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EQUAL EMPLOYMENT PRACTICES COMMISSION

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PUBLIC HEARING ON THE IMPLEMENTATION OF  
THE AMENDMENTS TO THE NEW YORK CITY HUMAN  
RIGHTS LAW CONCERNING DOMESTIC VIOLENCE  
AND GENDER IDENTITY

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40 Rector Street  
Sixth Floor  
New York, New York

May 20, 2004  
9:30 a.m.

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P R E S E N T :

- MANUEL A. MENDEZ, Vice-Chair
- ANGELA CABRERA, Commissioner
- VERONICA VILLANUEVA, ESQ., Commissioner
- ABRAHAM MAY, JR., Executive Director
- ERIC MATUSEWITCH, PHR, CAAP,  
Deputy Director
- LISA R. BADNER, ESQ., Counsel

1 EQUAL EMPLOYMENT PRACTICES COMMISSION

2 MR. MENDEZ: Good morning. My  
3 name is Manuel Mendez, and I'm the  
4 Vice-Chairman of the Equal Employment  
5 Practices Commission. I welcome all of  
6 you here today to the public hearing on  
7 the implementation of the amendments to  
8 the New York City Human Rights Law  
9 concerning domestic violence and gender  
10 identity. The purpose of today's hearing  
11 is to learn more about two recent changes  
12 in the New York City Human Rights Law.  
13 Among other things, these changes protect  
14 victims of domestic violence and  
15 transgender individuals from  
16 discrimination in employment.

17 The City's equal employment  
18 opportunity policy, which is currently  
19 being revised, will include these  
20 protections for City employees and  
21 applicants for City employment. For this  
22 reason, this Commission is sponsoring  
23 today's public hearing. It is important  
24 that we, as well as all other City  
25 agencies, and all of us, learn more about

1 EQUAL EMPLOYMENT PRACTICES COMMISSION

2 these issues and these amendments to the  
3 City's Human Rights Law.

4 To address these topics, the  
5 Commission will receive testimony from  
6 Deputy Commissioner Avery Mehlman from the  
7 City Commission on Human Rights and  
8 Commissioner Yolanda Jiminez from the  
9 Mayor's Office to Combat Domestic  
10 Violence.

11 We will also receive testimony  
12 from Wendy Weiser from Legal Momentum,  
13 formerly known as the NOW Legal Defense  
14 and Education Fund; Dean Spade, Esq., from  
15 the Sylvia Rivera Law Project; and Michael  
16 Silverman of the Transgender Legal Defense  
17 and Education Fund.

18 Before proceeding, I want to  
19 thank the Honorable Roberto Velez, the  
20 chief administrative judge of the Office  
21 of Administrative Trials and Hearings, for  
22 allowing us to use this very attractive  
23 hearing room for today's hearing. And it  
24 is quite comfortable here. I also want to  
25 thank his staff for their kind assistance

1 EQUAL EMPLOYMENT PRACTICES COMMISSION

2 in hosting today's hearing as well.

3           The Equal Employment Practices  
4 Commission was created by the revised New  
5 York City Charter to monitor and audit the  
6 equal employment practices, programs,  
7 policies, and procedures of all City  
8 agencies. This Commission is also  
9 empowered to hold public hearings such as  
10 this, and, if necessary, to compel the  
11 attendance of witnesses. The Charter also  
12 empowers this Commission to make policy,  
13 legislative, and budget recommendations  
14 regarding equal employment opportunity to  
15 the Mayor, the City Council, and the  
16 Department of Citywide Administrative  
17 Services, as well as other City agencies.

18           Before commencing this hearing,  
19 I would like to introduce my fellow  
20 Commissioner to my left, Veronica  
21 Villanueva, and offer her the opportunity  
22 if she wishes to have any opening remarks.

23           MS. VILLANUEVA: Good morning  
24 everybody, welcome. I'm very pleased to  
25 be here this morning to hear testimony on

1 EQUAL EMPLOYMENT PRACTICES COMMISSION

2 these very important issues to everyone in  
3 the City, and I welcome everyone here.

4 MR. MENDEZ: On behalf of  
5 Commissioner Cabrera, she may be joining  
6 us later. Unfortunately, she has a family  
7 matter that she must address. So I beg  
8 your indulgence with respect to her  
9 presence. But I do hope she will be  
10 joining us this afternoon.

11 I also want to introduce our  
12 senior staff members. To my left is  
13 Executive Director Abraham May, Jr.,  
14 Deputy Director Eric Matusewitch, and our  
15 agency counsel, Lisa Badner.

16 I will now open the hearing. I  
17 believe we have someone here from the City  
18 Commission on Human Rights.

19 MR. MEHLMAN: Good morning.

20 MR. MENDEZ: Thank you for  
21 coming.

22 MR. MEHLMAN: Thank you for  
23 inviting me.

24 The New York City Human Rights  
25 Law was amended in April 2002 to broaden

1 EQUAL EMPLOYMENT PRACTICES COMMISSION  
2 the scope of protection from gender  
3 discrimination by defining gender to  
4 include actual or perceived sex as well as  
5 a person's gender identity, self-image,  
6 appearance, behavior, or expression,  
7 whether or not that gender identity,  
8 self-image, appearance, behavior, or  
9 expression is different from that  
10 traditionally associated with the legal  
11 sex assigned to that person at birth.

12 This amendment allows transgender  
13 individuals to file gender claims pursuant  
14 to the New York City Human Rights Law.  
15 The Commission has been enforcing this law  
16 since its inception. To date, the  
17 Commission has filed eight cases alleging  
18 violations of this law. One of those  
19 cases has been filed against a City  
20 agency. There is also a case currently  
21 set for trial before the Office of  
22 Administrative Trials and Hearings.

23 In conjunction with this  
24 amendment, the Commission designed and  
25 distributed over 10,000 palm cards to

1 EQUAL EMPLOYMENT PRACTICES COMMISSION  
2 educate the public about this new  
3 development in the law. I believe all of  
4 the Commissioners have the palm cards. I  
5 do have a stack that I will leave in the  
6 back of the room, and if any of the  
7 individuals who are present here who are  
8 participating would like, they could take  
9 them. If they need more, they could  
10 certainly contact our agency to get more.

11 The Commission also created a  
12 working group that included members of the  
13 transgender community for the purpose of  
14 creating a set of guidelines meant to  
15 educate the public and businesses about  
16 the above-mentioned amendment to the Human  
17 Rights Law. Input from the community and  
18 a comparison of similar guidelines in  
19 other cities was the first step in this  
20 process. The Commission is currently  
21 working with the Law Department and  
22 speaking with representatives from City  
23 agencies to gain practical insight on a  
24 variety of issues. Once we complete that  
25 review, guidelines will be issued.



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2                   The New York City Human Rights  
3 Law was also amended in December 2003 to  
4 add two new protected classes in  
5 employment, victims of sex offenses and  
6 victims of stalking. This new law  
7 requires employers to provide reasonable  
8 accommodation to the employee victims of  
9 domestic violence, sex offenses, or  
10 stalking. Instead of the burden of proof  
11 being on the complainant victim to show  
12 discrimination, this amendment requires  
13 that an employer demonstrate that a  
14 victim's requested accommodation is unduly  
15 burdensome.

16                   All the Commission attorneys  
17 and investigators have been trained  
18 regarding the implementation of these  
19 amendments. The Commission is currently  
20 training the Board of Elections regarding  
21 diversity, sensitivity, and Human Rights  
22 Law. The Commission has plans to begin  
23 training the staff at the Office of the  
24 Public Advocate.

25                   I will be happy to answer any

1 EQUAL EMPLOYMENT PRACTICES COMMISSION

2 questions regarding how these two  
3 amendments to the Human Rights Law affect  
4 the City agencies.

5 MS. VILLANUEVA: Actually, I do  
6 have a couple of questions, Mr. Mehlman.

7 We understand that CCHR staff  
8 and members of the transgender community  
9 were working together to come up with the  
10 guidelines that you mentioned, and the  
11 last meeting was a year ago. Can you  
12 describe what transpired?

13 MR. MEHLMAN: That was the  
14 initial step, was to meet with members of  
15 the community, to get the input from the  
16 members of the community. Now we have  
17 been working with the Law Department and  
18 other City agencies to try to develop  
19 formal guidelines that will be issued.

20 But I want to reiterate that  
21 the adoption of any guidelines does not in  
22 any way change how this law is being  
23 implemented. We have implemented this law  
24 from day one, from when the law was signed  
25 into law, and we continue to prosecute

1 EQUAL EMPLOYMENT PRACTICES COMMISSION  
2 cases involving discrimination, including  
3 discrimination based upon gender and  
4 gender identity, and the guidelines really  
5 will not in any way affect the manner in  
6 which we in the Human Rights Commission  
7 implement the law and prosecute the law.

8 MS. VILLANUEVA: I'm sure that  
9 you don't mean by that that the guidelines  
10 are not important.

11 MR. MEHLMAN: The guidelines  
12 are clearly important. We are clearly  
13 working on it. But there are no  
14 guidelines for any other protected class.  
15 Obviously this is a new law, something  
16 different, and it is something that the  
17 agency felt it is important to have  
18 guidelines. Nothing in the law requires  
19 the agency to have guidelines or to put  
20 out guidelines, but we felt it was  
21 important.

22 We did meet with the community,  
23 and we are meeting with the Law Department  
24 as well as other City agencies to ensure  
25 that the guidelines are a comprehensive

1 EQUAL EMPLOYMENT PRACTICES COMMISSION  
2 educational tool for both the public as  
3 well as businesses that are run in the  
4 City.

5 MS. VILLANUEVA: Can you  
6 describe some of the legal snags you may  
7 be encountering which might be delaying  
8 implementation?

9 MR. MEHLMAN: There are no  
10 legal snags.

11 MS. VILLANUEVA: When do you  
12 expect to issue the guidelines?

13 MR. MEHLMAN: We are working  
14 with the Law Department. I don't have an  
15 exact date or timetable.

16 MS. VILLANUEVA: Do you have an  
17 approximate?

18 MR. MEHLMAN: Sometime in the  
19 early fall probably.

20 MR. MENDEZ: I'm curious, what  
21 steps has the Commission taken to train  
22 its own staff, since individuals go there  
23 in the hopes of getting fair  
24 representation?

25 MR. MEHLMAN: When the law was

1 EQUAL EMPLOYMENT PRACTICES COMMISSION  
2 signed into law by the Mayor, when the  
3 amendment was signed into law by the  
4 Mayor, all the members of our agency, the  
5 investigators as well as the attorneys,  
6 who also are investigators, met with the  
7 General Counsel and there was a training  
8 session regarding the implementation of  
9 this particular law explaining the  
10 parameters, explaining the law, and  
11 explaining what it protects. It protects  
12 the same types of things that all the  
13 other protected classes protect, i.e.,  
14 public accommodations, housing, bias  
15 harassment, as well as employment.

16 MS. VILLANUEVA: Can you  
17 foresee that these guidelines will address  
18 verification of gender issue of, for  
19 example, the use of public bathrooms? I  
20 know that has been a pretty hot issue.

21 MR. MEHLMAN: Unfortunately,  
22 the way the law was drafted, the law does  
23 not have a reasonable accommodation  
24 component as does the law regarding  
25 victims of sex offenses and stalking. So

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2 that makes it more difficult in terms of  
3 addressing certain issues, because the  
4 burden with reference to sex offenses and  
5 stalking in employment, the burden is  
6 clearly on the employer to make a  
7 reasonable accommodation for the  
8 individual who is claiming that they are  
9 being discriminated or who is requesting  
10 an accommodation based on their protected  
11 class.

12           The transgender law does not  
13 provide for reasonable accommodation.  
14 That is the way the law was drafted. That  
15 is the way the law was signed in by the  
16 Mayor. We don't think that the bathroom  
17 issue is going to be a great issue. We've  
18 had one person come into our agency since  
19 the law was amended in April 2002 alleging  
20 a violation of the Human Rights Law based  
21 on the fact that they were questioned  
22 regarding the use of a bathroom. We  
23 actually are about to file that case, and  
24 we will be investigating it.

25           But every case has to be

1 EQUAL EMPLOYMENT PRACTICES COMMISSION  
2 investigated based upon the facts and  
3 circumstances. We are hopeful that our  
4 investigations will be all-encompassing  
5 and the results will be just and  
6 appropriate under the Human Rights Law.

7 MS. VILLANUEVA: There is at  
8 least anecdotal evidence that this seems  
9 to be a more widespread issue, that it  
10 happens not just in employment, but in  
11 public places like malls and restaurants.

12 MR. MEHLMAN: The actual case  
13 was a public accomodation. A member of  
14 the transgender community went to take a  
15 test, I don't remember what test it was  
16 off the top of my head, but a law board,  
17 that type of test, I don't remember what  
18 it was exactly, and it was in a public  
19 facility that had private security guards  
20 that were securing the facility for the  
21 purposes of the test.

22 The complainant went to use the  
23 woman's restroom, and on exiting the  
24 restroom the security guard approached the  
25 complainant and actually gave the

1 EQUAL EMPLOYMENT PRACTICES COMMISSION

2 complainant some problems in terms of why  
3 that restroom was being used. It took us  
4 some time to find out who the security  
5 company was because the complainant didn't  
6 remember the name of the security guard or  
7 the name of the security guard company.

8 We have been able to locate that  
9 individual as well as the security guard  
10 company, and being that is a public  
11 accommodation, we have filed a complaint,  
12 or are about to file a complaint.

13 MS. VILLANUEVA: It is also my  
14 understanding that in the State of New  
15 York there is no law that states what  
16 gender may use a male and female bathroom.

17 MR. MEHLMAN: I'm not familiar  
18 with any law like that in the state. But  
19 clearly under the City Human Rights Law,  
20 if an individual is being discriminated  
21 based on their gender identity, they would  
22 have a claim against those that are doing  
23 the discrimination, whether it is a public  
24 accommodation, housing, or employment  
25 situation, as well as bias harassment.



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2 We actually had a case  
3 regarding bias harassment prior to this  
4 amendment regarding a transgender  
5 individual, and in the past, before this  
6 amendment, those cases were filed under  
7 the disability protected class because  
8 this law had not been in effect.

9 Regarding that case, we actually litigated  
10 that matter and we got a settlement for  
11 the individual in excess of \$10,000. That  
12 was in an employment situation, being  
13 harassed by co-employees regarding the  
14 gender identity of the complainant.

15 MR. MENDEZ: Let's talk a  
16 little bit about CCHR's role in terms of  
17 reviewing gender identity guidelines of  
18 other jurisdictions. I know you mentioned  
19 something about San Francisco. Are you  
20 looking at other municipalities as well?  
21 Are you looking at San Francisco as a  
22 model since it dates back to 1995?

23 MR. MEHLMAN: I don't think we  
24 are looking at San Francisco as a model.  
25 But we are looking at San Francisco

1 EQUAL EMPLOYMENT PRACTICES COMMISSION  
2 because they are one of the few cities  
3 that have gender identity protection on  
4 the books. So we have certainly looked at  
5 it to look at how they put forward their  
6 guidelines, and we are certainly using  
7 some of the information, and it has been  
8 very, very helpful in drafting these  
9 guidelines.

10 MR. MENDEZ: Can you be more  
11 specific in terms of what areas?

12 MR. MEHLMAN: In all areas.  
13 The guidelines speak to the bathroom issue  
14 that Commissioner Villanueva brought up as  
15 well as other areas. One of the phrases  
16 was unavoidable public nudity, gyms and  
17 things of that nature where public nudity  
18 would be unavoidable, in public  
19 accommodations as such, and we have been  
20 looking at how San Francisco guidelines  
21 have been handling it.

22 As I said earlier in my  
23 testimony, we are working with the Law  
24 Department as well as the other City  
25 agencies to ensure that all issues are

1 EQUAL EMPLOYMENT PRACTICES COMMISSION  
2 taken into consideration when drafting  
3 these guidelines.

4 MR. MENDEZ: Following suit  
5 with that, has CCHR reached out to other  
6 City agencies in terms of their EEO  
7 officers with respect to training in this  
8 matter? You did it internally.

9 MR. MEHLMAN: And we are doing  
10 it in other agencies as well. I don't  
11 know if the Board of Elections technically  
12 is a City agency, but it is an agency run  
13 through funding by the City, certainly as  
14 well as the Office of the Public Advocate.

15 But there was a meeting called  
16 with the Commissioner I believe about a  
17 year ago, I believe DCAS put the meeting  
18 together, where the Commissioner and  
19 myself met with either the EEO officers of  
20 all the City agencies or their general  
21 counsels. I can't remember off the top of  
22 my head how many actually showed up to the  
23 meeting, but I know they were all invited  
24 to the meeting, and there was quite a  
25 large group of people that were there. I

1 EQUAL EMPLOYMENT PRACTICES COMMISSION  
2 remember quite a number of agencies were  
3 represented, and we did discuss all the  
4 parameters of our law, the protections of  
5 our law, and what the Human Rights  
6 Commission does.

7 MR. MENDEZ: What would you do  
8 if someone went to CCHR, what is the  
9 policy on bathroom use when a transgender  
10 person goes to CCHR to file a complaint?

11 MR. MEHLMAN: If the individual  
12 states a claim of discrimination, that  
13 because of their gender identity they were  
14 discriminated in that they weren't allowed  
15 to use a certain bathroom --

16 MR. MENDEZ: I'm asking, at  
17 your work site, what would you do?

18 MR. MEHLMAN: If somebody  
19 complained about our policy?

20 MR. MENDEZ: If someone goes to  
21 CCHR to file a complaint, in the process  
22 they said "I would like to use the  
23 bathroom," what would you do?

24 MR. MEHLMAN: Any bathroom that  
25 individual chooses to use, I would allow

1 EQUAL EMPLOYMENT PRACTICES COMMISSION

2 them to use.

3 MR. MENDEZ: You would allow  
4 them, or is it a policy that they are  
5 allowed to use?

6 MR. MEHLMAN: They are allowed  
7 to use the bathroom that they choose.  
8 Nobody is told what bathroom they can or  
9 cannot use. If an individual, based upon  
10 their gender identity, wants to use the  
11 woman's bathroom or the men's bathroom,  
12 they can use those bathrooms, and we have  
13 had no complaints regarding that.

14 MR. MENDEZ: That goes from the  
15 security person at the front when you  
16 visit all the way to the back?

17 MR. MEHLMAN: The security  
18 person at the front in our agency is  
19 employed by our agency. It is more of a  
20 secretarial staff member, not a security  
21 guard.

22 MR. MENDEZ: So if the person  
23 asked upon getting off the elevator and  
24 before even going to file a complaint, "I  
25 wish to use the accommodations" --

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2 MR. MEHLMAN: We direct them to  
3 where the bathrooms are, and there is a  
4 male and female bathroom almost juxtaposed  
5 to each other, and whatever bathroom that  
6 individual wants to use, they are free to  
7 use. Like I said, we have not had a  
8 problem.

9 MR. MENDEZ: Let's talk a  
10 little bit about domestic violence. In  
11 terms of CCHR, what has CCHR done in terms  
12 of training its own staff with regard to  
13 domestic violence?

14 MR. MEHLMAN: The same thing,  
15 we have discussed the law. As I stated  
16 earlier, the practical effect of this law  
17 is that it does have a reasonable  
18 accommodation component built into the  
19 law, which we see in disability cases as  
20 well as religious discrimination as well.  
21 That squarely puts the burden on the  
22 employer if the accommodation is requested  
23 by the employee, which makes it easier for  
24 the Human Rights Commission to prosecute  
25 those kinds of cases.

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2 MR. MENDEZ: Can you expound a  
3 little bit, and without holding you  
4 accountable, because the guidelines are  
5 still in development --

6 MR. MEHLMAN: By the way, sorry  
7 to interrupt, Mr. Chairman, but we have  
8 not had a case filed against a City agency  
9 regarding the new domestic violence  
10 amendment.

11 MR. MENDEZ: Since you are in  
12 the process of addressing this issue in  
13 terms of transgender with respect to  
14 guidelines, can you expound a little bit  
15 more, for example, on dress codes,  
16 reasonable accommodations for an  
17 employee's healthcare needs in terms of  
18 gender reassignment?

19 MR. MEHLMAN: See, the danger  
20 with being so specific regarding the  
21 guidelines is the guidelines are not the  
22 law. The law is the law. The guidelines  
23 cannot take the place of the law. The  
24 guidelines should not take the place of  
25 the law.

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2           The law is clear, if someone is  
3 being discriminated based on their gender  
4 identity, they have protection under the  
5 Human Rights Law and the City Commission  
6 on Human Rights will prosecute those  
7 cases. Each case has to be looked at on a  
8 case by case factual basis.

9           The purpose of the guidelines,  
10 which, as I reiterated earlier, are not  
11 found regarding any other protected class  
12 that the Human Rights Law protects, and  
13 there are quite a few it does, is more of  
14 an educational tool to explain to the  
15 public what this new law is about and how  
16 the Commission will be implementing this  
17 new law. But we have implemented it from  
18 day one. We continue to implement it.  
19 And the idea or perhaps the assumption of  
20 some that because there are no guidelines,  
21 the law is not being prosecuted to the  
22 fullest extent by the Human Rights  
23 Commission, is misinformation and it is  
24 wrong.

