



Tip of the Month November 2020

Moving the Needle on Gender Bias

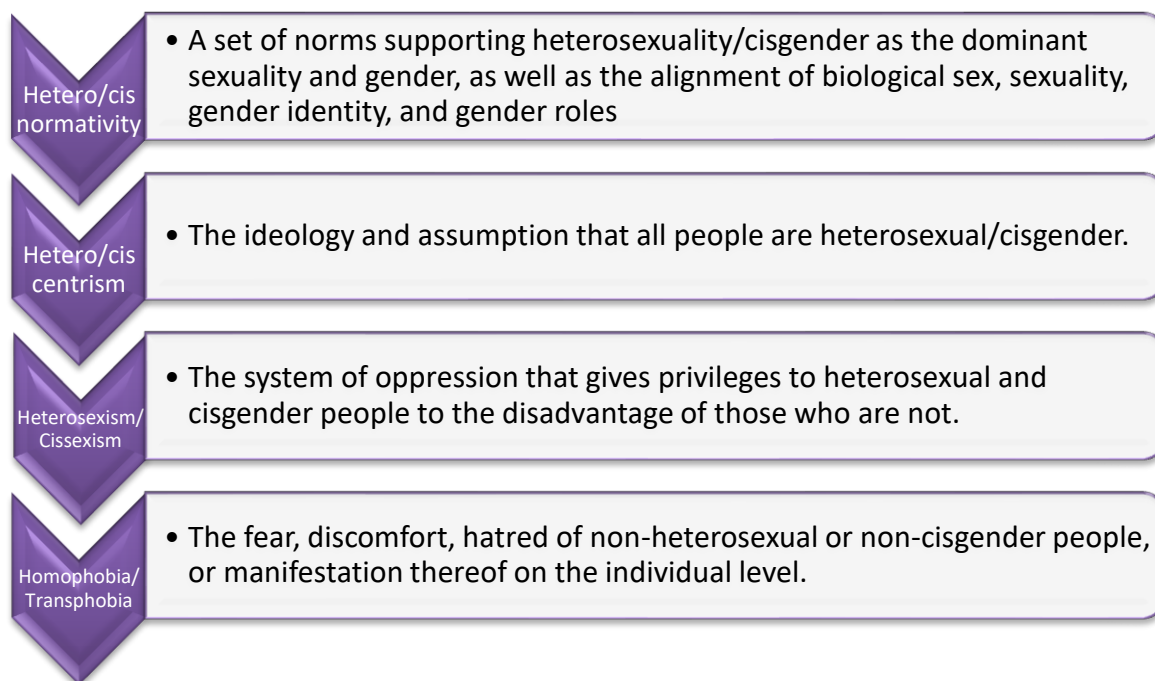
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Who is in our courts?

- Nationally, 4-6% of youth are LGBTQ+, but 19% of detained youth are. 90% of detained LGBTQ+ youth are youth of color, so inclusion cannot leave race out of the initiatives.
- LGBTQ+ youth are 4-5 times more likely than cis-het¹ youth to be detained.
- 51% of detained girls in California are LGBTQ+. In Hennepin County, Minnesota, 2014 data indicated it was 41%.
- At disposition, LGBTQ+ youth are confined at twice the rate of their cis-het peers.²

What does gender bias look like?

The ideology behind norms creates the systems of oppression, which then manifest in discrete acts of bias against marginalized people. In the LGBTQ+ community, the progression looks like this [\(click here for source\)](#):



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→ Solution: The only complete solution for LGBTQ+ oppression is to shift society's norms, ideologies, and assumptions around gender and sexuality. But harm will be significantly reduced if we can target ways that

¹ "Cis-het" is shorthand for "cisgender and heterosexual," or non-LGBTQ+.

² Why am I citing youth data? Because we do not collect this data on the adults in our courtrooms. Because youth in the system become adults in the system, we can assume they are at least partially representative of adult trends. For more data, see [the 2019 State Index on Youth Homelessness](#).

LGBTQ+ people are being harmed and change those realities (which recursively help shift our norms and ideologies toward inclusion). Here are some places to start:

Tip #1: Listen to LGBTQ+ folks and put your energy into helping us and changing what is causing us harm.

- Bias in action: at a training for legal community members on Gender Inclusion, attendees were asked to commit to making one change that would improve inclusion. One attendee said they would attend a pow-wow. Another attendee said they would work hard to remove “Ladies and Gentlemen” from their vocabulary. Neither of these commitments reflects something that will reduce the harm that marginalized people experience in the legal system.
- Solution: If you are going to commit to changes, check your goals against some of the following:⁴
 - Who benefits from my action?
 - Who does my action burden?
 - How can I respectfully share that burden?
 - How can I make sure my action is taken at an appropriate time?
 - What have I done to make sure that this is what the vulnerable/marginalized community wants and needs?
 - Discern what needs to be vetted and what doesn’t—are you unnecessarily placing roadblocks to helping?
 - Are you willing to do whatever task is required of you, whatever you are capable of, to help?
 - Are you able to say: I am investing my energy in what should grow?

Tip #2: Remove gender assumptions from jury instructions, introductions, and appearances, and revise forms to collect the data that you need to have accurately.

