caribbean islands are both Hispanic and Latino/a/x. However, Brazilians (who speak Portuguese) are Latino/a/x, but not Hispanic. People from Spain are Hispanic but not Latino/a/x. Those who identify as Latino or Hispanic can be of any race but note that many Latinx people consider their ethnicity to also be their race.

> → ***Latinx*** (pronounced La-teen-ex, plural ***Latinxs***) and ***Latine*** (pronounced La-teen-ay, plural ***Latines***) encompass both feminine and masculine word endings of Latina or Latino.

Asian refers to people who are citizens of countries in East or South Asia or who are of Asian descent. ***Asian American*** describes someone in the United States who is of Asian descent. Avoid "Oriental".

> → When referring to individuals, use the most specific ethnic identifier available, such as Vietnamese or Indonesian.

Pacific Islander includes Native Hawaiian, Samoan, and other people of the Pacific Island nations.

→ ***Asian Pacific Islander (API)*** and ***Asian American Pacific Islander (AAPI)*** are both acceptable to refer to a diverse population of more than 20 ethnic groups living in the United States.

There is no strong consensus on whether to capitalize "white" when describing race. Some people use ***White*** because they interpret the use of lowercase to reinforce the flawed idea that this is the default race. Some major media outlets like AP, The New York Times, NBC News, Los Angeles Times and Chicago Tribune do not capitalize ***white*** because as AP explains, there is no shared history and culture among the group described.

→ Because there is no consensus, you can use either in your writing.

→ Avoid the term "non-white," or other terms that treat white as a default.

→ Do not use the term "Caucasian" as a proxy for white or European because its use originated in the 18th Century as a way of classifying white people as a race to be favorably compared with other races. The term is technically a geographic descriptor of people hailing from the Caucasus mountains region (which includes Georgia, Armenia, Azerbaijan, parts of north Iran, and central southern Russia).

Use ***biracial*** or ***multiracial*** when referring to an individual who identifies as two or more races, NOT "mixed" or "mixed race" which are outdated. When describing ethnicity, preferred terms include ***multiethnic*** or ***polyethnic***.

→ Do not use the term "ethnic" when describing things that originate from outside of North America. Like the word "exotic," the word connotes otherness and can be seen as marginalizing or offensive.

The term ***minority*** or ***minorities*** is collective when used as a noun and is defined as a group or groups differing especially in race, religion, or ethnicity from the majority of a population. Do not use these terms when describing individuals.

Use ***Native American*** and ***Indigenous****.* Use ***Alaska Native*** when referring to individuals who identify as indigenous to Alaska. Use specific nation/tribal names where possible.

→ The term ***Indigenous Peoples*** (uppercase I and P) refers to Indigenous People as groups with distinct legal rights. Indigenous peoples (uppercase I, lowercase p) refers to Indigenous peoples with individual rights.

→ ***Nation*** is a more appropriate descriptor than "tribe," as ***nation*** shows respect for sovereignty and recognizes that Native American Nations have their own systems of government.

→ Use ***powwow*** only when referring to the title of a specific Native American event. Avoid if referring to a general gathering because the term evokes a stereotypical image of Native American

→ Avoid using "tribe" to refer to different ethnic groups in African countries or other groups that are not Native American Nations or other self-described indigenous groups. Also avoid words and phrases that trivialize the term "tribe" *(*e.g. "political tribalism" or referring to close ones or a business community as "my/our tribe").

Use ***Romani*** or ***Roma***, NOT gypsy. Romani people consider the term "gypsy" to be a racial slur.

The ***Middle East*** describes a predominantly Muslim geopolitical region between the Mediterranean in the West and the Indian subcontinent in the East. Different maps include different countries as part of the Middle East. Egypt is generally the only country in Africa considered to be part of the Middle East, even though it is not the only Arabic-speaking and predominantly Muslim country in North Africa.

Use ***Islam*** when referring to the religion. ***Muslim*** is the proper term for individual believers/followers of Islam and can be used as a noun or an adjective.

