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# Legal Communication & Rhetoric: JALWD

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## ARTICLES & ESSAYS

**Parsing the Visual Rhetoric of Office Dress Codes:  
A Two-Step Process to Increase Inclusivity  
and Professionalism in Legal-Workplace Fashion**

Karen DaPonte Thornton

# Parsing the Visual Rhetoric of Office Dress Codes

## A Two-Step Process to Increase Inclusivity and Professionalism in Legal-Workplace Fashion

Karen DaPonte Thornton\*

*“Vain trifles as they seem, clothes have, they say, more important offices than merely to keep us warm. They change our view of the world and the world’s view of us.”*

—Virginia Woolf, *Orlando*<sup>1</sup>

### I. Introduction

Lawyers in training are taught to think like lawyers. To impress a client or jury it is just as important to command the *look* of a lawyer—confident, truthful, and authoritative. Maintaining that command presence begins with an individual’s carriage and clothes.<sup>2</sup> A leader’s confidence comes in some measure from knowing how to look the part. Lawyers succeed when they demonstrate an understanding of the full spectrum of competencies needed to impress clients and juries, including knowing how to *look* like lawyers. This is why legal employers expect attorneys in their offices to use personal appearance as a kind of rhetorical device promoting credibility—*ethos*—to project an image of competence that matches their legal skills.

Employer expectations for professional dress in the legal office are rarely written and largely unspoken. Some would call that a test for the

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<sup>1</sup> VIRGINIA WOOLF, *ORLANDO: A BIOGRAPHY* 187 (Harcourt, 1928).

<sup>2</sup> Carmine Gallo, *Talk Like TED: The 9 Public-Speaking Secrets of the World’s Top Minds* 90 (2014).

new attorney, but this article suggests it is an opportunity for the employer, employee, and law schools to collaborate. National polling shows that today's employers are frustrated by employee professionalism, and that the quality most associated with being unprofessional is appearance or dress.<sup>3</sup> The frustration can be traced back to two main causes: (1) a lack of understanding on the part of new employees of how employers define professionalism, and (2) the normlessness of office dress policies.

The goal of this article is to encourage open conversations about workplace fashion and its significance in an attorney's professional identity. Employers and employees share an interest in clarifying employer expectations and empowering new members of the legal profession to adopt a personal sense of style that projects competence, leadership, and professionalism, without subtracting out the self.

Traditionally, employers have expected employees to adopt the style of dress of the organization, as confirmation that "the aspiring employee accepts the standards imposed by the successful leaders."<sup>4</sup> Employer dress codes regulate employee self-expression to ensure that employees maintain and continue the goals and values of the organization's leadership. Organizational traditions are more difficult to trace in today's legal office, however, where attorneys have largely abandoned the traditional public image of a formal suit and replaced it with "business casual." The shift toward a more casual legal workplace represents a desire to drop stiffness and distance, and to adopt a greater sense of genuineness and relatedness between attorneys and their clients. Despite this positive intention, the absence of rules defining "business casual" has created an unspoken code that is unsatisfying to employers and can be unfair to new employees.

To find their place within an office culture, new attorneys must decipher hidden dress codes by observing senior practitioners,<sup>5</sup> but learning to fit the mold can have deleterious effects. This process of replacing one's personal image with that of an employer has been shown to harm self-esteem,<sup>6</sup> rather than strengthen a sense of confidence. Today,

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<sup>3</sup> CENTER FOR PROFESSIONAL EXCELLENCE AT YORK COLLEGE OF PENNSYLVANIA, 2013 NATIONAL PROFESSIONALISM SURVEY WORKPLACE REPORT 51 (Jan. 2013), available at <http://www.ycp.edu/media/york-website/cpe/york-college-professionalism-in-the-workplace-study-2013.pdf>.

<sup>4</sup> See Robert M. Lang, *The Hidden Dress Code Dilemma*, 59 THE CLEARING HOUSE 277, 277 (Feb. 1986).

<sup>5</sup> Cf. Kathleen Brady, *From Law Student to Lawyer: Transition Smoothly to Your New Role Through Commitment, Professionalism, and Attention to Detail*, 36 THE STUDENT LAWYER, May 2008, at 22 (advising students to "pay attention to what people do as well as what they say," because employers measure competence by how new attorneys behave professionally. Different generations in the workforce have different views on acceptable behaviors, including how to dress for work. Students should understand that different perspectives will affect how behaviors such as dress are judged and be aware of how they are perceived).

the majority of law students and new attorneys are Millennials,<sup>7</sup> a generation whose defining characteristics include ambition, team focus, and “a greater awareness of and comfort level with diversity of all kinds than previous generations.”<sup>8</sup>

At best, the normlessness of unwritten dress codes creates an opportunity for these new attorneys to be welcomed with wider inclusion of cultural, racial, and gender differences. At worst, unwritten dress codes mask unconscious biases developed by a select group of insiders, intended to keep outsiders out. When the rules and goals of office fashion are transparent, the partisan overtones between the privileged insiders and newcomers evaporate.<sup>9</sup> Ultimately, dress codes should reflect a goal legal employers and new attorneys share—presenting a professional style that projects intentionality and confidence.

This article challenges law schools and employers to work in tandem to make transparent the business rationale for regulating dress and then collaborate in crafting dress codes that articulate a clear business purpose. Millennials’ voices at the table can ensure an emphasis on inclusivity rather than conformity. Through this conversation, young legal professionals can observe and learn to present a personal style that conveys the confidence, integrity, and authority that are the mark of a lawyer and leader. Ultimately, this article advocates an approach to building a positive office culture by training new lawyers to parse the message of unwritten dress codes and participate in drafting inclusive office policies that accommodate disparate cultural, racial, and gender experiences.<sup>10</sup>

Section I of this article explains the science behind how the human brain forms instant impressions of a person’s character based on appearance. Section II presents polling and anecdotal evidence to show that lawyers in training need and want formal mentoring about workplace fashion and style. Sections III and IV offer a two-step approach for law schools and employers to fulfill this need. Law schools should expose

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**6** DEBORAH L. RHODE, *THE BEAUTY BIAS: THE INJUSTICE OF APPEARANCE IN LIFE AND LAW* 28–30 (2010).

**7** Emily A Benfer & Colleen F. Shanahan, *Educating the Invincibles: Strategies for Teaching the Millennial Generation in Law School*, 20 *CLINICAL L. REV.* 1, 4 n.13 (2013).

