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Title:
Dirty Little Secrets: Confronting Them Together

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We all have programmatic problems on which we are too uncomfortable to ask our colleagues for help. This cuts us off from each other’s wisdom, crippling our ability to address these issues. Let’s tackle our issues together in a safe and supportive environment! Through an interactive discussion and small group work, we will identify participants’ Top 6 “secret” issues and collaborate on strategies and best practices to address them.
Above all, we lawyers are counselors and problem solvers. As such, in every legal service we provide, we need to deeply understand our client’s goals and capabilities, as well as have familiarity with external barriers they may face. Only then can we can provide the service most useful to them – in both our paid and volunteer work.

Without access to a lawyer, most in poverty have no effective remedy to the injustices that are routine in poverty: unsafe housing, unpaid wages, failure to return security deposit, abusive phone calls from debt collectors, unfair lawsuits, and more. When we fully utilize our skills as counselor and problem solvers, we can protect our clients’ basic needs and promote their well-being. We also often witness the strength and resilience of people in difficult circumstances and learn more about the communities in which we live.

This packet summarizes skills and strategies essential to effective counseling and problem solving at legal advice clinics. In general, providing effective services to clients in a legal clinic setting is more challenging than on a full representation basis because of the compressed timeframe. Nonetheless, experienced attorneys, with trained clinic assistants to leverage their time, routinely provide impactful services yielding concrete benefits for their clients.

VLN has studied attorneys who are most impactful and come up with a list of skills that they regularly utilize. These skills are listed in the table of contents of this manual and more fully described in the pages that follow.

VLN asks that all attorneys new to a clinic first have an onsite orientation and then spend a few shifts shadowing an experienced attorney with the skills list in hand, to focus on how to apply these skills effectively in the clinic setting.

For more information, please see www.vlnmn.org or wpbc.wikispaces.org. Or you may call 612-752-6655 to be contacted to the appropriate staff member.
Below is the list of skills of the most effective attorneys at VLN’s legal advice clinics know. New volunteers are asked to learn, cultivate and use these skills. Supportive materials and references are provided in this packet.

- **Create rapport and engage the client’s strengths** ................................................................. 3
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Create Rapport and Engage the Client’s Strengths

Establishing rapport, putting your client at ease, building trust, and good communication skills are essential for successful representations. Below are concrete suggestions for how to do this effectively.

**In general**

- Make the client comfortable. Introduce yourself, uncross your arms/legs (open body language), talk slowly, address them by their name, avoid legalese, etc.
- Communicate the amount of time that you and the client have together.
- Let the client know if you’ll be taking notes. Explain that it helps you to remember important facts. Consider offering the client pen and paper as well.
- Acknowledge how the client feels, even if you disagree.
- When taking time to think about possible solutions, let the client know. Prolonged silence can be unsettling.
- When asking personal questions, let the client know the reason you are asking them (to make the questions seem less intrusive).
- Watch the tendency of simultaneously thinking of solutions or counter-arguments while listening! This type of listening can lead us to jump to conclusions and/or miss important information.
- Consider listening to the client’s full story before determining the best course of action. Avoid making assumptions about the client’s situation or abilities.
- Consider adopting a strengths-based perspective, by focusing on what the client has done correctly as opposed to what they could have done better or differently.

**Appropriate Question Structure**

- Open-ended questions can be more useful at the beginning of the session because they better evoke the complexities of each factual scenario, as well as reveal the client’s underlying logic and priorities.
- Close-ended questions are more useful only after you have a sense of the client’s story. They should serve to clarify information and/or pursue particular solutions in light of the client’s story. Keep in mind that these types of questions can feel like interrogation and may be alienating.

**Active listening**

Active listening improves understanding. It includes paying attention not only to words but to body language and tone. Steps of active listening include:
<table>
<thead>
<tr>
<th>Step</th>
<th>Example</th>
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| Reflect back: Paraphrase what you’ve heard and/or by seek clarification. | • If I understand you correctly...  
• What I’m hearing you say is...  
• When you say..., do you mean...? |
| Summarize back to the client what she or he has said throughout the session to be sure you and the client are on the same page. It will also leave the client feeling heard. | • So the bottom line is that...  
• What you’re most interested in accomplishing is... |
| Clarify expectations and roles to avoid misconceptions and confusions | • What I’ll be doing for you is...  
• What I’ll need from you is... |
| Work with client through options and advice given                    | • While the decision is ultimately yours, I can help you explore the different options in an effort to help you decide. |

**Explore options.** One way to do this is:

1. Ask the client what they are hoping to accomplish. If that’s not possible, what would be a close second?
2. Play out the scenarios through different “what if” hypotheticals.
3. Discuss how certain choices might affect other areas of the client’s life and how the client’s circumstances might make it difficult to achieve certain outcomes.
4. Consider using scales (from 1 to 10) to gauge the client’s ability to complete tasks. Discuss the client’s support system, both formal and informal, as a resource for accomplishing tasks.
5. Explore non-legal solutions as well. Sometimes, legal options are impractical for clients because of how many resources, including time, our justice system takes. For more information, see below section to “Consider Options External to the Legal System.”
Write down/read back advice given and steps to follow:

- Explain to the client that some of the legal steps you’ll be discussing can be difficult to understand or remember. Let them know that you’ll be providing them a list of next steps for what to do to help them accomplish their goal and that you’ll be reviewing it at the end of the session.

- At the end of the session, read it back to the client.

- Ask if the client understands, and answer any questions. Consider asking the client to put in his or her own words what the next steps are.

Make referrals when appropriate

- For example: “You mentioned that you were also having housing issues. While I am not able to help you with that, I can refer you to a place that could, if you’d like.”

- If you know, explain what s/he can expect from the referral process.

Submitted by Yaima Couso, B.S.S.W, J.D., Robina Fellow at Volunteer Lawyers Network

Set Expectations

Setting the expectations at the beginning of the consultation is essential to maximize the benefit of your time together, as well as fulfill your ethical responsibilities. Many attorneys do this in the following order.

Introductions. If you have a clinic assistant, it’s helpful to ask him or her to provide you with the clinic data sheet (see page 57) in advance of meeting the client.¹ That way, you know the client’s name and have a sense of the client’s issue right away. This can save time in the beginning of the meeting.

Possible language: Hi Mr. Kennedy, it is nice to meet you. I’m xxx and understand from [clinic assistant’s name] that you have an issue with xxx.

Review the expected time of the consultation. Telling your client the anticipated length of the consultation sets the stage for some mutual ownership of how the time is spent. New attorneys who forget this step, and then later try to wrap the meeting up after 20 minutes, may find that the client feels shortchanged and the consult was less impactful than possible.

¹ At select clinics, where the client may be filing a petition, response, or motion, you may also wish to ask the clinic assistant to help the client complete an IFP form
Possible language: So, just so you know, we have about 20 minutes here together today and I’d like to do as much as possible for you in that amount of time.

Limited nature of the service. When providing limited scope services, we must make sure the client understands what we will be doing, what we will not be doing, and what will remain to be done by the client after the lawyer’s service. The most efficient way of doing this is to reference the language on the clinic data sheet, which the client signed, and ask if the client has any questions about it. When wrapping up the session, review this again referencing the specifics of the attorney/client session.

Recommended language at beginning: I also see that you signed the Client Agreement and, before we start, just want to make sure that you understand that I will be helping you at this clinic, but I will not be providing any follow up help. Do you have any questions about that? (You may come back to this clinic for help with next steps, but there will likely be another attorney working here that day).

Possible language at end of session: So just to review, I’m advising you to [x, y, z]. This is what I helped you with today and these are the next steps you’ll need to take going forward on your own. If you need additional assistance, you can, like we talked about earlier, you may come back to this clinic for help with next steps, but there will likely be another attorney working here that day).

Confidentiality. Review that everything the client tells you is confidential. (Per Rule 6.5, this holds even if you later realize that your firm is representing the client’s opponent. And, your duty of confidentiality is not impacted by the presence of a third party.)

Possible language: As noted in the statement you reviewed, everything we talk about today is confidential; I will not share it with anyone. There are some exceptions that

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2 Legal Clinic Service to Clients: We can provide a short meeting with an attorney, free of charge, to talk about a legal matter. The attorney can provide information on most legal matters along with advice or brief service about the next steps you may wish to take. The attorney may be helped by non-attorney volunteers under his/her supervision. This clinic does not provide ongoing services to clients or ongoing legal coaching with respect to a certain matter. Priority is given to those who have not been seen at this clinic before. LRIS/VLN reserve(s) the right to decline services. Audio or visual recording of attorney-client sessions is prohibited. VLN does not assist businesses or sole proprietors of businesses with business litigation.

Client Agreement: I understand and agree to the following: The attorney I meet with today can provide only legal information, advice and/or brief service on my legal issue. With the possible exception of brief follow up services that the attorney tells me he or she will do, the attorney will not provide ongoing legal service beyond that provided onsite today. I am still responsible for pursuing my legal matter and for taking any post-clinic follow up actions recommended by the attorney (e.g., serving other parties, filing paperwork in court, preparing other paperwork, and appearing in court). While the other party may be represented by this attorney’s law firm now or in the future, what I tell the attorney today is confidential. I give my informed consent for my information to be shared between LRIS & VLN and with others as needed. I am not now represented by another attorney regarding the matter that I am seeking help with today.
may permit me under limited circumstances to disclose confidential information such as if you ask me to help you to commit fraud or if I think it’s necessary to prevent death or injury.

Privilege and third parties. Often, a trained clinic assistant sits in on advice sessions in order to help the attorney and client. Other times, the client may bring a friend or other third party for support. When this is the case, it’s essential to let the client know that the presence of this third party\(^3\) constitutes a waiver of attorney/client privilege.\(^4\)

Possible language: Before we start, I’d like to ask you if it’s okay if [clinic assistant] can sit in with us. Many times, he/she will be able to assist me in providing good services. However, in the unlikely event there is a court hearing about this matter, having him/her in the session may mean that I could be required to testify about what we talk about today. That’s never happened, to my knowledge, but I need to let you know of the possibility. Is it okay with you to have our clinic assistant sit in to help?

Start the session. Now that you’ve set the stage, start the substance of the meeting. It’s helpful to reference the legal issue the client identified on the clinic data sheet, while keeping in mind that clients often mistakenly misstate their issue.

Possible language: I see that you’ve told [clinic assistant] that your legal issue is xxx. What specifically would you like a lawyer to do for you today?

### Understand and Avoid Five Common Communication Breakdowns Between Attorneys and Clients

When communicating with someone from generational poverty (or anyone who might be different from us), there is greater potential for communication breakdown based on:

1. Subconscious bias
2. Distrust of outsiders/ fear of professionals
3. Differences in priorities/worldviews
4. Differences in vocabulary and examples
5. Differences in basic communication styles (print- versus oral-culture styles).

These areas are explored more below.

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\(^3\) The presence of interpreters does not constitute a waiver of privilege if the interpreter is necessary to facilitate communication.

\(^4\) Attorney/client privilege is an evidentiary rule regarding what is admissible in a court proceeding. In short, an attorney cannot be compelled to disclose communications between an attorney and client that were for the purpose of giving or receiving legal advice.
1) SUBCONSCIOUS BIAS.

Professionals and those from the upper and middle classes have often formed subconscious biases about people in poverty that are often difficult to recognize and overcome. People in poverty also hold biases about people who are not in poverty. These subconscious biases can keep us from understanding each other and hamper efforts to provide legal services.

The three main sources of bias about people in poverty come from:

A. **Segregation and isolation.** Most middle-class people spend time with other people who are middle class. People in poverty tend to be surrounded by others who are in similar situations. This segregation by social class only exposes us to one way of life and does not allow us to understand the circumstances in which other people live.

B. **The media.** The number-one teacher of poverty in America is the media—which often dramatizes, sensationalizes, and provides extremes that perpetuate stereotypes and myths.

C. **The myth of the land of opportunity.** The United States has been called “the land of opportunity.” People are taught that everyone starts out the same and has the same chances—that every U.S. citizen can achieve success through ability and hard work. Conversely, we are taught that if someone does not succeed, it’s her or his fault. We learn that only people who lack ambition, are lazy, or have personal flaws experience poverty in our wealthy country.

2) DISTRUST OF OUTSIDERS/FEAR OF PROFESSIONALS.

People in poverty may have limited exposure to people they can trust from other socio-economic classes and helping professions (including those within the legal system). Their experiences may include overworked and burned-out service providers or government employees who are unable to provide them what they need and who often do not have the communication skills for relating effectively with their clients. Prior experiences in the legal system may have left them feeling afraid, ashamed, judged, and inadequate. If communication with a previous attorney broke down, they may have been punished or judged for not following instructions that they did not understand or did not know how to follow. If they themselves have not had a bad experience, they likely have known someone who has and may feel uneasy and struggle to trust their attorney.

3) DIFFERENCES IN PRIORITIES/WORLDVIEWS.

We all have driving forces behind the decisions we make. The daily life experiences of people living in the crisis of poverty are different from those living in more affluent classes. In poverty, decisions are often made based on survival, relationships, and getting temporary
relief from the war zone of poverty. In the upper and middle classes, decisions are often based on family, career success, and material security. What seems possible in the middle-class context may seem impossible in the context of poverty.

4) DIFFERENCES IN VOCABULARY/EXAMPLES.

Legal professionals can often derail communication by speaking in legalese or providing examples from middle-class lifestyles that clients from poverty can’t relate to. Without common vocabulary and examples, the information does not make sense, which often leaves the client with little understanding of what she or he is supposed to do next and often no capacity to follow through with attorney instructions.

5) DIFFERENCES IN BASIC COMMUNICATION STYLES.

Walter Ong, the first to identify the impact of poverty and privilege on communication styles, observed that all people are born into oral culture. Over time, they learn to be print culture if they grow up around adults who rely on reading more than talking for gathering and sharing information. Oral culture does not mean that people cannot read; it means that they prefer to seek information for living their lives through verbal means, not print. One communication style is not inherently better than the other. But, in America, most of our systems, including the legal system, are set up to serve and value those who communicate and relate in a more print culture style.

**Oral Culture.** Orality is a natural state in which we are highly attuned to our senses (touch, smell, sight, sound, and taste) and devote a great deal of attention to sensory information. Orality emphasizes our interconnection with the environment and the people in it. Some characteristics of orality are spontaneity, connectedness, present orientation, comfort with emotions, ability to see “the big picture,” and holistic point of view. In oral culture (orality), individuals seek information for living their lives by asking others they know and trust. They trust people—not paper—for gaining information. They highly value people with whom they personally identify. There is an unspoken loyalty, and relationships are placed above tasks or objects.

**Example:** Imagine that you are having a conversation with someone about planning your future. A beautiful bird lands just a short distance from you. You see the bird and start discussing the color of its feathers, the way it cocks its beak, etc. You have forgotten all about the conversation that was going on. That is orality. That is being present oriented. That is being in the “here and now.” If your conversation happens to be with a person who is also from oral culture, that person will understand your changing the subject. If your conversation is with a middle- or upper-class person who is more conditioned by print, she or he may get upset or be uncomfortable with your changing the subject. Oral-culture people are into what is happening at the
time. They are highly sensitive to what is going on around them at all times. They are elemental, hypersensitive, and hyperaware of their environment. They must be to survive.

In oral culture, the vast majority of the important information forming an individual’s worldview comes from speech (storytelling, conversations, etc.). People tend to learn by doing or experiencing through someone else’s experiences. You can remain in touch with your natural orality by listening to and trusting your feelings. In order to fully understand oral culture, you have to consider it in comparison with print culture.

Ong’s research showed that people living in poverty, regardless of race or sex, overwhelmingly displayed oral-culture characteristics. Ong discovered that the conditions of poverty created a need for people to communicate using oral skills. For example, in poverty one might acquire material items, but those items are often lost, stolen, repossessed, or taken away. Poverty teaches that people are all you have, which elevates the importance of relationships.

Poverty is also unpredictable and chaotic, and people in poverty are constantly addressing one crisis after another. This poverty experience programs people to be flexible and to go with the flow. The spontaneity of oral culture is compatible with the crisis nature of poverty.

**Oral Culture**
- You seek information through relationships.
- You are spontaneous and skilled at having multiple conversations at once.
- Interrupting is okay.
- Repetition and telling the same stories over and over helps in your understanding.
- Sharing personal experiences and stories is your way of connecting with others.
- It is normal to show emotions/feelings.
- You are very physical and expect physical responses.

**Print Culture.** A print-culture style of communicating and learning comes from reading. If children are surrounded by adults who read for their primary information, they will likely gain the skills of print culture. Print culture is a learned communication style gained through reading as a primary source of information. Print culture (literacy) is a learned way of relating to the world where people learn to process and analyze (breaking things down according to parts) information collected through sight, sound, hearing, touch, and smell according to categories, classifications, and styles of reasoning developed by reading. Some
characteristics of print culture are: self-discipline (ability to not pay attention to everything that is going on around you, but rather to focus on a single idea), separation and disconnection, ability to develop technology, ability to break things down into parts, and ability to organize efforts according to predetermined goals.