→ Arab and Muslim are not synonymous terms, and therefore do not use them interchangeably. ***Muslim*** refers to adherents of the Islamic faith. ***Arab*** refers to people who hail from a specific geographical region or who speak Arabic as a first language.

→ ***Islamic*** is an adjective used to describe the religion of Islam, and it is not synonymous with ***Islamist***, which describes a political movement.

Jewish people are an ethno-religious group associated with Judaism. As there is no significant consensus on the term "Jew" when used as a noun, it is best to refer to individuals as being Jewish e.g. *they are Jewish*.

→ Be aware of coded anti-Semitic language. For example, "globalist" is a coded term that enforces the conspiracy that Jewish people have an allegiance to a worldwide order, like a global economy or international political system, that will enhance their control over the banks, governments, and media. Note that ***antisemitism*** and ***anti-Semitism*** are both correct stylings of the term.

SUBSTANCE USE

Addiction refers to a condition of being addicted to a particular substance.

> → Addiction is not the same as dependence. ***Addiction*** usually refers to a disease or disorder; ***dependence*** may, on the other hand, describe the condition of a medical patient who relies on medication.

Substance use disorder refers to a mental disorder that causes a person's inability to control their use of substances such as legal or illegal drugs, alcohol, or medicine.

Use ***someone with drug or alcohol addiction***, NOT "addict," "alcoholic," or "abuser" to refer to someone who harmfully uses drugs or alcohol.

> → Use ***recovering*** or ***in recovery from*** to refer to someone trying to overcome an addiction.

Use ***risky use***, ***unhealthy use***, ***excessive use,*** or ***heavy drug use***, NOT "drug abuse" or "drug problem." ***Misuse*** also is acceptable. Additionally, do not assume all people who engage in misuse have an addiction.

When referring to the results of a drug test, state that the person ***tested positive or negative for (drug)***, rather than saying the test result was "clean" or "dirty". Those terms are considered derogatory because they equate symptoms of illness to filth.

MISCELLANEOUS

Do not use "ghetto" because it is a pejorative term for lower income neighborhoods and is specifically anti-Black.

Racist or otherwise coded language you should avoid include: "black sheep" (use ***outcast***); "blacklisted" (use ***banned***); "gyp/gypped" (use ***cheated***); "low on the totem pole" (use ***low priority*** or ***limited in power***); "sold down the river" (use ***betrayed***); "paddy wagon" (use ***police van***); "off the reservation" (use ***outside the norm***); "prostitute" (use ***sex worker***); "uppity" (use ***arrogant***); and "thug" (just avoid), among others.

Use ***older person*** or ***senior***, NOT "elderly."

Use ***low-income housing*** or ***public housing***, NOT "the projects."

Some people prefer using person-first language like ***person experiencing homelessness*** or ***unhoused person*** instead of using "homeless" to describe a person. There is not yet consensus on proper terminology.

Use ***legacy*** or ***exempted***, NOT "grandfathered in." The term derives from attempts to keep Black people from voting by allowing illiterate men to vote if their grandfathers had been registered to vote before the passage of the 15th Amendment. This term is common in case law and legal discussion to describe the neutral impact of zoning laws, covenants, etc. Consider explaining in a footnote your choice to depart from using that term because of its origin in prior racist laws so that the court understands what you are referring to when you depart from this common terminology.

When discussing slavery, use ***enslaved person*** rather than "slave." Bluebook Rule 10.7.1(d) now requires that when citing cases involving slavery, they must be marked as such. For example, *Dred Scott v. Sanford*, 60 U.S. (19 How.) 393 (1857) (enslaved party), *superseded by constitutional amendment*, U.S. Const. amend. XIV or *Wall v. Wall*, 30 Miss. 91 (1855) (enslaved person at issue). The goal of the change is to encourage lawyers to use precedent that does not rely upon slavery or to, at minimum, compel readers to recognize that human suffering underlies a given legal theory.

