

Common Law S4 Ep 9: Doriane Nguenang Transcript

[THEME MUSIC IN, THEN UNDER]

Risa Goluboff: On this episode of Common Law: discrimination and Black hairstyles, with UVA Law graduate Dorian Nguenang.

Doriane Nguenang: I was just thinking about how me bringing my whole self to my firm, including bringing my hair, whether that was going to be a liability for me and what that would mean in terms of my career prospect.

[THEME MUSIC UP, THEN UNDER AND OUT]

Risa Goluboff: Welcome back to Common law, a podcast from the University of Virginia School of Law. I'm Risa Goluboff, the dean. If you haven't already heard, we are lucky this season to have not one but four UVA Law professors taking turns co-hosting with me. For that reason we're calling this season "Co-Counsel." Today, we're teaming up again with professor Cathy Hwang. Cathy is an expert in business law, including mergers and acquisitions – or M&A – corporate contracts and corporate governance. Cathy, it is awesome to see you again, and I understand that for this episode, we're interviewing someone that you mentored when she was a student at UVA.

Cathy Hwang: Yes. So thank you so much for having me back. It's great to be here. And that's right, when you asked me for ideas about possible guests, I did quickly think of this person who worked with me as a research assistant and who herself has blossomed into a legal scholar. So Doriane Nguenang graduated last year from the law school at UVA, and she worked with me for several semesters. She did just amazing work on a bunch of projects, including the "Cleaning Corporate Governance" project, and in my forthcoming casebook. She recently published an essay in the Virginia Law Review on "Black Women's Hair and Natural Hairstyles in the Workplace." So that's what we'll be talking with her about. On top of all that, she's currently an associate with Baker McKenzie's corporate and securities practice group in Washington, D.C.

Risa Goluboff: Excellent. I love talking to our students shortly after they graduate and seeing, how they're doing and how they're thriving in the

practice world, so I can't wait to hear more about her work and her experiences and we will be right back with Doriane Nguenang.

[THEME MUSIC UP, THEN UNDER AND OUT]

Risa Goluboff: Doriane, thank you so much for joining us.

Doriane Nguenang: Thank you so much for having me!

Cathy Hwang: Thank you so much for taking the time. I know your schedule as a new associate is really tight. So, let's just jump right in. The paper that we want to talk about today is your essay that just came out in the Virginia Law Review that focuses on how courts interpret Title VII of the Civil Rights Act.

Doriane Nguenang: Mm-hmm.

Cathy Hwang: And how those interpretations have been short-sighted in not protecting natural hairstyles, especially those of Black women.

Doriane Nguenang: Yes.

Cathy Hwang: What got you interested in this topic?

Doriane Nguenang: I guess it's my own experience with my hair. Right now I shave it all.

Cathy Hwang: Yeah.

Doriane Nguenang: But coming to the U.S. was just a cultural shock to me.

Cathy Hwang: Right. You moved here from Cameroon when you were 16.

Doriane Nguenang: Yes. And even though I had traveled to other countries, including countries in Europe prior to moving to the U.S., coming here was really my first time being in the minority in a way, because in Cameroon almost everyone is Black. And so coming to the U.S. was really the first time that – I don't know how to put it in words, because it's not that I didn't know that I was Black, but it wasn't a defining characteristic in a country where almost everyone is Black. So

the high school I went to, I was the only Black person in the science track my year. And so I really became self-aware of everything about me, about my hair, how other would perceive me or perceive my hair or other physical attributes. And so I remember reading a lot about, like, what is acceptable and what is professional for interviews as it relates to hair and reading different blogs about the different types of hairstyles that could be appropriate. And so that was like the inspiration in a way. And when I was doing all these like readings, I came across a news report about some student being asked to cut their dreadlocks in order to be able to compete in different sports activities.

[ABC NEWS: HIGH SCHOOL WRESTLER WHO WAS FORCED TO CUT HIS DREADLOCKS DISPLAYED 'CHARACTER,' HIS PARENTS SAY](#)

Reporter: It's the video seen over 12 million times. A referee demands this high school wrestler cut his hair or forfeit his match. In a statement tonight, the parents of 16-year-old Andrew Johnson call the referee's conduct outrageous, saying this should have never happened.