When you learn to read, you must shut out sense data. You cannot pay attention to other sights, sounds, smells, etc., or you will not understand what you are reading. Reading teaches you to not pay attention to what is going on around you. When you read, you must be focused on what you are reading or you will not understand it. Because letters have no meanings in themselves, the meaning of what we read comes from the ways in which many interchangeable parts (letters) are organized. Therefore, people who are more literate (print oriented) are better at thinking about things according to the parts that make up the whole and at organizing parts into new combinations. You can gain the skills of print culture through reading, making lists, and outlining what you have read.

**Example:** Imagine again that you are having a conversation with someone about a legal issue. A beautiful bird lands just a short distance from the window in your office. You see the bird and notice that it is very interesting. But, it is not the subject at hand. So you don’t think about the bird anymore. Instead, you continue to focus on the legal issue. This is self-discipline. If your conversation is with a person who is from oral culture, that person may feel hurt and/or rejection that you are so focused on the task and not into relating with them, sharing, and hearing about the bird. If you are talking with someone who is also print-culture oriented, that person will appreciate your ability to stay on task.

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**Print Culture**

- You are a linear thinker and you like things in order...first this, then this, etc.
- You are most comfortable focusing on one idea at a time.
- You believe a plan is essential and your goal is to stay on task.
- It is important to think abstractly about situations and analyze them carefully.
- You approach tasks by breaking them into parts.
For specific suggestions as to how to communicate effectively when a client may be oral culture and you may be print culture, please see next section: Communication Tips for Attorneys at Clinics.

Communication Tips for Attorneys at Clinics

Below is a list of specific skills and strategies as they relate to communicating with your client at a clinic, including a checklist for maximizing the chances you’re understanding and being understood.

1. **Watch for the human tendency to judge what is different or what we don’t understand because judgment prevents connection and communication.**

   Understanding that it’s human to judge when we see differences, be diligent about looking for cues of bias, such as frustration or other internal feelings of discomfort around differences. Unless we see this, we’ll lose our ability to help someone different from us or to act on our values.

2. **To overcome judgment, become curious and seek more information.** While many attorneys have had experiences of “situational” poverty (or see how poverty is misportrayed in the media), many pro bono clients come from “generational,” “working class” or “immigrant” poverty, with very different experiences and skills. Learn about the context of poverty to help understand your client’s decisions, common logistical barriers to participating in legal processes, and ways he might communicate and organize organization differently. Unless we understand the context, we may make faulty assumptions about motives and be less wholehearted in our efforts.
3. **Build trust.** Be friendly and make sure your body language and nonverbal communication support your words as you start to get to know each other. Build common ground by identifying and sharing some things you might have in common. Do you both have children a certain age, have a pet, enjoy a certain sport? Identifying these will help you both get beyond stereotypes you might have about the other. And personal connection will show your client you’re a real human being who cares about him or her.

4. **Determine the specific circumstances of your client’s life that may impact the ability to participate in the legal process.** To identify any logistical barriers, have a checklist of questions to ask, including numerous contact information, job hours, transportation issues, day care, etc. (See sample Attorney Client Understanding.)

5. **When listening, ensure you are understanding your client.** For example:
   
   a. Use common active listening techniques. Suspend your thoughts about what you are doing to say (jot them down if it would help you remember). Avoid focusing on non-related subjects. Repeat back every so often what you hear to make sure you are understanding correctly and understanding the other’s perspective, explanations and rationale.
   
   b. If a client is sharing information in a way that is more circular than linear, feel free to interrupt after a while to gently guide the conversation back. (The meeting agenda can help too.) But in the meantime, listening to the story can help you identify more ways to build identification with him.
   
   c. Ask open-ended questions and try to stay away from questions that ask “why,” which can put people on the defense. Instead, use statements such as, “Help me understand,” or “Tell me a little more about...” If a question seems invasive, preface it by letting your client know why you are asking it.
   
   d. When determining the facts of the case, you might first put your pen down and ask your client to tell you what happened. (This also supports trust.) Next, ask her to repeat the story, while you take notes, Finally, repeat back the story to see if you have understood. (Even your notes were accurate and complete, you may find out additional information in this third step.)
   
   e. As clarifying questions.
   
   f. Do not expect people to know what may be obvious to you. Use your expertise to coach and navigate people through the legal process.

6. **When speaking, ensure your client is understanding you.** For example:
   
   a. Use multiple approaches until you are assured of shared meaning.
   
   b. Use visuals as much as possible (including drawing out next steps).
c. Make sure your body language supports your verbal communication.
d. Use stories as a way to explain ("Here is what worked for my client Julie.").
e. Summarize every so often.
f. Ask her to summarize. "I’d like to make sure I’m being clear. Could you tell me what you are understanding the next steps are?"
g. Use familiar words and examples that laypeople can relate to.
h. Use a variety of examples to convey difficult points (trying to draw from the context of poverty rather than that of middle class).
i. Minimize the chance of losing your client through legalese, e.g., “I’m used to being around lawyers all day and can sometimes forget how to talk in plain English. If I slip up and use words you’re not sure about, please let me know.” (This phrasing owns our responsibility as the professional to be clear, rather than asking clients to let us know if “they don’t understand.”)
j. Review written communication orally and use a third grade level and clearly organized bullet points and graphs (whether or not your client is literate).
k. Repeat information that is new.
l. Break information into smaller, doable steps.
m. Follow up – poverty is constant crisis.

7. **Customize your services to what the client wants.** One solution does not fit everyone. Make sure you ask for your client’s goal after you have provided your assessment of the case and the available options. Understand that she may not want to pursue legal action. (For example, if it’s going to take five months to get the security deposit back, the case may take a lower priority in her life given other crises going on.)

8. **Be aware of the power differential.** Many pro bono clients feel intimidated or shame around lawyers. Pay attention to ways in which you can make her feel more comfortable (such as sitting at a conference table rather than an imposing desk).

9. **Consider the difference between empowerment and overwhelm.** Clients whose basic needs are not met are not in a position to be empowered. For others, teaching them how to do things for themselves is a deep service. It’s critical to know the difference.

10. **When giving instructions, give context (explain why), break them down into manageable steps, and ask whether the client is able to do them.** Because it’s second nature for us to schedule and keep appointments, keep a calendar, plan for future events, and organize paperwork, it’s hard not to assume that everyone has
those skills. However, the skills it takes to succeed in middle class or wealth are quite different from the skills it takes to survive in poverty. Find out whether your client has the ability to follow the instructions, given skills and other things happening in his or her life. If appropriate, offer supports.

Identify/Prioritize Issues

One challenge of clinics volunteering is to efficiently identify and prioritize the issues. Different attorneys may have different strategies for how to do this. Below is one set of questions by which you might do to:

1. Is there a legal issue or question? (If no, then let person know, step or places they can go to resolve the issue.)

2. If yes, can be solved by the courts?

3. If yes, is this clinic the best place to resolve the problem or is there another place better suited to resolve the problem. (For example, sometimes, clients who come to the Conciliation Court Clinic might be better helped at the Housing Court Project).

4. What is the underlying legal issue and what information do I need to help solve it?

5. What can I do with the information I have? Or, should I ask the client to obtain the information and come back later?

6. Is this something that the person is able or willing to accomplish?

7. What are some of the challenges that might prohibit them from accomplishing their goals?

8. How do I better communicate with them to effectuate the solution they need?

9. If they are responding to a court action:
   a. What is the specific legal issue,
   b. Do they have any defenses and, if yes, what are they?
   c. How do I help them package their story in a way the court will understand and be able to take action.
d. How do I help them filter out part of what they want to say because it won’t be helpful to the judge or their case?  

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**Identify Options Outside the Legal System**

Clients come to the legal clinic with the questions that they think are most relevant to their goals. However, they may not be right. Experienced lawyers always explore beneath the client’s question to ask about their ultimate goals. Once the lawyers understand the client’s goals, they then need to not only apply the law to the client’s facts to see what legal options the client has, but also think outside the box as problem-solvers to determine what practical options the clients may have to resolve their underlying concern. Finally, they need to assess the client’s ability to take the steps to meet that goal and, whenever possible, provide assistance. Some real life examples include

- A man asks for an ex parte order from a judge to stop a funeral home from cremating the remains of his former partner until he has had the chance to pay his respects. The funeral home has denied access because the man is not one of the types of relations that is permitted to see the remains. *Solution:* Make a friendly call to the funeral home to explain the situation and see if there is anything that could be worked out. *Result:* They suggest he go with their mutual daughter, who is happy to take him.

- A woman asks for a TPR. Why? Her drivers license has been suspended for failure to pay child support. *Solution:* Call the child support office and work out a payment plan.

These types of examples illustrate the problem-solving and counseling role of the attorney. 

While attorneys know the law, the attorney are not xyz that may also help so recommend

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5 Sample language: I understand that you’re frustrated now, that the other person has done something wrong. And, for you to succeed, here are the most important things for the judge to know and in this order. This is not your day in court in front of Judge Judy. Not all of this is helpful to say in court, and it could actually cloud the issues. Here, what you need to focus on is why you here and what the other person did that violates the law.
Provide Brief Services Whenever Appropriate

Brief services (limited scope legal services) for pro bono clients, including making a phone call, drafting a pleading, or writing a letter, provide access to justice to many struggling families and individuals in our community. Studies show that brief services can, with a limited amount of attorney time, provide clients with concrete outcomes to their legal matters. However, they are not right for every situation. Below is a checklist to ensure that a given limited scope service complies with the Minnesota Rules of Professional Conduct (MRPC) and can genuinely advance the client’s case.6

1. **Keep an eye out for conflicts.** The standard for pro bono limited scope services is “actual knowledge.”7 If you know that you or someone in your firm represents the client’s adverse party, do not give any legal advice to the client.

2. **Assess the extent to which the client’s issue is both legal and has merit.**8 If not, consider other alternatives for problem solving, including moral, economic, and social factors that may be relevant to the client’s situation.9 Consider litigation alternatives (neighborhood dispute resolution resources, mediation, informal requests for relief, etc.), if appropriate and likely to assist the client. If the client simply does not have a legitimate grievance or is unlikely to obtain any relief, you should be clear in advising the client that there is no merit to their position and you will not be assisting them.

3. **Check whether the client wishes to proceed with brief services.** Even with a meritorious claim, a client may prefer to not pursue an action because the current effort would be greater than the potential future value of a judgment. VLN clients have fewer resources to fully participate in the court system as it is currently designed, such as jobs that allow time off, available child care, transportation and access to a computer/printer.

4. **Communicate clearly to the client about the scope of your representation,** including:10

   a. What services you will provide

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6 This information is compiled from the webinar *Unbundled Legal Services — Professional Responsibilities* presented by Patrick R. Burns, First Assistant Director, Office of Lawyers Professional Responsibility. This webinar may be viewed at: [http://www.projusticemn.org/civillaw/library/attachment.183075](http://www.projusticemn.org/civillaw/library/attachment.183075).

7 Rule 6.5, MRPC. This applies to pro bono representation only.

8 Rule 3.1, MRPC.

9 Rule 2.1, MRPC.

10 Rule 1.2(c), MRPC: A lawyer may limit the scope of representation if the limitation is reasonable under the circumstances and the client gives informed consent. If it is reasonably foreseeable that the person receiving the advice will rely on the advice, an attorney-client relationship is formed. *Pine Island Farmers Coop v. Erstad & Riemer*, 694 N.W.2d 444, 448 (Minn. 2002), *Togstad v. Vesely*, Otto, Miller & Keefe, 291 N.W.2d 686, 693 (Minn. 1980).
b. What services you will not provide\textsuperscript{11}.

c. What the client must accomplish on their own in order to achieve objectives.

At VLN clinics, (a) and (b) are handled in the Client Agreement on the Clinic Data Sheet,\textsuperscript{12} although it may be necessary to also orally tell the client that you will not be representing them in court or help them on an ongoing basis. (C) is best provided on the Attorney Suggestion Form.

5. Evaluate whether the circumstances for unbundled services are reasonable, including the following criteria:\textsuperscript{13}

a. Whether the client will be better off with limited services than without.

b. The nature of the matter in substantive law\textsuperscript{14} and complexity.\textsuperscript{15} Cases with a high level of complexity are probably inappropriate for limited scope services.

The sophistication and abilities of the client to continue pro se. For example, assess whether the client can understand what is being asked for in the pleading, whether the client could represent herself at a hearing on this matter and answer questions stemming from the pleading. The client does not need to have the same depth of understanding as a lawyer might, but should be able to understand and articulate the basic arguments.

c. Whether there is sufficient time to complete the brief services contemplated.

\textsuperscript{11} Rule 1.2, MRPC.

\textsuperscript{12} Client Agreement: I understand and agree to the following: The attorney I meet with today can provide only legal information, advice and/or brief service on my legal issue. With the possible exception of brief follow up services that the attorney tells me he or she will do, the attorney will not provide ongoing legal service beyond that provided onsite today. I am still responsible for pursuing my legal matter and for taking any post-clinic follow up actions recommended by the attorney (e.g., serving other parties, filing paperwork in court, preparing other paperwork, and appearing in court). While the other party may be represented by this attorney’s law firm now or in the future, what I tell the attorney today is confidential. I give my informed consent for my information to be shared between LRIS & VLN and with others as needed. I am not now represented by another attorney regarding the matter that I am seeking help with today.

\textsuperscript{13} Rule 1.2, MRPC, only permits limiting the scope of representation if it is reasonable under the circumstances.

\textsuperscript{14} Id.

\textsuperscript{15} Rules 1.2, MRPC, Comment [2]: If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. See also Rule 6.5, MRPC.
6. **Written brief services:**

   a. **Ensure pleadings are brought in good faith, and have reasonable basis in both law and facts.** The obligation to the client and the court to investigate whether the pleadings are well founded in law and facts requires a reasonable inquiry under the circumstances and is not substantially less than in full representation. One practical suggestion to prevent frivolous claims is to discuss potential allegations and counsel the client to not sign the pleadings until and unless he or she can gather more factual support for a particular allegation.

   b. **When drafting pleadings, you may, if wished, use the “Assisted at VLN Clinic” stamp on each pleading.** This gives transparency to the court about the circumstances of the drafting of the pleading, addressing potential concerns about ghostwriting. If you’re at a clinic without a stamp, you may handwrite: “Assisted at a VLN Clinic.”

   c. **Keep a copy of what you have done.** Ask a clinic assistant to make a copy for you or scan a hard copy and/or save electronic copy on the VLN flashdrive.

7. **Phone calls on behalf of clients:**

   a. When making a phone call on behalf of a client (such as to obtain more information about an issue or negotiate a payment plan for a client), you should identify yourself as an attorney helping [client’s name] regarding the issue of [issue].

   b. If you’re speaking with an attorney for an opposing party, you should clarify whether your service to the client will be ongoing or limited. If the latter, a possible script is, “I’m helping [client] at a legal clinic and calling to see if we can work something out regarding the issue of ______.”

8. **Maintain client confidentiality.** Your obligation in limited scope services is the same as required in more traditional attorney-client relationships.

For questions regarding the MRPC, please call the Office of Professional Responsibility at 651-296-3952 for an advisory opinion. *(Written by VLN staff attorneys with guidance, Patrick R. Burns. First Assistant Director. Office of Lawyers Professional Responsibility)*

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16 Rules 3.1, 3.3, and 11.02, MRPC.
17 The MRPC do not directly address ghostwriting pleadings and, around the country, there is split authority on the propriety of ghostwriting.
18 See Rule 4.2 MRPC. The disclosure of limited scope is not required by this rule, but disclosure does assist opposing counsel in compliance with the rule.
19 Rule 1.6, MRPC.
Maximize Impact of Advice and Next Steps: Write It Down

Writing down your advice for next steps will greatly enhance the client’s ability to follow them. Even if your client is not literate, he or she will have something concrete to take with him or her to the next service provider who helps (including, sometimes, another attorney at a clinic who will greatly appreciate the written confirmation!).

All VLN clinics have 8.5 X 11 inch pads of paper with a list of possible referrals and, on the back, lined space to write in your Recommendations for Next Steps. (If your clinic does not have pads onsite, contact VLN at 612-752-6655.)

If you have a clinic assistant, you may ask him or her to take notes for you, as long as you review the notes prior to giving it to the client.

