

## **Tips for Communicating with Transgender Clients in Prisoners' Rights Cases**

Because prison populations are comprised of disproportionate numbers of poor people, people of color, people with disabilities, youth, survivors of violence, immigrants, and people who do not speak English fluently, many transgender people in prison face multiple forms of oppression. Learning to work effectively with trans people in prisoners' rights cases therefore requires developing competence in working with people who are facing multiple forms of marginalization in society. This series of fact sheets is designed to assist attorneys in developing the skills and approach to communicating with currently and formerly incarcerated trans people that will facilitate the best possible attorney/client relationship.

### **General Tips**

**1. When talking or writing to or about your client, use the language that your client has identified as appropriate.** It is critical always to use the name, pronouns, salutations, and other gendered language for your client that ze<sup>1</sup> wants you to use. Some trans people in prison will want you to use the same name and pronoun for them all of the time. Others will want you to use one name and pronoun for them when you are speaking with them privately and another when you are speaking with prison or jail staff. These are important choices that our clients make to protect their dignity, identity, privacy, and safety. These choices may also change over time. Our role as attorneys is simply to accept and abide by these choices. It is also important for attorneys to insist that others refer to our clients appropriately consistent with the wishes of our clients, particularly in court.

**2. If for some reason you genuinely cannot use the appropriate name, talk to your client about it.** There are some rare circumstances where you may actually need to use a client's legal name even if it is not what your client prefers. For example, most prisons and jails will not deliver mail if the envelope is not addressed with the recipient's legal name. Should such a need arise, talk to your client about it, explain why you want to use hir legal name, and seek hir agreement. Be careful not to confuse discomfort with a legitimate need to use a name or pronoun for your client other than what ze has identified as appropriate. For example, it is appropriate to continue to respect your client's identity and wishes in terms of name and pronoun even if a conversation with a third party becomes more awkward as a result.

**3. Focus on what is truly relevant to the case—not your client's medical history.** Rather than seeing trans people as full human beings, some focus on discovering and/or judging them based on their genitals. Trans people are often asked invasive and highly personal questions about their medical history and body parts that no one would consider appropriate to ask non-trans people. In the prison context, part of the abuse your client is complaining of may concern being forced to show hir genitals to prison officials. It is important that, as hir advocate, you do not in any sense

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<sup>1</sup> We use gender neutral pronouns, *ze* and *hir*, throughout these tip sheets. Most trans people prefer to be referred to as either *she/her* or *he/him*, but some prefer *they/them*, no pronouns, a mix of pronouns, or gender neutral pronouns.

repeat this mistreatment by asking hir inappropriate questions about hir body, genitals, or surgical or medical history.

**4. If questions about medical history are necessary, ask them politely and respectfully.**

In some cases, you may have a legitimate reason to ask questions related to your client's medical history. For example, you may need to know your client's history of receiving gender related healthcare to adequately prepare a case about denial of additional gender related healthcare. If you do have a need to ask such questions, do not shy away from them. Take a few simple steps to ask them in a respectful and appropriate way.

- Run your idea by someone else beforehand to double check that you have a legitimate reason to ask the questions you are considering.
- Never make these questions among the first you ask in an interview with your client.
- Explain to your client your reasons for asking these questions and acknowledge that they are highly personal.
- Accept it if your client does not want to answer right away. Move on and let hir tell you in hir own time or politely come back to the subject later.

**5. Develop information about a client's criminal history without taking the focus away from the harm your client has suffered.** While in a prisoners' rights case your representation concerns the violation of your client's rights and the harm ze has suffered as a result, hir criminal history and prior incarcerations will almost certainly be discoverable and the subject of questioning at the client's deposition. Therefore, you will need to know details about a client's convictions to prepare your client and to assess ways in which opposing counsel will seek to impeach hir testimony. Again, because people in prison are often dehumanized through an exclusive focus on their criminal history, it is important to ask such questions in a polite and respectful manner. Some of the tips above can be helpful in this context as well. For example, it is often helpful to explain why you need the information you are requesting and to begin questions about convictions later in the interview.

**6. Do not show less trust or respect to a client who is in prison than to any other client.** Never act scared of your client or withhold information. Be open and frank about the strengths and weaknesses of the case. Ask for help from your client in understanding parts of the timeline of events that may seem unclear or contradictory to you. Do not assume that something your client tells you is not true just because it seems especially bizarre and cruel—bizarre and cruel things happen to people in prison more often than seems possible to many people on the outside.

