

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

NEW YORK STATE JUDICIAL INSTITUTE

STATE OF NEW YORK

TRANSGENDER LITIGANTS IN THE COURTROOM
Providing Equal Access and Impartial
Justice - Part One

October 10, 2013

Participants:
HON. FERN A. FISHER (INTRODUCTION)
HON. PETER MOULTON
HON. PAULA J. HEPNER (RET.)
ELANA REDFIELD, ESQ.

Penina Wolicki
Official Court Transcriber

1 JUDGE FISHER: Good afternoon, and welcome
2 to this afternoon's program. I know most of you know
3 who I am and my titles. But I'm addressing you
4 mainly with my hat as director of Access to Justice
5 this afternoon. And I think this is a most important
6 program, and I'm happy to see the attendance here
7 today.

8 Today we are going to be having experts - -
9 - and I consider them all here experts and people
10 committed to the issue - - - where we'll be dealing
11 with the issue of transgender litigants in the court
12 system. And I know I'm probably speaking to the
13 choir when I explain that gender, being female or
14 male, is a basic element that helps make up an
15 individual's personality and sense of self. So when
16 someone has a strong discontent with the sex that one
17 is born with, clearly, the person has struggles,
18 particularly in this society.

19 But why are we talking about this as a
20 court system? And that's what we're here today.

21 One of the things that we are clear about
22 from the Access to Justice Program is that we must
23 take into consideration the differences of the
24 litigants that come before us. Because the
25 differences of people: race, natural origin, gender

1 - - -

2 Yes?

3 UNIDENTIFIED SPEAKER: The sound system's
4 not on. I'd ask if they could turn it on.

5 JUDGE FISHER: Oh, that would be helpful.

6 JUDGE MOULTON: We don't actually have
7 mics. This is just for the recording.

8 JUDGE FISHER: Okay, so I'll try to keep my
9 voice up. How about that.

10 What I was saying is that we know, from the
11 Access to Justice Program, that people's
12 individualities and backgrounds affect how they
13 relate to the court system: race, gender, national
14 orien - national origin, sexual orientation, and
15 today's topic, transgender.

16 We want to make sure that people who come
17 into our court system leave our court system with a
18 perception that they have been treated fairly. And
19 in order to do that, we have to understand how people
20 view our court system differently. And so today, our
21 speakers are going to begin to talk about the topic
22 to open up the topic for the entire court system - -
23 - and I'm so happy to see that this is being filmed,
24 so other people can watch this - - - and so that we
25 can address the issues that transgender individuals

1 have when they come into court with legal problems
2 just like everybody else.

3 I want to thank Judge Peter Moulton for
4 organizing this panel, and Judge Peter Moulton is a
5 supervising judge of New York County Civil Court;
6 Judge Juanita Bing Newton, the dean of the JI, who
7 was right on board right away to getting this program
8 done, and Damaris Torrent, who's sitting right here,
9 who's worked on this.

10 I want to welcome - - - welcome with arms
11 wide, Judge Paula Hepner, who's the former
12 supervising judge of family court in Brooklyn. And
13 she retired just a bit ago, but she's back and she's
14 back with the family to talk about this most
15 important topic. And finally, from somebody outside
16 the court family, the fact that you would spend time
17 with us this afternoon, is very - - - we're very
18 grateful for that. I'd like to introduce you to
19 Elana Redfield, who's from the Sylvia Rivera Law
20 Project. So thank you, Elana, particularly, for
21 being here, because I know you're doing this out of
22 the goodness of your heart. So thank you very much.

23 So I think we - - - all of us who know
24 about the topic, there's always something that we can
25 learn. And for those of you who are coming to learn,

1 keep your minds and your hearts open. Thank you very
2 much, and enjoy the program.

3 JUDGE MOULTON: Thank you, Judge Fisher for
4 your opening remarks and for your support of this
5 program. I would also like to thank Judge Juanita
6 Bing Newton and her very able staff at the Judicial
7 Institute for getting this program off the ground.
8 Welcome to the first day of the program, Transgender
9 Litigants in the Court System - Providing Equal
10 Access and Impartial Justice.

11 My name is Peter Moulton and I am the
12 supervising judge of civil court in Manhattan. I'm
13 joined by my colleague, retired Judge Paula Hepner,
14 who was formerly the supervising judge of family
15 court in Kings County, and by Elana Redfield, a staff
16 attorney at the Sylvia Rivera Law Project.

17 The second day of the program, which will
18 concern the experiences of transgender people in name
19 change proceedings in civil court and in various
20 proceedings in family court will be held in this same
21 room on October 25th from 1:10 to 2:30 p.m. A third
22 program on the experiences of transgender people in
23 criminal courts of the State of New York, will be
24 held at a later date. It's still in formation.

25 We will discuss the meaning of the term

1 "transgender" at greater length later in our
2 presentation. For those of you who are new to the
3 topic, let me give a basic definition. A basic
4 definition of a transgender person is someone who
5 dresses or acts or otherwise identifies in a way that
6 is different than society's expectations for a person
7 born a particular sex. For example, a transgender
8 man is someone who was assigned the sex "female" when
9 born, but who dresses and acts in conformity with
10 social norms commonly associated with men.

11 As we will discuss, a transgender person
12 may or may not have had hormone therapies or sexual
13 reassignment surgery. A person's gender identity,
14 which refers to how a person inwardly perceives and
15 outwardly expresses his or her gender, is different
16 than sexual orientation. The term sexual
17 orientation, of course, concerns the question who a
18 person is attracted to.

19 Transgender people are increasingly visible
20 in our society. However, they continue to face overt
21 discrimination and violence. In 2011, the National
22 Gay and Lesbian Task Force and the National Center
23 for Transgender Equity published a report summarizing
24 data generated by a broad survey of transgender
25 people in the United States. It's available online

1 at www.thetaskforce.org. The report illustrates the
2 difficulties faced by transgender people in our
3 society. Transgender people face discrimination in
4 school and at the workplace.

5 Seventy-eight percent reported they had
6 been harassed in school. Fifty-five percent reported
7 that they had lost a job because of bias. According
8 to the report, transgender people face an
9 unemployment rate that is twice the national average.
10 And they are nearly twice as likely to be homeless as
11 the general population.

12 Sixty-one percent of the survey respondents
13 said that they had been the victim of physical
14 assault, and sixty-four percent reported that they
15 had been the victim of sexual assault.

16 We're here today to discuss how to make the
17 Court system a safe place for transgender people.
18 Court personnel, judicial and nonjudicial, whether
19 straight, gay and lesbian, transgender, or
20 questioning, need to ensure that transgender people
21 in our courts have the same access to justice as
22 anyone else. That does not mean that we, as court
23 personnel must shed the neutrality that's the
24 hallmark of any well-ordered court system. It does
25 mean that we need to create a court environment that

1 is respectful of transgender people and cognizant of
2 the special challenges they face in our court system.

3 Among the speakers we will be hearing in
4 these programs are lawyers who regularly and ably
5 advocate for transgender people. In addition to
6 participating in the discussion about how we can
7 ensure that courts are welcoming and bias-free places
8 for transgender people, these lawyers may express
9 points of view with respect to particular court
10 proceedings that not all judges agree with.

11 This program is not prescriptive. Rather,
12 it's designed in part to open up a dialog concerning
13 the best practices in such proceedings.

14 Our obligation to be fair to everyone who
15 comes before us is part of our DNA. The duty is also
16 ingrained in the judicial canons of ethics as well as
17 the code of ethics for nonjudicial personnel. I'm
18 now going to walk you through some of the pertinent
19 provisions and give you citations so you know where
20 to find them. Judge Hepner will discuss at greater
21 length how we apply these provisions.

22 A foundational canon of judicial conduct is
23 found at 22 New York Code of Rules and Regulations
24 100.3(4), which states in relevant part: "A judge
25 shall perform judicial duties without bias or

1 prejudice against or in favor of any person. A judge
2 in the performance of judicial duties shall not, by
3 words or conduct, manifest bias or prejudice,
4 including by not limited to bias or prejudice based
5 upon age, race, creed, color, sex, sexual
6 orientation, religion, national origin, disability,
7 marital status, or socioeconomic status, and shall
8 require staff, court officials and others subject to
9 the court's direction and control to refrain from
10 such words or conduct."

