

QUEERING TRIAL ADVOCACY

Anthony J. Ghiotto[†]

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[†] Teaching Associate Professor of Law; Director of Advocacy; Director of the Kimball R. and Karen Gatsis Anderson Center for Advocacy and Professionalism; University of Illinois College of Law. Sincere thanks are owed to Kelly Christensen and Anna Gorman for their research assistance. I thank Professor Meghan Brinson for her guidance, review, and direction. Special thanks to Professor Todd Berger and the *Syracuse Law Review* editors for encouraging this Article and for their thoughtful review and edits.

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ABSTRACT

The legal profession requires trial lawyers to conform to conservative standards regarding dress, appearance, and mannerisms. Advocates of these norms insist that such requirements are integral to professionalism, reflecting the decorum and gravity expected in the courtroom. However, this standard of conformity often functions as a gatekeeping tool. Under the guise of professionalism, these expectations exclude visibly queer attorneys, sustaining longstanding notions of white, male, cisgender dominance within courtroom spaces.

This Article addresses the barriers created by these exclusionary norms. To foster acceptance of visibly queer attorneys within the realm of trial advocacy, the Article proposes a systematic approach to “queering” trial advocacy. The concept of “queering” in this setting means re-examining and interpreting the practice of trial advocacy—and the legal profession more broadly—through a lens that refuses traditional categories of gender and sexuality. Practically, this involves applying insights from queer theory to the structure and practice of trial advocacy itself.

Throughout the Article, both the process of entering the legal profession and the circumstances that shape ongoing participation in trial work are analyzed through a perspective that actively challenges and rejects conventional norms of gender and sexuality. This consistent approach enables the Article to recommend solutions that not only acknowledge but also transcend traditional categories, thereby promoting authentic and visible queer representation in the courtroom.

INTRODUCTION

The trial lawyer has long stood as the embodiment of professionalism—confident but composed, forceful yet restrained, dressed in tailored sobriety, speaking in tones calibrated for respect and persuasion.¹ Professionalism, as the legal profession conceives it, is not merely about competence or ethics; it is a performative code that dictates how lawyers must look, speak, and behave in order to be deemed

1. See DEBORAH L. RHODE, *THE TROUBLE WITH LAWYERS* 3–5 (2015).

legitimate.² This code, forged in the image of white, cisgender, heterosexual men, continues to define who belongs in the courtroom and who does not.³ Trial advocacy, more than any other branch of practice, amplifies these expectations because it unfolds in the public eye—a performative space where appearance and demeanor are conflated with credibility. To succeed as a trial lawyer, an attorney must not simply advocate but also must embody an ideal of professionalism that is itself exclusionary.

Yet professionalism’s insistence on conformity is neither neutral nor universal. As Deborah Rhode observed, professionalism operates as a “disciplinary mechanism,” reinforcing hierarchies of race, gender, and sexuality under the guise of decorum.⁴ The standards that govern courtroom appearance—conservative suits, subdued colors, gender-normative hairstyles—signal far more than respect for the court. They function as boundary markers, distinguishing those who can comfortably comply from those whose identities make such compliance impossible.⁵ In this way, professionalism remains a tool of gatekeeping; it regulates not only conduct but identity itself.⁶

This question of gatekeeping is not abstract. Over the past decade, we have seen sustained efforts at both the state and federal level to narrow, police, or even erase publicly legible trans and queer identities: the 2025 ban on open military service by transgender people,⁷ increased state legislation limiting transgender rights to gender affirming care,⁸ and more recent executive actions reviving binary, biology-

2. *See id.* at 4.

3. *See* Leah Goodridge, *Professionalism as a Racial Construct*, 69 UCLA L. REV. DISCOURSE 38, 43–44 (2022).

4. *See* Deborah L. Rhode, *The Professionalism Problem*, 39 WM. & MARY L. REV. 283, 284–85, 301–02 (1998).

5. *See id.*

6. *See id.*

7. *See* Lesley Wexler & Anthony Ghiotto, *The Transgender Military Ban: Part I: District Court Rejection of Deference and Secretary of Defense Hegseth’s Rejection of Judge Reyes*, VERDICT (Apr. 7, 2025), <https://verdict.justia.com/2025/04/07/the-transgender-military-ban-part-i-district-court-rejection-of-deference-and-secretary-of-defense-hegseths-rejection-of-judge-reyes> (on file with Syracuse Law Review).

8. *See* Orion Rummeler, *More Extreme, Here’s Where State Laws Stand in 2025*, THEM (May 28, 2025), <https://www.them.us/story/anti-trans-laws-extreme-state-laws-stand-2025> (on file with Syracuse Law Review). *See also* Erin Reed, *Anti-Trans National Legal Risk Assessment Map*, ERIN IN THE MORNING (Aug. 25, 2025), <https://www.erininthemorning.com/p/anti-trans-national-legal-risk-assessment> (on file with Syracuse Law Review); Azeen Ghorayshi, *Many States Are Trying to Restrict Gender Treatments for Adults, Too*, N.Y. TIMES (Apr. 22, 2023),

only definitions of sex and directing agencies to strip recognition from transgender Americans.⁹ These initiatives are not just culture-war skirmishes—they are state-sponsored demands for invisibility.¹⁰ As states and the federal government model the message that legitimate public participation is contingent on gender conformity, trial courts—already sites of hyper-managed decorum—become especially likely to reproduce that message.¹¹ In such an environment, asking visibly queer trial lawyers to ‘tone it down’ is not a neutral style preference; it participates in the broader political project of making queer and trans people disappear from public life.

This Article argues that the same norms of professionalism that once excluded Black attorneys and women from the courtroom now operate to exclude visibly queer attorneys. The legal profession’s historical gatekeeping has always demanded that outsiders conform to dominant expectations of appearance, language, and demeanor before being granted entry.¹² When attorneys of color and cisgender women sought inclusion, the profession conditioned their acceptance on assimilation — to look, speak, and behave like the white men who defined the profession’s standards.¹³ Black lawyers such as Thurgood Marshall were permitted into the courtroom only when they performed professionalism in ways that reassured white judges and juries that

<https://www.nytimes.com/2023/04/22/health/transgender-adults-treatment-bans.html> (on file with Syracuse Law Review).

9. See *Trump Anti-LGBTQ+ Executive Order Litigation Tracker*, THE LGBTQ+ BAR, <https://lgbtqbar.org/programs/trump-executive-order-tracker/> (on file with Syracuse Law Review) (last visited Jan. 19, 2026).

10. See Robert McCoy, *The FBI is Coming for Trans People*, THE NEW REPUBLIC (Sept. 19, 2025), <https://newrepublic.com/post/200688/fbi-coming-trans-people-kash-patel-charlie-kirk> (last visited Jan. 19, 2026) (on file with Syracuse Law Review); Gillian Branstetter, *Do Trans People Have a Right to Exit: Or, My Life as an Ideology*, THE AUTONOMY (Sept. 21, 2025), <https://autonomy.substack.com/p/do-trans-people-have-a-right-to-exist> (on file with Syracuse Law Review); Dylan E. Horner, *Transgender Identity, Authenticity, & Existential Concerns*, INT’L SOC’Y FOR THE SCI. OF EXISTENTIAL PSYCH. (Nov. 6, 2023), <https://www.is-sep.org/features/transgender-identity-authenticity> (on file with Syracuse Law Review); Mary Kekatos, *Concern after HHS report advocates for therapy for trans kids over gender-affirming care*, ABC NEWS (May 2, 2025, 6:07 AM), <https://abcnews.go.com/Health/concern-after-hhs-report-advocates-therapy-trans-kids/story?id=121372589> (quoting an ACLU posting that transgender people face an “existential threat to survival.”) (on file with Syracuse Law Review).

11. See, e.g., *Legal Challenges to President Trump’s Anti-LGBTQ+ Executive Orders*, GLAD L., <https://www.gladlaw.org/legal-challenges-to-trumps-anti-lgbtq-executive-orders/> (on file with Syracuse Law Review) (last visited Jan. 19, 2026).

12. See *infra* Part I (A)–(B).

13. See *infra* Part I (A)–(B).

they were not “too different.”¹⁴ Women attorneys faced a parallel burden, expected to display confidence without aggression, competence without emotion, femininity without sexuality.¹⁵ These historical examples reveal that “professionalism” has never been a neutral ideal; it has always been a social contract of conformity.

The challenge now faced by visibly queer attorneys is distinct. For many, their queerness cannot be muted or hidden without erasing an essential part of who they are. The very notion of visible queerness—queerness expressed through dress, gender performance, voice, or embodiment—is inherently disruptive to the profession’s normative order. As Judith Butler,¹⁶ Eve Sedgwick,¹⁷ and David Halperin¹⁸ each theorized in different ways, queerness resists the binaries upon which social and professional hierarchies rest. To be visibly queer is to reject the coherence of the heterosexual matrix—to refuse the alignment of man/masculine and woman/feminine that sustains courtroom expectations of propriety.¹⁹ When visibly queer attorneys enter the courtroom, they do more than represent clients; they confront, and in so doing expose, the gendered and sexualized assumptions that underlie the profession’s conception of professionalism.²⁰

This confrontation produces a paradox. The legal profession, still dominated by white, cisgender, straight men, continues to equate professionalism with conformity.²¹ Yet queerness, particularly visible queerness, derives its power from disruption—from refusing to conform.²² If the visibly queer trial lawyer succeeds in ceasing to disrupt established gender and sexuality norms, they cease to be visibly queer; their distinct identity becomes erased. Thus, the condition of entry into

14. KENNETH W. MACK, REPRESENTING THE RACE: THE CREATION OF THE CIVIL RIGHTS LAWYER 62–65 (2012).

15. See Lara Bazon, *What It Takes to be a Trial Lawyer if You’re Not a Man*, THE ATLANTIC (Sept. 2018), <https://www.theatlantic.com/magazine/archive/2018/09/female-lawyers-sexism-courtroom/565778/> (on file with Syracuse Law Review) (last visited Jan. 19, 2026).

16. See JUDITH BUTLER, GENDER TROUBLE xx–xxvi, 20–34 (2d ed., 1990).

17. See EVE SEDGWICK, EPISTEMOLOGY OF THE CLOSET 27 (1990).

18. See DAVID M. HALPERIN, SAINT FOUCAULT: TOWARDS A GAY HAGIOGRAPHY 62 (1995).

19. See Brenda Cossman, *Queering Queer Legal Studies: An Unreconstructed Ode to Eve Sedgwick (and Others)*, 6 CRITICAL ANALYSIS L. 1, 25–26 (2019).

20. See generally Kenji Yoshino, *Covering*, 111 YALE L.J. 769, 772–79, 838–45 (2001) (on pressures on gay professionals—including in law—to “tone down” identity; visibility reveals the norm that demands covering).

21. Elizabeth B. Cooper, *The Appearance of Professionalism*, 71 FLA. L. REV. 1, 12–13 (2019).

22. See *infra* Part II (A)–(B).

the courtroom—that one must look and behave “professionally”—becomes, for many visibly queer attorneys, an impossible price of admission.²³

Part I traces how the profession’s gatekeeping function has historically operated through the rhetoric of professionalism, using the experiences of Black attorneys and cisgender female attorneys to show that the courtroom has always demanded assimilation to white, male, straight norms before conferring legitimacy. Part II turns to visible queerness itself, drawing on queer theory to explain why visibility is central to many queer identities and why demands for conformity strike at the core of those identities. Part III, which examines what happens when visibly queer attorneys approach the profession’s gate, shows that contemporary visibly queer attorneys still encounter closed doors, discrimination, pressure to closet or codeswitch, and judicial hostility—a dynamic that mirrors state-level and federal efforts to narrow public queerness. Part IV then offers solutions in legal education, bar governance, and the judiciary to “queer” trial advocacy—not by abandoning decorum, but by redefining professionalism so that authenticity, not assimilation, is the measure of the trial lawyer.

I. GATEKEEPING AND THE PRICE OF ADMISSION

Before understanding the obstacles faced by visibly queer attorneys when entering the courtroom space, we need to understand the courtroom space, both narrowly in the trial setting and much more broadly in the legal profession context. This Part explores the historical examples of Black attorneys and cisgender female attorneys. It focuses on the legal profession’s gatekeeping function, especially in the trial advocacy space, for groups of attorneys historically deemed as “other.” From there, this Part explores the different conditions of entry placed on these groups under the cloak of professionalism.

This Part’s starting point is the reality that the legal profession and the courtroom remain dominated by white, male, cisgender straight attorneys.²⁴ The legal profession actively sought to exclude those attorneys it deemed as others, whether it was because of their race, gender, or sexual orientation.²⁵ These groups eventually

23. See *infra* Part III (B).

24. See Helia G. Hull, *Diversity in the Legal Profession: Moving from Rhetoric to Reality*, 4 COLUM. J. RACE & L. 1, 18–19 (2013) (noting the profession remains “white, male dominated”).

25. See Alexis Hoag-Fordjour, *White Is Right: The Racial Construction of Effective Assistance of Counsel*, 98 N.Y.U. L. REV. 770, 778–79 (2023) (“the legal

demanded access and entry into the profession.²⁶ Their entry came at a price, though. The white, male, cisgender, straight dominated legal profession conditioned entry into the profession on conformance.²⁷ This demand for conformance continues today.²⁸

A. Attorneys of Color

The exclusion of attorneys of color from the courtroom was not accidental, nor was it merely a reflection of the broader patterns of racial exclusion in American life.²⁹ It was intentional, deliberate, and systematized by the profession itself.³⁰ From the moment Black Americans began to claim the identity of “lawyer,” they were met with a profession that both feared and resisted their entry, particularly into the domain of litigation and trial practice involving white parties.³¹ Unlike transactional work, trial advocacy meant speaking before juries, persuading judges, and representing clients in public, an act that inherently challenged white supremacy when performed by Black advocates.³² The legal profession thus drew sharp boundaries. Although attorneys of color might gain admission to the bar in limited numbers, they would be denied entry into the courtroom space.

The barriers to entry were formidable. For much of the nineteenth and early twentieth centuries, bar associations systematically excluded

profession is and has always been white ... Whiteness shaped the profession’s values, culture, and practice norms”).

26. See Bryant G. Garth & Joyce S. Sterling, *Diversity, Hierarchy, and Fit in Legal Careers: Insights from Fifteen Years of Qualitative Interviews*, 31 GEO. J. LEGAL ETHICS 123, 129–30 (2018) (discussing women and minorities “brought into the profession” via elite law firm careers).