Use ***developing countries***, or ***low/middle income countries*** NOT "third world country," which is outdated.

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This is an alphabetical list, and inclusion in it does not mean that the Law Department agrees with or endorses all information contained within the links.

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US Law Week
Aug. 11, 2021, 1:00 AM

Big Law Stress Is Forcing Associates Out: What Can Firms Do?

By Julian Sarafian and Kate Reder Sheikh

Between long hours, heavy workloads, and pandemic-induced worries, Big Law associates are stressed and seeking jobs elsewhere. Julian Sarafian, a Harvard Law grad and former corporate attorney, shares his personal experience with his decision to step back from Big Law, and Kate Sheikh, managing director of legal recruiter Major, Lindsey & Africa, suggests ways law firms can protect the mental health of their associates.

Over the past year, the profits of major law firms have soared, largely on the backs of associates who were suffering. The personality type that becomes a lawyer—self-motivated, detail-oriented, eager to please—needs boundaries, not a further push.

Big Law partners and firm management need to pivot in order to protect and retain their associates. Doing so will not only benefit the well-being of the associates in the firm but also the bottom lines of the firms will benefit from reduced attrition, more productive associates and increased morale.

Julian's Story

It's 8 p.m. on a Thursday and I'm at the gym in Palo Alto lifting weights. My phone vibrates as I receive an email from my senior associate: "Can you run with this?"

The request is from an investor to fix signature pages on the deal we are aiming to close the next morning. Instantly, several thoughts flash through my mind: I can handle this later tonight. The fix is easy enough, and I'll respond to my senior now and let him know. A minute later, I fire off a confirmatory "no problem" and get back to my workout. What exercise was I doing again? Time is, quite simply, not my own. It almost never is.

As clients become increasingly demanding and aggressive with their timelines on deals (and for good reason given the excruciatingly high legal fees they pay), there is no room for flexibility, error, or delays in our profession. And as the service provider who must do anything in their power to bring a smile to their clients' faces, the result is predictable: Attorneys working around the clock, responding to emails at all hours of the day, night or morning, always ready, willing and able to drop what they are doing at a moment's notice should a client need them.

My resumé tells the story of quintessential success in law: After graduating University of California, Berkeley in three years, I attended Harvard Law School and then landed my top job choice at a Bay Area firm. (For the record, that firm was a great firm and my views in this article should not be construed as blaming them for issues that are prevalent across our industry). I grinded and was a stellar associate, responding to emails quickly, handling tasks discreetly, and taking ownership of my deal work.

It was only during December 2020, during the height of the pandemic, that my burnout and stress levels forced me to seek help from professionals. I was then diagnosed with severe anxiety and mild depression. After a lot of thinking, I made the choice to step back from my legal career and focus on my mental health for the time being so that I could learn to manage this anxiety that had previously strangled my perspective on life.

How Can Law Firms 'Lessen the Load'?

This level of control that the profession takes over attorneys—and by extension, the lack of control individual attorneys feels over their own life in this system—can be a breeding ground for anxiety, stress and, in the worst cases, mental illness.

Of course, when this workload and inherent pressures join forces with a global pandemic, economic and political instability, and nonstop work from our homes for over a year, the already high levels of anxiety among attorneys became only more exacerbated.

So, what concrete things can firms do to lessen the load?

Set Boundaries

A boutique law firm in San Francisco shuts off lawyer emails in the evening with auto-replies, and they turn them back on early in the morning. If there are emergencies, text messages are sent or phone calls are made. Partners need to be firm in their own assignments and with clients that associates are not actually available around the clock.

Tap Into Services that Promote Mental Health

Several firms offer their associates free access to services like Ginger and the Calm app and encourage their regular use, which normalizes the use of these resources.

Respect Vacations

The only way associates will feel empowered to take vacation is if they see partners doing the same. A faux-cation—where you are somewhere beautiful but sitting in your room working—is almost worse than not going at all. The time off has to be honored.

