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NEW YORK STATE JUDICIAL INSTITUTE

STATE OF NEW YORK

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TRANSGENDER LITIGANTS IN THE COURT  
SYSTEM:

Providing Equal Access and Impartial  
Justice - Part Three

(A Focus on Criminal Matters)

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November 15, 2013

Participants:

HON. JUANITA BING NEWTON  
JUSTINE "TINA" LUONGO, ESQ.  
ELANA REDFIELD, ESQ.  
MR. PATRICK A. SANDS

Official Court Transcriber

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3 JUDGE BING NEWTON: Good Afternoon, I am  
4 Juanita Bing Newton, Dean of the New York State  
5 Judicial Institute. And it's our pleasure and  
6 delight to work in conjunction with the civil court  
7 and Judge Moulton.

8 And so, lest I forget, I want to extend a  
9 personal and heartfelt thanks to you, Judge Moulton.  
10 Congratulations on your election to Supreme Court,  
11 and thank you for your vigilant involvement in this  
12 program.

13 As many of you know, this is the third in a  
14 series of programs (indiscernible) titled Transgender  
15 Litigants in the Court System. The first session was  
16 titled "Transgender Community in the Court 101 (an  
17 introduction)". The second session focused  
18 specifically on some matters that are found often in  
19 the civil courts, such as name change. And this  
20 afternoon, we've assembled a panel to share with us  
21 information as to how there are some special issues  
22 to be addressed for the transgender community and for  
23 the criminal court community; and it's the third and  
24 final session of this program. That is to say,  
25 however, there is no reason why these topics can't be

1 continued to be explored among the Manhattan  
2 community, and I would encourage that.

3 On our panel this afternoon, we have three  
4 people who are steeped in information about this  
5 subject and they are to my far right - - - Ms. Elana  
6 Redfield who is an attorney with the Sylvia Rivera  
7 Law Project. And a special thanks to Ms. Redfield.  
8 She is accumulating her CLE because this is the third  
9 of three presentations she's made for us and she has  
10 been stalwart and we thank you much for that.

11 Next to her is Mr. Patrick Sands. Mr.  
12 Sands is the Director of the Sands Foundation, a  
13 501(c)(3) that provides assistance and help to people  
14 who are in alternative to incarceration programs as  
15 well as people who are returning from incarceration  
16 and other criminal penalties.

17 And lastly we have, next to me, Ms. Tina  
18 Luongo, who is an attorney with The Legal Aid  
19 Society. She's now on the administrative side, but  
20 among her many assignments, she does training on this  
21 subject for the Legal Aid Society. She is especially  
22 happy to see, as I am, a cross-section of the  
23 community here - - - both judges, we welcome you,  
24 attorneys, we welcome you, court administrators,  
25 court officers, and just people who are interested in

1           how we can better provide real access to justice for  
2           a community that often feels that they are not being  
3           treated with respect. And public trust and  
4           confidence studies tell us that the way the value and  
5           the support for the judiciary and the courts can be  
6           established is by ensuring that there is a high level  
7           of public trust and confidence about how we treat  
8           everyone. And people see how we treat others, so  
9           this is a valuable lesson for all of us to learn.

10                         This afternoon, for the next hour and a  
11           half or so, we're going to have a presentation from  
12           each of our guests, and we're going to have  
13           conversation and dialogue with our three presenters,  
14           and we hope that, during the course of this  
15           afternoon, we will also have an exchange of  
16           information with you in the audience to answer your  
17           questions and share some information that will both  
18           inform and transform your way of thinking on this  
19           subject.

20                         So we're going to begin with a presentation  
21           by Ms. Redfield and we call it Transgender 101.

22                         ELANA REDFIELD: Thank you Judge Bing  
23           Newton. I also want to take this opportunity to  
24           thank you and Judge Moulton for really pushing  
25           forward this three-part series. So, with that, I'm

1 going to talk a little bit about transgender  
2 awareness, and this is a review of materials we  
3 talked about in the first presentation. So if you're  
4 interested in a more expanded discussion of these  
5 issues, you could view the original presentation on  
6 the Judicial Institute Web site.

7 So to start, who are we talking about when we  
8 talk about transgender people? We're talking about people  
9 who dress in a way that's associated with one sex even  
10 though they were raised as another sex; or people who  
11 identify as a particular sex or gender even though they  
12 were raised as a different sex or gender; people who do  
13 not identify with either male or female at all; or people  
14 who identify with parts of one sex or gender and parts of  
15 another.

16 How many transgender people are there? It's  
17 really hard or impossible to estimate, for a number of  
18 reasons. One of the most important reasons is that many  
19 people don't feel comfortable disclosing their transgender  
20 status on forms like a census or when asked directly,  
21 because it's not safe, because trans people face so much  
22 violence and harassment. Other people don't identify as  
23 transgender; they identify as a man or woman, and even if  
24 they have transitioned their gender in the past, so they  
25 wouldn't put that down on a census.

1                   So it's tough to estimate. But the National  
2 Center for Transgender Equality put together one number;  
3 that's an estimate that it's somewhere between .25 and 1  
4 percent of the United States population, which is roughly  
5 the population of Alaska. Regardless, transgender people  
6 are protected by the law. State and local laws and  
7 regulations apply. There are executive orders that apply,  
8 agency directives that protect the rights of transgender  
9 people, such as the Office of Children and Family  
10 Services, or Administrative - - - Administration of  
11 Children's Services in New York City. There are ethical  
12 codes that apply, policy statements of many professional  
13 organizations, such as the American Psychiatric  
14 Association, the American Psychological Association, and  
15 the American Medical Association. There's ongoing case  
16 law; it's always being developed. And also, we may talk  
17 today about the Prison Elimina - - - Prison - - - PREA,  
18 the Prison Rape Elimination Act, which has specific  
19 provisions that apply to trans and gender-nonconforming  
20 people.

21                   New York City has an especially broad protection  
22 under the human rights law. It explicitly protects  
23 against discrimination on the basis of gender identity or  
24 expression. It applies to employers, landlords, public  
25 accommodations and government agencies, among other

1 parties. And it prohibits harassment, mistreatment,  
2 violence or other forms of discrimination based on actual  
3 or perceived transgender status, gender identity or gender  
4 expression. So as you can see, it's very broad.

5 So officers of the court have an obligation to  
6 treat people fairly. And so when we're talking about  
7 transgender issues, we want to break down a little bit of  
8 terminology in a sort of conceptual sense, so that it  
9 becomes more clear how to treat transgender people fairly  
10 and how to support them when they're going through the  
11 court system.

12 When we're talking about cultural competency, we  
13 - - - there's at least four components to that: one is to  
14 break down terminology; another is to identify and  
15 challenge the messages that we've received from our  
16 cultures, from our families, from society, from peers,  
17 that may influence the way that we act or what we believe.  
18 Deepening understanding about transphobia is an ongoing  
19 process that requires a lot of reflection. And learning  
20 to support trans people in court proceedings and our  
21 personal lives will give some of the - - - some  
22 suggestions about these things today.

23 So the terms I'm going to present now are terms  
24 that many trans people use, but by no means do all trans  
25 people use these terms. These are a baseline. These are

1 general umbrella terms that you can use in your daily  
2 lives, in your jobs and also in your personal lives. But  
3 I also want to flag that there may be terms that people  
4 prefer or don't like, that you should be aware of if they  
5 raise those concerns with you.

6 So the term "transgender" is an umbrella term'  
7 this is a term that applies to a wide variety of people  
8 who transgress gender norms. Typically the term is  
9 applied to people who dress or act in a way that's  
10 different or opposite from what's considered normal for  
11 their birth sex, as we mentioned earlier. And many times  
12 people ask, well, what's the difference between gender and  
13 sex? The World Health Organization defines gender as the  
14 result of socially constructed ideas about the behavior,  
15 actions and roles a particular sex performs. So we like  
16 to think of it as a complex thing with a lot of different  
17 factors.

18 Now, when we're talking about sex, we use the  
19 term "assigned birth sex" at the Sylvia Rivera Law  
20 Project. This refers to anatomical features such as  
21 chromosomes, genitals and secondary sex characteristics  
22 like facial hair. And when we say "assignment" in this  
23 context, we're talking about the nonconsensual act of  
24 being assigned a gender. This happens when you're born.  
25 So your parents or the doctors look at outward the

1 physical manifestation of sex characteristics and decide  
2 what gender you're going to be.

3 And we use the term "assigned" because it  
4 emphasizes the decision-making that happens. And it's  
5 important to note that one in one hundred babies is born  
6 with nontraditional sex characteristics. So for one in  
7 one hundred babies, they're born and they do not easily  
8 fit into the categories of male or female. And we call  
9 those people - - - these babies intersex; so that's a  
10 term. You might happen to be familiar with the term  
11 "hermaphrodite", which is not a term I'd recommend using.  
12 "Intersex" is a more broadly accepted term. And I like to  
13 point this out because we have an assumption, I think,  
14 that most people are born male or female, but one in one  
15 hundred people is actually a lot of people who are born  
16 with nontraditional sex characteristics.