**8** *Id.* at 9.

**9** See RHODE, *THE BEAUTY BIAS*, *supra* note 6, at 19–20, 96.

**10** Others have written on the limitations of existing legal frameworks to prohibit appearance discrimination and the need for civil-rights laws banning appearance discrimination or action by courts, enforcement agencies, and legislators to read existing statutes more broadly and end appearance bias. See *id.* at ch. 6 & ch. 7; Jason P. Eyster, *The Lawyer as Artist: Using Significant Moments and Obtuse Objects To Enhance Advocacy*, 14 *LEGAL WRITING* 87 (2008); Jennifer L. Levi, *Some Modest Proposals for Challenging Established Dress Code Jurisprudence*, 14 *DUKE J. GENDER L. & POL’Y* 243, 246 (2007); Jane M. Siegel, *Thank You, Sarah Palin, For Reminding Us: It’s Not About the Clothes*, 17 *VA. J. SOC. POL’Y & L.* 144, 159–61 (2009). Visual-impact moments are also discussed in RUTH ANNE ROBBINS, STEVE JOHANSEN, KEN CHESTEK, *YOUR CLIENT’S STORY: PERSUASIVE LEGAL WRITING* 242–45 (2013).

students to practitioners who can model and mentor through frank discussions about workplace fashion, and use visual rhetoric analysis in legal writing courses to further understanding of the *ethos* of fashion. Once these fundamentals are learned, legal employers can continue the formal mentoring by including new attorneys in the office dress-code drafting process.

## II. The Science, Economics, and Culture of Why Fashion Matters

The choices we make in dress and grooming each day create our most important visual-impact moment.<sup>11</sup> In a professional setting, newcomers are quickly labeled by their appearance. If lawyers do not realize it, fashion designers certainly do. Miuccia Prada once remarked, “What you wear is how you present yourself to the world, especially today, when human contacts are so quick. Fashion is instant language.”<sup>12</sup>

In the courtroom, the best lawyers recognize that traditional methods of connecting with a jury are less effective in a society where “visual imagery predominates” and instant technology and shortened attention spans prevail.<sup>13</sup> Just as litigators can improve their ability to persuade a jury by adopting visual technology,<sup>14</sup> new attorneys should recognize the instant impression they make with their choice of workplace fashion.

To be effective in their visual presentation, attorneys need to understand visual intelligence and how the brain works.<sup>15</sup> Seeing is a dynamic process through which the brain constructs instant impressions by mapping images of the outside world onto existing memory and understanding.<sup>16</sup> The brain receives a two-dimensional image through the retina and optic nerve via electronic signals.<sup>17</sup> The brain then turns that “two-dimensional image into a three-dimensional image.”<sup>18</sup> Sometimes, due to

11 See generally Ruth Anne Robbins on “visual impact moments” in legal writing: Ruth Anne Robbins & Victoria L. Chase, *Iron Chefs’ Lawyering Kitchen*, presentation at Capital Area Legal Writing Conference (Mar. 1, 2013, Washington College of Law, American University, Washington, D.C.).

12 Anna Cabrera, *Fashion is Instant Language*, THE WINDSOR STAR, Aug. 12, 2011, <http://blogs.windsorstar.com/life/fashion-is-instant-language> (quoting Miuccia Prada).

13 Lucille A. Jewel, *Through a Glass Darkly: Using Brain Science and Visual Rhetoric to Gain a Professional Perspective on Visual Advocacy*, 19 SO. CAL. INTERDISCIPLINARY L.J. 237, 237 (2010).

14 *Id.* at 238.

15 *Id.* at 247.

16 *Id.* at 248–49.

17 *Id.* at 248 (citing TOM STAFFORD & MATT WEBB, MIND HACKS 124–25 (2005) (explaining that the brain processes images quickly as part of an ancient self-preservation system)).

18 *Id.* at 249 (citing STEVEN PINKER, HOW THE MIND WORKS 8 (1997)); ZENON W. PYLSHYN, SEEING AND VISUALIZING, IT’S NOT WHAT YOU THINK 5 (2003)).

retinal distortions, the human brain will take incomplete information and fit it into existing patterns to make it whole.<sup>19</sup> The process of organizing ideas into these patterns is often stronger than the image itself.<sup>20</sup> This phenomenon explains both optical illusions and stereotyping, because the shortcuts taken by the brain's instantaneous cognition system make it susceptible to "bias and prejudice."<sup>21</sup>

Even the rational center of the brain tends toward bias based on memory connections.<sup>22</sup> In 2009, three law professors decided to test the question whether a video says different things to different eyes.<sup>23</sup> They set up an empirical study in response to a Supreme Court case in which the Court reviewed a police-chase video and determined that "no reasonable juror could find that the fleeing driver did not pose a deadly risk to the public." A dissenting opinion encouraged others to view the video on the Supreme Court website.<sup>24</sup> The professors presented the chase video to 1,350 people<sup>25</sup> and found that a substantial minority (twenty-six percent) disagreed that the fleeing driver posed a deadly risk.<sup>26</sup> The study results showed that "a person's cultural, social, and racial background has a bearing on what they 'see.'"<sup>27</sup> Specifically, "African-Americans, low-income workers, and residents of the Northeast, for example, tended to form more pro-plaintiff views of the facts than did the Court. . . . Indeed, these individuals were much more likely to see the police, rather than Harris, as the source of the danger posed by the flight . . ."<sup>28</sup> The authors concluded that differences in what people saw were influenced by "value-motivated cognition."<sup>29</sup>

19 *Id.* at 251.

20 *Id.*

21 *Id.* at 255.

22 *Id.* at 257.

23 Dan M. Kahan, David A. Hoffman & Donald Braman, *Whose Eyes Are You Going to Believe? Scott v. Harris and the Perils of Cognitive Illiberalism*, 122 HARV. L. REV. 837, 854 (2009).

24 The Supreme Court granted certiorari in *Scott v. Harris* to consider whether the police decision to use deadly force to stop a fleeing motorist was reasonable. 550 U.S. 372, 374 (2007). Writing for the Court, Justice Scalia noted that a videotape that captured the car chase "quite clearly" shows the respondent driving "shockingly fast" and "swerv[ing]" in contradiction to the respondent's version of the facts. *Id.* at 377–79. The majority opinion did not rebut Justice Stevens' lone dissent, which disputed the conclusion that "a reasonable jury," *id.* at 387 (Breyer, J., concurring), could not have seen the video and believed the respondent's version of the facts. *Id.* at 389–97 (Stevens, J., dissenting). Instead, the Court took the unprecedented approach of posting the video on its website to let the public "see for yourself" Kahan, et al., *supra* note 23, at 838.

25 Kahan, et al., *supra* note 23, at 841.

26 *Id.* at 866.

27 Jewel, *supra* note 13, at 258–59 (citing Kahan, et al., *supra* note 23, at 838).

28 Kahan, et al., *supra* note 23, at 841.

29 *Id.* at 903 ("[V]alue-motivated cognition refers to the tendency of people to resolve factual ambiguities in a manner that generates conclusions congenial to self-defining values.").

