

A Fair Workplace for the LGBTQ Community

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John Caher: Welcome to Amici, News and Insight from the New York courts. I'm John Caher.

The Richard C. Failla LGBTQ Commission of the New York courts sponsors public Pride Month events in every region of the state every June, except this year, with the pandemic, that wasn't feasible. However, the Failla commission and the Office of Diversity & Inclusion held a special Skype event on June 18th, moderated by Tony Walters, director of the Office of Diversity & Inclusion. In this podcast, we're bringing you the audio portion of that presentation. I hope you enjoy it.

Tony Walters: I just want to say hello to those people who I have not seen in many, many, many months due to this pandemic. Hope all is well with yourselves and your families.

Matt Skinner: I can now read on the *New York Law Journal* website that just talks about not necessarily thinking of ourselves in silos at this moment and recommitting to and redoubling our efforts for diversity and inclusion at this time that we're all experiencing. With those sort of initial announcements out of the way, let's talk about some good news though. It's just been an incredible week, including today's big decision from the Supreme Court. And this week has really brought home the importance of an independent judiciary and a smart lawyering that really can take a little idea or a little theory and run with it all the way to a victory in the Supreme Court. It's just incredible.

Just a little bit about the Failla Commission.

It was created in December 2016, to promote equal participation and access throughout the court systems, by all persons, regardless of sexual

orientation, gender identity or gender expression. To fulfill this mission, we do events like this. We try to promote and enhance diversity and the presence of our LGBT judicial, non-judicial personnel within the court system. I want to give another shout out to my co-chairs, past and present, and members of the commission who are with us on Skype today too. I'm going to try to cover approximately 55 years of the LGBT civil rights movement in less than 10 minutes. It's going to be a lot of material in a short amount of time. So please feel free to ask questions for the Q&A if I skip over or confuse anything in the next few minutes.

But let me start with 1964. The Civil Rights Act of 1964 is the statute that the Supreme court was interpreting this week. The history of the statute, basically, and most people know this, the primary thing Congress was trying to eradicate or work to eradicate by passing the bill was racism, discrimination against people of color, the African American community. This was sort of the height of the African American civil rights movement that really resulted in the Civil Rights Act of 1964 passing. When it was being debated on the House floor, at the last minute an amendment was added by Congressman Howard Smith from Virginia. Congressman Smith was basically a known opponent of the legislation. He was a known sort of racist.

And there's a lot of debate amongst historians about whether he added sex to title seven of the bill in order to try to be a poison pill that would bring down the whole bill. Basically, there were four characteristics that were originally in the bill: race, color, religion, and national origin, and sex was added to the list at the very end of the House debate on the floor of the House. It passed and it made it into the bill. It then went to the Senate where they didn't change anything and LBJ signed it. Because there's so little legislative history about what this was supposed to mean once it got into the legislation, there's been a battle in the courts ever since then about what it means and what does discrimination because of sex legally mean

Now Title Seven has really been the gold standard for civil rights legislation for employment discrimination legislation. It's really the most important bill that's ever been passed to address fairness in the workplace. But, as I mentioned, it's been a very long struggle over the past 56 years to try for all the federal courts, but especially the Supreme Court, to grapple with what is off-limits, now that discrimination because of sex is prohibited under Title Seven of the Civil rights act of 1964.

To quickly now bring us forward to the US Supreme Court, as many of you I'm sure know the magic number in the Supreme Court is five. You

need five votes out of nine to win a Supreme Court case. The US Supreme Court has been and will continue to be the most important policymaker for the LGBT community, period.

Over the last 25 years, the Supreme Court has been engaged in a project and when you look at it broadly, a project of ending double standards in American law for the LGBT community. Basically, there have been four real landmark decisions, and this is now the fifth in that series. But there've been four landmark decisions before this Monday's decision and just sort of bringing you up to speed on what those did I think is important too.