17 JUDGE BING NEWTON: Yeah, I read - - - I read  
18 recently that Germany just passed an act to leave an  
19 option of neither - - -

20 ELANA REDFIELD: Um-hum.

21 JUDGE BING NEWTON: - - - male, female or  
22 neither, for the parents, so that there won't be a - - - a  
23 - - - a - - - a decision made - - - assigned decision made  
24 that - - -

25 ELANA REDFIELD: Um-hum.

1 JUDGE BING NEWTON: - - - that - - - as you just  
2 described.

3 ELANA REDFIELD: And in - - - as a matter of  
4 fact, a lot of intersex people, when they grow up, they  
5 wish that their parents hadn't made that decision, so that  
6 they had the opportunity to self-identify. So there's  
7 actually a lawsuit pending right now in which someone, who  
8 had surgery performed on them as a baby to conform their  
9 genitals to a traditional gender configuration, is suing  
10 the doctors just to challenge that practice, that doctors  
11 don't have the ability to do that, so that they have the  
12 space to decide for themselves how they want to identify.

13 So in addition to - - - to sex, to these sex  
14 characteristics, there's also other factors; one of them  
15 is gender expression. This is how a person expresses or  
16 represents their gender to the world. It includes things  
17 like how they speak, how they stand, their posture, how  
18 they dress, what clothes do they wear, do they present  
19 themselves as masculine, feminine or in another way, do  
20 they do things like hold doors for other people, or do  
21 they have - - - doors held for them. It's something  
22 that's deeply rooted in our culture, in the way that we  
23 were brought up. It's influenced by a number of different  
24 factors. And so there's no across-the-board rule for what  
25 - - - what is a feminine gender expression or what is a

1 masculine gender expression, but it is a factor that  
2 everyone has, how we express our gender.

3 For people whose gender expression is different  
4 than what you expect based on their assigned sex, based on  
5 the sex they were given at birth, we use the term "gender  
6 nonconformity". So it's someone who's - - - these are  
7 qualities or aspects that either don't match assumptions  
8 about gender or don't match the expectations that you have  
9 about the way someone should behave based on their  
10 assigned sex.

11 Another component that we feel is really the - -  
12 - the core component is the gender identity. So everyone  
13 has a gender identity. This is a personal sense of what  
14 your gender is. Most people's gender identity remains the  
15 same, although it can change over time. However, people  
16 get a sense for what their gender is, at a very early  
17 stage in life. People who we could refer to as cisgender  
18 are people who - - - whose gender identity matches or  
19 comports with the sex they were assigned at birth. So  
20 they are assigned male or female at birth and they grow up  
21 and they identify with the gender that they were given.  
22 So this is most people. This is ninety-nine percent of  
23 the population.

24 So the other percent - - - one percent, as I  
25 pointed out earlier over and over again - - - I want to

1 really drive it home, though - - - is that "transgender"  
2 refers to people who do not identify that way, who know  
3 from an early age or who develop a sense over time that  
4 their gender identity, how they identify themselves, is  
5 not equal to the sex that they are assigned at birth.

6 So these are some terms that we use to describe  
7 gender; you may hear them from people. Most commonly  
8 you'll hear trans people refer to themselves as either  
9 male or female. How they identify is most often  
10 characterized the same way that any nontrans person would  
11 identify their gender. For someone who was born male,  
12 assigned male at birth by their parents or by the doctor,  
13 and decides later that they live their lives as a woman or  
14 they identify as a woman, that's a trans woman; and  
15 another term you may hear is "M-to-F", which is male-to-  
16 female. You may also hear a term, "woman of trans  
17 experience"; this is a woman who has ex - - - who has gone  
18 through a transition in their lives but identifies as a  
19 woman. You may also hear "gender-nonconforming woman",  
20 someone who identifies as a woman. Maybe they were  
21 assigned female at birth. They identify as a woman but  
22 they dress or act in a way that's not associated with a  
23 feminine presentation.

24 So on the masculine side, we also have "man".  
25 We have "trans man", which is someone who is at birth

1 assigned a female gender and then, as they grow up, they  
2 dec - - - they realize they identify as male and they live  
3 their lives as male. This is also referred to as an  
4 F-to-M, or female-to-male, or man of trans experience.

5 And then there are many other terms people may  
6 use to describe their gender that don't fit into these  
7 masculine or feminine categories. You may hear terms like  
8 "butch" or "femme", "gender-nonconforming", "AG" or  
9 "aggressive", "gender fluid", "gender-questioning". These  
10 are all terms people may use; and if they use those terms,  
11 a good rule is always to reflect those terms back to them  
12 whenever you can.

13 Here are some terms to avoid. So the first two  
14 might be obvious: "he-she" and "shemale"; these have a  
15 negative connotation. Typically these terms are used to  
16 denigrate trans people, to invalidate their experiences.  
17 And then there are terms that are more commonly used, like  
18 "transvestite". Well, this term is not a term that  
19 everyone likes to identify with, so it's not one that you  
20 should just assume is okay to use. If someone says to you  
21 that that term is how they identify or that they - - -  
22 they feel comfortable with that term, then that's a  
23 different story. But avoid that term unless you know that  
24 a person uses it. Same is true of "tranny". Essentially  
25 for all these terms, you know, using the term

1 "transgender" can - - - can replace all these things.

2 And then in terms of pre-op, post-op and non-op,  
3 this is language we hear a lot when we're talking about  
4 trans people. They're not necessarily negative terms, but  
5 they're basing the idea of legitimacy as - - - in a  
6 gender, as - - - they're basing it on genital surgeries.  
7 So the "op" is the genital surgery that trans - - - some  
8 trans people have. But we know that approximately twenty  
9 percent, or less, of trans people have these kind of  
10 surgeries; that leaves eighty percent that do not, for a -  
11 - - various number of reasons, including, most  
12 predominantly, discrimination; they're inaccessible,  
13 they're - - - they're not affordable, they're not covered  
14 by health care. So there's a lot of reasons that people  
15 may not have these surgeries and, therefore, I would say  
16 to you don't use these terms unless the person says to  
17 you, "I like these terms for myself."

18 Another term to avoid is "cross-dresser"; this  
19 is a term that refers to a specific identity but does not  
20 refer to all trans people, so don't use it unless you know  
21 someone identifies with that term.

22 Another thing to point out: this is probably  
23 obvious but, if not, gender identity and sexual  
24 orientation are different things. Gender identity refers  
25 to the way a person identifies, how they see themselves;

1 they identify as male, they identify as female, and they -  
2 - - and/or they identify as genderqueer or gender-  
3 nonconforming or they don't want to pick a gender. Sexual  
4 orientation refers to who they are attracted to. So,  
5 suppose I identify as a man and I'm attracted to women.  
6 Then my gender identity is male and my sexual orientation  
7 is heterosexual or straight because I'm attracted to  
8 women; I'm attracted to the opposite sex. So it's  
9 important to make this distinction between the two things.

10 Now, I've given a really short run-through of  
11 these terms, because we're going to talk in more depth  
12 about all the different ways they play out in the  
13 criminal-court system, later. But I do want to run  
14 through a few tips. And again, if you would like more in-  
15 depth exploration of the terms and of trans  
16 discrimination, please see the - - - the first video from  
17 this series.

18 So the first tip we have for affirming and  
19 supporting trans people in the court system is to  
20 challenge your own assumptions. A vital part of cultural  
21 competency is willingness to be open to - - - to what you  
22 know and what you don't know. Trans people experience  
23 things that you may never experience in your life if  
24 you're not trans. And so the experiences that they're  
25 bringing to the courtroom may be something that - - - that

1           may be something that you don't expect or that you  
2           associate with other - - - with things that - - - that are  
3           bad. For example, someone might come to court with a lot  
4           of arrests for prostitution, but they've been arrested for  
5           prostitution at least nine out of ten times because they  
6           were wearing clothing that matched their gender identity,  
7           when they were assigned a different sex at birth. So  
8           they're just presenting as themselves and they got  
9           stopped, and that's used as evidence of prostitution  
10          against them. This happens to so many of my clients; I  
11          can't tell you.

12                 So, challenging your assumptions about what - -  
13          - what people's backgrounds and what they're bringing to  
14          the courtroom. You also have to look at the messages that  
15          you're getting in your life, from your own community,  
16          about what is right and what's wrong for - - - for people  
17          of a certain gender; and looking at structures, from  
18          intake forms to bathrooms, to make sure that these  
19          structures can accommodate transgender people.

20                 Many trans people will use a name that's more  
21          consistent with their gender expression or identity than  
22          the one they were given at birth. So if a name is legally  
23          changed, then one action step you can do is make sure all  
24          the court records are amended to reflect the legal name  
25          change, because oftentimes people, for example, will get

1 arrested and they'll have an ID under their old name but  
2 they will have legally changed their name. So they end up  
3 with another name on their court records when they are  
4 legally entitled to use their preferred name. If they  
5 have not found - - - not legally changed their name, there  
6 may be other ways you can use that name. So we're going  
7 to talk more about AKAs a little bit later, I think. But  
8 it's one option to use an AKA in order to get that name on  
9 the record, so that you can refer to someone using this  
10 name.

11 JUDGE BING NEWTON: You know, I just wanted it  
12 to be a little bit more dynamic, but I just - - - could I  
13 stop you again? That's - - - that's the privilege of  
14 being the moderator.

15 What do you think about that, Ms. Luongo? We  
16 talked a little bit about challenging the assumptions.

17 And then I also want to remember to ask you the  
18 question, Ms. Redfield, number 3 there. On one of these  
19 you said "challenge", we have to look at our structures  
20 and our intake and our security checkpoints. So what do I  
21 tell the chief clerk of the criminal court who's sitting  
22 there, as to how he should look at his buildings, to  
23 accommodate what you just said, in terms of a practical  
24 response to these very serious issues?

