

Including Inclusivity: Imperative Skills in a time of Prolific Diversity

The need:

- No data is formally collected on transgender citizens in the United States, but most estimates and surveys suggest that about 1% of the population is transgender.
- Despite being only 1% of the population, transgender people disproportionately many other marginalized things:
 - 41% of trans individuals have attempted suicide, compared to only 1.60% of the general population
 - 50-66% transgender individuals have experienced sexual assault, compared to 18% men and boys, and 33% women and girls
 - 50% of transgender individuals are survivors intimate partner violence
 - 40% of homeless youth are LGBT
 - 32% of LGBT youth faced physical, emotional, or sexual abuse at home
 - 20% of transgender people have experienced housing discrimination, and more than 10% have been evicted because of their gender identity.
 - 15-20% have been the victim of stalking, compared to only 5% of the general population
- 91% of transgender respondents to a survey from the UCLA Law School had an outstanding legal issue that they needed help with.
 - The survey respondents report major negative impacts on their lives from not receiving legal assistance for their legal issues.
 - These include the following negative outcomes reported as a result of the outstanding legal issue:
 - stress-related illness (77%)
 - difficulty carrying on normal life (70%)
 - physical ill health (27%)
 - difficulty getting needed medications (20%)
 - difficulty accessing medical appointments (17%)
 - loss of income (17%)
 - loss of employment (13%)
 - violence (10%), and
 - having to move (10%)




The harms:

- Punitive national laws, policies and practices targeting transgender people, complex procedures for changing identification documents, and social hostility/exclusion strip transgender people of their rights and limit access to justice
- Workplace-related research on lesbian, gay, bisexual, and trans (LGBT) individuals reveals that trans workers are the most marginalized and are excluded from gainful employment, with discrimination occurring at all phases of the employment process, including recruitment, training opportunities, employee benefits, and access to job advancement. This environment inculcates pessimism and internalized transphobia in trans people, discouraging them from applying for jobs. These extreme limitations in employment can push trans people towards jobs that have limited potential for growth and development, such as beauticians, entertainers or sex workers. Unemployment and low-paying or high risk and unstable jobs feed into the cycle of poverty and homelessness.
- When homeless trans people seek shelter, they are housed with groups based on their sex assigned at birth, even when it does not match their presentation, their lived experience, or any other aspect of who they are, and are subject to abuse and humiliation by staff and residents.
- Laws were enforced, even in recent decades, criminalizing trans people's very existence through legislation that punishes so-called unnatural sex, sodomy, "buggery", homosexual propaganda, and cross-dressing.
- Experience with laws criminalizing their lives have discouraged trans people from interacting with the law or seeking justice, leading to further marginalization. When picked up for any of the aforementioned alleged crimes or under vague "public nuisance" or "vagrancy" laws, their abuse can continue at the hands of the police or inmates in criminal justice systems that fail to appropriately provide basic healthcare and other needs for trans inmates.

Who are the clients we are talking about?


- People who do not conform to traditional ideas about gender and sex, which can include people who are gender non-conforming, agender, non-binary, intersex, transgender, and many more identities and life experiences
- People who transition by making changes in social, medical, and/or legal ways
- People who are questioning their gender
- People who do not fit into the sex and/or gender binaries
- People who are currently gender-conforming, but have a trans history (currently identify only as a man or woman, but had transitioned in the past from a different gender assigned at birth)
- Multiply gendered people, which can include indigenous two-spirit people, India's hijra people, and many other third-gender or multi-gendered identities found in cultures all over the globe
- Family, friends, and significant others of the above



Reality: there isn't a list of 'right' or 'wrong' language or behaviors. The only right language is what your client uses. The only wrong language is intentionally using words or language that the client does not use. How do you get it right? Keep calm and listen carefully. Ask clarifying questions if you need to, and softly and quickly apologize, correct yourself, and move on if you make a mistake—do not dwell on your error or spend time on it.