25           We've had eight individuals who



1 EQUAL EMPLOYMENT PRACTICES COMMISSION  
2 are transgender that have come into our  
3 agency to file a complaint. Each one of  
4 those individuals was given the  
5 opportunity to file a complaint, except  
6 for the eighth individual, we are waiting  
7 for that complainant to actually come in  
8 to actually sign the complaint, but  
9 everyone stated a claim. Two of the  
10 issues were closed issuing a nonprobable  
11 cause determination because the cases were  
12 lacking merit. The reason we found for  
13 the termination in the employer/employee  
14 world was based upon how the individual  
15 did their job, not based upon their  
16 gender.

17           The rest are pending. One is  
18 actually pending before OATH, and we are  
19 actually awaiting a trial. That one  
20 involved a housing case where an  
21 individual complainant was looking to rent  
22 a house, and the real estate agency, it is  
23 more of a housing agency or referral  
24 agency, refused to deal with that  
25 individual because of their gender

1 EQUAL EMPLOYMENT PRACTICES COMMISSION  
2 identity status. We are actually  
3 beginning the discovery stage leading up  
4 to what will hopefully be a successful  
5 hearing before an OATH judge.

6 MS. VILLANUEVA: You just  
7 stated a couple of minutes ago that the  
8 importance of the guidelines really is an  
9 educational tool. I think our big concern  
10 is because this is a new law and it is  
11 something that is relatively new in the  
12 U.S. in general, that the guidelines are  
13 going to be very, very helpful in getting  
14 the word out as to how this law works and  
15 how it is to be implemented.

16 MR. MEHLMAN: We have handed  
17 out 10,000 of these palm cards. The cards  
18 clearly describe the law, clearly describe  
19 what people's rights are, and clearly  
20 describe how they are protected, and they  
21 certainly describe who to contact if one  
22 feels that their rights are being  
23 violated.

24 MS. VILLANUEVA: While the palm  
25 cards are great, they are helpful and

1 EQUAL EMPLOYMENT PRACTICES COMMISSION

2 useful, I think a guideline for an  
3 employer will be more helpful than the  
4 palm cards.

5 MR. MEHLMAN: There is no  
6 disagreement that we think the guidelines  
7 would be helpful, otherwise we wouldn't  
8 have begun the process to develop the  
9 guidelines. We just want to ensure that  
10 when we issue guidelines, that they are  
11 not in conflict with the law, because the  
12 law is what was passed by the City Council  
13 and signed by the Mayor, the guidelines  
14 are just an educational tool that the  
15 Commission will be issuing.

16 We want to make sure we get  
17 input from all of the individuals in the  
18 City, both members of the transgender  
19 community as well as the City agencies,  
20 who are probably the largest employer in  
21 the City of New York.

22 MR. MENDEZ: So your forecast  
23 is you hope that there will be some type  
24 of guidelines by the fall?

25 MR. MEHLMAN: When we issue the

1 EQUAL EMPLOYMENT PRACTICES COMMISSION  
2 guidelines, those will be the guidelines.  
3 We are not going to issue a preliminary  
4 set of guidelines. We will issue the  
5 guidelines by the City Commission on Human  
6 Rights, and I'm hopeful it will be  
7 sometime in the fall.

8 MR. MENDEZ: I respectfully  
9 request that perhaps you consider sending  
10 us a draft prior to issuing them.

11 MR. MEHLMAN: We will look into  
12 that.

13 MR. MENDEZ: Any other further  
14 questions?

15 Well, thank you for your  
16 testimony.

17 MR. MATUSEWITCH: On the  
18 reasonable accommodation issue, I just  
19 want to explore what the Commission might  
20 consider a reasonable accommodation.

21 If a transgender individual,  
22 for example, requested time off, let's  
23 say, to get mental health counseling, for  
24 example, and the employer refused to do  
25 so, what would the Commission's position

1 EQUAL EMPLOYMENT PRACTICES COMMISSION

2 be if an employer, for example, if he was  
3 not to allow an employee time off to  
4 undergo mental health counseling during a  
5 transition period?

6 MR. MEHLMAN: If it is  
7 healthcare needs, under the human rights  
8 laws, the City Commission on Human Rights,  
9 our Human Rights Law, the administrative  
10 code, it would probably be able to be  
11 filed based upon a disability, because the  
12 disabilities under the human rights laws  
13 are different than the disabilities under  
14 the federal law. We protect all ranges of  
15 disabilities.

16 If somebody needed healthcare,  
17 it wouldn't be any different than someone  
18 needing time off for any other type of  
19 healthcare. Fortunately, the disability  
20 component of the Human Rights Law does  
21 allow for reasonable accommodation. So we  
22 could certainly file it both under gender  
23 identity as well as if they were going for  
24 some kind of healthcare needs, i.e.,  
25 operation, mental health, all of those

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2 would be included in the protections under  
3 our very expansive disabilities section.

4 MR. MATUSEWITCH: Can you think  
5 of any situations where the lack of  
6 reasonable accommodation clause in the  
7 Human Rights Law might negatively impact  
8 on the rights of a transgender individual?

9 MR. MEHLMAN: We were talking  
10 about bathrooms. If there was a  
11 reasonable accommodation component, one  
12 could argue if it was reasonable for an  
13 employer or a public accommodation or a  
14 housing provider to put in a  
15 gender-neutral bathroom facility into a  
16 location; then if there was a reasonable  
17 accommodation component of the law, one  
18 could argue that that could be a  
19 possibility.

20 But I want to make it clear, we  
21 are talking in the realms of possibilities  
22 that are not included in our Human Rights  
23 Law. So that is really something that we  
24 really cannot get into, because it is  
25 really not part of the Human Rights Law.

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2 It is just a thought process.

3 MR. MATUSEWITCH: Just to sum  
4 up, are you suggesting that the lack of a  
5 reasonable accommodation clause in the  
6 Human Rights Law might have a major  
7 impact?

8 MR. MEHLMAN: I don't think so.  
9 I think the way we protect the protected  
10 class is all of the protected classes,  
11 which the majority do not have a  
12 reasonable accommodation standard or  
13 component, I believe will be done in an  
14 appropriate fashion, and if individuals  
15 are discriminated against and file their  
16 cases with the Human Rights Commission, we  
17 will efficiently and in a timely fashion  
18 prosecute those cases to the full extent  
19 of the law if in fact we find that  
20 discrimination has occurred at the  
21 conclusion of an investigation.

22 MR. MENDEZ: Mr. May would like  
23 to ask a question.

24 MR. MAY: You mentioned in your  
25 testimony, Commissioner Mehlman, that you

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2 are currently training the Board of  
3 Elections regarding diversity and  
4 sensitivity of the Human Rights Law and  
5 you plan to do the same for the Office of  
6 the Public Advocate.

7 My question is, could you tell  
8 us if training services from your agency  
9 are available to all City agencies, and,  
10 if so, what is the process, and, if not,  
11 how do you distinguish?

12 MR. MEHLMAN: Upon request, and  
13 we don't have a large staff, we have a  
14 strong staff, we certainly will work with  
15 City agencies if they do request the  
16 training.

17 That training, the Board of  
18 Elections, which I believe we are about to  
19 complete, trained I believe every member  
20 of the Board of Elections, the entire  
21 staff, not just on the Human Rights Law,  
22 but, as I outlined in my testimony,  
23 sensitivity, cooperation, things like  
24 that. So it really has two components.  
25 And it was very, very, very well-accepted



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2 by the members of the Board of Elections.

3 I actually participated last Friday on one  
4 of the sessions and felt it was very  
5 helpful, as did the members.

6 Any City agency can contact our  
7 agency to request such a training, and we  
8 would have to work out a schedule with  
9 them.

10 MR. MAY: So currently the only  
11 other agencies that have requested it are  
12 the Public Advocate?

13 MR. MEHLMAN: That's correct.  
14 We also train private companies as well.  
15 We have been to many restaurants in the  
16 City. We have been to housing providers.  
17 Last year we had a one-day lecture to one  
18 of the largest real estate brokerage  
19 houses in New York. We will continue to  
20 do the training because we are confident  
21 that with the training we will try to get  
22 individuals to understand the law and try  
23 to adhere to the law.

24 MS. BADNER: We are really glad  
25 to hear that you are doing some trainings

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2 and including transgender issues among the  
3 protected classes.

4 I guess I would like to know,  
5 through the process of our auditing  
6 agencies and working with the agencies,  
7 we've found that even though the "About  
8 EEO" that DCAS published includes  
9 transgender and the cards are out there,  
10 so people are generally aware that this  
11 issue is included, I'm curious if any of  
12 the things that the Commissioners have  
13 touched on are affirmatively discussed in  
14 the training of your staff and of other  
15 agencies, for example, is the fact that  
16 there is a prohibition on the  
17 discrimination of gender identity status,  
18 is there any affirmative information  
19 given, examples, you know, that are given  
20 to the EEO officers, that is my specific  
21 concern, is the EEO officers, as far as  
22 what that means as far as dress codes,  
23 does that mean that you cannot require  
24 somebody to verify their gender for you,  
25 or does that mean that you can't require a

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2 dress code, or that there is no regulation  
3 on bathrooms? Is there anything more  
4 affirmatively covered in that training?

5 MR. MEHLMAN: I can only speak  
6 to the training that we at the City  
7 Commission on Human Rights have conducted,  
8 and the answer is yes. We do discuss the  
9 law, we have questions and answers and we  
10 discuss examples, things of that nature,  
11 as a tool to educate and to train those  
12 individuals who are responsible in their  
13 positions on implementing and making sure  
14 these laws do not violate.

15 MR. MENDEZ: Thank you for your  
16 testimony. We look forward to seeing you  
17 in the near future.

18 MR. MAY: Before we continue,  
19 we neglected to inform you that we do have  
20 sign language interpretation for the hard  
21 of hearing. Are there any persons who  
22 need sign language interpretation?

23 Would the sign language  
24 interpreter please ask that question for  
25 us.

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2 MR. MENDEZ: Thank you.

3 The Commission is requesting --  
4 I don't see Yolonda Jiminez. Is there a  
5 person representing the Commissioner?

6 MS. EMBERT: I'm representing  
7 Commissioner Jiminez. My name is Monique  
8 Embert. I'm the Deputy Commissioner of  
9 that office.

10 MR. MENDEZ: Why is the  
11 Commissioner not here?

12 MS. EMBERT: She had another  
13 engagement she had to attend with the Fire  
14 Department. But she is fully familiar  
15 with the statement that I'm going to  
16 present.

17 MR. MENDEZ: So this is her  
18 testimony you are going to be presenting?

19 MS. EMBERT: That's correct.

20 Good morning, members of the  
21 Equal Employment Practices Commission.  
22 Thank you for this opportunity to speak  
23 with you today about domestic violence in  
24 New York City.

25 I would like to begin by

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2 sharing some national statistics with you  
3 to provide a perspective on how this issue  
4 impacts men, women, and children.

5 According to the United States Department  
6 of Justice, one in four women in the  
7 United States have been assaulted by an  
8 intimate partner. More than one-third of  
9 all women who sought care in emergency  
10 rooms for violence-related injuries at the  
11 hospital were injured by an intimate  
12 partner. And nearly two-thirds of women  
13 who reported being raped since the age of  
14 18 were raped by an intimate partner. In  
15 addition to physical injury, domestic  
16 violence has enormous economic  
17 consequences as well. The health-related  
18 costs of rape, assault, stalking, and  
19 homicide by intimate partners exceed \$5.8  
20 billion each year, according to the Center  
21 for Disease Control. Of this total,  
22 nearly \$4.1 billion is for direct medical  
23 and mental healthcare services.

24 Productivity losses account for nearly  
25 \$1.8 billion annually. Domestic violence

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2 is a complex and pervasive issue.

3           In New York City, 14 City  
4 agencies and more than 400 community-based  
5 organizations provide direct assistance to  
6 domestic violence victims. These services  
7 range from supportive counseling to law  
8 enforcement, from emergency room  
9 healthcare to education in our City's  
10 public schools. A coordinated community  
11 response, generally considered the most  
12 effective approach, is essential to  
13 eliminating domestic violence. New York  
14 City receives more calls for help from  
15 domestic violence than the entire  
16 population of some cities in the United  
17 States. In 2003, our domestic violence  
18 hotline received more than 147,000 calls.  
19 The New York City Police Department  
20 responds to over 600 domestic violence  
21 incidents on average each day. Last year,  
22 64 women, children, and men died as a  
23 result of family-related violence  
24 citywide, and as of yesterday, it was 30  
25 in '04.

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2 In New York City, we are  
3 employing various strategies to combat  
4 this devastating problem. Applying a  
5 coordinated community response ensures  
6 that those most in need are provided  
7 services from various agencies. Utilizing  
8 public education strategies helps to break  
9 the intergenerational cycle of violence.  
10 Data tracking and technology enhance the  
11 reach of existing programs. In January of  
12 2002, Mayor Bloomberg appointed  
13 Commissioner Jiminez as the first  
14 Commissioner of the Mayor's Office to  
15 Combat Domestic Violence. That office is  
16 charged with developing policies and  
17 programs aimed at reducing domestic  
18 violence and coordinating the provision of  
19 domestic violence services. Commissioner  
20 Jiminez has created, among other things,  
21 an internal interagency task force to  
22 assist in this mission. Over the past two  
23 years, we have worked with various  
24 agencies and organizations to institute  
25 new projects and practices.

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2 We have seen progress.

3 Domestic violence homicides in New York  
4 City declined by 17.9 percent between 2002  
5 and 2003. That represented the largest  
6 decrease in the last nine years. Major  
7 domestic violence crimes, murder, rape,  
8 felony assault, in combination have also  
9 declined by 10.8 percent. Our office  
10 collects data to identify at-risk victims  
11 and routinely reviews statistics collected  
12 by the City's domestic violence hotline  
13 and the New York City Police Department to  
14 understand trends in domestic violence  
15 demographics. We also review all  
16 family-related homicide data in  
17 collaboration with the NYPD and the  
18 Department of Health and Mental Hygiene to  
19 examine such factors as to whether there  
20 had been any prior contact with the police  
21 or any orders of protection had been  
22 issued. Through our analysis, we found  
23 that 70.3 percent of family-related  
24 homicide cases in 2003 had no known prior  
25 contact with the police. As a result,



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2 this administration has focused attention  
3 on additional entry points for victims  
4 seeking help, for example, through the  
5 City hospitals.

6                   Since the beginning of this  
7 administration, Mayor Bloomberg has  
8 embarked upon several major initiatives  
9 which strengthen interagency coordination  
10 while enhancing the delivery of services  
11 for victims citywide. Our Domestic  
12 Violence Response Team's pilot program,  
13 which we call Divert, utilizes a  
14 coordinated community response to combat  
15 domestic violence. Divert works to  
16 increase collaboration among multiple  
17 agencies and advocacy organizations which  
18 provide victims' services, while  
19 developing policy and procedure  
20 recommendations based on in-depth case  
21 conferences on those high-risk cases. The  
22 Divert program is unique in that it  
23 creates a structure to discuss high-risk  
24 cases collaboratively among the City  
25 agencies charged with providing the direct

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2 services to victims. These agencies  
3 include the Departments of Probation and  
4 Correction, the Administration for  
5 Children's Services, the Human Resources  
6 Administration, the New York City Housing  
7 Authority, the NYPD, as well as the New  
8 York State Division of Parole and several  
9 community-based organizations. The  
10 program focuses on selected high-risk  
11 cases in two police precincts which have  
12 recorded the highest incidence of domestic  
13 violence in the City, the 43 in the Bronx  
14 and the 67 in Brooklyn. By highlighting  
15 service provision in these communities  
16 with the high number of domestic violence  
17 incidents, Divert is able to enhance the  
18 services for selected families while  
19 providing the City with crucial  
20 information in live time to help us better  
21 respond to the needs of domestic violence  
22 victims. Our ultimate goal is to reduce  
23 the likelihood of further violence for  
24 victims and their children.

25 We are also working with the

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2 City's healthcare system to ensure that  
3 medical providers are prepared to meet the  
4 needs of victims at the City's healthcare  
5 facilities. Social workers in New York  
6 City public hospitals provide assistance  
7 to more than 2,500 domestic violence  
8 victims each year. In one initiative,  
9 Project HEAL, which stands for Health  
10 Emergency Assistant Link, we equipped all  
11 11 City hospitals with digital cameras to  
12 better document injuries for use as  
13 evidence. Project HEAL trained domestic  
14 violence coordinators in each hospital to  
15 use software that allows victims to  
16 complete a petition for a family court  
17 order of protection before leaving the  
18 hospital.

19 Through a federal grant, our  
20 office has also developed and distributed  
21 a best practices manual, the Medical  
22 Provider's Guide to Managing the Care of  
23 Domestic Violence Patients Within a  
24 Cultural Context. It discusses the  
25 assessment and treatment of domestic

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2 violence victims from diverse populations.  
3 Providing culturally-sensitive training in  
4 New York City is particularly important  
5 because 36 percent of our residents are  
6 foreign-born. Since research shows that  
7 battering often begins or is most severe  
8 during pregnancy, the manual also  
9 specifically addresses intervention by  
10 prenatal care providers. We have  
11 distributed the manual citywide to over  
12 1,500 healthcare providers. We also  
13 created education materials in nine  
14 languages and distributed them to local  
15 hospitals and other healthcare providers.  
16 Our public education materials and manual  
17 were developed with input from over 160  
18 domestic violence survivors and 45  
19 healthcare providers from a variety of  
20 clinical settings, including midwives.

21 In an effort to prevent  
22 domestic violence and child abuse, North  
23 Central Bronx Hospital has collaborated  
24 with our office and the Department of  
25 Health and Mental Hygiene to pilot a model

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2 parenting program to help keep families  
3 safe. The hospital will hold separate  
4 parenting classes for young mothers and  
5 fathers in the primary language of the  
6 participants. These classes will cover  
7 topics such as healthy relationships and  
8 the effect of abuse on children, as well  
9 as parenting skills, well-baby  
10 information, and other medical and social  
11 topics. Classes held for mothers will  
12 also discuss power and control tactics in  
13 abusive relationships and provide  
14 information on available services to  
15 victims of domestic violence in their  
16 community in their language.

17 In 2002, the Health and  
18 Hospitals Corporation consolidated  
19 existing family violence policies in the  
20 new guide, the Clinician Guide for  
21 Identifying, Treating, and Preventing  
22 Family Violence. This guide serves as a  
23 practical reference for preventing,  
24 identifying, and treating family violence  
25 in the community. It also provides

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2 information on the latest developments in  
3 research and provides expert advice on  
4 family violence issues.

5                   On March 24th of this year, the  
6 Department of Health and Mental Hygiene  
7 announced their Take Care New York  
8 initiative, which addresses key  
9 preventable causes of illness and death in  
10 New York City. The new policy outlines  
11 ten steps New Yorkers can take in order to  
12 live longer and healthier lives, including  
13 having a home free of domestic violence.  
14 Facing abuse at home is a terrifying  
15 experience, but this fear may be  
16 compounded for victims who are immigrants,  
17 especially for those who are dependent  
18 upon their abuser for language  
19 interpretation or for their legal status.  
20 Research indicates that new immigrants are  
21 less likely to report crimes than other  
22 victims and that domestic violence may be  
23 one of the least reported crimes. These  
24 victims are often more afraid of  
25 deportation than of the traumatic abuse

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2 they suffer at home. As a result, no one  
3 learns about the abuse until it is too  
4 late.

5                   Based upon research completed  
6 by Dr. Susan Wilt of our Department of  
7 Health and Mental Hygiene, we know that  
8 foreign-born women are overrepresented  
9 among intimate partner female homicide  
10 victims compared with the general  
11 population. In order to convey to  
12 immigrant victims that help is available,  
13 this office has taken specific steps to  
14 increase awareness of domestic violence in  
15 local ethnic communities throughout the  
16 City. In March of this year, we launched  
17 a new pilot project in the 115th Precinct  
18 in Jackson Heights, Queens to meet the  
19 complex needs of immigrant victims. In  
20 that precinct, 77 percent of the residents  
21 are foreign-born and 83 percent speak a  
22 language other than English at home. The  
23 new program equips officers who respond to  
24 domestic violence incidents with  
25 specially-programmed cellular telephones

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2 which bring live immediate access to  
3 language interpretation services in over  
4 150 languages. This program has created  
5 quite an international outreach to New  
6 York City. As we understand, it is the  
7 first time this language line service has  
8 been placed into patrol cars. The program  
9 helps victims in many ways. It allows  
10 officers to obtain more accurate  
11 information in the victim's language at  
12 the scene of the crime. Officers are now  
13 able to communicate with victims who  
14 otherwise would not be able to tell their  
15 story, ultimately increasing better  
16 accountability.

17           The precinct's 250 police  
18 officers have received training on how to  
19 use the language line telephones and on  
20 culturally-sensitive interview skills. In  
21 the first two months of the pilot project,  
22 patrol officers called the language line a  
23 total of 56 times in 10 different  
24 languages, including Spanish, Bengali,  
25 Cantonese, Korean, Mandarin, Russian, and



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2 Senegalese.

3           Just last month this office  
4 hosted a community forum in Spanish to  
5 introduce the new program at a church to  
6 residents in that precinct. The Office to  
7 Combat Domestic Violence began hosting  
8 community outreach events in diverse  
9 communities following a particularly  
10 brutal domestic violence homicide last  
11 summer when a man doused his girlfriend  
12 with gasoline and set her on fire in front  
13 of her ten-year-old son. Business and  
14 community leaders joined with police  
15 officers, domestic violence advocates, and  
16 government officials to increase awareness  
17 of local services for victims. We are all  
18 conveying one clear message,  
19 language-specific help is available in the  
20 local community, and, consistent with the  
21 Mayor's Executive Order 41, help is  
22 available regardless of immigration  
23 status. Local and ethnic media coverage  
24 have helped us to convey this message  
25 directly to the community. We have since

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2 hosted other outreach events in  
3 neighborhoods impacted by similar crimes.  
4 Local faith leaders and the consul  
5 generals from the countries represented in  
6 the community have helped us further this  
7 effort.

