

Transgender Litigants in the Court System

Providing Equal Access and Impartial Justice

New York State Judicial Institute, October 2013

Ethical Obligations of the Court

- Judicial Officers, Court Personnel and Officers of the Court are responsible for assuring that transgender adults and youth are treated equitably and fairly by everyone they meet in the courthouse and by everyone from whom they receive services.
- Judicial Officers, Court Personnel and Officers of the Court are responsible for developing cultural competence in working with transgender adults and youth to carry out their ethical obligation.

Ethical Obligations: Origins

The requirements governing the professional conduct of judges, court personnel and officers of the court are:

- Judicial Canons of Ethics
- Code of Ethics for Non-Judicial Personnel
- Lawyer's Code of Professional Responsibility
- Court Rules

22 NYCRR 100.3 Canons of Judicial Conduct

- Section 100.3 A judge shall perform the duties of judicial office impartially and diligently.
- (A) *Judicial duties in general. The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply.*
- (B) *Adjudicative responsibilities.*
- (1) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.
- (2) A judge shall require order and decorum in proceedings before the judge.
- (3) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.
- (4) A judge shall perform judicial duties without bias or prejudice against or in favor of any person. A judge in the performance of judicial duties shall not, by words or conduct, manifest bias or prejudice, including but not limited to bias or prejudice based upon age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status or socioeconomic status, and shall require staff, court officials and others subject to the judge's direction and control to refrain from such words or conduct.
- (5) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status or socioeconomic status, against parties, witnesses, counsel or others. This paragraph does not preclude legitimate advocacy when age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status or socioeconomic status, or other similar factors are issues in the proceeding...

22 NYCRR 100.3 Canons of Judicial Conduct

- (C) *Administrative responsibilities.*
- (1) A judge shall diligently discharge the judge's administrative **responsibilities without bias or prejudice** and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.
- (2) A judge **shall require staff, court officials and others subject to the judge's direction and control** to observe the standards of fidelity and diligence that apply to the judge **and to refrain from manifesting bias or prejudice** in the performance of their official duties...
- (D) *Disciplinary responsibilities.*
- (1) A judge who receives information indicating a substantial likelihood that another judge has committed a substantial violation of this Part shall take appropriate action.
- (2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a substantial violation of the Code of Professional Responsibility shall take appropriate action.
- (3) Acts of a judge in the discharge of disciplinary responsibilities are part of a judge's judicial duties...

22 NYCRR 50.1 Non-Judicial Employees Code of Ethics

- **Section 50.1. Code of ethics for nonjudicial employees of the Unified Court System**
- **PREAMBLE:** A fair and independent court system is essential to the administration of justice. Court employees must observe and maintain high standards of ethical conduct in the performance of their duties in order to inspire public confidence and trust in the fairness and independence of the courts. This code of ethics sets forth basic principles of ethical conduct that court employees must observe, in addition to laws, rules and directives governing specific conducts, so that the court system can fulfill its role as a provider of effective and impartial justice.
- (I.) Court employees shall avoid impropriety and the appearance of impropriety in all their activities.
- (A.) Court employees shall respect and comply with the law...
- (II.) Court employees shall adhere to appropriate standards in performing the duties of their office.
- (A.) Court employees shall perform their duties properly and with diligence.
- (B.) Court employees shall be patient and courteous to all persons who come in contact with them.
- (C.) Court employees shall not discriminate, and shall not manifest by words or conduct bias or prejudice, on the basis of race, color, **sex, sexual orientation**, religion, creed, national origin, **marital status**, age or disability.
- (D.) Court employees shall not disclose any confidential information received in the course of their official duties, except as required in the performance of such duties, nor use such information for personal gain or advantage...

Rule 8.4 Lawyer's Code of Professional Responsibility

- **Rule 8.4. Misconduct**
- A lawyer or law firm shall not:
 - (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another...
 - (d) engage in conduct that is prejudicial to the administration of justice...
 - (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;
 - (g) unlawfully discriminate in the practice of law, including in hiring, promoting or otherwise determining conditions of employment on the basis of age, race, creed, color, national origin, **sex**, disability, **marital status or sexual orientation**. Where there is a tribunal with jurisdiction to hear a complaint, if timely brought, other than a Departmental Disciplinary Committee, a complaint based on unlawful discrimination shall be brought before such tribunal in the first instance. A certified copy of a determination by such a tribunal, which has become final and enforceable and as to which the right to judicial or appellate review has been exhausted, finding that the lawyer has engaged in an unlawful discriminatory practice shall constitute prima facie evidence of professional misconduct in a disciplinary proceeding; or
 - (h) engage in any other conduct that adversely reflects on the lawyer's fitness as a lawyer.