The idea that one's background affects what one sees is troubling in light of research that "less attractive individuals are less likely to be hired and promoted" than like-credentialed peers whose appearance is more pleasing.<sup>30</sup> A 2011 study designed and executed by Boston University researchers and the Dana Farber Cancer Institute, and paid for by makeup giant Proctor & Gamble, showed that people's perceptions of a woman's competence, likability, and trustworthiness increase if she is wearing make-up.<sup>31</sup> An economics professor observing the results found "the conclusion that make-up makes women look more likeable—or more socially cooperative—made sense . . . because 'we conflate looks and a willingness to take care of yourself with a willingness to take care of people.'"<sup>32</sup>

More than just predict an individual's likability, attractiveness has been proven to increase an individual's career success.<sup>33</sup> A study conducted by two economics researchers, measuring the earnings differential associated with beauty, concluded that attorneys in the private sector are more attractive than their public sector peers five years out of law school and that this discrepancy increased over time.<sup>34</sup> The researchers measured attractiveness based on yearbook photos at a highly competitive law school, then used alumni reporting data to track employment five and fifteen years after graduation.<sup>35</sup> In describing their expected results, researchers noted that "social-psychological evidence shows . . . that people find attractive communicators more persuasive than unattractive ones."<sup>36</sup> Researchers hypothesized that the difference they found could be explained by private counsels' need to generate clients and billable hours, compared to the "captive" clientele of public-sector attorneys.<sup>37</sup> Researchers also determined that more-attractive public-sector attorneys moved to the private sector, where they were more greatly rewarded for their looks<sup>38</sup> because good looks helped them attract and retain clients.<sup>39</sup>

In today's consumer society, individuals seeking to increase their attractiveness have seemingly limitless choices when it comes to fashion

30 Deborah L. Rhode, *The Injustice of Appearance*, 61 STANFORD L. REV. 1033, 1039 (2009). The author acknowledges that the very notion of being able to categorize people in this way may be flawed and may call into question the validity of such research.

31 Catherine Saint Louis, *Up The Career Ladder, Lipstick in Hand*, N.Y. TIMES (Oct. 12, 2011), <http://www.nytimes.com/2011/10/13/fashion/makeup-makes-women-appear-more-competent-study.html>.

32 *Id.* (quoting Daniel Hamermesh, Professor of Economics at the University of Texas at Austin).

33 Rhode, *The Injustice of Appearance*, *supra* note 30, at 1039 & n. 26; Jeff E. Biddle & Daniel S. Hamermesh, *Beauty, Productivity, and Discrimination: Lawyers' Looks and Lucre*, 16 J. LABOR ECON. 172 (1998).

34 Biddle & Hamermesh, *supra* note 33, at 195.

35 *Id.* at 177–78.

36 *Id.* at 176–77.

37 *Id.* at 177.

38 *Id.* at 195.

39 *See id.* at 194.

and grooming decisions. There is considerable pressure on new professionals to make the “right” decisions about the personal appearance they present because dress and grooming decisions serve as proxies for business judgment. The harder and more complex question is how to maintain confidence and a sense of self while assimilating. In practice, proving one can fit the dress and grooming expectations is integral to being a productive member of a professional workplace.<sup>40</sup>

Many employers seeking to regulate these mutable characteristics seem to believe, “If employees can’t figure out what clothes are appropriate for their work, they probably can’t do the work.”<sup>41</sup> This personalization of appearance expectations seems to exist in the workplace and on the bench. In *Jespersen v. Harrah’s Operating Co.*, the Ninth Circuit, sitting *en banc*, refused to find Harrah’s “Personal Best” policy (requiring female employees to wear styled hair, stockings, and makeup) to unequally burden women as a group. In his dissent, Judge Kozinski empathized,

Whether to wear cosmetics—literally, the face one presents to the world—is an intensely personal choice. . . . If you are used to wearing makeup—as most American women are—this may seem like no big deal. But those of us not used to wearing make up would find a requirement that we do so highly intrusive. Imagine for example, a rule that all judges wear face powder, blush, mascara and lipstick while on the bench. Like Jespersen, I would find such a regime burdensome and demeaning; it would interfere with my job performance.<sup>42</sup>

On the other hand, one could imagine an equally empathetic judge musing, “I have to conform to gender-based stereotypes every day. I don’t particularly like to put on make-up, stockings, wear a suit, tie, etc. It’s really hard for me to conform to these gender stereotypes daily, and I’m doing what I need to do to fit into the narrow constructions of what makes a man or a woman appear as expected. Therefore, everybody else should be able to do it, too.”<sup>43</sup> This attitude might have been reflected in a district court’s refusal to find discrimination in an employer’s heavy-handed dictating of dress and grooming expectations for a female anchor, actions that were held to have been simply the employer’s attempt to help an anchor who lacked an “aptitude” for style.<sup>44</sup>

<sup>40</sup> James S. Bowman & Harry L. Hooper, *Dress and Grooming Regulations in the Public Service: Standards, Legality, and Enforcement*, 15 PUBLIC ADMINISTRATION Q. 328, 328–29 (Fall 1991).

<sup>41</sup> *Id.* at 337–38 (quoting an anonymous manager in *Dress Codes*, INDUSTRY WEEK (June 9, 1986), at 21).

<sup>42</sup> *Jespersen v. Harrah’s Operating Co.*, 444 F.3d 1104, 1117–18 (9th Cir. 2006) (*en banc*) (Kozinski J., dissenting); see also Levi, *supra* note 10, at 246.

<sup>43</sup> Levi, *supra* note 10, at 246.

Some scholars assert that such paternalistic views have been in place ever since women entered the workforce, and employers have attempted to control women employees with dress and grooming styles.<sup>45</sup> Such scholars are critical of employers who justify biased dress codes on client-focused service as a legitimate business goal, because it becomes a way for “[t]hose with status . . . to keep the status quo.”<sup>46</sup>

A superficial focus on fashion in the workplace might be criticized as only furthering stereotypes.<sup>47</sup> A more nuanced, collaborative understanding of appearance as part of professional image, however, can help break down such barriers. New attorneys who receive formal mentoring in law school and engage in collaborative dress code drafting in the legal workplace will gain a strong sense of professional style and confidence and help end workplace biases. Rather than avoid the issue because “clothes []make statements, but they cannot be grammatically parsed like language,”<sup>48</sup> law schools can use legal writing pedagogy to make “the unconscious conscious”<sup>49</sup> in the visual rhetoric of fashion. In partnership with legal educators, legal employers should take the crucial next step of inviting new attorneys trained to parse the language of dress codes to engage in a collaborative dress-code drafting process. Just as ethical rules are needed for courtroom use of visual rhetoric because of the possibility of influence and implicit bias,<sup>50</sup> intentionally crafted dress codes can break down stereotypes and ensure individual attorneys present a professional sense of business casual style.