11 Under subsection (B) (5), a judge also has
12 the obligation to require that lawyers appearing in
13 front of her refrain from expressing bias.

14 At this time, these provisions do not
15 explicitly mention bias against gender identity or
16 gender expression, however, the general prohibition
17 against these - - - against bias, embraces
18 transgender people.

19 Subsection (C) of the same canon speaks to
20 a judge's duty to discharge her administrative
21 responsibilities without bias or prejudice.

22 The Code of Ethics for Non-Judicial
23 Employees contains similar principles. Section
24 50.1(C) provides that "Court employees shall not
25 discriminate and shall not manifest by words or

1 conduct, bias or prejudice on the basis of race,
2 color, sex, sexual orientation, religion, creed,
3 national origin, marital status, age or disability."

4 This provision does not, again, explicitly
5 include gender identity or expression, but again, a
6 basic imperative of the court system is the provision
7 of equal justice under law to all people who come
8 into our courts.

9 The Lawyer's Code of Professional
10 Responsibility, at Rule 8.4(g) also contains a
11 prohibition against unlawful discrimination in the
12 practice of law.

13 This rule of the Chief Administrator that's
14 on the PowerPoint, provides that if we do trans - - -
15 if we transact official business outside of official
16 court buildings, we may not do so in any place that
17 discriminates on the basis of various protected
18 categories.

19 Of course, there is also a growing body of
20 laws and policies affecting transgender people which
21 may come up in court. Some of these are listed in
22 the PowerPoint.

23 SONDA, the Sexual Orientation Non-
24 Discrimination Act, speaks to discrimination on the
25 basis of perceived and actual sexual orientation.

1 Transgender people may fall within its protection
2 based upon their sexual orientation.

3 The Dignity for All Students Act mandates
4 instruction in the state's public schools concerning
5 civility and character education. It also contains
6 anti-bullying provisions that could be of use to
7 transgender youth who are often exposed to bullying
8 in the state schools.

9 Local jurisdictions have passed anti-
10 discrimination provisions that embrace transgender
11 people.

12 Just moving quickly through this, Slide 12
13 lists various executive orders that also afford
14 protection to transgender individuals; as have
15 various agency directives.

16 Slide 15 shows various professional
17 organizations have also promulgated codes of ethics
18 for professions that may provide expert witnesses in
19 court. They also have policy statements that are put
20 out by their organizations concerning anti-bias
21 against transgender people.

22 Finally, there is a nascent body of case
23 law involving the rights and responsibilities of
24 transgender people. These cases are a good place to
25 start for judges seeking some insight into how issues

1 involving transgender people come up in the state's
2 courts.

3 I now turn the microphone and the mouse
4 over to former Family Court Judge Paula Hepner.

5 JUDGE HEPNER: Thank you, Judge Moulton.

6 While these canons speak about performing
7 judicial duties without bias or prejudice, not
8 manifesting bias or prejudice by words or conduct,
9 and the Code speaks about lawyers not unlawfully
10 discriminating in the practice of law, they are
11 talking about more than eliminating derogatory
12 phrases from our language and snickering from our
13 behavior. They are talking about making the judicial
14 system, as Judge Fisher pointed out, respond
15 respectfully and effectively to people of all
16 cultures, languages, classes, races, ethnic
17 backgrounds, abilities, religions, genders, sexual
18 orientations, gender identities and gender
19 expressions.

20 Achieving this change in our culture is a
21 process. The judicial system as a whole will change
22 its approach to the diversity of the people who come
23 before us when the individuals in that system are
24 able to recognize, affirm, and value the worth of
25 every person in the family units we see.

1 How do we do the three things you see on
2 the slide: assure that transgender adults and youth
3 are treated equitably and fairly by everyone they
4 meet in the courthouse from the day that - - - the
5 moment they walk in to the moment they leave? How do
6 we develop cultural competence in working with
7 transgender youth and adults? And how do we, as
8 judicial officers and personnel in the court system
9 demonstrate the values, behaviors, attitudes, and
10 practices in every case that we see, so that
11 transgender people, and indeed, all people who come
12 to the court will find it a welcoming environment?

13 We cannot change our judicial system
14 externally until we do something about it internally,
15 both as individuals and collectively as a group. We
16 begin by identifying our own history with sexual
17 orientation, gender identity, gender expression, and
18 the role that that upbringing has played in our
19 formulation of what we view as appropriate cultural
20 norms.

21 In doing this, we can move beyond
22 blindness, avoidance and simple tolerance of
23 difference based on sexual orientation, gender
24 identity, and gender expression to an understanding
25 of, respect for, and acceptance of each person's

1 right to identify as they choose and to live their
2 lives consistent with that identity.

3 What it means to become culturally
4 competent and how we demonstrate this in our cases
5 and our courthouses is the subject of the remainder
6 of this program, which will be led by Elana Redfield,
7 staff attorney at the Sylvia Rivera Law Project, and
8 also director of the Survival and Self-Determination
9 Project.

10 MS. REDFIELD: Thank you, Judge Hepner and
11 thank you Judge Moulton.

12 I want to start by bringing into the room,
13 Sylvia Rivera, for a second. Our law project is
14 named after her, and she was a transgender Latina
15 activist who really paved the way for our way of
16 thinking about transgender advocacy, which is to say,
17 we think of it not in isolation, but as it relates to
18 everything else.

19 So as I go through my presentation today, I
20 want you to remember that I don't think of any of
21 these things as being isolated, but all related to
22 every other kind of experience someone in their lives
23 is going to have.

24 So we're talking today about cultural
25 competency, and that's really the focus of my piece.

1 The way I think of it, it's broken down into four
2 components when we're talking about transgender
3 people. The first component is terminology. How do
4 we speak about gender and sex, sexual orientation,
5 and specifically, what are some terms that
6 transgender activists or allies use?

7 The second section is identifying and
8 challenging some of the messages that we get from our
9 society, from our culture, from our peers about what
10 trans people are, who trans people are, and what
11 trans people do.

12 Then the third part is to deepen our
13 understanding about transphobia. What does it mean
14 when we say "transphobia", and what does
15 discrimination against trans people look like?

16 The fourth part would be to learn some ways
17 to support trans people who are in the legal system.
18 Also, these same tips are applicable in our own
19 personal lives if we have trans people in our lives
20 that we want to support.

21 So we're starting with terminology. Some
22 terms of art. These terms, I want to say, are a
23 baseline. These are terms that you can use
24 comfortably knowing that they - - - they're not
25 necessarily offensive or that they are terms that are

1 broadly accepted. But I don't want you to think that
2 these are the only terms that are used or that these
3 terms might not be challenged by anybody.

4 So I'm going to start by saying the term
5 "transgender" is an umbrella term. We at the Sylvia
6 Rivera Law Project use it to refer - - - as an
7 umbrella term to refer to anybody whose gender
8 identity is different from the sex they're assigned
9 at birth, which we'll talk about more in detail. But
10 it can be used to apply to anybody whose gender trans
11 - - - they transgress gender norms in any way.

12 So who might be transgender? People who
13 dress in a way that's associated with one sex, even
14 though they were raised as another sex; people who
15 identify as a particular sex or gender, even though
16 they were raised as a different sex or gender; people
17 who simply do not identify with either male or female
18 at all; or people who identify with parts of one
19 gender and parts of another gender.

20 How many transgender people are there?
21 Well, it's really hard to say. There are a number of
22 reasons. For one, trans - - - trans-status is not a
23 checkbox on a census. Another reason is that many
24 trans people wouldn't feel comfortable outing
25 themselves as trans because of discrimination or

1 violence. Or, many people who are - - - who have an
2 experience of being transgender don't identify that
3 way for the purposes of documentation. They would
4 say, I'm a man or I'm a woman. They wouldn't say I'm
5 a transgender man or - - -

6 So it's hard to really get an accurate
7 number. But there are estimates. The National
8 Center for Transgender Equality estimates around .25
9 percent to 1 percent of the United States population,
10 which is roughly the population of Alaska. And I
11 like that as an image - - - Alaska.