22 NYCRR Section 20.1 Rules of the Chief Administrator

- Transaction of official business in nonpublic facilities.
- (a) The transaction of official business by judges, justices and nonjudicial personnel of the Unified Court System, when permitted to be held in a nonpublic facility, shall not knowingly be conducted in a facility which by practice, by law or other regulation restricts membership or admission thereto on the basis of **sex**, race, color, ethnic origin, religion, creed or **sexual orientation**. Reimbursement from State funds shall be denied for knowing violation of this subdivision.
- (b) The term transaction of official business, for purposes of this section only, shall mean and apply to sessions, conferences and seminars conducted by or under the auspices of the Unified Court System.

Legal Protections for LGBTQ Adults & Youth

In addition to upholding the Canons, Codes and Court Rules, there is a growing body of laws and policies governing the treatment of transgender people with which Judicial Officers must be familiar and prepared to enforce:

- State & Local Laws & Regulations
- Executive Orders & Administrative Policies
- Agency Directives
- Ethics Codes for Court-Appointed Experts
- Policy Statements of Professional Organizations
- Developing Case Law

State Laws

- SONDA - Sexual Orientation Non-Discrimination Act, NYS Executive Law § 296 *et. seq.*
- New York City Commission on Human Rights, Title 8, § 102 of the NYC Administrative Code
- “Dignity for All Students Act,” Laws of 2010, ch. 482 – effective July 1, 2012

Local Laws

Local jurisdictions that have enacted non-discrimination provisions including gender identity and expression:

- City of Albany-2004
- City of Binghamton-2009
- City of Buffalo-2002
- City of Ithaca-2003
- City of New York-2002
- City of Rochester-2001
- City of Syracuse-2012
- Suffolk County-2001
- Tompkins County-2005
- Westchester County-2009

Executive Orders & Administrative Policies

- Governor's Office, Executive Orders, NY Comp. Codes R. & Regs, Title 9, §5.32
- NYS Office of Children & Family Services, "Lesbian, Gay, Bisexual, Transgender and Questioning Youth (PPM 3442.00)" 3/17/08
- Office of Children & Family Services, Regulation on Non-Discrimination for Local DSS, Local Detention Facilities, OCFS Facilities & Contract Agencies – *in development*
- Regulations of the Commissioner of Education, 8 NYCRR §100.2

Agency Directives

- NYC Children’s Services “Promoting a Safe and Respectful Environment for Lesbian, Gay, Bisexual, transgender and Questioning (LGBTQ) Youth and their Families Involved in the Child Welfare, Detention and Juvenile Justice System,” Policy #2012/01 issued 11/21/12
- Directive #02/07 NYC Department of Juvenile Justice Policies and Procedures: Anti-Discrimination of LGBTQ Youth

- Guidelines for Continuity & Provision of Medical Care, Regulations of the Department of Juvenile Justice, Title 41, §3-01
- NYC Department of Education, Chancellor’s Regulations A-830 (Filing Internal Complaints of Unlawful Discrimination/Harassment), A-831 (Peer Sexual Harassment) and A-832 (Student-To-Student Bias-Based Harassment, Intimidation, and/or Bullying)

Codes of Ethics for Court-Appointed Experts

- American Psychiatric Association Principles of Medical Ethics-2008 Edition, Section 1
- Ethical Principles of Psychologists and Code of Conduct-2010 Amendments, Principle E: Respect for People's Rights and Dignity
- Code of Ethics of the National Association of Social Workers, §1.05 Cultural Competence and Social Diversity