### III. Law Students Need Formal Mentoring Programs and Classroom Discussion about the Ethos of Fashion as They Form Their Professional Identity

That Millennial law students will be receptive to fashion mentoring relies heavily on that generation’s reputation as creative, collaborative learners, who have a greater awareness of diversity than previous generations.<sup>51</sup> Much has been written about the short attention span of students raised on the internet, who have come to expect instantaneous results without deliberating or challenging assumptions.<sup>52</sup> Clinical professors

44 *Craft v. Metromedia, Inc.*, 766 F.2d 1205, 1210 (8th Cir. 1985) The Eighth Circuit deferred to the lower court’s assessment of the facts, but opined that the employer may have “overemphasized” employee appearance. *Id.* at 1215.

45 Siegel, *supra* note 10, at 154–56.

46 *Id.* at 153.

47 *Id.* at 156–57.

48 *Id.* at 153 (quoting Amy de la Haye & Elizabeth Wilson, *Introduction*, in *DEFINING DRESS: DRESS AS OBJECT, MEANING AND IDENTITY* 5 (Amy de la Haye & Elizabeth Wilson eds., 1999)).

49 Jewel, *supra* note 13, at 262.

50 *Id.* at 272.

51 Benfer & Shanahan, *supra* note 7, at 8–9, 11.

52 *Id.* at 10, 22.

have shown that the skill of critical and independent thought can be taught through a reflective process, getting students to pause and examine their decisions and results.<sup>53</sup> Engaging our Millennial students in a conversation about the role fashion plays in forging their professional identity is such a reflective process. As a first step, we need to get a sense of what they think about the subject.

In April 2013, I polled all of The George Washington School of Law 1Ls to find out how prepared they were to dress for their first summer legal jobs. I billed the poll as an exam study break and received 103 responses out of a class of approximately 450 students. Each question was followed by three answer choices (yes, no, no opinion), because my goal was to measure only *whether* students were thinking about fashion not *what* they were thinking. I intentionally did not ask students to identify their sex because gender identity in fashion has a level of complexity beyond the scope of this simple poll.

The poll results show that students need guidance when it comes to the interrelationship between fashion and their burgeoning professional identities. Ninety percent of the students who responded acknowledged that their employers would evaluate them on their dress and grooming.<sup>54</sup> But seventy-five percent expected the employer to dictate a dress code. That suggested to me that most 1L students fail to recognize the “hidden rule” dilemma.<sup>55</sup> Fifty-four percent of the students who responded indicated they want dress and grooming decisions to express their personality, and the same number said it is always important to feel comfortable in one’s clothes. Seventy-eight percent said it is important to always look one’s best. Perhaps the question could have been more carefully crafted, but I was surprised that number was not closer to one hundred percent. In a professional school focused on building an identity desired by legal employers, how could looking anything but one’s best be the goal? Overall, the survey results made me wonder whether students appreciate that they make their most positive impact when they dress thoughtfully, with consideration for the professional expectations of their employer or client.

Polling can provide insights into group mentality, but fashion is intensely personal, so I also collected anecdotes of the individual perspectives of upper-level students about their experiences dressing for

53 *Id.* at 20.

54 Poll results on file with author.

55 Lang, *supra* note 4, at 277 (stating that a profession projects its image most powerfully through dress and that sometimes those rules of dress are clear and other times more subtle); *see also* Brady, *supra* note 5, at 20 (encouraging new attorneys to “pay attention to the spoken and unspoken rules” to ensure a smooth transition from law school to practice).

summer internships. One student was anxious that her 1L summer spent at a public-interest organization with a relaxed style of dress was insufficient preparation for the more formal law-firm atmosphere she sought for her 2L summer.<sup>56</sup> Other students told me they learned while on the job how to project the confidence and competence they wanted their audience to see. One male student purposefully dressed as formally or more formally than his assigning attorneys because he was self-conscious of his young age:

If you are a “straight-through” law student like me, who is only 23, and you’re wearing polos with giant Polo Ralph Lauren or Express emblems on them, your supervisors simply will not take you seriously. . . . One way of making the right impression before even speaking a word to someone is to wear clothes on the “dressier” end . . . and keeping them crisp and clean. After all, it is human nature to equate the organization and cleanliness of someone’s appearance with the organization and cleanliness of their mind and their work product.<sup>57</sup>

Another male student, who began the summer dressing in suits in an effort to make a good impression at his government-agency internship, noticed his “colleagues seemed uncomfortable with my decision to wear a suit[;] therefore, I simply wear slacks and a tie each day.”<sup>58</sup>

In some of these conversations, students shared personal details that show how body image relates to professional identity. One student gained twenty pounds from indulging in summer-associate lunches at a BigLaw firm, and by the end of the summer his clothes became visibly tight.<sup>59</sup> He shared his experience to caution students not to buy a full wardrobe at the beginning of the summer and instead to anticipate the need for sizing adjustments.

Each of the students I talked to had realized his or her decisions about dress had been intentional and even a form of communication. Moreover, they appreciated that I was open to talking to them about their choices and trepidations, because no one else had.

56 Email from Jennifer Grobe to Karen Thornton, Mid-summer Greetings (July 10, 2014, 5:46 p.m. EDT) (on file with the author).

57 Email from David Edmonds to Karen Thornton, Mid-summer Greetings (July 3, 2014, 11:31 a.m. EDT) (on file with the author).

58 Email from Jacob Yaniero to Karen Thornton, Mid-summer Greetings (July 7, 2014, 7:55 p.m. EDT) (on file with the author).

59 Email from Nathaniel Castellano to Karen Thornton, Summer Associate Wardrobe (Apr. 1, 2015, 3:07 p.m. EDT) (on file with the author).

## IV. Using the Language of Visual Rhetoric to Parse Hidden Dress Codes and Prepare Law Students for Practice

When law schools broach the topic of workplace fashion, it can make headlines on *Above the Law*,<sup>60</sup> but business schools have long recognized that personal presentation must be part of a professional curriculum. At The George Washington University School of Business, students are provided a dress and grooming guide for interviews, and members of the career office turn students away from on-campus interviews if they are not dressed in accordance with the guide.<sup>61</sup> Business professors, lecturers, and presenters model and discuss professional appearance across the MBA curriculum to encourage student confidence and competence about professional style. Formal mentoring on workplace fashion is yet another area where law schools lag behind business schools in adapting to changing business climates and modern markets.<sup>62</sup>

### A. Visual Rhetoric in Professional-Development Coursework

The Carnegie Report urged law schools to do more to encourage students to practice professionalism and civility as part of their preparation for careers in the law.<sup>63</sup> Professionalism and civility are leadership qualities.<sup>64</sup> Good leaders have high emotional intelligence.<sup>65</sup> They listen, empathize, and get along “with people of diverse backgrounds.”<sup>66</sup> If we expect new attorneys to embody the qualities of professionalism and civility, then we must engage them in a discussion about office-dress expectations and foster a broad definition of reasonable business purpose.