**7. Maintain regular communications with your client.** Give your client an idea of how often ze will hear from you. Write or call on a regular basis to keep hir posted as to the status of hir matter. Send hir copies of all papers you file on hir behalf. You may need to have your number added to a list with the facility to make sure your client's calls to you are private. The calls will also probably be collect and must be accepted directly, rather than through a voicemail system.

**8. Arrange for interpretation as necessary.** If you and your client do not speak the same language well enough to fully communicate complex legal concepts, you will need an interpreter. The interpreter should be a professional without any personal interest in the case, rather than a friend, family member, or caseworker of the client. Speak and make eye contact directly with your client, but pause much more often than usual to give the interpreter time to work.

**9. Ask and answer questions.** Your client is likely intimately familiar with systems and institutions you know little about. Ze may use slang, vocabulary, and jargon you are not familiar with. Do not guess what your client means—if you are not sure, ask. Conversely, as an attorney you are familiar with processes and use language that may seem foreign to your client. Explain your terms in a plain and direct manner and encourage your client to ask you questions. Be especially sure to explain even seemingly “basic” legal terms when working through an interpreter. A comparable term may not exist in the language your client speaks.

**10. Connect your client with other forms of support.** Trans people in prison often have to deal with abuse in isolation. Sometimes this isolation is very literal; your client may be in solitary confinement. Even if your client is permitted to have contact with others, many trans people in prison remain profoundly isolated because of transphobia, fear, violence, and rejection from family and old friends. You may be one of the few people whom your client sees who treats hir like a human being and expresses willingness to help in some way. For the well-being of your client, as well as to reduce any related pressure on your relationship, try to connect your client with any available beneficial resources in terms of mental health services, pen pal services, community groups, and so on. If you are working with a community-based public interest law organization, they can often assist you in making these connections.

**11. Consider trying to identify other transgender people in the same detention system.** Many trans people who have been in the same facilities have had similar experiences of mistreatment. Locating and reaching out to them can help you to identify possible additional plaintiffs or witnesses.

**12. Share information about your client's gender with the court when it will be helpful to the case.** It is often necessary or beneficial to inform the court that your client is transgender. Whether and in what way to disclose this fact to the court should be determined based on the facts and circumstances of the case in consultation with the client. Consider how best to educate the judge about transgender people. Be prepared to advocate for your client's privacy should the court ask for additional information that you and your client believe is overly invasive and irrelevant to the case, such as anatomical details.

### **Tips for Staying in Touch with your Client**

1. While your client is incarcerated, it is usually relatively easy to locate hir. Many states and cities have ways to verify the current location of a prisoner on-line or by phone. It is a good idea to check on hir current location often, especially on the day of a scheduled visit; people in prison can be transferred without notice.
2. Many people do not have stable housing or a phone after they are released. As soon as you can, preferably well before release, get as much contact information and back up contact information as possible. If the client has a friend or family member ze plans to be in touch with or a program ze plans to enroll in, get the information for the friend, family member, and/or program. Getting the contact information for hir parole officer, if applicable, is also very useful. Your client should be in regular contact with hir parole officer, which gives you a way to get a message to your client for hir to call you if necessary.
3. While your client is still incarcerated, if possible schedule an appointment with hir for soon after ze will be released.
4. Make sure your client has all of your work contact information prior to release, including a toll free number if available.
5. If there is no consistent way that you can reach your client, it can be useful to make an agreement with your client that ze will always call you at a particular time and day each week to check in.