8                   Through a joint venture with  
9 local domestic violence service providers,  
10 our office has also designed and  
11 distributed educational materials  
12 translated into 14 different languages  
13 emphasizing that domestic violence is a  
14 crime. That is particularly important  
15 because in many countries it is not a  
16 crime. The materials provide useful  
17 information about domestic violence  
18 offenses and sexual assault. Coordinated  
19 community efforts, such as the Domestic  
20 Violence Response Team's Project HEAL, and  
21 outreach to immigrant communities have  
22 helped us reach the most vulnerable  
23 victims.

24                   Prevention, especially with  
25 young people, is critical to ending the

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2 cycle of violence before it damages  
3 further generations. Last year the  
4 Department of Youth and Community  
5 Development allocated over \$4 million for  
6 violence prevention and intervention  
7 services, including six programs that  
8 involve the whole family in violence  
9 prevention. Another program, the  
10 Relationship Abuse Prevention Program,  
11 known as RAP, is a school-based teen  
12 relationship abuse program which promotes  
13 healthy relationships, intervenes in the  
14 cycle of teen intimate partner violence,  
15 and prevents destructive patterns of  
16 relationship abuse from extending into  
17 adult relationships. Administered by the  
18 Human Resources Administration since 1999,  
19 RAP is currently based in 20 high schools  
20 citywide. During the 2002-2003 school  
21 year, over 22,000 students per month  
22 participated in individual or group  
23 counseling. The program's focus on  
24 prevention, intervention, staff  
25 development and training, community

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2 outreach, as well as parent education,  
3 allows for full integration of services  
4 throughout the school community while  
5 ensuring a zero tolerance approach to  
6 abuse in all its forms. We also recently  
7 launched a new dating violence public  
8 education campaign using posters,  
9 brochures, and palm cards that have been  
10 translated into 12 languages.

11 Domestic violence is also an  
12 important child welfare issue. Research  
13 shows that between 30 and 60 percent of  
14 child abuse and neglect cases also involve  
15 a family history of domestic violence.  
16 Therefore, in 2003, our office partnered  
17 with the Administration for Children's  
18 Services and two community-based  
19 organizations to begin implementing a  
20 supervised visitation program in Queens  
21 for families who have experienced domestic  
22 violence. Funded by a federal grant, the  
23 Safe Havens Visitation Program is vital  
24 because victims are often at greater risk  
25 of harm after they leave an abusive

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2 partner. Through the program,  
3 court-ordered visits and exchanges of  
4 children between separated parents will be  
5 monitored by trained social workers in a  
6 safe environment. Parents may also  
7 receive counseling and support services in  
8 their language. Materials developed  
9 through the grant will allow the program  
10 to be replicated by other community-based  
11 organizations citywide. Within the past  
12 two years, the Administration for  
13 Children's Services has enhanced domestic  
14 violence screening and assessment tools  
15 for child protective staff. That City  
16 agency has also developed and implemented  
17 updated domestic violence training  
18 programs for new and experienced staff,  
19 including both child protective staff and  
20 attorneys, and continues to provide  
21 ongoing training and technical assistance  
22 to community-based preventive service  
23 programs throughout the City.

24                   These efforts are significant  
25 because of the substantial overlap between

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2 domestic violence and child abuse and  
3 neglect. Many victims in fact will  
4 interface with child welfare service  
5 providers before they seek assistance from  
6 domestic violence service providers or  
7 from the criminal justice system. The  
8 implementation of new domestic violence  
9 protocols by ACS have improved the ability  
10 of child protective specialists and  
11 preventive programs staff to assess and  
12 respond to child safety issues while  
13 providing victims of domestic violence  
14 with appropriate safety planning and  
15 referrals. In particular, the ACS  
16 clinical consultation program places 12  
17 domestic violence coordinators in the ACS  
18 child protective field offices citywide.  
19 These trained consultants work as part of  
20 a multidisciplinary team which also  
21 includes mental health and substance abuse  
22 specialists and a teen coordinator.  
23 Consultations are available to  
24 caseworkers, supervisors, and managers to  
25 help screen the client for domestic

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2 violence and to develop an appropriate  
3 case plan. The domestic violence  
4 consultants also identify and develop  
5 connections to domestic violence-related  
6 neighborhood-based resources to facilitate  
7 referrals. In 2003, domestic violence  
8 experts conducted over 3,200 consultations  
9 and 248 training sessions.

10 Elder abuse is a form of  
11 domestic violence. As our nation's  
12 population ages, the number of elder abuse  
13 cases also increases. In order to address  
14 this, in 2002, the Department for the  
15 Aging, which is the nation's largest  
16 department to address aging issues,  
17 contracted for the first time with  
18 community-based organizations to provide  
19 elder abuse prevention and intervention  
20 services at community centers throughout  
21 the five boroughs. The programs provide  
22 supportive counseling, training, financial  
23 protection, legal referrals, and  
24 information on violence prevention.

25 We have also partnered with the

1 EQUAL EMPLOYMENT PRACTICES COMMISSION  
2 Department of Aging and two  
3 community-based organizations to  
4 collaborate on a two-year federal grant  
5 which will develop a training curriculum  
6 for police, judges, and prosecutors in the  
7 identification, investigation, and  
8 prosecution of elder abuse crimes. This  
9 project is designed to afford those  
10 personnel who receive training with an  
11 understanding of the signs, symptoms, and  
12 approaches necessary to identify and  
13 address physical and mental elder abuse,  
14 as well as financial exploitation, which  
15 is of particular concern to that  
16 community. Using culturally-sensitive  
17 training, law enforcement will be better  
18 prepared to facilitate positive  
19 interaction with victims who may otherwise  
20 be unwilling or unable to respond to  
21 important questions impeding the  
22 investigation or the prosecution.

23 By directly confronting the  
24 issue of family violence throughout all  
25 generations in New York City, we are



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2 taking an important step to stem the tide  
3 of future abuse. Part of this effort also  
4 includes the ongoing evaluation and  
5 assessment of existing programs to ensure  
6 that the City's services meet the emerging  
7 needs of victims efficiently. For  
8 example, in the criminal justice arena,  
9 the City launched a new digital 911  
10 program in 2002 which now enables judges  
11 to hear high-quality recordings of a  
12 victim's cry for help before setting bail  
13 in domestic violence cases. These  
14 recordings, which have been particularly  
15 helpful in prosecuting domestic violence  
16 cases, can now be retrieved in less than  
17 24 hours, whereas a year ago it could take  
18 up to three months. Based on the use of  
19 these digital recordings, judges are now  
20 22 percent more likely to impose bail for  
21 batterers, prosecutors have compelling  
22 evidence, and cases are closed almost 25  
23 percent faster.

24                   Currently there are over 300  
25 domestic violence prevention officers and

1 EQUAL EMPLOYMENT PRACTICES COMMISSION  
2 detective investigators dedicated to  
3 eliminating domestic violence who all need  
4 ongoing training. In 2003, the Police  
5 Academy updated the domestic violence  
6 curriculum and graduated their first class  
7 of over 1,300 recruits who were trained  
8 with the new curriculum. The revised  
9 curriculum was informed in part by  
10 information collected by our office, from  
11 focus groups held in ten different  
12 languages with over 100 domestic violence  
13 victims and police officers, as part of a  
14 federally funded grant.

15 When a victim leaves an abuser,  
16 she may need a new place to live. We are  
17 also improving the way the City meets the  
18 needs of domestic violence victims for  
19 emergency shelter and permanent housing.  
20 Last year the City's domestic violence  
21 hotline received over 12,000 unduplicated  
22 requests for shelter. To meet this  
23 demand, the City has increased the number  
24 of available emergency beds by 26.3  
25 percent since 2001, creating a total of

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2 1,832 beds. We have also increased the  
3 number of longer-stay transitional housing  
4 units to 173. In 2003, 9,500 individuals  
5 were able to be housed in shelters  
6 administered by the Human Resources  
7 Administration. Further, in recognition  
8 of the need to increase shelter space for  
9 physically disabled domestic violence  
10 victims, HRA will soon enter into a  
11 contract to construct an 86-bed facility  
12 specially designed for disabled victims.  
13 Prior to this administration, shelter  
14 requests were on average three times  
15 higher than the number of available beds.  
16 This ratio has steadily decreased, and now  
17 requests are on average 1.7 times higher  
18 than the number of available beds. The  
19 City is closer to meeting the demand for  
20 shelter than ever before.

21 In October 2003, Mayor  
22 Bloomberg announced several measures to  
23 streamline access to public and subsidized  
24 housing using upgraded technology and the  
25 coordinated efforts of several City

1 EQUAL EMPLOYMENT PRACTICES COMMISSION  
2 agencies. The new initiatives are a  
3 direct result of the work I described  
4 earlier, the Domestic Violence Response  
5 Team analyzing high-risk cases.

6 More public housing options  
7 have been made available to victims who  
8 are current or prospective NYCHA tenants  
9 by allowing them to apply for housing  
10 within their home borough. Historically a  
11 victim in public housing who wanted to  
12 escape from the batterer was required to  
13 move to another borough. For example, a  
14 victim in Williamsburg, Brooklyn may  
15 actually have been closer to the abuser  
16 when moving to Greenpoint, Queens than if  
17 she had been relocated to Bay Ridge in  
18 Brooklyn. Victims can now obtain new  
19 apartments within their home boroughs as  
20 long as they are a safe distance away  
21 within a different set of zip codes from  
22 their former residences. This new policy  
23 will open up more housing options for  
24 victims.

25 Soon victims of a single felony

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2 will rightfully be given special  
3 consideration by NYCHA without needing  
4 proof of a second incident. In addition,  
5 applications for permanent housing and  
6 Section 8 housing vouchers have been  
7 expedited through NYCHA's use of an online  
8 database to conduct federally mandated  
9 criminal background eligibility reviews of  
10 applicants. Permanent housing  
11 applications are now being processed two  
12 to three weeks faster. This is a  
13 reduction in time that quite simply can  
14 save lives. We also heard from Divert  
15 victims that something as simple as  
16 finding out the status of their housing  
17 applications could take an entire day  
18 because they were required to go to the  
19 NYCHA housing office in person with their  
20 children often in tow. Victims have now  
21 been assigned a PIN number to allow them  
22 to learn the status of their NYCHA housing  
23 applications with a simple phone call. We  
24 are taking these important steps to  
25 continuously improve the delivery of

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2 services for domestic violence victims.

3           The City also offers several  
4 innovative programs for those victims of  
5 abuse who have become survivors. The  
6 Department of Correction, in coordination  
7 with the Office of the Criminal Justice  
8 Coordinator, has implemented a  
9 technological initiative known as the VINE  
10 system, standing for Victim Information  
11 and Notification Everyday. VINE assists  
12 crime victims in determining the custody  
13 status of inmates. Victims also have the  
14 status of being automatically notified  
15 when the alleged abuser is released. In  
16 2003, 46,984 calls were placed to notify  
17 2,722 registrants of the changes in  
18 jurisdictional custody and the release  
19 status of inmates within DOC custody.

20           Another program for survivors,  
21 the HARTS program, known as Housing  
22 Assistance for Relocation and Transitional  
23 Services, was implemented by NYCHA in  
24 October 2002 to assist families moving  
25 into public housing from emergency shelter

1 EQUAL EMPLOYMENT PRACTICES COMMISSION  
2 and individuals moving into public housing  
3 with domestic violence or intimidated  
4 witness status. Services are also made  
5 available to families relocating within  
6 NYCHA housing as intimidated victims and  
7 witnesses through NYCHA's already existing  
8 emergency transfer program. The HARTS  
9 program model is intensive case  
10 management, with cases expected to stay  
11 open on average six to nine months.  
12 Families are assessed for their level of  
13 independent living skills, and individual  
14 service plans are developed for each  
15 family. Workshops on topics such as  
16 budgeting, apartment maintenance, and  
17 parenting skills are provided as well. In  
18 2003, the program received 1,814 referrals  
19 and made a total of 2,288 home visits and  
20 42 shelter visits.

21 An understanding of the City's  
22 efforts to combat domestic violence would  
23 not be complete without an understanding  
24 of the impact of domestic violence in the  
25 workplace. Because domestic violence is a

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2 24-hour issue, the experience of abuse  
3 does not end when a victim goes to work.  
4 The trauma of a battering incident which  
5 occurs outside the workplace can  
6 negatively impact punctuality, the rate of  
7 absenteeism, and worker productivity.  
8 Victims are often unable to focus on their  
9 work because of overriding concerns and  
10 feelings of low self-esteem, which make it  
11 difficult to meet the demands of  
12 employment. Court appearances and  
13 doctors' appointments contribute further  
14 to employee absenteeism, and the safety of  
15 workers can be compromised if the victim  
16 encounters the abuser during working  
17 hours.

18           The U.S. Department of Labor  
19 estimates that 75 percent of domestic  
20 violence victims face harassment from  
21 intimate partners while at work. We also  
22 know that domestic violence is  
23 underreported. However, friends, family,  
24 and work colleagues frequently know that  
25 the abuse is occurring, but are unaware of



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2 available resources. In fact, 56 percent  
3 of senior executives who were surveyed  
4 reported being aware of employees who had  
5 been affected by domestic violence. Many  
6 employers are reluctant to speak with  
7 employees about personal issues. However,  
8 the benefit of developing an effective  
9 domestic violence workplace policy which  
10 includes focused dialogue can bring about  
11 positive outcomes. In addition to  
12 benefitting victims of abuse directly,  
13 these policies can improve productivity,  
14 minimize workplace disruptions, and aid in  
15 the retention of employees. The  
16 collaborative efforts of management and  
17 workers can further ensure a safe and  
18 secure workplace.

19 The Bloomberg Administration is  
20 committed to protecting the rights of  
21 domestic violence victims in every  
22 setting, augmenting legislation passed  
23 during the Giuliani Administration which  
24 made it unlawful for an employer to fire,  
25 refuse to hire, or discriminate against

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2 victims of domestic violence. Mayor  
3 Bloomberg recently signed new legislation  
4 to further protect their rights. The new  
5 law, as you well know, explicitly requires  
6 that all employers provide reasonable  
7 accommodation to victims of domestic  
8 violence, sex offenses, and stalking.  
9 This allows victims to remain productive  
10 members of the workforce and to continue  
11 to remain economically self-sufficient.  
12 New York City is the first city in the  
13 United States to enact such legislation.

14           The initiatives I have  
15 discussed and additional information on  
16 all aspects of domestic violence can be  
17 obtained from our recently developed web  
18 site at [www.nyc.gov\domesticviolence](http://www.nyc.gov/domesticviolence). The  
19 input to that web site was received within  
20 the last two months. It has been updated  
21 by each of the agencies involved.

22           The elimination of domestic  
23 violence requires a multifaceted approach.  
24 We have been fortunate to see some success  
25 despite our limited resources and given

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2 the magnitude of the problem. Our  
3 directed efforts are aimed at assisting  
4 current victims of abuse before they  
5 become homicide statistics. Programs must  
6 be continually evaluated to be sure that  
7 they address emerging needs. Support for  
8 state and federal legislation which  
9 provides funding for victims' services and  
10 research is essential. All of the  
11 programs initiated by our office have been  
12 implemented because we secured federal  
13 funding. Promoting awareness through  
14 education is vital, because so many of the  
15 homicides, family, friends, neighbors, or  
16 work colleagues were aware of the abuse,  
17 but they did not act to direct the victim  
18 to available resources because they did  
19 not appreciate the danger to the victim.

20 At a recent event co-sponsored  
21 by our office, the New York Women's  
22 Agenda, and the Altria Group, participants  
23 shared practical strategies for addressing  
24 domestic violence in the workplace. Chief  
25 among them was the recommendation to

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2 review existing domestic violence  
3 workplace policies developed by experts in  
4 the field. The New York State Office for  
5 the Prevention of Domestic Violence has  
6 created a comprehensive model domestic  
7 violence policy for counties which is  
8 available on their web site,  
9 www.opdv.state.ny.us. Equal employment  
10 opportunity officers can play an important  
11 role in implementing workplace policy.

12 In closing, I wish to thank the  
13 members of this Commission for your  
14 support of the efforts to reduce domestic  
15 violence in New York City, and I will be  
16 pleased to meet with you any other time to  
17 discuss what can be done to implement the  
18 new law. Again, thank you for your  
19 commitment to victims of abuse.

20 MR. MENDEZ: Thank you. Are  
21 you prepared to answer some questions?

22 MS. EMBERT: Yes, I will.

23 MR. MENDEZ: On page 4 of your  
24 testimony, you indicated since the  
25 beginning of his administration, Mayor

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2 Bloomberg has embarked upon several major  
3 initiatives which strengthen interagency  
4 coordination. Who comprises the  
5 interagency? What agencies are  
6 represented at the table?

7 MS. EMBERT: All of the  
8 agencies that are mentioned in this  
9 testimony are part of the task force that  
10 we have monthly.

11 MR. MENDEZ: It occurs monthly?

12 MS. EMBERT: That's correct.  
13 Then the Domestic Violence Response Team  
14 program, where we take in the cases on an  
15 ongoing basis, those cases are conferenced  
16 with agency representatives monthly. And  
17 then one other time during the month there  
18 is a training so that each of the agencies  
19 is aware of the different protocols of the  
20 other agencies. So we do an ongoing  
21 training as well as to analyze the way the  
22 agencies need further cooperation to  
23 assist the victim.

24 MR. MENDEZ: In the course of  
25 your presentation, you spoke about elder

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2 abuse. I'm curious, since you do work  
3 with HRA regarding that program, have you  
4 reached out to Protective Services for  
5 adults?

6 MS. EMBERT: Yes, Adult  
7 Protective Services is currently a partner  
8 with us on the DIFDA grant to develop the  
9 training. We also have a wide  
10 representation of other agencies as well  
11 on that grant. But because of part of the  
12 patrol guide policy, DIFDA and Adult  
13 Protective Services must be contacted.  
14 When we rolled out the new curriculum for  
15 the NYPD Academy, that section of the  
16 patrol guide was addressed as well. The  
17 curriculum is not completed yet.

18 But on June, I think it is  
19 19th, there will be a conference up at  
20 Fordham, and we expect over 125 officers  
21 to be there as well as civil attorneys and  
22 others on this issue to hear the findings  
23 of the various work groups on that. But  
24 it is a very key issue because DIFDA works  
25 continuously with Adult Protective

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2 Services.

3 MR. MENDEZ: We hear a lot in  
4 the City of New York about housing  
5 shortages, yet in your testimony you  
6 indicated there has been a decline in the  
7 need for beds for victims of domestic  
8 violence. What do you attribute that to?

9 MS. EMBERT: Some because of  
10 the new beds coming online, and just the  
11 fact that we did have available for the  
12 City Section 8 vouchers. Now that that  
13 whole problem is again potentially going  
14 to be a critical problem for the City, it  
15 may not remain at its current level. As  
16 you know, that is something that NYCHA is  
17 looking into very closely now.

18 But, again, it could be, too,  
19 that some of the procedural changes that  
20 have been made, and especially with the  
21 support services for victims in NYCHA  
22 housing, there has just been a tremendous  
23 outreach through every channel.

24 So that if you can prevent  
25 homelessness, that is ultimately the goal.

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2 MR. MENDEZ: Following suit  
3 with that issue of preventing  
4 homelessness, many of the homeless are  
5 placed in HPD housing, whether that is  
6 sponsored by privates or nonprofits.

7 Are you working with HPD, and  
8 have you looked at any analysis that  
9 indicates that the pattern of reports are  
10 coming from HPD housing?

11 MS. EMBERT: HPD actually had a  
12 set number of vouchers that they could  
13 use, and, yes, they worked closely with  
14 us. In fact, they are both on our monthly  
15 committee of the agencies and they are on  
16 the Divert program. So we have learned a  
17 lot from HPD as far as how to handle their  
18 programs.

19 They used to have a whole  
20 system where they would take applicants  
21 who are already ready to get their  
22 apartment. They would go out on a Friday  
23 with a van and facilitate their search for  
24 apartments. But it is my understanding  
25 right now that HPD no longer has those



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2 vouchers at this time.

3 But no, HPD has been extremely  
4 responsive to domestic violence victims  
5 and to our office in particular.

6 MS. VILLANUEVA: I just have a  
7 couple of questions.

8 Has your office worked with the  
9 City Commission on Human Rights in  
10 connection with establishing guidelines  
11 for City agencies and private sector  
12 employers to accommodate victims of  
13 domestic violence?

14 MS. EMBERT: Just to the extent  
15 when the local laws were proposed, we  
16 always have meetings with the agencies  
17 involved to look at the legislation, which  
18 we were supportive of. We see this as  
19 wonderful legislation for domestic  
20 violence victims.

21 But as you heard the prior  
22 speaker say, they haven't had the report  
23 yet for this, and it could be that many  
24 domestic violence victims are not aware of  
25 the law yet and that we will see more

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2 complaints, but thus far there hasn't been  
3 the level of activity.