Policy Statements of Professional Organizations

- **American Psychiatric Association's Principles of Medical Ethics With Annotations Especially Applicable to Psychiatry**
<http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/about-ethics-group/ethics-resource-center/educational-resources/federation-repository-ethics-documents-online/american-psychiatric-association.page>
- **American Psychological Association's Policy Statements on Lesbian, Gay, Bisexual and Transgender concerns**
<http://www.apa.org/pi/lgbt/resources/policy/index.aspx>
- **National Association of Social Workers, Diversity & Equity Homepage: Gay, Lesbian, Bisexual & Transgender Issues**
<http://www.naswdc.org/diversity/new/glb.asp>

Developing Case Law

Transgender litigation:

- *K.B. v J.R.*, 26 Misc.3d 465, 887 N.Y.S.2d 516 (Sup Ct Kings Co 2009)
- *Karin T. v Michael T.*, 127 Misc.2d 14, 484 N.Y.S.2d 780 [Fam Ct Erie Co 1985]

Related Cases:

- *H.M. v E.T.*, 14 N.Y.3d 521, 930 N.E.2d 206, 904 N.Y.S.2d 285 (2010)
- *Juanita A. v Kenneth Mark N.*, 15 N.Y.3d 1, 904 N.Y.S.2d 293, 930 N.E.2d 214 (2010)
- *T.V. v New York State Dept. of Health*, 88 A.D.3d 290, 929 N.Y.S.2d 139 (2d Dept 2011)
- *P. v B.*, 29 Misc.3d 406, 906 N.Y.S.2d 865 (Fam. Ct Orange Co 2010)
- *In re Adoption of Sebastian*, 25 Misc.3d 567, 879 N.Y.S.2d 677 (Surr. Ct NY County 2009)
- *Matter of Guardianship of Astonn H.*, 167 Misc.2d 840, 635 N.Y.S.2d 418 (Fam. Ct Kings Co 1995)
- *M.A.B. v R.B.*, 134 Misc.2d 317, 510 N.Y.S.2d 960 (Sup. Ct Suffolk Co 1986)

Meeting Our Ethical Obligations

How do we:

- Assure that transgender adults and youth are treated equitably and fairly by everyone they meet in the courthouse and by everyone from whom they receive services?
- Develop cultural competence in working with transgender adults and youth?
- Demonstrate these values, behaviors, attitudes and practices in every case we see?

We begin by:

- Identifying our own history with sexual orientation/gender identity/gender expression and the role that upbringing has played in our formulation of what we view as appropriate cultural norms
- Recognizing our current relationship to those myths and messages as well as our innate biases
- Moving beyond blindness, avoidance and simple tolerance of sexual orientation, gender identity and gender expression to
- Respecting each person's right to identify as they choose and determine when, how and to whom they will disclose information about their gender identity

Cultural Competency And Transgender People

Components of Cultural Competency

Cultural Competency in transgender issues means:

- A. Breaking down terminology about gender, sex, and sexual orientation
- B. Identifying and challenging the messages we have received from our cultures, families, religions, and peers that may influence our beliefs or actions
- C. Deepening our understanding about transphobia in society
- D. Learning ways to support transgender people in court proceedings and in our personal lives

A) Transgender Terminology

Terms of Art for Discussing Transgender Issues

Transgender Terms of Art

- These are terms used by advocates and transgender people in legal, social and policy advocacy
- Can be used as a **BASELINE** for communicate about gender issues in the courtroom.
- Other terms issues may be raised or preferred in the individual context

The Term “Transgender”

- Usually “Transgender;” sometimes “Transgender-ED”
- Transgender is an umbrella term.
- The term applies to a wide variety of people who *transgress gender norms* in some way.
- Typically, the term is applied to people who dress or act in a way that is different or opposite from what is considered normal for their birth sex.

Who Might Be Transgender?

- People who **dress in a way** that is associated with one sex, even though they were raised as another sex
- People who **identify** as a particular sex or gender, even though they were raised as a different sex or gender
- People who simply **do not identify with either** male or female at all
- People who identify with **parts of one sex or gender** and **parts of another** sex or gender

How Many Transgender People Are There?

- Its hard or impossible to estimate, because trans status is not included in most survey data
- Many trans people do not feel comfortable “outing” themselves because of fear of harassment or violence
- Other people simply identify as men or women, and wouldn’t describe themselves as transgender even if they have undergone a gender transition

The National Center for Transgender Equality estimates it is between .25% and 1% of the U.S. population....