27. See *id.* at 126, 142–43 (interviewee: “I just thought ... they’re so fake ... why do I have to pretend to be interested in [golf]?”) (describing how non-traditional lawyers must “fit”).

28. See Deborah L. Rhode, *Diversity and Gender Equity in Legal Practice*, 88 U. CIN. L. REV. 871, 871 (2018) (arguing that structural problems and cultural norms remain impediments to full inclusion).

29. See Amanda Carlin, *The Courtroom as White Space: Racial Performance as Noncredibility*, 63 UCLA L. REV. 450, 453–54 (2016).

30. See Alexis Hoag-Fordjour, *White is Right: The Racial Construction of Effective Assistance of Counsel*, 98 N.Y.U. L. REV. 770, 795 (2023) (in discussing the right to counsel, Hoag-Fordjour argues that “the legal profession was synonymous with whiteness. This was born out of enduring structural racism, lack of access to education, and barriers to the profession erected to exclude racially marginalized groups who sought entry.”); see also Margaret M. Russell, *Beyond “Sellouts” and “Race Cards”: Black Attorneys and the Straitjacket of Legal Practice*, 95 MICH. L. REV. 766, 767–68 (1997).

31. See MACK, *supra* note 14, at 40–43.

32. See *id.*

Black attorneys from joining these organizations that controlled admission and professional legitimacy.³³ The American Bar Association, founded in 1878, “formally excluded African American lawyers from member from its founding all the way through 1943”³⁴ Beyond excluding Black attorneys, the American Bar Association actively imposed barriers to keep minorities out of the profession.³⁵ State and local bars were no different, enforcing both formal and informal color lines.³⁶ In many jurisdictions, even if Black attorneys were technically allowed to practice, they were barred from courtrooms by hostile judges or stripped of the ability to argue before juries.³⁷

The stories of early Black attorneys illustrate this pattern. Macon Bolling Allen, admitted to practice in Maine in 1844 and widely recognized as the nation’s first Black lawyer, was initially denied opportunities to argue before juries.³⁸ When he later moved to South Carolina during Reconstruction, he was appointed as a judge, but only in the short-lived window of Reconstruction governance.³⁹ After Reconstruction, the judiciary and bar re-entrenched racial exclusion, and the prospect of Black advocates before white juries virtually disappeared.⁴⁰

Even as late as the early twentieth century, Black lawyers who gained admission to the bar were often relegated to serving only Black clients and confined to practice in Black communities.⁴¹ They could not expect white judges or white clients to recognize their authority. In many Southern courtrooms, Black lawyers were forced to enter

33. See Hoag-Fordjour, *supra* note 25, at 796 (“The formation of the ABA was part of a larger trend in professionalization across industries. These efforts reflected the ruling class’s desire to maintain white supremacy and control as an influx of nonwhite people infiltrated Northern cities, threatening white, Anglo-Saxon Protestant dominance at the turn of the nineteenth century.”).

34. Anthony M. Ciolli, *A Legacy of Discrimination: A Brief History of U.S. Territories in the American Bar Association*, 134 YALE L.J. FORUM 488, 489 (2025).

35. See George B. Shepherd, *No African-American Lawyers Allowed: The Inefficient Racism of the ABA’s Accreditation of Law Schools*, 53 J. LEGAL EDUC. 103, 109 (2003).

36. See Ronald Adrine, *A History of the Black Legal Experience and the Organized Bar in Greater Cleveland*, CMBA UPDATES & LEGAL NEWS (May 16, 2023), <https://www.clemetrobar.org/?pg=CMBABlog&blAction=show-Entry&blogEntry=91499> (on file with Syracuse Law Review).

37. See J. CLAY SMITH, JR., *EMANCIPATION: THE MAKING OF THE BLACK LAWYER: 1844–1944* 215–18 (1993).

38. See *id.* at 33.

39. See *id.* at 96.

40. See *id.*

41. See *id.* at 204–05.

through separate doors, forbidden from addressing white jurors directly, and subjected to demeaning forms of address from the bench.⁴² These practices sent a clear message: even if the law could not formally bar them from advocacy, the profession would ensure that their presence remained marginalized and subordinated.

The transformation began slowly, led by the efforts of Black lawyers who positioned themselves as indispensable to the broader civil rights struggle. Charles Hamilton Houston, often called “the man who killed Jim Crow,” reframed the very meaning of Black trial advocacy.⁴³ In the 1930s and 1940s, Houston and his protégé Thurgood Marshall demonstrated in courtroom after courtroom that Black lawyers could match, and often surpass, their white counterparts in skill, strategy, and persuasion. Their work in cases like *Missouri ex rel. Gaines v. Canada*⁴⁴ and ultimately *Brown v. Bd. of Educ.*⁴⁵ forced the profession to acknowledge Black lawyers as legitimate trial attorneys. But the cost of that legitimacy was steep. Houston and Marshall—and generations of Black lawyers following them—were expected to conform meticulously to white professional norms of dress, speech, and demeanor.

Kenneth Mack has documented this dynamic in *Representing the Race*.⁴⁶ The legal profession forced Black lawyers to navigate a paradox.⁴⁷ Black lawyers were visible symbols of racial difference, yet they had to present themselves in ways that reassured prominent whites, to include members of the established legal profession, that they were one of their own.⁴⁸ This paradox meant that the white establishment expected Black lawyers to represent white cultural values and not those of their race.⁴⁹ One way in practice that Black lawyers did so was by adopting the dialect and rhetorical style of the white male elite. Marshall himself, for example, was scrupulous in his courtroom dress and demeanor, often moderating his rhetorical style in order to bridge racial gaps and appear competent and skilled to the white

42. See MACK, *supra* note 14, at 62–65.

43. GENNA RAE MCNEIL, *GROUNDWORK: CHARLES HAMILTON HOUSTON AND THE STRUGGLE FOR CIVIL RIGHTS* 145–47 (1983).

44. *Missouri ex rel. Gaines v. Can.*, 305 U.S. 337, 338 (1938).

45. *Brown v. Bd. of Educ.*, 347 U.S. 483, 484 (1954).

46. See MACK, *supra* note 14, at 15.

47. See Risa Goluboff, *Lawyers, Law, and the New Civil Rights History: Representing the Race: The Creation of the Civil Rights Lawyer*, 126 HARV. L. REV. 2312, 2313–14 (2012) (book review).

48. See MACK, *supra* note 14, at 4–5.

49. *Id.* at 6 (“But to be a successful lawyer, [a black lawyer] had to also represent the core identity of what was a white dominated profession.”).

legal elites.⁵⁰ Black women lawyers like Jane Bolin, the first Black woman judge in the United States, faced an even more complex set of expectations.⁵¹ They had to meet the standards imposed on both Black attorneys and female attorneys, navigating an intersectional level of conformity.⁵²

Yet the veneer of professionalism on the part of Black lawyers was not enough for the white male legal profession. Black lawyers could gain professional acceptance by adhering perfectly to dominant white professional norms, but even that acceptance remained conditional and incomplete.⁵³ The courtroom thus became a site where the ideal of professionalism operated as a racial filter. Black lawyers could participate, but only if they conformed to white norms, and even then, their legitimacy was precarious.

This dynamic remains today. Black attorneys continue to report that their courtroom advocacy is judged differently from that of white colleagues.⁵⁴ For example, white attorneys can exhibit anger and aggression in the courtroom, while Black attorneys cannot.⁵⁵ Leah

50. *See id.* at 67-68.

51. The intersectionality struggles of Black female attorneys remain today. *See* Goodridge, *supra* note 3, at 41 (2022) (“Professionalism in the legal industry often carries the silent expectation that people of color, women, people with disabilities and people who identify as LGTBQIA have a high threshold to withstand discrimination.”).

52. *See* MACK, *supra* note 14, at 140–46; *see also*, JACQUELINE A. MCLEOD, DAUGHTER OF THE EMPIRE STATE: THE LIFE OF JUDGE JANE BOLIN 88–90 (2003).

53. *See* MACK, *supra* note 14, at 81–82, 93 (explaining that Black lawyers were urged to adhere closely to dominant white professional norms in order to gain acceptance, but that acceptance “carried subtexts of paternalism and even race prejudice”); *see also* Goluboff, *supra* note 47, at *Lawyers*, 2313–14 (describing that Black lawyers had to perform “courtly gentility” to succeed, yet the closer they approximated whiteness, the less authentically they could represent their race).

54. *See, e.g.*, Meagan Flynn, ‘Lawyering while black’: Maryland deputy accused attorney of being a suspect, complaint says, WASH. POST (Mar. 28, 2019), <https://www.washingtonpost.com/nation/2019/03/28/lawyering-while-black-maryland-deputy-accused-attorney-being-suspect-complaint-says/> (on file with Syracuse Law Review) (telling the story of Rashad James, a Black attorney who was suspected of impersonating an attorney at a courthouse); DESTINY PEERY ET AL., ABA COMM’N ON WOMEN PRO., LEFT OUT AND LEFT BEHIND: THE HURDLES, HASSLES, AND HEARTACHES OF ACHIEVING LONG-TERM CAREERS FOR WOMEN OF COLOR 5 (includes a female trial lawyer sharing that “I think judges expected me to be dumb and unprepared. They compliment me as if I am an exception. I have judges trying to correct my English skills.”); Danielle Johnson, *Walk in my Shoes: A Day in the Life of a Black Woman Attorney*, 69 BOS. BAR J. 4 (May 28, 2020) (In exploring her career as a black woman legal aid attorney, Johnson notes “my dominant experience navigating my chosen profession is one of alienation, exclusion, and discomfort. . .”).

55. *See* Goodridge, *supra* note 3, at 43.

Goodridge, in arguing that professionalism was a racial construct, highlights that she “spoke with at least ten Black attorneys with decades of experience in courtrooms and every single one understood and iterated that despite white opposing counsels or peers acting in the most inappropriate and unprofessional manner, I was the one who would look unprofessional if I came close or matched their behavior.”⁵⁶ For the Black trial lawyer, but not the white, “[p]rofessionalism was based on the notion that one withstood microaggressions and bias with grace and lightheadedness.”⁵⁷

Beyond the requirement for the Black advocate to maintain composure and avoid visible anger, Goodridge further notes that “[w]hile professionalism seemingly applies to everyone, it is used to widely police and regulate people of color in various ways[,] including hair [and] tone. . . .”⁵⁸ Deborah Rhode echoed these concerns. She noted that Black trial lawyers are often advised, sometimes explicitly, sometimes subtly, to alter their speech patterns, to straighten or cut their hair,⁵⁹ and to adopt styles of dress that align with white expectations of “neutral” professionalism.⁶⁰ Rhode concluded that “professionalism” remained coded as white, male, and straight, and deviations from that code are read as deficiencies rather than as legitimate expressions of professional identity.⁶¹ Consequently, for many Black trial attorneys, they must engage in “codeswitching”⁶² to meet these white, male, and straight expectations of professionalism in the courtroom.⁶³

56. *Id.* at 44.

57. *Id.* at 43.

58. *Id.* at 41.

59. See Paulette M. Caldwell, *A Hair Piece: Perspectives on the Intersection of Race and Gender*, 1991 DUKE L.J. 365, 383 (1991) (“Hairstyle choices are an important mode of self-expression. For [B]lacks, and particularly for [B]lack women, such choices also reflect the search for a survival mechanism. . . Hair becomes a proxy for legitimacy and determines the extent to which individual [B]lacks can ‘crossover’ from the private world of segregation and colonization. . . into the mainstream of American life.”).

60. See DEBORAH L. RHODE, *THE TROUBLE WITH LAWYERS* 66 (2015).

61. *See id.*

62. *See generally* Diane Hamilton, *What Is Code-Switching And Why Does It Matter In Communication*, FORBES (Aug. 13, 2025), <https://www.forbes.com/sites/dianehamilton/2025/08/13/what-is-code-switching-and-why-does-it-matter-in-communication/> (on file with Syracuse Law Review) (“Code-switching is a linguistics term that refers to when people alternate between two or more languages or dialects depending on the audience or setting. Over time, the meaning has extended beyond language to include changes in tone, behavior, clothing, or demeanor to meet perceived expectations.”).

63. *See, e.g.*, Jocelyn James, *Vernacular Verdict: Using Slang as Covert Courtroom Strategy*, MEDIUM (Feb. 3, 2023),

B. Cisgender Female Attorneys

The gatekeeping function of the legal profession has been especially stark when viewed through the lens of women's entry into the trial courtroom. Until the late nineteenth century, women were formally excluded from the profession altogether.⁶⁴ Myra Bradwell's failed attempt to gain admission to the Illinois bar in 1872, and the Supreme Court's decision in *Bradwell v. Illinois* upholding the state's denial, crystallized the entrenched belief that women were inherently unsuited to law.⁶⁵ Justice Bradley's concurrence declared that "[t]he paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother,"⁶⁶ revealing the gendered assumptions undergirding exclusion from the bar. Even after formal barriers fell, cultural, institutional, and professional ones remained.

For much of the twentieth century, female lawyers were tolerated in certain corners of the profession, such as in family law, probate, or administrative practice; however, trial advocacy remained a bastion of masculine dominance. Female attorneys pursuing trial work soon discovered that "[b]eing a litigator is not the same job for women as it is for men."⁶⁷ Judges, juries, and opposing counsel often viewed women at counsel table as secretaries or paralegals rather than as advocates.⁶⁸ This relegation was not accidental; it reinforced the notion that the courtroom, as a performative arena of authority and confrontation, demanded traits coded as male—assertiveness, aggression, control. To be admitted into that space, women lawyers had to

<https://medium.com/@jocelynjames/vernacular-verdict-using-slang-as-covert-courtroom-strategy-7e91b0eeb1d3> (on file with Syracuse Law Review) (discussing how black trial lawyers have become to code switch with their vernacular depending on the courtroom and jury); *Codeswitching and Perceived Professionalism at Work*, CORNELL UNIV. ILR SCH. (Oct. 6, 2021), <https://www.ilr.cornell.edu/news/research/codeswitching-and-perceived-professionalism-work> (on file with Syracuse Law Review) (although not specific to the legal profession, the article discusses a study that "confirms that Black employees who engage in racial codeswitching are consistently perceived as more professional, compared to employees who do not codeswitch.").

64. See Mary Jane Mossman, *Women Lawyers and Women's Legal Equality: Reflections on Women Lawyers at the 1893 World's Columbian Exposition in Chicago*, 87 CHI.-KENT L. REV. 503, 503, 505–06 (2012).

65. See generally *Bradwell v. Illinois*, 83 U.S. 130 (1873).

66. *Id.* at 131.