Among the skills law schools have recognized as critical to their skills-course offerings, including professional-development training, is empathy—a lawyer’s ability to “project him or herself into the thoughts of

<sup>60</sup> Kashmir Hill, Fashion Dos and Don'ts from the Windy City, *ABOVE THE LAW* (Apr. 12, 2010), <http://abovethelaw.com/2010/04/fashion-dos-and-donts-from-the-windy-city-if-you-have-a-tramp-stamp-it-may-already-be-too-late> (poking fun at snarky commentary heard at a “Project Runway for law students” event held at John Marshall Law School and sponsored by the Chicago Bar Association).

<sup>61</sup> Telephone conversation with Toni Della-Ratta, Director Graduate Career Management, The George Washington Univ. Sch. of Bus., Aug. 28, 2014. Notes on file with the author.

<sup>62</sup> See generally Ben Taylor, *Why Law School Rankings Matter More than Any Other Education Rankings*, *FORBES* (Aug. 14, 2014), <http://www.forbes.com/sites/bentaylor/2014/08/14/why-law-school-rankings-matter-more-than-any-other-education-rankings/> (noting that business-school rankings are far more volatile than those of law schools in part because “MBA programs must constantly adapt to changing business climates and modern markets”).

<sup>63</sup> Sophie Sparrow, *Practicing Civility in the Legal Writing Course: Helping Law Students Learn Professionalism*, 13 *LEGAL WRITING* 113, 128 n.90 (2007).

<sup>64</sup> See *id.* at 121.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* (quoting DANIEL COLEMAN, ET AL., *PRIMAL LEADERSHIP: REALIZING THE POWER OF EMOTIONAL INTELLIGENCE* 255, app. B (2002)).

another and understand how that person . . . is thinking.”<sup>67</sup> Getting dressed for work is itself an empathetic act. Lawyers who can “calibrate” their dress, in addition to their language and posture, to their audience’s expectations are more likely to connect and build relationships.<sup>68</sup> These relationships grow out of an intuitive response by the audience, which forms in a matter of seconds.<sup>69</sup> The lawyer who is attuned to the employer’s business purpose and makes fashion choices consistent with that purpose will connect on a visceral level with the client, the court, and the coworker.

At The George Washington School of Law, our 1L Inns of Court program, which presents weekly programming on professional identity and career development, is an opportunity for an open conversation about workplace fashion choices. The program coordinators invite alumni and local practitioners to talk about what lawyers do and how they built their career stories. Students hear how lawyers communicate and see how they look. Students’ feedback shows they are paying attention. After one program, a 3L student wrote, “There were three presenters and one or more wasn’t very professionally dressed. . . . I think personal presentation is a big part of the professional world whether you like it or not[,] and it’s important to keep that in mind, especially when giving a presentation.”<sup>70</sup>

A number of students expressed an interest in collaborating on an Inns of Court presentation called “Building a Workplace Wardrobe that Reflects Your Professional Identity.” The goal of the program is to engage students in a conversation about the politics of fashion and how to create a personal sense of professional style. When I hand-pick upper-level student presenters, mostly from leadership positions on journals, student organizations, and in the writing-fellow program, I am conscious of the importance of diversity, the *ethos* of storytelling, and the visual impact of peer models. The program presents these students, dressed as they would be for work, sharing personal narratives of a typical day, and the considerations that went into creating their looks. The presenters offer vivid and sometimes delicate lessons they learned on the job as they interpreted customs of dress in different types of offices. The voices include students of varied racial, religious, and cultural backgrounds, from different regions

67 Ian Gallacher, *Thinking Like Nonlawyers: Why Empathy is a Core Lawyering Skill and Why Legal Education Should Change to Reflect Its Importance*, 8 LEGAL COMM. & RHETORIC: JALWD 109, 112 (2011).

68 See generally *id.* at 112.

69 See generally *id.* at 123 (citing Ruth Anne Robbins, *Harry Potter, Ruby Slippers, and Merlin: Telling the Client’s Story Using the Characters and Paradigm of the Archtypical Hero’s Journey*, 29 SEATTLE U. L. REV. 767, 768–69 (2006); see also *supra* text accompanying notes 15–21).

70 Email from Anna Myers to Karen Thornton, IOC Upper-level programming (Aug. 27, 2014, 12:50 a.m. EDT) (on file with the author).

of the country, and students who identify as gay or gender nonconforming. The student presenters are not shy about sharing embarrassments, shopping strategies, and budget secrets, and we encourage questions from the audience.

As master of ceremonies, in addition to fielding questions, my role is to make sure the students in the audience leave with a coupon book of discounts (which I negotiate with the local Brooks Brothers, Ann Taylor, J. Crew and Banana Republic stores) and a three-part guide, synthesized from the student presentations, for creating their own professional style. First, students are asked to be generally familiar with highly regarded office fashion blogs, such as *Corporette.com*, an ABA Journal Top 100 Blawg since 2008; books, such as *Dressing the Man*, available at Brooks Brothers; and even cable-television fashion pundits.<sup>71</sup> Students can engage in reflection guided by expert stylists such as Stacy London and Tim Gunn, whose television presence have made fashion more accessible and therefore more imperative. Their advice: You have to know yourself first, then purge your closet of pieces that make you question your confidence, and, finally, shop for quality, well-tailored clothes that create an image of authority. I suggest students read Robin Givhan, a Pulitzer Prize-winning journalist, who frequently writes and blogs about how powerful people use fashion to project their authority. Her style advice for Millennials entering a new career—"The point of dressing up is to get ready to face the world," and leave the weekend self at home.<sup>72</sup>

As a second step, students can seek personalized assistance at no cost in stores where attorneys shop. Nordstrom, J. Crew, Macy's and Bloomingdale's, to name a few, offer free personal-shopper services. The *Wall Street Journal* reviewed these services and confirmed they are free (of cost and pressure), and the focus on fit and a personal sense of style is wholly educational.<sup>73</sup>

Finally, we encourage students to seek an alumni mentor who can model a sense of style that strikes a balance of empowerment and fit. Developing this sense of self-awareness builds the critical-thinking skills, and empathy, it takes to read an audience. For example, the adage, "dress for the job you want," might backfire for an intern like Jacob, who started the summer wearing a suit in a business-casual office environment. Being

71 A shortcoming of these offerings is their tendency to be gender-specific, but the topic of society's construction of gender is too complex for this presentation, so I invite gender-nonconforming students to share their experiences and educate their peers through narrative.