Barriers to accessing services:

- Fear
 - Of abuse, hostility, rejection, derision, judgment, discrimination
 - Of being outed
 - Of other clients
 - Of denial of services
 - Of police misconduct
 - Of being the only trans person in the group
- Not trans-welcoming
 - Incongruent identification can be used to out the person, or even to deny services, as many trans folks do not have an ID that reflects their current name, gender, and appearance
 - Cost and legal infrastructure can make updating identifications impossible for many, and not everyone wishes to go through the process or have changes
 - Will the environment be friendly and respectful, accepted, or will there be hostility
- Not culturally competent
 - Is the agency skilled at how to respectfully treat trans people when they walk in the door? Will the client be in the position of having to educate the service provider? Will the client be asked invasive questions? Use the client's name and pronoun correctly?
 - Will the staff understand the how issues manifest differently in this community than they do in the general population?
- Reputation of service
 - This community runs on word of mouth and is tightly knit. One negative experience or story can quickly keep the rest of the community from seeking services there
- Lack of access to learning what services are available
- Cis-woman-focused services
 - Unclear policies around who will be served, feelings of erasure, hopelessness that service is available
- Shame/embarrassment/stigma of their experience
- Concern that involvement with law would make things worse
- Systemic problems such as lack of access to transit, lack of time, inflexible work schedules
- Cost



TIP #1: Use the correct terminology for your client and ensure that all others interacting with your client will too, even if that involves hard conversations with the Court.

Terms are crucial to conveying respect and openness. Simultaneously, terms are meaningless because they tell you none of what you need to know to provide appropriate legal advice.

Such “terms” include:

- Identity labels
- Names
- Pronouns
- Experiences
- Personal history
- Body part names
- Nearly any part of a social experience

Definitions of terms are hotly contested, even within the community. Defining terms for ourselves does not give us an understanding of who the person is or what their needs and goals are.

But those labels can be very dear to the client’s sense of self, so you want to use them for the client and resist the urge to impose any labels that you perceive on the person.


How do I ask for my client’s correct name and pronouns?

- Attorney: “Hi, my name is Courtney Baga, I use she/her and they/them pronouns. Thanks for coming in to the legal clinic today. What name and pronouns do you use?”
- Client: “I’m Jamie, he/him.”
- Attorney: “It’s nice to meet you, Jamie.” Narrative bullets are round. Bio bullets are Chevron.

If you are looking for casual transitions or ways to connect with your client, do not connect by editorializing on information your client shares about their identity. It’s common to want to comment on your personal progress or challenges using various pronouns. This redirects the conversation to your needs, in a situation where the client is vulnerable and probably nervous. Doing so signals to the client that their identity is unusual to you, and that you may not be a safe person with their communication needs (for example, the client’s need to be called the correct pronouns) and that you are focused on your own discomfort over theirs. Choose innocuous topics that you would discuss with any client.

How do I keep up with rapidly changing vocabulary?

Look up words you don’t know and use them correctly to show your cultural competence with meeting with clients. As with any culture, the community has developed terminology like “dead name” (a name that was assigned to you that you no longer go by or is connected to a “dead” identity) and “AMAB/AFAB” (assigned male/female at birth). If you work with LGBTQ individuals frequently, stay up to date on the terminology, the same way you would stay up to date on the factors that affect other aspects of your legal practice. If you do not work with the community regularly, don’t make your client educate you—look up what you need to if it’s strictly relevant to the representation.



I am a member of the LGBTQ community, or I have family members or friends who are. Should I flag this for my client to help them feel more comfortable?

This is a judgment call. Even within the community, people experience disrespect, so focus on showing respect through your actions. You can mention your own experience if it seems relevant or like it could reassure the client—some would be reassured. If you choose to disclose, keep it short and refocus on the client’s needs.

TIP #2: Spend more time listening than you do talking, and don’t start talking until you fully understand your client’s situation.

1) Listen

- Let the person talk, don’t interrupt or offer your perspective or guide the conversation too soon.
- Listen for cues that will alert you to the person’s goals, and don’t get caught up in the details of the story or action plan too soon
- Don’t jump to conclusions; be aware that you are hearing what is on your client’s mind at this moment, and only what that person is choosing to tell you.

2) Empathize

- Let the person know you care: “I’m sorry you’re going through a hard time right now.”
- Reflect back the person’s feelings: “That must have really hurt” “What a confusing situation you’re in right now.”
- Show you understand why the person is feeling badly: “It makes sense that you are beside yourself upset about what happened.”
- Non-verbals are key. You can show empathy with just a nod, a head tilt, or a sound.
- Listen for the “soft needs” underneath the “hard feelings” and goals. People often lead with protective, hard goals, but the soft feelings beneath are often a pathway toward understanding and setting realistic goals.
- Avoid statements that appear empathetic but are really put downs of others in the situation: “how insensitive!” or “I can’t believe they won’t ____.” While this might be affirming in the moment, it often leads to further entrenched positions and muddies the path toward conflict resolution.
- If the person is going on and on with a critique of the situation or unhelpful details, gently steer back to the conversation in front of you by offering empathy: “what a mess, I’m sorry.” You can’t problem solve with a harangue.
- Good empathy should help the person feel calmer rather than adding fuel to the bonfire. An exception would be if the client is in dire trouble and is too calm in the face of danger, such as a physically abusive or situation with significant criminal or liberty types of concerns.