12 I should credit Harper Jean Tobin who - - -
13 for - - - who put that out there in my head. She
14 works at the National Center for Transgender
15 Equality.

16 So now I want to break some things down
17 even further. I want to talk about the differences
18 between gender and sex. So when I say gender, I'm
19 referring to a social construction. The World Health
20 Organization defines gender as "the result of
21 socially constructed ideas about the behavior,
22 actions, or roles a particular sex performs."

23 So here we have a nifty graphic
24 illustrating that gender identity or expression is
25 not equal to the assigned birth sex for transgender

1 people. Now, what do I mean by "assigned birth sex"?

2 Well, advocates use the term "sex" to - - -
3 some advocates, not all advocates - - - most
4 advocates use the term "sex" to refer to anatomical
5 features, such as chromosomes, genitals, or secondary
6 sex characteristics like facial hair. And when we
7 say "assigned", that's the process of being assigned
8 that sex that happens at birth. So when you're born,
9 the doctor or your parents look at your sex
10 characteristics and they say, this person is a boy or
11 this person is a girl.

12 And we like the term "assigned sex" because
13 it emphasizes the fact that a decision's being made
14 by a third party. That's an action that's being
15 taken to decide what your sex is. And the reality is
16 that approximately one in one hundred babies is born
17 with sexual traits or sex characteristics that don't
18 neatly fit into the traditional concepts of male and
19 female. So most of those people are - - - the doctor
20 looks at them and they say, I'm going to go with
21 female or I'm going to go with male.

22 Or in the case of many people, they're
23 actually forced to undergo surgeries to conform their
24 bodies to the gender that the doctor decides they're
25 most like or should be, which is actually an area of

1 activism for many people who identify as intersex.
2 And that's the term that you would use.

3 And also, a side note, the sex
4 characteristics change over time, right? Everyone,
5 as we grow and age, sex characteristics change.
6 Someone - - - well, I'll leave it at that. You can
7 use your imagination.

8 So gender expression is the way that a
9 person expresses their gender to the world. Now,
10 this can be - - - it manifests in so many ways:
11 posture, the way that people speak, the way that
12 people dress, jewelry, whether you wear it, whether
13 you don't wear it, what kinds of jewelry you might
14 wear. Also things like do you hold a door for
15 somebody? Do you walk through the door first? It's
16 very deep, and there's a long list, so I'll leave it
17 at that.

18 But I want to note that these things really
19 vary across cultures. So it's influenced by race and
20 class. It's influenced by culture, by family role,
21 by religion, by your peers, by media. So gender
22 expression varies very broadly.

23 And a story I like to tell about gender
24 expression is I had a client who had a severe - - -
25 or has a severe psychiatric disability. And she

1 lives in a supported facility where her ability to
2 express her gender is limited by the rules of the
3 facility that she lives in. So she was assigned male
4 at birth; she identifies as female. But because of
5 where she lives, she's not really allowed to express
6 her gender the way that she wants to. She's subject
7 to the rules of the residential facility, of the
8 programs that she spends her day in, and of the kind
9 of jobs that she's allowed to take because of her
10 situation. So you can't look at her and necessarily
11 know what her gender is.

12 The next slide I have is about gender
13 nonconformity. This one was a hard one. I kind of
14 wanted to put it in the beginning, kind of wanted to
15 put in the end. I wasn't sure where to put it, so I
16 just threw it in the middle. But gender
17 nonconformity is sort of a generalized term for when
18 characteristics, aspects, or mannerisms do not match
19 assumptions about sex or gender.

20 So, right, so if you're looking at my
21 client and she does not necessarily look like what
22 you would think a woman looks like, you actually - -
23 - you can't know. She's gender nonconforming,
24 because she identifies as female, but she presents in
25 a way that you might think of or someone might think

1 of as not feminine.

2 And gender nonconforming is really broad.
3 It's a term you can use whenever gender - - - you
4 don't ex - - - you don't match assumptions about the
5 way a particular gender should look or act. For
6 example, there was a court case a while back where
7 this person who identified as a woman but was very
8 masculine presenting, tried to use a bathroom - - - a
9 women's bathroom in a restaurant in Manhattan. And
10 the restaurant in the case said you can't use that
11 bathroom, because she didn't look feminine enough.

12 I mean, they were, I guess, confused about
13 her gender. But suffice to say they won that case.

14 And really what I want to drive everyone
15 towards is a recognition that the most important
16 factor is gender identity, how someone identifies.

17 Okay. So this is the internal personal
18 sense for what your gender is. Gender identity is
19 innate. We all have one, and most people know theirs
20 from a very young age. Most people's gender identity
21 remains the same, although it can change over time.
22 And many people have gender identities that do not
23 match their assigned birth sex. Right?

24 So that, again, brings us back to
25 transgender. So I think we've probably hit that nail

1 enough times to drive it home. But I really wanted
2 to get that definition in your heads.

3 So one term that we used when we're talking
4 about trans people is cisgender, and cisgender is a
5 term to refer to people who are not transgender.
6 It's an antonym of transgender. And there is a Latin
7 root, cis being the opposite of trans in Latin. We
8 think that - - - no one really knows where it
9 started, but it seems like it may have started in
10 Internet chat rooms or academia back in the 90s. But
11 now it's become a very common, widely accepted way to
12 describe non-trans people.

13 And I'd like to say, you don't normally
14 need to use it unless you're talking about trans
15 people, because most of the time, you don't need to
16 make distinctions between trans and non-trans people.

17 The last point in the terminology I want to
18 make, is that - - - oops, here's a whole - - - so
19 this is not the last point. It's the second to last
20 point. So some terms you might see to describe
21 gender.

22 This is a list. The list is not
23 exhaustive. People are going to describe themselves
24 however they identify. So the best thing you can
25 always keep in mind is to reflect back the language

1 orientation. And there's been a long history of
2 advocates for lesbian and gay rights to work together
3 with transgender advocates to achieve similar goals,
4 but they're a separate thing. Sexuality and gender
5 identity are separate things. So I use the star to
6 represent gender identity, yeah; and a heart to
7 represent who you love.

8 So when we say gender identity referring to
9 who you are, how you identify; and sexual orientation
10 refers to who you are attracted to. So you can never
11 know somebody's sexual orientation just because you
12 know that they're trans. Right? Yeah, the same way
13 that if you are a republican, you might date
14 republicans or democrats, or it could go, you know,
15 any way; you can't make assumptions based on
16 someone's own self identification.

17 So the second part of cultural competency
18 is to identify cultural messages that we're getting.
19 Now, I'm going to skip to this slide, because I think
20 it makes the point that they're everywhere. This is
21 a photograph of a promotional poster in a subway stop
22 next to where I live. And if you can't see what it
23 says, someone has drawn a beard on this person and
24 written, I'm really a man.

25 It's actually a very common form of

1 ridicule, right, to degender someone or to say this
2 person isn't really what they are. And particularly
3 making fun of trans - - - trans women or poking fun
4 at people who are not really women, is very common in
5 our society.

6 So there's a lot of misinformation out
7 there, and I want to just touch on some of what's out
8 there. So there's a challenge I like everyone to
9 take which is to watch any movie or TV show or comedy
10 special and give yourself a point every time gender
11 nonconformity is used as a gag. And I gave some
12 examples here. But this list is not exhaustive. I'm
13 pretty sure any comedy movie made in the last thirty
14 years does - - - has at least one trans joke in it.
15 So if anyone wants to try that out, I'd be curious to
16 hear the results.

17 But also we see a lot of sinister plot
18 twists. I'm just thinking about the - - - The
19 Silence of the Lambs. And you know, I remember as a
20 kid thinking, wow, trans people are terrifying,
21 because you see this movie, right? And I was just on
22 the subway last week, and now there's a haunted house
23 that they're promoting using a reference to The
24 Silence of the Lambs. So it's still alive, that
25 idea, of like the murderous transsexual who needs to

1 fulfill their gender transition through killing
2 people.

