

The Power of Collective Action to Address Workplace Sex Discrimination

Legal Network for Gender Equity Webinar
February 2, 2023, 3:00 pm ET





Tyler Sprague (she/her) is a staff attorney at the National Legal Advocacy Network. Growing up in a blue-collar household, Tyler witnessed first-hand the struggle to establish equitable work-environments and representation in her community. It is her mission to help shape the law in ways that will preserve and protect the rights of workers as a common good.

Prior to NLAN, she graduated from Chicago-Kent College of Law and received a certificate in labor and employment law. At Chicago-Kent she was student Editor for the Employment Law and Policy Journal, Vice President of the Labor and Employment Law Society, and the first student to be elected to the board of the National Employment Lawyers Association. She was also a recipient of the Peggy Browning Fellowship where she dedicated her efforts to addressing root-causes of unfair workplace issues through leadership development, base-building, and organizing.



Jennifer Reisch (she/her), Principal at Reisch Law, is a seasoned litigator and aspiring legal organizer based in Oakland, California who has dedicated her career to using creative legal advocacy to defend the rights of workers and advance economic, gender, and racial justice. Over her two decades of practice as a civil rights and employment attorney, she has counseled and collaborated with scores of individuals and organizations to challenge systemic discrimination, sexual harassment, wage theft, pay inequity, and other unfair practices in workplaces and other institutions across the country. She has extensive experience litigating in California state court and in federal courts and has successfully engaged with worker-led coalitions and organizations to inform and strengthen litigation strategy and to secure meaningful non-monetary relief in both individual and class action cases.

Prior to returning to private practice, Jennifer served as the Legal Director of Equal Rights Advocates for over eight years, where she played a key role in developing, passing, and implementing some of the strongest and most innovative pay equity and anti-sexual harassment laws in the nation, including the California Fair Pay Act of 2015 (SB 358) and the Property Service Workers Protection Act of 2016 (AB 1978). She has served on a number of state, national, and global task forces and advisory bodies relating to the prevention and elimination of workplace harassment and sexual violence, gender pay equity, and accommodation of pregnant workers. In addition to her extensive litigation and advocacy experience, Jennifer is also a teacher, who has designed and taught law school courses on issues facing low-wage workers, the human rights of immigrant workers, and representing Spanish-speaking workers. She is currently co-teaching and supervising the Gender Justice Team of students in the UC Irvine Workers, Law, and Organizing Clinic.



Nora Cassidy (she/her) is an attorney in Legal Aid at Work's Gender Equity and LGBTQ Rights Program where she represents and supports workers who have faced harassment based on their sex, sexual orientation, gender, or gender identity. Through the Central Valley Workers' Rights Project, Nora works in partnership with low-wage workers and community organizations to conduct outreach, education, and advocacy.

Nora received her B.A. in history from Carleton College and her J.D. from UC Irvine School of Law where she was a Public Service Scholar and participated in the Immigrant Rights Clinic. In law school, Nora worked at the ACLU of Southern California, California Rural Legal Assistance, the Mexican American Legal Defense and Education Fund, and the Equal Employment Opportunity Commission. Prior to joining Legal Aid at Work, Nora clerked for Judge Kim McLane Wardlaw on the United States Court of Appeals for the Ninth Circuit and Magistrate Judge Bruce McGiverin on the United States District Court for the District of Puerto Rico. Nora speaks Spanish.



Katie Lubin Benson (she/her) is a partner at Lieff Cabraser Heimann & Bernstein LLP in San Francisco specializing in securities class actions and derivative cases.

Katie recently represented several pension funds in shareholder derivative litigation against directors and officers of The Boeing Company alleging that they breached their fiduciary duty through their failure of oversight of the 737 MAX design and development. The settlement included a \$237.5 million cash payment and extensive corporate governance reforms including a new board director, mandated director expertise, and an ombudsperson program to oversee airplane safety. Previously, Katie represented public pension funds in shareholder derivative litigation against Wells Fargo's officers and directors arising from the sales practices scandal. In addition to her case work, Katie routinely participates in CLE programs about shareholder derivative litigation and class actions.