Tell Clients When They Have No Legal Issue or Merit
(Or When The Cost Might Outweigh The Benefit)

It can be difficult to tell a client that he or she does not have a meritorious claim or defense, or that the difficulties of obtaining his/her goal through the legal system outweigh the benefits. However, when applicable, this advice is an essential component of clinic services; enabling a client to leave with relative peace of mind, after a caring advocate has carefully reviewed their situation with them, is better than having the client leave with false hopes. Pursuing a claim that is without merit or disproportionately burdensome will waste the client’s valuable and limited time and resources; it can also subject them to sanctions.

Some tips that can help in this situation, in no particular order:

- **Acknowledge unfairness.** Many clients appreciate it if an attorney acknowledges that the client’s situation seems or is unfair. Explain that many actions that may seem unfair or immoral to the client are not prohibited by law and our legal system fails to
address many situations that can be of importance to our clients. Acknowledging that sometimes bad things simply happen to good people can sometimes make a client feel better.

- **Listen deeply and empathize with the client’s situation.** Sometimes fully listening to the client’s issue and empathizing with him or her (“I would likely feel the same way if I were in your situation!”) can give enormous relief. Never underestimate the value of feeling truly being heard.

- **Consider writing a letter or making a phone call on behalf of the client.** While a client may not have a cause of action, writing a letter or making a phone call to see if there might be another way to resolve the situation can often resolve the client’s problem. Often the “opposing party” may wish to resolve the situation but either be unable to do so with the client directly or be more motivated to avoid issues with “an attorney”! Be sure not to threaten legal action, but rather try to paint the client in a sympathetic light to try to persuade the other party involved in the dispute that they should give the client what they are asking for because the clients will suffer some financial, emotional, or mental hardship or stress if the dispute is not resolved.

- **Give the client information about the limits of court power.** For example, many people believe that getting a judgment against another party will result in immediate payment. Give the client a more realistic view of the court’s enforcement powers: even if a favorable judgment is obtained, it requires more paperwork to enforce a judgment and in any event, many people are judgment proof.

- **Give the client information about the difficulties of proceeding pro se.** Clients can benefit by a reality check regarding the difficulty of understanding and following the rules of court, including the rules of evidence. Most people have great difficulty in court, for example, of understanding how to introduce evidence and the difference between evidence and argument.

- **Give the client information about the difficulties of obtaining evidence.** Clients might also make assumptions regarding the availability of evidence that they are not actually in possession of. For example, a client may believe that security camera footage of an altercation or dispute exists, but not understand that such footage may be available to them.

- **Unless the client asks for detailed explanation, consider keeping the legal exposition/lecture to a minimum.** Certainly, the client should be given a very clear understanding of your view of how the law applies to their factual circumstances and why you don’t think they have a case. However, it should be down-to-earth, using as little legalese and jargon as possible.
• **Consider making a referral to a non-legal entity which might be better suited to help this individual with their problem.** VLN maintains a great list of such referral agencies at: http://www.volunteerlawyersnetwork.org/volunteer/clinic.

• **If appropriate, consider a consumer complaint with the Minnesota Attorney General.** The Office of the Minnesota Attorney General has a consumer complaint division. The client could make a consumer complaint by completing a simple, one page form that can be downloaded at http://www.ag.state.mn.us/Office/Complaint.asp. Once this complaint form is received by the Attorney General’s Office, it will send the client a letter confirming receipt of the complaint and will send the opposing party a letter that often reiterates the client’s original complaint and request that the opposing party responds. Large corporations and legitimate businesses often take these complaints seriously. Making this complaint may be one quick and free way to resolve a dispute. However, the client should understand that the Attorney General’s Office will not represent the client or taken any action directly on behalf of the client should the dispute not be resolved.

• **Listen to your instincts if you are not feeling safe.** If any safety concerns arise while you are giving a client bad news, excuse yourself from the room or cubicle and return to a more public setting.
Leverage Time Through Clinic Assistants

Many community clinics have onsite clinic assistants to help leverage the attorney’s time in serving the clients. An attorney delegating to a good clinic assistant can do twice as much (or more) as an attorney alone! Some specific ways in which the clinic assistants are typically trained to help attorneys are listed below. When an attorney has a clinic assistant onsite ready to help, it’s often useful to review the below list together to create a shared understanding of how the clinic assistant will help the attorney during this particular shift.

Tasks that Clinic Assistants May Perform at Clinics

- Setting up the clinic for the attorney-client advice session(s), such as turning on a computer and/or printer, getting out the clinic data sheets, putting up signs.
- Putting out the clinic sign in sheet (if applicable) to facilitate clients being seen in the order in which they arrive.
- Completing the Clinic Data Form with the client, including:
  - Ensuring the client is income-eligible for the clinic
  - Helping the client identify the question he/she would like to ask the attorney (although attorneys should take this only as a starting point, because clients often don’t correctly identify their legal issue).
  - Helping clients organize paperwork.
- Complete (for the attorney to review) the IFP form (at select clinics where it is likely the client would be filing paperwork with the court).
- Organize client paperwork.
- Based on the client’s issue, gathering resources from the resources onsite or online to give to the attorney as a resource and/or to give to the client.
- Sitting in on the attorney-client consultation (with permission from the client after the attorney has reviewed the implications on privilege – see page xx) to assist the attorney, including, as appropriate and/or requested:
  - Writing notes for the client on the “Attorney Suggestion Form.” (Attorneys should review this prior to the client receiving it to ensure it’s accurate and complete.) See above, page 20.
  - Obtaining other resources for the attorney, sometimes from VLN resources or the internet.
  - Offering to, under the attorney’s supervision, provide additional services to the client while the attorney sees another client, such as:
    - Completing a boilerplate letter or form with a client for the attorney’s review
• Making a phone call on behalf of the client to obtain more information for the attorney
  o If the attorney fills in a form for the client (or approves a form completed by the clinic assistant), ensuring the attorney uses the “Assisted at a VLN Clinic” stamp. (We use this only if the attorney writes the last draft.)
  o Letting the attorney know whether others are waiting (so the attorney may gauge his or her time accordingly).
• Helping the client start following the attorney’s instructions after the clinic, such as giving him or her an address or pointing him or her in the right direction
• Closing up the clinic site at the end of the shift.

On their own, without the supervision of an attorney, clinic assistants may:
• Provide forms and instructions (including brochures, court websites, lawhelpmn.org).
• Assist in limited completion of forms:
  o Instruct generally as to how to complete a form, as long as avoid suggesting specific language or parties.
  o May instruct as to applicable filing deadlines, as long as do not compute the deadline and give a specific date.
• Provide a guide to available resources (such as refer to relevant rules/statutes or refer to specific courts (housing, conciliation, family, etc.).
• Make referrals to other agencies, as long as make it clear that the referral is based on the client’s statement of the legal issue, not an independent assessment of the legal issue.
• Give definitions of terms/jargon.

Clinic assistants may not ever:
• Suggest specific language to be used in filling out court forms.
• Recommend particular actions, pleadings or arguments.
• Opine as to the merits of a proposed court action.
• Apply law to particular facts.
• Represent persons in court.
• Perform specific legal research.
• Recommend one legal option over another.
• Recommend legal strategy.
Use Onsite Resources

Community clinics generally have onsite resources related to the most common legal issues seen at that clinic.

Partner with Social Supports When Possible

As more legal services clinics are located at social services agencies, attorneys have more opportunities to collaborate with onsite social workers to better meet their client’s goals. When appropriate, such collaborations can result in much broader and more lasting benefits to the client. Below are some benefits of such collaborations, specific examples of when such collaborations are particularly helpful, limitations and potential pitfalls of such collaborations, and how they might be overcome.

BENEFITS OF ATTORNEY-SOCIAL WORKER COLLABORATION

The average user of a walk-in clinic is a low-income client who faces many barriers in life. And frequently, the legal issue presented by the client on that particular day is just one small part of the overall problems the client faces every day. For example, the legal issue may be child custody, but substance abuse, homelessness, lack of education and/or ability to keep a steady job may all play into the client’s inability to maintain a shared custody relationship with their child. The underlying problems here, while resulting in legal issues, are more appropriate to address with a social worker. Some benefits of working with social workers include:

- They are more broadly trained in understanding global patterns that destabilize clients, how to work with individuals experiencing mental illness, and how to work in a collaborative setting.
- Their input can lead to more effective interviewing of a client and also the overall interaction with clients.
- They can bring clarity to evaluating a client’s legal issue and help to determine whether crisis intervention and/or referral to appropriate agencies are warranted.
- They can assist in developing a more holistic approach to addressing the legal issue presented, including non-legal aspects of the problem, and assistance in developing a plan that is achievable.
- They are trained in making good referrals and have greater knowledge of the services available to clients and when such services are warranted.
ATTORNEY-SOCIAL WORKER COLLABORATION IS HELPFUL WHEN:

- **The client is operating under reduced mental capacity or illness.** Social workers can assist in understanding and working with clients experiencing mental illness. They can help a client with follow-up steps. If a social worker has an established relationship with the client, that social worker might be able to offer invaluable insight into the client’s relevant history and capacity to resolve legal issues.

- **The client’s problems are complex and multi-faceted, including varying underlying non-legal problems,** such as the example provided above regarding child custody. Often, the client is overloaded with “helpers,” having to go from provider to provider. Social workers and case managers are more experienced in helping clients cope with working through different systems, assessing when a client is reaching critical “shut down” overload, and working with clients to obtain ancillary services needed to successfully resolve legal and underlying non-legal issues.

- **The client needs assistance in obtaining records and documents or other follow-up.** School social workers in particular are particularly adept at working within school data privacy requirements. Assisting clients in obtaining documents or applications generally falls outside the service provided by a volunteer attorney in a brief legal services clinic; however, such assistance may be needed with clients facing what appear to be daunting tasks in order to resolve their legal issues.

CONCERNS RAISED BY THE ATTORNEY-SOCIAL WORKER COLLABORATION

Most issues that arise in attorney-social worker collaboration revolve around either: confidentiality/information sharing or the ethical and legal limitations under which each professional operates.

1) **Confidentiality**

Per the MN Rules of Professional Conduct, attorneys are prohibited from revealing privileged client information unless the client gives informed consent. MRPC 1.6(b). Thus, it is imperative to have the client sign an Authorization to Release Information before any discussion of the client’s legal issues with a social worker. An example of such a form follows.

Two caveats: First, the attorney must ensure that the client understands the nature of the informed consent and that the consent is voluntary. MRPC 1.4, which states “a lawyer shall promptly inform the client of any decision or circumstance with respect to which the client’s informed consent ... is required by these rules,” appears to require such disclosure. Second, it is appropriate to ask to speak to the client alone to assure that the client understands the Authorization to Release Information.

Such a form may also address how social workers’ mandated reporting issues would be handled. Social workers are mandated reporters of child and vulnerable adult abuse. Social
workers may also be obligated to report certain facts back to the organization for which they work (e.g., some organizations require that their clients remain free of any alcohol or drug use while participating in the program). The attorney does not want to make the client choose between withholding pertinent facts from the attorney or risking being reported by their social worker. The resolution, though sticky, is in the hands of the attorney. It is necessary to make sure the impact of such disclosures, if made in front of the social worker, is clear to the client. And, if reporting by a social worker is unavoidable, make sure the client has the opportunity to privately disclose additional relevant information outside of the social worker’s knowledge, if appropriate.

2) Ethical obligations:

There is a critical distinction between the ethical obligations of attorneys and social workers. Attorneys are ethically obligated to serve a client’s stated wishes while social workers are ethically obligated to serve a client’s best interests. These are quite different standards.

For example, a client meets with a volunteer attorney at a brief legal services clinic. During the course of this brief consultation, the attorney notes that the client appears to have mental health issues. The client is able to live on his own, but it also appears that adult children may be taking advantage of the client or, at a minimum, that the client is in a neglectful home environment and is not receiving social services due to an unwillingness to seek help. The client does not see any of these issues and is not interested in being referred to a social service provider. Should the attorney contact the county in the interests of the client’s welfare? Herein lies the distinction between attorneys and social workers: the client is not interested in intervention, and the attorney must accede to the client’s wishes absent the belief that disclosure of the client’s perceived disability is necessary to prevent a reasonably certain death or substantial bodily harm. MRPC 1.6(b)(6). And even then, in Minnesota, disclosure is simply permitted, but not required. A social worker, by contrast, would likely be obligated to intervene.

This last limitation highlights both the pros and cons of attorney-social worker collaboration when working with a client at a legal services clinic. On the one hand, the social worker may be able to take action that would serve the best interests of the client and, ultimately, provide more and/or better life services. On the other hand, the attorney cannot divulge or allow such information to be divulged without client consent.

To the extent practicable, the limitations noted above should be discussed between attorney and social worker prior to meeting with the client, or at least prior to the client discussing his or her legal issues with the social worker present. Taking precautions designed to meet the requirements of the attorney/client relationship as well as meet the needs of the client relative to services provided by both an attorney and social worker can result in a win-win situation for all parties involved, and particularly the client. Social workers can provide
invaluable services to the volunteer attorney’s clients and, as feasible and appropriate, should be included to most successfully resolve a client’s legal and related issues.
Consent for Release of Information From Attorney to Social Services Advocate

I give permission to (name of attorney(s)) ________________________________ to share pertinent information about the legal problems we discussed, as necessary to assess or provide services to me, with (person or agency)_________________________________________________

The attorney has explained to me that (please check below boxes)

☐ Social workers and many other professionals are mandated reporters of child and vulnerable adult abuse (unlike attorneys).

☐ Certain social services professionals are required to report certain facts to their agency (such as if a client has broken a rule prohibiting drug or alcohol use when participating in a program).

☐ The attorney cannot prevent re-disclosure of information released per this consent.

☐ I may cancel this consent in writing at any time prior to the information being released and that in any event this consent form expires automatically one year after signing.

Signature of client: ______________________________________________  Date:______________

Printed name of client: ___________________________________________

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Consent for Release of Information from Social Services Advocate to Attorney

I give permission to (name of advocate) ________________________________ to share pertinent information about me and the services I am receiving from him/her and his/her agency, as necessary to assess or provide services to me, with (person or agency): ______________________________________________________________. I understand that:

☐ My records are protected under state and federal privacy regulations and cannot be disclosed without my written consent unless otherwise provided by law.

☐ I may cancel this consent in writing at any time prior to the information being released and that in any event this consent form expires automatically one year after signing.

☐ Any information released to the above social services advocate and agency will be shared only with staff and/or others who need this information to assess and/or provide services to me.

Signature of client: ______________________________________________  Date:__________

Printed name of client: ______________________________

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Last Updated 2-25-16
Types of Poverty

To begin to understand experiences of people in poverty, we must start with an explanation of what that word means! One of the most common usages of the word “poverty” comes from the federal government’s poverty guidelines. These guidelines determine who is eligible for government services such as legal aid and food stamps. Today, the federal poverty guidelines for a family of four are $24,250. Do a quick back-of-the-envelope calculation of rent, utilities, health care, food, clothes, school supplies, and other basics and you will see the difficulty of surviving on that income.

The formula used to calculate what a family of four needs in 2015 is based on a 1960s cost of living. It does not include childcare, transportation, or health care as family needs. The Economic Policy Institute added in cost of childcare, transportation, and health care and determined a family of four would need a minimum of $48,000 just to cover basic human needs in today’s society.

In addition to the faulty federal poverty guidelines, we get even more confused because there is no single “poverty” experience. For instance, people experiencing generations of homelessness, illiteracy, and hunger can carry the same “poverty” label as someone who grew up with safe housing, a good education, and a stable family who slips into poverty because of a health crisis or divorce. Both situations are called “poverty,” but people in situational poverty have some critical assets. They often have a family safety net and are in a much better position to navigate the courts, which are set up for people who can read and write and have a basic understanding of the legal system. People from generational poverty are less likely to trust the system or know how to navigate it.

Some people you serve may be experiencing generational poverty, while others may be experiencing working-class poverty, immigrant poverty, situational poverty, or mixed-class poverty. Each of these life experiences is different and shapes our expectations, knowledge, confidence, and opportunities. Understanding the different types of poverty can empower you to better understand and meet your clients where they are. This will improve communication and client follow-through. Below are some characteristics of four lived experiences of poverty.