Show Gratitude

A significant part of the churn associates experience is because all of their hustle feels unseen. Very often associates will finish a massive project and simply be shuffled off to the next one with no thank you, no coda, nothing. This leaves them feeling beyond commodified.

Understand Associates Can Be Victims of Success

Because they are good at their jobs, the work faucet never turns off. Some firms have introduced utilization managers who make sure assignments are balanced and not all flowing to the same few associates. Many Type A associates will not turn anything down and will end up working themselves sick if the firm does not intervene.

Include a Wellness Element in Performance Reviews

Associate should both be asked about their mental well-being and also be invited to provide feedback on ways in which the firm could improve the wellness of its workforce. Associates have ideas but often do not see a time to communicate them and/or feel vulnerable doing so without the right context.

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Write for Us: Author Guidelines

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Daily Labor Report ®
June 23, 2022, 1:00 AM

DEI Efforts Can Help Diverse Attorneys Overcome Perfection Paradox

By Yusuf Zakir and Kate Reder Sheikh

Attorneys of color often carry a burden of expectations that others do not; pressure to perform perfectly at all times may weigh heavily on them, say Davis Wright Tremaine diversity, equity, and inclusion chief Yusuf Zakir and Major, Lindsey & Africa partner Kate Reder Sheikh. They write about steps firms can take to help, including embedding a commitment to DEI across the organization.

Perfection is not attainable.

Yet, people of color are often faced with a paradox. They are expected to be perfect. When they fail to meet that unattainable standard, they are far more likely to be left to the wayside.

This challenge also permeates law firms, as reflected in many interviews that MLA recruiters recently conducted with Am Law 200 associates of color.

The burden on attorneys of color to be perfect is tremendous. There is a pressure to never appear too angry, too excitable, too anything—so as to avoid being stereotyped. And there is no easy solution.

To start, however, law firms need to center on a DEI strategy that focuses on embedding a commitment to DEI across the organization. DEI does not work when it is in a silo. It requires the active participation of leaders and stakeholders with incentives such as billable hour credit.

Addressing the long-term impact of exclusion in law firms will require a multi-pronged approach because this issue permeates all aspects of the legal industry, starting in law school, continuing through the associate experience, and ultimately partnership makeup.

At Davis Wright Tremaine, for example, the firm has centered its strategy, initiatives, and efforts on four pillars: community (fostering an inclusive culture), growth (ensuring equity in access to opportunities), education (elevating individual and collective consciousness) and engagement (collaborating with external stakeholders).

Pressure Mounts Early

For attorneys of color, the narrowing of the tightrope begins early. There is significant overlap between attorneys of color and those who are first-generation law students. First-generation students often lack equitable access to information, long before they even consider taking the LSAT.

These inequities result in disparate outcomes. For example, the average LSAT score for Black test takers in 2016-2017 was 142, whereas it was 153 for their White and Asian peers, impacting law school admissions. This is problematic given that the LSAT is not a reliable predictor of law school success (or success in practice).

Once in law school, significant information deficits continue to occur. For example, the importance of 1L grades in the job search process and the strange dance of on-campus interviews are often foreign concepts to first-generation students.

By providing equity in access to information, we can level the playing field for students considering the law and for those who make it to law school. Many law firms have invested in these efforts—but we need to do more.

Lack of representation at the partnership level poses another significant challenge for attorneys of color, particularly early-career associates seeking mentorship and guidance. Law firms are still primarily White and male. Only 9% of equity partners in multi-tier law firms are people of color and only 2% are Black (and less than 1% are Black women).

While representation of associates of color has continued to rise, ascension to partnership continues to be elusive for people of color. In 2019, 24% of departures from law firms were attorneys of color. This was up from 22% in 2018 and were the highest figures to date.

No Benefit of the Doubt

These representation challenges have a significant impact on attorneys of color. One of those impacts is the paradox of perfection. “I do not get the same benefit of the doubt on projects or if I say I’m busy,” one Black associate told us in an interview.