Today's Speakers



Tyler Sprague (she/her)
National Legal Advocacy Network



Jennifer Reisch (she/her)
Reisch Law



Nora Cassidy (she/her)
Legal Aid at Work



Katie Lubin Benson (she/her)
Lief Cabraser Heimann &
Bernstein LLP



THE POWER OF COLLECTIVE ACTION TO ADDRESS WORKPLACE SEX DISCRIMINATION

Thursday, February 2, 2023

WHO WE ARE:

The National Legal Advocacy Network

(NLAN) is a legal non-profit organization dedicated to shifting the balance of power towards greater equity in our economy and society through organizing, empowering systematically marginalized people and challenging entrenched racial discrimination, sexual harassment and exploitative workplace practices and predatory business schemes.



MODEL:

- Legal action as one tool for building worker power.
- NLAN works deep partnership with base building organizations to democratize the law, engage in strategic litigation and build people power.
- Components of Work:
 - Law & Organizing Support
 - Strategic Enforcement
 - Worker Center Bar





WHAT WILL BE COVERED

- Movement Lawyering
- Trauma Informed Advocacy
- Best Practices for Working With
Organizers/ Low-wage Workers

MOVEMENT LAWYERING



MOVEMENT LAWYERING

**Law has a profound impact on lives of poor, working class people
(especially BIOPIC)**

- Goal is to build power, not dependency
- Creative use of legal strategies to empower people
- Providing long-term support for movements transforming oppressive systems
- Viewing legal support from an organizing lense

MOVEMENT LAWYERING

Common challenges:

- Disconnect between law and organizing
- Providing legal support in a way that supports a campaign and doesn't take away from it
- Different types of lawyering is required
- Balancing not taking up too much space with the need to sometimes take the lead and run with a situation
- Making it about the process, not just the legal work or outcomes, adds a lot of work

MOVEMENT LAWYERING

STRATEGIC LAWSUITS -WHEN & WHY TO BRING THEM

- **Litigation by itself rarely results in systemic change.**
 - We forget big picture movement implications.
 - We also take power away from workers when we center the lawsuit.
- Litigation in conjunction with organizing can make change -
Small and large, immediate and systemic.

MOVEMENT LAWYERING

EXAMPLE

- Campaign against sexual harassment included...
 - Demand Letter asking company to end sex harassment
 - After workers fired in retaliation:
 - Press conference and public protest in front of Victoria's Secret
 - EEOC charges for systemic harassment, retaliation
 - NLRB charges for interference with right to organize
 - IL Attorney General investigation
- Results
 - Workers immediately rehired
 - Forced company to table to negotiate settlement directly with the impacted workers

MOVEMENT LAWYERING

Big Picture:

- ***Companies aren't afraid of lawyers, they are afraid of workers.***
- Movement lawyers are advocates for workers- keep in mind the larger goals of the worker center/campaign.
- Movement lawyers need to be prepared to advocate for both the individual and the collective in these spaces.

TRAUMA INFORMED ADVOCACY



TRAUMA INFORMED ADVOCACY

- Listen to worker
- Share the process & repeat as necessary
- Keep tabs on outward signs of trauma
- Make it empowering whenever possible
- Build rapport and trust
- Make space for story telling

SEXUAL HARASSMENT & LOW-WAGE WORKERS



SEXUAL HARASSMENT & LOW-WAGE WORKERS

- **Concerns**

- Workers in low-wage, female dominated-- highest reported incidences of sex harassment and assault
- Culture of objectification
- Likelihood of retaliation

- **Tactics**

- Worker empowerment
- Collective action
- Strategic combo of legal & org tactics

BEST PRACTICES FOR WORKING WITH ORGANIZERS AND LOW-WAGE WORKERS



BEST PRACTICES

- Internalize the limits of the law
- Build authentic relationships w/organizers & community
- Understand the model and goals of the organizations working with
- Learn from clients & worker leaders
- Similar to a principle of trauma-informed advocacy
- Refrain from being the lawyer that says "you can't do that"