3 And then I feel this next image really
4 shows the kind of reaction people - - - the way that
5 trans people are depicted in media, right? This is
6 from the show The Family Guy. And this is when Brian
7 discovers that he's been having a relationship with a
8 transgender woman. And I think that sense of disgust
9 runs really deep, and that's part of all this - - -
10 all of these messages we're getting.

11 These don't always seem significant, but
12 they add up. Right? They play a powerful role.
13 They reaffirm cultural standards about trans people
14 being other, being undesirable, being unsexy, being
15 disgusting. And I want to note that this is the same
16 thing that's happening with racism and the same thing
17 that's happening with size and fatness and with
18 ability, that these - - - we're always getting these
19 messages about what kinds of bodies are okay.

20 Some of the - - - if you just - - - still,
21 if you boil down what these messages are saying it's
22 transgender people are only pretending to be
23 something they're not, or trans people are overly
24 sexual, or sexually deviant, or all trans people are
25 sex workers.

1 Messages that it's disgusting, humiliating
2 or shameful to love or be romantically involved with
3 transgender people, or that they're less valuable, or
4 less real, less trustworthy, because they are - - -
5 they're - - - or their needs are not as important.
6 Right? That they don't matter as much.

7 Janet Mock is an author, an activist, who
8 recently wrote a really interesting blog post about
9 loving trans women. So I'm just going to read her
10 quote. "We as a society have not created a space for
11 men to openly express their desire to be with trans
12 women. We tell men to keep their attraction to trans
13 women secret, to limit it to the Internet, to frame
14 it as a fetish or a passing transaction. In effect,
15 we're telling trans women that they are only
16 deserving of secret interactions with men, further
17 demeaning and stigmatizing trans women."

18 And so I think that touches on a lot of the
19 messages. Right? And the effect. Right? They
20 obscure the realities of transgender lives. The
21 conflate causes and effects of discrimination. And
22 they justify the denial of healthcare, of services,
23 of support, and respect for trans people. And they
24 contribute to the mentality that trans people are
25 disposable.

1 No transgender presentation would be
2 complete without a discussion of the surgery. The
3 number one transgender myth. Here's Christine
4 Jorgensen. So the myth is that a person of one
5 gender becomes a person of another gender when they
6 have the surgery. So where does it come from? Well,
7 I pointed - - - I put that picture of Christine
8 Jorgensen, because that is her narrative and that is
9 one of the earliest times when trans people were
10 discussed in the media and discussed broadly across
11 different cultures was when Christine Jorgensen was
12 trying to get health care so she could change her
13 gender.

14 For many people, sex - - - gender
15 reassignment is extremely important. It provides a
16 greater sense of harmony between - - - between their
17 gender identity and the physical body. And - - - and
18 genital reassignment surgery can be a really huge
19 part of that.

20 It also provides a really good litmus test
21 or really - - - sorry, not good. I won't use the
22 good. But an easy litmus test for deciding who gets
23 to be trans - - - who gets to be male, who gets to be
24 female.

25 The reality is, there's no single procedure

1 that all trans people get. Less than twenty percent
2 of transgender people overall get genital
3 reassignment surgery, less than five percent of
4 transgender men; and that they're very costly.
5 Surgeries can run up to, you know, 30,000, 50,000,
6 80,000 dollars.

7 They're physically challenging, so
8 sometimes people can't have them because they have
9 other medical conditions or they don't want to take
10 the risk of the complications of surgery. They're
11 permanently sterilizing, so whenever you have
12 surgery, it's - - - you have to agree to not
13 reproduce. Right? And they're frequently undesired.
14 Many trans people want to be recognized for how they
15 identify without having these kinds of surgeries.

16 I would describe the myth of the surgery as
17 hetero-normative, because it's based on the idea of
18 two distinct sexes and the functions that they
19 perform. And it's also class-based, because it
20 doesn't acknowledge the reality that most people
21 cannot afford this kind of treatment.

22 Oftentimes there's a narrative that if you
23 really wanted it you would - - - you would save up
24 and you would get it. Hopefully the next few
25 segments of the presentation will help to erase that

1 sort of thinking, if anybody has it.

2 The myth of the surgery ignores the fact
3 that gender identity is innate, that you have it. It
4 doesn't matter what your body is like. It doesn't
5 matter what you look like or how you dress. You know
6 who you are. And it - - - it also ignores the
7 reality that a lot of people who would have genital
8 surgeries cannot get them because of discrimination.
9 It's not covered by most surger - - - most health
10 insurance. It is extremely expensive. And we'll
11 talk about the forms of discrimination people
12 experience and how it might add up to a complete
13 impossibility of obtaining this kind of treatment.

14 It also sets up a standard of authenticity
15 that only can be met by a privileged few. Right? So
16 in some ways, I guess that that's part of - - - of
17 the idea - - - of people not wanting to deal with
18 trans people, is that well, only people who have this
19 particular proceeding - - - procedure, are actually
20 trans or actually female or actually male, and that
21 means that there's a lot of people who we don't have
22 to actually worry about. Right? We don't have - - -
23 this doesn't - - - it doesn't undermine the sense of
24 what it means to be male and female, because it's
25 this limited number of people who can do it.

1 So our alternative model is one that says
2 appropriate clinical treatment is what trans people
3 need to transition into their preferred gender. So
4 harmonizing your body with your gender identity
5 should be a matter of whatever clinical treatment is
6 appropriate to you, decided by you and your doctor.

7 This includes all forms of treatment,
8 everything from hormone therapy to psychotherapy,
9 talk therapy, nongenital surgery like top surgery,
10 lifestyle changes, legal, social factors, using a
11 different pronoun, and genital surgery. So it's a
12 much more comprehensive and holistic approach.

13 I was reading this book called "How Sex
14 Changed" by Joanne Meyerowitz right before preparing
15 this. And I thought, actually, it's a really good
16 history of the way that the narrative of the surgery
17 has evolved throughout culture. It's by no means an
18 exhaustive read, but it's an interesting one.

19 So the third component is to - - - is
20 understanding transgender discrimination. And I want
21 to really dig deep into it today.

22 So transphobia is the fear, hatred, dislike
23 of, or discrimination towards a person because
24 they're trans or because they transgress gender
25 norms. Violent transphobia is one of the most

1 discussed forms of transphobia, and it's extremely
2 real. It's particularly common against transgender
3 people of color are the most common targets of
4 violence.

5 And there's a good report on the violence
6 against transgender people of color called
7 "Disposable People" by the Southern Poverty Law
8 Center. So the CLA materials contain references that
9 you can look at.

10 I want to talk about one - - - actually a
11 couple examples. So I know this might be a sort of
12 disturbing image to look at, but this is a picture of
13 Cece McDonald who was attacked. She's a transgender
14 woman of color who was physically attacked. One of
15 the assailants smashed a beer glass across her face.
16 This is her getting medical treatment afterwards.

17 She defended herself, and one of the
18 attackers was killed. She was charged with second
19 degree murder, and after a long period of time in
20 jail she accepted a plea in order to avoid going on
21 trial. And this is a picture of her talking with a
22 visitor.

23 There's an important thing to understand,
24 right, is that transgender people, and in particular
25 transgender people of color, are so frequently

1 getting killed. Recently, just a month ago - - - a
2 little bit less than - - - no, around a month ago,
3 this woman, Islan Nettles, was killed in Harlem. And
4 when this happens we see media coverage like this
5 that totally - - - she's - - - she identifies as a
6 woman and she's described as a man. And they put her
7 old - - - her birth name into the newspaper articles.
8 And this is extremely common. Unfortunately, I don't
9 know the name of the other woman who's in this
10 picture. But it adds insult to injury. Right?

11 And then we see the trivialization of this
12 same violence. We see movies like "Ticked Off
13 Trannies with Knives" that talk about how funny and
14 sexy and sassy it is that trans people are trying to,
15 you know, exact vengeance for the violence that they
16 experience. And then we see the real - - - in real
17 life, what happens is that they're put in jail for
18 it. So Cece is in jail for being alive, and - - - in
19 short.

