
TRANSCRIPTS

PANEL ONE: THE IDENTITY VICTIM*

BOAZ GREEN, SYMPOSIUM EDITOR: On behalf of the *Georgetown Journal of Gender and the Law*, I would like to welcome you to the eighth annual symposium. The *Gender Journal* actually started from a symposium and the symposium has always been the central part of the *Journal's* mission. The *Journal* is a feminist law journal which also seeks to look at the connection between gender, race, and class in dealing with both practical issues that practitioners deal with and also scholarly issues. We publish the Annual Review of Gender and Sexuality Law, which is written by students and is the first annual review of issues pertaining to gender that is mostly geared towards practitioners and people who want to start off their research. Our general issue is more scholarly, and I think this symposium brings the two together very nicely, by bringing both scholars and practitioners together to generate a discussion and bring change in the areas they talk about. This year's symposium is entitled *Sex, Gender and Crime*, and the reason we chose this for our symposium issue was partly because of all the discussion that has been in the news, and various other arenas, concerning same-sex marriage. It was very tempting to focus solely on same-sex marriage, but we also felt that in some ways the whole discussion of same-sex marriage put a lot of other GLBT community issues in the shadows. It seems too soon to focus our struggle on getting same-sex relationships recognized, when a lot of people in these communities still face serious threats of crime and criminalization. Through this symposium we are hoping to shed light on other issues that seem to have been pushed aside in the recent year, year and a half.

I would like to introduce Professor Patterson, our moderator for The Identity Victim panel, who will then introduce our other speakers who were gracious enough to come. Professor Patterson is on the faculty advisory board for the *Gender Journal* and has been one of the most supportive faculty members for the *Journal*. She has been a moderator in other symposia and has always been available for us to talk to her about issues the *Journal* is facing. I spoke with her often last year while trying to figure out what we were going to do for this symposium and we are very happy to have her here as the moderator for this discussion. Professor Patterson has been at the Law Center for 25 years. She joined in 1980 after serving as chair of the D.C. Public Services Utilities Commission and now teaches Conflicts of Laws, Contracts, Race and American Law, and Commercial Law Sales and Transactions. She has served as Associate

* Eighth Annual Symposium, *Sex, Gender and Crime: The Politics of the State as Protector and Punisher* (Georgetown University Law Center, Mar. 17, 2005). All footnotes have been inserted by the editors of the *Georgetown Journal of Gender and the Law*.

Dean for the J.D. and Graduate programs, which has included supervision of academic programs, curriculum development and full-time and adjunct faculty. She has also received the Frank F. Flegal teaching award and has twice received the Law Center's faculty of the year award. She worked at the law firm of Hogan & Hartson before joining the Law School and clerked for the Honorable Ruggero J. Aldisert of the U.S. Court of Appeals for the Third Circuit. She has been, as I said, very helpful to the Journal and just so we can get going and have a more interesting conversation I'll turn it over to Professor Patterson.

PROFESSOR ELIZABETH PATTERSON: Thank you Boaz. I'm very pleased to be here and to moderate this very exciting panel with these very committed panelists. As I prepared to come here today I opened up the *Washington Post* this morning and, as many of you did I'm sure, found on the first page of the Metro section an article that detailed the killing of Wanda Alston who is the director of the D.C. office of GLBT affairs, murdered yesterday in front of her home, a strong leader in the D.C. community who was preparing for the mayor's first GLBT summit that is to take place on April 30 here in Washington.¹ Now we don't know the reason why she was killed but it seems to me it's just as disquieting that it is just as likely she was killed because of who she is and what she does, as anything else. That article reminded me of a series of articles several months ago that ran in the *Post* that focused on poor black, gay and lesbian teens and the risks to their safety and their enormous courage in just being who they are.² Our panel topic today, The Identity Victim, focuses upon the impact of crime that is motivated by a victim's sexual orientation, gender expression and/or sexual behavior and the impact of such crimes on the victim and the victim's community. These are crimes against people for being who they are and daring to insist upon the right to live full and free lives. This is the worst kind of violence that proceeds from a belief that one can harass, maim, and even kill people just for who they are.

Now I'm wearing a green bracelet today, and it's not because it's St. Patrick's Day, it's because I am participating in a student-organized Georgetown campaign to save Darfur in western Sudan and stop the genocide there—the systematic harassment and maiming and killing of people for who they are. You might ask, why do I raise that issue here? My wonderful colleague Mari Matsuda urges us to always ask the other question: where we see sexism, ask: where is the racism? Where we see homophobia, ask: where is the patriarchy?³ The thread that runs

1. Allan Lengel & Clarence Williams, *Williams Cabinet Member is Slain: Gay Affairs Director Found Dead at Home*, WASH. POST, Mar. 17, 2005, at B1.

2. Anne Hull, *Young and Gay in Real America: In the Bible Belt, Acceptance is Hard-Won*, WASH. POST, Sept. 26, 2004, at A1; Anne Hull, *Young and Gay in Real America: A Slow Journey from Isolation*, WASH. POST, Sept. 27, 2004, at A1; Anne Hull, *Young and Gay in Real America: Braving the Streets Her Way*, WASH. POST, Oct. 3, 2004, at A1; Anne Hull, *Young and Gay in Real America: Using Her Voice to Rise Above*, WASH. POST, Oct. 4, 2004, at A1.

3. Mari Matsuda, *Beside My Sister, Facing the Enemy: Legal Theory Out of Coalition*, 43 STAN. L. REV. 1183, 1189 (1991).

clearly from this afternoon's topic to Darfur is hatred, pure and simple, ignorance and intolerance. So let me turn to the panelists, and I will introduce them as they will come to speak to you in turn.

Our first panelist this afternoon is Mr. Basil Lucas who is the coordinator of the hate crimes and police relations programs at the New York Gay and Lesbian Anti-Violence Project. He received his undergraduate degree from Rutgers in New Jersey in 1990, he has been in the field of social work for over ten years. He is currently an MSW, that is, a Master in Social Work candidate, at Hunter College School of Social Work. He has lived and worked in New York City for the past ten years and is a tireless advocate for the lesbian and gay community. He has been very outspoken on issues pertaining to the civil rights of this community and hopes to continue his work to ensure safety, respect and equal access under the law. Mr. Lucas.

BASIL LUCAS: Good afternoon folks, ladies and gentlemen, students and other faculty members who may be here. My name once again is Basil Lucas, and I am the coordinator of the hate crimes and police relations program at the New York City Gay and Lesbian Anti-Violence Project.⁴ I first would like to say thank you to the *Georgetown Journal of Gender and the Law* for inviting me and my colleagues here today to speak with you. I think what we have to say is very important and very timely.

Just to give you a brief background of AVP, we began 25 years ago as volunteer organization. In those days lesbian and gay, and I'll say LGBT—the acronym we are going to use today—that community, our community was not receiving the type of police support that you could expect in New York City for any other crime. This led to the creation of what we call a vigilante kind of group—individuals would send out a decoy in the areas where lots of attacks had been taking place, and when the decoy victim was attacked, the group would jump out of a car, attack the attacker, get back in the car and leave—because at that point a gay man could not go to the police and report that he was being attacked as a victim of a hate crime. This went on for a few months, and then the neighborhood folks began talking to police and saying that gay men were attacking *them*. And thus began the dialogue which opened the doors for the incorporation of AVP. Today we have a staff of twenty-four and still a large cadre of volunteers who still support a great deal of our work. So in addition to the direct services we provide to victims, AVP seeks to change the attitudes that tolerate or instigate hate or motivate violence through public education campaigns, by working with other organizations serving other communities victimized by hate motivated crimes, and by organizing our community in our response to anti LGBT violence.

So what is a hate crime? Now in New York City we use the same working definition as the NYPD does and that definition is as follows: a hate crime is any

4. See generally AVP: The New York City Gay & Lesbian Anti-Violence Project, <http://www.avp.org/> (last visited Feb. 24, 2006).

crime committed in whole or in part based solely on the perception of the attacker. Again, a working definition for us. So how do we know when something is a hate crime? And that could be very debatable, but this is how we look at some of the things we see. I'll give you two case examples. There was a young man who was dating a transgender woman in upstate New York. When his friends found out he was dating this woman they attacked him. He was brutally assaulted, he was strangled, he was burned, he was stabbed and his dead body was thrown into a garbage dumpster. There was also evidence that he was sodomized with a broom stick.

Here is another example. A couple was walking down the street and were passing a local religious cult gathered at the corner. In New York we have a group of folks who will stand at corners and spout all kinds of religious and anti-gay rhetoric. They saw this couple coming along and that is what they began to do. They began to verbally harass the woman—one of the members of the cult spat on her, tripped her, and she fell. This couple happened to be heterosexual. They were male and female. They dressed similarly, they had the same kind of body types, and they are often mistaken for a gay, male couple. So looking at these two examples—the folks walking down the street and a young man dating his transgender girlfriend—who they represented to their attackers is solely what caused, in my opinion, these crimes to happen. So this is how you have to look at the possibility of something being a hate crime.