Risa Goluboff: So that's when you decided to write your paper?

Doriane Nguenang: So actually it's not at that point that I decided to write the paper. I took a class fall 2020, called – if I remember correctly – Big Law Profession?

Risa Goluboff: Yes, Big Law and the Profession and Business of Law. It's such a terrific class.

Doriane Nguenang: Yes. The professor invited a lot of speakers who for the most part were associates at big law firms. And one of the speakers that the professor had invited spoke about us bringing our whole self to our firms and being our authentic self. And so I was just thinking about how me bringing my whole self to my firm, including bringing my hair, how that was going to be judged based on proximity to what is the accepted norm or in a lot of big firms for the most part straight white men are what's the accepted norm. And so I was just, like, wondering how maybe deviating from that norm, whether that was going to be a liability for me and what that would mean in terms of my career prospect. So that's when I decided to, oh, maybe write a paper about Black women bringing their whole self to the firm, including bringing their hair to the firms. So the paper was actually geared toward big law. It

didn't really have a lot of legal analysis. And after the class ended, for some reason, I still thought about the paper a lot. So that's when I actually decided to add some legal analysis to it and submit it to Law Review, to see what they were going to say about it. So this is how I ended up writing this paper.

Cathy Hwang: Thinking about bringing your whole self to the firm, right?

Doriane Nguenang: Yeah.

Cathy Hwang: You also brought your whole self to what you were doing as a law student. This topic that was important to you, you were able to write a paper that, like, other people weren't able to do because they didn't have that experience, which I thought is really cool.

Doriane Nguenang: Thank you.

Risa Goluboff: So when you went and started doing the legal research, and uncovering the case history about discrimination that Black women have faced, what did you learn?

Doriane Nguenang: The way courts have actually interpreted race under Title VII, they only focus on immutable characteristics, so things that you cannot change.

Risa Goluboff: Can you give us an example or two of the kinds of cases that you found?

Doriane Nguenang: So I found two main, seminal cases. One of them is called *Rogers v. American Airlines*.

Risa Goluboff: Yes, *Renee Rogers versus American Airlines*. This is a case from 1981. So tell us who *Renee Rogers* was.

Doriane Nguenang: She's a Black woman and she was a long-term employee at American Airlines. So she basically maintained that the airline discriminated against her as a Black woman because of the company's grooming policy, which prohibited employees in certain positions from wearing all-braided hairstyle, which is basically having cornrows. And so in that case, the U.S. District Court for the Southern District of New York actually held that the policy was neutral.

Cathy Hwang: "Neutral" is doing a lot of work in that sentence.

[LAUGHING]

Doriane Nguenang: Yes. And as a result, it wasn't, uh, racial discrimination. Not taking into account the cultural aspect of Black hair or the meaning of Black hair in Black communities. A natural hairstyle have always been part of us, have always been part of our culture. And so when I came here and I read those cases, I was taken aback because this is not how I have seen my natural hair or natural hairstyle. It's always been part of me.

Risa Goluboff: There's a real conflict between what you heard these lawyers saying, right? Bring your whole self and your whole authentic self. And then what the law seems to be saying, which is some part of your authentic self – we're not going to protect it as welcome if there are places that aren't welcoming it. And that's because they're using this definition of immutability that kind of goes through a lot of anti-discrimination law. And their argument would be well, no, your hairstyle is mutable, so just change your hairstyle. And you're pointing out, no! Your hairstyle really is a big part of your identity. Right?

Doriane Nguenang: Yeah. And another reason too for why I actually thought about writing the paper was bringing the perspective of someone who grew up somewhere else, where – like I mentioned in my paper – in Cameroon, women wear different natural hairstyles. I had never heard about it being an issue or it being unprofessional or unkempt. So you really see the exposure to Western standard that comes into play. And so I really also wanted to emphasize that in my paper and bringing that other perspective of how natural hairstyles are viewed in a majority Black country and how it is viewed by some in the United States or other Western countries.