BEST PRACTICES

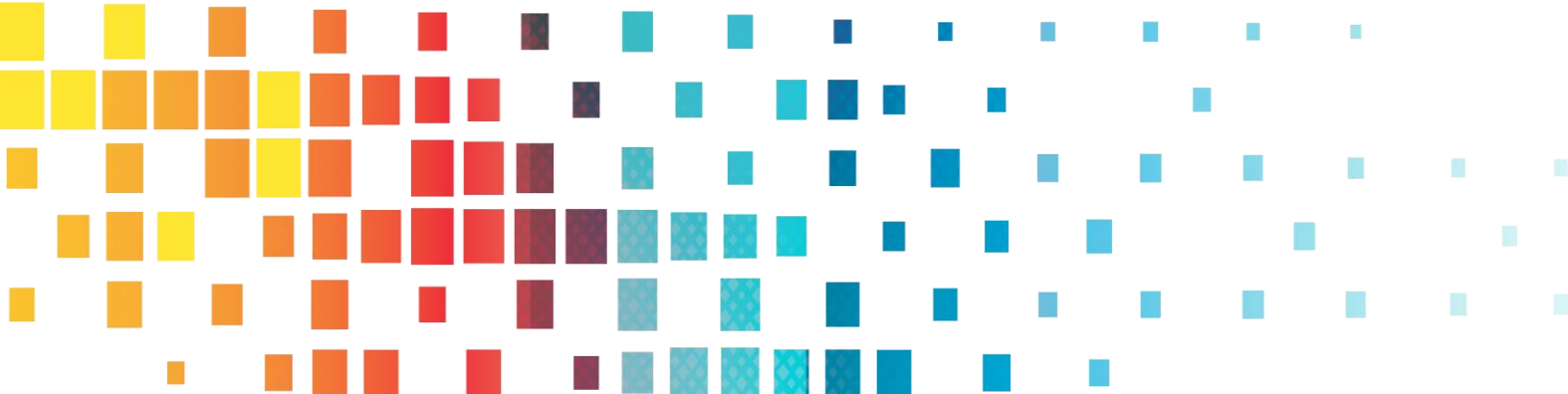
- Be self-aware
- Earn your reputation
- Care about people
- Make time for frequent reflection
- Develop and maintain
- Build Community

THANK YOU!



NLAN

NATIONAL LEGAL
ADVOCACY NETWORK



Collaborating with Worker Organizations to Inform & Strengthen Litigation

Legal Network for Gender Equity

*The Power of Collective Action to
Address Workplace Sex Discrimination*

February 2, 2023

Jennifer A. Reisch, Reisch Law

Worker-Led Organizations Can:

- Inform your approach to case selection, pleading and litigation strategy
- Lift up your clients' voices and stories
- Amplify the impact of legal victories and settlements



Before a case is filed...



- Intake and case selection
- Understanding policies & practices
- Forum selection
- Identifying, connecting with credible, trustworthy experts



At the Outset of a Case

- **Identifying plaintiffs, defendants**
- **Framing the case narrative, telling a powerful story**
- **Pleading strategy – causes of action, claims**
- **Selecting a forum**
- **Being bold, creative in demands/prayer for relief**

During Litigation



- Put principles of trauma-informed, client-centered advocacy into practice
 - Connect clients with supportive community, resources
 - Generate media attention and shame bad actors
 - Educate the public about issues in your case
-

In Settlement Negotiations & Agreements

- **Develop, shape non-monetary relief demands, proposals**
- **Publicize, disseminate settlement notice**
- **Encourage, facilitate worker participation in settlement**
- **Monitor, participate in settlement implementation and compliance**





Branner v. Covenant Aviation Security

Worked with union to:

- **Reach out to workers, ID potential plaintiffs**
 - **Gather information/intel about policies, practices, documents**
 - **Support organizing efforts, strengthen collective bargaining**
 - **Inform non-monetary/injunctive relief demands**
-

