

JONAMAY

LAMBERT & ASSOCIATES

~~I AM GAY~~
~~I AM STRAIGHT~~
~~I AM LESBIAN~~
~~I AM BISEXUAL~~
~~I AM TRANSGENDER~~
I AM HUMAN

**A CHALLENGING 2017 FOR TRANSGENDER
AND LGTBQ PEOPLE AND RECENT EVENTS**

Whitepaper

OVERVIEW

The transgender community had a tumultuous 2017, featuring several affirmative events that illustrated the public’s growing acceptance of people whose gender identity is different from the sex assigned to them at birth. The election of eight transgender individuals to public office on November 8 is extraordinary evidence of a new open-mindedness evinced by the American public. At the same time, we saw the rise of barricades blocking the community from genuine inclusion in society and the workplace. President Donald Trump’s tweet that no transgender people should “serve in any capacity in the U.S. military” was perhaps the year’s biggest obstacle, threatening to prevent these individuals from achieving their full potential.

Last year’s advances and setbacks carry lessons for corporate leadership on the importance of foresight, managing change, decision-making, and the need for ongoing expansion of our diversity and inclusion efforts. The rapid evolution of public attitudes on LGBTQ people challenges executives to be prepared to adapt to dynamic change.

You will recall that a recent blog post on our website, www.jonamaylambert.com, discussed the selection of Ines Rau, a transgender woman, as the November 2017 Playmate. Many transgender individuals see the choice of Rau as an affirmation of their community, while others view it as a sexist objectification of women.



POLITICS

However, an unalloyed victory was the election of at least eight transgender Americans to public office on November 8. They include,

- Andrea Jenkins to the Minneapolis City Council (the first openly transgender woman of color elected to public office in the United States)
- Danica Roem to the Virginia House of Delegates (Virginia's first openly transgender public official and the nation's single transgender state representative)
- Gerri Cannon to the Somersworth, New Hampshire, School Board
- Lisa Middleton to the Palm Springs, California, City Council (California's first out transgender person elected to a non-judicial office)
- Stephe Koontz to the Doraville, California, City Council
- Tyler Titus to the Erie, Pennsylvania, School Board (the state's first transgender elected official)
- Philippe Cunningham to the Minneapolis, Minnesota, City Council (the first out transgender man elected to a council of a major U.S. city)
- Raven Matherne to the Stamford, Connecticut, Board of Representatives (the state's first openly transgender woman on a local board)¹

Incidentally (and ironically), Danica Roem defeated Bob Marshall, who has held his seat in the Virginia House of Delegates since 1992 and is a notorious anti-gay public official. Marshall, who is known for calling himself Virginia's "chief homophobe," has proposed legislation to ban openly gay people from serving in the Virginia National Guard; prevented the appointment of a judge, because he was gay; sponsored a successful effort to amend the Virginia constitution to outlaw same-sex marriage; recently (2015) introduced a bill that would allow anti-LGBTQ segregation in hotels, restaurants, businesses, schools, government

agencies, and hospitals; and advocated a measure last year to ban transgender students from using school bathrooms that aligned with their gender identity. The proposal would also compel school principals to out transgender students to their parents.²

Another example of growing acceptance of the LGBTQ communities came from “down under.” In November, the Australian Bureau of Statistics released the results of a survey, which posed a simple yes-or-no question to the people of Australia: “Should the law be changed to allow same-sex couples to marry?” An astounding 79.5 percent (12,727,920 of the population of 16,006,920) responded to the survey, and 61.6 percent said “yes” and only 38.4 percent said “no.” That is a commanding mandate for change and a compelling conclusion to the spirited debate on same-sex marriage that has roiled public opinion for some time in the South Pacific member of the Commonwealth of Nations.³ The survey was non-binding, but the verdict of the Australian people is something that politicians should not ignore. In fact, Prime Minister Malcolm Turnbull asserted that his government’s goal was to pass legislation in parliament by Christmas. The British Broadcasting Corporation (BBC) quoted the Prime Minister’s positive message on same-sex marriage: “[Australians] have spoken in their millions and they have voted overwhelmingly yes for marriage equality . . . They voted yes for fairness, yes for commitment, yes for love.”⁴

Public attitudes about LGBTQ people in America have also changed significantly in recent years. This is particularly evident in the increasing willingness of the public to accept same sex marriage. The PRRI (Public Religion Research Institute) study, *A Shifting Landscape: A Decade of Change in American Attitudes about Same-Sex Marriage and LGBT Issues*, analyzes the changing attitudes regarding same-sex marriage from 2003 to 2013, demonstrating a remarkable shift in public opinion. PRRI is “a nonprofit, nonpartisan organization dedicated to conducting independent research at the intersection of religion, culture, and public policy.”⁵

Table 1 summarizes the Study's findings and provides a statistical overview of this transformation over ten years.