...Which is roughly the population of Alaska. (NCTE/H.J. Tobin).

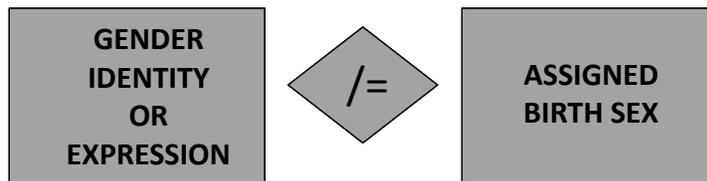
Breaking It Down... GENDER vs. SEX

The World Health Organization defines gender as “the result of ***socially constructed ideas*** about the behavior, actions, and roles a particular ***sex*** performs”

See: <http://www.who.int/gender/whatisgender/en/index.html>

TRANSGENDER

Generally refers to a someone whose



Breaking It Down... ASSIGNED BIRTH SEX

Advocates often use the term "Sex" to refer to **ANATOMICAL FEATURES** such as chromosomes, genitals, secondary sex characteristics like facial hair



When we say "Assignment" in this context, we are typically referring to the **NON CONSENSUAL** act of **ASSIGNING A GENDER** to a person that happens at birth

Why ASSIGNED SEX and not "BIOLOGICAL SEX" ... or Other Terms?

- Emphasizes the fact that a decision is being made by a third party from the beginning
- The reality is that 1 in 100 babies is born with sex characteristics that don't neatly fit into traditional concepts of male and female (Intersex Society of North America Study)
- Is more accurate, because many sex characteristics can and do change, in both transgender and non-transgender people

Breaking It Down.... GENDER EXPRESSION

The way a person expresses or represents their gender to the world

INCLUDES THINGS LIKE:

- Mannerisms/Posture
- Way of Speaking
- Way of Dressing
- Actions like holding doors, or not holding doors

INFLUENCED BY:

- Race & Class
- Culture
- Family Role
- Religion
- Peers
- Media



GENDER NON CONFORMITY

Any qualities, aspects, characteristics, or mannerisms a person may have which:

- Do not match assumptions about the sex they were assigned at birth, OR
- Do not match assumptions about the way that a particular gender should normally act or behave

Breaking It Down.... **GENDER IDENTITY**



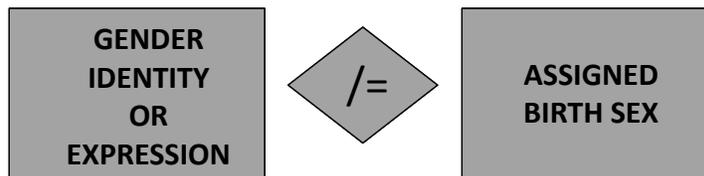
A person's internal, personal sense of their gender.

Breaking It Down.... **GENDER IDENTITY**

- Gender Identity is INNATE – we all have one, and most people know theirs from a very young age
- Most people's gender identity remains the same no matter what they look like, act like, or what medical procedures they have had
- Sometimes peoples' gender identity can change over time, or as they grow and get to know themselves better
- Many people have gender identities that do not match their assigned birth sex.

TRANSGENDER

Generally refers to a someone whose



“CIS” - GENDER

- A term to refer to people whose gender identity matches or comports with the sex they were assigned at birth.
- Antonym of “transgender”
- Latin root, “cis” being opposite of “trans”

SOME TERMS TO DESCRIBE GENDER

- Woman/Female
- Trans woman
- MTF (male-to-female)
- Woman of Trans Experience
- Gender Non-Conforming Woman
- Man/Male
- Trans Man
- FTM (female-to-male)
- Man of Trans Experience
- Gender Non-Conforming Man
- Butch/Femme
- AG or Aggressive
- Genderqueer
- Gender Non-Conforming
- Gender Fluid
- Gender Questioning

SOME TERMS TO AVOID

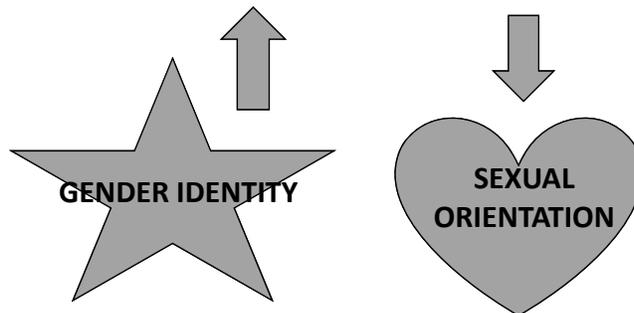
These terms have complicated, loaded, outdated or even discriminatory meanings and it is best to avoid them...unless you know that someone uses these terms for themselves.