Generational Poverty

- Are typically workers of the land, as opposed to owners of the land
- May never have connected meaningfully with anyone who benefited from education

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• Have not known anyone who was promoted or was respected in a job
• Are highly mobile, often without a home and moving frequently looking for ways to make money
• Have high family illiteracy
• Subconsciously have come to believe that something is wrong with them and that is why they are in poverty
• Learn not to trust professionals or people with titles
• Have likely had negative experiences in trying to access the legal system
• Focus on making it through the day

**Working-Class Poverty**
• Work, but are barely able to pay for basic needs (no money for any extras)
• Are typically renters as opposed to homeowners
• Often live paycheck to paycheck
• Rarely have health care coverage
• Focus on making it two weeks or through the month
• Learn not to trust people who are making it
• View poverty as personal deficiency

**Immigrant Poverty**
• Have few or no resources
• Face language and culture barriers
• Seem to have a stronger sense of self than those in working-class and generational poverty
• Often do better than those born into poverty in America
• View poverty as a system problem

**Situational Poverty**
• Grew up in stable environments and had their basic needs met and more
• Attended school regularly; had health care, family vacations, etc.
• Were surrounded by educated people with living-wage jobs
• Do not recognize advantages of growing up middle class
• Have had a crisis (health, divorce, etc.) and had income and savings drop
• Became isolated (or isolated themselves) from middle-class friends during their poverty crisis
• Are embarrassed by their situation
• Have likely had positive experiences with accessing legal services, but once in poverty, face barriers to equal justice
• Have not internalized poverty as personal deficiency
• Are more likely to make it back into the middle class

Again, the key point here is that the word “poverty” is used to describe many lived experiences, not a monolithic one. This knowledge will empower you to listen to your clients better and gain insight to better address individual barriers that might prevent them from receiving equal access to justice.

These four general types of poverty give a context to your clients’ worldviews, expectations, motivations, and communication. And to make things a bit more complicated, there are many more poverty contexts than these four. For instance, a client may be from a mixed-class experience, such as growing up with one parent from the lower middle class and the other from a working-class background, or having one parent from immigrant poverty and the other from situational poverty. These mixed-class experiences influence people’s lives in ways that are different from having two parents from a middle-class context.

We learn about our world and develop attitudes, beliefs, and values from our daily life experiences. If your family struggles with hunger, your daily life experiences will be shaped by that. If your family owns their home, your daily life experiences will be impacted by that. If you watch people you love do without their basic needs, you will be affected by that. Every adult who comes into the life of a child is handing that child a description of the world. People can only teach and model what they have been exposed to in a relevant and meaningful way.

**The worldview taught by poverty**

People living in poverty internalize the messages sent their way by society. Families living in the crisis of poverty receive societal messages that they do not belong and they are the cause of their own poverty. Many people come to believe that something is wrong with them. Poverty steals their hope and self-confidence.
Here are some of the messages that people experiencing generational, working-class, and immigrant poverty absorb from society:

- Everyone else is smarter than I am.
- People who are not in poverty are better than I am.
- People who are making it do not care about me.
- I/we don't belong anywhere.
- People like us do not get educated.
- We don’t have what we need to break out of poverty.
- There is no one to help.
The Impact of Race on Pro Bono Services

Minnesotans coming from generations of poverty often have had negative experiences dealing with public institutions, including the legal system. Even while requesting pro bono assistance from the Volunteer Lawyers Network (VLN), they may be skeptical about our good faith efforts and/or ability to avail them of the protections of the law. In short, their distrust of the system we represent often extends to us. This is particularly true for people of color because of the added issues of institutional racism and racial disparities, as more fully described below.

Understanding the racial disparities that exist in our state provides critical context when working with pro bono clients. This article provides this background, as well as practical suggestions for lawyers in addressing this inherent subtext in providing pro bono services.

**People of color have disproportionately negative experiences with the criminal justice system**

According to a 2013 report by the Council on Black Minnesotans, people of African descent view “criminal justice problems as systemically discriminating, entrenched, and supported by mainstream power brokers.” Some data:

- People of color are more likely to be in prison than white people. For instance, although Blacks are 5.2 percent of the state’s population, they represent 37 percent of the prison population. American Indians are 1.2 percent of the population and yet represent 9 percent of the prison population. Latinos are 4.7 percent of the population and make up 8 percent of the prison population.

- On any given day in Minnesota, a black person is more than 20 times more likely to be stopped for a traffic offense than a white person. Even though whites stopped during traffic searches were found to carry contraband at higher rates than people of color, resulting arrests and prosecutions were ten times higher for blacks than whites.

  ➢ **Impact:** This disparity impacts every aspect of people’s lives. Because most landlords and employers routinely do background checks, disparities in the criminal justice records create additional barriers for people of color. A criminal record affects their ability to find living wage jobs and/or decent housing.

**People of color face institutional barriers to acquiring wealth**

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21 Disparity Analysis: A review of disparities between White Minnesotans and other racial groups, Council on Black Minnesotans, 2013
Buying a home is one important way to accumulate wealth. Minnesotans of color are less likely to own homes than white Minnesotans. The homeownership gap between white people and people of color in Minnesota led the nation in 2012. 76 percent of white Minnesotans owned homes compared to 39 percent people of color.

Some of this disparity is the legacy of our past national appraisal system that assessed homes at a lower value simply because a person of color lived there. People of color were systematically denied access to federal housing lending programs and subjected to redlining. One result of these practices: Between 1934 and 1962, the federal government underwrote 120 billion dollars in new housing. Less than 2% went to people of color.

**Impact:** Since homeownership is a key way that families accumulate and pass on wealth, people of color continue to endure the effects of this economic racism. In 2009, the national median net worth of white households was $113,149. For black households it was $5,677 and for Hispanics it was $6,325.

**Mortgage lending disparities continue today**

Nationally, people of color continue to receive home loans on less favorable terms and at a higher cost than similarly situated white borrowers; people who live in segregated communities of color receive a disproportionate rate of subprime loans and foreclosures, thereby bearing the brunt of the mortgage crisis. Among the findings specific to the Twin Cities, a report from the Institute on Race and Poverty found that:

“Denial rates [for home mortgages] are higher for black, Hispanic and Asian applicants than for whites, regardless of income. Very high income black, Hispanic and Asian applicants (applicants with incomes more than $157,000 per year) show denial rates higher than whites in the lowest-income category (less than $39,250 per year). Disparities are greatest for black borrowers. The denial rate for blacks with incomes above $157,000 was 25%, while it was just 11% for whites making less than $39,250.”

**Impact:** The housing crisis resulted from historic and systemic government policies that denied access to people of color (see above), poor government oversight of predatory financial institutions, and unreasonable risks taken by financial institutions. People of color bore a disproportionate burden of the resulting foreclosure crisis, again affecting their ability to accumulate wealth and pass it on.

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22 Minnesota Compass, Wilder Foundation
23 For more information and cites, see [http://en.wikipedia.org/wiki/Housing_Segregation](http://en.wikipedia.org/wiki/Housing_Segregation)
24 For more information see Race, the Power of an Illusion DVD, one transcript at [http://newsreel.org/transcripts/race3.htm](http://newsreel.org/transcripts/race3.htm)
People of color make less money than whites

According to U.S. Census data for 2012, Minnesotans who are black or Native American each make about half of the median income of white Minnesotans. The median income for white non-Hispanic Minnesotans that year was $61,667 compared to $32,153 for Native Americans and $28,136 for black Minnesotans. Black Minnesotans and Native Americans also have higher unemployment rates.

Impact: All the above factors have a significant impact across generations, creating a negative momentum that is hard to overcome. Some liken it to trying to go up a down escalator. Whatever the interconnecting causes that lead to these disparities, one result is that people of color are disproportionately in poverty.

Many persons of color are scarred by historical trauma

Historical trauma refers to cumulative emotional and psychological wounding that extends across generations. For example, the emotional effects from maternal abandonment of a young child of any race might be seen across three generations. Mental health care professionals generally agree that people of color often carry unresolved historical trauma as a result of generations of discrimination, segregation, racism, and “micro-aggressions.” Micro-aggressions refer to brief, daily hassles and slights experienced by people of color, such as frequent media portrayal of people of color as tokens or criminals, frequent denials by the dominant culture that systemic racism and oppression continue to exist, insensitive remarks or demeaning practices such as being followed by security in a department store.

27 Minnesota Budget Project blog. “Minnesota still a land of Inequality, Sept. 19, 2013”
28 http://en.wikipedia.org/wiki/Historical_trauma
Addressing the impact of race in our individual pro bono representations

The Rules of Professional Conduct (RPC) require that we provide competent and effective representation and urge that we work for equal access to our system of justice for all. Below are some suggestions for how we can fulfill these in our individual representations of people of color from poverty.

- Take a little more time with clients to give them a context to our volunteer work—that we have a professional interest (and responsibility) to make sure the justice system works well... for everyone, and so we are volunteering our services.
- Reassure clients that “volunteer” doesn’t equal second best. We will be just as zealous in their representation as we are with paying clients.
- Watch for indications of mistrust of authority or institutions and take time to acknowledge them. For example, “I can imagine that you may not have had good experiences of the legal system, and yet in order for me to help you as best as I can, I need you to come to the court hearings with me.”
- Anticipate that some clients will be hesitant to fully answer our questions, especially those that may seem personal and/or invasive. It helps to explain the reason we need to ask certain questions, and acknowledge that they may be personal.
- Remember and acknowledge that racism is a reality for our clients of color—and they are the experts on their life experiences. If clients bring up racism as part of their case, we can take some time to listen. If a client’s claim of racism is not legally relevant to the case, we can take a moment to explain why while taking care to not minimize the possible racism and its emotional impact on the client. For example, if a client says that the landlord did not give him extra time to pay the rent because he is black, we can acknowledge that that is unfair, but it is not relevant to the unlawful detainer based on not paying rent.
- After hearing our advice and/or explanation about remedies, our clients may decide that the legal system will not address their problem enough to justify their and your efforts. They may decide not to pursue their case, a decision we need to respect as making sense to them based on their prior experiences.

Providing excellent representation and access to justice for all—including those from different backgrounds—is an ongoing professional issue for all attorneys. In recognition of this, VLN offers practical help for volunteers serving in cultural settings that are often quite different from their own.

For information regarding serving people living in poverty, see www.wpbc.wikispaces.com.

Written by Martha Delaney, JD, Deputy Director of Volunteer Lawyers Network
Overcoming Misconceptions of our Justice System from an Immigrant Perspective

Whether you are taking on a new client or a court employee interacting with the public, a significant amount of an attorney’s time is spent correcting people’s misconceptions about how the judicial system works. This challenge is compounded when you are helping an immigrant who might have little or no background about the American judicial system. The term "immigrant" is used in this article solely for the purpose of efficiency with the recognition that the term itself is rather simplistic and cannot accurately represent the depth and breadth of experiences that members of ethnic and/or linguistic groups who originated outside of Hennepin County have brought with them to the United States. It is often hard for someone to separate his or her prior experiences from a present set of facts, even if those prior experiences are no longer directly applicable to the facts at hand because that person has moved from one place to another. If home truly is where the heart is, home is also the place that the mind instinctively reverts to in a time of crisis. It is only natural that people born and raised in countries and into cultures outside of the United States may have misconceptions about the American judicial system that are based upon previous experiences in their countries of origin.

Sources of Misconceptions: Culture of Origin and U.S. Pop Culture

Many new immigrants may ask friends, relatives, or acquaintances from their country or culture of origin about legal issues or the judicial system. These personal contacts are often trusted sources of information used to navigate life in the United States. This may be especially true of members of cultures where oral transmission of information, not written transmission, is the norm. As anyone who has ever lived in a small town probably already knows, the information shared amongst members of a small, tight-knit community is not always accurately transmitted. When interacting with some who has immigrated to the United States, one should not downplay the impact of television courtroom dramas and how they portray the American judicial system. Rarely do members of the Hennepin County bench or bar have the occasion to speak with the bravado and self-righteous conviction portrayed by fictitious television judges or lawyers. Doing a little reality checking of expectations prior to a hearing or trial is one way to make sure that an immigrant client does not visibly convey disappointment to the judge over what could seem like a less than dramatic performance in a real courtroom.

Minnesota courts have been engaged in ongoing efforts to improve the availability of accurate legal information to immigrant communities. The Minnesota Judicial Branch Self Help website, www.mncourts.gov/selfhelp/, and other websites such as www.lawhelpmn.org, provide valuable information for pro se parties in several languages,
yet such information may still be inaccessible to immigrants due to illiteracy, lack of basic computer skills, or access to the Internet. To overcome these barriers, attorneys or court staff may need to go over educational information and boilerplate forms with a litigant. This can also include the assistance of a translator, who may need to ask the litigant about information relevant to their case and to reiterate or explain what the attorney or court staff said in the immigrant’s own words or language.

**Misconceptions Regarding Corruption in the Judicial System**

Immigrants appearing in U.S. courts need to understand that corruption is neither commonplace nor tolerated in the American judicial system. Unfortunately, corruption within a judicial system can be an unpleasant fact of life, or part of the ordinary cost of doing business, in many countries across the globe. According to Micaela Schuneman, an attorney and Director of Refugee Services at the International Institute of Minnesota, "It is a challenge for many of our refugee and immigrant clients to access the judicial system in the U.S. Many of our clients come from countries where they could not trust their governmental entities, so it is extremely important for a lawyer who is working with our clients to explain how the U.S. System works. For example, that judges must be neutral and that it is illegal to bribe judges."

When working with immigrant litigants, it may be necessary to explain explicitly that the fact that a judge presiding over a lawsuit may have previously ruled in favor of the opposing party, such as a credit card company in a consumer debt lawsuit, does not mean that the judge's hand is in their pocket. Similarly, a judge previously ruling in favor of the State of Minnesota in a criminal proceeding does not mean the judge is constrained and will rule against an immigrant defendant as a matter of course without giving the case at hand fair and impartial consideration.

It is also important for immigrant parties and witnesses to understand the preeminent weight that U.S. courts place on honesty, which has civil and/or criminal consequences for perjury. The telling of half-truths, omitting important information, or refusing to answer the question as asked can all lead to a litigant or witnesses losing credibility in the fact finder’s eyes, even if the addressing the subject matter of relevance to the legal matter would be considered impolite or inappropriate within the litigant's or witness's culture of origin.

**Misconceptions Regarding the Role of a Judge and Judicial Proceedings**

At perhaps the most basic level, the work of a judge is the issuing of court orders and following proper judicial procedures. It is important to explain to an immigrant party that a judge has to follow rules and procedures. Some immigrants may be surprised to learn that following rules of civil procedure, evidence, and general rules of practice can take a very long time. As Micaela Schuneman explains, "It is also important to explain how long the judicial process might take. Some clients think that their issue will be resolved quickly, when in fact
it might take a long time for their lawyer to gather necessary evidence that can be submitted in court. A judge cannot always immediately right a perceived wrong on the spot without motion practice. This may confuse an immigrant litigant who may expect immediate vindication from an American court.

**Misconceptions Regarding a Multiplicity of Courts**

The number of courthouses located within the Fourth Judicial District and Hennepin County can overwhelm someone who is trying to get their foot through an American courthouse door for the first time. The Fourth Judicial District Court has locations in Brooklyn Center, Edina, Minneapolis, and Minnetonka. Minneapolis alone has state courts located at the Hennepin County Government Center, the Hennepin County Public Safety Facility (Jail), the Family Justice Center, the Conciliation Court at Minneapolis City Hall, and the Juvenile Justice Center. Explaining basic concepts like where to venue a case, personal jurisdiction, subject matter jurisdiction, or how to commence and file a lawsuit, is almost always required when working with immigrant litigants.

**Misconceptions Regarding the Appropriate and Inappropriate Participants in the American Judicial System**

Having legal standing to sue is a concept that can be unfamiliar to many immigrants. U.S. courts typically will not allow an individual to pursue a claim on behalf of another adult family member who is capable of doing so on his or her own. This may be confusing to a member of a culture where it is commonplace for family members to act interchangeably on behalf of one another. For example, an immigrant mother may not understand why she cannot petition the District Court to expunge her adult son's criminal records. In other instances, an immigrant witness might not understand that the Rules of Evidence strictly limit what types of testimony a witness may give and that arguing on behalf of an immigrant litigant is not an appropriate role for a witness.

It is important for immigrants to understand that only a licensed attorney can represent another person in a Minnesota court proceeding. The concept of attorney representation as the only alternative to self-representation may seem limiting to immigrants from Latin American countries. In this part of the world, it is common for parties in legal proceedings to seek assistance from a *notario público*. Unlike the function of a notary public in the United States, a *notario público* in Latin American countries can have a significant function in legal proceedings. Micaela Schuneman explains, "in some Latin American countries, the word 'notario' means the same thing as 'abogado' (lawyer). There is often confusion regarding the difference between a 'notary' and a 'lawyer.'" When working or interacting with our diverse immigrant community, it is important to explain the difference and avoid issues concerning unauthorized practice of law.
Misconceptions Regarding a Civil Right to Counsel

While America is the land of the free and home of the brave, it is important for immigrants to understand that the U.S. is also a place where many types of activities that may seem dishonest, unfair, or just plain wrong to someone from a different culture are nonetheless legal activities. Concepts that most attorneys take for granted such as default interest rates, payment acceleration clauses, and attorney’s fees provisions may be foreign concepts to someone who never executed a written contractual agreement prior to arriving in the U.S. To immigrants who are less familiar with the complexities that the average U.S. consumer faces on a daily basis, the invisible hand of the free market may feel rather icy upon first grasp. An immigrant who feels especially taken advantage of or disrespected may mistakenly confuse a civil dispute with a criminal matter. Police usually refuse to take a report related to a "civil matter" though the meaning and implications of the use of the term can easily be lost on someone with limited understanding of the judicial system let alone on someone who may have limited English language skills.