There are certain earmarks that may also indicate a hate crime is taking place. These may include the overkill factor. When you see gunshot, mutilation, you know horrible, horrible overkill as you would call it, you begin to wonder: is this a hate crime given the fact of the weapons used in those kinds of crimes? You see blunt trauma very often, mutilation when the body is already dead, you see extra things done to the body to even further humiliate the victim. We often see attackers outnumbering their victims, sometimes even 10 to 1—one person is the victim you have ten folks with weapons attacking them. These are some of the things that you look at that maybe make you think this might be a hate crime.

Where a crime takes place is also a possible indicator for such. In New York we have the West Village and we have Chelsea—the two Meccas, I would say, for the gay community—and oftentimes in the summer, especially around June when Pride Month takes place, we have a high spike in incidents of hate. We also have a new gay high school in New York City and that has been a target of many, many incidents over the last year and a half.

So when a hate crime happens to someone, we know for a fact that any victim of a crime will have certain reactions both psychological and physical. In our community we often see that people may even change the way they dress, or they may stop going to their comfort zones, places they would normally hang out. People may take their bumper stickers off their cars, grow their hair out, hit the gym, all of these things which may seem very benign in general are sometimes the things we end up doing just to not be the obvious target.

And even if one is not the direct victim of a hate crime, when a hate crime happens it sends a clear message to the entire community that you are in danger, you are not wanted, you have to be on your guard. So everyone is affected when a hate crime happens. Even, as Professor Patterson just mentioned, the case here in D.C., I think of myself, the work that I do, and what could happen to me if by some strange, remote reason someone chooses to look at me and target me for the work that I do. It can happen; it does happen.

Also in today's political and social climate, and despite the recent success of *Lawrence v. Texas* and the marriage rights in Vermont, there has been regular and vehement anti-LGBT rhetoric, including the move, for the first time, to establish a constitutional amendment to confer secondary citizenship status to a specific group of folks—meaning the gay and lesbian community. And even after that decision in 2003, in *Lawrence v. Texas*, we at AVP saw a forty-three percent increase in anti-LGBT violence. At the same time NYPD saw an eighty-two percent increase in their numbers, and that was the first time in our twenty-five years of existence that their numbers were higher than ours, the very first time (we have always had to struggle with correlation between what they're seeing and what we're seeing). And nationally, The National Coalition of Anti-Violence Project, saw a twenty-four percent increase nationwide. What was startling was that in Chicago their numbers jumped 120 percent. That sticks in my mind. So whenever we have success, there is often a great backlash.

So why is it important to report a hate crime if you think you are a victim of one? We certainly can document the severity of these crimes and the level of the crime. We're able to lobby our politicians and seek support from our legislators. We can garner the necessary protection. On an individual level, it can deter future victimization because if someone considers committing a hate crime, but sees that there is an enhanced penalty, they may think twice before they act as such. They are held accountable for their behavior, and they are told that hate crimes are not acceptable in any way in our society. Also, it's very important, if you know someone who is a hate crime victim, that they make a police report, because oftentimes in our country, folks don't have money when a hate crime happens, and injuries are so extensive, so egregious that they may not be able to afford seeking medical attention. If they do nothing else, they should report a hate crime just to get state compensation or assistance. Most states have a crime victims board, or an equivalent, and that is something we tell our victims about whenever they come in.

I brought a lot of pamphlets with me today, so I'll close at this time and certainly take questions when the time is right, and I thank you for allowing me speak to you and I hope it was very informative.

PATTERSON: Thank you very much. And we will have time for questions. Although after each of the panelists has spoken I am first going to open the floor for the panelists to either ask each other questions or comment on each other's presentations, and then we'll open it up to the audience.

Our second speaker is Dr. Penelope Saunders who is the executive director of Different Avenues, a grass roots service provider and model HIV prevention project for people engaging in informal sexual exchange in Washington, D.C. She has designed programs and carried out research in Australia, the United States and Latin America, with a special focus on sex workers and youth. She was a Rockefeller Research Fellow at the Program for Study of Sexuality, Gender, Health and Human Rights in 1999. She has been an advocate in international debates about trafficking in women at the U.N. Crimes Commission and continues to attend U.N. meetings such as the Committee on the Status of Women in New York. Dr. Saunders.

PENELOPE SAUNDERS: Since this panel is dedicated to discussing crimes that are committed against people because of their perceived sexual behavior, their actual sexual behavior, or their sexual orientation, I would like to tell you a little bit more about the people who we work with. Firstly, I wear two different hats. I am the executive director of Different Avenues, as has just been described.⁵ I'm also the secretary of the board of directors of the Network of Sex Work Projects, that's the global group that exists to defend the health and human rights of sex workers worldwide.⁶ The constituents of the NSWP—that is, the people who the network advocates for and its membership—are fairly easy to define. They are sex workers. That means people who on a pretty regular basis exchange sex for money or for other things that they need. They usually recognize this as their profession or their work in some way. Members of the NSWP are male, female and transgendered. They can be found working in brothels, red light zones, massage parlors, the street and online. In fact anywhere that sex work exists around the world you will likely find members of the NSWP as well.

On the other hand in my role as the head of a local service provider, Different Avenues, I work with the issue of sexual exchange using another approach. That is, a non-identity based approach or perhaps better said an approach that does not impose identities on people who come to us for assistance. Let me explain what that means in practice and why we would find this useful. Many people who engage in sexual exchange do not identify as sex workers or prostitutes for a number of reasons. They may engage in very informal exchanges or exchange sex very occasionally and they may feel that this has nothing to do with how they perceive themselves or how they are viewed by society. They may not wish to discuss their engagement in this activity because of stigma. Or culturally it may be that certain forms of sexual behavior are not viewed as sex work, that identity does not accrue to you because you have received money for sex. We see this non-identity approach as complementary to the work of other sex work projects that engage with more recognized groups of sex workers. In fact, when preparing

5. See generally Different Avenues, <http://www.differentavenues.org/> (last visited Feb. 24, 2006).

6. See generally Network of Sex Work Projects, <http://www.nswp.org/> (last visited Feb. 24, 2006). In 2005 NSWP management shifted to a 'core group' structure.

my comments for this presentation I had a long conversation with Gigi Thomas who is the client advocate from another local D.C. organization called HIPS, that works with sex workers very much about their identity of sex workers.⁷ Different Avenues' approach is a way of reaching more people, or simply other kinds of people—reaching those people who would be turned off if they saw a sign on the door saying “sex workers support group here tonight.” Or even “sex worker empowerment happens here.” Even though we have this different approach, that's not explicitly about an identity, we are concerned about advocacy—to change how society treats people based on identity—but once again we do this in a different way. We hope that people find Different Avenues to be a place where they can organize about issues of concern to them, from identities that they create, or maybe by challenging society's understanding of what identities can be. They create new structures to advocate from. They don't have to work from categories imposed on them. I don't have time to tell you everything about our services that we provide at Different Avenues. I'll just say a couple of things.

We have run very intensive forms of street outreach work in the past—in the southeast and northeast—reaching young men who have sex with men, engaging in informal sexual exchanges, and with trans-gendered people. Now we are focused on venue outreach work, certain bars and clubs, hotels such as tourist homes, or trick houses where sexual exchange occurs indoors. It's important to say that the people encountered by Different Avenues are frequently engaged in things that are considered illegal—soliciting, drug use, or selling drugs.

In order to illustrate how the people we work with are affected by crime motivated by the victim's sexual behavior, I want to tell you two different types of narratives about the issue. One of the cases concerns a woman experiencing a horribly violent rape. This is drawn from an interview I did with a client of our services. The other narrative comes from program observations collected by the Different Avenues outreach team and speaks to a very different experience about groups of women in quite a different way. On to the first example—a woman who was working in prostitution, but I must say a very informal form of prostitution in a lesser known area for soliciting in Washington, D.C., was picked up by a man and raped by him. She described the situation like this during our interview. “I got raped. I got raped right here on the Avenue. I got raped because he had seen me walking up and down the street getting in and out of cars and he thought that he could have his chance.” When I was doing the interview, I was very surprised that this story about the rape came out quite suddenly. I wasn't speaking to her about violence at all but in fact, I simply noted in my experience of working with her as a client at Different Avenues that she seemed to work independently. She worked for herself and she seemed to be a very independent type of woman. She contextualized the rape then, after I said that, as a man's bid to control her in her work. She said, “He actually told me, ‘you're going to work for me.’ I said no. He

7. See generally HIPS, <http://www.hips.org/> (last visited Feb. 24, 2006).

said, 'well you must want to die.' And I actually had to say to him, yes I would come and work for him, but I haven't seen the person since." She did not report the rape to police. She did not seek medical attention. I realized later why she would not report it. She had some warrants out on her and she was afraid to draw attention to herself. She eventually spent some time in jail on account of those warrants. But at the time she was raped, she was hiding out and didn't want to be recognized. The man who had raped her was, in reality, not trying to get her to work for him. She never saw him again. But he clearly used that threat as a way of controlling her, creating fear, and he targeted her because he perceived her as prostitute without protection. The case also shows how people don't have a way of reporting crimes committed against them, especially in terms of speaking to the police and other authorities. She saw the police not as protective but rather as punishers who would arrest her if she went to them for help.