25 So first your question and then the question to

1           you.

2                         JUSTINE "TINA" LUONGO:  So I - - - I agree that  
3           a client should be identified with the name that they want  
4           to be identified in.  Now, often that runs afoul of what's  
5           on the criminal-court complaint or the indictment.  And  
6           I'm going to talk a little bit, particularly for my  
7           colleagues in the defense community that are sitting in  
8           the room - - - very happy to see you - - - how you can  
9           talk to your clients, in arraignments, about how they  
10          choose to identify.

11                        My concern about AKAs is that often - - - and  
12          I'm not sure if there're any prosecutors in the room - - -  
13          I hope there are - - - will often use an AKA as a way, on  
14          the next arrest, to ask for bail because it's different  
15          than what the person was booked at, at NYPD, or what's on  
16          the complaint.  So from a defense attorney's perspective,  
17          I understand, sort of, asking for an AKA, but what I'd  
18          rather as a defense attorney and what I'd rather the  
19          system do is simply change the name on the complaint to  
20          the name in which the client prefers, particularly if  
21          there's a - - - a name change that has happened, because  
22          of the negative connotation that an AKA has, sort of, in  
23          the criminal-justice system.

24                        JUDGE BING NEWTON:  So you would counsel your -  
25          - - your - - - your client - - - we - - - we can ask for

1 this AKA, but there are consequences, beyond this moment  
2 in time, to - - - to making that request?

3 JUSTINE "TINA" LUONGO: Right. What I would - -  
4 - what I - - - I would actually say to my client is - - -  
5 the first question I'd ask my client is - - - when I meet  
6 my client, is, "How would you prefer to be" - - - "for me  
7 to" - - - "for me to talk" - - - "talk to you? Who" - - -  
8 "How" - - - "What name would you want to use with me,  
9 first? What shall I call you?" That name might be  
10 different when I ask the question of the client, "And what  
11 would you like me to use out there in front" - - - "open  
12 court, in front of the judge?" Depending on the client's  
13 experience, past experience with the criminal-justice - -  
14 - sort of their own personal experience, those answers  
15 could be very different. They may want me to, sort of, in  
16 our relationship, use the name that they prefer, but they  
17 might not want to make waves actually in front of a court;  
18 "I just want to get out of here and I" - - - if - - - if  
19 the - - - their perception is that the system will use  
20 that request against them, and that is a perception based  
21 on many factors, they may simply say, "Go with what's on  
22 the complaint. I don't care. I" - - - "I just want to  
23 try to get out of here."

24 So I wouldn't ask for an AKA. What I would say  
25 if my client said, "No, I'd like you to ask the court to

1 address me the way I prefer," then what I'd say is,  
2 "Judge, I'm asking the court" - - - "my client is asking  
3 the court and the prosecutor to" - - - "to change" - - -  
4 "to amend the complaint to reflect the name, not as an AKA  
5 but to simply amend it." And then we have the issues of  
6 whether that will be done.

7 JUDGE BING NEWTON: Right.

8 JUSTINE "TINA" LUONGO: But, sort of, the  
9 request is not for an AKA. The request is sort of - - -  
10 just to take it on and - - - and - - - and call the client  
11 by the name in which they prefer.

12 JUDGE BING NEWTON: And - - - and the structure  
13 question, I - - - I - - - at one of your Web sites, I saw  
14 the beginning of a movie where several transgender people  
15 were arrested for using the - - - the great crime of using  
16 the wrong bathroom.

17 ELANA REDFIELD: Correct.

18 JUDGE BING NEWTON: And - - - and so that's a  
19 structural - - - structure question, a facility question.  
20 So how do - - - how do we, as a system, address those  
21 kinds of issues as they relate to access to justice for  
22 this population?

23 ELANA REDFIELD: I think that there's a two-part  
24 - - - a two-part change that has to happen; one is that  
25 people have to become aware of what protections exist in -

1 - - most people don't realize that it is - - - it is legal  
2 to use a bathroom based on your preferred gender, how you  
3 identify your gender; so not - - - not preferred gender  
4 but your gender identity. So you can use whatever  
5 bathroom that you prefer, based on how you identify in  
6 your city. That's protected under the law. And it's also  
7 not illegal to use a bathroom of the wrong gender.

8 So - - - so for one, people - - - this is really  
9 changing, I think, but people need to become aware of  
10 that. And I know people have had issues with that in  
11 accessing different court - - - court buildings, that  
12 they'll use a bathroom, based on the gender that they  
13 identify as, but they will be asked to leave because they  
14 - - - by people - - - other people who are in there who  
15 aren't aware of the law, by court officers, by - - - by  
16 any - - - anyone, because of the fact that people don't  
17 realize they have the right to be there.

18 And then the other piece is - - - is more  
19 affirmative, actually taking steps to enforce the fact  
20 that people can use bathrooms, based on their - - - on  
21 their gender identity. So you can put up signs, signs  
22 that say "New York City law permits people to" - - - "to  
23 use bathroom based on their gender identity." You can  
24 make sure that staff are trained and everyone's aware that  
25 people have a right to access bathrooms. And - - - and

1           you can also have a protocol for when someone who is  
2           coming from outside of the building goes in a bathroom and  
3           freaks out because they see someone they think doesn't  
4           belong there. So that - - - those are - - - that's a  
5           bathroom change.

6                     Another - - - another piece that's really  
7           important is that people - - - if you're checking IDs,  
8           which you don't need to check ID to get into the court  
9           building, at least through the main entrances, but anyone  
10          who does check IDs should be trained so that they know  
11          that sometimes people are going to have different ID cards  
12          because they are living as one gender and they are unable  
13          to change their ID or they haven't done it for other  
14          reasons. For example, increasingly, changing IDs becomes  
15          a sort of domino effect, where you have to - - - in order  
16          to change, for example, your Social Security card, if  
17          you're an immigrant, you also have to have valid  
18          immigration status. Well, many people have come to the  
19          United States a long time ago and got a Social Security  
20          card and then got other IDs that are built off of that,  
21          but then they want to update their name on - - - on their  
22          other IDs and they can't because they lost their  
23          immigration status. That's just one example of the ways  
24          in which people might not be able to change their IDs;  
25          another, of course, is that many people don't have name

1 changes - - - legal name changes. So, anticipating that  
2 IDs might be mismatched is another piece.

3 JUDGE BING NEWTON: Okay. Thank you.

4 ELANA REDFIELD: So, moving from names, there's  
5 another very important thing that we can do in the  
6 courtroom and as advocates, which is affirming gender.  
7 It's such a small thing but it's so powerful when you can  
8 use the right pronouns. So I identify as female, and I  
9 prefer people to refer to me as "she", "her", "Ms.  
10 Redfield". And - - - and so if you as an attorney or as a  
11 judge can - - - can use those affirming pronouns, that  
12 goes a long way in building trust.

13 Now, sometimes you don't know what pronouns a  
14 person's going to use. It's always better to ask. Of  
15 course ask privately if possible; a bench conference or in  
16 a way that's not going to out them across the room, or a  
17 way that's not going to challenge them too much. But  
18 asking someone's pronouns is much better than going  
19 through a whole court proceeding using the wrong pronouns  
20 based on a name that you see on the paperwork or based on  
21 what someone says their gender is. Like, if someone has a  
22 male-sounding name and it says somewhere in the paperwork  
23 that they are male or masculine, and they come to court  
24 and they're dressed presenting very femininely, then  
25 you're definitely not going to want to go through the

1 proceeding referring to them as "he", "him", "Mr. So-and-  
2 so", because that's going to make them extremely  
3 uninvested in - - - in participation. And it's also - - -  
4 I mean, it's going to contribute to the sense that - - -  
5 that the court is not taking their interest into  
6 consideration.

7 JUDGE BING NEWTON: So all of you would agree -  
8 - - one of the judges here in the audiences says she likes  
9 to greet the defendants who - - - coming from the pens or  
10 wherever, to - - - to  
11 - - - to ratchet down the stress and the tension, but she  
12 doesn't know - - - she wants to say, "Good morning,  
13 Mr./Ms.", be respectful; was not quite sure how to decide  
14 to do that. You would suggest that - - - that she waits  
15 until things are settled down and invite counsel to the  
16 bench to ask that question?

17 ELANA REDFIELD: I think so. I mean, I - - -  
18 that gesture sounds really wonderful. And I think that -  
19 - -

20 JUDGE BING NEWTON: Yes.

21 ELANA REDFIELD: - - - you can do it without - -  
22 - without us - - - assuming the gender. You could say  
23 "Good morning" or, you know, "I'm Judge So-and-so." But  
24 you - - - and most of the time you're - - - you're going  
25 to be safe when you're talking to someone. Most of the

1 time you can say - - - you can assume. I wouldn't suggest  
2 that, for every single person going to the courtroom, that  
3 you ask their - - - their pronouns, until society changes.  
4 Give it five years. In five years yes, but for now that  
5 might be a bit cumbersome, right?

6 But - - - so you can make assumptions, you know,  
7 for the most part. But in a situation like that where  
8 people are coming through and you're just greeting them  
9 for the first time, I'd say just avoid "Ms.", "Mr.", if  
10 you can.

11 JUDGE BING NEWTON: We had a question from the  
12 audience. Did I see counsel - - -

13 UNIDENTIFIED SPEAKER: A hand here. His hand,  
14 yeah.

15 JUDGE BING NEWTON: Yes. You'll wait? Okay.

16 Mr. Sand (sic), would you agree that your  
17 clients would - - - would like to have the respect but  
18 they don't want the judges to mistakenly identify them?