**Tips for Meetings with Formerly Incarcerated Clients**

1. Make sure you have somewhere comfortable and private to meet. Provide any refreshments or amenities you normally would for client meetings.
2. Check in ahead of time to see if your client will need accommodations for any disabilities, then make any requested arrangements.
3. Be sure your client has a way to reach your office—most people who have recently been released from prison are very poor. You may need to give hir carfare so ze can afford to make it to you.
4. Your office should not require ID of anyone entering the building. Many marginalized people cannot get any “valid” ID. For those trans people who do have ID, many do not have ID that reflects the appropriate name or gender, which exposes them to harassment and humiliation any time they need to show it. If you cannot eliminate ID requirements altogether in the time you have, you still must ensure these visitors have equal access to your office, such as by leaving instructions that when your client comes ze must be allowed in without being asked for ID.
5. It is a best practice to have gender neutral restrooms. Trans people are often harassed, and sometimes even beaten or arrested, in gender segregated restrooms. If there are any gender segregated restrooms in your office, you must be sure that everyone in your building understands that trans people may use whichever restroom they feel most comfortable in and that no one may interfere with anyone else using the restroom just because that person doesn't look “right” for the bathroom. If you have done this work, let your client know so that ze will have less cause to be concerned for hir safety in the restrooms in your office.
6. If your client does not speak English, be sure to arrange for an interpreter and plan for how the client will access your office if ze needs to interact with multiple other people who may not speak hir language before ze reaches you.
7. Make sure that everyone in your office knows how to interact appropriately and respectfully with trans people. Trans awareness training for everyone, including partners, associates, paralegals, receptionists, and security guards, is an excellent idea.
8. Depending on your client's circumstances particularly in terms of disabilities and parole, you may need to go to your client because ze cannot leave hir home, hospital, or drug treatment program. Make arrangements as necessary.
9. Understand that because of the extreme poverty and obstacles trans people recently released from prison face in society, your client may not be able to make every appointment. Try to be as flexible as possible about rescheduling and giving your client reminders.

## **Tips for Meeting with Currently Incarcerated Clients**

1. Find out what the facility's policies are for legal visits. For New York State prisons, you must call at least 24 hours in advance for gate clearance. For New York City jails, you do not need to call in advance, but you do need either an Attorney Secure Pass or a pass from the Department of Correction. If you do not have one of these IDs and anticipate working with a client in a NYC facility, you should apply for one of them right away.
2. If you arranged for clearance in advance, bring the name of the person you spoke with and/or a paper trail of your request to help facilitate matters in case the staff do not have your clearance ready when you arrive.
3. Let your client know when you will be coming, but do not say that you will visit until you are certain that you will. People in prison often look forward to visits, so it is important not to raise expectations that will be disappointed later.
4. It is often procedure to strip search people in prison before and/or after legal visits, which is a highly invasive process. If your client wants to make a different arrangement, such as waiving hir right to a contact visit and instead accepting a non-contact visit so that ze can avoid a strip search, you should make every effort to comply with hir wishes.
5. While rules about contraband vary from facility to facility, in a legal visit you typically will be allowed to bring in paper, documents, and pens but you will not be allowed to bring in any electronic devices such as cell phones, tape recorders, Blackberries, laptops, etc. If you need to bring electronic equipment into the facility, seek special permission well in advance.
6. The metal detectors for prisons and jails are usually much more sensitive than metal detectors for courts or airports. Underwire bras often set them off, leading some attorneys to avoid wearing them on prison visits.
7. Budget a lot more time for the meeting than you usually would. It may be half an hour to an hour before you actually meet with your client after you get to the facility.
8. It is polite to bring money for the vending machines and get a snack for your client. Ze is probably missing a meal to meet with you and the food from the vending machines may be considerably better than what ze usually has to eat. For some facilities, you need to bring quarters. Other facilities will have a machine that allows you to put funds on a card or that makes change.
9. Your client has a right to confidentiality. You should insist on an area to meet with your client that is out of earshot of everyone other than you and your client if you are not automatically provided with it.

### **Tips for Working with Clients with Psychiatric or Cognitive Disabilities**

- 1. Never decline representation on the basis of a client's disability.** It is both unethical and unlawful for attorneys to discriminate against prospective clients on the basis of disability. Nonetheless, some attorneys assume that they will never be able to succeed in a case on behalf of someone with a psychiatric or cognitive disability. In fact, people with psychiatric and cognitive disabilities have prevailed in important civil rights lawsuits. People with disabilities are overrepresented in prisons and are often targeted for mistreatment and abuse. Trans people in prison may also be disproportionately disabled as result of trauma from assault, isolation, and/or inadequate or abusive medical and mental health care. The representation of currently and formerly incarcerated people with disabilities is therefore not only possible, but also vital.
- 2. Consider proactively how to appropriately address any challenges in representation related to a client's disability.** If a client's memory or perception is impaired in ways that affect his recollection of events that are the subject of the litigation, it can be useful to think of ways to help you and your client construct a clear timeline and narrative of events (are there other sources of information that would be helpful for you and your client to consult? ways of phrasing questions or approaching interviews that make it easier for your client to recall events?). You should also anticipate your approach should the opposing party attempt to introduce evidence of your client's disability to impeach his testimony. Disability civil rights attorneys can be a helpful resource.
- 3. Never talk down to a client or assume that a client is not able to participate fully in the development of his matter because of a disability.** People with disabilities know better than anyone else what is best for them and have the same right as other clients to make decisions and to be kept informed of the progress of their cases. People with psychiatric and cognitive disabilities are almost always entirely capable of making all of their own decisions. If you are in the rare situation of working with a client who is truly not capable of making his own decisions about his case, you may seek to have a court appoint a guardian for your client. Even in that case, it is important that the guardian and you continue to consult your client, involve him in decisions, and respect his wishes to the maximum extent possible.
- 4. Bring patience and flexibility to your interviews.** Often, people who are not used to non-traditional communication skills will unintentionally cut off a person with a disability when he is in the middle of attempting to communicate or will rush him while he is still processing information. Such interruptions can make communication much more difficult and can discourage your client from trying to convey his thoughts to you. Avoid interrupting or rushing a client with a disability during interviews, even if it seems to you at first that he is not listening or is talking about irrelevant subjects. Have patience and listen closely. Trauma can have a significant impact on speech. Even if you find the communication of a person with a speech impediment difficult to understand at first, with enough calm, close listening understanding is almost always possible. People with developmental disabilities often have a range of communication styles, such as gesturing,