67. JENNIFER L. PIERCE, GENDER TRIALS: EMOTIONAL LIVES IN CONTEMPORARY LAW FIRMS 104 (1995).

68. See VIRGINIA G. DRACHMAN, SISTERS IN LAW: WOMEN LAWYERS IN MODERN AMERICAN HISTORY 87, 91 (1998).

demonstrate conformity with these masculine norms, while simultaneously avoiding censure for being “too aggressive” or “unfeminine.”⁶⁹

While female attorneys are expected to follow these masculine norms, the profession also expected them to adhere to a standard appearance set for female attorneys. Shannon Cumberbatch notes that “[p]eople in the legal profession are constantly being assessed on their appearances, whether explicitly indicated or not.”⁷⁰ She continued by stating that “[c]onventional standards of professional presentation in law tend to be more conservative, more exacting, more expensive, and more consequential than in most other industries, yet not more equitable nor clear.”⁷¹ To Cumberbatch, women feel the weight of these standards. She shared the experience of another female attorney, whose law school told the female students that:

big hoop earrings were unprofessional; that open-toe shoes were not preferred; that we should test skirt lengths by kneeling and seeing if the skirt hit the floor. Blouse, they said, could dip three fingers’ length below the collarbone (not further). No ostentation jewelry or accessories...When the big firms came falling for interviews, we were advised to wear foundation, blush, a suitably demure lipstick shade, and suitably demure nails.⁷²

Members of the judiciary appear to support these gendered expectations of dress.⁷³ At a Seventh Circuit Bar Association meeting, several federal judges explicitly addressed how female attorneys

69. See Kathleen A. Bergin, *Sexualized Advocacy: The Ascendant Backlash Against Female Lawyers*, 18 YALE J.L. & FEMINISM 191, 220 (2006).

70. Shannon Cumberbatch, *When Your Identity is Inherently ‘Unprofessional’: Navigating Rules of Professional Appearance Rooted in Cisheteronormative Whiteness as Black Women and Gender Non-Conforming Professionals*, 34 J. CIV. RTS. & ECON. DEV. 81, 87 (2021) (citing Adrian Furnham et al., *What to wear? The influence on the perceived professionalism of dentists and lawyers*, 43 J. APPLIED SOC. PSYCH. 1838, 1843–45 (2013)).

71. *Id.*

72. *Id.* at 91.

73. See, e.g., Deanna Paul, *‘We didn’t let girls do it in the old days’, a judge said. ‘Inappropriate,’ a higher court ruled*, WASH. POST (July 29, 2018), <https://www.washingtonpost.com/news/post-nation/wp/2018/07/29/we-didnt-let-girls-do-it-in-the-old-days-a-judge-said-inappropriate-a-higher-court-ruled/> (on file with Syracuse Law Review) (discussing a judge telling a female attorney in court that “[i]t was a lot simpler when you guys wore dark suites, white shirts and navy ties...”).

appeared in court.⁷⁴ One judge commented that some women should dress more appropriately in court, adding that one female advocate looked as if she was going to the gym.⁷⁵ Another judge complained that he judged a law school moot court competition and saw “skirts so short there’s no way they can sit down, and blouses so short there’s no way the judges wouldn’t look.”⁷⁶ Yet another judge commented that titillating attire was a “huge problem” and a distraction in the courtroom and that “you don’t dress in court as if it’s Saturday night and you’re going out to a party.”⁷⁷

Deborah Rhode characterized these obstacles faced by female trial lawyers as a “double standard and a double bind.”⁷⁸ Women could not be “too soft” or “too strident” or “too aggressive” or “not aggressive enough.”⁷⁹ This double standard and double bind continue to shape the experiences of cisgender female trial lawyers. Lara Bazelon, reflecting on her own career as a criminal defense attorney, describes how female advocates are subjected to constant scrutiny over appearance, demeanor, and tone—scrutiny that their male counterparts rarely encounter.⁸⁰ A man’s courtroom anger is read as passion; a woman’s is labeled shrill.⁸¹ A man’s confidence reads as competence; a woman’s risks being dismissed as arrogance.⁸² Bazelon observes that women trial lawyers are compelled to calibrate every aspect of their performance—voice, wardrobe, gestures—to walk a fine line between credibility and likability.⁸³ Professionalism in this context becomes not a neutral standard but a gendered code of conduct.

This code reflects broader cultural assumptions about women’s roles in adversarial spaces. Sociological studies confirm that jurors and judges evaluate female advocates differently than male ones,

74. See John Schwartz, *At a Symposium of Judges, a Debate on the Laws of Fashion*, N.Y. TIMES (May 22, 2009), <https://www.nytimes.com/2009/05/23/us/23lawyers.html?r=1&hp> (on file with Syracuse Law Review).

75. *See id.*

76. *Id.*

77. *Id.*

78. Lara Bazelon, *What It Takes to be a Trial Lawyer If You’re Not a Man*, THE ATLANTIC (July 30, 2018), <https://www.theatlantic.com/magazine/archive/2018/09/female-lawyers-sexism-courtroom/565778/> (on file with Syracuse Law Review).

79. *Id.*

80. *See id.*

81. *See id.*

82. *See id.*

83. *See* Bazelon, *supra* note 78.

privileging those who adopt traditionally feminine traits of warmth and deference but punishing them if such traits undermine perceptions of authority.⁸⁴ Conversely, women who adopt assertive strategies often face reputational backlash, branded as “difficult” or “abrasive.”⁸⁵ In Bazelon’s terms, women are instructed to “smile more, cry less, dress better, tone it down, play it up, stop being so emotional.”⁸⁶ The cumulative effect is that professional identity for cisgender female trial lawyers is policed not only by rules of evidence and procedure but by a regime of gendered expectations masquerading as professionalism.

The tension Bazelon highlights is that women are forced to litigate “in drag,” adopting a persona shaped by male expectations.⁸⁷ This experience, which also involves codeswitching, mirrors the experience of attorneys of color described earlier. Admission into the courtroom space is contingent upon conformance with dominant norms that erase or suppress difference. For women, this means more than simply dressing in a conservative suit; it means managing every aspect of self-presentation to neutralize gender in an arena built to privilege masculinity. The cost of entry is conformance predicated upon forsaking authenticity.

At the same time, the legal profession has used the rhetoric of professionalism to deny that these constraints exist. By presenting courtroom expectations as “neutral” and “objective,” the profession obscures the ways in which they disproportionately burden women. The expectation that women wear skirt suits in muted colors, keep their hair styled in traditionally feminine ways, or use makeup to appear “polished,” is coded as professionalism, not sexism.⁸⁸ Yet as

84. See Pierce, *supra* note 67, at 103–42.

85. See *id.*

86. Bazelon, *supra* note 78.

87. See *id.*

88. See, e.g., Elie Mystal, *Biglaw Women, Do You Even Know How to Use Make-up*, ABOVE THE L. (Mar. 11, 2010, 6:35 PM), <https://abovethelaw.com/2010/03/biglaw-women-do-you-even-know-how-to-use-make-up/#more-1583> (on file with Syracuse Law Review) (discussing a City Bar of New York event that hosted a national makeup artist to discuss “what is appropriate and suitable for the workplace, including business casual attire, and make0up, to demonstrating proper make-up techniques...”); Kashmir Hill, *Fashion Dos and Don’ts from the Windy City (If you have a tramp stamp, it may already be too late)*, ABOVE THE L. (April 12, 2010, 12:12 PM), <https://abovethelaw.com/2010/04/fashion-dos-and-donts-from-the-windy-city-if-you-have-a-tramp-stamp-it-may-already-be-too-late/> (on file with Syracuse Law Review) (discussing a Chicago Bar Association event “with ‘guest judges and fashion industry experts’ to critique law students selections for ‘professional attire.’”); Staci Zaretsky, *A Message from*

Bazon and others remind us, these are not neutral markers but gendered demands.⁸⁹ As such, professionalism operates as a disciplinary tool. Through the expectation and requirement of professionalism, the legal profession polices women's bodies, voices, and personalities, and conditions their legitimacy as advocates on adherence to male-centric norms.

The irony is that women's presence has reshaped trial practice in profound ways. Studies suggest that female trial lawyers often connect with juries differently than male lawyers, particularly in cases involving vulnerable witnesses or sensitive subject matter.⁹⁰ Nonetheless, for those noting these successes, they often attribute it not to skill or preparation but to stereotyped "female" qualities like empathy or nurturing.⁹¹ The effect is to reinscribe gender difference even when women succeed. Moreover, women of color and queer women face intersectional challenges that multiply these dynamics, as stereotypes about race, gender, and sexuality converge to shape professional expectations in unique and often more punitive ways.⁹²

The persistence of these dynamics reveals the unfinished project of gender equality in the profession. Formal barriers to entry have fallen with women now making up more than half of law school

Career Services: Ladies, Please Learn How to Dress Yourself, ABOVE THE L. (Nov. 21, 2011, 1:21 PM), <https://abovethelaw.com/2011/11/a-message-from-career-services-ladies-please-learn-how-to-dress-yourself/> (on file with Syracuse Law Review) (discussing a law school event where female students were taught how to dress professionally. The advice included to make sure suits weren't too tight, cleavage was to be kept to a minimum, to avoid wearing peep-toe pumps, to wear make-up, and to wash their hair and body.).

89. See Bazon, *supra* note 78; see also Cumberbatch, *supra* note 70.

90. See Mary M. Levi et al., *Strength Versus Sensitivity: The Impact of Attorney Gender on Juror Perceptions and Trial Outcomes in a Rape Case*, 28 VIOLENCE AGAINST WOMEN 2010, 2010–23 (2022) (finding that in criminal rape trials, female attorneys are more often associated with "sensitive" traits while male attorneys are associated with "strength" in juror perceptions, particularly in connection with attorney competency and verdicts).

91. See, e.g., Jan Nielsen Little, *Ten Reasons Why Women Make Great Trial Lawyers*, KEKER & VAN NEXT LLP (June 1, 2006), https://www.keker.com/Templates/media/files/pdfs/Jan_Column_June2006.pdf (on file with Syracuse Law Review); Tess Becker, *Giving Women a Face in the Courtroom*, SMILEY MOVEMENT (May 8, 2023, 5:18 PM), <https://smileymovement.org/news/giving-women-a-face-in-the-courtroom> (on file with Syracuse Law Review) ("Women attorneys are uniquely suited to serve as trial lawyers, applying empathy, humility, focus, dedication, and deep understanding of client needs. . .").

92. See Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL. F. 139, 149–50 (1989).

graduates and a growing share of trial advocates.⁹³ Yet the courtroom remains a site where professionalism is defined against the backdrop of male norms, and where women's entry is conditioned on constant performance and self-regulation. As Bazelon concludes, when women try cases, they are not simply trying the case in front of them. They are trying themselves, over and over again, in front of audiences primed to doubt them.⁹⁴ The burden of conformance—demanded in the name of professionalism—remains the price of admission.

In sum, the experience of advocates of color and cisgender female demonstrate the legal profession's power over those who wish to enter the profession and those who wish to do so as trial attorneys. Through the requirement of professionalism, the legal profession can require "outsiders" to conform to behavior, dress, appearance, and mannerisms deemed appropriate by white, male, cisgender, straight norms and expectations. It is this gate to entry and this cost of admission that visibly queer trial attorneys now face to gain entry not only into the profession, but also into the courtroom.

II. VISIBLE QUEERNESS

If attorneys of color and cisgender female attorneys were able to accept the conditions of acceptance and adopt to those professionalism standards, then why can't queer attorneys? A central component of this Article's thesis is that for many visibly queer attorneys, conformance in dress, appearance, and mannerisms is not a choice or possibility. The outward manifestation and representation of their queerness is inherently tied to their identity and sense of self. To understand why visibility is so essential to queerness and so in opposition to current understandings of legal professionalism, we first need to understand what it means to be queer and what it means to visibly queer. This Part does just that.

A. What it Means to be Queer

To queer trial advocacy and thus create accessible and accepting courtroom spaces for visibly queer advocates, we need to understand what it means to be visibly queer. Our starting point is to understand

93. See Jalien S. Fenwick, *See Her, Hear Her: The Historical Evolution of Women in Law and Advocacy for the Path Ahead*, AM. BAR ASS'N (Nov. 15, 2023), https://www.americanbar.org/groups/business_law/resources/business-law-today/2023-november/see-her-hear-her-historical-evolution-women-in-law/ (on file with Syracuse Law Review).

94. See Bazelon, *supra* note 78.

what it means to be queer. The difficulty is that there is no one true definition of queer or queerness when it comes to identity. In fact, even queer individuals and queer supporting individuals differ on what it means to be queer, what queerness means to them, and how they share, live, or present their queerness.⁹⁵

Queer theory serves not only as a lens through which to understand issues impacting queerness, but it also helps to define queer and queerness.⁹⁶ Unfortunately, though, there is not orthodoxy when it comes to queer theory.⁹⁷ Teresa de Lauretis first used the term “queer theory” and defined it as “a refusal of heterosexuality as the benchmark for all sexual formation.”⁹⁸ Later, without explicitly referring to queerness, Judith Butler focused on gender rather than sexuality.⁹⁹ They attacked birth sex, gender, and desire, arguing that they are discursively produced and performed.¹⁰⁰ Eve Sedgwick returned to sexuality and sexual orientation to center queer theory on the homosexual/heterosexual dichotomy.¹⁰¹

Taken together, these approaches focused queer theory on the dichotomy between gay and straight, homosexual and heterosexual. But rather than enforcing or supporting these dichotomies, queer theory considered these dichotomies to be part of the problem.¹⁰² As noted by Brenda Cossman, queer theory suggested that the “homo/hetero

95. See, e.g., Callie Hitchcock, *What'd the DNA of Desire? How the “born this way” narrative of identity is holding the queer community back.*, SLATE (Mar. 28, 2019, 9:00 AM), <https://slate.com/human-interest/2019/03/born-this-way-queer-identity-fluidity.html> (on file with Syracuse Law Review) (“The only story I have for my queerness defies genre; it doesn’t suit an ‘aha’ moment or a coming out story, nor a clear indication of raw willful choice against biological nature.”); Jenna Wortham, *When Everyone Can Be ‘Queer,’ Is Anyone?*, N.Y. TIMES (July 12, 2016), <https://www.nytimes.com/2016/07/17/magazine/when-everyone-can-be-queer-is-anyone.html> (on file with Syracuse Law Review) (“The word “queer” has always contained the shimmer of multitudes...”).

96. See Teresa de Lauretis, *Queer Theory: Lesbian and Gay Sexualities*, in DIFFERENCES: A JOURNAL OF FEMINIST CULTURAL STUDIES 3.2, iv (1991).

