

FROM OUT TO IN: THE OPPORTUNITY AND NEED FOR CLINICAL LAW PROGRAMS TO EFFECTIVELY SERVE LOW-INCOME LGBT INDIVIDUALS

BY: SARAH STEADMAN*

ABSTRACT

Although the recent legalization of same-sex marriage in the U.S. is heartening for lesbians and gays, the resulting discriminatory legislative backlash against the LGBT population shows that this community continues to be marginalized and at risk. Over two hundred anti-LGBT bills have been introduced in state legislatures since January 2016. North Carolina recently passed anti-LGBT legislation that eliminated and prohibits LGBT anti-discrimination protections, and bars transgender individuals from using gender congruent public bathrooms. One result of recent and historical discrimination is LGBT individual's newfound and pre-existing fears of encountering anti-LGBT bias when seeking legal services, even as recent developments have increased their legal needs. With higher rates of poverty than the general population, low-income LGBT individuals often have limited access to justice. Traditional legal services organizations are overwhelmed, leaving law school clinics as the only realistic alternative source of legal help for the low-income LGBT community. Many generalist law school clinics provide some of the legal services needed by low-income LGBT persons. These generalist clinics, however, may not be designed to provide a safe and culturally-competent environment to that

* Visiting Professor of Law, University of New Mexico School of Law. My deep thanks to Serge Martinez, Camille Carey, Julie Sakura, Justin Muehlmeier and Andy Bochte for their invaluable help and wisdom.

population.

This Article argues that law school clinics have the obligation and opportunity to use their unique position to train LGBT culturally responsive lawyers. It concludes by proposing cultural competency actions law school clinics can pursue with the aim of becoming effective LGBT legal service providers for the benefit of their students and their LGBT clients.

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I. INTRODUCTION

A transgender¹ youth, named Michelle at birth, calls the local

¹ Transgender is “[a] term for people whose gender identity, expression, or behavior is different from those typically associated with their assigned sex at birth.” *Transgender Terminology*, NATIONAL CENTER FOR TRANSGENDER EQUALITY (Jan. 15, 2014), <http://www.transequality.org/issues/resources/transgender-terminology> (last visited on *Steadman*

transgender resource center to ask where he can get bias-free legal help to change his identity documents. It is crucial that his identification matches his gender identity and the name that he uses socially, Michael—the name that affirms his gender identity. Without identification that fits his appearance, Michael is at risk of being “outed” as transgender, and could face rejection, discrimination, and even abuse every time he is required to present his driver’s license.² Michael cannot apply and interview for a job or rent an apartment without worrying about being rejected or worse.³ Michael has lived on the streets since being kicked out of his childhood home when he began to transition to his authentic gender.⁴ The homeless shelters had rejected Michael—accusing him of using false identification.⁵ He has put off changing his legal name without an advocate because it would involve going to court. For kids like Michael, going to court is

should enter the date she last visited it). See also, E. Coleman et al., Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People, Version 7, WORLD PROFESSIONAL ASSOCIATION FOR TRANSGENDER HEALTH 222 (2011) (defining transgender as “a diverse group of individuals who cross or transcend culturally defined categories of gender. The gender identity of transgender people differs to varying degrees from the sex they were assigned at birth.”).

² See Catherine Sakimura & Daniel Redman, *A Great Unmet Need: Legal Aid Services for Low-Income Transgender Clients*, 26 MGMT. INNOVATION. EXCHANGE J. 29, 31 (Spring 2012).

³ DR. JAIME M. GRANT ET AL., INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY 138 (2011), *available at* http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf (“Possessing accurate and consistent identification documents is essential to basic social and economic functioning in our country. Access to employment, housing, health care and travel all can hinge on having appropriate documentation. Yet, for many of the respondents, obtaining identity documents that match their gender is a major hurdle.”). According to that report, 40 percent of those who presented an ID that did not match their gender identity when it was required in the ordinary course of life (like applying for a job) reported being harassed, 3 percent reported being attacked or assaulted, and 15 percent were asked to leave the setting in which they had presented incongruent identification. *Id.* at 139. Rates of reported hiring discrimination were “much higher” for those who did not have a driver’s license consistent with their gender. *Id.*

⁴ See ANDREW CRAY ET AL., CENTER FOR AMERICAN PROGRESS, SEEKING SHELTER: THE EXPERIENCES AND UNMET NEEDS OF LGBT HOMELESS YOUTH 7 (Sept. 2013), *available at* <http://cdn.americanprogress.org/wp-content/uploads/2013/09/LGBTHomelessYouth.pdf> (“LGBT youth are vastly overrepresented among the homeless youth population.”); “Fifty-seven percent (57%) of respondents experienced family rejection . . . Those who were rejected by family members had considerably elevated negative outcomes, including homelessness (three times the frequency) . . . compared to those that were accepted by their family members.” *Id.* at 88. “Nineteen percent (19%) of respondents said they became homeless as a result of discrimination or family rejection based on gender identity. This figure is more than 2.5 times higher than the general population lifetime rate of homelessness (7.4%).” *Id.* at 112.

⁵ DR. JAIME M. GRANT ET AL., *supra* note 3, at 116 (“Twenty-nine percent of respondents who attempted to access [homeless] shelter reported being denied access to shelters altogether because they were transgender or gender non-conforming.”).

equated with being in trouble. The transgender resource center employee fields many of these calls and knows that the local law school has a legal clinic. It is the only low-income legal resource in the area. But the employee does not know whether the clinic helps with name change proceedings. Most importantly, she does not know whether the clinic is a safe and welcoming resource for transgender individuals. She is concerned that Michael would face anti-transgender bias.⁶ Since Michael has experienced discrimination by service providers before, the resource center employee knows that he will not seek help, unless she can reassure him that the law school clinic is a safe provider. Only with that reassurance would Michael pursue the legal assistance he urgently needs to avoid future harm.

While the recent legal recognition of same-sex marriage in the United States was a key civil rights victory and reflected gains in the social acceptance of same-sex relationships,⁷ the gains have resulted in a legislative backlash against LGBT persons. Over two hundred anti-LGBT bills have been introduced in state legislatures since January 2016.⁸ North Carolina recently passed anti-LGBT legislation that eliminated and prohibits LGBT anti-discrimination protections, and bars transgender individuals from using gender congruent public bathrooms.⁹ The current anti-LGBT backlash would inevitably elevate Michael's and other LGBT individual's fear of being met with bias by legal service providers. It also increases the population's need for legal assistance and advocacy.

The recent legislative retaliation is in keeping with a long history of marginalization.¹⁰ This marginalization persists today: LGBT individuals

⁶ *Id.* at 5 (“One fifth (22%) were denied equal treatment by a government agency or official; 29% reported police harassment or disrespect; and 12% had been denied equal treatment or harassed by judges or court officials.”).

⁷ *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) (legalizing same-sex marriage and requiring all states to recognize valid same-sex marriages performed in other states).

⁸ Richard Socarides, *North Carolina and the Gay-Rights Backlash*, NEW YORKER, Mar. 28, 2016, <http://www.newyorker.com/news/news-desk/north-carolina-and-the-gay-rights-backlash>; see, e.g., Liam Stack, *The Challenges That Remain for L.G.B.T. People After Marriage Ruling*, N.Y. TIMES, (June 30, 2016), <http://www.nytimes.com/2016/07/01/us/the-challenges-that-remain-for-lgbt-people-after-marriage-ruling.html?emc=eta1> (summarizing the current barriers to LGBT equality, including discriminatory legislation and violence).

⁹ Public Facilities Privacy & Security Act N.C.H.B.2B (2016).

¹⁰ Compare AM. PSYCHIATRIC ASS'N, DIAGNOSTIC & STATISTICAL MANUAL OF MENTAL DISORDERS 44 (2nd ed. 1968) (the American Psychiatric Association's classification homosexuality a mental disorder), with AM. PSYCHIATRIC ASS'N, DIAGNOSTIC & STATISTICAL MANUAL OF MENTAL DISORDERS (2nd ed. 6th prtg. 1973) (eliminating homosexuality as a mental disorder and substituting the new category of “Sexual Orientation Disturbance”). While gays were permitted to serve in the military, from 1993 to 2010 the U.S. military banned homosexuality in

continue to face discrimination, legal disenfranchisement, and obstacles to obtaining legal services, with poverty being the greatest barrier to justice.¹¹ People commonly misperceive LGBT persons as wealthy and capable of hiring private attorneys to assist them with their legal needs. In reality, LGBT individuals and couples are more likely to be poor than heterosexual individuals and couples.¹² Consequently, low-income LGBT individuals primarily obtain legal services through legal aid organizations.¹³ Legal aid organizations typically prioritize serving marginalized groups.¹⁴ However, these organizations are in crisis due to decreased funding and resources.¹⁵ They are unable to assist at least half of all low-income persons who seek their help. As a result, 80 percent of the low-income population's legal needs remain unaddressed.¹⁶

There are only a few LGBT specialized legal aid resources

what has been called the "Don't Ask, Don't Tell" policy. See 10 U.S.C.A. § 654 (2014). This policy was repealed in 2011. See Don't Ask Don't Tell Repeal Act of 2010, Pub. L. No. 111-321 (2010). Sodomy laws criminalizing same-sex intimate acts existed in every state until the U.S. Supreme Court's decision in 2003 holding such laws unconstitutional. See *Lawrence v. Texas*, 539 U.S. 558 (2003). Not until 2000 did the first state, Vermont, provide "nearly all of the benefits of marriage" to same-sex couples through civil unions. *National News Briefs; Governor of Vermont Signs Gay-Union Law*, N.Y. TIMES, (Apr. 27, 2000), <http://www.nytimes.com/2000/04/27/us/national-news-briefs-governor-of-vermont-signs-gay-union-law.html>. Beginning in 1996, DOMA prevented the federal government from recognizing marriages of same-sex couples. See The Defense of Marriage Act of 1996, Pub. L. No. 104-199, 110 Stat. 2419 (1996). DOMA was held unconstitutional in 2013. See Windsor, 133 S. Ct. 2675 (2013).

¹¹ See GRANT ET AL., *supra* note 3, at 51 ("Fifteen percent (15%) of our respondents reported a household income under \$10,000/year, nearly four times the rate of this category for the general population."); *Serving Low-Income LGBT Parents and LGBT Parents of Color*, NAT'L CENTER FOR LESBIAN RTS. (Aug. 28, 2007) [hereinafter "NCLR"], <http://www.nclrights.org/legal-help-resources/resource/serving-low-income-lgbt-parents-and-lgbt-parents-of-color/> ("In addition to difficulties due to their sexual orientation or gender identity, low-income LGBT clients also face additional barriers created by poverty and a general lack of access to the legal system.").

¹² See M.V. Lee Badgett et al., *New Patterns of Poverty in the Lesbian, Gay, and Bisexual Community*, WILLIAMS INST., 1 (June 2013), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGB-Poverty-Update-Jun-2013.pdf>.

¹³ See Lisa J. Cisneros and Catherine Sakimura, *Recognizing and Responding to the Needs of Low-Income Lesbian, Gay, Bisexual, and Transgender Clients*, 43 CLEARINGHOUSE REV. 515, 518 (Mar.-Apr. 2010).

¹⁴ Catherine Sakimura, Daniel Torres, and Cole Thaler, *Serving All Communities: Providing Respectful and Competent Services to Low-Income LGBT clients*, 47 CLEARINGHOUSE REV. 336 (Jan.-Feb. 2014).