72 Ijeoma S. Nwatu, *A Peek Inside Her Agenda*, HER AGENDA, <http://www.heragenda.com/power-agenda/robin-givhan> (visited Mar. 8, 2015).

73 Jenni Avins, *The Next Generation of Personal Shoppers*, WALL STREET J. (May 3, 2013), <http://www.wsj.com/articles/SB10001424127887323982704578452750295412238>.

attuned to and reflecting upon these nuances builds emotional intelligence. A law school that guides students to reflect upon the professional identity they want to project produces new attorneys who can successfully join an office culture without losing their sense of self.

## B. In the Lawyering Curriculum

In the lawyering courses, beginning with the first year, professors are well equipped to mentor lawyers in training about workplace fashion because it directly correlates to teaching the effect of a writer's visual presentation on the page. In written work, an author's choices about visual presentation go to her credibility and ability to connect with the audience.<sup>74</sup> Lawyers understand, and legal writing professors teach, the significance of making one's meaning clear not simply by the words chosen, but how those words appear on the page. Just as readability and persuasiveness improve when a writer establishes regular, repeated patterns in highly organized text,<sup>75</sup> so does a lawyer who makes careful choices about clothing style and fit establish professional credibility. Learning experts who study things like the contrast between light and dark on a page have proven that the "white space does not actually affect legibility, 'but the reader thinks it does.'"<sup>76</sup> Similarly, the clean lines of a suit or structured silhouette of a tailored piece of clothing convey a sense of authority from first glance, creating an instant positive impression.<sup>77</sup>

Brain science tells us viewers make split-second, superficial assumptions about an individual's clothing choices.<sup>78</sup> One way to curb stereotyping is to make fashion part of our teaching of rhetoric. While there are many ways to approach this, the simplest way would be for professors across the legal curriculum to assign readings from employment-law scholars and practitioners, followed by in-class drafting exercises. Beginning with a boilerplate dress code, the professor can lead a discussion about tailoring language to a legal employer's expectations and

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<sup>74</sup> Ruth Anne Robbins, *Painting with Print: Incorporating Concepts of Typographic and Layout Design into the Text of Legal Writing Documents*, 2 LEGAL COMM. & RHETORIC: JALWD 108, 111 (2004).

<sup>75</sup> *Id.* at 112.

<sup>76</sup> *Id.* at 124 (quoting ROBERT S. LAUBACH & KAY KOSCHNIK, USING READABILITY: FORMULAS FOR EASY ADULT MATERIALS 36 (1977)).

<sup>77</sup> According to expert stylist, Stacy London, "suits are great for conveying an image of authority, for sure. For men, suiting is ALL about details of the way it fits.

Women can obviously wear suits (pant or skirt) as well and pair them with more feminine, colorful or textured tops. An alternative option for women is dresses, ones that are tailored well and appropriately hemmed at the knee. Straighter cuts in womenswear like pencil skirts and sheath dresses tend to have clean lines, which can look very authoritative.

Lisa Johnson Mandell, *What Not To Wear's Stacy London Helps You Dress for Less Stress at Work*, AOL JOBS (Feb. 2, 2011), <http://jobs.aol.com/articles/2011/02/02/what-not-to-wears-stacy-london-helps-you-dress-for-less-stress>.

<sup>78</sup> See *supra* text accompanying notes 15–21.

client relationships. The conversation would address empathy, diversity, and self-expression, as well as emphasize that putting an office-dress policy in writing promotes a perception that the employer is not being arbitrary.<sup>79</sup>

The goal of such nondirective teaching, commonly used in legal writing and clinic courses, is to encourage self-discovery and awareness. With dress codes, the visual rhetoric of clear, concise, written work product can be analogized to tailored, yet individual, fashion style. After laying the groundwork of employers' business purposes, the conversation expands to how students present their personal identity. The lesson is not how the professor would dress, but how a self-aware student will choose to dress, and the discussion reinforces themes of respect, empathy, and leadership.<sup>80</sup> In such a learning environment the generational gap between law professors and students evaporates. Just as using Times New Roman has been referred to as "not a choice, but an absence of choice,"<sup>81</sup> it is time for lawyers to broaden their acceptance of office fashion style to something more than a closetful of blue and grey Brooks Brothers suits. New attorneys need not sacrifice personal identity to embrace a professional identity. In fact, greater acceptance of fashion style can lead to greater civility in the classroom and workplace. "Civility is not about repressing concerns or individualism, but encouraging those expressions in a constructive way."<sup>82</sup>

## V. Bringing the Conversation to the Workplace: An Opportunity for Legal Employers to Embrace Diversity in Office Dress Codes Through Collaboration

### A. Frustrated Employers

For the past four years, the York College Center for Professionalism has conducted an extensive national survey of employers of "new college graduates."<sup>83</sup> Responses indicate that employer satisfaction with professionalism is low.<sup>84</sup> Respondents further indicate the leading reason for the

<sup>79</sup> See generally Levi *supra* note 10; Janet G. Payton, *Legal Aspects of Regulating Employee Attire*, 36-07 THE LAWYER'S BRIEF I (Apr. 15, 2006), at 26.

<sup>80</sup> See Sparrow, *supra* note 63, at 129.

<sup>81</sup> Ruth Anne Robbins, *Conserving the Canvas: Reducing the Environmental Footprint of Legal Briefs by Re-imagining Court Rules and Document Design Strategies*, 7 LEGAL COMM. & RHETORIC: JALWD 193, 201 n. 43 (2010).

<sup>82</sup> Sparrow, *supra* note 63, at 120.

<sup>83</sup> 2013 National Professionalism Survey Workplace Report, *supra* note 3, at 8.

<sup>84</sup> *Id.* at 8 (48.6% of employers feel that "less than 50% of new employees exhibit professionalism in their first year" and 35.9% of employers report "a decrease in the percentage of new employees demonstrating professionalism.").

low rate of demonstrating important professional qualities is that employees are “not understanding what professionalism means.”<sup>85</sup> When asked to identify qualities that best describe professionalism, appearance–dress (26.8%) was among respondents’ top three choices.<sup>86</sup> Respondents also indicated the quality most often associated with being *unprofessional* is appearance–dress (26.5%).<sup>87</sup> The majority of employers (56.9%) rate appearance as having a great impact on “the perception of one’s competence.”<sup>88</sup>

The York study also revealed that the younger the respondent employers, the less likely they were to consider appearance a detriment to the perception of one’s ability.<sup>89</sup> If the absence of clear rules on professional dress and failure to fulfill employer expectations are particularly frustrating to more-senior attorneys, then supportive mentoring is unlikely. This excerpt from an email leaked from within a national law firm to *Above the Law* exemplifies the kind of condescending grumblings senior attorneys pass off as sartorial guidance:

2. If it hasn’t been dry-cleaned or you don’t have a spouse/significant other who is exceptionally talented with an iron (since it is clear that no male lawyer here knows how to iron), don’t wear it.

