

CLINICAL USE OF INCLUSIVE LANGUAGE

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Lawyers' primary professional tool is language. Lawyers should strive to use accurate, clear, and compelling word choices in their communications. Attorneys have the responsibility to use words that demonstrate respect for our clients and others. In addition, clinical instructors seek to further pedagogical and representation goals while also communicating principles of diversity, equity, and inclusion. This paper discusses the importance of inclusive language in legal practice and education, highlighting its role in clinical pedagogy.

The paper outlines a multi-factor framework for inclusive language decision-making: reflect, respect, accuracy, precision, relevance, and audience. This framework allows flexibility and contextual analysis, accommodating evolving language norms. The paper also examines the adoption of inclusive language in legal clinics, emphasizing its importance in student education and advocacy. By analyzing various identity categories, such as race, ethnicity, gender, and disability, among others, the paper demonstrates how clinics model inclusive language practices in their representation and communication. Overall, the project underscores the significance of inclusive language in promoting accessibility, justice, and equity within legal education and practice.

INTRODUCTION

Lawyers' primary professional tool is language.¹ Accordingly, lawyers should strive to use accurate, clear, and compelling word choices in their communications. Attorneys have the responsibility to use

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¹ See generally Jennifer Safstrom & Joseph Mead, *Developing Inclusive Language Competency in Clinical Teaching*, 29 CLIN. L. REV. 349 (2023).

words that demonstrate respect for our clients and others. In addition, clinical instructors seek to further pedagogical and representation goals while also communicating principles of diversity, equity, and inclusion (“DEI”) that are core to promoting accessibility and the principles of justice that ground our legal work.²

Inclusive language principles help to guide lawyers in choosing the most appropriate words to engender respect, amplify understanding, and enhance communication. While this requires nuanced analysis specific to the context and individuals involved, inclusive language can have a myriad of benefits. Beyond mere grammatical accuracy or linguistic specificity, word choices can help build relationships, foster understanding, and provide insight into personal narratives.³ Inclusive language is a goal unto itself, not simply a means to achieving advocacy goals, whether in the context of litigation, legislation, or community education.

As student attorneys in a clinic, law students may encounter these issues in practice for the first time. Looking at clinics as a microcosm of the broader legal community, this paper considers the inclusivity of clinics’ language choices. To contextualize this assessment, this paper employs a framework for inclusive language decision-making, discusses current best practices, summarizes current social and legal trends, and analyzes the implications of language choices through clinics’ work product and public communications. This Article deeply focuses on the language choices clinics have adopted and the application of these principles. The analysis considers how these language choices are reconciled with patterns in practice and court use. This Article connects these principles to larger academic and practice issues, including law schools’ experiential learning work in clinics and their mandate to provide instruction on professional identity, bias, cultural competency and humility, and racism. The Article also considers debates within the legal profession on the adoption of DEI efforts more broadly, as a backdrop for these considerations.

I. FRAMEWORK FOR INCLUSIVE LANGUAGE DECISION-MAKING PRINCIPLES

This Article builds upon prior scholarship setting forth key considerations for inclusive language decision-making in a multi-factor framework—reflect, respect, accuracy, precision, relevance, and audience.⁴ These key values help to facilitate critical self-reflection, which is

² Jayne Reardon, *Inclusive Language Is Allyship*, 2CIVILITY (Apr. 22, 2021), <https://www.2civility.org/inclusive-language-is-allyship/> [https://perma.cc/D6L8-DH4J].

³ Safstrom & Mead, *supra* note 1, at 369.

⁴ *Id.* at 361–69.

both inherent in the clinic pedagogical model and a critical lawyering skill.⁵ “Scholars have described clinical pedagogy as a ‘Prepare-Perform-Reflect’ methodology”: “clinical teaching connects the cognitive, practical, and ethical aspects of lawyering, [] provides students opportunities to apply their knowledge, [and allows students to] . . . reflect on the experience[s]” supported by faculty.⁶ Engaging in “reflective practice applies to the legal profession,” as clinic seeks to instill life-long practice skills.⁷ “A conscious and deliberate analysis of a lawyering performance can provide . . . insights into what choices were available, what internal and external factors affected the decision making process, and what societal forces affected the context of the representation,” allowing lawyers to concretize the abstract process of self-reflection, deliberation, and growth.⁸

These general principles provide a set of considerations to inform language choices and guide the decision-making process without dictating the use of a particular term in all situations. The language user, guided by the principles, should engage in the following behavior:

- **Reflect:** Inquire and explore language options and word choices. Ask questions. Recognize that language evolves rapidly, and so terms common years ago may no longer be appropriate.
- **Respect:** Use language that is humanizing and destigmatizing. Recognize that many terms come with baggage, and the use of certain phrases flattens a person to a particular aspect of their

⁵ Kelley Burton & Judith McNamara, *Assessing Reflection Skills in Law Using Criterion*, 19 LEGAL EDUC. REV. 171, 184 (2009), <https://ler.scholasticahq.com/article/6221-assessing-reflection-skills-in-law-using-criterion> [<https://perma.cc/4JJE-N5JQ>] (last visited Dec. 18, 2024) (“Reflective learners take a deep or active learning approach by asking questions of the experience to develop their own understanding . . . [to] query underpinning beliefs, values, assumptions and evidence, and to be creative in their outlook upon alternative options, conclusions, perspectives and views.”).

⁶ Sarah O. Schrup & Susan E. Provenzano, *The Conscious Curriculum: From Novice Towards Mastery in Written Legal Analysis and Advocacy*, 108 NW. U.L. REV. COLLOQUY 80, 88 (2013) (discussing “modeling and scaffolding are the most difficult cognitive apprenticeship tools”).

⁷ See, e.g., Timothy Casey, *Reflective Practice in Legal Education: The Stages of Reflection*, 20 CLIN. L. REV. 317, 319 (2014); *id.* 320–21 (describing one model for self-reflection: “The first stage—Competence—asks the student to relate her performance to the standard of a reasonably competent lawyer. At the next stage—Difference and Choice—the student considers different means to achieve the goal of the performance. Middle stages—Internal Context and External Context—ask the student to describe factors that affected her decision-making process, beginning with a consideration of personal preferences, experiences, biases and characteristics, and moving to consideration of the preferences, experiences, biases and characteristics of others. The next stage—Societal Context—asks the student to consider relationships between law and society, social, political, historical, or economic structures that affect the lawyering process. In the final stage—Metacognition—the student should demonstrate an awareness of the effect of reflection on her thinking process.”).

⁸ *Id.*

identity or a condition that they are experiencing. Defer to how an individual identifies.

- ❑ **Accuracy:** Use language that is exact and correct.
- ❑ **Precision:** Utilize an appropriate level of generality or granularity.
- ❑ **Relevance:** Assess whether aspects of a person's identity are relevant to the issue.
- ❑ **Audience:** Consider the recipient of your message. Advocates can use their platforms to educate judges, partners, and/or the public about terms and the reasoning informing these language choices.

These principles aim to provide a set of considerations to evaluate in deciding on the best term in context. This framework provides flexibility, allowing for the incorporation of evolving terms and changing social use. For instance, while the term queer “was previously used as a slur, [it] has been reclaimed by many parts of the LGBTQ+ movement.”⁹ Rather than a framework that prescribes the use of the term queer or that, conversely, eschews its use in all cases, this methodology requires a contextualized analysis. In deciding whether the use of the term queer is apt, the author or speaker would consider not only the term's current social use (Reflect), but also the additional factors. One would assess the individual's identified language choices consistent with their identity and avoid loaded terms (Respect), consider the clarity (Accuracy) and specificity (Precision) of the terms used, in context with other potential terms (e.g., queer versus gay versus LGBTQ versus LGBTQIA+¹⁰). One would further consider the centrality of this language in the matter (Relevance) and how that language may be received by others in the course of achieving the representation goals (Audience).

⁹ *Sexual Orientation and Gender Identity Definitions*, HUMAN RTS. CAMPAIGN, <https://www.hrc.org/resources/sexual-orientation-and-gender-identity-terminology-and-definitions> [https://perma.cc/J4DQ-DBKN] (last visited Dec. 18, 2024).

¹⁰ See, e.g., *LGBTQIA Resource Center Glossary*, UNIV. OF CAL. DAVIS, <https://lgbtqia.ucdavis.edu/educated/glossary#l> [https://perma.cc/JJZ5-YT44] (last visited Dec. 17, 2024) (“LGBTQIA+: Abbreviation for Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, and Asexual. The additional ‘+’ stands for all of the other identities not encompassed in the short acronym. [It is a]n umbrella term that is often used to refer to the community as a whole. Our center uses LGBTQIA to intentionally include and raise awareness of Queer, Intersex and Asexual communities as well as myriad other communities under our umbrella.”); *Movement Lawyering Clinic*, CORNELL L. SCH., <https://www.lawschool.cornell.edu/academics/experiential-learning/clinical-program/movement-lawyering-practicum/> [https://perma.cc/MFJ2-5NX5] (last visited Dec. 18, 2024) (“[L]aw students provide legal support for social justice groups including women's liberation, Black liberation, immigrants' and LGBTQ rights, and more.”).

II. EVOLVING SOCIAL AND LEGAL USE OF INCLUSIVE LANGUAGE

Being aware of language differences and controversies is essential to well-informed and nuanced communication. This objective understanding—of what terms are in use and their origin—raises normative questions about how such terms should be used. There is debate in the legal profession, as in society, about whether and to what extent to center diversity in our interactions. These tensions manifest in several ways, in both the educational and professional contexts, through interactions with clients, colleagues, and institutional actors. The use of correct pronouns, to give one example, is not only a debate raised by litigation before the courts but is also actively being considered by the judiciary itself.¹¹ Diversity initiatives are simultaneously a source of legal risk and professional impetus.¹²

Inclusive language is contested in the profession and there is often no consensus. Not only is the movement to enhance DEI in the legal profession challenged, but even where there is consensus in promoting equity as a shared goal, a particular strategy may be opposed or a

¹¹ Compare Eesha Pendharkar, *Parents Are Suing Schools Over Pronoun Policies. Here's What You Need to Know*, EDUC. WEEK (May 12, 2023), <https://www.edweek.org/leadership/parents-are-suing-schools-over-pronoun-policies-heres-what-you-need-to-know/2023/05> [https://perma.cc/LFV3-HL8C], with Alex Ebert, *Pronoun Selection for Lawyers, Litigants Divides Michigan Courts*, BLOOMBERG L. (June 6, 2023), <https://news.bloomberglaw.com/business-and-practice/pronoun-selection-for-lawyers-litigants-divides-michigan-courts> [https://perma.cc/TRQU-622E]; see also Alicia Cohn, *Judge: Referring to Transgender People by Chosen Pronouns 'Courtesy,' Not Law*, HILL (Jan. 17, 2020), <https://thehill.com/regulation/court-battles/478737-judge-referring-to-transgender-people-by-chosen-pronouns-courtesy/> [https://perma.cc/VU7Y-CZUX].

¹² See Lara A. Flath, David E. Schwartz & Amy Van Gelder, *Employers Offering DEI Training Need to Monitor Both Pro- and Anti-DEI Court Challenges and Legislative Proposals*, SKADDEN (Mar. 2024), <https://www.skadden.com/insights/publications/2024/03/insights-special-edition/employers-offering-dei-training-need-to-monitor> [https://perma.cc/J48B-AB9V] (noting “legislators on both sides of the aisle have passed bills and introduced others to either pare back or promote DEI initiatives”); see also *The Littler Annual Employer Survey Report*, LITTLER (May 2024), https://www.littler.com/files/2024_littler_employer_survey_report.pdf [https://perma.cc/94KZ-AXUW] (“[I]n comparison to 2023, respondents report slightly elevated concerns around retaliation lawsuits (45%), as well as in the area of inclusion, equity and diversity (24%) after a tumultuous period of pushback against corporate diversity programs.”). Given the timing of publication, this Article does not account for the implications of the Trump Administration’s policies on DEI, which will undoubtedly be significant, in both the public and private sectors. See, e.g., Andrea Hsu, *Trump Calls DEI Programs ‘Illegal.’ He Plans to End Them in the Federal Government*, NPR (Jan. 23, 2025, 5:00 AM), <https://www.npr.org/2025/01/23/nx-s1-5271588/trump-dei-diversity-equity-inclusion-federal-workers-government> [https://perma.cc/HPT7-TWES]; Jessica Guynn, *‘A First Taste’: Trump DEI War Escalates, Reshaping Diversity in Corporate America*, USA TODAY (Feb. 13, 2025, 5:51 PM), <https://www.usatoday.com/story/money/2025/02/13/trump-war-on-dei-escalates/78537133007/> [https://perma.cc/D2ZX-C3UX]; Brian Fong & Swaja Khanna, *Attorney General Pam Bondi’s Ending Illegal DEI and DEIA Discrimination and Preferences Memo*, JD SUPRA (Feb. 11, 2025), <https://www.jdsupra.com/legalnews/attorney-general-pam-bondi-s-ending-8012634/> [https://perma.cc/43KJ-B4LL].

given word choice could face backlash. Although an inclusive language framework does not resolve these complexities, it can provide a tool to make these considerations less ad hoc and the analysis more robust. The framework proposed in Part I, acknowledging the contentious nature of the debate, accounts for differing views and enables situational application given ever-evolving language use. Rather than a prescriptive formula, the framework operates as a multi-prong assessment to facilitate thoughtful consideration of inclusive language.

Advocates favoring diversity emphasize the importance of fostering inclusive environments that reflect the breadth of human experiences and perspectives, and why such efforts are essential to addressing historical inequities and systemic barriers, across groups and impacting every area of the law.¹³ These proponents often highlight the tangible benefits of diversity, including enhanced creativity, innovation, and problem-solving, as well as the moral imperative to build fair and representative institutions.¹⁴ Those opposed to DEI efforts are guided by principles that emphasize legal constraints, individual merit, and concerns for perceived overreach. Opponents often express concerns about the fairness of preferential policies and the potential for reverse discrimination. Critics also argue that DEI initiatives can flatten identities or unnecessarily create identity divisions that can perpetuate harm or create tokenism.¹⁵

¹³ See, e.g., Sybil Dunlop & Jenny Gassman-Pines, *Why the Legal Profession Is the Nation's Least Diverse (and How to Fix It)*, 47 MITCHELL HAMLINE L. REV. 129, 130 (2021) (noting the legal “profession is the least diverse in the nation”); *How to Make Courts Accessible to Users with Disabilities and Limited English Proficiency*, PEW (Jan. 29, 2024), <https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2024/01/29/how-to-make-courts-accessible-to-users-with-disabilities-and-limited-english-proficiency> [<https://perma.cc/KQ5R-2W5F>].

¹⁴ See, e.g., Kaela Sosa, *Unlocking Profitability and Growth: The Power of Diversity, Equity, and Inclusion in the Legal Industry*, TDM LIBR., <https://tdmlibrary.thediversitymovement.com/unlocking-profitability-and-growth-the-power-of-diversity-equity-and-inclusion-in-the-legal-industry/> [<https://perma.cc/M3RS-FS37>] (last visited Dec. 26, 2024) (noting benefits include “competitive advantage,” “improved performance and productivity,” and “innovation”).

¹⁵ See, e.g., Jace Purcell, *Affirmative Action Should Prioritize Socioeconomic Status over Race*, CAMPANILE (Nov. 1, 2019), <https://thecampanile.org/20606/opinion/affirmative-action-should-prioritize-socioeconomic-status-over-race/> [<https://perma.cc/S4P7-VGY4>] (“People from low-income families have been deprived of advantages that their wealthier peers have access to such as attending a good high school, affording tutors and accessing standardized and AP tests—thus, logically, they should receive an advantage in admissions considerations. . . . [Higher education institutions] should set their criteria, colleges should cut out the middleman and have affirmative action admissions be mainly based on socioeconomic status rather than race.”).

A. DEI Integration Debate in Legal Profession

There are efforts within the legal community that seek to acknowledge “the importance of cross-cultural competence to professionally responsible representation and the obligation of lawyers to promote a justice system that provides equal access and eliminates bias, discrimination, and racism in the law.”¹⁶ On the one hand, for instance, the American Bar Association’s (ABA) Accreditation Standard 303 mandates law schools to provide instruction on professional identity, bias, cultural competency and humility, and racism.¹⁷ The ABA Standards Committee has “expand[ed] their understanding of disadvantaged faculty even more, arguing that the list should also include religion, national origin, gender identity, gender expression, sexual orientation, age, disability, military status, Native American tribal citizenship and socioeconomic background.”¹⁸ The Committee’s expansive definition has received pushback.¹⁹ ABA Model Rule 8.4(g) prohibits “engag[ing] in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law.”²⁰ State bar associations and courts have taken disciplinary action against attorneys using derisive language,²¹ although some have noted

¹⁶ Neil W. Hamilton & Louis D. Bilonis, *Revised ABA Standards 303(b) and (c) and the Formation of a Lawyer’s Professional Identity, Part 1: Understanding the New Requirements*, NALP (May 2022), <https://www.nalp.org/revised-aba-standards-part-1> [<https://perma.cc/X9ML-5N3F>] (discussing ABA standards for law schools).

¹⁷ Michelle Weyenberg, *ABA Passes Revisions to Accreditation Standards*, NAT’L JURIST (Apr. 5, 2022), <https://nationaljurist.com/national-jurist/news/aba-passes-revisions-to-accreditation-standards/> [<https://perma.cc/LS7Z-J9RS>].

¹⁸ Danielle Braff, *ABA Considers Expanding Law School Diversity Standards*, ABA J. (Feb. 28, 2024, 9:59 AM), <https://www.abajournal.com/web/article/the-aba-considers-expanding-law-school-diversity-standards> [<https://perma.cc/GUZ4-EGQJ>].

¹⁹ Karen Sloan, *19 States Defend ABA Law School Diversity Rule Amid Republican Warning*, REUTERS (June 20, 2024, 12:22 PM), <https://www.reuters.com/legal/government/19-states-defend-aba-law-school-diversity-rule-amid-republican-warning-2024-06-20/> [<https://perma.cc/K8AA-L6K2>].

²⁰ MODEL RULES OF PRO. CONDUCT r. 8.4 (AM. BAR ASS’N 2024), https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_8_4_misconduct/ [<https://perma.cc/G9LF-98J6>] (Misconduct); see also Ellen Yaroshesky, *The Long Road to New York’s Anti-Discrimination and Anti-Harassment Ethics Rule*, 50 HOFSTRA L. REV. 627, 656 (2022).

²¹ See, e.g., *Lawyers Suspended for Racist, Sexist, Xenophobic, and Homophobic Email Content*, MD. STATE BAR ASS’N, https://125.msba.org/wp-content/uploads/2022/05/1-January-2021-Case-Notes_-MSBA-CLE-Publications-bzijuf.pdf [<https://perma.cc/ER29-NF7M>] (last visited Dec. 19, 2024) (“The Maryland Court of Appeals disciplined two attorneys for including racist, misogynistic, xenophobic, and homophobic remarks in their workday emails.”); Hassan Kanu, *A Lawyer’s Racism Can Impede Duty to Client, Massachusetts High Court Says*, REUTERS (June 20, 2023, 7:52 PM), <https://www.reuters.com/legal/legalindustry/lawyers-racism-can-impede-duty-client-massachusetts-high-court-says-2023-06-20/> [<https://perma.cc/J4C5-LAAQ>] (finding bias

inequities in bar discipline.²² Attorneys may face discipline for actions taken outside of professional settings.²³ A range of private and public institutions have vocalized support for diversity in the profession, access to courts, and other issues pertaining to DEI.²⁴ Some entities, including bar associations, have sought to provide guidance to legal professionals on diversity issues and implementation of equitable practices.²⁵

Yet, there are challenges to inclusion. Some in the legal community see diversity as a threat to the profession. For instance, in an op-ed authored in the *Wall Street Journal*, Alabama Supreme Court Justice Jay Mitchell expressed worry over efforts by the National Conference of Bar Examiners (“NCBE”) to update the bar exam, criticizing the changes as undermining the rigor of the test (e.g., shortened duration, testing of fewer subjects).²⁶ His commentary directly juxtaposes his perceived higher standards of the older exam with equity considerations, contending that “the biggest concern is the NCBE’s use of the NextGen

can undermine zealous representation in a “case [that] involved . . . a court-appointed attorney who had chastised [his client] for wearing a kufi prayer cap when they first met in 2016, . . . left a second meeting without speaking after seeing [the client’s] prayer cap [, and] . . . told [the client] not to ‘wear that shit in court’ during their final meeting, and encouraged him to accept a longer sentence than a prior attorney had sought, the opinion said.”).

²² Joe Patrice, *Study Finds that Bar Discipline Is Totally Racist Shocking Absolutely No One*, ABOVE THE L. (Nov. 19, 2019, 12:13 PM), <https://abovethelaw.com/2019/11/study-finds-that-bar-discipline-is-totally-racist-shocking-absolutely-no-one/> [<https://perma.cc/G6MG-5PD5>] (“A California bar study has charted attorney discipline over a 28-year span and discovered that, by and large, black and Latinx attorneys are disciplined more often and their punishments are more severe than then comparable population of white lawyers.”).

²³ *Backlash Mounts Against Attorney Whose Racist Rant Went Viral*, YAHOO (May 17, 2018), <https://www.yahoo.com/news/backlash-mounts-against-attorney-whose-074304592.html> [<https://perma.cc/AP4A-XS2W>] (“A New York attorney caught hurling a racist rant . . . may now be facing disciplinary troubles, as a backlash has produced calls for his disbarment, prompted a U.S. Congressman to file a formal grievance, and caused members of the public to write scathing reviews of his legal practice on social media. According to news reports, Manhattan-based lawyer Aaron Schlossberg—whose law firm website touts his language fluency in Spanish—is . . . heard [in the video] berating the manager at Fresh Kitchen after overhearing a conversation in Spanish between other employees. The man accuses them of all being ‘undocumented’ and threatens to call U.S. Immigration and Customs Enforcement. ‘I pay for their welfare, I pay for their ability to be here. The least they can do is speak English,’ he said.”).

²⁴ See, e.g., NAT’L CTR. FOR STATE CTS., STATE COURT STATEMENTS ON RACIAL JUSTICE, <https://www.ncsc.org/consulting-and-research/areas-of-expertise/racial-justice/state-activities/state-court-statements-on-racial-justice> [<https://perma.cc/9H9M-WUMA>] (last visited Dec. 19, 2024); Edwin Bell, *Helping Courts Address Diversity, Equity, and Inclusion*, JUDICATURE (2022), <https://judicature.duke.edu/articles/helping-courts-address-diversity-equity-and-inclusion/> [<https://perma.cc/YJ4U-A69B>].

²⁵ N.Y. BAR ASS’N, REPORT AND RECOMMENDATIONS OF THE NEW YORK STATE BAR ASSOCIATION TASK FORCE ON ADVANCING DIVERSITY (Sept. 2023), <https://nysba.org/app/uploads/2023/09/NYSBA-Report-on-Advancing-Diversity-9.20.23-FINAL-with-cover.pdf> [<https://perma.cc/J3G9-4RY5>].

²⁶ Sarah Wood, *NextGen Bar Exam: What to Know*, U.S. NEWS (Feb. 15, 2023), <https://www.usnews.com/education/best-graduate-schools/top-law-schools/applying/articles/nextgen-bar-exam-what-to-know> [<https://perma.cc/E3XG-9BX4>].

exam to advance its ‘diversity, fairness and inclusion’ agenda.”²⁷ Justice Mitchell asserts, these changes to the exam will “put[] considerable emphasis on examinees’ race, sex, gender identity, national and other identity-based characteristics” and that efforts to eliminate differences in group outcomes are resulting in a “water[ing] down [of] the test.”²⁸ However, his op-ed fails to acknowledge ongoing controversies and concerns over disparities in bar exam results that are not in alignment with testing goals and undermine its validity as a neutral competency assessment—issues of which NCBE is acutely aware,²⁹ which is complemented by broader advocacy efforts³⁰ and movements to reconsider equities in other legal professional examinations, like the Law School Admissions Test (“LSAT”).³¹

The debate within the bar and in practice expands much further. Law firms have been targeted for their programming and sued for their diversity initiatives,³² while also simultaneously expanding practice ar-

²⁷ Jay Mitchell, *The New Bar Exam Puts DEI Over Competence*, WALL ST. J. (May 19, 2023, 7:04 PM), <https://www.wsj.com/articles/the-new-bar-exam-puts-dei-over-competence-ncbe-family-law-schools-9c0dd4e8> [<https://perma.cc/HF9R-LRXJ>].