¹⁵ MARTHA MINOW ET AL., REPORT OF THE PRO BONO TASK FORCE, LEGAL SERV. CORP., 1-2 (Oct. 2012), available at http://www.lsc.gov/sites/default/files/LSC/lscgov4/PBTF_%20Report_FINAL.pdf (describing the current crisis faced by legal aid services organizations and the unaddressed legal needs of the nation's poor).

¹⁶ *Id.* at 1-2.

nationally,¹⁷ resulting in a nationwide scarcity of culturally responsive legal services for this population. Further, those specialized legal resources are limited in their ability to provide direct representation outside of their local service areas and have limited resources. Many of the LGBT specialized resources focus on LGBT public policy advocacy rather than direct representation.¹⁸ Therefore, many low-income LGBT persons' legal needs are not being met.

This Article addresses the unmet legal needs of the low-income LGBT population by first describing those needs and then suggesting that existing generalist, rather than LGBT specialized, law school clinical programs could help to meet these needs. Next this Article discusses how the clinical programs can provide culturally responsive services, and, finally, why that effort is important. Law school clinics are uniquely situated as training institutions to educate a generation of lawyers on how to provide culturally responsive legal services to the LGBT population. Law students who go on to practice law will almost inevitably represent one or more members of this population. Whereas legal aid organizations provide direct legal services to LGBT individuals (as their resources allow), law school clinics, by training culturally responsive future lawyers, would serve both those individual clients and benefit countless other LGBT individuals.

Part II of this Article summarizes the legal landscape and demographics of the LGBT population in the United States. Part III describes the common legal needs of this population by area of law, and why those needs exist. Part IV proposes that law school clinics could effectively help to meet low-income LGBT legal needs by creating a safe and culturally responsive environment for those clients. Section A of Part IV explores what it means for a law school clinic to be LGBT culturally responsive, and suggests ways to adopt and maintain such an environment. Section B of Part IV suggests that educating clinical law students to learn how to effectively represent low-income LGBT persons is a vital opportunity to train future practitioners. Further, it is congruent with the legal profession's mandates and values. Finally, such training invaluablely benefits both the students and their inevitable future LGBT clients.

¹⁷ For example, the New York Legal Assistance Group has a LGBT specific law services project. See NEW YORK LEGAL ASSISTANT GROUP (NYLAG), <http://nylag.org/units/lgbt-law> (last visited November 20, 2016).

¹⁸ See, e.g., LAMBDA LEGAL, <http://www.lambdalegal.org>.

II. LAWS, POVERTY, AND OTHER DEMOGRAPHICS IMPACTING THE UNITED STATES' LGBT POPULATION

Between 5.2 and 9.5 million adults in the United States are estimated to be LGBT.¹⁹ LGBT persons live in every state in the nation, but the states along the east and west coasts have the highest percentage of LGBT residents.²⁰ Twenty states and the District of Columbia have statutes prohibiting discrimination on the basis of sexual orientation and gender identity, most of which are states with relatively high populations of LGBT residents.²¹ Gender identity discrimination is an act of bias against an individual because that person is transgender, and it is considered discrimination because of sex, e.g. under Title VII of the Civil Rights Act of 1964.²² “Transgender” is an umbrella term used to describe people whose gender identity is different from the gender they were assigned at birth.²³ Sexual orientation discrimination is action against an individual based on her or his actual or perceived sexual orientation. Sexual orientation is defined by the Equal Employment Opportunity Commission as actual or perceived homosexuality, bisexuality or heterosexuality, and includes associating with another person of one of those sexual orientations.²⁴

¹⁹ Gary J. Gates, *LGBT Demographics: Comparisons Among Population-based Surveys*, WILLIAMS INST. 1, 4 (Oct. 2014), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/lgbt-demogs-sep-2014.pdf>.

²⁰ See Gates, *supra* note 19 at 9; GARY J. GATES & FRANK NEWPORT, *LGBT Percentage Highest in D.C., Lowest in North Dakota*, GALLUP (Feb. 15, 2013), <http://www.gallup.com/poll/160517/lgbt-percentage-highest-lowest-north-dakota.aspx> (illustrating that of the ten states with the highest percentages of LGBT residents, only two of them are not on either the east or west coast).

²¹ See Gates & Newport, *supra* note 20. California, Colorado, Connecticut, Delaware, Hawaii, Iowa, Illinois, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Utah, Vermont, Washington and the District of Columbia prohibit discrimination in various contexts based on sexual orientation and gender identity. See *Non-Discrimination Laws, Movement Advancement Project*, MAP (May, 2016), available at http://www.lgbtmap.org/equality-maps/non_discrimination_laws (listing the states that prohibit discrimination based on sexual orientation and gender identity). Nine of those states are in the top ten states with the highest percentage of LGBT residents.

²² See, e.g., *Macy v. Department of Justice*, EEOC Appeal No. 0120120821 (April 20, 2012), available at <http://www.eeoc.gov/decisions/0120120821%20Macy%20v%20DOJ%20ATF.txt>.

²³ *Understanding Transgender People: The Basics*, NAT'L CENTER FOR TRANSGENDER EQUALITY (Jul. 2016), <http://www.transequality.org/issues/resources/understanding-transgender-people-the-basics>.

²⁴ *Gender Identity*, LGBT APPALACHIAN STATE U., <http://lgbt.appstate.edu/education-support/educational-resources/gender-identity> (last visited July 16, 2016).

There is no federal LGBT anti-discrimination law.²⁵ When state protections are available, they are typically in the contexts of employment, housing, and consumer protection. Anti-discrimination laws protect LGBT individuals from discriminatory employment practices including bias in hiring, promotion, job assignment, termination, compensation, retaliation, and harassment.²⁶ Fifty percent of the LGBT population lives in states that do not prohibit employment discrimination based on sexual orientation or gender identity.²⁷ In housing, anti-discrimination laws protect persons from discriminatory practices by an owner, landlord or real estate broker in selling or leasing property, eviction and property financing.²⁸ Twenty-eight states do not have housing non-discrimination laws that include sexual orientation or gender identity.²⁹ Again, this leaves 52 percent of the LGBT population without protection from housing discrimination. In the context of consumer transactions, laws protect LGBT individuals from, among other things, being denied services, goods, or accommodations by commercial establishments.³⁰ Only nineteen states and D.C. have laws barring discrimination in consumer transactions on the basis of sexual orientation and gender identity.³¹ Thus, a majority of states allow such discrimination. Besides the states that prohibit discrimination based on both sexual orientation and gender identity, three other states have statutes prohibiting discrimination based on sexual orientation, but not on gender identity.³² Disturbingly, Tennessee, Arkansas, and North Carolina

²⁵ Sexual orientation and gender identity are not protected classes under the federal laws that protect against discrimination: Title II of the Civil Rights Act of 1964, *see* 42 U.S.C. § 2000a (2012) (prohibiting discrimination against other classes in public accommodations); The Fair Housing Act, *see* 42 U.S.C. §§ 3604–06 (2012) (prohibiting discrimination against other classes in the sale or rental of housing, real estate-related transactions, and brokerage services); Title III of the Americans with Disabilities Act, 42 U.S.C. §12181 (2012). However, on July 21, 2014, President Obama signed an amendment to Executive Order 11246, extending protection from sexual orientation and gender identity discrimination to LGBT persons in federal government procurement. *See* Exec. Order No. 13,672, 79 Fed. Reg. 42971 (Jul. 23, 2014). Still, workers in the private and state government sectors are not protected by that executive order.

²⁶ *See, e.g.*, N.M. STAT. ANN. 1978, § 28-1-7 (2014) (“It is an unlawful discriminatory practice for: A. an employer, . . . to refuse to hire, to discharge, to promote or demote or to discriminate in matters of compensation, terms, conditions or privileges of employment against any person otherwise qualified because of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap or serious medical condition.”).

²⁷ *See* MAP, *supra* note 21.

²⁸ *See, e.g.*, MASS. GEN. LAWS ch. 151B, § 4(3B, 3C, 6, 7) (West 2014).

²⁹ *See* MAP, *supra* note 21.

³⁰ *See, e.g.*, N.M. STAT. ANN. §§ 28-1-7(F) (West 2014).

³¹ *See* MAP, *supra* note 21.

³² New Hampshire and Wisconsin prohibit discrimination based on sexual orientation, but not

have laws prohibiting the passage or enforcement of local LGBT non-discrimination laws.³³

The absence of legal protections for a substantial number of LGBT persons in housing and on the job places those individuals at an increased risk of poverty over their lifetimes.³⁴ Poverty rates among the LGBT population are similar to or higher than in the heterosexual population. One in five LGBT individuals live at or below the national poverty level.³⁵ Single LGBT parents are three times more likely to live near the poverty level than their heterosexual counterparts,³⁶ while same-sex couples raising children experience poverty at twice the rate of their heterosexual peers.³⁷ Older female same-sex couples are at greater risk of poverty than heterosexual couples.³⁸ Sub-populations of the LGBT community face a disproportionate risk of poverty, including same-sex African American couples, Latino same-sex parents, and Native American transgender persons.³⁹ Finally, transgender persons endure two times the unemployment rate and have extremely low-incomes at four times the rate of the general public.⁴⁰

gender identity. See *Non-Discrimination Laws: State by State Information*, ACLU (2016), available at <https://www.aclu.org/map/non-discrimination-laws-state-state-information-map>.

³³ See MAP, *supra* note 21.

³⁴ Legal protections help guard against major life events, such as job loss or health issues, and the lack of such protections can often contribute to poverty. See Badgett et al., *supra* note 12, at 25 (discussing the legal policies related to poverty and the LGBT community).

³⁵ See *id.* at 2.

³⁶ See GARY J. GATES, THE WILLIAMS INSTITUTE, LGBT PARENTING IN THE UNITED STATES 1 (Feb. 2013), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Parenting.pdf>.

³⁷ Badgett et al., *supra* note 12, at 8 (“[C]hildren in same-sex couple households are almost twice as likely to be poor and children in unmarried different-sex couple households are more than twice as likely to be poor than children in married different-sex couple households.”).

³⁸ See *id.* at 4.

³⁹ *Id.* at 11; see also CHRISTOPHER RAMOS & GARY J. CATES, CENSUS SNAPSHOT: CALIFORNIA’S LATINO/LATINA LGB POPULATION, WILLIAMS INST. (Oct. 2008) (highlighting key findings of demographic and economic information for more than 200,000 lesbian, gay, and bi-sexual Latino individuals in California); Jack Harrison-Quintana & Erin Fitzgerald with Jaime Grant, INJUSTICE AT EVERY TURN: A LOOK AT AMERICAN INDIAN AND ALASKAN NATIVE RESPONDENTS IN THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY, NAT’L GAY & LESBIAN TASK FORCE, 1 (2008) (studying discrimination against transgender persons in the U.S. and finding that “American Indian and Alaskan Native transgender and gender non-conforming people often live in extreme poverty, with 23% reporting a household income of less than \$10,000/year. This is higher than the rate for transgender people of all races (15%) and almost three times the general American Indian and Alaskan Native population rate (8%). This is almost six times the general U.S. population rate (4%).”), available at http://www.thetaskforce.org/downloads/reports/reports/ntds_native_american_3.pdf.

⁴⁰ Badgett et al., *An Executive Order to Prevent Discrimination Against LGBT Workers*, WILLIAMS INST. 3 (Feb. 19, 2013), available at <http://williamsinstitute.law.ucla.edu/wp->

Poverty is a barrier to legal service access. Legal representation is a significant expense and unaffordable for those attempting to meet their own or their family's basic needs. As noted, legal aid services are not meeting the needs of low-income LGBT persons, leaving a significant gap in the provision of legal services to low-income LGBT persons. Law school clinics are ideally situated to help fill that gap.