19 PATRICK SANDS: Yeah, a lot of times when I'm in  
20 a courtroom - - - you find that a lot of the clients want  
21 to be called as who they are or how they identify their  
22 self. And one of the things that I have find (sic) is  
23 that a client will shut down real quick if the district  
24 attorney or the judge or even their lawyer made a mistake  
25 by calling them other than what they want to be

1 identified. So now it's a lot of tension now because they  
2 tell you who to call them by, but you're calling them  
3 other than what they asked you to call, and it makes them  
4 not invested into their own case or, you know, their own  
5 process.

6 So it's so important that, one - - - you know,  
7 and I'm so much in agreement with you. One of the things  
8 that I find that one of the judges did was she had a  
9 conversation with the defendant before she went forward,  
10 and the defendant said, I am - - - I identify as this, I  
11 look like this, but I identify as this. And the judge  
12 said, in this courtroom, you're going to call her  
13 Ms. So-and-so, but - - - she looks like a man but you're  
14 going to call her Ms. So-and-so. And that's so important  
15 because that makes - - - that affirms the client to go  
16 forth to feel that they are empowered in their case. It's  
17 all about empowering the client and the - - - the  
18 defendant in their case.

19 JUDGE BING NEWTON: So - - - so, Ms. Luongo, let  
20 me ask you this question, because we spoke a little bit.  
21 And we agree that sometimes the - - - the transgender  
22 defendant seems like a person who has an attitude, angry  
23 with me, angry with you, angry with everyone, angry with  
24 being there. And so my question to you is this; I don't -  
25 - - I don't minimize the anger: Could that backfire?

1           Could I go out and be too kind and too happy and too  
2           solicitous and - - - and - - - and - - - and the client  
3           just says, "Oh, she's just trying to play me. She's not  
4           really honest. She's" - - - "She's, you know, mocking me  
5           or" - - -

6                         JUSTINE "TINA" LUONGO: You know, I - - - I - -  
7           - I don't think that that would be the takeaway from the  
8           "Good morning". I think my experience with judges who say  
9           "Good morning" to the client and to - - - and to the  
10          lawyer, "Good morning", you know, "How are you today?",  
11          whether it's in a - - - especially in arraignments, where  
12          you have a situation where a client has been arrested,  
13          could have been in for more than twenty-four hours, is of  
14          trans experience and has been placed on a bench and  
15          segregated or mocked as they're walking through central  
16          booking or in a precinct, there's a whole world that  
17          happens and a whole experience that happens to a client  
18          before they even step in front of a court, before we even  
19          see them in arraignment booth, and all of that has - - -  
20          has sort of created the experience.

21                         So when somebody comes - - - when I meet  
22          somebody, and somebody - - - and I'm going to interview  
23          them, whether they're of trans experience or not, sort of,  
24          those experiences that happened in the community and  
25          through NYPD and through their booking process, they have

1 brought with them. They're exhausted. They can be  
2 suffering from several other issues not related to - - -  
3 to, sort of, their trans experience. And so the first  
4 thing is, I - - - as defense attorney, my job is to, sort  
5 of, deescalate and get information. But what's really  
6 important in front of the court is, sort of - - - they  
7 could be handled in the very which way they've been  
8 handled if they have a rap sheet and have been through the  
9 system; the same way. But if someone just says "Good  
10 evening. How are you?" in arraignments from the bench, or  
11 even from the court staff - - - I see a few court officers  
12 in the audience, and court clerks - - - that changes a  
13 little bit. It sort of does ratchet down.

14 The issue now is to - - - so what do you say  
15 after that "Good morning, "Good evening", "Ms. or "Mr."?  
16 I agree; maybe leave it alone. Or if you are inclined,  
17 you can ask to approach; ask a - - - a defense attorney to  
18 approach; "Counsel, can you approach a moment?" Come up.  
19 The prosecutor's going to come up and the judge can say,  
20 "How does your client wish for me to identify them in open  
21 court?", and I will answer, because as a defense attorney,  
22 I'm' - - - we're sort of going to all trai - - - be  
23 trained, as of today, to ask your client that very simple  
24 question in arraignments.

25 Yes, Judge.

1                   There's a question.

2                   UNIDENTIFIED SPEAKER: One of the things that  
3                   you - - -

4                   JUDGE BING NEWTON: We - - - we - - - we can't  
5                   hear you.

6                   But another question I have is, couldn't it be  
7                   incumbent upon defense attorney, before the case is  
8                   called, to come up to the clerk or the court officer or to  
9                   the judge, to give us the high sign that "Judge, my client  
10                  would like to be referred to as" - - - "in this way"?

11                  JUSTINE "TINA" LUONGO: And certainly if there's  
12                  time in arraignment to, sort of, get the court's attention  
13                  or to talk to the bridge officer and make the request of  
14                  the bridge officer, abs - - - who's going to call the case  
15                  in, which then would sort of - - - sort of, communicate to  
16                  the court, I would love for bridge officers who have that  
17                  task, to do that.

18                  But yes, you know, a part of our job as lawyers  
19                  is to advocate right from the very beginning not only on  
20                  the record but off the record, and what that means - - -  
21                  and I'm actually going to talk about a situation in the -  
22                  - - in one of the counties - - - I won't say which one - -  
23                  - of where a - - - a lawyer advocated, sort of, beyond the  
24                  case, because of what was going on in the courtroom.

25                  UNIDENTIFIED SPEAKER: One thing that defense

1           counsel can do to help the court is, when the arraignment  
2           begins, say they're appearing on behalf of Ms. So-and-so  
3           or Mr. So-and-so, so the court knows how to address their  
4           client. That alleviates the issue of having to call  
5           people up but still allows the court the opportunity to  
6           address their client respectfully; and there're a lot of  
7           us in the court who want to be able to do that. So that's  
8           something that, if you know there's an issue, the court  
9           would love that opportunity to get a little heads-up.

10                   JUSTINE "TINA" LUONGO: That's a great tip.

11                   JUDGE BING NEWTON: And this is from a judge  
12           who's been on the bench for - - - how long, Judge?

13                   UNIDENTIFIED SPEAKER: Little less than a year.

14                   JUDGE BING NEWTON: - - - a little less than a  
15           year. So we can learn a lot from new people who - - - who  
16           have observations that some of us become jaded to. So,  
17           thank you, Judge.

18                   So, Elana?

19                   ELANA REDFIELD: I believe Patrick actually was  
20           going to speak to - - -

21                   JUDGE BING NEWTON: Okay, go ahead.

22                   PATRICK SANDS: Yeah, and there's one more thing  
23           that - - - another piece is - - - is you have male, right,  
24           men, you know, physically male, but identify as female,  
25           because that's what they feel like or that is what they

1 identify as. And we have to be careful in a situation  
2 like that, because if I come in front of a judge and - - -  
3 and, you know, I got a beard and I - - - you know, I got  
4 muscles, but I say "I'm Ms. So-and-so," I have a right to  
5 be called Ms. So-and-so. Or if - - - if - - - if I come  
6 in front of a - - - a judge or a ADA and I say I have, you  
7 know, all the women characteristics and the body and  
8 everything, and I say "I'm Mr. So-and-so," I have that  
9 right to be called that, because that's what I identify  
10 (sic), that's who I - - - you know, I might be a male - -  
11 - a female trapped into a male body.

12 That's a part of the trans experience, too,  
13 right?

14 And, you know, so I have a right to be - - - I  
15 have a right to be addressed Ms. So-and-so or  
16 Mr. So-and-so. So that's another piece of that - - -

17 ELANA REDFIELD: Yeah.

18 PATRICK SANDS: - - - to add on.

19 JUDGE BING NEWTON: Thank - - - thank you.

20 So, Elana, I know you're about to wrap up, even  
21 though we've been taking your time, right?

22 ELANA REDFIELD: It's okay. I'm - - - I am  
23 almost done.

24 JUDGE BING NEWTON: Good.

25 ELANA REDFIELD: So one - - - one big piece of

1 being a good advocate for trans people is to avoid  
2 questions that are not relevant to the case. So if you  
3 know somebody identifies as male or female, you don't have  
4 to ask them what medical treatments they've had; you don't  
5 need to do that in order to refer to someone as "she" or  
6 "him".

7 I always like to - - - to offer the test of ask  
8 - - - think about whether it's a question that you would  
9 like to be asked yourself. So would you like someone to  
10 ask you what your genitals look like? The answer for most  
11 people is no. Would you like someone in a position of  
12 authority to ask you that in front of a lot of people?  
13 The answer for most people is no. So unless that is at  
14 issue in the case, my suggestion is to avoid any kind of  
15 questions that are not going to be relevant.

16 So transphobia is such a deep and pervasive  
17 thing. So, keeping in mind always that it is a part of  
18 someone's life in so many ways, here are some examples of  
19 what might be going on for somebody: Unemployment: were  
20 they discriminated in their jobs? Now we see near-  
21 universal job discrimination for transgender people.  
22 Ninety-seven percent, in one study, of people experience  
23 some adverse - - - some adverse action in their job.

24 Do we need - - - okay.

25 Criminal history: are - - - was a person

1 arrested for using the wrong bathroom? For not having ID?  
2 Petty theft of clothing or cosmetics, and prostitution.  
3 Look into the facts of the case, because - - - because so  
4 many times people are - - - trans people are arrested and  
5 the evidence that's used in their case is that they are  
6 transgender.