3) Affirm

- Affirm the strength and capacity of your client: “I can see you are being thoughtful about how to resolve this.”
- Affirm the strength and capacity of others involved when you know and mean it.

- Avoid being so positive that the client doesn't feel heard.
- Certain issues discussed may provide you an opportunity to affirm the resilience someone has from their LGBTQ identity:
 - "It has to be really hard to not have the family law system set up to support your relationship just because you are [LGBTQ]. It's awful to see how couples have to fight to be treated fairly."
- Recognize the emotion of the person in front of you, but don't latch on to it yourself.

These confidante skills can allow you to build trust with your client as you are starting to serve them and set the tone to be able to interview them effectively.

TIP #3: Show empathy and awareness for your client's individual needs and create space for those needs to potentially be different than you have ever heard of before.

How do I ask for my client's unique concerns in accessing legal help?

- Attorney: "I see from your intake form that you are here to talk about a housing issue today. Before we dive into that, is there any information you would like me to have on how I can best support you, any particular concerns you have, or something you want to discuss right away?"
- Client: "I am really uncomfortable going to the courthouse. I do not want to have to go in front of a judge if I can help it."
- Attorney: "Okay, thanks for sharing that. I can see how that would be really scary. It's hard to know how safe a particular judge or courthouse will feel. We can definitely talk through all your options and help figure out what the best next steps are for you."

Resist the urge to reassure your client right away if they share a concern. The client needs to feel heard and validated in order to know that you will respect the boundaries that they share with you. You can give them more information later about what each option they have looks like, so they can think through their fears and concerns in context. When they raise the concern is not the time to tell them that their concern doesn't concern you the same way.

How do I get enough information about my client's situation when I see how complicated gender and sex and transition can be?

Trans individuals make choices in three key areas about how they want to live their life—medical, legal, and social. These choices do not tell you anything about that person's actual identity or legal needs, and asking about them when they aren't strictly relevant will put your client on high alert and cue to them that you are not culturally competent. There are many different decisions in all these areas, such as how to dress, what names to use, and what medical interventions or changes are desired. Every choice is based on many complex factors and can even vary day to day or in different contexts based on the time, activities, comfort, safety, cost, and more.

Example 1:

- Attorney: "The legal form requires that I put the name that is on your legal identity documents here. Would you write it in for me?"

Example 2:

- Client: "I am a nonbinary transfeminine person, so it's really hard to get my landlord to take me seriously and I think she is just trying to evict me to get me out of her hair, but the whole place is falling apart."

- Lawyer: “That must be so tough to deal with. At this point, what would be the best outcome for you? What would a win look like?” (then go on to determine if a discrimination claim, housing habitability actions, or perhaps just seeking new housing is most appropriate for the client)

TIP #4: Overcome bias:

- **Take it all in**
- **Spend time to list out the client’s goals**
- **Evaluate alternative options**
- **Articulate your recommendations**
- **Identify the key facts supporting and steps required for each choice the client has**

One psychological effect of perceiving a client to be gender diverse (or have another diverse identity) is a tendency to naturally assume that the demographic category is more significant than other aspects of the individual’s background, behavior, or experience. This is called “**master status thinking**.” Master status thinking is a type of implicit bias that puts the diverse identity the primary issue and focus of the meeting instead of the issue that the client prioritizes. The conversation may follow the attorney’s curiosity (trans history and experiences), invasive questions (inappropriate and irrelevant to the legal issue), redirecting the conversation (back to transness), and assumptions about causality/correlations (may be false or true, but should not be assumed).

How can I work against the natural tendency toward master status thinking?

In order to prevent this cognitive bias that all of us tend towards, try to set aside the fact that your client is diverse and listen to the many different factors that comprise that experience. There is tension between this and the fact that to understand your client, you need to see the systemic factors about that person’s background, behavior, and experience that are directly linked to their status as a marginalized person. One effective way to balance this is to start by showing empathy and understanding of the experience as a marginalized person, and then move on to focus on your client’s options for solving the problem based on their personal situation, taking into account all the factors of their situation, skills, and goals. Resist the urge to only give them the traditional legal framework, without considering whether that framework solves the problem that the individual experiences. Help the client through their decision on what the best next steps are.

What should a discussion with a client look like when they present with complex, interconnected identity and legal issues?

Allow the client to direct the conversation, and gradually focus your questions to explore the client’s goals and the legal parameters applicable to the situation.