\* \* \* \* \*

5. Polo-type shirts which look like they have been crumpled in the back corner floor of your closet do not count as acceptable business casual. This is true even when you attempt to smooth them out for 15 seconds before you put them on in the morning. While you may not notice your shirt looks like you slept in it, others will. . . .

\* \* \* \* \*

7. Shoes need polish . . . like weekly. Ask your father[,] if you are so lucky to have him living[,] what civilized people use[d] to say you could tell about a fella based on his shoes.

8. There are actually unofficial rules about appropriate combinations of brown/black shoes, brown/black socks . . . and brown/black belts based on the color of your clothes and the color of the belt/sock/shoe you are wearing. Typically, they should be the same color. This is a little complicated for some. If in doubt, wear the same color. Or, ask your spouse/significant other or purchase a book.

85 *Id.* at 50.

86 *Id.* at 49. The other two were work ethic (34%) and interpersonal skills (32.1%).

87 *Id.* at 51. The other two in the top three were “poor work ethic” (24.7%), and a lack of focus (24.1%).

88 *Id.* at 59–61.

89 *See id.* at 59.

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11. Most days you should wear a sport coat with the rest of what constitutes your “casual dress.” This is still a law office and coats are generally a part of the kind of casual business dress we allow/tolerate/reluctantly permit.

12. All of the above rules also apply to times when you wear a suit. Simply because you actually put on a coat and tie simultaneously does not mean that wrinkles and stains and lord knows what else we see are acceptable dress.

13. Shirts with ties that don’t have button downs or collar stays make you look like the guy in the Three Stooges (or worse).<sup>90</sup>

The tone of this email bespeaks a frustration with a junior attorney’s failure to be sufficiently image conscious; worse, it smacks of classism and ageism and does little to teach the confidence and civility associated with a true sense of professional style. As frustrated and concerned as senior attorneys may be, they seem at a loss as to how to address the problem.

Sometimes, employers will attempt to engage in mentoring on appropriate dress with levity, perhaps in an attempt to connect the generations. However, humor, no matter how well intended, can go awry. In early 2013, a PowerPoint briefing given to a small number of Defense Intelligence Agency (DIA) employees on “How to Dress for Success” went viral inside the Beltway after being posted to the *U.S. News* “Washington Whispers” blog.<sup>91</sup> The final slide, featuring a photo of Sean Connery as James Bond wearing a tuxedo and disarming smile, is captioned “Am I dressed appropriately to represent DIA?”<sup>92</sup> The tone of the presentation, which included advice like “suspenders = elegance” and “neck jewelry/earrings = negative impact” for men and “do not advocate the ‘Plain Jane’ look” for women, was so embarrassing for the agency that DIA director Michael Flynn wrote a memo of apology to all agency employees, “I apologize to the entire workforce for the unnecessary and serious distraction of this ‘Dress for Success’ briefing,” the memo says. “I too find it highly offensive.”<sup>93</sup> Rather than give serious consideration to the impact of professional appearance, the presentation’s trivialization and director’s overreaction did a disservice

<sup>90</sup> Elie Mystal, *Business Casual Basics for Slovenly Men*, ABOVE THE LAW (June 17, 2013), <http://abovethelaw.com/2013/06/business-casual-basics-for-slovenly-men/>.

<sup>91</sup> Tierney Sneed, *Here is the Dress for Success Presentation Given at DIA*, WASHINGTON WHISPERS BLOG (May 14, 2013), <http://www.usnews.com/news/blogs/washington-whispers/2013/05/14/how-to-dress-for-success-at-the-defense-intelligence-agency> (this link includes a copy of the PowerPoint presentation).

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

to DIA employees. Biases only grow stronger when discussion of appearance choices and differences are silenced.

## B. Inclusion Replaces Frustration

Employers do have a right to establish dress and grooming standards for their employees, and that right has been upheld in federal court, so long as the standards do not affect immutable characteristics or religious expression, or unequally burden one sex over the other.<sup>94</sup> Judges give considerable deference to employers on the question whether their standards are associated with “legitimate business goals” and seem uninterested in using appearance-discrimination cases to encourage greater inclusivity in the workplace.<sup>95</sup> Rather than wait for legal protections to evolve, employers and employees can begin a civil discussion, demystifying unwritten dress codes so that individuals from all backgrounds can relate to and fulfill professional expectations without abandoning their identities.

Talking openly about workplace fashion can reduce discrimination by empowering individuals to take control of the impressions they make.<sup>96</sup> This includes working within appearance guidelines to express one’s own identity and sense of style. To draft “reasonable” dress codes that can be applied consistently, employers should seek employee input to define terms clearly. Such collaboration “generates good morale and better adherence”<sup>97</sup> and broader support for the employer’s reasonable business purpose when those rules affect an individual’s self-expression through fashion.<sup>98</sup> Through open conversations, employers can increase their

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<sup>94</sup> Rhode, *The Injustice of Appearance*, *supra* note 30, at 1075; *Wislocki–Goin v. Mears*, 831 F.2d 1374, 1376 (7th Cir. 1987) (termination of an employee working in the juvenile-detention system because her excessive use of makeup and untied hair violated the superior-court judge’s unwritten “Brooks Brothers” dress code held not to have been discriminatory).

<sup>95</sup> “The case law . . . indicates that employers with clearly written policies and consistent application of those policies likely can demonstrate that the appearance policy is legitimate and a business necessity, and does not violate Title VII.” Laura Hazen & Jenna Syrdahl, *Dress Codes and Appearance Policies: What Not to Wear at Work*, 39 THE COLORADO LAWYER 55, 62 (Sept. 2010). Only one state and six local jurisdictions, including the District of Columbia prohibit some form of appearance discrimination. Rhode, *The Injustice of Appearance*, *supra* note 30, at 1081 (citing appearance-discrimination ordinances in Michigan; Washington, D.C.; San Francisco, CA; Santa Cruz, CA; Madison, WI; Urbana, IL; and Howard County, MD). Fundamentally, clothes and hair are not considered immutable characteristics and therefore get less protection under the law. Even in the District of Columbia, where the District Code prohibits discrimination on the basis of personal appearance, at least one local judge has indicated that appearance is less worrisome than other forms of discrimination: “One must doubt . . . that the eradication of discrimination based upon source of income or personal appearance was meant to be as compelling an interest as the eradication of discrimination based upon race.” *Gay Rights Coalition of Georgetown Univ. Law Ctr. v. Georgetown Univ.*, 536 A.2d 1, 72 (D.C. 1987) (Belson, J., concurring in part and dissenting in part). Employees are expected to employ self-help to reform their mutable characteristics and assimilate to the office culture. Kimberly A. Yuracko, *Trait Discrimination as Race Discrimination: An Argument About Assimilation*, 74 GEO. WASH. L. REV. 365, 423 (2006).