Gigi and I pulled together examples of other instances of violence faced by people who are sex workers or who are perceived as beings sex workers. In our experience, the police are very often perpetrators of abuse asking sex workers—female and transgendered sex workers—for "freebies." That is, the police say, "give me free sex and I won't arrest you," or sexually harassing sex workers in a variety of situations and targeting sex workers who dare to complain about this abuse. If they file a complaint against an abusive police officer the police target them by repeatedly arresting them for violating stay away orders or something similar. Police also rape and these crimes are rarely reported.

On to the second example. During outreach Different Avenues outreach workers take a moment to discuss issues with people working in the venues. People who we outreach to in venues are mostly women who could be described as exotic dancers, but the issues described here are applicable to male and transgendered persons who are employed by or associated with the clubs, or are working or dancing in similar situations. Some are quite happy about working as dancers, but others describe themselves as stressed even to the point of using drugs and alcohol to relieve this stress. Part of the stress in their lives centers on the work environment. The women do not have adequate places to change or to relax on site. They work very long hours. The places are not clean or particularly safe structurally. Women say that they feel the clubs don't protect them enough, and if a patron became violent they fear that they would not be protected. The women experienced discrimination in other parts of their lives because of what they do. The things that trouble these women are not dramatic crimes, but the day to day hardship brought about by a bad working environment and a society that belittles them or does not take them seriously as workers, mothers, or providers. Unlike on the street, the police here are noticeable more by their absence than their presence. Dancers are not likely to be arrested if they continue to work indoors. Many of the dancers do go out and work in other areas where they could be exposed to arrest, but if they stay in the clubs they are not likely to be arrested. Places can be shut down, and sometimes when we do outreach we find a club shut

down for a couple of weeks for something like liquor license infractions, but not for major busts. I propose the State could have a role here. Not in the sense of the police protecting women from dramatic moments of sexual abuse or violent crime, but by facilitating the conditions that would allow workers to protect their labor rights and by enforcing occupational health and safety guidelines. These kinds of changes would go to the heart of the day to day struggles confronted by people working in these forms of sexual exchange. Their conditions can be improved if they are given the respect they deserve as workers and provided with the same environmental protections provided to other workers in other kinds of work.

I want to conclude with one other thought about the way in which identity can be at the root of crime and abuse. Identity, in some circles, is thought of as an internal quality, something that a person develops and expresses to society. But as our work at Different Avenues show, other forces are at work to produce categories of people in ways that are discriminatory and limiting. The law and policing itself, creates a kind of person by arrest and stay away orders. This person is the prostitute, someone who should be controlled or even removed from society, someone who does not deserve to be in our society. This view of prostitution creates categories of people who are not multi-dimensional complicated people with life histories, families and their own stories. Rather they just become undesirable people who engage in a certain kind of sexual behavior—that is, sexual commerce in public space. In this dehumanizing process, transgendered women are targeted doubly because they are perceived as always engaging in prostitution when they congregate on the streets no matter what they are doing, and because they show their gender difference in public ways that often infuriate the police. It doesn't really matter to the police and the courts how *you* might feel about your engagement in sexual commerce. You might think this is a temporary phase to pay the bills; that you were out with some friends and got a chance to make a little money; that you are a dancer who dates on the side; that you're just a dancer, not a sex worker. But if you are caught for soliciting or fail to obey police officers' warnings to leave an area, then you are in some kind of legal trouble. People who seek to commit crimes against the people that Different Avenues serves think that they know exactly who you are and know that you are vulnerable to them because of your sexual behavior and how this behavior is judged by society. They can take your money, get free sex or even rape you, and no one will listen to your side of the story. That is what they think. Everyday in my work, I like to challenge that this identity has any real meaning or any real utility. This is what ending discrimination is about.

PATTERSON: Thank you, Dr. Saunders, for introducing the notion of ascribed or perceived identity into our discussion. Our next speaker is Lara Schwartz, who joined the Human Rights Campaign as senior counsel in 2002. She works on opposing discriminatory constitutional amendments and promoting legislation that protects the GLBT community, including hate crimes legislation and federal

protection for same-sex couples. She also advocates for the appointment of fair-minded judges to the federal bench. Before joining HRC, Schwartz was associated with the law firm of Gilbert Heinz and Randolph and with the law firm of Skadden Arps. She served as law clerk to the Honorable Ronald Lee Gillman on the U.S. court of Appeals for the Sixth Circuit. She is a graduate of Harvard Law School and Brown University and she is admitted to the bars of Maryland and Washington, D.C. Lara Schwartz.

LARA SCHWARTZ: Thank you Professor and thank you to the *Georgetown Journal of Gender and Law* for presenting this symposium on sex, gender and crime, the politics of the state as protector and punisher. In my role as senior counsel at Human Rights Campaign I have been working on just that issue: the state as protector of the LGBT community and punisher of anti-gay and anti-transgender motivated violence.⁸ And it is indeed—I will posit in these brief comments—the politics of the state's role protecting this community and punishing homophobia and transphobia that have shaped the debate and the fortunes of federal legislation on hate crimes, and not, in fact, the law surrounding the state's role as protector and punisher.

I thank the preceding speakers first of all for setting forth the definition of hate violence and the idea of both actual and perceived identities because these are the concepts that shape what I want to talk about, which is the federal hate crimes legislation that I work to promote. Just to expound upon the definition of a hate crime and the meaning of a hate crime as unique in the scope of crimes that we do punish both at the state and federal levels. Hate crime, as Mr. Lucas said, is motivated by animus toward the person's actual or perceived identity whether as lesbian, gay, bisexual, transgender, due their religion, due to their actual perceived race, due to their actual or perceived disability or gender. The impact of hate crimes and the reason that they do demand special attention by the state is that they have the effect of, as Mr. Lucas said, causing people to change their behavior, causing people to live in fear because a hate crime is not just a crime against an individual. It's not just swiping a wallet or stealing a car. It's a statement toward a community: you do not belong here, you are not welcome here, you are not safe here. And in fact talking to people who are members of frequently targeted communities, actions as small as how one dresses and as big as where one lives and works are influenced by the threat and reality of hate violence every day. It's because of that that even such "liberal activists" as Orrin Hatch have called hate crimes domestic terrorism.⁹ It's a serious and real problem and the FBI, which keeps insufficient reports of it because of under-reporting, as these other panelists have presented, nonetheless has solid evidence that even as crime in our society declines, hate crimes, crimes of violence based on animus toward the actual or perceived identity of the victim, are on the rise.

8. See generally Human Rights Campaign, <http://www.hrc.org/> (last visited Feb. 24, 2006).

9. 151 CONG. REC. S6037 (daily ed. May 26, 2005) (statement of Sen. Kennedy).

Now there is federal legislation proposed that would protect the LGBT community as well as other communities from bias-motivated crimes. The most recent permutation of this bill is called the Local Law Enforcement Enhancement Act. It was Senate Bill 966 in the 108th Congress and has yet to be reintroduced in this Congress.¹⁰ And I apologize for the flu that I have and if I seem a little dim it is not my level of enthusiasm for this topic but my level of energy today. The Local Law Enforcement Enhancement Act would provide federal jurisdiction to prosecute crimes of violence that inflict bodily harm or serious bodily harm that are motivated by the actual or perceived race, national origin, religion, gender, disability, sexual orientation of the victim. It would also give the federal government the ability to provide resources to local jurisdictions to prosecute crimes of this nature where they lack the resources. So the two scenarios this would affect are as follows. One is the case that we hear of quite often and was addressed in the prior comments where local law enforcement is not very enthusiastic about pursuing the prosecution of a hate crime. And this intuitively makes sense. If you are in a place where you are likely to be vulnerable to a hate crime you are possibly in a place where local law enforcement might not be very sympathetic to you due to our identity. And this is particularly true I think in the case of LGBT related crimes and particularly crimes, against transgender people.

But secondly, the successful prosecution of hate crimes can be very complicated. As was mentioned, the fact patterns can be quite intense. Mutilation, challenges of identifying the victim, the challenge of establishing the motives and looking into the background and related facts to prove a hate crime and in fact in the famous case of Matthew Shepherd the city of Laramie, Wyoming came to Washington to request that the Justice Department provide funds for just this reason, to assist in the prosecution. The Justice Department could not do so because there is not federal jurisdiction, or was not federal legislation, and still isn't that would cover this and as a result although the prosecution was successfully followed through, the city had to actually furlough about half of its law enforcement staff in order to achieve that goal. So the idea behind the legislation is to fill that gap in the local law enforcement area which is why it is very well supported by local law enforcement nationwide, but also to allow the federal government to step in in the cases which we know of where local law enforcement is simply insufficient or unmotivated. And another famous case, that would be the case of Brandon Tina, the transgender man in Nebraska who when he reported his rape to the police they essentially blamed it on him, did not make an arrest, and he was subsequently murdered by the very same people whom he had reported just that week. So that is the background.

Moving on to the politics of the state protecting the LGBT community,

10. Local Law Enforcement Enhancement Act of 2003, S. 966, 108th Cong. (2003). The legislation was later reintroduced in the House of Representatives as H.R. 2662. On September 14, 2005, it was successfully attached to the Children's Safety Act, H.R. 3132, and voted out of the House by a vote of 223-199, with 30 Republicans voting in the affirmative. 151 CONG. REC. H7923 (Sept. 14, 2005).

punishing homophobia, that I think is at the heart of why we do not have federal legislation protecting the LGBT community on the books right now.