In 1996, in *Romer vs. Evans*, the US Supreme Court said, basically it involved an amendment to the US or the Colorado state constitution that forbid adding LGBT protections to any state or local nondiscrimination ordinance or statute.

In the Supreme Court they said, in this country, we have a tradition ... that everyone has a chance to petition their government to try to enact nondiscrimination protections is acceptable, that only the LGBT community is forbidden under this amendment in Colorado from pursuing nondiscrimination protections in the state and city law. 2003 in *Lawrence vs. Texas*, Americans generally have a right to privacy in their bedroom except for the LGBT community under this criminal statute in Texas. That was no longer acceptable. In 2013, Americans, if they're married under state law, are generally married for federal purposes as well. 2013 the Supreme Court said it's unacceptable for only the same sex couples to be denied recognition by the federal government for their marriages.

And finally, and probably the most famous decision in 2015, *Obergefell v. Hodges*, the Supreme Court said Americans generally have a fundamental right to marry the person who they choose, and it's no longer acceptable that only same sex couples can be denied the right to marry.

So those are the four big decisions in a nutshell. What scared a lot of people is that the author of those four decisions retired in 2018, Justice, Anthony Kennedy. *Romer* and *Lawrence* were 6-3, but *Windsor* and *Obergefell* were 5-4. And when this case got to the court, it was accepted for review over a year ago last April. I think there was a lot of terror in the LGBT community about how we could get to five votes in the Supreme Court no matter the sort of merits of the case.

A lot of people thought that was the ballgame when Justice Kennedy retired in 2018. I will say I included in the materials an article I wrote for the local LGBT newspaper in New York City after attending the argument back in October, and I had this crazy prediction that we would get Justice Gorsuch and Chief Justice Roberts to join the four more traditional liberals and maybe ruling in favor of the plaintiffs here. It was just a sense of, you could sort of tell Justice Alito was not gettable, but Justice Roberts and Justice Gorsuch to me seemed like they were playing more of a devil's advocate when the lawyers for the gay and trans plaintiffs were at the lectern and didn't really, just from the tone of their voice.

If you read the transcript, you might not get that sense, but for me when I heard the tone of voice and their body language, it just seemed like they were maybe gettable despite their previous records. And let me just explain their previous records. In 2015, when we won Obergefell, Chief Justice Roberts wrote and then read this dissent from the bench, which if you follow the Supreme court, it's extremely rare for someone to read a dissent from the bench and now everything is just posted online because of the pandemic. So, we don't have the theater of decision day in the way that we used to this year, but Justice Roberts read a dissent from the bench which he ended by saying the constitution has nothing to offer basically the LGBT community in his view.

Although strangely enough, during the argument for Obergefell, Chief Justice Roberts also asked a question about if Tom can marry Sue but Tom cannot marry Andy, isn't that sex discrimination? So he seemed to understand this theory in the previous cases and why he suddenly believes in sex discrimination as a valid theory for the LGBT community now and didn't five years ago, I think is a very interesting question.

I'll just say to Justice Gorsuch in his first year on the bench wrote a dissent about, there was a case that arose after Obergefell about whether Obergefell extended to married same sex couples who have children, whether they can both be put on the birth certificate. And there was an issue that came up from Arkansas about whether married couples there generally had a presumption of being both listed on the birth certificate.

And the issue was whether Obergefell really commanded Arkansas to list both parents on the birth certificate. And he wrote a very sort of unnecessary dissent in that case explaining that he didn't think Obergefell necessarily meant that when the case involving the bakery that wouldn't make a cake for same sex couples was at the court two years ago, he also wrote the baker ended up winning that case on sort of technical grounds,

but Justice Gorsuch wrote a dissent again in that case saying, "Here's another reason why I think the baker should win." So there was a lot of reason to believe Chief Justice Roberts, and Justice Gorsuch would not come along for this ride.