III. LEGAL NEEDS OF LOW-INCOME LGBT INDIVIDUALS AND COUPLES⁴¹

To understand how law school clinics can meet the LGBT population's need for legal services, they must first understand what those needs commonly entail. Those identified in this Article are not intended to be an exhaustive list. Moreover, LGBT persons also have legal needs that are typical of the general population, and are unrelated to their sexual orientation or gender identity. In this part, I highlight the services that LGBT people are most in need of and discuss what may be unique about those needs. I describe common low-income LGBT legal needs in estate planning and elder law, family law, employment law, juvenile justice and education advocacy, immigration law, and business and tax law. Transgender individuals have particular needs, which I describe separately. I will also identify some law school clinics that practice in those areas of law, as examples, focusing on the states with relatively few LGBT legal resources such as in the mid-west.

A. ESTATE PLANNING AND ELDER LAW

LGBT elders are more likely than other LGBT persons to be isolated and invisible.⁴² Growing up, many have faced legal disenfranchisement and the criminalization of their intimacy, in addition to a diagnosis of mental illness based on their sexual orientation. In other words, "[m]any LGBT

content/uploads/LGBTExecutiveOrder-Feb-2013.pdf.

⁴¹ This Article does not address the legal advocacy needs of the LGBT community as a whole, such as through impact litigation, policy reform and legislative advocacy. I anticipate that non-LGBT specialty clinics are less likely to have and to develop such specific legal resources. Moreover, there are excellent national LGBT legal advocacy groups doing that work.

⁴² Nancy Flaxman, *Isolated and Underserved: Reaching Lesbian, Gay, Bisexual and Transgender Seniors*, 3 MARQUETTE ELDER'S ADVISOR 39, 40 (2001); see also Nancy J. Knauer, "Gen Silent": *Advocating for LGBT Elders*, 19 ELDER L.J. 103, 111 (citing reasons for the social isolation of this group, and a reliance for support not on their biological family, but on their "chosen family"). See generally Nancy J. Knauer, *LGBT Elder Law: Toward Equality in Aging*, 32 HARVARD J.L. & GENDER 1 (Winter 2009) (describing the historical and current challenges for LGBT elders).

seniors have experienced a lifetime of judgment, rejection, persecution and loss when their sexual orientation was revealed.”⁴³ Even with the legalization of same-sex marriage, elderly LGBT persons may not take advantage of that option because many have spent their lives protecting themselves and each other from persecution by remaining in the closet. They chose to conceal their identity, to avoid drawing attention to and confirming their sexual orientation and intimate relationships. This was the case for one of my clients, now in his eighties, who had been in a decades-long relationship with his partner in the progressive state of California. The client remained extremely wary, even so, of disclosing his sexual orientation. And he and his partner had chosen not to register as domestic partners when that became an option. Instead, they chose a private means of protecting each other by creating wills, powers of attorney, jointly titling property, and using transfer and payable upon death designations on their investment and bank accounts. All of these are useful legal tools to protect unmarried same-sex couples.

In contrast, another elder same-sex couple in a similarly committed relationship for years may also have intended for their separate and community assets to sustain the survivor between them until death. This couple may also have chosen not to marry because they continued to expect hostility towards their relationship. However, their wariness of bias by the legal profession led them to avoid seeking estate planning assistance. Therefore, they had not created wills naming each other as beneficiaries. When one member of the couple died intestate, her assets passed to an unknown relative rather than to her loved one. That illustration shows that estate planning is a critical tool to ensure that a committed, but unmarried, same-sex couple's assets pass upon death according to their wishes.

LGBT individual and same-sex relationship protections include drafting powers of attorney to designate a surrogate decision-maker for finances and health care should an LGBT individual become incapacitated and unable to make informed decisions. For same-sex couples who choose not to marry, the formal designation of an agent for health care decisions is necessary to trump the default surrogate decision-makers in states that do not include or prioritize significant others by statute.⁴⁴

⁴³ See Flaxman, *supra* note 42, at 42.

⁴⁴ Compare D.C. CODE § 21-2210 (2012) (authorizing a “spouse or domestic partner of the patient” and a “close friend” to grant, refuse, or withdraw consent on behalf of a patient during incapacity with respect to the provision of any health-care service), with ALA. CODE § 22-8A-11(d) (1975) (authorizing, by priority, only the patient’s spouse, adult child, parents, adult sibling, surviving relatives, and an ethics committee to make such healthcare decisions which does not

For transgender individuals, designating a transgender-affirming surrogate for health care decisions is imperative. Transgender-specific medical care is necessary health care for transgender persons.⁴⁵ Troublingly, a study of the health of transgender elders found significant evidence of anti-transgender bias in medical settings—one-quarter or more of participants had encountered discrimination by a physician.⁴⁶ Consequently, to protect their identity and welfare, it is essential for transgender persons to choose a surrogate decision-maker who will make health care decisions that maintain their gender identities by addressing their particular health care needs, and advocate firmly if met with bias.

In addition to powers of attorney, an advance directive is an important estate planning tool that documents one's preference regarding end of life medical treatment. That document or a health care power of attorney typically includes a provision designating who the individual prefers to serve as their guardian should they become incapacitated. An adult guardian, appointed by a court, may be necessary if, for instance, the individual has not appointed a power of attorney or the authority granted to the surrogate is insufficient. A guardian's decision-making authority may be broad, like a parent's authority over a minor child, or limited to certain areas of one's affairs, such as medical decisions or residence.

To illustrate, consider an elder lesbian couple who are committed but not married and one of whom has advanced dementia but no power of attorney. The partner with capacity may need assistance navigating the court procedure to become the other's guardian. Because she may not have priority under the state's adult guardianship laws to be appointed guardian—compared to a spouse or biological family member—it is crucial that she has a legal advocate to argue that her appointment as guardian is in her partner's best interests. Effective advocacy would require culturally responsive representation. The University of New Mexico's Community Lawyering Clinic assists with court appointments of guardians for incapacitated persons.⁴⁷

include classes of persons that might include a same-sex partner); see also *Healthcare Equality Index: Default Surrogate Selections Laws*, HUM. RTS. CAMPAIGN, <http://www.hrc.org/resources/entry/healthcare-equality-index-default-surrogate-selection-laws> (last visited July 16, 2016) (providing a state-by-state list of statutory surrogate decision maker laws impacting LGBT persons).

⁴⁵ GRANT ET AL., *supra* note 3, at 85; see also, Coleman et al., *supra* note 1.

⁴⁶ Karen L. Fredriksen-Goldsen et al., *Physical and Mental Health of Transgender Older Adults: An At-Risk and Underserved Population*, *Gerontologist*, 2 (March 2013); see also GRANT ET AL., *supra* note 3, at 6.

⁴⁷ See generally EDWARD M. STERN & GERALD L. WILSON, *THE NAPLA/SAPLA BOOK OF LAW*

Drafting powers of attorney and advance directives are not legally complex or time-consuming tasks. Thus, they are ideal tasks for clinical law students to practice culturally responsive client engagement and interviewing skills.⁴⁸ A significant number of LGBT individuals and couples could be served by a clinic able to draft those legal documents—providing much needed legal assistance to that population. The Thomas M. Cooley Law School in Michigan, for example, has an Estate Planning Clinic in which students draft wills, powers of attorney, and medical directives for clients.⁴⁹ The Southern Illinois University School of Law also has an Elderly Clinic that provides estate planning services including wills and powers of attorney.⁵⁰ Those clinics are well situated to serve the estate planning needs of their states' proportionally significant LGBT community.⁵¹ Additionally, some transactional and business law clinics also offer estate planning services, such as the Albany Law School's Tax & Transactions Clinic.

B. FAMILY LAW

Approximately two million same-sex couples live in the United States and, according to a Gallup poll conducted in November 2015, 45 percent of same-sex couples living with a same sex partner are married.⁵²

SCHOOL LISTS, KAPLAN, 123–57 (1993), available at http://www.bu.edu/cas/files/2011/12/NAPLA_Lists2011_Book_v2.pdf (providing a list of law school clinics by area of services provided).

⁴⁸ Law school clinics can find information online about drafting estate planning documents for LGBT elders. See, e.g., NAT'L RESOURCE CENTER ON LGBT AGING, <http://www.lgbtagingcenter.org/resources/index.cfm?s=18> (last visited July 16, 2016).

⁴⁹ See *Estate Planning Clinic*, COOLEY L. SCH., http://www.cooley.edu/clinics/estate_planning.html (last visited July 16, 2016).

⁵⁰ See *Civil Practice/Elderly Clinic*, SIU SCH. L., <http://www.law.siu.edu/academics/clinics/civil-practice-clinic/student-programs.html> (last visited November 20, 2016).

⁵¹ At 3.8 percent, Michigan's LGBT population is 3.8 percent, slightly above the national average and, in 2010, it had 14,598 same-sex couples. Gary J. Gates & Abigail M. Cooke, *Michigan Census Snapshot: 2010*, WILLIAMS INST. 1 (2010), available at http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_Michigan_v2.pdf. Illinois' LGBT population mirrors Michigan's at 4.8 percent and, in 2010, it had 23,049 same-sex couples. Gary J. Gates & Abigail M. Cooke, *Illinois Census Snapshot: 2010*, WILLIAMS INST. 1 (2010), available at http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_Illinois_v2.pdf.

⁵² Gary J. Gates, & Frank Newport, *An Estimated 780,000 Americans in Same-sex Marriages*, GALLUP SOC. ISSUES (Apr. 24, 2015), <http://www.gallup.com/poll/182837/estimated-780-000-americans-sex-marriages.aspx>; Jeffrey M. Jones & Gary J. Gates, *Same-Sex Marriages Up After Supreme Court Ruling*, GALLUP SOC. ISSUES (Nov. 5, 2015),

The number of married same-sex couples increased significantly since same-sex marriage became legal nationwide.⁵³ On June 26, 2015, the United States Supreme Court held that all states must recognize and allow same-sex marriage.⁵⁴ In the U.S., an estimated 37 percent of LGBT persons, married or single, have children.⁵⁵ Same-sex parents need culturally responsive assistance with custody matters upon separation or divorce. And childless married same-sex couples who separate or divorce may need legal assistance with equitable property division.

Many law schools have family law clinics that offer representation in custody matters and divorce.⁵⁶ The Mississippi College School of Law's Mission First Legal Aid Clinic provides family law services. Mississippi ranks as the poorest state in the nation, with a poverty rate of 22.6 percent compared to the 15.5 percent national average,⁵⁷ and with 29 percent of its children living in poverty.⁵⁸ At 26 percent, it is the state with the highest proportion of same-sex couples raising children.⁵⁹ The University of Kansas School of Law's Legal Aid Clinic also provides domestic relations legal assistance, as does its Medical-Legal Partnership Clinic. Eighteen percent of children in Kansas live in poverty.⁶⁰ And, at 22 percent, Kansas is also among the states with the greatest proportion of same-sex couples who are parents.⁶¹ In both Mississippi and Kansas, for low-income LGBT parents who need family law services, these clinics may offer the only affordable legal assistance option.

While states can no longer prohibit same-sex couples from marrying, those couples may still choose not to marry for various reasons.⁶² For

<http://www.gallup.com/poll/186518/sex-marriages-supreme-court-ruling.aspx>.

⁵³ Jones & Gates, *supra* note 52.