²⁸ *Id.*

²⁹ See, e.g., Karen Sloan, *Racial Disparities in Bar Exam Scores Worsened in 2022*, REUTERS (Apr. 12, 2023, 1:18 PM), <https://www.reuters.com/legal/legalindustry/racial-disparities-bar-exam-scores-worsened-2022-2023-04-12/> [<https://perma.cc/TWZ7-VR6V>] (“The first-time pass rate for white test takers last year was 83%, while 57% of Black examinees passed on their first attempt—a difference of 26 percentage points—the ABA said Tuesday. In 2021, that gap was 24 percentage points.”); Scott DeVito, Erin Lain & Kelsey Hample, *Onerous Disabilities and Burdens: An Empirical Study of the Bar Examination’s Disparate Impact on Applicants from Communities of Color*, 43 PACE L. REV. 205 (2023); Jane Bloom Grisé, *Question #1: Is There a Gender Gap in Performance on Multiple Choice Exams? A. Always B. Never C. Most of the Time*, 43 WOMEN’S RTS. L. REP. 140, 144 (2021).

³⁰ Stephanie Francis Ward, *Disability Rights Advocates Challenge California’s Bar Exam Accommodation Process*, ABA J. (June 13, 2023, 8:52 AM), <https://www.abajournal.com/web/article/lawyers-involved-with-lsat-consent-decree-file-doj-complaint-regarding-california-bar-exam> [<https://perma.cc/4G3X-J2PB>] (“Two disability rights groups have filed a U.S. Department of Justice complaint against the State Bar of California alleging that the agency ‘consistently’ violates the Americans With Disabilities Act regarding bar exam accommodation requests.”).

³¹ Karen Sloan, *LSAT’s Elimination of ‘Logic Games’ Prompts Jeers, Cheers*, REUTERS (Oct. 19, 2023), <https://www.reuters.com/legal/litigation/lstats-elimination-logic-games-prompts-jeers-cheers-2023-10-19> [<https://perma.cc/HDQ8-YDDD>] (“The decision to axe logic games comes after the council in 2019 entered a settlement with two blind LSAT takers who claimed logic games violated the Americans with Disabilities Act because they could not draw diagrams that test takers often use to complete that portion of the test. That settlement gave the council four years to revise the logic games.”).

³² Tatyana Monnay, *Law Firms Embrace Roadmap Against Diversity Program Attacks*, BLOOMBERG L. (Oct. 2, 2023, 4:30 AM), <https://www.bloomberglaw.com/product/blaw/bloomberglawnews/bloomberg-law-news/X8NM5AH4000000#cite> [<https://perma.cc/WGR2-7LTN>] (“[F]ive Republican state attorneys general sent a letter Aug. 29 to the top 100 law firms to ‘ensure that you fully comply with your legal duty to treat all individuals equally—without regard to race, color, or national origin—in your employment and contracting practices.’ Sen. Tom Cotton (R-Ark.) put law firms on notice for their DEI programs in a similar letter on July 17”).

eas to meet the increased demand for DEI-legal assistance.³³ Although some law firms continue to be criticized for failings in their DEI work.³⁴ Educational institutions have had to navigate evolving DEI restrictions.³⁵ And this is to say nothing of language used behind closed doors, reflecting racist, sexist, and dehumanizing views of clients, other attorneys, and judges.³⁶

Another flashpoint of this debate is manifested in state courts, exemplifying the extremes of the backlash to DEI efforts. In Wisconsin, the state's "Supreme Court [] denied a Wisconsin State Bar request to create a new continuing education credit for attorneys focusing on diversity, equity and inclusion."³⁷ In seeking to modify the state bar's educational requirements, the bar association noted ongoing education re-

³³ Tatyana Monnay, *Wall Street Firms Build Diversity Practices After Court Decision*, BLOOMBERG L. (Nov. 17, 2023, 4:00 AM), <https://www.bloomberglaw.com/product/blaw/bloomberglawnews/bloomberglaw-news/BNA%200000018b-43b2-d03e-afeb-f7b3d2b60001> [<https://perma.cc/VV9P-FV2Z>] ("The Supreme Court's ban of affirmative action in college admissions has prompted a new wave of practices specializing in diversity, equity and inclusion at law firms . . . [that] decided there was enough business to justify creating the practice areas because of client queries about racial equity audits and whether diversity pushes would withstand possible legal challenges."); see also Tatyana Monnay, *Women, Minority Law Firm Gains Dampened by Litigation Threat*, BLOOMBERG L. (Jan. 10, 2024, 4:15 AM), <https://news.bloomberglaw.com/business-and-practice/women-minority-law-firm-gains-dampened-by-litigation-threats> [<https://perma.cc/4WNP-7BV4>].

³⁴ See, e.g., Mahira Dayal, *Ex-Armstrong Teasdale DEI Chief Sues Firm for Discrimination*, BLOOMBERG L. (July 5, 2024, 5:33 PM), <https://www.bloomberglaw.com/product/blaw/bloomberglawnews/business-and-practice/BNA%2000000190-846b-d4f6-a199-d47b795a0001> [<https://perma.cc/26EH-BZSQ>] (describing former diversity leader's lawsuit against law firm for race and sex discrimination); Marianna Wharry, *Attorney Sues Former Firm for Termination While Seeking Postpartum Depression Treatment*, ALM L. (Apr. 10, 2024, 6:16 PM), <https://www.law.com/2024/04/10/attorney-sues-former-firm-for-termination-while-seeking-postpartum-depression-treatment/?slreturn=20250121161658> [<https://perma.cc/S4CX-GUPR>] (raising claims of "unlawful pregnancy discrimination, sex discrimination, disability discrimination and retaliation").

³⁵ See, e.g., Donald Padgett, *University of Houston Closing LGBTQA Resource Center to Comply with Anti-DEI Law*, Advoc. (Aug. 24, 2023, 4:35 PM), <https://www.advocate.com/education/university-of-houston-dei-center> [<https://perma.cc/WK98-D3HX>]; Jaclyn Diaz, *Florida Gov. Ron DeSantis Signs a Bill Banning DEI Initiatives in Public Colleges*, NPR (May 15, 2023, 5:48 PM), <https://www.npr.org/2023/05/15/1176210007/florida-ron-desantis-dei-ban-diversity> [<https://perma.cc/4L7R-VDMS>].

³⁶ Jon Levine, *'Woke' LA Firm Partners Routinely Used Vile Language to Refer to Women, POC, Emails Show*, N.Y. Post (June 3, 2023), <https://nypost.com/2023/06/03/woke-la-firm-routinely-used-vile-language-to-refer-to-women-poc/> [<https://perma.cc/2Q5M-68PU>] (updated June 4, 2023, 11:47 AM) ("The partners made frequent use of the word f---t and other anti-LGBTQ slurs"; "repeatedly referr[ed] to women as 'c--ts' and a judge as 'sugar t-ts'"; wrote "'Kill her by anal penetration.' . . . [in] reacting to an overtime request from another Lewis Brisbois attorney"; and utilized numerous racial slurs and offensive stereotypes, including use of "the N-word in work emails" and statements like, "Gypsy is my new word to describe about half of the minorities in California.").

³⁷ Rich Kremer, *Supreme Court Justice Writes DEI Education for Attorneys Would Create 'Goose-Stepping Brigade'*, Wis. Pub. Radio (July 15, 2023), <https://www.wpr.org/justice/wisconsin-supreme-court-denies-request-voluntary-dei-continuing-education-attorneys> [<https://perma.cc/YVG2-UZQ6>].

garding “the effects of bias in negatively impacting the delivery of legal services’ would improve the quality of legal services in Wisconsin.”³⁸ In rejecting the proposal, the court’s order referred to DEI as “a disguise for dangerous identity politics” and stated:

If the Bar’s end game were simply CLE credit, the petition would be easily dismissed as virtue signaling given the liberality with which the Board of Bar Examiners (BBE) already awards credit for such courses. But the Bar ultimately seeks to mandate DEIA training, impose group think on attorneys, and condition bar admission and continuing licensure on subscribing to an illiberal political ideology. Real diversity means welcoming dissenting voices, not coercing them into an echo chamber using the force of the State.³⁹

B. First Amendment Considerations in DEI Initiatives

DEI initiatives can implicate First Amendment protections. The Wisconsin court also focused on First Amendment concerns in critiquing the requested DEI CLE credit. The opinion declares that “the very language of DEI[] is at odds with our ‘national ethos.’”⁴⁰ It justified its decision: “The very point of mandating D[iversity], E[quity], I[nclusion, and], A[ccess] CLE would be to create a ‘goose-stepping brigade[]’ of attorneys, but ‘the First Amendment applies strictures designed to keep our society from becoming moulded [*sic*] into patterns of conformity[.]’”⁴¹ Despite acknowledging that “[o]n its face, the proposed rule

³⁸ *Id.*; see Alex Ebert, *Florida’s Anti-DEI Push Axes ‘Bias Elimination’ Lawyer Training*, BLOOMBERG L. (Feb. 29, 2024, 10:33 AM) <https://news.bloomberglaw.com/social-justice/floridas-anti-dei-push-axes-bias-elimination-lawyer-training> [<https://perma.cc/DQK3-ER6R>] (“Courses on ‘bias elimination’ were struck from ethics classes that Florida attorneys must take to keep their law licenses under a rule formally accepted by the Florida Supreme Court Thursday. The ruling is the latest push by the high court to remove diversity, equity, and inclusion (DEI) training from the state bar.”); but see *Diversity, Inclusion and Elimination of Bias FAQs*, N.Y. Crs., <https://ww2.nycourts.gov/sites/default/files/document/files/2021-09/12n%20-%20FAQs%20-%20Diversity%20Inclusion%20and%20Elimination%20of%20Bias.pdf> [<https://perma.cc/78U3-KDU3>] (New York “add[ed] Diversity, Inclusion and Elimination of Bias as a new CLE category of credit (effective January 1, 2018) and requir[es] that experienced attorneys complete at least 1 CLE credit hour in Diversity, Inclusion and Elimination of Bias as part of their biennial CLE requirement (effective July 1, 2018).”).

³⁹ *In the Matter of Diversity, Equity, Inclusion, and Access Training for Continuing Legal Education*, Wis. Sup. Ct. (July 13, 2023), <https://www.wicourts.gov/sc/rulhear/DisplayDocument.pdf?content=pdf&seqNo=679679> [<https://perma.cc/M275-X9MJ>].

⁴⁰ *Id.*

⁴¹ *Id.* (annotation in original) (citation omitted) (“This sort of extreme reaction to diverse viewpoints creates legitimate fear that mandatory D[iversity], E[quity], I[nclusion, and], A[ccess] CLE will become ‘a means to harass and drive from the profession all dissenters, by requiring many participants to sit through what they will undoubtedly consider hostile propaganda. Petty harassment and timewasting can serve effectively as an ideological

might seem viewpoint neutral,” the court goes on to conclude that the “underlying illiberal political ideology knows the intent is to force a particular view on an entire profession” and that “[t]he DEI[] movement’s contempt for the First Amendment erodes the freedom of attorneys to advocate in their clients’ best interests lest they run afoul of prevailing sensitivities.”⁴²

In yet another example, a North Carolina Supreme Court Justice filed a lawsuit against the state’s Judicial Standards Commission, which is investigating public statements made by the justice that the commission asserts “appear to allege that your Supreme Court colleagues are acting out of racial, gender, and/or political bias in some of their decision making.”⁴³ This investigation was launched after Earls “told the online legal journal Law360.com that the state supreme court should examine the reasons behind the lack of diversity in state courts and what implicit biases may be within the judiciary.”⁴⁴ In the interview, “Earls herself, a Black female justice,” “discussed the court’s lack of judicial clerks from racial minority groups,” “the role implicit bias plays in interrupting female advocates . . . and during oral arguments,” and “the state courts’ discontinuance of racial equity and implicit bias training.”⁴⁵

This matter invokes the First Amendment as a defense against restrictions on the justice’s DEI-related speech, contrasting with the role of free speech and viewpoint diversity espoused in the Wisconsin court’s analysis:

screen.”) (quoting David Randall, *Wokeness Is Creeping into Continuing Legal Education*, JAMES G. MARTIN CTR. FOR ACAD. RENEWAL (Feb. 17, 2023)).

⁴² WIS. SUP. CT., *supra* note 39; see also Henry Redman, *Wisconsin Supreme Court Denies State Bar Request to Start DEI Training*, WIS. EXAM’R (July 13, 2023, 4:03 PM), <https://wisconsinexaminer.com/2023/07/13/wisconsin-supreme-court-denies-state-bar-request-to-start-dei-training/> [https://perma.cc/R8DJ-JBM8].

⁴³ Justin Gamble, *North Carolina Supreme Court Justice Files Lawsuit over State Investigation into Her Comments About Diversity*, CNN (Sept. 4, 2023, 5:52 PM), <https://www.cnn.com/2023/09/04/us/anita-earls-lawsuit-diversity-statements-reaj/index.html> [https://perma.cc/7TKY-KBXJ].

⁴⁴ *Id.*; see also Amanda Powers & Alicia Bannon, *State Supreme Court Diversity—May 2023 Update*, BRENNAN CTR. (May 2023), <https://www.brennancenter.org/our-work/research-reports/state-supreme-court-diversity-may-2023-update> [https://perma.cc/7VDA-AZSB] (“In 18 states, no justices identify as a person of color.”; “Across high courts in all 50 states and Washington, DC, just 20 percent of state supreme court seats are held by people of color. By contrast, people of color make up over 40 percent of the U.S. population.”; “Men hold 58 percent of high court seats.”) (emphasis in original omitted); see also *Profile of the Legal Profession 2024: Judges*, AM. BAR ASS’N (Nov. 18, 2024), <https://www.americanbar.org/news/profile-legal-profession/judges/?login> [https://perma.cc/6XFD-A5E6] (providing demographics of federal judges).

⁴⁵ Kelan Lyons, *NC Supreme Court Justice Anita Earls Sues State’s Judicial Standards Commission*, NC NEWSLINE (Aug. 29, 2023, 12:39 PM), <https://ncnewsline.com/2023/08/29/nc-supreme-court-justice-anita-earls-sues-states-judicial-standards-commission/> [https://perma.cc/VZ47-ZRGP]; Hannah Albarazi, *North Carolina Justice Anita Earls Opens Up About Diversity*, LAW360 (June 20, 2023, 10:45 AM), <https://www.law360.com/articles/1687516/north-carolina-justice-anita-earls-opens-up-about-diversity> [https://perma.cc/48T2-5YA3].

[T]he First Amendment of the United States Constitution prohibits the Commission, as an arm of the State, from stifling or even chilling free speech, especially core political speech from an elected Justice of the North Carolina Supreme Court. The First Amendment allows Justice Earls to use her right to free speech to bring to light imperfections and unfairness in the judicial system. At the same time, the First Amendment prohibits the Commission from investigating and punishing her for doing so.⁴⁶

In seeking an injunction to prevent further speech-chilling action by the commission, Justice Earls seeks to ensure the ability to “speak out about what [she] view[s] as imperfections or defects in the judicial system and [] do so in a measured and nuanced manner,” because prohibiting her DEI discourse is “inimical to the First Amendment.”⁴⁷ In this way, the First Amendment can be used as a basis to undergird speech protections, including about DEI efforts in the judiciary and legal profession. The matter was recently resolved without deciding the issue when the North Carolina Judicial Standards Commission dismissed the complaint against Justice Earls and the judge withdrew her suit.⁴⁸

C. Judicial Approaches to Inclusive Language

Courts have grappled with evolutions in language, contending with how to respond to emerging trends in inclusive language and offering a microcosm into the professional uses of varying terms.⁴⁹ The range of responses from the judiciary has varied. Some courts have sought to keep parity with other judicial entities in adopting changes⁵⁰ while some have

⁴⁶ Complaint at 4, *Earls v. N.C. Jud. Standard Cmm’n*, No. 1:23-cv-00734 (M.D.N.C. Aug. 29, 2023), <https://storage.courtlistener.com/recap/gov.uscourts.ncmd.96465/gov.uscourts.ncmd.96465.1.0.pdf> [https://perma.cc/362J-P9FD].

⁴⁷ *Id.* at 20.

⁴⁸ Kelan Lyons, *Justice Anita Earls Drops Lawsuit as Judicial Standards Commission Dismisses Complaint*, NC NEWSLINE (Jan. 17, 2024), <https://ncnewsline.com/briefs/justice-anita-earls-drops-lawsuit-as-judicial-standards-commission-dismisses-complaint/> [https://perma.cc/BU34-RG3X]; Mehr Sher, *Justice Earls, NC Commission End Legal Dispute; Free Speech Issue Unresolved*, CAROLINA PUBLIC PRESS (Jan. 17, 2024), <https://carolinapublicpress.org/62831/earls-nc-legal-dispute-ends-complaint-dismissed-free-speech/> [https://perma.cc/RVU3-Z22A].

⁴⁹ Part III further assesses the use of inclusive language for different communities and identities, both by courts and clinics. Word choices, use of authority, and emphasis (e.g., use of capitalization, brackets, etc.) are all significant in applying the framework set forth in Part I: reflection, respect, accuracy, precision, relevance, and audience.

⁵⁰ *Dyjak v. Wilkerson*, No. 21-1212, 2022 WL 1285221, at *1, n.1 (7th Cir. Apr. 29, 2022) (“We see no reason to break with that emerging consensus, in light of our normal practice of using the pronouns adopted by the person before us, e.g., *Balsewicz v. Pawlyk*, 963 F.3d 650 (7th Cir. 2020) (using ‘she’ for a transgender woman when that is the person’s preference), as

contemplated the grammatical legitimacy of changed terms.⁵¹ Courts have at times adopted terms as used by the parties,⁵² but have also declined to adopt the parties' preferred terms, as did the District of Arizona in *United States v. Merlo-Espinal*. In that matter, the court rejected the use of the term "Latinx," citing a Pew Research Center study that "a majority of U.S. Hispanics . . . prefer the terms Hispanic or Latino."⁵³

In considering identity language, courts have, at times, conflated or merged terms.⁵⁴ For instance, the Southern District of New York in *United States v. Scott* noted the "percent [of] Black or African American ("Black") individuals" and "Hispanic or Latino ("Latinx") individuals" in assessing the jury-eligible population in a community.⁵⁵ Courts have also used terms out of context, as did the Eastern District of Missouri in *Wilbers v. Moneta Group Investment Advisors, Inc.* In quoting Eighth Circuit case law, the court describes the U.S. Supreme Court "Justices . . . [as] mildly schizophrenic in mapping [the] contours" of a legal doctrine.⁵⁶ Offensive language is often found in statutes, case law, and other legal materials cited in scholarship and opinions.⁵⁷

well as the Supreme Court's decision to do so in *Bostock v. Clayton County*, 140 S. Ct. 1731, 1738 (2020).").

⁵¹ *Id.* ("[D]espite the potential for some confusion about the singular and the plural, this usage of 'they/them/their' has now been accepted by numerous style guides and dictionaries as appropriate in referring to a singular person of unknown or non-binary gender.") (citing MLA Handbook § 3.5 (9th ed. 2021); APA Publication Manual § 4.18 (7th ed. 2020); *They, Them, Their*, Associated Press Stylebook (55th ed. 2020); Farhad Manjoo, *It's Time for 'They,'* N.Y. TIMES (July 10, 2019), <https://www.nytimes.com/2019/07/10/opinion/pronoun-they-gender.html> [<https://perma.cc/Z5ZJ-K7EE>]; Chicago Manual of Style ¶ 5.48 (17th ed. 2017)).

⁵² L.O.K. by & through Kelsey v. Greater Albany Pub. Sch. Dist. 8J, No. 6:20-CV-00529-AA, 2022 WL 2341855 (D. Or. June 28, 2022) (analyzing Title IX and related claims by "Plaintiff L.O.K. [] a twelve-year-old child who is intersex and non-binary" and "uses they/them pronouns").

⁵³ *United States v. Merlo-Espinal*, No. CR 21-1720-TUC-CKJ (DTF), 2022 WL 2191192, at *3 (D. Ariz. June 17, 2022) (citing Luis Noe-Bustamante, Lauren Mora & Mark Hugo Lopez, *About One-in-Four U.S. Hispanics Have Heard of Latinx, but Just 3% Use It*, PEW RSCH. CTR. (Aug. 11, 2020), <https://www.pewresearch.org/race-and-ethnicity/2020/08/11/about-one-in-four-u-s-hispanics-have-heard-of-latinx-but-just-3-use-it/> [<https://perma.cc/5MKG-2ZW2>]).

⁵⁴ See, e.g., Frank Newport, *Black or African American?*, GALLUP (Sept. 28, 2007), <https://news.gallup.com/poll/28816/black-african-american.aspx> [<https://perma.cc/RK94-9MTP>]; John H. McWhorter, *Why I'm Black, Not African American*, L.A. TIMES (Sept. 8, 2004), <https://manhattan.institute/article/why-im-black-not-african-american> [<https://perma.cc/GPY9-T2UL>]; Antonio Campos, *What's the Difference Between Hispanic, Latino and Latinx?*, UNIV. OF CAL. (Oct. 26, 2021), <https://www.universityofcalifornia.edu/news/choosing-the-right-word-hispanic-latino-and-latinx> [<https://perma.cc/8VFH-637X>].

⁵⁵ *United States v. Scott*, 545 F. Supp. 3d 152, 159–60 (S.D.N.Y. 2021).

⁵⁶ *Wilbers v. Moneta Grp. Inv. Advisors, Inc.*, No. 406CV00005 ERW, 2006 WL 1360866, at *2 (E.D. Mo. May 17, 2006) ("Although the Supreme Court has indicated the broad scope of the phrase, '[t]hat locution is not self-defining, and the Justices have been at least mildly schizophrenic in mapping its contours.'" (quoting *Minn. Chapter of Associated Builders and Contractors, Inc. v. Minn. Dept. of Pub. Safety*, 267 F.3d 807, 811–12 (8th Cir. 2001)).

⁵⁷ *Caring Cmty. of Conn., Inc. v. Town of Colchester*, No. HHB-CV-16-6037378-S, 2023 WL 4446569, at *5 (Conn. Super. Ct. July 6, 2023) ("(iii) housing for homeless, retarded

On other occasions, courts have decided whether to defer to terms or capitalization in source materials or to make modifications. While some courts adhere to the original source,⁵⁸ others incorporate updated language.⁵⁹ In *United States v. Talley*, the Northern District of California did both—preserving the source capitalization in quoted language but not in other sections. For instance, the court kept the original lowercasing of “black” when citing source material text that did not use caps (“The dispatcher asked if the man was ‘white, black, Asian, or Hispanic.’”).⁶⁰ However, the court opted to capitalize in non-quoted sections (“Talley is Black, with a medium to dark complexion.”).⁶¹

Courts have also looked to a range of different sources to inform and justify their language choices. For instance, in adopting they/them pronouns for the litigant in *People v. Gobrick*, the opinion noted: “[T]his Court does not yet have an official policy in regard to the use of preferred pronouns.”⁶² After disclaiming that the “use of nonbinary pronouns . . . has no effect on the outcome of the proceedings,” the court went on to use “they/them pronouns where applicable,” while also preserving record references that “use[d] the pronouns he/him.”⁶³ In support of its decision, the court cited the Merriam-Webster Dictionary, American Physiological Association, Michigan Bar Journal, and American Bar Association Journal, which all accept the use of the singular they/them.⁶⁴

However, the concurrence of the same opinion accuses the court of fueling the flames of the “pronoun wars” which is “the greatest nightmare grammarians have ever endured.”⁶⁵ The concurrence disavows the use of inclusive language, stating: “I decline to join in the insanity that has apparently now reached the courts.” “Once we start down the road of accommodating pronoun (or other) preferences in our opinions,” the concurrence reasons, “the potential absurdities we will face are unbounded.”⁶⁶

or mentally or physically handicapped individuals, or for battered or abused women and children”) (quoting Number 03-270 of the 2003 Public Acts, § 12-81 (7)); *see also id.* *5, n. 5.

⁵⁸ *Mitchell v. Morton Cnty. Sheriff Kyle Kirchmeier*, No. 1:19-CV-149, 2020 WL 8073625, at *4 (D.N.D. Dec. 10, 2020), *aff’d in part, rev’d in part and remanded sub nom. Mitchell v. Kirchmeier*, 28 F.4th 888 (8th Cir. 2022) (“Mitchell contends ‘[d]efendants have a history of discriminating against and racially profiling individuals in Indigenous communities.’”).

