

STATEMENT OF JODY MARKSAMER, ESQ.

CHAIRMAN WALTON: Mr. Marksamer, we've got a time problem, but we want to hear from you.

MR. MARKSAMER: I'm going to be brief.

Just to start with, I'd like for you to -- through my written testimony, to get a better understanding of more of the concerns that I have and the issues that exist for lesbian, gay and bisexual adult inmates. And a lot of these concerns are similar to the testimony that I had discussed earlier for the LGBT youth.

And I also would like to acknowledge that the testimony that Mr. Spade and Mr. Daley, as well as Dr. Long, provided today concerning transgender inmates and their recommendations are also recommendations that I support, though I'm here specifically to address concerns for lesbian and gay and bisexual people.

Well, I want to begin with explaining kind of the cultural piece that, I think, adds to the sexual victimization of the lesbian/gay/bisexual people. And I'm using the term "bisexual" also, even though that's not a term that was included in this panel, because there are a lot of people who don't identify as either lesbian or gay, but do identify as bisexual and either are perceived as gay or lesbian or also are perceived as bisexual that are also sexually victimized at a similar level that both gay

and lesbian people are too. So I think it's important to include that term under this discussion.

Many people mistakenly believe that prison rape is committed by people they call predatory homosexuals. And this term is often used in court decisions, in the media and society in general, and, in fact, however, gay men in prisons are way more likely to be victims of sexual assault and rape than they are to be predators of this sexual violence.

In prison settings it is common for men who never would have engaged in sexual contact with other men to actually develop nonconsensual sexual relationships with men while they're incarcerated. These relationships are also -- may be considered or called by people who do studies about prison sexual assault, they may call this a homosexual rape, when, actually, that -- I think that term in and of itself really puts the idea into individuals' heads that the perpetrator is somebody who identifies himself as homosexual, when, actually, that's not how they see themselves. But it really should be considered a rape that is committed by a man against another man as opposed to a homosexual rape.

And these sorts of relationships or sexual violence, they're not just about sex. They're actually way more about submission between one aggressor and another person who is seen as a submissive person. Often the victims are given

women's names, which are both perpetrated by other inmates as well as the -- the correctional staff and guards. They're -- these victims are often forced into submissive, stereotypically feminine roles within the prison or they're required to do cleaning and other sorts of activities like that for the person that is their abuse perpetrator.

And these perpetrators are not -- are seen as dominant, well-respected members of this prison hierarchy. They're not looked at as homosexuals or individuals that -- that they themselves would then be available for any sort of sexual assault.

And in this context, gay and bisexual men are highly overrepresented as victims of these sexual crimes, and prisoners with feminine mannerisms are particularly targeted rather than transgender women or gay men who have feminine traits.

One study, for example, found that 41 percent of gay and bisexual men were sexually assaulted in prisons as opposed to 9 percent of heterosexual men. There has been very few studies that have addressed the sexual orientation of the victims of sexual assault and either -- either the individual's sexual orientation or the perceived orientation by the perpetrator.

Prisoners who are gay or who are perceived as gay may be raped or sexually harassed as a way to initiate them into these particular roles, even just to get them into the prison context and establish who

has the power and who does not. Often this takes a form of a rape.

Male prisoners who are gay or bisexual may also be subjected to sexual violence through malicious and discriminatory treatment by guards. Guards who hate or disapprove of gay people have conspired with prisoners regularly to have gay inmates beaten up or to allow other inmates to rape them. Guards have also placed gay inmates in cells with known sexual predators, just as Mr. Spade had mentioned was a common thing that happened to transgender women, and they've also opened cells to gay inmates in order to facilitate the assaults.

According to Human Rights Watch, actual or perceived sexual orientation is one of four categories that make the female prisoner a more likely target for sexual abuse, as well as a target for retaliation when she reports that abuse.

Another study completed by Dr. Struckman-Johnson found that a quarter of female inmates who were raped in three Midwestern prisons were bisexual or lesbian. That's highly disproportionate to the number of bisexual and lesbian inmates that are likely to be in that facility, and I also think that that is a low percentage.

Lesbian and bisexual inmates also may be placed in administrative segregation or placed in

cells with men if they refuse to have sex with guards, and this is -- the story that Dr. Long had mentioned earlier I think is only one -- concerning the lesbian woman placed in segregation in a male facility, I think this is only one example of something that happens on a more regular basis than that.

Alleviating sexual violence against gay, lesbian and bisexual prisoners would require more than just addressing the general factors that will lead to vastly improved sleeping conditions for all inmates, though concerns of overcrowding and many of the other issues that I'm sure have been addressed in this hearing, as well as in the prior hearing, would also make gay and lesbian/bisexual prisoners safer.

But there are also specific changes in -- that are unique that need to be addressed for lesbian/gay/bisexual prisoners. These changes include addressing the current homophobic prison culture, and that includes changing the perspective that lesbian/gay/bisexual, transgender prisoners are sexual predators and replacing it with the understanding that most often they are sexually victimized and in need of protection. This can be accomplished through mandatory training for prison staff to increase awareness of LGBT prisoner needs, including the necessary precautions that are needed in order to increase their safety.

Clear written policies and some guidelines

appropriately addressing safety concerns of LGBT prisoners are also necessary, and I think, as I mentioned earlier in the juvenile context, the idea that verbal harassment and physical violence against lesbian and gay people in prison settings cannot be allowed to continue if we want to challenge the high incidence of sexual abuse and rape against these prisoners, because that sort of behavior makes prisoners available to further sexual abuse.

In addition, prison staff should be prohibited from placing LGBT inmates with violent or sexually aggressive inmates. This cannot be okay to be seen as a treatment that occurs for inmates who have violated a rule in the facility or something along those lines.

And there also needs to be effective policies that allow LGBT inmates access to protective segregation when they need it, because this is a -- I've heard very often that an inmate is not provided that necessary protection even when they asked for it, which in and of itself is not something that prisoners will ask for because of all the different sorts of things that come along with that, but when there is a huge need for it, that may be a place that prisoners will go to. And if a prisoner is asking for this, especially in a lesbian/gay/bisexual prisoner, there needs to be a way they can access this type of protection.

Finally, prisons should establish programs that are dedicated to prison-rape prevention, which include an orientation for incoming prisoners on preventing rape and sexual assault, as well as counseling programs for both victims and perpetrators of prison sexual harassment, assault and rape. Such programs must specifically include specific components to protect prisoners who are or are perceived to be LGBT.

Again, I want to thank you for the opportunity to speak today on these really important issues and for you addressing them in this Commission, and I look forward to reading the recommendations of the Commission.

Thank you.

CHAIRMAN WALTON: Thank you very much.