⁵⁴ Obergefell 135 S. Ct. at 2607.

⁵⁵ GATES, *supra* note 36.

⁵⁶ See generally *Legal Recognition of LGBT Families*, NAT'L CENTER LEGAL RECOGNITION (2016), available at http://www.nclrights.org/wp-content/uploads/2013/07/Legal_Recognition_of_LGBT_Families.pdf (providing a summary of LGBT families legal rights in the United States).

⁵⁷ See *Percent of People Below poverty Level in the Past 12 Months (For Whom Poverty Status is Determined)*, U.S. CENSUS BUREAU ("ACS").

⁵⁸ See *Children in Poverty (100 Percent Poverty)*, KIDS COUNT DATA CENTER, THE ANNIE E. CASEY FOUND. (2016) <http://datacenter.kidscount.org/data/tables/43-children-in-poverty?loc=1&loct=2#detailed/2/2-52/false/869,36,868,867,133/any/321,322> (last visited July 17, 2016).

⁵⁹ See Gates, *supra* note 36, at 1.

⁶⁰ See ANNIE E. CASEY FOUND. *supra* note 58.

⁶¹ See Gates, *supra* note 36, at 4.

⁶² See, e.g., *A Survey of LGBT Americans*, PEW RESEARCH CENTER (June 13, 2013)

them, cohabitation agreements offer important legal protection. Those agreements are written contracts setting forth a couple's mutual rights and obligations regarding joint and separate property, income, and assets acquired during the relationship, living expenses, and providing for financial support upon separation.

Rates of intimate partner violence among same-sex couples are the same as in heterosexual relationships.⁶³ It occurs among an estimated one in three or four same-sex couples.⁶⁴ However, LGBT persons of color and transgender individuals are at greatest risk.⁶⁵ LGBT victims of domestic violence experience unique challenges and often do not receive necessary assistance.⁶⁶ Same-sex relationship domestic violence is different because, among other things, the batterer may threaten to expose the victim's sexual orientation at work or to family members. "This threat is amplified by the sense of extreme isolation among gay and lesbian victims since some are still closeted from friends and family, have fewer civil rights protections, and lack access to the legal system."⁶⁷ Moreover, LGBT victims may be wary of reporting abuse to law enforcement authorities because they fear exposure of their sexual orientation or gender identity. Culturally responsive lawyers are needed to address LGBT safety concerns in this area of law.⁶⁸ And there are law school clinics that represent

<http://www.pewsocialtrends.org/2013/06/13/a-survey-of-lgbt-americans/> ("Overall, a total of 60% of LGBT survey respondents are either married or say they would like to marry one day, compared with 76% of the general public"); *see also* Cara Buckley, *Gay Couples, Choosing to Say 'I Don't'*, N.Y. TIMES, OCT. 25, 2013, available at <http://www.nytimes.com/2013/10/27/style/gay-couples-choosing-to-say-i-dont.html>.

⁶³ *See Domestic Violence in the LGBT Community: A Fact Sheet*, CENTER FOR AM. PROGRESS 1 (June 14, 2011), available at <https://www.americanprogress.org/issues/lgbt/news/2011/06/14/9850/domestic-violence-in-the-lgbt-community/>.

⁶⁴ *Id.*

⁶⁵ *See 2012 Report on Intimate Partner Violence in Lesbian, Gay, Bisexual, Transgender, Queer and HIV-Affected Communities in the U.S.*, NATIONAL COALITION OF ANTI-VIOLENCE PROGRAMS, (Oct. 1, 2013) 1, available at http://www.avp.org/storage/documents/ncavp_2012_ipvreportmediarelease.pdf.

⁶⁶ *See id.* at 2-3.

⁶⁷ CENTER FOR AM. PROGRESS, *supra* note 63.

⁶⁸ The American Bar Association's Commission on Domestic Violence has compiled family law legal resources for service provision to LGBT victims of domestic violence. *See generally* American Bar Association, *Domestic Violence in the LGBT Community: Family Law Legal Resources* by Topic, http://www.americanbar.org/content/dam/aba/administrative/domestic_violence1/publications/lgbttoolkit_aba_lgbt_bibliography_updated.authcheckdam.pdf (last visited July 17, 2016) (providing a compilation of family law legal resources for service provision to LGBT victims of domestic violence).

domestic violence victims, including family law clinics such as Washburn University School of Law's Children and Family Law Clinic in Kansas. The University of Wyoming College of Law's Domestic Violence Legal Assistance Project focuses on that area of law. Low-income LGBT persons who experience intimate partner violence there need access to legal assistance. Wyoming has only one law school clinic and only one other publicly funded pro bono program that offers such assistance.⁶⁹ Thus, the legal aid options for those low-income LGBT individuals are exceptionally limited.

Law school clinics can provide valuable assistance and advocacy to LGBT couples seeking to adopt. Those couples may be discriminated against and considered inferior compared to heterosexual couples seeking to adopt.⁷⁰ Some law school clinics assist families with the adoption process, such as the Mississippi College School of Law⁷¹ and Temple University's Beasley School of Law.⁷² Harvard Law School's clinic also provides and promotes services for LGBT couples, including adoptions.⁷³

C. EMPLOYMENT LAW

LGBT persons, especially transgender individuals and LGBT people

⁶⁹ See *Student Legal Clinics, College of Law, Legal Services Program and Domestic Violence Legal Assistance Program*, U. WYO., <http://www.uwyo.edu/law/experiential/clinics/legal-services-dv.html> ("Except for the Wyoming Coalition Against Domestic Violence and Sexual Assault's legal project, which employs two attorneys (in addition to the DVLAP Director), the UWLS and DVLAP are the only publicly funded programs in the state which offer a full range of pro bono legal services in the area of domestic relations, including post decree modifications and enforcement actions; an area that continues to be a significant unmet legal need in Wyoming.").

⁷⁰ Andrew Giambrone, *Equality in Marriage May Not Bring Equality in Adoption*, ATLANTIC (May 26, 2015), <http://www.theatlantic.com/politics/archive/2015/05/equality-in-marriage-may-not-bring-equality-in-adoption/393806/>; Rachel Stewart Johnson, *A Same-Sex Couple's Struggle to Adopt*, JOHNS HOPKINS MAGAZINE (Fall 2013), <http://hub.jhu.edu/magazine/2013/fall/gay-couple-adoption>.

⁷¹ *Adoption Legal Clinic*, MISS. C. L. <http://law.mc.edu/academics/centers/family-children-law/adoption-legal-clinic/> (last visited July 17, 2016).

⁷² *Law School Based Clinics*, TEMP. U. BEASLEY SCH. L., <http://www.law.temple.edu/academics/experiential/clinicals/temple-based-clinics/> (last visited July 17, 2016).

⁷³ *Family and Domestic Violence Clinic*, HARV. L. SCH. <http://hls.harvard.edu/dept/clinical/clinics/family-and-domestic-violence-law-clinic-lsc/> (last visited July 17, 2016).

of color,⁷⁴ encounter pervasive discrimination in employment,⁷⁵ for the most part without any legal remedy. As noted, in most states it is still legal to refuse to hire, to fire, or to fail to promote someone based on her or his sexual orientation or gender identity. This area of law is complex because LGBT legal protections are geographically fixed—meaning that protections based on sexual orientation and gender identity can differ from county to county (if there are no protections at the state level). And what does and does not constitute an actionable incidence of discrimination varies. However, in those states, cities, and counties that have applicable anti-discrimination laws, LGBT individuals need legal assistance to enforce them. Further, LGBT discrimination against LGBT individuals in employment may include employers who refuse to pay those employees wages they are owed, resulting in wage theft claims. Some clinical law programs, such as the University of Chicago Law School’s Wage Theft Legal Clinic and the University of New Mexico Law School’s Business and Tax Clinic, litigate wage theft claims.

Although representing claimants by litigating discrimination complaints is not a legal service typically offered by general practice law school clinics, there are thirty-four employment law and other civil litigation clinics that provide such representation.⁷⁶ Further, because LGBT persons are at a greater risk of losing a job or not being hired, general law school clinics could provide preventative financial protections, such as cohabitation and support agreements, wills, and trusts.

⁷⁴ See, e.g., NAT’L GAY & LESBIAN TASK FORCE, *supra* note 39, at 2 (“37% of American Indian and Alaskan Native respondents lost a job due to bias, and 60% were denied a job because of their transgender identity or gender non-conformity, 65% of American Indian and Alaskan Native respondents were harassed, 14% were physically assaulted, and 10% were sexually assaulted at work.”).

⁷⁵ See Badgett et al., *supra* note 40, at 2 (“[A]n astonishing [ninety] percent of transgender people report some form of harassment or mistreatment on the job.”).

⁷⁶ See Kaplan, *The NAPLA/SAPLA Book of Law School Lists*, available at http://www.bu.edu/cas/files/2011/12/NAPLA_Lists2011_Book_v2.pdf; see, e.g., *Clinical Programs*, U. DEN. STURM COLLEGE OF L., <http://www.law.du.edu/index.php/law-school-clinical-program/clinical-programs/civil-litigation-clinic> (last visited July 17, 2016), *The Boston University Civil Litigation Program*, B.U. SCH. L., <http://www.bu.edu/law/central/jd/programs/clinics/civil/> (last visited July 17, 2016); *The Tulane Civil Litigation Clinic*, TUL. U. L. SCH., <http://www.law.tulane.edu/tlsAcademicPrograms/index.aspx?id=4176> (last visited July 17, 2016). Lambda Legal provides a legal tool kit that outlines LGBT workplace rights. See generally LAMBDA LEGAL, *OUT AT WORK*, available at <http://www.lambdalegal.org/publications/out-at-work> (last visited July 17, 2016).

D. TRANSGENDER PERSONS' COMMON LEGAL CONCERNS

"These are hard times, I know, but there is still no reason for me to not be able to find adequate employment. I am very passable until the employer runs my driver's license. I have to work as a Drag King for now and hope to at least make my mortgage payment."⁷⁷ Transgender individuals are unemployed at twice the rate of the general population.⁷⁸ For transgender persons of color, the rate is up to four times higher.⁷⁹ A comprehensive study of anti-transgender (and gender non-conforming)⁸⁰ discrimination in America found that 90 percent of respondents had experienced mistreatment on the job, and 47 percent reported being fired or not hired or promoted.⁸¹ Seventeen percent of those individuals sought to evade discrimination by hiding their gender identity.⁸² As noted, identification documents that do not match a transgender individual's appearance increase the risk of discrimination. Thus, law school clinics could help prevent transgender employment maltreatment by helping those individuals to change their legal names. Obtaining a court ordered name change is typically a straightforward and simple legal procedure. Nonetheless, bias and the fear of bias by the courts⁸³ mean that the assistance and advocacy of an attorney could be crucial for a transgender individual. Alternatively, clinical law students could provide educational workshops to the transgender community on navigating a name change proceeding without legal representation.

Gender changes on state identification documents are typically more complex, often requiring that an individual undergo sex reassignment surgery before the gender change is allowed.⁸⁴ But the majority of transgender individuals who transition do not undergo sex reassignment surgery for various reasons, including fear of bias and denial of service by

⁷⁷ See GRANT ET AL., *supra* note 3, at 154.

⁷⁸ *Id.* at 3.

⁷⁹ *Id.*

⁸⁰ GRANT ET AL., *supra* note 3, at 180 ("Gender non-conforming [is a] term for individuals whose gender expression is different from societal expectations and/or stereotypes related to gender.").

⁸¹ *Id.* at 3.