So that's really why it was such a stunning moment on Monday when we got the decision. It's an extremely formalistic majority opinion if you've taken a look at it. But basically it involves a theory called textualism. A lot of the judges and lawyers on Skype with us now know a little bit about this, but basically the idea is that you only look at the words in the statute when you try to figure out what a statute means. You don't think about why Congress passed it or what they were hoping to achieve. You just look at the bare words themselves and try to take them where they'll take you. And Justice Gorsuch said, "If you apply a but-for test and just swap out, the sex of the plaintiffs in these cases."

Now there were three cases that were all decided in one decision here on Monday, two of them involved gay men, one of them involved a transgender woman. And Justice Gorsuch said, "If you just swap out the sex of these people for the opposite sex, they would not have been fired, and that's really all that matters." So they passed sort of the but-for test of their sex being an inescapable reason for why they were fired from their jobs. Some interesting observations about the case. I will say Justice Gorsuch, he uses the word "homosexual" a lot in the opinion, which is a little dated. Most gay people today don't really refer to themselves as homosexual anymore. He also leaves the B word for LGBT family only out of his opinions.

So I'm hoping there's been that 20 years of litigation about whether gay and lesbian people are covered. But the amazing thing is, we all of a sudden got LGBT workplace protections in all 50 States instantly. There's been an incredibly long struggle over the past 50 years or so to get workplace protections for the LGBT community. I don't know if anybody was watching the wonderful mini-series the past couple of months on Hulu called Mrs. America, which is about the battle over the ERA and Congresswoman Bella Abzug is featured prominently in the mini-series. But Congresswoman Bella Abzug tried to get an amendment, basically tried to amend Title Seven 50 years ago to add the LGBT community to the legislation explicitly.

But over the past 50 years we could never get a House, the Senate and the President to all agree at the same time to amend the legislation. So we've really been sort of left adrift as to whether or not we were or were not covered under sex discrimination. But as I sort of previously said, the

Supreme Court has been engaged in ending double standards in the law for the LGBT community. And it was previously the case that everyone who was protected by Title Seven was protected against sex discrimination except for the LGBT community. And what they really did on Monday was end this unnecessary and judicially created LGBT exclusion from the meaning of Title Seven and brought the LGBT community officially within its protections.

And it's just an incredible thing. I think if you talk to people, last year we did all these events about the 50th anniversary of the Stonewall riots. If you talk to people back in 1969 about how things would have unfolded in the LGBT civil rights movement, I think a lot of people would have thought or hoped that we would have gotten this moment earlier, before some of the other things. And of course marriage equality and some of the other achievements have been enormously important. But I think if you think back to what people in the early seventies were especially worried about, it was just this the sense that if anyone found out that they were LGBT, they would be immediately fired.

If you take a look at Justice Alito's dissent, and there's that 30 page majority opinion and then there's like 130 pages of dissent, most of it from Justice Alito, but he really pins his case on this hypothetical of an employer that has an application form that just has one question, are you LGBT? And if that were the only, and he's trying to make the point that sexual orientation and gender identity are distinct concepts from the concept of gender. The thing that I wish Justice Alito would understand perhaps a little bit more is that he also tries to lay out the history of LGBT people briefly in 1964 to prove the point that Congress couldn't possibly have meant to cover them when they passed the Civil Rights Act.

But what I wish Justice Alito would understand is that hypothetical is such, especially 50 years ago, that hypothetical wasn't just hypothetical, it was the reality that if people found out that you were LGBT, that would automatically mean you either didn't get a job or you were fired from your job. I don't have time in this presentation to get into all the nitty gritty, but the federal government used to especially, President Eisenhower signed this executive order in the 1950s that really required the federal government... for gay employees within the federal government and then really immediately fire them if there was anything that would possibly lead people to believe that they were LGBT. So it's just such an incredible moment really within the past 10 years to see the switch.