20 But there's a lot more to transphobia than
21 violence. And this is a part where everyone here can
22 really play a role. I want to talk about structural
23 discrimination. And that's essentially
24 discrimination that arises because structures,
25 institutions, practices, don't take trans people into

1 consideration. They don't anticipate trans people.

2 Here's an easy example. Does your intake
3 form say M/F, and - - - or does it - - - does it
4 allow people to describe their gender differently?
5 But it goes - - - it goes a lot deeper than that.

6 So any kind of institution that doesn't
7 take the needs of a particular community into
8 consideration would be structural discrimination.
9 You're not - - - those communities are not - - - not
10 the ones making the intake forms. They're not the
11 ones who are deciding how policies work. They're
12 left out.

13 It doesn't require a perpetrator, which is
14 why it's so hard sometimes to talk about
15 discrimination. There's not an individual actor.
16 It's just that's the way it is.

17 And it's - - - these systems are deeply
18 intertwined with healthcare, government, and the
19 economy and frequently result in health risks,
20 violence, and death in transgender communities.

21 So to start, I want to talk about gender
22 transition and ways this - - - this comes up in
23 gender transition. So when I say the term
24 "transition", I'm talking about the process of
25 aligning the - - - your physical body, your social

1 life, your legal role, all - - - or your gender
2 expression, with the way that you identify your
3 gender.

4 It might include healthcare treatments. It
5 might include telling your friends, I use a different
6 pronoun now or I use a different name now. It may
7 involve a legal name change. It may involve a shift
8 in a social group or your role in your family or a
9 shift in - - - and many other things.

10 One of the biggest components of transition
11 is healthcare. So all of the most common treatments
12 for trans - - - for gender transition are considered
13 safe and effective by medical providers, including
14 the American Medical Association, the American
15 Psychiatric Association, and the American
16 Psychological Association.

17 However, very few doctors have experience
18 treating trans people, and it's so common that people
19 have the experience of going in because of a broken
20 arm and becoming a subject of discussion, having all
21 the interns brought in to meet you, being unable to
22 get even - - - what's the word - - - when you enter a
23 hospital, what's that called - - - admitted as your
24 preferred gender, and then having to wear a bracelet
25 that has your old name or your old gender on it.

1 So even - - - so people are discouraged
2 from treatment for general things not related to
3 trans health, and very few doctors have the expertise
4 to actually provide healthcare - - - trans
5 healthcare.

6 It's typically excluded by healthcare
7 providers, insurance providers. So trans people
8 frequently have to pay out-of-pocket, which means
9 many of them cannot afford to get care.

10 New York State Medicaid does not cover
11 trans health care. It has a specific exclusion which
12 was passed in 1998. As a result, low-income New
13 Yorkers who are on Medicaid cannot get genital
14 reassignment surgery. And what that presents is a
15 really interesting situation, because what New York
16 State Medicaid requires in order to change your IDs
17 is genital surgery.

18 So if you want to ever get a New York State
19 benefits ID, you have to get off of Medicaid, or find
20 a way to get a surgery that - - - you know, a 30,000-
21 dollar surgery, and then get back on it, and then
22 they'll change it, maybe. So people are stuck in a
23 Catch-22. So they can never change their gender
24 marker.

25 Many people, especially low-income people,

1 are unable to get these treatments covered, so they
2 end up having to take on extra work. And if you are
3 unemployed or if you're low income, many people end
4 up doing sex work. We have a lot of clients who will
5 tell us, I ended up - - - I started doing sex work
6 because I had to pay for my hormones. And it's just
7 a reality that people have to acknowledge that - - -
8 that trans communities need this care and they're
9 going to find ways to get it.

10 Doctors' letters, long-term treatment and
11 sometimes surgery, are required in order to update ID
12 documents. So many agencies, notably the Human
13 Resources Administration, require surgery in order to
14 update IDs, which is outdated at this point, because
15 there's general medical consensus that - - - that
16 surgery should not be required.

17 This is some of the IDs I like to - - -
18 these are IDs. So what do you use an ID for? For
19 getting into programs, for getting jobs, for getting
20 healthcare, for accessing a gym, for accessing your
21 building, accessing lots of physical spaces. They
22 always print the name and often print the gender.
23 Usually there's a picture and sometimes a signature.

24 Related to IDs are school transcripts,
25 credit history and GEDs as well as medical

1 documentation bears your name on it. Right?

2 So in order to change those things, people
3 have to get a court order to - - - a legal court
4 order to change their name. And New York State does
5 not have a provision for legal gender change through
6 the courts. So some form of medical intervention is
7 required, and it varies across agencies.

8 So here are some examples of non-affirming
9 policies. A policy that requires gender - - -
10 genital surgery includes New York City and State
11 birth certificates require genital surgery in order
12 to be changed, and New York City HRA benefits card.

13 Examples of affirming policies, we look to
14 the federal level. We look to the United States
15 passport, the Social Security, consular birth
16 certificates and immigration documents can all be
17 changed with a doctor's letter stating that the
18 person has had appropriate clinical treatment.

19 Now, moving beyond the concept of
20 transition into the day-to-day lives of trans people.
21 Here's a quote from Lisa Mottet, who's a transgender
22 activist: "Society pushes people into the streets
23 into order to survive, and they're not allowed to
24 survive there," so, "that's a societal hate crime."

25 One - - - one site where people end up

1 getting forced into the streets, unfortunately, is
2 family. A recent study found fifty-seven percent of
3 respondents had experienced significant family
4 rejection. And fifty-one percent of those who - - -
5 whose families had rejected them had attempted
6 suicide. So we're talking about more than half of
7 trans people have been rejected by their families,
8 and more than half of those people have tried to kill
9 themselves.

10 Trans people are disproportionately likely
11 to be kicked out of their homes or run away from
12 home. Transgender people in foster care have a
13 similar higher rate of the same experience.

14 New York City's homeless youth are
15 disproportionately LGBT. This recent study was
16 really startling. Twenty to forty percent of
17 homeless youth are believed to be LGBT, so lesbian,
18 gay, bisexual or transgender. And thirty-nine
19 percent of them were kicked out of their homes by
20 their families.

21 And the same is true for adults. Many,
22 many, many adults lose their families because they
23 decide to transition. This leads to a higher rate of
24 homelessness. Right?

25 Transgender people are disproportionately

1 likely, one third of transgender New Yorkers
2 reported, in one study, to be - - - to have been
3 homeless at one point in their lives.

4 Homeless shelters are sex segregated. New
5 York City actually has a fairly affirming policy that
6 allows you to enroll in the homeless - - - in the
7 shelter system by self identifying your gender.
8 There's basically intake points for male and for
9 female facilities, and you can choose which one you
10 want to go to.

11 How many people here use a bathroom? I do
12 too. So everybody, I think, needs to use them. And
13 for people whose gender identity or expression is
14 different than the sex they're assigned at birth,
15 this can bring up a lot of problems.

16 Under New York City law, the Human Rights
17 Law, anyone can use a bathroom based on their gender
18 identity, but it doesn't mean that they won't
19 experience discrimination trying to do so. They'll
20 probably win the court case that happens afterwards.
21 But people are still pretty unaware that this is a
22 law or that they have that right.

23 There actually is a card that's put
24 together by the NYCLU and the Transgender Legal
25 Defense and Education Fund that has - - - says this

1 is my right to use this bathroom. And if you want
2 that card, you can get that card from us or from the
3 NYCLU or TLDEF.

4 But it's really common for people still to
5 get arrested for using the wrong bathroom, which is
6 funny, because it's not illegal. Actually, there's
7 not a law that says you can't use the restroom of the
8 opposite gender. But, you know, it's disorderly
9 conduct. Right? People also win those cases when
10 they get arrested. Our founder was arrested for
11 using the wrong bathroom.

12 And people experience a lot of violence in
13 bathrooms. Just so much violence trying to use a
14 bathroom. So if you are a trans woman and you are
15 forced to use a men's bathroom, that leads to a lot
16 of - - - at the very least, a lot of discomfort, and
17 usually verbal - - - verbal harassment, or physical
18 harassment, or sexual harassment. And the same is
19 true for trans men using men's rooms. Sometimes
20 trans men don't want to use men's rooms.