<sup>96</sup> See Paul Reidinger, *Dressing Like a Lawyer: Whether in a Law Office or Courtroom, What You Wear May Be Almost as Important as What You Say*, 82 A.B.A. J. 78, 80 (Mar. 1996).

<sup>97</sup> See Hazen & Syrdahl, *supra* note 95, at 62.

<sup>98</sup> Rhode, *The Injustice of Appearance*, *supra* note 30, at 1098.

awareness of the harms of assimilation, such as the expectation that women adopt male-created norms, including dress, which detracts from the diversity, creativity, and satisfaction of the practice of law.<sup>99</sup> A more collaborative approach could produce a dress code that “reflect[s] greater variation across age, weight, race, and ethnicity, and . . . grooming requirements [that] reflect greater tolerance for diversity and self-expression.”<sup>100</sup>

As a starting point, these questions are ones that supervising attorneys might consider:

- What message is my office trying to send its clients through the dress and grooming of its employees?
- Are my employees happier when they have more flexibility in their dress and grooming?
- Does it add value to the office if the employees are able to express a diversity of dress and grooming styles?
- What am I trying to accomplish by creating a dress code?
- What are the goals for my office’s dress code?
- Can I express the dress code in a gender-, cultural-, and race-neutral way?
- Can I express the dress code in an affirmative rather than a punitive way?
- Are there unwritten rules to the office’s dress code, and can we find a way to write them down?

And some questions new attorneys might consider:

- What message is my firm (or agency or office) trying to send its clients through the dress and grooming of its employees?
- How compatible is my personal style with that message?
- What components of my personal style are necessary to my self-expression and self-respect?

<sup>99</sup> Rand Jack & Dana Crowley Jack, *Women Lawyers: Archetype and Alternatives*, 57 *FORDHAM L. REV.* 933, 936 (1989). Carrie Yang Costello observed, among students at one law school, that over the course of the first year some female students adopted a style of “austere androgyny of absence” in attempting to conform to unwritten rules of dress. Carrie Yang Costello, *Changing Clothes: Gender Inequality and Professional Socialization*, 16 *NWSA J.* 138, 139–41 (Summer 2004). Others were able to create a mix of masculine and feminine looks that they wore with a greater sense of ease. *Id.* at 139. Different races, genders, and cultures may struggle more to adopt a professional identity where it is incongruous with their existing identity. *Id.* at 141. This identity dissonance can create discomfort and anxiety unless the individual prefers and embraces the new identity. *Id.* at 141.

<sup>100</sup> Rhode, *The Injustice of Appearance*, *supra* note 30, at 1096. In Colorado, the state antidiscrimination statute allows employers to impose a reasonable dress code as long as it is applied consistently. *COLO. REV. STAT.* § 24-34-402(5) (2015) (“Nothing in this section shall preclude an employer from requiring compliance with a reasonable dress code as long as the dress code is applied consistently.”). The state civil-rights commission issued rules stating office dress codes shall not force an individual to dress inconsistently with their gender identity. Hazen & Syrdahl, *supra* note 95, at 58.

- Are any of those components incompatible with the message the firm wants to send its clients?
- Is a resolution possible?

An employer who demands employees leave their identities out of the office risks overlooking the power of emotional intelligence, critical thought, and creativity. If an employer wants to project a culture of respect to its clients, then the written dress code should be grounded in respect—for others and for diversity.<sup>101</sup> Clothes can be a “creative tool of self expression” in a field where creative lawyering and problem solving is valued. In building a professional identity and selecting among practice areas in the field of law, law students and new attorneys should consider the type of office culture they would like to join. Where the work is more subjective, bringing the personal into the workplace may be encouraged.<sup>102</sup> Yet learning to become comfortable with ambiguity and diversity promotes creativity, as does an environment where individuals feel free to challenge ideas. If a legal employer wants to project a business image of cultivating creativity,<sup>103</sup> it should adopt an inclusive definition of professional fashion.

## VI. Conclusion

Legal employers expect attorneys in their offices to use the *ethos* of personal appearance to project an image of competence to clients. This expectation is largely unspoken, however, and employers today are frustrated with the level of leadership and professionalism demonstrated by new employees. It is in both the employer’s and employee’s interests to clarify employer expectations and empower new members of the legal profession to adopt a personal sense of style that projects competence, leadership, and professionalism, without subtracting out the self.

101 See generally What Protections are Afforded on the Basis of Weight and Appearance? HUMAN RESOURCES COMPLIANCE LIBRARY, ¶30,575 (CCH) (2014).

102 Kirsten Dellinger, *Wearing Gender and Sexuality “On Your Sleeve”: Dress Norms and the Importance of Occupational and Organizational Culture at Work*, GENDER ISSUES 3, 13 (Winter 2002). A female Harvard Business School professor who “wore red Converse sneakers to teach a one-day event on small business management education” as an experiment, found that she earned higher evaluations from students “who identified themselves . . . as having a higher need to be unique,” and attributed the response to an inference that “she’s so autonomous, she must do what she wants.” Shirley S. Wang, *Success Outside the Dress Code: The Subtle Cues That Help Non-Conformists Break from the Pack and Thrive*, WALL STREET JOURNAL, Mar. 17, 2014, <http://www.wsj.com/articles/SB10001424052702304017604579445140870078088>.

103 Yuracko, *supra* note 95, at 454; see also Wang, *supra* note 102 (quoting Charles Pavitt, a Communications professor at the University of Delaware who studies social influence: “Willingness to deviate can be useful for groups as well[,] particularly when it comes to decision-making.”).

Professional *and* personal style, not conformity, should be the goal of office dress codes. By making the unconscious conscious through open communication about employers' goals and employees' professional identity, we overcome biases and prepare new attorneys for a profession where choice of dress creates an instantaneous message about an individual's business judgment. Together, employers and new attorneys can realize the aspiration of dress code policies that "reflect greater variation across age, weight, race, and ethnicity, and . . . grooming requirements [that] reflect greater tolerance for diversity and self-expression."<sup>104</sup> Greater tolerance for diversity and creativity ultimately increases satisfaction in the practice of law.<sup>105</sup>

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<sup>104</sup> Rhode, *The Injustice of Appearance*, *supra* note 30, at 1096.

<sup>105</sup> See Jack & Jack, *supra* note 99, at 936.