

STATEMENT OF DEAN SPADE, ESQ.

CHAIRMAN WALTON: Mr. Spade. Thank you.

MR. SPADE: Also, I would like to thank you all for inviting me to give testimony on this topic. In my work, I find this to be the most urgent issue that we face, and I'm delighted about the work that you-all are making.

My name is Dean Spade, and I'm the founder of the Sylvia Rivera Law Project. The Sylvia Rivera Law Project has provided free legal services to over 550 transgender, intersex and gender-nonconforming people since we opened our doors in 2002.

I think it's really excellent that we are having this panel directly after the panel that came before, because a lot of what was discussed there were the cultural misunderstandings and mistakes about how women's sexuality is approached and how women are approached as sexually exploitable people. And I think that some of that cultural shift that was talked about in the last panel applies also to this panel, because of the extensive misunderstanding of the transgender/intersex populations that exist and the myths that surround these populations and the violence with which our culture responds to these populations and how that plays out in the corrections setting.

So to begin I would just like to provide a little background about what transgender and intersex

means, because I think that that's often sort of a basis from which we can build our recommendations.

"Transgender" is an umbrella term used to describe a wide range of identities and experiences, including transsexual people and others whose appearance or characteristics are perceived to be gender atypical, people who break the rules of gender. This term includes both those who undergo medical treatment to alter their physical appearance to match their internal gender identity, and those who live as a new gender without any medical treatment.

In fact, although our culture focuses a lot of attention on the medical treatment, especially genital surgeries that some transgender people undergo, the majority of people actually do not undergo these surgeries or procedures because they don't want them, they can't afford them, they're not medically eligible for them, or they're not necessary for them to express their gender identity. That's one of the most central misconceptions which Dr. Long referred to, the notion that transgender people should be defined based on whether or not they've accessed those procedures, when in reality the majority never do.

The most common trans health care that people actually do undergo is hormone therapy to masculinize or feminize the body; although, many

people express their gender without using medical care, relying on hair and clothing style and other methods indicating gender that we're all familiar with because we all engage in them.

The term "transgender" also includes people such as women who are seen as masculine, men who are seen as feminine, and people whose gender expression is not clearly definable as masculine or feminine. All of these people target sort of within the context of our culture that really requires people to be clearly identifiable women or men and follow the rules set out for each gender [sic]. So that's what transgender -- sort of a general definition of transgender.

The term "intersex" is also unfamiliar to a lot of people. People with intersex conditions have bodies that are not easily classifiable as male or female according to current western medical standards about what male and female bodies are supposed to look like or be like. In some instances, intersex is confused with transgender; although, the two are different.

There are a variety of intersex conditions. I won't go into detail about that now, but they can be chromosomal, hormonal or affect the genitals. Intersex conditions are far more common than most people are aware since they are regarded with much secrecy in our culture. For many people, having an intersex condition is a private medical matter they

do not share with others, but can become a significant source of negative attention when they're in a corrections facility or when they're otherwise in state custody and their body is under the supervision of others and under the scrutiny of others.

At SRLP, the organization I founded, our clients face a wide range of discrimination that leads them into incarceration, and I want to just briefly discuss that: Why are transgender people as a population disproportionately incarcerated. Because I think that that gives us clues regarding how we could better accommodate the population and what should change.

A central issue that occurs for transgender people is that many of us lose family support. That's sort of a thing that probably is not that difficult to imagine, because there's still such strong feelings against transgender identity in our culture, such strong misunderstandings, and the majority of our clients, certainly, have lost any family support they might have had had they not been transgender. So that's one sort of notch of your ability to be economically whole going into the world. Many are kicked out of their homes as transgender youth. This also happens, again, in lesbian youth, as you may be aware.

Additionally, after sort of losing family

support, many people face extensive job discrimination. In my experience, most employers still think that it's not illegal to discriminate against transgender people. And there's only six states that have explicit antidiscrimination legislation stating that it is illegal. There's an idea that this is a reasonable reason to get rid of an employee, that this person is a freak. It's not considered by many people under the realm of discrimination. They wouldn't even call it discrimination. They would just say "My customers won't like you," or whatever the case may be, "You're out."

In education discrimination is also very, very common. Youth tend to have such difficulty in schools that they often leave the education system before they get their diploma. They are harassed and bullied not only by students, but also by teachers and administration. They don't have access to the basic things that they need to stay in school.