Cathy Hwang: So one thing that is kind of troubling here is that in addition to this being an issue that affects Black women's employment opportunities, it also seems to be something that affects their health. So can you tell us a little bit more about the consequences that Black women face when they have to maintain non-natural hairstyles?

Doriane Nguenang: So a lot of the times uh, Black women will have to change their hair texture to make it look more straight, which means that they will have to use chemical products to do so. For the most part, they

use what's called relaxers, and those alter the textures so that your hair goes from its afro texture to a more straighter texture. And so there are important, not only, like, health costs related to that, but also financial costs related to that. Because in order to keep your hair straight, you kind of have to use those chemicals quite regularly. And so that means spending money to do so. Also, by resorting to those chemical treatments, you have issues like burns on the scalp and other scalp diseases related to that.

Cathy Hwang: You also wrote about this other health impact I'd not considered before: exercise. Can you say a little bit more about?

Doriane Nguenang: There was this study that actually showed that Black women exercise less than any other groups and hair kind of represents this critical barrier to exercising for many Black women, in that the time and the economic constraints involved in preserving your hairstyle post-exercise, actually frames physical activity as prohibitive, or something that they cannot afford to do all the time. In the same study, this hairstyle that Black women reference as accommodating exercise, generally involved the least amount of maintenance – for example, you have ponytails, you have braids, you have cornrows and other type of natural hairstyle – but those hairstyles are some of the same styles that are not considered professional or that are considered unkempt or, like in the prior cases that I mentioned, those were prohibited and so the hairstyle that can actually help to benefit Black women health are the same style that you have like grooming policies prohibiting them.

Risa Goluboff: Yeah.

Cathy Hwang: So in your paper, you're talking about a problem that you hope the Supreme Court will address, but you also offer a path toward a solution and note points in the past where the court expanded the meaning of Title VII, so can you tell us a little bit about that?

Doriane Nguenang: When I was doing research, I was hoping to find a solution that will avoid bringing immutability into the question. And so I look at the Supreme Court's reasoning in other cases involving the other protected classes under Title VII, including religion, uh, national origin, and sex. And in the very first cases related to sex discrimination under Title VII, the court also interpreted sex as being immutable. But starting with the case called Price Waterhouse v. Hopkins, that's a case where the employee Ann Hopkins alleged that her employer, accounting firm

Price Waterhouse, denied her a promotion to the partnership because of her gender presentation. A partner at the firm told Hopkins that she needed to walk more femininely, she needed to talk more femininely, and dress more femininely, and wear makeup and have her hair styled a certain way. And so the court in that case actually indicated that Title VII's prohibition against discrimination based on a statutorily protected class is not limited to protecting only those characteristics of the class that may be viewed as immutable. And so the court ruled that discrimination based on those characteristics, which Hopkins could have changed as well – she could have walked more, I guess, femininely, whatever that means or talk more femininely. The court said that discrimination based on those characteristics constituted sex discrimination. And so since that case, the Supreme Court has actually expanded the definition of sex discrimination to include discrimination based on sex stereotype, same-sex harassment, and finally sexual orientation and gender identity under *Bostock v. Clayton County* that was decided in 2020.

[OYEZ: BOSTOCK V. CLAYTON COUNTY ORAL ARGUMENT - OCTOBER 8, 2019](#)

Chief Justice John G. Roberts, Jr.: We'll hear argument first this morning in Case 17-1618, *Bostock versus Clayton County*, and the consolidated case. Ms. Karlan.

Risa Goluboff: Right. So in this case, a gay man, Gerald Bostock was fired from his job after he joined a gay softball league.

Pamela S. Karlan: There is no analytic difference between this kind of discrimination and forms of discrimination that have been already recognized by every court to have addressed them. For example, discrimination against men who are effeminate rather than macho. Like the discrimination here, that discrimination is because of nonconformity with an expectation about how men should behave.