You can talk about this in a much longer timeframe, but within the last 10 years we go from the military, and of course now we have the trans military ban, but to go from the official policy of the federal government being that you have to fire LGBT people from the military to now go to an interpretation of our leading civil rights employment discrimination statute mandating that LGBT workplace discrimination is illegal is just an incredible thing that we've accomplished in a sort of relatively short period of time. And there's a lot of interesting implications from this win. I think I've already sort of gone over probably way over my time. So I'm going to turn it back over now to Tony and the other speakers. But I hope I've done a good enough job explaining what sort of happened this week and how we got here.

Tony Walters: Matt. Thank you for that riveting summary. Yes, we're going to turn this over now to Kay Ann Porter Campbell who's really going to speak to some of the protections that we as a core system have for our employees. Again, Kay Ann is the special inspector general for bias matters. So she's going to tell you about how the federal law now actually intersects with what we've already had and we're protected by on the local and state level. Kay Ann.

Kay Ann Porter: Thank you, Tony, for inviting me to be a part of this panel discussion. So very timely. And thank you, Matt, for that history some of which I was not aware of but very enlightening. But I must say that even though the federal government just now has protections for the LGBTQ community, New York State has always been ahead of the game in providing those protections, and as such the court system has always fathered along with whatever the New York state executive law has provided in that statute.

Kay Ann Porter: So what I just wanted to say is that, just to tell you a little bit more about what the Office of Inspector General does is, we do investigate complaints of bias within the court system, and that would include everything covered on the Title Seven and as Matt mentioned, now that sexual orientation and the LGBTQ communities covering under title seven, those are the kinds of complaints that we do investigate. We've always done this. The office was created back in 1998 so we have been at the forefront with making sure that our employees as well as court users, litigants, attorneys, whomever that does business with the court system has had those protections in the past. So the office basically consists of the inspector general, Sheryl Spatz and myself, Carol Hamm who's a deputy, and we have a team of investigators who are assigned to investigate these types of complaints.

Anything that falls under Title Seven or the Executive Law is the type of things that we would investigate. And as I mentioned to you, the Executive Law also provides protections for gender identity, gender expression, and gender dysphoria. I know those are probably some terms that not everyone is familiar with but trans, excuse me, gender identity specifically has to deal with the internal psychological sense of being a man or a woman, gender expression is how you express yourself outwardly whether or not in their manner of dress, and then just gender dysphoria actually medical condition and it's related to someone having a gender identity that's different from the sex assigned at birth.

So those are some of the categories specifically that's covered under the Executive Law. It may not be laid out in Title Seven at this time but the New York State Executive Law Section 296 and as a result, the court system, we would investigate any complaints falling under those categories. So how did we get our complaints? We can get them from either litigants if they have an issue with someone making a comment or now we have enacted you can use bathrooms with the gender that you identify with. So whomever comes into the courthouse, if you're litigant and attorney, a process server, if you're using our facilities, you're entitled to protection so you can file a complaint. We can get complaints through the chief clerk if something is reported to the chief as well as the person themselves, the complainant themselves can come forward and file a complaint.

The process of the investigation is such that once we get a complaint, we reach out to that complainant. We would conduct an interview, most likely interview them in person. At this time that may be a little bit more difficult given our current situation. But we like to interview people in person. We interview witnesses. We ask the complainant or any witnesses that they may have to the incident or that know about the incident as well as finally the subject of the investigation. And just like to point out that it's not necessary for complainant to be an employee. As long as we have jurisdiction over the subject, that's fine. And also, as well, if we have an employee who's alleging that someone who does business regularly with the court system, say, for instance an attorney or a process server, someone who regularly comes into the building and is making some sort of discriminatory type comments or behaving in a discriminatory manner to our employees, we can take action because we have to protect our employees and make sure they're in a safe environment.