⁸² *Id.*

⁸³ See Sakimura & Redman, *supra* 2, at 31. ("Most transgender people have previously experienced misunderstanding or hostility from . . . the legal system.").

⁸⁴ See *Changing Birth Certificate Sex Designations: State-By-State Guidelines*, LAMBDA LEGAL, <http://www.lambdalegal.org/know-your-rights/transgender/changing-birth-certificate-sex-designations> (last visited July 15, 2016) (listing state by state requirements to change sex designations on birth certificates).

health care providers, lack of access to transgender-competent medical providers and expense.⁸⁵ Rather, hormonal treatment and counseling are the most commonly obtained gender transition related treatments.⁸⁶ Therefore, litigation or legislative advocacy is necessary in those states with laws requiring sex reassignment surgery before individuals are allowed to change their gender on a birth certificate and driver's license.

Regarding gender changes on federal identification documents, such as Social Security cards, each issuing agency has specific procedural requirements.⁸⁷ Law school clinics could easily provide information and guidance to transgender persons on each agency's procedure, thus facilitating critical protection for those individuals.

Transgender individuals face disproportionate discrimination and harassment by landlords, including eviction.⁸⁸ Many general law school clinics offer representation in landlord/tenant disputes, such as the Mississippi College School of Law's Mission First Legal Aid Clinic and the University of Idaho College of Law's General Clinic, but only twenty states and the District of Columbia protect transgender individuals from discrimination in housing.⁸⁹ The motivation behind the housing dispute, however, might be anti-transgender discrimination but the pretext is a non-discriminatory landlord/tenant issue (such as a landlord improperly withholding a security deposit). In that case, law school clinics in states without protective laws could still offer essential assistance to transgender individuals whose landlord target them based on bias.

If, like the youth in this Article's introduction, a transgender youth's parent or legal guardian rejects him or her, they may need to obtain legal emancipation⁹⁰—a transfer of control and legal decision-making authority from the parent or guardian to the youth. These vulnerable youth need the legal authority to make their own decisions because they must take care of themselves. Such decisions may include signing a lease or other contract, consenting to medical care, or deciding where and with whom they reside. Emancipation legal proceedings are typically not complex or lengthy—they

⁸⁵ See, e.g., GRANT ET AL., *supra* note 3, at 10-11, 77, 79.

⁸⁶ *Id.* at 78.

⁸⁷ See *id.* A GUIDE TO CHANGING CALIFORNIA & FEDERAL IDENTITY DOCUMENTS TO MATCH YOUR GENDER IDENTITY, TRANSGENDER L. CENTER (Jul. 2014), *available at* http://translaw.wpengine.com/wp-content/uploads/2012/05/ID_Please_FINAL_7.25.14.pdf (providing information on how to change federal identity documents).

⁸⁸ See Sakimura & Redman, *supra* note 2, at 31.

⁸⁹ See MAP, *supra* note 21.

⁹⁰ See, e.g., N.M.S.A. § 32A-21-3 (1978) (defining emancipation of a minor).

are often capable of being completed in one semester of law school.

E. JUVENILE JUSTICE AND EDUCATION ADVOCACY

LGBT minors, especially Latino and African-American youth, are disproportionately involved in the juvenile justice system.⁹¹ Although LGBT minors are 5-7 percent of the general youth population, they represent 15 percent of youth in the juvenile justice system.⁹² These youth are thought to enter the system in comparatively high numbers due to discrimination and alienation based on their sexual orientation or gender identity.⁹³ “Hostile school climates pave the way for . . . LGBT youth to spend less time in school and more time on the streets, thus increasing the likelihood of entering into the school-to-prison pipeline.”⁹⁴ As much as 40 percent of the young homeless population is LGBT.⁹⁵ Once homeless, LGBT youth may resort to criminal activity out of necessity, such as theft, dealing drugs, and sex work.⁹⁶ They are also at risk of police harassment and arrests for misdemeanors, such as under-age drinking and loitering.⁹⁷

⁹¹ See generally Randi Feinstein et al., *Justice for All?: A Report on Lesbian, Gay, Bisexual and Transgendered Youth in the New York Juvenile Justice System*, The Equity Project, LESBIAN AND GAY YOUTH PROJECT OF THE URBAN JUSTICE CENTER (2001), available at <http://www.hivlawandpolicy.org/sites/www.hivlawandpolicy.org/files/justiceforallreport.pdf> (discussing issues related to LGBT youth and their paths to incarceration); Preston Mitchum, *Infographic: Schools Are Failing LGBT Youth and Funneling Them into Prison*, CENTER FOR AM. PROGRESS (Feb. 27, 2014) <http://www.americanprogress.org/issues/lgbt/news/2014/02/27/83604/infographic-schools-are-failing-lgbt-youth-and-funneling-them-into-prison/> (discussing how school systems fail to provide for children, which increases the chances of their incarceration); Caitlyn Silhan, *Comment: The Present Case Does Involve Minors: An Overview of the Discriminatory Effects of Romeo and Juliet Provisions and Sentencing Practices on Lesbian, Gay, Bisexual and Transgender Youth*, 20 L. & SEXUALITY RV. LESBIAN GAY BISEXUAL & LEGAL ISSUES 97 (2011) (discussing government-sanctioned discrimination against LGBT youth that has resulted in a higher rate of incarceration for LGBT youth than their heterosexual peers).

⁹² See Mitchum, *supra* note 91.

⁹³ NCLR, *LGBTQ YOUTH IN THE JUVENILE JUSTICE SYSTEM* 1 (Jun. 2006); see generally Joseph J. Wardenski, *A Minor Exception?: The Impact of Lawrence v. Texas on LGBT Youth*, 95 J. CRIM.L. & CRIMINOLOGY, 1363, 1364 (Summer 2005) (“LGBT youth offenders’ experiences in the juvenile justice system—when they are arrested, tried in juvenile court, sentenced, and ultimately incarcerated—are plagued by intentional and unintentional discrimination because of their real or perceived sexual orientation.”).

⁹⁴ See Mitchum, *supra* note 91.

⁹⁵ See NCLR, *supra* note 93, at 10.

⁹⁶ See Feinstein et al., *supra* note 91, at 1.

⁹⁷ See Wardenski, *supra* note 93, at 1364.

⁹⁴ See Mitchum, *supra* note 91; see also GRANT ET AL., *supra* note 3, at 33 (“Those who expressed a transgender identity or gender non-conformity while in grades K-12 reported alarming rates of harassment (78%), physical assault (35%) and sexual violence (12%).”).

Attorneys who represent these juveniles typically do not have the experience and cultural competency to serve and advocate most effectively for them.⁹⁸

Destiny, a 16-year-old transgender girl, reported being sexually assaulted in juvenile facilities. Her court appointed attorney told the judge, “I think this young man has a lot of things — and I use the word man — to think about” and continued to argue in favor of commitment in the facility where Destiny was clearly unsafe. Destiny’s experience is a startling example of how an unsupportive counsel, an apathetic judge, and unsafe conditions can foster and exacerbate abuse within the criminal justice system.⁹⁹

LGBT youth critically need lawyers who have the relevant skills and cultural competency, for example, to combat discriminatory treatment during their incarceration.¹⁰⁰ With LGBT youth cultural responsiveness training, clinical law students could be those essential advocates.

Many law school clinics provide juvenile delinquency representation, for example, the University of Arkansas at Little Rock’s William H. Bowen School of Law’s Litigation Clinic in which students represent accused youth, and the University of Arkansas School of Law’s Juvenile Defense Clinic. Arkansas’ poverty rate of 19.5 percent is well above the national average of 15.9 percent,¹⁰¹ and it has an estimated 3.5 percent LGBT population.¹⁰² Given those statistics, it is inevitable that many local LGBT juveniles and their families are unable to afford private legal defense, and would rely on public defender aid or the assistance offered by those clinics. Although it is important for juvenile public defender departments to train their attorneys in culturally responsive service provision to LGBT youth, it may be more realistic for law school clinics to require that training.

Transgender youth have an especially pressing need for legal

⁹⁸ See Feinstein et al., *supra* note 91, at 35; see also Katayoon Majd et al., *Hidden Injustice: Lesbian, Gay, Bisexual, and Transgender Youth in Juvenile Courts*, CENTER HIV L. & POL’Y (Fall 2009), *available at* http://www.hivlawandpolicy.org/sites/www.hivlawandpolicy.org/files/hidden_injustice.pdf (examining issues that impact LGBT youth through the duration of the juvenile court process ranging from arrest through post-disposition).

⁹⁹ Sarah McBride, *New Criminal Justice Report Reminds Us That Transgender Discrimination Goes Beyond Bathrooms*, HUFFINGTON POST (Jun 08, 2016), *available at* http://www.huffingtonpost.com/sarah-mcbride/americas-broken-criminal-_b_10116204.html.

¹⁰⁰ *Id.* at 7.

¹⁰¹ See ALEMAYEHU BISHAW, *Poverty: 2010 and 2011*, AMERICAN COMMUNITY SURVEY BRIEFS at 3 (Sept. 2012), <https://www.census.gov/prod/2012pubs/acsbr11-01.pdf>.

¹⁰² See GATES & NEWPORT, *supra* note 20.

advocacy in public schools. Hostile school environments for those youth means that their safety is at risk, and they are more likely to be the victims of harm by peers, teachers, and staff than the perpetrators, as some suggest.¹⁰³ Nonetheless, they have been shamefully targeted¹⁰⁴ recently in response to the federal government directing public schools¹⁰⁵ to enforce the civil rights of transgender students under Title IX—which protects those students from discrimination on the basis of sex.¹⁰⁶ The federal directive stated that schools could not treat transgender students differently from students of the same gender identity. That includes allowing a transgender student to use the bathroom that corresponds to their gender identity, rather than their anatomical sex. Enforcement of the non-discrimination guidelines, however, requires advocacy at the local school district level. Clinical law students in child advocacy clinics could serve as such advocates in collaboration with community LGBT organizations and leaders, and provide individual representation for transgender students who experience discrimination in school.

F. IMMIGRATION LAW

In the United States, before the 2013 repeal of a portion of the Defense of Marriage Act (“DOMA”),¹⁰⁷ approximately 40,000 same-sex married couples with one non-citizen member were unable to obtain legal immigration status for the non-citizen based on marriage, unlike married

¹⁰³ See GRANT ET AL., *supra* note 3, at 37-38 (In addition to reported harassment and abuse by other students, “[r]espondents experienced considerable abuse, including harassment and bullying (31%), physical assault (5%) and sexual assault (3%) at the hands of teachers and staff.”); see, e.g., Jeff Brady, *When A Transgender Person Uses A Public Bathroom, Who Is At Risk?*, NPR, May 15, 2016, available at <http://www.npr.org/2016/05/15/477954537/when-a-transgender-person-uses-a-public-bathroom-who-is-at-risk>.

¹⁰⁴ See, e.g., Jack Healy & Richard Perez-Pena, *Solace and Fury as Schools React to Transgender Policy*, N.Y. TIMES, May 13, 2016, available at <http://www.nytimes.com/2016/05/14/us/transgenderbathrooms.html?action=click&contentCollection=Politics&module=RelatedCoverage®ion=Marginalia&pgtype=article>.

¹⁰⁵ U.S. Dept. of Education & U.S. Dept. of Just., *Dear Colleague Letter on Transgender Students*, (May 13, 2016), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>.

¹⁰⁶ Title IX of the Education Amendments of 1972, 20 U.S.C.A. §§ 1681 et seq. (2016).