We know from polls that Americans overwhelmingly support laws like the Local Law Enforcement Enhancement Act, regardless of one's feelings about the issues such as marriage, equality, relationship recognition, even anti-discrimination in the workplace. I think most people fundamentally—and polls bear this out—comprehend that expressing disapproval of lesbian, gay, bisexual, and transgender people by means of violence is unacceptable. And I'm focusing, although the LLEEA covers other forms of hatred that are equally nefarious, racism, bias against people on the basis of religion, national origins, disabilities, these are all nefarious, but I'm focused on the LGBT piece of it because really that is the crux of the politics of this bill. My somewhat unremarkable thesis is: It's the gays stupid. We don't have this law because of the way some people feel about lesbians, gay, bisexual and unfortunately particularly transgender Americans. So I've seen in advocating for this bill that there is great opposition to it on the right. And the organizations that most ardently oppose the LLEEA happen to be the same organizations that also oppose any form of protection for lesbian, gay, bisexual, transgender people or especially same-sex couples. So they come at this law with a whole lot of quasi-legal or quasi-policy arguments as to why it's not worthy, necessary, constitutional or right. But at the end of the day their argument comes down to disapproval of the LGBT community.

Here is what I mean. One argument that anti-gay groups have tried to use in support of killing this law is to call it simply unnecessary. What they basically want to do is write anti-LGBT violence out of existence. And here is a quote from the South Dakota Family Policy Council, "We hardly have any homosexuals in South Dakota let alone the need for special rights for them." Or here is a quote from the Concerned Women for America¹¹ as to why this bill is unnecessary. "Most attacks on homosexuals are done by other homosexuals as a result of lovers' quarrels or rough sex gone wrong." There is also a spurious "thought police," free speech argument that is put forth frequently and consistently by opponents of these bills who are unwilling to say aloud what they really oppose is protecting LGBT people. Even though the United States Supreme Court ruled definitely in *Wisconsin v. Mitchell* that there is no free speech chilling effect in hate crimes laws, these groups, including the Republican Policy Committee, which is the Senate's research arm for conservative policy, continue to put forth inaccurate and legally inapposite free speech argument regarding hate crimes laws. They look at other countries that actually have hate speech laws. Our law in this country would only cover violent crimes, crimes of violence and they call it thought police and they said it will outlaw the Bible. So the Republican Policy Committee formal paper from 2003—it sounds like 1803—from 2003 on the

11. See generally, Concerned Women of America, <http://www.cwfa.org/main.asp> (last visited Feb. 24, 2006).

Local Law Enforcement Enhancement Act, said that the act would harm law enforcement and encourage them to become the thought police.¹² Focus on the family, quoting the Concerned Women's, Bob Knight, said the idea that someone could be punished merely for speaking out should be offensive in a democracy. Well it should. But under hate crimes law people are not punished for speaking out, they are punished for murdering, they are punished for assaulting, they are punished for driving LGBT people and others into a state of terror. And the real opposition to these kinds of laws shines through at the bottom line when groups from the FRC to the RPC state at the end of all it's a symbolic nature of hate crimes legislation. It's the politics, it's the gays stupid, that drives the opposition. They say that somehow a federal statement that it is not okay to express disapproval of LGBT people through violence undermines morality. The same Republican Policy Committee report states, quote, "The bill would undermine the settled moral convictions of tens of millions of Americans." It says furthermore the Kennedy bill—it's interesting it was co-sponsored by a Republican, Gordon Smith, but it's always the Kennedy bill when they want to smear it in a certain way. "The Kennedy bill facilitates a political crusade to extend all race, sex and religion and disability based civil rights protections and thereby declares illegitimate any moral or religious objections to homosexuality, transvestitism, or transsexuality."

The Concerned Women of America state that if hate crimes laws are passed that cover sexual orientation it will force schools to teach that disapproving of homosexuality is hate that leads to violence. The Texas Eagle Forum¹³ stated that by codifying sexual orientation as a protected attribute under hate crimes law gay activists will be able to more effectively press their case for recognition of same sex marriage and domestic partner benefits. And finally Bob Knight in the Washington Times, not the basketball coach, but from the Concerned Women, "It would have the effect of recasting traditional morality as a form of bigotry."

Now in a sense this is outrageous because what I like to do when I think about a law sometimes is pretend that I'm briefing a case, like if this law were a case what would its holding be. And the very bare bones unassuming and not very impressive holding, if you will, of the Local Law Enforcement Enhancement Act is that it is not acceptable to express disapproval of another group through violence. And this is not really a rallying cry that you would particularly want to lead a pride parade with, it's a very modest in fact inadequate goal in some senses. For instance the legislation has not had explicit protections for transgender people in the past and that is something that is hopefully being remedied at present.

So that's the holding, and that seems quite modest. But on the other hand, is it

12. The United States Senate Republican Policy Committee formal paper can be found at http://rpc.senate.gov/_files/CRIMEcr071503.pdf.

13. See generally Texas Eagle Forum, <http://texaseagle.org/> (last visited Feb. 24, 2006).

really. I mean this bill's core message is it's not okay to express your loathing of these people through violence. But is that too much? Is it a matter of slippery slope or are they right? Is it actually a nail in the coffin of homophobia? Well I'll argue that both things are true. In a sense hate crimes legislation is very modest and too modest considering all of the disadvantages that face the communities intended to be protected by them. But in a sense its true law is symbolic. There is a symbolism of the law and we saw that nowhere more clearly than in the 2003 victory in *Lawrence v. Texas* which struck down sodomy laws. Now these were creatively used and aggressively used by prosecutors in order to build their cases in a variety of sexual offenses and if you ask any prosecutor, and I have, they do love having a bevy of arrows in their quiver and sodomy laws have been one regardless of the LGBT motivation. But since symbolic importance of sodomy laws to the LGBT community and to others was really, I think, cast into a very illuminating perspective by *Lawrence*, because you had a community celebrating equality when in fact what had been declared by the Court was that mere moral disapproval is not a reason to throw someone in jail. And you had outrage on the part of anti-gay activists saying you know if the state can't declare homosexuality a punishable offense we've lost. So I think it's important and I think my own experience and many of the activists in this room's own experience with pushing, promoting and advocating for hate crimes legislation tells us: It's the gays stupid, it is symbolic. There is no doubt an enormous value that the added resources and federal jurisdiction that such bills provide will give the communities, but more importantly it is a statement by the federal government that LGBT people are worthy of joining police dogs and chickens used in cock fighting events for special unique protection by the federal government. And that is important and that is symbolic and so I think as we go forward promoting legislation that protects the LGBT community we must always remember that in a sense the opponents are right, this is a symbolic statement that LGBT people are, to quote Mara Keisling, who's got my all time favorite quote on this, "not too hated for a hate crimes law." Thank you.

PATTERSON: Thank you. And before I introduce our last speaker, I would like to take this opportunity, since we are very close to 3:00, to mention the campaign here at the Law Center to remember Darfur and to have a moment of silence for the victims, because we are talking about the same kind of violence that is motivated by hate, that is motivated by a desire to rid society of certain kinds of people. We want to take a one minute moment please. Thank you.

And now our last speaker, Dean Spade. Dean Spade is a trans attorney and activist and founder of the Sylvia Rivera Law Project.¹⁴ The Project is a collective legal organization providing free legal services to low income people and people of color facing gender identity discrimination and engaging in public education, policy reform and community organizing support which is focused on

14. See generally Sylvia Rivera Law Project, <http://www.srlp.org/> (last visited Feb. 24, 2006).

issues relevant to trans, intersex and gender nonconforming people. Dean's writings have appeared in the Berkeley Women's Law Journal, the Howard Scroll, GLQ, the Harvard Lesbian and Gay Review, the Chicano Latino Law Review and other publications. His essays have appeared in a recent book *Without a Net*, edited by Michele Tea, and *That's Revolting Queer Strategies for Resisting Assimilation* edited by Mattilda Sycamore. Dean is also co-editor of the online journal www.makezine.org. Dean Spade.

DEAN SPADE: I want to thank the people who organized the symposium for having me here. I think this is an important event, an important set of things to talk about and I definitely think as many of the speakers have noted it's essential for us to think specifically about the trans community and some of the ways in which violence is a serious and ongoing part of our lives. It is certainly a central concern of my work. There aren't any numbers about how frequently trans-people experience violent crimes or various kinds of violence, but there are a lot of estimates out there. The problem is no one counts us and no one really counts our experiences in any way. And that's an ongoing problem which any trans advocate can tell you about in terms of the huge HIV rates in our community that we don't have adequate statistics on and many other issues. But I've heard one statistic repeated over and over again which is that trans folks are seven to ten times more likely to be the victims of a murder than non-trans folks, and I've also heard much higher estimates than that. It's good to hear that everyone who has spoken already has addressed aspects of this disproportionate violence toward trans people.

In my work, as was mentioned, I provide free legal services to low income folks facing gender identity discrimination. Those are folks who are experiencing discrimination in shelters, in trying to access public benefits in public schools, foster care, juvenile justice and certainly in the criminal justice system. And the overwhelming experience of our work is that the highest level of violence against our community is at the hands of the state. That has become a central theme of our work. I could spell that out in detail for you by gleaning the data we've collected about the 500+ clients we have served, but in the interest of time I will present the broad strokes of what we've learned.