- ◆ Bias in action: Putative-defendant is arrested after having a legal name change. Despite having updated legal identity documents in all appropriate systems, law enforcement books defendant under their deadname (the name they previously used, which is incorrect). As a result, proceedings begin with the wrong name on the record. While in custody, the defendant is unable to access their medically necessary prescriptions because they are in the legal name. Defendant faces serious medical and psychological effects. The legal process is denied legitimacy in the defendant’s eyes, further deteriorating the Social Contract.⁵
- ◆ Solution:
 - Model: “My name is CB Baga, from Faegre Drinker Biddle & Reath. I use they/them pronouns, Mx. honorific, and I represent the Plaintiff.”
 - Correct others: “Excuse me, I believe the Defendant uses she/her pronouns.” “As a reminder, whenever my client is misgendered, I will hold up one finger to serve as a brief reminder without interrupting the record.”
 - Update computer systems, dress codes, forms, etc. – and influence others to do so – to ensure the correct name and pronouns appear in systems and everyone can get them right throughout interactions.
 - Assume anyone could be LGBTQ+ so you avoid singling out people who look “different” to you as potentially LGBTQ+. Don’t assume identity based on appearance.

⁴ Many of these are from adrienne maree brown’s *Emergent Strategy*. Thank you for being a visionary to the work.

⁵ The Social Contract is a descriptive theory and philosophical model that posits that the individual will comply with legal order to the extent that the state fulfills their part of the agreement. To the extent that the government is too weak to serve the people, secure rights, and satisfy societies best interests, citizens withdraw their obligation to obey. It is one useful framework for the breakdown of social order during times of civil unrest. Similarly, improving the legitimacy of the system is key to repairing social discord.

- Sample Intake Questions: What are your pronouns (e.g. she/her/hers; he/him/his; they/them/theirs); Is your spouse, partner, or significant other employed?; what do they do?

Tip #3: Determine whether services are culturally sensitive and appropriate, and not harmful (for all identities).

- ❖ Bias in action: Client in recovery at PRIDE Institute began her recovery journey with resounding success. But a step-down center began citing her for “dress code violations” inconsistently with how the cisgender women at the facility were treated. Ultimately, the step-down center asked her to leave threatening eviction, compromising her recovery.
- ❖ Many services are connected to religious institutions that include harmful components such as conversion therapy, inappropriate sex offender assessment/treatment, and requirements that participants conform to the norms for the sex assigned to them at birth. Many services attempting to be inclusive in theory are not in practice.
- ❖ Solution: Avoid causing more harm:
 - Talk with the client and/or their attorney about the person’s needs and alternative referrals;
 - Get culturally incompetent individuals to engage in counseling and support groups to help improve their ability to support. For LGBTQ+ competence, check out PFLAG and the Family Acceptance Project;
 - Educate yourself on relevant resources;
 - Work with culturally competent individuals to identify the right people for a specific situation.

Tip #4: Recognize the ways that the law has entrenched bias against LGBTQ+ folks and decide how you can exercise what discretion and influence you hold to change it.

- Bias in action: LGBTQ+ individuals in the system are unlikely to have the support of biological or traditional family structures. Yet there are laws that entomb this fact in a way harms our community further. For example: criminal defendants’ conditions of release under Criminal Procedure Rule 6.02 Subd. 2, which considers our families to determine whether we will be detained.
- Solution:
 - Where you are able, reframe your assumptions around what family or support looks like to include our chosen families and other non-traditional support structures;
 - Consider where you can put your energy behind what should grow to support marginalized communities, such as taking more *pro bono* clients, mentoring new lawyers, assisting with events you see as important, and helping those in your life do better (we don’t all have to do it all, but we can all play a role in positive change);
 - When looking at/for discrimination or places for progress, check first if norms that uphold heterosexuality or cisgender status as inherently superior or presumptive are at play;
 - Take in media from groups and cultures that are not your own – news, television, podcasts, music, etc. – to be exposed to a culture different than the dominant culture and improve the diversity of thought to which you are exposed. [Cognitive diversity increases the range of information and perspectives you consider and improves creativity.](#)

Tip #5: Meet marginalized people where they are at.

- Bias in action: Volunteer lawyer typically serves billable clients who have ample resources. In meeting with a *pro bono* client, lawyer prints the forms they think the client needs and sends the client home with verbal instructions to fill them out and file. The client leaves, never to make progress on the matter again.
- Solution: Tailor your assistance to what a client needs.

- If a client has more barriers to accessing justice, consider where you can help by connecting them to additional resources, spending more time to fill out forms with or for them, and helping with ongoing administrative needs such as filing, directions, and follow-up.
- Rather than helping 10 people for 6 minutes each, with only the few with the most privilege making it over the finish line, make sure everyone you help gets as close to the finish line as you are able to get them.
- You provide your usual clients with exceptional service (I am willing to assume, as you are, dear reader, clearly invested if you are still reading this). Yet clients with different access to justice needs deserve the same degree of care. You may have developed your client service norms based on assumptions about what your clients' needs are. Marginalized groups are more likely to be left out of your designs, so as you learn more, improve how you work with them.