There is a corresponding pressure to worry about how one’s individual actions may be considered to represent a broader demographic group. An IP associate at an AmLaw 200 firm told us, “I feel a ton of responsibility to ‘not screw this up’ for the Latino or Latina associates who come to my firm after me. I worry that if I fail, the firm will be reticent to hire people who look like me later.”

The challenges continue with the practice of law in a number of ways. First, the lack of representation results in a feeling of isolation. “I am so aware that I am the only Black man on my team. When conversation in a meeting turned to rap music, everyone turned and looked at me, as the resident expert,” an associate at an AmLaw 20 firm recounted to us.

He also expressed that while he knows he deserves to be at his firm and is more than capable of doing the work, he worries that he is seen as a “diversity hire,” creating additional pressure to be “perfect.”

This permeates to other processes in a law firm, as well. For example, attorneys of color feel tokenized when they are only asked to interview people of their demographic background but seldom asked to interview other candidates.

"I knew I was going to be put as a face of diversity on the website, but I was still disappointed when it happened," an associate at an AmLaw 50 firm told us.

An associate at an AmLaw 100 firm said, "I have been asked to join matters in ways that highlight the fact that I am diverse, rather than the fact that I have applicable skills, which sometimes makes it feel as if my value is in my diversity, not my competence as a lawyer."

Some Solutions

To facilitate equity in access, law firms may consider implementing formal sponsorship programs to establish sponsorship relationships. Organically, these relationships are often built on affinity bias, which is why they form less often for underrepresented populations. However, these relationships can be built and nurtured, but to do so requires effort and a real commitment from firm leadership.

To reduce feelings of isolation, we must continue building community. Most law firms have embraced affinity groups. In addition, office-level DEI efforts can be used to strengthen relationships and make people feel welcome. This is particularly critical in our hybrid world where efforts to foster collaboration and respect are critical to inclusion and must be done far more intentionally than before.

In the long term, the solution is simple: representation. Representation is the antidote to tokenization. If we want to tackle the paradox of perfection, we need our organizations to be reflective of our society as a whole and of the communities we serve.

This article does not necessarily reflect the opinion of The Bureau of National Affairs, Inc., the publisher of Bloomberg Law and Bloomberg Tax, or its owners.

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Defining 'Good' Law Firm Culture (and How Associates Are Shaping What It Means)

Kate Reder Sheikh (/en/people/kate-reder-sheikh) | February 09, 2021

There have been thousands of pounds of ink that have been spilled trying to describe the concept of culture internally at firms. Indeed, a "better culture" is one of the top criteria that associates are seeking when they change jobs. Some firms have achieved that mark, and associates flock to them. Others are famous for being sharp-elbowed, and either don't know or don't care. So, what is a "good culture" in the context of a law firm, and how is it achieved? Furthermore, how are associates stepping into the driver's seat to frame that definition?

Hiring & Retaining

When associates come for interviews, they are looking for insight into a law firm's culture through words and actions. The firm is also looking for associates who are going to fit in. Some firms have an informal "no jerks" policy. That is one of the reasons they deploy partners and other attorneys from other practice groups to interview candidates — they want those who won't be blinded by a potential superstar to evaluate whether the lawyer will play well with others. Another good hiring tactic — for cultural purposes — is to take a more informal step and meet with potential peers so that it does not feel like a formal interview.

Once associates are in the door, however, a firm should take steps to keep them, which is where culture critically comes into play. If there are partners who are known for their bad tempers and tend to treat their associates like servants, the firm is going to lose out.

The basic answer of how to retain top talent is humanity. In our contactless age, associates appreciate having more human, live (non-email) conversations with their partners. The kinds of conversations where they are asked about their mental well-being. The other element that means a lot? When partners express vulnerability and answer honestly when asked how things are going

for them personally. It's so simple, but so impactful. Associates need to be asked how their stress levels are and what can be done to address that. Otherwise, this talent is left feeling undervalued and dehumanized.