21 So the best kind of policies are ones that
22 allow people to self identify what bathroom they want
23 - - - they feel safest using. And one of the ways
24 that many - - - many buildings and organizations
25 accommodate that is by having all-gender bathrooms,

1 that is to say, bathrooms anybody can use.

2 I think the centerpiece of these kind of
3 bathrooms is having stalls that lock, so anybody can
4 feel safe when they're using the bathroom. They've
5 been used for a long time. I'm not sure how long the
6 Urban Justice Center has had them, but many, many,
7 many years. But other organizations like the New
8 York City LGBT center and Green Chimneys have all-
9 gender bathrooms. CUNY Law School where I went to
10 law school, has all-gender bathrooms.

11 So employment and income. If your IDs
12 don't match the way you look or your preferred name,
13 it's very hard to get a traditional job, especially
14 low-income jobs.

15 If a - - - even if a trans person is hired,
16 they're likely to face harassment or discrimination
17 at some point from coworkers or from clients or
18 elsewhere.

19 So we have double the rate of unemployment;
20 near universal harassment. So what that means is
21 that ninety-seven percent of people who took a survey
22 about employment harassment for trans people reported
23 experiencing some degree of harassment on the job.

24 There's a significant likelihood of losing
25 jobs or not getting promoted. And there are high

1 rates of poverty amongst trans people.

2 So since trans people have such high rates
3 of employment and such high rates of discrimination,
4 many times people have a hard time getting jobs, and
5 are forced to actually work off the books. A lot of
6 people are on welfare, and a lot of people end up
7 having to commit survival crimes such as sex work, in
8 order to get by.

9 JUDGE MOULTON: Elana, I need to just take
10 a short break. For people who are getting CLE
11 credit, the CLE code is 1520 - - - 1520. Thank you.
12 Sorry to interrupt.

13 MS. REDFIELD: So with a high likelihood of
14 homelessness, difficulty finding work, high rates of
15 family rejection, you can't change your IDs, you
16 can't get the healthcare you need, it's not a
17 surprise that many trans people are arrested, and
18 trans people are disproportionately likely to end up
19 in the criminal justice system.

20 Trans people - - - gender is highly
21 regulated in prisons. Right? Because they are
22 deeply sex segregated. While incarcerated, trans
23 people are disproportionately likely to be sexually
24 assaulted. So one statistic was that - - - from a
25 California - - - California men's prisons, was that

1 fifty-nine percent of transgender women in men's
2 facilities reported sexual assault. So that's
3 essentially two thirds of the participants of the
4 survey.

5 Another egregious issue is placement. Most
6 people are placed by their genital status, and it's
7 done by a genital check. So when you're arrested
8 they stick their finger - - - their hands in your
9 pants and say well, that's what's there so that's
10 where you're going.

11 And at SRLP, at the Sylvia Rivera Law
12 Project, we have zero clients who are incarcerated by
13 their preferred gender. So that means that none of
14 our clients are in facilities that match how they
15 identify.

16 There was, interestingly, a show "Orange is
17 the New Black" where there was a character - - - this
18 was portrayed by Laverne Cox, who's an amazing
19 transgender activist. And this character was
20 actually in a women's facility and based on a real
21 person who was a trans woman in a women's facility.
22 So we know they're out there. But for the most part,
23 people are placed by their genital status.

24 In prison, it's extremely hard to get any
25 kind of healthcare, but accessing transgender

1 healthcare is ex - - - is very difficult. The New
2 York State Department of Corrections and Community
3 Supervision has a protocol for providing trans
4 healthcare. But it doesn't mean that people are able
5 to access it freely. There are often obstacles.

6 So getting healthcare, preventing hate
7 violence, and accessing gender affirming clothing are
8 main - - - are some of the main issues that our
9 incarcerated community members experience on a daily
10 basis.

11 I have to also mention Chelsea Manning.
12 Right? So she was recently brought to - - - a lot of
13 media attention to prison issues, because she
14 announced that she was trans - - - changing her
15 gender after her sent - - - she was sentenced to
16 eight to thirty-five years' sentence in a military
17 facility.

18 She requested treatment for gender
19 dysphoria, and the prison immediately issued a
20 statement that they were not going to provide it. So
21 this is fairly common. It actually sheds a lot of
22 light on the day-to-day lives of so many people in
23 New York State prisons as well.

24 So I want to remind folks of the
25 intersections, too, that we talked about in the

1 beginning, that transgender people of color and low
2 income people face the manifestations of transphobia
3 much more severely than people who - - - with more si
4 - - - more privilege. Right? And that when you're
5 dealing with transphobia and racism, that's - - - or
6 transphobia and poverty, that that means you're going
7 to experience it differently than a middle-class
8 white person is going to experience transphobia.

9 So there are so many different ways that
10 this - - - that transphobia plays out. And we have
11 to remember that we have to push back on all of them
12 at the same time.

13 So the fourth component, now that we've
14 gone through discrimination and what it looks like,
15 is to get practical and talk about what are the ways
16 that people - - - that everyone here can support
17 trans people, can help facilitate people feeling
18 respected in the court system and in our personal
19 lives.

20 So the first one is to challenge
21 assumptions. I really think this is like one of the
22 most important parts of cultural competency, is to
23 recognize what you're bringing, what your assumptions
24 are, and what you think about trans people, and how
25 that might affect how you treat people.

1 It means thinking critically about gender
2 roles, what we're taught. In my family - - - I grew
3 up in the country. In my family, the women children
4 were responsible for cleaning our house and for doing
5 the dishes and the male - - - assigned male children
6 were responsible for stacking wood, cutting wood, for
7 fixing things that are broken, for mowing the lawn.
8 So like there's a very gender division, right in my
9 life. And everyone's life, I think, we'll probably
10 recognize that there are those factors.

11 And we have to look at structures. Like I
12 mentioned intakes - - - intake forms or bathrooms,
13 hiring practices, and, you know, security check
14 points. It's one thing that's great about the court
15 system is that you don't need to show an ID to enter.
16 But in many places you do need to show an ID enter,
17 and that means that many people might not have IDs.
18 They might not have ID that match. So people need to
19 be aware that that's going to happen for trans
20 people, there's going to be those problems.

21 Affirming preferred names. So whether or
22 not someone has legally changed their name, you can
23 always use their preferred name. And you can always
24 - - - so if their name is legally changed, then court
25 documents can be amended to reflect the legal name

1 change. If their name has not been legally changed,
2 there may be ways - - - strategies where you can make
3 a notation in the file so that the preferred name can
4 be used.

5 Affirming gender. Now, one of the biggest
6 pieces of this is recognizing what pronoun someone
7 wants to use. And even if you're using the old name,
8 you can still use the preferred pronouns that someone
9 wants to use. So I prefer she and her. You can
10 always - - - if you are not aware of what pronoun
11 someone might prefer, then you can ask them. It's
12 better to do it privately like in a sidebar type
13 situation, a bench conference. But if you can find
14 out the way someone wants to be referred to, that
15 makes a huge difference in their feeling respected.

16 And also, addressing people by Mr. or Ms.
17 can be problematic sometimes, because you don't
18 necessarily know how someone identifies. So you
19 could use the last name of the case, or if there are
20 multiple parties, you could say parties on that case
21 or if you have a different name for the plaintiff or
22 the defendant, you could say "Plaintiff Smith"
23 Defendant Rodriguez" or call it by the case number.
24 I don't know if that's going to work most - - - but
25 there are a lot of ways around saying Mr. So-and-so,

1 Ms. So-and-so, or using the old name.

2 In the name-change context, you can call
3 someone by the name they're trying to change their
4 name to. At least you know that's the one that they
5 want, right?

6 Avoiding questions that are not relevant to
7 the case. A lot of times trans people get this
8 question of have you had the surgery. And my
9 favorite response to that is have you had the
10 surgery, or even better, tell me what your genitals
11 look like. Because people don't want to talk about
12 that, right? No one wants to talk about that. And
13 the only reason - - - trans people may tell you about
14 it, but it's because all these messages in society
15 that we have to tell you about our genitals all the
16 time.