Doriane Nguenang: The court stated that statutory prohibitions often go beyond the principle evil that they were passed to fight. For example, here, sex as an immutable characteristic, and now you have this expansion of the definition of sex to cover reasonably comparable evils. And so I figure out that this can be a solution as well, just like using the reasoning of the court in sex discrimination cases and applying that same reasoning to natural hair, natural hairstyles, and that's what I did in the paper. And then I also focus on the burdens, including what I

mentioned before health-wise, when it comes to Black women feeling pressure to adapt or conform to European beauty standards.

Risa Goluboff: It's really interesting when you think about the history of Title VII, it starts in race and then moves to sex, and then you're making the opposite move now, right, to take some of the reasoning in the sex cases that go beyond immutability and then apply them back into race.

Doriane Nguenang: Yes.

Cathy Hwang: Beyond litigation, there might also be a legislative fix for this, right?

Doriane Nguenang: Mm-hmm.

Cathy Hwang: A dozen or so states have passed laws banning hair-related discrimination. And in March, the House of Representatives passed the Crown Act.

[CONGRESSWOMAN BARBARA LEE SPEAKS ON HOUSE FLOOR IN SUPPORT OF CROWN ACT](#)

Rep. Barbara Lee: Thank you, Madam Speaker. I rise in strong support of HR 2116, the Creating a Respectful and Open World for Natural Hair Act, commonly known as the CROWN Act.

Cathy Hwang: This is a clip from Congresswoman Barbara Lee's speech in support of the bill on the House floor.

Rep. Barbara Lee: And yes, personally, I've always worn my hair however I chose. I've worn it straight. I've worn it braided. I've worn it spiked. I've worn it curly. I've worn it in a big natural. You name it. You name it. Everyone should be able to make those choices without fear of repercussion. Hair discrimination is rooted in systemic racism and is a real barrier to advancement and empowerment for our communities.

Risa Goluboff: So the House passed the Crown Act back in March, but it hasn't passed the Senate yet.

Doriane Nguenang: It is my hope that will be the case. I'm not just sure how long it's going to take.

Risa Goluboff: Sure.

Doriane Nguenang: That's why I talk mostly about the Supreme Court as an alternate solution, changing or expanding the definition of race through the Supreme Court. Or hopefully when Congress passes the law, that will also be beneficial. So those are two solutions: either Congress passing the law, or if there is another case brought to the Supreme Court and the Supreme Court can expand the definition of race under Title VII, that would be great. I'm not just sure which one is going to come first.

Risa Goluboff: I know you worked with Professor Hwang.

Doriane Nguenang: Yes.

Risa Goluboff: So can you tell us little bit about what you did together?

Doriane Nguenang: We did a lot of bylaws work.

Risa Goluboff: Bylaws? Now that's exciting.

Cathy Hwang: Absolutely!

[LAUGHING]

Doriane Nguenang: For some reason, it's one of the assignments that I will never forget, because it was pretty – it was pretty intense.

Cathy Hwang: Horrible?

[LAUGHING]

Risa Goluboff: Intense is the nicer way of saying horrible, maybe.

[LAUGHING]

Doriane Nguenang: And I also really enjoyed working on the book that Professor Hwang is co-authoring.

Risa Goluboff: That's your new casebook, I presume?

Cathy Hwang: Yeah, exactly.

Doriane Nguenang: And it's really a fun time working with Professor Hwang. I dunno how many research assistants you can take in a semester, but I would recommend everyone to also be your research assistant. Professor Hwang is just amazing and fun and a great mentor.

Risa Goluboff: She is quite an amazing mentor and teacher, so ...

Doriane Nguenang: She is.

Risa Goluboff: It's nice to hear you say.

Cathy Hwang: Don't make me cry.

[LAUGHING]

Cathy Hwang: So this casebook that I'm working on — Doriane is, was a genius on it — and I was super lucky because after the bar exam, she's such a hard worker that she was like, 'Well, I finished the bar exam, so could I just, like, do some more research assistant work?' And the business office was nice enough to help me get her hired on as, like, an independent contractor. And it was amazing, right? It's like you have this graduated 3L who's taken all the classes that they can, helping you with the casebook. It's like growing a second head.