4 I was heartened to know that  
5 they had the capacity to do that type of  
6 training citywide to agencies, and our  
7 office would certainly welcome  
8 collaboration on the content or even the  
9 presentations. We are a very small  
10 office, a handful of people for doing what  
11 we are doing, but because we have our ear  
12 to the ground and we are working directly  
13 with the victims and all the DA offices  
14 and the Domestic Violence Department at  
15 the Police Department and all the  
16 agencies, I feel we are aware of new  
17 programs and we can give the real  
18 information that victims need. Maybe they  
19 could present the law on that side and we  
20 can make sure that the resources that are  
21 provided are the most updated.

22 MS. VILLANUEVA: Just following  
23 up on your point, because you are such a  
24 small office, I was wondering whether you  
25 even had the opportunity to reach out to

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2 City EEO officers or HR personnel to  
3 educate them on domestic violence issues.

4 MS. EMBERT: No, because just  
5 our policy office, not to say that we  
6 couldn't do it -- you know, I was thinking  
7 as he was testifying, the COIB has a small  
8 section of their office that is just in  
9 charge of training on COIB. So depending  
10 if your Commission has the capacity to  
11 allocate budget for staff and printed  
12 materials. Not to say that Commissioner  
13 Jiminez wouldn't also be open to that. We  
14 are a new office. We started in '02.

15 MR. MENDEZ: First let me  
16 applaud the efforts of the Bloomberg  
17 Administration in the creation of the  
18 office. I do recall some years ago in the  
19 Koch Administration when we had a severe  
20 issue with teen pregnancy, I was  
21 instrumental in the passage of the Teenage  
22 Services Act.

23 I'm wondering if anything is  
24 being done on looking at the state  
25 responsibility with respect to domestic

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2 violence, and is the City of New York  
3 proposing a particular legislation or  
4 looking for the state to take some level  
5 of responsibility on this matter?

6 MS. EMBERT: Actually, we have  
7 been in touch with the state office  
8 because there is a pending legislation now  
9 which talked about that very issue of the  
10 pregnancy prevention. Based on our  
11 research of teen violence, there is a  
12 direct correlation between pregnancy and  
13 abusive relationships. We have actually  
14 put in the language, the carat and  
15 inserted the language, and we are hoping  
16 it is in executive committee right now,  
17 that they will consider very strongly  
18 incorporating that language so that we  
19 could have the funding to broaden those  
20 programs in the schools.

21 But at the same time, we are  
22 also beginning to work with the Department  
23 of Education. In fact, on Thursday of  
24 next week, the 27th, we will have a  
25 conference with all of the adult drug

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2 counselors in the schools and we are going  
3 to have all of our current relationship  
4 abuse prevention staff members giving  
5 presentations to 600 counselors on that  
6 one day. That is just the beginning of  
7 our work with them. They will distribute  
8 all of our posters and palm cards for teen  
9 abuse, which directs teens not only to 911  
10 for emergency, 311 for services, but also  
11 to the youth line, the teen line, and the  
12 NYPD Special Victims Unit for sexual  
13 assault. Because, also, that is just a  
14 very important issue in domestic violence,  
15 to recognize the coincidence between  
16 sexual assault and domestic violence.

17           So as this rolls out with the  
18 Department of Education, we are hoping  
19 that we will have avenues to broaden this.  
20 As you know, there is the potential to  
21 have the parents involved. There is a  
22 whole structure for that. As well as the  
23 support staff for the school. And just to  
24 have the visual images in the school which  
25 promote an antiviolence environment and

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2 encourage teens not to tolerate  
3 disrespectful behavior toward them is just  
4 such an important issue. We hear that  
5 from everyone involved in every aspect,  
6 whether it is school safety or the parent  
7 training or the counselors, it is just a  
8 theme that runs throughout. So we hope we  
9 will get good support for that. Now they  
10 have reached out to do this first training  
11 which will reach at least 600 more people.

12 MR. MENDEZ: I think that is  
13 very important, especially in the youth  
14 movement, where that continues as an  
15 adult.

16 MS. VILLANUEVA: Since this is  
17 a hearing on two amendments, both domestic  
18 violence and transgender issues, can you  
19 tell us what, if any, accommodation would  
20 be made for a transgender victim of  
21 domestic violence, for example, a male to  
22 female transgender victim placed in a  
23 specific shelter?

24 MS. EMBERT: Right now there is  
25 one organization that particularly serves

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2 domestic violence victims. On the front  
3 page of our web site, if you click on to  
4 that issue, it will directly put you in  
5 touch with that organization. They have  
6 worked very closely with our office to  
7 make sure that all of our materials are  
8 reviewed so that they are appropriate also  
9 for that population. They provided the  
10 content for our web site basically because  
11 we have been working with them.

12 As far as the availability of  
13 shelter, I'm not aware of anything that  
14 would restrict access to shelter as long  
15 as they call directly into the New York  
16 City hotline for domestic violence, and  
17 then they will be referred to a shelter  
18 specialist who will screen them and  
19 contact the undisclosed site of the  
20 shelter. But they are a very good  
21 resource.

22 MR. MENDEZ: If I was a private  
23 employer and I tried to address this  
24 issue, how would your office promote the  
25 database that you have and all the

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2 information? Are you reaching out to the  
3 private sector as well?

4 MS. EMBERT: Yes. We are  
5 always involved with the private sector,  
6 because they sponsored a conference,  
7 Lifetime, Liz Claiborne, American Express  
8 come to mind immediately, but they have  
9 been pioneers in this field for 15 years,  
10 and there is an alliance group that we  
11 work with that is a corporate alliance  
12 group, and then there is also a coalition  
13 with the Cornell School of Industrial  
14 Relations, and that is a joint effort with  
15 our office as well as the City Council to  
16 make sure that small businesses are aware  
17 of this new law. We just had a  
18 publication by Cornell within the last two  
19 weeks. It gives our web site on it.

20 And, also, with the Corporate  
21 Alliance to End Partner Violence, I don't  
22 know if you remember receiving in your  
23 paychecks from the City, but all of the  
24 inserts that said --

25 MR. MENDEZ: We are not



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2 full-time Commissioners.

3 MS. EMBERT: All of the City  
4 employees received those within the last  
5 two months that gives the hotline number.  
6 They paid for those inserts with our  
7 information on it as well as for posters  
8 to go up. And we distributed those to the  
9 City agencies. And there are links on our  
10 web site so that you can review that or  
11 you can review the national guidelines for  
12 federal employees. We have that on our  
13 information page. Then, as I said, our  
14 web site is now on those new publications  
15 that are going to go out through small  
16 businesses. We will probably in the next  
17 few months have direct outreach efforts  
18 with them.

19 As you may know, the unions  
20 have been leaders on this issue, providing  
21 brown bag lunches, and one of the first  
22 things I did when I came to the office was  
23 to look through all the files, and I was  
24 very impressed with the work the unions  
25 had done on this issue. So we have worked

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2 closely with them on this issue.

3 MR. MENDEZ: You mentioned Liz  
4 Claiborne and you mentioned American  
5 Express. Have you looked at that as a  
6 protocol or something that might be able  
7 to be replicated?

8 MS. EMBERT: Yes. I think that  
9 especially American Express, the head of  
10 global security there, Joanne Collucci,  
11 she has a very clear multilevel approach  
12 to this. She designed it so it is New  
13 York-specific. It addresses management,  
14 security, human resources.

15 And, also, Liz Claiborne, Jane  
16 Randall, she just spoke recently and she  
17 said one of the problems down in one of  
18 their plants in North Carolina would not  
19 have been averted had they not had this  
20 protocol. A batterer had shown up to work  
21 at a loading dock area. She had already  
22 given her order of protection to security.  
23 They already had a protocol in place with  
24 the police. He was armed. It would have  
25 been a national coverage story had they

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2 not had their workplace policy in place.

3 As it was, it was handled according to the  
4 procedures. That is very rare, though.

5 It doesn't happen often that they have  
6 anything like that.

7 But the programs of the  
8 corporations have been to make all of  
9 their employees from the CEO on down aware  
10 of this issue. We do definitely believe  
11 that with more people just knowing that  
12 there is help available, that we will  
13 continue to reduce the homicides as well  
14 as the aggravated assaults against victims  
15 in the City. Help will be given to them  
16 earlier, maybe after the first incident  
17 instead of after the fifth or sixth  
18 incident, and we will see the numbers  
19 decline.

20 Many victims told us the place  
21 they can go where they feel safe is work.  
22 It is everyone's obligation to get to know  
23 their fellow employee. It will not show  
24 up in the form of a bruise necessarily.  
25 It will be all of these other stress

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2 factors that only with time and with  
3 proper sensitivity to this that the victim  
4 will disclose it and will get help that is  
5 available.

6 MR. MENDEZ: Since you  
7 mentioned the private sector, have you  
8 ever reached out to the various  
9 partnerships, I believe there is a New  
10 York City partnership or something which  
11 represents numerous major corporations in  
12 the City of New York?

13 I just put that out for food  
14 for thought in terms of a future search in  
15 looking to expand this issue. Because as  
16 an administrator in the public sector and  
17 private life, I have experienced this  
18 firsthand with staff. In the early years  
19 of my administrative career, I found that  
20 human resources departments didn't have  
21 that much response capability. I think  
22 that more and more the human resources  
23 departments have to step up to the plate  
24 and address these issues.

25 So I'm wondering, since you've

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2 done some work with American Express, and  
3 you mentioned Liz Claiborne, whether or  
4 not you are looking at the partnership --  
5 I forget, does that still exist in the  
6 City of New York, the New York City  
7 partnership?

8 MS. EMBERT: Yes. The new  
9 initiative now with the current law will  
10 be sort of a multifaceted approach. But  
11 it is beginning with small businesses.  
12 What we found is that they are going to  
13 see the problem most immediately in some  
14 communities. Commissioner Jiminez has  
15 contacted bodega associations so that we  
16 have that group to be on board with us.  
17 And we've tried to look at that sort of  
18 first entry point as much as possible.  
19 For instance, I know that in London they  
20 print out the hotline number on taxi  
21 receipts and many other jurisdictions have  
22 put them on liquor store bags or grocery  
23 store bags. These sort of more immediate  
24 sources of information is sort of the way  
25 you go first.

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2 But the Corporate Alliance, the  
3 larger group that we partner with that  
4 produced the materials for us, they have a  
5 systematic approach to that. They have  
6 many of their members, many of the  
7 companies that came on board came on board  
8 because there was a member of a law firm  
9 who then got other law firms to join,  
10 maybe the spouse of a CEO who then got  
11 that group to come. So they have grown,  
12 but they have a very systematic approach  
13 to do this. They try to put it in a  
14 smaller setting so that people will buy  
15 into the issue first; for instance, they  
16 hold a breakfast. They give the stats and  
17 show you how simple the protocol can be,  
18 and the speaker, the last speaker was a  
19 corporate executive from Altria who then  
20 went on to become a member of their human  
21 resources department, but she was a very  
22 high-level executive who was experiencing  
23 domestic violence and didn't know about  
24 resources. She will come and give a  
25 presentation to the officers of the

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2 corporations so that they feel they want  
3 to take ownership of this as their issue.

4 And it is a wonderful thing for  
5 companies as well, because they have women  
6 consumers, and domestic violence is one of  
7 the top issues for women consumers and  
8 women voters. So we have sort of a  
9 built-in incentive for them to want to  
10 make this information available and to  
11 promote this issue.

12 MR. MENDEZ: Let me say that I  
13 am thoroughly impressed with the work that  
14 Commissioner Jiminez has achieved in such  
15 a short period of time.

16 I have one last question. On  
17 male abuse, is the office doing anything  
18 in that regard?

19 MS. EMBERT: Well, as you know,  
20 the thrust is to make sure that batterers  
21 are accountable. But we have  
22 approximately 5 percent of all abused  
23 victims are male, and they can call and  
24 get services. We actually have programs,  
25 if you call into the hotline for the City

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2 and you say "I'm worried about abusing my  
3 spouse or my girlfriend and I want help,"  
4 they will be directed to Safe Horizon.  
5 They have special programs for that.

6 But what we would like to see  
7 developed, because some of these programs,  
8 it is a mixed review, the state has given  
9 sort of a template, but the research that  
10 we have reviewed, it is still not 100  
11 percent sure that this is actually  
12 producing results. Sometimes they review  
13 programs and they say it just makes you  
14 more likely to batter because you talk to  
15 other men who are battering.

16 But the program that seemed to  
17 be a good working model now in Connecticut  
18 is one that focuses on the effect on  
19 children of the violence. This program is  
20 being evaluated for possible replication  
21 on a national scale. To the extent that  
22 we are trying to get into the hospital to  
23 do this on the prenatal level to show the  
24 effect of battering on the children, you  
25 know, that is where you are going to get



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2 that buy-in from the male. No matter what  
3 happens, even if there is an order of  
4 protection, there are a certain percentage  
5 who are going to go back and reconcile  
6 with the abuser because they have children  
7 in common. So even though they may have  
8 broken the cycle, they will still have  
9 ongoing contact. But the thrust of those  
10 programs is primarily on education and  
11 showing the effects of that violence on  
12 children.

13 MR. MENDEZ: Does anyone have  
14 any further questions?

15 MR. MAY: Yes, I do. Good  
16 morning.

17 I think it is safe to say based  
18 on your testimony that you've done quite a  
19 bit of work in addressing this issue of  
20 domestic violence. So my first question  
21 comes as an administrator. How many  
22 people are on your staff?

23 MS. EMBERT: 12.

24 MR. MAY: My second question  
25 relates to the percentage of victims of

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2 domestic violence based on your data. Can  
3 you tell us what percentage are City  
4 employees?

5 MS. EMBERT: The percentage of  
6 domestic violence victims who are City  
7 employees? No. I could tell you the  
8 approximate percentage. When there is a  
9 report to the hotline, we do get stats  
10 from the hotline. I don't have it in  
11 front of me, but the last time I looked it  
12 was about 34 percent of the callers were  
13 employed, but that could be employed in  
14 any context.

15 I recently asked for the data  
16 to try to get an idea of the percentage of  
17 public benefit recipients who were coming  
18 in through criminal cases. Approximately  
19 60 percent on that score. But out of that  
20 smaller percentage of women reporting to  
21 the hotline who are employed at the time  
22 that they call, we don't ask how many are  
23 City employees. But the unions may be  
24 able to give you data on that.

25 MR. MENDEZ: As a matter of

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2 fact, many of the unions do have  
3 divisions, it is not uncommon for the  
4 unions to assist individuals who are  
5 facing housing evictions or issues of  
6 domestic violence. I do know that 1199  
7 does do that work.

8 MS. EMBERT: They do. I would  
9 imagine if you contacted each of the  
10 unions and you asked them what was the  
11 percentage of all of their members who  
12 reported domestic violence, but, you know,  
13 domestic violence is so underreported that  
14 if you don't have the posters on the  
15 walls, for instance, even in the hospital  
16 setting, without the posters on the walls  
17 and staff members wearing a button that  
18 says "You can talk to me about domestic  
19 violence," the disclosure rate is very  
20 low.

21 That is why we started the  
22 hospital program. If you put the posters  
23 on the wall, there was one study that  
24 showed you would have a third more  
25 disclosure just because it is an

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2 environment that says "It is okay to talk  
3 about the issue here."

4 MR. MAY: What about the  
5 crimes, you do monitor the crimes?

6 MS. EMBERT: Yes.

7 MR. MAY: In terms of that  
8 data, can you identify the percentage of  
9 crimes that are caused by City employees  
10 as opposed to domestic violence crimes  
11 that are committed by non-City employees?

12 MS. EMBERT: There is nothing  
13 on the current domestic incident report  
14 that requires the officer to give that  
15 kind of specific detail. Although the  
16 domestic incident report which is used  
17 citywide is being changed right now. Our  
18 office sits on that committee. We have  
19 asked that they put employment as a  
20 category simply because there was a recent  
21 11-city study, including New York City,  
22 where the risk factors for fatality  
23 included an unemployed batterer. So we  
24 want to try to collect that data  
25 throughout the state. So that category

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2 will be added to the new domestic incident  
3 report. But it is a pretty long report  
4 now.

5           They never, to my knowledge,  
6 ever collected that information as to  
7 whether, in response to a scene, you know,  
8 at the time they are doing the report,  
9 they don't ask if the person is a City  
10 employee. But you could probably get some  
11 data, too, from the individual agencies,  
12 maybe the human resources staff of each of  
13 the agencies might have had -- maybe  
14 interview the person from the top agency.

15           MR. MENDEZ: It is difficult  
16 data to gather, and I'm confident  
17 Commissioner Jiminez, given her background  
18 in the Police Department, if that data  
19 were available, you would have it. I  
20 don't agree that that data is available at  
21 this point.

22           MS. EMBERT: I don't think so.

23           MR. MAY: Has the agency had  
24 any communications with the Department of  
25 Citywide Administrative Services regarding

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2 this whole issue of domestic violence?

3 MS. EMBERT: I believe the  
4 Commissioner spoke when the legislation  
5 was pending and basically just reiterated  
6 that should this be a citywide training of  
7 staff, that we would really need to have  
8 some structure and financial ability to  
9 carry something like that out. We  
10 certainly wouldn't be able to do it just  
11 with the limited number of people that we  
12 have and literally no budget.

13 So we did speak to her about  
14 what would DCAS do, how would it be  
15 involved, but not recently, no, there has  
16 been no discussion about that recently.

17 MR. MAY: Is it safe to assume  
18 that you would be prepared, assuming the  
19 resources were available, to develop a  
20 training curriculum relative to domestic  
21 violence that would be available to EEO  
22 officers throughout the City?

23 MS. EMBERT: Yes. In fact,  
24 because of the model programs that exist  
25 on the state level, and those can just be

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2 ordered, it is a state mandate that they  
3 created this policy. In fact, I would  
4 like to just give you the copies that I  
5 have. They include the New York City  
6 domestic violence hotline. They don't  
7 include the updated sort of immigrant  
8 group specific data that we have on our  
9 web site. But these two (handing), one of  
10 those is for the employee and then one of  
11 them is for administrators, and it  
12 provides the model policy. So if that  
13 policy should be adopted for New York City  
14 and maybe with modified language, if  
15 necessary, to address any particular needs  
16 of the City, this is a template.

17 And Charlotte Watson, who is  
18 the head of that office, she does regular  
19 trainings. Now, I asked if we could get  
20 some data from her, and they have a much  
21 larger staff than the City does, but I  
22 wasn't able prior to this hearing to get  
23 data on how many people they have trained  
24 and how often do they train and what kind  
25 of commitment they would have. But it

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2 would certainly be worth approaching,  
3 because they often forget we are part of  
4 the state, but we are part of the state  
5 here and we have such a complex system  
6 here that we want to bear as much of the  
7 burden as we can, because we are not like  
8 the other counties and we have our own  
9 unique needs here in the City. But that  
10 is a completely useful guide.

11           Then everything that we have on  
12 our web site that is in addition to that,  
13 that could supplement that, we could add  
14 into that very easily or even give that  
15 out with some kind of glued-in insert that  
16 we could update, like a pocket part, maybe  
17 we could update it. Then it would be  
18 really important to just put something  
19 really small in the women's restrooms so  
20 someone could put something in their  
21 pocket so they don't have to go to an  
22 official source to take away that  
23 information. And posters and making the  
24 environment just sort of friendly to this  
25 issue.



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2 MR. MENDEZ: Any further  
3 questions?

4 MS. BADNER: Do you foresee  
5 your agency working with other City  
6 officials, perhaps DCAS, in developing  
7 kind of a boilerplate reasonable  
8 accommodations policy to be used by City  
9 agencies, similar to the reasonable  
10 accommodation policy for persons  
11 requesting accommodation for disabilities,  
12 for City agencies or even private sector  
13 employers to use?

14 MS. EMBERT: The state policy,  
15 which is a very good policy, I've read  
16 that state policy against the federal  
17 personnel management policy and against  
18 other policies. I think it is a very  
19 comprehensive policy. I think the  
20 language in there gives almost everything  
21 you can think of, except the federal  
22 government has almost like SWAT teams that  
23 come in and take over. We don't have the  
24 resources to have the marshals here.

25 But short of that, I think our

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2 state policy is excellent. It does cover  
3 all of the areas. It talks about if you  
4 use -- it doesn't say if you use City  
5 resources, say, to harass someone, but  
6 just small modifications like that, just  
7 to change the word from "state," "if you  
8 use state resources to harass," if we  
9 change it to "City resources to harass,"  
10 there are very few modifications that  
11 would have to be made. It is fairly  
12 comprehensive.

13 MR. MENDEZ: Thank you very  
14 much. Send our regards to Commissioner  
15 Jiminez.

16 MR. MENDEZ: We are just a  
17 little behind schedule. Our next  
18 presenter, and I don't know if she is in  
19 the audience, is Wendy Weiser here? Is  
20 Dean Spade here?

21 MR. SPADE: Thank you for  
22 convening today on these important issues.  
23 My name is Dean Spade. I'm an attorney  
24 and I work at the Sylvia Rivera Law  
25 Project. I'm also a member of the

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2 community drafting board that was working  
3 on the compliance guidelines that we spoke  
4 about earlier. I want to talk to you  
5 overall about the issues that we have seen  
6 with regard to the importance of the  
7 amendment to the City human rights laws to  
8 include gender identity discrimination.