¹⁰⁷ See Defense of Marriage Act, *supra* note 10; see also, Sharita Gruberg, *What the DOMA Decision Means for LGBT Binational Couples*, CENTER FOR AM. PROGRESS (Jun. 26, 2013), <http://www.americanprogress.org/issues/immigration/news/2013/06/26/68033/what-the-doma-decision-means-for-lgbt-binational-couples/>. (“[T]he repeal will permit legally married LGBT U.S. citizens and Lawful Permanent Residents, or LPRs, to sponsor their foreign-born spouses for green cards.”).

heterosexual binational couples.¹⁰⁸ These couples were forced to either live in the United States fearing deportation, to live countries apart, or away from home but together. With the legalization of same-sex marriage, immigration law clinics (those not solely practicing immigration defense) can now petition for the legal status of an LGBT couple's non-citizen member, which is not an exceptionally complex legal service.¹⁰⁹ Immigration Equality, an LGBT immigration legal service provider based in New York City, provides training to attorneys in LGBT immigration issues and could be a valuable training resource for law school clinics wishing to serve that population.¹¹⁰

The University of Tulsa College of Law in Oklahoma has an Immigration Rights Project clinic. That clinic could help low-income binational LGBT couples to petition for lawful permanent residency. The Immigration Rights Project also assists clients seeking asylum due to persecution or a fear of persecution in their home countries. For example, LGBT individuals face criminal or other persecution through harassment, physical and sexual assaults, or life imprisonment in Uganda and other nations.¹¹¹ The United States allows refugee asylum claims based on sexual orientation or gender identity.¹¹² Therefore, LGBT individuals at risk of persecution need assistance filing those claims from law school

¹⁰⁸ See Moni Basu, *Love Wins in Gay Couple's 40-Year Immigration Fight*, IMMIGR. EQUALITY (June 28, 2014 6:21 PM), <https://immigrationequality.org/cnn-love-wins-in-gay-couples-40-year-immigration-fight/> ("After DOMA's demise, about 40,000 such couples became eligible for immigration rights. Previously, they were forced to choose between love and country — and many of them lived in exile to be together.").

¹⁰⁹ See generally IMMIGRANT LEGAL RESOURCE CENTER, *Lesbian, Gay, Bisexual and Transgender (LGBT) Immigrant Rights*, <http://www.ilrc.org/info-on-immigration-law/lgbt-immigrant-rights> (last visited July 17, 2016) (providing resources to legal professionals working with LGBT immigrants).

¹¹⁰ See generally IMMIGR. EQUALITY, <http://immigrationequality.org> (last visited July 17, 2016) (Immigration Equality provides training to attorneys on LGBT immigration issues and training resources for law school clinics).

¹¹¹ See, e.g., *Making Love a Crime: Criminalization of Same-Sex Conduct in Sub-Saharan Africa*, AMNESTY INT'L (June 24, 2013), <http://www.amnestyusa.org/research/reports/making-love-a-crime-criminalization-of-same-sex-conduct-in-sub-saharan-africa> (describing increasing reports of harassment, discrimination, and attack on LGBTI individuals in sub-Saharan Africa); see also *Uganda: Law Rolls Back Basic Rights*, HUM. RTS. WATCH (Feb. 24, 2014), <http://www.hrw.org/news/2014/02/24/uganda-law-rolls-back-basic-rights> (describing the "deeply worrying infringement on the human rights" of Ugandans with President Yoweri Museveni's signing of the Anti-Homosexuality bill).

¹¹² See generally Heather McClure et al., *Preparing Sexual Orientation-Based Asylum Claims: A Handbook for Advocate and Asylum Seekers*, MIDWEST HUM. RTS. PARTNERSHIP FOR SEXUAL ORIENTATION & LESBIAN & GAY IMMIGR. RTS TASK FORCE 11 ("Political asylum' is a generic term for 'asylum,' and includes asylum based on sexual orientation.").

clinics that practice in that area of law.

G. BUSINESS AND TAX LAW

Same-sex couples who wish to engage in business together may need assistance formalizing their agreements. That assistance may include business entity formation, partnership agreements, and other contracts that protect same-sex family held businesses. Transactional law clinics typically offer business formation and contract drafting, and they could gain the expertise necessary to address any LGBT-specific needs.

Low-income LGBT families may need assistance to claim the Earned Income Tax Credit, a crucial and significant social safety net program available to low-income families.¹¹³ Low-income taxpayer clinics are already providing that legal assistance to tax payers, directly or through public education, such as the clinics at the University of New Mexico School of Law and the University of Idaho College of Law.¹¹⁴ Idaho is one of the five states with the highest proportion of LGBT parents,¹¹⁵ and its rate of children living in poverty is consistently around 19 percent.¹¹⁶ In 2014, New Mexico's overall poverty rate was 20.9 percent,¹¹⁷ and 30 percent of its children lived in poverty.¹¹⁸ In 2016, it ranked forty-eight out of fifty among states in the nation for children's economic well-being.¹¹⁹ Therefore, in both New Mexico and Idaho, the income from the tax credit could prove essential for low-income LGBT families to meet their basic needs. As such, the tax advice and assistance

¹¹³ See Chuck Marr et al., *EITC and Child Tax Credit Promote Work, Reduce Poverty, and Support Children's Development*, CENTER ON BUDGET & POL'Y PRIORITIES (Oct. 1, 2014), available at [http://www.cbpp.org/cms/?fa=](http://www.cbpp.org/cms/?fa=view&id=3793)

[view&id=3793](http://www.cbpp.org/cms/?fa=view&id=3793) (discussing the purpose and benefits of the Earned Income Tax Credit as a poverty reducing program).

¹¹⁴ See, e.g., *Clinics*, U. IDAHO COLLEGE L., <http://www.uidaho.edu/law/academics/clinicsprofessionalskills/clinics> (last visited July 17, 2016); *Low Income Taxpayer Clinic Map*, INTERNAL REVENUE SERVICE, https://taxpayeradvocate.irs.gov/about/litc?_ga=1.139960821.756426982.1477682982 (listing low income taxpayer clinics throughout the country, including the University of New Mexico Business and Tax clinic).

¹¹⁵ See Gates, *supra* note 36, at 1.

¹¹⁶ See ANNIE E. CASEY FOUND., *supra* note 58.

¹¹⁷ See U.S. CENSUS BUREAU, *supra* note 57.

¹¹⁸ See ANNIE E. CASEY FOUND., *supra* note 58.

¹¹⁹ See *Economic Well-Being Rank*, KIDS COUNT DATA CENTER, THE ANNIE E. CASEY FOUND., <http://datacenter.kidscount.org/data/tables/7246-economic-rank?loc=1&loct=2#detailed/2/2-9,11-52/false/870,573,869,36,868/any/14340> (last visited July 17, 2016).

those law school clinics offer could make a vital difference in the lives of those children.¹²⁰

IV. LAW SCHOOL CLINICAL PROGRAMS CAN HELP MEET THE LEGAL NEEDS OF LOW-INCOME LGBT PERSONS WHILE PROVIDING STUDENTS VALUABLE PROFESSIONAL SKILLS

Low-income LGBT persons have historically turned to legal aid organizations for their legal needs, but those organizations cannot meet their needs. Similar to legal aid organizations, a common mission of law school clinical programs is to serve those who would otherwise be unable to afford legal assistance—thus enabling access to justice.¹²¹ The benefits of providing law students with the training and opportunity to serve low-income LGBT clients has professional value beyond the increased availability of legal assistance to those clients, in that it would evoke the students' "sense of social responsibility."¹²² Typically, a law school clinic's mission includes serving marginalized groups.¹²³ That mission fits well into the cultural competency training that some law school clinics offer.¹²⁴ Out of approximately 1,036 distinct law school clinics in the

¹²⁰ See generally *Online LGBT Tax Resource: State Listing*, THE LGBT BAR, <http://lgbtbar.org/tax/> (last visited July 17, 2016) (providing tax resources for each state).

¹²¹ See, e.g., Frank S. Bloch, *New Directions in Clinical Legal Education: Access to Justice and the Global Clinical Movement*, 28 WASH. U. J.L. & POL'Y 111, 111 ("Access to justice is widely accepted as a central component of clinical legal education in the United States."); April Land, "Lawyering Beyond" Without Leaving Individual Clients Behind, 18 CLINICAL L. REV. 47, 50 (2011) ("The representation of individual clients in poverty has been at the core of clinical legal education since its inception."); see also Stephen Wizner, *Beyond Skills Training*, 7 CLINICAL L. REV. 327, 332 (Spring 2001) ("The founders of the clinical movement, responding to the social ferment and legal rights explosion of the 1960's, envisioned clinical legal education not only as a way of enriching legal education with professional training, but as a means of stimulating law schools to attend to the legal needs of the poor, and engaging students in the pursuit of social justice . . . the first generation of clinical teachers came from the world of legal services, civil rights, and public interest practice. They were social activist lawyers who had eschewed careers in private practice in order to work for social and economic justice. It was this orientation that they brought with them when they entered clinical teaching.").

¹²² See Wizner, *supra* note 121, at 329-30.

¹²³ See *id.* at 338 ("At the heart of the education provided by our clinical faculty stand individual clients and the interests of disadvantaged peoples.").

¹²⁴ There is criticism from legal academics that law schools in general do not emphasize training law students in cultural competency. See Cynthia M. Ward & Nelson P. Miller, *Cultural Awareness: The Role of Law Schools in Shaping Culturally Competent Lawyers*, 89 MI BAR J. 16, 18 (Jan. 2010) ("Law school clinical programs are another convenient area in which to incorporate cultural-competence training."). See, e.g., Beverly I. Moran, *Disappearing Act: The lack of Values Training in Legal Education—A Case for Cultural Competency*, 38 S.U. L. REV. 1, 2 (Fall 2010) ("Unlike, for example medical education, legal education has not adopted cultural competency as

nation that offer direct client representation by students,¹²⁵ only six are dedicated to specifically serving LGBT clients.¹²⁶ Of the six, one is an advocacy only project,¹²⁷ and the others offer both direct client representation and advocacy. Except for Indiana University's Maurer School of Law's LGBT Project, the geographical concentration of those LGBT specialized law clinics is in the Northeast U.S. The Northeast, as opposed to the Midwest or the South, however, is much more likely to have existing LGBT legal resources.¹²⁸

It is not realistic, practical, or necessary for law school clinical programs to devote the resources required to create an LGBT specialized clinic. As described in Part III, many of the common legal needs that low-income LGBT persons have are already provided by non-LGBT specialized clinical law programs. General law clinics are inevitably already serving

a value much less a fundamental practice skill.”). Despite that criticism, some law schools explicitly make it their goal to train culturally competent lawyers. *See, e.g., Neal & Bea Smith Legal Clinic*, DRAKE L. SCH., <http://www.drake.edu/law/clinics-centers/clinic/> (last visited July 17, 2016). Schools should take advantage of that educational opportunity to teach cultural competence.

¹²⁵ DAVID A. SANTACROCE & ROBERT R. KUEHN, CENTER FOR THE STUDY OF APPLIED LEGAL EDUCATION, THE 2010-11 SURVEY OF APPLIED LEGAL EDUC. 7 (2011), *available at* <http://www.csale.org/files/CSALE.Report.on.2010-11.Survey.5.16.12.Revised.pdf> (summarizing the survey of 194 American Bar Association accredited U.S. law schools on LGBT related topics and stating that 156 schools reported a total of 1,036 “distinct live-client clinics offered in the fall 2010 term”).