- He-She
- Shemale
- Transvestite
- Tranny
- Cross-Dresser
 - This one is not a negative term but refers to a specific community/identity

GENDER and SEXUAL ORIENTATION ARE DIFFERENT THINGS

- GENDER IDENTITY refers to the way a person identifies.
- SEXUAL ORIENTATION refers to who a person is attracted to.

I am a man. I am attracted to women.



B) Challenging Cultural Messages

Transgender People and the Media

- Transgender People are represented very negatively in the media. This helps perpetuate a lot of misinformation about transgender people.

A Note About POP CULTURE...

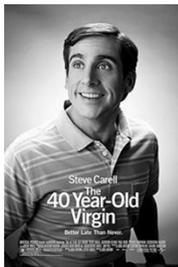


Gender non-conformity is a common subject of jokes and gags in popular culture

Media like magazines, books, television and movies continually reaffirm that gender nonconformity is funny, wrong, or shameful

The Movie and Television Challenge

Watch any movie, TV show, or comedy special. Give yourself a point every time gender non-conformity is used as a gag...



...A Sinister Plot Twist...



...Or A Big Reveal.



Brian discovers he has slept with a transgender woman.

<http://maddietampa.tumblr.com/post/32004797962/transphobia-in-movies-that-you-probably-like>

We are all exposed to these messages every day, all of the time, trans or non-trans.

- Messages do not always seem significant, but they play a powerful role
- Help reaffirm cultural standards, mores, taboos and assumptions
- At the same time they create shame and humiliation in trans people.
- Happens with other forms of oppression, especially racism, as well as xenophobia, homophobia, fat-phobia (size-ism) and ableism

COMMON MESSAGES *About Transgender People*

1. Transgender people are only pretending to be something they are not.
2. Transgender people are over-sexual, sexually deviant, or sex workers.
1. It is disgusting, humiliating, or shameful to love or be romantically involved with transgender people.
2. Transgender people are less valuable, real, or trustworthy, because they are transgender, or their needs and desires are not as important.

“We, as a society, have not created a space for men to openly express their desire to *be* with trans women... We tell men to keep their attraction to trans women secret, to limit it to the internet, frame it as a passing fetish or transaction. In effect, we’re telling trans women that they are only deserving of secret interactions with men, further demeaning and stigmatizing trans women.”

Janet Mock, Author & Activist

EFFECT OF THESE MESSAGES

1. Obscure the realities of transgender lives.
2. Conflate causes and effects of discrimination.
3. Justify the denial of health care, services, support, and respect for transgender people.
4. Contribute to the mentality of transgender people as “disposable” people

The #1 Myth About Transgender People:

The Surgery



THE SURGERY MYTH:

A person of one gender becomes a person of another gender only after
they have THE SURGERY

Where does the myth come from?

- For many transgender people, gender-affirming surgery provides a greater sense of harmony between gender identity and the physical body.
- In the 1950's, Christine Jorgenson became possibly the first symbol of transgender people in the U.S., when she sought out gender-affirming surgery in Europe.
- At that time, sex, gender, and sexuality were still widely seen as interdependent.
- THE SURGERY narrative allowed for an easy litmus test for gender, by tying it as closely as possible to sex and sexuality.

The Reality

- Today, there is really no single procedure that defines gender affirming health care.
- Less than 20% of transgender people (less than 5% of transgender men!) have the kinds of procedures that we commonly think of as SEX REASSIGNMENT SURGERY
- Genital surgeries are costly, not covered by most health insurance, physically challenging, permanently sterilizing, and frequently undesired.