eye movement, guttural responses, or facilitated communication through pictures, letters, word, symbols or modern technology. If you are working with a client who uses facilitated communication or gestures, it may be necessary to your representation to have a person present during the interview who is close to your client and who will be fluent in helping facilitate hir communication. Should such a third party presence be necessary it is advisable to obtain consent from your client and a written confidentiality agreement from the facilitator.

5. **Avoid use of ableist language.** It is very common for people to use words like, “crazy,” “psycho,” “sick,” “retarded,” “crippled,” or “lame” as insults and/or as figures of speech. It is never appropriate to use these or any other words referring to disability in a pejorative way.
6. **Use affirming, “people first” language.** When you need to refer to your client’s disability, it is best to use the same language that your client uses and/or that your client has identified as appropriate. As in many other marginalized communities, some in disability communities are reclaiming traditionally derogatory terms. It is generally not appropriate for people outside of these communities to use such language. Instead, as a general rule, you should use language that places the emphasis on your client as a person and then, when necessary, identifies hir needs or experience, rather than language that places an inappropriate emphasis on a medical diagnosis or that employs negative, archaic and/or stigmatized language. For example :
  - Use “My client communicates through gestures and pictures” rather than “My client is non-verbal.”
  - Use “She has MR” rather than “She is mentally retarded.”
  - Use “We will need an accessible entrance for my client who uses a wheelchair for mobility” rather than “We will need a handicapped entrance because my client is paraplegic/is wheelchair bound/can’t walk.”
7. **Make accommodations to ensure accessibility of your services.** Work proactively to make your services and office space fully accessible to people with disabilities. However, do not assume what your client needs. Instead ask your client what accommodations, if any, would be useful and act accordingly. Accommodations to improve accessibility are important for people with psychiatric and cognitive disabilities as well as for people with other types of disabilities. For example, a client might need to meet with you at times when ze can avoid large crowds on the street or may need extra time or assistance in filling out forms.

## **Tips for Interviewing Clients in Cases about Sexual Assault**

Interviews on the subject of sexual assault can be extremely challenging for everyone involved. Interviewees can be re-traumatized through the telling of their experiences. The questioning may trigger them to experience strong feelings of fear, shame, despair, rage, or powerlessness that linger well after the interview is over. For their part, interviewers may feel awkward, embarrassed, or guilty when asking about the assault and may also experience secondary trauma from hearing about it. These interviews may never become easy, but you can develop skills to make them less difficult and more useful for everyone.

**1. Acknowledge the difficulty of the interview.** Validate that the questions you are going to be asking are highly personal and painful. Explain why you need to ask them. When you initially counsel your client about the possibility of litigation on the subject of sexual assault, make sure you explain the times when ze will need to retell hir story to help hir make an informed decision about whether to proceed. Respect hir decision either way.

**2. Don't avoid the hard questions.** If you are litigating a case about sexual assault your client has experienced, you must interview your client thoroughly. You will ultimately need to have a clear picture of exactly what happened, including the specific acts that occurred, who was responsible for each act, when and where the assault occurred, what was said during the assault, how your client was affected by the assault, and so on. Not only do you need this information to make a compelling case for liability and damages against each defendant, but also your client will likely be questioned about all of it in the much less friendly environment of a deposition and witness stand. Ze deserves to be prepared.