⁵⁹ *State v. Griffin*, 846 N.W.2d 93, 100 (Minn. Ct. App. 2014) (modifying parenthetical to note: “concluding that when ‘parties agree that persons self-identifying as [B]lack are a distinctive group in the community . . . the first element of the *Williams* test’ has been satisfied”).

⁶⁰ *United States v. Talley*, 636 F. Supp. 3d 1041, 1043 (N.D. Cal. 2022).

⁶¹ *Id.* at 1045.

⁶² *People v. Gobrick*, No. 352180, 2021 WL 6062732, at *1 (Mich. Ct. App. Dec. 21, 2021), *appeal denied*, 981 N.W.2d 59 (Mich. 2022).

⁶³ *Gobrick*, 2021 WL 6062732, at *1.

⁶⁴ *Id.*

⁶⁵ *Id.* at *9 (Boonstra, J., concurring).

⁶⁶ *Id.*

Accordingly, Judge Boonstra writes: “I decline to start down that road, and while respecting the right of dictionary- or style-guide-writers or other judges to disagree, do not believe that we should be spending our time crafting our opinions to conform to the ‘wokeness’ of the day.”⁶⁷

“Michigan has become the first state to require judges to refer to attorneys [and parties] by their preferred pronouns,” which went into effect January 1, 2024, after the Michigan Supreme Court approved a new rule by a five-to-two majority.⁶⁸ The rule allows “[p]arties and attorneys” to “include Ms., Mr., or Mx. as a preferred form of address and one of the following personal pronouns in the name section of the caption: he/him/his, she/her/hers, or they/them/theirs” and “allows attorneys to include their preferred forms of address or pronouns in the captions of court documents.”⁶⁹ The rule “requires judges to use those terms ‘or other respectful means’ when referring to those attorneys either in court or in documents,” with the use of “alternative neutral language such as ‘Attorney Smith’ or ‘Plaintiff Smith.’”⁷⁰ The order notes the importance of the rule in fostering public access and trust:

Judges are ultimately public servants. We serve the entire public and are required to treat those who come before us with civility and respect. The gender identity of a member of the public is a part of their individual identity, regardless of whether others agree or approve. . . . The amendment of MCR 1.109(D) will help to promote and preserve the judiciary’s credibility and currency with the public that we serve while also providing guidance to judges and court staff.⁷¹

In short, courts’ adoption of inclusive language is highly varied, but many are confronting these issues in their practice and the substance of their decisions. More generally, equity and inclusion principles are being actively debated within court systems, by practicing attorneys, in legal academia, and by our society writ large.

⁶⁷ *Id.*

⁶⁸ Karen Sloan, ‘History is Made’ as Michigan Judges Are Ordered to Use Lawyers’ Preferred Pronouns, REUTERS (Sept. 28, 2023, 12:04 PM), <https://www.reuters.com/legal/government/history-is-made-michigan-judges-are-ordered-use-lawyers-preferred-pronouns-2023-09-28/> [<https://perma.cc/W22E-KXTZ>].

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Amendment of Rule 1.109 of the Michigan Court Rules, MICH. SUP. CT. (Sept. 27, 2023), https://www.courts.michigan.gov/siteassets/rules-instructions-administrative-orders/proposed-and-recently-adopted-orders-on-admin-matters/adopted-orders/2022-03_2023-09-27_formor_amdmcr1.109.pdf [<https://perma.cc/K4R8-EA8G>] (Welch, J.).

D. Evolving Approaches and Strategies to Inclusive Language

Equity and discrimination are changing concepts within the law itself,⁷² and contested in the law school setting.⁷³ Even when there is consensus on principles, there may not always be agreement on methodology or application. For example, this debate exists with respect to the use of person-first or identity-first language.⁷⁴ Advocates favoring person-first language emphasize the importance of recognizing individuals as people before their disabilities or conditions. Referring to “a person with a disability,” rather than a “disabled person,” centers their humanity and individuality so a person’s identity is not overshadowed by a single characteristic. This approach seeks to engender respect and avoid dehumanization. Those opposed, who prefer identity-first language, are guided by principles of empowerment and pride in identity. They argue that phrases like “autistic person” or “disabled person” affirm that these aspects are integral to who they are, not something separate or negative. For many, identity-first language reflects a reclamation

⁷² See, e.g., Michelle Travis, *The Supreme Court Case that Will Fuel the Corporate DEI Debate in 2025*, FORBES (Dec. 22, 2024), <https://www.forbes.com/sites/michelletravis/2024/12/22/the-supreme-court-case-that-will-fuel-the-corporate-dei-debate-in-2025/> [https://perma.cc/632X-A8HX] (“The U.S. Supreme Court is set to rule on an employment discrimination case in 2025 that could add fuel to the debate over corporate DEI programs—without ever mentioning diversity, equity, and inclusion. *Ames v. Ohio Department of Youth Services* involves a ‘reverse discrimination’ claim. These claims are brought by members of a majority group alleging discrimination in favor of members of a minority group.”).

⁷³ See, e.g., Anemona Hartocollis, *Northwestern Law School Accused of Bias Against White Men in Hiring*, N.Y. TIMES (July 2, 2024), <https://www.nytimes.com/2024/07/02/us/affirmative-action-lawsuit.html> [https://perma.cc/NBX3-A3EX] (“A conservative group filed a lawsuit against Northwestern University’s law school on Tuesday, claiming that its attempts to hire more women and people of color as faculty members violate federal law prohibiting discrimination against race and sex.”); Stephen Lemons, *Is There DEI in ASU? Judge Lets Professor Sue over Diversity Training*, PHOENIX NEW TIMES (Dec. 20, 2024), <https://www.phoenixnewtimes.com/news/asu-loses-bid-dismiss-anti-dei-lawsuit-brought-by-professor-20815934> [https://perma.cc/LTG5-3C7M] (“Maricopa County Superior Court . . . denied a motion to dismiss Goldwater’s May 17 amended complaint that challenges the ‘Inclusive Communities’ training the university requires of all employees.”).

⁷⁴ See, e.g., Shannon Wooldridge, *Writing Respectfully: Person-First and Identity-First Language*, NAT’L INST. OF HEALTH (Apr. 12, 2023), <https://www.nih.gov/about-nih/what-we-do/science-health-public-trust/perspectives/writing-respectfully-person-first-identity-first-language> [https://perma.cc/7LQK-ENRZ]; *Person-First and Identity-First Language*, EMPLOYER ASSISTANCE AND RESOURCE NETWORK ON DISABILITY INCLUSION, <https://askearn.org/page/people-first-language> [https://perma.cc/6SKX-3ST9] (last visited Dec. 26, 2024); Tara Haelle, *Identity-first vs. Person-first Language Is an Important Distinction*, ASS’N OF HEALTH CARE JOURNALISTS (July 31, 2019), <https://healthjournalism.org/blog/2019/07/identity-first-vs-person-first-language-is-an-important-distinction/> [https://perma.cc/74TA-HW49].

of terms, some of which may have been used historically to marginalize. Critics of person-first language often see it as dismissive of the lived realities and cultural significance tied to these identities, which promote solidarity. Opponents may also resist the clunkiness of people-first language.⁷⁵ As evidenced by these disagreements, there is no universal agreement on when to use which form.

To provide another illustration: content or trigger warnings have pros and cons to their utilization.⁷⁶ These disclaimers “are distinct in that they originated as a measure of protection specifically for survivors of trauma” as a way to “warn readers before discussing their experiences,” although they have been expanded.⁷⁷ “Trigger warnings are now used in educational settings, social media, entertainment, and other venues,” and it may be helpful to consider the use of trigger warnings in legal documents, such as in the context of domestic and sexual violence.⁷⁸ For example, two recent lawsuits filed against Sean Combs contained a trigger warning as seen here:⁷⁹

⁷⁵ See *Person-first Language Causes More Discrimination*, VALLEY VANGUARD (Feb. 10, 2020), <https://thevalleyvanguard.com/2020/02/10/person-first-language-causes-more-discrimination/> [<https://perma.cc/YN5U-S7PZ>] (“First off, it feels like a euphemism. It implies that outright saying their disability or health condition is something to be ashamed of and thus leads to more stigma. This is also why I dislike the term ‘differently abled.’ It’s also just clunky language and unnecessarily wordy. There are only a few circumstances where person-first language has flowed as naturally as identity first.”).

⁷⁶ Diana Simon, *Legal Education and Trigger Warnings: More Harm Than Good?*, 18 CHARLESTON L. REV. 481 (2024), <http://dx.doi.org/10.2139/ssrn.4535054> [<https://perma.cc/G6LW-FCX2>].

⁷⁷ Payton J. Jones, Benjamin W. Bellet & Richard J. McNally, *Helping or Harming? The Effect of Trigger Warnings on Individuals with Trauma Histories*, 8 CLINICAL PSYCH. SCI. 905 (2020) (“Giving a trigger warning means providing prior notification about forthcoming content that may be emotionally disturbing (Boysen, 2017). In this sense, trigger warnings are similar to PG-13 or ‘viewer discretion advised’ warnings that are common across many different forms of media.”); *but see* Shawnelle Martineaux, *Don’t Enshrine Trigger Warnings in Tort Law*, J. FREE BLACK THOUGHT, <https://freeblackthought.substack.com/p/dont-enshrine-trigger-warnings-in> [<https://perma.cc/KP67-B6MK>] (last visited Dec. 20, 2024) (“Today, however, with the preponderance of evidence of their ineffectiveness, their potential harmfulness, and an ever-extending list of purported triggers aimed at protecting against nebulous trauma events, I am compelled to forward three arguments against trigger-warning liability.”).

⁷⁸ Jones, et al., *supra* note 77.

⁷⁹ See *Doe v. Combs*, Case 1:23-cv-10628 (Dec. 6, 2023), <https://s3.documentcloud.org/documents/24193182/new-jane-doe-lawsuit-against-diddy-aka-sean-combs.pdf> [<https://perma.cc/8U3B-9AE2>].

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

JANE DOE,

Plaintiff,

v.

SEAN COMBS, HARVE PIERRE; THE THIRD
ASSAILANT; DADDY’S HOUSE RECORDINGS,
INC. and BAD BOY ENTERTAINMENT
HOLDINGS, INC.,

Defendants.

-----X

Civil Case No.

COMPLAINT

JURY TRIAL DEMAND

TRIGGER WARNING:
THIS DOCUMENT CONTAINS HIGHLY GRAPHIC INFORMATION OF A
SEXUAL NATURE, INCLUDING SEXUAL ASSAULT

Plaintiff Jane Doe (“Ms. Doe”) hereby alleges as follows:

PRELIMINARY STATEMENT

1. On November 16, 2023, Casandra Ventura a/k/a “Cassie” filed a 35-page lawsuit in which she exposed Sean Combs for subjecting her to nearly a decade of physical, sexual and emotional abuse punctuated by rape, sex trafficking and being forced to engage in drug fueled nonconsensual sexual encounters with other men.
2. Ordinarily, when a lawsuit such as Ms. Ventura’s is filed that involves events that took place long ago, witnesses are few and far between and evidence hard to muster. Not so for the claims brought against Mr. Combs. Within minutes of the filing, salient facts of Ms. Ventura’s claims were confirmed by various witnesses, including a rival musician whose car Mr. Combs blew up as well as various individuals who observed Mr. Combs beat Ms. Ventura.

However, the use of trigger warnings is debated, even in the context of the classroom. Some favor trigger warnings as modernizing the law school curricula, countering what some see as “an outdated system of learning that does not account for the changing demographics of our law students” and permitting students to “grappl[e] with and critique[e] the traditional law school pedagogy.”⁸⁰ Others reject the notion

⁸⁰ Simon, *supra* note 76, at 5.

of dispassionate learners and underscore the importance of making classrooms more “sensitive, inclusive, and antiracist,” including to ensure those from vulnerable populations feel included in the learning environment.⁸¹ By contrast, some advocates and educators oppose the use of trigger warnings. Some harbor concerns for academic freedom. A report by the American Association of University Professors argued that “trigger warnings are ‘infantilizing and anti-intellectual’; single out certain topics for attention; may result in professors eliminating material in their classes altogether; and may have a special impact on non-tenured and contingent faculty, who will feel even more pressure to use them or be fired.”⁸² Some may be concerned with its impact on classroom discussion dynamics, or see it as anti-Socratic.⁸³ Some find it unsupported by research or counterproductive.⁸⁴ Ultimately, there is no consensus on the use of content or trigger warnings.

III. INCLUSIVE LANGUAGE PRACTICES IN CLINICS

This part catalogs the various terms used by clinics, which provide a snapshot into broader trends in the legal profession, and evince or eschew values outlined in the framework presented in Part I. Given the issues within the legal profession related to inclusive language, as discussed in Part II, thoughtfulness around language choices is a critical part of professionalism. Clinics serve an important role in preparing students for practice and are directly engaged in practice themselves. In addition to fulfilling educational mandates to educate on “bias, cross-cultural competency, and racism,”⁸⁵ teaching inclusive language

⁸¹ *Id.* at 6, 8.

⁸² *Id.* at 9.

⁸³ *Id.* at 11 (“The Socratic method also requires students to think on the spot, answer questions precisely, and take intellectual risks. . . . An overriding learning goal is teaching students ‘to engage in sophisticated legal research and analysis, including analogical reasoning, critical thinking, problem solving, and policy analysis.’ Stripping or limiting classroom content because it might be offensive could undermine these goals. Giving trigger warnings or omitting offensive words or epithets because they will trigger student sensitivities is not going to prepare students for the realities of practicing law.”) (internal citation omitted).

⁸⁴ *Id.* at 13 (“[T]rigger warnings have the potential to make students feel more anxious, not less.”); *id.* (“[T]rigger warnings may give someone the impression that survivors are ‘emotionally incapacitated’ when, in fact, most trauma survivors are ‘resilient and show few symptoms of PTSD after an initial period of adjustment.’”).

⁸⁵ ABA Standard 303 requires law schools to “provide education to law students on bias, cross-cultural competency, and racism: (1) at the start of the program of legal education, and (2) at least once again before graduation.” ABA Standards for Approval of Law Schools, AM. BAR. ASS’N, https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2024-2025/2024-2025-standards-and-rules-for-approval-of-law-schools.pdf (last visited Dec. 26, 2024). Standard 303 also mandates that an accredited law school must offer a curriculum that requires each student to satisfactorily complete one or more experiential courses (which can include clinical courses) totaling at least six credit hours, although there are proposals to increase this requirement. ABA

decision-making skills serves other practice and pedagogical interests.⁸⁶ For example, inclusive language practices are essential to comply with professional ethics rules.⁸⁷ As “law school clinics . . . share ethics issues with law firms, government entities, public defenders, and legal aid offices,” and students are operating under the same requirements as attorneys, clinics are “highly conscientious that ethics and professionalism are a major component of their programs.”⁸⁸ In addition to building cultural competence and fostering positive relationship building, inclusive language reinforces effective communication and has an impact on the clinic’s representation. For instance, inclusive language is a necessary tool for client-centered lawyering, which “refers to a ‘richly elaborated philosophy of lawyering that strives at once to be client-directed, holistic, respectful of client narrative, client-empowering, and partisan.’”⁸⁹ Given the importance of clinical advocacy, this section considers how clinics exemplify the various language choices utilized in courts and society more broadly with respect to the adoption of inclusive terms.

Experiential Credits Working Group of the Standards Committee (Nov. 1, 2023), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/nov23/23-nov-experiential-learning-working-group-memo-to-council.pdf [https://perma.cc/3PVA-ZLF5].

⁸⁶ William E. Adams, Jr. & Leo P. Martinez, *Focus on Diversity: The ABA Strengthens Diversity, Equity, and Inclusion Educational Requirements for Law Schools*, BAR EXAM’R (2022), <https://thebarexaminer.ncbex.org/article/summer-2022/focus-on-diversity-2/> [https://perma.cc/MD5H-ZLRU] (last visited Dec. 20, 2024).

⁸⁷ See *supra* Part I; see, e.g., Priscilla DeGregory, ‘Racist Lawyer’ Aaron Schlossberg Publicly Scolded by Appeals Court, N.Y. POST (Dec. 22, 2022, 3:17 PM), <https://nypost.com/2020/12/22/racist-lawyer-aaron-schlossberg-scolded-by-appeals-court/> [https://perma.cc/Q7JN-ERCH] (documenting attorney’s statements, including: “If they have the balls to come here and live off of my money—I pay for their welfare, I pay for their ability to be here—the least they can do is speak English”); Matter of Teague, 15 N.Y.S.3d 312, 313 (2015) (“Respondent was charged with having made patently offensive racial, ethnic, homophobic, sexist, and other derogatory remarks to attorneys, in violation of rule 8.4(h) of the Rules of Professional Conduct”); Debra Cassens Weiss, *After Learning Lawyer’s Remark Was a ‘Serious Covert Insult,’ Judge Refers Incident to State Bar*, ABA J. (July 21, 2022, 9:53 AM), <https://www.abajournal.com/news/article/fter-learning-lawyers-remark-was-serious-covert-insult-judge-refers-incident-to-state-bar> [https://perma.cc/Q95X-AMQD] (last visited Dec. 20, 2024) (reporting attorney used “‘See You Next Tuesday’ [a]s a euphemism for the C-word” towards two female lawyers).

⁸⁸ Nina W. Tarr, *Ethics, Internal Law School Clinics, and Training the Next Generation of Poverty Lawyers*, 35 WM. MITCHELL L. REV. 1011, 1012 (2009) (discussing confidentiality, conflicts of interest, and other ethical issues); M. Chris Fabricant, *Rethinking Criminal Defense Clinics in “Zero-Tolerance Policy” Regimes*, 36 N.Y.U. REV. L. & SOC. CHANGE 351, 379–80 (2012) (considering the ethical issues arising between cause-lawyering and client-centered representation).

⁸⁹ Julie D. Lawton, *Who Is My Client? Client-Centered Lawyering with Multiple Clients*, 22 CLIN. L. REV. 145, 148 (2015) (“[R]especting the importance of the client’s role in client decision-making; and respecting the importance of the attorney’s appreciation for their clients’ ‘perspectives, emotions and values’ are enabled by inclusive language in the process of developing narratives and setting goals.).

A. General Considerations

This section seeks to provide the foundation for inquiring about language choices in the clinical and advocacy context as set forth in Part I. Reflection requires consideration of the evolution of language and the current debates on word choice. In seeking to distill the existing language controversies for different communities or identity groups, this part will introduce the use of terms in law and society. Then, for each category, the paper will elevate clinical examples demonstrating the range of language choices utilized and reflect on the potential applicability of the remaining principles—respect, accuracy, precision, and relevance—in the analysis.⁹⁰

Under the framework, respect entails understanding individual preferences and avoiding assumptions. It is best to seek guidance from individuals with whom one is directly engaged to understand how they describe their identity and which terms they feel comfortable using. Moreover, avoid making assumptions and educate oneself on current trends in language use. For instance, many organizations that work directly with particular communities can provide insight into general terms in current use.⁹¹ Being mindful of variations in the preferences between members or a group and that some terms may only be appropriate for use by those who are in-group, as opposed to those not of that identity, is also important.⁹²

Individuals should also convey respect in word choice and be careful using: zoomorphic, debasing idioms (e.g., “keeping someone on a tight leash”); coded, stigmatized phrases (e.g., “blue collar worker”); dehumanizing, reductionist language (e.g., “slave” instead of “enslaved person”).⁹³ Terms that might be devaluing or stigmatizing should be

⁹⁰ This analysis relies on the publicly available information about various clinical programs available through their websites. The audience for these sites is largely mixed—targeting prospective clients, current students, alumni, and the community writ large—and, thus, language may vary in other contexts.

⁹¹ Safstrom & Mead, *supra* note 1, at 369 (“Resources from the National Center on Disability and Journalism, GLAAD, and the Marshall Project, for instance, provide particular insight into the identifiers that are commonly used or preferred by members of their represented communities.”); *see also* Appendix.

⁹² *In-group/Out-group*, UNIV. OF TEX. SCH. OF L., <https://ethicsunwrapped.utexas.edu/glossary/in-group-out-group> [<https://perma.cc/8KFR-SQFT>] (last visited Dec. 18, 2024).

⁹³ Brian Resnick, *The Dark Psychology of Dehumanization, Explained*, Vox (Mar. 7, 2017, 8:10 AM), <https://www.vox.com/science-and-health/2017/3/7/14456154/dehumanization-psychology-explained> [<https://perma.cc/ELJ6-6PTT>] (“Look back at some of the most tragic episodes in human history and you will find words and images that stripped people of their basic human traits. In the Nazi era, the film *The Eternal Jew* depicted Jews as rats. During the Rwandan genocide, Hutu officials called Tutsis ‘cockroaches’ that needed to be cleared out.”); Scott Cummings, *Racial Prejudice and Political Orientations Among Blue-Collar Workers*, 57 Soc. Sci. Q. 907 (1977), <https://www.jstor.org/stable/42859715> (“Given the blue collar’s reaction against the war on poverty, affirmative action and racial quotas . . .

avoided.⁹⁴ For instance, terms like “marginalized,” “underserved,” “underrepresented,” or “minoritized” can have an othering effect, as these terms gloss over “the historical disinvestment experienced by some communities” and that more “[e]quity-focused alternatives include ‘historically and intentionally excluded’ and ‘disinvested,’” which reflect the historic and social experiences of a population or group.⁹⁵ One should also be cautious with the use of colloquialisms or terms that have a loaded history. Although terms can become attenuated from their original meaning, it is helpful to be aware that many phrases have biased origins. For instance, while the term “off the reservation” may be an appropriate way to describe factual circumstances,⁹⁶ its more common use as a figure of speech to describe someone acting erratically belies its historical roots. The use of the same term as a colloquialism to mean “to deviate from what is expected or customary; to behave unexpectedly or independently” carries negative connotations.⁹⁷ The term’s derivation

produce[d] a fusion between racial prejudice and reactionary politics.”); *Language of Slavery, Underground Railroad*, NAT’L PARK SERV. (Jan. 28, 2022), <https://www.nps.gov/subjects/undergroundrailroad/language-of-slavery.htm> [<https://perma.cc/3GAN-PXC8>] (Using the term enslaved person “more accurately describes someone who was forced to perform labor or services against their will under threat of physical mistreatment, separation from family or loved ones, or death. . . . Enslaved person emphasizes the humanity of an individual within a slaveholding society over their condition of involuntary servitude. . . . [T]his term, in which enslaved describes but person is central, clarifies that humanity was at the center of identity while also recognizing that this person was forcibly placed into the condition of slavery by another person or group.”).

⁹⁴ See, e.g., *Socioeconomic Status and Classism in Language*, PRATT INST. (Oct. 27, 2023, 4:31 PM), <https://libguides.pratt.edu/c.php?g=1278195&p=9379489> [<https://perma.cc/5Z6G-PDRU>] (“Terms to Avoid: The poor, low-class people, poor people; Suggested Alternatives: People whose incomes are below the federal poverty threshold, People who self-reported incomes were in the lowest income bracket; Comments: Many people find the terms ‘low-class’ and ‘poor’ pejorative. Use person-first language instead. Define income brackets and levels, if possible.”); *APA Style Guide*, AM. PSYCH. ASS’N, <https://apastyle.apa.org/style-grammar-guidelines/bias-free-language/socioeconomic-status> [<https://perma.cc/B5UW-VDT7>] (last visited Dec. 18, 2024); *Inclusive Language for Reporting Demographic and Clinical Characteristics*, JAMA, <https://jamanetwork.com/pages/inclusive-language> [<https://perma.cc/9ZDW-2E6V>] (last visited Dec. 18, 2024).

⁹⁵ Andis Robeznieks, *Try These 7 Equity-Focused Language Options to Engage Patients*, AM. MED. ASS’N, <https://www.ama-assn.org/delivering-care/health-equity/try-these-7-equity-focused-language-options-engage-patients> [<https://perma.cc/8S5L-9NX3>] (last visited Dec. 18, 2024).

⁹⁶ U.S. COMM’N ON CIV. RTS., *AMERICAN INDIAN CIVIL RIGHTS HANDBOOK* 58 (Mar. 1972), <https://www2.law.umaryland.edu/marshall/usccr/documents/cr11033.pdf> [<https://perma.cc/LGP3-4NU8>] (“Others [tribes] permit absentee voting only by members temporarily absent from the reservation and still others allow absentee voting by members living permanently off the reservation.”).