Branner v. Covenant Aviation Security

Non-Monetary Relief

- ✓ **Interactive process protocols**
- ✓ **List of accommodations**
- ✓ **Exhaust accommodation possibilities before leave**
- ✓ **Document and explain all denials of accommodations**
- ✓ **Clarify role and duties of third-party benefits/leave administrators**
- ✓ **Analyze essential functions of class members' jobs**
- ✓ **Train decisionmakers and union reps, shop stewards**
- ✓ **Keep records of implementation, compliance**
- ✓ **Notify employees of their rights, procedures**

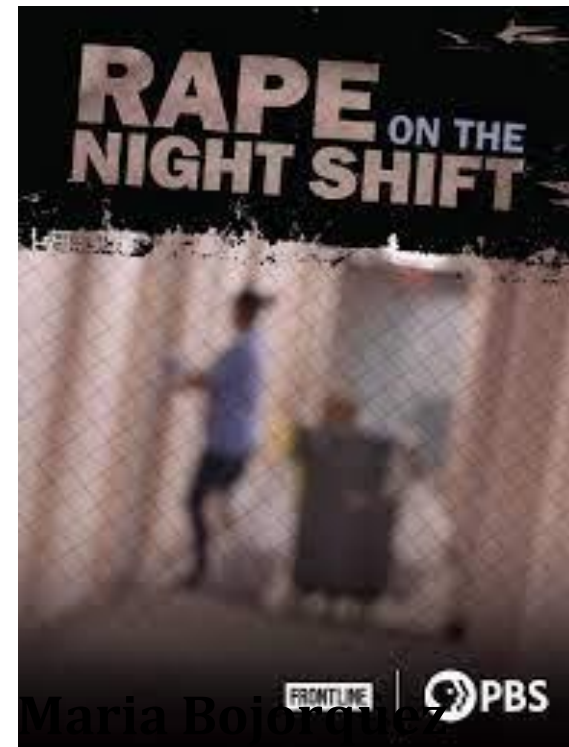
Combating Rape on the Night Shift: *Two Cases and the Rise of Ya Basta!*



Bojorquez v. ABM (2010-2015)



Speaking Out, Sparking a Movement



The Rise of Ya Basta!



Taking Collective Action, Building Community





Sanchez, et al. v. ABM





Sanchez, et al. v. ABM

Non-Monetary Relief

- ✓ **Accessible Anti-Harassment Materials**
 - ✓ **Effective, Interactive Harassment Prevention Training**
 - ✓ **Independent, Trauma-Informed Investigations**
 - ✓ **Third Party Contracting**
 - ✓ **Climate Surveys**
 - ✓ **Goal of Increasing % of Women in Supervisor/Manager Roles**
 - ✓ **Standard Operating Protocols to Improve Workplace Safety**
-

From Victims, to Survivors, to....



Agents of change

LEGAL AID AT WORK

WORKER EMPOWERMENT THROUGH MEDIA

February 2023
Nora Cassidy
Legal Aid at Work



Rape and sexual assault

'I felt worthless': harassment and violence shut out female truckers amid driver shortage

Treated like outsiders and reporting frequent sexual violence, female truckers remain at risk - and shelves remain bare

This article contains a description of sexual assault

Bryce Covert

Thu 7 Apr 2022 06.00 EDT

In October 2020, Laura Zuniga got a call from a dispatcher at Eagle Trucklines. She would be picking up a load in Fresno, California, that morning and dropping it off in Florida that evening. She had never driven with the male colleague assigned to co-drive with her

#MeToo Five Years Later: How The Movement Started And What Needs To Change

Holly Corbett Contributor

I'm a journalist covering bias, workplace equity and social justice.



Listen to article 16 minutes



This month, October 2022, marks the fifth anniversary of when the #MeToo movement went viral ...