9           Just to begin, to give you a  
10 little bit of an idea about what I do and  
11 how I come to this issue, my organization  
12 is the first organization in New York City  
13 to specifically provide direct legal  
14 assistance to people facing gender  
15 identity discrimination, and we are the  
16 only organization that does so on the east  
17 coast. We have over 250 clients in New  
18 York City facing this type of  
19 discrimination. The discrimination we  
20 cover includes numerous things, employment  
21 discrimination being a major issue, but  
22 including housing discrimination,  
23 education discrimination, foster care. It  
24 is quite broad.

25           One of the very key issues --

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2 well, first let me just take a step back  
3 and sort of give a brief understanding of  
4 what gender identity discrimination is and  
5 how transgender people face it. I think  
6 you all are probably familiar with that.  
7 Much of this is written into the law. The  
8 gender identity discrimination that I  
9 think the law is designed to address is  
10 not only experienced by transgender  
11 people, but is also faced by others. It  
12 is something that really bridges the gap.

13 I will make it clear that there  
14 has been a history of case law around the  
15 country and sometimes in New York that  
16 transgender people may not be covered by  
17 this type of prohibition on sex  
18 discrimination and gender discrimination  
19 laws. Part of the reason that this is so  
20 essential is people who are transgender  
21 and who oftentimes live in a different  
22 gender role than that expected or  
23 associated with the gender assigned to us  
24 at birth experience specific kinds of  
25 discrimination. To sort of put it in its

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2 most blanket terms, at this point our  
3 murder rate is still seven to ten times  
4 higher than the average and our murders  
5 are solved at a rate of only 25 percent.  
6 Also, beyond sort of the most heightened  
7 consequences of that expression in terms  
8 of murder, we are still turned away from  
9 basic services. Transgender people are  
10 still turned away at emergency rooms. I  
11 still have clients expelled from New York  
12 City public schools for being transgender.  
13 People are being fired or not hired based  
14 on their gender identity. It is still at  
15 that level, and societal understanding of  
16 that issue is very low, and media  
17 representations in the transgender  
18 community are very hostile. So basic  
19 understanding of this issue is very  
20 unclear, and the average person doesn't  
21 know what gender identity means still. I  
22 will discuss that that is a part of the  
23 reason why the guidelines are so  
24 essential. There are a lot of  
25 misunderstandings and a lot of

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2 repercussions for our community with  
3 regard to that.

4           One of the things I want to  
5 highlight within this sort of description  
6 of a problem before I get to talking  
7 specifically about the City employees who  
8 are my clients who do not feel comfortable  
9 stepping forward and testifying, is that  
10 the issue of sex-segregated facilities,  
11 bathrooms, locker rooms, homeless  
12 shelters, foster care and juvenile justice  
13 group homes, mental health housing, etc.,  
14 is a central and essential issue to the  
15 discrimination that the transgender  
16 community faces. I would say  
17 approximately 58 percent of the cases that  
18 I see in my office daily are cases that  
19 involve sex-segregated facilities on one  
20 level or another. Interestingly, many of  
21 those cases also involve domestic  
22 violence, because domestic violence  
23 shelters and programs are often still  
24 sex-based, and we see a significant  
25 exclusion of transgender domestic violence

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2 survivors within domestic violence  
3 services because there still needs to be a  
4 lot of education in that community. But  
5 additionally our cases involve frequently  
6 employment cases centered around the  
7 notion of the bathroom or locker room, if  
8 there is an employment situation with a  
9 uniform which people change in and out of,  
10 which is frequently part of City  
11 employment.

12           The sex-segregated facility  
13 issue, the issue of accessing facilities  
14 segregated based on sex, is so incredibly  
15 central because even if an employer has a  
16 surface understanding that gender identity  
17 discrimination is illegal and maybe they  
18 can't fire the person for being  
19 transgender, that does not resolve for  
20 that employer necessarily the issue of  
21 when and how that employee should access  
22 sex-segregated facilities. So what we see  
23 is exactly what was referred to earlier,  
24 this issue of verification of gender and  
25 the employer feeling they have a

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2 responsibility, often not necessarily out  
3 of a hostile place, but because they are  
4 not sure what to do because this is not  
5 written into the law, this is not spelled  
6 out as the law currently reads as to how  
7 and when to allow an employee to access a  
8 sex-segregated facility based on perhaps  
9 the new or current gender identification.  
10 That is where we see a lot of friction and  
11 a lot of discrimination and a lot of  
12 hostile environments created for  
13 transgender employees.

14 Before we go into further  
15 detail about that, I thought I would talk  
16 to you a little bit about some of the  
17 testimony I gathered from City employees  
18 who are my clients who are not willing to  
19 come forward because of how truly and  
20 deeply afraid they are of the consequences  
21 they face in their employment based on  
22 their gender identity, despite the fact  
23 that gender identity discrimination is  
24 illegal in our city.

25 MR. MENDEZ: You indicated you



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2 have about 250 cases. Without breaking  
3 confidentiality, can you give us a sense  
4 of what that number represents within the  
5 City workforce?

6 MR. SPADE: How many people in  
7 that number are City employees? I should  
8 have pulled that out and I didn't. I  
9 apologize.

10 MR. MENDEZ: Maybe if you would  
11 be kind enough to share that at a later  
12 date.

13 MR. SPADE: Sure.

14 I will share a story just  
15 briefly of four or five different people  
16 and also some generalizations about  
17 others. One of my clients actually wrote  
18 a statement which I'm going to briefly  
19 read. It is very vague because she is so  
20 afraid of being identified for who she is.  
21 As you can imagine, there is a fear that a  
22 transgender City employee would be  
23 identifiable by their employer were they  
24 to appear at this hearing.

25 Janice, as I will call her,

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2 wrote this: "I worked as a tenured civil  
3 servant for many years. I was harassed  
4 for being transgender on a daily basis for  
5 several years prior to my leaving City  
6 service. When I took this matter to my  
7 supervisors, they did nothing. I then  
8 went further through channels and my  
9 complaint was not taken seriously and  
10 dismissed. As a result of my complaint, I  
11 was harassed even more. I have financial  
12 damages, and I am no longer working for  
13 the City. I was forced to leave my job  
14 prematurely. I had to go into outpatient  
15 treatment and counseling and still have  
16 nightmares and anxiety attacks several  
17 times a week because of the harassment I  
18 was subject to on my former City job."

19 Another client who came forward  
20 to me to talk about these issues and was  
21 willing to be spoken of anonymously in  
22 this hearing was Jill. Jill works in an  
23 agency that is actually rather relatively  
24 proactive or interested it seems in sort  
25 of supporting employees with regard to

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2 antidiscrimination, whereas some of the  
3 employees I will talk about work in  
4 agencies more hostile. In Jill's agency,  
5 there are regular trainings regarding City  
6 antidiscrimination policies, but none that  
7 include gender identity. That is what  
8 Jill has conveyed to us, that these  
9 trainings include sexual orientation, but  
10 not gender identity. Jill spent a long  
11 time fearing transitioning at all. She  
12 was afraid to move forward with her gender  
13 transition because of her fear of how she  
14 would be treated on her job, because she  
15 was aware that no one in her job had any  
16 training with regard to gender identity  
17 and there was no clarity about how she  
18 would be treated.

19 We worked with Jill, and she  
20 basically created her own compliance  
21 guidelines. She was so afraid of coming  
22 out in her job and how she would be  
23 treated that she tried to write and create  
24 a series of expectations about how she  
25 should be treated specifically with regard

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2 to the difficulty like bathrooms and  
3 locker rooms, the use of her name and  
4 pronoun, etc. Because Jill was in a very  
5 friendly agency, her employers actually  
6 went along with it. They looked at her  
7 expectations and agreed and worked  
8 together on this plan. The emotional toll  
9 it took on Jill to have to create  
10 basically her own compliance guidelines  
11 and to have to work with her employers and  
12 fear the repercussions she might  
13 experience if she were to move forward was  
14 very, very high and delayed her transition  
15 and had a psychological impact on her.  
16 Additionally, this is the type of agency  
17 that would be welcoming with open arms  
18 information from the Commission on Human  
19 Rights with regard to how to treat  
20 transgender employees.

21 Sharon, who is another client  
22 of mine, has not had such a positive  
23 experience as Jill did with regard to her  
24 employer's responding to her. She has  
25 continually been harassed by her

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2 coworkers, people intentionally taunting  
3 her about her name and pronoun and about  
4 her use of the bathroom. When she worked  
5 with her employer and said "This is the  
6 day I'm going to come out as Sharon on the  
7 job and this is the day from here forward  
8 I would like to be perceived as a woman  
9 and I will be dressing accordingly," a  
10 week before that the employers brought in  
11 trainers to do a training about sexual  
12 orientation, not gender identity, which  
13 caused extreme confusion amongst the  
14 workforce such that Jill was perceived by  
15 her co-employees now more than ever as  
16 being homosexual or having a sexual  
17 orientation-based issue rather than a  
18 gender identity-based issue, which only  
19 heightened the harassment she faced.

20 Again, had there been proper training  
21 available from the Commission on Human  
22 Rights, or guidelines, I believe much of  
23 this would have been averted.

24 Mike is another client of mine  
25 who works in Fire and Rescue, I can't be

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2 more specific than that, who has told me  
3 again and again, despite my urging, he is  
4 afraid to make a complaint to the  
5 Commission on Human Rights. He feels  
6 there is no accountability in his agency,  
7 that what he has heard about the  
8 Commission on Human Rights from people in  
9 the transgender community indicates that  
10 he would not be protected in any way and  
11 there would be severe repercussions for  
12 him were he to file such a complaint. I  
13 will talk a little bit more about what  
14 that word on the street is in our  
15 community and why.

16 Another client of mine, who is  
17 also in the agency that Mike is in, said  
18 that the environment in which he is  
19 working is so incredibly aggressively  
20 transphobic and discriminatory that he  
21 really sees that there needs to be  
22 aggressive training towards that agency,  
23 not with an agency necessarily asking for  
24 it, but he can't see it being safe for him  
25 and Mike and other employees unless there

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2 was actually training brought in in an  
3 affirmative attempt from the Commission on  
4 Human Rights or some other agency, if that  
5 were the case.

6                   Finally, I will mention Pat,  
7 who works in law enforcement and has  
8 decided at this point in Pat's life it is  
9 not possible to come out as transgender on  
10 the job because there is no meaningful  
11 protection. I can only hope that you all  
12 can imagine the depth of pain that that  
13 creates for Pat in that job and in  
14 day-to-day life to not be able to express  
15 her self-understanding based on the need  
16 to maintain City employment.

17                   I want to talk a little bit  
18 more specifically about the issue of  
19 sex-segregated facilities, and one of the  
20 things I want to refer to is the original  
21 passage of this law and the community  
22 outcry that resulted in Local Law 3 moving  
23 forward. A lot of that outcry was about  
24 sex-segregated facilities. One issue  
25 which I know is not the realm of you all

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2 as Commissioners, but I think is relevant,  
3 is the issue of homeless shelters. The  
4 City of New York still places people in  
5 homeless shelters only according to birth  
6 gender. That means that transgender women  
7 will only be placed in a men's shelter.  
8 For our community, that means the shelters  
9 are inaccessible and we remain  
10 disproportionately street homeless.  
11 Because if you don't become DHS-certified  
12 and go through the DHS process, you are  
13 not eligible for the other types of  
14 housing the City has to offer. You can't  
15 get in the door. Our community is  
16 disproportionately homeless because of  
17 that.

18 That is a City policy of a City  
19 department that I would say, based on  
20 hopefully the testimony we heard earlier  
21 from the people at the Commission on Human  
22 Rights, that that violates the City law.  
23 There has been no action with regard to  
24 that. That is one example of a City  
25 policy that blatantly violates a City law



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2 and discriminates against the people on  
3 the basis of gender identity, making an  
4 entire aspect of City services  
5 inaccessible. And nothing has been done  
6 on that. It is not centrally relevant to  
7 City employment, but it is a part of this  
8 issue, sex-segregated facilities, which I  
9 think is key to City employment.

10 So as you know, the law passed  
11 in the spring of 2002. And in the fall of  
12 2002, the drafting committee was convened,  
13 which included myself and other members of  
14 the transgender community as well as  
15 people from the Commission on Human Rights  
16 and other leaders in the transgender  
17 rights movement. We met from the fall of  
18 2002 to the spring of 2003, and in May of  
19 2003 we were completely done with our  
20 draft. We had reviewed the guidelines of  
21 San Francisco as well as the draft  
22 guidelines they had in place at the time,  
23 which have now passed. We reviewed the  
24 law in Boston, which explicitly discusses  
25 sex-segregated facilities in the text of

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2 the law, which is a really great thing  
3 because it is much clearer than our New  
4 York City law. And we had discussed in  
5 detail the difficult issues; unavoidable  
6 nudity is one issue that Mr. Mehlman  
7 referenced.

8           There are situations, there  
9 aren't many left these days, there aren't  
10 a ton of open showers in your average  
11 locker room and City agency or school.  
12 But to the extent that there is, even the  
13 most difficult issue you can imagine of  
14 unavoidable nudity, you can discuss good  
15 options for that which mirror the San  
16 Francisco guidelines, and I hope you had  
17 the opportunity to see them, and they are  
18 available on the Commission on Human  
19 Rights web site, as to how to both  
20 encourage through the guidelines  
21 institutions that have unavoidable nudity  
22 to deal with that by buying \$2 shower  
23 curtains or whatever the case may be and  
24 to suggest that reasonable accommodations  
25 can be made; that if you have a City

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2 employee who needs to change in a locker  
3 room where there are only open showers and  
4 needs to shower as part of the health and  
5 safety of their job after they finished  
6 their work for the day, that you could  
7 allow them to shower in a bathroom or  
8 allow them to shower anywhere there is a  
9 door.

10                   These are not difficult  
11 problems to solve. There is an incredibly  
12 low rate of occurrence, and most often  
13 both the transgender individual and the  
14 employer are interested in resolving them  
15 with little or no conflict. It only  
16 becomes conflict when the discriminating  
17 agency creates a policy which the  
18 transgender individual cannot navigate,  
19 such as you must use the facility of your  
20 former gender, which is usually what the  
21 policy is that we see as problematic.  
22 That is where the person will experience  
23 extreme amounts of violence, harassment,  
24 and discomfort.

25                   So we really worked with and

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2 looked at carefully and created a really  
3 strong draft. Throughout that process, we  
4 were aware that there may be controversy  
5 within the Commission around those issues.  
6 And when we were almost finished, we were  
7 done with the draft, we said okay, what is  
8 next, now what steps do we take to make  
9 these compliance guidelines a reality. At  
10 our last meeting, we heard from the people  
11 who were representatives of the Commission  
12 at the meeting that the Commissioner had  
13 decided that the things that we had stated  
14 in our compliance guidelines with regard  
15 to the fact that no person could be forced  
16 to use a sex-segregated facility that did  
17 not comport with their gender identity,  
18 that she was uncomfortable with that, that  
19 she didn't know that could move forward,  
20 and used some sort of language to the  
21 effect that that might trample on other  
22 people's rights. I'm not sure how that  
23 worked. After that we had been put off  
24 for a year. Our phone calls have not been  
25 returned. We have gone to the City

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2 Council and asked the City Council to help  
3 advocate on our behalf to get this process  
4 rolling again, realizing without these  
5 guidelines the law in many ways has lost  
6 its meaning and thrust.

7 Simultaneously, as somebody who  
8 advocates for transgender people in the  
9 City, I want to talk about what goes on  
10 when you make a complaint to the  
11 Commission. First I want to mention, why  
12 is the Commission so extra-important to  
13 the transgender community, more important  
14 than other communities that are part of  
15 the protected classes? One of the reasons  
16 is that there has been no one to represent  
17 transgender people on issues of  
18 discrimination traditionally throughout  
19 the City. I founded our law project in  
20 September 2002. We have one full-time  
21 attorney. About 65 percent of the clients  
22 who meet us have been rejected from other  
23 legal services based on their gender  
24 identity, have either been mistreated, not  
25 treated respectfully, or told outright "We

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2 don't take cases like yours." There is no  
3 one representing these cases. That is why  
4 the Commission is an essential place where  
5 you could go and get an advocate to bring  
6 your case forward without having to find a  
7 private attorney to take you.

8 We do a lot of trainings for  
9 people like Legal Aid and other legal  
10 service organizations in the City because  
11 they have to catch up on this issue and  
12 many are not aware that they often are  
13 breaking the law by discriminating against  
14 transgender people who come for services  
15 there. So the Commission is essential  
16 because we can't handle all these cases.  
17 We have 250 clients, all of whom their  
18 cases would be applicable to CCHR. But  
19 what we find is when our clients go to  
20 complain with CCHR, we have a number of  
21 obstacles. One of the obstacles we have  
22 is that they are treated poorly by the  
23 initial intake staff. It is more than  
24 clear to me that the intake staff have not  
25 been adequately trained on working with

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2 the transgender community. I believe the  
3 Commissioner when they say that they have  
4 trained people on what this law states.  
5 Certainly what the law states, what is on  
6 the palm card, I think the people who work  
7 on the Commission know what is on the palm  
8 card. That does not address the issues of  
9 what it is to discriminate and with  
10 respect to disrespecting people's pronouns  
11 and names, refusing to understand when  
12 they explain their problem to you, and  
13 treating them generally with disrespect  
14 when they come.

15 I think one person mentioned  
16 the issue even of just the bathroom at the  
17 Commission. One of my clients went to  
18 complain, one of my legal interns  
19 accompanied them, and the client was  
20 denied the ability to use the bathroom at  
21 the Commission when making her complaint.

22 MR. MENDEZ: That is contrary  
23 to what we heard this morning.

24 MR. SPADE: Yes.

25 MR. MENDEZ: I asked that

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2 question specifically.

3 MR. SPADE: Yes, I'm sure  
4 Mr. Mehlman was not aware of the incident.  
5 I'm sure it was not publicized throughout  
6 the Commission.

7 I will mention another thing  
8 referring to his testimony. He talked  
9 about the client, who is also one of our  
10 clients, who made a complaint to the  
11 Commission based on being denied access to  
12 the bathroom when she went to take the GRE  
13 test. She is one of our clients. One of  
14 our interns accompanied her to make that  
15 complaint. I will also mention that for  
16 about six months we were being told every  
17 time we went in that we weren't allowed to  
18 accompany our clients into their  
19 interviews. Even though by law we are  
20 allowed to, we were told we can't  
21 accompany them unless we are going to  
22 represent them. The whole point is to  
23 accompany them because the Commission is  
24 hostile to our clients.

25 The client who was



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2 discriminated against when she went to  
3 take the GRE test was rejected by the  
4 Commission the first time she went in. We  
5 got a call later saying to bring her back  
6 in. My intern accompanied her. They told  
7 the story to the intake staff and were  
8 told that the Commission would not move  
9 forward with the complaint. The story is  
10 blatant. She used the bathroom. She left  
11 the bathroom. The security guard came and  
12 harassed her in front of everyone and said  
13 "You are a man" in front of all these  
14 other test-takers. It was clear  
15 harassment. My intern went back to the  
16 office and said that they rejected the  
17 case. I said "This is ridiculous. Are  
18 you kidding?" Later that person went over  
19 the case with our supervisor and the  
20 client was told "Oh, you can come back in  
21 and we will move forward." What kind of  
22 message does that send to the transgender  
23 community? Is it likely that client is  
24 interested in going back to the Commission  
25 and having that experience again?

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2           So I want to just mention this  
3 because Mr. Mehlman mentioned eight  
4 complaints have sort of come in. I have  
5 referred over 40 people to the Commission.  
6 10,000 palm cards have gone out. What is  
7 happening? Why are there eight? I think  
8 this raises suspicion for me. This is  
9 something I want you to be aware of. I  
10 think there is a level of deterrance going  
11 on and a level of disrespect for this type  
12 of complaint. I can say that from what  
13 I've heard within the Commission on Human  
14 Rights, that these complaints are not  
15 favored. And there is somebody here in  
16 the audience today that actually  
17 complained at the Commission and they are  
18 at the point where they are trying to find  
19 probable cause to move forward, and the  
20 attorney dealing with that probable cause  
21 issue told me that he feels it is unlikely  
22 probable cause will be found because it is  
23 so hard to get probable cause found on  
24 these complaints.

25           So I don't know how to express

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2 to you just this qualitative sense that  
3 all of us who are interacting with the  
4 Commission on this issue are experiencing  
5 with regard to disinterest in these  
6 complaints, a desire not to move forward  
7 on these complaints, and at the same time  
8 the complete railroading of the guidelines  
9 process, which has basically been stalled  
10 for a year. I believe now that due in  
11 part to the City Council's request and to  
12 your calling of this hearing, that they  
13 are actually doing some of what they are  
14 saying they are doing with regard to  
15 bringing this before the Law Department.  
16 But for about a year, when I could reach  
17 anyone at the Commission, I was being told  
18 it is on hold, staff changes, and then not  
19 having my phone calls returned or e-mails  
20 returned. We were told last May 2003 that  
21 the Commissioner would meet with us soon  
22 about this issue. We still have not been  
23 granted that meeting despite the fact that  
24 everybody on the compliance committee has  
25 been working to make that meeting happen.

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2 Just to give you a sense of that  
3 aggressive deterrance factor.