The Reality

- The Myth of THE SURGERY is based on hetero-normative, class-based ideas about gender transition.
- The Myth of THE SURGERY ignores the fact that gender identity is innate, personal, and immutable.
- The Myth of THE SURGERY ignores the reality that a majority of people who want gender affirming surgeries cannot get them because of discrimination
- The Myth of THE SURGERY hurts transgender people by creating standards of authenticity that can only be met by a privileged few.

An Alternate Model

- Medical authorities and government agencies are increasingly relying upon an “appropriate clinical treatment” standard
 - Doctors affirm the success of a gender transition when, in their opinion, the patient has had “appropriate clinical treatment”
 - Defined by the health needs of the individual
 - Includes all forms of treatment, such as hormone therapy, talk therapy, non-genital surgery, lifestyle, legal and social factors, and genital surgery

- For a good history of the relationship between transgender advocacy, science, and sex reassignment surgery, see:
 - How Sex Changed by Joanne Meyerowitz

C) Transgender Discrimination

Deepening Understanding About Transphobia in Society

What Discrimination Looks Like

What is Transphobia?

Transphobia is the fear, hatred or dislike of, or discrimination towards, a person because that person is transgender, gender-variant, or transgresses gender stereotypes.

Violent Transphobia

- Violence against transgender people is widespread.
- Violence against transgender people of color is commonly more severe, more frequent, and yet taken less seriously by authorities.
- Reports such as the Southern Poverty Law Center's *Disposable People* discuss these realities in detail.



- Cece McDonald, was attacked by a group of people outside of a bar on account of her identity as a transgender person of color. One assailant smashed a glass across her face.

The price of survival.

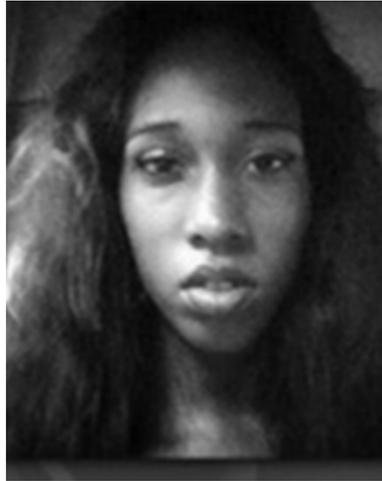
- Cece defended herself against the attack, in fear for her life. One of the assailants was killed.
- Charged with second-degree murder, and facing decades in prison, she accepted a plea to 41 months in prison.



Cece speaking with a visitor while serving her sentence

Violence against transgender people...

- Islan Nettles was a 21 year old transgender woman who was recently attacked in Harlem and died from her injuries.
- Media coverage has been mixed.



ISLAN NETTLES

Insult to Injury...

Two Transgender Men Killed

Friday, August 23, 2013



...And trivializing harsh realities



Structural Discrimination

When we talk about discrimination and violence against transgender, gender non-conforming, and intersex people, we are often talking about systems that are in place that are structurally set up in ways that are anti- trans, as well as racist, anti-poor, or ableist.

We call this structural or systemic violence.

Structural Discrimination

- Systems or institutions that don't take the needs of particular communities into consideration
- Does not require a perpetrator
- Deeply intertwined with the economy, health care, and systems of government
- Often results in increased health risks, violence, and death in marginalized communities

Gender Transition

- The process of aligning ones physical body, social or legal role, and/or gender expression with one's Gender Identity
- May include health care treatments such as hormones or surgery, legal proceedings such a a name change, a switch of pronouns or salutations, a shift in social group or role, or a shift in self-identification...among other things

Health Care

- All of the most common transgender health care treatments are considered safe and effective. There are many best practices guides available.
- However, even in New York City, there are very few doctors with experience working with transgender people. In other places, there are even fewer options.
- Trans health care typically excluded by insurance providers, so trans people have to pay out-of pocket, which means many trans people cannot afford to get care.