97. See Lauren Berlant & Michael Warner, *What Does Queer Theory Teach Us About X?*, 110 PMLA 343, 344 (1995) (“queer theory is not the theory of anything in particular. . .”). See also JUDITH BUTLER, BODIES THAT MATTER: ON THE DISCURSIVE LIMITS OF “SEX” 228 (1993) (arguing that queer theory “. . . will have to remain that which it is, in the present, never fully owned, but always and only redeployed, twisted, queered from a prior usage and in the direction of urgent and expanding political purpose.”).

98. Cossman, *supra* note 19, at 25 (citing Teresa De Lauretis, *Queer Legal Theory: Lesbians and Gay Sexualities*, 3 J. FEMINIST CULTURAL STUD. iii (1991)).

99. See *id.* at 26.

100. See *id.*

101. See *id.*

102. See *id.*

distinction normalized heterosexuality and reinforced the very static and essential conceptions of sex, sexuality, gender, and desire.”¹⁰³ Queer theory, though, also extended outside of gender and sexuality. Part of queer theory is the understanding that queer theory—and the nature of queerness—is a critique of the normal.¹⁰⁴ David Halperin defined queer as whatever is “at odds with the normal, the legitimate, the dominate.”¹⁰⁵ He added that “[q]ueer’ . . . demarcates not a positivity but a positionality vis-à-vis the normative – a positionality that is not restricted to lesbians and gay men but is in fact available to anyone who is or who feels marginalized because of his or her sexual practices.”¹⁰⁶

In attempt to reconcile the different approaches to queer theory and to understand queer legal theory, Cossman identified three themes prevalent in queer theory that provide some definitional understanding to queerness and the term queer.¹⁰⁷ These themes are: (1) anti-identitarian disrupting the sex/gender/desire matrix; (2) exploring sexuality as its own field, “not reducible to gender and feminism”; and (3) a critic of regimes of normalization.¹⁰⁸ This understanding of queerness guides the Article’s analysis going forward.

A closer examination of these three themes allows us to understand and define queerness in anticipation of understanding the need for queering of trial advocacy.

1. Queerness as Anti-Identitarian Disrupting the Sex/Gender/Desire Matrix

A key component of queer theory is its resistance to fixed identity categories and its disruption of the presumed alignment among sex, gender, and desire. Butler’s *Gender Trouble* interrogates the notion that sex is a biological substrate upon which gender and desire are naturally layered.¹⁰⁹ Butler contends instead that both gender and desire are performative—constituted through iterative acts that cite prior

103. Cossman, *supra* note 19, at 26.

104. *See id.*

105. DAVID HALPERIN, SAINT FOUCAULT: TOWARDS A GAY HAGIOGRAPHY 62 (1995).

106. *Id.*

107. *See* Cossman, *supra* note 19, at 27.

108. *See id.*

109. *See* BUTLER, *supra* note 16, at x–xxxiii.

norms rather than express any innate truth.¹¹⁰ What appears stable and “natural” is, in fact, an effect of discourse.

This insistence on performativity dismantles what Butler calls the “heterosexual matrix,” the normative grid that links biological sex to gender expression and to heterosexual desire.¹¹¹ The matrix functions by naturalizing the coherence of “man–masculine–desires women” and “woman–feminine–desires men.”¹¹² By exposing the instability of this triadic structure, queer theory challenges the presumption that identities are authentic or self-evident.

Eve Sedgwick complements this analysis by tracing how the homo/hetero binary has historically operated as one of the most fundamental organizing principles of Western thought.¹¹³ She argues that the epistemological privilege of the binary renders other distinctions, such as masculinity/femininity or secrecy/disclosure, legible through its lens.¹¹⁴ In Sedgwick’s view, the binary is less a reflection of ontological difference than a regulatory schema that produces and polices identities.¹¹⁵

The anti-identitarian impulse, then, is not simply a refusal of labels but a refusal of the epistemological structures that make labels appear necessary. Halperin captures this when he argues that “queer” does not denote a substantive identity but instead marks a positionality against the normative.¹¹⁶ Queer becomes a way of standing in opposition to the system of classification itself, a resistance to the demand that identities be coherent, stable, and nameable.¹¹⁷ Therefore, this theoretical refusal of identity allows for fluidity, multiplicity, and the destabilization of rigid categories.

2. Queerness as Exploring Sexuality as its Own Field, Not Reducible to Gender and Feminism

A second theme of queer theory is the insistence that sexuality must be studied as its own field of inquiry, irreducible to gender or to feminist analysis. While feminist theory focused largely on how gender norms structure oppression, it often treated sexuality as secondary

110. *See id.*

111. *Id.* at 151–80.

112. *Id.*

113. *See* SEDGWICK, *supra* note 17, at 1–11.

114. *See id.*

115. *See id.*

116. *See* HALPERIN, *supra* note 18, at 62.

117. *See id.*

or derivative.¹¹⁸ For instance, much early feminist scholarship framed sexuality primarily in terms of male domination and female subordination.¹¹⁹ To queer theorists, this framework, risks obscuring how sexuality operates as an autonomous axis of regulation and power.

Sedgwick posits this argument in *Epistemology of the Closet*, where she shows that the homo/hetero binary is not a mere subset of gender difference but a central organizing principle of modern Western culture.¹²⁰ For Sedgwick, the epistemological weight of this binary is so great that it structures entire domains of knowledge, including political and cultural, well beyond gender relations.¹²¹ Sexuality, in her view, cannot be collapsed into questions of gender because it is itself a distinct field of power and discourse.¹²²

Butler acknowledges a similar point. In *Bodies That Matter*, they critique the feminist tendency to assume the coherence of heterosexuality while deconstructing gender norms.¹²³ By foregrounding sexuality, queer theory identifies a separate but interrelated regime of regulation, one that produces desires, orientations, and practices as objects of governance.

Halperin further underscores this by refusing to define queer in terms of gender identity or feminist concerns.¹²⁴ Instead, he situates queerness in relation to sexual practices and orientations that defy normalization.¹²⁵ For Halperin, sexuality must be understood in its specificity—not as an extension of gender but as a field with its own logics of inclusion, exclusion, and hierarchy.

This attention to sexuality as its own field allows us to understand that rather than being subordinated to gender, sexuality becomes a lens for understanding how modern societies organize knowledge, morality, and subjectivity. In this sense, queer theory not only expands feminist inquiry but also pushes it beyond its traditional boundaries, insisting that sexuality be studied on its own terms.

118. See CATHARINE A. MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE 113–31 (1989).

119. See *id.*

120. See SEDGWICK, *supra* note 17, at 1–2.

121. See *id.*

122. See *id.*

123. See BUTLER, *supra* note 97, at 32.

124. See HALPERIN, *supra* note 18, at 62–67.

125. See *id.*

3. *Queerness as a Critic of Regimes of Normalization*

A third unifying theme of queer theory is its critique of regimes of normalization—that is, the diffuse social and cultural mechanisms that produce distinctions between the normal and the abnormal. Michel Foucault provides the theoretical groundwork here. In *The History of Sexuality*, Foucault argues that modern power does not operate primarily through repression but through the production of norms.¹²⁶ By classifying, measuring, and categorizing populations, modern institutions establish standards of health, morality, and sexuality that individuals are expected to inhabit. Normalization, then, is not merely descriptive but prescriptive as it constitutes the boundaries of what counts as intelligible life.¹²⁷

Queer theory takes up this insight to interrogate how normalization works in relation to gender and sexuality. Butler describes normalization as the demand that subjects conform to categories of gender intelligibility under threat of abjection.¹²⁸ Those whose identities or desires fall outside these categories—such as drag performers, transgender individuals, or others who resist heteronormative scripts—expose the contingency of norms and the violence embedded in their enforcement.

Sedgwick highlights another dimension of normalization in her analysis of the closet.¹²⁹ The very act of requiring individuals to either disclose or conceal their homosexuality becomes a mechanism of regulation, disciplining individuals into self-surveillance.¹³⁰ Normalization here operates less through explicit prohibition than through the social compulsion to conform to expectations of transparency and intelligibility.

The queer critique of normalization thus rejects the idea that the categories of gender and sexuality are natural, stable, or inevitable. Instead, it insists that these categories are historically contingent products of regulatory regimes. To be queer is not to claim a fixed identity but to resist the disciplinary force of norms that demand coherence and conformity.

When we take these three themes together, we can start defining, or at least understanding, queerness. Gender, sexuality, and societal

126. See MICHEL FOUCAULT, *THE HISTORY OF SEXUALITY, VOLUME I: AN INTRODUCTION* 135–59 (Robert Hurley trans., Pantheon Books 1978).

127. See *id.*

128. See BUTLER, *supra* note 97, at 16.

129. See SEDGWICK, *supra* note 17, at 67–90.

130. See *id.*

expectations of desire and normalness serve as tools of authority and dominance. Queerness, in turn, rejects traditional expressions of gender and sexuality, or at least rejects a static understanding and display of sexuality and gender, while also rejecting traditional understandings and displays of desire and normalness. Consequently, queerness threatens the establishment and traditional instruments of authority and power. To be queer is to be disruptive.

B. What it Means to Be Visibly Queer

A complicating feature of understanding queerness is the recognition that there is no right way to be queer.¹³¹ For some queer individuals, their queerness may be in their sexual orientation.¹³² For others, it may be how they perform their gender.¹³³ For others, it may be in how they express their sexual desire. For others, their queerness may be in the fluidity of their sexual orientation, their performance of their gender, or how they feel and exhibit their sexual identity.

Similarly, there is no right way in how to live as a queer person.¹³⁴ There is no requirement for queerness to be visible.¹³⁵ An individual may be disruptive through their gender, sexuality, desire, or rejection of normalness in a way not seen or portrayed to the public.¹³⁶ This

131. See Joanne Spataro, *There's No Right Way to Be Queer*, N.Y. TIMES (June 22, 2018), <https://www.nytimes.com/2018/06/22/opinion/theres-no-right-way-to-be-queer.html> (on file with Syracuse Law Review).

132. See Taylor Kunin-Ur, *Queer Labeling: Why It's Important and Why It's Not*, OUTWRITE (Feb. 13, 2023), <https://outwritenewsmag.org/2023/02/queer-labeling-why-its-important-and-why-its-not/> (on file with Syracuse Law Review).

133. See Rambling Reggie, *How My Queer Sexuality Informs My Gender Expression*, MEDIUM (Aug. 28, 2024), <https://medium.com/prismnpen/queer-sexuality-gender-expression-4fe316dbc5a0> (on file with Syracuse Law Review).

134. See Julie Serano, *Rethinking LGBTQ+ Visibility*, MEDIUM (June 11, 2019), <https://juliaserano.medium.com/rethinking-lgbtq-visibility-69e39f36731> (on file with Syracuse Law Review) (“More importantly, LGBTQ+ people are heterogeneous with regards to our sexual orientations, gender identities and expressions, relationships and desires, and in countless other respects. Thus, any strategy that presumes that we should all behave in some similar fashion — whether it’s in accordance with mainstream norms, or in purposeful defiance of them — strikes me as implausible.”).

135. See Lola Mendez, *I Hid My Queerness for 15 Years to Avoid Further Marginalizing Myself*, HUFFINGTON POST (Feb. 16, 2024, updated Sep. 5, 2024), https://www.huffpost.com/entry/queer-people-of-color-marginalized_n_65ce55fee4b04daca6962b1d (on file with Syracuse Law Review) (discussing how people may choose to not be visible with their queerness for their own safety and protection).

136. See Tiny Tales, *Not Queer Enough: The Unique Struggles of Bisexual Women*, MEDIUM (Sept. 20, 2023), <https://techno-anthroblog.medium.com/not-queer-enough-the-unique-struggles-of-bisexual-women-1ef8aad275bf> (discussing

private display of queerness does not render the individual any less queer or disruptive.¹³⁷

Simultaneously, though, for many queer individuals, their queerness can only be visible,¹³⁸ even if it creates significant public discomfort.¹³⁹ To understand the challenges faced by visibly queer attorneys, we need to understand the centrality of visibility for many queer individuals. A queer attorney does not cease to be a queer individual by nature of their bar license.¹⁴⁰ An exploration of queer voices, even those outside of traditional legal scholarship or mainstream media,

how straight passing bisexual women are deprived of their queer identity, but still queer).

137. See Kenji Yoshino, *Covering*, 111 YALE L.J. 769, 772–73, 836–38 (2002) (describing the pressure to downplay or “cover” stigmatized identities and explaining that such concealment does not eliminate the underlying identity but instead reflects social demands for assimilation).

138. See Giulio Serafini, *How Queerness Gives Me Freedom To Express My Authentic Self*, MEDIUM (Aug. 23, 2024), <https://medium.com/prismnpen/how-queerness-gives-me-freedom-to-express-my-authentic-self-d1daa90311e6> (“My queerness is a crucial element that influences how I express myself in every way: my emotional expression, my sense of style, the way I talk, and how I interact with everyone”); see also Jacob Tobia, *Featured Voices: Why I’m Genderqueer, Professional and Unafraid*, HUFFINGTON POST (June 10, 2014, 01:38 PM), https://www.huffpost.com/entry/genderqueer-professional_b_5476239 (on file with Syracuse Law Review) (“As transgender, genderqueer and gender non-conforming people, we deserve better. We deserve to have our work ethic and intellect respected regardless of how we choose to express our gender identities. We deserve to be able to wear clothing and behave in ways that affirm our gender”).

139. Queer writers frequently engage with and confront societal discomfort with visible queerness in both essays and fiction. See, e.g., Jane Coaston, *More Visible L.G.B.T.Q. People Isn’t a Curiosity or a Crisis – It’s Normal*, N.Y. TIMES (July 20, 2023), <https://www.nytimes.com/2023/07/20/opinion/gay-trans-lgbt-americans.html> (on file with Syracuse Law Review) (discussing critics who criticize the increase in visible queer and transgender individuals); JULIE SERANO, WHIPPING GIRL: A TRANSEXUAL WOMAN ON SEXISM AND THE SCAPEGOATING OF FEMININITY 44–45 (2007) (discussing how the public response to visible queerness caused her own discomfort with her visible transgender identity); TORREY PETERS, DETRANSITION, BABY (2021) (Peters, an openly queer transgender writer, uses a novel to discuss how the public shame towards a transgender body resulted in a transgender woman detransitioning); IMOGEN BINNIE, NEVADA (2013) (Binnie, a transgender woman, uses two individuals in different stages of accepting their transgender identity to explore the public discomfort with queerness and the internal effects it has on queer individuals); Gillian Branstetter, *An Anxious Freedom*, THE AUTONOMY (Aug. 31, 2024), <https://autonomy.substack.com/p/an-anxious-freedom> (on file with Syracuse Law Review) (discussing how visible transness creates discomfort as it forces cisgender individuals to confront their own anxieties).