In the realm of civil litigation, an immigrant litigant must be told that there is no equivalent of a prosecutor or public defender. An immigrant hoping to commence or defend a civil action should understand that the free legal resources available are often in scarce supply and in high demand. If free legal help is unavailable, an immigrant litigant will have to represent him or herself pro se if funds to hire an attorney are lacking. In the absence of a right to civil counsel, often the only help available is self-help.

Misconceptions Regarding Limitations on What A Court Can or Will Do

Many immigrant litigants may not understand that although a court can issue an order, it is often left up to a party to seek enforcement of that order. Many immigrant plaintiffs who win a judgment in Conciliation Court are disappointed to learn that winning is one thing and collecting is another. A potential immigrant plaintiff should be told that a court is not a collection agency so they should consider the likelihood of promptly being paid when weighing the potential costs and benefits of whether to engage in litigation. Litigating is often an unrealistic way to get money in the short-term. If an immigrant employee wants to sue a former employer for unpaid wages in hopes of paying rent by the first of the month, it is important for that person to understand that suing is often a much less likely way of coming up with quick cash than pursuing other options like borrowing money from friends or family, applying for unemployment insurance benefits, or finding a new job.

If going to court makes sense from a practical standpoint, commencing a court case may still be pointless if there is no legal authority bestowing the relief sought. For example, filing a criminal expungement petition is pointless if the conviction an immigrant petitioner would like expunged is one that is not statutorily eligible for expungement. Commencing a lawsuit
is pointless if an immigrant litigant lacks a cause of action or legal theory to sue upon. Some
immigrant litigants may not realize that simply because a court procedure or court form
exists, the existence of that procedure or form alone does not guarantee the litigant success.

Immigrants new to the judicial system can also have a hard time understanding that in some
instances there is no point in pursuing a court action that will turn out to be a losing battle.
When working with these litigants, it is important to advise them that there can be serious
negative consequences for needlessly commencing or prolonging litigation. An example of
this often arises in actions brought by credit card companies who demand attorney's fees as
part of their claim. There may be no point in answering the complaint if no factual or
affirmative defenses are available. Serving an answer will only drive up the cost of the
plaintiff's attorney's fees if the suit is lost on summary judgment. When it comes to
litigating, there is often a real risk of making a bad situation worse. The concepts of
attorney's fees and sanctions may be unfamiliar to an immigrant litigant and always merit a
discussion to prevent a first step from being taken down a wrong path.

It is difficult to tell a litigant they cannot do what they want when pursuing justice. This task
can be more difficult when the recipient is from a different culture. In these instances, it can
be helpful to empathize with the immigrant litigant and acknowledge that sometimes there
is no legal redress to right a wrong.

No One Solution for Overcoming Misconceptions

Exactly how a person, or group of people, confronts a challenging set of facts in trying times
will always be subject to variation. The possible misconceptions and strategies for
overcoming them mentioned here are only a fraction of those that attorneys and court staff
may encounter or use in their day-to-day work. The immigrant population who currently
makes Hennepin County its home is not a homogenous one. Strategies that may be helpful
explaining legal concepts to one cultural group may not be appropriate or applicable to
another. Hennepin County is truly rich in the diversity of its residents, and opportunities
abound for all of us to learn more about our shared human condition by sharing our own
unique perspectives when working together, both in and out of the courtroom.

Written by Glen Drew, Resource Attorney, Volunteer Lawyers Network
Working with Interpreters

Many of our clients speak multiple languages, but English may not be their first language, so we need help to communicate important legal processes and concepts. Here are some tips on working with interpreters to help you as you communicate with your multilingual clients.

1. **Introductions:** Introduce yourself to the volunteer interpreter. Introduce the client to the volunteer interpreter.

2. **Seating:** Position the interpreter appropriately. Ask the client and the interpreter about seating arrangements. It is usual for the interpreter to be seated next to the attorney so that the client can observe both the interpreter and the attorney simultaneously.

3. **Set Expectations:** In order to ensure that you, the client, and the interpreter have a shared understanding of the extent of the interpreter’s professional services, we suggest that you communicate the following points at the beginning of a session involving an interpreter. Please make sure to include all three parties in the conversation (client, attorney, and interpreter).
   - “This is a conversation between you [the client] and me [the lawyer]. But we need help to communicate, so we are going to communicate through an interpreter.”
   - “The interpreter will interpret everything you say into English and everything I say into ____ [client’s preferred language].”
   - “The interpreter cannot participate in the conversation, share his/her opinion, or give advice. The interpreter’s only job is to interpret what each of us says.”
   - “The interpreter has to follow the same rules of confidentiality as I do which means s/he has to keep whatever we say in this meeting a secret and cannot tell anyone else what we say.”
   - “If you do not understand something, ask me [the lawyer], not the interpreter. Please talk to me [the lawyer], not to the interpreter. I will do the same.”
   - “If I need to clarify something with the interpreter about the interpreting, I will ask the interpreter to tell you what I said to the interpreter. If you have a long question or a long answer, please pause frequently so that the interpreter can interpret everything accurately. I will do the same.”
   - “Please speak loud enough and pronounce your words clearly so the interpreter can hear you easily. I will do the same.”
4. **The Interpreter’s Role:**
   - The interpreter is neutral and not that of “cultural broker.” Ethical codes prohibit interpreters from giving opinions about the legal matter for which they are interpreting. Interpreters are ethically obligated to interpret everything that the client would have understood if he/she had understood (spoken) English, so do not make comments you do not want interpreted.
   - When the interpreter is related to the client, which is not an ideal situation, please keep a few things in mind:
     - Treat the family member as you would any professional interpreter; remind them they are bound by the ethics and confidentiality rules.
     - Consider any conflicts of interest that may arise in using a family member as an interpreter. If you have questions, do not proceed with the meeting until your questions have been answered.
     - Take extra care in communicating and clarifying. Although the family member speaks both languages, he/she may not fully grasp the complexities of interpreting in a legal matter.
     - If you do not feel comfortable, do not proceed with the meeting.

5. **Interpreter Styles:** Some interpreters’ style may be to “over-speak” what you say about the same time you say it (simultaneous). Others may interpret consecutively (see below), which means they will interpret what is said in its entirety in the pauses between phrases or sentences. Others may use a hybrid approach. Different situations may require different approaches.

6. **The Lawyer’s Role:**
   - Speak clearly and at your usual pace and volume. The interpreter should tell you if it is necessary to change your rate. Give extra time for the client to answer any questions you have asked, as there may be lag time as the
interpreter interprets from spoken English into a different language. This is especially important during group discussions. When the interpretation is consecutive – that is, the interpreter will not begin interpreting until you have finished speaking – speak in short ‘chunks’ so that the interpreter can more easily remember what is said.

- Speak directly to the client as you would to any client. For example, say, “What is your legal issue?” rather than “What is his legal issue?” We have a tendency to speak to the interpreter and not the client. Try to act as if the interpreter is not there, and speak directly to the client, in the first person, allowing time for the interpretation to occur. [Note: the interpreter should also use the first person.]

- Be as clear and specific as possible, and avoid using lingo, while allowing for follow-up questions to make sure all parties are clear on the meaning of the question and the answer. It can be helpful to explain legal concepts and to explain the “why” behind a legal concept or requirement.

- Make sure that the client and the interpreter will understand each other. Some languages have different dialects, and understanding can be difficult.

- If possible, provide the interpreter in advance with the documents you will use in the meeting. This will allow the interpreter to become familiar with the information and ask questions if he/she does not understand something.

- Do not leave client and interpreter alone. Clients often feel an affinity with the interpreter, which can interfere with the attorney-client relationship, jeopardize attorney-client privilege, or lead to the interpreter’s unauthorized practice of law.

- Do not allow side conversation. The interpreter is required to interpret everything that is said. Please stop the client and/or interpreter if side conversations occur. As the attorney, please do not have side conversations with the interpreter. If you need to clarify a point, ask the interpreter to explain what you are doing to the client. The client must feel secure that the interpreter is a neutral person.

- Using culturally-neutral humor can help build rapport. But you are speaking to someone that has a different culture and understanding of what is funny and how sarcasm is used. It may be best to avoid sarcasm and certain humor.

- End the meeting and reschedule with a different interpreter if you think what you want communicated is not being communicated.

- After the meeting and the client has left, take time to debrief with the interpreter. Talk about things that went well and what could have been done
better. Thank the interpreter for his/her time and attention. Remind the interpreter that all the information is strictly confidential and cannot be revealed to anyone else.

Resources:

- MN Judicial Branch Court Interpreter Program, Resources for Attorneys and Judges: [http://www.mncourts.gov/Help-Topics/Court-Interpreter-Program.aspx](http://www.mncourts.gov/Help-Topics/Court-Interpreter-Program.aspx)
- Volunteer Lawyers Network, [www.vlnmn.org](http://www.vlnmn.org)

### Working with Clients with Mental Illness

The 25-year old American with Disabilities Act provides protections for the many among us with mental illness. Mental illnesses are medical conditions that may disrupt a person’s thinking, feeling, mood, ability to relate to others, and daily functioning. Because individuals with mental illnesses have higher rates of poverty (their illness can be so debilitating as to prevent them from working), most pro bono attorneys will eventually be helping clients with mental illness. The following provide some guidance for providing legal services to clients with a mental illness (hereinafter referred to as just “clients”).

**Communication: be aware of your language:** As with any client, effective communication is fundamental to providing good service. Communication starts with being intentional with language:

- Out of respect, use “people first” language when referring to your client. *(Say, My client, who has a mental illness, or Do you have a mental health diagnosis? not My mentally ill client or Are you mentally ill?) Avoid conflating the person with the diagnosis. (Do not say, She’s a schizophrenic or Depressives react like that.)*
- Never use pejorative or slang terms for mental illness, even in jest.
- Work to avoid more subtle, pathological characterizations of a client that reinforce negative stereotypes. *(Say My client is afraid, not My client is paranoid.)*

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30 Approximately 26% of adults in Minnesota have a diagnosable mental health condition over a 12-month period and about six percent live with a serious mental illness such as schizophrenia, major depression, bipolar disorder, anxiety disorder, or posttraumatic stress disorder.

31 Mental illness also increases vulnerability to physical and sexual abuse, as well as higher rates of substance abuse.
• Do not ask personal questions or questions related to a person’s disability unless they are relevant to the legal services being provided. If that information is necessary or is offered by the client, educate yourself about the particular diagnosis.

In all interactions, remember that the goal is not to provide therapy, but to increase the lawyer’s comfort and ability to work effectively with the client in a professional yet supportive manner.

**Communication: moderate your style as needed:** Be attentive to the client’s style of interaction and adjust communication accordingly. For example, a person who has a diagnosis of anxiety may be agitated and talk quickly and disjointedly. Other people may have memory loss or be uncertain of information needed. Individuals with a mental illness that includes mania may experience expansive mood, feel invulnerable, and have racing thoughts. In any of these instances, consider asking simple questions to help the person focus and move the process forward. Repeat information or questions as needed while remaining patient. Consider asking whether the person would like to take a break in order to calm down, collect their thoughts, or process the information that they have gotten so far. Also consider whether the environment is suitably calm and quiet for the interaction.

**Offer an accommodation:** At times, an accommodation will help a client work more effectively with you. Besides being good practice and customer service, reasonable accommodations are required by the ADA. Ask the person if they would like help and what would work for them. Consider, for example: encouraging them to ask questions, even if they may have already asked them; encouraging them to take notes; offering to provide a written summary of a meeting or instructions for later reference; taping meetings; modifying the time, length or location of meetings; etc. However, do not assume that they want extra assistance and remember that they cannot be forced to accept an accommodation even you think it would be helpful. Many common accommodations are mentioned throughout this article.

**Personal care attendants/support people:** Some clients may bring a non-disabled individual (personal care attendant, a friend, or a family member, etc.) to help them or to provide emotional support. Be courteous to this individual, but talk directly to the client, not to the companion about the client. See Rule of Professional Conduct 1.14, Comment 3. Ask to talk with the client alone you have concerns regarding the effect on communication of having the third party present.

**Service animals:** Clients may be accompanied by a service dog that provides a service related to their disability. (For example, a person with an anxiety disorder may have a service dog trained to sense onset of anxiety and to direct the individual away from a situation that is causing an anxiety reaction.) In these cases, per the ADA, the animal should be allowed into the office and treated as a working animal regardless of “no-animal” building rules. A simple inquiry as to whether the animal is a service animal related to the individual’s...
disabilities is permissible but the client is not required to provide proof via a certificate of training or licensure. Because the service animal is working, instruct staff not to pat or otherwise distract the animal. The client is responsible to keep it under control at all times and to arrange for it to go out when necessary.

**Attorney obligations under the Rules of Professional Conduct (RPC):** A client is presumed competent and to have the capacity to act on his or her own behalf. There is a common law presumption of capacity, and relevant state law follows suit.\(^{32}\)

However, when a client’s capacity to make adequately considered decisions in connection with a representation is diminished, you are required to “as far as reasonably possible, maintain a normal client-lawyer relationship with the client.” Rule 1.14, RPC. The rule permits you to take action when you believe the client has diminished capacity, is at risk of harm, and cannot adequately act in his/her own interest. In such cases, you may take protective action, including consulting with persons who may be able to protect the client, and where appropriate, seeking appointment of a guardian ad litem, conservator or guardian. When taking protective action, you may reveal information about the client as necessary, subject to Rule 1.6 of the RPC.

Also review Rule 1.14, RPC and its the ten comments for detailed guidance on: the nature of diminished capacity (Comment 1); the importance of maintaining respect and communication (Comment 2); the propriety of including family members and others in discussions while leaving decision-making up to the client (Comment 3); the role of guardians (Comment 4); possible measures to protect the client from harm (Comment 5); how to determine the extent of the client’s diminished capacity (Comment 6); whether to seek appointment of a legal representative (Comment 7); limits on disclosure of the client’s diminished capacity (Comment 8); emergency legal assistance where threat of irreparable harm to client (Comment 9); and duties related to emergency legal assistance (Comment 10).

**Conclusion:** In almost any *pro bono* representation, you are protecting the basic needs of the most vulnerable among us, who have restricted access to the legal system. When you are representing a client with mental illness, by adopting these simple practices for communicating clearly, being respectful, and offering accommodations when needed, you will not only be a more effective attorney overall, but will make our communities more just and thriving for everyone.

**Note:** Attorneys with specific questions regarding working with clients with mental illness or the ADA may contact Pamela Hoopes directly at phoopes@mylegalaid.org.

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\(^{32}\) For example, civil commitment for treatment is not a judicial determination of legal incompetence. Minn. Stat. Section 253B.23, subdiv. 2. The health care directive statute contains a specific presumption of capacity that can be overcome only by clear and convincing evidence. Minn. Stat. Section 145C.10(a).
Volunteer Guiding Philosophy

Volunteer Lawyers Network is based on the core founding principle that private attorneys must dedicate some time to representing clients in poverty because:

- Pro bono services increase overall access to the legal services necessary for stability and well-being in our communities.
- All attorneys, not just legal aid attorneys and public defenders, share the profound professional responsibility to ensure that the rule of law extends to everyone in our communities.
- Those in poverty, who otherwise may experience the law as arbitrary and predatory, have more experience of the law’s protections and fairness, leading to greater community-wide respect for the system and engagement.
- Lawyers who provide pro bono legal services benefit in that they:
  - Get the satisfaction of helping vulnerable individuals and families in our communities and directly contribute to their well-being.
  - Gain communication and other skills that improve their services to paying clients.
  - Participate in an enterprise which crosses over social barriers.
  - Connect on a human level with those who may be quite different from them, which may dispel stereotypes and increase curiosity and empathy.
  - Gain first-hand knowledge about the experience of those living in poverty and the resilience and resources of people who survive in poverty.
  - Contribute more knowledgeably to discussions about community-wide issues in various aspects of their lives.
  - Make more informed philanthropic and policy choices.
  - Promote a more efficient court system.

- The community as a whole is enriched as:
o People form relationships across social barriers, is a necessary ingredient of any successful and positive social change.

o More people of influence become advocates for those whom the legal system has otherwise not served.

o More people are freed up to meet their human potential and participate more fully in our social and economic systems.

o Increased knowledge leads to policy decisions that are more effective in promoting safety, well-being and dignity for all.