Policies & Practice

Associates who are unhappy often report that there is a serious dissonance between what the written policies are at the firm (i.e., parental leave, sick leave, flexible working) and what is actually allowed by the partners with whom they work. For instance, one male associate, approaching a partner about his upcoming parental leave, was greeted with "You're not actually going to take that, right?"

There's a relatively simple fix to this challenge: Partners must be educated about what the firm's policies are and how to react to a lawyer who is expressing that they plan to take advantage of them. For example, those partners who did not have access to or did not take leave themselves may not be innately fluent in these discussions. HR needs to make sure they are.

Connectivity

An associate I placed once had a remarkable story. It was snowing, and he was holding a coffee for himself and another for his assistant. The person ahead of him neglected to hold the door for him – then turned to see that he was standing there, but kept walking. The galling fact? It was an associate he literally shared a wall with. They worked side by side, but had never spoken.

Encouraging interactions between associates will set them up for success and help them feel like they have an ally and give them more of a sense of belonging.

Some firms do a good job of setting up social events for all associates of a class year, making them into a cohort. Others focus on office-wide initiatives. Whatever a firm does to make their lawyers feel more connected to each other, the more loyal they seem to feel to the firm. It isn't rocket science: If the firm works to facilitate relationships, associates will be less interested in leaving their friends than they will if they feel siloed.

Flexibility

The COVID-19 pandemic has been a game changer when it comes to people’s expectations of flexibility. Many associates made the decision to move over the past year to be closer to family or lessen their mortgage payment. In doing so, many have come to realize they are very successful working from their homes at the hours of their choosing. Rigidity is no longer well-received, especially in a world where we’ve all been working remotely. Yes, firms are conservative by nature, but those that allow associates to transfer between offices (or even practice groups) are awarded the cultural gold star. The firms that continue to rely heavily on a five-day-a-week facetime requirement will leak talent. Those that treat associates like adults who can manage their own work will win.

Hierarchy

The corner office—a symbol that you’ve truly made it. At one Bay Area-based firm, the corner office is a video game room. Associates and partners and administrative staff sit together in an open plan office, listening to and learning from each other. Offices are available on a hoteling basis for private calls or negotiations, but most of the work is done in the open. Literally sitting shoulder to shoulder doesn’t allow for anyone to be holier than thou. This firm is routinely cited as having one of the best, flattest, most inclusive and most mentor-rich cultures.

Some people thrive in hierarchy, but most millennials don’t seem to. They want to be listened to and recognized for the ways in which they are experts. They want advancement to be based on merit, not tenure. They do not respond to anything that is lockstep. Law firms will never be a free-for-all, but steps away from rigid systems get rave reviews.

Is there a formula for a “good” or “happy” culture? No. Some of it is a secret sauce, and it can vary dramatically between offices. But some elements are consistent among the firms that associates complain most about, as well as the features they praise. Firms should recognize that the way they have always done things may not actually be the only way forward. A new generation of associates is telling us clearly what they want and need, and the old way of doing things may be falling out of fashion.

READ THE COMPLETE ARTICLE AT ATTORNEYATLAWMAGAZINE.COM (HTTPS://ATTORNEYATLAWMAGAZINE.COM/DEFINING-GOOD-LAW-FIRM-CULTURE-ASSOCIATES-SHAPING-WHAT-MEANS)

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Published on *The National Law Review* (http://www.natlawreview.com)

From Crafting a Narrative to Connecting on a Personal Level: Understanding the Art of Jury Persuasion

Article By:
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The Art of Jury Persuasion

During a trial, a litigator cannot rest on the merits of their case alone. Sure, the evidence may overwhelmingly be in their favor, but does the jury see it the same way? Is the evidence being explained to the juror in a way that they can synthesize? Is the evidence being presented in a way that the jury will remember during deliberations? These are just some of the aspects that an attorney needs to consider.