There are a couple of different ways in which I think the state contributes to violence against our community. One of the most obvious things you can likely imagine with ease is the severe systemic rape and assault our clients who are in state custody, who are transgender and gender-nonconforming, experience. Trans people are disproportionately incarcerated and disproportionately in systems like foster care and juvenile justice because of the severe and persistent discrimination we face in employment and education and oftentimes the loss of our ability to have a family safety net because of our identities. And while in state custody we face specific dangers due to the fact that those environments are usually sex-segregated and we're usually placed in the wrong gendered environment. Most shelters, foster care systems, and corrections facilities, place people exclusively according to birth gender, which means that trans women are placed

in men's facilities and trans men are placed in women's facilities. In those environments we are used for targets and as examples, demonstrating to the entire population what the consequences of not abiding by traditional gender norms are. We frequently experience exceptionally high levels of violence in these environments.

I could share hundreds of stories of clients facing unimaginable conditions that I can only describe as torture in mental health facilities, group homes of various kinds, drug treatment centers and other residential environments. Beyond those environments, which operate as punitive but are purportedly rehabilitative, we have clients contacting us everyday who are trans women living in men's prisons across the country. They face conditions of sexual violence that include sometimes daily rape at the hands of other inmates and corrections officers, forced prostitution rings, and other indescribable horrors. These facilities, like many shelters and drug treatment facilities, include a culture or climate of violence in which targeting what are perceived as "weak" residents or inmates is considered acceptable. For example, a young person in a juvenile justice facility may be targeted, and there is a sense that that person is okay for everybody to beat up on. Frequently that targeted person will be punished if they are engaged in a fight rather than the perpetrator, because they are seen as being the source of the trouble, provoking the violence. We consistently hear stories that the worst violence in these highly policed facilities occurs either at the hands of the staff or is facilitated by them. We frequently hear of corrections officers putting transgender women into cells of other inmates so that they will be raped, or taking part in the rapes. In our view, the violence of the state in these conditions operates at several levels: 1) overt acts of rape or assault by staff; 2) deliberate indifference to rape and assault that are going on; 3) lack of training and preparation for serving the needs of this highly vulnerable population; and 4) placement policies that common sense could tell anyone blatantly endanger transgender people.

Another level of violence we are deeply concerned about is a kind of violence that has long been discussed by anti-racist thinkers and activists which is the violence that happens when the state makes intentional decisions that deprive people of the basic necessities to live. This kind of violence, and state violence in general, often falls out of conversations about violence against LGBT people, and I think that is very unfortunate. I'm thinking of violence like the violence of welfare reform that we went through in the mid '90s that cut tens of thousands of people off the welfare rolls just in New York City alone, where I live; that deprived them of the ability to get an education because they had to drop out of college and other educational programs in order to do workfare jobs 40 hours a week; that deprived other people living on the margins of poverty of jobs as union workers were replaced by workfare workers who were paid less than minimum wage and who had no labor rights. I could go into a lot of details in welfare reform alone and the ways in which it has contributed to people not having

adequate food, not having adequate shelter, losing means of support, having to engage in criminalized behavior in order to get by and then ending up again, as I just mentioned, in criminal justice somewhere they can experience direct violence of people paid by the state to do that very job.

Similarly we could use the example of shelters or the fact that not only are homeless shelters increasingly underfunded, lack adequate resources for housing all the people who are homeless, the majority of whom are disproportionately children, but additionally they do things like house people solely according to birth gender rather than gender identity. This makes shelters so unsafe—imagine being the only woman in a men's shelter of 900 people—that many choose to remain street homeless rather than face the dangers of entering the system. And since trans people can't go into homeless shelters we usually can't get into other kinds of supportive or independent housing that require intake through the shelter system to qualify. Similarly, in New York City, they just changed the rules so that the shelter system doesn't recognize domestic partners. Partners cannot get into a family placement together; so no matter how long they have lived together, if they lose their housing and enter the shelter system they will be placed separately. Again, this makes the shelters system inaccessible to a whole set of people who, in a time of extreme crisis, can't face living apart from family in a dangerous environment and end up staying on the street where they face constant police harassment and arrest for the crime of sleeping outside.

The denial of medical care is another aspect of state violence that I think gets overlooked in conversations about violence. If we believe that killing people is violence, why shouldn't this include denial of life-saving care that others receive? Many people have heard the story in this region of Tyra Hunter, a woman who is often spoken about, who was denied medical care in emergency services.¹⁵ She was a transgender woman who was involved in a car accident, and when the EMS arrived at the scene she was unconscious. When they opened her clothing to begin treating her, they discovered she had a penis and they discontinued treatment. And it was proven in her wrongful death suit that she would have lived had they continued to provide services. That's just one example of what is an epidemic of health care discrimination in the trans community. Day in and day out I hear from clients who have been denied health care, have been subjected to involuntary medical care because they've been labeled mentally ill due to their gender identity, or have been subjected to other inappropriate, violent, and discriminatory treatment. All of those things again I would argue are forms of violence.

I bring these up as a way of helping us think about the way that violence and discrimination actually operate in our culture, as opposed to the fantasy that I think is a very conservative fantasy of crime and punishment that is very much

15. See, e.g., Scott Bowles, *A Death Robbed of Dignity Mobilizes a Community*, WASH. POST, Dec. 10, 1995, at B1.

promoted by our current very conservative government culture. My concern is that I think many LGBT people have also adopted this framework for thinking about violence and I'm hoping we can look at what that misframing obscures and who it serves. We live in a culture in which prison expansion is very exciting. People are making a lot of money on prisons right now as we move forward in a trend of privatizing prisons. At this point the United States imprisons more of our citizens than any other industrialized country. And the majority of people in prisons are there for non-violent crimes. The Drug War was a really great way to get a lot of people into the prisons. Also there are a lot of states that are ending parole which is a great way to fill up a prison you've just built. So there are lots of different ways the U.S. is expanding prisons and increasing policing and expanding definitions of crime. Of course the people primarily impacted by these changes are disproportionately people of color, disproportionately low income, and there is a rising population of women who are being pushed into prisons. It is important that we recognize that the folks who are changing these policies, raising penalties for non-violent crimes and making what were once ticketable offenses into arrestable offenses, are aware of the results that come from these changes. This is a time when our government is deciding to imprison more people. There are lots of things that are crimes that lead to incarceration now that didn't used to be, even in very local examples in cities like New York City we have these new "quality of life crimes," where things that used to be ticketable like jumping a turn style, sleeping outside, public urination—things that are mostly crimes of being poor—are now things that you actually go to Rikers Island for. These create a new way to funnel more people into incarceration.

Thinking about how our fantasy of being a crime and punishment based society and of being "tough on crime" and how that fits into this discussion of hate crimes, one of the things I like to think about is what critical race theorists often talk about—the perpetrator perspective. Maybe some of you have gotten to think about this while you've been in law school. This is the idea that there are two ways of looking at discrimination, and this is really basic, not doing justice to the whole theory. You could look at it as a situation where I go to get a job and they say you can't have the job, and they say that to me because I am a trans. Then they are denying me something I'm qualified for on the basis of an irrelevant characteristic, irrelevant to my qualifications. In order to make me whole in this scenario you should get me money that I should have gotten for that job or get me reinstated. That is justice under this approach. That is the "formal legal equality" vision of what discrimination is and how you make people whole who have experienced it. Another way of looking at discrimination and oppression is that it's a context of maldistribution, where entire communities are deprived of adequate schooling, of adequate health care, where they are deprived of a clean environment and where other communities have more resources than they need. Under that way of understanding discrimination or oppression other kinds of remedies begin to make sense—remedies that are about redistribution, affirma-

tive action would be an example, and those are disfavored right now in the legal culture and in our society overall. The first understanding focuses on the notion of an individual victim and an individual perpetrator and this person is the main focus of the remedies—the person who wronged the person is the one who denied the job, the one who beat the person up, the one who raped the person, and then the person who is the victim is a victim as an individual. The other way to look at it suggests we should focus on entire communities, cultural values, and cultural contexts that set up inequalities rather than taking them as isolated incidents. The individual role often results in a lot of scapegoating. It results in a way of redeeming the entire culture by focusing on the individuals who have committed the most noticeable act. They direct our attention away from looking at systemic inequalities and systemic remedies, and instead focus our attention on punishing perpetrators and redeeming the few individuals who can jump the overwhelming hurdles necessary to prove the discrimination they've experienced.