17 Like, you know, you could get a picture and
18 put it on a T-shirt and then there it is.

19 But unless it's at issue in the case,
20 there's no need to ask a question like that. And you
21 could always just check - - - check yourself by
22 saying, do I need to know this in order to move
23 forward with whatever we're doing together, whether
24 it's a case, whether it's a conversation we're
25 having. So avoiding questions that are too personal

1 or too specific to their trans experience, unless
2 they say I would like to talk about this or offer it.

3 And, you know, also don't push people if
4 they're like, I don't want to talk about that.
5 Unless it's like a lawsuit where you're trying to
6 determine - - - you know, I can't even imagine how it
7 would come up that you'd have to talk about it.

8 Considering the impact of transphobia on
9 the case. This is important. So there's all these
10 factors that every litigant is bringing into the
11 courtroom. The factors like did they suffer - - -
12 what kinds of discrimination have they experienced;
13 what kind of violence have they been experienced.

14 I mean, I don't want to generalize
15 completely, but I'd say most trans people have been
16 verbally harassed or physically harassed at some
17 point in their lives. So they're going to be afraid
18 to like put their address in things or necess - - -
19 or they might be afraid. Or they may not want to
20 discuss - - - they may be more reticent to discuss
21 facts with you. So understanding they're coming with
22 that.

23 Understanding that trans people may have
24 criminal history because they only had the option of
25 sex work. They may have been arrested for

1 prostitution because they couldn't survive if they
2 didn't do sex work. Or they may have chosen sex work
3 because it was affirming to their gender, whereas
4 otherwise they were being constantly shut down.

5 Consider the fact that family ties may be
6 severed. Or consider the fact - - - well, I already
7 mentioned violence, but I'll mention it again - - -
8 that there's a climate - - - and we all live in this
9 climate - - - where trans people are constantly
10 killed and constantly told that they are worth being
11 killed; that that's what they're worth, and that it's
12 okay to kill trans people, and that it's okay to
13 harass trans people, and it's okay to make you feel
14 bad about using your preferred bathroom or feel bad
15 about dressing the way that you want to dress.

16 So recognize that whenever you have a
17 litigant in your courtroom, they're probably coming
18 in with a lot of baggage.

19 Also consider the potential power of your -
20 - - of the outcome of the case. Right? If you deny
21 someone a personal safety waiver, will the
22 publication of a name change out them to their family
23 and cause family rejection? Will it cause people in
24 their neighborhood to know that they're trans when
25 they didn't know before?

1 Or will denial of bail result in jail
2 conditions that disproportionately harm a transgender
3 defendant? Right? So if you know that a disposition
4 that might not - - - might be unpleasant for
5 somebody, but you know that as a trans person,
6 they're going to go in and they're - - - you know
7 they're going to face extra harassment - - - they're
8 sixty-six or sixty percent likely to be sexually
9 harassed when they're locked up, is that going to
10 affect your decision about bail or about alternatives
11 to incarceration?

12 And also, will that unfairly coerce them
13 into taking a plea? Is it a factor for a trans
14 person that they don't want to - - - they'd take a
15 plea rather than spend more time being locked up? I
16 think that's a real consideration.

17 And then also, there's so much power to
18 really support trans people. Every name change
19 reduces transphobia, because it helps someone get ID
20 documents that match the way they identify.

21 Every time a judge or attorney uses
22 pronouns that affirm a litigant's gender, that - - -
23 that creates trust and it creates investment in the
24 legal system. And it's a small step, but it makes so
25 much difference when you can feel like your gender's

1 being respected when you're in court.

2 And at this point, I'm going to conclude
3 and hand it over to Judge Hepner - - - Hepner for
4 some more consideration.

5 JUDGE HEPNER: We were talking about what
6 we do on a daily basis when people come to court and
7 how these things that we've just been delving into
8 affect the way we respond when transgender folks come
9 into our courthouses, either as adults, as children,
10 as litigants, or as people who accompany anyone to
11 court.

12 In the practice tips, you heard Ms.
13 Redfield speak about being open to experiences of
14 people. And those are people who are differently
15 situated than we are. So when we are open to people
16 who are differently situated, it means that we think
17 about what we say before we say it.

18 It's so easy for us to say things that we
19 don't really realize unless we've thought about it
20 are not affirming, are offensive, are hostile and
21 unwelcoming. For example, saying to a transgender
22 mom who comes with her lesbian partner to court,
23 "tell your friend to have a seat in the back of the
24 courtroom." Just think about the assumptions that
25 went into that sentence and how easily we can say

1 that. Because why? We didn't stop to think.

2 So we need to stop making assumptions about
3 anyone's sexual orientation and gender identity. The
4 fact of the matter is, we don't know a single thing
5 about any single one person we see. So we need to be
6 sensitive. We need to be open to every possibility
7 that exists.

8 We don't want to be saying to a minor who
9 comes to court with a trans woman, where's your
10 father? We don't know what we've just done. But we
11 certainly have made a gap. We have made an
12 unwelcoming environment. We've made a lot of
13 assumptions.

14 We need to try to stop ourselves from
15 acting on assumptions about people's gender identity
16 based on what we see: the clothes, the things that
17 Ms. Redfield mentioned, the jewelry, the hairstyles,
18 the androgynous appearances. It doesn't tell you a
19 single thing. And they're not failsafe clues. We
20 have to remember that when people come into our
21 courtrooms.

22 We have to keep in the forefront of our
23 mind that relationship categories are more than
24 different-sex and same-sex. And in your materials
25 that are online, you will find a table of all the

1 possible combinations of same-sex and different sex
2 relationships that we see in our courtrooms.

3 We can start working on developing open-
4 ended questions for how to meet and greet our public
5 and our litigants. And those questions should signal
6 inclusiveness. So how do we do that? It's really
7 quite simple when you take a moment to stop and think
8 about it.

9 How would you like me to address you, Mr.,
10 Ms., he, she, or another term? If you say all of
11 those things, you're communicating an openness. If
12 you don't, and you just barrel ahead saying what you
13 think is correct, then you've again cut off openness,
14 access, and a welcoming environment.

15 So by adding in multiples you communicate
16 that you're aware that there are differences in the
17 people we serve and that you're open to hearing any
18 one of those answers, which is important. So for
19 example, do you describe your relationship - - - in a
20 family offense case - - - do you describe your
21 relationship as bisexual, different-sex, same-sex, or
22 something else? I mean, that's not the limit either.
23 We have pan-sexual, omni-sexual, non-monosexual.
24 There's no limit to what people are referring to
25 themselves as. So let's communicate by giving lots

1 of options, that we are open, we are inclusive, and
2 we are willing to hear what you have to say.

3 Another example: are you legally related
4 by marriage, civil union, domestic partnership? Look
5 what you're communicated to people. You've
6 communicated that a) you know about it, and you're
7 not going to flip when somebody says one of those
8 words to you, you're just going to go on as - - - as
9 life has dealt it.

10 In the case of children: do you - - - does
11 your mother allow your male and female friends to
12 come to your home? So that if you have a lesbian
13 daughter in the family, she can feel free to say they
14 don't like who I associate with. But if you only say
15 does your mother let boys come to your home, then
16 you've done the same thing again; you've cut off
17 access; you've made it nonwelcoming; and you've
18 communicated that you have a perspective that may not
19 match the person who's in front of you.

20 We heard Ms. Redfield talk about
21 substituting gender-neutral and non-heterosexist
22 language. She said terms like Mr. and Ms. are not
23 necessarily failsafe either. So we have to be
24 certain about the gender identities of our litigants
25 before we even step forward and use those words.

1 We were all - - - everyone in this room - -
2 - raised to believe that that was as proper form of
3 address and that that was respectful. But in the
4 context of our presentation today, I hope you can see
5 how those terms can be instantly alienating. And
6 that's what we're trying to show here.

7 "He and she" are not gender neutral terms.
8 We grew up thinking that's so. It's not. How do we
9 deal with that? Skip the "he and she". "Does this
10 person live with you?" Or use the person's name:
11 "where does Miley live?" if it's a respondent in a
12 family offense case or any other case.