7 Family ties: Frequently, trans people do not  
8 have family ties. We're looking at around fifty-seven  
9 percent of trans people have been significantly rejected  
10 by their families, either kicked out from their homes or  
11 disowned. They're families aren't speaking to them. So  
12 that's more than half. So, frequently when trans people  
13 show up to court, they're not going to show up with their  
14 family members. They may show up with community members,  
15 with advocates, because this is where a lot of the  
16 community ties come from, not from biological family.

17 And also, the history of violence and  
18 harassment. Since a person - - - I guarantee you, every  
19 trans person you've worked with has been harassed at some  
20 point in their lives, has experienced some form of threat  
21 on the basis of their gender identity. And this kind of  
22 climate throughout their lives is definitely going to  
23 affect their - - - their demeanor. It may affect their  
24 willingness to trust you. It may affect the - - - the  
25 facts of the case that they're in currently.

1           So, always consider that transphobia is playing  
2 a role in their lives, in every aspect. So use that lens  
3 when looking at their rap sheet, looking at their history,  
4 their family ties.

5           JUDGE BING NEWTON: Ms. Redfield, I'm going to  
6 stop you there because I think you're going a little bit  
7 over to some things that Ms. Luongo was going to test - -  
8 - talk about, and we're running out of time. Whenever we  
9 plan these programs, we find out these things are so  
10 interesting, we ask questions, we're curious. But we'll  
11 let you chime in and get the rest of it in during her  
12 time, okay?

13           ELANA REDFIELD: Okay, may I just add that our -  
14 - - the rest of the tips are in the handouts that we have,  
15 so - - -

16           JUDGE BING NEWTON: Right; I was going to refer  
17 people to - - - to the handouts.

18           And they're all - - - if you're in the Unified  
19 Court System, they're all on the Web site, and there are  
20 links to other resources. When you have time, as I did,  
21 just read some of it. It's very, very interesting and  
22 very informative. Thank you.

23           Ms. - - - you want to tell us about your  
24 clients' experience, Ms. - - - he's going to - - - we're  
25 going to switch; you're going to - - - we're going to go

1 to you.

2 JUSTINE "TINA" LUONGO: We're going to me now?

3 JUDGE BING NEWTON: Um-hum.

4 JUSTINE "TINA" LUONGO: Okay.

5 JUDGE BING NEWTON: Because you're going to take  
6 us from the transgender language, the phobia, the  
7 information about the community, to what actually happens  
8 in your courtroom with your clients, and what we can do to  
9 address the concerns in the processing of the court cases  
10 in the courtroom.

11 JUSTINE "TINA" LUONGO: So just a few things  
12 that I want to touch on. Sort of, I touched a little bit  
13 on the experience that happens to clients before they even  
14 reach arraignment, right, which is, sort of, when they're  
15 in the custody of NYPD.

16 And I'm - - - I - - - I'm - - - I saw in one of,  
17 Elana, your presentations, talking about the new rules and  
18 regulations for NYPD, that sort of have an effect.

19 So, for instance, the complaint should come in  
20 with the preferred name and not the, sort of, name on the  
21 ID, or previous name, because a new NYPD reg says that the  
22 police department should ask a client - - - an arrestee  
23 what the preferred name - - - their preferred name is,  
24 which means that the arrest paperwork should gen - - -  
25 then generate a complaint that has the preferred name on

1 it.

2 You should not see, for instance, false-  
3 personation charges coming in any longer for people with  
4 trans experience whose identification is different than  
5 the name they have given the police officer during the  
6 stop or the arrest. Police should have already taken into  
7 consideration the segregation and safety of a trans client  
8 and have asked them who should do the search of their  
9 person and their body and who they prefer to have the  
10 person searched by, whether it should be male or female  
11 officer. Some of these things will help us, then, when a  
12 client reaches the criminal court.

13 So the first - - - the first step is - - - is  
14 when the defense attorneys - - - when we meet, as defense  
15 attorneys, our clients. And what we train at Legal Aid  
16 Society - - - I started ten - - -

17 Just a little bit about me. I know, Judge, you  
18 said do a sentence.

19 I started right here as an attorney with the  
20 criminal-defense practice right here in Manhattan, and  
21 practiced across the street, in this building, for ten  
22 years. And then I had the privilege of being made the  
23 deputy attorney in charge of the criminal practice for the  
24 entire city. And - - - but - - - but some of the - - -  
25 the things I'm thinking about in terms of how we train our

1 attorneys came right out of missteps that have happened,  
2 sort of, the horror stories we've seen, all of us,  
3 throughout the system and - - - and, when it goes right,  
4 sort of taking those lessons and embedding them in  
5 training.

6 So what we train defense attorneys to do is have  
7 those op - - - open honest conversations, ask the client  
8 first and foremost. Sort of, don't go into the - - - open  
9 up the file and read the complaint. Take a few minutes  
10 and - - - and ask how your client is; ask them what they  
11 prefer you to call them; have the conversation about, sort  
12 of, what name should be used in open court. Obviously,  
13 you're going to be talking about the facts of the case;  
14 that is our primary job: to get that so we could advocate  
15 on behalf of our clients.

16 But sort of take it from the client-centered  
17 perspective. And this is for all clients, but certainly  
18 with - - - with clients of trans experience you want to -  
19 - - you want to build that relationship of trust early on.  
20 And if you start to - - - to just ask the simple questions  
21 that will make your client feel like you're taking a  
22 moment to get to know them so that you'd be a better  
23 advocate, it's going to go a long way.

24 And advocating means not only on the record.  
25 I'm going to give an example of - - - in a county where a

1 lawyer, before she even met the client, was advocating, in  
2 a county, you know, and - - - and this sort of is the - -  
3 - you know, you - - - you have to, unfortunately,  
4 sometimes talk about the missteps or when things have gone  
5 wrong, so that we can get it right. So there's no  
6 judgment here, but it - - - it - - - this happened; it's -  
7 - - it's a bad story.

8 In a county, there were three women of trans  
9 experience, on the bench, and the court staff were  
10 laughing, calling them the Golden Girls. And this staff  
11 member overheard this and she hadn't even picked up the  
12 case, and she started to advocate by talking to the  
13 officers first, but then going to the judge. And then  
14 later on, after she - - - she - - - she wound up  
15 representing the client, the client had - - - one of the  
16 clients had heard this, sort of was very angry, had an  
17 attitude. So the lawyer had to diffuse it before going  
18 before the judge. And then later on we had a larger  
19 conversation about the system and the building and the  
20 courtrooms itself.

21 So your advocacy starts very - - - right there,  
22 upfront with your client. And that relation - - - the  
23 client saw that lawyer go to bat for her, right before she  
24 even picked up that case, which is going to help with the  
25 representation throughout the case.

1                   So what do you want to do to make it right?  
2                   Well, you have to leave the implicit, and unfortunately  
3                   sometimes explicit, bias outside that courtroom. And we  
4                   can't change everybody. I can't change that somebody  
5                   might have certain views and have histories that are - - -  
6                   and I'm not going to be able to challenge that and change  
7                   that person, but I can, as an advocate, make sure that it  
8                   does not get involved with my client within the criminal  
9                   case. That's my role as a lawyer, as an advocate. And  
10                  it's the role of the judge to set the tone, and the - - -  
11                  the court officers and the senior court officers in the  
12                  room, and the court staff, to sort of set the environment  
13                  that I think makes for a better experience for everybody,  
14                  not just a client.

15                  The - - - the name issue is - - - and the  
16                  pronoun issue is really probably one of the things that I  
17                  think stresses a client the most in that interaction. And  
18                  if we can start to get it right, I think we're - - - we're  
19                  - - - we're in a right direction. But we also - - -

20                  So it was interesting you mentioned, Elana,  
21                  that, you know, don't ask questions that - - - about pre-  
22                  op or post-op, because they might not - - - they're not  
23                  relevant. I will say one thing about that, though. If I  
24                  think that bail is going to get set on my client, given  
25                  the rap sheet or the fact that it might be a serious

1 charge, and my client is of trans experience, I may have  
2 to have that very hard conversation about what genitalia  
3 they have, because right now, presently, although I think  
4 it's going to change with PREA, if you - - - if you are a  
5 woman of trans experience but have a - - - a penis, you're  
6 going to be put in male housing, and I have a  
7 responsibility to advise my client of that and let them  
8 know, if they have never been in the system, what that  
9 might be like for them. I'm hoping that PREA changes that  
10 so that we can actually go back to what years ago we used  
11 to call gay housing. Hopefully they'll find a better term  
12 for it.

13 I also have to have a conversation, as a defense  
14 attorney, with whether or not my client wants to be - - -  
15 be put in PC, protective custody. Do not assume - - -  
16 anybody in this room - - - that a client wants to do that,  
17 because unfortunately what that really means is they're  
18 getting taken out of gen pop, right, and placed in PC,  
19 which is sort of twenty-three-hour lockdown. And really,  
20 it - - - you know, that's really not the way to treat  
21 people that we think can be victimized or are victimized  
22 by harassment. But right now it's the only thing we have  
23 to protect our clients.

24 But you have to have that frank conversation  
25 with your client and then have the - - - so - - - and the

1 court shouldn't assume, again, that a client who is of  
2 trans experience wants PC and, sort of, order PC. Nor  
3 should we also assume that they need mental-health  
4 counseling.