NYS Medicaid

- FACT: New York State Medicaid specifically excludes coverage for any care for the purposes of gender reassignment.
- As a result, few low-income New Yorkers are able to obtain gender-affirming surgeries, even when considered urgent medical needs by doctors
- Many transgender people seek alternative forms of income, such as sex work, to pay for surgeries and hormones

Government ID

- Required to get jobs, get into programs, get healthcare, access buildings and other physical spaces
- Almost always print the name and gender on the front, usually with a picture
- Also related: credit history, school transcripts & GED' s, medical documentation

Government ID

- Court order required to change name on essentially all forms of government ID
- Some form of medical intervention is required to change gender on nearly all government ID

NON-AFFIRMING POLICY - REQUIRES GENITAL SURGERY

New York City & State Birth Certificates, New York City HRA Benefits Card

AFFIRMING POLICY - REQUIRES "APPROPRIATE CLINICAL TREATMENT"

US Passport, Social Security, Consular Birth Certificate, United States Citizenship & Immigration Services documents (ex. green card)

"Society pushes people into the streets in order to survive, and they're not allowed to survive there. That's a societal hate crime."

-Lisa Mottet,
National Center for
Transgender Equality

Common Realities
for Transgender People

Family

Transgender people, even more so than other LGBT people or the general population, are disproportionately likely not to have family support.

- In a recent study, 57% of respondents had experienced significant family rejection.
- **51% of those whose families had rejected them had attempted suicide.**

Family

- Transgender people are disproportionately likely to be kicked out of their homes, or run away from home
 - Transgender people in foster care experience similar or higher levels of rejection
- New York City's homeless youth are disproportionately LGBT.
 - **20-40% of homeless youth** are believed to be LGBT
 - 39% of them were kicked out of their homes by their families

Homelessness

- Transgender people are disproportionately likely to be homeless or have been homeless
 - One third of transgender and gender nonconforming New Yorkers have been homeless. (Frazer 2009)
- Homeless Shelters are sex segregated.
 - NYC DHS policy allows for self-identification of gender.

Bathrooms



Bathrooms

- Everybody needs to use them.
- For people whose gender identity is different from assumptions about gender, these spaces can very very very dangerous
- Under New York City's Human Rights Law, anyone can use a bathroom based on their gender ID (Title 8 of the Administrative Code of NYC)
- However, in public and private accommodations, it is not uncommon for transgender people to get arrested for using the "wrong" bathroom

All-Gender Bathrooms

All-gender bathrooms can resolve many of these problems for trans people. They are commonly used, and critiques are often unfounded. Examples of service providers/public accommodations that utilize all-gender bathrooms:

Example: LGBT Center,
 Urban Justice Center
 Green Chimneys
 CUNY Law School

Making a Living



Making A Living

- Transgender people experience:
 - **Double the rate of unemployment:** Survey respondents experience unemployment at twice the rate of the population as a whole.
 - **Near universal harassment on the job:** Ninety-seven percent (97%) of those surveyed reported experiencing harassment or mistreatment on the job.
 - **Significant losses of jobs and careers:** Forty-seven percent (47%) had experienced an adverse job outcome, such as being fired, not hired or denied a promotion.
 - **High rates of poverty:** Fifteen percent (15%) of transgender people in our sample lived on \$10,000 per year or less—double the rate of the general population.
- SOURCE: National Transgender Discrimination Survey (NTDS)

Making A Living

- If your ID's don't match the way you look or your preferred name, very hard to get a traditional job (especially in low income jobs with high turnover)
- Even if a trans person is hired, likely to face harassment, discrimination, or humiliation at some point, from coworkers or clients or elsewhere.

Alternative Economies

Since trans people may have a hard time getting jobs or participating in the mainstream economy, many trans people end up committing “survival crimes” in order to get by, such as doing sex work and selling drugs.

High Likelihood of Arrest

With a high rate of homelessness, difficulty finding work in traditional economies, difficulty accessing benefits, difficulty using public restrooms, difficulty accessing gender-affirming ID's, problems in schools, and general harassment based on their gender expression, transgender people face a high likelihood of arrest.

Prison & Jail



Photo by Rennett Stowe

- Trans people disproportionately likely to be in them
- Gender is highly regulated in prisons, from placement to dress to medications

- While incarcerated, transgender people are disproportionately likely to be sexually assaulted
 - 59% of transgender people in California men's prisons have been sexually assaulted while incarcerated. (Jeness 2006)
- Another widespread and egregious issues is placement – most trans people are placed in a facility by their birth sex or genital configuration.
- Other issues are accessing transgender health care, preventing hate violence, and accessing gender-affirming clothing.