4 I guess overall what I want to  
5 say is I think it is a tragedy. The  
6 transgender community fought for this law  
7 for years. We have been excluded from  
8 antidiscrimination law due to bad  
9 interpretations of legal cases in various  
10 parts of the country and in New York for  
11 years. We have had difficulty accessing  
12 basic legal services. We experience some  
13 of the most blatant harassment and  
14 discrimination still going on. Most  
15 people don't even know what gender  
16 identity discrimination means and don't  
17 think it means that you can't fire someone  
18 for being transgender or that you can't  
19 say "Well, you can't wear that to work,"  
20 or they kick someone out of the homeless  
21 shelter because "If you are dressed like  
22 that, you'll never be able to get a job,  
23 so you must not be complying with our  
24 program." This is the kind of blatant  
25 stuff you see. We are even turned away

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2 from hospitals. We need this law so badly  
3 and we need a Commission that actually  
4 enforces the law.

5 I think that San Francisco is  
6 actually a good, interesting model. The  
7 San Francisco Commission on Human Rights  
8 aggressively does training just on gender  
9 identity discrimination, not where it is a  
10 footnote. They do aggressive training  
11 with the police and other agencies. They  
12 are proactively ready to do it at any  
13 time. They employ transgender people to  
14 do some of these trainings and they have  
15 transgender people as Commissioners. They  
16 have put out guidelines that are clear and  
17 answer people's questions, and they have  
18 promoted those guidelines within the  
19 community at all of the city agencies.  
20 Their meaningful commitment to that  
21 enforcement exposes the lack of commitment  
22 by New York City's Commission on Human  
23 Rights. I think that is sort of a good  
24 basis of comparison and a good benchmark  
25 for us. They have been generous in

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2 communicating with us throughout the  
3 process, helping to address the difficult  
4 issues. There are reasons there are  
5 guidelines for this. This is a hard  
6 issue. You can't read this law and know  
7 what to do with the locker room. It  
8 doesn't tell you. It tells you that you  
9 can't discriminate against people on how  
10 they present their gender. For some  
11 people that doesn't answer the question of  
12 "What do I do with the person who used to  
13 use the women's room yesterday and now  
14 identifies as a male, but I don't know how  
15 to decide whether or not they have passed  
16 some test."

17 Our culture still sees  
18 transgender people through a very limited  
19 scope, and we need guidelines that will  
20 instruct employers on how not to follow  
21 that limited scope. I came here mostly to  
22 emphasize that and say I'm disappointed by  
23 the Commission's failure to enforce the  
24 law. I think it is a serious issue, and I  
25 think it is having a deep impact on City

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2 employees and City agencies, and it is  
3 something that is really something that  
4 can be remedied very easily with a little  
5 effort from the Commission on Human  
6 Rights.

7 MS. VILLANUEVA: I do have one  
8 question that I think you touched on and I  
9 think some of the prior testimony touched  
10 on, but I would like to explore a little  
11 bit, that is people being turned away from  
12 hospitals. I don't understand that at  
13 all. Do you have an example? How are  
14 people turned away from hospitals?

15 MR. SPADE: I could tell you so  
16 many stories. I will give you a couple of  
17 statistics that are helpful. One aspect  
18 where this comes forward, healthcare  
19 discrimination is really extensive against  
20 our community. It is estimated in some  
21 parts of the country -- there are very  
22 little statistics kept on our community.  
23 In general, the CDC doesn't count us. If  
24 you think about paperwork you have to fill  
25 out, there is no questions about whether

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2 you are transgender. But statistics do  
3 exist, and they show there is extreme  
4 healthcare discrimination. It is  
5 estimated in some communities in the  
6 United States that 63 percent of  
7 African-American transgender women may be  
8 HIV-positive. Of that, 50 percent who  
9 know they are HIV-positive receive no  
10 medical services because of the  
11 discrimination they experienced, or fear.

12 To tell you one blatant story  
13 that is circulated in our community is a  
14 story of a transgender woman in Baltimore  
15 who was involved in an automobile  
16 accident, and when the paramedics arrived  
17 at the scene and opened her clothing to  
18 treat her, they found she had a penis and  
19 stopped treating her. It was proven in  
20 court in a wrongful death suit by her  
21 family that had they continued to treat  
22 her, she would have lived. When you think  
23 about our rescue workers and how  
24 well-trained they are and how instinctual  
25 their actions are and how little can stop



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2 them from doing what their job is, it  
3 shows you the depth of gender identity  
4 misinformation, that they could be stopped  
5 in their tracks, people with that level of  
6 training. That is common.

7 I can't think of anyone in our  
8 community who doesn't have a story of some  
9 type of healthcare discrimination, whether  
10 being told "We don't provide services to  
11 people like you" or being harassed or  
12 being used as a joke or mockery within the  
13 healthcare context. Even this sort of  
14 blatant turning away, one case there was a  
15 client who was turned away from mental  
16 health housing from a nonprofit. This  
17 organization, rather than consider housing  
18 a transgender woman, decided to turn her  
19 away entirely and face a lawsuit rather  
20 than face the fact that they might have to  
21 house her. I have had clients kicked out  
22 of school and being arrested for being  
23 transgender. It is happening at hospitals  
24 and it is happening in doctors' offices  
25 and other clinic environments. It is

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2 underreported. Like domestic violence,  
3 transgender discrimination is something we  
4 see communities being accustomed to and  
5 not knowing whether or not they have  
6 resources to access, and maybe they tried  
7 at some point to access resources, perhaps  
8 even at the Commission on Human Rights.

9 So people are not reporting their  
10 discrimination because they are not  
11 guaranteed they will be helped.

12           It is so day to day. Clients  
13 who come to my office are experiencing  
14 some sort of harassment or discrimination  
15 five or six times a day on the subway, at  
16 their job, at school, maybe from their  
17 family or the place where they live. It  
18 is hard for them to know what raises to  
19 the level of making a complaint. I could  
20 tell you that every transgender person I  
21 know has something that could be a  
22 complaint at the Commission on Human  
23 Rights. If it was an effective tool, it  
24 could really change our City. Even if the  
25 only change that was made was that every

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2 person who walked in there and said they  
3 were discriminated against, even if a call  
4 was made by the Commission or an amount of  
5 training or some materials were sent  
6 besides the palm card, something with more  
7 explanation, if those things existed, if  
8 those basic things existed, the level of  
9 enforcement and education in the community  
10 would go up and we wouldn't see this kind  
11 of blatant turning away we are seeing.

12           People have estimated that the  
13 transgender rights movement is maybe 40  
14 and 50 years behind the gay and lesbian  
15 rights movement. If you can think of what  
16 you have seen in your lifetime happen with  
17 the gay and lesbian rights movement in  
18 terms of media coverage and acceptance,  
19 and if you can think about what it was,  
20 say, in 1960, that is where we are. That  
21 is a sort of way to conceptualize the  
22 blatant harassment we are still facing,  
23 and discrimination.

24           MS. VILLANUEVA: Thank you very  
25 much.

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2 MR. MENDEZ: Would you be  
3 gracious enough to let me know why the  
4 project was called Sylvia Rivera?

5 MR. SPADE: Sylvia Rivera was a  
6 transgender woman who was one of the  
7 veterans of the Stonewall uprising in  
8 1969, and she was an outspoken person with  
9 regard to -- an activist with regard to  
10 the fact that transgender issues often  
11 remained marginalized in movements seeking  
12 gay rights and that transgender rights  
13 needed to be a central issue and needed to  
14 cut across issues of race and class and  
15 ways in which people experienced  
16 heightened discrimination, if they were  
17 people of color, homeless, etc., and she  
18 was an advocate for low-income and  
19 homeless people as well.

20 MR. MENDEZ: If you were to  
21 share with this Commission three areas  
22 that you would like the Commission on  
23 Human Rights to address within this  
24 procedure, what would you say would be the  
25 three priorities?

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2 MR. SPADE: First, release the  
3 guidelines and don't cut out the important  
4 stuff. I do have a fear they are going to  
5 release guidelines that say something  
6 really inappropriate like you can use a  
7 bathroom if you had genital surgery and  
8 you show your genitals to the person  
9 asking. I want guidelines that actually  
10 respect people's gender identity and use  
11 self-identification as the basis so  
12 transgender people won't be subjected to  
13 humiliating scrutiny when trying to access  
14 basic services.

15 The second piece I would like  
16 to see is aggressive training on what the  
17 law means for all the City agencies,  
18 especially the Department of Homeless  
19 Services and all City agencies that employ  
20 transgender people, the Police and Fire  
21 and Rescue I think are key agencies that  
22 employ transgender people and don't know  
23 how to treat them properly. So good,  
24 aggressive training, compliance  
25 guidelines, and training of their own

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2 staff, sensitivity training, of which all  
3 the people on the drafting board all  
4 volunteered.

5 All of our agencies do  
6 trainings like this for other nonprofits  
7 and other City groups. I just trained  
8 judges yesterday. We volunteer to do it  
9 for free to help them, whatever they need  
10 to help them develop trainings that  
11 address the issues that aren't addressed,  
12 like names, pronouns, bathrooms and  
13 showers, etc., so that when people go to  
14 the Human Rights Commission, they don't  
15 have another discriminatory experience.

16 MR. MENDEZ: Any other  
17 questions?

18 MR. MATUSEWITCH: Are you  
19 familiar with the City's EEO policy?

20 MR. SPADE: Yes.

21 MR. MATUSEWITCH: Do you have  
22 any suggestions or recommendations of what  
23 you would like to see included in the  
24 policy?

25 MR. SPADE: I would want to sit

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2 down with that one a little longer.

3           Certainly I think in general  
4 when looking at information policies, many  
5 EEO policies, the best thing to do that we  
6 have learned in part from laws like the  
7 New York City law is to be more explicit  
8 and explain in greater depth.

9           Especially on the issue of when  
10 mentioning gender identity discrimination  
11 being prohibited, to then go on to say, as  
12 Boston's law does, this means that people  
13 cannot be forced to use sex-segregated  
14 facilities that don't comport with their  
15 gender identity, literally saying that is  
16 different than hoping it would be  
17 interpreted that way, which I think is  
18 what we are now facing because it is not  
19 written in the prior law.

20           MS. BADNER: In the course of  
21 representing your clients and working with  
22 your clients, have you had an opportunity  
23 to work with specific City personnel  
24 outside of the Commission on Human Rights,  
25 EEO officers or agency general counsels or

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2 HR personnel, in connection with  
3 advocating for any of your clients? And,  
4 if so, what has your experience been?

5 MR. SPADE: My experience has  
6 been mixed. I think the key with this is  
7 a lot of people, especially people who do  
8 work like EEO officers and people who work  
9 in HR, they want to do the right thing.

10 It is just not really spelled out. It is  
11 a new idea, how to deal with this  
12 appropriately, so they are not sure where  
13 to look. So oftentimes they want to see  
14 other agencies' policies, how they dealt  
15 with this.

16 Certainly there are agencies in  
17 which blatant hostility is there. I won't  
18 mince words about that. I think that is  
19 where we need the more mandatory training  
20 or aggressive tactics, asking people to go  
21 to training about gender identity.

22 MS. BADNER: My other question,  
23 the EEO policy is in the process of being  
24 revised, and the City has a pamphlet  
25 called About EEO which does include gender



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2 identity. You may have touched on this, I  
3 know you have materials that you could  
4 possibly share with people in the City who  
5 conduct training.

6           Aside from the City Commission  
7 on Human Rights, for example, if you could  
8 tell us a little bit about the film that  
9 your law project produced and other  
10 materials that might be helpful for people  
11 to gain an understanding of the issues.

12           MR. SPADE: The film you are  
13 referring to, because the issue of the  
14 bathroom is so continually problematic, we  
15 produced a 30-minute training video to  
16 sort of help personalize the issue and to  
17 show the anecdotes of people who had  
18 problems at their schools, at their jobs,  
19 in the parks, and have experts describe  
20 why this issue is so central and  
21 undiscussed in our culture. The video I  
22 think is very helpful, and we distribute  
23 it for free to anyone who wants it and  
24 will use it. It has been used to great  
25 effect in a lot of cities all over the

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2 country and in institutions like schools  
3 and employers.

4           Also, we collect training  
5 curricula that different organizations all  
6 over the country use to do effective  
7 training on gender identity, and we also  
8 work closely with a particular trainer who  
9 is often hired by the City Department of  
10 Health here in New York City to do  
11 training for HIV-related providers. He  
12 does a training for trainers which would  
13 be available to anyone who wants it that  
14 helps other people who are going to do  
15 gender identity training help them with  
16 what comes up in that training. I have  
17 seen ineffective trainers sent into  
18 training in juvenile justice and foster  
19 care, and that has heightened harassment.  
20 People who are not closely in touch with  
21 transgender communities might not be able  
22 to effectively do those trainings.

23           So I would love to make any of  
24 that available, including his expertise  
25 and our own. We have probably trained

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2 about 800 to 1,000 people in the last year  
3 and a half, service providers and  
4 educators, a lot of people in things like  
5 homeless services and legal services in  
6 New York City and elsewhere. So I would  
7 love to make that available to you all.

8 MR. MENDEZ: Could you expound  
9 a little bit, and this will be the last  
10 question, on the homeless population, the  
11 experiences.

12 MR. SPADE: I think it is  
13 really relevant to City employees also,  
14 because I think we know with the level of  
15 vulnerability that transgender people  
16 face, anyone could become homeless at any  
17 time, especially in a city with high  
18 housing costs like New York City.

19 But there are a couple of key  
20 issues. One issue is the transgender  
21 community is disproportionately homeless.  
22 More of us are homeless than really you  
23 would expect. It comes from another  
24 reason. One is we see a lot of  
25 transgender youth out of the home,

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2 transgender youth being kicked out of  
3 their homes by their parents or from  
4 abuse. You can imagine how difficult it  
5 is for parents and youth to communicate  
6 across gender identity. There is a large  
7 homeless youth population, and homeless  
8 adults were formerly homeless youth.

9 Foster care group homes are often  
10 sex-segregated and people are placed  
11 according to birth gender. Being the only  
12 girl in an all boys foster care youth home  
13 usually results in a runaway, because it  
14 is not safe.

15 We also see blatant harassment  
16 and discrimination against foster youth.  
17 We recently won a case about a transgender  
18 youth denied the ability to wear skirts  
19 and dresses in her foster care group home.  
20 We won the case, but I still hear about  
21 that happening all the time. Again,  
22 enforcement is the meaningful part. It is  
23 not that we win a case and suddenly people  
24 all over the foster care youth group homes  
25 know.

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2 We see a lot of discrimination  
3 in the private housing market. You know  
4 how hard it is to get an apartment in New  
5 York City. Transgender people are still  
6 considered frauds by most people. So it  
7 is difficult when you reveal your credit  
8 report and it shows a former gender to get  
9 housing. Then we see exclusions from  
10 mental health housing, domestic violence  
11 housing, other types of housing based on  
12 gender identity. It is blatant.

13 Recently I did a series of  
14 trainings with Covenant House, and they  
15 gave me a list of ten housing providers  
16 that they try to refer their youth to who  
17 tell them "no transgender" on the phone,  
18 intake coordinators saying "no  
19 transgender." I was happy they gave me  
20 that list so we can begin to work with  
21 them on the fact that they are breaking  
22 the law. They don't know they are  
23 breaking the law because the Commission on  
24 Human Rights hasn't told them. We see all  
25 of these things resulting in

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2 disproportionate homelessness.

3           We are working hard with the  
4 City trying to move this forward. We  
5 actually are working with the New  
6 Providence Women's Shelter to create a  
7 proposal for a pilot program at New  
8 Providence which would allow four  
9 transgender women to live there, four  
10 beds, it is a start, because the City is  
11 unwilling to change its policy even though  
12 it is in blatant violation of the Human  
13 Rights Law we are here to talk about  
14 today.

15           We are hoping a pilot program  
16 is at least a start, but I think a much  
17 better answer would be obviously for the  
18 law to be enforced and for the City to  
19 change its policy. San Francisco, Boston,  
20 tons of cities have moved past this policy  
21 where you house transgender people  
22 according to birth gender. It is just  
23 totally outdated. That is a serious  
24 issue. Even those of our clients who are  
25 in shelters and sticking it out being the

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2 only woman in a homeless shelter, and vice  
3 versa, are kicked out of shelters based on  
4 this gender identity.

5 MR. MENDEZ: Do you think the  
6 homeless system is steering in any way  
7 towards particular shelters?

8 MR. SPADE: I don't think so.  
9 That is not my experience. That would be  
10 one temporary option, to create one  
11 shelter that was safer and get some  
12 steering going on.

13 MR. MENDEZ: I recall in 1989  
14 when I was Commissioner of Homelessness,  
15 there was an effort in the Greenpoint  
16 shelter.

17 MR. SPADE: I don't see that  
18 happening now. Given the history of the  
19 City, there has been different times, but  
20 there isn't really a particularly safe  
21 shelter with regard to this issue. That  
22 is a really serious obstacle. I have a  
23 client right now who is a street homeless  
24 transgender woman who is a survivor of  
25 domestic violence, and we can't find

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2 anywhere for her to be. As the previous  
3 speaker mentioned, there was one  
4 organization, Gay and Lesbian Antiviolence  
5 Project, that does work on domestic  
6 violence, and they have one apartment for  
7 transgender domestic violence survivors.  
8 They have only one apartment they can  
9 place people in.

10 I have another client who  
11 survived two severe rapes, one of a person  
12 they knew and another that was a random  
13 rape, and the police are refusing to  
14 investigate it. My client is an immigrant  
15 and wants to enter the country based on  
16 the fact that she had been a victim of a  
17 violent crime through federal law. One of  
18 the things you have to prove is you are  
19 participating in the police investigation,  
20 but the police won't investigate. We have  
21 nowhere to place her in terms of domestic  
22 violence services, and she is not  
23 comfortable going into a men's shelter.

24 So not to go on and on, but to  
25 say that the problem is really



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2 multifaceted and a lot of it could be  
3 addressed by City law.

4 MR. MENDEZ: Thank you very  
5 much for your testimony.

6 MR. MENDEZ: I believe Wendy  
7 Weiser is here now. Ms. Weiser is with  
8 formerly the NOW Legal Defense and  
9 Education Fund, it is now entitled Legal  
10 Momentum.

11 MS. WEISER: Good morning, and  
12 thank you for the opportunity to testify  
13 today. I want to apologize for being a  
14 little late. I was at 40 Reade Street,  
15 which doesn't exist.

16 As you mentioned, I am an  
17 attorney at Legal Momentum, the new name  
18 of the NOW Legal Defense and Education  
19 Fund. That is a national civil rights  
20 organization that for over 35 years has  
21 worked to advance the rights of women.  
22 Our major goals are ending violence  
23 against women and eliminating barriers to  
24 women's economic opportunities, both of  
25 which are served by Local Law 75 of 2004,

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2 which I'm here to testify about today.

3 I also wanted to mention that  
4 Legal Momentum actually provides services  
5 both to victims and employers to deal with  
6 the effects -- we provide legal advice to  
7 deal with the effects of violence in the  
8 workplace, and we do have referrals to  
9 organizations that provide safety planning  
10 and other services for victims of domestic  
11 violence and stalking.

12 I was asked to talk today about  
13 what steps the City should take to  
14 implement this new Local Law 75, which  
15 expands the employment protections for  
16 victims of domestic and sexual violence.  
17 Given how new this law is, it was just  
18 signed into law in December of 2003, very  
19 few efforts have been taken to date to  
20 implement the law. So really it is all on  
21 a going-forward basis. So I was going to  
22 begin my remarks by actually walking  
23 through the new requirements of the law  
24 and actually explaining what they provide,  
25 and then I will focus on what steps the

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2 City should take to implement it, if that  
3 is all right.

4           Local Law 75 amends the Human  
5 Rights Law in a couple of ways. First, it  
6 expands the coverage about the employment  
7 discrimination and the accomodation  
8 protections to cover not only domestic  
9 violence victims, but also sexual assault  
10 and stalking victims. That means that it  
11 is now illegal for employers to  
12 discriminate against any employee because  
13 she is or is perceived to be a victim of  
14 domestic violence, sexual assault, or  
15 stalking. It was important to add in  
16 these additional groups of sexual assault  
17 and stalking victims because they often  
18 experience the same kinds of workplace  
19 effects from the sexual violence they  
20 experience and they are also subject to  
21 similar stereotypes that might cause  
22 discrimination, like it is the victim's  
23 fault or the victim should do something to  
24 control the abuser or the victim should  
25 get her act together and this shouldn't be

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2 affecting the workplace. So all three  
3 categories of survivors need to be and are  
4 now covered by the antidiscrimination  
5 provisions. Though all of the protections  
6 I'm going to discuss apply to all three,  
7 to victims of domestic violence, sexual  
8 assault, and stalking, for brevity's sake  
9 I'm going to refer mostly to domestic  
10 violence since that is the problem that  
11 will be most frequently encountered.

12           The second change that Local  
13 Law 75 made was to amend the definition of  
14 discrimination to make it clear that an  
15 employer cannot discriminate against an  
16 employee, and I quote, "based solely upon  
17 the actions of a person who has  
18 perpetrated acts or threats of violence  
19 against the individual." That is an  
20 important change. That means that an  
21 employer can't fire or otherwise penalize  
22 a victim of domestic or sexual violence  
23 because of the conduct or acts of her  
24 abuser. That wasn't clear before. Often  
25 abusers do harass or otherwise even

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2 assault their victims at work, and even if  
3 those actions do disrupt the workplace, an  
4 employer can't penalize the victim because  
5 of that under the law, and this is a  
6 recognition that the employee does not  
7 control her abuser and should not be  
8 penalized by her abuser's acts.