I've become increasingly concerned that hate crimes law, and the fervor around framing violence against LGBT people in terms of hate crimes and the remedy for this violence in terms of hate crimes laws, mimics this narrow approach to the question of violence. It should be said, though it is obvious, that hate crimes laws don't prevent hate crimes. People do not go through and read the law books and think "Oh, I'm going to get enhanced punishment, I won't go out there and do this tonight." I think it's misleading to say hate crime laws protect LGBT people for that reason. What they do is they increase the punishing power of the criminal justice system which we know disproportionately affects low income people and people of color. And it is shown, there are some really great law review articles written on this, that hate crimes laws often themselves are disproportionately used to punish people of color. I'm interested in looking at how homophobia and transphobia are actually legitimized by the state action I discussed above, that occurs systemically in shelters, welfare, jails, prisons and other contexts in which our most vulnerable community members endure regular torture and humiliation. I'm concerned that as a movement we have often ignored this state violence and then instead turned to the familiar American logic of our "let's go get people and put them in jail," pretending that getting the bad guy (we've all watched too many episodes of *Law and Order*) and targeting individuals will keep us safe. In reality, the people who get prosecuted for hate crimes are not people with a lot of power. If you look at who actually commits these "crimes" as they are defined in the rhetoric surrounding hate crimes laws, it's not the folks who benefit the most from systemic homophobia and transphobia. If we look systemically at how homophobia and transphobia operate within highly punitive, racist institutions like welfare, immigration, and criminal justice, we would question whether the way to alleviate the suffering caused by the most persistent forms of violence against our community members is to imprison a few more people displaying violence, or whether we need to take a deeper look at broader questions of maldistribution in our culture.

This leads to broader criticism that I have of the well-resourced LGBT organizations that too often choose symbolic victories and victories that disproportionately benefit white people and people with property, over victories that would really look at redistributing wealth and power and standing and unity of other groups who are negatively affected by the current trends we see in our culture that are very dangerous and very focused on moving to the right in terms of maldistribution. The agendas of those organizations have come to focus on the rights of people with occupational, educational, gender, and race privilege and to marginalize or ignore the struggles of transgender people, queer and trans people of color, and queer and trans poor people. These organizations have fought for the rights of gay youth to join the Boy Scouts, but virtually ignored the struggles of queer and trans youth who remain overrepresented and abused in the juvenile justice system. They have fought for the rights of gays and lesbians to pass their apartments on to one another and to rent or buy property without facing discrimination, but have provided no assistance to queer and trans people struggling in blatantly homophobic and transphobic homeless shelter systems nationwide and in the most well-funded housing program for the poor, the criminal justice system. They have waged battles on behalf of gay men who want to share frequent flyer miles with their partners, and lesbians who want a couple's rate for country club membership, but have entirely ignored the plight of queer and trans prisoners who face shocking violence with no relief. The interventions of the LGBT movement have moved away from Stonewall's original protest of police brutality and toward a push for hate crimes legislation.

Moving towards hate crimes means walking hand in hand with the police, promoting bills that local law enforcement are really excited about and are pushing forward. You have to ask yourself, this came up in Penny's piece, who feels comfortable calling the police? What communities feel comfortable calling the police? What communities feel protected by the police? I don't think sex workers, homeless people, immigrant communities, youth, and many communities of color, who are continually profiled by the police, feel the protection of the police. So just thinking about who feels protected by punishment enhancement for hate crimes is an interesting question. When you see trans people disproportionately being the ones arrested, when they call the police related to domestic violence, do those trans people feel protected by the police? If so many trans people, from my experience with my clients, face greater threats at the hands of the police and the criminal justice system than anywhere else, are hate crimes laws a remedy for their experiences of violence?

Another example would be the framing of the health care issue and immigration issues in terms of marriage, instead of looking at broader agendas that are possible areas of inquiry and action for queer movements. There has been a decision to focus on letting a few more people into this unequal realm of marriage rights where the state privileges people based on their sexual and family formation choices. What if instead we focused on how we are in the same boat

with other folks who are fighting for adequate health care, fighting for Medicaid, fighting for Medicare, fighting for better immigration policies? What if our strategies started from questions of what are equitable ways of distributing life chances—health care or immigration rights—to people rather than how can we get a few people in our community (those who have a partner with health care coverage or U.S. citizenship) a slice of the pie? There was a story not so many months ago about how one of the major gay legal groups is doing a case on behalf of two lesbians who are being charged extra fees at their country club because they can't be recognized as a married couple. And you just think (a) those people can afford their own lawyer and (b) what kind of priorities does this movement have? Is that the sort of front page New York Times case for this legal movement? Another example is fighting for people to share each other's frequent flyer benefits. Meanwhile, no one is doing anything about trans folks in prison who are being raped every day, who are dying or mutilating themselves. What I'm talking about here is resource allocation.

Like everyone here, I'm against hate crimes and all acts of violence that target oppressed communities out of fear and hatred of difference. It's agonizing and a painful horrible thing for me when people in my community are killed and are hurt every day, and it is a huge part of my work. I receive letters from clients facing daily rape, facing needless homelessness. I meet with clients who have been beaten and left for dead because of how they expressed their gender, and too often those who perpetrated these crimes were being paid by my tax dollars. But I don't think that enhancing the criminal justice system and adding punishing power helps. I don't think it prevents hate crimes and I think the majority of violence is not these individuals who are so easy to target and pretend are the most obvious manifestation of homophobia and transphobia. When we say, "that guy over there, that guy who beat up that queer or trans person, that is what homophobia is," we're too often implying that the rest of the system is fair, that we're living in a culture where that person is abnormal, when really that violence is but one manifestation of an entire culture that condones violence and deprivation as responses to gender and sexual variance. We need to examine the broader issue of how the entire state approaches and maldistributes resources and endangers people on the basis of their sexual orientation, family structure and gender identity expression.

To understand how power operates we need to look at who the most vulnerable people are in our culture. That's where we can see really what's going on and that's who I think is never looked to in a movement that is focused on picking our favorites and the easiest people to love and putting them in the media and choosing cases where they are the primary plaintiffs. I don't think that is a winning strategy. I personally don't believe that social justice trickles down. I do think it trickles up. And our work is based on that, and that's why the work of the Sylvia Rivera Law Project prioritizes low income people and people of color who are facing gender identity and expression discrimination. We think that we're

better off if we cast our lot with those who I think are in the increasing majority—those disadvantaged by systems that consolidate capital in smaller and smaller groups and that build this wealth gap, deprive more and more people of healthy living and working conditions, and imprison more and more of our population. Instead of joining up with the Christian right and being really excited about “promoting healthy families” and promoting the idea of marriage, which has always been something feminists stood against, we should instead be in the same boat with women who are having their parental rights terminated at earlier and earlier stages of their incarceration, women on welfare who are being bribed into getting married or into disclosing paternity of their domestic violence perpetrators by Bush’s new 1.5 billion healthy marriage promotion policy. We believe that we should look at all other people who are also being targeted by the same kinds of bad policies and same kinds of ideas about regulating family norms on sexuality and gender and be with them instead of trying to get another step up into a legitimate group that only a limited, and decreasing, sector of our community can meaningfully access.

I’m going to close just adding that my underlying feeling is just that it’s time we move away from symbolic victories and away from a set of symbolism, a world of symbolism that supports the idea that everything is fair except there are few people who may be mentally ill and that’s why they are killing transgender and variant people and gay folks. In reality we know that violence is incentivized by our culture and that the state plays a huge role in creating those incentives and that is what we should get to the source of. And that the best way to save and protect and help the livelihoods and survival of LGBT people is actually to redistribute wealth and power and to think about people having access to the basic necessities of survival. It is time to shift the discussion to focus on the systemic violence that affects so many in our community and to move away from a limited framework that scapegoats a few violent individuals in a broadly violent system. I have to also say that it’s interesting to hear that a right wing politician has called hate crimes “domestic terrorism” and to think about the way in which “terrorism” is being used right now, which I think we should all be very suspicious of, to rally witch hunts and mobilize violence and rights deprivation against immigrants, people of color, people of religious minorities. Should we be excited or should we be suspicious? I think the fact that that term was used actually is a big red flag for us about what these bills mean and where we should be aligning ourselves.

PATERSON: Thank you. Well I think we’ll just keep going, and first I would ask if the panelists have any questions that they want to ask of each other or any comments on each other’s presentations. I have one question. I have one question for Dr. Saunders and that is, what is the goal of your organization?

SAUNDERS: Well that’s always been a little difficult for Different Avenues because we do have this non-identity based approach. But you know in our mission we say we want to provide comprehensive services at the same time as building

communities where the people that we serve—as described in my paper—can live with health and rights. We don't see, I mean it's impossible for me to imagine, a service provision agency that did not have an advocacy and rights based component. Those two things go together.

PATTERSON: Open up to the audience then.

SAUNDERS: Actually I had a question of a fellow panelist. You know Dean when I was preparing my comments I was trying in my presentation to not fall into the same narrative of "there was a woman on the street, she was horribly raped, and the police were wrong." I wanted to try and tell two sides of the story, that there are other ways in which people are harmed and these instances get less press. We don't hear about them. I said that the state might have a role in enforcing occupational health and safety guidelines and that kind of thing, but now I've heard your presentation I'm a little concerned, because I think that the state also uses these guidelines like liquor laws or building codes to harass people in other ways. I was conscious of that when I was writing. What do you think about that framing of "does the state have a role"—did I make a mistake?

SPADE: I agree with the framing of the idea that sex work should be recognized as work and should be subject to the same kind of labor regulations that protect other workers. I also think that kind of gets me to another area, where I think there are often symbolic wins. There is a push to depict LGBT people first and foremost as workers, because to be a worker is like to be a legitimate American, right? And so we have the Employment Non-Discrimination Act and its state counterparts that usually focus on employment rights which are really, really important but still quite limited. Those employment rights don't cover sex workers, they don't cover people who work in prisons. They don't cover people with workfare jobs, they don't cover people who work in the most dangerous environments, many of which are highly regulated by the states—the state is actually frequently the employer.