⁹⁷ Kee Malesky, *Should Saying Someone Is ‘Off The Reservation’ Be Off-Limits?*, NPR (June 29, 2014, 3:41 PM), <https://www.npr.org/sections/codeswitch/2014/06/29/326690947/should-saying-someone-is-off-the-reservation-be-off-limits> [<https://perma.cc/9CYB-N2RM>]; see also Ben Zimmer, *‘Off the Reservation’ Is a Phrase With a Dark Past*, WALL ST. J. (May 6, 2016, 12:40 PM), <https://www.wsj.com/articles/off-the-reservation-is-a-phrase-with-a-dark-past-1462552837> [<https://perma.cc/W2VR-NBFR>].

relates to “Native American peoples [who] were restricted to reservations created by the U.S. government, and their freedom was severely limited,” but has also been used in its more figurative sense for “a century-long history in American political life” in contexts that are far attenuated from the term’s origin.⁹⁸ As such, many people using the phrase may have no idea of the term’s history, and may think the expression’s use is universally innocuous.

Similar logic applies to the use of other casual turns of phrase or specific terms provided in the Appendix. Some of the most commonly used words or idioms that carry historical connotations include: hooligan, hysteria, gypped, moron, lame, and you guys.⁹⁹ Even terms with mixed or contested historical origin, like “hip hip hooray”¹⁰⁰ or “rule of thumb,”¹⁰¹ may carry deep social connotations. Idioms with problematic

⁹⁸ Malesky, *supra* note 97.

⁹⁹ See generally Christina Sterbenz & Dominic-Madori Davis, *12 Racist and Offensive Phrases That People Still Use All the Time*, BUS. INSIDER (June 16, 2020, 12:16 PM), <https://www.businessinsider.com/offensive-phrases-that-people-still-use-2013-11> [<https://perma.cc/QK5U-WRVM>]; *Common Idioms and Expressions that are Unknowingly Offensive*, CHASE BREXTON HEALTH, <https://chasebrexton.org/blog/common-idioms-and-expressions-are-unknowingly-offensive> [<https://perma.cc/5PLL-3K4P>] (last visited Dec. 18, 2024); Kiran Herbert, *Offensive Words and Phrases to Eliminate from Your Business Communications*, OUTSIDE (Feb. 22, 2022), <https://www.outsideonline.com/business-journal/issues/offensive-words-and-phrases-to-eliminate-from-your-business-communications/> [<https://perma.cc/A4MM-UHKF>]; Morgan Greenwald, *20 Things You’re Saying That You Didn’t Know Were Offensive*, BESTLIFE (Nov. 1, 2020), <https://bestlifeonline.com/offensive-sayings/> [<https://perma.cc/8PE4-JB9H>]; Janaki Challa, *Why Being ‘Gypped’ Hurts the Roma More Than It Hurts You*, NPR (Dec. 30, 2013, 3:49 PM), <https://www.npr.org/sections/codeswitch/2013/12/30/242429836/why-being-gypped-hurts-the-roma-more-than-it-hurts-you> [<https://perma.cc/MB53-W3HQ>]; *Block*, ETYMOLOGY DICTIONARY, <https://www.etymonline.com/word/block> [<https://perma.cc/89Q8-835H>] (last visited Dec. 18, 2024).

¹⁰⁰ Sterbenz & Davis, *supra* note 99 (“Though steeped in controversy, some think the first part of this phrase relates to anti-Semitic demonstrations that started in Germany in the 19th century. Germans cheered ‘hep hep,’ a German herding call, as they forced Jews from their homes across Europe, according to Cracked.”).

¹⁰¹ U.S. COMM’N ON CIV. RTS., COMPARE UNDER THE RULE OF THUMB: BATTERED WOMEN AND THE ADMINISTRATION OF JUSTICE 2 (Jan. 1982), https://www.nlm.nih.gov/exhibition/confrontingviolence/assets/transcripts/OB12012_200_dpi.pdf [<https://perma.cc/S6TU-HT3P>] (“American law is built upon the British common law that condoned wife beating and even prescribed the weapon to be used. This ‘rule of thumb’ stipulated that a man could only beat his wife with a ‘rod not thicker than his thumb.’”) (internal citation omitted) *with* Devon Link, *Fact Check: Origin Stories for Popular Phrases are Nothing More than Urban Legends*, USA TODAY (Oct. 16, 2020), <https://www.usatoday.com/story/news/factcheck/2020/10/16/fact-check-origin-stories-popular-phrases-urban-legends/5939942002/> [<https://perma.cc/KP6J-34KJ>] (“In April 1998, the Baltimore Sun investigated the etymology of ‘rule of thumb’ and found no clear evidence that the domestic abuse story was true. The Sun suggested the phrase could have come from brewers’ practice of using their thumb to test the temperature of beer.”); *see also id.* (“Both the Sun and the Phrase Finder acknowledged a story in which a judge supposedly told a man he could beat his wife with a stick so long as it was thinner than his thumb. Allegedly, Judge Sir Francis Buller’s 1782 decision inspired cartoonist James Gillray to publish a satirical illustration the following year, which dubbed him ‘Judge Thumb.’”); *see also* Craig Shriver, *Rule of Thumb (Origin)*, GRAMMAR MONSTER, https://www.grammar-monster.com/sayings_proverbs/

origins, despite being removed in time and context, might nonetheless be divisive in their modern use, although some may argue the modern-day meanings are too far removed from their origins and reflect the way our language evolves.¹⁰²

At times, the relevance of a particular aspect of someone's identity might be emphasized or minimized, and how various aspects of someone's identity intersect may be nuanced. For instance, someone's gender identity may or may not be related to their immigration claim.¹⁰³ Although disaggregated for the purposes of this analysis in Part III, individuals can belong to multiple identity groups. Intersectionality, a concept coined by Kimberlé Crenshaw, highlights how various social identities—such as race, gender, sexuality, class, and ability—interconnect to create unique experiences of privilege or oppression.¹⁰⁴ Recognizing these intersections allows us to address the complexities of individual identity, and account for their lived experiences and worldview. Inclusive language promotes a deeper understanding of diversity and intersectionality, fostering communication that uplifts rather than marginalizes.¹⁰⁵

These generalized considerations are designed to foster reflection and respect: both to develop an understanding of terms' origin and impact, and to ensure language avoids needlessly stigmatizing any aspect of an individual's identity. However, there may be times when an individual's preference, social understanding, legal meaning, and other considerations can influence the accuracy, precision, or relevance of these

rule_of_thumb.htm [https://perma.cc/UK67-6Z5Y] (last visited Dec. 18, 2024) (“Gillray’s cartoon shows a man beating his fleeing wife, while Judge Buller (called ‘Judge Thumb’), carrying two bundles of sticks, watches the pair. The cartoon’s caption reads ‘thumbsticks—for family correction: warranted lawful!’”); see also BBC History Magazine, *Why Do We Say ‘Rule of Thumb’?*, HISTORY EXTRA (Apr. 15, 2021), https://www.historyextra.com/period/modern/rule-thumb-idiom-origins-meaning-phrase-why-do-we-say/ [https://perma.cc/CEQ4-Q3K3].

¹⁰² HUMAN RTS. CAMPAIGN, *supra* note 9.

¹⁰³ *Compare Sex and Gender Law Clinic Secures Asylum Grant for Gay, HIV-Positive Ivoirian*, COLUMBIA L. SCH. (Dec. 18, 2008), https://www.law.columbia.edu/news/archive/sex-and-gender-law-clinic-secures-asylum-grant-gay-hiv-positive-ivoirian [https://perma.cc/DA4N-ECCH] (“Columbia Law School’s Sexuality and Gender Law Clinic yesterday secured asylum for a gay, HIV-positive man who feared persecution if forced to return to the Republic of Côte d’Ivoire (Ivory Coast) in West Africa. The U.S. Department of Homeland Security issued the grant of asylum.”), with *Community HeLP Clinic Secures Visas for Victims of Serious Crime*, UNIV. OF GA. SCH. OF L., https://digitalcommons.law.uga.edu/press_releases/1279/ [https://perma.cc/96N8-ABWK] (last visited Dec. 27, 2024).

¹⁰⁴ Maya Richard-Craven, *DEI Should Address Intersectionality. Here’s Why*, FORBES (Apr. 14, 2024), https://www.forbes.com/sites/mayarichard-craven/2024/04/14/dei-should-address-intersectionality-heres-why/ [https://perma.cc/3HRZ-RXTM].

¹⁰⁵ *Language, Inclusion and Intersectionality*, SIMPL4ALL, https://simpl4all.eu/news/language-inclusion-and-intersectionality/ [https://perma.cc/2XT7-3Z8J] (last visited Dec. 27, 2024) (“Words are a tool through which we attribute meaning and meaning to reality. Consequently, no language is ever neutral because the words we choose become the lens through which we interpret the world. Those who express themselves have a great responsibility in using inclusive and non-exclusive language.”).

terms. There is variability within communities and across individuals, as well as across contexts, that may necessitate the use of particular terms. The legal profession and clinics, as society as a whole, face an ongoing struggle in discerning what terminology best reflects the nuance and the fullness of an individual's identity.

B. Race & Ethnicity

Courts and clinics alike, which reflect society's broad range of language, have used a range of terms to reflect racial and ethnic identities. Generally, in discussing racial or ethnic identity, authors and speakers should be aware of terms that have potentially coded meanings.¹⁰⁶ To center respectful, humanizing language, oversimplification or reductionism in describing an individual's identity should be avoided. It is further suggested to define individuals' identity based on who they *are* rather than who they *are not*, which is why terms like "minority" or "non-white," which define people as othered with respect to the majority group, should be avoided.¹⁰⁷

The nuances of identity are individual, and one should default to the labels someone uses to identify themselves. Adherence to individual preferences is respectful. It is important to be aware of the nuance of terminology, and that there are differences, even between terms that are, colloquially, used synonymously or differently. For instance, the terms African American and Black may be interchangeable for many, but not for all, individuals. African American can imply a recent connection to an African nation (e.g., recent immigrant) and the latter may more aptly be used to describe people whose connection to Africa is more distant (e.g., Caribbean immigrants who identify as Black but not African).¹⁰⁸ Further, the term Black is capitalized and should be used as an adjective rather than a noun.¹⁰⁹

¹⁰⁶ See, e.g., Jemima McEvoy, *Here's How 'Urban,' a Term Plagued by Racial Stereotypes, Came to Be Used to Describe Black Musicians*, FORBES (June 10, 2020, 3:08 PM), <https://www.forbes.com/sites/jemimamcevoy/2020/06/10/heres-how-urban-a-term-plagued-by-racial-stereotypes-came-to-be-used-to-describe-black-musicians/?sh=7c2cb16346e7> [https://perma.cc/VNY4-B6HU]; *The Racially Charged Meaning Behind the Word 'Thug,' All Things Considered*, NPR (Apr. 30, 2015, 5:25 PM), <https://www.npr.org/2015/04/30/403362626/the-racially-charged-meaning-behind-the-word-thug> [https://perma.cc/Z6UM-DFFF].

¹⁰⁷ Lorraine Bannai & Anne Enquist, *(Un)examined Assumptions and (Un)intended Messages: Teaching Students to Recognize Bias in Legal Analysis and Language*, 27 SEATTLE U. L. REV. 1, 18 (2003) (discussing the use of "positive" terms, such as "people of color," rather than describing an individual or community as what they are not, e.g., non-white).

¹⁰⁸ *Id.*; see also NAT'L ARCHIVES, *Black Person*, NAT'L ARCHIVES CATALOG (Dec. 19, 2023), <https://www.archives.gov/research/catalog/lcdrg> [https://perma.cc/U8KA-6WWV].

¹⁰⁹ *Explaining AP Style on Black and White*, ASSOC. PRESS (July 20, 2020), <https://apnews.com/article/archive-race-and-ethnicity-9105661462> [https://perma.cc/S6EA-5LE2] ("AP's style is now to capitalize Black in a racial, ethnic or cultural sense, conveying an essential and shared sense of history, identity and community among people who identify as Black, including those in the African diaspora and within Africa.").

Other groups' identity language requires similar sensitivity to nuance, history, and current social use. For instance, many Native American groups prefer to be identified by tribal membership (e.g., Seminole, Cherokee, Alaskan Native, etc.).¹¹⁰ Some use the term Native American, indigenous, or Indian, but some strongly disfavor the use of particular terms.¹¹¹ To proffer another example: "Asian refers to people who are citizens of countries in the Far East, Southeast Asia or the Indian subcontinent, or to describe people of Asian descent," the term "Pacific Islanders includes Native Hawaiian, Samoan, Guamanian, Fijian and other peoples of the Pacific Island nations," and "Asian/Pacific Islander or Asian American and Pacific Islander (AAPI) refers to this population in its entirety."¹¹² Hispanic, used to indicate Spanish origin, is not equivalent to Latino, which "refers to (almost) anyone born in or with ancestors from Latin America and living in the U.S., including Brazilians."¹¹³ There are also emerging terms in these communities, such as Latinx¹¹⁴ and BIPOC,¹¹⁵ which have been met both with welcome and dissatisfaction by various community members. Latinx, for instance, is favored as

¹¹⁰ *Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs*, 84 FED. REG. 1200 (Feb. 1, 2019), <https://www.govinfo.gov/content/pkg/FR-2019-02-01/pdf/2019-00897.pdf> [<https://perma.cc/JUH2-6P4P>] ("This notice publishes the current list of 573 Tribal entities recognized by and eligible for funding and services from the Bureau of Indian Affairs (BIA) by virtue of their status as Indian Tribes."); see also *Territory Acknowledgement*, NATIVE LAND DIGIT., <https://native-land.ca/resources/territory-acknowledgement> [<https://perma.cc/DGN4-RCVW>] (last visited Dec. 26, 2024).

¹¹¹ *Dacoda McDowell-Wahpekeche, Which Is Correct? Native American, American Indian or Indigenous?*, OKLAHOMAN (Apr. 22, 2021, 6:01 AM), <https://www.oklahoman.com/story/special/2021/04/22/what-do-native-people-prefer-called/4831284001/> [<https://perma.cc/4E7G-FJD4>] (updated Apr. 23, 2021, 10:24 AM) ("‘American Indian’ . . . or ‘Indian’ is a ‘misnomer’ because it may confuse individuals who come from India, as ‘there are Indian Americans who come from south Asia.’").

¹¹² *Guide to Inclusive Language: Asian, Asian American, Pacific Islander*, ADELPHI UNIV., <https://www.adelphi.edu/brand/messaging/guide-to-inclusive-language/> [<https://perma.cc/FP34-WBLP>] (last visited Dec. 20, 2024) (original emphasis omitted).

¹¹³ *What's the Difference Between Hispanic and Latino?*, ENCYC. BRITANNICA, <https://www.britannica.com/story/whats-the-difference-between-hispanic-and-latino> [<https://perma.cc/6ZNL-6YRG>] (last visited Dec. 20, 2024).

¹¹⁴ See, e.g., Mark Hugo Lopez, Jens Manuel Krogstad & Jeffrey S. Passel, *Who Is Hispanic?*, PEW RSCH. CTR. (Sept. 15, 2022), <https://www.pewresearch.org/short-reads/2024/09/12/who-is-hispanic/> [<https://perma.cc/KBT2-AEAB>] ("Only 23% of U.S. adults who self-identified as Hispanic or Latino have heard of the term [Latinx], and just 3% said they use it to describe themselves," according to a 2019 survey. Awareness and use of the term vary across subgroups, with Hispanics ages 18 to 29 among the most likely to have heard of the term—42% say they have heard of it, compared with 7% of those 65 and older. Some of the most common use of Latinx is among Hispanic women ages 18 to 29—14% say they use it, compared with 1% of Hispanic men in the same age group.).

¹¹⁵ *Compare Crystal Raypole, BIPOC: What It Means and Why It Matters*, HEALTHLINE (Nov. 9, 2021), <https://www.healthline.com/health/bipoc-meaning> [<https://perma.cc/US54-6938>], with Andrea Plaid & Christopher MacDonald-Dennis, *'BIPOC' Isn't Doing What You Think It's Doing*, NEWSWEEK (Apr. 9, 2021, 1:54 PM), <https://www.newsweek.com/bipoc-isnt-doing-what-you-think-its-doing-opinion-1582494> [<https://perma.cc/7RX7-UMLR>].

a gender-neutral alternative to Latina or Latino. However, some prefer “elle” or “Latine,” as more consistent with the Spanish language, which can be applied to all terms. “[T]he gender-neutral option with ‘e’ would be ‘le chique alte’ and ‘les chiques altes’” instead of the gendered alternatives, “las chicas altas” or “los chicos altos.”¹¹⁶

Clinics must navigate these language choices at every stage of representation. Many clinics ask prospective clients identity questions upfront, in order to ascertain and utilize language in accordance with an individual’s preferences; some ask open-ended questions, whereas others provide multiple-choice options. To offer one example: Western New England School of Law’s Small Business Legal Clinic provides the following race categories on its optional “Demographic Information” question on its legal intake form:

- Aboriginal or Torres Strait Islander Australian
- American Indian/Alaskan Native
- Asian
- Black or African American
- Canadian Aboriginal
- Caucasian/White
- Native Hawaiian or Other Pacific Islander
- Latin X
- Other (Please specify)¹¹⁷

This is just one example of the range of options that can be used to solicit information about an individual’s identity. Leaving a write-in option where an individual can specify a term besides those provided is another way to allow individuals to identify without pre-determined labels, which can allow for greater specificity and accuracy in the language used by the person.

Identity language use extends far more broadly than initial intakes. Clinics use a range of specific terms to encompass individuals across identity groups, particularly those experiencing relevant harm or facing systemic barriers, but have also adopted more general terms like BIPOC. The University of Minnesota, for instance, launched the Racial Justice Law Clinic to “teach second and third year students how to engage in direct representation, strategic litigation, and other forms of advocacy as part of a greater movement to advance the rights of Black,

¹¹⁶ Fiona Siobhan Bean, *Les Chiques: The Addition of a Third Gender-Neutral Option in the Spanish Language*, UNIV. OF MONT. SCH. OF L., https://scholarworks.umt.edu/umcur/2021/humanities_oral/15/ [<https://perma.cc/6N8G-8WW2>] (last visited Dec. 20, 2024).

¹¹⁷ *Small Business Legal Clinic Application*, W. NEW ENG. L., <https://www1.wne.edu/law/centers/center-for-innovation-and-entrepreneurship-application.cfm> [<https://perma.cc/EJ69-UKW4>] (last visited Dec. 20, 2024).

Indigenous, Latine/x, Asian-American Pacific Islander, and/or other People of Color.”¹¹⁸ The clinic goes on to say: “As an institution, we routinely see unmet need . . . that affect the rights and well-being of traditionally under-resourced people . . . we’re [often] talking about BIPOC individuals and communities. Our disparities are among the worst in the nation in almost every measure of social welfare and social control.”¹¹⁹ Other institutions also use the term BIPOC, such as Fordham in its Experiential Learning Anti-Racism Steering Committee statement: “As a result, we have not identified and addressed policies and practices that perpetuate structural racism; have not placed Black, Indigenous, and People of Color (BIPOC) perspectives, voices, and leadership in the forefront; and have not consistently named and countered racism in its implicit and explicit manifestations,”¹²⁰ despite its role in the legal professional.¹²¹ Other law schools and clinical programs have adopted similar anti-bias statements.¹²² Some law school clinics also use other inclusive terms, such as people or “students of color,” but which may lack specificity.¹²³

Language for other communities similarly varies. For instance, University of Tennessee’s Legal Clinic “is designed to learn more about

¹¹⁸ Liliana Zaragoza, *Racial Justice Law Clinic*, UNIV. OF MINN. L. SCH., <https://law.umn.edu/course/7120/fall-2022/racial-justice-law-clinic/zaragoza-liliana> [https://perma.cc/S9KQ-FF6S] (last visited Dec. 20, 2024).

¹¹⁹ Suzy Frisch, *Minnesota Law to Launch Racial Justice Law Clinic*, UNIV. OF MINN. L. SCH., <https://minnesotalawmag.law.umn.edu/stories/racial-justice-clinic> [https://perma.cc/4P2U-ZE2Z] (last visited Dec. 20, 2024).

¹²⁰ *Clinics*, FORDHAM SCH. OF L., <https://www.fordham.edu/school-of-law/experiential-education/clinics/> [https://perma.cc/Z4EC-3UCQ] (last visited Dec. 20, 2024).

¹²¹ See, e.g., Jeffrey Rachlinski, Andrew J. Wistrich & Bernice B. Donald, *Getting Explicit About Implicit Bias*, JUDICATURE (2020), <https://judicature.duke.edu/articles/getting-explicit-about-implicit-bias/> [https://perma.cc/XN5Q-B2PM] (discussing unconscious bias in judging); Jerry Kang, Judge Mark Bennett, Devon Carbado, Pam Casey, Nilanjana Dasgupta, David Faigman, Rachel Godsil, Anthony G. Greenwald, Justin Levinson & Jennifer Mnookin, *Implicit Bias in the Courtroom*, 59 UCLA L. REV. 1124 (2012).

¹²² See, e.g., *Legal Clinic Antiracism Statement*, UNIV OF ARK., <https://ualr.edu/law/clinical-programs/legal-clinic-antiracism-statement> [https://perma.cc/N8KL-AWGF] (last visited Dec. 20, 2024).

¹²³ See, e.g., *Racial Equity in Education Law and Policy Clinic*, GEORGETOWN UNIV. L. CTR., <https://www.law.georgetown.edu/experiential-learning/clinics/our-clinics/racial-equity-in-education-law-and-policy-clinic> [https://perma.cc/2V2D-UYU3] (last visited Dec. 20, 2024) (“[The] REEL Policy Clinic engages in policy advocacy on behalf of clients to advance racial equity in education. This work includes addressing issues that disproportionately impact the educational experiences and outcomes of students of color, including discriminatory school discipline practices, police presence in schools, school segregation, resource inequities, narrow and punitive assessments, and educational approaches that focus on remediation of students of color.”); *Center for Racial and Disability Justice*, NORTHWESTERN PRITZKER SCH. OF L., <https://www.law.northwestern.edu/research-faculty/racial-disability-justice/> [https://perma.cc/7JR3-DYDL] (last visited Dec. 20, 2024) (“Northwestern Pritzker Law Center for Racial and Disability Justice (CRDJ) is a first-of-its-kind center dedicated to promoting justice for people of color, people with disabilities, and individuals at the intersection of race and disability.”).

the challenges and opportunities in Knoxville's African American and immigrant communities,"¹²⁴ whereas the University of California Irvine describes that "workers are susceptible to unlawful treatment, particularly low-wage immigrant, women, and Black workers."¹²⁵ To consider another institution: Colorado Law offers a Civil Rights & Racial Justice Certificate that describes both "American Indian Law" and externships related to "American Indian/indigenous peoples law and policy."¹²⁶ Lewis & Clark Law School's Small Business Legal Clinic, in discussing its Rural Program "for more equitable access to legal services across the state" noted: "A number of groups provided input, from local chambers of commerce and the Oregon Native American Chamber to Latinx and rural community organizations."¹²⁷ Also using the term Latinx, the University of Baltimore's Immigrant Rights Clinic "focuses on providing medical services and health outreach to the Latinx community in the Baltimore area."¹²⁸ McGeorge Law School's Immigration Clinic, relatedly, notes that "as anti-immigrant sentiment has increased, Asian communities have experienced the effects firsthand" and have resulted in increased deportations.¹²⁹

Utilizing the right terminology to accurately and precisely describe identity, while respecting individual preferences and potential audience norms, requires careful consideration of all aspects of a term's use, history, and contextualized application. The part highlights the need for precise and accurate language when describing racial and ethnic identities, demonstrating how accuracy involves understanding the distinctions and contexts behind each term. It also calls for attention to the granularity of terms to ensure that they appropriately reflect individual and group identities, particularly with respect to self-identification. Commitment to thoughtful, context-sensitive language

¹²⁴ *Legal Clinic Launches Effort to Study Systemic Racism*, UNIV. OF TENN. COLL. OF L. (Jan. 22, 2021), <https://law.utk.edu/2021/01/22/legal-clinic-launches-effort-to-study-systemic-racism/> [https://perma.cc/3QFZ-JGY7].