5 It says, "Please read the CLE Code."

6 Judge, what's the CLE Code?

7 JUDGE BING NEWTON: The CLE code is 531. The  
8 CLE code is 531.

9 Thank you.

10 JUSTINE "TINA" LUONGO: So some things - - - you  
11 know - - -

12 JUDGE BING NEWTON: Can I just - - -

13 JUSTINE "TINA" LUONGO: Yeah.

14 JUDGE BING NEWTON: So in that discussion, what  
15 is the role of the judge, in terms of protective custody  
16 versus housing?

17 JUSTINE "TINA" LUONGO: I would say just be open  
18 to the lawyer really being the advocate and making that  
19 request. Don't make assumptions. I do think, though, for  
20 judges, it's really important to understand all of these  
21 dynamics when considering bail.

22 Now, I know that there's a statute - - - and you  
23 have to follow the statute - - - about when bail - - - and  
24 - - - and, sort of, all the factors about bail that you  
25 are asked as judges to factor in. And this will be my

1 pitch to say the bail statute calls for a lot of different  
2 options for bail; doesn't only mean cash or fully secured  
3 bond. There's lots of ways that you could - - - so it's  
4 my big pitch for the overall system - - - read the  
5 statute; there's a lot of options - - - because for this  
6 community in particular, sort of, gathering bail is tough.

7 Elana mentioned family ties. Many of my clients  
8 had some of the best family of choice they ever had, but  
9 they didn't have a mother who you can ring her - - - their  
10 birth mother or birth father, to ring up to tell them to  
11 come to court to post bond, to post bail. They didn't  
12 have that. They couch-surfed. They wouldn't consider  
13 themselves homeless, but on the CJA it means homeless,  
14 because really they've been couch-searching (sic) at their  
15 friend's house. And they're not homeless; they have  
16 friends. But CJA mentions they're homeless, right? Or  
17 they don't have a traditional job, so we hold that against  
18 them on the CJA. Well, we round out ninety-seven percent  
19 of our clients can't get jobs.

20 So while I - - - you know, while you have, sort  
21 of, the factors for bail, as judges in the room, I just  
22 advocate to, sort of, think why that might be. Sort of,  
23 just conceptualize why this client population you might  
24 need to think a little deeper, just a little bit, as to  
25 how - - - why that CJA doesn't add up to the, you know,

1 "recommend" or, you know, "recommend, with a limited  
2 flight risk".

3 Yeah.

4 JUDGE BING NEWTON: In that vein, are there  
5 programs that are available?

6 And - - - and you could chime in too, Patrick -  
7 - -

8 - - - programs that are available that attorneys  
9 could structure some alternative bail package for the  
10 judiciary, that we should be made aware of?

11 PATRICK SANDS: So our LGBT - - - the Kings  
12 County Court LGBT Court Diversion program, which is  
13 created by Charles J. Hynes, who is actually leaving  
14 office, but this is a special program that me and him - -  
15 - my organization and his office sat down to look at.  
16 Instead of the client going to the court and having to go  
17 for a bail hearing and everything, they come straight - -  
18 - with the - - - the agreement of the district attorney,  
19 they will go straight to us. So they won't even touch the  
20 court; they will go straight to my - - - the court  
21 advocate and the social worker that's right there on  
22 staff. And the ADA say, hey, we're not going - - - you're  
23 not going to even see the judge, you're going straight  
24 here. And - - - and it's only for certain crimes you  
25 could do that. And they would be able to do court

1 diversion instead of having to go through the process.

2 Now, if - - - if it's in the felony court, if  
3 it's in the felony range, then they will have to go  
4 through the judge, and the court ad - - - with the  
5 understanding the court advocate would be there to  
6 advocate with the judge. But nine out of ten times, the  
7 court advocate is working with the ADA and the judge  
8 already and say - - - and so we already know what's going  
9 to happen, how we're going to - - - you know, because he's  
10 - - - he or she is already in the court advocating for the  
11 client.

12 JUDGE BING NEWTON: So - - - and this is just a  
13 Brooklyn program, Mr. Sand?

14 PATRICK SANDS: Well, actually (indiscernible)  
15 we moved to Manhattan courts. It's mostly Manhattan  
16 courts. It is a Brooklyn program and it - - - it's  
17 created in Kings County, but most of the peo - - - most of  
18 the times we are called to Manhattan court - - -

19 JUDGE BING NEWTON: Okay.

20 PATRICK SANDS: - - - then Kings County court.

21 JUDGE BING NEWTON: So this is something that's  
22 available to - - - to counsel to advocate for, right?

23 PATRICK SANDS: Yes.

24 JUDGE BING NEWTON: And Manhattan as well?

25 PATRICK SANDS: Yes.

1 JUDGE BING NEWTON: Go ahead, Ms. Luongo.

2 JUSTINE "TINA" LUONGO: Sure. I think the other  
3 thing to consider is - - - is that - - - for this  
4 population, is sort of the fear of incarceration, which  
5 equals fear of harassment and fear of violence, equals  
6 wanting to plea. And it is - - - you know, look, we know  
7 the stats on the number of cases that plea, the number of  
8 cases that plea in arraignments, the number of cases that  
9 don't go to trial. With this population, though, there is  
10 that added concern that if bail is set, they are going to  
11 go into an environment, while sort of unsafe in general  
12 for most people, for this particular population increases.  
13 I think it's, like - - -

14 Sort of, twelve percent was the statistic?

15 ELANA REDFIELD: Twelve times more likely than -  
16 - -

17 JUSTINE "TINA" LUONGO: Twelve times. That's  
18 it.

19 ELANA REDFIELD: - - - a non trans person.

20 JUSTINE "TINA" LUONGO: Twelve times more  
21 likely. That's going to sort of - - -

22 JUDGE BING NEWTON: Twelve times more likely to?

23 ELANA REDFIELD: Be sexually assaulted.

24 JUDGE BING NEWTON: Okay.

25 JUSTINE "TINA" LUONGO: Yeah. Thank you.

1           That's in - - - a real factor in - - - in a  
2 person pleading. And as lawyers, we have to, sort of,  
3 advocate and - - - and - - - and I have in the past, sort  
4 of, made part of my bail applications, sort of, the  
5 concerns my client has for when bail gets set. And I  
6 think it's important to, sort of, make that record. Bail  
7 might ultimately get set despite my very good bail  
8 application and my client's fantastic ties that I consider  
9 ties. Bail may get set, which then leads to, as a defense  
10 attorney in, sort of, the system, what do I do next, now  
11 my client's incarcerated.

12           The question about safety has to be one I have  
13 to ask as an attorney every single time I'm in contact  
14 with my client, because I need to know and safeguard that  
15 while the case is pending and while my client is  
16 incarcerated, it is up to me as an advocate to continue to  
17 check on them for their safety. That might be calls; that  
18 might be visits. That is when they come to court, every  
19 time, because things happen.

20           And sometimes clients won't automatically, sort  
21 of, disclose that, and it's not because they don't trust  
22 you, but they think that it'll be held against them, or  
23 it'll start a chain reaction while they're in - - - in - -  
24 - in Corrections, sort of, in investigation. That might  
25 not fare out well for them. But it's really up to you to

1 check. And then find out where it is to advocate, how to  
2 advocate for your client, and that's about asking your  
3 client what your client wants to do about situations like  
4 that.

5 I will make it part of a renewed bail  
6 application as a change of circumstance. I happen to  
7 think it's a change of circumstance; my client was  
8 attacked. And I want the court to know. Now, ultimately  
9 the judge will factor in where the case is at, what the  
10 prob - - - but - - - but you have to advocate and continue  
11 to, sort of, advocate on behalf - - - and for the judges  
12 in the room, I'd ask you to consider that to be a change  
13 of circumstance, a big one, for this client, and  
14 considering safety as, sort of, the importance of the  
15 system, looking at that as a whole. And again, we hope  
16 that PREA is going to, sort of, change a lot of this,  
17 perhaps, but it's really always going to - - - we're  
18 always going to have this be a part of the everyday  
19 workings that we do.

20 And then I was going to segue into diversion and  
21 release and, sort of, reentry, and I think that that's,  
22 sort of, Patrick's domain. But as attorneys, you know,  
23 for every one of our clients, we're looking at how to  
24 divert clients faster to appropriate programs. And if  
25 diversion is not an option because of the case, because of

1 the nature of the charges, because of, sort of, whether  
2 the person was a predicate or not, and jail, sort of  
3 thinking past, you know, what might be our traditional  
4 role as defense attorneys, which is the end of the  
5 sentence, to start really reentry planning and thinking  
6 about that with your client and maybe reaching out to  
7 programs so that maybe you might not have been able to get  
8 that as a condition of the sentence as an alternative, but  
9 to, sort of, give your client options for reentry, because  
10 their reentry is going to be harder. They might have lost  
11 their housing. They may have to start from scratch. And  
12 if their identification doesn't match what the - - - you  
13 know, sort of, what they prefer and their preferred gender  
14 identity, that's that much harder.

15 So, connecting them to services even when  
16 they're in the middle of a jail sentence, so that it could  
17 be easily - - - they can be easily transitioned, is  
18 really, again, another role for a defense attorney, in my  
19 opinion.