So those are some of the steps for the interview process, the investigation process. Once we have completed the investigation, we

issue a confidential report and it's confidential to make sure that people are able to speak with us in a frank manner. They may feel that if the complainant knows what they have testified about as a witness that may cause some sort of a friction. So we tell everyone that the process is confidential, and it is. The report that we issue is also confidential. And that report is saying to the Administrative Judge in the part where the incident occurred as well as the Deputy Chief Administrative Judge for that court. And some of the findings and recommendations that we can make if we find that the allegations that have been made were substantiated could include anything from retraining or training if that person would not get that in the first instance, diversity training, it could be informal counseling, formal counseling or more serious recommendations such as suspension or possibly termination.

Of course, there is a process for the formal disciplinary measures that council's office would undertake. But those are some of the possible outcomes that the find that that person, that subject has engaged in some sort of discrimination or bias. If the person is a non-employee, if the subject is a non-employee, say for instance if the subject is an attorney and we find that that attorney has engaged in inappropriate behavior towards our employee, we can refer that attorney to attorney grievance as well. Obviously you don't have jurisdiction over whether or not to discipline them as an employee, but if they're an attorney, we can certainly refer that to the appropriate grievance committee. If it's to the point where we think that is actually criminal, we can refer it to the district attorney's office.

And if it involves a judge which we also do have jurisdiction to conduct an investigation, we can refer to matter after our investigation to the Commission on Judicial Conduct. So those are some of the abbeys that we have in the event that it's a non-employee who's the subject. And of course if it's just a litigant who regularly does business, we can somehow make sure that person when they come into the building no longer interacts in an inappropriate manner towards our employee just to make sure they're protected at all times. So those are the steps and the IG's office. We are here all the time to take complaints, the telephone, whether by email, we're open.

Tony Walters:

I'm sorry Judge Winslow. Yes. I see your question. We're going to have Kay Ann answer that at the conclusion of the presentation but right now we're going to hear from R. Lewis Speaks-Tanner, who is a senior court clerk and the president of the Pride Alliance of New York state courts.

Speaks-Tanner:

So I started in the court system about four years ago so I'm relatively new in the court system. But prior to coming to the court system, I worked in retail management almost my entire life and I had been out throughout that period. And I'm going to talk about my lived experiences as a gay employee. So not necessarily everyone experiences the same things as I do, though being out is not an on-off switch so to speak. It's on a continuum. It's a process. You can be out to yourself, your best friends, close friends, immediate family, or entire family, or even close work friends or anyone you encounter.

And so it's always a process, it's always something that you are making a decision to do or not to. And many LGBTQ people choose to be as visible as they want to be. Though some of those people that don't have that opportunity are what we would say more flamboyant or the ones that have characteristics that naturally identify themselves as not being hyper masculine or hyper feminine depending on the gender that they are expressing. I've had my share of harassment and experiences in previous work, in previous jobs, especially when I was much younger and didn't know how to handle the situations. Thankfully attitudes of most New Yorkers are now positive in the way of LGBTQ rights. After all, Marriage Equality Act was finally passed in 2011, not one of the first, but not one of the last.

And then our Gender Expression Nondiscrimination Act was finally passed into law in 2019, even though LGBTQ advocates have been working hard before 2003 when it was first introduced into the New York Legislature. So far in my court career I've not experienced any outward prejudice or discrimination, though at times I do ask myself why a person may have acted or said something in a certain way. One of the things that for me it comes across is that on the phone, my voice tends to sound higher than most males and I frequently get the yes ma'am or she as a pronoun that people use and I have to frequently correct people in those instances. So I do experience that in my life as a gay man. I remember my first day reporting to court after the one day of orientation down at I think it was 25 Beaver street, I think we did the orientation.

And of course I was nervous. The court system's a whole new environment for me. And as I was waiting to start the day, sitting, waiting for whatever clerk was going to do the orientation there, I noticed an employee's desk and inside a coffee mug were various flags, and one of them being the rainbow flag. So that was a welcome sign for me and it made me feel much better to know that there was going to be an ally, if not a member of the LGBTQ community working inside that building. I later found out there were fellow gay and lesbian people who worked in

the court and it made all the difference. In other courts I've been assigned it's been harder to recognize other LGBTQ folks, mainly because everyone works in a separate office with smaller offices.