140. See generally Swethaa S. Ballakrishnen, *Law School as Straight Space*, 92 FORDHAM L. REV. 91 (2023) (discussing how non-heteronormative law students and lawyers perceive and navigate a legal profession structured around cis/hetero assumptions).

helps to understand why queer visibility matters and why queer visibility may be inherently disruptive.¹⁴¹

When examining the voices of visibly queer individuals, a common refrain is that their queerness is rooted in their visual representation of their sexuality, in their performance of gender, in their rejection of what is deemed normal and acceptable, or in their fluidity.¹⁴² The visible nature of their queerness allows them to be disruptive, to challenge the binaries of gender and sexuality, to challenge what society deems normal and acceptable.¹⁴³ For these queer individuals, queerness emerges through external expression¹⁴⁴ counter to socially accepted appearances—hair styles and color,¹⁴⁵ jewelry choices, the

141. See generally Rachel Lopez, *Participatory Law Scholarship*, 123 COLUM. L. REV. 1795 (2023) (in discussing why professors should write scholarship along with non-lawyers who have been impacted by the matters discussed in the scholarship, Lopez highlights that people with lived experiences confronting the daily realities of injustice are needed to reimagine broken legal structures).

142. See Megan Sims, *Queering the Body*, HARV. INDEP. (2016), <https://harvardindependent.com/queering-the-body/> (on file with Syracuse Law Review) (discussing visual representations of queerness to “include piercings besides the earlobes (particularly cartilage, nostril, septum, and eyebrow), tattoos, and non-traditional hair colors and styles (especially short hair and undercuts)”, as a way to disrupt the conventions of hetero- and cis-normativity).

143. See Jessica A. Clarke, *They, Them, and Theirs*, 132 HARV. L. REV. 894, 901 (2019) (noting that the “increased visibility of a nonbinary minority...poses a direct challenge to all modes of sex segregation...”).

144. See Em Monforte, *What Does It Mean to Be Queer? I photographed over 70 young people to find out.*, CUT (June 20, 2023), <https://www.thecut.com/2023/06/emily-monforte-queer-lgbtqia-photo-series-pride-month.html> (on file with Syracuse Law Review) (highlighting queer individuals who define queerness by their outward appearance).

145. See generally Simedar Jackson, *5 Queer People Share How Their Hair Is Part of Their Identity*, TZR (June 28, 2024), <https://www.thezoereport.com/beauty/queer-hairstyles> (on file with Syracuse Law Review) (discussing how untraditional hair styles give queer individuals a sense of autonomy and resistance); see also Hannah McCann, *For Queer People, Hair is Subversive – But It’s Also About Identity & Belonging*, BEAUTY (Feb. 22, 2023), <https://www.refinery29.com/en-au/queer-beauty-hair> (on file with Syracuse Law Review) (discussing that queer beauty is inclusive of untraditional hairstyles and colors).

wearing or not wearing of make-up,¹⁴⁶ visible tattoos,¹⁴⁷ piercings,¹⁴⁸ shoes,¹⁴⁹ or gendered clothing choices.¹⁵⁰ For example, a third year queer law student assigned male at birth noted that their “queerness is not only about how you identify; it’s about how the world views you,” and “for me, having my nails painted is an aesthetic and political signifier—a means of indicating from afar that I have unlearned associations socially and stereotypically attached to one gender and not another.”¹⁵¹

Queerness may be visible, though, beyond appearance. Some queer individuals make their queerness public through their voice, whether in how they speak, how they articulate, how they use slang, or what they choose to disclose, whether it be their identity, their

146. See Rae Nudson, *On Makeup as a Tool for Queer Resistance*, LITERARY HUB (July 14, 2021), <https://lithub.com/on-makeup-as-a-tool-for-queer-resistance/> (on file with Syracuse Law Review) (discussing how the use of make-up before and after the Stonewall Raids by queer individuals served as broader protest and disruption).

147. See Mel Woods, *The queer euphoria of tattooing*, XTRA (Oct. 2, 2023), <https://xtramagazine.com/culture/the-queer-euphoria-of-tattooing-257599> (on file with Syracuse Law Review) (“Queer and trans people have long gotten tattoos to mark milestones in their personal lives, commemorate queer history, to be a part of weird underground camp culture”); see also Corinne Werder, *The Powerful Connection Between Tattoos and Sexual Identity*, GOMAG (July 28, 2017), <https://gomag.com/article/tattoo-queer-culture/> (on file with Syracuse Law Review) (discussing the importance of tattoos to the queer community).

148. See Clay Johnson, *Piercings in Queer Culture*, CULTURAL DAILY (Feb. 14, 2023), <https://www.culturaldaily.com/piercings-in-queer-culture/> (on file with Syracuse Law Review) (focusing on the importance of visible piercings in queer life and as an identifier of ones’ queerness).

149. See Nicky Alcenat, *How My Love of Heels Helped Me Lean Into My Transgender Womanhood*, VOGUE (May 31, 2023), <https://www.vogue.com/article/how-my-love-of-heels-helped-me-lean-into-my-transgender-womanhood> (on file with Syracuse Law Review) (discussing how wearing high heels helped accept a transgender identity).

150. See Victoria Clarke & Kevin Turner, *Clothes Maketh the Queer? Dress, Appearance and the Construction of Lesbian, Gay and Bisexual Identities*, 17 FEMINISM & PSYCH. 267, 275 (2007) (“[I]t is clear from this and other studies that [dress and appearance] are an important part of the everyday realities of (at least some) lesbians, gay men and bisexuals, and of the performativity of identity”); see also Sadhbh O’Sullivan et al., *The Outfits I Wear to Project & Protect My Queerness*, FASHION (June 11, 2021, 4:59 PM), <https://www.refinery29.com/en-us/2021/06/10522240/queer-style-fashion-photo-story> (on file with Syracuse Law Review) (“Dress is a way for me to reclaim my body from other people’s conceptions of it. It allows me to make my own rules and pave my own path”).

151. Slater Stanley, *Lifestyle Balancing: Queerness and the Practice of Law*, 57 U.S.F.L. REV. F. 502, 508 (2023).

partner, or the different ways their reject normalcy.¹⁵² Finally, for some queer individuals, their queer visibility is inherently tied to their outward life, whether it is through their partner, their career, or their advocacy.¹⁵³

Ultimately, in understanding the experience of queer attorneys in entering the courtroom space, we need to understand that there are different valid ways to be queer and that there are queer lawyers and there are queer trial attorneys presently. However, we must be aware that for many queer individuals, their queerness is visible. And that visible queerness gives rise to issues when they attempt to enter the legal profession and the courtroom space as visibly queer attorneys.

III. VISIBLE QUEERNESS AT THE GATE

At this point, we should understand that the legal profession serves a gatekeeping function. To preserve white supremacy, the legal profession excluded Black attorneys from the profession and then the courtroom. To preserve white male supremacy, the legal profession excluded cisgender female attorneys from the profession and then the courtroom. When pressured or forced to finally let Black and cisgender female attorneys enter the profession and the courtroom, the

152. See, e.g., Zachary Pace, *My Queer Voice: It has outed me my whole life. Why?*, YALE REV., <https://yalereview.org/article/my-voice-has-outed-me-my-whole-life> (on file with Syracuse Law Review) (“You can hear, as soon as I start to speak—effeminate inflection, nasal vowels, slight lisp—qualities of tone that may sound dissonant from my gender presentation: a queer voice.”) (last visited Feb. 2, 2026); Susan S. Lanser, *Queering Narrative Voice*, 32 TEXTUAL PRACTICE 923, 924–25 (2018) (on narration that articulates queer sexuality explicitly or implicitly, including gender ambiguity); Colin Whitworth, *Finding My Front Porch: An Autoethnography of Queer Southern Intersections*, 4 J. AUTOETHNOGRAPHY 102, 110 (2022) (describing voice as “physicalization of the tensive relationship between my homeplace and my sexuality”).

153. See, e.g., MARGOT CANADAY, QUEER CAREER: SEXUALITY AND WORK IN MODERN AMERICA (2023) (exploring how queer workers made decisions about being visible at work, risked exposure, rejected former discretion); Jakob Svensson et al., *We Are Queer and the Struggle Is Here! Visibility at the Intersection of LGBT+ Rights, Post-Coloniality, and Development Cooperation in Uganda*, 28 SEXUALITIES 1067, 1071 (2024) (describing visibility as central in activism and partner relational disclosure); Kate Lowry, *On Owning an Out Queer Presence*, MEDIUM (June 25, 2024), <https://medium.com/@kate.lowry/on-owning-an-out-queer-presence-af331e212513> (reflecting on public presence via self-disclosure) (on file with Syracuse Law Review); Bea Bischoff, *I Dress ‘Straight’ to Protect My Clients*, RACKED (July 5, 2017, 11:03 AM), <https://www.racked.com/2017/7/5/15874342/queer-lawyer-straightness-performance> [<https://perma.cc/T5FA-BDJL>] (an attorney discussing how she moves her wedding ring from her ring finger before meeting clients to avoid having to disclose she is married to another woman).

legal profession conditioned admission on the expectation of “professionalism,” which required Black and cisgender female trial attorneys to conform in dress, appearance, and mannerisms deemed acceptable and appropriate by the white, male, straight, and cisgender dominated legal profession.¹⁵⁴

We also know, though, that queerness is inherently disruptive. To be queer means a rejection of traditional standards of gender, sexuality, and normalcy. How then can a visibly queer attorney enter a profession and courtroom space that requires conformance and remain visibly queer?

The conflict between the legal profession and visibly queer attorneys is inevitable. This Part explores what happens visibly queer attorneys approach the gate to the legal profession and the courtroom. After discussing how and why the profession has largely closed the gate, it then explores why any condition of entrance that includes conformance is unattainable by visibly queer attorneys. From there, this Part explores the consequence of the restricted gate with an unattainable price of admission on queer attorneys, queer plaintiffs and defendants, and the profession.

A. The Closed Gate

Queer attorneys represent a sizeable minority in the legal profession. In 2017, the National Association for Law Placement (“NALP”) surveyed approximately 100,000 lawyers in the private sector.¹⁵⁵ Of those 100,000 attorneys, only 2.6% (2,664 overall) identified as part of the LBGT community.¹⁵⁶ Amongst those 2,664 attorneys, only 880 identified as firm partners.¹⁵⁷ Comparably, while recognizing that no “reliable statistics are available on the total number of lawyers who identify as LGBTQ in the legal professional overall,” a 2023 ABA study of 785 law offices revealed that 4.6% of those attorneys identified as LGBTQ.¹⁵⁸ In comparison, a 2024 Gallup poll found that 9.3%

154. See Cooper, *supra* note 21, at 35–36.

155. See *LGBT Representation Among Lawyers in 2017*, NALP (Jan. 2018), <https://www.nalp.org/0118research> (on file with Syracuse Law Review).

156. See *id.*

157. See *id.*

158. See *Profile of the Legal Profession 2024: Demographics*, AM. BAR ASS’N, <https://www.americanbar.org/news/profile-legal-profession/demographics/> (on file with Syracuse Law Review) (last visited on Sept. 27, 2025).

of American adults identified as LGBTQ.¹⁵⁹ This disparity reflects that the legal profession remains largely closed to queer individuals.

Additionally, the historical example of openly gay attorneys supports the understanding that the legal profession is largely closed to visibly queer individuals. Swethaa Ballakrishnen highlights that there “are historic accounts of both latent and blatant homophobia in the legal profession.”¹⁶⁰ For example, for much of the twentieth century, the legal profession treated gayness as evidence of moral unfitness, allowing state bar associations to render openly gay individuals ineligible for admission to the bar.¹⁶¹ In states across the country, bar examiners routinely asked applicants about their sexual orientation, and affirmative answers—or even suspicions—were grounds for denial.¹⁶² The underlying assumption was that being gay was incompatible with the character and fitness required of a lawyer.

Even after the formal abandonment of these explicit bans, the stigmatization of gay and lesbian lawyers persisted. Accounts from the 1970s and 1980s document that bar committees and law firms considered homosexuality to be a *per se* character defect, lumped alongside dishonesty or criminality.¹⁶³ In *Re Kimball*, the New York Court of Appeals in 1973 admitted a gay applicant but emphasized that “homosexuality” was relevant, just not dispositive, to fitness to practice law,¹⁶⁴ reflecting the profession’s view of sexual orientation as a problem to be monitored rather than an identity to be embraced.

For those queer lawyers who have entered the profession, they have been met with both implicit and explicit discrimination.¹⁶⁵ A 2020 ABA study concluded that lawyers who either identify as having disability or who identify as LGBTQ+ report experiencing “both

159. See Jeffery Jones, *LGBTQ+ Identification in U.S. Rises to 9.3%*, GALLUP (Feb. 20, 2025), <https://news.gallup.com/poll/656708/lgbtq-identification-rises.aspx> (on file with Syracuse Law Review).

160. Ballakrishnen, *supra* note 140, at 1120.

161. See Joel J. Finer, *Gay and Lesbian Applicants to the Bar: Even Lord Devlin Could Not Defend Exclusion*, 10 COLUM. J. GENDER & L. 231, 256 (2001).

162. See *id.* at 246–47.

163. See ANN SOUTHWORTH, *LAWYERS OF THE RIGHT: PROFESSIONALIZING THE CONSERVATIVE COALITION* 164–65 (John M. Conley & Lynn Mather eds., 2008); see also Ralph Slovenko, *The Homosexual and Society: A Historical Perspective*, 10 U. DAYTON L. REV. 445 (1985) (a series of symposium essays regarding the legal exclusion of gay attorneys and character standards).