¹²⁵ *Workers, Law, and Organizing Clinic*, UNIV. OF CAL. IRVINE SCH. OF L., <https://www.law.uci.edu/academics/real-life-learning/clinics/wlo.html> [https://perma.cc/3546-83WW] (last visited Dec. 20, 2024) ("Labor exploitation is facilitated and structured by racism, misogyny, ableism, and other forms of subordination. The immigration and criminal legal systems deepen the vulnerability of low-wage workers.").

¹²⁶ *Civil Rights & Racial Justice*, UNIV. OF COLO. L. SCH., <https://www.colorado.edu/law/areas-study/civil-rights-racial-justice> [https://perma.cc/54L6-GAJQ] (last visited Dec. 20, 2024).

¹²⁷ Daniel F. Le Ray, *The Road to a Successful Business*, LEWIS & CLARK L. SCH. (2022), <https://www.lclark.edu/live/news/48637-the-road-to-a-successful-business> [https://perma.cc/637E-HG9X].

¹²⁸ Stephen Gaines, *Student-Attorney in UB School of Law Immigrant Rights Clinic Describes Working with Latinx Clients*, UNIV. OF BALT. SCH. OF L. (May 20, 2019), <https://ublawaccolades.wordpress.com/2019/05/20/student-attorney-in-ub-school-of-law-immigrant-rights-clinic-describes-working-with-latinx-clients/> [https://perma.cc/4UJB-69P6].

¹²⁹ Kishwer Vikaas, *Immigration Resources for the AAPI Community*, MCGEORGE SCH. OF L. (Nov. 3, 2021), <https://www.mcgeorgelegalclinics.com/2021/11/immigration-resources-for-the-aapi-community/> [https://perma.cc/7GLP-2A5C].

that respects individual identities while addressing social and historical use is foundational.

C. Sex, Gender, Gender Identity & Sexual Orientation

Clinics also seek to foster respect regardless of gender identity and sexual orientation, especially as understandings of sex, gender, and sexuality have evolved. Gender identity and sexual orientation protections have been widely litigated.¹³⁰ Precise and accurate descriptions of gender require a granular understanding of scientific and social labeling. Sex assigned at birth “(male, female, intersex)” is “often based on the child’s external anatomy.”¹³¹ Gender identity is “[o]ne’s innermost concept of self as male, female, a blend of both or neither.”¹³² A cisgender individual is “[a] person whose gender identity is consistent in a traditional sense with their sex assigned at birth.”¹³³ Transgender is an adjective to “[d]escribe[] a person whose gender identity and sex assigned at birth do not correspond based on traditional expectations” and includes “people who are gender fluid or non-binary.”¹³⁴ Gender identity is distinct from gender expression, which is the “[e]xternal appearance of one’s gender identity, usually expressed through behavior, clothing, body characteristics or voice, and which may or may not conform to socially defined behaviors and characteristics typically associated with being either masculine or feminine.”¹³⁵ Sexual orientation describes a person’s “emotional, romantic or sexual attraction to other people.”¹³⁶ While some terms have been generally abandoned, such as “homosexual” or “transsexual,” some terms may have different connotations over time or carry different meaning when used in-community

¹³⁰ See, e.g., Nicole Chavez, *Why Montana’s Two-Spirit People Are Challenging a State Law that Defines Sex as Binary*, CNN (Dec. 4, 2023, 11:39 AM), <https://www.cnn.com/2023/12/04/us/montana-two-spirit-lawsuit-sex-binary-reaj/index.html> [<https://perma.cc/PLZ6-TEY2>]; Jodi Fortino, *A Kansas City Student Teacher’s Lawsuit Says Their Gender-Neutral Pronouns Deemed ‘Too Personal’*, KCUR (Mar. 24, 2023, 3:00 AM), <https://www.kcur.org/news/2023-03-24/a-kansas-city-student-teachers-lawsuit-says-their-gender-neutral-pronouns-deemed-too-personal> [<https://perma.cc/F3MY-YU66>]; Solcyré Burga, *The Implications of Supreme Court’s 303 Creative Decision Are Already Being Felt*, TIME (July 16, 2023, 12:32 PM), <https://time.com/6295024/303-creative-supreme-court-future-implications/> [<https://perma.cc/F3NU-944P>].

¹³¹ *Assigned Sex at Birth*, BOS. MED. CTR., <https://www.bmc.org/glossary-culture-transformation/assigned-sex-birth> [<https://perma.cc/CE5M-K9Y6>] (last visited Dec. 20, 2024).

¹³² *Sexual Orientation and Gender Identity Definitions*, HUM. RTS. CAMPAIGN, <https://www.hrc.org/resources/sexual-orientation-and-gender-identity-terminology-and-definitions> [<https://perma.cc/9PHD-VNVT>] (last visited Dec. 20, 2024).

¹³³ *LGBTQ+ Inclusion: Glossary*, UNIV. OF WIS. MED., <https://www.uwmedicine.org/practitioner-resources/lgbtq/lgbtq-inclusion-glossary> [<https://perma.cc/6HSB-84QB>] (last visited Dec. 26, 2024).

¹³⁴ *Id.*

¹³⁵ HUMAN RTS. CAMPAIGN, *supra* note 9.

¹³⁶ *Id.*

versus by those who do not share that identity, like the term “queer.”¹³⁷ Language has evolved to encompass a range of identities, such as the use of “they/them” as a gender-neutral pronoun or “Mx.” as a gender-neutral honorific.¹³⁸

Clinics have adopted a range of terms to enhance respect for all communities, while also using precise and accurate language with respect to these identity categories. Some may inquire about gender in their intake forms, regardless of whether it is directly related to the clinics’ services.¹³⁹ Clinics may also address particular client constituencies. For instance, clinics have often discussed women directly in the context of specific work, where women might be overrepresented in needing aid or suffering unique harm. For example, Domestic Violence Clinics may discuss the gender-based impact of their services, as did Tulane, Cincinnati, and Buffalo.¹⁴⁰ Some clinics may directly target women’s services.¹⁴¹ Clinics do not discuss exclusively serving women, however, in

¹³⁷ Juliette Rocheleau, *A Former Slur Is Reclaimed, and Listeners Have Mixed Feelings*, NPR (Aug. 21, 2019, 10:33 AM), <https://www.npr.org/sections/publiceditor/2019/08/21/752330316/a-former-slur-is-reclaimed-and-listeners-have-mixed-feelings> [https://perma.cc/26Q7-TH87] (noting the mixed feelings regarding the use of “queer,” with one listener describing the usage as “painful” and another sharing “he’s a ‘big fan’ of the word”).

¹³⁸ *They*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/they> [https://perma.cc/F9NG-T7HS] (last visited Dec. 26, 2024); *Mx.—A Gender-Neutral Honorific*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/wordplay/mx-gender-neutral-title> [https://perma.cc/HP9F-A38F] (last visited Dec. 20, 2024) (adding the word to the dictionary in September 2017).

¹³⁹ *Compare Intellectual Property Clinic*, UNIV. OF ILL. CHI. SCH. OF L., <https://law.uic.edu/experiential-education/clinics/trademark/contact/> [https://perma.cc/W98T-5GRF] (last visited Dec. 27, 2024) (providing Mx. honorific in intake form), *with Startup Clinic*, UNIV. OF MIAMI SCH. OF L., <https://miami.app.box.com/s/qaqedgfy00x999k7nxoiuskj2c36wj2t> [https://perma.cc/DHR7-JXJL] (last visited Dec. 27, 2024) (omitting gender inquiry in intake form).

¹⁴⁰ *Domestic Violence Clinic*, TULANE L. SCH., <https://law.tulane.edu/domestic-violence-clinic> [https://perma.cc/Z9TM-J7ZE] (last visited Dec. 20, 2024) (“Domestic violence requires a response well beyond either interventions for individual victims or the arrest of individual perpetrators. It requires full community engagement and a recognition of the complex and diverse experiences of women who experience abuse.” Senior Professor of the Practice, Becki T. Kondkar.”); *Domestic Violence & Civil Protection Order Clinic*, UNIV. OF CINCINNATI COLL. OF L., <https://law.uc.edu/real-world-learning/clinics/DomesticViolenceandCivilProtectionOrderClinic.html> [https://perma.cc/BX3C-GM79] (last visited Dec. 20, 2024) (discussing collaboration with “University of Cincinnati’s Women’s Center and Women Helping Women” and efforts to ensure “Cincinnati’s YWCA battered women and children’s shelter” retained funding); *Family Violence & Women’s Rights Clinic*, UNIV. OF BUFFALO SCH. OF L., <https://www.law.buffalo.edu/beyond/clinics/domestic-violence.current-projects.html> [https://perma.cc/JZ4N-477Q] (last visited Dec. 20, 2024) (“Clinic students have participated in the annual Teen Dating Violence Summit organized by the Erie County Commission on The Status of Women. Clinic students have developed a domestic violence court watch toolkit, and are working with Zonta and The Erie County Commission on the Status of Women on implementation.”).

¹⁴¹ See, e.g., *Women’s Employment Rights Clinic*, GOLDEN GATE UNIV. SCH. OF L., <https://law.ggu.edu/academics/clinics/womens-employment/> [https://perma.cc/3U5L-PT2V] (last visited Dec. 20, 2024) (“The Clinic’s mission is centered on ensuring that every worker has the right to economic fairness, equal opportunity, and dignity in the workplace. Our mission

recognition that gender violence can occur to anyone, including men and nonbinary individuals.¹⁴² Terms like “intimate partner violence” or “domestic violence” are neutral: they do not imply gender identity, a gendered relationship association, or a gendered assumption of who is perpetuating the violence.¹⁴³

Clinics can also use gender-inclusive terminology even when the issue might appear gendered. The use of gender-neutral language, like pregnant people or lactating parent (rather than gendered terms like “pregnant mothers,” “pregnant women,” or “breastfeeding mother”), accurately acknowledges a broader range of gender identities for individuals who are also biologically able to sustain a pregnancy.¹⁴⁴ For instance, New York University’s Reproductive Justice Clinic engages in “legal and policy research and analysis to support community and movement efforts to establish new or better resources for menstruating, pregnant, birthing and parenting people.”¹⁴⁵ However, some are concerned that de-gendering pregnancy can have adverse consequences and gloss over gender-based disparities in health and society more

is to collaborate with grassroots, community-based organizations, and worker centers to enhance their capacity for systemic change.”); *International Women’s Human Rights Clinic*, GEORGETOWN UNIV. L. CTR., <https://www.law.georgetown.edu/experiential-learning/clinics/our-clinics/international-womens-human-rights-clinic> [<https://perma.cc/5KXT-PLQQ>] (last visited Dec. 20, 2024) (“The IWHR Clinic advances women’s human rights globally through partnerships with local women’s human rights non-governmental organizations (‘NGOs’), as well as through research and scholarship.”); *Judge Elmo B. Hunter Legal Center for Victims of Crimes Against Women*, S. METHODIST UNIV. SCH. OF L., <https://www.smu.edu/law/clinics/hunter-legal-center> [<https://perma.cc/C6LN-S697>] (last visited Dec. 20, 2024) (“Students enrolled in the . . . Clinic provide representation to survivors of gender-based harms, including domestic violence, sexual assault and human trafficking, in a broad range of legal areas. The Hunter Center has partnered . . . to serve women who are most critically in need of legal assistance.”).

¹⁴² See, e.g., *Domestic Violence Clinic*, GEORGETOWN UNIV. L. CTR., <https://www.law.georgetown.edu/experiential-learning/clinics/our-clinics/domestic-violence-clinic/> [<https://perma.cc/B9CK-EGL5>] (last visited Dec. 20, 2024) (“Students in the Domestic Violence Clinic (DVC) represent victims of intimate abuse in civil protection order (CPO) cases in the D.C. Superior Court.”).

¹⁴³ *Family Violence Clinic Expands Its Impact with State and County Support*, UNIV. OF BUFFALO SCH. OF L., <https://www.law.buffalo.edu/links/2021-June/family-violence-clinic.html> [<https://perma.cc/7R54-XFEH>] (last visited Dec. 26, 2024) (discussing casework to address “intimate partner violence” and expressing “hope this program will prevent re-traumatizing a person who has experienced our court system because of domestic violence”); see also Mack Kenner, Cindy Yao, Lindsay Sergi & Julia Sturges, *Transgender and Nonbinary Persons’ Rights and Issues*, 25 GEO. J. GENDER & L. 1087, 1103 (2024) (“Transgender people face high rates of victimization due to domestic and intimate partner violence.”).

¹⁴⁴ Harmeet Kaur, *The Language We Use to Talk About Pregnancy and Abortion Is Changing. But Not Everyone Welcomes the Shift*, CNN (Sept. 4, 2022, 6:01 AM), <https://www.cnn.com/2022/09/04/us/abortion-pregnant-people-women-language-wellness-cec/index.html> [<https://perma.cc/V796-HUH2>].

¹⁴⁵ *Reproductive Justice Clinic*, N.Y.U. SCH. OF L., <https://www.law.nyu.edu/academics/clinics/reprojustice> [<https://perma.cc/6499-3BEK>] (last visited Jan. 23, 2025).

broadly.¹⁴⁶ Gendered terminology is reflected in clinical use, too, such as in one program's utilization of "pregnant women."¹⁴⁷

Clinics have also used a range of terms in considering gender identity.¹⁴⁸ Some clinics may use gendered dichotomies that do not reflect a recognition of nonbinary gender identities. For instance, one Veterans Legal Services Clinic offers "students will represent men and women who have served in our country's military and help them access benefits to which they are entitled under federal law."¹⁴⁹ This description leaves out servicemembers who are nonbinary, compounding a history of marginalization and exclusion in military services.¹⁵⁰ Gender-restricted language is often used in potentially exclusionary ways.¹⁵¹ However, gen-

¹⁴⁶ Brooke Migdon, *Experts Warn Gender-Neutral Language Like 'Pregnant People' May Put Mothers at Risk*, HILL (Feb. 1, 2022), <https://thehill.com/changing-america/respect/diversity-inclusion/592335-experts-warn-gender-neutral-language-like> ("Desexing the language of female reproduction has been done with a view to being sensitive to individual needs . . . Yet, this kindness has delivered unintended consequences that have serious implications for women and children . . . includ[ing] 'dehumanizing' mothers . . . because alternative, gender-inclusive terms typically involve body parts or physiological processes."); see also Kathy Katella, *Maternal Mortality Is on the Rise: 8 Things to Know*, YALE MED. (May 22, 2023), <https://www.yalemedicine.org/news/maternal-mortality-on-the-rise> [<https://perma.cc/P8BS-E96E>] ("Maternal mortality has been rising in the United States. A report from the Centers for Disease Control and Prevention (CDC) counted 1,205 U.S. women who died of maternal causes in 2021, compared with 861 in 2020 and 754 in 2019.").

¹⁴⁷ *Reproductive Justice Clinic*, UNIV. OF CAL. IRVINE SCH. OF L., <https://www.law.uci.edu/academics/real-life-learning/clinics/reproductive-justice.html> [<https://perma.cc/GJ34-EFFB>] (last visited Dec. 20, 2024) ("Our vision is to promote the reproductive health and rights of women and girls locally, nationally, and internationally through education, research, and legal advocacy. . . . Pregnant women in the United States have experienced punishment.").

¹⁴⁸ See, e.g., *Whose Name Is It, Anyway? Un-gatekeeping the Legal Name Change Process*, UNIV. OF BUFFALO SCH. OF L., <https://www.law.buffalo.edu/links/2023-April/clinic.html> [<https://perma.cc/UNY6-6NFJ>] (last visited Dec. 20, 2024) (including pronouns for each individual, e.g., "Associate Professor Heather Abraham (she/her)"; "Sean Brosius (he/him)"; "Daniel Kahl '24 (they/he)"; "Zadaa Ziran Guo '24 (they/them)").

¹⁴⁹ *Veterans Legal Services Clinic*, UNIV. OF ARK., <https://ualr.edu/law/clinical-programs/veterans-legal-services-clinic/veterans-legal-services-clinic-students/> [<https://perma.cc/278D-XSV5>] (last visited Dec. 20, 2024).

¹⁵⁰ *Blueprint for Equality: A Transgender Federal Agenda*, National Center for Transgender Equality, NAT'L CTR. FOR TRANSGENDER EQUITY, https://transequality.org/sites/default/files/docs/resources/NCTE%20Federal%20Blueprint%20Chapter%2014%20Military%20Service_0.pdf [<https://perma.cc/M4WL-VQ2E>] (last visited Dec. 20, 2024) ("Until recently transgender people have served with distinction, but in silence, in every branch of our armed forces. But while the repeal of 'Don't Ask, Don't Tell' in 2010 has allowed lesbian, gay, and bisexual troops to serve openly, an estimated over 12,000 transgender service members were still forced to lie about who they are in order to serve their country. On June 30, 2016, the Defense Department announced that transgender service members may live openly without fear of discharge, and the military will adopt policies to allow qualified transgender individuals to enlist, provide medically necessary care, and support gender transition while serving.").

¹⁵¹ See, e.g., *FAQs for Prospective Transnational Worker Rights Clinic Students*, UNIV. OF TEX. SCH. OF L., <https://law.utexas.edu/clinics/transnational-worker-rights/course-info/faqs-for-prospective-students/> [<https://perma.cc/M6QD-S8W2>] (last visited Dec. 20, 2024) ("You will be providing legal representation to immigrant and low-wage working men and women

dered terms may accurately reflect existing social divisions or realities. For example, “[t]he Prisoner Assistance Program, part of Maine Law’s Cumberland Legal Aid Clinic, helps inmates at the Maine Correctional Center in Windham in the Men’s, Women’s, and Pre-Release Units.”¹⁵² Gendered terms may be appropriate for subsets or cohorts where each person’s identity is known.¹⁵³ They might also be appropriate to denote unique harm to a specific population, enhancing precision.¹⁵⁴

Several clinics directly represent individuals on the basis of gender identity or sexual orientation. However, even groups that work with this community use a variety of terms. “Harvard LGBTQ+ Advocacy Clinic . . . work[s] on cutting-edge issues involving LGBTQ+ rights, with a particular emphasis on issues affecting underrepresented communities within the LGBTQ+ community.”¹⁵⁵ So, too, does Gonzaga,¹⁵⁶

in active litigation helping them recover unpaid wages, combat employment discrimination, and enforce basic employment rights.”); *Civil Rights Appellate Clinic Testimonials*, PENN STATE L. SCH., <https://pennstatelaw.psu.edu/practice-skills/clinics/civil-rights-appellate-clinic/civil-rights-appellate-clinic-testimonials> [<https://perma.cc/7729-RBXB>] (last visited Dec. 20, 2024) (“The Nittany Lion class-members worked very well and quickly with my firm . . . to protect our men and women in uniform after they get called to the colors to serve our Nation. I am grateful to Prof. Foreman and to his class for their sharp thinking, their tenacity, their ease of expression, and for their great advocacy for our most-deserving client and for all those generations of soldiers, sailors, marines and airmen who are in a position to benefit from any precedent created by winning cert in this matter.” Adam Augustine Carter, The Employment Law Group, PC”); *Veterans Clinic*, BAYLOR L. SCH., <https://law.baylor.edu/why-baylor-law/academics/experiential-learning/legal-clinics/veterans-clinic> [<https://perma.cc/27JN-4E3Z>] (last visited Dec. 26, 2024) (“Growing up in a family with a history of military service, Baylor Law Professor Bridget Fuselier founded the clinic after having witnessed firsthand the many men and women who served their country, only to be forgotten after their years of service.”).

¹⁵² *Prisoner Assistance Clinic*, UNIV. OF ME. SCH. OF L., <https://mainelaw.maine.edu/academics/clinics-and-centers/prisoner-assistance/> [<https://perma.cc/CY87-6QHU>] (last visited Dec. 20, 2024).

¹⁵³ *Compare Innocence Clinic*, UNIV. OF MICH. SCH. OF L., <https://michigan.law.umich.edu/academics/experiential-learning/clinics/michigan-innocence-clinic-0> [<https://perma.cc/VZ8L-N23Q>] (last visited Dec. 20, 2024) (“The first exclusively non-DNA Innocence Clinic in the country, the Michigan Innocence Clinic has successfully won the release of 41 men and women who had been wrongfully convicted of crimes and served anywhere from a few months to 46 years in prison.”) with *Racial Justice Clinic*, UNIV. OF S.F. SCH. OF L., <https://www.usfca.edu/law/engaged-learning/law-clinics> [<https://perma.cc/3AEU-NLJC>] (last visited Dec. 20, 2024) (“The RJC is committed to representing innocent men and women deserving of justice.”).

¹⁵⁴ *Criminal Defense and Racial Justice Clinic*, UNIV. OF D.C. SCH. OF L., <https://law.udc.edu/criminallawclinic/> [<https://perma.cc/7FLG-LPPU>] (last visited Dec. 20, 2024) (“Black Americans are incarcerated in state prisons at nearly five times the rate of white Americans. Although Black people make up less than half of the District of Columbia population, over 90 percent of people incarcerated in our local jails are Black . . . Clinic students also represent incarcerated individuals, overwhelming Black men and women, seeking release through parole.”).

¹⁵⁵ *LGBTQ+ Advocacy Clinic*, HARVARD L. SCH., <https://hls.harvard.edu/clinics/in-house-clinics/lgbtq-advocacy-clinic/> [<https://perma.cc/F4T6-K6MZ>] (last visited Dec. 20, 2024).

¹⁵⁶ *Lincoln LGBTQ+ Rights Clinic*, GONZAGA UNIV. SCH. OF L., <https://www.gonzaga.edu/school-of-law/clinic-centers/law-clinic/lgbtq-rights-clinic> [<https://perma.cc/TER8-W98A>] (last

although institutions may use a variety of terms.¹⁵⁷ Brooklyn Law's program, by contrast, is labeled the "LGBT Advocacy Clinic":

[The Clinic] represent[s] LGBT people in a variety of civil legal matters . . . including obtaining legal name changes and changing gender markers on identity documents for transgender clients, filing adoption petitions for LGBT parents seeking a legal relationship with their children, assisting LGBT people in obtaining divorces and other family law relief, helping transgender women incarcerated in men's prisons obtain medical care and protection from sexual assault, and filing complaints on behalf of LGBT people facing discrimination at school, at work, or in public accommodations.¹⁵⁸

Clinics can foster respect by adopting current, inclusive, humanizing language that acknowledges the evolving understandings of gender identity and sexual orientation. Deference to individual preferences is key, but ensuring accuracy involves understanding distinctions between terms, such as "gender identity" versus "gender expression." Word choice may, at times, center gender-neutral terms or, in some cases, use gendered language when addressing unique harms or specific populations.

D. Citizenship & Immigration Status

Clinics must also navigate complexities in word choices related to immigration status. There is a range of terms pertaining to citizenship and immigration status, many of which have both legal and social implications, connoting both legal privileges and public perceptions about a politically wrought issue. The terms "illegal," "illegal immigrant," and "alien" should

visited Dec. 20, 2024) ("The Lincoln LGBTQ+ Rights Clinic works to protect and advance the equal rights and dignity of individuals who identify as LGBTQ+.").

¹⁵⁷ See, e.g., *LGBTQI+ Rights Clinic*, Bluhm Legal Clinic, NORTHWESTERN PRITZKER SCH. OF L., <https://www.law.northwestern.edu/legalclinic/lgbtqi/> [<https://perma.cc/YZF7-37AR>] (last visited Dec. 26, 2024) ("The Northwestern Pritzker School of Law Bluhm Legal Clinic's LGBTQI+ Rights Clinic works to promote and advance litigation in support of the rights of lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) people."); *LGBTQI Equality Clinic*, UNIV. OF MD. CAREY SCH. OF L., <https://www.law.umaryland.edu/academics/clinics/lgbtqi-equality-clinic/> [<https://perma.cc/V96B-PBUD>] (last visited Dec. 26, 2024).