13 Boyfriend and girlfriend are not gender
14 neutral terms in the context of our presentation. So
15 let's go with: "Are you dating anyone?" you know, so
16 that we get out of putting people into our
17 preconceived assumptions.

18 Husband and wife are not gender-neutral any
19 longer. "What's your spouse or partner's name?" will
20 get you past communicating the barrier or
21 nonreceptivity.

22 Mother and father are not gender neutral.
23 So as I said before: "Did you come to court with
24 your parent"; or "Did your parent come today?" And
25 always safe, as Ms. Redfield said, are: petitioner,

1 respondent, plaintiff, defendant, complainant-
2 defendant; because that doesn't connote anything. It
3 leaves it all open.

4 We talked a lot about assumptions today,
5 and we talked a lot about the negative things that we
6 see. Most of us meet transgender folks - - - a lot
7 of us meet transgender folks, where? In criminal
8 proceedings or in juvenile delinquency proceedings.

9 Do we - - - we heard a lot of the data that
10 came from the report in Justice at Every Turn, which
11 is in your materials, and I highly recommend you look
12 at. It's a terrific report. But what we don't hear
13 are the affirming things. And it's not part of our,
14 I venture to say, list of assumptions we carry around
15 in our head, that for example, twenty-seven percent
16 of people in this study - - - there's more than 6,500
17 folks across the country - - - said they were
18 partnered. Twenty-three percent said they were in a
19 civil union or married. Three percent said they were
20 separated, and eleven percent said they were
21 divorced.

22 Think about that when you meet people in
23 your courtrooms. Who are you seeing? It's not just
24 a single person standing there.

25 Twenty percent of the respondents said they

1 had been in the military. And we talked about
2 Chelsea Manning. Twenty percent of the transgender
3 respondents have been in the military. Forty-seven
4 percent have received a college degree.

5 We don't think of that when we see people
6 coming into court on a criminal charge for loitering,
7 prostituting, or any other sex work that they've done
8 to survive, as we heard in this program.

9 Twenty-seven percent have a college degree.
10 Twenty percent have a graduate degree. Those are not
11 part of the set of assumptions we bring when we start
12 thinking typically about transgender folks.

13 Forty-nine percent said they went to school
14 as a transgender individual. So let's think about
15 the affirming side as well. And this is - - - leads
16 us to showing respect for - - - how do I make this
17 go? There we go - - - a person's sexual orientation
18 and gender ID - - - identity.

19 And it's not, as we have been saying,
20 affirmative, but happens all too often - - - I've
21 heard it myself many times over - - - judges saying
22 to a child's attorney, tell your client to get off
23 that makeup, those extensions, and nail tips. He
24 doesn't look much like a Richard to me.

25 It's really hard to believe that people

1 would say that, but it's been said. And we need to
2 think about what we are doing when we say things like
3 that.

4 We have many examples of judges directing
5 people how to dress in the courtroom. You know?
6 That's not really showing respect, if we have the
7 expectation that people will dress as we have defined
8 their gender to be, not as they have defined their
9 gender to be. And when we don't accept that, that's
10 again, alienating, unwelcoming, and creating a
11 hostile environment.

12 Ms. Redfield said we should mirror the
13 language people use in referring to themselves. And
14 we should start thinking about what unnecessary words
15 we can eliminate when we talk to people. So for
16 example, if you're a clerk in a petition room, how
17 can I help you, sir - - - do we need "sir"? No, we
18 don't need "sir". How can I help you? Let's start
19 off on equal footing here. Let's not instantly
20 communicate where we're coming from.

21 And the same is true for officers who are
22 outside; people checking in in the morning. You
23 know? What's the case - - - what's your case name,
24 sir? You know. We don't need those extra words.

25 What's the respondent's real name? That -

1 - - we don't need to have "real". We can just go
2 with what's the respondent's name. These are not
3 difficult things to do.

4 Speaking in affirmative and inclusive ways
5 which I was talking about a moment ago, is not just
6 about adding more options to what we say. But it is
7 being prepared to address the expectations of the
8 litigants who come in and the parents who come in.
9 We need to be prepared to explain that it's the
10 court's obligation to respect the dignity and rights
11 of every person who come here. We need to be
12 prepared to act if necessary.

13 So we need to think in advance about some
14 phrases we might have in our minds like: my job is
15 to see that the court provides equal access to
16 everyone, gay, straight, young, old, men, women,
17 black, white, bisexual and trans people, so that we
18 communicate that we are open and accepting and ready
19 to serve anyone in those communities.

20 Or we might say my professional obligation
21 is to respect your child's or the respondent's gender
22 identity, sexual orientation, just as it is my
23 obligation to respect yours.

24 I can't tell you how many parents I had in
25 front of me whose children were lesbian or gay and

1 they would appeal to me to say tell him or her to
2 change. So that's the parent's expectation.

3 Or you get in the family offense cases
4 where one of the parties is transgender, the other
5 person who is not, making derogatory remarks in court
6 about the other person, with the expectation that
7 you'll side with them. So we need to have things in
8 our lexicon, prepared, that we can say: our court
9 has a nondiscrimination policy, which means I have to
10 treat everyone in the courtroom with dignity and
11 respect, whether they're same-sex couples, whether
12 they're different-sex couples, and whether you agree
13 or you don't.

14 And last but not least, our job, we saw in
15 the canons, is to be prepared to act if necessary.
16 That's a judge's responsibility. Canons say we must
17 act with regard to the people over whom we have
18 control. That doesn't just mean our clerks and our
19 officers and our court attorneys. It means virtually
20 everyone in the courthouse and it certainly means
21 everyone who appears in our courtroom. Lawyers: we
22 have an obligation to deal with that - - - their
23 behavior, their conduct. We have an obligation to
24 deal with case workers. We have an obligation to
25 deal with probation officers. We have an obligation

1 to deal with the forensic mental health experts that
2 we assign to do custody evaluations.

3 And they all have, as you saw, codes of
4 professional responsibility that require them to be
5 culturally competent and nondiscriminatory. So as I
6 said, we need to see - - - oversee the behavior and
7 conduct of folks in our courtrooms, and we need to
8 find a way to address it.

9 One of the best practices is to, with your
10 staff, I think, start proactively and address it
11 first before it happens, and say to people, this is
12 how I want cases involving transgender folks, adults
13 and children, to be dealt with, or litigants, or
14 people who come with litigants. I - - - this is how
15 I want them to be treated. This is how I want them
16 to be referred to, before you're on the spot; before
17 it happens. It's much easier.

18 We need to, as judges and judicial
19 officers, think about the level of advocacy we see
20 from lawyers and social workers, particularly if we
21 start to suspect that there's bias going on in their
22 relationship to their trans clients. That's an
23 issue. As your canons and codes require, you can't
24 discriminate based on who you are representing.

25 And then last but not least, we receive, as

1 judges and judicial officers, tons of reports that
2 may or may not contain inappropriate language,
3 phrases, references, in them.

4 For example, I received in a report from
5 one of the agencies who said something like - - - it
6 was a - - - it was a probation report, and it said,
7 this - - - this young man is gay, but I don't make
8 too much out of this gay thing, because the kid will
9 probably grow out of it. That was written in a
10 report I received.

11 It's our obligation to do something. Now,
12 that doesn't mean you have to do something publicly.
13 But there are lots of strategies you need to think
14 about how are you going to address that. How are you
15 going to raise the consciousness and the awareness so
16 that our environment does become affirming and
17 welcoming?

18 Whoops. That's the wrong way. Back to
19 you. Back to you. Thank you all for coming.

20 JUDGE MOULTON: Thank you. Thank you all
21 for coming. That does end the CLE portion of our
22 program.

23 Lieutenant, can we stay in the courtroom
24 for a little while longer?

25 So even though the program is over, if

1 people have questions and want to discuss the
2 program, we're all able to stay. Thank you.

3 (End of audio)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript of proceedings in the Court of Appeals of Transgender Litigants in the Court System was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Penina Wolicki

Signature: _____

Agency Name: eScribers

Address of Agency: 700 West 192nd Street
Suite # 607
New York, NY 10040

Date: March 10, 2014