164. In *Re Kimball*, 301 N.E.2d 436 (N.Y. 1973).

165. See Peter Blanck et al., *Diversity and Inclusion in the American Legal Profession: Discrimination and Bias Reported by Lawyers with Disabilities and Lawyers Who Identify as LGBTQ+*, 47 AM. J.L. & MED. 9, 12–15 (2021) (describing the under-representation of LGBTQ lawyers in the legal profession).

subtle and overt forms of discrimination in their workplaces.”¹⁶⁶ Specifically, nearly half “of the people identifying as LGB, and about one-third . . . of the people identifying with other gender identities such as transgender, agender, or genderfluid, reported subtle but unintentional biases.”¹⁶⁷

Such discrimination appears to extend into the courtroom space. Todd Brower, the Judicial Education Director of Williams Institute on Sexual Orientation Law and Public Policy at UCLA, compiled several studies that reflect “a widespread pattern of disparate and unequal treatment and experiences faced by LGBT court users, witnesses, and parties in courtrooms, jury rooms and other segments of the judicial system.”¹⁶⁸ These studies include a Florida study where 14% of litigants reported courts did not show fairness and respect to LGBTQ individuals, a New Jersey study where 45% of lesbian and gay court users reported experiencing or observing parties being treated poorly because of their sexual orientation, and a 2015 study indicating that 13% of transgender and gender nonconforming people being denied equal treatment or being verbally harassed.¹⁶⁹

Brower noted that such treatment extended to queer attorneys and court employees. He emphasized a California study that found 25% of gay and lesbian court employees reported experiencing discrimination.¹⁷⁰ Further, a New Jersey study found that 78% of lesbian and gay court employees heard a co-worker, supervisor, or judge make derogatory statements about gay individuals.¹⁷¹

Taken together, the lack of queer representation in the legal profession, coupled with the discrimination faced by queer professionals both inside and outside the courtroom, suggest that the legal profession continues to largely close the gate of entry—to both the profession and the courtroom—for visibly queer attorneys.

166. Peter Blanck et al., *Diversity and Inclusion in the American Legal Profession: First Phase Findings from a National Study of Lawyers with Disabilities and Lawyers Who Identify as LGBTQ+*, 23 UNIV. D.C. L. REV. 23, 50 (2020).

167. *Id.* at 47.

168. Letter from Todd Brower, Jud. Educ. Dir. Of Williams Inst. on Sexual Orientation L. and Pub. Pol’y at Univ. of Cal. L.A., to Richard Durbin, U.S. Sen. & Charles Grassley, U.S. Sen. (Mar. 17, 2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Testimony-Equality-Act-Judicial-System-Mar-2021.pdf> (on file with Syracuse Law Review).

169. *See id.*

170. *See id.*

171. *See id.*

B. The Insurmountable Price of Admission

Black attorneys and cisgender female attorneys also encountered a legal profession hostile to their entry. Even once they entered the profession, they then encountered harassment, discrimination, and additional barriers and obstacles when trying to enter the courtroom space. To enter both the profession and the courtroom, many of these attorneys elected to conform by adhering to professionalism standards that moderated dress, appearance, and mannerisms.

Conceivably, the profession may afford the same cost of admission to visibly queer advocates. Quite simply, the profession may allow visibly queer advocates into the profession and the courtroom space so long as they conform to traditional standards of dress, appearance, and mannerisms. Consider the lived experiences of queer attorneys. Bea Bischoff discussed her and her wife's experiences as queer attorneys.¹⁷² She discusses that her wife keeps a "bifurcated wardrobe: Half her closet is filled with clothes she feels comfortable and confident in, half is clothes she hates but wears to court anyway."¹⁷³ For Bischoff, she "amassed a makeup collection and tentatively bought a few pairs of low heels."¹⁷⁴ She "also let [her] side-shave grow out into a shoulder-length bob."¹⁷⁵ She notes that when they are out together in their "court clothes," their "gay vibe is so thoroughly masked that people assume [they] are colleagues having a working dinner."¹⁷⁶ Bischoff recognizes that she and her wife chose to excise their queerness from the courtroom and that such conduct "reinforces the idea that everyone should be able to at least *appear* straight and cisgender in court" and that this "performance of gendered professionalism. . . reinforces the confines of the gender binary and limits the space for our trans and gender-nonconforming colleagues."¹⁷⁷

Bischoff's experience reflects the debate for visibly queer attorneys – do I mask my queerness to gain entry into the courtroom space? Do I remove my visible piercing, hide my tattoos, change my hair, my gender representation, my wardrobe, how I behave outside of work, how I engage with my partner publicly to gain access to the courtroom? Of note, Bischoff and other visibly queer attorneys do not

172. See Bischoff, *supra* note 153.

173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.*

177. Bischoff, *supra* note 153.

contest that such expectations exist, they only differ in their willingness to conform.¹⁷⁸

Additionally, the behavior of some judges towards queerness reinforces the belief that queer attorneys cannot be visibly queer in the courtroom space. An Arizona study found that 47% of those surveyed heard disparaging remarks about gay men or lesbians in courthouse public areas.¹⁷⁹ Judge Kyle Duncan, of the Fifth Circuit Court of Appeals, issued an opinion in a case involving a transgender employee where he intentionally refused to use the plaintiff's correct pronouns, writing that while he could use female pronouns as a matter of courtesy, no one could "make him."¹⁸⁰ For queer attorneys, judges such as these tell them that their visible queerness is not welcomed or accepted in their courtrooms. The queer attorneys must then elect whether to mask or hide their visible queerness and conform to traditional norms of appearance and dress to placate these judges.

Nonetheless, as discussed in the prior Part, the disruptive nature of queerness fundamentally prevents many visibly queer individuals from meeting the profession's expectation of seamless conformity. If a visibly queer person succeeds in ceasing to disrupt established gender and sexuality norms, they cease to be visibly queer. Their distinct identity becomes erased.¹⁸¹ As a result, any condition of entry into the legal profession—or specifically, the courtroom—that mandates visibly queer attorneys to hide or moderate their visibility is, in effect, a demand for them to relinquish their very identity.

This requirement to erase an identity carries profound and far-reaching implications. It is not a simple matter of adjusting one's appearance or behavior to meet professional standards. Rather, it is a demand for personal erasure, with consequences so significant that such a condition should be recognized as unattainable and unacceptable for visibly queer attorneys.¹⁸² These consequences include a denial of

178. See Cooper, *supra* note 21, at 12–13 (“The lesbian who is uncomfortable wearing skirts may consider whether she should adopt more traditional, yet for her, profoundly uncomfortable, symbols of femininity. She may wonder if her physical awkwardness in this feminine costume will actually facilitate her acceptance at work-or undermine it if her discomfort shows. Similarly, a transgender woman may wonder if she would be more successful if she dressed as a biological man, knowing she will pay a deep emotional cost if expected to remain closeted.”).

179. See Brower, *supra* note 168.

180. See *United States v. Varner*, 948 F.3d 250, 255 (5th Cir. 2020).

181. See generally Kenji Yoshino, *The Epistemic Contract of Bisexual Erasure*, 52 STAN. L. REV. 353, 356–61 (2000).

182. See Elliott Page, *The Euphoria of Elliott Page*, ESQUIRE (June 1, 2022, 6:00 AM), <https://www.esquire.com/entertainment/tv/a40011366/elliott-page->

authenticity, a lack of queer representation in the trial advocacy profession, and an increased burden on those visibly queer attorneys who do manage to enter the trial courtroom.

1. A Denial of Authenticity in Favor of Codeswitching or Closeting

For some visibly queer advocates, the prospect of entering the legal profession as a trial lawyer may seem worth the personal cost of conformity.¹⁸³ These individuals might choose to suppress their visible queerness and adhere to the professionalism standards dictated by the profession. However, this requirement fundamentally denies these attorneys the right to live authentically, forcing them to compromise their identity in order to pursue their careers.¹⁸⁴ As Elizabeth Cooper discussed, “[m]ost people have a sense of their ‘true selves’ and feel genuine and fully alive when acting in concert with their primary values, morals, or identity.”¹⁸⁵

Importantly, accepting these restrictive conditions does not change the inherent identity of visibly queer attorneys. They do not suddenly become straight, cisgender men or women. Their queerness—and the desire to express it visibly—persists. Instead, these attorneys must resort to strategies such as codeswitching, where they reveal their queerness outside the bounds of their professional roles or courtroom settings, yet conform to traditional norms while at work.¹⁸⁶

umbrella-academy-euphoria/ (on file with Syracuse Law Review) (although Page is not an attorney, he discusses the difficulties with hiding his visible queerness for his professional obligations. Specifically, he shares that being forced to wear a dress for a movie premiere made him want to die.).

183. See, e.g., Bischoff, *supra* note 153 (discussing how an attorney performed “gendered professionalism” every day to hide her queerness to as to not hurt her clients).

184. It should be noted that having the opportunity to be visibly queer in any setting reflects a great amount of privilege. For many queer individuals, visible representation of their queerness may result in social excommunication, physical injury, loss of financial opportunities, or even death. Quite simply, for many queer individuals, their only choice is invisibility, whether achieved through codeswitching or closeting. See Allison Turner, *HRC REPORT: Starting Data Reveals Half of LGBTQ Employees in the U.S. Remain Closeted at Work*, HUMAN RIGHTS CAMPAIGN (June 25, 2018), <https://www.hrc.org/news/hrc-report-startling-data-reveals-half-of-lgbtq-employees-in-us-remain-clos> (on file with Syracuse Law Review).

185. Cooper, *supra* note 21, at 29.

186. See generally Madeleine Holden, *The Exhausting Work of LGBTQ Code-Switching*, VICE (Aug. 12, 2019, 1:00 PM), <https://www.vice.com/en/article/the-exhausting-work-of-lgbtq-code-switching/> (on file with Syracuse Law Review) (defining code switching as members of marginalized communities adjusting their voices, speech patterns, mannerisms, and behavior to blend in across various social settings).

Alternatively, some may choose or feel compelled to remain in the closet, concealing their true selves from colleagues and clients.

Both codeswitching and closeting exact considerable mental health costs.¹⁸⁷ Psychological research on queer individuals shows that concealing one's identity or codeswitching is associated with heightened anxiety, depression, distress, and reduced well-being.¹⁸⁸ For example, a recent meta-analytic review of 193 studies with over 92,000 participants found sexual orientation concealment has a small but consistent positive association with internalizing mental health problems—depression, anxiety, psychological distress, and disordered eating.¹⁸⁹ The same study observed that while concealment might protect against some external harms, it separates individuals from queer community support, which in turn exacerbates emotional vulnerability.¹⁹⁰

Moreover, trans-specific qualitative research confirms even more acute effects. A study of 30 transgender and gender nonconforming adults in the U.S. found that identity concealment based on context is a persistent stressor; participants reported fear for personal safety, emotional distress from hiding gender history, and internal conflicts about passing or blending.¹⁹¹ Another study using a 14-day daily diary method among trauma-exposed sexual minority women and transgender and gender diverse persons measured how daily stressors and threat appraisal correlated with elevated identity concealment and, in turn, increased psychological distress.¹⁹²

187. See Lesley Wexler & Anthony Ghiotto, *The Transgender Military Ban: Part II: Collateral Consequences for Mental Health Access and Lessons for Future Litigants*, VERDICT (Apr. 9, 2025), <https://verdict.justia.com/2025/04/09/the-transgender-military-ban-part-ii-collateral-consequences-for-mental-health-access-and-lessons-for-future-litigants> (on file with Syracuse Law Review) (describing how queer and closeted servicemembers feel the need to codeswitch due to recent policies and stigma, neglecting their mental health).

188. See Kiki Fehling, *LGBTQ+ Mental Health and the Role of Minority Stress*, PSYCH. TODAY (Mar. 11, 2024), <https://www.psychologytoday.com/us/blog/building-a-life-worth-living/202403/lgbtq-mental-health-and-the-role-of-minority-stress> (on file with Syracuse Law Review).

189. See John E. Pachankis et al., *Sexual Orientation Concealment and Mental Health: A Conceptual and Meta-analytic Review*, 146 PSYCH. BULL. 831 (2020).

190. See *id.*

191. See Brian A. Rood et al., *Identity Concealment in Transgender Adults: A Qualitative Assessment of Minority Stress and Gender Affirmation*, 87 AM. J. ORTHOPSYCHIATRY 704, 704–10 (2017).

192. See Jillian R. Scheer et al., *Daily Minority Stressors, Threat Appraisal, and Identity Concealment Among Trauma-Exposed Sexual Minority Women and Transgender and Gender-Diverse People*, 72 J. COUNSELING PSYCH. 211, 211 (2025).

Overall, for visibly queer attorneys who elect to hide their visibility, they may enter the profession, but they do so at great personal costs—their mental health and their sense of community.

2. *Lack of Queer Legal Representation in the Courtroom*

Visibly queer representation in the professions matter. Patricia Grayhall shared her experiences as a visibly queer physician.¹⁹³ She emphasized that “I can’t help but believe the visible presence of queer doctors, especially in positions of power in more medical schools and residency training programs, would also improve health care outcomes for queer patients as the increased presence of women doctors did for women’s health care.”¹⁹⁴ To Grayhall, queer individuals need specialized medical care, and at times they need more significant medical care than cisgender individuals.¹⁹⁵ In her experience, queer individuals are then more likely to seek out this care if they can receive it from a queer physician.¹⁹⁶ She makes the additional argument that queer physicians are in fact able to provide better medical care to queer patients than cisgender patients.¹⁹⁷

The legal profession and the trial advocacy community have the same need for queer representation, especially considering how significant a minority queer identifying individuals are in the legal profession.¹⁹⁸ As discussed previously, the visibly queer community, especially the transgender community, has come under both public and private attack. These communities require access to the courtroom to both enforce the rights they continue to have, but to restore the rights

193. See Patricia Grayhall, *Why Visible Queer Physicians Matter*, MINDY MCGINNIS (Nov. 1, 2022), <https://www.mindymcginnis.com/blog/grayhall> (on file with Syracuse Law Review).

194. *Id.*

195. See *id.* Grayhall points to queer youth being a higher risk for substance abuse, sexually transmitted diseases, cancers, cardiovascular diseases, obesity, bullying, anxiety, and depression. She also notes that queer adults have “poorer physical and mental health and a higher incidence of preventable illness and substance abuse.” *Id.*

196. See *id.*

197. See *id.* Grayhall argues that women doctors are “more likely to follow guidelines, collaborate with specialists and ask patients about social circumstances that may affect their health; we also spend more time with patients,” and analogizes that queer doctors would provide the same benefits to queer patients. *Id.*

198. See Blanck, *supra* note 165 at 12–15 (describing the under-representation of LGBTQ lawyers in the legal profession); see also Stanley, *supra* note 151, at 509–10.

they have lost.¹⁹⁹ For these queer plaintiffs and defendants, the ability to work with and be alongside a visibly queer attorney may very well increase their willingness to proceed to trial.²⁰⁰ Similarly, visibly queer attorneys may be better suited to tackle queer issues and to represent visibly queer clients.²⁰¹

For example, Chase Strangio became the first transgender lawyer to argue in front of the U.S. Supreme Court when he challenged a Tennessee law barring transgender youth from accessing gender affirming care in *U.S. v. Skrametti*.²⁰² In discussing his advocacy, he emphasized his personal connection to the case. He shared, “I have this deep, intimate and personal connection to the work that I do that can make it both harder, but also more significant more motivating.”²⁰³ Strangio added that:

The central arguments are about not just the legitimacy of trans healthcare, but about, in some sense, the legitimacy of trans people, as members of civic life and public life. I think it just wouldn’t be possible to feel more connected to it. It has everything to do with my experiences in the world and my prospects for living in the United States in the future.²⁰⁴

Strangio’s example demonstrates the need for visibly queer advocates. He is advocating against a state seeking to restrict access to essential gender affirming care. And he is also doing so as a visibly queer attorney, breaking into the Supreme Court space to do so, while also motivated and fueled in his advocacy by his own personal connection to the issues presented. His presence is disrupting the system,

199. See 5 tips on best representing LGBT clients, AM. BAR ASS’N (Apr. 2017), <https://www.americanbar.org/news/abanews/publications/youraba/2017/april-2017/5-tips-on-best-representing-lgbt-clients/> (on file with Syracuse Law Review) (noting that LGBTQ clients need attorneys familiar with specific rights and access barriers for effective representation).