To this end, Volunteer Lawyers Network serves the community by bringing private attorneys to meaningful pro bono work that is responsive to the needs in the community by:

• Designing programs that respond to the emerging and immediate needs of those in poverty.
• Leveraging attorney hours by screening clients for financial and merit eligibility, providing write-ups of their issue, providing case coordination assistance, and more.
• Educating attorneys about the laws that impact those living in poverty.
• Creating form templates, manuals, CLE resources and access to on-staff resource attorneys to help lawyers meet their professional responsibility to provide competent and diligent services.
• Having mentor attorneys on hand to answer specific legal questions from volunteer attorneys.
• Maintaining and providing expertise in various legal issues through on-staff resource attorneys.
• Providing attorneys with elimination of bias trainings essential to help them understand the barriers those in poverty face when trying to access the justice system, understand client behavior in the context of the poverty rather than that of middle class, increase the quality of services provided, increase client outcomes, and increase volunteer satisfaction.
• Providing structured and supported ways for attorneys to may meet their community leadership responsibilities of promoting justice and making justice equally accessible to all people.
Support for Volunteer Attorneys

1. Client Screening: We offer you clients who have the legal issue in which you are interested in helping, as well as screening cases for merit and obtaining legally relevant information.

2. Legal resources and trainings
   a. Low-cost CLEs (https://www.vlnmn.org/events/)
   b. Written resources many of which are online
      i. https://vlc.wikispaces.com/ (password required)
      ii. www.lawhelpmn.org
   c. Tips of the month: https://www.vlnmn.org/volunteer-resources/tip-of-the-month/

3. Personalized coaching (applying what you’ve learned to the specific case situation)
   a. Mentor attorneys
   b. Resource attorneys

4. Resources on how poverty and race impact your pro bono representation
   b. On-demand CLEs
   c. Written resources

5. CLE credit for pro bono (1.0 credit for 3.0 hours, up to six in a reporting period)

6. Malpractice insurance (if you’re in our database and helping a client in our database)

7. Interpreting assistance (contact Barb)

8. Administrative support (conference rooms, help in obtaining IFP orders, etc.)

9. Financial coaching assistance for your clients

10. In select cases, case coordinator support for clients to follow your advice

11. Partnerships with community agencies
VLN Clinic Standards

VLN legal clinics serve an important function in VLN’s overall delivery of legal services. Clinics are an efficient and timely way to connect client and attorney in situations in which:

- A client needs immediate assistance
- A client needs advice as to whether or not there is a legal issue
- The clinic may provide brief legal services
- The client does not income qualify for full representation services (Clinics go up to 300% FPG)
- The client does not qualify for other VLN services

VLN clinics may be categorized as either walk-in or scheduled. Walk-in clinics serve clients on a first-come first-served basis to clients who come within the clinic hours. At scheduled clinics, clients are scheduled in advance with a specific attorney whose pro bono practice focuses on the client’s issue. Most clinics are administered directly by VLN, although some clinics are run by partner law firms and partnering social services agencies.

Per its current strategic plan, VLN asks all VLN legal clinic attorneys to do the following to increase the client’s chance of having a successful outcome.

- Provide written information to clients concerning their legal problem, such as legal aid fact sheets.
- Write down the advice that the attorney is providing, including, when appropriate, the legal and factual analysis of their matter and next steps the client should take.
- Provide more concrete brief service where appropriate, such as making phone calls, writing letters, getting information from agencies, assisting in filling out forms, and other limited tasks which may help solve the client’s legal problem.

The standards discussed below are used to evaluate current clinics and to apply to potential new legal advice clinics as they affiliate with VLN. The goal is to provide a safe and confidential setting for clients to discuss their legal concerns with volunteer lawyers, where lawyers can maximize their service to individuals who cannot afford to hire an attorney.

**Volunteer Lawyers Network Provides:**

VLN affiliated clinics can rely on VLN for a variety of support services. These include:

- Support from experience professional staff with many years of serving legal needs of economically disadvantaged clients
- Malpractice insurance for volunteer attorneys
- Help recruiting volunteer attorneys
- Orientation of new volunteers to the clinic
- CLEs on substantive legal issues relevant to the client base
- Trainings regarding how to be an effective clinic attorney
- Resources on the law, on referrals, and on client-relationships (e.g., working with mentally ill clients)
- Reviews of clinic performance and suggestions to best serve clients
- Signage (“Volunteer Lawyers Network Legal Clinic”) to identify services when the clinic is active, and to promote awareness of VLN and its other services
- Clinic records/data maintenance, including types of issues and services provided

Other resources available through VLN: A variety of legal resources are available directly through VLN or through the broader legal service community. They include:

- Clinic Resource Handbook
- Legal Aid’s Fact Sheets on issues common to people in poverty
- Attorney Suggestion and Referral Form
- VLC Wiki (https://vlc.wikispaces.com/)
- Providing Quality Legal Advice at Clinic Settings
- www.lawhelpmn.org

Clinic Assistants: Trained clinic assistants (law students, paralegal interns, etc.) can be of considerable help in the clinic setting, including:

- Ensuring that clients are seen in the order in which they signed up
- Completing the VLN clinic data form
- Reviewing VLN resources for relevant information for the client's issue
- Taking notes about the attorney's legal advice or referral to provide to the client (after the attorney has reviewed it)
- Assisting the client with following the attorney’s advice (e.g., helping fill out forms; look up bus schedules; make telephone calls; make photocopies, etc). (Note: any legal assistance must be under the supervision of the clinic attorney.)

Physical Location for Legal Advice Clinics:

Facilities are most often provided for legal advice clinics by other organizations, including the courts, community centers, churches, etc. The organization providing facilities should provide:

- An on-site contact person to coordinate with VLN
- Site accessible by target population, including those who are handicapped
- Appropriate setup to allow confidential consultations
- Space where clients may complete the VLN clinic data form in privacy
- Physical security for attorneys and for clients
- Access to a telephone (so attorneys may make calls on behalf of clients or to obtain further information)
- Access to the Internet for online legal research
- Secure location for completed clinic data forms until they are sent to VLN
- New clinic locations must be approved by the VLN Clinics and Quality Control Committee and the VLN Executive Director

Other clinic site and administrative requirements

- Sufficient clients to keep the volunteer attorney relatively busy
- VLN processes must be agreed to and in place to provide consistent services and to meet requirements of VLN funders. These processes include:
  - Attorney volunteers must have a volunteer member form on file with VLN.
  - A process must be in place to collect service data in the form required by VLN and to forward completed clinic data forms to VLN
  - A process must be in place to screen clients for financial eligibility (at or below 300% of FPG)
  - A process must be in place to prioritize waiting clients (e.g., a schedule created in advance with client reminders provided the day before the appointment by email, phone or mail; a sign up list for walk-ins; or a combination of both)

Security Policy

Safety of volunteers is a priority at VLN. Therefore, each clinic should be set up in a manner that promotes safety, to prevent incidents when possible and to allow quick reaction to incidents that do occur, including:

- A mechanism in place for calling for help (e.g., a security button, a personal attack alarm, a speed dial to security on the phone, or other plan for how to quickly be able to call for help)
- Scheduling two people (such as a volunteer attorney and a clinic assistant) to be present at the clinic as often as possible. At the courthouse clinics, attorneys will be notified in advance if there is no second person scheduled in case the attorney would like to bring someone else from his or her office
- Notice to clients that the clinic reserves the right to refuse service to anyone. This notice can be in a posted sign, on the clinic data sheet and/or on the clinic sign-in sheet
- Access to the list of clients who have been banned from VLN clinics. To receive access to this document, email martha@volunteerlawyersnetwork.org. The list of banned clients will be posted at the courthouse clinics and clinic assistants shall review this list before clients speak with the volunteer attorneys
Clinic volunteers (attorneys and clinic assistants) are asked to take the following steps to promote safety:

- Know the clinic’s procedure for calling for help (e.g., a security button, a personal attack alarm, a speed dial to security on the phone, or other plan for how to quickly be able to call for help)
- Ensure other people (e.g., clinic assistant, community center staff person, etc.) are nearby
- If meeting in an enclosed room, keep the door open during attorney/client consultations when practical and position the attorney and clinic assistants closer to the door than the client
- Call for help earlier rather than later to stop a situation from escalating. If at a courthouse, and if for any reason the attorney does not feel safe, he/she may be excused to ask for a deputy to be posted outside the conference area
- If a client is becoming abusive, consider a warning, such as: “I would really like to help you, but I will need to stop the session unless you [stop raising your voice with me]”
- Terminate any session in which a client does not immediately respond to such cues, as attacks are often preceded by such behavior
- Attorneys should follow their instincts and decline to assist a client they have any safety concerns.
Name: 

Street Address: 

Date of birth: 

City/State/Zip: 

Phone number: 

Email: 

May we contact you about the services you receive today? Yes No Best time to call: ________

Where did you hear about this clinic? ____________________________________________

<table>
<thead>
<tr>
<th>U.S. Citizen: Yes No</th>
<th>What is your monthly household income before taxes, including from all persons living with you?</th>
<th>What is your race/ethnicity?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gender: M F ________</td>
<td>Employment $_________ Unemployment Comp. $_________ Child Support $_________ Spouse’s Income $_________ General Assistance $_________ MFIP (cash portion) $_________ SI/Social Sec. Disability $_________ Food Support $_________ Social Sec. Retirement $_________ Pension $_________ Other (specify) $_________ Other (specify): ___________</td>
<td></td>
</tr>
<tr>
<td>Marital Status: Single Married Divorced Other:__________</td>
<td></td>
<td></td>
</tr>
<tr>
<td>How many adults live in your household? ______</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Children (under 18)? ______</td>
<td></td>
<td></td>
</tr>
<tr>
<td>What is your first language? English Spanish Somali Other ______</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Need interpreter? Yes No Language: __________________________</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Have you sought assistance for this problem elsewhere? □ Yes (if yes, answer question below) □ No □ I don’t know or wouldn’t say

Where have you sought help before? (check all that apply)

□ A social services organization □ The courts □ A government office □ Other (please specific): __________________________

**Legal Clinic Service to Clients:** We can provide a short meeting with an attorney, **free of charge**, to talk about a legal matter. The attorney can provide information on most legal matters along with advice or brief service about the next steps you may wish to take. The attorney may be helped by non-attorney volunteers under his/her supervision. **This clinic does not provide ongoing services to clients or ongoing legal coaching with respect to a certain matter.** Priority is given to those who have not been seen at this clinic before. LRIS/VLN reserve(s) the right to decline services. Audio or visual recording of attorney-client sessions is prohibited. VLN does not assist businesses or sole proprietors of businesses with business litigation.

**Client Agreement:** I understand and agree to the following: The attorney I meet with today can provide only legal information, advice and/or brief service on my legal issue. With the possible exception of brief follow up services that the attorney tells me he or she will do, the attorney will not provide ongoing legal service beyond that provided onsite today. I am still responsible for pursuing my legal matter and for taking any post-clinic follow up actions recommended by the attorney (e.g., serving other parties, filing paperwork in court, preparing other paperwork, and appearing in court). While the other party may be represented by this attorney’s law firm now or in the future, what I tell the attorney today is confidential. I give my informed consent for my information to be shared between LRIS & VLN and with others as needed. I am not now represented by another attorney regarding the matter that I am seeking help with today.

_____________________________                          ___________________
Client signature Date
Description of 1) client’s question or legal concern and 2) client’s goal:

<table>
<thead>
<tr>
<th>Opposing Party Name: ______________________</th>
<th>Talked with an attorney about this matter?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
</table>

Amount at Issue: _______________  County of venue of legal action: □ Hennepin □ Other: ______________________

Area of Law (check the ONE area that best describes):

- [ ] Housing (Tenant)
- [ ] Employment
- [ ] H.R.O./O.F.P.
- [ ] Negligence/P.I./Other Tort
- [ ] Housing (Landlord)
- [ ] Unemployment Ben.
- [ ] Wills or Probate
- [ ] Consumer Debt Dispute
- [ ] Security Deposit Claim
- [ ] Wage Claim
- [ ] Guardianship/Conserv
- [ ] Garnishment Exemption Claim
- [ ] Eviction Expungement
- [ ] Crim Expungement
- [ ] Car Title
- [ ] Contract Dispute
- [ ] Real Estate
- [ ] Civil Rights/Discrim
- [ ] Driver’s License
- [ ] Bankruptcy
- [ ] Foreclosure
- [ ] Public Benefits
- [ ] Conciliation Court
- [ ] Collecting on Judgment
- [ ] Family Law Issue
- [ ] Criminal/Traffic
- [ ] Concil. Court Appeal
- [ ] No Legal Issue
- [ ] Child Protection
- [ ] Juvenile Delinquency
- [ ] Civil Lawsuit
- [ ] Other _______

**Who Provided the Service**

Attorney (Pls print full name):
Clinic Assistant:

**Language Information (if applicable)**

If client spoke other language, who interpreted: □ Family member □ VLN volunteer: ____________
□ Meeting was conducted in English □ Language Line/OPI □ Other: ________________

**Service Provided**

- Made phone call
- Negotiated w/creditor
- Drafted/sent letter/docs
- Served legal docs
- Wrote draft language to insert on form
- Assisted with drafting Pleading or Court Form
  (e.g., Answer, Complaint, IFP, Garnishment Exemption)
- Specify: ______________________
- Legal advice
- Advised not a legal issue
- Advised no merit to issue
- Referral

**Details of Service Provided:**

Time Spent with Client: ________

Will you or a colleague provide any follow up service? □ Yes □ No □ Summer Associate
If yes, please provide details

**Referral to:**

- VLN – 612-752-6677
- Legal Aid
- HOME Line
- Self Help Center
- Family Self-Help Center
- Housing Ct. Project
- LRIS - 612-752-6666
- Low Fee Family Law Program
- Misdemeanor Defense Proj.
- Legal Rights Center
- Conciliation Court Clinic
- Other (specify):

Follow up call by VLN staff recommended

For datasheets from 1/9/2017-1/23/2017, check whether the LSAC survey was completed: □ online at LAP or □ on paper at LAP
The concepts from the sections Communication Tips for Attorneys and Understand and Avoid Five Common Communication Breakdowns Between Attorneys and Clients were taken from the Breaking Poverty Barriers to Equal Justice © video clips and curriculum. The Breaking Poverty Barriers to Equal Justice © materials are free to nonprofit legal services programs nationwide through the generous sponsorship of Lindquist & Vennum LLP, in partnership with Volunteer Lawyers Network, Target Corporation and Communication Across Barriers. For more information, see: www.lindquist.com/probono or www.wpbc.wikispaces/BPBEJ. Reprinted with permission.
DIRTY LITTLE SECRET:
MY ATTORNEYS DON’T UNDERSTAND POVERTY

Do your volunteer attorneys or law students ever ask you these questions? Or worse, don't ask and maybe don't come back?

These are typical questions and judgments that we often hear from legal volunteers. You can add The Breaking Poverty Barriers to Equal Justice materials to your trainings for attorneys, law students and other stakeholders to help them better understand the context and day-to-day challenges of their clients from poverty. It is free to legal services nonprofits* (including law schools). The goals include:

- Increase staff and volunteer understanding of poverty
- Increase staff and volunteer communication and other skills
- Improve client services and outcomes
- Increase attorney and law student satisfaction and retention

The 2.0 hours of video clips feature Donna Beegle, Ph.D. sharing her experiences growing up in migrant labor poverty. Beegle is now a national trainer and speaker on understanding poverty. Her presentation speaks to how we can better communicate with the people we serve and improve our results.

The presentation is tailored to legal professionals and qualifies for CLE credits. Those who have participated in this training have called it essential and transformative.

More information: wpbc.wikispaces.com/BPBEJ and www.lindquist.com/probono

These materials were created through a collaboration of the following organizations:
Concepts included in Breaking Poverty Barriers to Equal Justice

Understanding Poverty from an Insider’s Perspective: Why It’s Essential to Breaking Barriers to Equal Justice

- How the language and norms of those in poverty reduces their access to the legal system
- Where most people get their understanding of poverty and why that is not reliable
- Specific poverty barriers to getting equal justice in the courts
- Why those in poverty may not even seek the assistance of a lawyer and how to remedy this
- The importance of self-awareness and reflection for our ability to provide equal access

Defining Poverty and Understanding Its Impacts on Justice: The Experiences of Those In Poverty in Our Society and in our Legal System

- How not knowing the root causes of poverty and their many impacts prevents us from meeting the legal needs of those who live in the crisis of poverty
- How people living in poverty often experience the justice system, including law enforcement
- The financial reality of living in poverty and its impact on access to legal services
- Why working hard is not enough to achieve economic stability without two specific variables
- Four life experiences of “poverty” and impact on access to legal services

Examining Assumptions About Poverty: How Universal Access to Justice Depends on Legal Professionals Being Able to See and Suspend Judgments of "Other"

- Why we often resort to blame and judgment when we see the choices of people in poverty
- How judgment cripples effective communication, individual representations and efforts to change systemic barriers to equal justice
- Why examining our beliefs is essential to understanding who we will want to help
- Why communicating with someone from a different background can derail up to 80 percent of the time, dramatically impacting the quality of representation

Improving Communication Across Poverty: Overcoming Other Barriers to Equal Justice When Serving People from Poverty

- Five common reasons why communication might break down
- Building trust with clients from poverty
- Characteristics of oral and print styles of communication
- Specific tools for legal professionals to better communicate

Five Keys to Better Serve Your Clients: Suggestions for Legal Professionals and Courts

- The importance of recognizing strengths, and more

For more information, please contact Martha Delaney Russell (delaney.russell@vlmnmn.org) or Cynthia Anderson (canderson@lindquist.com).