¹²⁶ Those six schools are The Advocacy for LGBT Communities Clinic (LGBT Clinic) at Cornell Law School; Columbia Law School's Sexuality and Gender Law Clinic; Harvard Law School's The Lesbian, Gay, Bisexual and Transgender (LGBT) Law Clinic; Yale Law School's LGBT Litigation Clinic; The Lesbian, Gay, Bisexual, and Transgender Project at the Indiana University's Maurer School of Law; NYU Law School's The LGBT Rights Clinic. It is not reasonable to expect or to ask that many more law schools develop LGBT specialized clinical law programs due to their limited resources and the need for legal services in other marginalized groups besides the LGBT community. While most law schools do not specialize in serving LGBT clients, many law schools have LGBT student organizations and offer courses specific to LGBT issues. *See Diversity in Law School, Law School LGBT Survey Results*, L. SCH. ADMISSION COUNCIL, (Jul. 2014), <http://www.lsac.org/jd/diversity-in-law-school/lgbt-chart> (last visited July 17, 2016) (showing the results of a 2016 survey on LGBT diversity in U.S. law schools and reporting that of the one hundred and fifty law schools that responded, only three did not have LGBT student organizations, and forty offered no courses on LGBT legal issues).

¹²⁷ *Maurer School of Law's LGBT Project*, LGBT PROJECT, <http://www.law.indiana.edu/what/professional-careers/experiential-education/projects/lgbt.shtml> (last visited November 20, 2016).

¹²⁸ That is not to say that the contribution of the LGBT specialized clinical law programs is not wholly needed and welcome. The LGBT legal assistance resources in the Northeast include the Gay & Lesbian Advocates and Defenders, Boston, M.A. serving New England, New York Legal Assistance Group's LGBT Law Project, Gender Rights Advocacy Association of New Jersey, National Center for Lesbian Rights has an office in Washington, D.C., and Lambda Legal in New York.

LGBT clients. Common LGBT legal needs, such as name changes, wills, powers of attorney, advance directives, transfer on death deeds, and some contracts, are not typically complex legal matters that require extensive litigation and time. They could easily be incorporated, if not already offered, by law school clinics. However, although the resources for clinics to serve LGBT clients already exist, the cultural competency to do so may not. Thus, clinics should undertake LGBT cultural responsiveness training, which I address next.

A. HOW TO ENCOURAGE ACCESS AND EFFECTIVELY PROVIDE LEGAL SERVICES TO LOW INCOME LGBT CLIENTS

It is one of the “aims” of the legal profession to increase access to justice.¹²⁹ Fears of discrimination, hostility and judgment have long been significant barriers to LGBT persons accessing legal, social, mental health, and health care services. “Because of past and ongoing experiences of discrimination or invisibility, many LGBT individuals who need access to legal aid may fear that they will not be welcome or safe within our agencies or in the justice system—and may therefore not seek out the help they need.”¹³⁰ This reluctance is especially true for LGBT elders and transgender individuals.¹³¹ “Most transgender people have previously experienced misunderstanding or hostility from other service providers and the legal system.”¹³²

¹²⁹ ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP, CLINICAL LEGAL EDUC. ASS’N 61 (2007) (stating that two of the five aims of the legal profession are to “provide access to justice” and “encourage diversity”).

¹³⁰ See Sakimura et al., *supra* note 14, at 338.

¹³¹ See, e.g., Shiloh D. Erdley, Donald D. Anklaam & Christina C. Reardon, *Breaking Barriers and Building Bridges: Understanding the Pervasive Needs of Older LGBT Adults and the Value of Social Work in Health Care*, 57 J. GERONTOLOGICAL SOC. WORK 362 (Dec. 2013); Flaxman, *supra* note 42, at 40 (stating that LGBT seniors “have lived most of their adult lives knowing that it was not safe to access mainstream health and social services, or our justice system.”); Hilary Meyer, *Safe Spaces? The Need for LGBT Cultural Competency in Aging Services*, 21 PUB. POL’Y & AGING REP. 24, 24 (Summer 2011) (“LGBT individuals are victims of harassment, hostility, and neglect by caregivers and health care facilities in startling numbers.”); Sakimura & Redman, *supra* note 2, at 31. See generally Emily K. Simpson & Christine A. Helfrich, *Lesbian Survivors of Intimate Partner Violence: Provider Perspectives on Barriers to Accessing Services*, 18 J. OF GAY & LESBIAN SOC. SERVS. 39 (2005); Cathleen E. Willging, Melina Salvador & Miria Kano, *Pragmatic Help Seeking: How Sexual and Gender Minority Groups Access Mental Health Care in a Rural State*, 57 PSYCHIATRIC SERV. 871 (Jun. 2006), available at <http://ps.psychiatryonline.org/article.aspx?articleID=96791> (“Homophobia and transphobia in extant treatment settings make rural [LGBT] residents . . . particularly wary of professional services.”).

¹³² See Sakimura & Redman, *supra* note 2, at 31.

LGBT persons may be warier of accessing legal services in states with hostile legal and political climates. To encourage access in those states, law school clinics should make a concerted effort to reach out to local LGBT (non-legal) organizations and school LGBT student groups, if any, to build trusting relationships and referral sources. The following list suggests additional ways to potentially increase legal service to the low-income LGBT community:

- Create a law student project to develop *pro se* forms and instructions for straightforward court filings relevant to the LGBT population, such as name change petitions.¹³³ And have those students provide trainings at local LGBT community organizations on filing *pro se*.
- Develop and offer LGBT youth “Know Your Rights” presentations by clinical law students to LGBT youth in collaboration, for example, with local high school Gay-Straight Alliances.¹³⁴
- Incorporate LGBT client hypotheticals into clinic seminars and practical skill building exercises, such as interviewing, counseling, fact gathering, and mediation.
- Offer across clinic representation of LGBT families who have multiple legal issues, such as estate planning, child custody, and juvenile delinquency defense or immigration representation.
- Offer brief LGBT legal service events at LGBT community organizations and health care sites. The services could include advice on common LGBT legal issues, forms and instruction on the importance of identifying LGBT affirming surrogates, completing powers of attorney, advance directives, and name change pleadings, etc.¹³⁵
- Distribute LGBT “Know Your Rights”¹³⁶ pamphlets at law school

¹³³ See, e.g., *LSC Report of The Pro Bono Task Force: Involving Law Students*, LSC (Oct. 2012), http://files.dlapiper.com/files/upload/04385_LSC_Appendix_Involving_Law_Students.pdf (discussing the development of cyber clinics where law students develop content for statewide legal aid websites).

¹³⁴ *Gay-Straight Alliances*, GLSEN, <http://www.glsen.org/participate/student-action/gsa> (last visited November 20, 2016) (“Gay-Straight Alliances (GSAs) are student clubs that work to improve school climates for all students, regardless of sexual orientation or gender identity/expression.”).

¹³⁵ Through the University of New Mexico Clinical Law Program’s LGBT project, clinical law students provide legal information and forms, including powers of attorney, advance directives and name change pleadings during brief service events at LGBT community partner sites, such as the Transgender Resource Center of New Mexico.

¹³⁶ See, e.g., *Know Your Rights: Transgender*, LAMBDA LEGAL, <http://www.lambdalegal.org/know-your-rights/transgender?gclid=CO7At4rP->

public events, including those organized and hosted by LGBT student organizations.

- Invite local LGBT organizations to law school public events to distribute their literature and to establish relationships with those groups and their constituents.
- Arrange a law school clinic presence at LGBT Pride events, and hand out LGBT “Know Your Rights” pamphlets and your clinic’s materials describing its legal service offerings.

It is crucial that clinical programs reach out to local and state LGBT community organizations. First, to learn about the specific legal needs of the local LGBT population and barriers to service access. Second, to enlist those organizations’ expertise and cultural responsiveness training knowledge and resources. Finally, to build trust with their constituencies—enabling potential client referrals. Even in locales with small LGBT populations, there are typically community groups where LGBT persons go for support and to socialize, to identify gay and transgender “friendly” service providers, and for advocacy. These are organizations that the LGBT community trusts. Referrals for legal services by those organizations would be considered safe by that population.¹³⁷ Those organizations often have an education and outreach component, with experts who conduct community training in LGBT cultural competency or raise awareness of the issues affecting LGBT persons.¹³⁸ Many, if not most, law school clinics have a long history of community outreach and collaboration. Those existing outreach skills can be extended to LGBT community groups if such collaborations do not already exist. State LGBT bar association groups could be a resource to identify local LGBT legal needs and organizations or attorneys who could provide LGBT-specific legal training to the clinic. In locales where there are no LGBT bar association groups, there may be attorneys who

c0CFZSIaQodhi8Piw (last visited July 16, 2016) (answering various frequently asked legal questions by transgender individuals.).

¹³⁷ Jerel McCrary, *Two Steps Forward, One Step Back: Providing Family Law Services to LGBT Clients at a Legal Services Organization*, 26 MGMT. INNOVATION EXCELLENCE FOR LEGAL AID, J. 10, 12 (Spring 2012), available at <http://www.crla.org/sites/all/files/content/uploads/Resources/2012SpringJournal.pdf> (“Especially for legal services offices that are not located in locales normally identified as ‘gay friendly,’ it is important to conduct outreach in places where LGBT participants feel safe, such as a gay community center.”).

¹³⁸ *Id.* at 13 (“It is not sufficient merely to conduct training at an LGBT agency or to notify them of your availability to serve LGBT clients. Relationships between key personnel in each agency will assure the community agency that their clients will be comfortable and treated with respect at legal services.”).

specifically represent LGBT clients—their legal expertise and cultural knowledge could be a helpful resource.¹³⁹

Cultural responsiveness training should include reflecting on and building empathy towards, LGBT prospective clients who are wary of seeking legal help because they fear bias. A “[l]ack of cultural competency can be a barrier to establishing a relationship of trust and confidence with clients . . . It can also affect client access to legal aid . . .”¹⁴⁰ The good news is that providing some basic training on LGBT issues to an organization’s staff appears to result in significantly increased requests by LGBT persons for assistance.¹⁴¹ Because persons of color are more likely to identify as LGBT,¹⁴² it is especially important to train students and staff on the intersection of race and ethnicity with sexual orientation and gender identity.¹⁴³

Providing culturally responsive services to LGBT clients begins with the goal to create an environment where bias and stereotyping do not impede the professional relationship, and trust characterizes the attorney-client relationship.¹⁴⁴ In its “Best Practices for Legal Education” report, The Clinical Legal Education Association states: “It is important for law schools to help students develop their capacity to deal sensitively and effectively with clients and colleagues from a range of social, economic, and ethnic backgrounds. Students should learn to identify and respond positively and appropriately to issues of culture . . . that might affect communication techniques and influence a client’s objectives.”¹⁴⁵ Catherine Sakimura, Daniel Torres, and Cole Thaler describe six

¹³⁹ See, e.g., GAY LAW NET, <http://www.gaylawnet.com/attorneys/attorneys.html> (last visited July 16, 2016) (providing a directory of LGBT attorneys).

¹⁴⁰ See Sakimura et al., *supra* note 14, at 338.

¹⁴¹ See Kelly Abel Knochel, Catherine F. Croghan, Rajean P. Moone & Jean K. Quam, *Ready to Serve?: The Aging Network and LGB and T Older Adults*, LGBT AGING CENTER 4 (2010), available at <http://www.n4a.org/files/ReadyToServe1.pdf> (“Agencies with trained staff were three times more likely to have received a request to assist a transgender person and twice as likely to have received an LGB request for help.”).