So we see a lot of people who are economically underprivileged based on having an inability to access the job market on an equal basis and an inability to complete their education due to their gender identity or gender expression.

And then one of the things that we find to -- a huge source of issue -- an issue is that when in need, these are folks who cannot access a social safety net. When you think about it, the social

safety net is defined by sex segregation. Homeless shelters, mental-health group homes, foster-care group homes, drug treatment, housing for youth and adults, all of these are sex-segregation facilities for the most part. And if you are someone who is not easily defined in terms of sex segregation, it's likely that you'll face a lot of risks, which I'll of course get to in a prison context.

So a lot of folks are placed, as Dr. Long said, according to birth gender in these facilities, whether that's a homeless shelter -- New York City still places people in homeless shelters according to birth gender; although, many cities have moved past that, thankfully -- or whether it's foster care and they end up leaving, it's so dangerous, or they choose not to go in. I'd rather be street homeless than be the only woman in a shelter full of 900 men, right? That's a pretty reasonable response that a lot of the folks who come through our doors have.

So people end up street homeless, can't access that move into stable housing, that move into drug treatment, or whatever the case may be. Not to mention that many of those facilities still discriminate. They say we don't take trans. We get that a lot from intake coordinators at facilities. They don't want to deal with trans people. They don't understand how to accommodate them, they say we're not prepared, we can't do it. If everyone is

saying that, then you have nowhere to go.

So a lot of people end up in this sort of disproportionate homelessness, disproportionate poverty, caught up in the criminal justice system. People are engaging in survival crimes to get by. That's a very common story we hear. People engage in sex work to get by or end up dependent on drugs and alcohol due to the discrimination they face and the self-medication they're doing and wind up very highly represented in the criminal justice system.

Once incarcerated, the violence that transgender/intersex prisoners face is very significant, as has already been touched on. One source of this violence is how transgender prisoners are placed in correctional facilities. SRLP has served 77 clients in the last three years from across the country who were incarcerated during the time they were our clients, and 76 of these clients were placed according to their birth gender in the facilities that they were in.

Okay. So the majority who reached out to us for help are transgender women, people who are identified as male at birth and live as women. But then when they are locked up, they are placed in men's facilities. In these facilities, they face extensive sexual violence and assault, both at the hands of inmates and corrections officers. The stories of beatings, unnecessary frisks and strip searches, as Mr. Daley described, that involved

fondling and other violations and rapes pour into our offices.

Perhaps even more disturbing, we have consistently heard from clients at several different facilities about corrections officers facilitating rapes. One of our clients was placed in a cell intentionally to be raped, and the guards who placed her there joked about it openly, and she was raped and abused by this cell mate, who was a convicted sex offender, for over 24 hours until a new guard came on duty, who happened to be more sympathetic and let her out into her old cell. She had to be hospitalized for days due to her extensive injuries.

Other clients have reported that at the facilities in which they are incarcerated, corrections officers run prostitution rings, where all transgender or feminine inmates are forced to participate. There's different systems through which this works, things such as officers being paid to let male inmates into the cell of a transgender woman. One client who contacted us was at a facility where she described that there were 16 or 17 transgender women in the facility and all of them were forced into this system.

According to our clients' reports, corrections officers continually take money and other currency, whatever that is in a given prison, for facilitating sexual acts as to transgender inmates.

When the transgender inmates are raped, they often report receiving no medical attention despite how bad their injuries are. One client told us of being placed in solitary confinement for six months after she was assaulted by corrections officers. I'm going to read a direct quote from a letter that she wrote me:

"When you get beat up real bad and they don't want to take you out to get checked out, they put you in the snake pit. They threw me in the snake pit for six months after beating me up. Six months. They're animals. I got beat up by 12 officers. I'm only 123 pounds."

Our clients also report that attempts to get help, file grievances or hold corrections officers accountable go nowhere. Their claims go uninvestigated or investigations are cursory and result in no change. You'll see a quote in the testimony that -- I included in the testimony I gave you of a client who said that the investigator said something to her like "You deserve it because you dress like that, because you're trying to be a woman."