But finding and knowing that there are other LGBTQ people, coworkers helps to create a safety net and helps to make you feel more welcome in the environment that you are in. And I know that there are plenty of people that just come in and they just do their business and they don't associate with anyone, but there's a lot that interact with others. And the more visible for me, the more visible that I can be as an LGBT person, it makes other people easier for them to come out in whatever degree that they want to come out. And it helps to raise everyone up and to make it a positive work environment overall. And of course it has been a positive experience for me being out because when my mother-in-law was sick and dying, coworkers would ask about her just in the same way that coworkers ask about anyone's family and when I went to Oklahoma for the funeral, they understood. So while we have made great strides in being accepted and creating a fair workplace, there is a lot more work to do.

It can be difficult when others make comments about other LGBTQ coworkers or court users. And it makes me feel uncomfortable, but I do speak out when I can and when I feel it's appropriate because silence equals agreement in what's being said and that's certainly not what I want to have happen. And it makes me wonder what would happen if I... this is a different thought, I'm sorry. Sometimes I wonder what would happen if I had the courage to paint any of my fingernails a color, what would people say. Should I care what people say? But I do honor and recognize the badassness of those in the younger generation who are willing to push the boundaries of gender conformity and are willing to express themselves as fully as who they are genuinely are. And I look forward to the day when everyone in the court system uses the preferred pronoun, other person, as well as the day that everyone can stand with a person who is transgender and those that are transitioning from one gender expression to the other. Thank you.

Tony Walters: Lewis, if you could just speak very briefly about the Pride Alliance.

Speaks-Tanner: Sure. So the Pride Alliance actually got started as a Gay-Straight Alliance back in 2003 and when I came on board in the court system in 2016, it had kind of been in a dormant phase and we're now resurrecting it as a Pride Alliance meaning that everyone is welcome. One of the things is that adding the letters is the community keeps on growing bigger and bigger because in many circles it's the lesbian, gay, bisexual, transgender,

queer for the Q and I being intersex, that we needed to rebrand and not be exclusionary. So we're calling ourselves a Pride Alliance. And you can find us by emailing us info at pridealliance@nyscourts.org to sign up. We've been having some meetings.

Hopefully this year once we're able to not be physically distant, we'll be having more meetings but we're going to have some Zoom activities. And we want to honor and grow the organization because we want it to be an organization where people are definitely as a resource, people feeling comfortable with who they are, and also be able to advocate change and be there for when people say, "Hey, I'm not sure what happened here. Can you help us out?"

Tony Walters: Okay. Thank you Lewis. That concludes the lecture portion of the program, but I'm glad that we have some time for some of the questions that have come up in the queue. And also if people have questions, this is the time to ask them. So we'll start with Judge Winslow's question to, I think Kay Ann would be the person to answer this. Can you explain how a complainant actually files a complaint? Is there access via a website?

Kay Ann Porter: Okay. So we are on the website, we are on the intra and internet and so if you go to the Inspector General Office portion on the intranet you will find information about the office. You can download the complaint form. I think that complaint form is also on the Office of Diversity & Inclusion website. And again, you can also call. You don't have to actually send me the complaint form. If you call our office, we will take the complaint over the telephone and that will also start the process.

Tony Walters: Okay. Thank you. And we have another question. What if the person accused, and again this is for Kay Ann, what if the person accused is a supervisor, how is the subordinate kept safe moving forward?

Kay Ann Porter: Okay. So we've had that situation. It has happened and in the event that the subject is a supervisor, that would entail us having a discussion with the Chief Clerk of that court or the District Executive to figure out if we do need to reassign the person temporarily to make sure they're out of harm's way until the investigation has been completed. So we would take steps and we have to ameliorate any further harm. We would take steps to make sure the complainant is no longer being harmed in that situation. So it may entail some sort of a reassignment on a temporary basis until we can resolve the issue.