200. See Lark Lewis, *Hiring an Attorney in the LGBTQ+ Community*, FINDLAW (Jan. 28, 2025), <https://www.findlaw.com/lgbtq-law/hiring-an-attorney-in-the-lgbtq-community.html> (on file with Syracuse Law Review).

201. Shannon D. Taylor, *Representing Transgender and Gender-Diverse Clients*, OKLA. BAR J. (May 2020), <https://www.okbar.org/barjournal/may2020/obj9105taylor/> (on file with Syracuse Law Review) (emphasizing how gender-diverse clients may require attorneys who understand their lived experience).

202. See Solcyré Burga, *The First Out Trans Lawyer to Argue Before the Supreme Court Is Feeling the Pressure*, TIME (Oct. 21, 2024, 12:56 PM), <https://time.com/7049118/chase-strangio-supreme-court-interview/> (on file with Syracuse Law Review).

203. *Id.*

204. *Id.*

but he is doing so understanding the importance of the issue for himself and countless others.

Thus, the legal profession needs visibly queer trial lawyers and visibly queer individuals need them as well. However, by conditioning entry upon unattainable conformance, the legal profession deprives both the profession and queer individuals of readily available visibly queer representation. As result, both the profession and visibly queer individual suffer.

3. Extra Weight and Responsibility Placed Upon Current Visibly Queer Trial Lawyers

Strangio provides another lesson relevant to the experience of queer trial lawyers; there do exist visibly queer trial attorneys, even if the profession largely blocks entry into the profession. Visibly queer trial attorneys continue to fight discrimination and to ensure the rights of other visibly queer and minority population.²⁰⁵ However, they remain a significant minority in legal practice.²⁰⁶ Consequently, they carry an extra burden of emotional labor, while also burdened with attacks on their own queerness and their own presence in the courtroom.²⁰⁷

Elizabeth Cooper succinctly addresses the impact that microaggressions have on marginalized populations.²⁰⁸ She notes that “the vague nature of microaggressions make them particularly powerful. Indeed, they can lead one to feel powerless and invisible, or fungible with other members of the outsider group.”²⁰⁹ Beyond microaggression, Cooper emphasizes that “[s]cholars have found that even ‘trivial’ or isolated expressions of unintentional bias can cause

205. See generally Jennifer L. Levi et al., *Inside the Legal Fight for Trans Rights*, BOS. REV. (Mar. 6, 2024), <https://www.bostonreview.net/articles/inside-the-legal-fight-for-trans-rights/> (on file with Syracuse Law Review) (two visibly queer transgender attorneys discussing both the importance and difficulty in representing visibly queer and transgender individuals).

206. See Catherine Lovering, *The State of LGBTQ+ Representation in the Legal Profession: Stats, Trends & Challenges 2025*, MARTINDALE-AVVO (June 25, 2025), <https://www.martindale-avvo.com/blog/the-state-of-lgbtq-representation-in-the-legal-profession-stats-trends-challenges-2025/> (on file with Syracuse Law Review) (“The challenges faced by LGBTQ+ members of the profession can be multifaceted and complicated.”).

207. See generally Cooper, *supra* note 21 at 12–13. See also ABA study: *Disabled, LGBTQ+ lawyers face discrimination*, AM. BAR ASS’N (July 20, 2020), <https://www.americanbar.org/news/abanews/aba-news-archives/2020/07/aba-study-lgbtq-disabled-lawyers/> (on file with Syracuse Law Review).

208. See Cooper, *supra* note 21, at 32–39.

209. *Id.* at 37–38.

harm to the recipient, including repressed anger, low self-esteem, and physical health problems.²¹⁰

As discussed earlier, there is significant empirical evidence to support that LGBTQ attorneys experience discrimination and microaggressions. Additionally, there is anecdotal evidence to support that visible queer trial attorneys deal with these microaggressions and expressions of bias regularly. Shane McCammon, senior litigation associate at a global law firm, shared that she feels she must work harder than other individuals because when she walks into a courtroom as a visibly queer transgender woman, all the eyes are on her.²¹¹ Even before she walks into the courtroom, she must deeply think about what she will wear and how it will present her queerness.²¹² Then once she is in court, she constantly worries about whether she is going to be awkward, will she be misgendered, or will someone say something rude or homophobic.²¹³

She also discusses how queer trial attorneys must take time and effort to make sure courts use the right honorifics.²¹⁴ She noted how her nonbinary colleagues often file motions with the court to ensure that the court uses the right honorifics with them.²¹⁵ McCammon highlights that straight cisgender advocates do not have to file motions such as these, nor do they have to worry about being misgendered or having someone attack them for their visible identity.²¹⁶

Taken together, for queer trial attorneys, they must put in extra energy and embrace extra stress, when the very nature of trial work already necessitates a great amount of energy and inflicts substantial stress. And of course, this burden is placed on top of the already significant burden of being a visibly queer person in the United States. It is not unreasonable to anticipate that these visibly queer attorneys may experience burnout, harassment, and unmanageable emotional pressure that threatens their continued presence in trial advocacy.

In sum, when visibly queer attorneys attempt to enter either the legal profession or the courtroom space, they find both largely closed to them. The legal profession continues to close these spaces to visibly

210. *Id.* at 37.

211. See Telephone interview by Anna Gorman with Shane McCammon, Senior Litigation Career Associate, Orrick (Aug. 24, 2025) [hereinafter McCammon Interview].

212. See *id.*

213. See *id.*

214. See *id.*

215. See *id.*

216. See McCammon Interview, *supra* note 211.

queer people to maintain a white, male, cisgender, straight supremacy that mirrors the general public's discomfort with visible queerness. So long as visible queerness confronts and disrupts the profession's standards of professionalism and its members' own traditional binary identities, the gate of entry is likely to continue to be closed to visibly queer attorneys. The profession, however, may open the gates so long as visibly queer attorneys erase their identity by making their queerness invisible. But for many queer attorneys, such a price is one they cannot and will not pay. Consequently, both the profession and visibly queer individuals suffer greatly.

IV. SOLUTIONS

There is a relatively straightforward solution to ensuring that visibly queer trial lawyers have access to the courtroom space. The legal profession can simply allow any attorney that meets the required educational and character and fitness requirements for licensure to enter the profession, regardless of race, gender, or sexual orientation. From there, the legal profession can then remove conformance in dress, appearance, and mannerisms from its understanding of professionalism,²¹⁷ allowing all visibly queer attorneys with support to comfortably enter the courtroom space.

Such a solution is likely pollyannish and unrealistic. Consider a recent real-world example. In 2024, I hosted and sponsored a symposium titled, "*What it Takes to Be a Trial Lawyer, If You're Not a Man.*"²¹⁸ In many ways, that symposium, and Lara Bazelon's similarly

217. See, e.g., Esther Nir & Dror Nir, 1 CRIM. DEF. TECHNIQUES § 1A.04 (2025) ("As a general rule, trial counsel should dress conservatively and avoid projecting an appearance that may negatively impact jurors such as wearing body piercing, visible tattoos, unnatural hair coloring or displaying other types of 'edgy' grooming."); Daniel A. Procaccini, *First (And Lasting) Impressions*, 59 R.I. BAR J. 15, 16 (2010) (a sitting judge discussing that there is a relationship between attorneys' professionalism and their credibility in the courtroom and that professionalism includes how an attorney dresses and appears in the courtroom); Martha Neil, *Judge creates a stir by developing a dress code for female attorneys*, ABA J. (June 13, 2013), https://www.abajournal.com/news/article/judge_creates_a_stir_by_developing_a_dress_code_for_female_attorneys (on file with Syracuse Law Review); *Sandstrom v. State*, 309 So. 2d 17, 19, 23 (Fla. Dist. Ct. App. 1975) (the court affirming that a lawyer refusing to wear a tie and instead wearing "white suit, a sport shirt open at the neck, and a necklace with a round gold pendant" did constitute contempt of court); *State v. Cherryhomes*, 840 P.2d 1261, 1262 (N.M. Ct. App. 1992) (finding that a lawyer who wore a bandana instead of a tie did in fact violate the courtroom rules for appearance).

218. *Anderson Center Symposium: 2024 Events*, UNIV. OF ILL. URBANA-CHAMPAIGN, <https://anderson-center-symposium.law.illinois.edu/2024-events/> (on file with the Syracuse Law Review) (last visited Feb. 17, 2026).

titled Atlantic piece,²¹⁹ inspired this Article. I hosted a panel that explored issues of dress, appearance, and mannerisms for female trial attorneys. The panel consisted of four cisgender female trial attorneys, whose identities and experiences extended beyond races and practice areas. Somewhat surprisingly, the four panelists represented a moderate and conservative perspective for female trial attorneys. They seemed to agree that female advocates needed to wear makeup, dress femininely but modestly, wear jewelry, speak in a feminine voice so long as it was still firm and not subject to “upspeak,” and to avoid distracting the jury or judge with dress, appearance, or mannerisms outside the expected norms for female attorneys.

Following these comments, a male attendee interjected to share an experience he had judging a mock trial at a Chicago-area law school. He commented that one of the female advocates had a nose ring and that he found it distracting. The attendee commented that he gave feedback to the female advocate that he could not focus on her advocacy because of her piercing, at which point, the female advocate commented, “okay boomer.” At this point, the symposium devolved into a back and forth, with younger female attendees supporting the female advocate and other attendees supporting him. One attendee, a veteran female trial lawyer and now a judge, echoed the concerns that any deviations from the norm of female appearance served to distract from the advocate’s advocacy, commenting on female trial lawyers who have too much cleavage, piercings, or tattoos. She made sure to add that even as a straight woman, she at times found herself distracted by too much cleavage in the courtroom.

Lara Bazelon followed this panel with her keynote address. She dismissed her prepared comments to address the prior panel and subsequent discussion. She began her remarks on the absurdity of the debate, emphasizing the real issues facing women, queer individuals, and people of color, and that the profession should be addressing those, and not the appearance of female advocates.

This symposium exemplifies the deeply ingrained nature of the legal profession’s fixation on conformity in dress, manners, and appearance. Despite being presented with the pressing legal challenges faced by individuals considered “others,” the focus remained largely on upholding decorum rather than actively promoting inclusion and diversity within the profession.

Therefore, any meaningful solution to the issues discussed in this Article must directly confront the persistent association of conformity

219. See generally Bazelon, *supra* note 78.

with professionalism in the legal field. At the same time, it is vital for such solutions to recognize and respond to the pervasive discomfort with visible queerness that exists throughout the United States. Only by tackling both the profession's entrenched standards and broader societal attitudes can true progress toward inclusion be realized.

Queering trial advocacy provides such a solution. The term "queering" in this context involves considering or interpreting trial advocacy and the profession itself "from a perspective that rejects traditional categories of gender and sexuality."²²⁰ In essence, it means applying concepts from queer theory to the practice and structure of trial advocacy. This Part specifically focuses on queering trial advocacy through legal education, bar associations, and the judiciary. By focusing on these areas, it seeks to remove and rectify the barriers that have historically limited visible queer participation, and to lay the groundwork for meaningful inclusion and representation within the legal system.

A. Solutions in Legal Education

Swethaa Ballakrishnen identified law school a straight space.²²¹ In exploring the experience of genderqueer law students, Ballakrishnen "demonstrates the ways in which 'normal' professional practices in law school reinforce the rigidity of the gender binary and call for a performance of propriety that necessarily alienates students who do not fall into strict categories of identity."²²² They provide a number of recommendations to make the law school space more queer, or at least less straight. These recommendations include ensuring the "faculty and staff had comprehensive gender identity training," encouraging faculty and staff to pay closer attention to these students, considering changes to legal pedagogy that incorporate non-normativity, and ensuring that faculty and staff reevaluate "biases about what kinds of expression serve their conceptions of propriety and professionalism."²²³

Ballakrishnen's concerns and recommendations are especially relevant in how law schools teach trial advocacy. If a law school were to follow Ballakrishnen's guidance, and make law school a queerer

220. *Queering Definition*, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/queer> (on file with Syracuse Law Review) (last visited on Aug. 16, 2025).

221. See Ballakrishnen, *supra* note 140, at 1132–35.

222. *Id.* at 1118.

223. *Id.* at 1135–38.

place, that work could be easily undone for a visibly queer law student seeking to be a trial lawyer by a less-queered trial advocacy program. I attempt to build upon Ballakrishnen's work based on my own personal experiences as an advocacy director to suggest how advocacy programs may support and foster visibly queer students and encourage them to be visibly queer trial attorneys.

A starting point to reform trial advocacy education is for those educators to proceed with humility.²²⁴ An openness to encouraging and promoting visible queerness may disrupt and confront the educators' own implicit and explicit biases. For many trial advocacy professors, anti-gay discourse and norms persisting through generations of trial advocates may foreclose the possibility of change or acceptance of visible queerness.²²⁵ Additionally, trial advocacy professors may be inherently uncomfortable with visible queerness. Trial advocacy professors must begin with acceptance and an understanding that as society progresses, so does what is acceptable and what is appropriate. Further, humility is necessary to also accept that they must move on from their own discomfort to fulfill their role and purpose as a professional.²²⁶

From there, trial advocacy professors must proceed with empathy.²²⁷ The visibly queer students before them have probably already been met with harassment, microaggressions, exclusion, and perceived slights. Their presence in law school and their presence in

224. See generally JOHN DICKINSON, *HUMILITAS: A LOST KEY TO LIFE, LOVE, AND LEADERSHIP* (2011) (discussing the importance of humility as a character trait for those in leadership positions).