But you know I think it's interesting to just think about how even work gets defined differently, and that even happened during that welfare extravaganza during the mid 90s around penalizing welfare mothers and depicting welfare queens. Those folks were considered not doing legitimate work. Maybe they were stay-at-home moms—they were perceived as having too many kids, having teen pregnancies. This was portrayed as part of their vileness, their deviancy. Interestingly, at the same time that the Personal Responsibility and Work Opportunity Act was being passed, another law was being passed literally the same week in Congress that gave tax benefits and the ability to get retirement accounts to stay at home moms from upper class backgrounds. And so it's interesting what is considered work in our culture, I think it is really significant, and who has work protections and there are really great arguments from the 70s of feminists talking about all these different kinds of ways in which women's work is not considered work. And I think sex work is an example of that even

though it's strictly not women's work, but nonetheless it's associated with women and same with welfare parentage—being a parent is associated with women even though men are also parents. This is an important issue to consider as we see LGBT rights often framed in terms of employment rights, no doubt in part because of the symbolic value of the image of the blue or white-collar worker in American culture. We could get into a broader conversation about where the state belongs in our utopia, but I think it's a useful argument right now to examine where the state is located and what responsibilities it should have in the current system.

PATTERSON: Questions. Please come to the microphone

AUDIENCE SPEAKER: Hi, thank you all for speaking. I had a question for Dean Spade. I was wondering if you had some suggestions about what people can do, I mean specifically future lawyers, to work more from the ground up, because as you said social justice doesn't trickle down. But I think the reason that we often focus on hate crimes or gay marriage is because there is a tangible law. There is a tangible thing to do or to change, and so what do we do?

SPADE: I think there are more tangible things to change that are on the non-symbolic realm but we just don't talk about them so people don't get a chance to figure out how to plug into them, including in law schools. There are a million other kinds of policies and issues that affect trans folks and affect low income people and people facing the kind of discrimination we talked about here, and I was talking about everything from the policies that exist in cities around where people are placed in sex segregated facilities—that's probably one of the most vulnerable-making issues—where do you place folks in the juvenile justice system? Where do you place folks in the prison system? Where do you place folks in shelters with regard to their gender identity? That's something that makes trans people the most vulnerable that most groups have not been able to or not been interesting in addressing.

Beyond that the criminal justice system, in general, has not been considered a gay issue, right? It is not something that almost any of the well-resourced LGBT organizations have on their agenda for significant resources. I like to say if we've spent one percent of the marriage budget on trans prisoners we could actually resolve the issue of placement probably within a year or two, and it's a reasonable goal; people are being killed right now, as opposed to people who can't share benefits with each other. Even slight reallocation could result in major policy changes that would save lives. But I think one of the things that is missing on these issues is more direct services. I think that a lot of these decisions are made from up high. The groups that make the decisions about what policy issues to pursue don't actually have a set of clients whom they see. Their priorities come from their constituency—their donors, wealthy white gays and lesbians—their priorities are not based on the needs of those who lack access to legal representation. They don't have a client base that they are providing direct

service to that would allow them to generate organic priorities. They can't say—wow, forty percent of our clients are being affected by the criminal justice system, or a new reduction in Medicaid, so that is what we're going to prioritize this year in our litigation and policy work. And that's where you get a case that focuses on country club issues. It's from a lack of connection to a need-based constituency and too much accountability to an elite.

One of the critiques I've heard a lot of really smart activists use is that the way that funding is done, has sort of created a significant separation between direct services of various kind that help a community survive, which is important for raising its voice. Public education work, legislative and policy and legal work are separated out from community-based service work by organization type, and the two arenas aren't in enough communication. I don't know if you've noticed that in your own work. But I think one of the things that we're really trying to do is link our work to community organizing so that our clients have opportunities to raise their political voices and take part in social justice movements that concern them in conjunction with the direct services they are receiving to help them survive. We're also focusing support on members of organizations that are trying to raise the voices of those most affected by these issues. Whether that's immigrant groups, whether it's groups that work with families of prisoners, whatever it is. I think there is plenty to do. I think the thing is we need to turn the current agenda upside down and sort of saying who is first—trans people, poor people, people of color, immigrants, people with disabilities—putting those people first instead of last. It's always like can we add those on? Can we get one more of those? Can we get one of those on our board? If turning that agenda over we will learn a lot more about how oppression works and what equality and self-determination would mean, and everyone will benefit from that. I don't think that means white gay men will be suddenly suffering terribly. I think actually that it does trickle the other way, and so I think there is definitely plenty to do and I could give you details—if anyone wants a job for free there is a very detailed list of things I would like you to do. But there are a lot of tools and useful strategies on our web site that may be useful that sort of suggest a lot of detailed campaigns we're working on, everything from all this identity documentation stuff that is causing increased attacks on immigrants and making trans people increasingly unable to access basic identity documents in the name of the "war on terrorism," to strategies for changing policies at Departments of Health regarding birth certificates. There are a million things to do that impact people in the immediate, and I hope you'll explore our site and get some ideas.

LUCAS: If I may. Dean is saying I think—I want people to understand—that even though we all come from different points of view to this work, it's not about disagreement. I think what I realized is that when I do my work I may have the victim with the batterer on the street or the victim who as a transgender person can't get hormones because the states sees him as male, and I have to call to the attorney. So, like you're asking, you work where you are, you deal with the issue

that comes before you, and then you take the community organizing piece to the places where the work happens. So what I want to say to you is that we are not disagreeing, we are simply saying we all come at this work from different angles, and it all ends up in the same place and you were right about turning the whole system upside down, because the egregious thing is trans-folks did begin our movement, but where are they today; they are in back of the bus, as Sylvia Rivera so eloquently said many, many times when I met with her, so that's what I want to put into the discussion.

SCHWARTZ: This piece of the conversation reminds me of an interchange that happened recently on this list serve for mothers in the D.C. metro area that I was on. And people were having this kind of heated frenzy about whether working outside of your parenting responsibilities for pay or staying at home with your children was the right thing to do, and it was this bizarre you know in-fighting and it was strange and the thing that occurred to me is that there is—I would just bet a million dollars if I had it which I don't—that there isn't a comparable list serve of men arguing about whether it's better to join the Marines or go to dental school, you know are they parenting well enough? And I think in part that's a very similar story to the challenges of resource allocation and priority setting in LGBT communities and people that serve the LGBT community, at the end of the day the problems are overwhelming, they are tidal waves, there is the compounded impact of societal problems like poverty, like a very punitive government system that we're developing here, war on poverty is really war on poor, war on drugs, war on people who use them. So I think, to echo my co-panelists, when people in different LGBT related service organizations are all going to be attacking very significant problems from different viewpoints, and what it comes down to at the end of the day, you know something I weighed in on in this mother's discussion, is really that your worst problem isn't the person who chose differently from among the inadequate and unfair choices that are available to women today, your worst problem is the whole system that sets you up to have to pick from among a really crappy inadequate menu. And I think that is a challenge that faces people wanting to protect the LGBT community. It's completely unacceptable to have a constitutional amendment enacted that would permanently enshrine second class status for a whole segment of the U.S. population until the citizens of at least thirty-seven states affirmatively struggle and emphatically change their mind. It's just not okay. Is it an agenda that I would set to work on that issue as opposed to the people being brutalized every day in a system that scarcely recognizes their humanity? No. Can it be left unaddressed? No. So I think a challenge facing all of these groups is you know how to deal with the tidal wave. And fortunately there is a lot of talent and a lot of creativity coming at the issues from all directions.

AUDIENCE SPEAKER: This question is for Ms. Schwartz, but it's open to all of you. I was hoping you could talk more about the political climate that you are experiencing when you are doing lobbying on the Hill right now. It's been about four months since the election, and what are you hearing, or what sort of reactions

are you getting? I mean just the fact that the bill itself hasn't even been reintroduced is something that troubled me when you mentioned that, and I just kind of wondered what you are experiencing as an advocate.

SCHWARTZ: Okay. Well I think first of all I'm hopeful that the bill's reintroduction will be the result of careful improvement and flushing out of what has been in the past, so I wouldn't take that as symbolic. But I think that there is a very challenging atmosphere on the Hill. For a while there were perceptions about the meaning of the last election that were very hard on people who work on LGBT issues. And I'll also say that leading the offensive, you know to protect families, stop hate crimes, ensure equal employment and economic opportunities and you know secure services for HIV and AIDS and all of those things that are very important, had to be back-burnered in a sense to fight permanent enshrinement of second class status in the Constitution and which really goes beyond whether a person has similar country club benefits or can share in Social Security, although that's an important thing, it goes to an exception to the Equal Protection Clause being in the Constitution for one group of people and I think knowing the ways that creatively anti-gay forces have used anti-gay laws in every state and every place, every day, it is incredibly naive to think that a marriage amendment would go to simply relationship recognition and simply these sort of middle class set of goodies that certain people want. I think this is basically a complete exception to the Equal Protection Clause designed to target one group of people. I think it invalidates *Lawrence*, so I think that it's a well placed priority to fight that, and I think that the challenge of that is knowing that one has to stand their ground in that regard and continue to educate and motivate and push for something real that does something better than preserve a completely inadequate status quo. It's a challenging time and I think in terms of what people can do you heard in the *pro bono* services sense that you can help Dean and people like him who are helping people every day. But another thing you can do is draw a line and tell everyone around you to draw a line because right now the issue is that it is perceived that LGBT issues matter only to LGBT people and there aren't enough LGBT people to prevent a tide of just incredibly discriminatory and destructive laws. It only works if everyone draws a line and tells everyone they know that they have to draw a line. So that's something we're going to be working on.