Persuading a jury is no easy task; it is critical to put in the extra work — persuading a jury is an artform that takes years to hone and perfect. By spending time and focusing on this craft, not only can a litigator get slam dunk results on strong cases, but can even give their weaker cases a fighting chance in the courtroom.

Telling a Better Story

According to Dr. Christina Marinakis, IMS Consulting & Expert Services Jury Consulting Advisor, one of the first aspects that an attorney should focus on when it comes to improving their jury persuasion skills is storytelling. She states: “Jurors can’t be expected to remember mountains of information over a long period of time — mental capacity is limited, but we know from social science research that encoding and recall increases ten-fold when information is provided to people in the form of stories.” During a trial, jurors are presented with copious amounts of evidence. They need to learn all the facts of a case and, perhaps more importantly, they need to remember these facts. Trials can last days or even weeks after an attorney first presents their information to the jury. This is why it is crucial to present a case in a way that the jury will identify with.

To become a better and more memorable storyteller, an attorney should use the evidence of their case to weave together a narrative that a juror could never forget. They should make their story compelling. Additionally, to make the evidence easier to understand, they should tie it to specific themes. Consider this: people listening to long lists of words usually can only recall about less than a third of the list. Yet when the words are grouped by subject matter, the recall rate jumps close to 70 percent. Evidence is the same way. An attorney can tie pieces of evidence to a specific theme within the story, creating a higher likelihood that a juror would recall that piece of information. Dr. Marinakis states that overall, “Jurors will never remember all of the evidence, but if they remember the story, they can effectively argue your position during deliberations.”

Understanding How the Juror Thinks

When presenting evidence to jurors at a trial, it is imperative for an attorney to understand how they learn. Learning requires four steps in total — attention, encoding, storage, and retrieval. The first step in effectively getting a juror to learn is to get them to pay attention and listen to what is being said. This can be done in a number of ways, and in many ways mirrors the job of a teacher. For example, an attorney could use mixed media to grab a juror’s attention, or perhaps they could spark interest by telling an engaging story.

After the juror is listening, the next step is to encode this information. Once this information is assimilated, they need to store it until the deliberations. The final step in the learning process is to be able to recall and repeat the information. This is where themes can truly make an impact. By presenting a juror with themes, it makes it much easier for them to remember and repeat evidence. The best themes are short and memorable. An attorney asks jurors to take in significant amounts of information during a trial, so the learning process needs to be easy and engaging. Techniques such as alliteration, rhyming, and using colloquial phrases can be quite helpful in this area.

Making the Most Out of Voir Dire

Voir dire is a critical part of any trial. However, an attorney must understand that during voir dire, the prospective members of the jury have held their beliefs for years, potentially even from the time they were young children. There are too many attorneys focused solely on creating a strong first impression who spend voir dire trying to precondition the jury. And though both preconditioning and suggestive questioning could potentially have a minor impact on shaping a juror's future decisions, the power of an attorney to create influence at this stage is rather limited.

The ultimate goal of the litigator is to persuade the jury to provide a favorable verdict. Yet the verdict happens weeks following voir dire. There are going to be very few jurors — if any at all — who remember what an attorney said during voir dire. In order to get the most out of voir dire, an attorney should not be focused on getting a prospective juror to abandon their beliefs or put aside a bias. Rather, they should be focused on highlighting their bias and removing them from the jury pool. "Thus, we recommend limiting questions that are aimed to pre-condition, and focusing instead on those that reveal juror bias. The latter is going to give you more bang for the buck, because every cause challenge is the equivalent to an extra peremptory." Dr. Marinakis continues, "Focus your voir dire on eliciting negative reactions about your client so you can maximize cause challenges. You'll have plenty of time to win the jury over in opening statements and the rest of the trial."

Ultimately, jury persuasion is an artform that blends the legal world with human psychology. To become a more impactful attorney and litigator with a better win-loss ratio, this artform should be honed. Whether someone needs to better their storytelling or look for dynamic new ways to grab a juror's attention, improving jury persuasion skills can go a long way and make a strong legal mind a formidable presence in the courtroom.