20 JUDGE BING NEWTON: Before we go to Patrick - -  
21 - and we have his PowerPoint up - - - we - - - we talked -  
22 - - I think I spoke with all three of you - - - about how  
23 we - - - we might want to think - - - or the possibility  
24 of trying to answer this question: "But why doesn't your  
25 client want to go to XYZ drug program, or ABC other

1 program? It works for everybody else. Why is your client  
2 having such a hard time?" So maybe I'd like to do that  
3 with Elana - - - I mean Ms. Redfield, Ms. Luongo and then  
4 Patrick. And when you finish yours, then you go straight  
5 into your - - - your PowerPoint.

6 ELANA REDFIELD: So - - -  
7 Chairman last. Go ahead.

8 ELANA REDFIELD: So, well, I'll try to be brief.  
9 There are two reasons I can think of; one would be that  
10 the person was - - - as I mentioned earlier, I know we get  
11 really cynical about the idea of wrongful arrest, but a  
12 lot of times people are arrested for things and they don't  
13 identify with - - - they don't think they should be  
14 prosecuted for that. So they might not want to take - - -  
15 go into a program because they won't to take a plea  
16 because - - - or they don't want to get - - - result in  
17 some kind of conviction, and they may be afraid that's  
18 going to happen.

19 And the other reason I could think of is that  
20 trans people do sometimes face problems in programs, which  
21 I will defer to Patrick on.

22 JUDGE BING NEWTON: Okay. And do you defer to  
23 Patrick also?

24 JUSTINE "TINA" LUONGO: Yes, except I would say  
25 there's two - - -

1 JUDGE BING NEWTON: "Yes, except"; that's a - -  
2 -

3 JUSTINE "TINA" LUONGO: - - - except - - -

4 JUDGE BING NEWTON: - - - lawyer for you, right?  
5 "Yes, but no."

6 JUSTINE "TINA" LUONGO: I am going to leave the  
7 whole program angle. But I will say this, is that I think  
8 what's really important for all of us is to not use, sort  
9 of, the implicit bias that our clients who have trans  
10 experience have mental-health issues because sometimes  
11 there's a correlation. Now, there is a DSM-5 designation  
12 of gender-identity disorder; it's there not to, sort of,  
13 like, institutionalize people; it is there so that people  
14 can actually get hormones for treatment. And I think that  
15 it's even moving even further than that in the next  
16 ideation, right?

17 ELANA REDFIELD: Well, the DSM-5 is actually  
18 gender dysphoria.

19 JUSTINE "TINA" LUONGO: That's what it is.

20 ELANA REDFIELD: It moved on from gender - - -

21 JUSTINE "TINA" LUONGO: It's moved - - - that's  
22 - - - that's what it is.

23 So - - - so - - - but don't make those initial -  
24 - - that - - - that your client - - - or - - - or - - - or  
25 if you're not a defense attorney, if you're a prosecutor

1 or a judge, that - - - that that's the issue. That may  
2 not be the issue. There could be a whole host of other  
3 issues. So be open to what the diversion plan may be and  
4 what a - - - what an attorney might come to you to propose  
5 if you're a judge or a prosecutor.

6 JUDGE BING NEWTON: Mr. Sand? Do you want to  
7 switch - - - do you need the computer?

8 PATRICK SANDS: Yeah, and I'd like to stand up  
9 on this one. Would you mind that, Judge?

10 JUDGE BING NEWTON: No, because that's what I  
11 voted for, but I got outvoted, to standing. But - - -

12 PATRICK SANDS: What - - - so - - -

13 JUDGE BING NEWTON: But would you - - - would  
14 you need a microphone?

15 PATRICK SANDS: I'm going to use the microphone.

16 JUDGE BING NEWTON: And - - - okay.

17 PATRICK SANDS: So one of the things that we at  
18 SANDS' House believe in is educating the court system.  
19 right? And what we have found: that one size does not  
20 fit all. Right? So if I have a heterosexual defendant  
21 that walks through the door, it's not the same as a - - -  
22 a person of trans experience or a LGBT. Right?

23 So when you're dealing with defendants, you're  
24 dealing with them - - - you have to look at defendants in  
25 two different categories, right? And that's the problem

1 with the programs; they're built - - - we build our  
2 programs based off the psychology of we have to service  
3 people, right? We have to service these people. But we  
4 want to know why is it not effective for someone of trans  
5 experience and someone of LGBT experience, because you  
6 cannot build your programs based off of one size fit (sic)  
7 all; you have to base it off the psychology of the people  
8 that you're servicing. So if you're not talking my talk  
9 and you're not - - - and I'm sitting down with people  
10 that's not talking my talk, that cannot understand my  
11 problems, because my issues is kind of different from your  
12 issues, I'm more than likely going to walk out the door.

13 And then what ends up happening is the ADA says,  
14 "Hey, lock them up. Bring them back. Bring them back to  
15 court." We have to go - - - and the judge is saying, "But  
16 why is this not working? I sent you to a program,"  
17 instead of saying, "Is this the appropriate program?" or  
18 "Is this the appropriate services for you and your  
19 lifestyle or your psychology?" And this is where the  
20 court diversion programs comes in.

21 Charles J. Hynes and I, we're sitting down  
22 talking, and Charles J. Hynes said to me, as a district  
23 attorney - - - it is interesting; he called me to his  
24 office, he said, let's have lunch real quick. He said,  
25 there's a problem here, a lot of people of alternative

1 lifestyles walk through my courts with misdemeanor cases,  
2 and what ends up happening is we're locking them up and we  
3 are finding that they are going in and out the system,  
4 right, and - - - and - - - and - - - and the Brooklyn,  
5 Kings County judges want to know what can we do, because a  
6 lot of the cases that we're finding are misdemeanor cases,  
7 cases that are survivor crimes. Survivor crimes is  
8 prostitution, boosting, which we call - - -

9 UNIDENTIFIED SPEAKER: Can we have them fast-  
10 forward?

11 Petty - - - petty larceny.

12 PATRICK SANDS: Petty larceny, right? And so  
13 what happens is, he says, how could we create something  
14 here in Kings County for the Kings County ADA office - - -  
15 my - - - my office in - - - and the court system? So I  
16 sat down with another organization and we had a  
17 collaborative, which - - - the collaboration is we try - -  
18 - we have an eviden - - - we - - - we - - - we - - - this  
19 is new. So we - - - we - - - we've proven this as an  
20 evidence-based program designed to leverage each  
21 individual and fa - - - and strengthen family and  
22 resiliency to develop solutions to problems that create  
23 barriers to their political, econom - - - economic self-  
24 sufficiency and personal well-being. So this program is a  
25 wrapped-around service, right? And this program is - - -

1 is tailored based off of the psychology of LGBTQ people.  
2 Right?

3 Now, we - - - we have to, like - - - so SANDS'  
4 House is an organization - - - is a not-for-profit  
5 organization - - - and let's get this correct; if not, I  
6 would be fired by the end of the day. It's not called  
7 SANDS' House; it's called Mabel SANDS' House. So by the  
8 end of the day, they'll be sending me my pink slip if I  
9 don't say it correct - - - whose mission is to provide  
10 access to service and to promote mental and emotional  
11 healing for LGBTQ and SGL people who are returning from  
12 incarceration, as well as those who are currently serving  
13 time - - - serving time, usually in secrecy and hiding.

14 I heard at one point - - - I think it was you  
15 spoke about when trans people of trans experience go into  
16 prison, their safety issue. And it's a big safety issue  
17 because what - - - and not just trans experience; gay male  
18 too, LGBT. So a lot of times they are sent to prison, a  
19 lot of times judges will set bail, and a lot of them don't  
20 have money to - - - to pay for the bail. A lot of them  
21 don't have family support. A lot of them don't have the  
22 support that they need or the - - - the right advocacy  
23 inside the courtroom. And what happens is they're sent to  
24 prison, and a lot of times these individuals are abused  
25 within the Department of Corrections, or they end up

1           having to be put in PC.

2                       So let's skip around a little bit.

3                       So right now the - - - the diversion program's  
4           only for sixteen to twenty-four, in Kings County court.  
5           What we do in the Manhattan court is, because the  
6           Manhattan court is not really there yet, they just let us  
7           advocate. So we are the one - - - right? We come in, we  
8           work with the judge, we work with the ADA, and we sit down  
9           and say, hey, you know, after speaking with the - - - the  
10          lawyer, we do a - - - a biopsychosocial and we present it  
11          to the judge. And the judge says, you know, okay, this is  
12          - - - this might work, or I'm not going to give them court  
13          diversion but I might give them something - - - you know,  
14          I might lessen the time or give them probation.

15                      It's a voluntary and it's confidential  
16          alternative to the court proceeding for certain juvenile  
17          and adult offenders. And "Shiloh" means "the gift".  
18          "Shiloh" means "the gift".

19                      So I have five minutes left? I'm sorry. I'm  
20          sorry. I'm going to, like - - -

21                      JUDGE BING NEWTON: Don't - - - let me worry  
22          about that.

23                      PATRICK SANDS: So - - -

24                      JUDGE BING NEWTON: She's talking to me.

25                      PATRICK SANDS: so, you know, we - - - we - - -

1           you could read up on the rest of it.

2                       This is an incentive-based program. So what we  
3 do is we pay the client to graduate. We pay the client to  
4 rehabilitate their self. We have mental health (sic),  
5 where they are required to see a mental-health  
6 professional once a week. They go to resiliency classes  
7 to learn how to communicate. They learn things from  
8 communication to job readiness to self-esteem issues,  
9 because you have to break the (indiscernible) the view  
10 that you have, that keeps you committing crimes, keeps you  
11 coming into the system. Then we try to fill you back up  
12 with things that's positive, to tell you that you can make  
13 it, to tell you that you're able to - - - to be a  
14 productive citizen. That's the goal of the Shiloh  
15 program: to make productive citizens out (sic) these  
16 individuals that we find have been in and out the criminal  
17 justice system and have never had any intervention.