AUDIENCE SPEAKER: Hi, I had a couple of questions. One is for Ms. Schwartz. You just said that everyone has their different perspective for approaching these issues and they are equally valid and they are all equally good, which I think on some level is true. But also, do you think that the different priorities create different, as Dean was talking about, different resource levels, and therefore it actually does impact what work can get done and actually does make a difference in terms of which things are being prioritized and by whom? And it isn't just like we all move along and get along and whoever is working on what is great? Certain people get a lot more resources for certain things and how do you see that, within what you just described, as the idea that we should all just get along?

And then any of the panelists who are doing both service provision and working towards political advocacy or community organizing, can you describe that a little bit, because I think, as some people said, it is often divided and maybe that's of interest to people here.

Lastly, for Dean, I just wonder if you are familiar with— or I'm quite sure you're familiar with—an article by Alexander Holt called *Gendered Crime and Punishment*, in which I think he addresses the way that some people are approaching prison, industrial complex reform around transgendered people. I wondered if you could just touch on that, because I do feel sometimes people are like, "Oh, we just need special transgender prisons cells." What are some of solutions to that?

SCHWARTZ: Addressing the priorities issue—well first of all, I think that every organization has to be responsive, if they are a membership organization, as Human Rights Campaign is a membership organization, they need to be responsive to their members. If they are a community based organization, such as anti-violence project or a legal services clinic, they need to be responsive to the specific community, geographically and culturally, that they are serving, and I think every one of the areas that we've all discussed here is wildly underfunded, understaffed, and under the gun relative to the other side. And when the other side is the other side from what I do, it's the religious right organizations that spend over five times as much to do the opposite of what I do. In the case of the direct services that my co-panelists are providing, the other side is the state and the other side is society, which is clearly quite a big foe. But I don't think the answer is to go "oh blah, blah, we're all just buddies here." I think we need coalitions within community groups, I think we need to all work together.

We also have to recognize what kinds of resources work for which types of issues. I mean direct legal services are incredibly human resource intensive. In other words, you need bodies, you need lawyers who are going to come out of great law schools like this one and say you know even if I'm working for Cravath in New York, I'm going to be giving Dean my time to help the people who could die without it. And that's human resource specific, whereas what I do, it's not as much about bodies. There are very few of us in my office; it's about band width, it's about the ability to get the message out and in some cases dollars to get the message out. So there are also just different kinds of resources, and what I do know is that we haven't yet gotten that good at making sure of that, and you see it with the difference between people who are willing to maybe show up for one event and maybe give a \$30 membership, versus really go and talk to their Congressperson or go and volunteer at Whitman Walker, or in some way give that kind of impact. That's something that just has to be ramped up. People I think that the work it needs to be spread out. There need to be more people lining up in front of Dean's door to take cases from him, and I think there needs to be more people lining up in front of their Congressperson's door and drawing a line.

PATTERSON: The service versus advocacy issue, service and advocacy is that the second issue, anyone?

LUCAS: May I just jump in. I mean on a simple level, what I'm trying to say is that, for example, in my office, I mean I'm the guy with the clients who are there with the busted face, and the whole nine and I hear all the stories. But there may be something there that I can't handle. I need an attorney. I need a community organizer. So I will call Dean, I will call the experts who know and they go with it to the next level. And I'll still be there when my client has to give the testimony to whoever needs to hear whatever and Dean helps me get that done and so on and so forth. So there is a way for us all to do what we need to do. That's what I'm trying to say as far as the differences that we're hearing here today.

SAUNDERS: Services and advocacy. Well I was the person who said they shouldn't be separated. You know I guess having worked in this field for quite a long time and having run a lot of different, well three, organizations, I think people are often so alienated, have so little access to resources it's really, really tough. And then to ask that person—without providing those services and support and the letter to get the I.D. and the housing and that kind of thing—to then turn around to that person and say, “hey do you want to volunteer on this campaign to stop this repressive legislation that will affect you in D.C.?”—people really just don't have that luxury unless you support them with intensive services. For me it's a luxury to be able to speak out, a luxury and privilege to be able to speak out on the issues that I do. Different Avenues creates space for people to come in and do something in the organization or to develop in some other way of speaking out on an issue. But it takes a really long time to develop new grass roots advocates. It's not only meeting once a month to plan actions, it's about the five years of working with someone before that person steps out and says, “hey, I'm going to speak on my own issues in this particular way, and I now feel confident to do it.” But when that happens, even if it takes five years, it's so powerful, so that's why I see the two things going together.

PATTERSON: And the last word is going to go to Dean to respond to the third part of the three-part question.

SPADE: I think that what you were bringing up is this issue about the distinction between more surface reforms versus a deeper interrogation of the entire system of power. I think that's what the article you were mentioning, which I think is available on our web site in the prison section, is getting at. In that article he's talking a bit about how when we look at trans folks in prison it's not just “if only we could get more people into protective custody, if only there were a special trans prison.” It's the question of the entire system that makes prisons necessary, or that makes people think prisons are necessary, that continually expands prisons and that uses locking people up as a method of dealing with social problems that are fundamentally about maldistribution of wealth and power. I think that's a question that often LGBT communities have failed to engage, at least on a public

level.

There was this article that was written six months ago by Kenyon Farrow called, *Is Gay Marriage Anti-Black*, maybe some of you read it.¹⁶ It's a very, very provocative article about the ways in which people have reacted to leaders of color coming out in different communities against gay marriage. And he talks about why it is that that has been able to happen politically. One piece of it is the right wing going into communities of color with videos about how gay is a white issue and encouraging ideas about the masculinity or femininity of people of color that equate homophobia with proper gender performance. But the other part of what he's arguing has created this moment of leaders of color coming out opposing same-sex marriage is the long history of LGBT movements ignoring and marginalizing people of color. And so people are open to hearing this homophobic rhetoric from Christian Right leaders because there is no basis of real solidarity that has been built between the white LGBT movement and communities of color. I hear stories from people I know who work at larger organizations that send people out nationally to certain communities. They have been sending people out and they have been going to Latino communities and saying, "Hey, will you back us up on marriage?" Some people are like "Where the hell did you come from? Where have you been on our issues? Why do you guys say that immigration isn't a gay issue."

For many queer communities of color, the rights that attach to marriage, which are mostly rights related to private property like inheritance or access to private insurance, are not the most compelling social issues they are facing. It's interesting, it's sort of give and take, and I think that we all have a lot to learn about where our priorities come from and then how divisions get made and how then we maintain them with a kind of rhetoric we use publicly that may feel like it's getting a hook into something legitimate, but I think actually supports a system of people who are being crushed by that system or aware that it is supporting that system and it doesn't make us friends. I think again and again—and either your gut is here or it's not—my gut feeling is always that those who are the most vulnerable should be helped first. That's just my gut, and I don't know where that comes from, but that's just maybe from my own background. But I think my feeling on that is that when we look at this kind of work, we need to think about how the whole entire picture is shaped, and how less and less people control more and more resources.

We need to think about how capitalism is not sustainable because what it does it is it funnels and gleans resources to smaller and smaller groups of people. We're seeing that on a global level now very actively, and there is a lot of amazing activism against it. But what that means on the other side of that is that more and more and more people are really, really frustrated and are resisting and

16. Kenyon Farrow, *Is Gay Marriage Anti-Black?*, Nov. 8, 2004, <http://colours.mahost.org/articles/farrow.html>.

there is a global resistance going on, and I think we have an opportunity to get into the boat with the folks who are going to win. I like that option much better than to continue scrambling for a little piece of a set of privileges that I think are limited, are inherently violent to those who are not included in them. So I think it is important to resist homophobic legislation for sure, but it's just a question of where we put the bulk of our resources and the fact that there has never been anywhere near adequate resources to help people even survive or deal with policy and legal issues that are killing huge numbers of people in our community, and that don't even make the papers because we are trapped in a paradigm where we can only value lives like Matthew Shepherd's. He's not the picture of what the majority of violence against LGBT people looks like, so I think we need to think a lot about our priorities and where they come from and what leadership in our movement looks like. I see people thinking critically about that more and more, and developing more strategies to make our movements more accountable to broader understandings of justice, and I feel good about that.

PATTERSON: Well unfortunately I think we have reached the time when we have to end this panel. But I believe that each of you here will agree with me that this panel has been excellent, and it has done what you want every panel to do, which is to bring home to everyone the urgency of the issues, the immediacy of the issues, putting human faces on issues but also making us aware of the systemic issues that have to be addressed because it's not just individuals who are being targeted, but groups in a very systematic way. Thank you very much. Join me in applauding them.