¹⁵⁸ *Clinic—LGBT Advocacy*, BROOKLYN L. SCH., <https://www.brooklaw.edu/Courses/Clinic-LGBT-Advocacy> [<https://perma.cc/64TV-T5NF>] (last visited Dec. 20, 2024); see also *Advocacy for LGBT Practicum*, CORNELL L. SCH., <https://www.lawschool.cornell.edu/academics/experiential-learning/clinical-program/advocacy-for-lgbt-practicum/> [<https://perma.cc/TD8H-ZUCN>] (last visited Dec. 20, 2024) ("The LGBT practicum is dedicated to achieving equal rights and dignity for lesbian, gay, bisexual, and transgender (LGBT) people."); *Veterans Legal Services Clinic*, YALE L. SCH., <https://law.yale.edu/clinics/vlsc> [<https://perma.cc/76SW-4C3P>] (last visited Dec. 20, 2024) ("The clinic makes a special effort to assist groups that are marginalized within the military, such as Black and Latinx veterans, women and immigrants, LBGTQ+ veterans, veterans with disabilities, and survivors of military trauma.").

generally be avoided, as they have a dehumanizing valiance.¹⁵⁹ Advocates have suggested the use of more respectful and less stigmatizing terms, including: “undocumented,” “unauthorized,” “non-citizens,” “without status,” or “unlawfully present.”¹⁶⁰ However, there is no consensus on the use of these terms. For instance, some have an antipathy for the term “undocumented” because it may inaccurately convey a false understanding, as “[m]any illegal immigrants aren’t ‘undocumented’ at all; they may have a birth certificate and passport from their home country, plus a U.S. driver’s license, Social Security card or school ID. What they lack is the fundamental right to be in the United States.”¹⁶¹ While disfavored terms still often appear in statutes, case law, and other legal sources¹⁶² and are, at times, still used by courts,¹⁶³ more modern terminology is also utilized.¹⁶⁴

Clinics have typically used modern terms in describing immigration-related issues or identity status pertaining to citizenship. For instance, Stanford’s Immigrants’ Rights Clinic discusses representing an “asylum seeker”¹⁶⁵ and “longtime [] area resident,”¹⁶⁶ using these terms to describe the nature of the client’s petition and current community ties. Relatedly, the “first and only dedicated in-house Immigration Clinic in the state of Georgia” uses the term “non-citizen”¹⁶⁷ as does Duke.¹⁶⁸ To

¹⁵⁹ Monika Batra Kashyap, “*Illegal*” vs. “*Undocumented*”: A NWIRP Board Member’s Perspective, NW. IMMIGRANT RTS. PROJECT, <https://www.nwirp.org/illegal-vs-undocumented-a-nwirp-board-members-perspective/> [<https://perma.cc/9677-TZ5Z>] (last visited Dec. 20, 2024); Nicole Acevedo, *Biden Seeks to Replace ‘Alien’ with Less ‘Dehumanizing Term’ in Immigration Laws*, NBC NEWS (Jan. 22, 2021, 2:34 PM), <https://www.nbcnews.com/news/latino/biden-seeks-replace-alien-less-dehumanizing-term-immigration-laws-n1255350> [<https://perma.cc/PV8J-ZDHD>].

¹⁶⁰ Kashyap, *supra* note 159.

¹⁶¹ *Id.*

¹⁶² See, e.g., *Jane W. v. Thomas*, 560 F. Supp. 3d 855, 883 (E.D. Pa. 2021) (discussing the Alien Tort Statute, 28 U.S.C. § 1350).

¹⁶³ See, e.g., *State v. Dep’t of Com.*, No. CV 21-1523, 2022 WL 17251152, at *3 (E.D. La. Nov. 28, 2022) (referencing “illegal immigrants” in discussion of state standing).

¹⁶⁴ See, e.g., *United States v. Dasilva*, No. 3:21-CR-267, 2022 WL 17242870, at *6 (M.D. Pa. Nov. 23, 2022) (using the term “undocumented individuals” in considering whether Second Amendment protections are available to noncitizens).

¹⁶⁵ *IRC Students Successfully Represent Asylum Seeker*, STANFORD L. SCH., <https://law.stanford.edu/immigrants-rights-clinic/#slnav-overview> [<https://perma.cc/XN8Y-AWM4>] (last visited Dec. 20, 2024) (“[Students] represented D, a young woman from Ethiopia seeking asylum after experiencing persecution due to her ethnic identity.”).

¹⁶⁶ *IRC Students Represent Longtime Bay Area Resident in Deportation Case*, STANFORD L. SCH., <https://swap.stanford.edu/was/20190310002619/https://law.stanford.edu/immigrants-rights-clinic/#slnav-latest-updates> [<https://perma.cc/U2SV-JKXV>] (last visited Dec. 26, 2024).

¹⁶⁷ *Immigration Clinic*, GA. STATE COLL. OF L., <https://law.gsu.edu/student-experience/experiential-learning/clinics/immigration-clinic/> [<https://perma.cc/QXS3-BU7W>] (last visited Dec. 20, 2024) (“Through the Georgia State Law Immigration Clinic students develop and practice fundamental lawyering skills, including interviewing, counseling, fact investigation, legal research and writing, and courtroom fundamentals as they work on the cases of low-income non-citizens.”).

¹⁶⁸ *Immigration Clinic*, DUKE L. SCH., <https://law.duke.edu/immigrantrights/> [<https://perma.cc/J9CE-5VZW>] (last visited Dec. 20, 2024) (“The Immigrant Rights Clinic represents

give another example, the Immigration Litigation & Appellate Clinic at the University of Idaho allows “students [to] help immigrants who may be seeking asylum, permanent resident status, citizenship, status under the Violence Against Women Act (VAWA) and relief from removal” and refers to their “clients.”¹⁶⁹ Other clinics have also generally used the terms “immigrants,” “refugees,” or “noncitizens.”¹⁷⁰ This language acknowledges an individual’s personhood, apart from their legal status. The University of Maryland avoids labels and describes their clients’ experiences: “You will represent individuals fleeing persecution, those facing deportation because of criminal conviction, and those who have been the target of abusive enforcement practices.”¹⁷¹

Clinics addressing immigration issues can apply respect by avoiding dehumanizing terms, which may carry emotional and political weight, while also ensuring legal accuracy. Recognizing that labels, like “undocumented,” may not fully capture certain individuals’ circumstances, precision is also

individuals facing deportation and partners with local, state, and national organizations to promote access to resources, education, and justice for non-citizens. The clinic engages students in efforts to advance the rights of non-citizens through litigation, education and outreach, and policy advocacy.”).

¹⁶⁹ *Immigration Clinic*, UNIV. OF IDAHO COLL. OF L., <https://www.uidaho.edu/law/academics/experiential-learning/clinics/immigration> [https://perma.cc/8VZX-KT63] (last visited Dec. 20, 2024).

¹⁷⁰ See, e.g., *Immigration Practice Clinic*, VANDERBILT L. SCH., <https://law.vanderbilt.edu/clinics-experiential-learning/immigration-practice-clinic/> [https://perma.cc/9PGZ-XQVZ] (last visited Dec. 20, 2024) (discussing “represent[ation of] low-income immigrants from all over the world”); *Refugee & Human Rights Clinic*, UNIV. OF ME. SCH. OF L., <https://mainelaw.maine.edu/academics/clinics-and-centers/refugee-and-human-rights/> [https://perma.cc/98ER-ZEE9] (last visited Dec. 20, 2024) (“The RHRC and its attorneys target a critical gap in access to justice—providing direct legal representation and broader advocacy to immigrants and refugees seeking political asylum and similar protections under federal law.”); *Immigrant Rights Clinic*, UNIV. OF BALT. SCH. OF L., <https://law.ubalt.edu/clinics/immigrantrights.cfm> [https://perma.cc/ZC8X-W7Z4] (last visited Dec. 20, 2024) (“[S]tudents may collaborate on one issue related to systemic law reform to improve the procedures and laws that shape our immigrant clients’ lives.”); *Federal Appellate Immigration Clinic*, UNIV. OF MD. CAREY SCH. OF L., <https://www.law.umaryland.edu/academics/clinics/federal-appellate-immigration-clinic/> [https://perma.cc/8EU6-XXK5] (last visited Dec. 20, 2024) (“In these appellate forums, [students] will advocate for [their] clients while working to develop favorable precedents on systemic issues affecting noncitizens who face deportation or immigration imprisonment.”); *Immigration Clinic*, ROGER WILLIAMS SCH. OF L., <https://law.rwu.edu/academics/juris-doctor/clinics-and-externships/immigration-clinic> [https://perma.cc/BS5L-ARXR] (last visited Dec. 20, 2024) (“Students enrolled in the Immigration Clinic represent indigent immigrants who are seeking lawful permanent residence in the United States or are seeking to defend against removal proceedings.”); *Transnational Legal Clinic*, UNIV. OF PA. CAREY L. SCH., <https://www.law.upenn.edu/clinic/transnational/> [https://perma.cc/2DNH-E2N5] (last visited Dec. 20, 2024) (“[S]tudents have represented individuals seeking asylum and other forms of immigration relief from across the globe and have worked alongside and on behalf of international human rights and community-based organizations before regional and international human rights mechanisms on a range of rights-based issues, particularly as they relate to migrants and internally-displaced persons.”).

¹⁷¹ *Immigration Clinic*, UNIV. OF MD. CAREY SCH. OF L., <https://www.law.umaryland.edu/academics/clinics/immigration-clinic/> [https://perma.cc/GC6S-Z5BD] (last visited Dec. 20, 2024).

critical to align with legal definitions for relief. In applying these principles, clinics must thoughtfully navigate the complexities of immigration-related language while fostering dignity and clarity for their clients.

E. Disability & Medical Conditions

Clinics' descriptions of individuals' health conditions can be extremely fraught, especially given the range of medical conditions and their potential impacts. While people-first framing is often preferred to center the individual over their identity (e.g., "people with disabilities"), some individuals or communities prefer identity-first framing¹⁷² (e.g., "autistic adult" or "Deaf person").¹⁷³ Some terms have evolved to remove their stigmatization, such as the term "substance use disorder," which has been used to replace "substance abuse," "substance misuse disorder," "addict," "junkie," and "abuser," among others.¹⁷⁴ There are many terms in our vernacular that are ableist, including many metaphors and idioms (e.g., "turn a deaf ear," "dragging one's feet," and "turn a blind eye")¹⁷⁵ and ordinary turns of phrase (e.g., "insane," "psycho," "lame," "moronic," and "crazy").¹⁷⁶ For example, courts have colloquially used the term "schizophrenic" to mean contradictory or illogical outcomes,¹⁷⁷ despite being a negative derivation of the medical condition "schizophrenia,"

¹⁷² *People First Language*, OFF. OF DISABILITY RTS., D.C., <https://odr.dc.gov/page/people-first-language> [<https://perma.cc/L77N-EEJU>] (last visited Dec. 20, 2024).

¹⁷³ See Amanda Taboas, Karla Doepke & Corinne Zimmerman, *Short Report: Preferences for Identity-First Versus Person-First Language in a US Sample of Autism Stakeholders*, 27 AUTISM 565 (2022), <https://pubmed.ncbi.nlm.nih.gov/36237135/> [<https://perma.cc/FZ9W-CTHU>] (last visited Dec. 20, 2024) (surveying affected individuals who described a preference for "identity-first language"); see also *Interpreter Etiquette & the Do's and Don'ts of Working with an Interpreter*, OFF. OF CT. INTERPRETING SERVS. D.C. (Apr. 18, 2022), <https://www.dccourts.gov/sites/default/files/divisionspdfs/Dos-and-Donts-When-Working-With-an-Interpreter.pdf> [<https://perma.cc/CD7A-W32F>] (last visited Dec. 20, 2024) (utilizing "Deaf persons").

¹⁷⁴ *Words Matter—Terms to Use and Avoid When Talking About Addiction*, NAT'L INST. ON DRUG ABUSE, NAT'L INST. HEALTH (Nov. 29, 2021), <https://nida.nih.gov/nidamed-medical-health-professionals/health-professions-education/words-matter-terms-to-use-avoid-when-talking-about-addiction> [<https://perma.cc/4SZT-NCKM>].

¹⁷⁵ Cameron Hunt McNabb, *Ableist Language—Disability Metaphors—Disability Studies*, WRITING COMMONS (2023), <https://writingcommons.org/section/style/elements-of-style/inclusive-language/disability-studies-abelist-language-inappropriate-disability-metaphors/> [<https://perma.cc/DJ2J-KVJB>].

¹⁷⁶ Monica Torres, *Instead of These Ableist Words, Use Inclusive Language at Work*, HUFFINGTON POST (July 8, 2022), https://www.huffpost.com/entry/disability-language-work_1_5f85d522c5b681f7da1c3839 [<https://perma.cc/6K4M-VHF8>].

¹⁷⁷ See, e.g., *Wilbers v. Moneta Grp. Inv. Advisors, Inc.*, No. 406CV00005 ERW, 2006 WL 1360866, at *2 (E.D. Mo. May 17, 2006) ("Although the Supreme Court has indicated the broad scope of the phrase, '[t]hat locution is not self-defining, and the Justices have been at least mildly schizophrenic in mapping its contours.'") (quoting *Minn. Chapter of Associated Builders and Contractors, Inc. v. Minn. Dep't of Pub. Safety*, 267 F.3d 807, 811–12 (8th Cir. 2001)).

the effects of which can include “disruptions in thought processes, perceptions, emotional responsiveness, and social interactions.”¹⁷⁸

Clinics must navigate these medical and colloquial variations in their language choices. There are several clinics that practice disability law and use the name in their clinic title and/or description of their work,¹⁷⁹ and some have renamed to evince evolutions in terminology.¹⁸⁰ Clinics have also used the following terms: “people with disabilities,”¹⁸¹ “disabled individuals,”¹⁸² “adults with intellectual and developmental

¹⁷⁸ *Schizophrenia*, NAT’L INST. OF HEALTH, <https://www.nimh.nih.gov/health/statistics/schizophrenia> [https://perma.cc/4B65-P89Y] (last visited Dec. 20, 2024).

¹⁷⁹ See, e.g., *Community Law Clinic*, PENN STATE L. SCH., <https://dickinsonlaw.psu.edu/community-law-clinic> [https://perma.cc/85AT-84AM] (last visited Dec. 20, 2024) (“For those underserved populations living near or below the poverty line, the Community Law Clinic represents the way forward in matters of family law, disability law, and other areas where they need legal assistance.”); *Disability Rights Clinic*, SYRACUSE UNIV. COLL. OF L., <https://law.syracuse.edu/academics/experiential-courses-clinics-externships/clinics/disability-rights-clinic/> [https://perma.cc/6J63-3CK2] (last visited Dec. 20, 2024) (The Disability Rights Clinic (DRC) is dedicated to providing representation to individuals with disabilities as well as groups representing the disabled community.”); *Olmstead Disability Rights Clinic*, GA. STATE COLL. OF L., <https://law.gsu.edu/student-experience/experiential-learning/clinics/olmstead-disability-rights-clinic> [https://perma.cc/JMY3-4LUN] (last visited Dec. 20, 2024) (“Students have the opportunity to advocate on behalf of children and adults with disabilities in special education cases, administrative proceedings, and potential federal litigation.”).

¹⁸⁰ *Disability Inclusion and Advocacy Law (DIAL) Clinic*, NOVA SE. UNIV. SHEPARD COLL. OF L., <https://www.law.nova.edu/clinics/in-house/dial-clinic.html> [https://perma.cc/3J64-HYF7] (last visited Dec. 20, 2024) (“The Disability Inclusion and Advocacy Law (DIAL) Clinic (formerly known as the Adults with Intellectual & Developmental Disabilities (AIDD) law clinic) introduces law students to legal practice advocating for the civil rights of persons with disabilities.”).

¹⁸¹ See, e.g., *Disability Rights and Justice Clinic*, N.Y.U. SCH. OF L., <https://www.law.nyu.edu/academics/clinics/DisabilityRights> [https://perma.cc/VMW3-2N59] (last visited Dec. 20, 2024) (“The Disability Rights and Justice Clinic advocates to enhance and promote the civil rights, autonomy, and self-determination of low-income individuals with disabilities.”); Jeanne Leblanc, *UConn Law and Disability Rights Connecticut Establish Legal Clinic*, UNIV. OF CONN. SCH. OF L. (Sept. 12, 2022), <https://today.uconn.edu/2022/09/uconn-law-and-disability-rights-connecticut-establish-legal-clinic/#> [https://perma.cc/XPC6-4KBL] (“The UConn School of Law has joined forces with Disability Rights Connecticut to offer a clinic providing legal advocacy for people with disabilities.”); see also *Disability Law Clinic*, WAYNE STATE L. SCH., <https://law.wayne.edu/academics/clinics/disability> [https://perma.cc/P6BX-DVFM] (last visited Dec. 20, 2024) (describing “residents with disabilities”); *Workers’ Rights Disability Law Clinic*, UNIV. OF CAL. BERKELEY SCH. OF L., <https://www.law.berkeley.edu/experiential/pro-bono-program/slps/inactive-student-initiated-legal-services-projects-slps/workers-rights-disability-law-clinic-wrdlc/> [https://perma.cc/7GB5-P2JR] (last visited Dec. 20, 2024) (discussing work on behalf of “workers with disabilities”); *Disability Rights Clinic*, UNIV. OF TEX. SCH. OF L., <https://law.utexas.edu/clinics/disability-rights/> [https://perma.cc/62UH-53ZN] (last visited Dec. 20, 2024) (representing “clients with disabilities”).

¹⁸² *Elder & Disability Law Clinic*, WILLIAM & MARY SCH. OF L., https://law.wm.edu/academics/programs/jd/electives/clinics/clinics_list/elder/ [https://perma.cc/VR3W-JCMF] (last visited Dec. 20, 2024) (“The Elder & Disability Law Clinic provides free legal assistance for qualifying seniors and disabled individuals.”).

disabilities,”¹⁸³ “disability rights,”¹⁸⁴ and “disability justice.”¹⁸⁵ Clinics may use more general health-related language,¹⁸⁶ or allude to the scope of client eligibility or service offerings.¹⁸⁷

Clinics have, at times, described their work on behalf of individuals, “adults and children [to] obtain much needed disability benefits from the Social Security Administration (SSI and SSDI).”¹⁸⁸ This framing focuses on the services and benefits to which an individual is entitled, rather than on the person’s actual qualifying health condition. Stanford’s Community Law Clinic goes on to describe their “clients [as] adults and children in our local community who are unable to work on a full time basis due to mental and/or physical disabilities.”¹⁸⁹ “By preparing the cases and putting on a strong case at hearing, CLC students are able to secure life-changing benefits for a majority of [the] clients” by helping them navigate the complex SSDI process and humanizing the individuals in the administrative process.¹⁹⁰

¹⁸³ *Disability and Civil Rights Clinic*, BROOKLYN L. SCH., <https://www.brooklaw.edu/Academics/Clinics-and-Externships/In-House-Clinics/Disability-and-Civil-Rights-Clinic> [<https://perma.cc/H98J-4AQM>] (last visited Dec. 20, 2024) (“The Disability and Civil Rights Clinic focuses on protecting and advancing the civil rights of adults with intellectual and developmental disabilities . . . [and] functions as a pro bono law firm representing low-income New Yorkers, and their families in a variety of civil legal matters, including housing, public benefits, access to health care, special education, parental rights, alternatives to guardianship, prisoners’ rights and discrimination in access to programs and services.”).

¹⁸⁴ *Veterans Law and Disability Benefits Clinic*, HARVARD L. SCH., <https://hls.harvard.edu/clinics/in-house-clinics/veterans-law-and-disability-benefits-clinic/> [<https://perma.cc/3V7J-BKQX>] (last visited Dec. 20, 2024) (“Enrolled students have frequent opportunities to interact with medical providers and medical experts and to work on cases at the intersection of disability rights, disability access, mental health and the law.”).

¹⁸⁵ *Civil Rights and Disability Justice Clinic*, N.Y. L. SCH., <https://www.nyls.edu/civil-rights-and-disability-justice-clinic/> [<https://perma.cc/WF78-4LJD>] (last visited Dec. 20, 2024) (“[S]tudents will work under close faculty supervision and in partnership with community members, grassroots groups, and legal organizations to litigate cases and develop advocacy related to a range of civil rights and disability justice issues including racial, economic, and criminal justice, and education, housing, and voting rights.”).

¹⁸⁶ *Health and Disability Law Clinic*, UNIV. OF VA. SCH. OF L., <https://www.law.virginia.edu/clinics/health-and-disability-law-clinic> [<https://perma.cc/UAV2-6537>] (last visited Dec. 26, 2024) (“Clients’ health needs include public benefits claims (including Medicaid, Social Security, Medicare and other benefits); insurance coverage; obtaining access to mental health or rehabilitative services; and seeking justice for the mistreatment of seniors and those with disabilities in various contexts.”).

¹⁸⁷ *Disability Rights Law Clinic*, AM. UNIV. WASH. COLL. OF L., <https://www.american.edu/wcl/academics/experientialedu/clinical/theclinics/disability/> [<https://perma.cc/X52Q-9Q6V>] (last visited Dec. 26, 2024) (“The DRCL is a one-semester clinic in which law students represent clients and their families in a variety of matters related to disability law and people with disabilities (both mental and physical).”).

¹⁸⁸ *Community Law Clinic, Social Security Disability*, STANFORD L. SCH., <https://law.stanford.edu/community-law-clinic/social-security-disability> [<https://perma.cc/XY94-3QFB>] (last visited Dec. 20, 2024).

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

When describing individuals' health conditions, clinics should adopt language that respects the individual rather than their condition, such as using people-first terms like "people with disabilities," or defer to identity-first preferences when they align with specific community norms. Precision is essential in avoiding stigmatizing terms or casual misuses of terminology, such as using "schizophrenic," in a way that perpetuates harmful stereotypes. Lastly, relevance can guide how health conditions are framed, focusing on the legal requirements, such as for services provided or benefits sought. These considerations ensure that clinics treat their clients' identities with dignity while maintaining clarity in communication.

F. Criminal Legal System

Clinics, like courts, often use deeply entrenched terms to refer to criminal defendants.¹⁹¹ However, some courts have used terms like "criminal legal system," in lieu of "criminal justice," as more accurate in acknowledging the wrongful treatment of individuals in the carceral system because of inequity based on race, poverty, mental illness, housing instability, and substance use.¹⁹² Moreover, utilizing "incarcerated person" or other person-first framings, instead of "inmate" or "felon,"¹⁹³ is recommended to promote respect.¹⁹⁴ A person-first approach would utilize the terms "incarcerated people"; "imprisoned people"; "people in prison/jail"; "people jailed in X facility"; "John Doe, who was in-

¹⁹¹ See, e.g., *Johnson v. Gov. of State of Fla.*, 405 F.3d 1214, 1216 (11th Cir. 2005) (discussing "challenge to Florida's felon disenfranchisement law"); *Martinez v. State*, 772 P.2d 1305, 1306 (stating that "meritorious deductions may not shorten the basic thirty-year term of capital felons").

¹⁹² See, e.g., *United States v. French*, 977 F.3d 114, 118 (1st Cir. 2020) ("Juror 86 had not disclosed this information about her son's involvement in the criminal legal system on a questionnaire that the Clerk's Office distributed to her when she was called for jury duty in October 2013, prior to jury selection."); *State v. Tesfasilasye*, 518 P.3d 193, 200 (Wash. 2022) ("One of the State's proffered reasons for the strike—that the juror might be biased because her son had, in her view, been treated unfairly by the criminal legal system—is presumptively invalid."); *Baker v. 3M Co.*, No. 5:19-CV-00704-AKK, 2020 WL 6750805, at *2 (N.D. Ala. Oct. 15, 2020) (noting complainant "had multiple encounters with the criminal legal system").

¹⁹³ *Green v. Mass. Dep't of Corr.*, No. 2184CV02283C, 2021 WL 6335670, at *1 (Mass. Super. Nov. 30, 2021) (alleging plaintiffs "and other incarcerated persons have been deprived of their due process rights and right to counsel"); *Remick v. City of Phila.*, No. CV 20-1959, 2021 WL 4269171, at *1 (E.D. Pa. Sept. 14, 2021) (discussing "programming, visits, and movement of incarcerated persons").