18                       Intervention is so important because when a  
19 person comes to your courtroom - - - and any judge'll tell  
20 you - - - at fifty-seven years old, and they - - - and  
21 they're still coming with the same crimes, judges are  
22 saying, wait, something's wrong, you're sick, you - - -  
23 you've been in and out here doing the same thing. And  
24 it's not that they're sick; there was never intervention,  
25 there was never - - - where - - - there was never

1 intervention at a point where this person needs help and  
2 they need some type of mental help.

3 So if you want to read more - - - you know, more  
4 of the Shiloh program - - -

5 The Shiloh program's out there, Judge Juanita.

6 And so, court diversion is so important. And  
7 court advocacy is so important because the simple fact is  
8 you have an advocate there, you have an advocate right  
9 there in your courtroom. And a lot of times I find judges  
10 - - - judges want to hear more from you than a defense  
11 attorney, "Tell me what you found. What is it that you  
12 found about this client, and what are you trying to - - -  
13 to advocate for this client?" And a lot of times the  
14 judge will go with it. And I have seen the - - - you  
15 know, our success rate has been (indiscernible) - - -  
16 where the judge would say, you know what, we'll give you a  
17 program, I'll give you a shot. The ADAs say, no, no, no,  
18 no, no, no, I don't want it. And the judges say, no, I  
19 want a shot, I want to give you a shot, but if I give you  
20 this shot and you mess this shot up, that's your chance.

21 So having a court advocate who's of alternative  
22 lifestyle, that can understand the trans experience, could  
23 understand an LGBT and the psychology of LGB - - - LGBT,  
24 is so important.

25 JUDGE BING NEWTON: Mr. Sand, just one quick

1 question. Is your program available only to members of  
2 the trans community and the LGBT community?

3 PATRICK SANDS: Yes.

4 JUDGE BING NEWTON: Okay.

5 PATRICK SANDS: So for them to be in our  
6 program, they has (sic) to identify as LGBTQ - - -QIA.

7 JUDGE BING NEWTON: And you find that your  
8 participants have a better comfort zone I assume.

9 PATRICK SANDS: Yes. (Indiscernible)

10 JUDGE BING NEWTON: So, we're going to close.  
11 And before we do, I asked our panelists to share with you,  
12 in what I hope has been an informative and transformative  
13 program, what they want you - - - all of us to know, to  
14 think and to do, as a result of being here for this hour  
15 and a half. Ms. Redfield?

16 ELANA REDFIELD: So, to know (indiscernible) the  
17 kinds of experiences that transgender people are having  
18 and how they may be different than your own experiences.  
19 To think about how deeply your daily interactions are  
20 affected by gender expectations, gender roles. And to  
21 take the tips and reflections that we discussed and apply  
22 them in your daily life.

23 JUDGE BING NEWTON: Thank you. Mr. Sands?

24 (Indiscernible)?

25 PATRICK SANDS: To know how important court-

1 diversion programs, specifically tailored for people of  
2 alternative lifestyles, are. To do - - - I would like to  
3 see the court system and lawyers more understanding of the  
4 psychology and the issues that a lot of people of  
5 alternative lifestyle face day in and day out that can  
6 factor into why they continue to commit criminal behavior.

7 JUDGE BING NEWTON: Thank you.

8 Ms. Luongo?

9 JUSTINE "TINA" LUONGO: To know that setting the  
10 tone right from the very beginning is important, no matter  
11 what the role you play in the court system. To think:  
12 what would I want - - - how would I want to treat this  
13 person or how would I want the system to treat this person  
14 if it were me, my child, my mother, my father, my  
15 relative, my close friend. And to do: keep an open mind  
16 and leave implicit and explicit bias very far from the  
17 courtroom.

18 JUDGE BING NEWTON: We have more time?. So we  
19 have a few minutes, and I know you have questions.  
20 (indiscernible).

21 UNIDENTIFIED SPEAKER: I wanted to know if  
22 someone had to be going through the criminal justice  
23 system to take advantage of your [Mr. Sands'] program. If  
24 someone received their ACD and is no longer in the  
25 confines of the system, but could use the assistance, is

1           there some way we could refer them to you?

2                   PATRICK SANDS:  Yes.  Yes.  What you would do  
3           for something like that is refer them to what we call the  
4           Shi Experience which provides assistance and services to  
5           LGBTQ people who need help but are outside the criminal  
6           justice system.

7                   JUDGE BING NEWTON:  Any other questions?

8                   UNIDENTIFIED SPEAKER:  I recall reading about a  
9           project I think that the Chief Judge initiated around the  
10          question of bail.  I was just wondering if you were aware  
11          of it and whether LGBTQ questions are going to be  
12          evaluated as part of that.

13                   JUSTINE "TINA" LUONGO:  As part of the  
14          legislation?  There was a - - - there was a movement  
15          toward changing - - - potentially changing the bail  
16          structure, the bail statute.  Presently it remains the  
17          same.  However, again, I point out that the present bail  
18          statute has lots of alternatives, and Justin Barry is  
19          probably somebody who can speak about it way better than  
20          we can.

21                   UNIDENTIFIED SPEAKER:  For those individuals who  
22          do not identify as male or female, is there an appropriate  
23          pronoun that could be used?

24                   ELANA REDFIELD:  So, we usually recommend using  
25          "they" or "them", and asking them, of course, what they

1 would prefer to use.

2 JUSTIN BARRY: This is not specific to LGBTQ,  
3 but there are three supervised release bail programs that  
4 are available currently in New York City. Two for non-  
5 violent felonies. One in Manhattan and one in Queens.  
6 And there will be a third that will be opening up its  
7 doors, probably within the next two weeks, for  
8 misdemeanants in Kings County. So, for supervised release  
9 programs, if an attorney wanted to advocate not a true or  
10 a typical ROR risk, but a little bit more, there is  
11 supervised release for non-violent felony offenses in  
12 Queens and New York and, soon to be, for misdemeanor  
13 offenses in Kings.

14 ELANA REDFIELD: I also wanted to speak just  
15 briefly on the issue of bail. If bail is set, there are  
16 sometimes options available. So one option would be the  
17 Lorena Borjas Community Fund which does pay bail for  
18 transgender and LGB people who are locked up and there's  
19 bail set. There's also one called, I think, The Bronx  
20 Freedom Fund. So, there are bail funds that exist if bail  
21 is set.

22 JUSTINE "TINA" LUONGO: Our attorneys have  
23 reached out to - - - to them [Lorena Borjas Community  
24 Fund] and there is a movement to set up bail funds in  
25 other counties, based on the defense looking at what needs

1 to happen, and - - - the defender communities coming  
2 together to figure out how to set up more bail funds.

3 JUDGE BING NEWTON: Any other questions? I have  
4 a question for Mr. [Justin] Barry [who is Chief Clerk of  
5 the Criminal Court]. Years ago, some judges, I think led  
6 by Judge Mazzairelli, fought the battle to stop the  
7 practice of putting those charged with prostitution on the  
8 bench. There was this one category of people who were  
9 treated differently. They were put on the bench and sort  
10 of paraded out there. They sat out there all day long  
11 through the whole arraignment. And yet I hear our  
12 panelists talk about transgender people being put out on  
13 the bench. What is that? What's with the bench business?  
14 Can we look into that? Is there some way to resolve this  
15 problem rapidly and be a little more respectful?

16 JUSTIN BARRY: Absolutely. We have to be more  
17 respectful and we have to treat everyone in the court with  
18 respect. I'd love to take a look at a particular  
19 incident. We do not typically bring any class or any type  
20 or particular subset of defendants out to the courtroom.  
21 There are mandates by the New York City Police Department  
22 to segregate certain populations. It could be as simple  
23 as those three individuals were ready to be arraigned;  
24 they were brought from the back pens and put on the side  
25 of the courtroom - - - basically on deck to be arraigned

1           - - - and then, maybe, some disrespectful remarks were  
2           made. But I think the court systems have made enormous  
3           strides from my time as a public defender, starting back  
4           in 1989, when the prostitute cases were brought out en  
5           masse to the time right now when we actually have human  
6           trafficking intervention parts. So we are starting to  
7           think about different populations differently and we will  
8           continue to do so. And, any of the panelists who have  
9           issues with anybody being treated with a lack of respect  
10          should always feel free to come to me or one of the other  
11          administrators in Criminal Court.

12                         JUDGE BING NEWTON: And I know he's telling the  
13          truth (indiscernible).

14                         Any other questions?

15                         Well, would you all join me in thanking our  
16          panelists. It was indeed an informative and I hope  
17          transformative program.

18                         Again, thank you, Judge Moulton, for being our  
19          leader in this respect.

20                         JUSTINE "TINA" LUONGO: Thank you.

21                         JUDGE BING NEWTON: Have a good afternoon  
22          everyone.

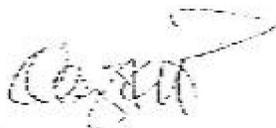
23                         (Proceedings are concluded)

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

I, Clara Rubin, certify that the foregoing transcript of proceedings in the New York State Judicial Institute, entitled "Transgender Litigants in the Court System", was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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Date: March 11, 2014