Or visit: wpbc.wikispaces.com/BPBEJ and www.lindquist.com/probono
Dirty Little Secrets: Confronting Them Together (May 2017 EJC)

**Description:** We all have programmatic problems on which we’re too ashamed to ask our colleagues for help. This cuts us off from each other’s wisdom and cripples our ability to address them. We will identify six common “secret” issues and come up with strategies and best practices to address them. You will leave this session with a better sense of how to promote quality legal services from volunteers as well as how to avoid crossing over into ineffective micromanaging.

**Schedule**
1:30  Introductions
1:35  Short presentation on Dirty Little Secret #1: How to fire volunteers
1:40  Review of World Café Discussions format
1:47  World Café Discussions
2:23  Summaries of table conversations re: remaining Dirty Little Secrets with participant additions
2:48  Discussion of remaining issues that participants addressed
2:55  Wrap up

**Your Role During World Café Discussions**

1. We will have five tables, each with a dirty little secret and a panelist/moderator.
2. Sit at one of the tables (you’ll have the opportunity to sit at three of the tables before we’re done). Tables must have roughly equal numbers of participants.
3. Round 1: For eight minutes, you and the others at that table will brainstorm about that dirty little secret, with the help of the facilitator.
4. A bell will ring and you’ll get up and move to a different table. (You don’t have to stay in the same group of people, just go to a different table.) Again, tables must have roughly equal numbers of participants.
5. Round 2: For eight minutes, you and the others at that table will brainstorm about that dirty little secret, with the help of the facilitator.
6. A bell will ring and you’ll get up and move to a different table, etc.
7. Round 3: For eight minutes, you and the others at that table will brainstorm about that dirty little secret, with the help of the facilitator.
8. A bell will ring and you’ll get up and move to a different table, etc.
9. Wrap up: the facilitators of each table will identify and report on key ideas for the group.

**Overall “rules”!**

- Be creative! This is Brainstorming!
- You may write, doodle and draw key ideas on your sheet
- No assessment of ideas – just brainstorming!
Dirty Little Secrets: Confronting Them Together (May 2017 EJC)

Presenter bios:

Sharon Goldsmith is the Executive Director of the Pro Bono Resource Center of Maryland. She joined PBRC in 1990 as its founding director. Sharon manages the overall operation of PBRC, including strategic planning, media relations, program development, financial management, human resources, board development, project incubation, and leadership. She also works closely with the Court of Appeals on its Standing Committee on Pro Bono Legal Services as well as with local pro bono committees and legal services providers to ensure the most effective and coordinated system of pro bono delivery exists statewide.

Kelly Henrici is the Executive Director of the Greater Dayton Volunteer Lawyers Project, which has been responsible for pro bono efforts in the Miami Valley region of Ohio for more than 25 years. After serving as General Counsel of an international company with revenues exceeding $1 billion and then as the Executive Director of the Program in Law and Technology at the University of Dayton School of Law, Kelly has dedicated herself to serving those in our community of lesser means. A graduate of the University of Illinois and the University of Dayton School of Law, in her spare time Kelly is a private pilot, a marathon runner, and an avid cyclist.

Samantha Howell is the Director of Pro Bono & Outreach of Prisoners’ Legal Services of New York (PLS). She is a graduate of Whitman College and Albany Law School. She has worked in the public interest sector for fifteen years and in the pro bono field for more than seven. Samantha has presented extensively on prisoners’ rights issues and the development and management of pro bono programs. Ms. Howell serves on the New York Civil Liberties Union (NYCLU) Capital Region Chapter’s board and legal committee, and is a member of the National Lawyers Guild. Ms. Howell is also a member of the New York State Bar Association’s President’s Committee on Access to Justice, the National Association for Pro Bono Professionals (NAPBPRO), the NYS Pro Bono Coordinators Network, the Capital Region Pro Bono Committee, the American Bar Association and the New York State Bar Association.

Marissa LaVette is the Assistant Staff Counsel with the ABA Center for Pro Bono, which provides technical support and assistance to pro bono programs nationally. She is a graduate of DePaul University College of Law and the University of Illinois Urbana-Champaign. Marissa has worked in the public interest sector since graduating law school. Her prior work has included representing children and families in education and disability related matters and coordinating a law school pro bono program to assist victims of domestic violence seeking orders of protection. Marissa has a passion for pro bono service and access to justice, and brings her experience in volunteer management, training, and community outreach to the Center.

Tom Walsh is the Deputy Director of Volunteer Lawyers Network in Minneapolis, Minnesota. He manages the overall operations of VLN, including program development and supervision. As the senior leader of the management team, he leads and participates in strategic discussions, budget planning, human resources, and technology management. He started with Volunteer Lawyers Network in 2005 to build programs that leverage volunteer attorney time, including by incorporating volunteer law students. He graduated from the University of Minnesota Law School in 2004 and has worked with people in poverty in many capacities including at a local legal aid program and as the family and bankruptcy resource attorney at VLN.
Strategies for Confronting Unconscious Bias

by Kathleen Nalty

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So—what’s in a name? Apparently, a lot. If you are named John, you will have a significant advantage over Jennifer when applying for a position, even if you both have the exact same credentials.1 If your name is José, you will get more callbacks if you change it to Joe.2 And if you’re named Emily or Greg, you will receive 50% more callbacks for job interviews than equally qualified applicants named Lakisha or Jamal.3

A three-part dialogue published in The Colorado Lawyer earlier this year raised awareness about the prevalence of conscious and unconscious biases in the legal profession.4 While we may be aware of our conscious attitudes toward others, we are typically clueless when it comes to our unconscious (or implicit) biases. This article will help you recognize your unconscious biases and provides research-based strategies for addressing them.

Why Does It Matter?

Research studies reveal just how much bias impacts decisions—not just on a conscious basis, but to a much greater extent, on an unconscious basis. Experts believe that the mind’s unconscious is responsible for 80% or more of thought processes.5 Yet the conscious mind is simply not capable of perceiving what the unconscious is thinking.6 You can be two people at the same time: a conscious self who firmly believes you do not have any bias against others because of their social identities, and an unconscious self who harbors stereotypes or biased attitudes that unknowingly leak into decision-making and behaviors.7 The good news is that we can work to redirect and reeducate our unconscious mind to break down stereotypes and biases we don’t agree with by engaging in the research-based activities outlined in this article.

This process is critical to making better decisions in general, and is particularly important as the legal industry struggles to play catch-up with respect to inclusiveness. In addition to eliminating the hidden barriers that keep the legal profession from being more diverse, recognizing and dealing with unconscious biases actually helps individuals become smarter, more effective lawyers. After all, this is a service industry, and our ability to interact with a diverse community and serve a wide variety of clients depends on making decisions free from fundamental errors. Finding the pitfalls in our thinking, taking them into account, and working to eliminate them leads to better decision-making. Individuals who make better decisions also help their organizations perform better.

So there is a lot at stake in terms of whether you will invest the time to be more inclusive and become a more effective lawyer by attending to your unconscious biases.

Types of Unconscious Cognitive Biases

We all have unconscious cognitive biases that can, and often do, interfere with good decision-making. There are too many to address in this article, but it is worthwhile to learn about a few that are particularly important with respect to diversity and inclusion.

Confirmation Bias

Confirmation bias is a type of unconscious bias that causes people to pay more attention to information that confirms their existing belief system and disregard that which is contradictory. Clearly this can harm good decision-making. You can probably think of at least one instance when you advised a client or reached a decision and later realized you dismissed or unintentionally ignored critical information that would have led to a different and perhaps better outcome.

Confirmation bias can also skew your evaluations of others’ work and potentially disrupt their careers. In The Colorado Lawyer’s three-part dialogue, Professor Eli Wald briefly mentioned a research study on confirmation bias in the legal industry that I feel bears further elaboration here.8 In 2014, Dr. Arin Reeves released results of a study she conducted to probe whether practicing attorneys make workplace decisions based on confirmation bias.9 This study tested whether attorneys unconsciously believe African Americans produce inferior written work and that Caucasians are better writers.

With the help of other practicing attorneys, Reeves created a research memo that contained 22 errors (spelling, grammar, technical writing, factual, and analytical). The memo was distributed to 60 partners working in nearly two dozen law firms who thought they were participating in a “writing analysis study” to help young lawyers with their writing skills. All of the participants were told the memo was written by a (fictitious) third-year associate named

About the Author

Kathleen Nalty is a lawyer/consultant who specializes in diversity and inclusion. She has assisted dozens of legal organizations in their implementation of inclusiveness initiatives—kathleen@kathleennaltyconsulting.com. Previously, she co-founded the Center for Legal Inclusiveness in Denver and led the organization as its executive director. Early in her legal career, she worked as a federal civil rights prosecutor for the U.S. Department of Justice, where she prosecuted hate crimes, slavery, and police brutality cases. Much of the content of this article is taken from Nalty’s book Going All In on Diversity and Inclusion: The Law Firm Leader’s Playbook (Kathleen Nalty Consulting LLC, 2015).
Thomas Meyer who graduated from New York University Law School. Half of the participants were told Thomas Meyer was Caucasian and the other half were told Thomas Meyer was African American. The law firm partners participating in the study were asked to give the memo an overall rating from 1 (poorly written) to 5 (extremely well written). They were also asked to edit the memo for any mistakes.

The results indicated strong confirmation bias on the part of the evaluators. African American Thomas Meyer’s memo was given an average overall rating of 3.2 out of 5.0, while the exact same memo garnered an average rating of 4.1 out of 5.0 for Caucasian Thomas Meyer. The evaluators found twice as many spelling and grammatical errors for African American Thomas Meyer (5.8 out of 7.0) compared to Caucasian Thomas Meyer (2.9 out of 7.0). They also found more technical and factual errors and made more critical comments with respect to African American Thomas Meyer’s memo. Even more significantly, Dr. Reeves found that the female and racially/ethnically diverse partners who participated in the study were just as likely as white male participants to be more rigorous in examining African American Thomas Meyer’s memo (and finding more mistakes), while basically giving Caucasian Thomas Meyer a pass.10

The attorneys who participated in this study were probably shocked by the results. That is the insidious nature of unconscious bias—people are completely unaware of implicit biases they may harbor and how those biases leak into their decision-making and behaviors.

Another type of unconscious cognitive bias— attribution bias—causes people to make more favorable assessments of behaviors and circumstances for those in their “in groups” (by giving second chances and the benefit of the doubt) and to judge people in their “out groups” by less favorable group stereotypes.

Availability Bias

Availability bias interferes with good decision-making because it causes people to default to “top of mind” information. So, for instance, if you automatically picture a man when asked to think of a “leader” and a woman when prompted to think of a “support person,” you may be more uncomfortable when interacting with a female leader or a man in a support position, particularly at an unconscious level.

Affinity Bias

The adverse effects of many of these cognitive biases can be compounded by affinity bias, which is the tendency to gravitate toward and develop relationships with people who are more like ourselves and share similar interests and backgrounds. This leads people to invest more energy and resources in those who are in their affinity group while unintentionally leaving others out. Due to the prevalence of affinity bias, the legal profession can best be described as a “mirrortocracy”—not a meritocracy. A genuine meritocracy can never exist until individual lawyers and legal organizations come to terms with unconscious biases through training and focused work to interrupt biases.

How Unconscious Bias Plays Out in the Legal Profession

Traditional diversity efforts have never translated into sustained diversity at all levels. Year after year, legal organizations experience disproportionately higher attrition rates for attorneys in already underrepresented groups—female, racially/ethnically diverse, LGBTQ, and those with disabilities.11 Before 2006 and the first of eight national research studies,12 no one was sure what was causing higher attrition rates for attorneys in these groups. Now the answer is clear: every legal organization has hidden barriers that disproportionately impact and disrupt the career paths of many female, LGBTQ, racially/ethnically diverse, and disabled lawyers.

According to the research studies, critical career-enhancing opportunities are shared unevenly by people in positions of power and influence, often without realizing that certain groups are disproportionately excluded. Hard work and technical skill are the foundation of career progress, but without some access to these opportunities, attorneys are less likely to advance in their organizations. Specifically, female, LGBTQ, disabled, and racially/ethnically diverse attorneys have disproportionately less access to the following:

- networking opportunities—informal and formal
- insider information
- decision-makers
- mentors and sponsors
- meaningful work assignments
- candid and frequent feedback
- social integration
The studies all point to bias as the major cause of these hidden barriers. Certainly, overt discrimination still exists and contributes to this dynamic. But it turns out that a specific kind of unconscious (and thus unintentional) bias plays the biggest role. Affinity bias, which causes people to develop deeper work and trust relationships with those who have similar identities, interests, and backgrounds, is the unseen and unacknowledged culprit. When senior attorneys—the vast majority of whom are white and male—gravitate toward and share opportunities with others who are like themselves, they unintentionally tend to leave out female, LGBTQ, disabled, and racially/ethnically diverse attorneys.

Strategies for Identifying and Interrupting Unconscious Bias

Having unconscious bias does not make us bad people; it is part of being human. We have all been exposed to thousands of instances of stereotypes that have become embedded in our unconscious minds. It is a bit unsettling, however, to think that good, well-intentioned people are actually contributing—unwittingly—to the inequities that make the legal profession one of the least diverse. The good news is that once you learn more about cognitive biases and work to disrupt the stereotypes and biased attitudes you harbor on an unconscious level, you can become a better decision-maker and help limit the negative impacts that are keeping our industry from being more diverse and inclusive.

The obvious place to start is with affinity bias; learning and reminding yourself about affinity bias should help you lessen the effect on people in your “out groups.” Affinity bias has been well-documented in major league sports. A series of research studies analyzing foul calls in NBA games demonstrates the powerful impact of simply being aware of affinity bias. In the first of three studies examining data from 13 seasons (1991–2004), researchers discovered that referees called more fouls against players who were not the same race as the referee, and these disparities were large enough to affect the outcomes in some games. Based on a number of studies documenting the existence of “in group” or affinity bias in other realms, the researchers inferred that the differential in called fouls was mostly happening on an unconscious level.

The findings of the first study, released in 2007, were criticized by the NBA, resulting in extensive media coverage. The researchers subsequently conducted two additional studies—one using data from basketball seasons before the media coverage (2003–06) and the other focusing on the seasons after the publicity (2007–10). The results were striking. In the seasons before referees became aware they were calling fouls disparately, the researchers replicated the findings from the initial study. Yet after the widespread publicity, there were no appreciable disparities in foul-calling.

The lesson to be learned from this research is that paying attention to your own affinity bias and auditing your behaviors can help you interrupt and perhaps even eliminate this type of implicit bias. Ask yourself the following questions:

- How did I benefit from affinity bias in my own career? Did someone in my affinity group give me a key opportunity that contributed to my success? Many lawyers insist they “pulled themselves up by their own bootstraps” but upon reflection have to acknowledge they were given key opportunities—especially from mentors and sponsors. Barry Switzer famously highlighted this tendency when he observed that “some people are born on third base and go through life thinking they hit a triple.”

- Who are my usual favorites or “go to” lawyers in the office or practice group?
- With whom am I more inclined to spend discretionary time, go to lunch, and participate in activities outside of work?
- Do I hold back on assigning work to attorneys from underrepresented groups until others vouch for their abilities?
- When I go on client pitches, do I always take the same people?
- Who makes me feel uncomfortable and why?
- Who do I avoid interacting with or giving candid feedback to because I just don’t know how to relate to them or because I’m afraid I’ll make mistakes?
- To whom do I give second chances and the benefit of the doubt (e.g., the people in my “in group”) and who do I judge by group stereotypes and, therefore, fail to give second chances?

It is easy for skeptics to dismiss inequities described by attorneys in underrepresented groups (or even the research studies documenting the disparate impact of hidden barriers) until they are presented with concrete evidence that some people simply have more access to opportunities that play a critical, but mostly unacknowledged, role in any attorney’s success. Thus, when implementing inclusiveness initiatives, it is important to actually count who has access to work-related opportunities, such as going on client pitches or participating in meaningful assignments, to counteract skeptics’ tendency to not believe what they don’t (or won’t) see.