Doriane Nguenang: That's because I missed working with you when I had to study for the bar exam, and so I told myself that I needed to at least do some more days before actually starting at my firm.

Risa Goluboff: Aww.

Cathy Hwang: Well, we miss you.

[LAUGHING]

Risa Goluboff: How has it been to put into practice what you learned in law school and what's it been like?

Doriane Nguenang: Sometimes it feels like an extension of law school in a way, or at least like being a research assistant for Professor Hwang because I get to learn a lot.

[LAUGHING]

Doriane Nguenang: But I would say that the learning curve is very steep. I'm learning every day, which is great. I like learning.

Cathy Hwang: I always say to my students that, like, law is a learning profession. So, like, there's no way we could actually teach you everything you need to know to become a partner at a, at a great firm like Baker, but we're just teaching you how to be good learners and be interested in learning, and so you can go out there and gain more skills.

Doriane Nguenang: That's definitely what's happening.

Risa Goluboff: This has been just fabulous, Doriane. Thank you so much for, for taking the time and talking with us.

Cathy Hwang: Thank you so much.

Doriane Nguenang: No, thank you so much to you two.

[THEME MUSIC IN, THEN UNDER, THEN OUT]

Cathy Hwang: I loved how Doriane had talked about bringing your authentic self to work. That's something that I thought a lot about, right, when I became an associate and an academic especially because there's a way that a law professor, quote, unquote, looks, right? Like, I didn't have that many women as law professors, no people of color teaching my first-year classes. I guess to me, that was almost like a positive thing, because I felt like there's no other Cathy and I, I don't think there's another Risa, right? Because I think you bring your authentic self to deaning. I don't think there's a different Risa.

Risa Goluboff: No, there is not. For better or for worse.

[LAUGHING]

Risa Goluboff: I feel the same way. think I am who I am and I think sometimes that can be a liability, but a lot of the time that can be a

benefit, right? And, uh, you know, the Law School has a libel show, a funny review that the students put on at the end of the year. And the year that I was named dean, there was a Libel Show skit about how I was different in pretty much every respect from all of the deans that had come before me most obviously as a woman, but being short, being a New Yorker, all of these different things. And it seemed like everybody was aware of who I was.

Cathy Hwang: Yes.

Risa Goluboff: I talk about a lot at the Law School, wanting the members of our community, our students, our faculty, our staff, to be able to be their whole selves and their authentic selves at the Law School. But I was in a conversation recently and somebody said, “Not everybody knows what people mean when you say, bring your whole self.” That’s sort of generational in that I think – you and I are not quite the same generation, I’d love to think I am your generation, but I’m not, and that Doriane is yet another generation removed – but that there are generations above me where both as a descriptive matter, people aren’t sure what you mean by bring your whole self, and as a normative matter, might not be sure that’s a good thing, right? That they might not think that’s appropriate. And that there’s some amount of conflict there maybe generationally. I don’t know whether you think that’s true or you’ve encountered that?

Cathy Hwang: Yeah, I think that’s really true, right? Because like, I remember, mentors, relatives, parents be like, this is the way you dress professionally. This is the way you behave at work. Actually a really interesting thing that turned for me was when I was an associate at Skadden, there was another woman in my year in M&A and she was so competent and knew so many things, just a great associate. But she would send emails and they would have happy faces in them and her spouse, instead of sending her flowers to the office, would send these huge balloon bouquets. And I remember being like, oh my gosh, she’s just, she’s bringing her whole self, like, this is who she is, right? She was just so fun.

Risa Goluboff: Sounds good to me.

Cathy Hwang: I think when you work at a law firm or at a job like being a professor where you do it so much, if you don’t bring your whole self, where does your whole self thrive? Right?

Risa Goluboff: Right. Where does it fit into your life?

Cathy Hwang: Yeah. Yeah, exactly.

Risa Goluboff: Well, and I think that the communities that we have at work are fuller and more vibrant and more meaningful if people bring their whole selves. But obviously that's not exactly where the law is, as Doriane, you know, has discovered and taught us.