National Law Review, Volume XII, Number 76
Source URL: https://www.natlawreview.com/article/crafting-narrative-to-connecting-personal-level-understanding-art-jury-persuasion

May 28, 2020

PRACTICE POINTS

The Art of Persuasion

Ways we can enhance our persuasion skills in trial and appellate courts by using principles of classical rhetoric.

By Young Advocates Committee

Share:

Paul Mark Sandler is a veteran trial lawyer, and author of publications such as *Anatomy of a Trial: A Handbook for Young Lawyers,* and *Model Witness Examinations*. He is of counsel with Shapiro Sher Guinot & Sandler, an active member of the ABA Litigation Section, and a fellow in the American College of Trial Lawyers. In his most recent publication, *The Art of Persuasion*, Sandler discusses how we can enhance our persuasion skills in trial and appellate courts by using principles of classical rhetoric, and giving attention to style and delivery. A full audio recording of highlights from *The Art of Persuasion* is available online. Below are a few takeaways:

1 **Focus on your goal.** What do you want the court to do? How do you want the court to respond? A winning argument is always goal-directed and your goal should be your guiding light in preparation. This means that you must understand (1) what you want to accomplish, (2) why it is important, and (3) how to best convey that to the court.

2 **Tailor your argument to the decision maker.** One of the most important features of persuasion is understanding to whom you are speaking. Having a receiver-centered approach means understanding the community and courtroom in which you will be presenting your case. Consider conducting background research early in your preparation and/or using tools such as mock juries or mock trials.

3 **Cultivate ethos.** Ethos is the listener's *perception* of your character. In writing a brief or presenting your argument, it is important to take the high road and present yourself with honor and integrity.

4 **Base your arguments on reason.** The two main aspects of reason or logic are deductive reasoning (drawing a specific conclusion based on generalities) and inductive reasoning (the

process of going from specific facts to a general conclusion). Using logic in your argument will increase its persuasive power, and can also assist you in spotting red herrings from the opposition.

5 **Build with evidence, law, and policy.** Evaluating theories and themes that relate to the betterment of society and development of the law can assist you in persuasion. For example, are there societal obligations or duties that you should raise in your argument?

6 **Appeal to emotion.** Voice inflection, visual presentations, and your choice of language can appeal to emotion; but be careful that you don't overdo it.

7 **Use the best medium for the message.** Demonstrative evidence (such as pictures or PowerPoint presentations), when used properly, can be a powerful tool to connect with your audience. Take care to avoid the professorial approach—ensure that you are not turning your back to the jury and reading from the presentation.

8 **Strategically arrange your arguments.** Establish a strong structure for your argument. Classic orators like Cicero were very keen on the arrangement of their arguments. At its core, every argument should have a beginning, a middle, and an end.

9 **Argue with style.** What is style? Style is the choice words that we use to express ourselves and the arrangement of those words. In finding the appropriate language to use, develop a style that is natural for you. Classic literary authors, such as William Faulkner, provide excellent examples of linguistic style that can make arguments sizzle.

10 **Use delivery to enhance your argument.** Delivery is your movement in the courtroom. Appellate courtrooms may require you to stand at a podium while presenting your argument, whereas a trial courtroom may allow you more flexibility to move and gesture. Prepare for how and what you will communicate with your delivery.

11 **Engage your listener.** Have your listener work with you and be a partner for what you are trying to achieve.

12 **Immunize and refute opposing points.** Bring to the surface opposing points and refute them so that when your listener hears from your opponent, your listener already has in mind what the response will be. Don't wait for the other side to attack.

You may obtain a free copy of *The Art of Persuasion* by emailing your request to Paul Mark Sandler at pms@shapirosher.com. See also, *The 12 Secrets of Persuasive Argument, Waicukauski, Sandler, and Epps* (ABA Publishing 2009).

— Young Advocates Committee