

# Supreme Court hears transsexual's suit

## Contends prison put her in danger

By Nancy E. Roman  
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Prison officials violated an effeminate transsexual's constitutional rights when they placed her among violent criminals at a maximum-security prison, Supreme Court justices were told yesterday.

"She was a young, nonviolent prisoner," said Elizabeth Alexander, a lawyer arguing the case on behalf of Dee Farmer, a transsexual who had silicone breast implants, hormone treatments and unsuccessful surgery to remove the testicles.

Miss Farmer, who had been convicted of credit card fraud and sentenced to 20 years in federal prison, said she was raped in 1989 while housed with male prisoners.

Ms. Alexander said officials at the prison in Terre Haute, Ind., should have known that Miss Farmer was vulnerable to attack. She argued that by not protecting her against probable assault, prison officials violated Miss Farmer's Eighth Amendment protection against cruel and unusual punishment.

"Her probability of being as-



Justice Ruth Bader Ginsburg questioned transsexual's attorney.

saulted was unusually high," she told justices.

But Paul Bender, deputy solicitor general, argued that prison officials did not necessarily know that Miss Farmer would face an extraordinary risk of assault. He said that according to a 1989 study only 1 percent of federal prisoners are physically assaulted.

Throughout yesterday's arguments Miss Farmer was referred to as "him" by Mr. Bender, who argued on behalf of the government, and as "her" by Ms. Alexander.

Justices followed the lead of Ms. Alexander, an attorney with the National Prison Project of the American Civil Liberties Union, who presented her case first, and referred to Miss Farmer as a female.

Miss Farmer filed her lawsuit in 1989, charging that four prison officials violated her Eighth Amendment rights. The suit sought damages and requested that she be placed in a medium-security prison and housed under safe conditions.

She is now housed at a medium-security prison in Florence, Colo.

A federal judge in Wisconsin dismissed the lawsuit, and the 7th U.S. Circuit Court of Appeals in Chicago upheld the dismissal.

The appeals court based its ruling in part on a 1991 Supreme Court ruling that said inmates who contend that prison conditions violate their rights must show that officials acted with "deliberate indifference."

The high court agreed to review the case to clarify what constitutes "deliberate indifference."

Justices must decide whether prison officials should have inferred from Miss Farmer's effeminate ap-

pearance and status as a transsexual that she would be extraordinarily vulnerable to assault.

Mr. Bender told justices that it would be a dangerous precedent to assume that prison officials would have such knowledge based on circumstantial evidence.

"And you cannot be 'deliberately indifferent' to a risk unless you know about the risk," he said.

Ms. Alexander said the risk was obvious.

Justice Ruth Bader Ginsburg asked Ms. Alexander whether prison officials could be held responsible for an assault on a "male with a slight build — an 18- or 19-year-old."

She responded that, in a number of cases, the person described by Justice Ginsburg would be at general risk.

The Farmer case was originally hailed as one that could dramatically affect state prisons by holding them financially responsible for damages in legal claims.

But as the justices probed the fine points yesterday, the case seemed less significant.

"There might be a lot less to this case than meets the eye," Justice Antonin Scalia said from the bench. "We may not be arguing about a whole lot here."