[+] GETTY IMAGES

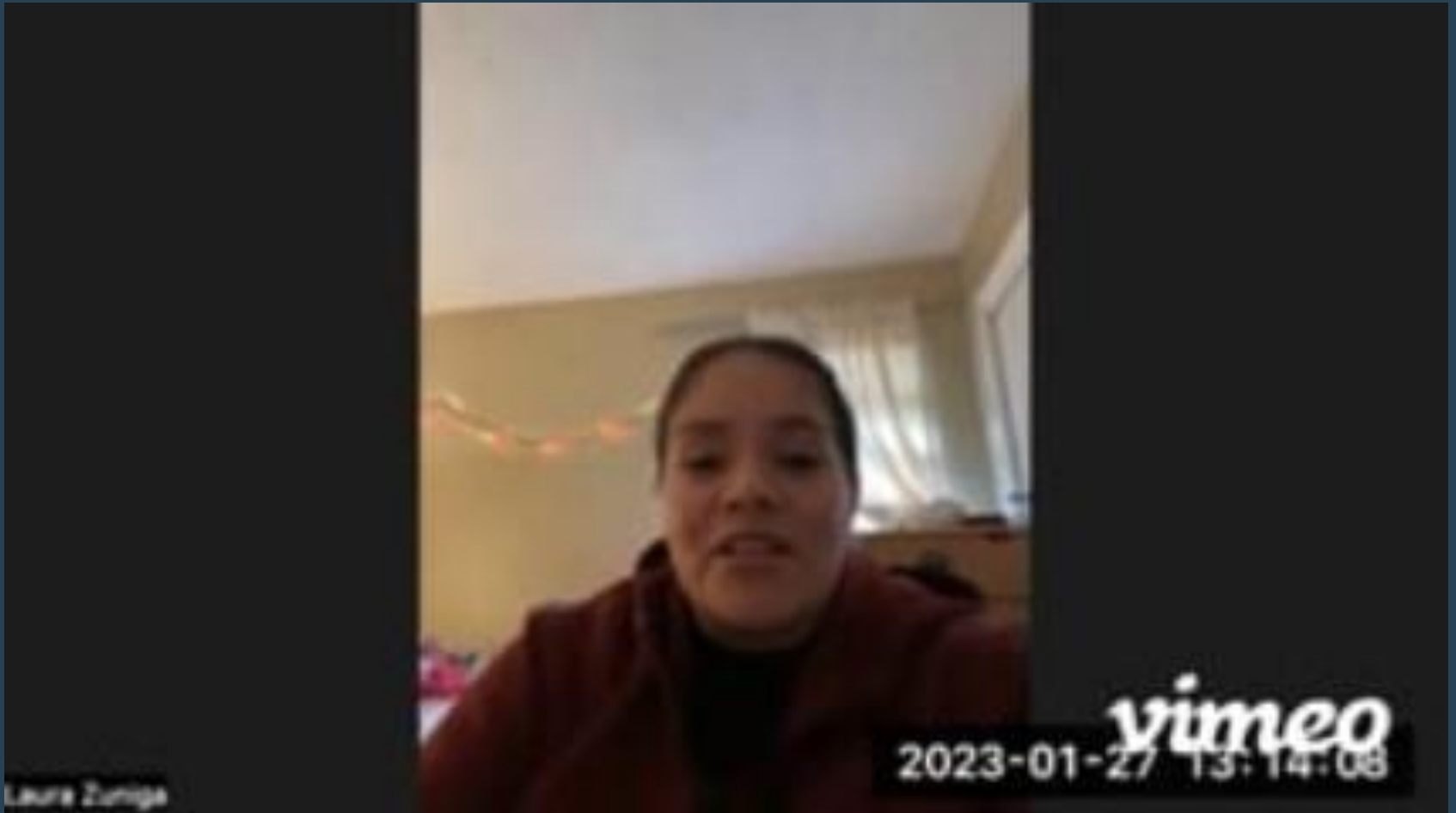
Like many people, Laura Zuniga, 39, of Fresno, California, wants to provide for her family. A single mother of three daughters ages 11 to 14, she struggles to pay her bills, but has a dream of buying a home of their own. “I want my