Table 1: Support for Same-Sex Marriage in America, 2013 and 2003⁶

SEGMENT	SUPPORT		SEGMENT	SUPPORT	
	2013	2003		2013	2003
TOTAL POPULATION AND SEX			RELIGIOUS AFFILIATION		
All Americans	53%	32%	Jewish	83%	
Female	57%	34%	Religiously Unaffiliated	73%	65%
Male	48%	19%	Mainline Protestant	62%	36%
Region			Catholic		
Northeast	60%	42%	White Catholic	58%	33%
West	58%	36%	Hispanic Catholic	56%	
Midwest	51%	33%	Hispanic Protestant		
South	48%	22%	Black Protestant	36%	23%
PARTY AFFILIATION			RACE/ETHNICITY		
Democrats	64%	39%	White, non-Hispanic	55%	32%
Republicans	34%	18%	Hispanic	45%	35%
Independents	57%	39%	Black, non-Hispanic	39%	28%
Tea Party	32%				
AGE			EDUCATIONAL ATTAINMENT		
18-33	69%	45%	Post-Graduate Degree	66%	51%
			College Graduate Degree	60%	40%
34-48	55%	32%	Some College	57%	34%

49-67	45%	27%	High school degree or less	46%	24%
68+	37%	12%	Post-Graduate Degree	66%	51%

Source: PRRI Research⁷

CORPORATE ENVIRONMENT

These changes pose a challenge to corporate leadership, who must become more attuned to public opinion and reflect the increased openness of the public as well as their customers and employees to diversity and inclusion. They increase the demand for state-of-the-art D&I programs.

Visionary corporate leaders are changing their previous attitudes about transgender employees and are providing them with support. According to Vanessa Sheridan, author of *The Complete Guide to Transgender in the Workplace*, in the year 2000 only three Fortune 500 companies “included gender identity in their employee nondiscrimination policies. Today, over half of Fortune 500 have implemented such policies.”⁸ Sheridan catalogues the many reasons that are driving companies to become more transgender inclusive from legal considerations to the value transgender persons bring to the workplace, such as improved employee recruitment and retention, enhancement of cultural competence, “to position a company (especially from a marketing perspective) as a diversity leader within its industry, the larger business community, and society in general,” and to support the internal brand for company employees by implementing D&I policies, which enhance employee well-being.⁹



Vanessa Sheridan

VIOLENCE

Sadly, 2017 has also been a year of setbacks for the transgender community. For example, the Federal Bureau of Investigation’s (FBI) released hate crime statistics for 2016, disclosing a

five percent increase in total hate crimes in 2016 as compared to the total for 2015. The statistics also showed a two percent increase in hate crimes based on sexual orientation and a nine percent increase in crimes targeting transgender people. The Human Rights Campaign believes that this is evidence of “the ongoing epidemic of anti-transgender violence.”¹⁰



MILITARY

President Donald Trump provoked another setback for the transgender community. In one his early morning tweets on July 26, President Donald Trump’s decreed that transgender persons could not serve in the U.S. military in any capacity. Blocking

transgender people from the military is particularly pernicious, because the military is one of the few employers in the United States who hire members of the transgender community, and many of them serve with distinction. However, it would unfair to accuse Trump of being insincere in his decision, despite the negative impacts of the ban. Trump said the ban was necessary, because U.S. armed forces “cannot be burdened with the tremendous medical costs and disruption that transgender in the military would entail.”¹¹ We should accept that Trump believed he was making a tough decision that he believed would bring us improved security and military readiness and efficiency.