**3. Don't ask for unnecessary repetition.** Document your interviews thoroughly and give in-depth briefing to any new attorneys or paralegals who begin work on the case, so your client will not have to endure retelling hir story any more than ze must.

**4. Be open to different language than you expect.** To talk about a sexual assault, a trans person may need to refer to parts of hir body that ze sees in a way that is different from typical societal understandings of bodies, that ze is intensely uncomfortable with, that ze is accustomed to being judged on the basis of, and/or that ze prefers not to think about at all. Many trans people adapt language to make it a better fit for the way they see their gender and body. Listen to whatever language the person is using for hir body parts and use that same language if you need to ask a follow up question.

**5. Remain non-judgmental.** Because of the guilt and shame associated with sexual assault, it is crucial to maintain a calm and non-judgmental manner during an interview. Trans people in prison may be particularly sensitive to judgment because of how often they are blamed for bringing sexual assault on themselves for being who they are or for committing a crime. If you

need to ask questions about the reasons your client did or didn't do something, it is often helpful to use "how" or "what" questions rather than "why." For example, asking "what were your reasons for following the officer after ze cracked your cell?" sounds less judging than "why did you go with hir?" and asking, "How did you decide to report what happened at that time?" sounds less judging than, "Why did you speak up then?"

**6. Make interviews as physically comfortable as possible.** Offer frequent breaks. You may need to have more than one meeting with your client to get the full story. If possible, have tissues on hand and something for your client to drink.

**7. Provide resources for support.** Encourage your client to seek out emotional support to heal from the experience from any sources available. Some anti-violence organizations provide counseling to people still in prison. Your client may also be able to find an ally in other people in prison, friends from the outside, or facility medical or mental health staff. Organizations like the National Coalition of Anti-Violence Projects and Just Detention International have some helpful resources for survivors of sexual assault in detention that you can share with your client.

**8. Respond with sensitivity while maintaining boundaries.** Validate your client's experiences by affirming that what happened to hir was terrible and that ze was not at fault. Never appear shocked, dismissive, amused, or skeptical during the interview. Particularly for people in prison, you may be the only sympathetic person they have to talk to. Nonetheless, it is important to avoid trying to take on a role you cannot really fill, such as therapist. Do not over-empathize, give advice about non-legal matters, or make promises you will not be able to keep.

**9. Be aware of retaliation.** People in prison often face brutal retaliation when they complain about sexual assault. In order for your client to be able to proceed with the lawsuit, you may need to advocate for hir in or out of court to protect hir from or respond to retaliation. It is important not to take any actions or make any demands for relief without close guidance from your client, who will have a much better sense of what will make hir safer than anyone else.

**10. Be scrupulous about confidentiality.** Discuss with your client whether ze wants you to move to proceed pseudonymously. Think and talk with your client in advance about what your strategy will be in terms of media. While prison staff are never supposed to read correspondence that an attorney sends, sometimes they do anyway. Staff or other people in prison also sometimes demand to see legal paperwork, at times responding with violence if they are refused, or confiscate documents during a cell search. Particularly if your client thinks that has already happened or is likely to happen with hir mail, it is safer to restrict letters to non-sensitive information. You may want to ask your client if ze would prefer that you send copies of documents you file to hir immediately or that you hold them in your office until ze has been transferred or released from custody. Do not reveal that your client is trans, a former prisoner, or a survivor of sexual violence to other people in your office unless they have a reason to know.

**11. Learn about sexual assault.** Different people react to and cope with sexual assault in different ways. Trying to bargain with the attacker, pretending to go along with the attacker's wishes, freezing up, or fighting back are a few typical responses during an attack. Pretending nothing is wrong, becoming withdrawn, avoiding sex, having more sex than usual, taking fewer showers than usual, and taking more showers than usual are just a few of many typical responses after an attack. Reading educational materials and consulting with advocates and service providers experienced in the field can help you better understand your client's experiences and do better work for hir.

**12. Take care of yourself.** Remember that these interviews have an impact on you as well. Advocates and service providers often experience secondary trauma, which can manifest in different ways for each of us. Nightmares, irritability, social avoidance, insomnia and/or feelings of resentment towards the client or the case in general are some common signs of vicarious or secondary trauma. You can make it easier by not scheduling a packed day after an interview that you know will be emotionally intense and discussing the impact of the case with a colleague, mentor, therapist, or other person. It also helps to take care of yourself by getting enough food, sleep, and exercise and doing things that you enjoy and that help to calm you.

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