225. See, e.g., William N. Eskridge Jr., *No Promo Homo: The Sedimentation of Antigay Discourse and The Channeling Effect of Judicial Review*, 75 N.Y.U. L. REV. 1327 (2000) (discussing how antigay discourse and norms became institutionalized and persist across generations); Cliff Zimmerman, *The Hidden Curriculum and the Discounting of Students' Identity: The Sources of Disaffection and the Challenge in Formation of Professional Identity*, 2 J.L. TEACHING & LEARNING 15 (2025) (showing how faculty-transmitted expectations about appearance, demeanor, and "fit" lead older or more traditional faculty to discount students who deviate—the empirical pattern behind a "back in my day" response).

226. See, e.g., Notisha Massaquoi, *Racial humility over competence: Addressing anti-Black racism and healthcare leadership responsibility*, 36 HEALTHCARE MGMT. F. 280, 280–84 (2023) (discussing the need for healthcare employers to utilize racial humility to recognize systemic anti-Black racism within their organizations).

227. See generally Grace Lordan & Teresa Almeida, *How Empathy and Competence Promote a Diverse Leadership Culture*, MIT SLOAN MGMT. R. (June 14, 2022), <https://sloanreview.mit.edu/article/how-empathy-and-competence-promote-a-diverse-leadership-culture/> (on file with Syracuse Law Review) (highlighting how exercising empathy towards female employees allows female employees to flourish and grow into leadership roles).

advocacy courses is already an act of courage. But their courage may be precarious. When proceeding with empathy, trial advocacy professors should actively seek to mentor and support those visibly queer students. Inclusion and support require individuals to mentor other individuals who do not look like them and do not share the same experiences.²²⁸

Having established the need to proceed with empathy and humility, trial advocacy professors must then be deliberate on what voices they bring into the advocacy programs and the situations in which they place their visibly queer students. A trial advocacy professor may establish an accepting and supportive culture, but that culture could be immediately undermined by an adjunct professor, a guest speaker, or a guest judge who singles out a visibly queer student, either through microaggressions, off-handed comments, facial gestures, or explicit comments targeted at the visibly queer student's outward expression of her queerness.²²⁹ Trial advocacy professors must make sure they have clear programmatic values that include an acceptance of visible queerness and comfort with disrupting traditional courtroom norms of dress, appearance, and mannerisms. These professors should then share these programmatic values with any guests who will have contact with their students. Only by agreeing to these values should the guest be allowed to have contact with the students.

In a prior article, I warned about the dangers of using mock trial and moot court competitions as an educational tool in teaching advocacy.²³⁰ In sending students to these external competitions, trial advocacy professors cede control of their instruction to outside schools or organizations. Perhaps the competition will use a casefile that plays on queer stereotypes. Perhaps a competition judge will criticize a student advocate for their visible queerness. Perhaps a visibly queer student will be told again-and-again at the competition that their

228. See Richard Farnell, *Mentor People Who Aren't Like You*, HARV. BUS. REV. (Apr. 17, 2017), <https://hbr.org/2017/04/mentor-people-who-arent-like-you> (on file with Syracuse Law Review).

229. See George Bach, *DON'T BE AFRAID OF TRIAL: Making the Teaching of Trial Practice Accessible and Yes, Less Aspirational*, 22.1 CONN. PUB. INT. L.J. 29, 34–35 (2022) (discussing the importance of having diverse adjuncts in teaching trial advocacy); see generally Todd A. Berger, *Male Legal Educators Cannot Teach Women How to Practice "Gender Judo": The Need to Critically Re-Assess Current Pedagogical Approaches for Teaching Trial Advocacy*, 45 J. LEGAL PRO. 1 (2020) (highlighting the need to include diverse representation in teaching trial advocacy).

230. See generally Anthony J. Ghiotto, *Trial Lawyers and an Ethos of Leadership: Enhancing Legal Education to Meet Evolving Demands*, 60 U.S.F. L. REV. 81 (2026).

queerness must be hidden for them to be successful. Such conduct is likely to have a chilling effect on the student and reinforce the traditional barriers of entry into the courtroom space. Trial advocacy professors must be deliberate in their use of mock trial and moot court programs, working to ensure students are sent to schools and competitions that reflect their own programmatic values.

The inverse is also true, though. Trial advocacy professors should bring in visibly queer voices. These voices can be visibly queer trial lawyers who may show visibly queer students that there is a place in the courtroom for them. They can also instruct visibly queer students on how to effectively use their visible queerness in the courtroom space to enhance their advocacy. Additionally, visibly queer voices may serve to make cisgender students more comfortable with visible queerness. The reality is that cisgender law students will soon constitute the legal profession that serves the gatekeeping function. By gaining exposure to visibly queer individuals and voices in law school, they may break down their own internal discomfort with visual queerness and then in turn break down those barriers of entry when they get to control access to the courtroom.

Finally, trial advocacy professors should be deliberate in their pedagogy.²³¹ Consider how they provide feedback.²³² When a visibly queer student performs an exercise, trial advocacy professors should carefully think about whether they should warn the visibly queer student that some component of their appearance may “distract” the jury, which would in turn hurt their client. A trial advocacy professor should only say that when she knows for sure that it is actually true; otherwise, such guidance is relying upon unsubstantiated generalizations and stereotypes about juries and has the effect of excluding the student’s visual queerness from the courtroom space. Further, trial advocacy professors should be deliberate in the case files they use, ensuring they are gender and queer inclusive, while also avoiding mandatory dress codes, avoiding definitions of professionalism that incorporate clothing and appearance, and deciding whether they tell visibly queer

231. See Kim Brooks & Debra Parkes, *Queering Legal Education: A Project of Theoretical Discovery*, 27 HARV. WOMEN’S L.J. 89, 106–13 (2004).

232. See Latonia Haney Keith, *Visible Invisibility: Feedback Bias in the Legal Profession*, 23 J. GENDER, RACE & JUST. 315, 336–46 (2020) (discussing how implicit and explicit bias drives how feedback is both given to women and people of color and received by them); see also Anne D. Gordon, *Better Than Our Biases: Using Psychological Research to Inform Our Approach to Inclusive Effective Feedback*, 27 CLINICAL L. REV. 195, 216–226 (2021) (examining how the cognitive biases of law school faculty members impact how feedback to diverse law students is delivered and the harm attendant to such feedback).

students that there are things they cannot be in the courtroom because of their visible queerness.²³³

B. Solutions in Bar Associations

Of course, legal education can only do so much. A trial advocacy program may be incredibly queer inclusive and teach visibly queer students to be themselves in the courtroom and to allow their natural presence to enhance their advocacy, but all that work may be immediately undone when they enter the profession. It can be undone by exclusion from the courtroom, a microaggression, or an explicit comment that there is no place for queer visibility in the courtroom. The burden for entry into the courtroom cannot rest upon visibly queer attorneys.²³⁴ Rather, the profession must take an active role in promoting queer trial attorneys and also protecting them.

The American Bar Association (“ABA”) has taken an active role in promoting diversity, equity, and inclusion in the legal profession, including for queer attorneys.²³⁵ But there is more the ABA can do. The ABA can use the Model Rules of Professional Conduct in several ways to protect queer trial lawyers. Throughout its preamble, the Model Rules touch upon the law as a profession and the professional responsibilities for all attorneys.²³⁶ At no point, though, do the Model Rules define what professionalism entails. The ABA can provide such a definition, with specific language excluding an attorney’s dress, appearance, and mannerisms.

While the Model Rules do prohibit attorneys from engaging “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,”²³⁷ the Model Rules can explicitly define what behavior constitutes harassment or discrimination. For example, the Model

233. See generally Todd A. Berger, *Problematic Problems: The Case Against Mock Trial Problems Involving Racist Speech*, 94 TEMP. L. REV. ONLINE 1, 9–12 (2022) (discussing the difficulties for diverse students to work through mock trial problems that include racist speech).

234. See Todd Brower, *Multistable Figures: Sexual Orientation Visibility and Its Effects on the Experiences of Sexual Minorities in the Courts*, 27 PACE L. REV. 141, 144–53 (2007).

235. See *Diversity, Equity, and Inclusion Center*, AM. BAR ASS’N, <https://www.americanbar.org/groups/diversity/> (on file with Syracuse Law Review) (last visited on Jan. 21, 2026).

236. See MODEL RULES OF PRO. CONDUCT pmb1. (AM. BAR ASS’N 1983).

237. MODEL RULES OF PRO. CONDUCT r. 8.4(g) (AM. BAR ASS’N 1983).

Rules could include misgendering, using the wrong pronouns, commenting on an attorney's hair, clothes, piercings, or gender presentation, telling an attorney they don't belong in the profession or the courtroom, all as examples of behavior that would be considered inappropriate and constitute misconduct.

Also, the ABA can impose additional responsibilities on partners, managers, and supervisory lawyers.²³⁸ The ABA can include the responsibility to create safe and inclusive workplaces that allow for and encourage queer attorneys. This addition could explicitly recognize that leaders in the profession have an affirmative duty to acknowledge visible queerness, to allow for it, to protect it, and even to encourage it.

C. Solutions in the Judiciary

Advocates for strict adherence to traditional courtroom norms regarding dress, appearance, and mannerisms often argue that these standards are necessary to avoid distracting judges and juries. According to this perspective, any deviation from established expectations risks shifting focus away from the substantive elements of a case, possibly leading to less favorable outcomes for clients. The rationale is that conformity serves a practical purpose—ensuring that the merits of the case receive full consideration—rather than endorsing exclusionary traditions.

However, this justification brings the judiciary into direct focus. Judges possess the authority to manage their own responses to perceived distractions and to control the tone and expectations within their courtrooms. As the central figures who seat and instruct juries, judges are uniquely positioned to challenge and revise the traditional norms of courtroom dress, appearance, and mannerisms that have historically marginalized visibly queer attorneys.

To initiate this change, judges must begin by adopting an approach grounded in humility and empathy. Even if they built their careers within traditional courtroom environments, judges are not required to perpetuate those norms. Instead, they can acknowledge that concepts of life, gender, and identity have evolved, and accept that visible queerness has a rightful place in the courtroom. This approach involves confronting and moving beyond any internal discomfort or fear and recognizing the history of discrimination and exclusion faced by visibly queer attorneys and trial participants. By doing so, judges

238. See MODEL RULES OF PRO. CONDUCT r. 5.1 (AM. BAR ASS'N 2019).

can avoid being distracted by visible queerness and foster an environment of respect and inclusion.

Once judges have embraced humility and empathy, they can establish and enforce courtroom rules that affirm and protect visible queerness. These rules might address the external expression of queerness by attorneys, while also maintaining a baseline of courtroom decorum. Such standards should extend to all courtroom participants, including staff, witnesses, and opposing counsel, emphasizing the importance of respect and dignity for everyone. For example, rules can require that all individuals be addressed by their preferred pronouns, prohibit the use of deadnames, and mandate respectful treatment for visibly queer individuals.

These inclusive rules may be implemented by individual judges or adopted more broadly through judicial bodies. For instance, in 2024, the Illinois Supreme Court's Commission on Access released bench cards promoting gender inclusivity in the courtroom.²³⁹ The bench cards provided guidance on pronoun usage and highlighted the importance of fostering dignity and respect in judicial proceedings; citing the Code of Judicial Conduct's requirements for inclusivity and non-discrimination, designed to "create welcoming court environments, promote fairness and equality, and build trust."²⁴⁰ They also outlined judicial obligations and offered actionable steps for ensuring transgender court users are treated with dignity and respect.²⁴¹ By adopting such measures, the judiciary can set a powerful example in advancing inclusiveness within courtroom settings.

After ensuring that their own perspectives are free from distraction by visible queerness and establishing rules for inclusivity, judges also have a responsibility to ensure that juries are similarly undistracted. This can be accomplished in two main ways: through the *voir dire* process and in jury instructions. During *voir dire*, when it is

239. See *Advancing Fairness and Respect: New Bench Cards Support Gender Inclusivity in Illinois Courts*, ILL. CTS.: NEWS (Mar. 2025), <https://www.illinoiscourts.gov/News/1517/Advancing-fairness-and-respect-New-bench-cards-support-gender-inclusivity-in-Illinois-Courts-March-2025/news-detail/> (on file with Syracuse Law Review).

240. *Bench Card: Promoting Gender Inclusivity at Court*, ILL. JUD. BRANCH (July 2025), https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/a01f98cb-09f1-4214-b779-d2db81b65bbd/gender_inclusivity_bench_card.pdf (on file with Syracuse Law Review).

241. See *Bench Card: Transgender People at Court*, ILL. JUD. BRANCH (July 2025), https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/4c8c52b6-8b66-4e16-8e43-1faae1c43b67/transgender_people_in_court_bench_card.pdf (on file with Syracuse Law Review).

known that a counsel, party, or witness is visibly queer, judges should incorporate questions designed to uncover and address both implicit and explicit biases among potential jurors. While attorneys themselves play a role in this process, judges should not relinquish their duty to create a fair and impartial jury. Ultimately, before seating a jury, judges must be confident that jurors can look past visible queerness and focus objectively on the facts and merits of the case.

In addition to *voir dire*, judges can further mitigate potential distractions by providing explicit jury instructions that emphasize the importance of impartiality and respect for all participants regardless of gender identity or expression. These instructions should clearly state that jurors must not allow personal biases or perceptions related to visible queerness to influence their evaluation of the evidence or the credibility of witnesses. By proactively addressing these issues, judges help cultivate a courtroom environment where every individual feels protected and valued, and the focus remains on justice and fairness.

CONCLUSION

Visibly queer trial attorneys play a vital role in enriching both the legal profession and the broader trial advocacy community. Their presence brings much-needed passion, dedication, and diversity to a field and a clientele that often lack adequate legal support. These attorneys offer perspectives and experiences that deepen the understanding of justice and help address the needs of underrepresented individuals.

Despite these benefits, the legal profession continues to struggle with its own fears regarding visible queerness. There remains a strong allegiance to a traditional model of professionalism—one that equates professionalism with conformity and is rooted in longstanding norms linked to white, male, cisgender, and straight supremacy. This paradigm not only stifles diversity but also perpetuates exclusion within the profession.

To overcome these barriers, it is essential for the legal field to embrace the process of queering trial advocacy. This means actively confronting and disrupting traditional sexual and gender norms, and challenging outdated standards that inhibit inclusivity. By doing so, the profession can move beyond these obstacles and foster a more welcoming and inclusive environment for visibly queer trial attorneys, ensuring that all individuals are valued and supported in the pursuit of justice.