Research scientists are learning more about how implicit biases operate, including methods for uncovering and interrupting them. While it is not yet clear whether implicit biases can be completely eliminated, certain techniques have been shown to lessen bias and disrupt its impact. To rescript your unconscious thoughts and interrupt implicit biases, you have to work your “ABS”: first, develop Awareness of those biases, and then make the Behavior and Structural changes required to disrupt them.

Awareness

If you make conscious negative judgments about groups that are based on stereotypes, you can challenge your thinking by asking yourself why: Why am I bothered by people in that group? Why do I or why should I care about that? Why do I persist in thinking all members of that group engage in that stereotyped behavior? Then actively challenge those beliefs every time they are activated. Overriding stereotypes takes a conscious act of will, whereas the activation of stereotypes does not, because they are often embedded in your unconscious mind.

Two easy ways to develop awareness of your unconscious biases are:

1. Keep track of your surprises (i.e., instances when something you expected turned out to be quite different). Those surprises offer a window into your unconscious. For example, when you pass a slow-moving car impeding the flow of traffic, do you expect to see a very elderly driver behind the wheel? When you see that the driver is actually younger, does that surprise you? You may truly believe you are not consciously
biased against the elderly, but you reflexively presumed that the slower driver was elderly. That is a product of unconscious bias. How could that attitude influence decision-making in other areas, such as in interactions with more senior colleagues, witnesses, jurors, or clients?

2. Take a free, anonymous implicit association test (IAT) online at implicit.harvard.edu/implicit/selectatest.html. This series of tests, sponsored by Harvard University and taken by millions of people since the late 1990s, can reveal areas where you unknowingly harbor unconscious biases. There are over a dozen different tests, measuring unconscious bias with respect to disability, race, age, gender, gender roles, mental health, weight, sexual orientation, religion, and more. The tests measure how quickly or slowly you associate positive or negative words with different concepts. Your unconscious, immediate assumptions reveal themselves in the delayed responses measured by the computer when you struggle to connect words and concepts that are not as readily associated. You might not like, or be in denial with respect to, some of the test results, but they can be useful in revealing often uncomfortable truths about what your unconscious mind is up to.

While awareness is necessary, it is not sufficient, by itself, to interrupt unconscious bias. Behavior changes are also essential.

**Behavior Changes**

Like correcting a bad habit, you can retrain yourself to think in less biased and stereotyped ways. Motivation is key; research shows that people who seek to be fair and unbiased are more likely to be successful in purging their biases. Researchers have identified strategies people can use to change their behaviors to overcome bias. They include the following:

**Retrain your brain.** “The ‘holy grail’ of overcoming implicit bias is to change the underlying associations that form the basis of implicit bias.” To do so, you need to develop the ability to be self-observant. Pay attention to your thinking, assumptions, and behaviors and then acknowledge, dissect, and alter automatic responses to break the underlying associations.

**Actively doubt your objectivity.** Take the time to review your decisions (especially those related to people and their careers) and search for indicia of bias; audit your decisions to ensure they don’t disparately impact people in other groups. Pause before you make a final decision. Question your assumptions and first impressions. Ask others for feedback to check your thought processes. Ask yourself if your decision would be different if it involved a person from a different social identity group. Finally, justify your decision by writing down the reasons for it. This will promote accountability, which can help make unconscious attitudes more visible.

**Be mindful of snap judgments.** Take notice every time you jump to conclusions about a person belonging to a different social identity group (like the slow driver). Have a conversation with yourself about why you are making judgments or resorting to stereotypes. Then resolve to change your attitudes.

**Oppose your stereotyped thinking.** One of the best techniques seems odd but has been shown to have a lasting effect: think of a stereotype and say the word “no” and then think of a counter-stereotype and say “yes.” People who do this have greater long-term success in interrupting their unconscious bias with respect to that stereotype. To decrease your implicit biases, you might also want to limit your exposure to stereotyped images; for instance, consider changing the channel if the TV show or song features stereotypes.

**Deliberately expose yourself to counter-stereotypical models and images.** For example, if it is easier for you to think of leaders as male, study successful female leaders to retrain your unconscious to make the connection between leaders and both women and men. Research has shown that simply viewing photos of women leaders helps reduce implicit gender bias. Even the Harvard professor who invented the IAT—Dr. Mahzarin Banaji—has acknowledged she has some gender bias. To interrupt it, she put rotating photographs on her computer screensaver that are counter-stereotypical, including one depicting a female construction worker feeding her baby during a work break.

**Look for counter-stereotypes.** Similarly, pay more attention and be more consciously aware of individuals in counter-stereotypic roles (e.g., male nurses, female airline pilots, athletes with disabilities, and stay-at-home dads).

**Remind yourself that you have unconscious bias.** Research shows that people who think they are unbiased are actually more biased than those who acknowledge they have biases. There is a Skill Pill mobile app on managing unconscious bias available for enterprise usage (skillpill.com). If you play this short app before engaging in hiring, evaluation, and promotion decisions, it could help you interrupt any unconscious biases. But you don’t need an app to prompt yourself to be mindful of implicit bias and its impact. You could create a one-page reminder sheet that accompanies every evaluation form or candidate’s résumé, for instance.

**Engage in mindfulness exercises on a regular basis,** or at least before participating in an activity that might trigger stereotypes (e.g., interviewing a job candidate). Research shows that mindfulness breaks the link between past experience and impulsive responses, which can reduce implicit bias.

**Engage in cross-difference relationships.** Cultivate work relationships (or personal relationships outside of work) that involve people with different social identities. This forces you out of your comfort zone and allows your unconscious to become more comfortable with people who are different. Those new relationships will also force you to dismantle stereotypes and create new types of thinking—both conscious and unconscious. So find ways to mentor junior colleagues who are different from you in one or more dimensions (gender, race, age, religion, parental status, etc.), and ask them how they view things. This will open you up to new ways of perceiving and thinking.

**Mix it up.** Actively seek out cultural and social situations that are challenging for you—where you are in the distinct minority or are forced to see or do things differently. For example, go to a play put on by PHAMILY (an acting troupe of people with mental and physical disabilities) or attend a cultural celebration that involves customs and people you have never been exposed to. The more uncomfortable you are in these situations, the more you will grow and learn.

**Shift perspectives.** Walk in others’ shoes; look through their lenses to see how they view and experience the world. Join a group that is different (e.g., be the male ally in the women’s affinity group). This will help you develop empathy and see people as individuals instead of lumping them into a group and applying stereotypes. And if you’re really serious about reducing implicit racial bias, research shows that picturing yourself as having a different race results in lower scores on the race IAT.
Find commonalities. It is also useful to look for and find commonalities with colleagues who have different social identities from yourself. Do they have pets? Are their children attending the same school as your children? Do they also like to cook, golf, or volunteer in the community? You will be surprised to discover how many things you have in common. Research shows that when you deliberately seek out areas of commonality with others, you will behave differently toward them and exhibit less implicit bias.

Reduce stress, fatigue, cognitive overload, and time crunches. We are all more prone to revert to unconscious bias when we are stressed, fatigued, or under severe cognitive load or time constraints. Relax and slow down decision-making so that your conscious mind drives your behavior with respect to all people and groups.

Give up being color/gender/age blind. Don’t buy into the popular notion that you should be blind to differences; it is impossible and backfires anyway. Your unconscious mind sees and reacts to visible differences, even if you consciously believe you don’t. Research demonstrates that believing you are blind to people’s differences actually makes you more biased. The better course is to acknowledge these differences and work to ensure they aren’t impairing your decision-making—consciously or unconsciously.

The world has changed. In the 20th century, we were taught to avoid differences and there was an emphasis on assimilation (the “melting pot”). In the 21st century, we know that being “difference-seeking” and inclusive actually causes people to work harder cognitively, which leads to better organizational performance and a healthier bottom line. Today’s mantra should be: “I need your differences to be a better thinker and decision-maker, and you need mine too.”

Awareness of implicit bias is not enough. Self-monitoring is also insufficient. Individual behavior changes often have to be supported and encouraged by structural changes to have the greatest impact on interrupting implicit biases.

Structural Changes
Highly skilled, inclusive leaders make concerted efforts to ensure that hidden barriers are not thriving on their watch. Because bias flourishes in unstructured, subjective practices, leaders should put structured, objective practices and procedures in place to help people interrupt their unconscious biases. Just knowing there is accountability and that you could be called on to justify your decisions with respect to others can decrease the influence of implicit bias. Leaders, in conjunction with a diversity and inclusiveness (D+I) committee, can examine all systems, structures, procedures, and policies for hidden structural inequities and design action plans to make structural components inclusive of everyone. Structural changes should be designed to address the hidden barriers first, because research shows that these are the most common impediments.

To make the invisible visible with respect to mentorship and sponsorship, one firm simply added the following question to its partners’ end-of-year evaluation form: “Who are you sponsoring?”
This simple but profoundly illuminating question allowed firm leaders determine who was falling through the cracks. The firm then created a D+I Action Plan with a focus on mentorship and sponsorship. The firm is currently implementing a “Culture of Mentorship” to ensure that all attorneys receive equitable development opportunities so they can do their best work for the firm. After all, a business model where some attorneys are cultivated and others are not makes no sense; the organization could accomplish so much more if every one of its human capital assets operated at the highest level possible. Imagine the enhancement to the bottom line for organizations that are inclusive and have eliminated hidden barriers to success for everyone.

There are dozens of structural changes that can be made, ranging from small to large. But the structural change with the most potential for lasting change is a D+I competencies framework. Recently, a two-year study of more than 450 companies by Deloitte determined that the talent management practices that predicted the highest performing companies all centered on inclusiveness. Many companies that have instituted D+I competencies and hold employees accountable for inclusive behaviors in their job duties and responsibilities are making real progress with respect to diversity. For example, at Sodexo, implementation of D+I competencies has resulted in “double digit growth in representation of women and minorities.”

This type of framework is critical in any legal organization. Many people would do more with respect to inclusiveness if they just knew what to do. Competencies define behaviors along an easily understandable scale—are you unskilled, skilled, or highly skilled in inclusiveness (and, therefore, contributing to the organization’s success in more meaningful ways)? This key component was lacking in the legal industry, so I wrote and published a book in 2015: Going All In on Diversity and Inclusion: The Law Firm Leader’s Playbook. This book contains individual and organizational competencies frameworks, as well as the tools and strategies law firm leaders need to address the hidden barriers, identify the unconscious biases that allow those barriers to thrive, and make genuine progress on diversity and inclusion.

Examples of Bias-Breaking Activities: Stories from the Front Lines

Implementing the de-biasing strategies outlined above is not a “one and done” proposition. It is an ongoing process and must become second-nature to be most effective. Once you start implementing these strategies, the lessons learned will be impactful.

I teach a class at the University of Denver Sturm College of Law on “Advancing Diversity and Inclusion,” which includes a session on unconscious biases. As part of their learning experience, I ask my students to engage in some of the activities outlined above and write short essays on what they discovered or learned. They have had some eye-opening experiences that will help them interrupt their own implicit biases and make them better decision-makers as practicing lawyers.

For instance, one student who is not very religious visited a local mosque to learn more about Muslim people and their faith. The student attended a presentation on Islam during an open house and observed the members during prayer. His experience gave him more familiarity and comfort with a group of people that is currently widely disparaged and stereotyped.

After taking an IAT that revealed an unconscious bias against older people and consciously acknowledging he avoids his older colleagues at work, another student decided to confront this tendency by finding commonalities with them. Specifically, the student knew that he shared an interest in gardening with an older colleague with whom he would be working on an upcoming project. So he deliberately struck up a conversation with this coworker about gardening and found it was then easier to work with him on the project.

Another student decided to consciously observe his reflexive thought processes by noticing what he was thinking or how he reacted to different people and then opposing any stereotyped thoughts. While attending a basketball game, he saw a black man dressed in medical scrubs enter the gym. Immediately, the student observed that he was trying to figure out what the man did for a living. The student noticed that he assumed the man worked as an x-ray technician or medical assistant. At that point, he realized that the man’s race and gender might be triggering these assumptions and the student then visualized the man as a nurse, a home health aid worker, or a physician. This student wrote that the exercise made him aware of how often he jumps to conclusions about others based on visible cues and makes assumptions that might be completely wrong.

A female student decided to doubt her own objectivity with respect to how she viewed the support staff at her company. She believes she’s a gender champion but was surprised to realize that she really doesn’t view the support staff (mostly women) as favor-
ably as the sales staff (mostly men). She decided to picture women in sales positions and men in support positions to try to retrain her unconscious mind and the assumptions she was used to making.

Another student, who is white and grew up in an all-white community, chose to observe the “Black Lives Matter” demonstration and participate in the Martin Luther King Day Parade. She also later attended a Sunday service at an all-black church and wrote this about the experience:

Overall it was a good experience because I think being uncomfortable can be good for a person. Looking back, I really had no reason to be uncomfortable because everyone was very nice and welcoming; my uneasiness was made up in my head based on assumptions I feared people would make about me.

Putting yourself in situations that are uncomfortable and observing your own attitudes, judgments, and behaviors can flip a switch in your brain and help you learn new ways of thinking and interacting with others. The real-world impact of this is illustrated by a story told to me by an in-house attorney who reassessed a biased assumption before it had an impact on someone else’s career. The attorney met with a group of people at her company to discuss staffing a challenging position that would require a lot of travel. The name of a qualified female employee candidate was proposed. The lawyer knew the candidate was a single mother of a toddler and immediately suggested to the group that it might be very difficult for a single mother to handle the extensive travel required. Effectively, this comment removed the woman from consideration. Later, the lawyer attended a workshop on unconscious bias. She realized that she’d made assumptions that might not be true. The lawyer met with the female employee and asked her if she was able to travel for business. The female employee said that travel wasn’t an impediment because she had several family members nearby who could help care for her child while she was out of town. The lawyer immediately went back to the group and explained her mistake, asking that the female employee’s name be included for consideration for the position.

Conclusion

Many attorneys, judges, and other law professionals in the Colorado legal community are pioneers when it comes to diversity and, particularly, inclusion. Ten years ago, with the establishment of the Deans’ Diversity Council, this legal community was the first in the country to focus on the new paradigm of inclusiveness and how it must be added to traditional diversity efforts to make diversity sustainable. The three-part dialogue on unconscious bias featured in The Colorado Lawyer was truly groundbreaking because it addressed challenges not often discussed openly.

The next step is to take action, on an individual and organizational basis, to eliminate hidden barriers and interrupt the unconscious biases that fuel those barriers. It should be deeply concerning to everyone that good, well-meaning people are doing more to foster inequities in the legal workplace—unintentionally and unknowingly—just by investing more in members of their affinity or “in groups” than the harm caused by outright bigotry. This unfortunate dynamic will change only when we come to terms with the fact that we all have biases—conscious and unconscious—and begin to address those biases. Good intentions are not enough; if you are not intentionally including everyone by interrupting bias, you are unintentionally excluding some.

So now, ask yourself, are you up to this challenge?

Notes

1. In a randomized, double-blind study, science faculty rated John, the male applicant for a lab manager position, as significantly more competent than Jennifer, the female candidate, awarding him an average starting salary more than 10% higher and volunteering to mentor him more often than Jennifer, even though she had the exact same credentials and qualifications. The insidious role of unconscious bias was revealed in the finding that the female evaluators were equally as likely as their male colleagues to exhibit bias for John and against Jennifer. Moss-Racusin et al., “Science faculty’s subtle gender biases favor male students,” Proceedings of the National Academy of Sciences (Sept. 2012), www.pnas.org/content/109/41/16474.abstract.


6. Id. at 55.

7. Id. at 20.


10. Id. at 5.


17. “Implicit biases are malleable; therefore, the implicit associations that we have formed can be gradually unlearned and replaced with new mental associations.” Staats et al., supra note 15 (citing Blair, 2002; Blair et al., 2001; Dasgupta, 2013; Dasgupta and Greenwald, 2001; Devine, 1989; Kang, 2009; Kang and Lane, 2010; Roos et al., 2013).
23. Mindfulness helps you be more aware; to identify, tolerate, and reduce unproductive thoughts and feelings; to resist having your attention pulled away from what is happening in the moment; to have some mastery over your thought processes; and to reduce stress. For examples of mindfulness exercises, visit the Living Well website at www.livingwell.org.au/mindfulness-exercises-3. Also recommended is Stanford Professor Shirzad Chamine’s book, Positive Intelligence: Why Only 20% of Teams and Individuals Achieve Their True Potential and How You Can Achieve Yours (Greenleaf Group Book Press, 2012) and website, www.positiveintelligence.com.
28. Gaertner, Reducing Intergroup Bias: The Common In-group Identity Model (Psychology Press, 2000) (When we re-categorize others according to features or characteristics we share, we are more likely to see them as part of us and are less likely to discriminate against them as an out group).