Tony Walters: Okay. And I've just been instructed that the mics are now unmuted so if anyone has a question, they should feel free to simply ask by speaking and hopefully one of our panelists can answer that question.

Speaker 6: Okay. Well, I have a question. This is for Kay Ann. One of the things I think a lot of people have questions about, and maybe it creates some hesitancy to come forward, is this whole idea of confidentiality in the discrimination complaint process. Can you speak to that and give people some really concrete explanation of what we can and cannot do as it pertains to confidentiality during the discrimination investigation process?

Kay Ann Porter: Okay. Well, first we ask both the subject and the complainant not to talk about it. That helps going forward because once you start talking about it, other people in the workplace will know about it. And it's fine if you want to tell your family because you're confiding in the family, but to discuss it at work, it sometimes may create divisions and people may want to take sides so that does not help in the first place. So we would tell everyone not to discuss it, keep it confidential amongst yourself. And as far as on our end, it's confidential to the extent that it's practicable.

We do have to disclose it to the DE because they need to be aware. And obviously the DE would disclose it to the Administrative Judge as well as to the appropriate DCJ, they need to be aware of what's going on in the event we need to take action. But we would not disclose it to the entire office. When we interview witnesses, we give them the same instructions that they should not discuss it with anyone else and it should be kept confidential. So we do our part. It's usually on the other end that we sometimes don't have that control but we do give that instruction that it should not be discussed in the office.

Tony Walters: Okay. Thank you. Any other questions amongst our participants? Okay. I see a question here. Do you see it Kay Ann?

Kay Ann Porter: Yes.

Tony Walters: Okay. So maybe you can phrase the question and then answer the question.

Kay Ann Porter: Okay. I think they asked about temporary reassignment during the investigation and what happens in the end as well as retaliation.

If the final outcome is that we do find that the subject has engaged in some sort of inappropriate behavior or discrimination, again, that would

entail us having a discussion with the DE of the Chief Clerk as to whether or not that person needs to be moved. If it's so egregious that we are recommending that person's suspension and termination, of course, that's completely different. They may no longer work for the court system. But if it's something that we think that that person needs to be retrained or they need a form of counseling, again, that's a conversation that it doesn't happen in the back and we have to reach out to the court to make sure that we can figure out where this person can be assigned away from the complainant.

And retaliation, that's very important. That's something we do tell everyone: You cannot retaliate against that person. Now, retaliation means that you cannot prevent that person from engaging in work related activities. I'll get the question, well, what if that person no longer wants to have lunch with me? That's not engaging in work related activity. So if that person alone wants to have lunch with you or bring you coffee in the morning, that's not something you can prevent but it cannot affect your work performance. So if it does, we ask the complainant as well as witnesses to bring that to our attention and that could form the basis of a new investigation as to whether or not that person has retaliated against either the witness or the complainant.

Tony Walters: Okay. I see another, this is a great question. Because attorneys, court staff, members of the public may not have the benefit of seeing the pride flags on desks or know your rights signage, what steps can the court system take to remain affirming to the LGBTQ community during this digital remote era, however long this may last? And I'm not sure who on the panel would like to take a stab at that. Maybe Matt if you have some ideas on how we could address that.

Matt Skinner: Yeah. I know Sarah and I'm glad she has this question. It's certainly a challenge that we are thinking hard about, we're trying to build up our presence online and on social media and we are planning a strong or, excuse me, a virtual conference in the fall to also add some more virtual programming that we're going to try to advertise far and wide to people outside the court system as well. But I think we really just need to continue doing as much training as we can around the state, making our presence sort of known and giving people as many different opportunities to connect with us as we can. One just sort of a visible thing, and I included this in the materials today, are the restroom signs that have been put up all over the state since last year which are just sort of a little simple reminder that the transgender and gender nonconforming people are welcome in our courtrooms and can use the

restroom that best matches their gender identity when they're in our buildings.