9           The third and perhaps most  
10 major change that the law makes is that it  
11 requires employers to, and I'm quoting,  
12 "make reasonable accommodation to enable a  
13 person who is a victim of domestic  
14 violence or a victim of sex offenses or  
15 stalkings to satisfy the essential record  
16 of the job." So an employer is only  
17 subject to this reasonable accommodations  
18 requirement if the employee's status as a  
19 victim of domestic or sexual violence is,  
20 I quote, "known or should have been known  
21 to the employer." So an employer is only  
22 required to provide accommodation to an  
23 employee if they know or should have known  
24 that she is a victim of domestic or sexual  
25 violence. While it is good practice for

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2 an employer to express concern for  
3 employees who one suspects may be  
4 suffering from domestic or sexual  
5 violence, the law does not require  
6 employers to pry or to investigate  
7 domestic violence. That is important to  
8 note.

9           So what kinds of accommodations  
10 are required by this provision? They are  
11 not specified in the law, but they were  
12 laid out in some detail in the legislative  
13 history what kinds of accommodations a  
14 victim may need to ensure she can address  
15 her safety and health concerns while  
16 remaining a productive employee. These  
17 include allowing the employee time off to  
18 go to court, to find shelter, to address  
19 medical problems, or otherwise to take  
20 steps to address the domestic or sexual  
21 violence, to change a telephone number, an  
22 extension, or routing calls through an  
23 office receptionist to curtail telephone  
24 harassment, to keep the employee's home  
25 address or telephone information

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2 confidential so that an abuser or a  
3 stalker can't find her, to transfer an  
4 employee to either a different desk or  
5 different department or different shift or  
6 work site so she can avoid her abuser,  
7 where that is possible; where applicable,  
8 to register with a security guard or a  
9 receptionist a copy of a protective order  
10 and information about the abuser to make  
11 sure they don't let the abuser or stalker  
12 into the building, and, where possible, to  
13 have a security guard escort the victim to  
14 transportation, where that is available,  
15 so that she can get there safely. All of  
16 these are very small steps for the  
17 employer to take, but they can make a huge  
18 difference for the employee.

19 I will talk a little bit more  
20 about that, but first I wanted to finish  
21 going through the requirements of the law.  
22 The law also includes a certification  
23 requirement under which the employer may  
24 ask the employee who has requested a  
25 reasonable accommodation to provide some

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2 proof that she actually is a victim of  
3 domestic or sexual violence. But the law  
4 provides also, it specifies what  
5 acceptable evidence includes, and it is  
6 really a long list. It includes and is  
7 not limited to a police or court record,  
8 documentation from a victim's service  
9 agency, from a lawyer, from a clergy  
10 member, or from a medical or other  
11 professional who has helped the victim  
12 with the violence, and it also says other  
13 corroborating evidence.

14           The breadth of this is actually  
15 very important. It is important that  
16 employers not hinge the reasonable  
17 accommodation on a specified mode of  
18 evidence that might actually be pushing  
19 the victim to take certain steps which may  
20 or may not be appropriate for a situation.  
21 Sometimes, for example, a protective order  
22 might not be the safest thing for a victim  
23 to obtain. Sometimes under some  
24 circumstances with a safety plan, a victim  
25 might determine that that might actually



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2 increase her danger and she can just hide  
3 from her abuser, that that would be a  
4 more effective way of achieving safety.

5 So a protective order cannot be a sole  
6 requirement for obtaining such an  
7 accommodation.

8           The law also includes a strict  
9 confidentiality requirement. So it should  
10 be noted, again, there is no legal  
11 requirement that a victim of domestic or  
12 sexual violence inform her employer that  
13 she has experienced domestic or sexual  
14 violence, but if an employee does inform  
15 her employer and asks for a reasonable  
16 accommodation, the employer must keep all  
17 that information, including the fact that  
18 she is a victim of domestic or sexual  
19 violence, "in the strictest confidence,"  
20 is the words the law uses. The import of  
21 this provision can't be overstated. Not  
22 only absent a confidentiality provision  
23 might employees be discouraged from taking  
24 steps to address domestic violence, they  
25 might be discouraged by stigma that might

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2 attach, and it might actually affect their  
3 ability to achieve safety in the workplace  
4 and elsewhere.

5 The last element of the law is  
6 that there is an affirmative defense for  
7 employers if the employee, and I quote,  
8 "could not, with reasonable accommodation,  
9 satisfy the essential requisites of the  
10 job or enjoy the rights in question." So  
11 that means if an employer makes  
12 accommodations for an employee and the  
13 employee still cannot function on the job,  
14 at some point the employer is no longer  
15 required to accommodate her, and this  
16 exception only kicks in once the employer  
17 shows that no more reasonable  
18 accommodations could help the situation,  
19 and it really should be a last resort.

20 I'm now going to turn to what  
21 steps the City should take to implement  
22 this. Fortunately, the City doesn't have  
23 to invent methods of implementation  
24 because there are a number of models that  
25 have been successfully developed and used

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2 both by private and government employers  
3 to accomplish the same aims as Local Law  
4 75. I had intended to have them all  
5 brought here, and unfortunately they are  
6 at 40 Reade Street. We do have examples  
7 of some policies. We do have some  
8 publications as well. All of the models  
9 do share the same essential elements, and  
10 a lot of studies have been done to show  
11 that these really are the most effective  
12 and essential elements of any workplace  
13 response to domestic violence.

14 I'm going to briefly go through  
15 what these elements are. The very first  
16 step the City should take, as we heard  
17 with respect to the gender identity  
18 protections, is to adopt a written  
19 domestic violence policy and guidelines.  
20 It should really be a detailed policy.  
21 This serves a number of functions. First,  
22 it makes sure that those who are making  
23 the employment decisions are informed of  
24 the law and how to follow it, and it will  
25 reduce violations, therefore it will

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2 ensure that the employees, including the  
3 victims of domestic and sexual violence,  
4 are informed of their rights and what  
5 procedures they need to follow in order to  
6 secure those rights.

7           Perhaps most importantly, the  
8 written policy will help raise awareness  
9 about domestic and sexual violence, which  
10 is probably the most important first step  
11 to take. It will encourage City employees  
12 to be more sensitive to domestic violence  
13 and to take steps to address it once they  
14 understand it and myths are debunked. By  
15 communicating the City's understanding of  
16 domestic and sexual violence and their  
17 openness to helping victims, a written  
18 policy may encourage victims to actually  
19 take steps to address the violence and  
20 help themselves and come forward and seek  
21 the cooperation of their employers. So  
22 this will improve workplace safety and  
23 also improve employee productivity and  
24 retention.

25           The key elements of any written

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2 domestic violence policy, the first one is  
3 a detailed explanation of what is domestic  
4 and sexual violence, to increase managers'  
5 awareness of the issues and describe what  
6 the appropriate responses are. A policy  
7 should also communicate the City's  
8 willingness to consider requests for  
9 reasonable accommodation and to provide  
10 flexible opportunities to get help for  
11 employees who are victims of domestic and  
12 sexual violence. The policy should have a  
13 description of the kinds of accommodations  
14 the City will consider, like requests for  
15 leave, modifications of schedules or  
16 shifts, safety measures, and some of the  
17 other accommodations I mentioned earlier.  
18 It should clearly communicate the City's  
19 commitment to nondiscrimination. Even  
20 though the nondiscrimination provisions  
21 have been in effect for domestic violence  
22 victims for a number of years, people  
23 don't know about that. People don't  
24 believe that they will not be  
25 discriminated against, and are often still

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2 discriminated against if they do come  
3 forward. So that should be made very  
4 clear. It should communicate the City's  
5 willingness to assist with safety  
6 planning, as requested by a victim. It  
7 should specify an assurance that all of  
8 the information will be kept strictly  
9 confidential. It is also important that  
10 the policy make clear that the City does  
11 not require disclosure of domestic and  
12 sexual violence.

13           The policy's objective should  
14 be to make the workspace safe to seek  
15 help, but it shouldn't be mandatory or  
16 coercive in that way. As I mentioned  
17 before, there are really a number of good  
18 domestic violence policies that could be  
19 used as a model for this. There is a  
20 model policy that New York State adopted  
21 for employers and one for counties a  
22 number of years ago. There are a whole  
23 bunch of ones private employers have  
24 developed. You can access a number of  
25 these on our web site. I can provide

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2 additional models afterwards as well and  
3 other web sites where these are available.

4 The second important element of  
5 implementation is providing training to  
6 all employees on domestic violence, on the  
7 new law and the City's policy. I can't  
8 overstate how essential training is.

9 Really countless studies show that  
10 training is a key factor in getting  
11 employers and employees to understand  
12 domestic violence and how to effectively  
13 respond to it, and that in fact employment  
14 policies are not really effective unless  
15 the company has effective training. Also,  
16 as we know from the sexual harassment and  
17 other contexts, a good policy will not  
18 shield the employer from liability if the  
19 employees aren't made aware of it and  
20 understand it.

21 In addition to explaining the  
22 City's policies and laws, the trainings  
23 really should teach a number of things  
24 that I want to make sure I reference.

25 First, it should explain how to recognize

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2 the signs of domestic violence, sexual  
3 assault, and stalking. These are not  
4 obvious, but there are a number of signs  
5 that really are quite consistent and easy  
6 to identify. I can go through those  
7 afterwards if you are interested.

8           The training should explain how  
9 to express concern for employees who a  
10 manager or an employer suspects may be  
11 suffering from domestic and sexual  
12 violence, and how to do so without putting  
13 pressure on that employee to disclose  
14 their situation. It should explain how to  
15 support victims of domestic and sexual  
16 violence in the workplace. It should  
17 explain what types of accommodations might  
18 be needed, how that arises, and which ones  
19 might be available. It should explain how  
20 to provide referrals to domestic and  
21 sexual violence service providers. And it  
22 should really focus on how to respect  
23 employees who are victims of domestic and  
24 sexual violence, including respecting  
25 their decision as to whether and how to



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2 address the violence in their lives. This  
3 is, again, important because dealing  
4 effectively with domestic violence is a  
5 process. It takes time and it varies  
6 really dramatically from person to person  
7 and it is really impossible to know from  
8 the outside, and I don't think an employer  
9 should try to figure out what the victim  
10 can and should do, and there are  
11 professionals that do assist them, and I  
12 will get to that in a moment.

13           The third really important step  
14 in implementation is that the training  
15 should be supplemented by other  
16 informational materials that are visible  
17 and available in the workplace, and these  
18 materials should include referrals to  
19 appropriate organizations that deal with  
20 domestic and sexual violence, including,  
21 for example, the National Domestic  
22 Violence Hotline, which really does make  
23 a -- a simple number does make a huge  
24 difference. Many organizations and  
25 companies also have had success in

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2 partnering with domestic violence and  
3 sexual violence service agencies in  
4 helping to address violence and the  
5 effects of domestic violence or sexual  
6 violence in the workplace. Again, this is  
7 useful because the employers are generally  
8 not qualified to provide safety planning  
9 or other advice to their victims. So it  
10 does help provide a way for a victim to  
11 help herself and to collaborate with the  
12 employer on achieving safety more  
13 effectively.

14                   The last thing I wanted to  
15 mention was the City really should make  
16 sure, as part of its security training,  
17 its security procedures, really to address  
18 domestic and sexual violence, and all  
19 security personnel and supervisors really  
20 should be trained on how to address  
21 workplace violence and how to handle  
22 potential crimes that might come to the  
23 workplace. They should understand  
24 protective orders and how to enforce them.  
25 They should learn how to deal with abusers

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2 and stalkers who might be trying to come  
3 into the workplace. They should also  
4 learn to recognize possible warning signs  
5 of domestic violence, rape, sexual  
6 assault, and know how to respond  
7 sensitively and effectively, and it should  
8 take common sense security procedures to  
9 keep all of its employees safe. That  
10 concludes the recommendations I wanted to  
11 make.

12 I can talk a little bit about  
13 why this is important or I can answer  
14 questions that you might have.

15 MR. MENDEZ: You can share.

16 MS. WEISER: Probably the most  
17 important reason why the City should take  
18 its effective steps, other than the fact  
19 that it is now the law, but people should  
20 recognize that this actually does enhance  
21 workplace safety and it enhances victim  
22 safety.

23 Without an assurance that an  
24 employer will be supportive and provide  
25 reasonable accommodations on the job and

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2 not penalize her, a victim may be  
3 reluctant to take steps to address  
4 violence in her life. She may be worried  
5 that she would be found out and subject to  
6 discrimination or other retaliation on her  
7 job, and she may not -- if she won't get  
8 the leave to go get a protective order or  
9 to go find shelter, she may stay with her  
10 abuser. This could increase the safety  
11 concerns both for the victim and then also  
12 for the workplace if the harasser is going  
13 to come to the workplace.

14           Studies do show that victims  
15 who have secure jobs are less likely to  
16 return to their abusers and are more  
17 likely to be safe, healthy, secure, and  
18 have economic independence from their  
19 abusers. So these steps can make enormous  
20 changes in helping victims keep their jobs  
21 and helping them remain productive  
22 employees and in saving lives.

23           Another thing that is important  
24 to note, this actually shouldn't be viewed  
25 as a burden for employers because it

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2 actually does have a lot of positive  
3 effects on the workplace, in addition to  
4 making the workplace a safer place, a lot  
5 of studies that have been looking at  
6 places that have already implemented  
7 domestic violence policies and taken steps  
8 have found that the domestic violence  
9 policies actually improve employee  
10 productivity and retention. They save the  
11 expense of hiring and training new  
12 employees. They improve workplace safety.  
13 They are often small steps that could make  
14 a big difference. Even, like I mentioned,  
15 the few days off to find shelter and get a  
16 protective order can enable the victim to  
17 leave an abusive situation and continue  
18 working outside the shadow of the abuse,  
19 to go and deal with health concerns that  
20 might come up.

21                   So all the studies that have  
22 been done to date show that this really  
23 does benefit employers to take these  
24 steps, and more and more employers have  
25 been recognizing this and have been

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2 voluntarily adopting these policies. In  
3 addition, whether or not these steps are  
4 taken, domestic violence is affecting  
5 people in the workplace. So the City and  
6 other employers are already experiencing  
7 the costs of these crimes on their  
8 employees, and so this really isn't adding  
9 any additional burden.

10 MR. MAY: Thank you very much  
11 for your testimony. You said your  
12 documents were left at 40 Reade Street?

13 MS. WEISER: There was no 40  
14 Reade Street, but I had them brought to 40  
15 Reade Street.

16 We do have a number of  
17 documents that were used in training. We  
18 prepared a publication on how to implement  
19 workplace domestic violence policies, and  
20 we do have other model policies that we  
21 can share as well. We also have a fact  
22 sheet on what the legal requirements are  
23 for New York laws and a question and  
24 answer sheet for victims which might be  
25 helpful in accomplishing some of the

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2 things that I was recommending of  
3 explaining to people what the law provides  
4 and how they might be able to access that.

5 MR. MAY: We will reach out to  
6 you to get that.

7 I wanted to ask if you had any  
8 data on the percentage of domestic  
9 violence crimes that are associated with  
10 City employees or spouses of City  
11 employees.

12 MS. WEISER: I have seen data  
13 on that, and I don't have that with me. I  
14 think it might be the Police Department  
15 that has this. I can try and forward this  
16 to you.

17 MR. MAY: Or the source. If  
18 you can tell us that the Police Department  
19 maintains that data, then we can get it.

20 MS. WEISER: Anecdotally, from  
21 the people that we do represent, a  
22 significant number of them have been City  
23 employees. I mean, we do this nationwide,  
24 but people from the City that have  
25 contacted us, a significant portion of

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2 them have been City employees.

3           A major problem that I've come  
4 across in the City employment context,  
5 particularly with larger agencies, is  
6 often the abuser works for the same  
7 agency, and I think that is one of the  
8 things -- or for a nearby agency -- and  
9 that is an important thing to train people  
10 on as well, how to address the situation  
11 where the victim and the abuser might both  
12 work for the MTA, and to make sure the  
13 abuser doesn't know where and when the  
14 victim will be working. If anyone is to  
15 be penalized for any abuse in the  
16 workplace, it should be the abuser and not  
17 the victim.

18           That is something that I have  
19 noticed a lot, particularly in City  
20 employment.

21           MS. BADNER: I'm curious what  
22 efforts Legal Momentum, or NOW, has made  
23 to reach out to the City policymakers as  
24 far as adopting guidelines for reasonable  
25 accommodation procedures, if any.



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2 MS. WEISER: We did do a lot of  
3 work to support this legislation, which is  
4 quite new. We just held, in cooperation  
5 with one of the Council members that  
6 sponsored this, some trainings for small  
7 businesses. We have not yet done any work  
8 on developing a City policy, but we would  
9 be happy to cooperate with anyone on  
10 putting together a model policy that the  
11 City could use and desperately needs right  
12 now.

13 MS. BADNER: My other question,  
14 you mentioned signs. I just thought  
15 briefly if you could discuss some of  
16 those, the signs of domestic violence, for  
17 people who may not know about them.

18 MS. WEISER: Often domestic  
19 violence affects people's work performance  
20 or can only be seen in their comportment  
21 in the workplace. So some of the signs  
22 that an employer or supervisor or coworker  
23 might look out for to see if somebody  
24 might be suffering from domestic violence  
25 or sexual violence is changes in work

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2 performance, lack of concentration, being  
3 preoccupied with something else,  
4 attendance problems, like unexplained  
5 absences or latenesses, because abusers --  
6 they might be recovering from injuries,  
7 but abusers also interfere with a victim's  
8 ability to get to work or to do work in a  
9 variety of ways.

10           Frequent court dates, divorce,  
11 child custody problems, that is usually a  
12 good red flag, and particularly ones that  
13 go beyond what one might normally expect,  
14 to take more time than with a divorce or  
15 child custody suit. It is very common for  
16 abusers to use child custody as a way of  
17 keeping contact with the victim despite a  
18 protective order and sort of harassing and  
19 threatening the victim. So you might have  
20 frequent child custody disputes.

21           Startled reactions, for  
22 example, or exhaustion or uncharacteristic  
23 mood changes are other ways that one might  
24 be able to recognize domestic violence.

25 Sudden unexplained financial problems,

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2 which might be explained by the fact that  
3 the victim doesn't have access to their  
4 finances or to their sources of money.  
5 Since domestic violence is a crime of  
6 control, the abuser often tries to control  
7 all aspects of the victim's life,  
8 including their finances. That might be  
9 visible. Unexplained bruises and injuries  
10 or unexplained withdrawal from  
11 communication with coworkers.

12                   Probably the most obvious sign,  
13 which is one that will frequently arise,  
14 is harassment that takes place at the  
15 workplace, either through harassing phone  
16 calls or the abuser showing up, or even  
17 the abuser showing up at the workplace.  
18 Those are witnessed by coworkers, and that  
19 does give people a clue as to what is  
20 going on.

21                   MS. VILLANUEVA: Thank you very  
22 much for your testimony this morning.

23                   MR. MENDEZ: We also have  
24 testimony today from Michael Silverman.  
25 Is Michael here? He is with the

1 EQUAL EMPLOYMENT PRACTICES COMMISSION  
2 Transgender Legal Defense and Education  
3 Fund.

4 MR. SILVERMAN: First, members  
5 of the Commission, thank you for the  
6 opportunity to present testimony.

7 I'm president of the board of  
8 directors of the Transgender Legal Defense  
9 and Education Fund, otherwise known as  
10 TLDEF. It is a nonprofit civil rights law  
11 firm committed to ending discrimination  
12 based on gender and identity expression  
13 and to achieving equality for transgender  
14 people through public education, test case  
15 litigation, direct legal services, and  
16 public policy efforts. I'm also here in  
17 my capacity as a member of the public  
18 policy and legislation committee of  
19 NYAGRA, the New York Association for  
20 Gender Rights Advocacy. NYAGRA was one of  
21 the principal proponents of the adoption  
22 of Local Law 3 two years ago. There have  
23 been a number of problems, with which the  
24 Commission appears to be aware, with the  
25 implementation of Local Law 3. I think it

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2 is important to recognize that while this  
3 Commission's mandate may be limited to  
4 employment issues regarding City  
5 employees, the law extends beyond  
6 employment to of course public  
7 accommodations and housing, and the kinds  
8 of discrimination that occur in those  
9 venues apply equally to City employees and  
10 non-City employees.

11 I want to focus on three areas,  
12 and to start I will tell you I'm going to  
13 try to limit my testimony to about 15  
14 minutes to leave some time for questions  
15 at the end. The three areas I want to  
16 focus on are the issuance of guidelines,  
17 enforcement, and public education. I  
18 think those are three critical areas for  
19 ensuring that this implementation becomes  
20 effective and Local Law 3 starts to have  
21 some teeth. I think many people would  
22 agree that at this point it hasn't had the  
23 efficacy that we would like to see it  
24 have.

25 Guidelines, after the City

1 EQUAL EMPLOYMENT PRACTICES COMMISSION  
2 Council adopted Local Law 3, the Human  
3 Rights Commission engaged in a dialogue  
4 over the creation of the guidelines with a  
5 number of advocates, including members of  
6 NYAGRA. Negotiations went on and on for  
7 about a year. A number of drafts went  
8 back and forth. And then for the past  
9 year what we've had is silence on the  
10 issuance of these guidelines. Really it  
11 is quite literal silence. Other than what  
12 I might describe as some grapevine  
13 information on what some perceived  
14 problems with the guidelines might be, we  
15 haven't had official word from the  
16 Commission, which is problematic because  
17 it is unclear whether there are political  
18 forces at work, whether there are  
19 substantive concerns about the scope of  
20 the guidelines, or whether the Commission  
21 is simply overwhelmed and can't get to  
22 this project. A number of people who were  
23 involved in drafting the guidelines have  
24 requested action from the Commission, and  
25 we still haven't heard back. Members of

1 EQUAL EMPLOYMENT PRACTICES COMMISSION  
2 NYAGRA as well have written to the  
3 Commission, and we haven't had a response  
4 to a request for a reason for the delay in  
5 adopting the guidelines.