However, Trump faced unexpected and significant opposition to his ban. Richard Primus argued in *Politico*, Trump’s proposal would be “flatly unconstitutional . . . a wall-to-wall ban on transgender Americans in the armed forces could only be understood as rooted in what constitutional doctrine calls animus: that is, the bare dislike of a group of people.”¹² In fact,

the Supreme Court has ruled in several cases that “animus is never a constitutionally valid reason for government action.”¹³

Others challenged Trump’s concerns regarding medical costs associated with transgender people in the military. According to James Hamblin writing in *The Atlantic*, a RAND analysis, commissioned by the Department of Defense, estimated the cost of gender-transition surgery and other transition-related costs (the source of the “tremendous medical costs that Trump was referring to) would cost the military between \$2.4 million and \$8.4 million annually (a 0.04 to 0.13 percent increase in the cost of military spending on health care).

That figure is far less than the \$84 million the military spends annually on medication for erectile dysfunction.¹⁴ Of course, the military could resolve this aspect of Trump’s justification for his decision by not funding transition-related medical costs, as it has done in the past.

Moreover, the President seemed to have caught the Pentagon by surprise, and many felt that the President went outside the chain of command in announcing his decision before conferring with the military. Defense Secretary Jim Mattis was on vacation when Trump made his announcement, and top military leaders have questioned the ban, asserting that it could be disruptive and force many excellent personnel to leave the services. Only several hours after Trump’s tweets, Navy Secretary Richard V. Spencer said he thought “any patriot” should be allowed to serve.¹⁵ Under questioning by the Senate Armed Services Committee, Gen. Joseph F. Dunford Jr., the chairman of the Joint Chiefs of Staff, reported that he had recommended keeping any troops who had served “with honor and value.” He said that, “I believe any individual who meets the physical and mental standards and is worldwide deployable and is currently serving should be afforded the opportunity to continue to serve.” In August, 56 retired generals and admirals signed a letter, stating that the ban would degrade and disrupt military readiness. That same month, Admiral Paul Zukunft, the Coast

Guard Commandant, declared that he would “not break faith” with transgender individuals serving in his service.¹⁶

LAW

Judge Colleen Kollar-Kotelly of the Federal District Court for the District of Columbia provided the most consequential pushback when she ruled on October 30, 2017 that the ban was likely unconstitutional and that it could not be implemented as planned. Judge Kollar-Kotelly was



quoted in the *New York Times* as saying, “There is absolutely no support for the claim that the ongoing service of transgender people would have any negative effect on the military at all . . . In fact, there is considerable evidence that it is the discharge and banning of such individuals that would have such effects.”¹⁷

This pushback provides a lesson in leadership and on the impacts of the ongoing debate between decisiveness and prudence. Writing in the *Harvard Business Review*, organizational psychologist and author, Nick Tesler, emphasized the value of strategic decisiveness, which he says, “is one of the most vital success attributes for leaders in every position and every industry.”¹⁸

We expect our leaders to demonstrate decisiveness, and we apply pressure on them to make even momentous decisions quickly and definitively. Unfortunately, this demand often induces negative, unexpected consequences. We all know leaders who feel obligated to make instantaneous judgments without deliberation and sufficient information. In its *CFO Insights*, Deloitte affirms that these pressures are real, and the firm delineates the factors

encouraging this kind of misstep: “We are inundated with breathless proclamations about the unprecedented pace of modern business and competitive intensity. The implication is that by waiting a week (a day, an hour) before choosing a course of action, an opportunity might be missed, to the perpetual detriment of the fence-sitter.”¹⁹ Leadership scholars often assert “‘indecisive’ is among the worst epithets that can be levied against an executive.”²⁰

No wonder Trump felt obligated to resolve the issue of transgender persons serving in the military quickly and definitively. Nonetheless, the controversy his decision generated provides a warning about proceeding with too much haste. It suggests that we should reconsider the governing approach of an earlier Republican president, George H. W. Bush, who believed that incrementalism and prudence were necessary characteristics of good governing.

Although pilloried by comedian Dana Carvey (“Wouldn’t be prudent”) on “Saturday Night Live,” Bush’s governing style has been reevaluated. In their book *Power and Prudence: The Presidency of George H. W. Bush*, Ryan J. Barilleaux and Mark J. Rozell challenge conventional wisdom and argue that his approach was appropriate for the time and the circumstances of his presidency. In the face of high inflation, a daunting budget deficit, and divided government, the President advocated “‘modest’ increases in public spending where appropriate” and “recommended a cautious approach on the domestic front. He expressed a preference for policy continuity rather than change.”²¹ Most of all, “he spoke of ‘prudence’ in dealing with international change and said the nation must ‘review our policies carefully and proceed with caution.’”²²

Our times are much different than those of the first President Bush’s presidency. Although we do have a dangerous deficit, inflation is low, and our government is not divided. However, “prudence” remains a valuable leadership trait provides balance to indispensable decisiveness. Prudence might have prevented President Trump from basing his transgender

ban on incorrect information. Prudence would also help leaders react positively and effectively changing attitudes and greater diversity in the workplace.