Cathy Hwang: Yeah. And I think her paper also brings to light, like, how much privilege there is to be able to be somebody who can bring their whole self.

Risa Goluboff: That's right.

Cathy Hwang: For all of the ways I think about how to fit in, right, like I don't have to think about things like changing my hair, or how I carry myself really.

Risa Goluboff: I think that's exactly right. And, and, I think as institutions like our law school, like law firms have diversified, these questions have come more to the fore, so it's possible that older generations, there were fewer people who might have felt that their whole self was not fully welcome or represented. And, and so I think that these are becoming more and more salient conversations that we're having.

Cathy Hwang: Yeah, totally.

Risa Goluboff: So can you tell us a little bit more about your casebook?

Cathy Hwang: Oh, yeah. So I have this casebook. It's coming out with Foundation Press, probably either later this year or next year. It's a corporations casebook co-authored with Paolo Saguato. And the idea is to think about corporations in a way that's relevant to the types of students who come to law school, right? So we have a lot of law students who come to law school with an interest in, let's say, social justice issues, or many students, even if they don't want to be a corporate lawyer, they'll take corporations or business associations at other schools because they feel like they should because it's on the bar. So the idea is to make that topic relevant to all sorts of students. So for instance, the first case in the book is about a Fair Housing Act violation for discrimination against a tenant and who should be liable. And that's

like a, it's a corporations agency type issue, but we're using, like, a kind of a foil that would appeal to students who want to do public interest. Or we have an authority case about mistreatment of migrant workers at a factory farm, and whether the company should be liable, even though they recruited through a temp agency. And the answer is the court says, yes. And so, this is really relevant to corporations question, but it's relevant to students, even if they don't want to go to a big firm and represent oil and gas.

Risa Goluboff: It sounds great. I can't wait until it comes out and I feel like you are so good at making things relevant. And I know you also taught a J term – a January term class – on “Succession.”

[SUCCESSION SEASON 1 OFFICIAL TRAILER HBO](#)

Logan Roy: Everything I've done in my life. I've done for my children. I know I made mistakes, but I've always tried to do the best by them because I love them.

Risa Goluboff: Talk about relevance, right? Making the world relevant through TV, right, the law relevant through TV.

Cathy Hwang: I should just say, like, for some reason, the associate dean is just letting me teach classes that basically are an excuse for me to watch TV. So shhhhhh. You know?

[LAUGHING]

Risa Goluboff: Don't tell the dean? Is that what you're saying?

Cathy Hwang: Don't tell the dean.

[LAUGHING]

Cathy Hwang: But it's super-fun, right? There's so much relevant stuff.

Risa Goluboff: Yes!

Cathy Hwang: I have this mantra, where I'm like, students are going to learn whether it's boring or whether it's fun, so you might as well make it fun.

Risa Goluboff: And you did.

[LAUGHTER]

[THEME MUSIC IN, THEN UNDER]

Cathy Hwang: That does it for this episode of Common Law. If you'd like more information on Doriane Nguenang's work on Black women's hairstyles, visit our website, Common Law podcast dot com. There you'll find all our previous episodes, links to our Twitter feed and more.

Risa Goluboff: And in two weeks, co-host John Harrison and I will be delving into the separation of powers with administrative law expert Jennifer Mascott.

Jennifer Mascott: If one has the view that that is way too much power for one individual to have, then you might be quite concerned that the modern court is suggesting that Congress is limited in terms of these accountability structures.

Risa Goluboff: We can't wait to share that with you. I'm Risa Goluboff.

Cathy Hwang: And I'm Cathy Hwang. Thanks for listening.

[THEME MUSIC UP, THEN UNDER]

Emily Richardson-Lorente: Do you enjoy Common Law? If so, please leave us a review on Apple Podcasts, Stitcher, or wherever you listen to the show. That helps other listeners find us. Common Law is a production of the University of Virginia School of Law and is produced by Emily Richardson-Lorente and Mary Wood.

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