

Tips for writing about trans legal issues by Noah Lewis

These tips mainly apply to writing about transgender men and women as opposed to non-binary or gender nonconforming individuals.

When in doubt, simply ask yourself if the language used to talk about trans people would be appropriate to use for cisgender (i.e., non-transgender) people. Would you use the language to describe your own behavior? E.g., If female, do you “dress in” women’s clothes or do you simply wear women’s clothes?

Name and pronouns

Use the individual’s preferred name, pronouns, and honorifics in papers and when speaking to a judge.¹ If the individual has not yet had a legal name change, you can use Preferred Name a/k/a Legal Name in the caption and then refer to them by their preferred name.

Defining transgender

Surveys show that most people have a good idea of what transgender means, but it can still be helpful to take charge of the definition by using a footnote such as this.² If the case isn’t about their transgender status, but their transgender status needs to be explained, dropping this in a footnote helps to emphasize that it’s not relevant and you are only providing the information to clarify a legal name that doesn’t match, for example.

Preferred terms	Terms to avoid
Trans woman, transgender woman	Transwoman, MTF, male-to-female individual
Trans man, transgender man	Transman, FTM, female-to-male individual
Transgender person	A transgender
Sex assigned at birth, assigned sex	Birth sex, natal sex
Affirmed sex	Target sex, new sex, preferred gender
Gender dysphoria ³ [include the footnote in your document if the person was diagnosed with GID]	Gender identity disorder

¹ You do not need to explain or justify using the correct pronouns, just use them. A justification can imply that the person is not really entitled to them or that using them is controversial or open for debate. If you are in a jurisdiction where confusion is likely, simply take more care in how you explain that the person is transgender.

² For transgender persons such as Ms. Doe, the sex assigned to them at birth (i.e., male or female) and recorded on their birth certificate is not an accurate reflection of their sex. Transgender persons live or seek to live in accordance with the sex of their brain – an immutable, intrinsic sense of being physically male or female – rather than the sex incorrectly ascribed to them at birth. This typically involves a process of coming to live openly in the world according to one’s affirmed sex and frequently includes physically aligning one’s primary or secondary sex characteristics with their affirmed sex. Though originally labeled male at birth, Ms. Doe lives in accordance with her intrinsic female sex and is in the process of becoming recognized as socially, legally and medically female.

³ Gender dysphoria is the current diagnostic term in the American Psychiatric Association’s 2013 Diagnostic and Statistical Manual of Mental Disorders (5th ed.) (DSM-5). It was previously called “gender identity disorder” in the 4th edition of the DSM. This condition is also known as transsexualism. World Health Organization, International Classification of Diseases, 9th

Tips for writing about trans legal issues

Although sometimes the phrase “transgender man” or “transgender woman” is helpful, it is generally more useful to describe a person as simply being a man or woman who is transgender. In the current climate of stereotypes and misunderstanding, using “transgender” to modify “man” or “woman” can imply that the person is less male or female than a cisgender individual. Being transgender is one aspect of a person. Just like a person might be gay or Latina or a lawyer, being transgender is an adjective that applies to a *person*, not that person’s sex.

[Introduce client in other ways first]. John is also transgender. Although labeled female at birth, John has a long-standing, innate sense of being male. He has completed steps to be medically, socially and legally recognized as male. His doctor has certified that he is male. He has an appearance, including facial and body hair, traditionally considered male. In social situations, others recognize and interact with him as male, including using male pronouns to refer to him. The State of New York recognizes John as male on his driver’s license and the federal Social Security Administration also recognizes him as male. While John does not have a passport, he is eligible to obtain a passport identifying his sex as male. In short, John is a man.

John has also been diagnosed with gender dysphoria, the medical diagnosis for transgender individuals who experience clinically significant distress as a result of an incongruence between their brain sex and their morphological sex.

Describing transition

Avoid presenting the issue as though someone switched from one sex to other. Most transgender people do not feel they have “changed” sexes, but rather came live openly as who they’ve always known themselves to be.

Preferred terms	Terms to avoid
Labeled male at birth, The sex recorded on her birth certificate was male	Born a boy, born male
In the process of (or has completed the process of) becoming recognized as socially, medically and legally male, Is openly male, Has been openly female since 2010, Since coming out as female at work	In the process of transitioning to male, Transitioned from male to female, gender transition, sex change,
Corrected the name and sex on her documents	Changed the name and sex on her documents
Living according to one's affirmed sex	Real-life experience
Depends on context, but options include transgender-related surgery, corrective surgery (if client likes this term), genital reassignment surgery, sex reassignment surgery, or name the specific procedure (e.g., double mastectomy and male chest reconstruction) if it makes sense	Sex change surgery
Preferred terms	Terms to avoid
Reconstructive surgery	Cosmetic surgery

Revision, Clinical Modification, 6th edition, (October 1, 2011), at ftp://ftp.cdc.gov/pub/Health_Statistics/NCHS/Publications/ICD9-CM/2011/Dtab12.zip.

Tips for writing about trans legal issues

Breast reconstruction	Breast augmentation
Facial reconstruction surgery	Facial feminization surgery

Although labeled female at birth, John has been openly male since 2011. In January 2011, he legally changed his name from a traditionally female name to a traditionally male name. In April 2011 he began testosterone therapy. In October 2012 he underwent a double mastectomy and male chest reconstruction.