Project Include provides an enlightening case study on proactive, effective management of transgender diversity in the workplace. The study also has valuable insights on administrating diversity in its many forms. Project Include is a non-profit organization “that uses data and advocacy to accelerate diversity and inclusion solutions in the tech industry.”²³

WORKPLACE



The case study poses a scenario in which the reader envisions a manager who has a hardworking technically skilled employee who, having been diagnosed with gender dysphoria, plans to transition and

asks for support. The study recommends a series of useful steps that leaders should take in support of the transgender employee²⁴:

- Do not overreact. “This is good news for your organization.”²⁵ Research indicates that the employee will become much happier and more productive.
- Take this situation as an opportunity to ensure that your corporate culture is truly inclusive and enables employees to express “their true selves” in a welcoming and respectful workplace.
- Do not ask about medical treatments, which are invasive and might violate your company’s code of conduct and legal guidelines on harassment.

- Call the employee by the new name he or she chooses and refrain from using the male or female pronoun that refers the gender of his or her birth.
- Do not expect the employee to educate you on transgender issues but inform yourself about relevant transgender issues.
- Advocate for the employee, inform other team members about the transition being sensitive to the employee's sensitivities and concerns, and insure the others treat the employee professionally and respectfully.
- Be alert to any mistreatment by others that might cause the employee distress. If you see team members disrespecting the employee, pull those workers aside individually and state, without equivocation, that such behavior will not be tolerated
- Insure that your company's health plan and disability insurance cover medical and leave issues related to the employee's transition.
- Review company D&I policies, training programs, and dress codes to make certain they accommodate the needs of transgender employee. Work with the company, if necessary, to develop guidelines, policies, and procedures that clarify how the company supports transgender employees.
- Update harassment and anti-discrimination rules to include gender identity and expression.
- Introduce a restroom policy "that allows for unrestricted access and use in accordance with gender presentation or the use of unisex facilities—single-stall bathrooms [,] in particular [,] could be unisex."²⁶

This is excellent advice that offers corporate leaders solid guidance in dealing with the advances and setbacks of LGBTQ people that destabilize the business environment and challenge them to repeatedly review, revise, and reinvent their D&I practices, procedures,

and programs. The challenges are real, the opportunities are countless, and the rewards are substantial.

RECENT DEVELOPMENTS

There have been some recent events both national and internationally that allude to a promising future.

- In late 2017, a federal judge for the District of Columbia as well as a judge for Maryland blocked the Trump administration's proposed ban on transgender troops.²⁷
- In early January 2018, The Inter-American Court of Human Rights issued a landmark ruling recognizing same-sex marriage and transgender rights in Costa Rica and 19 other countries in the Western Hemisphere.²⁸
- The European Union top court decided the law can include residence rights to same-sex spouses.²⁹
- A model, writer and campaigner, Paris Lees, became the first openly transgender woman to be featured in British Vogue. French Vogue featured a transgender model in 2017.³⁰

While there is much work to be done towards valuing and respecting people of all sexual orientations and gender identities, we are optimistic.

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⁷ Cox et al.

⁸ Sheridan, Vanessa, *Transgender Inclusion in the Workplace: The Time Is Now*, Huffington Post, February 2, 2016 (update) (last accessed November 18, 2017) https://www.huffingtonpost.com/vanessa-sheridan/transgender-inclusion-in-the-workplace-the-time-is-now_b_3624175.html

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¹² Primus, Richard, "Why Trump's Ban on Transgender Servicepeople Is Flatly Unconstitutional: Here's another Trump policy likely to get held up in courts," *Politico*, November 14, 2017 (last accessed November 14, 2017) <https://www.politico.com/magazine/story/2017/07/26/why-trumps-ban-on-transgender-servicepeople-is-flatly-unconstitutional-215423>

¹³ Primus

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²⁰ "CFO Insights"

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²² Barilleaux, Ryan J. and Mark J. Rozell

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²⁴ "Case Study: Transgender People," Include (last accessed November 18, 2017)

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