And of course now we're finally are getting to the point where people are going to start being in our buildings again. So I think the little things count and also the big things as well. We've just got to keep working hard to think of new and innovative ways to get our message out there and we certainly always encourage people if they have ideas to bring them to us because we don't necessarily pretend we have all the answers necessarily.

Speaks-Tanner: Tony I just wanted to add something. One of the ways that you can do that virtually is when you're talking to someone on the telephone or doing a remote conference instead of automatically assuming a pronoun is to automatically ask, what pronoun would you like to be used? I use he, his, him, and I just want to make sure that I address you appropriately and respectfully. I think that goes a long way to realizing that people might not necessarily, their expression and their identity might not line up to what others preconceived ideas of that are.

Tony Walters: Okay. I see some other great questions in the chat room. One speaks to microaggressions and how best to deal with them in the workplace. I think microaggressions is an area where we probably need to do a much more wholesale training. I'm not sure everybody even knows or can utilize microaggressions in a way that everybody understands the definition. But I will say that's something that along the line with implicit bias that hopefully my office and several other entities within the courts will be looking to Human Resources to develop more training along those lines. It's obviously a very important aspect of how we interact with each other in the workplace, but it's something that probably needs to be defined so that people can understand where you're starting from as a baseline and then start to kind of develop strategies on how to deal with microaggressions. So, a bigger topic I see we can discuss in a couple of minutes here.

I see something about gender neutral language booklets. If somebody wants to get those and wants to know what those are, contact my office because I'm sure that's probably online somewhere but I'm not sure where we are as far as having those reproducing any type of way to take them to outreach functions or anything like that. But if anybody has a question about the gender-neutral language booklet, where it is, how to access that, give my office a call and we'll be able to find that for you.

Okay. I see a question, what is an appropriate gender-neutral reflexive pronoun? Matt, do you want to take a stab at that one?

Matt Skinner: A lot of gender nonconforming people use they, them, which has traditionally been a plural pronoun but is increasingly sort of accepted as being a singular pronoun for folks who don't use he or she. There's also some creative ones that are sort of idiosyncratic that individuals use, but they, them is sort of the most common one being used in the singular sentence.

Tony Walters: Okay.

Speaks-Tanner: I'm sorry. I need to come back. I'm sorry. The question wasn't answered. I was asking for a reflexive pronoun. It's not they or them. It's like, is it theirself, themselves? Emself? Hello, Matt, do you have an answer for that?

Matt Skinner: Yeah, I think it would be themselves.

Lewis: For singular?

Matt Skinner: Yeah. Grammatically, I think we have to sort of get past the idea that it's traditionally a singular word, but in this context I'm pretty sure that's how they use the reflexive version.

Andrea Composter: Matt Skinner, it's Andrea Composter, you are correct. It is themselves.

Matt Skinner: Thanks, Andrea.

Tony Walters: Okay. Great answers. Anyone else? Okay. Well, I'd like to thank everyone for participating. This has been absolutely fantastic. We were absolutely floored by the amount of people that RSVP'd for this program. So I'm hoping I've helped to allay Matt's concerns about doing some of these types of things in the future, in a virtual workspace. There are materials and content info which are available I believe with your invitations. If you have any questions, please feel free to reach out to my office, Diversity & inclusion, or to the Failla Commission or to Kay Ann Porter's IGs office. And also to Lewis if you have any questions. Again, thank you. Happy remainder of Pride Month. And for those who'll be off tomorrow for Juneteenth, happy Juneteenth. With that, thank you and hope everyone stays safe and healthy.

John Caher: Thanks for listening to Amici. You find all of our recent podcast on the court system's website at www.nycourts.gov. And you'll also find a

transcript of each interview. If you have a suggestion for an Amici podcast, let me know. I'm John Caher and I can be reached at (518) 453-8669 or jcaher@nycourts.gov. In the meantime, stay tuned.