Our clients report facing severe retaliation for speaking up about their assaults. One of the people on the previous panel mentioned the issue of, in a facility, the relatives of the person who assaulted you retaliating for that person. I have

several clients who are in prisons that are in very small towns, where almost the entire town's population seems to be somehow involved in the prison in that town, and so that everyone's wife and uncle and sister and brother are all in there as well, and so that reporting becomes dangerous at a very high level, because there's such a wide range of people to retaliate.

One client with whom we are pursuing litigation regarding the treatment in a correctional facility right now and the severe rape she faced, faced continuous, sometimes daily, rape by corrections officers and inmates alike. When she reached out to us and began receiving mail from us, she was threatened with death if she continued to pursue litigation. She wrote us a letter telling us we must not contact her by mail no matter what, knowing that the corrections officers read all of her mail, despite the rules against reading legal mail. We could not restore contact with her until she was transferred to a new facility. You can imagine what that's like for advocates, to think this person is being raped and they've asked me not to contact them because that's how much danger they're in.

We hear stories like this every week from our incarcerated clients. Denial of medical care, rape and assault, forced prostitution, retaliation for grievances, fear of showering or eating or

participating in any activities that will bring them into contact with other prisoners or more corrections officers.

My experiences and interactions with these clients have brought a new meaning for me to the term "cruel and unusual punishment."

I'll have to just give one more brief annotive (phonetic) that I think is really significant regarding showering. I had two clients in a prison. One was a person with an intersex condition and the other one was a transgender woman. They were in the same facility. And the person with the intersex condition was being allowed to shower by himself, and the transgender woman was not, so she wasn't showering, as we've heard earlier from the other people. She had not showered the three months or something that she had been in there. And I was very concerned about this, and she contacted me about it, and I spoke to the superintendent over the phone, and I said, you know, I have two clients, and one of them is being allowed to shower and not the other one. They both are likely targets. They both have bodies that other people may have strong reactions to, that have what some people may consider mixed characteristics. The woman in question had large breasts. And the superintendent told me our policy is designed to protect pregnancy. It was very clear that the policy was not designed to prevent rape.

And that kind of thinking really brought me

to a new understanding of the context in which my clients were living. It is vitally important that changes be made immediately. One of the central issues that needs to be addressed is placement. The presumptive placement of transgender prisoners according to birth gender is fundamentally flawed. Others have segregated facilities -- systems, such as homeless-shelter systems, across the country have reconsidered this approach and changed, recognizing that it is essential to have a clear policy regarding placement of transgender people in sex-segregated facilities based on a principle of respecting self-identification and keeping people safe.

I detail other recommendations in my written testimony, but the one I'd like to highlight is this placement issue. I believe that underlying much of the violence, denial of care and other problems that plague transgender and gender -- intersex prisoners is a misunderstanding of our community as mentally ill, fraudulent and fundamentally wrong about who we are. Culture says that transgender people aren't really the gender we say we are.

Medical experts agree that that is not true. That has been established to not be true. But that has not filtered into the culture yet, right? And those cultural assumptions that transgender people are really our birth gender, that transgender women are really gay men, right, or transgender men are

really lesbians who need to be taught a lesson through rape -- these kinds of cultural assumptions are brought into the prison context. They're very, very common still.

One of the -- there's extensive statistics about high levels of violence that transgender people face. Some people call it hate crimes. Very, very high levels. Very high levels of homicides in this population, and that gives you a sense of how the culture views us. And in the prisons, where there's often no written policies at all about transgender inmates, all the guards and the other inmates have to go on are those cultural -- that cultural knowledge. That's all the knowledge in the prison about transgender people, and that -- those are the presumptions that are brought in.

So what we really need, as has been mentioned by the other panelists here, is that clear training and policy. And the last one I also want to mention is who is a worthy victim. And because transgender people have no policies written about them in many contexts or such inadequate ones that aren't filtered down and no training to make them real, they're not considered worthy victims in the prison. They're considered people who deserve to be sexually assaulted, deserve to be beaten, if you don't want to have that happen to you, why do you look different, why do you act different, why don't you stop being that way.

So I recommend, along with my colleagues here, that we really have clear training and policies about placement that are really thoughtful and developed in a really careful way, that are not based on a mistaken cultural assumption that transgender people are not who we understand ourselves to be.

And I thank you all for the opportunity to share this with you.

CHAIRMAN WALTON: Thank you very much.