¹⁹⁴ See, e.g., *Goodvine v. Duckert*, No. 22-CV-204-PP, 2022 WL 14813062, at *1 (E.D. Wis. Oct. 26, 2022) (noting "plaintiff was incarcerated when he filed his complaint"); *Valentine v. Collier*, No. 4:20-CV-1115, 2020 WL 3666614, at *1 (S.D. Tex. July 6, 2020) ("Pending before the Court are three Motions to Intervene filed by individuals incarcerated at Texas Department of Criminal Justice (TDCJ) prisons other than the Pack Unit, which is the prison at issue in the present case.").

carcerated at F[ederal] C[orrectional] I[nstitute]”; or “Jane Doe, who is serving 12 years in [] State Prison” exemplify this trend.¹⁹⁵ Person-first language can also apply to post-incarceration labels: “offender,” “parolee,” or “probationer,” among others.¹⁹⁶

A full range of terms is used by clinics in their advocacy practices. Yale, for instance, uses the term “criminal legal system” in describing its Criminal Justice Advocacy Clinic,¹⁹⁷ as does Vanderbilt’s Youth Opportunity Clinic in discussing “criminal legal involvement,”¹⁹⁸ while some clinics use criminal justice.¹⁹⁹ Other clinics, at UCLA and Stanford, use non-stigmatizing terms like “community members,” “members of our community accused of crimes,” or “clients.”²⁰⁰ Several clinics also used the term “defendants,”²⁰¹ “adults charged with criminal offenses,”²⁰²

¹⁹⁵ Akiba Solomon, *What Words We Use—and Avoid—When Covering People and Incarceration*, MARSHALL PROJECT (Apr. 12, 2021, 6:00 AM), <https://www.themarshallproject.org/2021/04/12/what-words-we-use-and-avoid-when-covering-people-and-incarceration> [https://perma.cc/D4ZE-ASYA].

¹⁹⁶ *Id.*

¹⁹⁷ *Criminal Justice Advocacy Clinic*, YALE L. SCH., <https://law.yale.edu/studying-law-yale/clinical-and-experiential-learning/our-clinics/criminal-justice-advocacy-clinic> [https://perma.cc/Y6X8-WZSQ] (last visited Dec. 20, 2024) (“Students in the Criminal Justice Advocacy Clinic (CJAC) represent individuals and organizations affected by the criminal legal system.”).

¹⁹⁸ *Youth Opportunity Clinic*, VANDERBILT L. SCH., <https://law.vanderbilt.edu/clinics-experiential-learning/youth-opportunity-clinic/> [https://perma.cc/2WJZ-VBKP] (last visited Dec. 20, 2024) (“Students in the Youth Opportunity Clinic represent young people from age 16 to 25 who are at risk for criminal legal involvement. Students’ civil legal advocacy helps clients access opportunities and achieve stability in the areas of education, housing, and employment.”).

¹⁹⁹ *Criminal Justice Clinic*, WASH U. SCH. OF L., <https://law.washu.edu/academics/clinical-education-program/criminal-justice-clinic> [https://perma.cc/C4EX-RJ7H] (last visited Dec. 26, 2024) (“The clinic exposes students to real-life lawyering skills within the framework of the criminal justice system for adults charged with misdemeanor or felony offenses.”).

²⁰⁰ *Criminal Defense Clinic*, UCLA SCH. OF L., <https://law.ucla.edu/academics/experiential-program/law-clinic-courses/criminal-defense-clinic> [https://perma.cc/U7LL-UP8D] (last visited Dec. 20, 2024) (explaining students “help[] community members to obtain post-conviction relief, such as pardons and clemency”); *Fact Sheet About Gubernatorial Pardons in California*, ILRC (June 4, 2019), <https://www.ilrc.org/resources/fact-sheet-about-gubernatorial-pardons-california> [https://perma.cc/F4YR-D3MD] (last visited Dec. 20, 2024) (discussing Governor’s pardon power for “persons convicted of California state crimes”); *Criminal Defense Clinic*, STANFORD L. SCH., <https://law.stanford.edu/criminal-defense-clinic/#slsnav-people> [https://perma.cc/5M74-VCFW] (last visited Dec. 20, 2024) (“Each student represents members of our community accused of crimes”; “Clinic students are their clients’ primary legal representatives in and out of court.”).

²⁰¹ *See, e.g., Clinics*, SAMFORD UNIV. CUMBERLAND SCH. OF L., <https://www.samford.edu/law/clinics> [https://perma.cc/2X7C-49L8] (last visited Dec. 20, 2024) (“The Capital Defense Clinic allows students to work with the Jefferson County Public Defender’s Office to assist in representing defendants who face capital charges.”).

²⁰² *Criminal Practice Clinic*, VANDERBILT L. SCH., <https://law.vanderbilt.edu/clinics-experiential-learning/criminal-practice-clinic/> [https://perma.cc/2QAW-MX9L] (last visited Dec. 20, 2024) (“Students enrolled in Criminal Practice Clinic represent adults charged with criminal offenses and children charged with criminal offenses and delinquency.”).

or otherwise refer to “indigent clients.”²⁰³ For those with convictions, people-first language can still center personhood: “people incarcerated for felonies.”²⁰⁴ The use of inclusive language is reflected in various clinics’ advocacy.²⁰⁵ Sometimes the term “felon” is used, such as in reference to the name of the offense (e.g., “felon in possession of a firearm”), or in describing scope of work or eligibility for services.²⁰⁶

However, not all clinics use these terms consistently. For instance, one clinic at Samford University describes how “students work on potential innocence claims of several Alabama prisoners” in its Innocence Clinic.²⁰⁷ The Drake Wrongful Convictions Clinic describes its program as “provid[ing] students with the opportunity to investigate and contribute to work on post-conviction litigation for Iowa inmates.”²⁰⁸ Emory uses the term “offenders” in explaining: “[A] team of two students will work on either a civil appeal regarding legal issues arising from foster

²⁰³ *Criminal Defense Clinic*, DRAKE UNIV. L. SCH., <https://www.drake.edu/law/clinics-centers/clinic/criminal-defense> [<https://perma.cc/KNP4-TDX9>] (last visited Dec. 20, 2024) (“The clinic contracts with the Iowa State Public Defender’s Office to represent indigent clients who have requested a public defender.”); see also *Criminal Defense Clinic*, UNIV. OF COLO. L. SCH., <https://www.colorado.edu/law/academics/clinics/criminal-defense-clinic> [<https://perma.cc/T6W4-Q9XY>] (last visited Dec. 20, 2024) (“The Criminal Defense Clinic offers law students the opportunity to represent indigent clients charged with misdemeanor and municipal offenses in Boulder and Jefferson Counties. The clinic provides high-quality legal services to clients and serves the community at large by providing legal assistance to those too poor to otherwise afford a lawyer.”).

²⁰⁴ *Wrongful Convictions Clinic*, DUKE L. SCH., <https://www.colorado.edu/law/academics/clinics/criminal-defense-clinic> [<https://perma.cc/G4LM-Z5FV>] (last visited Dec. 20, 2024) (“The Wrongful Convictions Clinic investigates plausible claims of innocence made by people incarcerated for felonies in North Carolina.”).

²⁰⁵ See, e.g., ILRC, *supra* note 200 (discussing Governor’s pardon power for “persons convicted of California state crimes”); STANFORD L. SCH., *supra* note 200 (“Each student represents members of our community accused of crimes”; “Clinic students are their clients’ primary legal representatives in and out of court.”).

²⁰⁶ See Mike Fox, *Supreme Court Takes Clinic Case on Challenges to Convictions*, UNIV. OF VA. SCH. OF L. (May 17, 2022), <https://www.law.virginia.edu/news/202205/supreme-court-takes-clinic-case-challenges-convictions> [<https://perma.cc/EMC3-LUTE>] (“Jones filed a motion to vacate his sentence in a 2000 conviction for being a felon in possession of a firearm.”); see also *Juvenile Justice Clinic*, CORNELL L. SCH., <https://www.lawschool.cornell.edu/academics/experiential-learning/clinical-program/juvenile-justice-clinic/> [<https://perma.cc/DSR4-8ZNJ>] (last visited Dec. 20, 2024) (“The clinic works closely with Justice 360-SC, a nonprofit that represents death-sentenced inmates and juveniles in South Carolina.”); *Capital Punishment Clinic*, CORNELL L. SCH., <https://www.lawschool.cornell.edu/academics/experiential-learning/clinical-program/capital-punishment-clinic/> [<https://perma.cc/2KCX-B9HH>] (last visited Dec. 20, 2024) (“Our clients are prison inmates, usually from the American South, who are challenging their convictions and sentences in the state and federal courts.”); *Michigan Innocence Clinic*, UNIV. OF MICH. SCH. OF L., <https://michigan.law.umich.edu/academics/experiential-learning/clinics/michigan-innocence-clinic-0> [<https://perma.cc/7BTH-2YBA>] (last visited Dec. 20, 2024) (“Information for Convicted People”).

²⁰⁷ SAMFORD UNIV. CUMBERLAND SCH. OF L., *supra* note 201.

²⁰⁸ *Wrongful Convictions Clinic*, DRAKE UNIV. L. SCH., <https://www.drake.edu/law/clinics-centers/clinic/wrongfulconvictionsclinic/> [<https://perma.cc/238B-JK5Q>] (last visited Dec. 26, 2024).

care proceedings or criminal appeals on behalf of youthful offenders in the juvenile and criminal justice systems.”²⁰⁹ These clinics utilize potentially less preferred terms while working to further equity within these communities.

When addressing individuals within the criminal legal system, person-first language can cultivate respect for the whole person. Although the use of stigmatizing terms like “inmate” or “felon” is common, including in the context of legal statutes or case law, clinics should ensure their language reflects the precise context without reinforcing bias. While opting for inclusive alternatives may be easier in some contexts, such as in client communication rather than pleadings, using adverse identities only when legally necessary can advance equity and clarity.

G. *Survivors & Victims*

Clinics, like courts and advocates, have used both the terms “victim” and “survivor” to describe those affected by crime.²¹⁰ The word “victim” can both carry sympathy and compassion for someone who has been injured, the label can also be understood to “imply weakness, assume guilt, or assign blame.”²¹¹ “Survivor” can be considered an empowering label that centers an individual’s recovery process. While both words may be accurate, their varying use can connote precision and respect. Affected individuals may prefer one label over the other, embrace the use of both terms, or prefer another descriptor, like

²⁰⁹ *Barton Appeal for Youth Clinic*, EMORY SCH. OF L., <https://law.emory.edu/academics/clinics/faculty-led-clinics/barton-appeal-for-youth-clinic.html> [https://perma.cc/M8LK-DZMC] (last visited Dec. 26, 2024).

²¹⁰ See, e.g., *Victims & Survivors*, OR. DEP’T OF JUST., <https://www.doj.state.or.us/crime-victims/> [https://perma.cc/K4BP-8BTR] (last visited Dec. 26, 2024) (“The mission of the CVC program is to ease the financial impact of these crimes on victims, survivors, and their families.”).

²¹¹ *Victim or Survivor: Terminology from Investigation Through Prosecution*, SEXUAL ASSAULT KIT INITIATIVE & RTI INT’L. 1, <https://sakitta.org/toolkit/docs/Victim-or-Survivor-Terminology-from-Investigation-Through-Prosecution.pdf> [https://perma.cc/YQZ6-TC4T] (last visited Dec. 26, 2024).

“victim-survivor.”²¹² As such, both the term victim and survivor are routinely used.²¹³

Clinics utilize a range of labels regarding survivors and victims in their practice. Several clinics use victim-survivor, victim/survivor, or a combination of the terms.²¹⁴ However, some use just the term “victim”²¹⁵

²¹² *Id.*; see also *Survivor, Victim, Victim-Survivor*, UPSETTING RAPE CULTURE, <https://upsettingrapeculture.com/survivor-victim/> [https://perma.cc/26WZ-JH44] (last visited Dec. 26, 2024) (“*Victim-survivor* has been used to express the intersectional experiences of the most marginalized groups affected by sexual assault, violence, and abuse such as Black cis-women, Black trans-women, and gender non-conforming folks of color who have herstorically never been seen as victims in the eyes of culture, community, or the law. *Victim-survivor* acknowledges the reality of vulnerability *and* triumph as well as the need to acknowledge various connected oppressions that can further complicate the already traumatic experience of sexual assault, intimate partner violence, and abuse.”).

²¹³ *Compare* State in Int. of L.R., 314 So. 3d 1139, 1141 (La. App. 4 Cir. 2021) (“The issue before this Court, is the extent of a victim’s right to be heard in a juvenile court proceeding: specifically, whether the victim of a delinquent act has standing to petition or motion a juvenile court to act.”), *with* Fox v. State, 640 S.W.3d 744, 753 (Mo. 2022) (discussing state’s assertion that “preventing sexual assault survivors from incurring secondary trauma due to interactions with the criminal justice system [wa]s a[] compelling interest”).

²¹⁴ See, e.g., *Child and Family Law Clinic*, UNIV. OF ARIZ. COLL. OF L., <https://law.arizona.edu/academics/clinics/child-and-family-law-clinic> [https://perma.cc/AX8K-DY35] (last visited Dec. 26, 2024) (“Clinic students provide representation to adults and teenagers in contested order of protection hearings to ensure that the order is upheld without modifications that pose a risk to the safety of the victim-survivor.”); *Restraining Order & Survivor Advocacy Clinic*, UNIV. OF WIS.-MADISON L. SCH., <https://law.wisc.edu/eji/rosa/> [https://perma.cc/446M-PQCL] (last visited Dec. 26, 2024) (“Law students assist victims/survivors of intimate-partner violence and/or crime by assisting with Restraining Order petitions, providing direct representation at injunction hearings (restraining order hearings), and providing relevant resources under the supervision of experienced clinical faculty. In addition, the Clinic seeks to assist victims/survivors with additional legal needs consistent with victims’ rights under Wisconsin’s Marsy’s Law.”); *Harvard Law School’s Marianna Yang Examines Rise in Factors, Hurdles in Courts for Victims*, HARVARD L. SCH. (June 30, 2022), <https://legalservicescenter.org/harvard-gazette-shadow-pandemic-of-domestic-violence/> [https://perma.cc/W7TF-EDKR] (using “victim/survivor”).

²¹⁵ *Family Law Clinic*, UNIV. OF ARK. SCH. OF L., <https://ualr.edu/law/clinical-programs/litigation-clinic/> [https://perma.cc/YR2H-TV8X] (last visited Dec. 26, 2024) (“In the Family Law Clinic, qualified UA Little Rock law students . . . may represent clients who are victims of domestic violence, parents seeking to establish or modify visitation or custody arrangements, spouses seeking divorce, or family members establishing guardianship over disabled relatives.”); *Domestic Violence Clinic*, MERCER L. SCH., <https://mercerlaw.university-tour.com/practice-makes-purpose/clinics#:~:text=Domestic%20Violence%20Clinic> [https://perma.cc/KHA4-P4G3] (last visited Dec. 26, 2024) (“[S]tudents represent victims in Temporary Protective Orders.”); *Immigration Litigation and Appellate Clinic*, UNIV. OF IDAHO, <https://www.uidaho.edu/law/academics/experiential-learning/clinics/immigration> [https://perma.cc/ZRJ7-67LD] (last visited Dec. 26, 2024) (“Representing clients in removal proceedings before Immigration Judges, the Board of Immigration Appeals, and federal appellate courts; Representing clients in their applications for permanent residence, citizens.”); *Crime Victim Litigation Clinic*, LEWIS & CLARK SCH. OF L., https://law.lclark.edu/programs/criminal_law/cvlc/ [https://perma.cc/93QJ-VNGS] (last visited Dec. 26, 2024) (“Victims’ rights were passed into law several decades ago but are only now being recognized in the media and in law.”).

or “survivor.”²¹⁶ The integration of both labels, alternatingly throughout, is also a common strategy.²¹⁷

For instance, in a resource developed in part by the Vanderbilt First Amendment and Harvard Law School’s Cyberlaw Clinic, the toolkit notes:

Note: This toolkit uses both the terms victim and survivor to refer to people who have experienced sex-based harassment. This is because some people use one or both terms to describe themselves, and others feel that neither term accurately captures the complexity of their identity or experience.²¹⁸

Accordingly, a range of terms might be most appropriate to use, either alternatingly or in combination, depending on an individual’s preference, audience, and other considerations. Clinics can enhance respect

²¹⁶ *Domestic Violence Law Clinic*, UNIV. OF ALA. SCH. OF L., <https://law.ua.edu/academics/law-clinics/domestic-violence-clinic/> [<https://perma.cc/9LGQ-YFZP>] (last visited Dec. 26, 2024) (“The Domestic Violence Law Clinic in Tuscaloosa County, Alabama, offers free and comprehensive legal help to survivors of domestic violence. . . . We assist domestic violence, stalking, and sexual assault survivors living in Tuscaloosa, Alabama.”); *Domestic Violence Clinic*, UNIV. OF OR. SCH. OF L., <https://law.uoregon.edu/become-practice-ready/clinics/domestic-violence> [<https://perma.cc/9YA3-KDAR>] (last visited Dec. 26, 2024) (describing “represent[ation of] low-income survivors of domestic violence, sexual assault, and stalking in civil legal matters,” and using the term “victim” only when the term appeared in a statute or agency name, such as when disclaiming the clinic “is a recipient of Victim of Crime Act Funds from the Oregon Department of Justice, Crime Victim and Survivor Services Division (DOJ/CVSSD)”); *Domestic Violence Clinic*, GEORGETOWN UNIV. L. CTR., <https://www.law.georgetown.edu/experiential-learning/clinics/our-clinics/domestic-violence-clinic/course-overview/> [<https://perma.cc/TYW2-J87L>] (last visited Dec. 26, 2024) (“For example, a CPO judge may direct an abusive partner to cease assaulting and threatening a survivor; to stay away from the survivor’s home, person and workplace; not to contact the survivor in any manner; and to vacate the parties’ shared home.”).

²¹⁷ *Family Justice Clinic*, UNIV. OF IDAHO COLL. OF L., <https://www.uidaho.edu/law/academics/experiential-learning/clinics/faces> [<https://perma.cc/RUQ8-Q65U>] (last visited Dec. 26, 2024) (“Students . . . assist in the full representation of survivors of domestic and sexual violence. . . . By working with the Faces of Hope Foundation, students have the opportunity to also interface with other professionals advocating for those impacted by interpersonal violence, including . . . [police, investigators,] medical professionals with St. Luke’s and St. Alphonsus, victim advocates, counselors and many others.”); *Restoration and Justice Clinic*, PEPPERDINE CARUSO SCH. OF L., <https://law.pepperdine.edu/experiential-learning/clinical-education/clinics/restoration-and-justice-clinic/> [<https://perma.cc/GFB2-H9BE>] (last visited Dec. 26, 2024) (noting “represent[ation of] victims of domestic violence, human trafficking, sexual assault and other gender-based crimes” and also describing “advocacy to ensure that the survivor’s legal needs are met”); *Human Trafficking Clinic + Lab*, UNIV. OF MICH. SCH. OF L., <https://michigan.law.umich.edu/academics/experiential-learning/clinics/human-trafficking-clinic-0> [<https://perma.cc/X4UD-NGLM>] (last visited Dec. 26, 2024) (“Our vision for the HTC+Lab partnership is that the work with individual survivors in the clinic will help ensure the lab is victim-centered and informed by lived-experience.”).

²¹⁸ *Survivors Speaking Out: A Toolkit About Defamation Lawsuits and Other Retaliation by and for People Speaking Out About Sex-Based Harassment*, NAT’L WOMEN’S L. CTR. & KNOW YOUR IX, at 1, <https://nwlc.org/wp-content/uploads/2023/08/Toolkit-Printer-Friendly-PDF.pdf> [<https://perma.cc/8UWA-ZVWF>].

by recognizing and honoring individuals' preferences and ensuring it is reflective of each person's unique experience. Accuracy is essential when choosing terms, as terms carry different connotations; the blanket application of a single term does not tailor the terminology with precision to the specific audience, purpose, and context.

H. Homelessness

People may experience a range of housing access challenges and the experiences of unhoused individuals can vary greatly.²¹⁹ The people-first approach would discourage the use of phrases like "homeless person" in favor of alternatives such as "person experiencing homelessness."²²⁰ This phrasing uses "person-centered terminology to phrase homelessness as an experience or an adjective, as opposed to an aspect inseparable from one's identity."²²¹ Although this phrasing has been utilized by some courts,²²² and some have utilized similar language such as "unhoused person,"²²³ the use of "homeless person(s)" is still commonplace.²²⁴

Many housing clinics do not work with the unhoused population, but are instead working with renting "tenants" or "homeowners" to prevent eviction or property loss.²²⁵ Some clinics work on housing is-

²¹⁹ *Four Categories of the Homeless Definition*, HUD EXCHANGE, <https://www.hudexchange.info/homelessness-assistance/coc-esg-virtual-binders/coc-esg-homeless-eligibility/four-categories/> [<https://perma.cc/X368-XNQU>] (last visited Dec. 26, 2024) (describing various experiences of housing insecurity, including "literally homeless" and "sheltered homeless").

²²⁰ *People Experience Homelessness, They Aren't Defined by It*, U.S. INTERAGENCY COUNCIL ON HOMELESSNESS (June 28, 2017), <https://www.usich.gov/news-events/news/people-experience-homelessness-they-arent-defined-it> [<https://perma.cc/Q9G2-JSHA>].

²²¹ Sara K. Rankin, *Civily Criminalizing Homelessness*, 56 HARV. C.R.-C.L. L. REV. 367, 412 (2021).

²²² *Denver Homeless Out Loud v. Denver, Colo.*, 32 F.4th 1259, 1264 (10th Cir. 2022) ("Encampments of people experiencing homelessness have proliferated throughout Denver."); *Honkala v. U.S. Dep't of Hous. & Urb. Dev.*, No. CV 21-0684, 2022 WL 282912, at *1 (E.D. Pa. Jan. 31, 2022) ("In 2018, the total number of people experiencing homelessness in Philadelphia was 5,788."); *Where Do We Go Berkeley v. Cal. Dep't of Transp.*, No. 21-CV-04435-EMC, 2022 WL 1032494, at *3 (N.D. Cal. Apr. 6, 2022) (discussing "housing opportunities come up for persons experiencing homelessness").

²²³ *Rios v. Cnty. of Sacramento*, 562 F. Supp. 3d 999, 1019 (E.D. Cal. 2021) ("Courts within this Circuit have often considered what process is due when a local government removes an unhoused community and its belongings from a particular property.").

²²⁴ *See, e.g., Miranda v. United States*, No. 2:17-CR-00159-DBB, 2023 WL 4303742, at *2 (D. Utah June 30, 2023).

²²⁵ *Housing Law Clinic*, VANDERBILT L. SCH., <https://law.vanderbilt.edu/clinics-experiential-learning/housing-law-clinic/> [<https://perma.cc/AFX9-H66G>] (last visited Dec. 26, 2024) ("Students in the Housing Law Clinic represent low-income tenants and homeowners across Tennessee in a wide variety of matters that directly impact their housing."); *see, e.g., Civil Justice Clinic*, DUKE L. SCH., <https://law.duke.edu/civiljustice/> [<https://perma.cc/GKP9-4MXY>] (last visited Dec. 26, 2024) ("[S]tudents directly represent clients in matters that include actions

sues in services of a particular population, like veterans.²²⁶ However, clients receiving services from any clinic might be experiencing homelessness or dealing with housing insecurity.²²⁷ Of the clinics working with this community, several use the term “experiencing homelessness.”²²⁸ Some have also used the term “unhoused,”²²⁹ and others “homeless.”²³⁰ The Homeless Advocacy Clinic at the University of the

arising from unsafe housing, landlord-tenant disputes, evictions, foreclosures, rent-to-purchase agreements, breach of contract, [and] consumer protection issues,” among others.); *Housing Clinic*, UNIV. OF IDAHO COLL. OF L., <https://uidaho.edu/-/media/uidaho-responsive/files/law/academics/practical-skills-flyer-202122.pdf?la=en&rev=39f00a106c1a44de8e791724b70cf137> [https://perma.cc/TFQ5-HBNK] (last visited Dec. 26, 2024) (“Housing Clinic focuses primarily on residential tenant eviction defense, habitability, and security deposits.”).

²²⁶ See, e.g., *Veterans Justice Clinic: Poverty, Homelessness & Criminalization*, UCLA SCH. OF L., <https://law.ucla.edu/academics/curriculum/veterans-justice-clinic-poverty-homelessness-criminalization> [https://perma.cc/238B-N9XW] (last visited Dec. 26, 2024) (assisting veterans with “continuing harms of COVID-19 on our clients (e.g. housing and economic insecurity, disability justice, and health access”).

²²⁷ Olivia Klein, *Clients, CORIs, and Community in Harvard Defenders*, HARVARD L. SCH. (May 11, 2023), <https://hls.harvard.edu/clinic-stories/clients-coris-and-community-in-harvard-defenders/> [https://perma.cc/3VBR-Y6AU] (“In CORI representation, you get to build a holistic relationship with your clients and learn about their hopes. It’s empowering to say, what are your goals, and how can we partner with you to get there? . . . I had a client who had been experiencing homelessness for several decades, and we were able to seal her CORI, and I’m deeply grateful that now she’s in permanent housing. It was really transformational to see how well she’s doing.”).