Chelsea Manning



- Chelsea Manning recently brought attention to issues affecting transgender inmates
- Facing an 8 to 35 year sentence in a military prison
- Requested treatment for gender dysphoria. Prison issued press statement that transgender health care would not be provided
- Very common situation for transgender inmates

Reminder: Intersections

- As a result, transgender people of color and low-income transgender people often face the manifestations of transphobia more severely than people with more privilege.
- Transgender people of color are facing transphobia PLUS racism
- Transgender people who are low-income are facing transphobia PLUS poverty

Intersections

It's all interrelated - Therefore, to understand and fight transphobia, you also have to look at racism, poverty, classism, sexism, homophobia, ableism, xenophobia...



D) Practice Tips

Learning to Support Transgender People in The Courtroom
and in Our Personal Lives

1) Challenge Assumptions

- A vital part of cultural competency is the willingness to challenge what you know and be open to experiences of people who are differently situated
- Challenging assumptions about gender means thinking critically about the impact of gender roles and expectations on both cis and transgender people
- We also have to look at our structures, from intake forms to bathrooms, from hiring practices to security checkpoints, to make sure transgender experiences are included and accounted for

2) Affirm Preferred Names

- Many transgender people prefer names that are more consistent with their gender expression or identity than the name they were given at birth
- Always use the preferred name of a transgender litigant. If the name is legally changed, make sure amend court records.
- Transgender litigant may not have had a legal name change. Find ways to use preferred name whenever possible.

3) Affirm Gender

- Always use the preferred pronouns of a litigant. If you don't know, a bench conference or sidebar could be used to briefly check in with the litigant.
- Avoid using terms like "Mr." or "Ms." until you are certain about the gender identities of the litigants. An alternative would be to use last names only, or address the party using their role (Defendant, Plaintiff), etc.
- Don't assume litigants identify as a particular gender just because of their legal or preferred name, or their appearance.

TIP: Use the party's preferred name if possible, especially when calling a case. If not, use the last name only.

EX: "Rodriguez"
"Parties on Smith"
"Plaintiff Smith, Defendant Rodriguez"

4) Avoid Questions That Are Not Relevant To The Case

- Ask yourself if the question is necessary for the purpose of the proceeding or conversation
- Avoid questions that are personal or specific to a person's transgender experiences unless that person offers the information or indicates a willingness to talk about it
- If a person gets uncomfortable talking about it, don't push them to say more

5) Consider The Potential Impact of Transphobia On The Case

- Unemployment – Did the litigant suffer discrimination or inability to find employment due to being transgender?
- Criminal history - Arrests for using the wrong bathroom, not having ID, petty theft of clothes or cosmetics, prostitution – could they be affected by the person’s trans identity
- Family Ties – Frequently family relations become far more complicated when the child or a parent is transgender.
- History of Violence and Harassment - How might a climate of discrimination affect the case at hand?

6) Consider the Impact of Transphobia in Society on the Disposition

- If a personal safety waiver is denied, will publication of a name change out someone as transgender against their will?
- Will denial of bail result in jail conditions that disproportionately harm a transgender defendant? Will that unfairly coerce the defendant to take a plea?

7) Consider The Impact of the Conduct or Disposition on Transphobia

- Every action to reduce transphobia matters!
- Every name change decision reduces transphobia by allowing a person to obtain IDs that correspond with their gender expression
- Every time a judge or attorney uses pronouns and names that affirm a litigants gender, it creates trust and investment in the legal system.

It's Easier Than You Think!

(Applying The Tips)

It's easier than you think:

- Not making assumptions about anyone's sexual orientation or gender identity (lawyers, experts, litigants, family members)
- Using open ended questions and give examples that signal inclusiveness
- Substituting gender-neutral, non-heterosexist language

It's easier than you think:

- Showing respect for a person's sexual orientation, gender identity and expression however it is manifested (choice of gendered attire, physical appearance, style of speech, mannerisms or behavior)
- Mirroring the language people use to refer to themselves and use their preferred name and pronoun
- Eliminating unnecessary words

It's easier than you think:

- Speaking in an inclusive, affirming way
- Being proactive in setting practice ground rules with courtroom staff, attorneys and social workers
- Being prepared to act if necessary

QUESTIONS & ANSWERS

THANK YOU!