After that incident, Zuniga says Eagle Trucklines never paid her for that drive and never called her again for another job, while her co-driver continued driving for the company for months afterwards. “It made me feel worthless,” says Zuniga, who believes she was fired for speaking up. “They didn’t protect me. They probably thought, ‘She’s Mexican, she’s a woman, she’s not going to say anything.’ What they did affected me. I’ve lost my hair, gained weight, I don’t laugh or sing anymore. I’m depressed. But I know I’m not the only one this has happened to. I feel like I need to speak up for myself, and for my daughters, and show them we have to fight so this doesn’t keep happening to other women.”

Why media + litigation?

- Meet client goals
- Impact an industry
- Shine a light on an unknown or underreported problem
- Remedy the pitfalls of litigation:
 - Time-consuming
 - Lawyer-led
 - Filtered through a legal lens
- Privileged speech

Why media + litigation?



Shareholder Derivative Litigation

Katherine Lubin Benson

Partner, Lieff Cabraser Heimann & Bernstein LLP

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Lieff
Cabraser
Heimann &
Bernstein
Attorneys at Law

What is Shareholder Derivative Litigation?

- Directors and officers owe a public company fiduciary duties of loyalty and due care.
- In a derivative action, shareholders allege, on behalf of the company, a state-law breach of fiduciary duty claim for harm caused to it by its directors and officers, including:
 - Egregious behavior directed toward consumers or employees,
 - Health & human safety, and
 - Massive fraud.
- Directors engage in bad faith oversight when they either (i) completely fail to implement any system or controls to oversee the company; or, (ii) having implemented such a system or controls, consciously disregard ‘red flags’ of risks or problems requiring their attention.

Derivative Litigation in the Employment Context

- Shareholders of public companies bring derivative claims for harm caused by employment-related misconduct, such as discrimination or sexual harassment or abuse.
- Examples:
 - Wynn Resorts
 - Alphabet (Google)
 - Fox News
 - McDonald's
- One goal of derivative litigation is to improve the workplace environment by securing corporate governance reforms and oversight through resolution of the claims.

Wynn Resorts Ltd. Derivative Action

- Shareholders alleged that Wynn's directors failed to hold founder and former CEO Steve Wynn accountable for a longstanding pattern of sexual abuse and harassment of employees.
- According to shareholders, the board's concealment of Wynn's misconduct put the company's gaming licenses in jeopardy.
- Corporate governance reforms instituted through settlement:
 - Overhaul of employment practices and training,
 - New employment compliance program,
 - Requirements to increase board diversity,
 - Institution of the "Rooney Rule," and
 - Prohibition of NDAs and forced arbitration clauses.

Alphabet Inc. Derivative Action (Google)

- Shareholders alleged that Google directors and officers engaged in a multi-year scheme to cover up sexual harassment and discrimination.
 - Top executives credibly accused of sexual misconduct were paid multi-million dollar severance packages.
- Governance reforms included:
 - \$310 million in funding for DEI,
 - Creation of a Diversity, Equity, and Inclusion Advisory Council,
 - Required sexual harassment and fiduciary training for the board, and
 - Eliminating mandatory arbitration for discrimination, harassment, and retaliation disputes; limiting NDAs.

Fox News Derivative Action

- Shareholders alleged that the board of directors failed to investigate workplace conditions at Fox News or institute reforms, despite numerous lawsuits by former employees and regulatory investigations.
 - Senior executives at Fox News created and maintained a hostile work environment featuring sexual harassment, racial discrimination, and retaliation.
 - Former CEO Roger Ailes engaged in sexual harassment with impunity, creating a climate in which others, including on-air personality Bill O'Reilly, were emboldened to harass female employees.
- Governance reforms included:
 - Fox News Workplace Professionalism and Inclusion Council to independently monitor Fox's hiring and advancement, anti-harassment and discrimination, and complaints processes.

Questions?



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Thank you!



@NWLC



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Join the Legal Network for Gender Equity at
nwlc.org/legalnetwork