¹⁴² Gary J. Gates and Frank Newport, *Special Report: 3.4% of U.S. Adults Identify as LGBT*, (Oct. 2012) available at <http://www.gallup.com/poll/158066/special-report-adults-identify-lgbt.aspx>.

¹⁴³ See generally NAT’L RESOURCE CENTER ON LGBT AGING, <http://www.lgbtagingcenter.org/training/index.cfm> (last visited July 17, 2016) (providing resources and webinars on providing legal services to LGBT elders of color).

¹⁴⁴ See generally Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33, 64-78 (Fall 2001) (encouraging students to explore themselves as cultural beings who have and are influenced by biases and stereotypes, to create settings in which bias and stereotype are less likely to govern, and to seek to eliminate bias).

¹⁴⁵ STUCKEY, *supra* note 129, at 66.

fundamentals of providing culturally competent legal assistance to LGBT clients: (1) leadership and vision from the organization's management; (2) ongoing training, needs assessments, and evaluations "to insure that LGBT-inclusive work becomes institutionalized"; (3) a welcoming office climate that "[conveys] a message of respect and inclusion"; (4) a respectful intake system, "building client trust" from the outset of the attorney-client engagement; (5) inclusive case handling practices, including purposeful communications within the agency and with the courts, "while protecting each client's dignity and privacy"; and (6) active outreach and messaging, including inclusive language in marketing and outreach materials.¹⁴⁶

Law school clinics could follow these six fundamentals by: (1) adding "gay friendly," inclusive language to their clinical law program websites, specifically to any prospective client page; (2) reaching out to local LGBT community organizations to build relationships and referrals; (3) adding a section under demographic data that includes gender identity and sexual orientation questions;¹⁴⁷ (4) including intake interview questions asking the prospective client's preferred gender pronouns, name and their sexual orientation;¹⁴⁸ and (5) providing cultural responsiveness training to clinic staff, students, and attorneys.¹⁴⁹

Additional examples of implementing the six fundamentals of providing culturally responsive legal services to the LGBT community are to:

- Incorporate LGBT-inclusive language and specify the clinic's LGBT legal services offerings in its marketing or outreach materials;
- Develop a survey for local LGBT organizations to disseminate to their constituents that identify and help to prioritize LGBT legal needs in that community;
- Consistently use a transgender client's name and the gender pronouns that she or he prefers (if different from their legal name and/or gender) on case files and in the case management system, to enable

¹⁴⁶ See Sakimura et al., *supra* note 14, at 337-339.

¹⁴⁷ See also *id.* at 339-40 (providing an example of how these questions could be added to an intake form and stating that "[t]he best practice is to incorporate questions about gender identity and sexual orientation into your standard intake form and allow clients to self-identify").

¹⁴⁸ See also *id.* at 341 ("Ask about a client's sexual orientation or gender identity just as you would ask any other questions about the client's life or identity. Do not create a stigma when asking these questions by stating that the questions are 'personal questions' or may be 'sensitive' . . . [that] sends the message that there is something wrong with being LGBT or that you are uncomfortable with LGBT clients.").

¹⁴⁹ See *id.* at 337-340 (providing examples of how to implement the six fundamentals).

clinic staff and attorneys to address them correctly;

- Educate clinic staff, students, and attorneys to be cognizant of sexual orientation and gender identity assumptions based on a client's appearance, manner of speech, etc.;
- Establish policies for maintaining the confidentiality of a client's sexual orientation and gender identity in outside communications (should the client wish that to remain private); and
- Train those in the clinic how to appropriately address instances of LGBT bias within that workplace.

Culturally responsive engagement with transgender clients requires training all clinic staff not to presume they know a client's gender identity based on their appearance or their speaking voice (and then addressing them as "sir" or "ma'am"), as well as to consistently use the client's preferred name and pronouns when communicating within the clinic about the client's case.¹⁵⁰

For LGBT seniors specifically, the National Resource Center on LGBT Aging¹⁵¹ describes cultural competency as encompassing three primary areas: cultural awareness, cultural humility, and cultural responsiveness. First, "cultural awareness" means becoming knowledgeable about what LGBT older adults typically experience when accessing—or thinking about accessing—services.¹⁵² Second, "cultural humility" means that no matter how much one learns about a culture, each individual is the expert on their own experience.¹⁵³ Third, "cultural responsiveness" means "learning new patterns of behavior and effectively applying them individually and within the organization's setting."¹⁵⁴ Cultural awareness includes sensitivity to and compassion about LGBT seniors' heightened fear of facing bias by legal providers because of the hostile cultural and legal context in which the seniors grew up. Cultural humility includes training legal providers to allow for individual differences in experiences and concerns among LGBT senior clients. A clinic should request client feedback on a regular basis to assess and improve its cultural

¹⁵⁰ See Sakimura & Redman, *supra* note 2 **Error! Bookmark not defined.**, at 30-31.

¹⁵¹ The National Resource Center was created from a grant by the U.S. Department of Health and Human Services to serve as a resource for LGBT organizations and individuals, along with non-LGBT elder focused agencies, to plan for the long term care needs of elders. See *About Us*, NAT'L RESOURCE CENTER ON LGBT AGING, <http://www.lgbtagingcenter.org/about/background.cfm> (last visited July 16, 2016).

¹⁵² See Meyer, *supra* note 131, at 25.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

responsiveness, including asking LGBT elder clients directly about their clinic experience. That feedback would identify any clinic-wide issues that the clinic could then address, with the goal of establishing culturally responsive institutional norms.

B. THE VALUE OF PROVIDING LAW STUDENTS WITH THE OPPORTUNITY AND TRAINING TO EFFECTIVELY SERVE LOW-INCOME LGBT CLIENTS

Law school clinics, like “[l]egal aid services are already serving LGBT clients, but without changing our practices and policies to allow us to provide respectful and competent services to them, we cannot fulfill our mission to ensure that all people have equal access to justice.”¹⁵⁵ Based on the law of averages, law students who become practicing attorneys, regardless of the area of law, will, at some point, serve one or more LGBT clients¹⁵⁶—whether or not those clients feel safe and comfortable enough to “come out” to them. Having learned LGBT culturally responsive representation, their LGBT clients are more likely to disclose their sexual orientation and/or gender identity (spontaneously or in response to being asked). That disclosure could reveal otherwise unrecognized legal issues, establish increased trust, and lead to more effective advocacy.¹⁵⁷

“There is little question that an increasingly diverse society has had and will continue to have a significant impact on the provision of professional services generally and, more specifically, legal services and the training of lawyers.”¹⁵⁸ Clinical law programs are training venues. As such, they offer a safe and supportive environment for budding attorneys to learn how to provide effective legal service. That includes sensitive and respectful client engagement with diverse groups—including LGBT clients. Clinics naturally are environments where not knowing the answer but asking the question, engaging in self-reflection,¹⁵⁹ addressing misperceptions and bias, are encouraged. This questioning is especially

¹⁵⁵ See Sakimura et al., *supra* note 14, at 342.

¹⁵⁶ See GRANT ET AL., *supra* note 3 (summarizing the population of LGBT individuals in the United States); Flaxman, *supra* note 42, at 40 (“[A]nyone who works with senior is working with LGBT seniors, whether they know it or not. No matter whom you are working with . . . you are working with LGBT . . . clients.”).

¹⁵⁷ See Sakimura et al., *supra* note 14, at 337 (“[U]nless we understand the legal protections available to LGBT people and create a space for LGBT clients to discuss their sexual orientations and gender identities with us, we may miss available claims for relief and thus be unable to provide them with competent representation.”).

¹⁵⁸ See Ward & Miller, *supra* note 124, at 19.

¹⁵⁹ See STUCKEY, *supra* note 129, at 48 (stating that reflection is one of the attributes of “effective” and “responsible” lawyers).

important when teaching students how to address barriers and effectively serve marginalized clients—about whom misperceptions are common. It is understandable that a student could be uncomfortable when faced with unfamiliar cultural identities, including LGBT.¹⁶⁰

That discomfort presents a valuable opportunity to train students to be culturally responsive and to engage and advocate effectively for LGBT clients and others. Proactively addressing such discomfort is necessary because it is inevitable that law school clinics have already, and will have, LGBT clients. According to the “MacCrate Report” by the American Bar Association Task Force on Law Schools and the Profession, one of the “fundamental” values of the legal profession is an obligation to promote “justice, fairness, and morality.”¹⁶¹ With appropriate training, serving marginalized populations, like low-income LGBT persons, gives law students the necessary practice in “according appropriate dignity and respect to all people with whom one interacts in a professional capacity”; and “refraining from . . . any form of discrimination on the basis of . . . sexual orientation . . . in one’s professional interactions with clients.”¹⁶² It is critical to train a clinical law student to accord dignity and respect to LGBT clients before a live client engagement to prevent possible harm before it occurs.¹⁶³

During their time in the clinic, law students likely receive more supervision and support than at any other time in their careers. Their LGBT clients would reap the benefits from the oversight of clinical law professors, many of whom have years of experience in building trust in client relationships, engaging clients with empathy and respect, protecting client confidentiality, effectively advocating for clients, and inspiring a commitment to serve the underserved and disenfranchised. Those fortunate clients would gain a different perspective on asking for help from the legal system, help they very much need.

We are compelled to treat our clients with dignity and respect, and to competently represent them.¹⁶⁴ “With an increasingly diverse potential

¹⁶⁰ See Sakimura et al., *supra* note 14, at 337 (“Given the political and cultural stigma around issues of sexual orientation and gender identity, some individuals and organizations may find that improving services to LGBT clients seems new, unfamiliar, or even uncomfortable.”).

¹⁶¹ ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUC. AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 136 (July 1992).

¹⁶² *Id.* at 214.

¹⁶³ See STUCKEY, *supra* note 129, at 54 (“Law teachers should . . . be careful not to ask students to demonstrate knowledge and skills until they have a fair opportunity to acquire them.”).

¹⁶⁴ The American Bar Association’s Model Rule of Professional Conduct 1.1 requires the

client base, lawyers cannot ignore cultural competency. Lawyers must provide competent legal services. Competent service depends on understanding the clients whom lawyers serve.”¹⁶⁵ Law school clinics offer an invaluable opportunity for law students to learn from the outset to effectively represent LGBT clients. Their inevitable future LGBT clients would benefit directly from that learning.

V. CONCLUSION

The rapid shift in the legal and social landscape regarding same-sex relationships and marriage notwithstanding, LGBT persons continue to have a pressing need for legal services. The need remains because disproportionate poverty, bias, and the continuing legal disenfranchisement beyond marriage are ongoing harms and vulnerabilities that require legal assistance. Poverty and fear of bias continue to prevent LGBT low-income persons from seeking and receiving legal services. Across the U.S., legal aid organizations cannot meet the direct representation needs of this population—most of whom have nowhere else to turn. Law school clinics are uniquely situated to step into that access to justice gap. And they are well suited to address cultural biases and to provide culturally responsible legal services. Those clinics are inevitably already serving low-income LGBT persons and already offer the legal services they need. With the resolve to be a safe and culturally responsive service provider, they could do so more capably. Perhaps most importantly, clinics have the distinct and precious opportunity to train a generation of LGBT culturally responsive lawyers, profoundly benefitting their future LGBT clients.

provision of “competent” legal services to clients. See MODEL RULES OF PROFESSIONAL CONDUCT R. 1.1 (1983).

¹⁶⁵ Ward & Miller, *supra* note 124, at 16 (outlining the role of law schools).