²²⁸ *Penn Law’s Walk-In Legal Assistance Project (WILA)*, UNIV. OF PA. CAREY L. SCH., <https://www.law.upenn.edu/live/profiles/795-penn-laws-walk-in-legal-assistance-project-wila> [https://perma.cc/92XK-J8U6] (last visited Dec. 26, 2024) (“At a weekly clinic, WILA provides accessible civil legal services to people who are experiencing homelessness and housing insecurity.”); *Report Documents the Criminalization of Homelessness*, YALE L. SCH. (Nov. 17, 2016), <https://law.yale.edu/yls-today/news/report-documents-criminalization-homelessness> [https://perma.cc/BZ3S-P36L] (“The report documents the harms people experiencing homelessness suffer at the hands of the criminal justice system every day.”); *Housing Rights Initiative*, UNIV. OF MIA. SCH. OF L., <https://www.law.miami.edu/academics/programs/human-rights/initiatives/housing-rights/> [https://perma.cc/K4GD-75SF] (last visited Dec. 26, 2024) (“In the United States and locally in Miami, the use of petty offenses to criminalize poverty is a critical issue where people experiencing homelessness regularly face the threat of criminal sanctions for fulfilling basic needs.”).

²²⁹ See, e.g., Nora Moriarty-McLaughlin, *Pepperdine’s Legal Aid Clinic Offers Lifeline to L.A.’s Unhoused Population*, PEPPERDINE CARUSO SCH. OF L. (Jan. 25, 2023), <https://pepperdine-graphic.com/pepperdines-legal-aid-clinic-offers-lifeline-to-l-a-s-unhoused-population/> [https://perma.cc/A4MK-JGVY] (“Law students at the Legal Aid Clinic at Pepperdine’s Caruso School of Law help unhoused and impoverished people in Downtown L.A.’s Skid Row by providing them access to legal support.”); *Law Students Help Clients to Enforce Civil Rights*, UNIV. OF ARK. SCH. OF L. (Apr. 27, 2022), <https://news.uark.edu/articles/59931/law-students-help-clients-to-enforce-civil-rights> [https://perma.cc/E69E-C8PB] (“[S]tudents . . . helped a local unhoused man charged with felony arson finally get released from jail.”).

²³⁰ *Clinics*, PEPPERDINE CARUSO SCH. OF L., <https://law.pepperdine.edu/experiential-learning/clinical-education/clinics/> [https://perma.cc/M7Z5-YBUN] (last visited Dec. 26, 2024) (“In the Legal Aid Clinic at the Union Rescue Mission students represent clients who are homeless on Skid Row in downtown Los Angeles.”).

Pacific uses a combination of terms in describing the crisis in accessing services:

In 2019, the Sacramento County Board of Supervisors formally declared an emergency homeless shelter crisis. The 2019 Homeless Point in Time for Sacramento County found that 5,570 persons experience homelessness on a given night, and that number has increased with COVID-19. In 2020, more than 95 homeless men and women died in Sacramento County, and the number of homeless deaths is surging. The data from a variety of governmental and nonprofit organizations is overwhelming that the vulnerable reentry and homeless population suffer disproportionately from serious mental illness and substance use disorders.²³¹

These terms can also be adapted for use across communities or when working with individuals who have intersectional identities. For instance, terms that relate to both survivor status and housing status can be used in combination, such as Harvard's use of the term "survivor-tenant."²³²

When addressing housing access challenges, clinics can demonstrate respect by using person-centered terminology, recognizing that homelessness is a circumstance, not an intrinsic aspect of identity. Accurately reflecting both legal and social realities requires precise tailoring when describing specific populations or issues. By thoughtfully applying these principles, clinics can address housing challenges in a way that respects the dignity and complexity of the individuals and communities they serve.

CONCLUSION

Inclusive language practices can help ensure all individuals are "treated fairly, with courtesy and respect, without regard to their race, gender, or any other protected personal characteristic."²³³ Clinical advocacy reflects the range of terminology used in our society and

²³¹ *Homeless Advocacy Clinic Goals & Structure*, UNIV. OF THE PAC. McGEORGE SCH. OF L., <https://law.pacific.edu/law/legal-clinics/homeless-advocacy-clinic> [<https://perma.cc/A7BT-8XVN>] (last visited Aug. 1, 2023); see also *Gift to Homeless Advocacy Clinic Will Support Students and Community*, UNIV. OF THE PAC. McGEORGE SCH. OF L., <https://www.pacific.edu/pacific-newsroom/gift-homeless-advocacy-clinic-will-support-students-and-community> [<https://perma.cc/XY3H-TEDR>] (last visited Aug. 1, 2023).

²³² *A Victory for Survivor-Tenants in Housing Court*, *Housing Law Clinic*, HARVARD L. SCH. (Sept. 26, 2017), <https://hls.harvard.edu/clinic-stories/clinical-voices/a-victory-for-survivor-tenants-in-housing-court/> [<https://perma.cc/PH8C-BAA3>].

²³³ *People v. Gobrick*, No. 352180, 2021 WL 6062732, at *1 (Mich. Ct. App. Dec. 21, 2021).

profession, including by clinics and courts, as reflected in the examples discussed. Clinics can model the balancing required to make inclusive language decisions—weighing reflection, respect, accuracy, precision, and relevance communicated by word choices to different audiences—in all aspects of their practice by assessing word choices, being mindful of the origin and history of words, honoring individual preference, considering intersectionality, and contextualizing their language choices.

APPENDIX

Term	Origin or Usage
auction block	This phrase describes where enslaved people stood to be sold. ²³⁴
basket case	This term “is used to refer to an ineffective or powerless person,” but its first cited use “in the Oxford English Dictionary is in 1919, soon after the end of World War I . . . came from rumors about soldiers who had lost all of their limbs and had to be transported in a basket.” ²³⁵
bugger	“This word’s roots are traced to Bulgarians and anal sex. ‘Bulgarus’ was a name given to a sect of heretics believed to have come from Bulgaria in the 11th century. Over time and through various languages, this was later shortened to ‘Bugger.’” ²³⁶
cretin	“Though most people use the word ‘cretin’ to refer to someone that is ‘insensitive’ or ‘stupid,’ Merriam-Webster writes that the word used to refer to those who live[] in the French-Swiss Alps, and were affected with hypothyroidism.” ²³⁷
eenie, meenie, miney, moe	“This modern, inoffensive version [of the children’s rhyme] comes from a similar, older one, where n---er replaces tiger.” ²³⁸

²³⁴ *Block*, ETYMOLOGY DICTIONARY, <https://www.etymonline.com/word/block> [<https://perma.cc/2TF6-D6H2>] (last visited Jan. 29, 2025); see also *Sale*, National Humanities Center Toolbox Library: Primary Resources in U.S. History & Literature, NAT’L HUMANITIES CTR., <https://nationalhumanitiescenter.org/pds/maai/enslavement/text2/text2read.htm> [<https://perma.cc/39GQ-BKL5>] (last visited Jan. 27, 2025).

²³⁵ Anne Curzan & Rebecca Kruth, *The Dark Origin of “Basket Case,”* MICH. PUBLIC (Jan. 6, 2019, 2:40 PM) <https://www.michiganpublic.org/arts-culture/2019-01-06/the-dark-origin-of-basket-case> [<https://perma.cc/676F-XCEZ>] (last visited Jan. 31, 2025); see also *Basket Case*, DICTIONARY.COM, <https://www.dictionary.com/browse/basket-case> [<https://perma.cc/KKM6-QB5M>] (last visited Jan. 27, 2025).

²³⁶ Gavin Fernando, *From ‘Long Time No See’ to ‘Bugger!’, These Overused Expressions Have Racist Origins*, CHRONICLE (Sept. 10, 2018, 6:46 PM), <https://www.thechronicle.com.au/news/from-long-time-no-see-to-bugger-these-overused-expressions-have-racist-origins/news-story/8ec88c31249f092e250a0353894411cf> [<https://perma.cc/EUT3-3262>] (last visited Jan. 31, 2025); see Sterbenz & Davis, *supra* note 99 (“Many considered the Bogomils heretical and thus, said they approached sex in an ‘inverse way.’”).

²³⁷ Sterbenz & Davis, *supra* note 99; see also *Cretin*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/cretin> [<https://perma.cc/HUL9-SAWC>] (last visited Jan. 31, 2025).

²³⁸ Sterbenz & Davis, *supra* note 99; see Alex Abad-Santos, *The Racist Children’s Songs You Might Not Have Known Were Racist*, VOX (May 21, 2014, 8:00 AM), <https://www.vox.com/2014/5/21/5732258/the-racist-childrens-songs-you-might-not-have-known-were-racist> [<https://perma.cc/8XLL-MKL2>] (last visited Jan. 31, 2025); see also Samara Pearley, *Eenie Meenie Miney Moe and the Ice Cream Truck Song’s Origin*, AFRICAN AM. FOLKLORIST, <https://theafricanamericanfolklorist.com/articles/eenie-meenie-miney-moe-and-the-ice-cream-truck-songs-origin> [<https://perma.cc/HUH7-8V89>] (last visited Jan. 31, 2025).

grandfather clause/grandfathered in	“The Grandfather Clause was a statute enacted in many states in the Deep South allowing prospective white voters to evade sitting literacy tests and other tactics designed to stop southern [B]lack[] [people] from voting and having other rights similar to white people.” ²³⁹ It is still used to mean some individuals are exempted from certain rights or privileges.
guru	Describing the term “guru,” like “ninja,” as “culturally appropriated and [] gendered as masculine, which can discourage female applicants,” for instance, “when it appears in job descriptions.” ²⁴⁰
gyp	The use of the term “gypped” to mean “defrauded, swindled, [or] cheated,” originated as a slur against the Romani people, who are colloquially referred to as gypsies. ²⁴¹
hooligan	“This phrase started appearing in London newspapers around 1898. The Oxford Online Dictionary speculates it evolved from the fictional surname ‘Houlihan,’ included in a popular pub song about a rowdy Irish family. Other sources . . . claim that Patrick Houlihan actually existed and that he was a bouncer and a thief in Ireland.” ²⁴²
hysteria	“[D]octors used ‘hysteria’ as a medical explanation for nearly every sick woman they encountered. The idea for such a diagnosis comes from Hippocrates’ belief that a woman’s hysteria is caused by a ‘wandering uterus.’” ²⁴³

²³⁹ Fernando, *supra* note 236; see *Inclusive Language*, UNIV. OF CAL. RIVERSIDE, https://diversity.ucr.edu/sites/default/files/2018-11/Inclusive_Language_for_web_4_2.pdf [<https://perma.cc/E8W8-8GV9>] (last visited Jan. 31, 2025).

²⁴⁰ Herbert, *supra* note 99; see also Michael T. Nietzel, *Stanford University Backs Away Its Harmful Language List*, FORBES (Jan. 08, 2023, 9:22 AM), <https://www.forbes.com/sites/michaelt Nietzel/2023/01/08/stanford-university-backs-away-from-its-harmful-language-list/> [<https://perma.cc/6HPV-8G6Y>] (last visited Jan. 31, 2025) (“[I]n the Buddhist and Hindu traditions, the word is a sign of respect. Using it casually negates its original value.”).

²⁴¹ Challa, *supra* note 99; see also *Gyp*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/gyp> [<https://perma.cc/84NQ-XKCG>] (last visited Jan. 31, 2025).

²⁴² Sterbenz & Davis, *supra* note 99; see also *The Original Hooligans*, BLOOMBERG (Aug. 17, 2012, 3:20 PM), <https://www.bloomberg.com/news/articles/2012-08-17/the-original-hooligans> [<https://perma.cc/8SRT-N5UQ>] (last visited Jan. 31, 2025) (“Hooligans were a stereotypical representation of urban immigrants, characterizing the cultural mixing and prejudices of London in the late 1800s.”).

²⁴³ Greenwald, *supra* note 99; Cecilia Tasca, Mariangela Rapetti, Mauro Giovanni Carta & Bianca Fadda, *Women and Hysteria in the History of Mental Health*, 8 CLINICAL PRAC. & EPIDEMIOLOGY MENTAL HEALTH 110, 111 (2012), <https://pmc.ncbi.nlm.nih.gov/articles/PMC3480686/pdf/CPMH-8-110.pdf> [<https://perma.cc/QNM4-SM9H>] (last visited Jan. 31, 2025).

itis	“More commonly known now as a ‘food coma,’ this phrase directly alludes to the stereotype of laziness associated with African Americans . . . [and] stems from a longer (and incredibly offensive) version — n----ritis.” ²⁴⁴
long time no see/no can do	Grammatically incorrect phrases like “long time no see” or “no can do” “mimic[] non-native English speakers when they are speaking English.” ²⁴⁵
master	Colloquial use of the term master (e.g., master copy, master list, master bedroom), “either as a verb or an adjective . . . [references that] historically, masters enslaved people, didn’t consider them human and didn’t allow them to express free will, so this term should generally be avoided.” ²⁴⁶
meeting a deadline	“In the 1860s, a ‘dead line’ was a line within or around a prison. Prisoners would be shot for crossing the ‘dead line.’ . . . Some of the earliest mentions of dead-line come up in 1863, preserved in diaries kept by captive soldiers during the Civil War,” including at the Andersonville, Georgia Confederate prison. ²⁴⁷ This term evolved to its modern use: to finish something by a specific time.
moron	“The term ‘moron’ wasn’t originally an insult, but a psychological diagnosis denoting a mild disability,” as is the case with the words imbecile and idiot. ²⁴⁸

²⁴⁴ Sterbenz & Davis, *supra* note 99; *Racist and Offensive Terms We Use in Everyday Language*, EBONY (Nov. 14, 2013), <https://www.ebony.com/racist-and-offensive-terms-we-use-in-everyday-language-981> [<https://perma.cc/R2S6-TY4U>] (last visited Jan. 31, 2025).

²⁴⁵ Lakshmi Ganghi, *Who First Said ‘Long Time, No See’ and In Which Language?*, NPR (Mar. 9, 2014, 7:05 PM), <https://www.npr.org/sections/codeswitch/2014/03/09/288300303/who-first-said-long-time-no-see-and-in-which-language> [<https://perma.cc/B8T3-SHZE>] (last visited Jan. 31, 2025); see Katherine Timpf, *‘Long Time, No See’ Is Now Considered ‘Derogatory’ Toward Asians*, NAT’L REV. (Nov. 6, 2018, 5:50 PM), <https://www.nationalreview.com/2018/11/university-claims-long-time-no-see-expression-derogatory-to-asians/> [<https://perma.cc/32Q5-MSX6>] (last visited Jan. 31, 2025); see also UNIV. OF CAL. RIVERSIDE, *supra* note 239 (“[S]imilar to ‘no can do’ ‘long time no see’ originally mimicked and denigrated Chinese or Native American speech patterns.”).

²⁴⁶ Nietzel, *supra* note 240; see Kate Conger, *‘Master,’ ‘Slave’ and the Fight Over Offensive Terms in Computing*, N.Y. TIMES (Apr. 13, 2021), <https://www.nytimes.com/2021/04/13/technology/racist-computer-engineering-terms-ietf.html> [<https://perma.cc/FH72-TZAW>].

²⁴⁷ *Your ‘Deadline’ Won’t Kill You*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/wordplay/your-deadline-wont-kill-you> [<https://perma.cc/56ZR-643X>] (last visited Jan. 27, 2025).

²⁴⁸ Greenwald, *supra* note 99; *The Clinical History of ‘Moron,’ ‘Idiot,’ and ‘Imbecile,’* MERRIAM-WEBSTER, <https://www.merriam-webster.com/wordplay/moron-idiot-imbecile-offensive-history> [<https://perma.cc/4L85-8J2L>] (last visited Jan. 31, 2025).

mumbo jumbo	“The phrase ‘mumbo jumbo’ likely comes from the West African god <i>Maamajomboo</i> . Why is it offensive?” In addition to being appropriative, the term carries weighted implications because “Mandinka males would dress up like the god to solve domestic disputes and abuse their wives.” ²⁴⁹
paddy wagon	“‘Paddy’ originated in the late 1700s as a shortened form of ‘Patrick,’ and then later a pejorative term for any Irishman. ‘Wagon’ naturally refers to a vehicle. ‘Paddy wagon’ either stemmed from the large number of Irish police officers or the perception that rowdy, drunken Irishmen constantly ended up in the back of police cars, according to <i>Splinter News</i> .” ²⁵⁰
peanut gallery	“[T]he popular phrase ‘peanut gallery’ typically used to reference hecklers, originated as a term to refer to those—usually Black people—who sat in the ‘cheapest’ section of the Vaudeville theaters.” ²⁵¹
pow-wow/powwow	“A pow-wow is a social gathering for ceremonial purposes, and many tribes still hold them [] regularly. Using this out of context to refer to a meeting or a quick chat or conversation trivializes the long tradition that is still maintained today by many tribes.” ²⁵²
slave driver	The term’s use, such as to refer to a tough supervisor, “makes light of the horrific experience of slavery.” ²⁵³
sold down the river	“Today, if someone ‘sells you down the river,’ [they] betray[] or cheat[] you. But the phrase has a much darker and more literal meaning . . . [D]uring slavery in the US, masters in the North often sold [] misbehaving [en]slave[d] [people], sending them down the Mississippi River to plantations in Mississippi, where conditions were much harsher.” ²⁵⁴

²⁴⁹ Greenwald, *supra* note 99; *see also* Lakshmi Gandhi, *Unmasking the Meaning and Marital Disputes Behind Mumbo Jumbo*, NPR (May 31, 2014, 7:03 AM), <https://www.npr.org/sections/codeswitch/2014/05/31/317442320/unmasking-the-meaning-and-marital-disputes-behind-mumbo-jumbo> [https://perma.cc/5257-BP66] (last visited Jan. 31, 2025).

²⁵⁰ Sterbenz & Davis, *supra* note 99; *see Avoid the Paddy Wagon this St. Patrick’s Day*, NAT’L LAW ENF’T OFFICERS MEM’L MUSEUM, <https://nleomf.org/avoid-paddywagon-this-st-patricks-day/> [https://perma.cc/2G72-76LJ] (last visited Jan. 31, 2025); *see also Paddy Wagon*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/paddy%20wagon> [https://perma.cc/9FFA-SNV5] (last visited Jan. 31, 2025).

²⁵¹ Sterbenz & Davis, *supra* note 99; *see* *Ebony*, *supra* note 242.
²⁵² *The Social Justice Phrase Guide*, ADVANCEMENT PROJECT, https://advancementproject.org/wp-content/uploads/2015/10/94da835bcf2d3e7631_bfm6yh5kg-1.pdf [https://perma.cc/2N9G-HS3P] (last visited Jan. 31, 2025); *see Powwow*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/powwow> [https://perma.cc/DS4G-X26W] (last visited Jan 31, 2025).

²⁵³ Herbert, *supra* note 99; *see Slave Driver*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/slave%20driver> [https://perma.cc/G3GG-P6LG] (last visited Jan. 31, 2025).

²⁵⁴ Sterbenz & Davis, *supra* note 99; Leah P. Holmes, *Sold Down the River*, MISS. ENCYC. (July 11, 2017), <https://mississippiencyclopedia.org/entries/sold-down-the-river/> [https://perma.cc/6LBN-V443] (last visited Jan. 31, 2025).

spaz	The term “spaz” or “spastic” to mean “over-energetic” or “excitable” belies the term’s “historic association with cerebral palsy which was previously known as spastic paralysis.” ²⁵⁵
spinster	“Once upon a time, the word ‘spinster’ didn’t refer to an unmarried woman, but a person who spun yard or thread for a living. Eventually the term took on its current meaning, as most of the women who were spinsters were also lower-class and unwed, relying on their job to provide for themselves.” ²⁵⁶
spirit animal	Using “spirit animal” to mean an animal you “connect with” strongly coopts the term’s origin and “trivializes Native relationships to the animal world . . . [which are deeply rooted in the] values and spiritual beliefs of Native communities.” ²⁵⁷
tipping point	“When tipping point first began to be employed in general use, it was almost entirely in reference to the propensity of white families to move out of an area when a certain percentage of the neighborhood was composed of [B]lack families. It served as a precursor of sorts to the phenomenon of white flight.” ²⁵⁸
totem pole	A totem pole is a “sculpture primarily traditional to tribes . . . when used as an idiom to describe a person of low rank, inaccurately trivializes the tradition and meaning of the totem poles, which do not have a hierarchy of carvings based on physical position” and reinforced a negative association. ²⁵⁹
tribe	“Often used as a cutesy way to describe like-minded people, ‘tribe’ has colonial origins as a bureaucratic term forced on Native Americans and incorrectly applied to many Africans.” ²⁶⁰

²⁵⁵ Greenwald, *supra* note 99; Ben Zimmer, *The Surprising History of the Slur Beyoncé and Lizzo Both Cut from Their New Albums*, SLATE (Aug. 3, 2022, 6:04 PM), <https://slate.com/culture/2022/08/beyonce-renaissance-lizzo-spaz-ableist-slur-lyrics-history.html> [https://perma.cc/X4NL-HPP9] (last visited Jan. 31, 2025).

²⁵⁶ Greenwald, *supra* note 99; *Where Does the Term ‘Spinster’ Come from?*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/wordplay/spinster-meaning-origin> [https://perma.cc/9SJQ-83MK] (last visited Jan. 31, 2025).

²⁵⁷ *Native American Relationships to Animals: Not Your “Spirit Animal,”* NAT’L MUSEUM OF THE AM. INDIAN, <https://americanindian.si.edu/nk360/informational/native-american-spirit-animal> [https://perma.cc/7ZV3-LT4Y] (last visited Jan. 31, 2025); see Herbert, *supra* note 99.

²⁵⁸ *The Racist Origins of ‘Tipping Point,’* MERRIAM-WEBSTER, <https://www.merriam-webster.com/wordplay/origin-of-the-phrase-tipping-point> [https://perma.cc/9D2E-LD9B] (last visited Jan. 31, 2025); see Greenwald, *supra* note 99.

²⁵⁹ ADVANCEMENT PROJECT, *supra* note 252; Herbert, *supra* note 99.

²⁶⁰ Herbert, *supra* note 99; see J. Maija Doggett, *The Trouble With “Tribe,”* ALASKA BUS. MAG., <https://digital.akbizmag.com/issue/april-2024/the-trouble-with-tribe/> [https://perma.cc/XD8T-RPTS] (last visited Jan. 29, 2025).

uppity	“[T]he term ‘uppity,’ nowadays used generally to refer to a stuck-up or arrogant person, was commonly used to describe Black people that ‘didn’t know their socioeconomic place.’” ²⁶¹
use as a crutch/lame/handicap	“Beyond ‘crippling,’ ableism is on display when people use the words ‘lame,’ ‘crutch,’ and ‘handicap.’” ²⁶²
you guys	“Positing men as the status quo excludes women and non-binary folks,” although some consider the term as egalitarian in origin, referring to Guy Fawkes. ²⁶³

²⁶¹ Sterbenz & Davis, *supra* note 99; Elspeth Reeve, *Yep, ‘Uppity’ Is Racist*, ATLANTIC (Nov. 22, 2011), <https://www.theatlantic.com/politics/archive/2011/11/yep-uppity-racist/335160/> [<https://perma.cc/586R-XFY3>] (last visited Jan. 31, 2025).

²⁶² Emerson Malone, *Ableism Is Embedded in Our Language. We Can Dismantle It.*, BUZZFEED (Nov. 17, 2021, 1:47 PM), <https://www.buzzfeednews.com/article/emersonmalone/ableism-language-disability> [<https://perma.cc/PSV4-ZMLV>]; Rakshitha Arni Ravishankar, *Why You Need to Stop Using These Words and Phrases*, HARV. BUS. REV., <https://hbr.org/2020/12/why-you-need-to-stop-using-these-words-and-phrases> [<https://perma.cc/WGC9-2EUZ>] (last visited Jan. 31, 2025).

²⁶³ Herbert, *supra* note 99; *see also* Allan Metcalf, *The Surprising Origins of the Phrase ‘You Guys’*, TIME (Sept. 30, 2019, 11:00 AM), <https://time.com/5688255/you-guys/> [<https://perma.cc/3CTS-M4TS>] (last visited Jan. 31, 2025) (describing use of the phrase in reference to Guy Fawkes and the shifting social meaning of the expression).