Transgender status

Exercise care when describing trans bodies. Avoid cisgender assumptions about what anatomy is “male” or “female” or what comprises “biological sex.” Simply saying “biological sex” elides the fact that discrimination is taking place because of someone’s status as transgender, not because of their anatomy. “Biological sex” is comprised of many factors such as hormones, secondary sex characteristics, brain sex, as well as genitals and reproductive organs. For trans people, since the brain is part of physical sex, trans people’s “biological sex” does match their affirmed sex.

Preferred terms	Terms to avoid
Informed/notified them that she is transgender, notified them of her intention to transition	Revealed, disclosed (unless possibly discussing a non-consensual disclosure)
Visibly transgender	Does not pass
Not visibly transgender, consistently read correctly as male, recognized socially as male	Passes as a man
Cisgender, cis, not transgender, non-transgender	Biological, naturally-born, genetic, real, women-born-women
Assigned male at birth. Trans women have female bodies regardless of their anatomy.	For trans women: male body, male genitals, male-bodied
Assigned female at birth. Trans men have male bodies regardless of their anatomy.	For trans men: female body, female genitals, female-bodied
Is openly female, describe specifics	Presents as female
Wears typical female clothing	Dresses in women’s clothing

Because she is visibly transgender, her co-workers were aware of her transgender status.

John is not visibly transgender. He is consistently read correctly as male by others in social interactions. His co-workers did not know he was transgender until John’s supervisor disclosed his transgender status to everyone without his consent.

Jane informed her supervisor that she is transgender and began coming to work openly as female. She began wearing makeup and female clothing to work.

Gender nonconforming vs. Transgender

Note: Most transgender people are *not* gender nonconforming. When viewed according to her affirmed sex of female, a transgender woman who wears traditionally female clothing is gender conforming. Referring to all transgender women as gender nonconforming plays into the false idea that they are “men in dresses” rather than women who were labeled male at birth.

Tips for writing about trans legal issues

Sex-specific institutions, facilities, jobs, and dress codes

There are five principles to keep in mind when writing about sex-based facilities. For a detailed, model complaint using the concepts below, please see TLDEF's complaint in *Ellicott v. NYC Dep't. of Parks and Recreation*.⁴

- 1) Avoid the phrase "gender identity." "Gender identity" perpetuates a cis-centric perspective that trans people are really the sex they were assigned at birth. Making a distinction between how one "identifies" and one's physical sex does not resolve people's concerns in contexts where privacy is an issue.⁵ We typically don't think about cis people "identifying" as men or women, they just *are* men or women. In contrast, trans people are painted as men who "identify" as women or women who "identify" as men. That is, people who are really still the sex they were assigned at birth who simply *think* they are something else. This fails to capture the lived experiences of trans people who *are* their affirmed sex but live in a society that tells them otherwise.
- 2) Start from an assumption that your client *is* their affirmed sex. Traditionally the assumption is that trans people must "prove" that they are their affirmed sex in order to demonstrate that they are "qualified" to use a particular facility. Instead, start with the assumption that a trans man is a man and a trans woman is a woman. Place the burden on the defendant to explain why it has singled out the trans person for differential, discriminatory treatment, such as demanding to see proof of sex or requiring genitals to look a certain way when it doesn't require that of cisgender people.
- 3) Emphasize that it is not about a transgender person seeking *inclusion* in a particular facility, but rather an issue of the defendant *excluding* the transgender individual not merely from the sex-specific facility itself, but also the public accommodation or workplace *in general*.
- 4) Avoid perpetuating the hidden cis-centric assumptions behind the exclusion of trans people from single-sex facilities. Explaining that there are at least three types of sex: social, legal and medical, helps to disrupt the common misconceptions that a) sex = genitals, b) genitals are usually how we separate people by sex, and c) we know what genitals a person has by looking at them. Explain the many factors that comprise "biological" sex besides genitals, and if relevant, the many different and sometimes conflicting elements of "legal" sex.
- 5) Re-frame the issue in a way that takes into account the reality that trans people exist and live in the world. Use trans people's experiences as the starting point rather than the "common sense" (i.e., cis-centric) framework that has created the problem in the first place. Ask yourself: Is this standard applied to cis people in this situation? What is the standard applied

⁴ http://www.transgenderlegal.org/media/uploads/doc_552.pdf

⁵ Actual defendant quotes: "While New Jersey law prohibits discrimination on the basis of gender identity or expression, it does not expressly hold the same as to transgender status;" "Defendants did not discriminate against Plaintiff by not allowing him the freedom to express his gender identity. Instead, Defendants decided not to hire Plaintiff for the open male urine monitor position on the basis that he could not do the job function that requires a bona fide occupational qualification."

Tips for writing about trans legal issues

to cis people? Describe the status quo in a way that reflects reality, not defendants' assumptions about reality. Make visible the actual rules about who may use a given facility:

On information and belief, individuals self-select which locker room they use. Defendants have not adopted any written rules or regulations or posted any guidelines regarding who may use the men's or the women's locker rooms. Defendants do not routinely require individuals to produce any identification, undergo a physical examination, or provide any proof of sex to enter either locker room. Instead, Defendants rely on the sound logic that each individual is the best arbiter of which locker room is appropriate for them.

Preferred terms	Terms to avoid
Sex-based, single-sex, sex-specific	Sex-segregated
Use the locker room	Access the locker room
Like any other woman	Like non-transgender women
Even though she is a transgender woman, Defendant required her to use the men's bathroom facilities and share a room with men.	Because she was biologically male, she was required to use the men's bathroom facilities and share a room with men. (Avoid passive voice where it blames the trans person for their anatomy and makes invisible the Defendant's active, discriminatory choices.)

Questions, comments:
Noah Lewis
noah.ethan@gmail.com