6 The guidelines are important  
7 for a number of reasons. I think it is  
8 important to sort of get a balanced view  
9 of what guidelines mean in the context of  
10 a civil rights law and what they mean in  
11 the context of this Commission in  
12 particular. As far as I know, and based  
13 on my experience, which is about ten years  
14 of litigating various types of civil  
15 rights cases, the Commission has not  
16 generally issued guidelines. There are  
17 probably a number of reasons for that. I  
18 will try to touch on a few of them here.

19 I want to point out right at  
20 the start that I think the gender  
21 provisions, that is, the definition now of  
22 gender to include gender identity and  
23 expression, aren't the same as some of the  
24 other areas that are covered by the Human  
25 Rights Law. Part of that has to do with

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2 what you might call the novelty of the  
3 law. There aren't that many of these laws  
4 in that many jurisdictions. It is getting  
5 better. We are getting more and more laws  
6 passed. But there is not the same body of  
7 law out there that exists for race  
8 discrimination or disability  
9 discrimination or sex discrimination that  
10 the Commission, interpreting the Human  
11 Rights Law, might look to, which makes the  
12 issuance of guidelines particularly  
13 important.

14 I think the law, which defines  
15 gender to include gender identity and  
16 expression, inevitably, as any new law  
17 does, is going to raise a variety of  
18 questions. The Commission, as the agency  
19 responsible for the enforcement and  
20 interpretation of this law at the primary  
21 level, needs to answer some of those  
22 questions. There are too many to really  
23 lay out here. But one can imagine anytime  
24 there is a new regulation on businesses  
25 and how they are to interact with



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2 employees or patrons or tenants, there  
3 will be questions, and it is not clear how  
4 the Commission is going to answer those  
5 questions. That lack of clarity creates a  
6 bit of a vacuum of knowledge both for the  
7 beneficiaries of the law, who don't know  
8 if they are protected from certain kinds  
9 of discrimination or whether certain  
10 behaviors are discriminatory, and for  
11 businesses that don't know how exactly  
12 they need to conduct themselves in order  
13 to stay within the bounds of the law.

14 I sort of want to emphasize the  
15 point of not having corollaries in other  
16 areas of the law. In the employment  
17 context, probably all the various  
18 categories that are covered in state and  
19 federal laws are covered here. So in the  
20 area of religious discrimination, for  
21 example, courts are used to the idea of  
22 accommodation based on a person's  
23 religious belief. In the area of race, we  
24 have Title VI and Title VII in particular  
25 to look to, which give us a lot of

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2 information about what discrimination is  
3 and what the impact is. Those things are  
4 also defined to a much larger extent than  
5 the Human Rights Law itself. In the area  
6 of disability, there is just volumes and  
7 volumes and volumes of regulations  
8 regarding what is a reasonable  
9 accommodation in an entire variety of  
10 settings.

11 One area where we do a lot of  
12 work is the healthcare setting, and I will  
13 get to that later, but there is a  
14 tremendous amount of discrimination  
15 encountered by transgender individuals.  
16 If you look to the regulations governing  
17 what reasonable accommodations are in the  
18 healthcare setting, they can fill a small  
19 book. They really indicate to hospitals,  
20 and whether hospitals and healthcare  
21 providers comply is another story, but  
22 there is also the Department of Justice,  
23 state and city human rights commissions,  
24 and people who go to court to enforce  
25 these provisions. So I just want to

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2 emphasize we don't have a whole lot of  
3 that in any other area of law for gender  
4 identity and expression. It doesn't mean  
5 there hasn't been protection before.

6 There has been under various state and  
7 federal laws governing disabilities and  
8 sexual discrimination. But for the most  
9 part this is largely undefined.

10 One other reason why I think  
11 the guidelines are important is for  
12 courts. Not everyone needs to go to the  
13 Human Rights Commission to file a  
14 complaint. The Human Rights Law provides  
15 a private right of action for any  
16 individual who believes that their rights  
17 have been violated. One can go directly  
18 to the New York State Supreme Court with  
19 notice to the Human Rights Commission and  
20 file a complaint in state Supreme Court.  
21 Courts in general will look to the  
22 guidance of the implementing agency. So  
23 that in the case of employment  
24 discrimination, what the EEOC has to say  
25 about interpretation of Title VII, it is

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2 not binding, but it is certainly valuable  
3 information that the courts will look to  
4 and often rely upon. It doesn't mean that  
5 the courts don't sometimes say that the  
6 EEOC has misinterpreted or gone beyond its  
7 bounds. They do say those things. But it  
8 is important that the agency with primary  
9 responsibility of enforcement of the law  
10 give some kind of guidance not just to  
11 individuals, but also to the courts on how  
12 this law is going to be interpreted.

13           There are other ways that this  
14 law could be defined and there are other  
15 ways that the Commission provides guidance  
16 on what its laws mean, and that is through  
17 decisions that the Commission itself  
18 makes. So that when an individual  
19 complains to the Commission directly,  
20 rather than going to court, the Commission  
21 will issue a decision at the end of its  
22 investigation, and those decisions, like  
23 any court decision, are precedential upon  
24 the Commission at least and often upon  
25 courts that are then looking to interpret

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2 the law.

3 That raises the question about  
4 enforcement of the Human Rights Law as it  
5 applies to gender identity and expression.

6 There are very, very few transgender  
7 rights cases being handled by the  
8 Commission, and what that means is that in  
9 addition to the lack of guidelines, we are  
10 not getting guidance through written  
11 decisions by the tribunal that is supposed  
12 to interpret this law. No one knows  
13 exactly why people aren't going forward.

14 But I can tell you certainly some of the  
15 things that I've experienced and that I've  
16 heard. As an initial matter, people just  
17 don't know their rights. There has not  
18 been enough public education and outreach  
19 regarding the scope of this law. In the  
20 two years that the Commission has been in  
21 charge of enforcing this law, I've seen  
22 one and maybe two documents come out of  
23 the Commission, and they are basically  
24 postcards. That is fine, a postcard is  
25 great, but these were primarily in the

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2 nature of "Here is who you can call if you  
3 have experienced discrimination." It  
4 didn't really expound upon what  
5 discrimination means under this law. They  
6 could issue pamphlets, posters, mailings,  
7 fliers, but there is nothing on their web  
8 site that indicates what this law means.  
9 That is problematic.

10 There is a perception, in  
11 addition, that the Commission is not  
12 sensitive to transgender concerns. If a  
13 person goes to the Commission with a  
14 complaint of discrimination based upon  
15 gender identity or expression, the  
16 investigators at the Commission simply  
17 won't get it. They don't understand what  
18 certain kinds of harassment mean to a  
19 person whose gender identity or expression  
20 doesn't conform to societal norms. There  
21 may not be certain things that a person  
22 perceives to be harassing. They may  
23 themselves intentionally or inadvertently  
24 mistreat a complainant and word gets out  
25 and people choose not to go. There is

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2 also a general lack of resources, and this  
3 is a long-standing problem for the  
4 Commission, and it is not limited to  
5 transgender rights. There is a huge  
6 historical backlog of cases. Since the  
7 time I started practicing ten years ago,  
8 the backlog was first starting to develop.  
9 After the Dinkins Administration left  
10 office, there were huge cuts in the budget  
11 at the Commission, a huge cut in the  
12 number of investigators and people who  
13 could move cases forward. I think at one  
14 point the case backlog came close to  
15 10,000 or something enormous. That tended  
16 to mean that cases would drag on for years  
17 and years and years. You could file in  
18 the early '90s and by the late '90s still  
19 not have a resolution of your case.  
20 People just don't wait around that long.  
21 They kind of just forget about things  
22 after a while.

23                   There is a perception in the  
24 larger advocacy community beyond  
25 transgender rights, and I work with people

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2 who do disability rights, racial justice,  
3 national origin discrimination, that a  
4 case will vanish if it is referred to the  
5 Commission. It affects not only  
6 transgender rights, but the rights of  
7 every person who might have a complaint  
8 that needs the attention of the  
9 Commission.

10 I just want to touch a little  
11 bit more on education and outreach.  
12 Again, as I told you, there have been a  
13 couple of postcards coming out of the  
14 Commission since this was adopted. I'm  
15 not sure if anyone knows if that is a lack  
16 of resources, a lack of political will, to  
17 put out anything that defines the scope of  
18 this law, or not any of the above. But  
19 without some word from the Commission, it  
20 is very difficult for anyone to know why  
21 this is the case. It is essential that  
22 the Commission do greater public education  
23 about this.

24 As advocates, we try to inform  
25 people about their rights. Our resources



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2 are far more limited than the Commission's  
3 resources, however limited they may be or  
4 however much work they have to do. But  
5 your largest employers in the City are  
6 lucky enough to have legal counsel who may  
7 inform them about changes in the  
8 employment law, for example, and what  
9 their obligations may be. I don't think  
10 any lawyer without guidance from the  
11 Commission is necessarily going to inform  
12 his or her client of any particulars about  
13 what they have to do in relation to  
14 transgender nondiscrimination. I think in  
15 the simplest formulation, "We will not  
16 hire you because you are transgender,"  
17 everyone will agree that is covered. As  
18 an advocate, I can make plenty of  
19 arguments, and I would make every one of  
20 them if that was all I could do, before a  
21 court or a tribunal about why the law  
22 means a lot more than that. But certainly  
23 there will be equally creative lawyers on  
24 the other side who will argue against  
25 that.

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2 Public accommodations, within  
3 public accommodations my primary focus  
4 tends to be healthcare, which is an  
5 enormously important issue for everyone,  
6 and it is particularly important for  
7 transgender people, who often have certain  
8 particular healthcare concerns relating to  
9 their bodies, to hormone therapy, to  
10 various kinds of treatment, but also have  
11 just general healthcare concerns that  
12 every individual has.

13 We continually get -- and I  
14 will start to move into examples of some  
15 cases, and I can't recall anybody  
16 identifying themselves as a City employee,  
17 but these are things that are going to  
18 apply and have applied regardless of  
19 insurance status, regardless of income  
20 status, and regardless of who your  
21 employer is -- we get calls about  
22 tremendous mistreatment in the healthcare  
23 system of transgender people regularly.  
24 It is things like humiliation in the  
25 examination room, patients who might have

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2 a resident treating them who will then  
3 call in all the other residents to examine  
4 the patient's body or to view it, or  
5 things that really just shock the  
6 conscience. Clearly to my mind that  
7 constitutes a harassing environment and  
8 discriminatory treatment. I would love to  
9 see regulations that set certain kinds of  
10 behavior.

11 Certainly the draft proposals  
12 of the regulations make clear that certain  
13 kinds of treatment, calling people by the  
14 wrong pronoun, would constitute forms of  
15 harassment that can constitute  
16 discrimination. It is not so very  
17 different from sexual harassment, which  
18 developed under case law and then  
19 administrative regulation. But we don't  
20 have that now to be clear. So I can't be  
21 certain that were I to send someone to the  
22 Human Rights Commission with that kind of  
23 complaint, that the Commission would  
24 recognize that that is discrimination as  
25 opposed to what they might call

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2 mistreatment that doesn't rise to the  
3 level of discrimination. It is difficult  
4 to know without any guidance from the  
5 Commission.

6 We have also had some cases in  
7 the employment context, again, not City  
8 employees, but there is a tremendous  
9 amount of employment discrimination going  
10 on. I have one that comes to mind to  
11 which we did refer this person to the  
12 Commission, and the case is ongoing and it  
13 is moving quite slowly, but it is moving,  
14 and in fairness to the Commission, there  
15 have not been any complaints of  
16 mistreatment. Whether the Commission will  
17 be able to sort it out correctly, I'm not  
18 certain, but at this point the jury is  
19 still out on that.

20 This is such an egregious case  
21 of discrimination that perhaps it is  
22 easier for the Commission to handle it  
23 well, but this is someone who worked as a  
24 flight attendant for an airline who is a  
25 male to female transsexual and worked for

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2 months and months for this airline,  
3 enduring tremendous sexual harassment.

4 You know, flight attendants and pilots,  
5 when they lay over in a city, they stay in  
6 a hotel, and the kinds of phone calls and  
7 computer messages going back and forth  
8 while in hotels were not to be believed.

9 Then somehow word got out that this  
10 individual was transsexual, and it went  
11 from a kind of sexual harassment to a  
12 mixed sort of sexual and antitranssexual  
13 harassment. The airline actually fired  
14 the employee rather than taking action  
15 against any of the perpetrators of these  
16 actions. We ultimately investigated the  
17 case. We spent a lot of time working it  
18 up with the plaintiff. We did not have  
19 the resources to bring an employment case  
20 in court, and we referred her to the Human  
21 Rights Commission, and, again, it is  
22 ongoing. But these kind of things are  
23 going on all the time.

24 Those are pretty much all of  
25 the comments that I would like to share

1 EQUAL EMPLOYMENT PRACTICES COMMISSION  
2 with you. If you have any questions, I  
3 would be happy to answer them.

4 MR. MENDEZ: We have been led  
5 to believe this morning that the  
6 Commission is reviewing the protocols and  
7 procedures. I'm not sure if you can call  
8 it a procedure or protocol. It was  
9 somewhat confusing this morning. But  
10 hopefully something will be emanating by  
11 the fall. I hope it addresses this very  
12 critical issue.

13 MR. SILVERMAN: I hope it does,  
14 too, and I do hope that while the  
15 Commission starts to look to this, whether  
16 as a result of this hearing or other  
17 things, that they will continue to include  
18 the advocacy community in those  
19 discussions so we end up with a law that  
20 people are happy with and that works both  
21 for the Commission and for people who are  
22 bound by the law and also people who are  
23 protected by the law.

24 MR. MENDEZ: Are there any  
25 further questions?

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2 I'm going to call for a recess,  
3 and we will reconvene this afternoon. We  
4 will reconvene again at 2:30 this  
5 afternoon.

6 (Luncheon recess at 12:54 p.m.)

7 (Proceedings resumed at 2:30  
8 p.m.)

9 MR. MENDEZ: I would like to  
10 reconvene the meeting of the Equal  
11 Employment Practices Commission. Today we  
12 are having the public hearing on the  
13 implementation of the amendments to the  
14 New York City Human Rights Law concerning  
15 domestic violence and gender identity.

16 I believe we have one  
17 individual that wants to share a few words  
18 with us.

19 MS. REIFREITAG: My name is  
20 Katie Reifreitag. I'm a transgender woman  
21 from Staten Island, New York. I'm here  
22 just to urge the City Commission on Human  
23 Rights to actually start to consider how  
24 they will implement Local Law 3 and how  
25 they will go about enforcing it. I

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2 remember when it was proposed to have such  
3 an amendment made to the Human Rights Law,  
4 I was out there rallying and writing  
5 letters and actually going to my  
6 legislators and asking them to make this  
7 happen, and we fought well for that and we  
8 got it. I'm glad to see that it was  
9 passed and the Mayor signed it into law a  
10 year later.

11           The thing is we weren't  
12 rallying to see a law put on the books on  
13 paper, we were actually rallying to see a  
14 change in how gender discrimination was  
15 understood and dealt with. Without  
16 enforcement of that law, we won't see that  
17 change. So it is very important to me to  
18 see that the law is treated as what it is,  
19 that it is a law and that it is enforced  
20 and taken care of the way any other law  
21 should be dealt with. There really isn't  
22 any good reason I think that the  
23 Commission could have for not having these  
24 conversations about the law itself. They  
25 are empowered to enforce this law, and



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2 there is really no good reason, I mean,  
3 you could try and give me a reason if you  
4 are the Commission, but I couldn't  
5 possibly accept any reason not to enforce  
6 it. It is the law, and it should be  
7 enforced. If that is the body that is  
8 given the power to do so, then they should  
9 be.

10 What the law means to me, I  
11 know they are making guidelines. Those  
12 guidelines should reflect what it actually  
13 says, and the thing is, like we said, like  
14 has been said earlier, the law actually is  
15 kind of unclear as to how exactly it will  
16 apply in every individual case. What it  
17 means to me, and why I'm here, is to say  
18 that this law to me means that I should be  
19 able to go to my classes or to my place of  
20 employment and be called by my chosen name  
21 regardless of the fact that some people  
22 may have known my given name before that,  
23 that I'm referred to with the correct  
24 pronoun, that I could just use the correct  
25 bathroom when I'm at school or at work.

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2 These are simple things that the law  
3 obviously was made to address. And while  
4 it is not stated in there, if guidelines  
5 are being made, it should be made clear in  
6 those guidelines, and I urge the  
7 Commission to do so. That is pretty much  
8 why I'm here.

9           There is really nothing else I  
10 could say other than this law was made,  
11 yes, to benefit trans people. It was  
12 obviously done to do so. But it is not  
13 only a law to benefit trans people. This  
14 is a law that could benefit anybody whose  
15 gender doesn't conform. You don't have to  
16 be transgender to be somebody whose gender  
17 doesn't conform to their assigned birth  
18 sex. So anybody that can suffer  
19 discrimination because they are even  
20 thought to be somebody that is like  
21 transgender people could benefit from such  
22 a law, but only if it is enforced. That  
23 is all I'm here to do, is to urge the  
24 Commission to actually start thinking  
25 about how they are going to handle Local

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2 Law 3.

3 MR. MENDEZ: Have you  
4 experienced anything in particular you  
5 want to share with us with respect to the  
6 Commission or your background?

7 MS. REIFREITAG: I think my  
8 most recent encounter of any  
9 discrimination would have to go more along  
10 the lines of sexual orientation. It  
11 happens to be that I am a lesbian  
12 transgender woman, so much of the  
13 discrimination -- I mean, I could sit here  
14 and figure out what goes where. But  
15 luckily we do have sexual orientation  
16 discrimination in place both on the  
17 federal and state and city levels where I  
18 have those outlets to fight any kind of  
19 discrimination that is placed on me. As  
20 of yet, I haven't had a problem, but I  
21 want to know that this Commission is here  
22 for when I do.

23 It is inevitable living in  
24 Staten Island, which isn't the greatest  
25 place to live as a transgender woman, and

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2 being on a very conservative campus, at  
3 least historically, that I'm prepared for  
4 those situations to arise, and luckily I  
5 think just a lot of people know to not get  
6 on my case about things, but that just  
7 might be because of the way I come off at  
8 school and work. I can't imagine that  
9 every transgender person is going to have  
10 the same luck as me. I want to know that  
11 that Commission is there for me or anybody  
12 else when the time comes that I may need  
13 it.

14 MR. MENDEZ: Thank you for your  
15 testimony.

16 MR. MAY: I have a question.  
17 Good afternoon. You were here this  
18 morning, were you not, when Commissioner  
19 Mehlman testified?

20 MS. REIFREITAG: Yes. I missed  
21 his first ten minutes, I think.

22 MR. MAY: What he said in his  
23 testimony is that the law is being  
24 enforced, they just have not yet  
25 established the guidelines. Is it your

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2 feeling that the law is not being  
3 enforced?

4 MS. REIFREITAG: It is my  
5 impression that Mr. Mehlman doesn't have a  
6 plan as to what exactly he will do in  
7 particular situations. I mean, he is  
8 going to take it case by case and figure  
9 it out, but I don't actually think he has  
10 a plan for dealing with certain situations  
11 which we can spell out. Why wait for the  
12 cases to happen before you use a case as  
13 an example for the next case and so on.  
14 Why set precedent when we can tell you  
15 what happens and then you are prepared for  
16 it, so that when the first case comes, you  
17 don't need to set precedent, you already  
18 have a plan as to how you will deal with  
19 those actions.

20 It seems to me Mr. Mehlman is  
21 waiting for a case to take on and then  
22 make precedent for the next case, and the  
23 next case you will be prepared, and that  
24 first case is going to be the one that is  
25 going to be the testing ground. I

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2 wouldn't want to see that very first case  
3 that is taken on be the testing ground for  
4 anything. We are not guinea pigs. We are  
5 people. We are voting citizens. We can  
6 tell you -- you've heard today a lot of  
7 what happens out there that isn't being  
8 reported. If you are prepared to deal  
9 with it, then you can go right in and try  
10 what you think will work.

11 MR. MAY: Thank you.

12 MR. MENDEZ: Thank you.

13 Let the record also show that  
14 Commissioner Cabrera has joined us this  
15 afternoon.

16 Are there any other individuals  
17 who have registered to testify?

18 I think I'm going to take the  
19 prerogative of the Chair and end the  
20 hearing, then, because we are due to end  
21 at 3:05. And having said that, I'm  
22 adjourning the hearing.

23 Should anybody arrive between  
24 now and 3:05, please call us back,  
25 Michelle, and we will immediately come

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2 back for the ten-minute remaining period.

3 This hearing is hereby  
4 concluded.

5 (Time noted: 2:55 p.m.)

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C E R T I F I C A T I O N

I, TODD DeSIMONE, a Registered  
Professional Reporter and a Notary Public,  
do hereby certify that the foregoing is a  
true and accurate transcription of my  
stenographic notes.

I further certify that I am not  
employed by nor related to any party to  
this action.

TODD DeSIMONE, RPR